

ONE HUNDRED SECOND LEGISLATURE - FIRST SESSION - 2011

COMMITTEE STATEMENT

LB667

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**Hearing Date:** Thursday March 03, 2011  
**Committee On:** Judiciary  
**Introducer:** Flood  
**One Liner:** Change provisions governing motor vehicle homicide, alcohol violations involving minors, driving under the influence of alcohol or drugs, bail, ignition interlock devices, and administrative license revocation

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

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**Vote Results:**

<b>Aye:</b>	8	Senators Ashford, Coash, Council, Harr, Larson, Lathrop, Lautenbaugh, McGill
<b>Nay:</b>		
<b>Absent:</b>		
<b>Present Not Voting:</b>		

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**Proponents:**  
SEN. MIKE FLOOD  
SHAWN EATHERTON  
DAVID LUTTON  
JOHN FREUDENBERG

DON KLEIN  
TIMOTHY HOEFT  
JEFF DAVIS  
MARK YOUNG

**Opponents:**  
MARTY CONBOY

MARK WEBER

MARK RAPPL

DIANE RIIBE  
TOMAS TOMOSEN  
ROBERT SCHMILL

**Neutral:**  
SIMERA REYNOLDS  
MATTHEW MITCHELL  
LAURIE YARDLEY

**Representing:**  
INTRODUCER  
BUFFALO COUNTY ATTORNEY  
SELF  
ATTORNEY GENERAL'S OFFICE, COUNTY  
ATTORNEY ASSOCIATION  
DOUGLAS COUNTY ATTORNEY  
PHELPS COUNTY ATTORNEY  
SARPY COUNTY SHERIFF  
NE COUNTY ATTORNEYS, HALL COUNTY  
ATTORNEY

**Representing:**  
NE STATE BAR, CITY OF OMAHA, OMAHA CITY  
PROSECUTOR  
NE CRIMINAL DEFENSE ATTORNEYS  
ASSOCIATION  
NE CRIMINAL DEFENSE ATTORNEYS  
ASSOCIATION  
PROJECT EXTRA MILE  
SELF  
MATT'S DREAM FOUNDATION

**Representing:**  
MOTHERS AGAINST DRUNK DRIVERS  
ALCOHOL MONITORING SYSTEMS  
DOUGLAS & LANCASTER COUNTY JUDGES

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

LB 667 would make the following changes to Nebraska Statutes in the following manner:

Section 1. Would add section 2 of this act to the criminal code.

Section 2. Creates the new offense of "Intoxicated Transportation of a Child", which would occur when:

1. A person operates or is in physical control of a motor vehicle while a person sixteen years of age or younger is a passenger in the vehicle and the person:

- Is under the influence of alcohol or drugs;
- Has a concentration of .08 or more of alcohol in their blood;
- Has a concentration of .08 of one gram or more by weight of alcohol per 210 liters of his or her breath;
- The person in actual or physical control of the motor vehicle refuses to submit to a chemical when requested to do so by a peace officer as allowed under 60-6,197 (DUI statutes).

2. A violation of this section is a Class I misdemeanor (1yr/\$1,000/Both), Crime shall be treated as separate offense from any other offense that may be charged and the sentence issued shall be served consecutive to any other issued.

Section 3. Revises 28-306 (Motor vehicle homicide; penalty.) to create a separate offense from any other offenses arising from the acts that a person was alleged to have committed in violation of this section of statute. A sentence imposed under this section shall be served consecutively to any other sentence issued.

Section 4. Amends 29-215 (Law enforcement officers; jurisdiction; powers...) to provide that a law enforcement officer has authority over persons operating a "personal watercraft" and may request the operator of the personal watercraft to submit to chemical testing and or transport the operator of the personal watercraft to a facility in or out of their jurisdiction for purposes of conducting chemical testing as part of their police powers identified under this section.

Section 5. Amends 29-901 (Bail; personal recognizance; conditions.) to provide that as a requirement of bail for a violation or citation for a violation of 60-6,196 (Driving under influence of alcoholic liquor or drug; penalties) or 60-6,197 (Driving under influence of alcoholic liquor or drugs; implied consent to submit to chemical test...) that the drivers license of the defendant be impounded and that upon request by the defendant that the court hold a hearing within ten days after the request is made to determine if the defendant is eligible for an ignition interlock permit;

- A defendant whose license has expired, been suspended, or revoked according to terms of a prior action is ineligible for an ignition interlock under this section; and
- The installation and maintenance of the ignition interlock if granted is at the defendants own expense.

Section 6. Amends 29-2259.01 (Probation Cash Fund; created; use; investment.) by striking the reference of a transfer of funds from the Ignition Interlock Device Fund to the Probation Cash Fund that occurred in 2009.

Section 7. Amends 37-1201 (State Boat Act.) to incorporate sections 15-18 of this act to the State Boat Act.

Section 8. Amends 37-1238.01 (Vessel equipped with red or blue light; limitation on operation.) to change the term law enforcement officer to peace officer.

Section 9. Amends 37-1254.01 (Boating under influence of alcohol or controlled substance; penalty; probation; prohibit operation; city or village ordinances; alcoholism treatment program.) to provide that a person shall not operate a personal watercraft under the influence of alcohol. Revises this section to provide that it is a violation of this act to operate a specified watercraft under the influence of alcohol or drugs and deletes reference to drugs as defined in 28-401. Amends this section by removing the penalty provisions from this section and referencing the penalties provided under section 18 of this bill.

Section 10. Amends 37-1254.02 (Boating under influence of alcohol or controlled substance; implied consent to

submit to chemical test; preliminary test; refusal; penalty.)

- Adds and clarifies under subsection (1) that operating a personal watercraft upon the waters of this state implies consent to submit to a chemical test or tests of blood, breath or urine.
- Subsection (2) is amended to add operation of a personal watercraft to this subsection and clarifies that a test as required under this subsection can be of blood, breath or urine. Incorporates a reference to the illegal operation of a motorboat or personal watercraft under the influence of alcohol or drugs as provided under 37-1254.01 and provides that it is unlawful to refuse to provide a sample of ones blood, breath, or urine if requested to provide such a sample by a peace officer.
- Strikes the penalty provisions provided under subsection 3 and 4 of this act as the penalty provisions have been relocated to subsection 17 and 18 of this act
- Clarifies that a person involved in a boat or "personal watercraft" accident may be required to submit to a chemical test of their blood, breath or urine if a peace officer has reasonable grounds to believe that they operated a boat or personal watercraft under the influence of drugs or alcohol.
- Reiterates that a person who refuses to submit to a chemical test as requested by a peace officer can be charged with an additional offense based on the refusal.
- Provides that a refusal to submit to a chemical test under this section shall admissible evidence in any action for a violation of 37-1254.01 or a similar city or village ordinance.

Section 11. Amends 37-1254.03 (Boating under influence of alcohol or controlled substance; choice of test; privileges of person tested.) to change the term "law enforcement officer" to "peace officer" and revised that chemical tests can test blood, breath and urine.

Section 12. Amends 37-1254.05 (Boating under influence of alcohol or controlled substance; chemical test; violation of statute or ordinance; results; competent evidence; permit; fee) to add the operation of a "personal watercraft" to this section.

- Provides that "relevant evidence" obtained from outside of this state that proves that a person was in actual or physical control of a motorboat or personal watercraft with an alcohol limit in excess of that allowed by law, shall be deemed competent evidence for prosecutorial purposes.

Section 13. Amends 37-1254.07(Boating under influence of alcohol or controlled substance; violation of city or village ordinance; fee for test; court costs.) to prohibit a person from being under the influence of alcohol or drugs while in control of a personal watercraft.

Section 14. Amends 37-1254.08 (Boating under influence of alcohol or controlled substance; test without preliminary breath test; when; qualified personnel.) to require a person under the influence of alcohol or drugs while operating a motorboat or personal watercraft to submit to chemical testing and that such testing can be of blood, breath, or urine. This act also changes the term "law enforcement officer" to "peace officer" and clarifies that a peace officer may request identified medical personal to draw blood for the purpose of determining the alcohol or drug concentration.

Section 15. Creates new section which provides that an authorized peace officer may request a person in control of a boat or personal watercraft to submit to a preliminary test of their breath for alcohol content when such officer has reasonable grounds that such person is operating the boat or watercraft under the influence of alcohol. A person shall be arrested for exceeding the allowable limits of alcohol in their system or for a refusal to submit to a test. A violation under this section shall be a Class III misdemeanor (3 months/\$500/Both).

Section 16. Creates a new penalty of operating a motorboat or personal watercraft during a court ordered suspension that was received from a prior conviction of operating a motorboat or personal watercraft in violation of sections 37-1254.01 or 37-1254.02.

Section 17. Creates new section to provide under subsection (1) definitions for what constitutes a "prior conviction" for sentencing purposes under section 18 of this act.

- Provides for the use of prior convictions from other states if at the time of conviction from another state, the offense would have violated 37-1254.02 of our statutes.
- Clarifies that a prior conviction includes a violation of sections 37-1254.01 or 37-1254.02 or any city or village ordinance as long as those city or village ordinances conformed to sections 37-1254.01 or 37-1254.02 as those sections existed when the violation occurred.
- For purposes of sentencing enhancement, a court-certified or authenticated copy of a prior conviction shall be "prima facie" evidence that the prior offense occurred.
- Clarifies that a person arrested for a violation of sections 37-1254.01 or 37-1254.02 before the effective date of the act but sentenced after the effective date of this act, shall be sentenced according to sections 37-1254.01 or 37-1254.02 as these sections existed on the date of arrest.

Section 18. Creates new section to provide that a person convicted under 37-1254.01 or 37-1254.02 shall be punished in the following manner:

- If person does not have a prior conviction such person shall be guilty of a Class II misdemeanor and that part of the sentence shall be an order not to operate a motorboat or personal watercraft on the waters of this state for 6 months from the date of conviction. The order shall be administered upon sentencing, upon final judgment of appeal or upon the date probation is revoked. If a person received probation or a suspended sentence, they shall be ordered not to operate a motorboat or personal watercraft for sixty days as part of the suspended sentence or probation.
- If the person has one or more prior convictions, the person shall be guilty of a Class I misdemeanor and that they be prohibited from operating a motorboat or personal watercraft for two years as part of the sentence. The same two year period of prohibition shall apply when probation is granted or a sentence is suspended.

Section 19. Amends 37-1295 (Certificate of title; disclosures required.) by changing the term from law enforcement officer to peace officer.

Section 20. Amends 53-180 (Sale to minors and incompetents; prohibited.) to provide that, "no person shall sell, furnish, give away, dispose of, or deliver....or procuring of any alcohol liquor to any minor person or mentally incompetent.

Section 21. Amends 53-180.05 (Minors and incompetents; violations; penalties; false identification; penalty; law enforcement agency; duties.) to add a requirement that as part of the current sentence for a violation of section 53-180 as provided under this section, (which is a Class I misdemeanor (1yr/\$1,000/Both)) is a mandatory two days' of imprisonment. This section is further amended to provide that if a violation of 53-180 results in serious bodily injury, then the offense shall be a Class III felony (20 yrs/\$25,000/ 1 yr man/min) and that as part of the sentence, a person shall be required to serve at least thirty days imprisonment. (53-180 prohibits the sale to, or procuring of, alcohol to or for minors).

Section 22. Amends 60-498 (Revocation; when mandatory.) to remove the reference to the revocation procedures provided under the Alternative License Revocation process from this section.

Section 23. Amends 60-4,110 (Operating motor vehicle during period of suspension, revocation, or impoundment; impounding of motor vehicle...) to remove the reference to the revocation procedures provided under the Alternative License Revocation process from this section.

Section 24. Amends 60-4,118.06 (Ignition interlock permit; issued; when; operation restrictions; violation; penalty.) to remove reference to a person subject to ALR being eligible for ignition interlock.

Section 25. Amends 60-4,129 (Employment driving permit; issuance; conditions; violations; penalty; revocation.) to remove the references to the ALR process as provided under 60-498.02.

- This act also removes the provision that prohibits the issuance of an employment driving permit under the

administrative license revocation based on an individual previously having their license revoked under the ALR process for a violation of 60-6,196, within the previous twelve years from the date of the current ALR offense.

Section 26. Amends 60-4,164(5) (Alcoholic liquor; implied consent to submit to chemical tests; refusal or failure; penalty; officer; report.) to provide that a person with a commercial drivers license is prohibited from refusing to submit to a chemical test or to be in actual or within two hours of having been in actual or physical control of a vehicle with a prohibited level of alcohol in their system

Section 27. Amends 60-4,182 (Point system; offenses enumerated.) to allow for the measuring of alcohol concentration under this section, to occur within two hours of a person driving a motor vehicle to determine if such person was driving under the influence of alcohol or any drug in violation of 60-6,196.

Section 28. Amends 60-601(Nebraska Rules of the Road.) to add a reference to section 37 of this act to the rules of the road.

Section 29. Amends 60-6,196 (Driving under influence of alcoholic liquor or drug; penalties.), subsection b and c to provide that for purposes of measuring blood alcohol concentration, that a measurement can be taken by a peace officer, within two hours of a person operating a motor vehicle.

Section 30. Amends 60-6,197 (Driving under influence of alcoholic liquor or drugs; implied consent to submit to chemical test; when test administered; refusal; penalty.) Removes the reference and punishment provided for administrative license revocations proceedings provided under subsection (3) of this section; and

- Amends subsection (5) of this section to provide that failure to inform a person that the refusal to submit to a chemical test as allowed under this section is a separate offense for which they can be charged, does not impact the admissibility of the chemical test result in any legal proceedings.
- Failure to provide advisement that a refusal can result in a separate criminal offense will prevent the state from filing a charge against the person who refused under this section of statute.

Section 31. Amends 60-6,197.02 (Driving under influence of alcoholic liquor or drugs; implied consent to submit to chemical test; terms, defined; prior convictions; use; sentencing provisions;) to redefine prior conviction in subsection (a) to mean a final judgment entered twelve years before the effective date of this act.

- This act would also remove the twelve year look back for dui convictions; and
- Would provide that for purposes of identifying prior convictions from other jurisdictions or states, the conviction is valid if the conviction would have been a violation of section 60-6,196, 60-6,197, 60-6,198 or section 2 of this act.

Section 32. Amends 60-6,197.03 (Driving under influence of alcoholic liquor or drugs; implied consent to submit to chemical test; penalties.)by providing that part of the penalty for a first conviction dui shall be the revocation of a drivers license for six months, with a court order not to drive for 30 days after the completion of which the court must allow a person to request an ignition interlock permit and have an ignition interlock installed on any vehicle they operate for the remainder of the revocation period.

- This section also provides that an ignition interlock permit cannot be granted until an ignition interlock device is installed any vehicle that the person eligible for the ignition interlock permit operates.
- This section also removes the ability of a court to impound a driver's license and the accompanying order not to drive.
- All references to impoundment is removed from this section and
- It is made clear that an ignition interlock device shall be granted upon request after a person has served their mandatory court ordered period prohibiting driving but the ignition interlock will be granted before the period of drivers' license revocation is completed.

Section 33. Amends 60-6,197.09 (Driving under influence of alcoholic liquor or drugs; not eligible for probation, suspended sentence, or employment driving permit.) to delete a reference to ALR under 60-498.02 and the ability to get

an employment driving permit under subsection 2 of 60-498.02.

Section 34. Amends 60-6,198 (Driving under influence of alcoholic liquor or drugs; serious bodily injury; violation; penalty.) to provide that a violation of 60-6,196 or 60-6,197 that results in serious bodily injury to another person or an unborn child as identified under this section, shall now be a separate and distinct offense from any other offense arising out of an alleged offense.

Section 35. Amends 60-6,211.04 (Applicability of other laws.) is amended to strike the reference to ALR under 60-498.01 to 60-498.04.

Section 36. Amends 60-6,211.05 (Ignition interlock device; continuous alcohol monitoring device and abstention from alcohol use; orders authorized; prohibited acts; violation; penalty; costs; tampering with device; hearing.) is amended to incorporate by reference 29-901 to this section. Allows the court to require an ignition interlock as a condition of bail. Provides that the DMV shall issue an ignition interlock permit upon proof that the defendant installed the ignition interlock device on the vehicle that they will operate during the period that the interlock is required. Clarifies that the ignition interlock device allowed while out on bail be approved by the DMV.

- Strikes reference to the ALR process under subsection (3);
- Strikes subsection (5) that provide a penalty for tampering with an ignition interlock device as it has been replaced under section 37 of this act.
- Clarifies under (7) (b) that costs associated with the installation of an ignition interlock device can be waived by the courts and the Board of Pardons if they should determine that it be done. However, this waiver is prohibited if the ignition interlock device is ordered as a condition of bail under 29-901.
- A strike subsection (11) and replaces it with a new subsection (9) that clarifies that an interlock device and permit as provided under subsection (1) (b) as it pertains to convictions and bail, does not create an order of probation when an order of probation has not been issued.

Section 37. Provides that tampering with an ignition interlock required under court order, during the period the order is in effect, is a Class I misdemeanor (1yr/\$1,000/Both) except when the tampering is of an ignition interlock required under subdivisions 4-10 of 60-6,197.03 which violation would be a Class IV felony (5yr/\$10,000/both).

Section 38. Amends 84-205(12) (Attorney General; powers and duties; Child Protection Division.) to delete a budget requirement from the Attorney General's Office representing the state in appeals from ALR proceedings.

Section 39. Amends 84-913.03(Hearing officer; prehearing conference and hearing; how conducted.) to delete a reference to the ALR hearing under 498.01 to 498.04.

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**Explanation of amendments:**

AM162 to LB 667 would make the following changes:

Section 2. Strikes requirement that sentences be served consecutively under this section.

Section 3. Strikes requirement that sentences be served consecutively under this section.

Section 4. Revises 28-394 (Motor vehicle homicide of an unborn child; penalty.), to create the separate offense of "Motor Vehicle Homicide of an Unborn Child" under this section.

Section 6. 29-1917 (Deposition of witness; when; procedure; use at trial.) This section is revised to strike the ability of the prosecution or the defense to request a deposition for a Class W misdemeanor.

Section 7. 29-2259.01 (Probation Cash Fund; created; use; investment.) Removes the supervision for the ignition interlock fund from the Probation Administration as called for under this section and gives it to the Department of Motor

Vehicles under section 27 of this amendment.

Section 21. 53-180 (Sale to minors and incompetents; prohibited.) is amended to provide that: "No person shall sell, furnish, give away, exchange, or deliver, or permit the sale, gift, or procuring of, any alcoholic liquors, to or for any minor or to any person who is mentally incompetent.

Section 22. 53-180.05 (Minors and incompetents; violations; penalties; false identification; penalty; law enforcement agency; duties.) is amended to require that a violation of (2) of this section is a Class III-A felony and includes a mandatory minimum of 30 days imprisonment, when a person "knowingly and intentionally" violates this section and serious bodily injury or death to any person was proximately caused by a minor's: (1) consumption of alcohol liquor provided or (2) the impaired condition which, in whole or in part, can be attributed to the alcoholic liquor provided.

Section 23. 60-498.01 (Driving under influence of alcohol; operator's license; confiscation and revocation; procedures; appeal.) Is amended in the following manner:

- Provides that a revocation of a drivers license under this section, becomes automatic 15 days after date of arrest;
- Provides that the director of the DMV may accept sworn reports under this section electronically;
- Requires the director of the DMV to prepare and approve an information form that describes how to request an ALR hearing or an ignition interlock permit (IIP). A petition for an ALR hearing must be completed and delivered to the DMV or postmarked within 10 days after the person's arrest, failure to comply with the 10 day deadline will foreclose the person's ability to contest the revocation. The DMV shall provide the ALR hearing and Ignition Interlock Permit forms to law enforcement agencies across the state. Provides that a person who submits an application for an ignition interlock permit in lieu of an administrative license revocation hearing makes the following acknowledgments:

1. That they will have their license administratively revoked pursuant to this section;
2. That they have waived their right to an ALR hearing to contest the revocation; and
3. That they understand that an ignition interlock permit and an ignition interlock device is required in order to operate any vehicle during the period of revocation. Upon completion of an application for an ignition interlock, the DMV shall issue the person an IIP subject to any "no-drive periods" and if the person is otherwise eligible.

- Increases 12 year look-back for ALR purposes to 15 years.
  - Eliminates the provision that provides for a "stay" of revocation of a license upon contesting an administrative license revocation.
  - Provides that an arrested person, who's issued an ignition interlock permit according to this section, shall receive day-for-day credit towards a period of revocation imposed by a court pursuant to 60-6,197 that arises from the same incident.
  - Provides that a person who does not petition for an ALR hearing and is subject to an administrative license revocation may immediately apply for an IIP for use during the applicable period of revocation set forth in 60-498.02
  - Provides that any person who petitions for an ALR Hearing is ineligible for an IIP unless ordered by the court at the time of sentencing for the related criminal proceeding.
  - Amends the provision that provides discovery, to allow prosecutors the right of discovery when a motorist utilizes statutory discovery as provided under ALR proceedings.
  - Provides that tampering or circumventing an ignition interlock devise that is installed pursuant to the ALR process shall extend the period of license revocation and the period requiring an ignition interlock permit by 6 months.

Section 24. 60-498.02 (Driving under influence of alcohol; revocation of operator's license; reinstatement; procedure; eligibility for employment driving permit and ignition interlock permit.)

- Provides a 180 day license revocation for a person that submitted to a chemical test and the test discloses the presence of alcohol in an amount specified under 60-6,196.
- Changes the 12 year look back for purposes of this section and increases it to 15 years.
- Provides that persons driving under an ignition interlock permit in accordance to sections 60-498.01 to 60-498.04 who has no prior convictions under the DUI statutes contained under 60-6,196, 60-6,197, or 60-6,197.06 or a prior

administrative license revocation shall only operate a vehicle for purposes of employment, education, substance abuse treatment, parole or probation supervision, continuing health care for themselves or their dependents, court-ordered community service obligations and for ignition interlock servicing at the ignition interlock facility.

Section 25. 60-498.03 (Operator's license revocation decision; notice; contents.) Provides that the director of the DMV will notify the individual of the directors decision to revoke the individuals license under the ALR process in writing by mailing the response to the offender instead of by the previously required certified or registered mail.

Section 26. 60-498.04 (License revocation; appeal; notice of judgment.)

- Provides that appeals filed under this section shall be in accordance to 84-917 (Contested case; appeal; right to cross-appeal; procedure.) of Nebraska Statutes. (84-917 is located under the section titled "Rules Of Administrative Agencies" under the Neb. Rev. Stat.)
- Provides that an appeal shall not suspend the order of revocation under the ALR process.

Section 27. 60-4,115 (Fees; allocation; identity security surcharge.)

- Creates an Ignition Interlock Fund for indigent individuals to be administered by the DMV and funded by \$40 of the currently required \$45 for an ignition interlock permit, with the remaining \$5 going towards the DMV cash fund.
- Removes fee for ignition interlock services from the Probation Administration by striking language directing funds for ignition interlock to the probation cash fund.
- Increases the fee for a duplicate or replacement ignition interlock permit to \$11 from the previous amount of \$10. The \$11 would be divided with 1) \$2.75 going to a county treasurer for credit to county general fund, 2) \$6 to be credited to the DMV cash fund, and 3) \$2.25 to the state general fund.

Section 28. 60-4,118.06 (Ignition interlock permit; issued; when; operation restrictions; violation; penalty.)

- Provides that a person subject to ALR under sections 60-498.01 to 60-498.04 shall be eligible for an ignition interlock permit.
- Provides that a person issued an ignition interlock pursuant to a court order and who does not have a previous convictions under 60-6,196, 60-6,197, or 60-6,197.06 (DUI Statutes) or a previous ALR shall only drive for purposes of employment, education, substance abuse treatment, parole or probation supervision, continuing health care for themselves or their dependents, court-ordered community service obligations and for ignition interlock servicing at the ignition interlock facility.
- Provides that a person issued an ignition interlock device under court order who has a prior DUI or ALR violation shall only drive to and from their residence for purposes of their employment, school, or a substance abuse treatment.
- Provides that an ignition interlock permit shall only be issued for violations of 28-306(3)(b) or (3)(c) (Motor Vehicle Homicide), 28-394 (3)(b) or (3)(c) (Motor vehicle homicide of an unborn child), or section 60-6,196, 60-6,197, or 60-6,197.06 (Driving Under the Influence Statutes)
- Limits availability of ignition interlock permit to holders of Class M or Class O operator's license.
- Requires the director of the DMV to revoke an ignition interlock permit upon (1) receipt of an abstract indicating that person had their operating privileges revoked or canceled or (2) if the IIP holder involved in another incident separate from the incident that resulted in the application for the IIP.
- Strikes current penalty provision for driving in violation of the IIP from this section.

Section 29. 60-4,129 (Employment driving permit; issuance; conditions; violations; penalty; revocation.)

- Eliminates the ability of a person to obtain a "work permit" for driving purposes for a DUI violation under 60-6,196 and 60-6,197.

Section 30. 60-4,164 (Alcoholic liquor; implied consent to submit to chemical tests; refusal or failure; penalty; officer; report.)

- This section would also allow the director of the DMV to accept sworn reports submitted electronically.



Section (31). 60-601 References sections 39 and 42 of this bill to the sections of statute that are known and cited as the Nebraska Rules of the Road.

Section (32). 60-6,197 (Driving under influence of alcoholic liquor or drugs; implied consent to submit to chemical test; when test administered; refusal; penalty.)

- Provides that failure to advise a person that refusal to submit to a chemical test is a separate offense shall not affect the admissibility of chemical test results in any legal proceedings, however such failure to advise shall negate the state's ability to bring a separate charge for refusing to submit to the chemical test provided under this section.

Section (33). 60-6,197.02 (Driving under influence of alcoholic liquor or drugs; implied consent to submit to chemical test; terms, defined; prior convictions; use; sentencing provisions; when applicable.)

- Would change the 12 year look back to 15 years.
- Identifies the violations subject to enhancement by prior offenses to consist of the following: 28-306(3)(b) or (3)(c) (Motor Vehicle Homicide), 28-394 (3)(b) or (3)(c) (Motor vehicle homicide of an unborn child), or section 60-6,196, 60-6,197, or 60-6,197.06 (Driving Under the Influence Statutes)
- Strikes the current 12 year statute of limitations for sentence enhancement purposes.
- Provides that individuals arrested for a violation of the DUI statutes contained in sections 60-6,196 or 60-6,197 before this act is operative, but sentenced pursuant to 60-6,197.03 shall be sentenced pursuant to the version of 60-6,197.03 in effect on the date of arrest.

Section (34). 60-6,197.03 (Driving under influence of alcoholic liquor or drugs; implied consent to submit to chemical test; penalties.) is amended to provide the following changes to sentences issued by a court:

- Removes the Courts ability to "impound" a drivers license;
- Would make ignition interlocks mandatory for conviction of 1st offense DUI, including high BAC, and 2nd offense DUI, (This does not include 2nd offense DUI high BAC);
- For 1st Offense DUI, removes 30 day "no drive time";
- For 2nd Offense DUI, reduces "no drive time" from 60 to 45 days; and
- For 3rd Offense DUI (High BAC) and 4th & subsequent Offense DUI, provides that if an offender is given probation--mandates abstention from alcohol and the use of continuous alcohol monitoring devices for a minimum time ranging from 60-180 days (depending on the number of prior convictions the person) has upon release from confinement.
- Provides that an ignition interlock permit cannot be issued until: (1) person seeking permit shows sufficient proof to DMV that the interlock has been installed on any vehicle that the person would operate and (2) that it is determined that the person seeking the permit is eligible for the use of an ignition interlock device.

Section (35). 60-6,197.05 (Driving under influence of alcoholic liquor or drugs; implied consent to chemical test; revocation; effect.)

- Provides that any period of revocation issued for a violation of 60-6,196 or 60-6,197 be reduced by any period imposed under 60-498.02 of the ALR Statutes.

Section (36). 60-6,197.09 (Driving under influence of alcoholic liquor or drugs; not eligible for probation, suspended sentence, or employment driving permit.)

- Strikes the reference to an employment driving permit under 60-498.02 of the ALR statutes to make the obtaining of such a permit impermissible.

Section (37). (NEW SECTION) Requires the DMV to conduct a public education campaign to inform Nebraska citizens of the dangers and consequences of driving under the influence in this state. The information shall include at a

minimum, the criminal and administrative penalties for driving under the influence.

Section (38). 60-6,198 (Driving under influence of alcoholic liquor or drugs; serious bodily injury; violation; penalty.)

- Would create the separate offense of serious bodily injury to another person or unborn child under this section.

Section (39). 60-6,211.05 (Ignition interlock device; continuous alcohol monitoring device and abstention from alcohol use; orders authorized; prohibited acts; violation; penalty; costs; tampering with device; hearing.)

- Provides that the DMV cannot issue an IIP until defendant shows sufficient proof that the ignition interlock device has been installed on any motor vehicle that the defendant will operate during their release.

- Provides that a person is eligible for an ignition interlock device if they are not subject to any other suspension, cancellation, mandatory no-driving period, or period of revocation and has properly completed the ignition interlock permit application.

- Requires the DMV to review its records and the driving record abstract of an applicant for an IIP to determine: 1) eligibility for the IIP, 2) previous dui and ALR's, 3) Current no-drive periods that must be satisfied before IIP eligibility, 4) permitted driving destinations under the IIP.

- Provides that if the court orders the ignition interlock and the person issued an ignition interlock does not have a previous convictions under 60-6,196, 60-6,197, or 60-6,197.06 (DUI Statutes) or a previous ALR shall only drive for purposes of employment, education, substance abuse treatment, parole or probation supervision, continuing health care for themselves or their dependents, court-ordered community service obligations and for ignition interlock servicing at the ignition interlock facility.

- Provides that any person issued an ignition interlock device under court order, who has a prior DUI or ALR violation shall only drive to and from their residence for purposes of their employment, school, or a substance abuse treatment.

- Provides that the cost incurred to comply with ignition interlock requirements be paid directly to the ignition interlock provider by the person ordered to comply unless the DMV determines the person to be indigent, then the cost to install, remove or maintain the device shall be paid out of the Motor Vehicles Ignition Interlock Fund, which is created under this section according to the rules and regulations adopted and promulgated by the DMV as required under this act.

- Ignition interlock facilities are required to notify the proper probation office or court of any known attempts to tamper with an ignition interlock device if ignition interlock is required by court order. Failure to provide notice is a Class V misdemeanor. (\$100 fine)

- Ignition interlock facilities required to notify the DMV of any known attempts to tamper with an ignition interlock device if ignition interlock is required under ALR. Failure to provide notice is a Class V misdemeanor. (\$100 fine)

- Provides that the issuance of an IIP by the DMV under ALR or by court order shall not be construed to create an order of probation when an order of probation has not been issued.

Section (40). (NEW SECTION) Provides that tampering with an ignition interlock device or drives a vehicle without an ignition interlock device as required is guilty of a Class IV felony (5yrs/\$10,000/Both).

- (2) Of this section provides that driving with an ignition interlock device but otherwise driving in violation of a Court or DMV order shall be guilty of a Class III misdemeanor.

Section (41). This act becomes operative January 1, 2012.

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Brad Ashford, Chairperson