Linda Willard

DEPARTMENT OF JUSTICE
STATE OF NEBRASKA
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#89066

NO.
STATE OF NEBRASKA
OFFICIAL
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DEPT. OF JUSTICE

ROBERT M. SPIRE
Attorney General
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DATE: October 31, 1989

ISSUE: Whether a conviction under Neb.Rev.Stat. §39-669.39 carries an assessment of seven (7) points on a driving record.

CONCLUSION: Yes.

REQUESTED BY: Margaret L. Higgins, Director, Department of Motor Vehicles

WRITTEN BY: Robert M. Spire, Attorney General
David Cygan, Assistant Attorney General

DISCUSSION:

If an individual is convicted of Driving Under the Influence of alcoholic liquor or drugs in violation of Neb.Rev.Stat. §39-669.07, and also causes serious bodily injury as a result thereof in violation of Neb.Rev.Stat. §39-669.39, this individual will be subject to an assessment of seven (7) points on a driving record.

Section 39-669.26 (5) provides a six (6) point assessment for a conviction of Driving Under the Influence, §39-669.07. A separate and distinct statute, §39-669.39 provides for further sanctions if an individual is injured by one who is convicted of D.U.I. Section 39-669.39 states: "(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."

The point system enumerated by statute, §39-669.26, lists specific points to be ascribed for specific offenses. Causing serious bodily injury while operating a motor vehicle while under the influence is not specifically enumerated. However, §39-669.26(13) states:

> All other traffic violations involving the operation of motor vehicles by the operator for which reports to the Department of Motor Vehicles are required under sections 39-669.22 and 39-669.23, not including parking

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violations, violations for operating a motor vehicle without a valid operator's license in the operator's possession, muffler violations, overwidth, overheight, or overlength violations or overloading of trucks -- 1 point.

As §39-669.39 is clearly a "traffic violation involving the operation of a motor vehicle by the operator" for which a report to the Department of Motor Vehicles is required, it will fall under the parameters of §39-669.26(13). Therefore, if an individual is convicted of D.U.I. and also of causing bodily injury as a result, he will be assessed seven (7) points. Six points will be assessed due to the D.U.I. conviction as stated in §39-669.26(5), and one (1) point will be assessed under §39-669.26(13).

Sincerely,

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APPROVED BY:

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32-108-13