

LEGISLATIVE BILL 166

Approved by the Governor March 1, 2001

Introduced by Hudkins, 21; Aguilar, 35; Cudaback, 36; Dierks, 40; Jensen, 20; Jones, 43; Kruse, 13; Vrtiska, 1; Wehrbein, 2

AN ACT relating to alcohol; to amend sections 37-1254.01 and 60-4,182, Reissue Revised Statutes of Nebraska, and sections 37-1254.02 and 60-6,196, Revised Statutes Supplement, 2000; to reduce the alcohol concentration limits allowed while operating a motorboat or motor vehicle; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 37-1254.01, Reissue Revised Statutes of Nebraska, is amended to read:

37-1254.01. (1) No person shall be in the actual physical control of any motorboat under propulsion upon the waters of this state:

(a) While under the influence of alcohol or of any controlled substance as defined in section 28-401;

(b) When such person has a concentration of ~~ten-hundredths~~ eight-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood;

(c) When such person has a concentration of ~~ten-hundredths~~ eight-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath; or

(d) When such person has a concentration of ~~ten-hundredths~~ eight-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her urine.

(2) Any person who is in the actual physical control of any motorboat under propulsion upon the waters of this state while in a condition described in subsection (1) of this section shall be guilty of a Class II misdemeanor. Upon conviction the court shall, as part of the judgment of conviction, order such person not to be in the physical control of a motorboat under propulsion upon the waters of this state for any purpose for a period of six months from the date of such conviction, except that 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 be in the physical control of any motorboat under propulsion upon the waters of this state for any purpose for a period of sixty days from the date of the order.

(3) Any city or village may enact ordinances in conformance with this section and section 37-1254.02.

(4) At the discretion of the court, any person convicted of violating this section or violating any city or village ordinance adopted in conformance with this section may be required to attend, at the convicted person's expense, an alcoholism treatment program as a term of probation.

Sec. 2. Section 37-1254.02, Revised Statutes Supplement, 2000, is amended to read:

37-1254.02. (1) Any person who has in his or her actual physical control a motorboat under propulsion upon the waters of this state shall be deemed to have given his or her consent to submit to a chemical test of his or her blood, breath, or urine for the purpose of determining the amount of alcohol content in such blood, breath, or urine.

(2) Any law enforcement officer who has been duly authorized to make arrests for violations of laws of this state or 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 in the actual physical control of a motorboat under propulsion upon the waters of this state under the influence of alcohol to submit to a chemical test of his or her blood, breath, or urine for the purpose of determining the alcohol content of such blood, breath, or urine when the officer has reasonable grounds to believe that the person was in the actual physical control of a motorboat under propulsion upon the waters of this state while under the influence of alcohol.

(3) Any law enforcement officer who has been duly authorized to make arrests for violations of laws of this state or ordinances of any city or village may require any person who has in his or her actual physical control a motorboat under propulsion upon the waters of this state to submit to a preliminary test of his or her breath for alcohol content if the officer has reasonable grounds to believe that such person has alcohol in his or her body

or has committed any violation of this section and section 37-1254.01. Any person who refuses to submit to such preliminary breath test or whose preliminary breath test results indicate an alcohol content of ~~ten-hundredths~~ eight-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath shall be placed under arrest. Any person who refuses to submit to such preliminary breath test shall be guilty of a Class III misdemeanor.

(4) Any person arrested pursuant to this section may, upon the direction of a law enforcement officer, be required to submit to a chemical test of his or her blood, breath, or urine for a determination of the alcohol content. Any person who refuses to submit to a chemical blood, breath, or urine test required pursuant to this section shall be guilty of a Class II misdemeanor, and the court shall, as part of the judgment of conviction, order such person not to be in the actual physical control of any motorboat under propulsion upon the waters of this state for any purpose for a period of six months from the date of such conviction. 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 be in the actual physical control of any motorboat under propulsion upon the waters of this state for any purpose for a period of sixty days from the date of the order.

(5) Any person who is required to submit to a preliminary breath test or to a chemical blood, breath, or urine test pursuant to this section shall be advised of the consequences of refusing to submit to such test.

Sec. 3. Section 60-4,182, Reissue Revised Statutes of Nebraska, is amended to read:

60-4,182. In order to prevent and eliminate successive traffic violations, there is hereby provided a point system dealing with traffic violations as disclosed by the files of the director. The following point system shall be adopted:

- (1) Conviction of motor vehicle homicide -- 12 points;
- (2) Third offense drunken driving in violation of any city or village ordinance or of section 60-6,196, as disclosed by the records of the director, regardless of whether the trial court found the same to be a third offense -- 12 points;
- (3) Failure to stop and render aid as required under the laws of this state in the event of involvement in a motor vehicle accident resulting in the death or personal injury of another -- 6 points;
- (4) Failure to stop and render aid as required under the laws of this state or any city or village ordinance in the event of a motor vehicle accident resulting in property damage if such accident is reported by the owner or operator within twelve hours from the time of the accident -- 4 points, otherwise -- 8 points, and for purposes of this subdivision a telephone call or other notification to the appropriate peace officers shall be deemed to be a report;
- (5) Driving a motor vehicle while under the influence of alcoholic liquor or any drug or when such person has a concentration of ~~ten-hundredths~~ eight-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or urine or per two hundred ten liters of his or her breath in violation of any city or village ordinance or of section 60-6,196 -- 6 points;
- (6) Willful reckless driving in violation of any city or village ordinance or of section 60-6,214 or 60-6,217 -- 6 points;
- (7) Careless driving in violation of any city or village ordinance or of section 60-6,212 -- 4 points;
- (8) Negligent driving in violation of any city or village ordinance -- 3 points;
- (9) Reckless driving in violation of any city or village ordinance or of section 60-6,213 -- 5 points;
- (10) Speeding in violation of any city or village ordinance or any of sections 60-6,185 to 60-6,190 and 60-6,313:
 - (a) Not more than five miles per hour over the speed limit -- 1 point;
 - (b) More than five miles per hour but not more than ten miles per hour over the speed limit -- 2 points; and
 - (c) More than ten miles per hour over the speed limit -- 3 points, except that one point shall be assessed upon conviction of exceeding by not more than ten miles per hour, two points shall be assessed upon conviction of exceeding by more than ten miles per hour but not more than fifteen miles per hour, and three points shall be assessed upon conviction of exceeding by more than fifteen miles per hour the speed limits provided for in subdivision (1)(e), (f), or (g) of section 60-6,186;

(11) Failure to yield to a pedestrian not resulting in bodily injury to a pedestrian -- 2 points;

(12) Failure to yield to a pedestrian resulting in bodily injury to a pedestrian -- 4 points; and

(13) All other traffic violations involving the operation of motor vehicles by the operator for which reports to the Department of Motor Vehicles are required under sections 60-497.01 and 60-497.02, not including violations involving an occupant protection system pursuant to section 60-6,270, parking violations, violations for operating a motor vehicle without a valid operator's license in the operator's possession, muffler violations, overwidth, overheight, or overlength violations, motorcycle or moped protective helmet violations, or overloading of trucks -- 1 point.

All such points shall be assessed against the driving record of the operator as of the date of the violation for which conviction was had. Points may be reduced by the department under section 60-4,188.

In all cases, the forfeiture of bail not vacated shall be regarded as equivalent to the conviction of the offense with which the operator was charged.

The point system shall not apply to persons convicted of traffic violations committed while operating a bicycle.

Sec. 4. Section 60-6,196, Revised Statutes Supplement, 2000, is amended to read:

60-6,196. (1) It shall be unlawful for any person to operate or be in the actual physical control of any motor vehicle:

(a) While under the influence of alcoholic liquor or of any drug;

(b) When such person has a concentration of ~~ten-hundredths~~ 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 ~~ten-hundredths~~ 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 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, (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. Such revocation shall not run concurrently with any jail term imposed.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order such person not to drive any motor vehicle for any purpose for a period of sixty days from the date of the order unless otherwise authorized by an order issued pursuant to section 60-6,211.05, and such order of probation shall also include, as one of its conditions, the payment of a four-hundred-dollar fine;

(b) If such person has had one conviction in the twelve years prior to the date of the current conviction (i) under this section, (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. Such orders shall not run concurrently with any jail term imposed.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order such person not to drive any motor vehicle in the State of Nebraska for any purpose for a period of one year 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, (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. Such orders shall not run concurrently with any jail term imposed.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order such person not to drive any motor vehicle in the State of Nebraska for any purpose for a period of one year unless otherwise authorized by an order issued pursuant to section 60-6,211.05 and shall issue an order pursuant to section 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, (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. Such orders shall not run concurrently with any jail term imposed. The court shall also sentence such person to serve at least ten days' imprisonment in the city or county jail or an adult correctional facility.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order such person not to drive any motor vehicle in the State of Nebraska for any purpose for a period of one year unless otherwise authorized by an order issued pursuant to section 60-6,211.05 and shall issue an order pursuant to section 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, (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 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.

(5) Any period of revocation or order not to drive imposed under this section shall be reduced by any period imposed under section 60-6,206. Any period of revocation or order not to drive imposed under subdivision (2)(a) of this section shall not prohibit the operation of a motor vehicle under the terms and conditions of an employment driving permit issued pursuant to subsection (2) of section 60-6,206.

(6) Any person operating a motor vehicle on the highways or streets of this state while his or her operator's license has been revoked pursuant to subdivision (2)(c) or (2)(d) of this section shall be guilty of a Class IV felony. If such person has had a conviction under this subsection prior to the date of the current conviction under this subsection, such person shall be guilty of a Class III felony.

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

(8) Any person who has been convicted of driving while intoxicated 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. 5. Original sections 37-1254.01 and 60-4,182, Reissue Revised Statutes of Nebraska, and sections 37-1254.02 and 60-6,196, Revised Statutes Supplement, 2000, are repealed.