

## LEGISLATIVE BILL 773

Approved by the Governor May 21, 2001

Introduced by Kruse, 13; Burling, 33; Engel, 17; Hartnett, 45; McDonald, 41; Preister, 5; Schrock, 38; Suttle, 10

AN ACT relating to operating vehicles, watercraft, or aircraft while impaired; to amend sections 28-1465, 28-1466, 28-1470, 28-1471, 28-1473, 28-1474, 37-1254.01, 37-1254.03, 37-1254.05, 37-1254.08, 60-4,163, 60-4,168, 60-4,182, and 81-1822, Reissue Revised Statutes of Nebraska, and sections 37-1254.02, 60-6,196, 60-6,197, and 60-6,201, Revised Statutes Supplement, 2000; to change and eliminate provisions relating to chemical analysis of breath or body fluid samples as prescribed; to change provisions relating to prior convictions and operator's license suspensions as prescribed; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 28-1465, Reissue Revised Statutes of Nebraska, is amended to read:

28-1465. It shall be unlawful for any person to operate or be in the actual physical control of any aircraft while under the influence of alcoholic liquor or of any drug or when that person has five-hundredths of one percent or more by weight of alcohol in his or her body fluid as shown by chemical analysis of his or her blood, or breath.  ~~or urine.~~

Sec. 2. Section 28-1466, Reissue Revised Statutes of Nebraska, is amended to read:

28-1466. Any person who shall operate or be in the actual physical control of any aircraft while under the influence of alcoholic liquor or of any drug or while having five-hundredths of one percent by weight of alcohol in his or her body fluid as shown by chemical analysis of his or her blood, or breath,  ~~or urine~~ shall be deemed guilty of a crime and, upon conviction thereof, shall be punished as provided in sections 28-1467 to 28-1469.

Sec. 3. Section 28-1470, Reissue Revised Statutes of Nebraska, is amended to read:

28-1470. Any person who operates or has in his or her actual physical control an aircraft within this state shall be deemed to have given his or her consent to submit to a chemical test of his or her blood, urine, or breath, for the purpose of determining the amount of alcoholic content in his or her body fluid.

Sec. 4. Section 28-1471, Reissue Revised Statutes of Nebraska, is amended to read:

28-1471. Any law enforcement 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 operating or was in actual physical control of an aircraft while under the influence of alcoholic liquor to submit to a chemical test of his or her blood, or breath,  ~~or urine~~ for the purpose of determining the alcoholic content of his or her body fluid, when the officer has reasonable grounds to believe that such person was operating or was in the actual physical control of an aircraft within this state while under the influence of alcoholic liquor.

Sec. 5. Section 28-1473, Reissue Revised Statutes of Nebraska, is amended to read:

28-1473. Any person arrested pursuant to sections 28-1465 to 28-1474 may, upon the direction of a law enforcement officer, be required to submit to a chemical test of his or her blood, or breath,  ~~or urine~~ for a determination of the alcohol content. Any person who refuses to submit to a chemical blood, or breath,  ~~or urine~~ test required pursuant to sections 28-1465 to 28-1474 shall be guilty of a crime and, upon conviction thereof, shall be punished in the same manner as he or she would be if convicted for a violation of section 28-1465.

Sec. 6. Section 28-1474, Reissue Revised Statutes of Nebraska, is amended to read:

28-1474. Any person who is required to submit to a preliminary breath test, or to a chemical blood, or breath,  ~~or urine~~ test pursuant to sections 28-1465 to 28-1474 shall be advised of the consequences of refusing to submit to such test.

Sec. 7. 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; 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. ~~or~~

~~(d) When such person has a concentration of ten-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her 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. 8. 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, or breath, ~~or urine~~ for the purpose of determining the amount of alcohol content in such blood, or 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, or breath, ~~or urine~~ for the purpose of determining the alcohol content of such blood, or 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, or breath, ~~or urine~~ for a determination of the alcohol content. Any person who refuses to submit to a chemical blood, or 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, ~~or~~ breath, ~~or~~ urine test pursuant to this section shall be advised of the consequences of refusing to submit to such test.

Sec. 9. Section 37-1254.03, Reissue Revised Statutes of Nebraska, is amended to read:

37-1254.03. The law enforcement officer who requires a chemical blood, ~~or~~ breath, ~~or~~ urine test pursuant to section 37-1254.02 may direct whether the test shall be of blood, ~~or~~ breath, ~~or~~ urine. When the officer directs that the test shall be of a person's blood, ~~the~~ ~~or~~ urine, such person may choose whether the test shall be of blood ~~or~~ urine. The person tested shall be permitted to have a physician of his or her choice evaluate his or her condition and perform or have performed whatever laboratory tests such person tested deems appropriate in addition to and following the test administered at the direction of the law enforcement officer. If the officer refuses to permit such additional test to be taken, then the original test shall not be competent as evidence. Upon request the results of the test taken at the direction of the law enforcement officer shall be made available to the person being tested.

Sec. 10. Section 37-1254.05, Reissue Revised Statutes of Nebraska, is amended to read:

37-1254.05. Except as provided in section 37-1254.03, any test made pursuant to section 37-1254.02, if made in conformance with the requirements of this section, shall be competent evidence in any prosecution under a state law or city or village ordinance regarding the actual physical control of any motorboat under propulsion upon the waters of this state while under the influence of alcohol or regarding the actual physical control of any motorboat under propulsion upon the waters of this state when the concentration of alcohol in the blood, ~~or~~ breath, ~~or~~ urine is in excess of allowable levels in violation of section 37-1254.01 or a city or village ordinance. To be considered valid, tests shall have been performed according to methods approved by the Department of Health and Human Services Regulation and Licensure and by an individual possessing a valid permit issued by the department for such purpose. The department may approve satisfactory techniques or methods and ascertain the qualifications and competence of individuals to perform such tests and may issue permits which shall be subject to termination or revocation at the discretion of the department.

The permit fee may be established by rules and regulations adopted and promulgated by the department, which fee shall not exceed the actual cost of processing the initial permit. Such fee shall be charged annually to each permitholder. The fees shall be used to defray the cost of processing and issuing the permits and other expenses incurred by the department in carrying out this section. The fee shall be deposited in the state treasury and credited to the Department of Health and Human Services Regulation and Licensure Cash Fund as a laboratory service fee.

Sec. 11. Section 37-1254.08, Reissue Revised Statutes of Nebraska, is amended to read:

37-1254.08. Any person arrested for any offense involving the actual physical control of a motorboat under propulsion upon the waters of this state while under the influence of alcohol shall be required to submit to a chemical test of his or her blood, ~~or~~ breath, ~~or~~ urine as provided in section 37-1254.02 without the preliminary breath test if the arresting officer does not have available the necessary equipment for administering a breath test or if the person is unconscious or is otherwise in a condition rendering him or her incapable of testing by a preliminary breath test. Only a physician, registered nurse, or qualified technician acting at the request of a law enforcement officer may withdraw blood for the purpose of determining its alcohol content, but such limitation shall not apply to the taking of a ~~urine~~ ~~or~~ breath specimen.

Sec. 12. Section 60-4,163, Reissue Revised Statutes of Nebraska, is amended to read:

60-4,163. No person shall operate or be in the actual physical control of a commercial motor vehicle while having any alcoholic liquor in his or her body. Any person who operates or is in the actual physical control of a commercial motor vehicle while having any alcoholic liquor in his or her body or who refuses to submit to a test or tests to determine the alcoholic content of his or her blood, ~~or~~ breath, ~~or~~ urine shall be placed out of service for twenty-four hours, shall be subject to disqualification as provided in sections 60-4,167 and 60-4,168, and shall be subject to prosecution for any violation of sections 60-6,196 and 60-6,197.

Any order to place a person out of service for twenty-four hours issued by a law enforcement officer shall be made pursuant to section 392.5(c) of the federal Motor Carrier Safety Regulations adopted pursuant to section 75-363, as such regulation existed on the effective date of this act.

Sec. 13. Section 60-4,168, Reissue Revised Statutes of Nebraska, is amended to read:

60-4,168. (1) Except as provided in subsection (2) of this section, a person shall be disqualified from driving a commercial motor vehicle for one year:

(a) Upon his or her first conviction, after April 1, 1992, in this or any other state for:

(i) Driving a commercial motor vehicle while under the influence of alcohol or a controlled substance;

(ii) Leaving the scene of an accident involving a commercial motor vehicle driven by the person; or

(iii) Using a commercial motor vehicle in the commission of a felony; or

(b) Upon a first administrative determination, after April 1, 1992, that such person while driving a commercial motor vehicle in this or any other state was requested to submit to a chemical test or tests of his or her blood, breath, or urine by a law enforcement officer and refused or had a concentration of four-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood, ~~or~~ four-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath. ~~7~~ ~~or four-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her urine.~~

(2) If any of the offenses described in this section occurred while the person was transporting hazardous material in a commercial motor vehicle which required placarding pursuant to section 75-364, the person shall, upon conviction or administrative determination, be disqualified from driving a commercial motor vehicle for three years.

(3) A person shall be disqualified from driving a commercial motor vehicle for life if, after April 1, 1992, he or she is convicted of or administratively determined to have committed a second or subsequent violation of any of the offenses described in subsection (1) of this section or any combination of those offenses arising from two or more separate incidents.

(4) A person shall be disqualified from driving a commercial motor vehicle for a period of not less than sixty days if he or she is convicted in this or any other state of two serious traffic violations or not less than one hundred twenty days if he or she is convicted in this or any other state of three serious traffic violations, arising from separate incidents occurring within a three-year period.

(5) For purposes of this section, conviction shall mean an adjudication of guilt in a court of original jurisdiction, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, a plea of guilty or nolo contendere accepted by the court, a payment of a fine or court costs, or a violation of a condition of release without bail, regardless of whether the penalty is rebated, suspended, or probated.

(6) For purposes of this section, serious traffic violation shall mean:

(a) Speeding at or in excess of fifteen miles per hour over the legally posted speed limit;

(b) Willful reckless driving as described in section 60-6,214 or reckless driving as described in section 60-6,213;

(c) Improper lane change as described in section 60-6,139;

(d) Following the vehicle ahead too closely as described in section 60-6,140; and

(e) A violation of any law or ordinance related to motor vehicle traffic control, other than parking violations or overweight or vehicle defect violations, arising in connection with an accident or collision resulting in death to any person.

Sec. 14. 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. 15. 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 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. 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 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. 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 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. 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 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. 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 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 ~~this~~ 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 60-6,206. 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. 16. Section 60-6,197, Revised Statutes Supplement, 2000, is amended to read:

60-6,197. (1) Any person who operates or has in his or her actual physical control a motor vehicle in this state shall be deemed to have given his or her consent to submit to a chemical test or tests of his or her blood, breath, or urine for the purpose of determining the concentration of alcohol or the presence of drugs in such blood, breath, or urine.

(2) Any peace officer who has been duly authorized to make arrests for violations of traffic laws of this state or of ordinances of any city or village may require any person arrested for any offense arising out of acts alleged to have been committed while the person was driving or was in actual physical control of a motor vehicle while under the influence of alcoholic liquor or drugs to submit to a chemical test or tests of his or her blood, breath, or urine for the purpose of determining the concentration of alcohol or the presence of drugs in such blood, breath, or urine when the officer has reasonable grounds to believe that such person was driving or was in the actual physical control of a motor vehicle in this state while under the influence of alcoholic liquor or drugs in violation of section 60-6,196.

(3) Any peace officer who has been duly authorized to make arrests for violation of traffic laws of this state or ordinances of any city or village may require any person who operates or has in his or her actual physical control a motor vehicle in this state to submit to a preliminary test of his or her breath for alcohol concentration if the officer has reasonable grounds to believe that such person has alcohol in his or her body, has committed a moving traffic violation, or has been involved in a traffic accident. Any person who refuses to submit to such preliminary breath test or whose preliminary breath test results indicate an alcohol concentration in violation of section 60-6,196 shall be placed under arrest. Any person who refuses to submit to such preliminary breath test shall be guilty of a Class V misdemeanor.

(4) Any person arrested as provided in this section may, upon the direction of a peace officer, be required to submit to a chemical test or tests of his or her blood, breath, or urine for a determination of the concentration of alcohol or the presence of drugs. If the chemical test discloses the presence of a concentration of alcohol in violation of subsection (1) of section 60-6,196, the person shall be subject to the administrative revocation procedures provided in sections 60-6,205 to 60-6,208 and upon conviction shall be punished as provided in section 60-6,196. Any person who refuses to submit to such test or tests required pursuant to this section shall be subject to the administrative revocation procedures provided in sections 60-6,205 to 60-6,208 and shall be guilty of a crime and upon conviction punished as follows:

(a) If such person 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. Such revocation shall not run concurrently with any jail term imposed.



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

(b) If such person 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. 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 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. 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 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. 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 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) Any person involved in a motor vehicle accident in this state may be required to submit to a chemical test of his or her blood, breath, or urine by any peace officer if the officer has reasonable grounds to believe that the person was driving or was in actual physical control of a motor vehicle on a public highway in this state while under the influence of alcoholic liquor or drugs at the time of the accident. A person involved in a motor vehicle accident subject to the implied consent law of this state shall not be deemed to have withdrawn consent to submit to a chemical test of his or

her blood, breath, or urine by reason of leaving this state. If the person refuses a test under this section and leaves the state for any reason following an accident, he or she shall remain subject to subsection (4) of this section and section 60-6,206 upon return.

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

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

Sec. 17. Section 60-6,201, Revised Statutes Supplement, 2000, is amended to read:

60-6,201. (1) Any test made under section 60-6,197, if made in conformity with the requirements of this section, shall be competent evidence in any prosecution under a state statute or city or village ordinance involving operating a motor vehicle while under the influence of alcoholic liquor or drugs or involving driving or being in actual physical control of a motor vehicle when the concentration of alcohol in the blood or breath is in excess of allowable levels.

(2) Any test made under section 60-6,211.02, if made in conformity with the requirements of this section, shall be competent evidence in any prosecution involving operating or being in actual physical control of a motor vehicle in violation of section 60-6,211.01.

(3) To be considered valid, tests of blood, breath, or urine made under section 60-6,197 or tests of blood or breath made under section 60-6,211.02 shall be performed according to methods approved by the Department of Health and Human Services Regulation and Licensure and by an individual possessing a valid permit issued by such department for such purpose, except that a physician, registered nurse, or other trained person employed by a licensed health care facility or health care service which is defined in the Health Care Facility Licensure Act or clinical laboratory certified pursuant to the federal Clinical Laboratories Improvement Act of 1967, as amended as such act existed on the effective date of this act, or Title XVIII or XIX of the federal Social Security Act, as such act existed on the effective date of this act, to withdraw human blood for scientific or medical purposes, acting at the request of a peace officer, may withdraw blood for the purpose of a test to determine the alcohol concentration or the presence of drugs and no permit from the department shall be required for such person to withdraw blood pursuant to such an order. The department may approve satisfactory techniques or methods to perform such tests and may ascertain the qualifications and competence of individuals to perform such tests and issue permits which shall be subject to termination or revocation at the discretion of the department.

(4) A permit fee may be established by regulation by the department which shall not exceed the actual cost of processing the initial permit. Such fee shall be charged annually to each permit holder. The fees shall be used to defray the cost of processing and issuing the permits and other expenses incurred by the department in carrying out this section. The fee shall be remitted to the State Treasurer for credit to the Department of Health and Human Services Regulation and Licensure Cash Fund as a laboratory service fee.

(5) Relevant evidence shall not be excluded in any prosecution under a state statute or city or village ordinance involving operating a motor vehicle while under the influence of alcoholic liquor or drugs or involving driving or being in actual physical control of a motor vehicle when the concentration of alcohol in the blood, or breath, or urine is in excess of allowable levels on the ground that the evidence existed or was obtained outside of this state.

Sec. 18. Section 81-1822, Reissue Revised Statutes of Nebraska, is amended to read:

81-1822. No compensation shall be awarded:

(1) If the victim aided or abetted the offender in the commission of the unlawful act;

(2) If the offender will receive economic benefit or unjust enrichment from the compensation;

(3) If the victim violated a criminal law of the state, which violation caused or contributed to his or her injuries or death;

(4) If the victim is injured as a result of the operation of a motor vehicle, boat, or airplane (a) unless the vehicle was used in a deliberate attempt to injure or kill the victim, (b) unless the operator is charged with a violation of section 60-6,196 or 60-6,197 or a city or village ordinance enacted in conformance with either of such sections, or (c) unless any

chemical test of the operator's breath, or blood, ~~or~~ ~~urine~~ indicates an alcohol concentration equal to or in excess of the limits prescribed in section 60-6,196; or

(5) If the victim incurs an economic loss which does not exceed ten percent of his or her net financial resources. For purposes of this subdivision, a victim's net financial resources shall not include the present value of future earnings and shall be determined by the committee by deducting from the victim's total financial resources:

(a) One year's earnings;

(b) The victim's equity in his or her home, not exceeding thirty thousand dollars;

(c) One motor vehicle; and

(d) Any other property which would be exempt from execution under section 25-1552 or 40-101.

Nothing in this section shall limit payments to a victim by an offender which are made as full or partial restitution of the victim's actual pecuniary loss.

Sec. 19. Original sections 28-1465, 28-1466, 28-1470, 28-1471, 28-1473, 28-1474, 37-1254.01, 37-1254.03, 37-1254.05, 37-1254.08, 60-4,163, 60-4,168, 60-4,182, and 81-1822, Reissue Revised Statutes of Nebraska, and sections 37-1254.02, 60-6,196, 60-6,197, and 60-6,201, Revised Statutes Supplement, 2000, are repealed.