

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 900

Introduced by Bloomfield, 17; Ebke, 32; Hughes, 44; Kintner, 2; Krist, 10; Morfeld, 46; Schnoor, 15.

Read first time January 11, 2016

Committee: Transportation and Telecommunications

1 A BILL FOR AN ACT relating to motorcycles; to amend sections 60-3,153,
2 60-4,105, 60-4,118, 60-4,118.02, 60-4,118.03, 60-4,128, and
3 60-6,279, Reissue Revised Statutes of Nebraska, section 60-4,146,
4 Revised Statutes Cumulative Supplement, 2014, and section 60-4,114,
5 Revised Statutes Supplement, 2015; to change registration fees for
6 motorcycles; to rename the Health Advisory Board and provide powers
7 and duties; to create a fund; to create the brain injury services
8 program; to provide powers and duties for the Department of Motor
9 Vehicles and the Department of Health and Human Services; to change
10 a penalty; to change motorcycle and moped helmet provisions; to
11 eliminate obsolete fund provisions; to harmonize provisions; to
12 repeal the original sections; and to outright repeal section
13 60-2132.01, Revised Statutes Cumulative Supplement, 2014.
14 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 60-3,153, Reissue Revised Statutes of Nebraska,
2 is amended to read:

3 60-3,153 For the registration of every motorcycle, the fee shall be
4 six dollars. An additional fee of nineteen dollars shall be collected
5 which fee shall be remitted to the State Treasurer for credit to the
6 Motorcycle Safety and Brain Injury Trust Fund.

7 Sec. 2. Section 60-4,105, Reissue Revised Statutes of Nebraska, is
8 amended to read:

9 60-4,105 (1) Unless otherwise provided by statute, any person
10 aggrieved by a final decision or order of the director or the Department
11 of Motor Vehicles to cancel, suspend, revoke, or refuse to issue or renew
12 any operator's license, any decision of the director made after
13 consideration of advice from the Health Advisory, Safety, and Brain
14 Injury Trust Board, or suspension of an operator's license under the
15 License Suspension Act may appeal to either the district court of the
16 county in which the person originally applied for the license or the
17 district court of the county in which such person resides or, in the case
18 of a nonresident, to the district court of Lancaster County within thirty
19 days after the date of the final decision or order.

20 (2) Summons shall be served on the department within thirty days
21 after the filing of the petition in the manner provided for service of a
22 summons in section 25-510.02. Within thirty days after service of the
23 petition and summons, the department shall prepare and transmit to the
24 petitioner a certified copy of the official record of the proceedings
25 before the department. The department shall require payment of a five-
26 dollar fee prior to the transmittal of the official record. The
27 petitioner shall file the transcript with the court within fourteen days
28 after receiving the transcript from the department.

29 (3) The district court shall hear the appeal as in equity without a
30 jury and determine anew all questions raised before the director. Either
31 party may appeal from the decision of the district court to the Court of

1 Appeals.

2 (4) The appeal procedures described in the Administrative Procedure
3 Act shall not apply to this section.

4 Sec. 3. Section 60-4,114, Revised Statutes Supplement, 2015, is
5 amended to read:

6 60-4,114 (1) The county treasurer may employ such additional
7 clerical help as may be necessary to assist him or her in the performance
8 of the ministerial duties required of him or her under the Motor Vehicle
9 Operator's License Act and, for such additional expense, shall be
10 reimbursed as set out in section 60-4,115.

11 (2) The director may, in his or her discretion, appoint department
12 personnel to examine all applicants who apply for an initial license or
13 whose licenses have been revoked or canceled to ascertain such person's
14 ability to operate a motor vehicle properly and safely.

15 (3) Except as otherwise provided in section 60-4,122, the
16 application process, in addition to the other requisites of the act,
17 shall include the following:

18 (a) An inquiry into the medical condition and visual ability of the
19 applicant to operate a motor vehicle;

20 (b) An inquiry into the applicant's ability to drive and maneuver a
21 motor vehicle, except that no driving skills test shall be conducted
22 using an autocycle; and

23 (c) An inquiry touching upon the applicant's knowledge of the motor
24 vehicle laws of this state, which shall include sufficient questions to
25 indicate familiarity with the provisions thereof.

26 (4) If an applicant is denied or refused a certificate for license,
27 such applicant shall have the right to an immediate appeal to the
28 director from the decision. It shall be the duty of the director to
29 review the appeal and issue a final order, to be made not later than ten
30 days after the receipt of the appeal by the director, except that if the
31 director requests the advice of the Health Advisory, Safety, and Brain

1 Injury Trust Board on the matter, the director shall have up to forty-
2 five days after the day a medical or vision problem is referred to him or
3 her to consult with members of the board to obtain the medical opinion
4 necessary to make a decision and shall issue a final order not later than
5 ten days following receipt of the medical opinion. After consideration of
6 the advice of the board, the director shall make a determination of the
7 applicant's physical or mental ability to operate a motor vehicle and
8 shall issue a final order. The order shall be in writing, shall be
9 accompanied by findings of fact and conclusions of law, and shall be sent
10 by regular United States mail to the applicant's last-known address. The
11 order may be appealed as provided in section 60-4,105.

12 Sec. 4. Section 60-4,118, Reissue Revised Statutes of Nebraska, is
13 amended to read:

14 60-4,118 (1) No operator's license shall be granted to any applicant
15 until such applicant satisfies the examiner that he or she possesses
16 sufficient powers of eyesight to enable him or her to obtain a Class O
17 license and to operate a motor vehicle on the highways of this state with
18 a reasonable degree of safety. The Department of Motor Vehicles, with the
19 advice of the Health Advisory, Safety, and Brain Injury Trust Board,
20 shall adopt and promulgate rules and regulations:

21 (a) Requiring a minimum acuity level of vision. Such level may be
22 obtained through the use of standard eyeglasses, contact lenses, or
23 bioptic or telescopic lenses which are specially constructed vision
24 correction devices which include a lens system attached to or used in
25 conjunction with a carrier lens; and

26 (b) Requiring a minimum field of vision. Such field of vision may be
27 obtained through standard eyeglasses, contact lenses, or the carrier lens
28 of the bioptic or telescopic lenses.

29 (2) If a vision aid is used by the applicant to meet the vision
30 requirements of this section, the operator's license of the applicant
31 shall be restricted to the use of such vision aid when operating the

1 motor vehicle. If the applicant fails to meet the vision requirements,
2 the examiner shall require the applicant to present an optometrist's or
3 ophthalmologist's statement certifying the vision reading obtained when
4 testing the applicant within ninety days of the applicant's license
5 examination. If the vision reading meets the vision requirements
6 prescribed by the department, the vision requirements of this section
7 shall have been met. If the vision reading demonstrates that the
8 applicant is required to use bionotic or telescopic lenses to operate a
9 motor vehicle, the statement from the optometrist or ophthalmologist
10 shall also indicate when the applicant needs to be reexamined for
11 purposes of meeting the vision requirements for an operator's license as
12 prescribed by the department. If such time period is two years or more
13 after the date of the application, the license shall be valid for two
14 years. If such time period is less than two years, the license shall be
15 valid for such time period.

16 (3) If the applicant for an operator's license discloses that he or
17 she has any other physical impairment which may affect the safety of
18 operation by such applicant of a motor vehicle, the examiner shall
19 require the applicant to show cause why such license should be granted
20 and, through such personal examination and demonstration as may be
21 prescribed by the director with the advice of the Health Advisory,
22 Safety, and Brain Injury Trust Board, to show the necessary ability to
23 safely operate a motor vehicle on the highways. The director may also
24 require the person to appear before the board or a designee of the board.
25 If the examiner, board, or designee is then satisfied that such applicant
26 has the ability to safely operate a motor vehicle, an operator's license
27 may be issued to the applicant subject, at the discretion of the
28 director, to a limitation to operate only such motor vehicles at such
29 time, for such purpose, and within such area as the license shall
30 designate.

31 (4)(a) The director may, when requested by a law enforcement

1 officer, when the director has reason to believe that a person may be
2 physically or mentally incompetent to operate a motor vehicle, or when a
3 person's driving record appears to the department to justify an
4 examination, request the advice of the Health Advisory, Safety, and Brain
5 Injury Trust Board and may give notice to the person to appear before an
6 examiner, the board, or a designee of the director for examination
7 concerning the person's ability to operate a motor vehicle safely. Any
8 such request by a law enforcement officer shall be accompanied by written
9 justification for such request and shall be approved by a supervisory law
10 enforcement officer, police chief, or county sheriff.

11 (b) A refusal to appear before an examiner, the board, or a designee
12 of the director for an examination after notice to do so shall be
13 unlawful and shall result in the immediate cancellation of the person's
14 operator's license by the director.

15 (c) If the person cannot qualify at the examination by an examiner,
16 his or her operator's license shall be immediately surrendered to the
17 examiner and forwarded to the director who shall cancel the person's
18 operator's license.

19 (d) If in the opinion of the board the person cannot qualify at the
20 examination by the board, the board shall advise the director. If the
21 director determines after consideration of the advice of the board that
22 the person lacks the physical or mental ability to operate a motor
23 vehicle, the director shall notify the person in writing of the decision.
24 Upon receipt of the notice, the person shall immediately surrender his or
25 her operator's license to the director who shall cancel the person's
26 operator's license.

27 (e) Refusal to surrender an operator's license on demand shall be
28 unlawful, and any person failing to surrender his or her operator's
29 license as required by this subsection shall be guilty of a Class III
30 misdemeanor.

31 Sec. 5. Section 60-4,118.02, Reissue Revised Statutes of Nebraska,

1 is amended to read:

2 60-4,118.02 (1) There is hereby created the Health Advisory, Safety,
3 and Brain Injury Trust Board which shall consist of six health care
4 providers appointed by the director with the advice and recommendation of
5 the Department of Health and Human Services. The members of the board
6 shall consist of one general practice physician, one physician engaged in
7 the practice of ophthalmology, one physician engaged in the practice of
8 orthopedic surgery, one physician engaged in the practice of neurological
9 medicine and surgery, one optometrist, and one psychiatrist. Each member
10 of the board shall be licensed to practice his or her profession pursuant
11 to the Uniform Credentialing Act.

12 (2) Beginning on the effective date of this act, the board shall
13 consist of twelve members. The members shall be the six health care
14 providers as set forth in subsection (1) of this section, plus the
15 following six members appointed by the Governor: One person from a public
16 or private health organization; one person from a disability advisory or
17 planning group within Nebraska; one person from a service provider for
18 individuals with brain injuries; an individual with a brain injury; a
19 family member of an individual with a brain injury; and one person from
20 the general public. The Director of Public Health of the Department of
21 Health and Human Services or his or her designee and the Director of
22 Motor Vehicles or his or her designee shall serve as ex officio members.

23 (3) Of the initial members of the board described under subsection
24 (1) of this section, two shall be appointed for four years, two shall be
25 appointed for three years, and two shall be appointed for two years.
26 Thereafter, each member shall be appointed for a term of four years and
27 until a successor is appointed and qualified.

28 (4) Of the initial members of the board described under subsection
29 (2) of this section, two shall be appointed for four years, two shall be
30 appointed for three years, and two shall be appointed for two years.
31 Thereafter, each member shall be appointed for a term of four years and

1 until a successor is appointed and qualified.

2 (5) If a vacancy occurs for any reason other than the expiration of
3 a term, the Director of Motor Vehicles may appoint a person licensed in
4 the same type of professional practice as the member being replaced to
5 serve out the unexpired term. Members of the board shall be reimbursed
6 for their actual and necessary expenses as provided in sections 81-1174
7 to 81-1177.

8 (6) The board shall meet as necessary at the call of the director
9 but shall not meet more than once each calendar quarter. At the initial
10 meeting of the board following completion of the initial appointments,
11 the board shall select from among its members a chairperson and shall
12 designate any other officers or committees as it deems necessary. The
13 board may select officers and committees annually or as necessary to fill
14 vacancies and to carry out duties of the board.

15 Sec. 6. Section 60-4,118.03, Reissue Revised Statutes of Nebraska,
16 is amended to read:

17 60-4,118.03 (1)(a) Whenever the director requests the advice of the
18 Health Advisory, Safety, and Brain Injury Trust Board concerning the
19 physical or mental ability of an applicant for or holder of an operator's
20 license to operate a motor vehicle as provided in sections 60-4,114 and
21 60-4,118, the board may formulate its advice from records and reports or
22 may cause an examination and report to be made by one or more members of
23 the board or any qualified person designated by the board. The applicant
24 or licensee may cause a written report to be forwarded to the board by a
25 physician of his or her choice. The director shall give due consideration
26 to any such report.

27 (b) Reports received or made by the board or any of its members for
28 the purpose of assisting the director in determining whether a person is
29 qualified to be licensed shall be for the confidential use of the board,
30 the director, and any designees of the director and may not be divulged
31 to any person other than the applicant or licensee or used in evidence in

1 any legal proceeding, except that a report may be admitted in an appeal
2 of an order of the director based on the report. Any person aggrieved by
3 a decision of the director made after consideration of advice given by
4 the board may appeal the decision as provided in section 60-4,105.

5 (c) No member of the board and no person examining any applicant or
6 licensee shall be liable in tort or otherwise for any opinion,
7 recommendation, or report presented to the board or the director if such
8 action was taken in good faith and without malice.

9 (2) The Health Advisory, Safety, and Brain Injury Trust Board shall
10 administer the Motorcycle Safety and Brain Injury Trust Fund pursuant to
11 section 11 of this act.

12 Sec. 7. Section 60-4,128, Reissue Revised Statutes of Nebraska, is
13 amended to read:

14 60-4,128 Any person violating the provisions of section 60-4,127
15 shall be guilty of a traffic infraction and shall upon conviction thereof
16 be fined not less than fifty ten dollars nor more than one hundred fifty
17 dollars. In addition, a person operating a motorcycle without a Class M
18 license may be required to complete the basic motorcycle safety course as
19 provided in the Motorcycle Safety Education Act.

20 Sec. 8. Section 60-4,146, Revised Statutes Cumulative Supplement,
21 2014, is amended to read:

22 60-4,146 (1) In addition to certifying himself or herself under this
23 section, an applicant shall also certify himself or herself under section
24 60-4,144.01.

25 (2) Upon making application pursuant to section 60-4,144, any
26 applicant who operates or expects to operate a commercial motor vehicle
27 in interstate or foreign commerce and who is not subject to 49 C.F.R.
28 part 391 shall certify that he or she is not subject to 49 C.F.R. part
29 391. Any applicant making certification pursuant to this subsection shall
30 meet the physical and vision requirements established in section 60-4,118
31 and shall be subject to the provisions of such section relating to the

1 Health Advisory, Safety, and Brain Injury Trust Board.

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

7 (4) Upon making application for a CLP-commercial learner's permit or
8 commercial driver's license, any applicant who operates or expects to
9 operate a commercial motor vehicle solely in intrastate commerce and who
10 is not subject to 49 C.F.R. part 391 adopted pursuant to section 75-363
11 shall certify that he or she is not subject to 49 C.F.R. part 391. Any
12 applicant making certification pursuant to this subsection shall meet the
13 physical and vision requirements established in section 60-4,118 and
14 shall be subject to the provisions of such section relating to the Health
15 Advisory, Safety, and Brain Injury Trust Board.

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

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

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

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

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

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

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

28 Please explain:

29 (b) Do you experience any condition which affects your ability to
30 operate a motor vehicle? (e.g. due to loss of, or impairment of, foot,
31 leg, hand, arm; neurological or neuromuscular disease, etc.) ... yes ...

1 no

2 Please explain:

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

5 Please explain, including how the above affects your ability to
6 drive:

7 Sec. 9. Section 60-6,279, Reissue Revised Statutes of Nebraska, is
8 amended to read:

9 60-6,279 (1) A person shall not operate a motorcycle or moped on
10 any highway in this state unless such person is wearing eye protection.

11 (2) No person under the age of eight years shall be a passenger on a
12 motorcycle or moped on any highway in this state.

13 (3) Except as otherwise provided in subsection (4) of this section,
14 a A person shall not operate or be a passenger on a motorcycle or moped
15 on any highway in this state unless such person is wearing a protective
16 helmet of the type and design manufactured for use by operators of such
17 vehicles and unless such helmet is secured properly on his or her head
18 with a chin strap while the vehicle is in motion. All such protective
19 helmets shall be designed to reduce injuries to the user resulting from
20 head impacts and shall be designed to protect the user by remaining on
21 the user's head, deflecting blows, resisting penetration, and spreading
22 the force of impact. Each such helmet shall consist of lining, padding,
23 and chin strap and shall meet or exceed the standards established in the
24 United States Department of Transportation's Federal Motor Vehicle Safety
25 Standard No. 218, 49 C.F.R. 571.218, for motorcycle helmets.

26 (4) A person who is at least twenty-one years of age is exempt from
27 subsection (3) of this section.

28 (5) For purposes of this section, eye protection means glasses that
29 cover the orbital region of a person's face, a protective face shield
30 attached to a protective helmet, goggles, or a windshield on the
31 motorcycle or moped that protects the operator's and passenger's

1 horizontal line of vision in all operating positions.

2 Sec. 10. (1) The Motorcycle Safety and Brain Injury Trust Fund is
3 created. The fund shall be administered and awards from the fund
4 determined by the Health Advisory, Safety, and Brain Injury Trust Board
5 with additional fiscal oversight provided by the Director of Motor
6 Vehicles. The fund shall consist of fees credited to it under section
7 60-3,153. Any money in the fund available for investment shall be
8 invested by the state investment officer pursuant to the Nebraska Capital
9 Expansion Act and the Nebraska State Funds Investment Act.

10 (2) The fund shall be used for expenses relating to meeting the
11 needs of individuals with a brain injury in Nebraska, motorcycle safety
12 awareness and education programs, and providing for expenses of the
13 Health Advisory, Safety, and Brain Injury Trust Board. No more than two
14 and one-half percent of the fund shall be used for motorcycle safety
15 awareness and education programs. No more than ten percent of the fund
16 shall be used for administration of the fund.

17 (3)(a) A brain injury services program shall be created within sixty
18 days after the effective date of this act and shall be administered by a
19 program administrator under the direction of the Health Advisory, Safety,
20 and Brain Injury Trust Board. The Department of Motor Vehicles shall
21 provide administrative support to the board to aid in administering the
22 program.

23 (b) The purpose of the brain injury services program is to provide
24 services, service funding, or other support for individuals with a brain
25 injury who are not eligible for the Traumatic Brain Injury (TBI) Waiver
26 program with the Department of Health and Human Services or who do not
27 otherwise meet the income requirements of the program. Such services,
28 service funding, or other support shall be available based upon funds
29 appropriated for the program.

30 (4)(a) Application for services under the brain injury services
31 program shall use the same application as used for the Traumatic Brain

1 Injury (TBI) Waiver program used by the Department of Health and Human
2 Services. In order to apply for the brain injury services program, the
3 applicant shall authorize the department to provide the applicant's
4 Traumatic Brain Injury (TBI) Waiver application materials to the brain
5 injury services program. The application materials provided shall
6 include, but not be limited to, the waiver application and any denial
7 letter, financial assessment, and functional assessment regarding the
8 person.

9 (b) If a functional assessment for the Traumatic Brain Injury (TBI)
10 Waiver program has not been completed due to an individual's financial
11 ineligibility for the waiver, the brain injury services program may
12 provide for another functional assessment to determine the individual's
13 needs. The brain injury services program shall reimburse the Department
14 of Health and Human Services for the assessment.

15 (5) The brain injury services program may utilize resource
16 facilitators to facilitate brain injury services. The resource
17 facilitator shall be available to provide ongoing support for persons
18 with a brain injury in coping with the issues of living with a brain
19 injury and in assisting such persons in transitioning back to employment
20 and living in the community. The resource facilitator is intended to
21 provide a linkage to existing services and increase the capacity of the
22 state's providers of services to individuals with brain injury by:

23 (a) Providing brain injury specific information, support, and
24 resources;

25 (b) Enhancing the usage of support commonly available to an
26 individual with a brain injury from the community, from family, and from
27 personal contacts and linking such individuals to appropriate services
28 and community resources; and

29 (c) Accessing, securing, and maximizing private and public funding
30 available to support an individual with a brain injury.

31 (6) The Health Advisory, Safety, and Brain Injury Trust Board shall

1 report annually on the status of the Motorcycle Safety and Brain Injury
2 Trust Fund and the brain injury services program to the Governor and
3 Legislature. The report to the Legislature shall be made electronically.

4 Sec. 11. Original sections 60-3,153, 60-4,105, 60-4,118,
5 60-4,118.02, 60-4,118.03, 60-4,128, and 60-6,279, Reissue Revised
6 Statutes of Nebraska, section 60-4,146, Revised Statutes Cumulative
7 Supplement, 2014, and section 60-4,114, Revised Statutes Supplement,
8 2015, are repealed.

9 Sec. 12. The following section is outright repealed: Section
10 60-2132.01, Revised Statutes Cumulative Supplement, 2014.