

LEGISLATIVE BILL 1211

Approved by the Governor April 15, 1996

Introduced by Robak, 22; Abboud, 12; Hartnett, 45; Lynch, 13

AN ACT relating to cities and villages; to amend sections 18-1738.02, 18-1741.03, and 18-1741.04, Revised Statutes Supplement, 1994, and sections 18-1736 to 18-1738.01, 18-1739 to 18-1741.01, and 33-139.01, Revised Statutes Supplement, 1995; to change provisions relating to the issuance of parking permits for handicapped or disabled persons; and to repeal the original sections.

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

Section 1. Section 18-1736, Revised Statutes Supplement, 1995, is amended to read:

18-1736. (1) A city or village may designate parking spaces for the exclusive use of (a) handicapped or disabled persons whose motor vehicles display the distinguishing license plates issued to handicapped or disabled persons pursuant to section 60-311.14, (b) handicapped or disabled persons whose motor vehicles display a distinguishing license plate issued to a handicapped or disabled person by another state, (c) such other handicapped or disabled persons or temporarily handicapped or disabled persons, as certified by the city or village, whose motor vehicles display the permit specified in section 18-1739, and (d) such other motor vehicles, as certified by the city or village, which display the permit specified in section 18-1739. All such permits shall be displayed by attaching the permit to the motor vehicle's rearview mirror so as to be clearly visible through the front windshield. When there is no rearview mirror, the permit shall be displayed on the dashboard.

(2) If a city or village so designates a parking space, it shall be indicated by posting aboveground and immediately adjacent to and visible from each space a sign as described in section 18-1737. In addition to such sign, the space may also be indicated by blue paint on the curb or edge of the paved portion of the street adjacent to the space.

Sec. 2. Section 18-1737, Revised Statutes Supplement, 1995, is amended to read:

18-1737. (1) Any city or village and any person in lawful possession of any offstreet parking facility may designate stalls or spaces in such facility owned or operated by the city or village or person for the exclusive use of handicapped or disabled persons whose motor vehicles display the distinguishing license plates issued to such individuals pursuant to section 60-311.14, such other handicapped or disabled persons or temporarily handicapped or disabled persons, as certified by the city or village, whose motor vehicles display the permit specified in section 18-1739, and such other motor vehicles, as certified by the city or village, which display such permit. Such designation shall be made by posting aboveground and immediately adjacent to and visible from each stall or space a sign which is in conformance with the Manual on Uniform Traffic Control Devices adopted pursuant to section 60-6.118.

(2) The owner or person in lawful possession of an offstreet parking facility, after notifying the police or sheriff's department, as the case may be, and any city or village providing onstreet parking or owning, operating, or providing an offstreet parking facility may cause the removal, from a stall or space designated exclusively for handicapped or disabled persons or temporarily handicapped or disabled persons or motor vehicles for the transportation of handicapped or disabled persons or temporarily handicapped or disabled persons, of any vehicle not displaying the proper permit or the distinguishing license plates specified in this section if there is posted aboveground and immediately adjacent to and visible from such stall or space a sign which clearly and conspicuously states the area so designated as a tow-in zone.

(3) A person who parks a vehicle in any onstreet parking space which has been designated exclusively for handicapped or disabled persons or temporarily handicapped or disabled persons or motor vehicles for the transportation of handicapped or disabled persons or temporarily handicapped or disabled persons, or in any so exclusively designated parking space in any offstreet parking facility, without properly displaying the proper permit or when the handicapped or disabled person to whom or for whom, as the case may be, the license plate or permit is issued will not enter or exit the vehicle while it is parked in the designated space shall be guilty of a handicapped

parking infraction as defined in section 18-1741.01 and shall be subject to the penalties and procedures set forth in sections 18-1741.01 to 18-1741.07. The display on a motor vehicle of a distinguishing license plate or permit issued to a handicapped or disabled person by and under the duly constituted authority of another state shall constitute a full and complete defense in any action for a handicapped parking infraction as defined in section 18-1741.01. If the identity of the person who parked the vehicle in violation of this section cannot be readily determined, the owner or person in whose name the vehicle is registered shall be held prima facie responsible for such violation and shall be guilty and subject to the penalties and procedures described in this section. In the case of a privately owned offstreet parking facility, a city or village shall not require the owner or person in lawful possession of such facility to inform the city or village of a violation of this section prior to the city or village issuing the violator a handicapped parking infraction citation.

Sec. 3. Section 18-1738, Revised Statutes Supplement, 1995, is amended to read:

18-1738. (1) The clerk of any city of the primary class, first class, or second class or village shall, or the county clerk or designated county official pursuant to section 23-186 may, take an application from a handicapped or disabled person or temporarily handicapped or disabled person or his or her parent, legal guardian, or foster parent for a permit which will entitle the holder thereof or a person driving a motor vehicle for the purpose of transporting such holder to park in those spaces provided for by sections 18-1736 to 18-1741 when the holder of the permit will enter or exit the motor vehicle while it is parked in such spaces. For purposes of this section, the handicapped or disabled person or temporarily handicapped or disabled person shall be considered the holder of the permit.

(2) For the purpose of sections 18-1736 to 18-1741, handicapped or disabled person shall mean any individual with a severe visual or physical impairment which limits personal mobility and results in an inability to travel unassisted more than two hundred feet without the use of a wheelchair, crutch, walker, or prosthetic, orthotic, or other assistive device, any individual whose personal mobility is limited as a result of respiratory problems, any individual who has a cardiac condition to the extent that his or her functional limitations are classified in severity as being Class III or Class IV, according to standards set by the American Heart Association, and any individual who has permanently lost all or substantially all the use of one or more limbs. Temporarily handicapped or disabled person shall mean any handicapped or disabled person whose personal mobility is expected to be limited in such manner for no longer than one year.

(3) A person applying for a permit or for the renewal of a permit shall complete an application, shall provide proof of identity, and shall submit a completed medical form containing the statutory criteria for qualification and signed by a physician, physician assistant, or nurse practitioner certifying that the person who will be the holder meets the definition of handicapped or disabled person or temporarily handicapped or disabled person. In the case of a temporarily handicapped or disabled person, the certifying physician, physician assistant, or nurse practitioner shall indicate the estimated date of recovery or that the temporary handicap or disability will continue for a period of six months, whichever is less. A person may hold only one permit under this section and may hold either a permit under this section or a permit under section 18-1738.01, but not both. The Department of Motor Vehicles shall provide applications, and medical forms, ~~and permits~~ to the clerk or designated county official. The application form shall contain information listing the legal uses of the permit and that the permit is not transferable, is to be used by the party to whom issued or for the motor vehicle for which it is issued, is not to be altered or reproduced, and is to be used only when a handicapped or disabled person or a temporarily handicapped or disabled person will enter or exit the motor vehicle while it is parked in a designated parking space. It shall indicate that those convicted of handicapped parking infractions shall be subject to suspension of the permit for six months and possible fines. A copy of the completed application form shall be given to each applicant. Before issuing a permit is issued, the clerk or designated county official department shall enter all information required in the manner prescribed by section 18-1739. The clerk or designated county official shall submit to the department the name, address, and license number of all persons receiving applying for a permit pursuant to this section.

(4) The Department of Motor Vehicles, upon receipt from the clerk or designated county official of a completed application form and completed medical form from an applicant for a handicapped parking permit under this

section, shall verify that the applicant qualifies for such permit and, if so, shall issue the same by mailing the permit to the applicant at the address provided on the application. Upon issuing such permit, the department shall mail a copy of the permit holder's completed application form and completed medical form with the permit number to the clerk or designated county official who originally accepted the application.

Sec. 4. Section 18-1738.01, Revised Statutes Supplement, 1995, is amended to read:

18-1738.01. The clerk of any city of the primary class, first class, or second class or village shall, or the county clerk or designated county official pursuant to section 23-186 may, take an application from any person for a motor vehicle permit which will entitle the holder thereof or a person driving the motor vehicle for the purpose of transporting handicapped or disabled persons or temporarily handicapped or disabled persons to park in those spaces provided for by sections 18-1736 to 18-1741 if the motor vehicle is used primarily for the transportation of handicapped or disabled persons or temporarily handicapped or disabled persons. Such parking permit shall be used only when the motor vehicle for which it was issued is being used for the transportation of a handicapped or disabled person or temporarily handicapped or disabled person and such person will enter or exit the motor vehicle while it is parked in such designated spaces. A person applying for a permit or for the renewal of a permit pursuant to this section shall apply for a permit for each motor vehicle used for the transportation of handicapped or disabled persons or temporarily handicapped or disabled persons, shall complete such forms as are provided to the clerk or designated county official by the Department of Motor Vehicles, and shall demonstrate to the clerk or designated county official that each such motor vehicle is used primarily for the transportation of handicapped or disabled persons or temporarily handicapped or disabled persons. The application form shall contain information listing the legal uses of the permit and that the permit is not transferable, is to be used by the party to whom issued or for the motor vehicle for which it is issued, is not to be altered or reproduced, and is to be used only when a handicapped or disabled person or a temporarily handicapped or disabled person will enter or exit the motor vehicle while it is parked in a designated parking space. It shall indicate that those convicted of handicapped parking infractions shall be subject to suspension of the permit for six months and possible fines. A copy of the completed application form shall be given to each applicant. No more than one such permit shall be issued for each motor vehicle. A person may hold either a permit under this section or a permit under section 18-1738, but not both. ~~The clerk or designated county official shall issue a permit, as provided to the clerk or designated county official by the department; to an approved applicant. Before issuing such permit, the clerk or designated county official shall~~ The department, upon receipt from the clerk or designated county official of a completed application form with necessary accompanying certifications, shall verify that the applicant qualifies for a permit under this section and, if so, shall issue the same by mailing the permit to the applicant at the address provided for the applicant on the application. Before such permit is issued, the department shall enter all information required in the manner prescribed by section 18-1739. The clerk or designated county official shall submit to the department the name, address, and license number of all persons receiving applying for a permit pursuant to this section.

Sec. 5. Section 18-1738.02, Revised Statutes Supplement, 1994, is amended to read:

18-1738.02. Any person applying for a permit pursuant to section 18-1738 or 18-1738.01 shall apply for such permit to the city clerk, village clerk, county clerk, or designated county official pursuant to section 23-186, of the city, village, or county within which the applying individual resides. If such person does not reside within a city or village and the county clerk or designated county official does not issue permits, the person shall make application to the city clerk or village clerk of the city or village located nearest to his or her place of residence or the county clerk or designated county official of any neighboring county who issues such permits. No city clerk, village clerk, county clerk, or designated county official shall ~~issue~~ accept the application for a permit pursuant to section 18-1738 or 18-1738.01 ~~to~~ of any person making application contrary to the provisions of this section.

Sec. 6. Section 18-1739, Revised Statutes Supplement, 1995, is amended to read:

18-1739. (1) The permit to be issued pursuant to section 18-1738 or 18-1738.01 shall be constructed of a durable plastic designed to resist normal wear or fading for the term of the permit's issuance and printed so as to

minimize the possibility of alteration following issuance. The permit shall be of a design, size, configuration, color, and construction and contain such information as specified in the rules and regulations adopted and promulgated by the United States Department of Transportation in the Uniform System for Handicapped Parking, 23 C.F.R. part 1235.

(2) In addition to the requirements of subsection (1) of this section, the permit shall show such identifying information with regard to the handicapped or disabled person or temporarily handicapped or disabled person to whom it is issued as is necessary to the enforcement of sections 18-1736 to 18-1741.07 as determined by the Department of Motor Vehicles.

(3) No permit shall be issued to any person or for any motor vehicle if any parking permit has been issued to such person or for such motor vehicle and such permit has been suspended pursuant to section 18-1741. At the expiration of such suspension, a permit may be renewed upon the payment of the permit fee.

(4) A duplicate permit may be provided without cost if the original permit is destroyed, lost, or stolen. Such duplicate permit shall be issued in the same manner as the original permit, except that a newly completed medical form need not be provided if a completed medical form submitted at the time of the most recent application for a permit or its renewal is on file with the clerk or designated county official. A duplicate permit and shall be valid for the remainder of the period for which the original permit was issued.

Sec. 7. Section 18-1740, Revised Statutes Supplement, 1995, is amended to read:

18-1740. (1) All permits authorized under sections 18-1736 to 18-1741 for handicapped or disabled parking prior to September 10, 1993, shall be issued for a period ending January 1 of the fourth year following the date of issuance. All permits authorized under such sections for handicapped or disabled parking after September 9, 1993, and before September 10, 1995, shall be issued for a period of three years. Upon the expiration of a permanent permit, it may be renewed pursuant to the provisions of this section and section 18-1738 or 18-1738.01. After September 9, 1995, all permanently issued permits authorized by sections 18-1736 to 18-1741.07 shall be issued for a period ending on September 30 of the third year following the date of issuance and shall expire on that date, except that an application for the renewal of a permit filed with the issuing city or village clerk or designated county official within thirty days of the date after its expiration shall be deemed to have been filed prior to the date of its expiration. The possession of an expired but otherwise valid handicapped parking permit within thirty days following the date of its expiration shall serve as a full and complete defense in any action for a handicapped parking infraction resulting from the absence of a handicapped parking permit arising during that thirty-day period.

(2) All permits authorized under sections 18-1736 to 18-1741 prior to September 10, 1995, for temporarily handicapped or disabled parking shall be issued for a period ending ninety days after the date of issuance but may be renewed for up to three additional ninety-day periods. All permits authorized under sections 18-1736 to 18-1741.07 after September 9, 1995, for temporarily handicapped or disabled parking shall be issued for a period ending not more than six months after the date of issuance but may be renewed for a one-time period not to exceed six months. For the renewal period, there shall be submitted an additional application with proof of a handicap or disability and the required permit fee.

(3) A permit fee of three dollars shall be charged for each permit, two dollars and fifty cents of which shall be retained by the clerk or designated county official who issues submits the permit and fifty cents one dollar of which shall be forwarded on a quarterly basis to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

Sec. 8. Section 18-1741, Revised Statutes Supplement, 1995, is amended to read:

18-1741. Permits issued under sections 18-1736 to 18-1741 shall not be transferable and shall be used only by the party to whom issued or for the motor vehicle for which issued and only for the purpose for which it is issued. No person shall alter or reproduce in any manner a permit issued pursuant to section 18-1738 or 18-1738.01. No person shall knowingly hold more than one permit or knowingly provide false information on an application for a permit issued pursuant to such sections. Any violation of this section shall be cause for suspension of such permit for a period of six months and such other punishment as may be provided by local ordinance. In addition, the trial court shall impose a fine of not more than two hundred fifty dollars which may be waived by the court if, at the time of sentencing, all handicapped parking permits issued to or in the possession of the offender are

returned to the court. At the expiration of such six-month period, a suspended permit may be renewed upon the payment of the permit fee.

Sec. 9. Section 18-1741.01, Revised Statutes Supplement, 1995, is amended to read:

18-1741.01. (1) For purposes of sections 18-1741.01 to 18-1741.07, handicapped parking infraction shall mean the violation of any statute or ordinance regulating ~~(1)~~ (a) the use of parking spaces designated for use by handicapped or disabled persons or ~~(2)~~ (b) the obstruction of any wheelchair ramps constructed or created in accordance and in conformity with the federal Americans with Disabilities Act of 1990.

(2) For any offense classified as a handicapped parking infraction, a handicapped parking citation may be issued by any peace officer or by any person designated by ordinance or resolution approved by a governing board of a county, city, or village to exercise the authority to issue a citation for any handicapped parking infraction. Such authorization shall be carried out in the manner specified in sections 18-1741.03 and 18-1741.04.

Sec. 10. Section 18-1741.03, Revised Statutes Supplement, 1994, is amended to read:

18-1741.03. To insure uniformity, the Supreme Court may prescribe the form of the handicapped parking citation to be used for handicapped parking infractions. The handicapped parking citation shall include a description of the handicapped parking infraction, the time and place at which the person cited is to appear, a warning that failure to appear in accordance with the command of the citation is a punishable offense, and such other matter as the Supreme Court deems appropriate. The handicapped parking citation shall provide space for an affidavit by a peace officer certifying that the recipient of the citation is the lawful possessor in his or her own right of a handicapped or disabled parking permit issued under the provisions of section 18-1738 or 18-1738.01 and that the peace officer has personally viewed the permit. The Supreme Court may provide that a copy of the handicapped parking citation constitutes the complaint filed in the trial court.

Sec. 11. Section 18-1741.04, Revised Statutes Supplement, 1994, is amended to read:

18-1741.04. When a handicapped parking citation is issued for a handicapped parking infraction, the person issuing the handicapped parking citation shall enter thereon all required information, including the name and address of the cited person or, if not known, the license number and description of the offending motor vehicle, the offense charged, and the time and place the person cited is to appear in court. Unless the person cited requests an earlier date, the time of appearance shall be at least three days after the issuance of the handicapped parking citation. One copy of the handicapped parking citation shall be delivered to the person cited or attached to the offending motor vehicle. At least twenty-four hours before the time set for the appearance of the cited person, either the prosecuting attorney or other person authorized by law to issue a complaint for the particular offense shall issue and file a complaint charging such person with a handicapped parking infraction or such person shall be released from the obligation to appear as specified. A person cited for a handicapped parking violation may waive his or her right to trial. For any handicapped parking citation issued for a handicapped parking infraction by reason of the failure of a vehicle to display a handicapped parking permit issued pursuant to section 18-1738 or 18-1738.01, the complaint shall be dismissed if, within seven business days after the date of issuance of the citation, the person cited files with the court the affidavit provided for in section 18-1741.03, signed by a peace officer certifying that the recipient is the lawful possessor in his or her own right of a handicapped parking permit issued under section 18-1738 or 18-1738.01 and that the peace officer has personally viewed the permit. The Supreme Court may prescribe uniform rules for such waivers. Anyone may use a credit card authorized by the court in which the person is cited as a means of payment of his or her fine and costs.

Sec. 12. Section 33-139.01, Revised Statutes Supplement, 1995, is amended to read:

33-139.01. Notwithstanding any existing provision to the contrary, when any employee of the State of Nebraska or of any political subdivision thereof is called as a witness in connection with his or her officially assigned duties, or when any privately employed security guard is called as a witness by his or her employer in connection with his or her officially assigned duties, in any action or proceeding in any court in this state, he or she shall not receive any witness fee, attendance fee, or mileage fee which shall be taxed as court costs in such action or proceeding, except that he or she shall be compensated for his or her actual and necessary expenses when

required to travel outside of the county of his or her residence. Payment for such actual and necessary expenses shall be made by the party who calls the employee as a witness.

For purposes of this section, volunteer firefighters and rescue squad members and persons authorized by a city or village ordinance or county resolution to issue handicapped parking citations in a volunteer capacity pursuant to section 18-1741.01 testifying in that capacity alone shall not be deemed employees of the State of Nebraska or of any political subdivision of this state.

Sec. 13. Original sections 18-1738.02, 18-1741.03, and 18-1741.04, Revised Statutes Supplement, 1994, and sections 18-1736 to 18-1738.01, 18-1739 to 18-1741.01, and 33-139.01, Revised Statutes Supplement, 1995, are repealed.