

LEGISLATIVE BILL 497

Approved by the Governor May 13, 2009

Introduced by Fulton, 29.

FOR AN ACT relating to driving under the influence; to amend sections 29-2259.01 and 60-6,197.05, Reissue Revised Statutes of Nebraska, and sections 60-498.02, 60-4,115, 60-4,118.06, 60-6,197.01, 60-6,197.02, 60-6,197.03, 60-6,197.06, and 60-6,211.05, Revised Statutes Cumulative Supplement, 2008; to change provisions relating to employment driving permits and ignition interlock devices; to change and provide penalties relating to ignition interlock devices; to provide for the payment of installation, removal, or maintenance costs of such devices for certain persons as prescribed; to change provisions relating to operating a motor vehicle under a revoked license; to eliminate a fund; to harmonize provisions; to repeal the original sections; to outright repeal section 60-6,211.10, Revised Statutes Cumulative Supplement, 2008; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 29-2259.01, Reissue Revised Statutes of Nebraska, is amended to read:

29-2259.01 (1) There is hereby created the Probation Cash Fund. All funds money collected pursuant to subdivisions (2)(m) and (2)(o) of section 29-2262 and subdivisions (4)(a) and (4)(b) of section 60-4,115 shall be remitted to the State Treasurer for credit to the fund.

(2) Expenditures from the money in the fund collected pursuant to subdivisions (2)(m) and (2)(o) of section 29-2262 shall include, but not be limited to, supplementing any state funds necessary to support the costs of the services for which the funds were money was collected.

(3)(a) The Office of Probation Administration shall use no more than five percent of the money in the fund collected in each fiscal year pursuant to subdivisions (4)(a) and (4)(b) of section 60-4,115 for administrative costs of the office.

(b) Expenditures from the money in the fund collected pursuant to subdivisions (4)(a) and (4)(b) of section 60-4,115 shall also be used to provide for the cost of installing, removing, and maintaining an ignition interlock device in accordance with subsection (9) of section 60-6,211.05. The office shall not be required to pay costs authorized under this subdivision that exceed the amount of funds available for this purpose.

(4) Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(5) The State Treasurer shall transfer any money in the Ignition Interlock Device Fund on the effective date of this act to the Probation Cash Fund.

Sec. 2. Section 60-498.02, Revised Statutes Cumulative Supplement, 2008, is amended to read:

60-498.02 (1) At the expiration of thirty days after the date of arrest as described in subsection (2) of section 60-6,197 or if after a hearing pursuant to section 60-498.01 the director finds that the operator's license should be revoked, the director shall (a) revoke the operator's license of a person arrested for refusal to submit to a chemical test of blood, breath, or urine as required by section 60-6,197 for a period of one year and (b) revoke the operator's license of a person who submits to a chemical test pursuant to such section which discloses the presence of a concentration of alcohol specified in section 60-6,196 for a period of ninety days unless the person's driving record abstract maintained in the department's computerized records shows one or more prior administrative license revocations on which final orders have been issued during the immediately preceding twelve-year period at the time the order of revocation is issued, in which case the period of revocation shall be one year. Except as otherwise provided in section 60-6,211.05, a new operator's license shall not be issued to such person until the period of revocation has elapsed. If the person subject to the revocation is a nonresident of this state, the director shall revoke only the nonresident's operating privilege as defined in section 60-474 of such person and shall immediately forward the operator's license and a statement of the order of revocation to the person's state of residence.

~~(2)~~ (2)(a) At the expiration of thirty days after an order of revocation is entered under subsection (1) subdivision (1)(b) of this section, any person whose operator's license has been administratively revoked for

a period of ninety days for submitting to a chemical test pursuant to section 60-6,197 which disclosed the presence of a concentration of alcohol in violation of section 60-6,196 may make application to the director for issuance of an employment driving permit pursuant to section 60-4,130.

(b) At the expiration of sixty days after an order of revocation is entered under subdivision (1)(a) of this section, any person whose operator's license has been administratively revoked for refusal to submit to a chemical test pursuant to section 60-6,197, may make application to the director for issuance of an employment driving permit pursuant to section 60-4,130 unless the person's driving record abstract maintained in the department's computerized records shows one or more prior administrative license revocations on which final orders have been issued during the immediately preceding twelve-year period at the time the order of revocation is issued.

(3) (a) At the expiration of thirty days after an order of administrative license revocation for ninety days is entered under ~~subsection (1)~~ subdivision (1)(b) of this section, any person who submitted to a chemical test pursuant to section 60-6,197 which disclosed the presence of a concentration of alcohol in violation of section 60-6,196 is eligible for an order to allow application for an ignition interlock permit to operate a motor vehicle equipped with an ignition interlock device pursuant to section 60-6,211.05 upon presentation of sufficient evidence to the ~~Department of Motor Vehicles~~ department that such a device is installed.

(b) At the expiration of sixty days after an order of administrative license revocation for one year is entered under ~~subsection (1)~~ subdivision (1)(b) of this section, any person who submitted to a chemical test pursuant to section 60-6,197 which disclosed the presence of a concentration of alcohol in violation of section 60-6,196 is eligible for an order to allow application for an ignition interlock permit in order to operate a motor vehicle equipped with an ignition interlock device pursuant to section 60-6,211.05 upon presentation of sufficient evidence to the ~~Department of Motor Vehicles~~ department that such a device is installed.

(c) At the expiration of sixty days after an order of administrative license revocation is entered under subdivision (1)(a) of this section, any person who refused to submit to a chemical test pursuant to section 60-6,197 is eligible for an order to allow application for an ignition interlock permit in order to operate a motor vehicle equipped with an ignition interlock device pursuant to section 60-6,211.05 upon presentation of sufficient evidence to the department that such a device is installed, unless the person's driving record abstract maintained in the department's computerized records shows one or more prior administrative license revocations on which final orders have been issued during the immediately preceding twelve-year period at the time the order of revocation is issued.

~~(e)~~ (d) A person operating a motor vehicle pursuant to this subsection shall only operate the motor vehicle to and from his or her residence, to his or her place of employment, his or her school, or an alcohol treatment program, required visits with his or her probation officer, or an ignition interlock service facility. Such permit shall indicate for which purposes the permit may be used. All permits issued pursuant to this subsection shall indicate that the permit is not valid for the operation of any commercial motor vehicle.

~~(4) No person shall be eligible for an employment driving permit or an ignition interlock permit during any period of time during which his or her operator's license is subject to an administrative revocation order for refusal to submit to a chemical test of blood, breath, or urine as required by section 60-6,197.~~

~~(5)~~ (4) A person may have his or her eligibility for a license reinstated upon payment of a reinstatement fee as required by section 60-694.01.

~~(6)~~ (a) (5)(a) A person whose operator's license is subject to revocation pursuant to subsection (3) of section 60-498.01 shall have all proceedings dismissed or his or her operator's license immediately reinstated without payment of the reinstatement fee upon receipt of suitable evidence by the director that:

(i) Within the thirty-day period following the date of arrest, the prosecuting attorney responsible for the matter declined to file a complaint alleging a violation of section 60-6,196 and notified the director by first-class mail or facsimile transmission of such decision and the director received such notice within such period or the notice was postmarked within such period; or

(ii) The defendant, after trial, was found not guilty of violating section 60-6,196 or such charge was dismissed on the merits by the court.

(b) The director shall adopt and promulgate rules and regulations establishing standards for the presentation of suitable evidence of compliance with subdivision (a) of this subsection.

(c) If a charge is filed for a violation of section 60-6,196 pursuant to an arrest for which all proceedings were dismissed under this subsection, the prosecuting attorney shall notify the director by first-class mail or facsimile transmission of the filing of such charge and the director may reinstate an administrative license revocation under this section as of the date that the director receives notification of the filing of the charge, except that a revocation shall not be reinstated if it was dismissed pursuant to section 60-498.01.

Sec. 3. Section 60-4,115, Revised Statutes Cumulative Supplement, 2008, is amended to read:

60-4,115 (1) Fees for operators' licenses and state identification cards shall be collected and distributed according to the table in subsection (2) of this section, except for the ignition interlock permit and associated fees as outlined in subsection (4) of this section. County officials shall remit the county portion of the fees collected to the county treasurer for placement in the county general fund. All other fees collected shall be remitted to the State Treasurer for credit to the appropriate fund. The State Treasurer shall transfer an amount equal to three dollars and fifty cents times the number of original or renewal Class M licenses issued pursuant to section 60-4,127 during the previous year from the Department of Motor Vehicles Cash Fund to the Motorcycle Safety Education Fund.

(2) The fees provided in this subsection in the following dollar amounts apply for operators' licenses and state identification cards.

| Document | Department | | | |
|--|---------------|-----------|---------|-------|
| | County | of Motor | State | |
| | Total General | Vehicles | General | |
| Fee | Fund | Cash Fund | Fund | |
| State identification card: | | | | |
| Valid for 1 year or less | 5.00 | 2.75 | 1.25 | 1.00 |
| Valid for more than 1 year but not more than 2 years | 10.00 | 2.75 | 4.00 | 3.25 |
| Valid for more than 2 years but not more than 3 years | 14.00 | 2.75 | 5.25 | 6.00 |
| Valid for more than 3 years but not more than 4 years | 19.00 | 2.75 | 8.00 | 8.25 |
| Valid for more than 4 years for person under 21 | 24.00 | 2.75 | 10.25 | 11.00 |
| Valid for 5 years | 24.00 | 3.50 | 10.25 | 10.25 |
| Duplicate or replacement | 11.00 | 2.75 | 6.00 | 2.25 |
| Class O or M operator's license: | | | | |
| Valid for 1 year or less | 5.00 | 2.75 | 1.25 | 1.00 |
| Valid for more than 1 year but not more than 2 years | 10.00 | 2.75 | 4.00 | 3.25 |
| Valid for more than 2 years but not more than 3 years | 14.00 | 2.75 | 5.25 | 6.00 |
| Valid for more than 3 years | | | | |

| | | | | |
|--|-------|------|-------|-------|
| but not more than 4 years | 19.00 | 2.75 | 8.00 | 8.25 |
| Valid for 5 years | 24.00 | 3.50 | 10.25 | 10.25 |
| Biotopic or telescopic lens restriction: | | | | |
| Valid for 1 year or less | 5.00 | 0 | 5.00 | 0 |
| Valid for more than 1 year | | | | |
| but not more than 2 years | 10.00 | 2.75 | 4.00 | 3.25 |
| Duplicate or replacement | 11.00 | 2.75 | 6.00 | 2.25 |
| Add, change, or remove class, | | | | |
| endorsement, or restriction | 5.00 | 0 | 5.00 | 0 |
| Provisional operator's permit: | | | | |
| Original | 15.00 | 2.75 | 12.25 | 0 |
| Biotopic or telescopic lens restriction: | | | | |
| Valid for 1 year or less | 5.00 | 0 | 5.00 | 0 |
| Valid for more than 1 year | | | | |
| but not more than 2 years | 15.00 | 2.75 | 12.25 | 0 |
| Duplicate or replacement | 11.00 | 2.75 | 6.00 | 2.25 |
| Add, change, or remove class, | | | | |
| endorsement, or restriction | 5.00 | 0 | 5.00 | 0 |
| LPD-learner's permit: | | | | |
| Original | 8.00 | .25 | 5.00 | 2.75 |
| Duplicate or replacement | 11.00 | 2.75 | 6.00 | 2.25 |
| Add, change, or remove class, | | | | |
| endorsement, or restriction | 5.00 | 0 | 5.00 | 0 |
| LPE-learner's permit: | | | | |
| Original | 8.00 | .25 | 5.00 | 2.75 |
| Duplicate or replacement | 11.00 | 2.75 | 6.00 | 2.25 |
| Add, change, or remove class, | | | | |
| endorsement, or restriction | 5.00 | 0 | 5.00 | 0 |
| School permit: | | | | |
| Original | 8.00 | .25 | 5.00 | 2.75 |
| Duplicate or replacement | 11.00 | 2.75 | 6.00 | 2.25 |
| Add, change, or remove class, | | | | |
| endorsement, or restriction | 5.00 | 0 | 5.00 | 0 |
| Farm permit: | | | | |
| Original or renewal | 5.00 | .25 | 0 | 4.75 |
| Duplicate or replacement | 5.00 | .25 | 0 | 4.75 |
| Temporary | 5.00 | .25 | 0 | 4.75 |
| Add, change, or remove class, | | | | |

| | | | | |
|--|-------|------|------|-------|
| endorsement, or restriction | 5.00 | 0 | 5.00 | 0 |
| Driving permits: | | | | |
| Employment | 45.00 | 0 | 5.00 | 40.00 |
| Medical hardship | 45.00 | 0 | 5.00 | 40.00 |
| Duplicate or replacement | 10.00 | .25 | 5.00 | 4.75 |
| Add, change, or remove class, endorsement, or restriction | 5.00 | 0 | 5.00 | 0 |
| Commercial driver's license: | | | | |
| Valid for 1 year or less | 11.00 | 1.75 | 5.00 | 4.25 |
| Valid for more than 1 year but not more than 2 years | 22.00 | 1.75 | 5.00 | 15.25 |
| Valid for more than 2 years but not more than 3 years | 33.00 | 1.75 | 5.00 | 26.25 |
| Valid for more than 3 years but not more than 4 years | 44.00 | 1.75 | 5.00 | 37.25 |
| Valid for 5 years | 55.00 | 1.75 | 5.00 | 48.25 |
| Bioptic or telescopic lens restriction: | | | | |
| Valid for one year or less | 11.00 | 1.75 | 5.00 | 4.25 |
| Valid for more than 1 year but not more than 2 years | 22.00 | 1.75 | 5.00 | 15.25 |
| Duplicate or replacement | 11.00 | 2.75 | 6.00 | 2.25 |
| Add, change, or remove class, endorsement, or restriction | 10.00 | 1.75 | 5.00 | 3.25 |
| LPC-learner's permit: | | | | |
| Original or renewal | 10.00 | .25 | 5.00 | 4.75 |
| Duplicate or replacement | 10.00 | .25 | 5.00 | 4.75 |
| Add, change, or remove class, endorsement, or restriction | 10.00 | .25 | 5.00 | 4.75 |
| Seasonal permit: | | | | |
| Original or renewal | 10.00 | .25 | 5.00 | 4.75 |
| Duplicate or replacement | 10.00 | .25 | 5.00 | 4.75 |
| Add, change, or remove class, endorsement, or restriction | 10.00 | .25 | 5.00 | 4.75 |
| School bus permit: | | | | |
| Original or renewal | 5.00 | 0 | 5.00 | 0 |
| Duplicate or replacement | 5.00 | 0 | 5.00 | 0 |
| Add, change, or remove class, endorsement, or restriction | 5.00 | 0 | 5.00 | 0 |

(3) If the department issues an operator's license or a state

identification card, the department shall remit the county portion of the fees to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

(4) (a) The fee for an ignition interlock permit shall be forty-five dollars. Five dollars of the fee shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. Forty dollars of the fee shall be remitted to the State Treasurer for credit to the ~~Ignition Interlock Device~~ Probation Cash Fund.

(b) The fee for a duplicate or replacement ignition interlock permit shall be ten dollars. Twenty-five cents of the fee shall be remitted to the county treasurer for credit to the county general fund. Five dollars of the fee shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. Four dollars and seventy-five cents of the fee shall be remitted to the State Treasurer for credit to the ~~Ignition Interlock Device~~ Probation Cash Fund.

(c) The fee for adding, changing, or removing a class, endorsement, or restriction on an ignition interlock permit shall be five dollars. The fee shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

(5) This subsection applies beginning on the implementation date designated by the director pursuant to section 60-462.02. The department and its agents may collect an identity security surcharge to cover the cost of security and technology practices used to protect the identity of applicants for and holders of operators' licenses and state identification cards and to reduce identity theft, fraud, and forgery and counterfeiting of such licenses and cards to the maximum extent possible. The surcharge shall be in addition to all other required fees for operators' licenses and state identification cards. The amount of the surcharge shall be determined by the department. The surcharge shall not exceed eight dollars. The surcharge shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

Sec. 4. Section 60-4,118.06, Revised Statutes Cumulative Supplement, 2008, is amended to read:

60-4,118.06 (1) Upon receipt by the director of (a) a certified copy of a court order issued pursuant to section 60-6,211.05, a certified copy of an order for installation of an ignition interlock device and issuance of an ignition interlock permit pursuant to subdivision (1), ~~(2)~~, or ~~(2)~~ (3) of section 60-6,197.03, or a copy of an order from the Board of Pardons pursuant to section 83-1,127.02, (b) sufficient evidence that the person has surrendered his or her operator's license to the Department of Motor Vehicles and installed an approved ignition interlock device in accordance with such order, and (c) payment of the fee provided in section 60-4,115, such person may apply for an ignition interlock permit. A person subject to administrative license revocation under section 60-498.02 shall be eligible for an ignition interlock permit as provided in such section. The director shall issue an ignition interlock permit for the operation of a motor vehicle equipped with an ignition interlock device. Any person issued an ignition interlock permit pursuant to a court order shall only operate the motor vehicle equipped with an ignition interlock device to and from his or her residence, his or her place of employment, his or her school, an alcohol treatment program, required visits with his or her probation officer, or an ignition interlock service facility. The ~~Sueh~~ permit shall indicate for which purposes the permit may be used. All permits issued pursuant to this subsection shall indicate that the permit is not valid for the operation of any commercial motor vehicle. ~~The department shall not issue an ignition interlock permit to any person convicted of a second or subsequent violation of section 60-6,196 or 60-6,197 until at least one year of the operator's license revocation has elapsed.~~

(2) Upon expiration of the revocation period or upon expiration of an order issued by the Board of Pardons pursuant to section 83-1,127.02, a person may apply to the department in writing for issuance of an operator's license. Regardless of whether the license surrendered by such person under subsection (1) of this section has expired, the person shall apply for a new operator's license pursuant to the Motor Vehicle Operator's License Act.

(3) A person who operates a motor vehicle in violation of the purposes for operation indicated on the ignition interlock permit shall be guilty of a Class II misdemeanor, shall have his or her ignition interlock permit revoked, and shall serve the balance of any revocation period without the privilege to operate a motor vehicle using an ignition interlock device.

Sec. 5. Section 60-6,197.01, Revised Statutes Cumulative Supplement, 2008, is amended to read:

60-6,197.01 (1) Upon conviction for a violation described in section 60-6,197.06 or a second or subsequent violation of section 60-6,196 or 60-6,197, the court shall impose either of the following restrictions:

(a)(i) The court shall order all motor vehicles owned by the person so convicted immobilized at the owner's expense for a period of time not less than five days and not more than eight months and shall notify the Department of Motor Vehicles of the period of immobilization. Any immobilized motor vehicle shall be released to the holder of a bona fide lien on the motor vehicle executed prior to such immobilization when possession of the motor vehicle is requested as provided by law by such lienholder for purposes of foreclosing and satisfying such lien. If a person tows and stores a motor vehicle pursuant to this subdivision at the direction of a peace officer or the court and has a lien upon such motor vehicle while it is in his or her possession for reasonable towing and storage charges, the person towing the vehicle has the right to retain such motor vehicle until such lien is paid. For purposes of this subdivision, immobilized or immobilization means revocation or suspension, at the discretion of the court, of the registration of such motor vehicle or motor vehicles, including the license plates; and

(ii)(A) Any immobilized motor vehicle shall be released by the court without any legal or physical restraints to any registered owner who is not the registered owner convicted of a second or subsequent violation of section 60-6,196 or 60-6,197 if an affidavit is submitted to the court by such registered owner stating that the affiant is employed, that the motor vehicle subject to immobilization is necessary to continue that employment, that such employment is necessary for the well-being of the affiant's dependent children or parents, that the affiant will not authorize the use of the motor vehicle by any person known by the affiant to have been convicted of a second or subsequent violation of section 60-6,196 or 60-6,197, that affiant will immediately report to a local law enforcement agency any unauthorized use of the motor vehicle by any person known by the affiant to have been convicted of a second or subsequent conviction of section 60-6,196 or 60-6,197, and that failure to release the motor vehicle would cause undue hardship to the affiant.

(B) A registered owner who executes an affidavit pursuant to subdivision (1)(a)(ii)(A) of this section which is acted upon by the court and who fails to immediately report an unauthorized use of the motor vehicle which is the subject of the affidavit is guilty of a Class IV misdemeanor and may not file any additional affidavits pursuant to subdivision (1)(a)(ii)(A) of this section.

(C) The department shall adopt and promulgate rules and regulations to implement the provisions of subdivision (1)(a) of this section; or

(b) As an alternative to subdivision (1)(a) of this section, the court shall order the convicted person, in order to operate a motor vehicle, to obtain an ignition interlock permit and install an ignition interlock device on each of the motor vehicles vehicle owned or operated by the convicted person if he or she was sentenced to an operator's license revocation of at least one year, and has completed at least one year of such ~~revocation~~. No ignition interlock permit may be issued until sufficient evidence is presented to the department that an ignition interlock device is installed on each vehicle and that the applicant is eligible for use of an ignition interlock device. The installation of an ignition interlock device shall be for a period not less than six months, ~~commencing upon the end of such year of the operator's license revocation~~. Notwithstanding any other provision of law, if the owner was convicted of a second or subsequent violation of section 60-6,196 or 60-6,197, no ignition interlock device or ignition interlock permit shall be ordered by any court or state agency under any circumstances until at least one year of the operator's license revocation shall have elapsed.

(2) In addition to the restrictions required by subdivision (1)(b) of this section, the court may require a person convicted of a second or subsequent violation of section 60-6,196 or 60-6,197 to use a continuous alcohol monitoring device and abstain from alcohol use for a period of time not to exceed the maximum term of license revocation ordered by the court. A continuous alcohol monitoring device shall not be ordered for a person convicted of a second or subsequent violation unless the installation of an ignition interlock device is also required.

Sec. 6. Section 60-6,197.02, Revised Statutes Cumulative Supplement, 2008, is amended to read:

60-6,197.02 (1) A violation of section 60-6,196 or 60-6,197 shall be punished as provided in section 60-6,197.03. For purposes of sentencing under section 60-6,197.03:

(a) Prior conviction means a conviction for a violation committed within the twelve-year period prior to the offense for which the sentence is being imposed as follows:

(i) For a violation of section 60-6,196:

(A) Any conviction for a violation of section 60-6,196;

(B) Any conviction for a violation of a city or village ordinance enacted in conformance with section 60-6,196;

(C) Any conviction under a law of another state if, at the time of the conviction under the law of such other state, the offense for which the person was convicted would have been a violation of section 60-6,196; or

(D) Any conviction for a violation of section 60-6,198; or

(ii) For a violation of section 60-6,197:

(A) Any conviction for a violation of section 60-6,197;

(B) Any conviction for a violation of a city or village ordinance enacted in conformance with section 60-6,197; or

(C) Any conviction under a law of another state if, at the time of the conviction under the law of such other state, the offense for which the person was convicted would have been a violation of section 60-6,197;

(b) Prior conviction includes any conviction under section 60-6,196, 60-6,197, or 60-6,198, or any city or village ordinance enacted in conformance with any of such sections, as such sections or city or village ordinances existed at the time of such conviction regardless of subsequent amendments to any of such sections or city or village ordinances; and

(c) Twelve-year period means the period computed from the date of the prior offense to the date of the offense which resulted in the conviction for which the sentence is being imposed.

(2) In any case charging a violation of section 60-6,196 or 60-6,197, the prosecutor or investigating agency shall use due diligence to obtain the person's driving record from the Department of Motor Vehicles and the person's driving record from other states where he or she is known to have resided within the last twelve years. The prosecutor shall certify to the court, prior to sentencing, that such action has been taken. The prosecutor shall present as evidence for purposes of sentence enhancement a court-certified copy or an authenticated copy of a prior conviction in another state. The court-certified or authenticated copy shall be prima facie evidence of such prior conviction.

(3) For each conviction for a violation of section 60-6,196 or 60-6,197, the court shall, as part of the judgment of conviction, make a finding on the record as to the number of the convicted person's prior convictions. The convicted person shall be given the opportunity to review the record of his or her prior convictions, bring mitigating facts to the attention of the court prior to sentencing, and make objections on the record regarding the validity of such prior convictions.

(4) A person arrested for a violation of section 60-6,196 or 60-6,197 before the effective date of this act, but sentenced pursuant to section 60-6,197.03 for such violation on or after the effective date of this act, shall be sentenced according to the provisions of section 60-6,197.03 in effect on the date of arrest.

Sec. 7. Section 60-6,197.03, Revised Statutes Cumulative Supplement, 2008, is amended to read:

60-6,197.03 Any person convicted of a violation of section 60-6,196 or 60-6,197 shall be punished as follows:

(1) Except as provided in subdivision (2) of this section, if such person has not had a prior conviction, such person shall be guilty of a Class W misdemeanor, and the court shall, as part of the judgment of conviction, order that the operator's license of such person be revoked or impounded for a period of six months from the date ordered by the court. If the court orders the person's operator's license impounded, the court shall also order that the person shall not operate a motor vehicle for a period of six months and shall not order the installation of an ignition interlock device or an ignition interlock permit. If the court orders the person's operator's license revoked, the revocation period shall be for six months. The revocation order shall require that the person not drive for a period of thirty days, after which the court may order that and the court shall order that after thirty days of no driving, the person may apply for an ignition interlock permit for the remainder of the revocation period and shall have an ignition interlock device installed on any motor vehicle he or she operates during the remainder of the revocation period. Such revocation or impoundment shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of sixty days from the date ordered by the court. The court may order that during the period of revocation the person apply for unless otherwise authorized by an order for an ignition interlock

permit and the installation of an ignition interlock device ~~issued~~ pursuant to section 60-6,211.05. Such ~~and such~~ order of probation or sentence suspension shall also include, as one of its conditions, the payment of a four-hundred-dollar fine;

(2) If such person has not had a prior conviction and, as part of the current violation, had a concentration of fifteen-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or fifteen-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath, such person shall be guilty of a Class W misdemeanor, and the court shall, as part of the judgment of conviction, revoke the operator's license of such person for a period of one year from the date ordered by the court. The revocation order shall require that the person not drive for a period of sixty days, after which the court may order that ~~and shall order that after sixty days of no driving,~~ the person may apply for an ignition interlock permit for the remainder of the revocation period and ~~shall~~ have an ignition interlock device installed on any motor vehicle he or she operates during the remainder of the revocation period. Such revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of one year from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after which the court may order that the person apply unless otherwise authorized by an order for an ignition interlock permit and installation of an ignition interlock device issued pursuant to section 60-6,211.05, ~~and such~~ for the remainder of the revocation period and have an ignition interlock device installed on any motor vehicle he or she operates during the remainder of the revocation period. Such revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. Such order of probation or sentence suspension shall also include, as conditions, the payment of a five-hundred-dollar fine and either confinement in the city or county jail for two days or the imposition of not less than one hundred twenty hours of community service;

(3) Except as provided in subdivision (5) of this section, if such person has had one prior conviction, such person shall be guilty of a Class W misdemeanor, and the court shall, as part of the judgment of conviction, order that the operator's license of such person be revoked for a period of one year from the date ordered by the court. The revocation order shall require that the person not drive for a period of sixty days, after which the court may order that the person apply for an ignition interlock permit for the remainder of the revocation period and have an ignition interlock device installed on any motor vehicle he or she owns or operates during the remainder of the revocation period and shall issue an order pursuant to section 60-6,197.01. ~~Such orders~~ revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of one year from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after which the court may order that during the period of revocation the person apply for unless otherwise authorized by an order for an ignition interlock permit and installation of an ignition interlock device ~~issued~~ pursuant to section 60-6,211.05 and shall issue an order pursuant to section 60-6,197.01. Such ~~and such~~ order of probation or sentence suspension shall also include, as conditions, the payment of a five-hundred-dollar fine and either confinement in the city or county jail for ten days or the imposition of not less than two hundred forty hours of community service;

(4) Except as provided in subdivision (6) of this section, if such person has had two prior convictions, such person shall be guilty of a Class W misdemeanor, and the court shall, as part of the judgment of conviction, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such orders shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of

probation or sentence suspension, order that the operator's license of such person be revoked for a period of at least two years but not more than fifteen years from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after which the court may order that during the period of revocation the person apply for unless otherwise authorized by an order for an ignition interlock permit and installation of an ignition interlock device issued pursuant to section 60-6,211.05 and shall issue an order pursuant to section 60-6,197.01. Such ~~and such~~ order of probation or sentence suspension shall also include, as conditions, the payment of a six-hundred-dollar fine and confinement in the city or county jail for thirty days;

(5) If such person has had one prior conviction and, as part of the current violation, had a concentration of fifteen-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or fifteen-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath or refused to submit to a test as required under section 60-6,197, such person shall be guilty of a Class I misdemeanor, and the court shall, as part of the judgment of conviction, revoke the operator's license of such person for a period of at least one year but not more than fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such revocation and order shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. The court shall also sentence such person to serve at least ninety days' imprisonment in the city or county jail or an adult correctional facility.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of at least one year but not more than fifteen years from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after which the court may order that during the period of revocation the person apply for unless otherwise authorized by an order for an ignition interlock permit and installation of an ignition interlock device issued pursuant to section 60-6,211.05 and shall issue an order pursuant to section 60-6,197.01. Such ~~and such~~ order of probation or sentence suspension shall also include, as conditions, the payment of a one-thousand-dollar fine and confinement in the city or county jail for thirty days;

(6) If such person has had two prior convictions and, as part of the current violation, had a concentration of fifteen-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or fifteen-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath or refused to submit to a test as required under section 60-6,197, such person shall be guilty of a Class IIIA felony, and the court shall, as part of the judgment of conviction, revoke the operator's license of such person for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such revocation and order shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. The court shall also sentence such person to serve at least one hundred eighty days' imprisonment in the city or county jail or an adult correctional facility.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of at least five years but not more than fifteen years from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after which the court may order that during the period of revocation the person apply for unless otherwise authorized by an order for an ignition interlock permit and installation of an ignition interlock device issued pursuant to section 60-6,211.05 and shall issue an order pursuant to section 60-6,197.01. Such ~~and such~~ order of probation or sentence suspension shall also include, as conditions, the payment of a one-thousand-dollar fine and confinement in the city or county jail for sixty days;

(7) Except as provided in subdivision (8) of this section, if such person has had three prior convictions, such person shall be guilty of a Class IIIA felony, and the court shall, as part of the judgment of conviction, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such orders shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation

is revoked. The court shall also sentence such person to serve at least one hundred eighty days' imprisonment in the city or county jail or an adult correctional facility.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after which the court may order that during the period of revocation the person apply for unless otherwise authorized by an order for an ignition interlock permit and installation of an ignition interlock device issued pursuant to section 60-6,211.05 and shall issue an order pursuant to section 60-6,197.01. Such ~~and such~~ order of probation or sentence suspension shall also include, as conditions, the payment of a one-thousand-dollar fine and confinement in the city or county jail for ninety days;

(8) If such person has had three prior convictions and, as part of the current violation, had a concentration of fifteen-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or fifteen-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath or refused to submit to a test as required under section 60-6,197, such person shall be guilty of a Class III felony, and the court shall, as part of the judgment of conviction, revoke the operator's license of such person for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such revocation and order shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after which the court may order that during the period of revocation the person apply for unless otherwise authorized by an order for an ignition interlock permit and installation of an ignition interlock device issued pursuant to section 60-6,211.05 and shall issue an order pursuant to section 60-6,197.01. Such ~~and such~~ order of probation or sentence suspension shall also include, as conditions, the payment of a one-thousand-dollar fine and confinement in the city or county jail for one hundred twenty days;

(9) Except as provided in subdivision (10) of this section, if such person has had four or more prior convictions, such person shall be guilty of a Class III felony, and the court shall, as part of the judgment of conviction, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such orders shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after which the court may order that during the period of revocation the person apply for unless otherwise authorized by an order for an ignition interlock permit and installation of an ignition interlock device issued pursuant to section 60-6,211.05 and shall issue an order pursuant to section 60-6,197.01. Such ~~and such~~ order of probation or sentence suspension shall also include, as conditions, the payment of a one-thousand-dollar fine and confinement in the city or county jail for one hundred eighty days; and

(10) If such person has had four or more prior convictions and, as part of the current violation, had a concentration of fifteen-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or fifteen-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath or refused to submit to a test as required under section 60-6,197, such person shall be guilty of a Class II felony and the court shall, as part of the judgment of conviction, revoke the operator's license of such person for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such revocation and order shall be administered upon sentencing, upon final

judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after which the court may order that during the period of revocation the person apply for unless otherwise authorized by an order for an ignition interlock permit and installation of an ignition interlock device issued pursuant to section 60-6,211.05 and shall issue an order pursuant to section 60-6,197.01. Such ~~and such~~ order of probation or sentence suspension shall also include, as conditions, the payment of a one-thousand-dollar fine and confinement in the city or county jail for one hundred eighty days.

Sec. 8. Section 60-6,197.05, Reissue Revised Statutes of Nebraska, is amended to read:

60-6,197.05 Any period of revocation imposed for a violation of section 60-6,196 or 60-6,197 shall be reduced by any period imposed under section 60-498.02. Any period of revocation imposed under subdivision (1) of section 60-6,197.03 for a violation of section 60-6,196 or 60-6,197 or under subdivision (2)(a) of section 60-6,196, as such section existed prior to July 16, 2004, shall not prohibit the operation of a motor vehicle under the terms and conditions of an employment driving permit issued pursuant to subsection (2) of section 60-498.02.

Sec. 9. Section 60-6,197.06, Revised Statutes Cumulative Supplement, 2008, is amended to read:

60-6,197.06 (1) Unless otherwise provided by law pursuant to an ignition interlock permit, any ~~Any~~ person operating a motor vehicle on the highways or streets of this state while his or her operator's license has been revoked pursuant to section 28-306, section 60-698, subdivision (4), (5), (6), (7), (8), (9), or (10) of section 60-6,197.03, or section 60-6,198, or pursuant to subdivision (2)(c) or (2)(d) of section 60-6,196 or subdivision (4)(c) or (4)(d) of section 60-6,197 as such subdivisions existed prior to July 16, 2004, shall be guilty of a Class IV felony, and the court shall, as part of the judgment of conviction, revoke the operator's license of such person for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such revocation and order shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

(2) If such person has had a conviction under this section or under subsection (6) of section 60-6,196 or subsection (7) of section 60-6,197, as such subsections existed prior to July 16, 2004, prior to the date of the current conviction under this section, such person shall be guilty of a Class III felony, and the court shall, as part of the judgment of conviction, revoke the operator's license of such person for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such revocation and order shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

Sec. 10. Section 60-6,211.05, Revised Statutes Cumulative Supplement, 2008, is amended to read:

60-6,211.05 (1)(a) If an order of probation is granted under section 60-6,196 or 60-6,197, as such sections existed prior to July 16, 2004, or section 60-6,196 or 60-6,197 and sections 60-6,197.02 and 60-6,197.03, as such sections existed on or after July 16, 2004, the court may order that the defendant ~~to~~ install an ignition interlock device of a type approved by the Director of Motor Vehicles on each motor vehicle operated by the defendant during the period of probation. Upon sufficient evidence of installation, the defendant may apply to the director for an ignition interlock permit pursuant to section 60-4,118.06. The device shall, without tampering or the intervention of another person, prevent the defendant from operating the motor vehicle when the defendant has an alcohol concentration greater than three-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or three-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath. ~~the levels prescribed in section 60-6,196.~~

(b) If the court orders an ignition interlock permit and installation of an ignition interlock device as part of the judgment of conviction pursuant to subdivision (1), ~~or~~ (2), or (3) of section 60-6,197.03, the device shall be of a type approved by the director and shall be installed on each motor vehicle operated by the defendant. The device shall, without

tampering or the intervention of another person, prevent the defendant from operating the motor vehicle when the defendant has an alcohol concentration greater than three-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or three-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath. the levels prescribed in section 60-6,196.

(2) If the court orders installation of an ignition interlock device and issuance of an ignition interlock permit pursuant to subsection (1) of this section, the court may also order the use of a continuous alcohol monitoring device and abstention from alcohol use at all times. The device shall, without tampering or the intervention of another person, test and record the alcohol consumption level of the defendant on a periodic basis and transmit such information to probation authorities.

(3) Any order issued by the court pursuant to this section shall not take effect until the defendant is eligible to operate a motor vehicle pursuant to subsection (3) of section 60-498.02.

~~(4)~~ (4)(a) If the court orders an ignition interlock device or the Board of Pardons orders an ignition interlock device under section 83-1,127.02, the court or the Board of Pardons shall order the ~~Department of Motor Vehicles~~ to issue to the defendant to apply for an ignition interlock permit as provided in section 60-4,118.06 which indicates that the defendant is only allowed to operate a motor vehicle equipped with an ignition interlock device.

(b) Such court order shall remain in effect for a period of time as determined by the court not to exceed the maximum term of revocation which the court could have imposed according to the nature of the violation and shall allow operation of an ignition-interlock-equipped motor vehicle only to and from the defendant's residence, to the defendant's place of employment, the defendant's school, or an alcohol treatment program, required visits with his or her probation officer, or an ignition interlock service facility.

(c) Such Board of Pardons order shall remain in effect for a period of time not to exceed any period of revocation the applicant is subject to at the time the application for a license reinstatement reprieve is made.

(5) A person who tampers with or circumvents an ignition interlock device installed under a court order while the order is in effect, ~~or~~ who operates a motor vehicle which is not equipped with an ignition interlock device in violation of a court order made pursuant to this section, or who otherwise operates a motor vehicle equipped with an ignition interlock device in violation of the requirements of the court order under which the device was installed shall be guilty of a Class II misdemeanor.

(6) Any person restricted to operating a motor vehicle equipped with an ignition interlock device, pursuant to a Board of Pardons order, who operates upon the highways of this state a motor vehicle without such device or if the device has been disabled, bypassed, or altered in any way, shall be punished as provided in subsection (3) of section 83-1,127.02.

(7) If a person ordered to use a continuous alcohol monitoring device and abstain from alcohol use pursuant to a court order as provided in subsection (2) of this section violates the provisions of such court order by removing, tampering with, or otherwise bypassing the continuous alcohol monitoring device or by consuming alcohol while required to use such device, he or she shall have his or her ignition interlock permit revoked and be unable to apply for reinstatement for the duration of the revocation period imposed by the court.

(8) The director shall adopt and promulgate rules and regulations ~~to approve~~ regarding the approval of ignition interlock devices, and the means of installation of the installing ignition interlock devices, and the means of administering the ignition interlock permit program.

(9) The costs incurred in order to comply with the ignition interlock requirements of this section shall be paid by the person complying with an order for an ignition interlock permit and installation of an ignition interlock device ~~pursuant to section 60-6,211.05 or 83-1,127.02~~ unless the court or the Board of Pardons has determined the person to be indigent, incapable of paying for the cost of installation, removal, or maintenance of the ignition interlock device in accordance with this subsection.

(10)(a) An ignition interlock service facility shall notify the appropriate district probation office, if the order is made pursuant to subdivision (1)(a) of this section, or notify the appropriate court if the order is made pursuant to subdivision (1)(b) of this section, of any evidence of tampering with or circumvention of an ignition interlock device, or any attempts to do so, when the facility becomes aware of such evidence.

(b) If a district probation office receives evidence of tampering with or circumvention of an ignition interlock device, or any attempts to

do so, from an ignition interlock service facility, the district probation office shall notify the appropriate court of such violation. The court shall immediately schedule an evidentiary hearing to be held within fourteen days after receiving such evidence, either from the district probation office or an ignition interlock service facility, and the court shall cause notice of the hearing to be given to the person operating a motor vehicle pursuant to an order under subsection (1) of this section. If the person who is the subject of such evidence does not appear at the hearing and show cause why the order made pursuant to subsection (1) of this section should remain in effect, the court shall rescind the original order. Nothing in this subsection shall apply to an order made by the Board of Pardons pursuant to section 83-1,127.02.

(11) Notwithstanding any other provision of law, the costs associated with the installation, maintenance, and removal of a court-ordered ignition interlock device by the Office of Probation Administration shall not be construed so as to create an order of probation when an order for the installation of an ignition interlock device and ignition interlock permit was made pursuant to subdivision (1)(b) of this section as part of a conviction.

Sec. 11. Original sections 29-2259.01 and 60-6,197.05, Reissue Revised Statutes of Nebraska, and sections 60-498.02, 60-4,115, 60-4,118.06, 60-6,197.01, 60-6,197.02, 60-6,197.03, 60-6,197.06, and 60-6,211.05, Revised Statutes Cumulative Supplement, 2008, are repealed.

Sec. 12. The following section is outright repealed: Section 60-6,211.10, Revised Statutes Cumulative Supplement, 2008.

Sec. 13. Since an emergency exists, this act takes effect when passed and approved according to law.