

AMENDMENTS TO LB 158

(Amendments to Standing Committee amendments, AM470)

Introduced by Seiler

1 1. Insert the following new sections:

2 Section 1. Section 60-498.02, Revised Statutes Cumulative
3 Supplement, 2012, is amended to read:

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

1 a nonresident of this state, the director shall revoke only the
2 nonresident's operating privilege as defined in section 60-474 of
3 such person and shall immediately forward the operator's license
4 and a statement of the order of revocation to the person's state
5 of residence.

6 (2) A person operating a motor vehicle under an ignition
7 interlock permit issued pursuant to sections 60-498.01 to 60-498.04
8 ~~who has no previous convictions under section 60-6,196, 60-6,197,~~
9 ~~or 60-6,197.06 and no previous administrative license revocation~~
10 ~~shall only operate the motor vehicle to and from his or her~~
11 ~~residence for purposes of his or her employment, his or her school,~~
12 ~~a substance abuse treatment program, his or her parole or probation~~
13 ~~officer, his or her continuing health care or the continuing~~
14 ~~health care of another person who is dependent upon the person,~~
15 ~~his or her court-ordered community service responsibilities, or an~~
16 ~~ignition interlock service facility. A person operating a motor~~
17 ~~vehicle under an ignition interlock permit issued pursuant to~~
18 ~~sections 60-498.01 to 60-498.04 who has a previous conviction~~
19 ~~under section 60-6,196, 60-6,197, or 60-6,197.06 or a previous~~
20 ~~administrative license revocation shall only operate the a motor~~
21 ~~vehicle equipped with an ignition interlock device, to and from~~
22 ~~his or her residence, his or her place of employment, his or~~
23 ~~her school, a substance abuse treatment program, or an ignition~~
24 ~~interlock service facility. Such permit shall indicate for which~~
25 ~~purposes the permit may be used. All permits issued pursuant to~~
26 ~~this subsection such sections shall indicate that the permit is not~~
27 ~~valid for the operation of any commercial motor vehicle.~~

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

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

9 (i) The prosecuting attorney responsible for the matter
10 declined to file a complaint alleging a violation of section
11 60-6,196;

12 (ii) The defendant, after trial, was found not guilty
13 of violating section 60-6,196 or such charge was dismissed on the
14 merits by the court; or

15 (iii) In the criminal action on the charge of a violation
16 of section 60-6,196 arising from the same incident, the court held
17 one of the following:

18 (A) The peace officer did not have probable cause to
19 believe the person was operating or in the actual physical control
20 of a motor vehicle in violation of section 60-6,196 or a city or
21 village ordinance enacted in conformance with such section; or

22 (B) The person was not operating or in the actual
23 physical control of a motor vehicle while having an alcohol
24 concentration in violation of section 60-6,196 or a city or village
25 ordinance enacted in conformance with such section.

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

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

2 (c) If a criminal charge is filed or refiled for a
3 violation of section 60-6,196 pursuant to an arrest for which all
4 administrative license revocation proceedings were dismissed under
5 this subsection, the director, upon notification or discovery,
6 may reinstate an administrative license revocation under this
7 section as of the date that the director receives notification of
8 the filing or refiling of the charge, except that a revocation
9 shall not be reinstated if it was dismissed pursuant to section
10 60-498.01.

11 Sec. 2. Section 60-4,118.06, Revised Statutes Cumulative
12 Supplement, 2012, is amended to read:

13 60-4,118.06 (1) Upon receipt by the director of (a)
14 a certified copy of a court order issued pursuant to section
15 60-6,211.05, a certified copy of an order for installation of an
16 ignition interlock device and issuance of an ignition interlock
17 permit pursuant to section 60-6,197.03, or a copy of an order
18 from the Board of Pardons pursuant to section 83-1,127.02, (b)
19 sufficient evidence that the person has surrendered his or her
20 operator's license to the department and installed an approved
21 ignition interlock device in accordance with such order, and (c)
22 payment of the fee provided in section 60-4,115, such person
23 may apply for an ignition interlock permit. A person subject
24 to administrative license revocation under sections 60-498.01 to
25 60-498.04 shall be eligible for an ignition interlock permit as
26 provided in such sections. The director shall issue an ignition
27 interlock permit only for the operation of a motor vehicle equipped

1 with an ignition interlock device. Any person issued an ignition
2 interlock permit pursuant to a court order who has no previous
3 convictions under section 60-6,196, 60-6,197, or 60-6,197.06 and no
4 previous administrative license revocation shall only operate the
5 motor vehicle equipped with an ignition interlock device to and
6 from his or her residence for purposes of his or her employment,
7 his or her school, a substance abuse treatment program, his or her
8 parole or probation officer, his or her continuing health care or
9 the continuing health care of another person who is dependent
10 upon the person, his or her court-ordered community service
11 responsibilities, or an ignition interlock service facility. Any
12 person issued an ignition interlock permit pursuant to a court
13 order who has a previous conviction under section 60-6,196,
14 60-6,197, or 60-6,197.06 or a previous administrative license
15 revocation shall only operate the motor vehicle equipped with an
16 ignition interlock device to and from his or her residence, his
17 or her place of employment, his or her school, a substance abuse
18 treatment program, or an ignition interlock service facility. The
19 permit shall indicate for which purposes the permit may be used.
20 All permits issued pursuant to this subsection shall indicate that
21 the permit is not valid for the operation of any commercial motor
22 vehicle.

23 (2) Upon expiration of the revocation period or upon
24 expiration of an order issued by the Board of Pardons pursuant
25 to section 83-1,127.02, a person may apply to the department
26 in writing for issuance of an operator's license. Regardless of
27 whether the license surrendered by such person under subsection

1 (1) of this section has expired, the person shall apply for a new
2 operator's license pursuant to the Motor Vehicle Operator's License
3 Act.

4 (3) (a) An ignition interlock permit shall not be issued
5 under this section or sections 60-498.01 to 60-498.04 to any person
6 except in cases of a violation of subdivision (3) (b) or (c) of
7 section 28-306, subdivision (3) (b) or (c) of section 28-394, or
8 section 28-1254, 60-6,196, 60-6,197, or 60-6,197.06.

9 (b) An ignition interlock permit shall only be available
10 to a holder of a Class M or O operator's license.

11 (4) The director shall revoke a person's ignition
12 interlock permit issued under this section or sections 60-498.01 to
13 60-498.04 upon receipt of an (a) abstract of conviction indicating
14 that the person had his or her operating privileges revoked or
15 canceled or (b) administrative order revoking or canceling the
16 person's operating privileges, if such conviction or order resulted
17 from an incident other than the incident which resulted in the
18 application for the ignition interlock permit.

19 Sec. 5. Section 60-6,211.05, Revised Statutes Cumulative
20 Supplement, 2012, is amended to read:

21 60-6,211.05 (1) If an order is granted under section
22 60-6,196 or 60-6,197 and sections 60-6,197.02 and 60-6,197.03, the
23 court may order that the defendant install an ignition interlock
24 device of a type approved by the Director of Motor Vehicles on
25 each motor vehicle operated by the defendant during the period of
26 revocation. Upon sufficient evidence of installation, the defendant
27 may apply to the director for an ignition interlock permit pursuant

1 to section 60-4,118.06. The device shall, without tampering or
2 the intervention of another person, prevent the defendant from
3 operating the motor vehicle when the defendant has an alcohol
4 concentration greater than three-hundredths of one gram or more
5 by weight of alcohol per one hundred milliliters of his or her
6 blood or three-hundredths of one gram or more by weight of alcohol
7 per two hundred ten liters of his or her breath. The Department
8 of Motor Vehicles shall issue an ignition interlock permit to the
9 defendant under section 60-4,118.06 only upon sufficient proof that
10 a defendant has installed an ignition interlock device on any motor
11 vehicle that the defendant will operate during his or her release.

12 (2) If the court orders installation of an ignition
13 interlock device and issuance of an ignition interlock permit
14 pursuant to subsection (1) of this section, the court may also
15 order the use of a continuous alcohol monitoring device and
16 abstention from alcohol use at all times. The device shall, without
17 tampering or the intervention of another person, test and record
18 the alcohol consumption level of the defendant on a periodic basis
19 and transmit such information to probation authorities.

20 (3) Any order issued by the court pursuant to this
21 section shall not take effect until the defendant is eligible
22 to operate a motor vehicle pursuant to subsection (8) of section
23 60-498.01. A person shall be eligible to be issued an ignition
24 interlock permit allowing operation of a motor vehicle equipped
25 with an ignition interlock device if he or she is not subject to
26 any other suspension, cancellation, required no-driving period,
27 or period of revocation and has successfully completed the

1 ignition interlock permit application process. The Department of
2 Motor Vehicles shall review its records and the driving record
3 abstract of any person who applies for an ignition interlock permit
4 allowing operation of a motor vehicle equipped with an ignition
5 interlock device to determine (a) the applicant's eligibility
6 for an ignition interlock permit, (b) the applicant's previous
7 convictions under section 60-6,196, 60-6,197, or 60-6,197.06 or any
8 previous administrative license revocation, if any, and (c) if the
9 applicant is subject to any required no-drive periods before the
10 ignition interlock permit may be issued. and ~~(d) the permitted~~
11 ~~driving uses to be allowed to that person on his or her ignition~~
12 ~~interlock permit.~~

13 (4) (a) If the court orders an ignition interlock device
14 or the Board of Pardons orders an ignition interlock device under
15 section 83-1,127.02, the court or the Board of Pardons shall order
16 the defendant to apply for an ignition interlock permit as provided
17 in section 60-4,118.06 which indicates that the defendant is only
18 allowed to operate a motor vehicle equipped with an ignition
19 interlock device.

20 (b) Such court order shall remain in effect for a period
21 of time as determined by the court not to exceed the maximum term
22 of revocation which the court could have imposed according to the
23 nature of the violation and shall allow operation by the defendant
24 of only an ignition-interlock-equipped motor vehicle. only ~~(i) if~~
25 ~~the defendant has no previous conviction under section 60-6,196,~~
26 ~~60-6,197, or 60-6,197.06 and no previous administrative license~~
27 ~~revocation, to and from his or her residence for purposes of his~~

1 ~~or her employment, his or her school, a substance abuse treatment~~
2 ~~program, his or her probation officer, his or her continuing~~
3 ~~health care or the continuing health care of another person who~~
4 ~~is dependent upon the person, his or her court-ordered community~~
5 ~~service responsibilities, or an ignition interlock service facility~~
6 ~~or (ii) if the defendant has a previous conviction under section~~
7 ~~60-6,196, 60-6,197, or 60-6,197.06 or a previous administrative~~
8 ~~license revocation, to and from his or her residence, his or her~~
9 ~~place of employment, his or her school, a substance abuse treatment~~
10 ~~program, or an ignition interlock service facility.~~

11 (c) Such Board of Pardons order shall remain in effect
12 for a period of time not to exceed any period of revocation the
13 applicant is subject to at the time the application for a reprieve
14 is made.

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

21 (6) If a person ordered to use a continuous alcohol
22 monitoring device and abstain from alcohol use pursuant to a court
23 order as provided in subsection (2) of this section violates the
24 provisions of such court order by removing, tampering with, or
25 otherwise bypassing the continuous alcohol monitoring device or
26 by consuming alcohol while required to use such device, he or
27 she shall have his or her ignition interlock permit revoked and

1 be unable to apply for reinstatement for the duration of the
2 revocation period imposed by the court.

3 (7) The director shall adopt and promulgate rules and
4 regulations regarding the approval of ignition interlock devices,
5 the means of installing ignition interlock devices, and the means
6 of administering the ignition interlock permit program.

7 (8) (a) The costs incurred in order to comply with the
8 ignition interlock requirements of this section shall be paid
9 directly to the ignition interlock provider by the person complying
10 with an order for an ignition interlock permit and installation of
11 an ignition interlock device.

12 (b) If the Department of Motor Vehicles has determined
13 the person to be indigent and incapable of paying for the cost
14 of installation, removal, or maintenance of the ignition interlock
15 device in accordance with this section, such costs shall be paid
16 out of the Department of Motor Vehicles Ignition Interlock Fund
17 if such funds are available, according to rules and regulations
18 adopted and promulgated by the department. Such costs shall also
19 be paid out of the Department of Motor Vehicles Ignition Interlock
20 Fund if such funds are available and if the court or the Board of
21 Pardons, whichever is applicable, has determined the person to be
22 indigent and incapable of paying for the cost of installation,
23 removal, or maintenance of the ignition interlock device in
24 accordance with this section. The Department of Motor Vehicles
25 Ignition Interlock Fund is created. Any money in the fund available
26 for investment shall be invested by the state investment officer
27 pursuant to the Nebraska Capital Expansion Act and the Nebraska

1 State Funds Investment Act.

2 (9) (a) (i) An ignition interlock service facility shall
3 notify the appropriate district probation office or the appropriate
4 court, as applicable, of any evidence of tampering with or
5 circumvention of an ignition interlock device, or any attempts
6 to do so, when the facility becomes aware of such evidence.
7 Failure of the facility to provide notification as provided in this
8 subdivision is a Class V misdemeanor.

9 (ii) An ignition interlock service facility shall notify
10 the Department of Motor Vehicles, if the ignition interlock
11 permit is issued pursuant to sections 60-498.01 to 60-498.04,
12 of any evidence of tampering with or circumvention of an ignition
13 interlock device, or any attempts to do so, when the facility
14 becomes aware of such evidence. Failure of the facility to
15 provide notification as provided in this subdivision is a Class V
16 misdemeanor.

17 (b) If a district probation office receives evidence of
18 tampering with or circumvention of an ignition interlock device, or
19 any attempts to do so, from an ignition interlock service facility,
20 the district probation office shall notify the appropriate court of
21 such violation. The court shall immediately schedule an evidentiary
22 hearing to be held within fourteen days after receiving such
23 evidence, either from the district probation office or an ignition
24 interlock service facility, and the court shall cause notice of
25 the hearing to be given to the person operating a motor vehicle
26 pursuant to an order under subsection (1) of this section. If
27 the person who is the subject of such evidence does not appear

1 at the hearing and show cause why the order made pursuant to
2 subsection (1) of this section should remain in effect, the court
3 shall rescind the original order. Nothing in this subsection shall
4 apply to an order made by the Board of Pardons pursuant to section
5 83-1,127.02.

6 (10) Notwithstanding any other provision of law, the
7 issuance of an ignition interlock permit by the Department of Motor
8 Vehicles under section 60-498.01 or an order for the installation
9 of an ignition interlock device and ignition interlock permit made
10 pursuant to subsection (1) of this section as part of a conviction,
11 as well as the administration of such court order by the Office
12 of Probation Administration for the installation, maintenance, and
13 removal of such device, as applicable, shall not be construed to
14 create an order of probation when an order of probation has not
15 been issued.

16 2. Renumber the remaining sections and correct the
17 repealer accordingly.