

LEGISLATIVE BILL 585

Approved by the Governor May 26, 1999

Introduced by Bromm, 23

AN ACT relating to alcoholic liquor; to amend sections 53-186, 60-601, 60-6,196, and 60-6,197, Reissue Revised Statutes of Nebraska, and section 60-4,118, Reissue Revised Statutes of Nebraska, as amended by section 18, Legislative Bill 704, Ninety-sixth Legislature, First Session, 1999; to change provisions relating to restricted motor vehicle operators' licenses; to prohibit possession of open alcoholic beverage containers and consumption of alcoholic liquor in public places as prescribed; to define terms; to change provisions relating to driving under the influence; to provide for immobilization of motor vehicles and installation of ignition interlock devices; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 53-186, Reissue Revised Statutes of Nebraska, is amended to read:

53-186. (1) Except as provided in subsection (2) of this section, it shall be unlawful for any person to consume alcoholic liquor ~~(a) in the public streets, alleys, parking areas, roads, or highways, (b) inside vehicles while upon the public streets, alleys, parking areas, roads, or highways, or~~ ~~(c)~~ upon property owned or controlled by the state or any governmental subdivision thereof unless authorized by the governing bodies having jurisdiction over such property.

(2) The commission may issue licenses for the sale of alcoholic liquor at retail (a) on lands owned by public power districts, public power and irrigation districts, the Bureau of Reclamation, or the Corps of Army Engineers or (b) for locations within or on structures on land owned by the state, cities, or villages or on lands controlled by airport authorities. The issuance of a license under this subsection shall be subject to the consent of the local governing body having jurisdiction over the site for which the license is requested as provided in the Nebraska Liquor Control Act.

Sec. 2. Section 60-4,118, Reissue Revised Statutes of Nebraska, as amended by section 18, Legislative Bill 704, Ninety-sixth Legislature, First Session, 1999, is amended to read:

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, with the advice of the Health Advisory Board, shall adopt and promulgate rules and regulations:

(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

(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 applicant for an operator's license discloses that he or she has any other physical impairment 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 with the advice of the Health Advisory Board, to show the necessary ability to safely operate a motor vehicle on the highways. The director may also require the person to appear before the board or a designee of the board. If the

examiner, board, or designee is then satisfied 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)(a) The director may, when requested by a law enforcement officer, when the director 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, request the advice of the Health Advisory Board and may give notice to the person to appear before an examiner, the board, or a designee of the director for examination concerning the person's ability to operate a motor vehicle safely. Any such request by a law enforcement officer shall be accompanied by written justification for such request and shall be approved by a supervisory law enforcement officer, police chief, or county sheriff.

(b) A refusal to appear before an examiner, the board, or a designee of the director for an examination after notice to do so shall be unlawful and shall result in the immediate cancellation of the person's operator's license by the director.

(c) If the person cannot qualify at the examination by an examiner, his or her operator's license shall be immediately surrendered to the examiner and forwarded to the director who shall cancel the person's operator's license.

(d) If in the opinion of the board the person cannot qualify at the examination by the board, the board shall advise the director. If the director determines after consideration of the advice of the board that the person lacks the physical or mental ability to operate a motor vehicle, the director shall notify the person in writing of the decision. Upon receipt of the notice, the person shall immediately surrender his or her operator's license to the director who shall cancel the person's operator's license.

(e) Refusal 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 subsection 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 seventeen years.

(6) No operator's license shall be issued to a person under eighteen years of age applying for an operator's license under this section unless such person:

(a) Has possessed a valid provisional operator's permit for at least a twelve-month period beginning on the date of issuance of such person's provisional operator's permit;

(b) Has not accumulated three or more points pursuant to section 60-4,182 during the twelve-month period immediately preceding the date of the application for the operator's license; and

(c) Has surrendered the provisional operator's permit to the examiner.

(7) The department shall waive the written examination and the driving test required under this section for any person seventeen to twenty-one years of age applying for his or her initial operator's license, except a commercial driver's license or permit, if he or she has been issued a provisional operator's permit.

(8)(a) Upon receipt by the director of (i) a certified copy of a court order issued pursuant to section 60-6,211.05, (ii) 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 (iii) payment by the defendant of the fee provided in section 60-4,115, the defendant shall be eligible for reinstatement of his or her operator's license following the expiration of thirty days after revocation under section 60-6,206 and 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. The department shall not issue such a license to any person convicted of a second or subsequent violation of section 60-6,196 or 60-6,197 until at least one year of the operator's license revocation has elapsed.

(b) Upon expiration of the court order issued pursuant to section 60-6,211.05 or an order issued by the Board of Pardons pursuant to section 83-1,127.02, 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. 3. Section 60-601, Reissue Revised Statutes of Nebraska, is amended to read:

60-601. Sections 60-601 to 60-6,374 and sections 4 and 7 of this act shall be known and may be cited as the Nebraska Rules of the Road.

Sec. 4. (1) For purposes of this section:

(a) Alcoholic beverage means (i) beer, ale porter, stout, and other similar fermented beverages, including sake or similar products, of any name or description containing one-half of one percent or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute therefor, (ii) wine of not less than one-half of one percent of alcohol by volume, or (iii) distilled spirits which is that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced. Alcoholic beverage does not include trace amounts not readily consumable as a beverage;

(b) Highway means a road or street including the entire area within the right-of-way;

(c) Open alcoholic beverage container means any bottle, can, or other receptacle:

(i) That contains any amount of alcoholic beverage; and

(ii)(A) That is open or has a broken seal or (B) the contents of which are partially removed; and

(d) Passenger area means the area designed to seat the driver and passengers while the motor vehicle is in operation and any area that is readily accessible to the driver or a passenger while in their seating positions, including any compartments in such area. Passenger area does not include the area behind the last upright seat of such motor vehicle if the area is not normally occupied by the driver or a passenger and the motor vehicle is not equipped with a trunk.

(2) It is unlawful for any person in the passenger area of a motor vehicle to possess an open alcoholic beverage container while the motor vehicle is located in a public parking area or on any highway in this state.

(3) Except as provided in section 53-186, it is unlawful for any person to consume an alcoholic beverage (a) in a public parking area or on any highway in this state or (b) inside a motor vehicle while in a public parking area or on any highway in this state.

Sec. 5. Section 60-6,196, Reissue Revised Statutes of Nebraska, is amended to read:

60-6,196. (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 twelve 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 twelve 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 60-6,211.05, and such order of probation shall also include, as one of its conditions, the payment of a four-hundred-dollar fine;

(b) If such person (i) has had one conviction under this section in the twelve 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 twelve 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, and shall issue an order pursuant to section 7 of this act with respect to all motor vehicles owned by such person. Such ~~revocation orders~~ shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. Such ~~revocation orders~~ 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~~ one year from the date of the order unless otherwise authorized by an order issued pursuant to section 60-6,211.05 and shall issue an order pursuant to section 7 of this act with respect to all motor vehicles owned by such person, and such order of probation shall also include, as conditions, the payment of a five-hundred-dollar fine and either confinement in the city or county jail for forty-eight hours and the payment of a five-hundred-dollar fine five days or the imposition of not less than two hundred forty hours of community service;

(c) If such person (i) has had two convictions under this section in the twelve years prior to the date of the current conviction, (ii) has been convicted two times under a city or village ordinance enacted pursuant to this section in the twelve 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 times in the twelve 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, and shall issue an order pursuant to section 7 of this act with respect to all motor vehicles owned by such person. Such ~~revocation orders~~ shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. Such ~~revocation orders~~ 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 60-6,211.05 and shall issue an order pursuant to section 7 of this act with respect to all motor vehicles owned by such person, and such order of probation shall also include, as conditions, the payment of a six-hundred-dollar fine and either confinement in the city or county jail for ~~seven ten~~ days and the payment of a ~~six-hundred-dollar~~ fine or the imposition of not less than four hundred eighty hours of community service; and

(d) If such person (i) has had three or more convictions under this section in the twelve years prior to the date of the current conviction, (ii) has been convicted three or more times under a city or village ordinance enacted pursuant to this section in the twelve 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 three or more times in the twelve years prior to the date of the current conviction, such person shall be guilty of a Class IV felony, 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, and shall issue an order pursuant to section 7 of this act with respect to all motor vehicles owned by such person. Such ~~revocation orders~~ shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. Such ~~revocation orders~~ shall not run concurrently with any jail term imposed. The court shall also sentence such person to serve at least ten days' imprisonment in the city or county jail or an adult correctional facility.

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 60-6,211.05 and shall issue an order pursuant to section 7 of this act with respect to all motor vehicles owned by such person, and such order of probation shall also include, as conditions, the payment of a one-thousand-dollar fine and either confinement in the city or county jail for ~~seven~~ ten days and the payment of a ~~one-thousand-dollar fine~~ or the imposition of not less than four hundred eighty hours of community service.

(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 twelve 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 twelve-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 60-6,206. Any period of revocation or order not to drive imposed under subdivision (2)(a) of 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 60-6,206.

(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) or (2)(d) of this section shall be guilty of a Class IV felony. If such person has had a conviction under this subsection prior to the date of the current conviction under this subsection, such person shall be guilty of a Class III felony.

(7) Any city or village may enact ordinances in conformance with this section and section 60-6,197. Upon conviction of any person of a violation of such a city or village ordinance, the provisions of this section with respect to the operator's license of such person 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. 6. Section 60-6,197, Reissue Revised Statutes of Nebraska, is amended to read:

60-6,197. (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 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 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 60-6,196.

(3) Any peace 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 60-6,196 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 peace 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 60-6,196, the person shall be subject to the administrative revocation procedures provided in sections 60-6,205 to 60-6,208 and upon conviction shall be punished as provided in section 60-6,196. 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 60-6,205 to 60-6,208 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 twelve 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 60-6,196 in the twelve 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 60-6,211.05, and such order of probation shall also include, as one of its conditions, the payment of a four-hundred-dollar fine;

(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 twelve 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 60-6,196 in the twelve 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, and shall issue an order pursuant to section 7 of this act with respect to all motor vehicles owned by such person. Such ~~revocation orders~~ shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. Such ~~revocation orders~~ 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~~ one year from the date of the order unless otherwise authorized by an order issued pursuant to section 60-6,211.05 and shall issue an order pursuant to section 7 of this act with respect to all motor vehicles owned by such person, and such order of probation shall also include, as conditions, the payment of a five-hundred-dollar fine and either confinement in the city or county jail for forty-eight hours and the payment of a five-hundred-dollar fine five days or the imposition of not less than two hundred forty hours of community service;

(c) If such person (i) has had two convictions under this section for refusal to submit to a chemical blood, breath, or urine test in the twelve years prior to the date of the current conviction, (ii) has been convicted two times under a city or village ordinance enacted pursuant to this section as authorized by section 60-6,196 in the twelve 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 times in the twelve 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, and shall issue an order pursuant to section 7 of this act with respect to all motor vehicles owned by such person. Such ~~revocation orders~~ shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. Such ~~revocation orders~~ 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 60-6,211.05 and shall issue an order pursuant to section 7 of this act with respect to all motor vehicles owned by such person, and such order of probation shall also include, as conditions, the payment of a six-hundred-dollar fine and either confinement in the city or county jail for ~~seven ten~~ days and the payment of a ~~six-hundred-dollar fine~~ or the imposition of not less than four hundred eighty hours of community service; and

(d) If such person (i) has had three or more convictions under this section for refusal to submit to a chemical blood, breath, or urine test in the twelve years prior to the date of the current conviction, (ii) has been convicted three or more times under a city or village ordinance enacted pursuant to this section as authorized by section 60-6,196 in the twelve 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 three or more times in the twelve years prior to the date of the current conviction, such person shall be guilty of a Class IV felony, 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, and shall issue an order pursuant to section 7 of this act with respect to all motor vehicles owned by such person. Such ~~revocation orders~~ shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. Such ~~revocation orders~~ shall not run concurrently with any jail term imposed. The court shall also sentence such person to serve at least ten days' imprisonment in the city or county jail or an adult correctional facility.

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 60-6,211.05 and shall issue an order pursuant to section 7 of this act with respect to all motor vehicles owned by such person, and such order of probation shall also include, as conditions, the payment of a one-thousand-dollar fine and either confinement in the city or county jail for ~~seven ten~~ days and the payment of a ~~one-thousand-dollar fine~~ or the imposition of not less than four hundred eighty hours of community service.

(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 60-6,196 in the twelve 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 twelve-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) or (4)(d) of this section shall be guilty of a Class IV felony. If such person has had a conviction under this subsection prior to the date of the current conviction under this subsection, such person shall be guilty of a Class III 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 operator's license of such person 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 peace 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 60-6,206 upon return.

(10) Any person who is required to submit to a chemical blood, breath, or urine test or tests pursuant to this section shall be advised that refusal to submit to such test or tests is a separate crime for which the person may be charged.

(11) Refusal to submit to a chemical blood, breath, or urine test or tests pursuant to this section shall be admissible evidence in any action for a violation of section 60-6,196 or a city or village ordinance enacted pursuant to such section.

Sec. 7. Upon conviction for a second or subsequent violation of section 60-6,196 or 60-6,197, the court shall impose either of the following restrictions on all motor vehicles owned by the person so convicted:

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

(b)(i) Any immobilized motor vehicle shall be released by the court without any legal or physical restraints to any registered owner who is not the registered owner convicted of a second or subsequent violation of section 60-6,196 or 60-6,197 if an affidavit is submitted to the court by such registered owner stating that the affiant is employed, that the motor vehicle subject to immobilization is necessary to continue that employment, that such employment is necessary for the well-being of the affiant's dependent children or parents, that the affiant will not authorize the use of the motor vehicle by any person known by the affiant to have been convicted of a second or subsequent violation of section 60-6,196 or 60-6,197, that affiant will immediately report to a local law enforcement agency any unauthorized use of the motor vehicle by any person known by the affiant to have been convicted of a second or subsequent conviction of section 60-6,196 or 60-6,197, and that failure to release the motor vehicle would cause undue hardship to the affiant.

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

(iii) The department shall adopt and promulgate rules and regulations to implement the provisions of subdivision (1) of this section; or

(2) As an alternative to subdivision (1) of this section, the court shall order the installation of an ignition interlock device on each of the owner's motor vehicles if the owner was sentenced to an operator's license revocation of at least one year and has completed at least one year of such revocation. The installation of an ignition interlock device shall be for a period not less than six months commencing upon the end of such year of the

operator's license revocation. Notwithstanding any other provision of law, if the owner was convicted of a second or subsequent violation of section 60-6,196 or 60-6,197, no ignition interlock device shall be ordered by any court or state agency under any circumstances until at least one year of the operator's license revocation shall have elapsed.

Sec. 8. Original sections 53-186, 60-601, 60-6,196, and 60-6,197, Reissue Revised Statutes of Nebraska, and section 60-4,118, Reissue Revised Statutes of Nebraska, as amended by section 18, Legislative Bill 704, Ninety-sixth Legislature, First Session, 1999, are repealed.