

**ONE HUNDRED FIRST LEGISLATURE - FIRST SESSION - 2009**  
**COMMITTEE STATEMENT**  
**LB497**

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**Hearing Date:** Tuesday February 17, 2009  
**Committee On:** Transportation and Telecommunications  
**Introducer:** Fulton  
**One Liner:** Change ignition interlock device provisions and penalties

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**Roll Call Vote - Final Committee Action:**  
Advanced to General File with amendment(s)

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**Vote Results:**

**Aye:** 8 Senators Campbell, Fischer, Gay, Hadley, Janssen, Lautenbaugh,  
Louden, Stuthman

**Nay:**

**Absent:**

**Present Not Voting:**

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**Proponents:**

Senator Tony Fulton  
Marty Conboy  
Simera Reynolds  
Coleen Nielsen  
Robert Schmill  
Jerry Stanton

**Representing:**

Introducer  
self  
MADD  
Nebraska Criminal Defense Attorneys Association  
Matt's Dream Foundation  
Affordable Ignition Interlock

**Opponents:**

**Representing:**

**Neutral:**

**Representing:**

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**Summary of purpose and/or changes:**

LB 497 eliminates the Ignition Interlock Fund and creates limitations on the use of an ignition interlock permit and penalties for violations. The bill also clarifies the ignition interlock process.

**Section by Section Summary**

Section 1 amends Sec. 29-2259.01 to authorize money in the fund collected for ignition interlock permits to be used for administrative costs of the Office of Probation Administration. Expenditures may be used to provide for the cost of installing, removing, and maintaining an ignition interlock device when it is determined that the defendant is incapable of paying such costs.

Subsection (5) states that any money in the Ignition Interlock Fund on the effective date of this act shall transfer to the Probation Cash Fund.

Section 2 amends Sec. 60-4,115 to direct the fees collected for an ignition interlock permit to the Probation Cash Fund.

Section 3 amends Sec. 60-4,118.06 to limit any person issued a ignition interlock permit to only operate the motor vehicle from home to work, school, an alcohol treatment program, or an ignition interlock service facility. A person who

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violates this section is guilty of a Class II misdemeanor, shall have his or her permit revoked, and will not be eligible for a new permit for the remainder of the revocation period.

The section also strikes the requirement that an ignition interlock permit cannot be issued to a person convicted of a second or subsequent DUI violation until at least one year of the operator's license revocation has elapsed.

Section 4 amends Sec. 60-6,197.01 to strike the requirement that an ignition interlock permit cannot be ordered by a court to a person convicted of a second or subsequent DUI violation until at least one year of the operator's license revocation has elapsed.

Section 5 amends Sec. 60-6,197.03 to require the court to order a person to undergo a mandatory assessment to determine whether the person has an alcohol abuse problem and undergo alcohol abuse counseling if appropriate.

The section also states that if a person has had one prior DUI conviction, the court shall revoke the operator's license for one year and may order that after sixty days of no driving, the person may apply for an ignition interlock permit and shall have the device installed on any motor vehicle that he or she owns for the remainder of the revocation period.

Section 6 amends Sec. 60-6,211.05 to statutorily prevent the defendant from operating a motor vehicle equipped with an ignition interlock device when the defendant has an alcohol concentration of .03 or greater, and to require the device to prevent the defendant from operating the motor vehicle when he or she has an alcohol concentration of .03 or greater.

Subsection (5) inserts new language to state that a person who operates a motor vehicle equipped with an ignition interlock device outside the requirements of the court is guilty of a Class II misdemeanor.

The bill creates a new subsection (10) to require an ignition interlock service facility to notify the Office of Probation Administration of any evidence of tampering or circumvention of a device.

The Office of Probation Administration shall notify the appropriate court of such violation. The court shall schedule an evidentiary hearing within fourteen days after receiving such evidence, and shall give notice to the person operating the motor vehicle. If the person fails to appear at the scheduled hearing, the court shall rescind the original order. This subsection does not apply to an order made by the Board of Pardons.

Section 7 repeals the original sections.

Section 8 outright repeals Sec. 60-6,211.10 which creates the Ignition Interlock Device Fund.

Section 9 attaches an emergency clause to the bill.

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**Explanation of amendments:**

The committee amendment, AM 627, strikes the original sections and becomes the bill. Changes made to the bill by the amendment include:

Section 1 adds a new section to amend Sec. 60-498.02, which deals with the Administrative License Revocation program. The amendment clarifies that a person with an IIP can drive to and from work, school, an alcohol treatment program, or ignition interlock facility. Visits with a probation officer are also added as an authorized driving destination.

Section 2 clarifies within the IIP statute that a person with an IIP can drive to and from work, school, or other authorized destination. Visits with a probation officer are also added as an authorized driving destination.

Section 3 adds clarifying language.

Section 4 adds a new section to the bill to amend Sec. 60-6,197.02. The amendment adds a clarifying provision to direct the courts to administer sentencing in accordance with the law on the date of arrest, regardless if the conviction takes place after the effective date of the bill.

Section 5 adds language to make it clear that the revocation order requires the person to not drive for 30 days before they are eligible for an IIP for a first offense. For a second or subsequent offense, the waiting period is 45 days as per federal law. The amendment also clarifies that if the court orders an IIP, it is required for the defendant to obtain the permit.

The amendment adds clarifying language for each subdivision, moves down the mandatory assessment language for high BAC first-time offenders that receive probation in subsection (2) for consistency purposes, and adds the mandatory assessment language in each subsection for any offender who receives probation and is eligible for an IIP, regardless of the number of offenses. The mandatory assessment is required by federal law for high BAC offenders.

Section 6 adds a new section to the bill to amend Sec. 60-6,197.06. The new language allows for an exemption from the penalties outlined in the statute for driving on a revoked license when the person has an IIP. The amendment also adds references to sections dealing with motor vehicle homicide and leaving the scene of an accident because both of these sections have a license revocation period.

Section 7 adds language to clarify that the ignition interlock device will be installed for the entire period of probation. Once there is sufficient evidence that an ignition interlock has been installed in the vehicle, the person can apply for an IIP.

In subsection 4(b) the amendment clarifies that the motor vehicle can operate to and from work, school, or other authorized destination. Visits with a probation officer will also be an authorized driving destination.

Subsection (8) broadens the scope of the DMV's rulemaking authority to include the means of administering the ignition interlock permit program.

Subsection (10)(a) adds language to clarify whom an ignition interlock facility should contact in the occasions when a person may not be under the authority of the Probation Office. The amendment also requires the facility to notify the appropriate probation district office instead of the Office of Probation Administration.

Subsection (11) moves a provision from Section 1 of the original bill found in Sec. 29-2259.01 to clarify that the Ignition Interlock Program and the Office of Probation Administration's involvement does not constitute an order of probation when the court ordered the installation of an ignition interlock device.

Section 8 reinstates Sec. 60-6,211.10 from repeal as in the original bill. Instead, the Ignition Interlock Device Fund shall be administered by the Department of Roads, through its safety program, to reduce alcohol-related accidents and for public education and awareness of the dangers and penalties associated with driving under the influence of alcohol or drugs.

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Deb Fischer, Chairperson