

Chapter 10.16

DRIVING WHILE INTOXICATED UNLICENSED OR UNINSURED

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10.16.010 Age Limit.

It shall be unlawful for any person under sixteen years of age to operate a motor vehicle upon any public street or alley within the city; provided, however, that any person who has a learner's permit as provided by the laws of the State of Nebraska may operate a motor vehicle over the public streets and alleys of the city if he or she is accompanied at all times by a licensed operator who is at least twenty-one years of age, who possesses a valid operator's license issued by the State of Nebraska or another state, and is actually occupying the seat beside the driver.

Any person who shall have attained the age of fourteen years may operate a motor vehicle over the public streets or alleys of the city if he or she is accompanied at all times by a licensed operator who shall be a high school driver training instructor certified by the Commissioner of Education of the State of Nebraska. (Ord. 18901 §1; March 26, 2007; prior Ord. 15635 §1; July 9, 1990: P.C. §10.52.010; Ord. 12551 §1; April 9, 1979: Ord. 8476 §1; July 20, 1964: Ord. 5699 §1201, as amended by Ord. 7312; October 10, 1960).

10.16.020 Operator Must be Fourteen Years of Age.

It shall be unlawful for any person to operate a motor vehicle within the city on any property not specified in Section 10.16.010, unless such person has reached the age of fourteen. This section shall not apply to privately owned property, provided the motor vehicle engine operated thereon does not produce in excess of five brake horsepower. (Ord. 15635 §2; July 9, 1990: P.C. §9.54.100; Ord. 9813 §1; July 7, 1969: prior Ord. 7492 §10; June 19, 1961).

10.16.030 Under Influence of Alcoholic Liquor; Alcohol in Body Fluid; Penalty.

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 a concentration of eight hundredths (.08) of one gram or more by weight of alcohol per 100 milliliters of his or her blood, or when that person has a concentration of eight hundredths (.08) of one gram or more by weight of alcohol per 210 liters of his or her breath. Every person who violates this section shall be guilty of a misdemeanor and, upon conviction, shall be punished as follows:

(a) (1) If such person has not had a prior conviction in the fifteen-year period prior to the date of the current offense, such person shall be imprisoned in the county jail not less than seven days nor more than sixty days, and shall be fined not less than \$500.00, recoverable with costs, and the court shall, as part of the judgment of conviction, order that the operator's license of such person be revoked for a period of six months from the date ordered by the court. The revocation order shall require that the person apply for an ignition interlock permit pursuant to subsection (1)(b) of Neb. Rev. Stat. § 60-6,197.01 for the revocation period and have an ignition interlock device installed on any motor vehicle he or she operates during the revocation period. Such revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

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 ordered by the court. Such order of probation shall also include, as one of its conditions, the payment of a \$500.00 fine.

(2) If such person has not had a prior conviction in the fifteen-year period prior to the date of the current offense and, as part of the current violation, had a concentration of fifteen-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or fifteen-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath, such person shall be imprisoned in the county jail not less than seven days nor more than sixty days, and shall be fined not less than \$500.00, recoverable with costs, and the court shall, as part of the judgment of conviction, revoke the operator's license of such person for a period of one year from the date ordered by the court. The revocation order shall require that the person apply for an ignition interlock permit pursuant to Neb. Rev. Stat. §60-6,197.01 for the revocation period and have an ignition interlock device installed on any motor vehicle he or she operates during the revocation period. Such revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

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 that the operator's license of such person be revoked or impounded for a period of one year from the date ordered by the court. The revocation order shall require that the person apply for an ignition interlock permit pursuant to Neb. Rev. Stat. §60-6,197.01 for the revocation period and have an ignition interlock device installed on any motor vehicle he or she operates during the revocation period. Such revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. Such order of probation or sentence suspension shall also include, as conditions, the payment of a \$500.00 fine and either confinement in the county jail for two days or the imposition of not less than 120 hours of community service;

(b) If such person has had one prior conviction in the fifteen-year period prior to the date of the current offense, and as part of the current violation had a concentration of less than fifteen-hundredths of one gram by weight of alcohol per one hundred milliliters of his or her blood or less than fifteen-hundredths of one gram by weight of alcohol per two hundred ten liters of his or her breath, such person shall be imprisoned in the county jail not less than thirty days nor more than six months, and shall be fined \$500.00, recoverable with costs, and the court shall, as part of the judgment of conviction, order that the operator's license of such person be revoked for a period of eighteen months from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days and that the person apply for an ignition interlock permit and have an ignition interlock device installed on any motor vehicle he or she owns or operates for at least one year. The court shall also issue an order pursuant to Lincoln Municipal Code Section 10.16.045(b). If the person has an ignition interlock device installed as required under this subsection, the person shall not be eligible for reinstatement of his or her operator's license until he or she has had the ignition interlock device installed for the period ordered by the court. The revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

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 that the operator's license of such person be revoked for a period of eighteen months from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days and that the person apply for an ignition interlock permit and installation of an ignition interlock device for not less than a one-year period pursuant to Neb. Rev. Stat. §60-6,211.05. The court shall also issue an order pursuant to Lincoln Municipal Code Section 10.16.045(b). If the person has an ignition interlock device installed as required under this subsection, the person shall not be eligible for reinstatement of his or her operator's license until he or she has had the ignition interlock device installed for the period ordered by the court. The order of probation shall also include, as conditions, the payment of a \$500.00 fine and either confinement in the county jail for ten days or the imposition of not less than 240 hours of community service.

(c) 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 in the fifteen-year period prior to the date of the current conviction. 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.

(d) For purposes of this section, the fifteen-year period shall be computed from the date of the prior offense to the date of the offense which resulted in the current conviction and the term "prior conviction" shall mean convictions defined by Neb. Rev. Stat. § 60-6,197.02, as the same existed at the time of such conviction, regardless of subsequent amendments thereto.

(e) The provisions of this section shall apply anywhere throughout the city except private property which is not open to public access.

(f) Any period of revocation imposed by the court for a violation of Section 10.16.030 or 10.16.040 shall be reduced by any period of revocation imposed under Neb. Rev. Stat. §§ 60-498.01 to 60-498.04, including any period during which a person has a valid ignition interlock permit, arising from the same incident.

(g) A person who commits a violation punishable under Lincoln Municipal Code Section 10.16.030 or 10.16.040 while participating in criminal proceedings for a violation of Section

10.16.030, 10.16.040, or any of the violations referenced in Neb. Rev. Stat § 60-6,197.09 shall not be eligible to receive a sentence of probation or a suspended sentence for either violation committed in this state. (Ord. 19888 §1; June 17, 2013: prior Ord. 19670 §1; January 30, 2012: Ord. 18779 §1; August 7, 2006: Ord. 18758 §1; June 26, 2006: Ord. 18163 §1; April 14, 2003: Ord. 17905 §1; August 27, 2001: Ord. 17341 §1; May 18, 1998: Ord. 16272 §1; November 30, 1992: Ord. 15635 §3; July 9, 1990: P.C. §10.52.020: Ord. 14918 §1; June 27, 1988: Ord. 14633 §1; March 23, 1987: Ord. 14389 §1; May 19, 1986: Ord. 13422 §1; June 28, 1982: Ord. 12975 §1; August 18, 1980: Ord. 12519 §5; March 12, 1979: Ord. 10500 §1; July 10, 1972: Ord. 10235 §1; August 23, 1971: Ord. 9902 §1; December 22, 1969: Ord. 5699 §1202, as amended by Ord. 6852; November 24, 1958).

10.16.040 Chemical Tests; Refusal; Penalty.

(a) Any person who operates or has in his or her actual physical control a motor vehicle shall be deemed to have given his or her consent to submit to a chemical test or tests of his or her blood, breath, or urine for the purpose of determining the concentration of alcohol or the presence of drugs in such blood, breath, or urine.

(b) Any peace 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 or drugs to submit to a chemical test or tests of his or her blood, breath, or urine for the purpose of determining the concentration of alcohol or the presence of drugs in such blood, breath, or urine, when the officer has reasonable grounds to believe that such person was driving or was in the actual physical control of a motor vehicle while under the influence of alcoholic liquor or drugs.

(c) Any peace 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 who operates or has in his or her actual physical control a motor vehicle to submit to a preliminary test of his or her breath for alcohol concentration if the officer has reasonable grounds to believe that such person has alcohol in his or her body, 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 concentration in violation of Section 10.16.030 shall be placed under arrest. Any person who refuses to submit to such preliminary breath test shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not to exceed \$100.00, recoverable with costs.

(d) Any person arrested as provided in subsections (b) and (c) of this section may, upon the direction of a peace officer, be required to submit to a chemical test or tests of his or her blood, breath, or urine for a determination of the concentration of alcohol or the presence of drugs. Any person who refuses to submit to such test or tests required pursuant to this section shall be subject to the administrative license revocation procedures pursuant to state law, shall be guilty of a misdemeanor and, upon conviction, shall be punished as follows:

(1) If such person has not had a prior conviction, such person shall be imprisoned in the county jail for not less than seven days nor more than sixty days, and shall be fined not less than \$500.00, recoverable with costs, and the court shall, as part of the judgment of conviction, order that the operator's license of such person be revoked for a period of six months from the date ordered by the court. The revocation order shall require that the person apply for an ignition interlock permit pursuant to subsection (1)(b) of Neb. Rev. Stat. § 60-6,197.01 for the revocation period and have an ignition interlock device installed on any motor vehicle he or she operates during the revocation

period. Such revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

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 ordered by the court. The court shall order that during the period of revocation the person apply for an ignition interlock permit pursuant to *Neb. Rev. Stat.* § 60-6,211.05. Such order of probation shall also include, as one of its conditions, the payment of a \$500.00 fine.

(e) Any person arrested for any offense involving the operation or actual physical control of a motor vehicle while under the influence of alcoholic liquor or drugs shall be required to submit to a chemical test or tests of his or her blood, breath, or urine, as provided in this section, without the preliminary breath test if the arresting officer does not have available the necessary equipment for administering a breath test, or if the person is unconscious or is otherwise in a condition rendering him or her incapable of testing by a preliminary breath test.

(f) Any person who is required to submit to a chemical blood, breath, or urine test or tests pursuant to this section shall be advised that refusal to submit to such test or tests is a separate crime for which the person may be charged. Failure to provide such advisement shall not affect the admissibility of the chemical test result in any legal proceedings. However, failure to provide such advisement shall negate the state's ability to bring any criminal charges against a refusing party pursuant to this section.

(g) The provisions of this section shall apply anywhere throughout the city except private property which is not open to public access.

(h) Any person involved in a motor vehicle accident in this state may be required to submit to a chemical test or tests of his or her blood, breath, or urine by any peace officer if the officer has reasonable grounds to believe that the person was driving or was in actual physical control of a motor vehicle on a public highway in this state while under the influence of alcoholic liquor or drugs at the time of the accident.

(i) Any period of revocation imposed by the court for a violation of Section 10.16.030 or 10.16.040 shall be reduced by any period of revocation imposed under *Neb. Rev. Stat.* §§ 60-498.01 to 60-498.04, including any period during which a person has a valid ignition interlock permit, arising from the same incident.

(j) A person who commits a violation punishable under Section 10.16.030 or 10.16.040 while participating in criminal proceedings for a violation of Section 10.16.030, 10.16.040, or any of the violations referenced in *Neb. Rev. Stat.* § 60-6,197.09 shall not be eligible to receive a sentence of probation or a suspended sentence for either violation committed in this state. (Ord. 19670 §2; January 30, 2012; prior Ord. 18779 §2; August 7, 2006: Ord. 18758 §2; June 26, 2006: Ord. 17341 §2; May 18, 1998: Ord. 16968 §1; April 15, 1996: Ord. 16272 §2; November 30, 1992: Ord. 15635 §4; July 9, 1990: P.C. §10.52.025: Ord. 14918 §2; June 27, 1988: Ord. 14699 §1; July 6, 1987: Ord. 14633 §2; March 23, 1987: Ord. 14389 §2; May 19, 1986: Ord. 13422 §2; June 28, 1982: Ord. 12975 §2; August 18, 1980: Ord. 12519 §6; March 12, 1979: Ord. 11035 §2; March 11, 1974: Ord. 10500 §2; July 10, 1972: Ord. 10235 §2; August 23, 1971: Ord. 9903 §1; December 22, 1969).

10.16.045 Driving Under Influence of Alcoholic Liquor or Drug; Second Offense; Restrictions on Motor Vehicles.

Upon conviction for a second violation of Lincoln Municipal Code Section 10.16.030 or 10.16.040, the court shall impose either of the following restrictions:

(a) (1) The court shall order all motor vehicles owned by the person so convicted immobilized at the owner's expense for a period of time not less than five days and not more than eight months and shall notify the Department of Motor Vehicles of the period of immobilization. Any immobilized motor vehicle shall be released to the holder of a bona fide lien on the motor vehicle executed prior to such immobilization when possession of the motor vehicle is requested as provided by law by such lienholder for purposes of foreclosing and satisfying such lien. If a person tows and stores a motor vehicle pursuant to this section at the direction of a peace officer or the court and has a lien upon such motor vehicle while it is in his or her possession for reasonable towing and storage charges, the person towing the vehicle has the right to retain such motor vehicle until such lien is paid. For purposes of this section, immobilized or immobilization means revocation or suspension, at the discretion of the court, of the registration of such motor vehicle or motor vehicles, including the license plates; and

(2) Any immobilized motor vehicle shall be released by the court without any legal or physical restraints to any registered owner who is not the registered owner convicted of a second violation of Section 10.16.030 or 10.16.040 if an affidavit is submitted to the court by such registered owner stating that the affiant is employed, that the motor vehicle subject to immobilization is necessary to continue that employment, that such employment is necessary for the well-being of the affiant's dependent children or parents, that the affiant will not authorize the use of the motor vehicle by any person known by the affiant to have been convicted of a second violation of Section 10.16.030 or 10.16.040, that affiant will immediately report to a local law enforcement agency any unauthorized use of the motor vehicle by any person known by the affiant to have been convicted of a second violation of Section 10.16.030 or 10.16.040, and that failure to release the motor vehicle would cause undue hardship to the affiant.

A registered owner who executes an affidavit pursuant to this section which is acted upon by the court and who fails to immediately report an unauthorized use of the motor vehicle which is the subject of the affidavit is guilty of a misdemeanor, punishable by fine of not less than \$100.00 nor more than \$500.00, and may not file any additional affidavits pursuant to this section.

(b) As an alternative to subsection (a) of this section, the court shall order the convicted person, in order to operate a motor vehicle, to obtain an ignition interlock permit and install an ignition interlock device on each motor vehicle owned or operated by the convicted person if he or she was sentenced to an operator's license revocation of at least one year. If the person's operator's license has been revoked for at least a one-year period, after a minimum of a forty-five-day no driving period, the person may operate a motor vehicle with an ignition interlock permit and an ignition interlock device pursuant to this subsection and shall retain the ignition interlock permit and ignition interlock device for not less than the remainder of a one-year period or period of revocation ordered by the court, whichever is longer.

(c) In addition to the restrictions required by subsection (b) of this section, the court may require a person convicted of a second violation of Section 10.16.030 to use a continuous alcohol monitoring device and abstain from alcohol use for a period of time not to exceed the maximum term of license revocation ordered by the court. A continuous alcohol monitoring device shall not be

ordered for a person convicted of a second violation unless the installation of an ignition interlock device is also required. (Ord. 19670 §3; January 30, 2012; prior Ord. 18163 §2; April 14, 2003).

10.16.050 Owner Not to Permit Operation.

It shall be unlawful for any owner or person in control of any motor vehicle to permit any person under sixteen years of age, except as hereinbefore provided, to permit any intoxicated person, or to permit any person under the influence of intoxicating liquor or any drugs to operate any motor vehicle. (Ord. 15635 §5; July 9, 1990: P.C. §10.52.030: Ord. 5699 §1203; April 12, 1954).

ANNOT.: This ordinance is valid and duly authorized by statute. *State v. Smith*, 181 Neb. 846, 152 N.W.2d 16 (1967).

Penalty provisions of this ordinance are authorized by statute. *Id.*

Language of this ordinance is plain and unambiguous. *Id.*

A violation of this offense may be used in calculating defendant's accumulating twelve "points" so as to warrant revocation of driving privileges by director of motor vehicles. *Maciejewski v. Sullivan*, 193 Neb. 598, 228 N.W.2d 294 (1975).

Sentence of thirty days in jail and one year revocation of driving privileges for violation of this ordinance held not excessive. *State v. Shea*, 208 Neb. 17, 301 N.W.2d 602 (1981).

10.16.060 Operator Must be Licensed.

(a) It shall be unlawful for any person to operate a motor vehicle, except a farm tractor, minibike, or snowmobile, upon any street, alley, or highway within the city, except as otherwise provided in this chapter, without having on his or her person and in full force and effect an operator's license or learner's permit to operate it as provided by the laws of the State of Nebraska.

(b) It shall be unlawful for any person to operate a motorcycle upon any street, alley, or highway within the city unless such person shall have on his or her person and in full force and effect a motorcycle operator's license, as provided by the laws of the State of Nebraska. (Ord. 17992 §1; April 29, 2002: prior Ord. 15635 §6; July 9, 1990: P.C. §10.52.040: Ord. 12973 §1; August 18, 1980: Ord. 11035 §3; March 11, 1974: Ord. 10654 §1; January 2, 1973: Ord. 10245 §1; September 7, 1971: Ord. 5699 §1204, as amended by Ord. 7312; October 10, 1960).

10.16.063 Operation of a Motor Vehicle While Operator's Privilege Revoked or Impounded and Not Eligible for Reinstatement; Prohibited.

It shall be unlawful for any person to operate a motor vehicle upon any street, alley, or highway within the city during any period that he or she is subject to a court order not to operate any motor vehicle for any purpose or during any period that his or her operator's license has been revoked or impounded pursuant to conviction or convictions for violation of any law or laws of this state, by an order of any court, or by an administrative order of the Director of the State Department of Motor Vehicles. Upon conviction for a violation thereof, such person shall be deemed guilty of a misdemeanor and shall be punished as follows:

(a) For a first offense, such person shall be imprisoned in the county jail for not more than six months, or shall be fined in an amount not to exceed \$500.00, or both such a fine and

imprisonment, recoverable with costs, and the court shall, as 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 the date of his or her final discharge from the jail, or the date of payment or satisfaction of such fine, whichever is the later, and also order the operator's license of such person revoked for a like period; and

(b) For each subsequent offense, such person shall be imprisoned in jail for not more than six months, or shall be fined in an amount not to exceed \$500.00, or both such a fine and imprisonment, recoverable with costs, and the court shall, as part of the judgment of conviction, order such person not to operate a motor vehicle for any purpose for a period of two years from the date of his or her final discharge from jail, or the date of payment or satisfaction of such fine, whichever is the later, and also order the operator's license of such person revoked for a like period.

(c) Such orders of the court as they relate to operation of a motor vehicle and revocation of the operator's license shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked, whichever is later. (Ord. 17992 §2; April 29, 2002).

10.16.065 Operation of Motor Vehicle While Operator's Privilege Suspended and Eligible for Reinstatement; Prohibited.

It shall be unlawful for any person to operate a motor vehicle upon any street, alley, or highway within the City (i) during any period that his or her operator's license has been suspended, (ii) after a period of revocation but before issuance of a new license, or (iii) after a period of impoundment but before the return of the license. Upon conviction for a violation thereof, such person shall be deemed guilty of a misdemeanor and shall be punished as follows:

(a) Such person shall be imprisoned in the county jail for not more than three months or shall be fined in an amount not to exceed \$500.00 or both such fine and imprisonment, recoverable with costs and the court may, 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 the date ordered by the court.

(b) If the person at the time of sentencing shows proof of reinstatement of his or her suspended operator's license, proof of issuance of a new license, or proof of return of the impounded license, the person shall only be fined in an amount not to exceed one hundred dollars.

(c) If the court orders the person not to operate a motor vehicle for a period of one year from the date ordered by the court, the court shall also order the operator's license of such person to be revoked for a like period. Such orders of the court shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked, whichever is later. (Ord. 17992 §3; April 29, 2002).

10.16.070 Proof of Financial Responsibility; Violation; Penalty.

It shall be unlawful for any person owning a motor vehicle which is being operated or towed with In Transit decals pursuant to state law, or which is being operated or towed within thirty days after date of purchase pursuant to state law, or which is required to be registered in this state, and which is operated or towed on a public street of this city to allow the operation or towing of his or her motor vehicle on a public street of this city, without having a current and effective automobile liability policy, evidence of insurance, or proof of financial responsibility.

The owner shall be presumed to know of the operation or towing of his or her vehicle or trailer on a public street of this city in violation of this section when the motor vehicle or trailer is

being operated or towed by a person other than the owner. Any motor vehicle operator unable to produce such proof upon request of a Nebraska law enforcement officer shall be allowed ten days from the date of the request to produce proof that financial responsibility was in existence at the time of such request. Every person who violates this section shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than \$500.00, recoverable with costs shall be advised by the court that his or her operator's license, motor vehicle certificate of registration, and license plates will be suspended by the Nebraska State Department of Motor Vehicles until he or she complies with the requirements pursuant to state law. (Ord. 18932 §1; June 11, 2007: prior Ord. 17154 §1; March 10, 1997: Ord. 15635 §7; July 9, 1990: P.C. §10.52.050: Ord. 14400 §1; June 2, 1986).

10.16.080 Body Fluid Analysis; Fee; Payment Upon Conviction.

Upon the conviction of any person for violation of the provisions of Section 10.16.030 of the Lincoln Municipal Code, or of driving a motor vehicle while under the influence of alcoholic liquor or of any drug, in violation of the Lincoln Municipal Code, there shall be assessed as part of the costs the fee charged by any physician or any agency administering tests pursuant to a permit issued by the Nebraska State Department of Health in accordance with Section 39-699.11 of the Nebraska Revised Statutes, for the test or tests administered and the analysis thereof under the provisions of Section 10.16.040 of the Lincoln Municipal Code, if such test or tests were actually made. (Ord. 15635 §8; July 9, 1990: P.C. §10.72.060: Ord. 12686 §1; September 10, 1979).