

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 158

Introduced by Seiler, 33.

Read first time January 14, 2013

Committee:

A BILL

1 FOR AN ACT relating to motor vehicles; to amend section 60-6,197.01,
2 Reissue Revised Statutes of Nebraska, and section
3 60-6,197.03, Revised Statutes Cumulative Supplement,
4 2012; to change provisions relating to ignition interlock
5 devices; and to repeal the original sections.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 60-6,197.01, Reissue Revised Statutes
2 of Nebraska, is amended to read:

3 60-6,197.01 (1) Upon conviction for a violation described
4 in section 60-6,197.06 or a second or subsequent violation of section
5 60-6,196 or 60-6,197, the court shall impose either of the following
6 restrictions:

7 (a)(i) The court shall order all motor vehicles owned by
8 the person so convicted immobilized at the owner's expense for a
9 period of time not less than five days and not more than eight months
10 and shall notify the Department of Motor Vehicles of the period of
11 immobilization. Any immobilized motor vehicle shall be released to
12 the holder of a bona fide lien on the motor vehicle executed prior to
13 such immobilization when possession of the motor vehicle is requested
14 as provided by law by such lienholder for purposes of foreclosing and
15 satisfying such lien. If a person tows and stores a motor vehicle
16 pursuant to this subdivision at the direction of a peace officer or
17 the court and has a lien upon such motor vehicle while it is in his
18 or her possession for reasonable towing and storage charges, the
19 person towing the vehicle has the right to retain such motor vehicle
20 until such lien is paid. For purposes of this subdivision,
21 immobilized or immobilization means revocation or suspension, at the
22 discretion of the court, of the registration of such motor vehicle or
23 motor vehicles, including the license plates; and

24 (ii)(A) Any immobilized motor vehicle shall be released
25 by the court without any legal or physical restraints to any

1 registered owner who is not the registered owner convicted of a
2 second or subsequent violation of section 60-6,196 or 60-6,197 if an
3 affidavit is submitted to the court by such registered owner stating
4 that the affiant is employed, that the motor vehicle subject to
5 immobilization is necessary to continue that employment, that such
6 employment is necessary for the well-being of the affiant's dependent
7 children or parents, that the affiant will not authorize the use of
8 the motor vehicle by any person known by the affiant to have been
9 convicted of a second or subsequent violation of section 60-6,196 or
10 60-6,197, that affiant will immediately report to a local law
11 enforcement agency any unauthorized use of the motor vehicle by any
12 person known by the affiant to have been convicted of a second or
13 subsequent conviction of section 60-6,196 or 60-6,197, and that
14 failure to release the motor vehicle would cause undue hardship to
15 the affiant.

16 (B) A registered owner who executes an affidavit pursuant
17 to subdivision (1)(a)(ii)(A) of this section which is acted upon by
18 the court and who fails to immediately report an unauthorized use of
19 the motor vehicle which is the subject of the affidavit is guilty of
20 a Class IV misdemeanor and may not file any additional affidavits
21 pursuant to subdivision (1)(a)(ii)(A) of this section.

22 (C) The department shall adopt and promulgate rules and
23 regulations to implement the provisions of subdivision (1)(a) of this
24 section; or

25 (b) As an alternative to subdivision (1)(a) of this

1 section, the court shall order the convicted person, in order to
2 operate a motor vehicle, to obtain an ignition interlock permit and
3 install an ignition interlock device on each motor vehicle owned or
4 operated by the convicted person if he or she was sentenced to an
5 operator's license revocation of at least one year. If the person's
6 operator's license has been revoked for at least a one-year period,
7 after a minimum of a forty-five-day no driving period, the person may
8 operate a motor vehicle with an ignition interlock permit and an
9 ignition interlock device pursuant to this subdivision and shall
10 retain the ignition interlock permit and ignition interlock device
11 for not less than ~~the remainder of a~~ one-year period or the period of
12 revocation ordered by the court, whichever is longer. No ignition
13 interlock permit may be issued until sufficient evidence is presented
14 to the department that an ignition interlock device is installed on
15 each vehicle and that the applicant is eligible for use of an
16 ignition interlock device.

17 (2) In addition to the restrictions required by
18 subdivision (1)(b) of this section, the court may require a person
19 convicted of a second or subsequent violation of section 60-6,196 or
20 60-6,197 to use a continuous alcohol monitoring device and abstain
21 from alcohol use for a period of time not to exceed the maximum term
22 of license revocation ordered by the court. A continuous alcohol
23 monitoring device shall not be ordered for a person convicted of a
24 second or subsequent violation unless the installation of an ignition
25 interlock device is also required.

1 Sec. 2. Section 60-6,197.03, Revised Statutes Cumulative
2 Supplement, 2012, is amended to read:

3 60-6,197.03 Any person convicted of a violation of
4 section 60-6,196 or 60-6,197 shall be punished as follows:

5 (1) Except as provided in subdivision (2) of this
6 section, if such person has not had a prior conviction, such person
7 shall be guilty of a Class W misdemeanor, and the court shall, as
8 part of the judgment of conviction, order that the operator's license
9 of such person be revoked for a period of six months from the date
10 ordered by the court. The revocation order shall require that the
11 person apply for an ignition interlock permit pursuant to section
12 60-6,211.05 for the revocation period and have an ignition interlock
13 device installed on any motor vehicle he or she operates during the
14 revocation period. Such revocation shall be administered upon
15 sentencing, upon final judgment of any appeal or review, or upon the
16 date that any probation is revoked.

17 If the court places such person on probation or suspends
18 the sentence for any reason, the court shall, as one of the
19 conditions of probation or sentence suspension, order that the
20 operator's license of such person be revoked for a period of sixty
21 days from the date ordered by the court. The court shall order that
22 during the period of revocation the person apply for an ignition
23 interlock permit pursuant to section 60-6,211.05. Such order of
24 probation or sentence suspension shall also include, as one of its
25 conditions, the payment of a five-hundred-dollar fine;

1 (2) If such person has not had a prior conviction and, as
2 part of the current violation, had a concentration of fifteen-
3 hundredths of one gram or more by weight of alcohol per one hundred
4 milliliters of his or her blood or fifteen-hundredths of one gram or
5 more by weight of alcohol per two hundred ten liters of his or her
6 breath, such person shall be guilty of a Class W misdemeanor, and the
7 court shall, as part of the judgment of conviction, revoke the
8 operator's license of such person for a period of one year from the
9 date ordered by the court. The revocation order shall require that
10 the person apply for an ignition interlock permit pursuant to
11 subdivision (1)(b) of section 60-6,197.01 for the revocation period
12 and have an ignition interlock device installed on any motor vehicle
13 he or she operates during the revocation period. Such revocation
14 shall be administered upon sentencing, upon final judgment of any
15 appeal or review, or upon the date that any probation is revoked.

16 If the court places such person on probation or suspends
17 the sentence for any reason, the court shall, as one of the
18 conditions of probation or sentence suspension, order that the
19 operator's license of such person be revoked for a period of one year
20 from the date ordered by the court. The revocation order shall
21 require that the person apply for an ignition interlock permit
22 pursuant to subdivision (1)(b) of section 60-6,197.01 for the
23 revocation period and have an ignition interlock device installed on
24 any motor vehicle he or she operates during the revocation period.
25 Such revocation shall be administered upon sentencing, upon final

1 judgment of any appeal or review, or upon the date that any probation
2 is revoked. Such order of probation or sentence suspension shall also
3 include, as conditions, the payment of a five-hundred-dollar fine and
4 either confinement in the city or county jail for two days or the
5 imposition of not less than one hundred twenty hours of community
6 service;

7 (3) Except as provided in subdivision (5) of this
8 section, if such person has had one prior conviction, such person
9 shall be guilty of a Class W misdemeanor, and the court shall, as
10 part of the judgment of conviction, order that the operator's license
11 of such person be revoked for a period of one year from the date
12 ordered by the court. The revocation order shall require that the
13 person not drive for a period of forty-five days, after which the
14 court shall order that the person apply for an ignition interlock
15 permit for ~~the remainder of the revocation~~ not less than a one-year
16 period and have an ignition interlock device installed on any motor
17 vehicle he or she owns or operates during the ~~remainder of the~~
18 ~~revocation~~ one-year period and shall issue an order pursuant to
19 subdivision (1)(b) of section 60-6,197.01. Such revocation shall be
20 administered upon sentencing, upon final judgment of any appeal or
21 review, or upon the date that any probation is revoked.

22 If the court places such person on probation or suspends
23 the sentence for any reason, the court shall, as one of the
24 conditions of probation or sentence suspension, order that the
25 operator's license of such person be revoked for a period of one year

1 from the date ordered by the court. The revocation order shall
2 require that the person not drive for a period of forty-five days,
3 after which the court shall order that ~~during the period of~~
4 ~~revocation~~ the person apply for an ignition interlock permit and
5 installation of an ignition interlock device for not less than a one-
6 year period pursuant to section 60-6,211.05 and shall issue an order
7 pursuant to subdivision (1)(b) of section 60-6,197.01. Such order of
8 probation or sentence suspension shall also include, as conditions,
9 the payment of a five-hundred-dollar fine and either confinement in
10 the city or county jail for ten days or the imposition of not less
11 than two hundred forty hours of community service;

12 (4) Except as provided in subdivision (6) of this
13 section, if such person has had two prior convictions, such person
14 shall be guilty of a Class W misdemeanor, and the court shall, as
15 part of the judgment of conviction, order that the operator's license
16 of such person be revoked for a period of fifteen years from the date
17 ordered by the court and shall issue an order pursuant to section
18 60-6,197.01. Such orders shall be administered upon sentencing, upon
19 final judgment of any appeal or review, or upon the date that any
20 probation is revoked.

21 If the court places such person on probation or suspends
22 the sentence for any reason, the court shall, as one of the
23 conditions of probation or sentence suspension, order that the
24 operator's license of such person be revoked for a period of at least
25 two years but not more than fifteen years from the date ordered by

1 the court. The revocation order shall require that the person not
2 drive for a period of forty-five days, after which the court may
3 order that during the period of revocation the person apply for an
4 ignition interlock permit and installation of an ignition interlock
5 device issued pursuant to section 60-6,211.05 and shall issue an
6 order pursuant to subdivision (1)(b) of section 60-6,197.01. Such
7 order of probation or sentence suspension shall also include, as
8 conditions, the payment of a one-thousand-dollar fine and confinement
9 in the city or county jail for thirty days;

10 (5) If such person has had one prior conviction and, as
11 part of the current violation, had a concentration of fifteen-
12 hundredths of one gram or more by weight of alcohol per one hundred
13 milliliters of his or her blood or fifteen-hundredths of one gram or
14 more by weight of alcohol per two hundred ten liters of his or her
15 breath or refused to submit to a test as required under section
16 60-6,197, such person shall be guilty of a Class I misdemeanor, and
17 the court shall, as part of the judgment of conviction, order payment
18 of a one-thousand-dollar fine and revoke the operator's license of
19 such person for a period of at least one year but not more than
20 fifteen years from the date ordered by the court and shall issue an
21 order pursuant to section 60-6,197.01. Such revocation and order
22 shall be administered upon sentencing, upon final judgment of any
23 appeal or review, or upon the date that any probation is revoked. The
24 court shall also sentence such person to serve at least ninety days'
25 imprisonment in the city or county jail or an adult correctional

1 facility.

2 If the court places such person on probation or suspends
3 the sentence for any reason, the court shall, as one of the
4 conditions of probation or sentence suspension, order that the
5 operator's license of such person be revoked for a period of at least
6 one year but not more than fifteen years from the date ordered by the
7 court. The revocation order shall require that the person not drive
8 for a period of forty-five days, after which the court may order that
9 during the period of revocation the person apply for an ignition
10 interlock permit and installation of an ignition interlock device for
11 not less than a one-year period issued pursuant to section
12 60-6,211.05 and shall issue an order pursuant to subdivision (1)(b)
13 of section 60-6,197.01. Such order of probation or sentence
14 suspension shall also include, as conditions, the payment of a one-
15 thousand-dollar fine and confinement in the city or county jail for
16 thirty days;

17 (6) If such person has had two prior convictions and, as
18 part of the current violation, had a concentration of fifteen-
19 hundredths of one gram or more by weight of alcohol per one hundred
20 milliliters of his or her blood or fifteen-hundredths of one gram or
21 more by weight of alcohol per two hundred ten liters of his or her
22 breath or refused to submit to a test as required under section
23 60-6,197, such person shall be guilty of a Class IIIA felony, and the
24 court shall, as part of the judgment of conviction, revoke the
25 operator's license of such person for a period of fifteen years from

1 the date ordered by the court and shall issue an order pursuant to
2 section 60-6,197.01. Such revocation and order shall be administered
3 upon sentencing, upon final judgment of any appeal or review, or upon
4 the date that any probation is revoked. The court shall also sentence
5 such person to serve at least one hundred eighty days' imprisonment
6 in the city or county jail or an adult correctional facility.

7 If the court places such person on probation or suspends
8 the sentence for any reason, the court shall, as one of the
9 conditions of probation or sentence suspension, order that the
10 operator's license of such person be revoked for a period of at least
11 five years but not more than fifteen years from the date ordered by
12 the court. The revocation order shall require that the person not
13 drive for a period of forty-five days, after which the court may
14 order that during the period of revocation the person apply for an
15 ignition interlock permit and installation of an ignition interlock
16 device issued pursuant to section 60-6,211.05 and shall issue an
17 order pursuant to subdivision (1)(b) of section 60-6,197.01. Such
18 order of probation or sentence suspension shall also include, as
19 conditions, the payment of a one-thousand-dollar fine, confinement in
20 the city or county jail for sixty days, and, upon release from such
21 confinement, the use of a continuous alcohol monitoring device and
22 abstention from alcohol use at all times for no less than sixty days;

23 (7) Except as provided in subdivision (8) of this
24 section, if such person has had three prior convictions, such person
25 shall be guilty of a Class IIIA felony, and the court shall, as part

1 of the judgment of conviction, order that the operator's license of
2 such person be revoked for a period of fifteen years from the date
3 ordered by the court and shall issue an order pursuant to section
4 60-6,197.01. Such orders shall be administered upon sentencing, upon
5 final judgment of any appeal or review, or upon the date that any
6 probation is revoked. The court shall also sentence such person to
7 serve at least one hundred eighty days' imprisonment in the city or
8 county jail or an adult correctional facility.

9 If the court places such person on probation or suspends
10 the sentence for any reason, the court shall, as one of the
11 conditions of probation or sentence suspension, order that the
12 operator's license of such person be revoked for a period of fifteen
13 years from the date ordered by the court. The revocation order shall
14 require that the person not drive for a period of forty-five days,
15 after which the court may order that during the period of revocation
16 the person apply for an ignition interlock permit and installation of
17 an ignition interlock device issued pursuant to section 60-6,211.05
18 and shall issue an order pursuant to subdivision (1)(b) of section
19 60-6,197.01. Such order of probation or sentence suspension shall
20 also include, as conditions, the payment of a two-thousand-dollar
21 fine, confinement in the city or county jail for ninety days, and,
22 upon release from such confinement, the use of a continuous alcohol
23 monitoring device and abstention from alcohol use at all times for no
24 less than ninety days;

25 (8) If such person has had three prior convictions and,

1 as part of the current violation, had a concentration of fifteen-
2 hundredths of one gram or more by weight of alcohol per one hundred
3 milliliters of his or her blood or fifteen-hundredths of one gram or
4 more by weight of alcohol per two hundred ten liters of his or her
5 breath or refused to submit to a test as required under section
6 60-6,197, such person shall be guilty of a Class III felony, and the
7 court shall, as part of the judgment of conviction, revoke the
8 operator's license of such person for a period of fifteen years from
9 the date ordered by the court and shall issue an order pursuant to
10 section 60-6,197.01. Such revocation and order shall be administered
11 upon sentencing, upon final judgment of any appeal or review, or upon
12 the date that any probation is revoked.

13 If the court places such person on probation or suspends
14 the sentence for any reason, the court shall, as one of the
15 conditions of probation or sentence suspension, order that the
16 operator's license of such person be revoked for a period of fifteen
17 years from the date ordered by the court. The revocation order shall
18 require that the person not drive for a period of forty-five days,
19 after which the court may order that during the period of revocation
20 the person apply for an ignition interlock permit and installation of
21 an ignition interlock device issued pursuant to section 60-6,211.05
22 and shall issue an order pursuant to subdivision (1)(b) of section
23 60-6,197.01. Such order of probation or sentence suspension shall
24 also include, as conditions, the payment of a two-thousand-dollar
25 fine, confinement in the city or county jail for one hundred twenty

1 days, and, upon release from such confinement, the use of a
2 continuous alcohol monitoring device and abstention from alcohol use
3 at all times for no less than one hundred twenty days;

4 (9) Except as provided in subdivision (10) of this
5 section, if such person has had four or more prior convictions, such
6 person shall be guilty of a Class III felony with a minimum sentence
7 of two years' imprisonment, and the court shall, as part of the
8 judgment of conviction, order that the operator's license of such
9 person be revoked for a period of fifteen years from the date ordered
10 by the court and shall issue an order pursuant to section
11 60-6,197.01. Such orders shall be administered upon sentencing, upon
12 final judgment of any appeal or review, or upon the date that any
13 probation is revoked.

14 If the court places such person on probation or suspends
15 the sentence for any reason, the court shall, as one of the
16 conditions of probation or sentence suspension, order that the
17 operator's license of such person be revoked for a period of fifteen
18 years from the date ordered by the court. The revocation order shall
19 require that the person not drive for a period of forty-five days,
20 after which the court may order that during the period of revocation
21 the person apply for an ignition interlock permit and installation of
22 an ignition interlock device issued pursuant to section 60-6,211.05
23 and shall issue an order pursuant to subdivision (1)(b) of section
24 60-6,197.01. Such order of probation or sentence suspension shall
25 also include, as conditions, the payment of a two-thousand-dollar

1 fine, confinement in the city or county jail for one hundred eighty
2 days, and, upon release from such confinement, the use of a
3 continuous alcohol monitoring device and abstention from alcohol use
4 at all times for no less than one hundred eighty days; and

5 (10) If such person has had four or more prior
6 convictions and, as part of the current violation, had a
7 concentration of fifteen-hundredths of one gram or more by weight of
8 alcohol per one hundred milliliters of his or her blood or fifteen-
9 hundredths of one gram or more by weight of alcohol per two hundred
10 ten liters of his or her breath or refused to submit to a test as
11 required under section 60-6,197, such person shall be guilty of a
12 Class II felony with a minimum sentence of two years' imprisonment
13 and the court shall, as part of the judgment of conviction, revoke
14 the operator's license of such person for a period of fifteen years
15 from the date ordered by the court and shall issue an order pursuant
16 to section 60-6,197.01. Such revocation and order shall be
17 administered upon sentencing, upon final judgment of any appeal or
18 review, or upon the date that any probation is revoked.

19 If the court places such person on probation or suspends
20 the sentence for any reason, the court shall, as one of the
21 conditions of probation or sentence suspension, order that the
22 operator's license of such person be revoked for a period of fifteen
23 years from the date ordered by the court. The revocation order shall
24 require that the person not drive for a period of forty-five days,
25 after which the court may order that during the period of revocation

1 the person apply for an ignition interlock permit and installation of
2 an ignition interlock device issued pursuant to section 60-6,211.05
3 and shall issue an order pursuant to subdivision (1)(b) of section
4 60-6,197.01. Such order of probation or sentence suspension shall
5 also include, as conditions, the payment of a two-thousand-dollar
6 fine, confinement in the city or county jail for one hundred eighty
7 days, and, upon release from such confinement, the use of a
8 continuous alcohol monitoring device and abstention from alcohol use
9 at all times for no less than one hundred eighty days.

10 Sec. 3. Original section 60-6,197.01, Reissue Revised
11 Statutes of Nebraska, and section 60-6,197.03, Revised Statutes
12 Cumulative Supplement, 2012, are repealed.