

## LEGISLATIVE BILL 153

Approved by the Governor April 18, 1986

Introduced by V. Johnson, 8; Hoagland, 6

AN ACT relating to motor vehicles; to amend sections 39-669.07, 39-669.08, 39-669.16, 60-403, 60-426, and 60-427, Reissue Revised Statutes of Nebraska, 1943, sections 28-106 and 29-2260, Revised Statutes Supplement, 1984, and section 60-430.01, Revised Statutes Supplement, 1985; to redefine a misdemeanor classification; to change provisions relating to driving while intoxicated as prescribed; to authorize the reduction of certain sentences; to prohibit the issuance of operator's licenses to certain persons; to provide for suspension or revocation of operator's licenses in certain instances; to require notice as prescribed; to impose certain reinstatement fees; to harmonize provisions; to provide penalties; to eliminate a prohibition and penalty relating to operation of a vehicle for which an operator's license is not required; to eliminate a penalty relating to motor vehicle homicide; to repeal the original sections, and also sections 39-669.20 and 60-430.04, Reissue Revised Statutes of Nebraska, 1943; and to declare an emergency.

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

Section 1. That section 28-106, Revised Statutes Supplement, 1984, be amended to read as follows:

28-106. (1) For purposes of this code and any statute passed by the Legislature after the date of passage of this code, misdemeanors are divided into seven classes which are distinguished from one another by the following penalties which are authorized upon conviction:

Class I misdemeanor.....	Maximum - not more than one year imprisonment, or one thousand dollars fine, or both
	Minimum - none
Class II misdemeanor.....	Maximum - six months imprisonment, or one thousand

dollars fine, or both  
 Minimum - none  
 Class III misdemeanor..... Maximum - three months  
 imprisonment, or five hundred  
 dollars fine, or both  
 Minimum - none  
 Class IIIA misdemeanor.... Maximum - seven days  
 imprisonment, five hundred  
 dollars fine, or both  
 Minimum - none  
 Class IV misdemeanor..... Maximum - no imprisonment,  
 five hundred dollars fine  
 Minimum - one hundred  
 dollars fine  
 Class V misdemeanor..... Maximum - no imprisonment,  
 one hundred dollars fine  
 Minimum - none  
 Class W misdemeanor..... Driving while intoxicated -  
 implied consent refusal  
 First conviction  
 Maximum - thirty days  
imprisonment and five hundred  
dollars fine  
 Mandatory minimum -  
~~mandatory~~ seven days  
 imprisonment and two hundred  
 dollars fine  
 Second conviction  
~~Mandatory mandatory~~ thirty  
 days imprisonment and five  
 hundred dollars fine  
 Third or subsequent  
 conviction  
 Maximum - six months  
 imprisonment and five hundred  
 dollars fine  
 Minimum - three months  
 imprisonment and five hundred  
 dollars fine

(2) Sentences of imprisonment in misdemeanor cases shall be served in the county jail, except that in the following circumstances the court may, in its discretion, order that such sentences be served in institutions under the jurisdiction of the Department of Correctional Services:

(a) If the sentence is for a term of one year upon conviction of a Class I misdemeanor, or for a combined term of one year or more in the event of conviction of more than one misdemeanor offense;

(b) If the sentence is to be served concurrently with a term for conviction of a felony; or

(c) If the Department of Correctional Services has certified as provided in section 28-105 as to the availability of facilities and programs for short-term prisoners and the sentence is for a term or combined terms of six months or more.

Sec. 2. That section 29-2260, Revised Statutes Supplement, 1984, be amended to read as follows:

29-2260. (1) Whenever a person is adjudicated delinquent or in need of special supervision as defined in section 43-201, his or her disposition shall be governed by the provisions of Chapter 43, article 2.

(2) Whenever a court considers sentence for an offender convicted of either a misdemeanor or a felony for which mandatory or mandatory minimum imprisonment is not specifically required, the court may withhold sentence of imprisonment unless, having regard to the nature and circumstances of the crime and the history, character, and condition of the offender, the court finds that imprisonment of the offender is necessary for protection of the public because:

(a) The risk is substantial that during the period of probation the offender will engage in additional criminal conduct;

(b) The offender is in need of correctional treatment that can be provided most effectively by commitment to a correctional facility; or

(c) A lesser sentence will depreciate the seriousness of the offender's crime or promote disrespect for law.

(3) The following grounds, while not controlling the discretion of the court, shall be accorded weight in favor of withholding sentence of imprisonment:

(a) The crime neither caused nor threatened serious harm;

(b) The offender did not contemplate that his or her crime would cause or threaten serious harm;

(c) The offender acted under strong provocation;

(d) Substantial grounds were present tending to excuse or justify the crime, though failing to establish a defense;

(e) The victim of the crime induced or facilitated commission of the crime;

(f) The offender has compensated or will compensate the victim of his or her crime for the damage

or injury the victim sustained;

(g) The offender has no history of prior delinquency or criminal activity and has led a law-abiding life for a substantial period of time before the commission of the crime;

(h) The crime was the result of circumstances unlikely to recur;

(i) The character and attitudes of the offender indicate that he or she is unlikely to commit another crime;

(j) The offender is likely to respond affirmatively to probationary treatment; and

(k) Imprisonment of the offender would entail excessive hardship to his or her dependents.

(4) When an offender who has been convicted of a crime is not sentenced to imprisonment, the court may sentence him or her to probation.

Sec. 3. That section 39-669.07, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

39-669.07. It shall be unlawful for any person to operate or be in the actual physical control of any motor vehicle while under the influence of alcoholic liquor or of any drug or when that person has ten-hundredths of one per cent or more by weight of alcohol in his or her body fluid as shown by chemical analysis of his or her blood, breath, or urine. Any person who shall operate or be in the actual physical control of any motor vehicle while under the influence of alcoholic liquor or of any drug or while having ten-hundredths of one per cent by weight of alcohol in his or her body fluid as shown by chemical analysis of his or her blood, breath, or urine shall be deemed guilty of a crime and, upon conviction thereof, shall be punished as follows:

(1) If such person (a) has not had a previous conviction under this section since July 17, 1982, (b) was not convicted under this section prior to July 17, 1982, or (c) has not been convicted under a city or village ordinance enacted pursuant to this section either prior or subsequent to July 17, 1982, 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 of his or her conviction; and shall order that the operator's license of such person be revoked for a like period. 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;

(2) If such person (a) has had one previous conviction under this section since July 17, 1982, (b) has been convicted once under this section as it existed prior to July 17, 1982, or (c) has been convicted once under a city or village ordinance enacted pursuant to this section either prior or subsequent to July 17, 1982, 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 of his or her conviction, and shall order that the operator's license of such person be revoked for a like period.

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 six months from the date of the order, and such order of probation shall include as one of its conditions confinement in the city or county jail for forty-eight hours; and

(3) If such person (a) has had two or more convictions under this section since July 17, 1982, (b) has been convicted two or more times under this section as it existed prior to July 17, 1982, (c) has been convicted two or more times under a city or village ordinance enacted pursuant to this section either prior or subsequent to July 17, 1982, or (d) has been convicted as described in subdivisions (3)(a) to (3)(c) of this section a total of two or more times, 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 never again drive any motor vehicle in the State of Nebraska for any purpose for a period of fifteen years from the date of his or her conviction, and shall order that the operator's license of such person be permanently revoked for a like period.

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 such order of probation shall include as one of its conditions confinement in the city

or county jail for seven days.

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 under this section prior or subsequent to July 17, 1982, and the defendant's prior convictions under a city or village ordinance enacted pursuant to this section either prior or subsequent to July 17, 1982. 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.

Any person operating a motor vehicle on the highways or streets of this state while his or her operator's license has been ~~permanently~~ revoked pursuant to subdivision (3) of this section shall be guilty of a Class IV felony.

Any city or village may enact ordinances in conformance with this section and section 39-669.08. Upon conviction of any person of a violation of such a city or village ordinance, the provisions of this section with respect to the license of such person to operate a motor vehicle shall be applicable the same as though it were a violation of this section.

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. 4. That section 39-669.08, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

39-669.08. (1) Any person who operates or has in his or her actual physical control a motor vehicle upon a public highway in 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.

(2) 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 driving or was in actual physical control of a motor vehicle while under the

influence of alcoholic liquor to submit to a chemical test of his or her blood, 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 driving or was in the actual physical control of a motor vehicle upon a public highway in this state while under the influence of alcoholic liquor.

(3) Any law enforcement 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 upon a public highway in 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 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 content of ten-hundredths of one per cent or more 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 law enforcement officer, be required to submit to a chemical test of his or her blood, breath, or urine for a determination of the alcohol content. Any person who refuses to submit to a chemical blood, breath, or urine test required pursuant to this section shall be subject to the administrative revocation procedures of the Director of Motor Vehicles provided in sections 39-669.07 to 39-669.09 and 39-669.14 to ~~39-669.18~~ 39-669.19 and shall be guilty of a crime and, upon conviction thereof, shall be punished as follows:

(a) If such person (i) has not had a previous conviction under this subsection since July 17, 1982, (ii) was not convicted under this subsection prior to July 17, 1982, or (iii) has not been convicted under a city or village ordinance enacted pursuant to this subsection as authorized by section 39-669.07, either prior or subsequent to July 17, 1982, 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 of his or her conviction; and shall order that the operator's license of such person be revoked for a like

period.

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;

(b) If such person (i) has had one previous conviction under this subsection since July 17, 1982, (ii) has been convicted once under this subsection as it existed prior to July 17, 1982, or (iii) has been convicted once under a city or village ordinance enacted pursuant to this subsection as authorized by section 39-669.07 either prior or subsequent to July 17, 1982, 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 of his or her conviction, and shall order that the operator's license of such person be revoked for a like period.

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 six months from the date of the order, and such order of probation shall include as one of its conditions confinement in the city or county jail for forty-eight hours; and

(c) If such person (i) has had two or more convictions under this subsection since July 17, 1982, (ii) has been convicted two or more times under this subsection as it existed prior to July 17, 1982, (iii) has been convicted two or more times under a city or village ordinance enacted pursuant to this subsection as authorized by section 39-669.07 either prior or subsequent to July 17, 1982, or (iv) has been convicted as described in subdivisions (c)(i) to (c)(iii) of this subsection a total of two or more times, 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 never again drive any motor vehicle in the State of Nebraska for any purpose for a period of fifteen years from the date of his or her conviction and shall order that the operator's license of such person be permanently revoked for a like period.

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 such order of probation shall include as one of its conditions confinement in the city or county jail for seven days.

For each conviction under this subsection, 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 under this subsection prior or subsequent to July 17, 1982, and the defendant's prior convictions under a city or village ordinance enacted pursuant to this subsection or section 39-669.07 either prior or subsequent to July 17, 1982. 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.

Any person operating a motor vehicle on the highways or streets of this state while his or her operator's license has been permanently revoked pursuant to subdivision (c) of this subsection shall be guilty of a Class IV felony.

Any city or village may enact ordinances in conformance with this subsection. Upon conviction of any person of a violation of such city or village ordinance, the provisions of this subsection with respect to the license of such person to operate a motor vehicle shall be applicable the same as though it were a violation of this subsection.

(5) Any person who is required to submit to a preliminary breath test, or to a chemical blood, breath, or urine test pursuant to this section shall be advised of the consequences of refusing to submit to such test.

Sec. 5. Any person who prior to the effective date of this act has had his or her motor vehicle operator's license revoked for life pursuant to section 39-669.07 or 39-669.08 may submit an application to the court for a reduction of such lifetime revocation. The court in its discretion may reduce such revocation to a period of fifteen years.

Sec. 6. (1) Any person who, while operating a motor vehicle in violation of section 39-669.07 or 39-669.08, proximately causes serious bodily injury to another person shall be guilty of a Class II misdemeanor.

(2) For purposes of this section, serious bodily injury shall mean bodily injury which involves a

substantial risk of death, a substantial risk of serious permanent disfigurement, or a temporary or protracted loss or impairment of the function of any part or organ of the body.

Sec. 7. No person shall be licensed to operate a motor vehicle by the State of Nebraska if such person has an operator's license currently under suspension or revocation for an alcohol-related violation in any other state or jurisdiction in the United States.

When such a person presents to the Department of Motor Vehicles an official notice from the state or jurisdiction that suspended or revoked his or her motor vehicle operator's license that such suspension or revocation has been terminated, he or she may then be licensed to operate a motor vehicle by the State of Nebraska.

Sec. 8. That section 39-669.16, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

39-669.16. Upon receipt of the officer's report of such refusal, the Director of Motor Vehicles shall notify such person of a date for hearing before him or her as to the reasonableness of the refusal to submit to the test. The notice of hearing shall be served by the director by mailing it to such person by certified or registered mail to the last-known residence address of such person; or, if such address is unknown, to the last-known business address of such person at least ten days before the hearing. After granting the person an opportunity to be heard on such issue, if it is not shown to the director that such refusal to submit to such chemical test was reasonable, the director shall summarily revoke the motor vehicle operator's license or nonresident operating privilege of such person for a period of six months one year from the date of such order. For the purpose of such hearing, the director may appoint an examiner who shall have power to preside at such hearing, ~~to~~ administer oaths, examine witnesses, and take testimony, and thereafter report the same to the director. At the expiration of the six-month revocation period, such person may have his or her license reinstated upon payment of a fee of fifty dollars. The fees paid pursuant to this section shall be deposited in the Department of Motor Vehicles Cash Fund.

Sec. 9. That section 60-403, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

60-403. Except as herein otherwise provided, no resident of the State of Nebraska shall operate a motor vehicle upon the streets, alleys, or public highways of the State of Nebraska until the person has obtained a license for that purpose. Application for such an operator's license shall be made under oath or affirmation on uniform blanks prepared and furnished to the county treasurers, examiners of the Department of Motor Vehicles, and any local examiners by the Director of Motor Vehicles. The standard application blanks shall be sufficient in form and content to substantially carry out the purposes of this act. They shall contain, in addition to any other information and questions necessary to comply with the requirements and purposes of this act, the name, age, post office address, place of residence, date of birth, sex, and a brief description of the applicant and the following specific questions: (1) Do you suffer from any physical defects that would detract from normal ability to safely operate a motor vehicle? (2) Have you suffered dismemberment of foot, leg, hand, or arm? (3) Are you subject to vertigo or fainting spells? (4) Has your operator's license ever been revoked or suspended; in Nebraska or in any other state or jurisdiction in the United States and, if so, give date and period of and reason for each such occurrence.

Sec. 10. That section 60-426, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

60-426. The director is authorized to suspend or revoke the license of any resident of this state: (1) ~~upon~~ Upon receiving a certified copy of the judgment of the conviction of such person in another state of an offense therein which, if committed in this state, would be grounds for the suspension or revocation of the license of such operator by any trial judge or magistrate in this state; ~~or~~ (2) who has violated a promise to comply with the terms of a traffic citation issued by a law enforcement officer for a moving violation in any jurisdiction outside this state pursuant to the Nonresident Violator Compact, until satisfactory evidence of compliance with the terms of the citation has been furnished to the director; ~~or~~ (3) who has violated a promise to comply with the terms of a traffic citation issued on or after July 1, 1986, by a law enforcement officer for a moving violation in any jurisdiction inside this state until satisfactory evidence of compliance with the terms of the citation has been furnished to the director. The court having



jurisdiction over the offense for which the citation has been issued shall notify the director of a violation of a promise to comply with the terms of the citation only after twenty working days have elapsed from the date of the failure to comply.

Upon notice to the director that a resident has violated a promise to comply with the terms of a traffic citation as provided in this section, the director shall not suspend or revoke such resident's license until he or she has sent written notice to such resident by registered or certified mail to the resident's last-known address. Such notice shall state that such resident has twenty working days from the date of the notice to show the director that the resident has complied with the terms of such traffic citation. No suspension or revocation shall be entered by the director if the resident complies with the terms of a citation during such twenty working days.

Upon the expiration of any license revocation ordered pursuant to this section, a resident may have his or her license reinstated upon payment of a fee of fifty dollars. The fees paid pursuant to this section shall be deposited in the Department of Motor Vehicles Cash Fund.

Sec. 11. That section 60-427, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

60-427. Upon conviction of any person in any court within this state of any violation of (1) any law of this state pertaining to the operation of motor vehicles or (2) any city or village ordinance pertaining to the operation of a motor vehicle in such a manner as to endanger life, limb, or property, except for operating a motor vehicle while under the influence of alcoholic liquor or any drug, the judge of such court may, in his or her discretion, suspend the license of such convicted person to operate a motor vehicle for any purpose for a period of time not less than ten days nor more than one year, unless a greater period of suspension or revocation be made mandatory by other provisions of law, or may impound the license for a period of not more than ninety days and order that such person not operate a motor vehicle during the period such license is impounded. Upon conviction of any person in any court within this state of any city or village ordinance pertaining to the operation of a motor vehicle while under the influence of alcoholic liquor or any drug, the judge of such court shall suspend the license of such convicted person to operate a motor



vehicle for any purpose for a period of six months from his release from confinement adjudged or payment of any fine imposed, whichever is later. Such judge shall forthwith notify in detail the Director of Motor Vehicles, of the action and findings of the court as provided for in sections 39-669.22 to 39-669.25. If the judgment of conviction contains an order that the defendant shall not drive a motor vehicle for any period of time and also suspends or revokes defendant's license, then the director shall forthwith revoke or suspend the same and notify the superintendent of law enforcement and public safety Superintendent of Law Enforcement and Public Safety of such revocation or suspension. It shall then be the duty of the Nebraska State Patrol to enforce the conditions of such revocation or suspension recited in any judgment of conviction.

Sec. 12. That section 60-430.01, Revised Statutes Supplement, 1985, be amended to read as follows:

60-430.01. It shall be unlawful for any person to operate a motor vehicle during any period that his or her motor vehicle operator's license has been suspended, revoked, or impounded pursuant to conviction or convictions for violation of any law or laws of this state or by an order of any court or by an administrative order of the Director of Motor Vehicles, or after such suspension, revocation, or impoundment but before reinstatement of his or her license or issuance of a new license. Any Except as otherwise provided by law, any person so offending shall: (1) For a first such offense, be guilty of a Class III misdemeanor, and the court shall, as a part of the judgment of conviction, order such person not to operate any motor vehicle for any purpose for a period of one year from (a) the date of final discharge from the county jail or other correctional facility, or (b) the date of payment or satisfaction of any fine imposed, or (c) the date of judgment, whichever is later the latest; and (2) for each subsequent such offense, be guilty of a Class III misdemeanor, and the court shall, as a part of the judgment of conviction, order such person not to operate any motor vehicle for any purpose for a period of two years from (a) the date of final discharge from the county jail or other correctional facility, or (b) the date of payment or satisfaction of any fine imposed, or (c) the date of judgment, whichever is later the latest.

Sec. 13. That original sections 39-669.07, 39-669.08, 39-669.16, 60-403, 60-426, and 60-427,

Reissue Revised Statutes of Nebraska, 1943, sections 28-106 and 29-2260, Revised Statutes Supplement, 1984, and section 60-430.01, Revised Statutes Supplement, 1985, and also sections 39-669.20 and 60-430.04, Reissue Revised Statutes of Nebraska, 1943, are repealed.

Sec. 14. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.