

LEGISLATIVE BILL 564

Approved by the Governor June 10, 1993

Introduced by Day, 19; Hohenstein, 17; Pedersen, 39; Pirsch, 10

AN ACT relating to crimes and offenses; to amend sections 29-2264 and 39-669.13, Reissue Revised Statutes of Nebraska, 1943, and sections 39-669.07, 39-669.08, 39-669.11, 39-669.12, 39-669.16, 39-669.22, 39-6,122, and 60-4,118, Revised Statutes Supplement, 1992; to change provisions relating to setting aside convictions; to prohibit certain persons from operating or having actual physical control of a motor vehicle with alcohol in the blood or breath as prescribed; to provide for consent to chemical tests; to provide for impoundment of motor vehicle operators' licenses; to provide for the applicability of provisions; to provide for the use of ignition interlock devices; to change provisions relating to the sentence for driving under the influence and the assessment of points against operators' licenses; to provide for a restricted operator's license; to provide penalties; to harmonize provisions; to provide operative dates; to repeal the original sections; and to declare an emergency.

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

Section 1. That section 29-2264, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

29-2264. (1) Whenever any person is placed on probation by a court and satisfactorily completes the conditions of his or her probation for the entire period thereof or ~~who~~ is discharged from probation prior to the termination of the period thereof, the sentencing court shall issue an order releasing the offender from probation and such order shall in all felony cases restore the offender's civil rights the same as though a pardon had been issued.

(2) Whenever any person is convicted of a ~~crime~~ misdemeanor or felony and is placed on probation by the court or is sentenced to a fine only, he or she may, after satisfactory fulfillment of the conditions of ~~his~~ probation for the entire period thereof; or after discharge from probation prior to the termination of the period thereof and after payment of any fine, petition the sentencing court to set aside the conviction.

(3) In determining whether to set aside the conviction, the court shall consider:

(a) The behavior of the offender ~~while on probation~~ after sentencing;

(b) The likelihood that the offender will not engage in

further criminal activity; and

(c) Any other information the court considers relevant.

(4) The court may grant the offender's petition and issue an order setting aside the conviction when in the opinion of the court the order will be in the best interest of the offender and consistent with the public welfare. Such order shall:

(a) Nullify the conviction; and

(b) Remove all civil disabilities and disqualifications imposed as a result of the conviction the same as though a pardon had been issued.

(5) The setting aside of a conviction in accordance with the ~~provisions of sections 29-2246 to 29-2268~~ Nebraska Probation Administration Act shall not:

(a) Require the reinstatement of any office, employment, or position which was previously held and lost or forfeited as a result of the conviction;

(b) Preclude proof of a plea of guilty whenever such plea is relevant to the determination of an issue involving the rights or liabilities of someone other than the offender;

(c) Preclude proof of the conviction as evidence of the commission of ~~a crime~~ the misdemeanor or felony, whenever the fact of its commission is relevant for the purpose of impeaching the offender as a witness, except that the order setting aside the conviction may be introduced in evidence;

(d) Preclude use of the conviction for the purpose of determining sentence on any subsequent conviction of a criminal offense;

(e) Preclude the proof of the conviction as evidence of the commission of ~~a crime~~ the misdemeanor or felony in the event an offender is charged with a subsequent offense and the penalty provided by law is increased if the prior conviction is proved; or

(f) Preclude the proof of the conviction to determine whether an offender is eligible to have a subsequent conviction set aside in accordance with the ~~provisions of sections 29-2246 to 29-2268~~ Nebraska Probation Administration Act.

(6) This section shall be retroactive in application and shall apply to all persons, otherwise eligible in accordance with the provisions of this section, whether convicted prior to, on, or subsequent to ~~August 27, 1974~~ the operative date of this section.

Sec. 2. (1) It shall be unlawful for any person under twenty-one years of age to operate or be in the actual physical control of any motor vehicle:

(a) When such person has a concentration of two-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood but less than the concentration prescribed under subdivision (1)(b) of section 39-669.07; or

(b) When such person has a concentration of two-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath but less than the concentration

prescribed under subdivision (1)(c) of section 39-669.07.

(2) Enforcement of this section by state or local law enforcement agencies shall be accomplished only as a secondary action when the driver of a motor vehicle has been cited for a violation of some other offense.

Sec. 3. (1) Any person who operates or has in his or her actual physical control a motor vehicle in this state shall be deemed to have given his or her consent to submit to a chemical test or tests of his or her blood or breath for the purpose of determining the concentration of alcohol in such blood or breath.

(2) Any peace officer who has been duly authorized to make arrests for violations of traffic laws of this state or of ordinances of any city or village may require any person under twenty-one years of age who has been cited for some offense to submit to a chemical test or tests of his or her blood or breath for the purpose of determining the concentration of alcohol in such blood or breath when the officer has reasonable grounds to believe that such person was driving or was in the actual physical control of a motor vehicle in this state in violation of section 2 of this act. Such peace officer may require such person to submit to a preliminary breath test. Any person who refuses to submit to such preliminary breath test or whose preliminary breath test results indicate an alcohol concentration in violation of section 2 of this act shall be placed under arrest.

(3) Any person arrested as provided in this section may, upon the direction of a peace officer, be required to submit to a chemical test or tests of his or her blood or breath for a determination of the concentration of alcohol. If the chemical test discloses the presence of a concentration of alcohol in violation of section 2 of this act, the person shall be found guilty of a traffic infraction as defined in section 168, Legislative Bill 370, Ninety-third Legislature, First Session, 1993, and upon conviction shall have his or her operator's license impounded by the court for thirty days for each violation of section 2 of this act. Any person who refuses to submit to such test or tests required pursuant to this section shall not have the tests taken but shall be found guilty of a traffic infraction as defined in section 168, Legislative Bill 370, Ninety-third Legislature, First Session, 1993, and upon conviction shall have his or her operator's license impounded by the court for ninety days for refusal to submit to such tests required pursuant to this section.

Sec. 4. (1) If a person whose operator's license has been impounded pursuant to section 3 of this act has had no other violations of section 2 or 3 of this act during the time of impoundment of the operator's license, the record of such impoundment shall be sealed. The court shall not report this infraction to the Department of Motor Vehicles.

(2) Any person whose operator's license is impounded pursuant to section 3 of this act may be allowed by the court to operate a motor vehicle in order to drive to and from his or her place of employment.

Sec. 5. Sections 2 to 4 of this act shall not operate to

prevent any person, regardless of age, from being prosecuted or having any action taken pursuant to section 39-669.07 or 39-669.08 or having his or her operator's license revoked pursuant to sections 39-669.15 to 39-669.18 for violation of section 39-669.07 or 39-669.08 or from being prosecuted or having any action taken under any other provision of law. If such person is believed to be under the influence of alcoholic liquor pursuant to section 39-669.07 or 39-669.08, sections 2 to 4 of this act shall not operate to prevent prosecution of such person under section 39-669.07 or 39-669.08 even if sections 2 to 4 of this act apply.

Sec. 6. (1) If an order of probation is granted under section 39-669.07 or 39-669.08, the court may order 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. 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 (2) of section 39-669.16. 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 the levels prescribed in section 39-669.07.

(2) If the court orders an ignition interlock device, the court shall order the Department of Motor Vehicles to issue to the defendant a restricted Class O license as provided in section 60-4.118 which indicates that the defendant is only allowed to operate a motor vehicle equipped with an ignition interlock device. The 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.

(3) 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 shall be guilty of a Class II misdemeanor.

(4) The director shall adopt and promulgate rules and regulations to approve ignition interlock devices and the means of installation of the devices.

Sec. 7. That section 39-669.07, Revised Statutes Supplement, 1992, be amended to read as follows:

39-669.07. (1) It shall be unlawful for any person to operate or be in the actual physical control of any motor vehicle:

(a) While under the influence of alcoholic liquor or of any drug;

(b) When such person has a concentration of ten-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood; or

(c) When such person has a concentration of ten-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath.

(2) Any person who operates or is in the actual physical

control of any motor vehicle while in a condition described in subsection (1) of this section shall be guilty of a crime and upon conviction punished as follows:

(a) If such person (i) has not had a conviction under this section in the eight years prior to the date of the current conviction or (ii) has not been convicted under a city or village ordinance enacted pursuant to this section in the eight years prior to the date of the current conviction, such person shall be guilty of a Class W misdemeanor, and the court shall, as part of the judgment of conviction, order such person not to drive any motor vehicle for any purpose for a period of six months from the date ordered by the court and shall order that the operator's license of such person be revoked for a like 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 revocation shall not run concurrently with any jail term imposed.

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 such person not to drive any motor vehicle for any purpose for a period of sixty days from the date of the order unless otherwise authorized by an order issued pursuant to section 6 of this act:

(b) If such person (i) has had one conviction under this section in the eight years prior to the date of the current conviction or (ii) has been convicted once under a city or village ordinance enacted pursuant to this section in the eight years prior to the date of the current conviction, such person shall be guilty of a Class W misdemeanor, and the court shall, as part of the judgment of conviction, order such person not to drive any motor vehicle for any purpose for a period of one year from the date ordered by the court and shall order that the operator's license of such person be revoked for a like 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 revocation shall not run concurrently with any jail term imposed.

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 such person not to drive any motor vehicle in the State of Nebraska for any purpose for a period of six months from the date of the order unless otherwise authorized by an order issued pursuant to section 6 of this act, and such order of probation shall include as one of its conditions confinement in the city or county jail for forty-eight hours; and

(c) If such person (i) has had two or more convictions under this section in the eight years prior to the date of the current conviction, (ii) has been convicted two or more times under a city or village ordinance enacted pursuant to this section in the eight years prior to the date of the current conviction, or (iii) has been convicted as described in subdivisions (i) and (ii) of this subdivision a total of two or more times in the eight years prior to the date of the current conviction,

such person shall be guilty of a Class W misdemeanor, and the court shall, as part of the judgment of conviction, order such person not to drive any motor vehicle in the State of Nebraska for any purpose for a period of fifteen years from the date ordered by the court and shall order that the operator's license of such person be revoked for a like 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 revocation shall not run concurrently with any jail term imposed.

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 such person not to drive any motor vehicle in the State of Nebraska for any purpose for a period of one year unless otherwise authorized by an order issued pursuant to section 6 of this act, and such order of probation shall include as one of its conditions confinement in the city or county jail for seven days.

(3) For each conviction under this section, the court shall as part of the judgment of conviction make a finding on the record as to the number of the defendant's prior convictions under this section and under a city or village ordinance enacted pursuant to this section in the eight years prior to the date of the current conviction. The defendant 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) For purposes of this section, the eight-year period shall be computed from the date of the prior offense to the date of the offense which resulted in the current conviction and the terms conviction under this section and prior conviction shall include any conviction under this section as it existed at the time of such conviction regardless of subsequent amendments to such section.

(5) Any period of revocation or order not to drive imposed under this section shall be reduced by any period imposed under section 39-669.16. Any period of revocation or order not to drive imposed under this section 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 39-669.16.

(6) 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 subdivision (2)(c) of this section shall be guilty of a Class IV felony.

(7) Any city or village may enact ordinances in conformance with this section and section 39-669.08. Upon conviction of any person of a violation of such a city or village ordinance, the provisions of this section with respect to the license of such person to operate a motor vehicle shall be applicable the same as though it were a violation of this section.

(8) Any person who has been convicted of driving while intoxicated for the first time or any person convicted of driving while

intoxicated who has never been assessed for alcohol abuse shall, during a presentence evaluation, submit to and participate in an alcohol assessment. The alcohol assessment shall be paid for by the person convicted of driving while intoxicated. At the time of sentencing, the judge, having reviewed the assessment results, may then order the convicted person to follow through on the alcohol assessment results at the convicted person's expense in lieu of or in addition to any penalties deemed necessary.

Sec. 8. That section 39-669.08, Revised Statutes Supplement, 1992, be amended to read as follows:

39-669.08. (1) Any person who operates or has in his or her actual physical control a motor vehicle in this state shall be deemed to have given his or her consent to submit to a chemical test or tests of his or her blood, breath, or urine for the purpose of determining the concentration of alcohol or the presence of drugs in such blood, breath, or urine.

(2) Any law enforcement officer who has been duly authorized to make arrests for violations of traffic laws of this state or of ordinances of any city or village may require any person arrested for any offense arising out of acts alleged to have been committed while the person was driving or was in actual physical control of a motor vehicle while under the influence of alcoholic liquor or drugs to submit to a chemical test or tests of his or her blood, breath, or urine for the purpose of determining the concentration of alcohol or the presence of drugs in such blood, breath, or urine when the officer has reasonable grounds to believe that such person was driving or was in the actual physical control of a motor vehicle in this state while under the influence of alcoholic liquor or drugs in violation of section 39-669.07.

(3) Any law enforcement officer who has been duly authorized to make arrests for violation of traffic laws of this state or ordinances of any city or village may require any person who operates or has in his or her actual physical control a motor vehicle in this state to submit to a preliminary test of his or her breath for alcohol concentration if the officer has reasonable grounds to believe that such person has alcohol in his or her body, has committed a moving traffic violation, or has been involved in a traffic accident. Any person who refuses to submit to such preliminary breath test or whose preliminary breath test results indicate an alcohol concentration in violation of section 39-669.07 shall be placed under arrest. Any person who refuses to submit to such preliminary breath test shall be guilty of a Class V misdemeanor.

(4) Any person arrested as provided in this section may, upon the direction of a law enforcement officer, be required to submit to a chemical test or tests of his or her blood, breath, or urine for a determination of the concentration of alcohol or the presence of drugs. If the chemical test discloses the presence of a concentration of alcohol in violation of subsection (1) of section 39-669.07, the person shall be subject to the administrative revocation procedures provided in sections 39-669.15 to 39-669.18 and upon conviction shall be punished as provided in section

39-669.07. Any person who refuses to submit to such test or tests required pursuant to this section shall be subject to the administrative revocation procedures provided in sections 39-669.15 to 39-669.18 and shall be guilty of a crime and upon conviction punished as follows:

(a) If such person (i) has not had a conviction under this section for refusal to submit to a chemical blood, breath, or urine test in the eight years prior to the date of the current conviction or (ii) has not been convicted under a city or village ordinance enacted pursuant to this section as authorized by section 39-669.07 in the eight years prior to the date of the current conviction, such person shall be guilty of a Class W misdemeanor, and the court shall, as part of the judgment of conviction, order such person not to drive any motor vehicle in the State of Nebraska for any purpose for a period of six months from the date ordered by the court and shall order that the operator's license of such person be revoked for a like 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 revocation shall not run concurrently with any jail term imposed.

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 such person not to drive any motor vehicle in the State of Nebraska for any purpose for a period of sixty days unless otherwise authorized by an order issued pursuant to section 6 of this act;

(b) If such person (i) has had one conviction under this section for refusal to submit to a chemical blood, breath, or urine test in the eight years prior to the date of the current conviction or (ii) has been convicted once under a city or village ordinance enacted pursuant to this section as authorized by section 39-669.07 in the eight years prior to the date of the current conviction, such person shall be guilty of a Class W misdemeanor, and the court shall, as part of the judgment of conviction, order such person not to drive any motor vehicle in the State of Nebraska for any purpose for a period of one year from the date ordered by the court and shall order that the operator's license of such person be revoked for a like 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 revocation shall not run concurrently with any jail term imposed.

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 such person not to drive any motor vehicle in the State of Nebraska for any purpose for a period of six months from the date of the order unless otherwise authorized by an order issued pursuant to section 6 of this act, and such order of probation shall include as one of its conditions confinement in the city or county jail for forty-eight hours; and

(c) If such person (i) has had two or more convictions under this section for refusal to submit to a chemical blood, breath, or

urine test in the eight years prior to the date of the current conviction, (ii) has been convicted two or more times under a city or village ordinance enacted pursuant to this section as authorized by section 39-669.07 in the eight years prior to the date of the current conviction, or (iii) has been convicted as described in subdivisions (i) and (ii) of this subdivision a total of two or more times in the eight years prior to the date of the current conviction, such person shall be guilty of a Class W misdemeanor, and the court shall, as part of the judgment of conviction, order such person not to drive any motor vehicle in the State of Nebraska for any purpose for a period of fifteen years from the date ordered by the court and shall order that the operator's license of such person be revoked for a like 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 revocation shall not run concurrently with any jail term imposed.

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 such person not to drive any motor vehicle in the State of Nebraska for any purpose for a period of one year unless otherwise authorized by an order issued pursuant to section 6 of this act, and such order of probation shall include as one of its conditions confinement in the city or county jail for seven days.

(5) For each conviction under this section, the court shall, as part of the judgment of conviction, make a finding on the record as to the number of the defendant's prior convictions under this section and under a city or village ordinance enacted pursuant to this section or section 39-669.07 in the eight years prior to the date of the current conviction. The defendant 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.

(6) For purposes of this section, the eight-year period shall be computed from the date of the prior offense to the date of the offense which resulted in the current conviction and the terms conviction under this section and prior conviction shall include any conviction under this section as it existed at the time of such conviction regardless of subsequent amendments to such section.

(7) 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 subdivision (4)(c) of this section shall be guilty of a Class IV felony.

(8) Any city or village may enact ordinances in conformance with this section. Upon conviction of any person of a violation of such city or village ordinance, the provisions of this section with respect to the license of such person to operate a motor vehicle shall be applicable the same as though it were a violation of this section.

(9) Any person involved in a motor vehicle accident in this state may be required to submit to a chemical test of his or her blood,

breath, or urine by any law enforcement officer if the officer has reasonable grounds to believe that the person was driving or was in actual physical control of a motor vehicle on a public highway in this state while under the influence of alcoholic liquor or drugs at the time of the accident. A person involved in a motor vehicle accident subject to the implied consent law of this state shall not be deemed to have withdrawn consent to submit to a chemical test of his or her blood, breath, or urine by reason of leaving this state. If the person refuses a test under this section and leaves the state for any reason following an accident, he or she shall remain subject to subsection (4) of this section and section 39-669.16 upon return.

(10) Any person who is required to submit to a preliminary breath test or to a chemical blood, breath, or urine test or tests pursuant to this section shall be advised of (a) the consequences of refusing to submit to such test or tests and (b) the consequences if he or she submits to such test and the test discloses the presence of a concentration of alcohol in violation of subsection (1) of section 39-669.07. Refusal to submit to such test or tests shall be admissible in any action for a violation of section 39-669.07 or a city or village ordinance enacted pursuant to such section.

Sec. 9. That section 39-669.11, Revised Statutes Supplement, 1992, be amended to read as follows:

39-669.11. (1) Any test made under section 39-669.08, if made in conformity with the requirements of this section, shall be competent evidence in any prosecution under a state statute or city or village ordinance involving operating a motor vehicle while under the influence of alcoholic liquor or drugs or involving driving or being in actual physical control of a motor vehicle when the concentration of alcohol in the blood or breath is in excess of allowable levels.

(2) Any test made under section 3 of this act, if made in conformity with the requirements of this section, shall be competent evidence in any prosecution involving operating or being in actual physical control of a motor vehicle in violation of section 2 of this act.

(3) (2) To be considered valid, tests of blood, breath, or urine made under section 39-669.08 or section 3 of this act shall be performed according to methods approved by the Department of Health and by an individual possessing a valid permit issued by such department for such purpose, except that a physician, registered nurse, or other trained person employed by a licensed institution or facility which is defined in section 71-2017.01 or clinical laboratory certified pursuant to the Nebraska Clinical Laboratories Certification Act, the federal Clinical Laboratory Improvement Act of 1967, as amended, or Title XVIII or XIX of the federal Social Security Act to withdraw human blood for scientific or medical purposes, acting at the request of a law enforcement officer, may withdraw blood for the purpose of a test to determine the alcohol concentration or the presence of drugs and no permit from the department shall be required for such person to withdraw blood pursuant to such an order. The department may approve satisfactory techniques or methods to perform such tests and may ascertain the qualifications and

competence of individuals to perform such tests and issue permits which shall be subject to termination or revocation at the discretion of the department.

(4) (3) A permit fee may be established by regulation by the department which shall not exceed the actual cost of processing the initial permit. Such fee shall be charged annually to each permit holder. The fees shall be used to defray the cost of processing and issuing the permits and other expenses incurred by the department in carrying out this section. The fee shall be remitted to the State Treasurer for credit to the Department of Health Cash Fund as a laboratory service fee.

(5) (4) Relevant evidence shall not be excluded in any prosecution under a state statute or city or village ordinance involving operating a motor vehicle while under the influence of alcoholic liquor or drugs or involving driving or being in actual physical control of a motor vehicle when the concentration of alcohol in the blood, breath, or urine is in excess of allowable levels on the ground that the evidence existed or was obtained outside of this state.

Sec. 10. That section 39-669.12, Revised Statutes Supplement, 1992, be amended to read as follows:

39-669.12. Any physician, registered nurse, other trained person employed by a licensed institution or facility which is defined in section 71-2017.01 or clinical laboratory certified pursuant to the Nebraska Clinical Laboratories Certification Act, the federal Clinical Laboratory Improvement Act of 1967, as amended, or Title XVIII or XIX of the federal Social Security Act to withdraw human blood for scientific or medical purposes, or hospital shall be an agent of the State of Nebraska when performing the act of withdrawing blood at the request of a law enforcement officer pursuant to section 39-669.08 and section 3 of this act. The state shall be liable in damages for any illegal or negligent acts or omissions of such agents in performing the act of withdrawing blood. The agent shall not be individually liable in damages or otherwise for any act done or omitted in performing the act of withdrawing blood at the request of a law enforcement officer pursuant to ~~section 39-669.08~~ such sections except for acts of gross negligence of the agent or of persons employed by such agent.

Sec. 11. That section 39-669.13, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

39-669.13. Upon the conviction of any person for violation of ~~the provisions of~~ section 2 of this act or section 39-669.07; or of driving a motor vehicle while under the influence of alcoholic liquor or of any drug in violation of any city or village ordinance, there shall be assessed as part of the court costs the fee charged by any physician or any agency administering tests pursuant to a permit issued in accordance with section 39-669.11, for the test administered and the analysis thereof under the provisions of section 39-669.08 and section 3 of this act, if such test was actually made.

Sec. 12. That section 39-669.16, Revised Statutes Supplement, 1992, be amended to read as follows:

39-669.16. (1) At the expiration of thirty days after the date of arrest pursuant to section 39-669.08 or if after a hearing pursuant to section 39-669.15 the director finds that the impounded 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 39-669.08 for a period of one year and (b) for a person who submits to a chemical test pursuant to section 39-669.08 which discloses the presence of a concentration of alcohol specified in section 39-669.07, revoke the impounded operator's license for a period of ninety days the first time such operator's license is revoked and one year for the second and any subsequent time the license is revoked within an eight-year period. The Except as otherwise provided in section 6 of this act, the license shall not be restored nor shall a new operator's license 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 operating privilege of such person and shall immediately forward the operator's license and a statement of the factual basis for the revocation to the person's state of residence.

~~(2) Any person whose operator's license is revoked for a period of ninety days as provided by subsection (1) of this section may make application to the director for issuance of an employment driving permit pursuant to section 60-4,130. Any person who makes application for an employment driving permit pursuant to this subsection shall not be eligible for issuance of the permit until sixty days of the period of revocation ordered under subsection (1) of this section have elapsed.~~

(2) At the expiration of thirty days after an order of revocation is entered under subsection (1) 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 39-669.08 which disclosed the presence of a concentration of alcohol in violation of section 39-669.07 (a) may make application to the director for issuance of an employment driving permit pursuant to section 60-4,130 and (b) is eligible for an order pursuant to section 6 of this act to operate a motor vehicle equipped with an ignition interlock device. This subsection shall not apply to nor shall any person be eligible for the benefit of this subsection during any period of time during which his or her operator's license is subject to an administrative revocation order (i) for refusal to submit to a chemical test of blood, breath, or urine as required by section 39-669.08 or (ii) for a period of more than ninety days for submitting to a chemical test pursuant to section 39-669.08 which disclosed the presence of a concentration of alcohol in violation of section 39-669.07.

(3) A person may have his or her license reinstated upon payment of a reinstatement fee of fifty dollars to the department after the period of revocation has expired. The director shall remit all reinstatement fees to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

(4) A person whose operator's license is subject to

revocation pursuant to subsection (3) of section 39-669.15 shall have all proceedings dismissed or his or her operator's license immediately reinstated without payment of the reinstatement fee (a) upon presentation of suitable evidence to the director that 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 39-669.07, (b) if the charge is dismissed, or (c) if the defendant, at trial, is found not guilty of violating section 39-669.07. The director shall adopt and promulgate rules and regulations establishing standards for the presentation of suitable evidence of compliance with subdivision (a), (b), or (c) of this subsection.

Sec. 13. That section 39-669.22, Revised Statutes Supplement, 1992, be amended to read as follows:

39-669.22. (1) An abstract of the court record of every case in which a person is convicted of violating any provision of Chapter 39, articles 6 and 7, Chapter 60, articles 4 and 5, ~~or any amendments thereto~~ or any traffic regulations in city or village ordinances shall be transmitted within thirty days by the court to the Director of Motor Vehicles. Any abstract received by the director more than thirty days after the date of conviction shall be reported by the director to the State Court Administrator.

~~The director shall not assess such person with any points under section 39-669.26 for such violation when the person is placed on probation therefor, except that any~~ (2) Any person violating section 28-306, 39-669.01, 39-669.03, 39-669.07, 39-669.08, 39-6.104.01, or 39-6.104.02 who is placed on probation shall be assessed the same points under section 39-669.26 as if such person were not placed on probation unless a court has ordered the installation of an ignition interlock device pursuant to section 6 of this act. For any other violation, the director shall not assess such person with any points under section 39-669.26 for such violation when the person is placed on probation, until the director is advised by the court that such person previously placed on probation has violated the terms of his or her probation and such probation has been revoked. Upon receiving notice of such revocation of probation, the director shall assess to such person the points which such person would have been assessed had the person not been placed on probation. When a person fails to successfully complete probation, ~~it shall be the duty of~~ the court ~~to~~ shall notify the director immediately.

Sec. 14. That section 39-6,122, Revised Statutes Supplement, 1992, be amended to read as follows:

39-6,122. Sections 39-601 to 39-6,122 and sections 2 to 6 of this act shall be known and may be cited as the Nebraska Rules of the Road.

Sec. 15. That section 60-4,118, Revised Statutes Supplement, 1992, be amended to read as follows:

60-4,118. (1) No operator's license shall be granted to any applicant until such applicant satisfies the examiner that he or she possesses sufficient powers of eyesight to enable him or her to obtain a

Class O license and to operate a motor vehicle on the highways of this state with a reasonable degree of safety. The Department of Motor Vehicles shall adopt and promulgate rules and regulations:

(1) (a) Requiring a minimum acuity level of vision. Such level may be obtained through the use of standard eyeglasses, contact lenses, or bioptic or telescopic lenses which are specially constructed vision correction devices which include a lens system attached to or used in conjunction with a carrier lens; and

(2) (b) Requiring a minimum field of vision. Such field of vision may be obtained through standard eyeglasses, contact lenses, or the carrier lens of the bioptic or telescopic lenses.

(2) If a vision aid is used by the applicant to meet the vision requirements of this section, the operator's license of the applicant shall be restricted to the use of such vision aid when operating the motor vehicle. If the applicant fails to meet the vision requirements, the examiner shall require the applicant to present an optometrist's or ophthalmologist's statement certifying the vision reading obtained when testing the applicant within ninety days of the applicant's license examination. If the vision reading meets the vision requirements prescribed by the department, the vision requirements of this section shall have been met.

(3) If the application for an operator's license discloses that the applicant for such license suffers from any other physical defect or defects of a character which may affect the safety of operation by such applicant of a motor vehicle, the examiner shall require the applicant to show cause why such license should be granted and, through such personal examination and demonstration as may be prescribed by the director, to show the necessary ability to safely operate a motor vehicle on the highways. If the examiner is satisfied, after the demonstration, that such applicant has the ability to safely operate a motor vehicle, an operator's license may be issued to the applicant subject, at the discretion of the director, to a limitation to operate only such motor vehicles at such time, for such purpose, and within such area as the license shall designate.

(4) The director may, ~~at the request of~~ when requested by a law enforcement officer, ~~when the director~~ or when he or she has reason to believe that a person may be physically or mentally incompetent to operate a motor vehicle, or when a person's driving record appears to the department to justify an examination, give notice to the holder of an operator's license to appear before an examiner for examination to operate a motor vehicle safely. A refusal to appear before an examiner for an examination shall be unlawful and shall result in the immediate cancellation of the person's operator's license by the director. If the license holder cannot qualify at the examination, his or her operator's license shall be immediately surrendered to the examiner and forwarded to the director who shall cancel his or her license and privilege to operate a motor vehicle. Refusal to appear before an examiner for examination after notice to do so or to surrender an operator's license on demand shall be unlawful, and any person failing to surrender his or her operator's

license as required by this section shall be guilty of a Class III misdemeanor.

(5) No operator's license referred to in this section shall, under any circumstances, be issued to any person who has not attained the age of sixteen years, but upon application therefor and proof of age in the manner provided in section 60-484, any such person may take the examination required by this section at any time within sixty days prior to his or her sixteenth birthday.

(6)(a) Upon receipt of a certified copy of a court order issued pursuant to section 6 of this act and of sufficient evidence that the defendant has surrendered his or her operator's license to the department and installed an approved ignition interlock device in accordance with such court order and upon payment by the defendant of the fee provided in section 60-4.115, the director shall issue to the defendant a Class O license restricted to the operation of a motor vehicle equipped with an ignition interlock device.

(b) Upon expiration of the court order issued pursuant to section 6 of this act, the defendant may apply to the department in writing for issuance of an operator's license which does not contain such restriction. If the license surrendered by the defendant under subdivision (a) of this subsection has not expired, the director shall return such license to the defendant. If such license has expired, the defendant shall reapply for an operator's license pursuant to the Motor Vehicle Operator's License Act.

Sec. 16. Sections 2 to 6, 8 to 15, and 18 of this act shall become operative on January 1, 1994. The other sections of this act shall become operative on their effective date.

Sec. 17. That original section 29-2264, Reissue Revised Statutes of Nebraska, 1943, and section 39-669.07, Revised Statutes Supplement, 1992, are repealed.

Sec. 18. That original section 39-669.13, Reissue Revised Statutes of Nebraska, 1943, and sections 39-669.08, 39-669.11, 39-669.12, 39-669.16, 39-669.22, 39-6.122, and 60-4.118, Revised Statutes Supplement, 1992, are repealed.

Sec. 19. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.