

## **Drunken drivers in Nebraska back behind the wheel? Not so fast**

**By Joe Duggan / World-Herald Bureau | Posted: Tuesday, May 27, 2014 12:00 am**

LINCOLN — A new state law intended to allow repeat drunken drivers to obtain ignition interlock devices more quickly has hit a roadblock.

The law allows drunken drivers who lost their licenses for 15 years to apply immediately for an interlock device that permits them to drive during their revocation.

But the applications must ultimately be approved by the Nebraska Board of Pardons, whose members said recently they will continue a policy that makes revoked drivers wait seven years before they can ask to have the devices.

Interlocks force drivers to exhale into a device that measures alcohol levels before their cars will start. In recent years, the Nebraska Legislature has encouraged widespread use of the devices as a way to increase public safety while allowing offenders to drive for work and other obligations.

Judges have increasingly ordered interlocks for people convicted of driving under the influence, including those with three or more offenses who have had their licenses revoked for 15 years.

When a judge doesn't order an interlock at sentencing, however, an offender who wants one must file a request with the Department of Motor Vehicles. The department, in turn, forwards eligible applicants to the Board of Pardons, which makes the final decision on reprieves.

A law that took effect last month struck the seven-year waiting period before an application can be filed with the DMV. But Pardons Board members have broad discretion to set their own policy, and they said they will refuse to consider applications that haven't met the seven-year standard.

Gov. Dave Heineman, Secretary of State John Gale and Attorney General Jon Bruning, who make up the board, said applicants who apply sooner than seven years will waste their time and the \$100 application fee.

“Their chances of getting a reprieve are slim and none — actually more like none and none, to be perfectly candid,” Heineman said.

Supporters of the new law argue that withholding ignition interlocks won't make roads safer. Reducing drunken driving should take priority over punishment, they say.

“Let’s be honest, the majority of people (with revoked licenses) are still driving,” said State Sen. Burke Harr of Omaha, who sponsored the law. “This is a way of controlling that. Our bill says you can drive, but you’re going to be restricted.”

The 15-year revocation is reserved for drivers who have been convicted of DUI three or more times. There are about 7,300 people with the revocations in Nebraska.

A major revamping of drunken driving law that took effect in 2012 placed a new emphasis on ignition interlocks as a way to keep all offenders from driving drunk during their probation or revocation period.

Harr said his law was identified by a legislative study as a way to provide a path, in addition to the courts, for repeat offenders to get the devices installed more quickly.

The Pardons Board requires seven years of no driving, seven years of a clean criminal record and seven years of sobriety before granting reprieve requests. Members call it the 7-7-7 policy, and it’s a tough hurdle to clear.

In 2013, the Pardons Board granted hearings to 16 people seeking reprieves and approved just two, said pardons administrator Sonya Fauver.

“The board has strict guidelines,” she said. “You’ve got to be squeaky clean, and you’ve got to prove you’re sober.”

During the board’s meeting last week, DMV Director Rhonda Lahm told the board her department already is receiving questions about the new law from people with 15-year revocations. Officials estimate they will receive 80 to 100 applications each year under the new law.

Lahm asked if the board intends to consider requests before the 7-7-7 standard had been met. All three members were resolute in saying they will adhere to the existing policy.

Bruning called it “outrageous” that judges allow repeat DUI offenders to get behind the wheel after serving less than seven years of a revocation. Gale, meanwhile, said he is dismayed by the myriad ways drunken driving penalties can seemingly be lessened.

“There is an industry alive and well in Nebraska that constantly seeks to mitigate and minimize the impact of drunken driving,” he said.

Heineman said another problem with the bill is that it was amended into an omnibus package that included other measures he supported.

When Harr later heard the board railed against his law, he said he was surprised.

He said he worked closely with DMV staff members to draw up the bill. A legislative committee voted unanimously to advance it after no one — including the governor and attorney general —

opposed it at a public hearing. No senator objected when the bill was amended into other legislation.

Harr defended the law as an extension of another law widely lauded by lawmakers and signed by Heineman just three years ago.

“To say this bill is controversial is revisionist history,” Harr said. “It’s disappointing to me that, all of a sudden, after the bill passed, they have a problem with it.”

Andrea Frazier, program manager for MADD Nebraska, said her organization supports the use of ignition interlocks as a way to reduce drunken driving by chronic offenders. But she said she also respects the discretion of the Pardons Board.

Lincoln attorney Mark Rappl said he will advise clients to think carefully about applying for a reprieve based on the board’s comments last week.

He said ignition interlocks are more than a slap on the wrist. The offender must pay for their installation and a roughly \$75 monthly maintenance fee.

Judges cannot allow interlocks for 15-year revocations without first requiring a period of no driving. The law requires a minimum of 45 days, but judges often order a year or two, Rappl said.

“I understand the dangers of drinking and driving, but I would disagree with those who think interlocks somehow depreciate the seriousness of the offense.”

James Schaefer, an Omaha attorney who has practiced DUI law for 25 years, said he’s hopeful the board may rethink the policy after a new governor and a new attorney general take over from Heineman and Bruning next year.

“I understand they want to be tough on crime, so to speak, but let’s look at it from a safety standpoint,” he said.

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