

## LEGISLATIVE BILL 208

Approved by the Governor March 2, 2004

Introduced by Kruse, 13; Aguilar, 35; Burling, 33; Hudkins, 21; Jones, 43;  
Redfield, 12

AN ACT relating to motor vehicles; to amend sections 60-6,108 and 60-6,210, Reissue Revised Statutes of Nebraska, sections 28-306, 28-394, 29-3605, and 60-601, Revised Statutes Supplement, 2002, and sections 60-484, 60-498.01, 60-498.02, 60-4,144, 60-6,196, 60-6,197, 60-6,209, 60-6,211.04, 60-6,211.05, and 83-1,129, Revised Statutes Supplement, 2003; to change and transfer provisions relating to driving under the influence and implied consent; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 28-306, Revised Statutes Supplement, 2002, is amended to read:

28-306. (1) A person who causes the death of another unintentionally while engaged in the operation of a motor vehicle in violation of the law of the State of Nebraska or in violation of any city or village ordinance commits motor vehicle homicide.

(2) Except as provided in subsection (3) of this section, motor vehicle homicide is a Class I misdemeanor.

(3)(a) If the proximate cause of the death of another is the operation of a motor vehicle in violation of section 60-6,213 or 60-6,214, motor vehicle homicide is a Class IIIA felony.

(b) If the proximate cause of the death of another is the operation of a motor vehicle in violation of section 60-6,196 or section 16 of this act, motor vehicle homicide is a Class IIIA felony. The court shall, as part of the judgment of conviction, order the person not to drive any motor vehicle for any purpose for a period of at least sixty days and not more than fifteen years and shall order that the operator's license of such person be revoked for the same period.

(c) If the proximate cause of the death of another is the operation of a motor vehicle in violation of section 60-6,196 or section 16 of this act, motor vehicle homicide is a Class III felony if the defendant has a prior conviction ~~under~~ for a violation of section 60-6,196 or section 16 of this act, under a city or village ordinance enacted pursuant to such in conformance with section 60-6,196, or under a law of another state if, at the time of the conviction under the law of such other state, the offense for which the defendant was convicted would have been a violation ~~under~~ of section 60-6,196. The court shall, as part of the judgment of conviction, order the person not to drive any motor vehicle for any purpose for a period of at least sixty days and not more than fifteen years and shall order that the operator's license of such person be revoked for the same period.

(d) An order of the court described in subdivision (b) or (c) of this subsection shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. ~~whichever is later.~~

Sec. 2. Section 28-394, Revised Statutes Supplement, 2002, is amended to read:

28-394. (1) A person who causes the death of an unborn child unintentionally while engaged in the operation of a motor vehicle in violation of the law of the State of Nebraska or in violation of any city or village ordinance commits motor vehicle homicide of an unborn child.

(2) Except as provided in subsection (3) of this section, motor vehicle homicide of an unborn child is a Class I misdemeanor.

(3)(a) If the proximate cause of the death of an unborn child is the operation of a motor vehicle in violation of section 60-6,213 or 60-6,214, motor vehicle homicide of an unborn child is a Class IV felony.

(b) Except as provided in subdivision (3)(c) of this section, if the proximate cause of the death of an unborn child is the operation of a motor vehicle in violation of section 60-6,196 or section 16 of this act, motor vehicle homicide of an unborn child is a Class IV felony and the court shall, as part of the judgment of conviction, order the person not to drive any motor vehicle for any purpose for a period of at least sixty days and not more than fifteen years after the date ordered by the court and shall order that the operator's license of such person be revoked for the same period. The revocation shall not run concurrently with any jail term imposed.

(c) If the proximate cause of the death of an unborn child is the operation of a motor vehicle in violation of section 60-6,196 or section 16 of this act and the defendant has a prior conviction under such for a violation of section 60-6,196 or a city or village ordinance enacted pursuant to such in conformance with section 60-6,196, motor vehicle homicide of an unborn child is a Class III felony and the court shall, as part of the judgment of conviction, order the person not to drive any motor vehicle for any purpose for a period of at least sixty days and not more than fifteen years after the date ordered by the court and shall order that the operator's license of such person be revoked for the same period. The revocation shall not run concurrently with any jail term imposed.

Sec. 3. Section 29-3605, Revised Statutes Supplement, 2002, is amended to read:

29-3605. For purposes of sections 29-3606 to 29-3609:

(1) Department means the Department of Motor Vehicles; and

(2) Minor traffic violation does not include leaving the scene of an accident, sections 60-696 to 60-698, driving under the influence of alcoholic liquor or drugs, sections 60-4,164, 60-6,196, and 60-6,211.01, reckless driving or willful reckless driving, sections 60-6,213 and 60-6,214, participating in a speed competition, section 60-6,195, operating a motor vehicle to avoid arrest, section 28-905, refusing a breath or blood test, sections 60-4,164, 60-6,197, and 60-6,211.02 and section 14 of this act, driving on a suspended or revoked operator's license, sections 60-4,107 to 60-4,110 and section 16 of this act, speeding twenty or more miles per hour over the speed limit, operating a motor vehicle without insurance or other financial responsibility in violation of the Motor Vehicle Safety Responsibility Act, any injury accident, or any violation which is classified as a misdemeanor or a felony.

Sec. 4. Section 60-484, Revised Statutes Supplement, 2003, is amended to read:

60-484. (1) Except as otherwise provided in the Motor Vehicle Operator's License Act, no resident of the State of Nebraska shall operate a motor vehicle upon the alleys or highways of the State of Nebraska until the person has obtained an operator's license for that purpose.

(2) Application for an operator's license may be made on uniform blanks prepared and furnished by the director to the county treasurers and the examiners of the Department of Motor Vehicles prior to January 1, 2003. Such application may be made to an examiner in any county. The standard application blanks shall be sufficient in form and content to substantially carry out the purposes of the act.

(3) Beginning October 1, 2000, application for an operator's license may also be made in a manner prescribed by the department. Such application may be made to an examiner in any county. The examiner shall personally conduct the examination of the applicant and deliver to each successful applicant an examiner's certificate containing the statements made pursuant to subsection (4) of this section.

(4) In addition to any other information and questions necessary to comply with the requirements and purposes of the act, the applicant (a) shall provide his or her name, age, post office address, place of residence unless the applicant is a program participant under the Address Confidentiality Act, date of birth, sex, social security number, and brief description of himself or herself, (b) may complete the voter registration portion pursuant to section 32-308, (c) shall be provided the advisement language required by subsection ~~(10)~~ (5) of section 60-6,197, (d) shall answer the following:

(i) Have you within the last three months (e.g. due to diabetes, epilepsy, mental illness, head injury, stroke, heart condition, neurological disease, etc.):

(A) lost voluntary control or consciousness ... yes ... no

(B) experienced vertigo or multiple episodes of dizziness or fainting ... yes ... no

(C) experienced disorientation ... yes ... no

(D) experienced seizures ... yes ... no

(E) experienced impairment of memory, memory loss ... yes ... no

Please explain: .....

(ii) Do you experience any condition which affects your ability to operate a motor vehicle? (e.g. due to loss of, or impairment of, foot, leg, hand, arm; neurological or neuromuscular disease, etc.) ... yes ... no

Please explain: .....

(iii) Since the issuance of your last driver's license/permit has your health or medical condition changed or worsened? ... yes ... no

Please explain, including how the above affects your ability to drive: ....., and (e)

may answer the following:

(i) Do you wish to register to vote as part of this application process?

OPTIONAL - YOU ARE NOT REQUIRED TO ANSWER ANY OF THE FOLLOWING QUESTIONS:

(ii) Do you wish to be an organ and tissue donor?

(iii) Do you wish to receive any additional specific information regarding organ and tissue donation?

(iv) Do you wish to donate \$1 to promote the Organ and Tissue Donor Awareness and Education Fund?

(5) Application for an operator's license shall be made under oath or affirmation of the applicant.

(6) The social security number shall not be printed on the operator's license and shall be used only (a) to furnish driver record information to the United States Selective Service System under section 60-483, (b) with the permission of the director in connection with the verification of the status of an individual's driving record in this state or any other state, or (c) for purposes of child support enforcement pursuant to section 42-358.08 or 43-512.06.

(7) (a) Except for an individual under the age of eighteen years, each individual applying for an operator's license or a state identification card shall furnish proof of date of birth and identity by a valid Nebraska operator's license, a valid Nebraska learner's permit, a valid Nebraska school permit, a valid operator's license from another state or jurisdiction of the United States, a certified birth certificate, a certified birth registration, a valid United States passport, a valid United States military identification card, United States military discharge papers, other United States-based identification as approved by the director, or information preserved in the digital system implemented under section 60-484.01.

(b) Any individual under the age of eighteen years applying for an operator's license or a state identification card shall provide a certified copy of his or her birth certificate, a certified birth registration, or other reliable proof of his or her identity and age accompanied by a certification signed by a parent or guardian explaining the inability to produce a copy of such birth certificate. The applicant may be required to furnish proof to the examiner that the parent or guardian signing the certification is in fact the parent or guardian of such applicant.

Sec. 5. Section 60-498.01, Revised Statutes Supplement, 2003, is amended to read:

60-498.01. (1) Because persons who drive while under the influence of alcohol present a hazard to the health and safety of all persons using the highways, a procedure is needed for the swift and certain revocation of the operator's license of any person who has shown himself or herself to be a health and safety hazard (a) by driving with an excessive concentration of alcohol in his or her body or (b) by driving while under the influence of alcohol.

(2) If a person arrested ~~pursuant to~~ as described in subsection (2) of section 60-6,197 refuses to submit to the chemical test of blood, breath, or urine required by ~~that~~ section 60-6,197, the test shall not be given except as provided in section 60-6,210 for the purpose of medical treatment and the arresting peace officer, as agent for the Director of Motor Vehicles, shall verbally serve notice to the arrested person of the intention to immediately confiscate and revoke the operator's license of such person and that the revocation will be automatic thirty days after the date of arrest unless a petition for hearing is filed within ten days after the date of arrest as provided in subsection (6) of this section. The arresting peace officer shall within ten days forward to the director a sworn report stating (a) that the person was arrested ~~pursuant to~~ as described in subsection (2) of section 60-6,197 and the reasons for such arrest, (b) that the person was requested to submit to the required test, and (c) that the person refused to submit to the required test.

(3) If a person arrested ~~pursuant to~~ as described in subsection (2) of section 60-6,197 submits to the chemical test of blood or breath required by ~~that~~ section 60-6,197, the test discloses the presence of alcohol in any of the concentrations specified in section 60-6,196, and the test results are available to the arresting peace officer while the arrested person is still in custody, the arresting peace officer, as agent for the director, shall verbally serve notice to the arrested person of the intention to immediately confiscate and revoke the operator's license of such person and that the revocation will be automatic thirty days after the date of arrest unless a petition for hearing is filed within ten days after the date of arrest as provided in subsection (6) of this section. The arresting peace officer shall within ten days forward to the director a sworn report stating (a) that the

person was arrested ~~pursuant to~~ as described in subsection (2) of section 60-6,197 and the reasons for such arrest, (b) that the person was requested to submit to the required test, and (c) that the person submitted to a test, the type of test to which he or she submitted, and that such test revealed the presence of alcohol in a concentration specified in section 60-6,196.

(4) On behalf of the director, the arresting peace officer submitting a sworn report under subsection (2) or (3) of this section shall serve notice of the revocation on the arrested person, and the revocation shall be effective thirty days after the date of arrest. The notice of revocation shall contain a statement explaining the operation of the administrative revocation procedure. The peace officer shall also provide to the arrested person an addressed envelope and a petition form which the arrested person may use to request a hearing before the director to contest the revocation. The petition form shall clearly state on its face that the petition must be completed and delivered to the Department of Motor Vehicles or postmarked within ten days after receipt or the person's right to a hearing to contest the revocation will be foreclosed. The director shall prepare and approve the form for the petition, the addressed envelope, and the notice of revocation and shall provide them to law enforcement agencies.

If the person has an operator's license, the arresting peace officer shall take possession of the license and issue a temporary operator's license valid for thirty days. The arresting peace officer shall forward the operator's license to the department along with the sworn report made under subsection (2) or (3) of this section.

(5) (a) If the results of a chemical test indicate the presence of alcohol in a concentration specified in section 60-6,196, the results are not available to the arresting peace officer while the arrested person is in custody, and the notice of revocation has not been served as required by subsection (4) of this section, the peace officer shall forward to the director a sworn report containing the information prescribed by subsection (3) of this section within ten days after receipt of the results of the chemical test. If the sworn report is not received within ten days, the revocation shall not take effect.

(b) Upon receipt of the report, the director shall serve the notice of revocation on the arrested person by certified or registered mail to the address appearing on the records of the director. If the address on the director's records differs from the address on the arresting peace officer's report, the notice shall be sent to both addresses. The notice of revocation shall contain a statement explaining the operation of the administrative revocation procedure. The director shall also provide to the arrested person an addressed envelope and a petition form which the arrested person may use to request a hearing before the director to contest the revocation. The petition form shall clearly state on its face that the petition must be completed and delivered to the department or postmarked within ten days after receipt or the person's right to a hearing to contest the revocation will be foreclosed. The director shall prepare and approve the form for the petition, the addressed envelope, and the notice of revocation. The revocation shall be effective thirty days after the date of mailing.

(c) If the records of the director indicate that the arrested person possesses an operator's license, the director shall include with the notice of revocation a temporary operator's license which expires thirty days after the date of mailing. Any arrested person who desires a hearing and has been served a notice of revocation pursuant to this subsection shall return his or her operator's license with the petition requesting the hearing. If the operator's license is not included with the petition requesting the hearing, the director shall deny the petition.

(6) (a) An arrested person's operator's license confiscated pursuant to subsection (4) of this section shall be automatically revoked upon the expiration of thirty days after the date of arrest. An arrested person's operator's license confiscated pursuant to subsection (5) of this section shall be automatically revoked upon the expiration of thirty days after the date of mailing of the notice of revocation by the director. The arrested person shall postmark or return to the director a petition within ten days after the receipt of the notice of revocation if the arrested person desires a hearing. The petition shall be in writing and shall state the grounds on which the person is relying to prevent the revocation from becoming effective. The hearing and any prehearing conference may be conducted in person or by telephone, television, or other electronic means at the discretion of the director, and all parties may participate by such means at the discretion of the director.

(b) The director shall conduct the hearing within twenty days after a petition is filed. Upon receipt of a petition, the director shall notify

the petitioner of the date and location for the hearing by certified or registered mail postmarked at least seven days prior to the hearing date. The filing of the petition shall not prevent the automatic revocation of the petitioner's operator's license at the expiration of the thirty-day period. A continuance of the hearing to a date beyond the expiration of the temporary operator's license shall stay the expiration of the temporary license when the request for continuance is made by the director.

(c) At hearing the issues under dispute shall be limited to:

(i) In the case of a refusal to submit to a chemical test of blood, breath, or urine:

(A) Did the peace officer have probable cause to believe the person was operating or in the actual physical control of a motor vehicle in violation of section 60-6,196 or a city or village ordinance enacted ~~pursuant to~~ in conformance with such section; and

(B) Did the person refuse to submit to or fail to complete a chemical test after being requested to do so by the peace officer; or

(ii) If the chemical test discloses the presence of alcohol in a concentration specified in section 60-6,196:

(A) Did the peace officer have probable cause to believe the person was operating or in the actual physical control of a motor vehicle in violation of section 60-6,196 or a city or village ordinance enacted ~~pursuant to~~ in conformance with such section; and

(B) Was the person operating or in the actual physical control of a motor vehicle while having an alcohol concentration in violation of subsection (1) of section 60-6,196.

(7) The director shall adopt and promulgate rules and regulations to govern the conduct of the hearing and insure that the hearing will proceed in an orderly manner. The director may appoint a hearing officer to preside at the hearing, administer oaths, examine witnesses, take testimony, and report to the director. All proceedings before the hearing officer shall be recorded. Upon receipt of the arresting peace officer's sworn report, the director's order of revocation has prima facie validity and it becomes the petitioner's burden to establish by a preponderance of the evidence grounds upon which the operator's license revocation should not take effect. The director shall make a determination of the issue within seven days after the conclusion of the hearing. A person whose operator's license is revoked following a hearing requested pursuant to this section may appeal the order of revocation as provided in section 60-498.04.

Sec. 6. Section 60-498.02, Revised Statutes Supplement, 2003, is amended to read:

60-498.02. (1) At the expiration of thirty days after the date of arrest ~~pursuant to~~ as described in subsection (2) of section 60-6,197 or if after a hearing pursuant to section 60-498.01 the Director of Motor Vehicles finds that the operator's license should be revoked, the director shall (a) revoke the operator's license of a person arrested for refusal to submit to a chemical test of blood, breath, or urine as required by section 60-6,197 for a period of one year and (b) revoke the operator's license of a person who submits to a chemical test pursuant to such section which discloses the presence of a concentration of alcohol specified in section 60-6,196 for a period of ninety days unless the person's driving record abstract maintained in the department's computerized records shows one or more prior administrative license revocations on which final orders have been issued during the immediately preceding twelve-year period at the time the order of revocation is issued, in which case the period of revocation shall be one year. Except as otherwise provided in section 60-6,211.05, a new operator's license shall not be issued to such person until the period of revocation has elapsed. If the person subject to the revocation is a nonresident of this state, the director shall revoke only the nonresident's operating privilege as defined in section 60-474 of such person and shall immediately forward the operator's license and a statement of the order of revocation to the person's state of residence.

(2) At the expiration of thirty days after an order of revocation is entered under subsection (1) of this section, (a) any person whose operator's license has been administratively revoked for a period of ninety days for submitting to a chemical test pursuant to section 60-6,197 which disclosed the presence of a concentration of alcohol in violation of section 60-6,196 may make application to the director for issuance of an employment driving permit pursuant to section 60-4,130 and (b) any person who submitted to a chemical test pursuant to section 60-6,197 and has his or her operator's license revoked for ninety days pursuant to subsection (1) of this section is eligible for an order pursuant to section 60-6,211.05 to operate a motor vehicle equipped with an ignition interlock device upon presentation of sufficient

evidence to the Department of Motor Vehicles that such a device is installed.

This subsection shall not apply to nor shall any person be eligible for the benefit of this subsection during any period of time during which his or her operator's license is subject to an administrative revocation order for refusal to submit to a chemical test of blood, breath, or urine as required by section 60-6,197 or is subject to a one-year revocation under subdivision (1)(b) of this section.

(3) A person may have his or her eligibility for a license reinstated upon payment of a reinstatement fee as required by section 60-694.01.

(4)(a) A person whose operator's license is subject to revocation pursuant to subsection (3) of section 60-498.01 shall have all proceedings dismissed or his or her operator's license immediately reinstated without payment of the reinstatement fee upon receipt of suitable evidence by the director that:

(i) Within the thirty-day period following the date of arrest, the prosecuting attorney responsible for the matter declined to file a complaint alleging a violation of section 60-6,196 and notified the director by first-class mail or facsimile transmission of such decision and the director received such notice within such period or the notice was postmarked within such period; or

(ii) The defendant, after trial, was found not guilty of violating section 60-6,196 or such charge was dismissed on the merits by the court.

(b) The director shall adopt and promulgate rules and regulations establishing standards for the presentation of suitable evidence of compliance with subdivision (a) of this subsection.

(c) If a charge is filed for a violation of section 60-6,196 pursuant to an arrest for which all proceedings were dismissed under this subsection, the prosecuting attorney shall notify the director by first-class mail or facsimile transmission of the filing of such charge and the director may reinstate an administrative license revocation under this section as of the date that the director receives notification of the filing of the charge, except that a revocation shall not be reinstated if it was dismissed pursuant to section 60-498.01.

Sec. 7. Section 60-4,144, Revised Statutes Supplement, 2003, is amended to read:

60-4,144. (1) Application for any original or renewal commercial driver's license or application for any change of class of commercial motor vehicle, endorsement, or restriction may be made in a manner prescribed by the department. Such application may be made to an examiner in any county. The examiner shall personally conduct the examination of the applicant and deliver to each successful applicant an examiner's certificate containing the statements made pursuant to subsection (2) of this section.

(2) The application or examiner's certificate shall include the voter registration portion pursuant to section 32-308, the advisement language required by subsection ~~(4)~~ (5) of section 60-6,197, and the following:

(a) The full name, the current mailing address, and the residential address of the applicant, except that if the applicant is a program participant under the Address Confidentiality Act, he or she need not supply his or her residential address;

(b) A physical description of the applicant, including sex, height, weight, and eye and hair colors;

(c) The applicant's date of birth;

(d) The applicant's social security number;

(e) The applicant's signature;

(f) Certification that the commercial motor vehicle in which the applicant takes any driving skills examination is representative of the class of commercial motor vehicle that the applicant operates or expects to operate;

(g) The certification required pursuant to section 60-4,145 or 60-4,146;

(h) Beginning September 30, 2005, the names of all states where the applicant has previously been licensed to operate any type of motor vehicle;

(i) The following specific questions:

(i) Have you within the last three months (e.g. due to diabetes, epilepsy, mental illness, head injury, stroke, heart condition, neurological disease, etc.):

(A) lost voluntary control or consciousness ... yes ... no

(B) experienced vertigo or multiple episodes of dizziness or fainting ... yes ... no

(C) experienced disorientation ... yes ... no

(D) experienced seizures ... yes ... no

(E) experienced impairment of memory, memory loss ... yes ... no

Please explain: .....

(ii) Do you experience any condition which affects your ability to operate a motor vehicle? (e.g. due to loss of or impairment of foot, leg, hand, or arm; neurological or neuromuscular disease, etc.) ... yes ... no

Please explain: .....

(iii) Since the issuance of your last driver's license/permit has your health or medical condition changed or worsened? ... yes ... no

Please explain, including how the above affects your ability to drive: .....

(j) Do you wish to register to vote as part of this application process?

OPTIONAL - YOU ARE NOT REQUIRED TO ANSWER ANY OF THE FOLLOWING QUESTIONS:

(k) Do you wish to be an organ and tissue donor?

(l) Do you wish to receive any additional specific information regarding organ and tissue donation?

(m) Do you wish to donate \$1 to promote the Organ and Tissue Donor Awareness and Education Fund?

(3) Application shall be made under oath or affirmation of the applicant.

Sec. 8. Section 60-601, Revised Statutes Supplement, 2002, is amended to read:

60-601. Sections 60-601 to 60-6,377 and sections 12 to 18 of this act shall be known and may be cited as the Nebraska Rules of the Road.

Sec. 9. Section 60-6,108, Reissue Revised Statutes of Nebraska, is amended to read:

60-6,108. (1) The provisions of the Nebraska Rules of the Road relating to operation of vehicles refer exclusively to operation of vehicles upon highways except where a different place is specifically referred to in a given section, but sections 60-6,196, 60-6,197, and 60-6,212 to 60-6,218 and section 14 of this act shall apply upon highways and anywhere throughout the state except private property which is not open to public access.

(2) Nothing in the Nebraska Rules of the Road shall be construed to prevent the owner of real property used by the public for the purposes of vehicular travel, by permission of the owner and not as a matter of right, from prohibiting such use nor from requiring other, different, or additional conditions from those specified or otherwise regulating the use thereof by such owner.

(3) The Nebraska Rules of the Road shall be applicable and uniform throughout this state and in all political subdivisions and municipalities of this state, and no local authority shall enact or enforce any ordinance directly contrary to the Nebraska Rules of the Road unless expressly authorized by the Legislature.

Sec. 10. Section 60-6,196, Revised Statutes Supplement, 2003, 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 eight-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 eight-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 provided in sections 12 to 18 of this act. as follows:

(a) If such person has not had a conviction in the twelve years prior to the date of the current conviction (i) under this section or section 60-6,198, (ii) under a city or village ordinance enacted pursuant to this section, or (iii) under a law of another state, if at the time of the conviction under the law of such other state, the offense for which such person was convicted would have been a violation under this section, 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.

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 has had one conviction in the twelve years prior to the date of the current conviction (i) under this section or section 60-6,198, (ii) under a city or village ordinance enacted pursuant to this section, or (iii) under a law of another state, if at the time of the conviction under the law of such other state, the offense for which such person was convicted would have been a violation under this section, 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, shall order that the operator's license of such person be revoked for a like period, and shall issue an order pursuant to section 60-6,197.01 with respect to all motor vehicles owned by such person. Such orders shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

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 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 60-6,197.01 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 five days or the imposition of not less than two hundred forty hours of community service,

(c) If such person has had two convictions in the twelve years prior to the date of the current conviction (i) under this section or section 60-6,198, (ii) under a city or village ordinance enacted pursuant to this section, (iii) under a law of another state, if at the time of the conviction under the law of such other state, the offense for which such person was convicted would have been a violation under this section, or (iv) as described in subdivisions (i) through (iii) of this subdivision, 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, shall order that the operator's license of such person be revoked for a like period, and shall issue an order pursuant to section 60-6,197.01 with respect to all motor vehicles owned by such person. Such orders shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

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 and shall order that the operator's license of such person be suspended for a like period unless otherwise authorized by an order issued pursuant to section 60-6,211.05 and shall issue an order pursuant to section 60-6,197.01 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 ten days or the imposition of not less than four hundred eighty hours of community service, and

(d) If such person has had three or more convictions in the twelve years prior to the date of the current conviction (i) under this section or section 60-6,198, (ii) under a city or village ordinance enacted pursuant to this section, (iii) under a law of another state, if at the time of the conviction under the law of such other state, the offense for which such person was convicted would have been a violation under this section, or (iv) as described in subdivisions (i) through (iii) of this subdivision, 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, shall order that the operator's license of such person be revoked for a like period, and shall issue an order pursuant to section 60-6,197.01 with respect to all motor vehicles owned by such person. Such orders shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. 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 and shall order that the operator's license of such person be suspended for a like period unless otherwise authorized by an order issued pursuant to section 60-6,211.05 and shall issue an order pursuant to section 60-6,197.01 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 ten days 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 in the twelve years prior to the date of the current conviction (a) under this section or section 60-6,198, (b) under a city or village ordinance enacted pursuant to this section, or (c) under a law of another state, if at the time of the conviction under the law of such other state, the offense for which the defendant was convicted would have been a violation under this section. In any case charging a violation under this section, the prosecutor or investigating agency shall use due diligence to obtain the defendant's driving record from the Department of Motor Vehicles and the defendant's driving record from other states where he or she is known to have resided within the last twelve years. The prosecutor shall certify to the court, prior to sentencing, that such action has been taken. The prosecutor shall present as evidence for purposes of sentence enhancement under this section an authenticated copy of a prior conviction in another state. The authenticated copy shall be prima facie evidence of such prior 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 (a) under this section or section 60-6,198 as it existed at the time of such conviction regardless of subsequent amendments to either section, (b) under a city or village ordinance enacted pursuant to this section regardless of subsequent amendments to this section, or (c) under a law of another state, if at the time of the conviction under the law of such other state, the offense for which the person was convicted would have been a violation under this section regardless of subsequent amendments to this section.

(5) Any period of revocation or order not to drive imposed under this section shall be reduced by any period imposed under section 60-498.02. 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 60-498.02.

(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 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 addition to any penalties deemed necessary.

Sec. 11. Section 60-6,197, Revised Statutes Supplement, 2003, 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) (3) Any person arrested as provided in described in subsection (2) of 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 60-498.01 to 60-498.04 and upon conviction shall be punished as provided in section 60-6,196 sections 12 to 18 of this act. 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 60-498.01 to 60-498.04 and shall be guilty of a crime and upon conviction punished as provided in sections 12 to 18 of this act. as follows:~~

~~(a) If such person has not had a conviction in the twelve years prior to the date of the current conviction (i) under this section for refusal to submit to a chemical blood, breath, or urine test, (ii) under a city or village ordinance enacted pursuant to this section as authorized by section 60-6,196, or (iii) under a law of another state, if at the time of the conviction under the law of such other state, the offense for which such person was convicted would have been a violation under this section, 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.~~

~~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 has had one conviction in the twelve years prior to the date of the current conviction (i) under this section for refusal to submit to a chemical blood, breath, or urine test, (ii) under a city or village ordinance enacted pursuant to this section as authorized by section 60-6,196, or (iii) under a law of another state, if at the time of the conviction under the law of such other state, the offense for which such person was convicted would have been a violation under this section, 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, shall order that the operator's license of such~~

person be revoked for a like period, and shall issue an order pursuant to section 60-6,197.01 with respect to all motor vehicles owned by such person. Such orders shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

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 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 60-6,197.01 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 five days or the imposition of not less than two hundred forty hours of community service,

(c) If such person has had two convictions in the twelve years prior to the date of the current conviction (i) under this section for refusal to submit to a chemical blood, breath, or urine test, (ii) under a city or village ordinance enacted pursuant to this section as authorized by section 60-6,196, (iii) under a law of another state, if at the time of the conviction under the law of such other state, the offense for which such person was convicted would have been a violation under this section, or (iv) as described in subdivisions (i) through (iii) of this subdivision, 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, shall order that the operator's license of such person be revoked for a like period, and shall issue an order pursuant to section 60-6,197.01 with respect to all motor vehicles owned by such person. Such orders shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

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 and shall order that the operator's license of such person be suspended for a like period unless otherwise authorized by an order issued pursuant to section 60-6,211.05 and shall issue an order pursuant to section 60-6,197.01 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 ten days or the imposition of not less than four hundred eighty hours of community service, and

(d) If such person has had three or more convictions in the twelve years prior to the date of the current conviction (i) under this section for refusal to submit to a chemical blood, breath, or urine test, (ii) under a city or village ordinance enacted pursuant to this section as authorized by section 60-6,196, (iii) under a law of another state, if at the time of the conviction under the law of such other state, the offense for which such person was convicted would have been a violation under this section, or (iv) as described in subdivisions (i) through (iii) of this subdivision, 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, shall order that the operator's license of such person be revoked for a like period, and shall issue an order pursuant to section 60-6,197.01 with respect to all motor vehicles owned by such person. Such orders shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. 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 and shall order that the operator's license of such person be suspended for a like period unless otherwise authorized by an order issued pursuant to section 60-6,211.05 and shall issue an order pursuant to section 60-6,197.01 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 ten days 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 in the twelve years prior to the date of the current conviction (a) under this section, (b) under a city or village ordinance enacted pursuant to this section, or (c) under a law of another state, if at the time of the conviction under the law of such other state, the offense for which the defendant was convicted would have been a violation under this section. In any case charging a violation under this section, the prosecutor or investigating agency shall use due diligence to obtain the defendant's driving record from the Department of Motor Vehicles and the defendant's driving record from other states where he or she is known to have resided within the last twelve years. The prosecutor shall certify to the court, prior to sentencing, that such action has been taken. The prosecutor shall present as evidence for purposes of sentence enhancement under this section an authenticated copy of a prior conviction in another state. The authenticated copy shall be prima facie evidence of such prior 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 (a) under this section as it existed at the time of such conviction regardless of subsequent amendments to this section, (b) under a city or village ordinance enacted pursuant to this section regardless of subsequent amendments to this section, or (c) under a law of another state, if at the time of the conviction under the law of such other state, the offense for which the person was convicted would have been a violation under this section regardless of subsequent amendments to this 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) (4) 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) (3) of this section and section 60-498.02 upon return.

(10) (5) 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) (6) 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 in conformance with such section.

Sec. 12. (1) A violation of section 60-6,196 or 60-6,197 shall be punished as provided in section 13 of this act. For purposes of sentencing under section 13 of this act:

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

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

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

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

enacted in conformance with section 60-6,196;

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

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

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

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

(B) Any conviction for a violation of a city or village ordinance enacted in conformance with section 60-6,197; or

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

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

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

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

(3) For each conviction for a violation of section 60-6,196 or 60-6,197, the court shall, as part of the judgment of conviction, make a finding on the record as to the number of the convicted person's prior convictions. The convicted person 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.

Sec. 13. Any person convicted of a violation of section 60-6,196 or 60-6,197 shall be punished as follows:

(1) If such person has not had a prior 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.

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 ordered by the court 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;

(2) If such person has had one prior 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, shall order that the operator's license of such person be revoked for a like period, and shall issue an order pursuant to section 60-6,197.01 with respect to all motor vehicles owned by such person. Such orders shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

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 one year from the date ordered by the court unless otherwise authorized by an order issued pursuant to section 60-6,211.05 and shall issue an order pursuant to section 60-6,197.01 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 five days or the imposition of not less than two hundred forty hours of

community service;

(3) If such person has had two prior convictions, 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 fifteen years from the date ordered by the court, shall order that the operator's license of such person be revoked for a like period, and shall issue an order pursuant to section 60-6,197.01 with respect to all motor vehicles owned by such person. Such orders shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

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 one year from the date ordered by the court and shall order that the operator's license of such person be suspended for a like period unless otherwise authorized by an order issued pursuant to section 60-6,211.05 and shall issue an order pursuant to section 60-6,197.01 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 ten days or the imposition of not less than four hundred eighty hours of community service; and

(4) If such person has had three or more prior convictions, 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 for any purpose for a period of fifteen years from the date ordered by the court, shall order that the operator's license of such person be revoked for a like period, and shall issue an order pursuant to section 60-6,197.01 with respect to all motor vehicles owned by such person. Such orders shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. 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 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 suspended for a like period unless otherwise authorized by an order issued pursuant to section 60-6,211.05 and shall issue an order pursuant to section 60-6,197.01 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 ten days or the imposition of not less than four hundred eighty hours of community service.

Sec. 14. 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.

Sec. 15. Any period of revocation imposed for a violation of section 60-6,196 shall be reduced by any period imposed under section 60-498.02. Any period of revocation imposed under subdivision (1) of section 13 of this act for a violation of section 60-6,196 or under subdivision (2)(a) of section 60-6,196, as such section existed prior to the effective date of this act, 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 60-498.02.

Sec. 16. 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 (3) or (4) of section 13 of this act or pursuant to subdivision (2)(c) or (2)(d) of section 60-6,196 or subdivision (4)(c) or (4)(d) of section 60-6,197, as such subdivisions existed prior to the effective date of this act, shall be guilty of a Class IV felony. If such person has had a conviction under this section or under subsection (6) of

section 60-6,196 or subsection (7) of section 60-6,197, as such subsections existed prior to the effective date of this act, prior to the date of the current conviction under this section, such person shall be guilty of a Class III felony.

Sec. 17. Any city or village may enact ordinances in conformance with sections 60-6,196 and 60-6,197. Upon conviction of any person of a violation of such a city or village ordinance, the provisions of sections 12 and 13 of this act with respect to the operator's license of such person shall be applicable the same as though it were a violation of section 60-6,196 or 60-6,197.

Sec. 18. Any person who has been convicted of driving while intoxicated 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 addition to any penalties deemed necessary.

Sec. 19. Section 60-6,209, Revised Statutes Supplement, 2003, is amended to read:

60-6,209. (1) Any person whose operator's license has been revoked pursuant to a conviction for a violation of sections 60-6,196, 60-6,197, and 60-6,199 to 60-6,204 for a third or subsequent time for a period of fifteen years may apply to the Department of Motor Vehicles, on forms prescribed by the department, requesting the department to make a recommendation to the Board of Pardons for reinstatement of his or her eligibility for an operator's license. Upon receipt of the application, the Director of Motor Vehicles shall review the application if such person has served at least seven years of such revocation and make a recommendation for reinstatement or for denial of reinstatement. The department may recommend reinstatement if such person shows the following:

(a) Such person has completed a state-certified substance abuse program and is recovering or such person has substantially recovered from the dependency on or tendency to abuse alcohol or drugs;

(b) Such person has not been convicted, since the date of the revocation order, of any subsequent violations of section 60-6,196 or 60-6,197 or any comparable city or village ordinance and the applicant has not, since the date of the revocation order, submitted to a chemical test under section 60-6,197 that indicated an alcohol concentration in violation of section 60-6,196 or refused to submit to a chemical test under section 60-6,197;

(c) Such person has not been convicted, since the date of the revocation order, of driving while under suspension, revocation, or impoundment under section 60-4,109;

(d) Such person has abstained from the consumption of alcoholic beverages and the consumption of drugs except at the direction of a licensed physician or pursuant to a valid prescription; and

(e) Such person's operator's license is not currently subject to suspension or revocation for any other reason.

(2) In addition, the department may require other evidence from such person to show that restoring such person's privilege to drive will not present a danger to the health and safety of other persons using the highways.

(3) Upon review of the application, the director shall make the recommendation to the Board of Pardons in writing and shall briefly state the reasons for the recommendations. The recommendation shall include the original application and other evidence submitted by such person. The recommendation shall also include any record of any other applications such person has previously filed under this section.

(4) The department shall adopt and promulgate rules and regulations to govern the procedures for making a recommendation to the Board of Pardons. Such rules and regulations shall include the requirement that the treatment programs and counselors who provide information about such person to the department must be certified by the state.

(5) If the Board of Pardons reinstates such person's eligibility for an operator's license, such reinstatement may be conditioned for the duration of the original revocation period on such person's continued recovery. If such person is convicted of any subsequent violation of section 60-6,196 or 60-6,197, the reinstatement of the person's eligibility for an operator's license shall be withdrawn and such person's operator's license will be revoked by the Department of Motor Vehicles for the time remaining under the original revocation, independent of any sentence imposed by the court, after thirty days' written notice to the person by first-class mail at his or her last-known mailing address as shown by the records of the department.

(6) If the Board of Pardons reinstates a person's eligibility for an

operator's license, the board shall notify the Department of Motor Vehicles of the reinstatement. Such person may apply for an operator's license upon payment of a fee of one hundred twenty-five dollars and the filing of proof of financial responsibility. The fees paid pursuant to this section shall be collected by the department and remitted to the State Treasurer. The State Treasurer shall credit seventy-five dollars of each fee to the General Fund and fifty dollars of each fee to the Department of Motor Vehicles Cash Fund.

Sec. 20. Section 60-6,210, Reissue Revised Statutes of Nebraska, is amended to read:

60-6,210. (1) If the driver of a motor vehicle involved in an accident is transported to a hospital within or outside of Nebraska and a sample of the driver's blood is withdrawn by a physician, registered nurse, qualified technician, or hospital for the purpose of medical treatment, the results of a chemical test of the sample shall be admissible in a criminal prosecution ~~under~~ for a violation of section 60-6,196 to show the alcoholic content of or the presence of drugs or both in the blood at the time of the accident regardless of whether (a) a peace officer requested the driver to submit to a test as provided in section 60-6,197 or (b) the driver had refused a chemical test.

(2) Any physician, registered nurse, qualified technician, or hospital in this state performing a chemical test to determine the alcoholic content of or the presence of drugs in such blood for the purpose of medical treatment of the driver of a vehicle involved in a motor vehicle accident shall disclose the results of the test (a) to a prosecuting attorney who requests the results for use in a criminal prosecution under section 28-306 or 60-6,196 and (b) to any prosecuting attorney in another state who requests the results for use in a criminal prosecution for driving while intoxicated, driving under the influence, or motor vehicle homicide under the laws of the other state if the other state requires a similar disclosure by any hospital or person in such state to any prosecuting attorney in Nebraska who requests the results for use in such a criminal prosecution under the laws of Nebraska.

Sec. 21. Section 60-6,211.04, Revised Statutes Supplement, 2003, is amended to read:

60-6,211.04. Sections 60-6,211.01 to 60-6,211.03 shall not operate to prevent any person, regardless of age, from being prosecuted or having any action taken ~~pursuant to~~ for a violation of section 60-6,196 or 60-6,197 or having his or her operator's license revoked pursuant to sections 60-498.01 to 60-498.04 for a violation of section 60-6,196 or 60-6,197 or from being prosecuted or having any action taken under any other provision of law. If such person is believed to be under the influence of alcoholic liquor pursuant to section 60-6,196 or 60-6,197, sections 60-6,211.01 to 60-6,211.03 shall not operate to prevent prosecution of such person ~~under~~ for a violation of section 60-6,196 or 60-6,197 even if sections 60-6,211.01 to 60-6,211.03 apply.

Sec. 22. Section 60-6,211.05, Revised Statutes Supplement, 2003, is amended to read:

60-6,211.05. (1) If an order of probation is granted under section 60-6,196 or 60-6,197, as such sections existed prior to the effective date of this act, or section 60-6,196 or 60-6,197 and sections 12 and 13 of this act, as such sections existed on or after the effective date of this act, the court may order the defendant to install an ignition interlock device of a type approved by the Director of Motor Vehicles on each motor vehicle operated by the defendant. Any order issued by the court pursuant to this section shall not take effect until the defendant is eligible to operate a motor vehicle pursuant to subsection (2) of section 60-498.02. The device shall, without tampering or the intervention of another person, prevent the defendant from operating the motor vehicle when the defendant has an alcohol concentration greater than the levels prescribed in section 60-6,196.

(2) If the court orders an ignition interlock device or the Board of Pardons orders an ignition interlock device under section 83-1,127.02, the court or the Board of Pardons shall order the Department of Motor Vehicles to issue to the defendant a restricted Class O license as provided in section 60-4,118.06 which indicates that the defendant is only allowed to operate a motor vehicle equipped with an ignition interlock device. Such court order shall remain in effect for a period of time as determined by the court not to exceed the maximum term of revocation which the court could have imposed according to the nature of the violation. Such Board of Pardons order shall remain in effect for a period of time not to exceed any period of revocation the applicant is subject to at the time the application for a license reinstatement is made.

(3) A person who tampers with or circumvents an ignition interlock device installed under a court order while the order is in effect or who operates a motor vehicle which is not equipped with an ignition interlock



device in violation of a court order made pursuant to this section shall be guilty of a Class II misdemeanor.

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

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

Sec. 23. Section 83-1,129, Revised Statutes Supplement, 2003, is amended to read:

83-1,129. (1) Any person desiring the Board of Pardons to exercise its pardon authority shall request an application from its secretary. The application shall be returned to the secretary and shall state the specific relief requested and such other information as is prescribed by the board.

(2) Any person whose operator's license has been revoked pursuant to ~~sections~~ a conviction for a violation of section 60-6,196 or 60-6,197 and 60-6,199 to 60-6,204 for a third or subsequent time for a period of fifteen years and who desires the Board of Pardons to exercise its pardon authority shall make application pursuant to section 60-6,209.

(3) Any application filed pursuant to subsection (1) or (2) of this section shall be considered with or without a hearing by the board at its next regular scheduled meeting. If a hearing is held, it shall be conducted in an informal manner and a record of the proceedings shall be made and preserved according to the guidelines of the board.

Sec. 24. Original sections 60-6,108 and 60-6,210, Reissue Revised Statutes of Nebraska, sections 28-306, 28-394, 29-3605, and 60-601, Revised Statutes Supplement, 2002, and sections 60-484, 60-498.01, 60-498.02, 60-4,144, 60-6,196, 60-6,197, 60-6,209, 60-6,211.04, 60-6,211.05, and 83-1,129, Revised Statutes Supplement, 2003, are repealed.