

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 724

Introduced by Fischer, 43.

Read first time January 04, 2012

Committee: Transportation and Telecommunications

A BILL

1 FOR AN ACT relating to motor vehicles; to amend sections 60-4,168 and
2 60-6,179.01, Reissue Revised Statutes of Nebraska, and
3 sections 60-4,144, 60-4,146, 60-4,182, and 60-601,
4 Revised Statutes Supplement, 2011; to change provisions
5 relating to commercial driver medical examinations; to
6 prohibit texting while driving a commercial motor
7 vehicle; to provide penalties; to harmonize provisions;
8 to repeal the original sections; and to declare an
9 emergency.

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

1 Section 1. Section 60-4,144, Revised Statutes Supplement,
2 2011, is amended to read:

3 60-4,144 (1) An applicant for any original or renewal
4 commercial driver's license or an applicant for a change of class of
5 commercial motor vehicle, endorsement, or restriction shall
6 demonstrate his or her knowledge and skills for operating a
7 commercial motor vehicle as prescribed in the Motor Vehicle
8 Operator's License Act. An applicant for a commercial driver's
9 license shall provide the information and documentation required by
10 this section and sections 60-484 and 60-4,144.01 and also, beginning
11 on an implementation date designated by the director on or before
12 January 1, 2014, the information and documentation required by
13 section 60-484.04. Such information and documentation shall include
14 any additional information required by 49 C.F.R. parts 383 and 391
15 and also include:

16 (a) Certification that the commercial motor vehicle in
17 which the applicant takes any driving skills examination is
18 representative of the class of commercial motor vehicle that the
19 applicant operates or expects to operate; and

20 (b) The names of all states where the applicant has been
21 licensed to operate any type of motor vehicle in the ten years prior
22 to the date of application.

23 (2) Any person applying for any commercial driver's
24 license on or before December 31, 2011, must present the
25 certification required pursuant to section 60-4,145 or 60-4,146.

1 (3) Any person applying for any commercial driver's
2 license on or after January 1, 2012, must make one of the
3 certifications in section 60-4,144.01 and any certification required
4 under section 60-4,146 and must provide such certification
5 certifications to the department in order to be issued a commercial
6 driver's license.

7 (4) On or after January 1, 2012, but no later than
8 January 30, 2014, every person who holds any commercial driver's
9 license must provide to the department medical certification as
10 required by section 60-4,144.01. The department may provide notice
11 and prescribe medical certification compliance requirements for all
12 holders of commercial driver's licenses. Holders of commercial
13 driver's licenses who fail to meet the prescribed medical
14 certification compliance requirements may be subject to downgrade.

15 Sec. 2. Section 60-4,146, Revised Statutes Supplement,
16 2011, is amended to read:

17 60-4,146 (1) Beginning January 1, 2012, in addition to
18 certifying himself or herself under this section, an applicant shall
19 also certify himself or herself under ~~subsections (2) and (4) of~~
20 section 60-4,144.01.

21 (2) Upon making application pursuant to section 60-4,144,
22 any applicant who operates or expects to operate a commercial motor
23 vehicle in interstate or foreign commerce and who is not subject to
24 49 C.F.R. part 391 shall certify that he or she is not subject to 49
25 C.F.R. part 391. Any applicant making certification pursuant to this

1 subsection shall meet the physical and vision requirements
2 established in section 60-4,118 and shall be subject to the
3 provisions of such section relating to the Health Advisory Board.

4 (3) Upon making application pursuant to section 60-4,144,
5 any applicant who operates or expects to operate a commercial motor
6 vehicle solely in intrastate commerce and who is subject to 49 C.F.R.
7 part 391 adopted pursuant to section 75-363 shall certify that the
8 applicant meets the qualification requirements of 49 C.F.R. part 391.

9 ~~(2)–(4)~~ Upon making application pursuant to section
10 60-4,144, any applicant who operates or expects to operate a
11 commercial motor vehicle solely in intrastate commerce and who is not
12 subject to 49 C.F.R. part 391 adopted pursuant to section 75-363
13 shall certify that he or she is not subject to 49 C.F.R. part 391.
14 Any applicant making certification pursuant to this section
15 subsection shall meet the physical and vision requirements
16 established in section 60-4,118 and shall be subject to the
17 provisions of such section relating to the Health Advisory Board.

18 ~~(3) An applicant who certifies that he or she is exempt~~
19 ~~from the physical qualifications and examination requirements of 49~~
20 ~~C.F.R. part 391 pursuant to subsection (4) of section 75-363 shall~~
21 ~~meet the physical and vision requirements established in section~~
22 ~~60-4,118 and shall be subject to the provisions of such section~~
23 ~~relating to the Health Advisory Board. A successful applicant shall~~
24 ~~be issued a commercial driver's license which restricts the holder to~~
25 ~~operating a commercial motor vehicle solely in intrastate commerce~~

1 ~~and which also indicates that the holder is exempt from the physical~~
 2 ~~qualifications and examination requirements prescribed by 49 C.F.R.~~
 3 ~~part 391. Two years after the initial issuance of such license and~~
 4 ~~upon renewal, and every two years following renewal, the holder of~~
 5 ~~the commercial driver's license shall present to the department upon~~
 6 ~~request, on a form to be prescribed by the department, a statement~~
 7 ~~from a physician detailing that based upon his or her examination of~~
 8 ~~the applicant the medical or physical condition in existence prior to~~
 9 ~~July 30, 1996, which would otherwise render the individual not~~
 10 ~~qualified under federal standards, has not significantly worsened or~~
 11 ~~that another nonqualifying medical or physical condition has not~~
 12 ~~developed.~~

13 ~~(4)-(5)~~ An applicant who certifies that he or she is not
 14 subject to 49 C.F.R. part 391 under subsection (2) or (4) of this
 15 section ~~or who certifies that he or she is exempt from 49 C.F.R. part~~
 16 ~~391 under subsection (3) of this section~~ shall answer the following
 17 questions on the application:

18 (a) Have you within the last three months (e.g. due to
 19 diabetes, epilepsy, mental illness, head injury, stroke, heart
 20 condition, neurological disease, etc.):

21 (i) lost voluntary control or consciousness ... yes ...
 22 no

23 (ii) experienced vertigo or multiple episodes of
 24 dizziness or fainting ... yes ... no

25 (iii) experienced disorientation ... yes ... no

1 (iv) experienced seizures ... yes ... no

2 (v) experienced impairment of memory, memory loss ...
3 yes ... no

4 Please explain:

5 (b) Do you experience any condition which affects your
6 ability to operate a motor vehicle? (e.g. due to loss of, or
7 impairment of, foot, leg, hand, arm; neurological or neuromuscular
8 disease, etc.) ... yes ... no

9 Please explain:

10 (c) Since the issuance of your last driver's license/
11 permit has your health or medical condition changed or worsened? ...
12 yes ... no

13 Please explain, including how the above affects your
14 ability to drive:

15 Sec. 3. Section 60-4,168, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 60-4,168 (1) Except as provided in subsections (2) and
18 (3) of this section, a person shall be disqualified from driving a
19 commercial motor vehicle for one year upon his or her first
20 conviction, after April 1, 1992, in this or any other state for:

21 (a) Driving a commercial motor vehicle in violation of
22 section 60-6,196 or 60-6,197 or under the influence of a controlled
23 substance or, beginning September 30, 2005, driving any motor vehicle
24 in violation of section 60-6,196 or 60-6,197 or under the influence
25 of a controlled substance;

1 (b) Driving a commercial motor vehicle in violation of
2 section 60-4,163 or 60-4,164;

3 (c) Leaving the scene of an accident involving a
4 commercial motor vehicle driven by the person or, beginning September
5 30, 2005, leaving the scene of an accident involving any motor
6 vehicle driven by the person;

7 (d) Using a commercial motor vehicle in the commission of
8 a felony other than a felony described in subdivision (3)(b) of this
9 section or, beginning September 30, 2005, using any motor vehicle in
10 the commission of a felony other than a felony described in
11 subdivision (3)(b) of this section;

12 (e) Beginning September 30, 2005, driving a commercial
13 motor vehicle after his or her commercial driver's license has been
14 suspended, revoked, or canceled or the driver is disqualified from
15 driving a commercial motor vehicle; or

16 (f) Beginning September 30, 2005, causing a fatality
17 through the negligent or criminal operation of a commercial motor
18 vehicle.

19 (2) Except as provided in subsection (3) of this section,
20 if any of the offenses described in subsection (1) of this section
21 occurred while a person was transporting hazardous material in a
22 commercial motor vehicle which required placarding pursuant to
23 section 75-364, the person shall, upon conviction or administrative
24 determination, be disqualified from driving a commercial motor
25 vehicle for three years.

1 (3) A person shall be disqualified from driving a
2 commercial motor vehicle for life if, after April 1, 1992, he or she:

3 (a) Is convicted of or administratively determined to
4 have committed a second or subsequent violation of any of the
5 offenses described in subsection (1) of this section or any
6 combination of those offenses arising from two or more separate
7 incidents; or

8 (b) Beginning September 30, 2005, used a commercial motor
9 vehicle in the commission of a felony involving the manufacturing,
10 distributing, or dispensing of a controlled substance.

11 (4)(a) A person is disqualified from driving a commercial
12 motor vehicle for a period of not less than sixty days if he or she
13 is convicted in this or any other state of two serious traffic
14 violations, or not less than one hundred twenty days if he or she is
15 convicted in this or any other state of three serious traffic
16 violations, arising from separate incidents occurring within a three-
17 year period while operating a commercial motor vehicle.

18 (b) A person is disqualified from driving a commercial
19 motor vehicle for a period of not less than sixty days if he or she
20 is convicted in this or any other state of two serious traffic
21 violations, or not less than one hundred twenty days if he or she is
22 convicted in this or any other state of three serious traffic
23 violations, arising from separate incidents occurring within a three-
24 year period while operating a motor vehicle other than a commercial
25 motor vehicle if the convictions have resulted in the revocation,

1 cancellation, or suspension of the person's operator's license or
2 driving privileges.

3 (5)(a) A person who is convicted of operating a
4 commercial motor vehicle in violation of a federal, state, or local
5 law or regulation pertaining to one of the following six offenses at
6 a highway-rail grade crossing shall be disqualified for the period of
7 time specified in subdivision (5)(b) of this section:

8 (i) For drivers who are not required to always stop,
9 failing to slow down and check that the tracks are clear of an
10 approaching train;

11 (ii) For drivers who are not required to always stop,
12 failing to stop before reaching the crossing, if the tracks are not
13 clear;

14 (iii) For drivers who are always required to stop,
15 failing to stop before driving onto the crossing;

16 (iv) For all drivers, failing to have sufficient space to
17 drive completely through the crossing without stopping;

18 (v) For all drivers, failing to obey a traffic control
19 device or the directions of an enforcement official at the crossing;

20 or

21 (vi) For all drivers, failing to negotiate a crossing
22 because of insufficient undercarriage clearance.

23 (b)(i) A person shall be disqualified for not less than
24 sixty days if the person is convicted of a first violation described
25 in this subsection.

1 (ii) A person shall be disqualified for not less than one
2 hundred twenty days if, during any three-year period, the person is
3 convicted of a second violation described in this subsection in
4 separate incidents.

5 (iii) A person shall be disqualified for not less than
6 one year if, during any three-year period, the person is convicted of
7 a third or subsequent violation described in this subsection in
8 separate incidents.

9 (6) For purposes of this section, controlled substance
10 has the same meaning as in section 28-401.

11 (7) For purposes of this section, conviction means an
12 unvacated adjudication of guilt, or a determination that a person has
13 violated or failed to comply with the law, in a court of original
14 jurisdiction or by an authorized administrative tribunal, an
15 unvacated forfeiture of bail or collateral deposited to secure the
16 person's appearance in court, a plea of guilty or nolo contendere
17 accepted by the court, the payment of a fine or court costs, or a
18 violation of a condition of release without bail, regardless of
19 whether or not the penalty is rebated, suspended, or probated.

20 (8) For purposes of this section, serious traffic
21 violation means:

22 (a) Speeding at or in excess of fifteen miles per hour
23 over the legally posted speed limit;

24 (b) Willful reckless driving as described in section
25 60-6,214 or reckless driving as described in section 60-6,213;

1 (c) Improper lane change as described in section
2 60-6,139;

3 (d) Following the vehicle ahead too closely as described
4 in section 60-6,140;

5 (e) A violation of any law or ordinance related to motor
6 vehicle traffic control, other than parking violations or overweight
7 or vehicle defect violations, arising in connection with an accident
8 or collision resulting in death to any person;

9 (f) Beginning September 30, 2005, driving a commercial
10 motor vehicle without a commercial driver's license;

11 (g) Beginning September 30, 2005, driving a commercial
12 motor vehicle without a commercial driver's license in the operator's
13 possession; ~~and~~

14 (h) Beginning September 30, 2005, driving a commercial
15 motor vehicle without the proper class of commercial driver's license
16 and any endorsements, if required, for the specific vehicle group
17 being operated or for the passengers or type of cargo being
18 transported on the vehicle; and -

19 (i) Beginning October 27, 2013, texting while driving as
20 described in section 7 of this act.

21 Sec. 4. Section 60-4,182, Revised Statutes Supplement,
22 2011, is amended to read:

23 60-4,182 In order to prevent and eliminate successive
24 traffic violations, there is hereby provided a point system dealing
25 with traffic violations as disclosed by the files of the director.

1 The following point system shall be adopted:

2 (1) Conviction of motor vehicle homicide - 12 points;

3 (2) Third offense drunken driving in violation of any
4 city or village ordinance or of section 60-6,196, as disclosed by the
5 records of the director, regardless of whether the trial court found
6 the same to be a third offense - 12 points;

7 (3) Failure to stop and render aid as required under
8 section 60-697 in the event of involvement in a motor vehicle
9 accident resulting in the death or personal injury of another - 6
10 points;

11 (4) Failure to stop and report as required under section
12 60-696 or any city or village ordinance in the event of a motor
13 vehicle accident resulting in property damage - 6 points;

14 (5) Driving a motor vehicle while under the influence of
15 alcoholic liquor or any drug or when such person has a concentration
16 of eight-hundredths of one gram or more by weight of alcohol per one
17 hundred milliliters of his or her blood or per two hundred ten liters
18 of his or her breath in violation of any city or village ordinance or
19 of section 60-6,196 - 6 points;

20 (6) Willful reckless driving in violation of any city or
21 village ordinance or of section 60-6,214 or 60-6,217 - 6 points;

22 (7) Careless driving in violation of any city or village
23 ordinance or of section 60-6,212 - 4 points;

24 (8) Negligent driving in violation of any city or village
25 ordinance - 3 points;

1 (9) Reckless driving in violation of any city or village
2 ordinance or of section 60-6,213 - 5 points;

3 (10) Speeding in violation of any city or village
4 ordinance or any of sections 60-6,185 to 60-6,190 and 60-6,313:

5 (a) Not more than five miles per hour over the speed
6 limit - 1 point;

7 (b) More than five miles per hour but not more than ten
8 miles per hour over the speed limit - 2 points;

9 (c) More than ten miles per hour but not more than
10 thirty-five miles per hour over the speed limit - 3 points, except
11 that one point shall be assessed upon conviction of exceeding by not
12 more than ten miles per hour, two points shall be assessed upon
13 conviction of exceeding by more than ten miles per hour but not more
14 than fifteen miles per hour, and three points shall be assessed upon
15 conviction of exceeding by more than fifteen miles per hour but not
16 more than thirty-five miles per hour the speed limits provided for in
17 subdivision (1)(e), (f), (g), or (h) of section 60-6,186; and

18 (d) More than thirty-five miles per hour over the speed
19 limit - 4 points;

20 (11) Failure to yield to a pedestrian not resulting in
21 bodily injury to a pedestrian - 2 points;

22 (12) Failure to yield to a pedestrian resulting in bodily
23 injury to a pedestrian - 4 points;

24 (13) Using a handheld wireless communication device in
25 violation of section 60-6,179.01 or texting while driving in

1 violation of section 7 of this act - 3 points;

2 (14) Unlawful obstruction or interference of the view of
3 an operator in violation of section 60-6,256 - 1 point; and

4 (15) All other traffic violations involving the operation
5 of motor vehicles by the operator for which reports to the Department
6 of Motor Vehicles are required under sections 60-497.01 and 60-497.02
7 - 1 point.

8 Subdivision (15) of this section does not include
9 violations involving an occupant protection system pursuant to
10 section 60-6,270, parking violations, violations for operating a
11 motor vehicle without a valid operator's license in the operator's
12 possession, muffler violations, overwidth, overheight, or overlength
13 violations, motorcycle or moped protective helmet violations, or
14 overloading of trucks.

15 All such points shall be assessed against the driving
16 record of the operator as of the date of the violation for which
17 conviction was had. Points may be reduced by the department under
18 section 60-4,188.

19 In all cases, the forfeiture of bail not vacated shall be
20 regarded as equivalent to the conviction of the offense with which
21 the operator was charged.

22 The point system shall not apply to persons convicted of
23 traffic violations committed while operating a bicycle or an electric
24 personal assistive mobility device as defined in section 60-618.02.

25 Sec. 5. Section 60-601, Revised Statutes Supplement,

1 2011, is amended to read:

2 60-601 Sections 60-601 to 60-6,380 and section 7 of this
3 act shall be known and may be cited as the Nebraska Rules of the
4 Road.

5 Sec. 6. Section 60-6,179.01, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 60-6,179.01 (1) This section does not apply to an
8 operator of a commercial motor vehicle if section 7 of this act
9 applies.

10 ~~(1)~~~~(2)~~ Except as otherwise provided in subsection ~~(2)~~
11 ~~(3)~~ of this section, no person shall use a handheld wireless
12 communication device to read a written communication, manually type a
13 written communication, or send a written communication while
14 operating a motor vehicle which is in motion.

15 ~~(2)~~~~(3)~~ The prohibition in subsection ~~(1)~~~~(2)~~ of this
16 section does not apply to:

17 (a) A person performing his or her official duties as a
18 law enforcement officer, a firefighter, an ambulance driver, or an
19 emergency medical technician; or

20 (b) A person operating a motor vehicle in an emergency
21 situation.

22 ~~(3)~~~~(4)~~ Enforcement of this section by state or local law
23 enforcement agencies shall be accomplished only as a secondary action
24 when a driver of a motor vehicle has been cited or charged with a
25 traffic violation or some other offense.

1 ~~(4)~~-(5) Any person who violates this section shall be
2 guilty of a traffic infraction. Any person who is found guilty of a
3 traffic infraction under this section shall be assessed points on his
4 or her motor vehicle operator's license pursuant to section 60-4,182
5 and shall be fined:

6 (a) Two hundred dollars for the first offense;

7 (b) Three hundred dollars for a second offense; and

8 (c) Five hundred dollars for a third and subsequent
9 offense.

10 ~~(5)~~-(6) For purposes of this section:

11 (a)(i) Handheld wireless communication device means any
12 device that provides for written communication between two or more
13 parties and is capable of receiving, displaying, or transmitting
14 written communication.

15 (ii) Handheld wireless communication device includes, but
16 is not limited to, a mobile or cellular telephone, a text messaging
17 device, a personal digital assistant, a pager, or a laptop computer.

18 (iii) Handheld wireless communication device does not
19 include an electronic device that is part of the motor vehicle or
20 permanently attached to the motor vehicle or a handsfree wireless
21 communication device; and

22 (b) Written communication includes, but is not limited
23 to, a text message, an instant message, electronic mail, and Internet
24 web sites.

25 Sec. 7. Beginning October 27, 2013, except as otherwise

1 provided in subsection (2) of this section, no operator of a
2 commercial motor vehicle shall engage in texting while driving.

3 (2) Texting while driving is permissible by an operator
4 of a commercial motor vehicle if such texting is necessary to
5 communicate with law enforcement officials or other emergency
6 services.

7 (3) Any person who violates this section shall be guilty
8 of a traffic infraction. Any person who is found guilty of a traffic
9 infraction under this section shall be subject to disqualification as
10 provided in section 60-4,168, shall be assessed points on his or her
11 motor vehicle operator's license pursuant to section 60-4,182, and
12 shall be fined:

13 (a) Two hundred dollars for the first offense;

14 (b) Three hundred dollars for a second offense; and

15 (c) Five hundred dollars for a third and subsequent
16 offense.

17 (4) For purposes of this section:

18 (a) Driving means operating a commercial motor vehicle,
19 with the motor running, including while temporarily stationary
20 because of traffic, a traffic control device, or other momentary
21 delays. Driving does not include operating a commercial motor vehicle
22 with or without the motor running when the operator moves the vehicle
23 to the side of, or off, a highway and halts in a location where the
24 vehicle can safely remain stationary;

25 (b) Electronic device includes, but is not limited to, a

1 cellular telephone; a personal digital assistant; a pager; a
2 computer; or any other device used to input, write, send, receive, or
3 read text; and

4 (c)(i) Texting means manually entering alphanumeric text
5 into, or reading text from, an electronic device. Texting includes,
6 but is not limited to, short message service, emailing, instant
7 messaging, a command or request to access an Internet web page, or
8 engaging in any other form of electronic text retrieval or electronic
9 text entry for present or future communication.

10 (ii) Texting does not include:

11 (A) Reading, selecting, or entering a telephone number,
12 an extension number, or voicemail retrieval codes and commands into
13 an electronic device for the purpose of initiating or receiving a
14 telephone call or using voice commands to initiate or receive a
15 telephone call;

16 (B) Inputting, selecting, or reading information on a
17 global positioning system or navigation system; or

18 (C) Using a device capable of performing multiple
19 functions, including, but not limited to, fleet management systems,
20 dispatching devices, smartphones, citizens band radios, and music
21 players, for a purpose other than texting.

22 Sec. 8. Original sections 60-4,168 and 60-6,179.01,
23 Reissue Revised Statutes of Nebraska, and sections 60-4,144,
24 60-4,146, 60-4,182, and 60-601, Revised Statutes Supplement, 2011,
25 are repealed.

1 Sec. 9. Since an emergency exists, this act takes effect
2 when passed and approved according to law.