

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 407

Introduced by Pedersen, 39

Read first time January 16, 2007

Committee: Judiciary

A BILL

1 FOR AN ACT relating to driving under the influence; to amend
2 sections 60-498.02 and 60-4,118.06, Reissue Revised
3 Statutes of Nebraska, and sections 60-6,197.01 and
4 60-6,211.05, Revised Statutes Cumulative Supplement,
5 2006; to change eligibility requirements for ignition
6 interlock devices as prescribed; to harmonize provisions;
7 and to repeal the original sections.

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

1 Section 1. Section 60-498.02, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 60-498.02 (1) At the expiration of thirty days after the
4 date of arrest as described in subsection (2) of section 60-6,197
5 or if after a hearing pursuant to section 60-498.01 the Director
6 of Motor Vehicles finds that the operator's license should be
7 revoked, the director shall (a) revoke the operator's license of a
8 person arrested for refusal to submit to a chemical test of blood,
9 breath, or urine as required by section 60-6,197 for a period of
10 one year and (b) revoke the operator's license of a person who
11 submits to a chemical test pursuant to such section which discloses
12 the presence of a concentration of alcohol specified in section
13 60-6,196 for a period of ninety days unless the person's driving
14 record abstract maintained in the department's computerized records
15 shows one or more prior administrative license revocations on which
16 final orders have been issued during the immediately preceding
17 twelve-year period at the time the order of revocation is issued,
18 in which case the period of revocation shall be one year. Except
19 as otherwise provided in section 60-6,211.05, a new operator's
20 license shall not be issued to such person until the period of
21 revocation has elapsed. If the person subject to the revocation is
22 a nonresident of this state, the director shall revoke only the
23 nonresident's operating privilege as defined in section 60-474 of
24 such person and shall immediately forward the operator's license
25 and a statement of the order of revocation to the person's state

1 of residence.

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

17 (3) Any person who submitted to a chemical test pursuant
18 to section 60-6,197 and has had his or her operator's license
19 administratively revoked for a period of one year under subdivision
20 (1)(b) of this section is eligible, after forty-five days, for an
21 order pursuant to section 60-6,211.05 to operate a motor vehicle
22 equipped with an ignition interlock device.

23 ~~This subsection~~ (4) Subsection (2) of this section shall
24 not apply to nor shall any person be eligible for the benefit of
25 ~~this~~ such subsection during any period of time during which his or

1 her operator's license is subject to an administrative revocation
2 order for refusal to submit to a chemical test of blood, breath, or
3 urine as required by section 60-6,197. ~~or is subject to a one-year~~
4 ~~revocation under subdivision (1)(b) of this section.~~

5 ~~(3)~~ (5) A person may have his or her eligibility for a
6 license reinstated upon payment of a reinstatement fee as required
7 by section 60-694.01.

8 ~~(4)(a)~~ (6)(a) A person whose operator's license is
9 subject to revocation pursuant to subsection ~~(3)~~ (5) of section
10 60-498.01 shall have all proceedings dismissed or his or her
11 operator's license immediately reinstated without payment of the
12 reinstatement fee upon receipt of suitable evidence by the director
13 that:

14 (i) Within the thirty-day period following the date
15 of arrest, the prosecuting attorney responsible for the matter
16 declined to file a complaint alleging a violation of section
17 60-6,196 and notified the director by first-class mail or facsimile
18 transmission of such decision and the director received such notice
19 within such period or the notice was postmarked within such period;
20 or

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

24 (b) The director shall adopt and promulgate rules and
25 regulations establishing standards for the presentation of suitable

1 evidence of compliance with subdivision (a) of this subsection.

2 (c) If a charge is filed for a violation of section
3 60-6,196 pursuant to an arrest for which all proceedings were
4 dismissed under this subsection, the prosecuting attorney shall
5 notify the director by first-class mail or facsimile transmission
6 of the filing of such charge and the director may reinstate an
7 administrative license revocation under this section as of the
8 date that the director receives notification of the filing of the
9 charge, except that a revocation shall not be reinstated if it was
10 dismissed pursuant to section 60-498.01.

11 Sec. 2. Section 60-4,118.06, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 60-4,118.06 (1) Upon receipt by the director of
14 (a) a certified copy of a court order issued pursuant to
15 section 60-6,211.05, (b) sufficient evidence that the person
16 has surrendered his or her operator's license to the Department
17 of Motor Vehicles and installed an approved ignition interlock
18 device in accordance with such court order, and (c) payment of
19 the fee provided in section 60-4,115, such person may apply for
20 reinstatement of his or her eligibility for an operator's license
21 following the passage of thirty days of the ninety-day revocation
22 period under section 60-498.02 and the director shall issue to such
23 person a Class O license restricted to the operation of a motor
24 vehicle equipped with an ignition interlock device. The department
25 shall not issue such a restricted license to any person convicted

1 of a ~~second~~ third or subsequent violation of section 60-6,196
2 or 60-6,197 until at least one year of the operator's license
3 revocation has elapsed.

4 (2) Upon expiration of the court order issued pursuant
5 to section 60-6,211.05 or an order issued by the Board of
6 Pardons pursuant to section 83-1,127.02, a person may apply to
7 the department in writing for issuance of an operator's license
8 which does not contain such restriction. Regardless of whether the
9 license surrendered by such person under subsection (1) of this
10 section has expired, the person shall apply for a new operator's
11 license pursuant to the Motor Vehicle Operator's License Act.

12 Sec. 3. Section 60-6,197.01, Revised Statutes Cumulative
13 Supplement, 2006, is amended to read:

14 60-6,197.01 (1) Upon conviction for a second or
15 subsequent violation of section 60-6,196 or 60-6,197, the court
16 shall impose either of the following restrictions on all motor
17 vehicles owned by the person so convicted:

18 (a)(i) The court shall order the motor vehicle or motor
19 vehicles immobilized at the owner's expense for a period of time
20 not less than ~~five days and not more than eight months~~ the
21 minimum period of ineligibility for an employment driving permit
22 or ignition interlock device under section 60-498.02, 60-4,129,
23 60-4,130, or 60-6,211.05 and shall notify the Department of Motor
24 Vehicles of the period of immobilization. Any immobilized motor
25 vehicle shall be released to the holder of a bona fide lien on the

1 motor vehicle executed prior to such immobilization when possession
2 of the motor vehicle is requested as provided by law by such
3 lienholder for purposes of foreclosing and satisfying such lien.
4 If a person tows and stores a motor vehicle pursuant to this
5 subdivision at the direction of a peace officer or the court and
6 has a lien upon such motor vehicle while it is in his or her
7 possession for reasonable towing and storage charges, the person
8 towing the vehicle has the right to retain such motor vehicle until
9 such lien is paid. For purposes of this subdivision, immobilized
10 or immobilization means revocation or suspension, at the discretion
11 of the court, of the registration of such motor vehicle or motor
12 vehicles, including the license plates; and

13 (ii) (A) Any immobilized motor vehicle shall be released
14 by the court without any legal or physical restraints to any
15 registered owner who is not the registered owner convicted of a
16 second or subsequent violation of section 60-6,196 or 60-6,197
17 if an affidavit is submitted to the court by such registered
18 owner stating that the affiant is employed, that the motor vehicle
19 subject to immobilization is necessary to continue that employment,
20 that such employment is necessary for the well-being of the
21 affiant's dependent children or parents, that the affiant will not
22 authorize the use of the motor vehicle by any person known by the
23 affiant to have been convicted of a second or subsequent violation
24 of section 60-6,196 or 60-6,197, that affiant will immediately
25 report to a local law enforcement agency any unauthorized use of

1 the motor vehicle by any person known by the affiant to have been
2 convicted of a second or subsequent conviction of section 60-6,196
3 or 60-6,197, and that failure to release the motor vehicle would
4 cause undue hardship to the affiant.

5 (B) A registered owner who executes an affidavit pursuant
6 to subdivision (1)(a)(ii)(A) of this section which is acted upon
7 by the court and who fails to immediately report an unauthorized
8 use of the motor vehicle which is the subject of the affidavit is
9 guilty of a Class IV misdemeanor and may not file any additional
10 affidavits pursuant to subdivision (1)(a)(ii)(A) of this section.

11 (C) The department shall adopt and promulgate rules and
12 regulations to implement the provisions of subdivision (1)(a) of
13 this section; or

14 (b) As an alternative to subdivision (1)(a) of this
15 section, the court shall order the installation of an ignition
16 interlock device on each of the owner's motor vehicles if the owner
17 was sentenced to an operator's license revocation of at least one
18 year and has completed at least ~~one year of such revocation.~~ the
19 minimum period of ineligibility for an employment driving permit
20 or ignition interlock device under section 60-498.02, 60-4,129,
21 60-4,130, or 60-6,211.05. No license reinstatement may occur
22 until sufficient evidence is presented to the department that
23 an ignition interlock device is installed on each vehicle and
24 that the applicant is eligible for use of an ignition interlock
25 device. ~~The installation of an ignition interlock device shall be~~

1 ~~for a period not less than six months commencing upon the end of~~
2 ~~such year of the operator's license revocation. Notwithstanding any~~
3 ~~other provision of law, if the owner was convicted of a second or~~
4 ~~subsequent violation of section 60-6,196 or 60-6,197, no ignition~~
5 ~~interlock device shall be ordered by any court or state agency~~
6 ~~under any circumstances until at least one year of the operator's~~
7 ~~license revocation shall have elapsed.~~

8 (2) In addition to the restrictions required by
9 subdivision (1)(b) of this section, the court may require a person
10 convicted of a second or subsequent violation of section 60-6,196
11 or 60-6,197 to use a continuous alcohol monitoring device and
12 abstain from alcohol use for a period of time not to exceed
13 the maximum term of license revocation ordered by the court. A
14 continuous alcohol monitoring device shall not be ordered for a
15 person convicted of a second or subsequent violation unless the
16 installation of an ignition interlock device is also required.

17 Sec. 4. Section 60-6,211.05, Revised Statutes Cumulative
18 Supplement, 2006, is amended to read:

19 60-6,211.05 (1) If an order of probation is granted
20 under section 60-6,196 or 60-6,197, as such sections existed prior
21 to July 16, 2004, or section 60-6,196 or 60-6,197 and sections
22 60-6,197.02 and 60-6,197.03, as such sections existed on or after
23 July 16, 2004, the court may order the defendant to install an
24 ignition interlock device of a type approved by the Director of
25 Motor Vehicles on each motor vehicle operated by the defendant.

1 The device shall, without tampering or the intervention of another
2 person, prevent the defendant from operating the motor vehicle when
3 the defendant has an alcohol concentration greater than the levels
4 prescribed in section 60-6,196.

5 (2) If the court orders installation of an ignition
6 interlock device pursuant to subsection (1) of this section, the
7 court may also order the use of a continuous alcohol monitoring
8 device and abstention from alcohol use at all times. The device
9 shall, without tampering or the intervention of another person,
10 test and record the alcohol consumption level of the defendant
11 on a periodic basis and transmit such information to probation
12 authorities.

13 (3) Any order issued by the court pursuant to this
14 section shall not take effect until the defendant is eligible
15 to operate a motor vehicle pursuant to subsection (2) or (3) of
16 section 60-498.02.

17 (4) If the court orders an ignition interlock device or
18 the Board of Pardons orders an ignition interlock device under
19 section 83-1,127.02, the court or the Board of Pardons shall order
20 the Department of Motor Vehicles to issue to the defendant a
21 restricted Class O license as provided in section 60-4,118.06 which
22 indicates that the defendant is only allowed to operate a motor
23 vehicle equipped with an ignition interlock device. Such court
24 order shall remain in effect for a period of time as determined by
25 the court not to exceed the maximum term of revocation which the

1 court could have imposed according to the nature of the violation.
2 Such Board of Pardons order shall remain in effect for a period
3 of time not to exceed any period of revocation the applicant is
4 subject to at the time the application for a license reinstatement
5 is made.

6 (5) A person who tampers with or circumvents an ignition
7 interlock device installed under a court order while the order is
8 in effect or who operates a motor vehicle which is not equipped
9 with an ignition interlock device in violation of a court order
10 made pursuant to this section shall be guilty of a Class II
11 misdemeanor.

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

18 (7) If a person ordered to use a continuous alcohol
19 monitoring device and abstain from alcohol use pursuant to a court
20 order as provided in subsection (2) of this section violates the
21 provisions of such court order by removing, tampering with, or
22 otherwise bypassing the continuous alcohol monitoring device or by
23 consuming alcohol while required to use such device, he or she
24 shall have his or her Class O license revoked and be unable to
25 apply for license reinstatement for the duration of the revocation

1 period imposed by the court.

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

5 Sec. 5. Original sections 60-498.02 and 60-4,118.06,
6 Reissue Revised Statutes of Nebraska, and sections 60-6,197.01
7 and 60-6,211.05, Revised Statutes Cumulative Supplement, 2006, are
8 repealed.