

ONE HUNDRED SECOND LEGISLATURE - FIRST SESSION - 2011
COMMITTEE STATEMENT
LB675

Hearing Date: Thursday March 03, 2011
Committee On: Judiciary
Introducer: Pirsch
One Liner: Provide and change penalties and enforcement relating to driving under the influence and the duty to stop at motor vehicle accidents and create an offense relating to certain controlled substances

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

Vote Results:
Aye: 8 Senators Ashford, Coash, Council, Harr, Larson, Lathrop, Lautenbaugh, McGill
Nay:
Absent:
Present Not Voting:

Proponents:	Representing:
SEN. PETE PIRSCH	INTRODUCER
MARTY CONBOY	CITY OF OMAHA
PAUL CARTER	PRIDE-OMAHA
CARRIE COPENHARVE	SELF
DIANE RIIIBE	PROJECT EXTRA MILE
BOB SCHMILL	MATT'S DREAM

Opponents:	Representing:
Neutral:	Representing:
LAURIE YARDLEY	LANCASTER & DOUGLAS COUNTY JUDGES

Summary of purpose and/or changes:
LB 675 would make the following changes to the Nebraska Statutes:

Section 1. Amends 28-101 to incorporate by reference section 4 of this bill to the sections identified as the "Nebraska Criminal Code" which consist of sections 28-101 to 28-1356.

Section 2. Amends section 28-106 (1) (Misdemeanors; classification of penalties; sentences; where served) to double the amount of fines provided under this subsection for Class W misdemeanors. Current fines listed under this subsection are in the amount of \$400, \$500, and \$600 which would become \$800, \$1,000 and \$1,200 respectively.

Section 3. Amends 28-401.01 to incorporate by reference section 4 of this bill to the Uniform Controlled Substances Act contained in sections 28-401 through 28-456.01 of the Nebraska Statutes.

Section 4. Creates the new criminal offense of "providing a bodily fluid containing a Schedule I or II controlled substance" as required under 60-6,197. A violation under this act would be as Class I misdemeanor. A person would have an absolute affirmative defense against a charge under this act, if they were taking the controlled drug as

prescribed and directed by a physician. The affirmative defense under this section would not pertain to any other violations of law that may exist, or any other prohibited substance that might be detected.

Section 5. Amends 60-498.02 (Driving under influence of alcohol; revocation of operator's license; reinstatement; procedure; eligibility for employment driving permit and ignition interlock permit.) to increase the "look-back" period provided under this section, for prior administrative license revocations for sentence enhancement purposes from the current 12 year time frame limitation to 20 years.

Section 6. Amends 60-4,129 (Employment driving permit; issuance; conditions; violations; penalty; revocation.) to increase the look back period provided under this section from the current 12 years to 20 years, for the purpose of identifying prior administrative license revocations.

Section 7. Amends 60-601(Nebraska Rules of the Road.) to add section 10 of this act to the Nebraska Rules of the Road.

Section 8. Amends 60-697(Accident; driver's duty; penalty.) to change subsection from numerical order to alphabetical order.

Section 9. Amends 60-698 (Accident; failure to stop; penalty.) to bifurcate the penalty provided under this section based on severity of injury.

* If a person with a duty to stop, fails to stop at an accident that results in an injury, they can be charged with a Class IIIA felony (5yrs/\$10,000/both);

* If a person with a duty to stop fails to stop at an accident those results in serious bodily injury or death, they can be charged with a Class III felony (20yrs/\$25,000/Both).

Section 10. Creates the new offense of a prior dui offender operating a motor vehicle with a B.A.C of .02 or higher. A violation of this offense shall be a Class I misdemeanor (1yr /\$1,000/both).

Section 11. Amends 60-6,197.02 (Driving under influence of alcoholic liquor or drugs; implied consent to submit to chemical test; terms, defined; prior convictions; use; sentencing provisions; when applicable.) to increase the "look back" period for purposes of establishing a "prior conviction" from 12 year to 20 years, the 20 year period for look back purposes will be from the date of the prior offense to the date of the current offense for which the current criminal sentence is being imposed.

* Amends subsection (2) to provide that prosecutors must use their due diligence to obtain an offenders driving record from Neb. DMV or any other state where the offender is known to have lived, for purposes of identifying any prior offenses within 20 years (which is a change from 12 years) from the current offense.

* Finally, this section is amended to provide that a person arrested under 60-6,196 or 60-6,197 before the effective date of this act but sentenced for a violation of these sections on or after the effective date of the changes provided under this section shall be sentenced under 60-6,197.03 as this section existed on the date of the arrest.

Section 12. Amends 60-6,197.03(Driving under influence of alcoholic liquor or drugs; implied consent to submit to chemical test; penalties.) to double the amount of fines levied under this section of statute, when the court places a person charged under this section on probation or suspends the sentence.

* Provides that a person who has four or more prior convictions shall serve a mandatory minimum five years of incarceration for any subsequent conviction under this section.

* This section is also amended to require that a person with four or more priors would have to serve a mandatory minimum of five years of incarceration as part of any sentence of probation or suspended sentence.

Section 13. Amends 60-6,198 (Driving under influence of alcoholic liquor or drugs; serious bodily injury; violation;

penalty.) to make grammatical changes made by the Revisor of Statutes Office. Changes "shall mean" to "means" and "shall have" to "has" in subsection (2) and subsection (3).

Explanation of amendments:

AM1380 makes the following changes to LB 675:

- * Increases fine amounts under Section 1, from the current \$400-\$600 to \$500-\$1,000.
- * Changes the look back period for sentence enhancement purposes in sections 2, 3, & 8 from twenty years to fifteen years.
- * Strikes section 4, that would have provided a criminal offense for submitting a sample of a bodily fluid (as required under 60-6,197), that contained a schedule I or II drug.
- * Lowers the penalty provided in section 7, for a person with a prior dui, who drives with a blood alcohol content above .02 from a Class I misdemeanor to a Class IIIA misdemeanor (7days/\$500/Both).
- * Changes the five year mandatory minimum previously required for those convicted of 5th offense or higher dui and replace it with a minimum sentence of two years. This change located in section 9.
- * Under section 9, changes the amount of a fine that is required as a condition of probation from the current \$1,000 to \$2,000.
- * Under Section 12, requires those individuals with four or more dui convictions to serve a minimum sentence of at least two years and complete a diagnostic evaluation and the programming identified before being eligible for parole.

Brad Ashford, Chairperson