

LEGISLATIVE BILL 290

Approved by the Governor April 21, 1973

Introduced by DeCamp, 40, for the Governor

AN ACT to amend section 39-727, Revised Statutes Supplement, 1972, relating to highways; to provide additional penalties for certain offenses; to provide for probation as prescribed; to repeal the original section; and to declare an emergency.

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

Section 1. That section 39-727, Revised Statutes Supplement, 1972, be amended to read as follows:

39-727. It shall be unlawful for any person to operate or be in the actual physical control of any motor vehicle while under the influence of alcoholic liquor or of any drug or when that person has ten-hundredths of one per cent or more by weight of alcohol in his body fluid as shown by chemical analysis of his blood, breath, or urine. Any person who shall operate or be in the actual physical control of any motor vehicle while under the influence of alcoholic liquor or of any drug or while having ten-hundredths of one per cent by weight of alcohol in his body fluid as shown by chemical analysis of his blood, breath, or urine shall be deemed guilty of a crime and, upon conviction thereof, shall be punished as follows: (1) If such conviction is for a first offense, such person shall be imprisoned in the county jail for not more than three months, or shall be fined one hundred dollars, or be both so fined and imprisoned, 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 of his final discharge from the county jail, or the date of payment or satisfaction of such fine, whichever is the later, and shall order that the operator's license of such person be revoked for a like period; provided, in the event that the court shall suspend the proceedings and place such person on probation as provided by law, the court as one of the conditions of probation shall order such person not to drive any motor vehicle for any purpose for a period of thirty days from the date of the order, except as provided for in section 3 of this act; (2) if such conviction is for a second offense such person shall be imprisoned in the county jail for not less than five days nor more than three months, and shall be fined the sum of

three hundred dollars, 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 of his final discharge from the county jail, or the date of payment or satisfaction of such fine, whichever is the later, and shall order that the operator's license of such person be revoked for a like period, and if the motor vehicle which such person was operating or was actually physically controlling, while under the influence of alcoholic liquor or any drug, is registered in the name of such person, the motor vehicle shall be impounded in a reputable garage by the court for a period of not less than two months nor greater than one year at the expense and risk of the owner thereof; Provided, any motor vehicle so impounded shall be released to the holder of a bona fide lien thereon, executed prior to such impounding, when possession of such motor vehicle is requested in writing by such lienholder for the purpose of foreclosing and satisfying his lien thereon; and (3) if such conviction is for a third offense, or subsequent offense thereafter, such person shall be imprisoned in the Nebraska Penal and Correctional Complex for not less than one year nor more than three years and the court shall, as part of the judgment of conviction, order such person not to drive any motor vehicle for a period of one year from the date of his final discharge from the Nebraska Penal and Correctional Complex, and shall order that the operator's license of such person be revoked for a like period. Such penalties as provided for in subdivisions (2) and (3) of this section shall be applicable regardless of whether the prior conviction or convictions was or were based upon violation of this section or upon violation of a city or village ordinance enacted pursuant to this section, or both. Any city or village may enact ordinances in conformance with this section and section 39-727.03. Upon conviction of any person of a violation of such a city or village ordinance, the provisions of this section with respect to the license of such person to operate a motor vehicle shall be applicable the same as though it were a violation of this section.

Sec. 2. The Director of Motor Vehicles shall within one hundred twenty days after the effective date of this act develop and certify to the state probation administrator a model probation program which shall generally comply with the ASAP Program of the National Highway Traffic Safety Administration as now in effect or amended from time to time. Thereafter any county or municipality desiring to have a program of probation certified shall submit the same to the probation administrator who shall examine the program to determine that the same has been in effect for at least ninety days

and is generally in compliance with the model program prepared by the Director of Motor Vehicles. If the probation administrator shall find that the program meets those requirements, he shall then certify the program. In the event that the probation administrator shall at any time determine that the program is not being conducted in accordance with the plan as certified, he may suspend the certification of the program and the power of the court to suspend proceedings pursuant to the provisions of section 3 of this act.

Sec. 3. If any county or municipality having jurisdiction of such offenses shall any time after the effective date of this act develop a certified program of probation as provided for in section 2 of this act and shall have conducted such program either before or after certification for a period of at least ninety days, then so long as the program remains certified the court within such county or municipality having jurisdiction over offenses covered by this act may waive the requirement that persons placed on probation shall not drive any motor vehicle for any purpose for a period of thirty days from the date of the order as provided for in section 1 of this act.

Sec. 4. That original section 39-727, Revised Statutes Supplement, 1972, is repealed.

Sec. 5. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.