

LEGISLATIVE BILL 95

Approved by the Governor February 26, 2015

Introduced by Smith, 14.

A BILL FOR AN ACT relating to bicycles; to amend sections 28-109, 39-101, 60-122, 60-338, 60-611, 60-637, 60-638, and 60-640, Reissue Revised Statutes of Nebraska, and sections 60-123, 60-339, 60-471, 60-4,182, and 60-501, Revised Statutes Cumulative Supplement, 2014; to redefine bicycle to include certain electric-powered bicycles; to exclude bicycles from certain definitions of motor vehicle; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 28-109, Reissue Revised Statutes of Nebraska, is amended to read:

28-109 For purposes of the Nebraska Criminal Code, unless the context otherwise requires:

(1) Act shall mean a bodily movement, and includes words and possession of property;

(2) Aid or assist shall mean knowingly to give or lend money or credit to be used for, or to make possible or available, or to further activity thus aided or assisted;

(3) Benefit shall mean any gain or advantage to the beneficiary including any gain or advantage to another person pursuant to the desire or consent of the beneficiary;

(4) Bodily injury shall mean physical pain, illness, or any impairment of physical condition;

(5) Conduct shall mean an action or omission and its accompanying state of mind, or, where relevant, a series of acts and omissions;

(6) Deadly physical force shall mean force, the intended, natural, and probable consequence of which is to produce death, or which does, in fact, produce death;

(7) Deadly weapon shall mean any firearm, knife, bludgeon, or other device, instrument, material, or substance, whether animate or inanimate, which in the manner it is used or intended to be used is capable of producing death or serious bodily injury;

(8) Deface shall mean to alter the appearance of something by removing, distorting, adding to, or covering all or a part of the thing;

(9) Dwelling shall mean a building or other thing which is used, intended to be used, or usually used by a person for habitation;

(10) Government shall mean the United States, any state, county, municipality, or other political unit, any branch, department, agency, or subdivision of any of the foregoing, and any corporation or other entity established by law to carry out any governmental function;

(11) Governmental function shall mean any activity which a public servant is legally authorized to undertake on behalf of government;

(12) Motor vehicle shall mean every self-propelled land vehicle, not operated upon rails, except self-propelled chairs used by persons who are disabled, and electric personal assistive mobility devices as defined in section 60-618.02, and bicycles as defined in section 60-611;

(13) Omission shall mean a failure to perform an act as to which a duty of performance is imposed by law;

(14) Peace officer shall mean any officer or employee of the state or a political subdivision authorized by law to make arrests, and shall include members of the National Guard on active service by direction of the Governor during periods of emergency or civil disorder;

(15) Pecuniary benefit shall mean benefit in the form of money, property, commercial interest, or anything else, the primary significance of which is economic gain;

(16) Person shall mean any natural person and where relevant a corporation or an unincorporated association;

(17) Public place shall mean a place to which the public or a substantial number of the public has access, and includes but is not limited to highways, transportation facilities, schools, places of amusement, parks, playgrounds, and the common areas of public and private buildings and facilities;

(18) Public servant shall mean any officer or employee of government, whether elected or appointed, and any person participating as an advisor, consultant, process server, or otherwise in performing a governmental function, but the term does not include witnesses;

(19) Recklessly shall mean acting with respect to a material element of an offense when any person disregards a substantial and unjustifiable risk that the material element exists or will result from his or her conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to the actor, its disregard involves a gross deviation from the standard of conduct that a law-abiding person would observe in the actor's situation;

(20) Serious bodily injury shall mean bodily injury which involves a

substantial risk of death, or which involves substantial risk of serious permanent disfigurement, or protracted loss or impairment of the function of any part or organ of the body;

(21) Tamper shall mean to interfere with something improperly or to make unwarranted alterations in its condition;

(22) Thing of value shall mean real property, tangible and intangible personal property, contract rights, choses in action, services, and any rights of use or enjoyment connected therewith; and

(23) Voluntary act shall mean an act performed as a result of effort or determination, and includes the possession of property if the actor was aware of his or her physical possession or control thereof for a sufficient period to have been able to terminate it.

Sec. 2. Section 39-101, Reissue Revised Statutes of Nebraska, is amended to read:

39-101 For purposes of Chapter 39, unless the context otherwise requires:

(1) Alley means a highway intended to provide access to the rear or side of lots or buildings and not intended for the purpose of through vehicular traffic;

(2) Divided highway means a highway with separated roadways for traffic in opposite directions;

(3) Highway means the entire width between the boundary limits of any street, road, avenue, boulevard, or way which is publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel;

(4) Intersection means the area embraced within the prolongation or connection of the lateral curb lines or, if there are no lateral curb lines, the lateral boundary lines of the roadways of two or more highways which join one another at, or approximately at, right angles or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict. When a highway includes two roadways thirty feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. In the event such intersecting highway also includes two roadways thirty feet or more apart, then every crossing of two roadways of such highways shall be regarded as a separate intersection. The junction of an alley with a highway shall not constitute an intersection;

(5) Mail means to deposit in the United States mail properly addressed and with postage prepaid;

(6) Maintenance means the act, operation, or continuous process of repair, reconstruction, or preservation of the whole or any part of any highway, including surface, shoulders, roadsides, traffic control devices, structures, waterways, and drainage facilities, for the purpose of keeping it at or near or improving upon its original standard of usefulness and safety;

(7) Motor vehicle means every self-propelled land vehicle, not operated upon rails, except mopeds as defined in section 60-637, self-propelled chairs used by persons who are disabled, ~~and~~ electric personal assistive mobility devices as defined in section 60-618.02, and bicycles as defined in section 60-611;

(8) Park or parking means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading merchandise or passengers;

(9) Pedestrian means any person afoot;

(10) Right-of-way means the right of one vehicle or pedestrian to proceed in a lawful manner in preference to another vehicle or pedestrian approaching under such circumstances of direction, speed, and proximity as to give rise to danger of collision unless one grants precedence to the other;

(11) Roadway means that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. If a highway includes two or more separate roadways, the term roadway refers to any such roadway separately but not to all such roadways collectively;

(12) Shoulder means that part of the highway contiguous to the roadway and designed for the accommodation of stopped vehicles, for emergency use, and for lateral support of the base and surface courses of the roadway;

(13) Sidewalk means that portion of a highway between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, intended for use by pedestrians;

(14) Traffic means pedestrians, ridden or herded animals, and vehicles and other conveyances either singly or together while using any highway for purposes of travel; and

(15) Vehicle means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices moved solely by human power, devices used exclusively upon stationary rails or tracks, ~~and~~ electric personal assistive mobility devices as defined in section 60-618.02, and bicycles as defined in section 60-611.

Sec. 3. Section 60-122, Reissue Revised Statutes of Nebraska, is amended to read:

60-122 Moped means a device ~~bicycle~~ with fully operative pedals for propulsion by human power, an automatic transmission, and a motor with a cylinder capacity not exceeding fifty cubic centimeters which produces no more than two brake horsepower and is capable of propelling the device ~~bicycle~~ at a maximum design speed of no more than thirty miles per hour on level ground.

Sec. 4. Section 60-123, Revised Statutes Cumulative Supplement, 2014, is amended to read:

60-123 Motor vehicle means any vehicle propelled by any power other than

muscular power. Motor vehicle does not include (1) mopeds, (2) farm tractors, (3) self-propelled equipment designed and used exclusively to carry and apply fertilizer, chemicals, or related products to agricultural soil and crops, agricultural floater-spreader implements, and other implements of husbandry designed for and used primarily for tilling the soil and harvesting crops or feeding livestock, (4) power unit hay grinders or a combination which includes a power unit and a hay grinder when operated without cargo, (5) vehicles which run only on rails or tracks, (6) off-road designed vehicles not authorized by law for use on a highway, including, but not limited to, golf car vehicles, go-carts, riding lawnmowers, garden tractors, all-terrain vehicles, utility-type vehicles, snowmobiles registered or exempt from registration under sections 60-3,207 to 60-3,219, and minibikes, (7) road and general-purpose construction and maintenance machinery not designed or used primarily for the transportation of persons or property, including, but not limited to, ditchdigging apparatus, asphalt spreaders, bucket loaders, leveling graders, earthmoving carryalls, power shovels, earthmoving equipment, and crawler tractors, (8) self-propelled chairs used by persons who are disabled, ~~and~~ (9) electric personal assistive mobility devices, and (10) bicycles as defined in section 60-611.

Sec. 5. Section 60-338, Reissue Revised Statutes of Nebraska, is amended to read:

60-338 Moped means a device bicycle with fully operative pedals for propulsion by human power, an automatic transmission, and a motor with a cylinder capacity not exceeding fifty cubic centimeters which produces no more than two brake horsepower and is capable of propelling the device bicycle at a maximum design speed of no more than thirty miles per hour on level ground.

Sec. 6. Section 60-339, Revised Statutes Cumulative Supplement, 2014, is amended to read:

60-339 Motor vehicle means any vehicle propelled by any power other than muscular power. Motor vehicle does not include (1) mopeds, (2) farm tractors, (3) self-propelled equipment designed and used exclusively to carry and apply fertilizer, chemicals, or related products to agricultural soil and crops, agricultural floater-spreader implements, and other implements of husbandry designed for and used primarily for tilling the soil and harvesting crops or feeding livestock, (4) power unit hay grinders or a combination which includes a power unit and a hay grinder when operated without cargo, (5) vehicles which run only on rails or tracks, (6) off-road designed vehicles not authorized by law for use on a highway, including, but not limited to, golf car vehicles, go-carts, riding lawnmowers, garden tractors, all-terrain vehicles, utility-type vehicles, snowmobiles registered or exempt from registration under sections 60-3,207 to 60-3,219, and minibikes, (7) road and general-purpose construction and maintenance machinery not designed or used primarily for the transportation of persons or property, including, but not limited to, ditchdigging apparatus, asphalt spreaders, bucket loaders, leveling graders, earthmoving carryalls, power shovels, earthmoving equipment, and crawler tractors, (8) self-propelled chairs used by persons who are disabled, ~~and~~ (9) electric personal assistive mobility devices, and (10) bicycles as defined in section 60-611.

Sec. 7. Section 60-471, Revised Statutes Cumulative Supplement, 2014, is amended to read:

60-471 Motor vehicle means all vehicles propelled by any power other than muscular power. Motor vehicle does not include (1) bicycles as defined in section 60-611, (2) self-propelled chairs used by persons who are disabled, (3) ~~2) farm tractors,~~ (4) ~~3) farm tractors used occasionally outside general farm usage,~~ (5) ~~4) road rollers,~~ (6) ~~5) vehicles which run only on rails or tracks,~~ (7) ~~6) electric personal assistive mobility devices as defined in section 60-618.02,~~ and (8) ~~7) off-road designed vehicles not authorized by law for use on a highway, including, but not limited to, go-carts, riding lawn mowers, garden tractors, all-terrain vehicles and utility-type vehicles as defined in section 60-6,355, minibikes as defined in section 60-636, and snowmobiles as defined in section 60-663.~~

Sec. 8. Section 60-4,182, Revised Statutes Cumulative Supplement, 2014, is amended to read:

60-4,182 In order to prevent and eliminate successive traffic violations, there is hereby provided a point system dealing with traffic violations as disclosed by the files of the director. The following point system shall be adopted:

- (1) Conviction of motor vehicle homicide - 12 points;
- (2) Third offense drunken driving in violation of any city or village ordinance or of section 60-6,196, as disclosed by the records of the director, regardless of whether the trial court found the same to be a third offense - 12 points;
- (3) Failure to stop and render aid as required under section 60-697 in the event of involvement in a motor vehicle accident resulting in the death or personal injury of another - 6 points;
- (4) Failure to stop and report as required under section 60-696 or any city or village ordinance in the event of a motor vehicle accident resulting in property damage - 6 points;
- (5) Driving a motor vehicle while under the influence of alcoholic liquor or any drug or when such person has a concentration of eight-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or per two hundred ten liters of his or her breath in violation of any city or village ordinance or of section 60-6,196 - 6 points;
- (6) Willful reckless driving in violation of any city or village ordinance or of section 60-6,214 or 60-6,217 - 6 points;

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

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

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

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

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

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

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

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

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

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

(13) Using a handheld wireless communication device in violation of section 60-6,179.01 or texting while driving in violation of subsection (1) or (3) of section 60-6,179.02 - 3 points;

(14) Using a handheld mobile telephone in violation of subsection (2) or (4) of section 60-6,179.02 - 3 points;

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

(16) A violation of subsection (1) of section 60-6,175 - 3 points; and

(17) 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 60-497.01 and 60-497.02 - 1 point.

Subdivision (17) of this section does not include violations involving an occupant protection system pursuant to section 60-6,270, parking 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, motorcycle or moped protective helmet violations, or overloading of trucks.

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

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

The point system shall not apply to persons convicted of traffic violations committed while operating a bicycle as defined in section 60-611 or an electric personal assistive mobility device as defined in section 60-618.02.

Sec. 9. Section 60-501, Revised Statutes Cumulative Supplement, 2014, is amended to read:

60-501 For purposes of the Motor Vehicle Safety Responsibility Act, unless the context otherwise requires:

(1) Department means Department of Motor Vehicles;

(2) Golf car vehicle means a vehicle that has at least four wheels, has a maximum level ground speed of less than twenty miles per hour, has a maximum payload capacity of one thousand two hundred pounds, has a maximum gross vehicle weight of two thousand five hundred pounds, has a maximum passenger capacity of not more than four persons, and is designed and manufactured for operation on a golf course for sporting and recreational purposes;

(3) Judgment means any judgment which shall have become final by the expiration of the time within which an appeal might have been perfected without being appealed, or by final affirmation on appeal, rendered by a court of competent jurisdiction of any state or of the United States, (a) upon a cause of action arising out of the ownership, maintenance, or use of any motor vehicle for damages, including damages for care and loss of services, because of bodily injury to or death of any person or for damages because of injury to or destruction of property, including the loss of use thereof, or (b) upon a cause of action on an agreement of settlement for such damages;

(4) License means any license issued to any person under the laws of this state pertaining to operation of a motor vehicle within this state;

(5) Low-speed vehicle means a four-wheeled motor vehicle (a) whose speed attainable in one mile is more than twenty miles per hour and not more than twenty-five miles per hour on a paved, level surface, (b) whose gross vehicle weight rating is less than three thousand pounds, and (c) that complies with 49 C.F.R. part 571, as such part existed on January 1, 2011;

(6) Minitruck means a foreign-manufactured import vehicle or domestic-manufactured vehicle which (a) is powered by an internal combustion engine with a piston or rotor displacement of one thousand five hundred cubic centimeters or less, (b) is sixty-seven inches or less in width, (c) has a dry weight of four thousand two hundred pounds or less, (d) travels on four or more tires, (e) has a top speed of approximately fifty-five miles per hour, (f) is equipped

with a bed or compartment for hauling, (g) has an enclosed passenger cab, (h) is equipped with headlights, taillights, turnsignals, windshield wipers, a rearview mirror, and an occupant protection system, and (i) has a four-speed, five-speed, or automatic transmission;

(7) Motor vehicle means any self-propelled vehicle which is designed for use upon a highway, including trailers designed for use with such vehicles, minitrucks, and low-speed vehicles. Motor vehicle does not include (a) mopeds as defined in section 60-637, (b) traction engines, (c) road rollers, (d) farm tractors, (e) tractor cranes, (f) power shovels, (g) well drillers, (h) every vehicle which is propelled by electric power obtained from overhead wires but not operated upon rails, (i) electric personal assistive mobility devices as defined in section 60-618.02, and (j) off-road designed vehicles, including, but not limited to, golf car vehicles, go-carts, riding lawnmowers, garden tractors, all-terrain vehicles and utility-type vehicles as defined in section 60-6,355, minibikes as defined in section 60-636, and snowmobiles as defined in section 60-663, and (k) bicycles as defined in section 60-611;

(8) Nonresident means every person who is not a resident of this state;

(9) Nonresident's operating privilege means the privilege conferred upon a nonresident by the laws of this state pertaining to the operation by him or her of a motor vehicle or the use of a motor vehicle owned by him or her in this state;

(10) Operator means every person who is in actual physical control of a motor vehicle;

(11) Owner means a person who holds the legal title of a motor vehicle, or in the event (a) a motor vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee or (b) a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purposes of the act;

(12) Person means every natural person, firm, partnership, limited liability company, association, or corporation;

(13) Proof of financial responsibility means evidence of ability to respond in damages for liability, on account of accidents occurring subsequent to the effective date of such proof, arising out of the ownership, maintenance, or use of a motor vehicle, (a) in the amount of twenty-five thousand dollars because of bodily injury to or death of one person in any one accident, (b) subject to such limit for one person, in the amount of fifty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and (c) in the amount of twenty-five thousand dollars because of injury to or destruction of property of others in any one accident;

(14) Registration means registration certificate or certificates and registration plates issued under the laws of this state pertaining to the registration of motor vehicles;

(15) State means any state, territory, or possession of the United States, the District of Columbia, or any province of the Dominion of Canada; and

(16) The forfeiture of bail, not vacated, or of collateral deposited to secure an appearance for trial shall be regarded as equivalent to conviction of the offense charged.

Sec. 10. Section 60-611, Reissue Revised Statutes of Nebraska, is amended to read:

60-611 Bicycle shall mean (1) every device propelled solely by human power, upon which any person may ride, and having two tandem wheels either of which is more than fourteen inches in diameter or (2) a device with two or three wheels, fully operative pedals for propulsion by human power, and an electric motor with a capacity not exceeding seven hundred fifty watts which produces no more than one brake horsepower and is capable of propelling the bicycle at a maximum design speed of no more than twenty miles per hour on level ground.

Sec. 11. Section 60-637, Reissue Revised Statutes of Nebraska, is amended to read:

60-637 Moped shall mean a device bicycle with fully operative pedals for propulsion by human power, an automatic transmission, and a motor with a cylinder capacity not exceeding fifty cubic centimeters which produces no more than two brake horsepower and is capable of propelling the device bicycle at a maximum design speed of no more than thirty miles per hour on level ground.

Sec. 12. Section 60-638, Reissue Revised Statutes of Nebraska, is amended to read:

60-638 Motor vehicle shall mean every self-propelled land vehicle, not operated upon rails, except bicycles, mopeds, self-propelled chairs used by persons who are disabled, and electric personal assistive mobility devices.

Sec. 13. Section 60-640, Reissue Revised Statutes of Nebraska, is amended to read:

60-640 Motor-driven cycle shall mean every motorcycle, including every motor scooter, with a motor which produces not to exceed five brake horsepower as measured at the drive shaft, mopeds, and every bicycle with motor attached except for a bicycle as described in subdivision (2) of section 60-611. Motor-driven cycle shall not include an electric personal assistive mobility device.

Sec. 14. Original sections 28-109, 39-101, 60-122, 60-338, 60-611, 60-637, 60-638, and 60-640, Reissue Revised Statutes of Nebraska, and sections 60-123, 60-339, 60-471, 60-4,182, and 60-501, Revised Statutes Cumulative Supplement, 2014, are repealed.