

AMENDMENTS TO LB 751

(Amendments to Standing Committee amendments, AM1939)

Introduced by Flood

1 1. Insert the following new sections:

2 Sec. 5. Section 43-287, Revised Statutes Cumulative
3 Supplement, 2010, is amended to read:

4 43-287 (1) When a juvenile is adjudged to be a juvenile
5 described in subdivision (1), (2), (3)(b), or (4) of section
6 43-247, the juvenile court may:

7 (a) If such juvenile ~~has one or more licenses or permits~~
8 holds any license or permit issued under the Motor Vehicle
9 Operator's License Act, impound any such ~~licenses or permits~~
10 license or permit for thirty days; or

11 (b) If such juvenile does not have a permit or license
12 issued under the Motor Vehicle Operator's License Act, prohibit
13 such juvenile from obtaining any permit or any license pursuant to
14 the act for which such juvenile would otherwise be eligible until
15 thirty days after the date of such order.

16 (2) A copy of an abstract of the juvenile court's
17 adjudication shall be transmitted to the Director of Motor Vehicles
18 pursuant to sections 60-497.01 to 60-497.04 if a license or permit
19 is impounded or a juvenile is prohibited from obtaining a license
20 or permit under subsection (1) of this section. If a juvenile
21 whose operator's license or permit has been impounded by a juvenile
22 court operates a motor vehicle during any period that he or she

1 is subject to the court order not to operate any motor vehicle or
2 after a period of impoundment but before return of the license or
3 permit, such violation shall be handled in the juvenile court and
4 not as a violation of section 60-4,108.

5 (3) When a juvenile is adjudged to be a juvenile
6 described in subdivision (3)(a) of section 43-247 for excessive
7 absenteeism from school, the juvenile court may issue the parents
8 or guardians of such juvenile a fine not to exceed five hundred
9 dollars for each offense or order such parents or guardians
10 to complete specified hours of community service. For community
11 service ordered under this subsection, the juvenile court may
12 require that all or part of the service be performed for a public
13 school district or nonpublic school if the court finds that service
14 in the school is appropriate under the circumstances.

15 (4) A juvenile who holds any license or permit issued
16 under the Motor Vehicle Operator's License Act and has violated
17 subdivision (3)(b) or (c) of section 28-306, subdivision (3)(b) or
18 (c) of section 28-394, or section 28-1254, 60-6,196, 60-6,197, or
19 60-6,197.06 shall not be eligible for an ignition interlock permit.

20 Sec. 18. Section 60-498.01, Revised Statutes Supplement,
21 2011, is amended to read:

22 60-498.01 (1) Because persons who drive while under the
23 influence of alcohol present a hazard to the health and safety of
24 all persons using the highways, a procedure is needed for the swift
25 and certain revocation of the operator's license of any person who
26 has shown himself or herself to be a health and safety hazard (a)
27 by driving with an excessive concentration of alcohol in his or her

1 body or (b) by driving while under the influence of alcohol.

2 (2) If a person arrested as described in subsection (2)
3 of section 60-6,197 refuses to submit to the chemical test of
4 blood, breath, or urine required by section 60-6,197, the test
5 shall not be given except as provided in section 60-6,210 for the
6 purpose of medical treatment and the arresting peace officer, as
7 agent for the director, shall verbally serve notice to the arrested
8 person of the intention to immediately confiscate and revoke the
9 operator's license of such person and that the revocation will
10 be automatic fifteen days after the date of arrest. The arresting
11 peace officer shall within ten days forward to the director a sworn
12 report stating (a) that the person was arrested as described in
13 subsection (2) of section 60-6,197 and the reasons for such arrest,
14 (b) that the person was requested to submit to the required test,
15 and (c) that the person refused to submit to the required test. The
16 director may accept a sworn report submitted electronically.

17 (3) If a person arrested as described in subsection (2)
18 of section 60-6,197 submits to the chemical test of blood or breath
19 required by section 60-6,197, the test discloses the presence of
20 alcohol in any of the concentrations specified in section 60-6,196,
21 and the test results are available to the arresting peace officer
22 while the arrested person is still in custody, the arresting peace
23 officer, as agent for the director, shall verbally serve notice
24 to the arrested person of the intention to immediately confiscate
25 and revoke the operator's license of such person and that the
26 revocation will be automatic fifteen days after the date of arrest.
27 The arresting peace officer shall within ten days forward to the

1 director a sworn report stating (a) that the person was arrested
2 as described in subsection (2) of section 60-6,197 and the reasons
3 for such arrest, (b) that the person was requested to submit to
4 the required test, and (c) that the person submitted to a test,
5 the type of test to which he or she submitted, and that such test
6 revealed the presence of alcohol in a concentration specified in
7 section 60-6,196. The director may accept a sworn report submitted
8 electronically.

9 (4) On behalf of the director, the arresting peace
10 officer submitting a sworn report under subsection (2) or (3) of
11 this section shall serve notice of the revocation on the arrested
12 person, and the revocation shall be effective fifteen days after
13 the date of arrest. The notice of revocation shall contain a
14 statement explaining the operation of the administrative license
15 revocation procedure. The peace officer shall also provide to the
16 arrested person information prepared and approved by the director
17 describing how to request an administrative license revocation
18 hearing or apply for an ignition interlock permit from the
19 department. A petition for an administrative license revocation
20 hearing must be completed and delivered to the department or
21 postmarked within ten days after the person's arrest or the
22 person's right to an administrative license revocation hearing
23 to contest the revocation will be foreclosed. The director shall
24 prepare and approve the information form, the application for an
25 ignition interlock permit, and the notice of revocation and shall
26 provide them to law enforcement agencies.

27 If the person has an operator's license, the arresting

1 peace officer shall take possession of the license and issue
2 a temporary operator's license valid for fifteen days. The
3 arresting peace officer shall forward the operator's license to
4 the department along with the sworn report made under subsection
5 (2) or (3) of this section.

6 (5)(a) If the results of a chemical test indicate the
7 presence of alcohol in a concentration specified in section
8 60-6,196, the results are not available to the arresting peace
9 officer while the arrested person is in custody, and the notice
10 of revocation has not been served as required by subsection (4)
11 of this section, the peace officer shall forward to the director
12 a sworn report containing the information prescribed by subsection
13 (3) of this section within ten days after receipt of the results of
14 the chemical test. If the sworn report is not received within ten
15 days, the revocation shall not take effect. The director may accept
16 a sworn report submitted electronically.

17 (b) Upon receipt of the report, the director shall
18 serve the notice of revocation on the arrested person by mail
19 to the address appearing on the records of the director. If the
20 address on the director's records differs from the address on
21 the arresting peace officer's report, the notice shall be sent to
22 both addresses. The notice of revocation shall contain a statement
23 explaining the operation of the administrative license revocation
24 procedure. The director shall also provide to the arrested person
25 information prepared and approved by the director describing how
26 to request an administrative license revocation hearing and an
27 application for an ignition interlock permit. A petition for an

1 administrative license revocation hearing must be completed and
2 delivered to the department or postmarked within ten days after the
3 mailing of the notice of revocation or the person's right to an
4 administrative license revocation hearing to contest the revocation
5 will be foreclosed. The director shall prepare and approve the
6 ignition interlock permit application and the notice of revocation.
7 The revocation shall be effective fifteen days after the date of
8 mailing.

9 (c) If the records of the director indicate that the
10 arrested person possesses an operator's license, the director
11 shall include with the notice of revocation a temporary operator's
12 license which expires fifteen days after the date of mailing. Any
13 arrested person who desires an administrative license revocation
14 hearing and has been served a notice of revocation pursuant to
15 this subsection shall return his or her operator's license with
16 the petition requesting the hearing. If the operator's license is
17 not included with the petition requesting the hearing, the director
18 shall deny the petition.

19 (6) (a) An arrested person's operator's license
20 confiscated pursuant to subsection (4) of this section shall be
21 automatically revoked upon the expiration of fifteen days after
22 the date of arrest, and the petition requesting the hearing shall
23 be completed and delivered to the department or postmarked within
24 ten days after the person's arrest. An arrested person's operator's
25 license confiscated pursuant to subsection (5) of this section
26 shall be automatically revoked upon the expiration of fifteen days
27 after the date of mailing of the notice of revocation by the

1 director, and the arrested person shall postmark or return to the
2 director a petition within ten days after the mailing of the notice
3 of revocation if the arrested person desires an administrative
4 license revocation hearing. The petition shall be in writing
5 and shall state the grounds on which the person is relying to
6 prevent the revocation from becoming effective. The hearing and any
7 prehearing conference may be conducted in person or by telephone,
8 television, or other electronic means at the discretion of the
9 director, and all parties may participate by such means at the
10 discretion of the director.

11 (b) The director shall conduct the hearing within twenty
12 days after a petition is received by the director. Upon receipt of
13 a petition, the director shall notify the petitioner of the date
14 and location for the hearing by mail postmarked at least seven
15 days prior to the hearing date. The filing of the petition shall
16 not prevent the automatic revocation of the petitioner's operator's
17 license at the expiration of the fifteen-day period. A continuance
18 of the hearing to a date beyond the expiration of the temporary
19 operator's license shall stay the expiration of the temporary
20 license when the request for continuance is made by the director.

21 (c) At hearing the issues under dispute shall be limited
22 to:

23 (i) In the case of a refusal to submit to a chemical test
24 of blood, breath, or urine:

25 (A) Did the peace officer have probable cause to believe
26 the person was operating or in the actual physical control of a
27 motor vehicle in violation of section 60-6,196 or a city or village

1 ordinance enacted in conformance with such section; and

2 (B) Did the person refuse to submit to or fail to
3 complete a chemical test after being requested to do so by the
4 peace officer; or

5 (ii) If the chemical test discloses the presence of
6 alcohol in a concentration specified in section 60-6,196:

7 (A) Did the peace officer have probable cause to believe
8 the person was operating or in the actual physical control of a
9 motor vehicle in violation of section 60-6,196 or a city or village
10 ordinance enacted in conformance with such section; and

11 (B) Was the person operating or in the actual physical
12 control of a motor vehicle while having an alcohol concentration in
13 violation of subsection (1) of section 60-6,196.

14 (7) (a) Any arrested person who submits an application
15 for an ignition interlock permit in lieu of a petition for an
16 administrative license revocation hearing regarding the revocation
17 of his or her operator's license pursuant to this section shall
18 complete the application for an ignition interlock permit in which
19 such person acknowledges that he or she understands that he or
20 she will have his or her license administratively revoked pursuant
21 to this section, that he or she waives his or her right to a
22 hearing to contest the revocation, and that he or she understands
23 that he or she is required to have an ignition interlock permit in
24 order to operate a motor vehicle for the period of the revocation
25 and shall include sufficient evidence that an ignition interlock
26 device is installed on one or more vehicles that will be operated
27 by the arrested person. Upon the arrested person's completion of

1 the ignition interlock permit application process, the department
2 shall issue the person an ignition interlock permit, subject to any
3 applicable requirements and any applicable no-drive period if the
4 person is otherwise eligible.

5 (b) An arrested person who is issued an ignition
6 interlock permit pursuant to this section shall receive day-for-day
7 credit for the period he or she has a valid ignition interlock
8 permit against the license revocation period imposed by the court
9 arising from the same incident.

10 (c) If a person files a completed application for an
11 ignition interlock permit, the person waives his or her right to
12 contest the revocation of his or her operator's license.

13 (8) Any person who has not petitioned for an
14 administrative license revocation hearing and is subject to an
15 administrative license revocation may immediately apply for an
16 ignition interlock permit to use during the applicable period of
17 revocation set forth in section 60-498.02, subject to the following
18 additional restrictions:

19 (a) If such person submitted to a chemical test which
20 disclosed the presence of a concentration of alcohol in violation
21 of section 60-6,196 and has no prior administrative license
22 revocations on which final orders have been issued during the
23 immediately preceding fifteen-year period at the time the order
24 of revocation is issued, the ignition interlock permit will be
25 immediately available fifteen days after the date of arrest or the
26 date notice of revocation was provided to the arrested person, as
27 long as he or she is otherwise eligible for an ignition interlock

1 permit, upon completion of an application process for an ignition
2 interlock permit;

3 (b) If such person submitted to a chemical test which
4 disclosed the presence of a concentration of alcohol in violation
5 of section 60-6,196 and has one or more prior administrative
6 license revocations on which final orders have been issued during
7 the immediately preceding fifteen-year period at the time the order
8 of revocation is issued, the ignition interlock permit will be
9 available beginning fifteen days after the date of arrest or the
10 date notice of revocation was provided to the arrested person
11 plus forty-five additional days of no driving, as long as he or
12 she is otherwise eligible for an ignition interlock permit, upon
13 completion of an application process for an ignition interlock
14 permit;

15 (c) If such person refused to submit to a chemical
16 test of blood, breath, or urine as required by section 60-6,197,
17 the ignition interlock permit will be available beginning fifteen
18 days after the date of arrest plus ninety additional days of no
19 driving, as long as he or she is otherwise eligible for an ignition
20 interlock permit, upon completion of an application process for an
21 ignition interlock permit; and

22 (d) Any person who petitions for an administrative
23 license revocation hearing shall not be eligible for an ignition
24 interlock permit unless ordered by the court at the time of
25 sentencing for the related criminal proceeding.

26 (9) The director shall adopt and promulgate rules and
27 regulations to govern the conduct of the administrative license

1 revocation hearing and insure that the hearing will proceed in
2 an orderly manner. The director may appoint a hearing officer to
3 preside at the hearing, administer oaths, examine witnesses, take
4 testimony, and report to the director. Any motion for discovery
5 filed by the petitioner shall entitle the prosecutor to receive
6 full statutory discovery from the petitioner upon a prosecutor's
7 request to the relevant court pursuant to section 29-1912 in
8 any criminal proceeding arising from the same arrest. A copy
9 of the motion for discovery shall be filed with the department
10 and a copy provided to the prosecutor in the jurisdiction in
11 which the petitioner was arrested. Incomplete discovery shall not
12 stay the hearing unless the petitioner requests a continuance.
13 All proceedings before the hearing officer shall be recorded.
14 Upon receipt of the arresting peace officer's sworn report, the
15 director's order of revocation has prima facie validity and it
16 becomes the petitioner's burden to establish by a preponderance of
17 the evidence grounds upon which the operator's license revocation
18 should not take effect. The director shall make a determination
19 of the issue within seven days after the conclusion of the
20 hearing. A person whose operator's license is revoked following a
21 hearing requested pursuant to this section may appeal the order of
22 revocation as provided in section 60-498.04.

23 (10) Any person who tampers with or circumvents an
24 ignition interlock device installed pursuant to sections 60-498.01
25 to 60-498.04 or who operates a motor vehicle not equipped with
26 a functioning ignition interlock device required pursuant to such
27 sections or otherwise is in violation of the purposes for operation

1 indicated on the ignition interlock permit under such sections
2 shall, in addition to any possible criminal charges, have his or
3 her revocation period and ignition interlock permit extended for
4 six months beyond the end of the original revocation period.

5 (11) A person under the age of eighteen years who holds
6 any license or permit issued under the Motor Vehicle Operator's
7 License Act and has violated subdivision (3) (b) or (c) of section
8 28-306, subdivision (3) (b) or (c) of section 28-394, or section
9 28-1254, 60-6,196, 60-6,197, or 60-6,197.06 shall not be eligible
10 for an ignition interlock permit.

11 Sec. 25. Section 60-4,120.02, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 60-4,120.02 (1) Any person convicted of violating
14 a provisional operator's permit issued pursuant to section
15 60-4,120.01 by operating a motor vehicle in violation of subsection
16 (3) of such section shall be guilty of an infraction and may
17 have his or her provisional operator's permit revoked by the
18 court pursuant to section 60-496 for a time period specified by
19 the court. Before such person applies for another provisional
20 operator's permit, he or she shall pay a reinstatement fee as
21 provided in section 60-499.01 after the period of revocation has
22 expired.

23 (2) A copy of an abstract of the court's conviction,
24 including an adjudication, shall be transmitted to the director
25 pursuant to sections 60-497.01 to 60-497.04.

26 (3) Any person who holds a provisional operator's permit
27 and has violated subdivision (3) (b) or (c) of section 28-306,

1 subdivision (3)(b) or (c) of section 28-394, or section 28-1254,
2 60-6,196, 60-6,197, or 60-6,197.06 shall not be eligible for an
3 ignition interlock permit.

4 ~~(3)~~ (4) For purposes of this section, conviction includes
5 any adjudication of a juvenile.

6 Sec. 26. Section 60-4,124, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 60-4,124 (1) A person who is younger than sixteen years
9 and three months of age but is older than fourteen years and two
10 months of age may be issued a school permit if such person lives a
11 distance of one and one-half miles or more from the school he or
12 she attends and either resides outside a city of the metropolitan,
13 primary, or first class or attends a school which is outside a city
14 of the metropolitan, primary, or first class and if such person
15 has held an LPE-learner's permit for two months. A school permit
16 shall not be issued until such person has demonstrated that he or
17 she is capable of successfully operating a motor vehicle, moped, or
18 motorcycle and has in his or her possession an issuance certificate
19 authorizing the county treasurer to issue a school permit. In order
20 to obtain an issuance certificate, the applicant shall present
21 (a) proof of successful completion of a department-approved driver
22 safety course which includes behind-the-wheel driving specifically
23 emphasizing (i) the effects of the consumption of alcohol on a
24 person operating a motor vehicle, (ii) occupant protection systems,
25 (iii) risk assessment, and (iv) railroad crossing safety and (b) (i)
26 proof of successful completion of a written examination and driving
27 test administered by a driver safety course instructor or (ii)

1 a certificate in a form prescribed by the department, signed by
2 a parent, guardian, or licensed driver at least twenty-one years
3 of age, verifying that the applicant has completed fifty hours
4 of lawful motor vehicle operation, under conditions that reflect
5 department-approved driver safety course curriculum, with a parent,
6 guardian, or adult at least twenty-one years of age, who has a
7 current Nebraska operator's license or who is licensed in another
8 state. The department may waive the written examination if the
9 applicant has been issued an LPE-learner's permit or LPD-learner's
10 permit and if such permit is valid or has expired no more than
11 one year prior to application. The written examination shall not
12 be waived if the permit being applied for contains a class or
13 endorsement which is different from the class or endorsement of the
14 LPE-learner's permit.

15 (2) A person holding a school permit may operate a motor
16 vehicle, moped, or motorcycle:

17 (a) To and from where he or she attends school and
18 between schools of enrollment over the most direct and accessible
19 route by the nearest highway from his or her place of residence
20 to transport such person or any family member who resides with
21 such person to attend duly scheduled courses of instruction and
22 extracurricular or school-related activities at the school he or
23 she attends; or

24 (b) Under the personal supervision of a licensed
25 operator. Such licensed operator shall be at least twenty-one years
26 of age and licensed by this state or another state and shall
27 actually occupy the seat beside the permitholder or, in the case of

1 a motorcycle or moped, if the permitholder is within visual contact
2 of and under the supervision of, in the case of a motorcycle, a
3 licensed motorcycle operator or, in the case of a moped, a licensed
4 motor vehicle operator.

5 (3) The holder of a school permit shall not use any
6 type of interactive wireless communication device while operating a
7 motor vehicle on the highways of this state. Enforcement of this
8 subsection shall be accomplished only as a secondary action when
9 the holder of the school permit has been cited or charged with a
10 violation of some other law.

11 (4) A person who is younger than sixteen years of age
12 but is over fourteen years of age may be issued an LPE-learner's
13 permit, which permit shall be valid for a period of three months.
14 An LPE-learner's permit shall not be issued until such person
15 successfully completes a written examination prescribed by the
16 department and demonstrates that he or she has sufficient powers of
17 eyesight to safely operate a motor vehicle, moped, or motorcycle.

18 (5) (a) While holding the LPE-learner's permit, the person
19 may operate a motor vehicle on the highways of this state if he
20 or she has seated next to him or her a person who is a licensed
21 operator or, in the case of a motorcycle or moped, if he or she is
22 within visual contact of and is under the supervision of a person
23 who, in the case of a motorcycle, is a licensed motorcycle operator
24 or, in the case of a moped, is a licensed motor vehicle operator.
25 Such licensed motor vehicle or motorcycle operator shall be at
26 least twenty-one years of age and licensed by this state or another
27 state.

1 (b) The holder of an LPE-learner's permit shall not
2 use any type of interactive wireless communication device while
3 operating a motor vehicle on the highways of this state.
4 Enforcement of this subdivision shall be accomplished only as a
5 secondary action when the holder of the LPE-learner's permit has
6 been cited or charged with a violation of some other law.

7 (6) The county treasurer shall collect the fee and
8 surcharge prescribed in section 60-4,115 from each successful
9 applicant for a school or LPE-learner's permit. All school permits
10 shall be subject to impoundment or revocation under the terms of
11 section 60-496. Any person who violates the terms of a school
12 permit shall be guilty of an infraction and shall not be eligible
13 for another school, farm, LPD-learner's, or LPE-learner's permit
14 until he or she has attained the age of sixteen years.

15 (7) Any person who holds a permit issued under this
16 section and has violated subdivision (3)(b) or (c) of section
17 28-306, subdivision (3)(b) or (c) of section 28-394, or section
18 28-1254, 60-6,196, 60-6,197, or 60-6,197.06 shall not be eligible
19 for an ignition interlock permit.

20 Sec. 27. Section 60-4,125, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 60-4,125 (1) For any minor convicted or adjudicated of
23 violating the terms of an LPD-learner's permit issued pursuant
24 to section 60-4,123 or an LPE-learner's permit issued pursuant
25 to section 60-4,124, the court shall, in addition to any other
26 penalty or disposition, order the impoundment or revocation of such
27 learner's permit and order that such minor shall not be eligible

1 for another operator's license or school, farm, LPD-learner's, or
2 LPE-learner's permit until he or she has attained the age of
3 sixteen years.

4 (2) Any person who holds an LPD-learner's permit issued
5 pursuant to section 60-4,123 or an LPE-learner's permit issued
6 pursuant to section 60-4,124 and has violated subdivision (3) (b) or
7 (c) of section 28-306, subdivision (3) (b) or (c) of section 28-394,
8 or section 28-1254, 60-6,196, 60-6,197, or 60-6,197.06 shall not be
9 eligible for an ignition interlock permit.

10 (3) A copy of the court's abstract or adjudication shall
11 be transmitted to the director who shall place in an impound
12 status or revoke the LPD-learner's or LPE-learner's permit of such
13 minor in accordance with the order of the court and not again
14 issue another operator's license or school, farm, LPD-learner's, or
15 LPE-learner's permit to such minor until such minor has attained
16 the age of sixteen years.

17 Sec. 28. Section 60-4,126, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 60-4,126 (1) Any person who is younger than sixteen years
20 of age but is over thirteen years of age and resides upon a
21 farm in this state or is fourteen years of age or older and is
22 employed for compensation upon a farm in this state may obtain a
23 farm permit authorizing the operation of farm tractors, minitrucks,
24 and other motorized implements of farm husbandry upon the highways
25 of this state if the applicant for such farm permit furnishes
26 satisfactory proof of age and satisfactorily demonstrates that he
27 or she has knowledge of the operation of such equipment and of

1 the rules of the road and laws respecting the operation of motor
2 vehicles upon the highways of this state. Any person under sixteen
3 years of age but not less than thirteen years of age may obtain a
4 temporary permit to operate such equipment for a six-month period
5 after presentation to the department of a request for the temporary
6 permit signed by the person's parent or guardian and payment of
7 the fee and surcharge prescribed in section 60-4,115. After the
8 expiration of the six-month period, it shall be unlawful for such
9 person to operate such equipment upon the highways of this state
10 unless he or she has been issued a farm permit under this section.
11 The fee for an original, renewal, or duplicate farm permit shall
12 be the fee and surcharge prescribed in section 60-4,115. All farm
13 permits shall be subject to revocation under the terms of section
14 60-496. Any person who violates the terms of a farm permit shall
15 be guilty of an infraction and shall not be eligible for another
16 school, farm, LPD-learner's, or LPE-learner's permit until he or
17 she has attained the age of sixteen years.

18 (2) Any person who holds a permit issued under this
19 section and violated subdivision (3)(b) or (c) of section 28-306,
20 subdivision (3)(b) or (c) of section 28-394, or section 28-1254,
21 60-6,196, 60-6,197, or 60-6,197.06 shall not be eligible for an
22 ignition interlock permit.

23 2. Correct the operative date and repealer sections so
24 that the sections added by this amendment become operative three
25 calendar months after the adjournment of this legislative session.