

LEGISLATURE OF NEBRASKA
NINETY-NINTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 594

Introduced by Kruse, 13; Baker, 44; Brown, 6; Burling, 33;
Byars, 30; Combs, 32; Erdman, 47; Howard, 9;
Hudkins, 21; Jensen, 20; Johnson, 37; Kopplin, 3;
Kremer, 34; D. Pederson, 42; Redfield, 12;
Schimek, 27; Schrock, 38; Stuhr, 24; Thompson, 14;
Wehrbein, 2

Read first time January 18, 2005

Committee: Judiciary

A BILL

1 FOR AN ACT relating to driving under the influence; to amend
2 sections 60-6,197.02 and 60-6,197.03, Reissue Revised
3 Statutes of Nebraska, and section 28-106, Revised
4 Statutes Supplement, 2004; to change and provide
5 penalties; to change provisions relating to driving under
6 the influence; to harmonize provisions; and to repeal the
7 original sections.

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

1 Section 1. Section 28-106, Revised Statutes Supplement,
2 2004, is amended to read:

3 28-106. (1) For purposes of the Nebraska Criminal Code
4 and any statute passed by the Legislature after the date of passage
5 of the code, misdemeanors are divided into seven classes which are
6 distinguished from one another by the following penalties which are
7 authorized upon conviction:

8 Class I misdemeanor..... Maximum -- not more than one year
9 imprisonment, or one thousand dollars
10 fine, or both

11 Minimum -- none

12 Class II misdemeanor..... Maximum -- six months imprisonment, or
13 one thousand dollars fine, or both

14 Minimum -- none

15 Class III misdemeanor..... Maximum -- three months imprisonment,
16 or five hundred dollars fine, or both

17 Minimum -- none

18 Class IIIA misdemeanor.... Maximum -- seven days imprisonment,
19 five hundred dollars fine, or both

20 Minimum -- none

21 Class IV misdemeanor..... Maximum -- no imprisonment, five
22 hundred dollars fine

23 Minimum -- one hundred dollars fine

24 Class V misdemeanor..... Maximum -- no imprisonment, one hundred
25 dollars fine

26 Minimum -- none

27 ~~Class W misdemeanor.....~~ ~~Driving while intoxicated — implied~~
28 ~~consent refusal~~

1 Class W misdemeanor..... Driving under the influence or implied
2 consent
3 First conviction
4 Maximum -- sixty days imprisonment and
5 five hundred dollars fine
6 Mandatory minimum -- seven days
7 imprisonment and four hundred dollars
8 fine
9 Second conviction
10 ~~Maximum -- ninety days imprisonment and~~
11 ~~five hundred dollars fine~~
12 Maximum -- six months imprisonment and
13 five hundred dollars fine
14 Mandatory minimum -- thirty days
15 imprisonment and five hundred dollars
16 fine
17 Third conviction
18 Maximum -- one year imprisonment and
19 six hundred dollars fine
20 Mandatory minimum -- ninety days
21 imprisonment and six hundred dollars
22 fine

23 (2) Sentences of imprisonment in misdemeanor cases shall
24 be served in the county jail, except that in the following
25 circumstances the court may, in its discretion, order that such
26 sentences be served in institutions under the jurisdiction of the
27 Department of Correctional Services:

28 (a) If the sentence is for a term of one year upon

1 conviction of a Class I misdemeanor;

2 (b) If the sentence is to be served concurrently or
3 consecutively with a term for conviction of a felony; or

4 (c) If the Department of Correctional Services has
5 certified as provided in section 28-105 as to the availability of
6 facilities and programs for short-term prisoners and the sentence
7 is for a term of six months or more.

8 Sec. 2. Section 60-6,197.02, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 60-6,197.02. (1) A violation of section 60-6,196 or
11 60-6,197 shall be punished as provided in section 60-6,197.03. For
12 purposes of sentencing under section 60-6,197.03:

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

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

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

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

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

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

25 or

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

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

28 (B) Any conviction for a violation of a city or village

1 ordinance enacted in conformance with section 60-6,197; or

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

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

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

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

26 (3) For each conviction for a violation of section
27 60-6,196 or 60-6,197, the court shall, as part of the judgment of
28 conviction, make a finding on the record as to the number of the

1 convicted person's prior convictions. The convicted person shall
2 be given the opportunity to review the record of his or her prior
3 convictions, bring mitigating facts to the attention of the court
4 prior to sentencing, and make objections on the record regarding
5 the validity of such prior convictions.

6 Sec. 3. Section 60-6,197.03, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 60-6,197.03. Any person convicted of a violation of
9 section 60-6,196 or 60-6,197 shall be punished as follows:

10 (1) If such person has not had a prior conviction, such
11 person shall be guilty of a Class W misdemeanor, and the court
12 shall, as part of the judgment of conviction, order ~~such person not~~
13 ~~to drive any motor vehicle for any purpose that the operator's~~
14 license of such person be revoked or impounded for a period of six
15 months from the date ordered by the court. ~~and shall order that~~
16 ~~the operator's license of such person be revoked for a like period.~~
17 Such revocation or impoundment shall be administered upon
18 sentencing, upon final judgment of any appeal or review, or upon
19 the date that any probation is revoked.

20 If the court places such person on probation or suspends
21 the sentence for any reason, the court shall, as one of the
22 conditions of probation or sentence suspension, order ~~such person~~
23 ~~not to drive any motor vehicle for any purpose that the operator's~~
24 license of such person be revoked or impounded for a period of
25 sixty days from the date ordered by the court unless otherwise
26 authorized by an order issued pursuant to section 60-6,211.05, and
27 such order of probation or sentence suspension shall also include,
28 as one of its conditions, the payment of a four-hundred-dollar

1 fine;

2 (2) ~~If~~ Except as provided in subdivision (4) of this
3 section, if such person has had one prior conviction, such person
4 shall be guilty of a Class W misdemeanor, and the court shall, as
5 part of the judgment of conviction, order ~~such person not to drive~~
6 ~~any motor vehicle for any purpose~~ that the operator's license of
7 such person be revoked for a period of one year from the date
8 ordered by the court, ~~shall order that the operator's license of~~
9 ~~such person be revoked for a like period,~~ and shall issue an order
10 pursuant to section 60-6,197.01 with respect to all motor vehicles
11 owned by such person. Such orders shall be administered upon
12 sentencing, upon final judgment of any appeal or review, or upon
13 the date that any probation is revoked.

14 If the court places such person on probation or suspends
15 the sentence for any reason, the court shall, as one of the
16 conditions of probation or sentence suspension, order ~~such person~~
17 ~~not to drive any motor vehicle for any purpose~~ that the operator's
18 license of such person be revoked or impounded for a period of one
19 year from the date ordered by the court unless otherwise authorized
20 by an order issued pursuant to section 60-6,211.05 and shall issue
21 an order pursuant to section 60-6,197.01 with respect to all motor
22 vehicles owned by such person, and such order of probation or
23 sentence suspension shall also include, as conditions, the payment
24 of a five-hundred-dollar fine and either confinement in the city or
25 county jail for five days or the imposition of not less than two
26 hundred forty hours of community service;

27 (3) ~~If~~ Except as provided in subdivision (4) of this
28 section, if such person has had two prior convictions, such person

1 shall be guilty of a Class W misdemeanor, and the court shall, as
2 part of the judgment of conviction, order ~~such person not to drive~~
3 ~~any motor vehicle for any purpose~~ that the operator's license of
4 such person be revoked for a period of fifteen years from the date
5 ordered by the court, ~~shall order that the operator's license of~~
6 ~~such person be revoked for a like period,~~ and shall issue an order
7 pursuant to section 60-6,197.01 with respect to all motor vehicles
8 owned by such person. Such orders shall be administered upon
9 sentencing, upon final judgment of any appeal or review, or upon
10 the date that any probation is revoked.

11 If the court places such person on probation or suspends
12 the sentence for any reason, the court shall, as one of the
13 conditions of probation or sentence suspension, order ~~such person~~
14 ~~not to drive any motor vehicle for any purpose~~ that the operator's
15 license of such person be revoked or impounded for a period of one
16 year from the date ordered by the court ~~and shall order that the~~
17 ~~operator's license of such person be suspended for a like period~~
18 unless otherwise authorized by an order issued pursuant to section
19 60-6,211.05 and shall issue an order pursuant to section
20 60-6,197.01 with respect to all motor vehicles owned by such
21 person, and such order of probation or sentence suspension shall
22 also include, as conditions, the payment of a six-hundred-dollar
23 fine and either confinement in the city or county jail for ten days
24 or the imposition of not less than four hundred eighty hours of
25 community service; ~~and~~

26 (4) If such person has had one or two prior convictions
27 and, as part of the current violation had a concentration of
28 sixteen-hundredths of one gram or more by weight of alcohol per one

1 hundred milliliters of his or her blood or sixteen-hundredths of
2 one gram or more by weight of alcohol per two hundred ten liters of
3 his or her breath, such person shall be guilty of a Class IV
4 felony, and the court shall, as part of the judgment of conviction,
5 revoke the operator's license of such person for any purpose for a
6 period of at least one year but not more than fifteen years from
7 the date ordered by the court, and shall issue an order pursuant to
8 section 60-6,197.01 with respect to all motor vehicles owned by
9 such person. Such revocation and order shall be administered upon
10 sentencing, upon final judgement of any appeal or review, or upon
11 the date that any probation is revoked. The court shall also
12 sentence such person to serve at least ten days' imprisonment in
13 the city or county jail or an adult correctional facility.

14 If the court places such person on probation or suspends
15 the sentence for any reason, the court shall, as one of the
16 conditions of probation or sentence suspension, order that the
17 operator's license of such person be revoked or impounded for a
18 period of at least one year but not more than fifteen years unless
19 otherwise authorized by an order issued pursuant to section
20 60-6,211.05 and shall issue an order pursuant to section
21 60-6,197.01 with respect to all motor vehicles owned by such
22 person, and such order of probation or sentence suspension shall
23 also include, as conditions, the payment of a one-thousand-dollar
24 fine and either confinement in the city or county jail for ten days
25 or the imposition of not less than four hundred eighty hours of
26 community service; and

27 (5) If such person has had three or more prior
28 convictions, such person shall be guilty of a Class IV felony, and

1 the court shall, as part of the judgment of conviction, order ~~such~~
2 ~~person not to drive any motor vehicle for any purpose that the~~
3 operator's license of such person be revoked for a period of
4 fifteen years from the date ordered by the court, ~~shall order that~~
5 ~~the operator's license of such person be revoked for a like period,~~
6 and shall issue an order pursuant to section 60-6,197.01 with
7 respect to all motor vehicles owned by such person. Such orders
8 shall be administered upon sentencing, upon final judgment of any
9 appeal or review, or upon the date that any probation is revoked.
10 The court shall also sentence such person to serve at least ten
11 days' imprisonment in the city or county jail or an adult
12 correctional facility.

13 If the court places such person on probation or suspends
14 the sentence for any reason, the court shall, as one of the
15 conditions of probation or sentence suspension, order ~~such person~~
16 ~~not to drive any motor vehicle for any purpose that the operator's~~
17 license of such person be revoked or impounded for a period of one
18 year from the date ordered by the court and ~~shall order that the~~
19 ~~operator's license of such person be suspended for a like period~~
20 unless otherwise authorized by an order issued pursuant to section
21 60-6,211.05 and shall issue an order pursuant to section
22 60-6,197.01 with respect to all motor vehicles owned by such
23 person, and such order of probation or sentence suspension shall
24 also include, as conditions, the payment of a one-thousand-dollar
25 fine and either confinement in the city or county jail for ten days
26 or the imposition of not less than four hundred eighty hours of
27 community service.

28 Sec. 4. Original sections 60-6,197.02 and 60-6,197.03,

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- 1 Reissue Revised Statutes of Nebraska, and section 28-106, Revised
- 2 Statutes Supplement, 2004, are repealed.