

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 659**

Introduced by Karpisek, 32.

Read first time January 19, 2011

Committee: Transportation and Telecommunications

A BILL

1 FOR AN ACT relating to driving under the influence; to amend section  
2 60-6,196, Reissue Revised Statutes of Nebraska; to  
3 prohibit driving with certain controlled substances in  
4 bodily fluids; to provide an affirmative defense; and to  
5 repeal the original section.  
6 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 60-6,196, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           60-6,196 (1) It shall be unlawful for any person to  
4 operate or be in the actual physical control of any motor vehicle:

5           (a) While under the influence of alcoholic liquor or of  
6 any drug;

7           (b) When such person has a concentration of eight-  
8 hundredths of one gram or more by weight of alcohol per one hundred  
9 milliliters of his or her blood; ~~or~~

10           (c) When such person has a concentration of eight-  
11 hundredths of one gram or more by weight of alcohol per two hundred  
12 ten liters of his or her breath; ~~-~~

13           (d) When such person has any amount of a Schedule I  
14 controlled substance as provided in section 28-405 or one of its  
15 metabolites or analogs in his or her blood, saliva, urine, or other  
16 bodily fluid; or

17           (e) When such person has any amount of a Schedule II,  
18 III, or IV controlled substance as provided in section 28-405 or one  
19 of its metabolites or analogs in his or her blood, saliva, urine, or  
20 other bodily fluid. If a person is charged with a violation under  
21 this subdivision, the fact that the person consumed the controlled  
22 substance (i) pursuant to a prescription issued by a health care  
23 professional licensed under the Uniform Credentialing Act and  
24 authorized to prescribe the controlled substance and (ii) in  
25 accordance with the health care professional's directions through

1 injection, ingestion, or inhalation shall constitute an absolute  
2 affirmative defense against such charge with regard to the particular  
3 prescribed controlled substance but no other substance and not with  
4 regard to a charge under any other subdivision of this subsection.

5 (2) Any person who operates or is in the actual physical  
6 control of any motor vehicle while in a condition described in  
7 subsection (1) of this section shall be guilty of a crime and upon  
8 conviction punished as provided in sections 60-6,197.02 to  
9 60-6,197.08.

10 (3) Except as provided in subdivision (1)(e) of this  
11 section, the fact that a person charged with a violation of  
12 subsection (1) of this section is or was legally entitled to consume  
13 alcohol or to use a controlled substance, drug, medication, or other  
14 impairing substance shall not constitute a defense against any charge  
15 of violating subsection (1) of this section.

16 Sec. 2. Original section 60-6,196, Reissue Revised  
17 Statutes of Nebraska, is repealed.