

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 736

Introduced by Fulton, 29.

Read first time January 09, 2008

Committee: Judiciary

A BILL

1 FOR AN ACT relating to driving under the influence; to amend
2 sections 60-6,197.01 and 60-6,211.05, Revised Statutes
3 Cumulative Supplement, 2006, and section 60-6,197.03,
4 Revised Statutes Supplement, 2007; to change certain
5 penalties; to provide indigent assistance for ignition
6 interlock devices; and to repeal the original sections.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 60-6,197.01, Revised Statutes
2 Cumulative Supplement, 2006, is amended to read:

3 60-6,197.01 (1) Upon conviction for a ~~second~~ third or
4 subsequent violation of section 60-6,196 or 60-6,197, the court
5 shall impose either of the following restrictions on all motor
6 vehicles owned by the person so convicted:

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

25 (ii) (A) Any immobilized motor vehicle shall be released

1 by the court without any legal or physical restraints to any
2 registered owner who is not the registered owner convicted of a
3 second or subsequent violation of section 60-6,196 or 60-6,197
4 if an affidavit is submitted to the court by such registered
5 owner stating that the affiant is employed, that the motor vehicle
6 subject to immobilization is necessary to continue that employment,
7 that such employment is necessary for the well-being of the
8 affiant's dependent children or parents, that the affiant will not
9 authorize the use of the motor vehicle by any person known by the
10 affiant to have been convicted of a second or subsequent violation
11 of section 60-6,196 or 60-6,197, that affiant will immediately
12 report to a local law enforcement agency any unauthorized use of
13 the motor vehicle by any person known by the affiant to have been
14 convicted of a ~~second~~ third or subsequent conviction of section
15 60-6,196 or 60-6,197, and that failure to release the motor vehicle
16 would cause undue hardship to the affiant.

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

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

1 (b) As an alternative to subdivision (1)(a) of this
2 section, the court shall order the installation of an ignition
3 interlock device on each of the owner's motor vehicles if the
4 owner was sentenced to an operator's license revocation of at least
5 one year and has completed at least one year of such revocation.
6 No license reinstatement may occur until sufficient evidence is
7 presented to the department that an ignition interlock device
8 is installed on each vehicle and that the applicant is eligible
9 for use of an ignition interlock device. The installation of an
10 ignition interlock device shall be for a period not less than
11 six months commencing upon the end of such year of the operator's
12 license revocation. Notwithstanding any other provision of law, if
13 the owner was convicted of a ~~second~~ third or subsequent violation
14 of section 60-6,196 or 60-6,197, no ignition interlock device shall
15 be ordered by any court or state agency under any circumstances
16 until at least one year of the operator's license revocation shall
17 have elapsed.

18 (2) In addition to the restrictions required by
19 subdivision (1)(b) of this section, the court may require a person
20 convicted of a ~~second~~ third or subsequent violation of section
21 60-6,196 or 60-6,197 to use a continuous alcohol monitoring device
22 and abstain from alcohol use for a period of time not to exceed
23 the maximum term of license revocation ordered by the court. A
24 continuous alcohol monitoring device shall not be ordered for a
25 person convicted of a second or subsequent violation unless the

1 installation of an ignition interlock device is also required.

2 Sec. 2. Section 60-6,197.03, Revised Statutes Supplement,
3 2007, is amended to read:

4 60-6,197.03 Any person convicted of a violation of
5 section 60-6,196 or 60-6,197 shall be punished as follows:

6 (1) Except as provided in subdivision (2) of this
7 section, if such person has not had a prior conviction, such
8 person shall be guilty of a Class W misdemeanor, and the court
9 shall, as part of the judgment of conviction, order that the
10 operator's license of such person be revoked or impounded for a
11 period of ~~six months~~ sixty days from the date ordered by the
12 court and order that, for a period of one hundred twenty days
13 after the period of revocation or impoundment, such person shall
14 be allowed to operate a motor vehicle only if it is equipped with
15 an ignition interlock device. Such revocation or impoundment and
16 order to operate a motor vehicle only if it is equipped with an
17 ignition interlock device shall be administered upon sentencing,
18 upon final judgment of any appeal or review, or upon the date that
19 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 that the
23 operator's license of such person be revoked or impounded for
24 a period of sixty days from the date ordered by the court
25 unless otherwise authorized by an order issued pursuant to section

1 60-6,211.05, and such order of probation or sentence suspension
2 shall also include, as one of its conditions, the payment of a
3 four-hundred-dollar fine;

4 (2) If such person has not had a prior conviction
5 and, as part of the current violation, had a concentration of
6 fifteen-hundredths of one gram or more by weight of alcohol per
7 one hundred milliliters of his or her blood or fifteen-hundredths
8 of one gram or more by weight of alcohol per two hundred ten
9 liters of his or her breath, such person shall be guilty of a
10 Class W misdemeanor, and the court shall, as part of the judgment
11 of conviction, revoke the operator's license of such person for a
12 period of ~~one year~~ one hundred twenty days from the date ordered by
13 the court and order that, for a period of two hundred forty-five
14 days after the period of revocation or impoundment, such person
15 shall be allowed to operate a motor vehicle only if it is equipped
16 with an ignition interlock device. Such revocation and order to
17 operate a motor vehicle only if it is equipped with an ignition
18 interlock device shall be administered upon sentencing, upon final
19 judgment of any appeal or review, or upon the date that any
20 probation is revoked.

21 If the court places such person on probation or suspends
22 the sentence for any reason, the court shall, as one of the
23 conditions of probation or sentence suspension, order that the
24 operator's license of such person be revoked or impounded for
25 a period of one year from the date ordered by the court

1 unless otherwise authorized by an order issued pursuant to
2 section 60-6,211.05, and such order of probation or sentence
3 suspension shall also include, as conditions, the payment of a
4 five-hundred-dollar fine and either confinement in the city or
5 county jail for two days or the imposition of not less than one
6 hundred twenty hours of community service;

7 (3) Except as provided in subdivision (5) of this
8 section, if such person has had one prior conviction, such person
9 shall be guilty of a Class W misdemeanor, and the court shall,
10 as part of the judgment of conviction, order that the operator's
11 license of such person be revoked for a period of ~~one year~~ one
12 hundred twenty days from the date ordered by the court and shall
13 issue an order pursuant to section 60-6,197.01. and order that,
14 for a period of two hundred forty-five days after the period of
15 revocation or impoundment, such person shall be allowed to operate
16 a motor vehicle only if it is equipped with an ignition interlock
17 device. Such orders revocation and order to operate a motor vehicle
18 only if it is equipped with an ignition interlock device shall be
19 administered upon sentencing, upon final judgment of any appeal or
20 review, or upon the date that any probation is revoked.

21 If the court places such person on probation or
22 suspends the sentence for any reason, the court shall, as
23 one of the conditions of probation or sentence suspension,
24 order that the operator's license of such person be revoked or
25 impounded for a period of one year from the date ordered by the

1 court unless otherwise authorized by an order issued pursuant
2 to section 60-6,211.05, ~~and shall issue an order pursuant to~~
3 ~~section 60-6,197.01,~~ and such order of probation or sentence
4 suspension shall also include, as conditions, the payment of a
5 five-hundred-dollar fine and either confinement in the city or
6 county jail for ten days or the imposition of not less than two
7 hundred forty hours of community service;

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

17 If the court places such person on probation or suspends
18 the sentence for any reason, the court shall, as one of the
19 conditions of probation or sentence suspension, order that the
20 operator's license of such person be revoked for a period of at
21 least two years but not more than fifteen years from the date
22 ordered by the court unless otherwise authorized by an order issued
23 pursuant to section 60-6,211.05 and shall issue an order pursuant
24 to section 60-6,197.01, and such order of probation or sentence
25 suspension shall also include, as conditions, the payment of a

1 six-hundred-dollar fine and confinement in the city or county jail
2 for thirty days;

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

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 that the
23 operator's license of such person be revoked or impounded for a
24 period of at least one year but not more than fifteen years from
25 the date ordered by the court unless otherwise authorized by an

1 order issued pursuant to section 60-6,211.05 ~~and shall issue an~~
2 ~~order pursuant to section 60-6,197.01~~, and such order of probation
3 or sentence suspension shall also include, as conditions, the
4 payment of a one-thousand-dollar fine and confinement in the city
5 or county jail for thirty days;

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

22 If the court places such person on probation or suspends
23 the sentence for any reason, the court shall, as one of the
24 conditions of probation or sentence suspension, order that the
25 operator's license of such person be revoked for a period of at

1 least five years but not more than fifteen years from the date
2 ordered by the court unless otherwise authorized by an order issued
3 pursuant to section 60-6,211.05 and shall issue an order pursuant
4 to section 60-6,197.01, and such order of probation or sentence
5 suspension shall also include, as conditions, the payment of a
6 one-thousand-dollar fine and confinement in the city or county jail
7 for sixty days;

8 (7) Except as provided in subdivision (8) of this
9 section, if such person has had three prior convictions, such
10 person shall be guilty of a Class IIIA felony, and the court shall,
11 as part of the judgment of conviction, order that the operator's
12 license of such person be revoked for a period of fifteen years
13 from the date ordered by the court and shall issue an order
14 pursuant to section 60-6,197.01. Such orders shall be administered
15 upon sentencing, upon final judgment of any appeal or review, or
16 upon the date that any probation is revoked. The court shall also
17 sentence such person to serve at least one hundred eighty days'
18 imprisonment in the city or county jail or an adult correctional
19 facility.

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 that the
23 operator's license of such person be revoked for a period of
24 fifteen years from the date ordered by the court unless otherwise
25 authorized by an order issued pursuant to section 60-6,211.05 and

1 shall issue an order pursuant to section 60-6,197.01, and such
2 order of probation or sentence suspension shall also include,
3 as conditions, the payment of a one-thousand-dollar fine and
4 confinement in the city or county jail for ninety days;

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

18 If the court places such person on probation or suspends
19 the sentence for any reason, the court shall, as one of the
20 conditions of probation or sentence suspension, order that the
21 operator's license of such person be revoked for a period of
22 fifteen years from the date ordered by the court unless otherwise
23 authorized by an order issued pursuant to section 60-6,211.05 and
24 shall issue an order pursuant to section 60-6,197.01, and such
25 order of probation or sentence suspension shall also include,

1 as conditions, the payment of a one-thousand-dollar fine and
2 confinement in the city or county jail for one hundred twenty days;

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

12 If the court places such person on probation or suspends
13 the sentence for any reason, the court shall, as one of the
14 conditions of probation or sentence suspension, order that the
15 operator's license of such person be revoked for a period of
16 fifteen years from the date ordered by the court unless otherwise
17 authorized by an order issued pursuant to section 60-6,211.05 and
18 shall issue an order pursuant to section 60-6,197.01, and such
19 order of probation or sentence suspension shall also include,
20 as conditions, the payment of a one-thousand-dollar fine and
21 confinement in the city or county jail for one hundred eighty days;
22 and

23 (10) If such person has had four or more prior
24 convictions and, as part of the current violation, had a
25 concentration of fifteen-hundredths of one gram or more by weight

1 of alcohol per one hundred milliliters of his or her blood or
2 fifteen-hundredths of one gram or more by weight of alcohol per
3 two hundred ten liters of his or her breath or refused to submit
4 to a test as required under section 60-6,197, such person shall
5 be guilty of a Class II felony and the court shall, as part of
6 the judgment of conviction, revoke the operator's license of such
7 person for a period of fifteen years from the date ordered by the
8 court and shall issue an order pursuant to section 60-6,197.01.
9 Such revocation and order shall be administered upon sentencing,
10 upon final judgment of any appeal or review, or upon the date that
11 any probation is revoked.

12 If the court places such person on probation or suspends
13 the sentence for any reason, the court shall, as one of the
14 conditions of probation or sentence suspension, order that the
15 operator's license of such person be revoked for a period of
16 fifteen years from the date ordered by the court unless otherwise
17 authorized by an order issued pursuant to section 60-6,211.05 and
18 shall issue an order pursuant to section 60-6,197.01, and such
19 order of probation or sentence suspension shall also include,
20 as conditions, the payment of a one-thousand-dollar fine and
21 confinement in the city or county jail for one hundred eighty days.

22 Sec. 3. Section 60-6,211.05, Revised Statutes Cumulative
23 Supplement, 2006, is amended to read:

24 60-6,211.05 (1) If an order of probation is granted
25 under section 60-6,196 or 60-6,197, as such sections existed prior

1 to July 16, 2004, or section 60-6,196 or 60-6,197 and sections
2 60-6,197.02 and 60-6,197.03, as such sections existed on or after
3 July 16, 2004, the court may order the defendant to install an
4 ignition interlock device of a type approved by the Director of
5 Motor Vehicles on each motor vehicle operated by the defendant.
6 The device shall, without tampering or the intervention of another
7 person, prevent the defendant from operating the motor vehicle when
8 the defendant has an alcohol concentration greater than the levels
9 prescribed in section 60-6,196.

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

18 (3) Any order issued by the court pursuant to this
19 section shall not take effect until the defendant is eligible
20 to operate a motor vehicle pursuant to subsection (2) of section
21 60-498.02.

22 (4) If the court orders an ignition interlock device or
23 the Board of Pardons orders an ignition interlock device under
24 section 83-1,127.02, the court or the Board of Pardons shall
25 order the Department of Motor Vehicles to issue to the defendant

1 a restricted Class O license as provided in section 60-4,118.06
2 which indicates that the defendant is ~~only~~ allowed to operate a
3 motor vehicle only if it is equipped with an ignition interlock
4 device. Such court order shall remain in effect for a period of
5 time as determined by the court not to exceed the maximum term
6 of revocation which the court could have imposed according to
7 the nature of the violation. Such Board of Pardons order shall
8 remain in effect for a period of time not to exceed any period of
9 revocation the applicant is subject to at the time the application
10 for a license reinstatement is made.

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

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

23 (7) If a person ordered to use a continuous alcohol
24 monitoring device and abstain from alcohol use pursuant to a court
25 order as provided in subsection (2) of this section violates the

1 provisions of such court order by removing, tampering with, or
2 otherwise bypassing the continuous alcohol monitoring device or by
3 consuming alcohol while required to use such device, he or she
4 shall have his or her Class O license revoked and be unable to
5 apply for license reinstatement for the duration of the revocation
6 period imposed by the court.

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

10 (9) The costs incurred in order to comply with this
11 section shall be paid by the defendant unless the court has
12 determined the defendant to be indigent.

13 Sec. 4. Original sections 60-6,197.01 and 60-6,211.05,
14 Revised Statutes Cumulative Supplement, 2006, and section
15 60-6,197.03, Revised Statutes Supplement, 2007, are repealed.