

## LEGISLATIVE BILL 809

Approved by the Governor May 30, 2001

Introduced by Urban Affairs Committee: Hartnett, 45, Chairperson;  
Connealy, 16; Erdman, 47; Janssen, 15; Preister, 5;  
Quandahl, 31; Redfield, 12

AN ACT relating to parking; to amend sections 18-1738.01 and 18-1738.02, Reissue Revised Statutes of Nebraska, sections 18-1736, 18-1737, 18-1738, 18-1741.01, and 81-1108.15, Revised Statutes Supplement, 2000, and sections 18-1739 to 18-1741, Reissue Revised Statutes of Nebraska, as amended by sections 1 to 3, respectively, Legislative Bill 31, Ninety-seventh Legislature, First Session, 2001; to change provisions relating to permits for handicapped or disabled persons; to change provisions relating to enforcement of permit violations; to provide duties for the Department of Motor Vehicles; to repeal the original sections; and to declare an emergency.

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

Section 1. Section 18-1736, Revised Statutes Supplement, 2000, be amended to read:

18-1736. (1) A city or village may designate parking spaces, including access aisles, 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 hanging the permit from the motor vehicle's rearview mirror so as to be clearly visible through the front windshield. The permit shall be displayed on the dashboard only when there is no rearview mirror.

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

(3) For purposes of sections 18-1736 to 18-1742, access aisle means a space adjacent to a handicapped parking space or passenger loading zone which is constructed and designed in compliance with the federal Americans with Disabilities Act of 1990 and the federal rules and regulations adopted and promulgated in response to the act, as the act and the rules and regulations existed on the effective date of this act.

Sec. 2. Section 18-1737, Revised Statutes Supplement, 2000, is amended to read:

18-1737. (1) Any city or village, any state agency, and any person in lawful possession of any offstreet parking facility may designate stalls or spaces, including access aisles, in such facility owned or operated by the city, village, state agency, 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, including access aisles, a sign which is in conformance with the Manual on Uniform Traffic Control Devices adopted pursuant to section 60-6,118 and the federal Americans with Disabilities Act of 1990 and the federal rules and regulations adopted and promulgated in response to the act, as the act and the rules and regulations existed on the effective date of this act.

(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, village, or state agency providing onstreet parking or owning, operating, or providing an offstreet parking facility may cause the

removal, from a stall or space, including access aisles, 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, including access aisles, 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 or access aisle 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 or access aisle 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 or access aisle 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.

(4) For purposes of this section and section 18-1741.01, state agency means any division, department, board, bureau, commission, or agency of the State of Nebraska created by the Constitution of Nebraska or established by act of the Legislature, including the University of Nebraska and the Nebraska state colleges, when the entity owns, leases, controls, or manages property which includes offstreet parking facilities.

Sec. 3. Section 18-1738, Revised Statutes Supplement, 2000, 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 or the Department of Motor Vehicles 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 or access aisles 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 or access aisles. 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~~ purposes 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 assistant 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 advanced practice registered nurse certifying that the person who will be the holder meets the definition of handicapped or disabled person or temporarily

handicapped or disabled person. No applicant shall be required to provide his or her social security number. In the case of a temporarily handicapped or disabled person, the certifying physician, physician assistant, or advanced practice registered nurse 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 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 or access aisle. ~~It shall~~ The application form shall provide space for the applicant to sign a statement that he or she is aware of his or her rights, duties, and responsibilities with regard to the use and possession of a handicapped or disabled parking permit and the penalties provided by law for handicapped parking infractions. The application form shall also 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 a 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 applying for a permit pursuant to this section. An application for the renewal of a permit under this section may be filed within thirty days prior to the expiration of the permit. The existing permit shall be invalid upon receipt of the new permit. Following the receipt of the application and its processing, the Department of Motor Vehicles shall deliver each individual renewed permit to the applicant in person or by first-class United States mail, postage prepaid, as circumstances permit, except that renewed permits shall not be issued sooner than ten days prior to the date of expiration.

(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~~ delivering the permit to the applicant in person or by first-class United States mail, postage prepaid, as circumstances permit. Upon issuing such permit, the department shall ~~mail a copy of the permitholder's completed application form and completed medical form with the permit number~~ provide the basic issuing data to the clerk or designated county official of the city or county where the permitholder resides or, if different, to the clerk or designated county official who originally accepted the application.

Sec. 4. Section 18-1738.01, Reissue Revised Statutes of Nebraska, is amended to read:

18-1738.01. (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 or the Department of Motor Vehicles 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 or access aisles 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 or access aisles.

(2) 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 or the department 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 or access aisle. ~~It shall~~ The application form shall provide space for the applicant to sign a statement that he or she is aware of his or her rights, duties, and responsibilities with regard to the use and possession of a handicapped or disabled parking permit and the penalties provided by law for handicapped parking infractions. The application form shall also 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. An application for the renewal of a permit under this section may be filed within thirty days prior to the expiration of the permit. The existing permit shall be invalid upon receipt of the new permit. Following the receipt of the application and its processing, the Department of Motor Vehicles shall deliver each individual renewed permit to the applicant in person or by first-class United States mail, postage prepaid, as circumstances permit, except that renewed permits shall not be issued sooner than ten days prior to the date of expiration.

(3) 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~~ delivering the permit to the applicant in person or by first-class United States mail, postage prepaid, as circumstances permit. 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 applying for a permit pursuant to this section. Upon issuing such permit, the department shall provide the basic issuing data to the clerk or designated county official of the city or county where the permit holder resides or, if different, to the clerk or designated county official who originally accepted the application.

Sec. 5. Section 18-1738.02, Reissue Revised Statutes of Nebraska, 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 23-1867 of the city, village, or county within which the applying individual resides or to the Department of Motor Vehicles. 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, ~~to the county clerk or designated county official of any neighboring county who issues such permits, or to the department.~~ No city clerk, village clerk, county clerk, ~~or designated county official, or department employee~~ shall accept the application for a permit pursuant to section 18-1738 or 18-1738.01 of any person making application contrary to the provisions of this section.

Sec. 6. Section 18-1739, Reissue Revised Statutes of Nebraska, as amended by section 1, Legislative Bill 31, Ninety-seventh Legislature, First Session, 2001, 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 Parking for Persons with Disabilities, 23 C.F.R. part 1235, as such regulations existed on the effective date of this act the effective date of this act.

(2) In addition to the requirements of subsection (1) of this section, the permit shall show the expiration date and 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. The expiration date information shall be distinctively

color-coded so as to identify by color the year in which the permit is due to expire.

(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 in the manner provided for renewal in sections 18-1738, 18-1738.01, and 18-1740.

(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 or the Department of Motor Vehicles. A duplicate permit shall be valid for the remainder of the period for which the original permit was issued.

Sec. 7. Section 18-1740, Reissue Revised Statutes of Nebraska, as amended by section 2, Legislative Bill 31, Ninety-seventh Legislature, First Session, 2001, is amended to read:

18-1740. (1) All permanently issued permits for handicapped or disabled parking authorized by sections 18-1736 to 18-1741.07 shall be issued for a period ending on September 30 of the third year after the date of issuance and shall expire on that date. ~~7 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 after the date of 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 after 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 18-1741.07 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 one time for a period not to exceed six months. For the renewal period, there shall be submitted an additional application with proof of a handicap or disability.

Sec. 8. Section 18-1741, Reissue Revised Statutes of Nebraska, as amended by section 3, Legislative Bill 31, Ninety-seventh Legislature, First Session, 2001, 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. No person who is not the holder of a handicapped or disabled parking permit issued to him or her as a handicapped or disabled person shall display a handicapped or disabled parking permit and park in a space or access aisle designated for the exclusive use of a handicapped or disabled person. No person who is the holder of a handicapped or disabled parking permit issued for the use of such person when transporting a handicapped or disabled person shall display his or her handicapped or disabled parking permit and park in a space or access aisle designated for the exclusive use of a handicapped or disabled person unless a handicapped or disabled person is actually in the vehicle displaying the permit at the time it is parked, has left the vehicle while it was parked, and will return to the vehicle before it leaves the designated space or access aisle. No person who is not the holder of a handicapped or disabled parking permit issued for use when a vehicle is transporting a handicapped or disabled person shall display a handicapped or disabled parking permit and park in a space or access aisle designated for the exclusive use of a handicapped or disabled person unless a handicapped or disabled person is actually in the vehicle displaying the permit at the time it is parked, has left the vehicle while it was parked, and will return to the vehicle before it leaves the designated space or access aisle. Any violation of this section shall constitute a handicapped parking infraction and 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 in the manner provided for renewal in sections 18-1738, 18-1738.01, and 18-1740.

Sec. 9. Section 18-1741.01, Revised Statutes Supplement, 2000, is amended to read:

18-1741.01. (1) For purposes of sections 18-1741.01 to 18-1741.07, handicapped parking infraction ~~shall mean~~ means the violation of any statute or ordinance regulating (a) the use of parking spaces, including access aisles, designated for use by handicapped or disabled persons, ~~or~~ (b) the unauthorized possession, use, or display of handicapped or disabled parking permits, or (c) the obstruction of any wheelchair ramps constructed or created in accordance and in conformity with the federal Americans with Disabilities Act of 1990, as the act existed on the effective date of this act.

(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.

(3) A state agency as defined in section 18-1737 which owns, leases, controls, or manages state property on which public parking is allowed may enter into an agreement with the governing board of the county, city, or village in which the state property or any portion of it is located to allow the political subdivision to enforce sections 18-1736 to 18-1741.07 on such state property.

Sec. 10. Section 81-1108.15, Revised Statutes Supplement, 2000, is amended to read:

81-1108.15. (1) The division shall have the primary functions and responsibilities of statewide facilities planning, facilities construction, and facilities administration and shall adopt and promulgate rules and regulations to carry out this section.

(2) Facilities planning shall include the following responsibilities and duties:

(a) To maintain utilization records of all state-owned, state-occupied, and vacant facilities;

(b) To coordinate comprehensive capital facilities planning;

(c) To define and review program statements based on space utilization standards;

(d) To prepare or review planning and construction documents;

(e) To develop and maintain time-cost schedules for capital construction projects;

(f) To assist the Governor and the Legislative Fiscal Analyst in the preparation of the capital construction budget recommendations;

(g) To maintain a complete inventory of all state-owned, state-occupied, and vacant sites and structures and to review the proposals for naming such sites and structures;

(h) To determine space needs of all state agencies and establish space-allocation standards; and

(i) To cause a state comprehensive capital facilities plan to be developed.

(3) Facilities construction shall include the following powers and duties:

(a) To maintain close contact with and inspections of each project so as to assure execution of time-cost schedules and efficient contract performance if such project's total design and construction cost is more than fifty thousand dollars;

(b) To perform final acceptance inspections and evaluations; and

(c) To coordinate all change or modification orders and progress payment orders.

(4) Facilities administration shall include the following powers and duties:

(a) To serve as state leasing administrator or agent for all facilities to be leased for use by the state and for all state-owned facilities to be rented to state agencies or other parties subject to section 81-1108.22. The division shall remit the proceeds from any rentals of state-owned facilities to the State Treasurer for credit to the State Building Revolving Fund and the Building Renewal Allocation Fund;

(b) To provide all maintenance, repairs, custodial duties, security, and administration for all buildings and grounds owned or leased by the State of Nebraska except as provided in subsection (5) of this section;

(c) To procure and manage office space and assign the remaining office space after the Executive Board of the Legislative Council has made its determination pursuant to subsection (1) of section 81-1108.21;

(d) To be responsible for adequate parking and the designation of parking stalls or spaces, including access aisles, in offstreet parking

facilities for the exclusive use of handicapped or disabled or temporarily handicapped or disabled persons pursuant to section 18-1737;

(e) To ensure that all state-owned, state-occupied, and vacant facilities are maintained or utilized to their maximum capacity or to dispose of such facilities through lease, sale, or demolition;

(f) To report monthly time-cost data on projects to the Governor and the Clerk of the Legislature;

(g) To administer the State Emergency Capital Construction Contingency Fund;

(h) To submit status reports to the Governor and the Legislative Fiscal Analyst after each quarter of a construction project is completed detailing change orders and expenditures to date. Such reports shall be required on all projects costing five hundred thousand dollars or more and on such other projects as may be designated by the division; and

(i) To submit a final report on each project to the Governor and the Legislative Fiscal Analyst. Such report shall include, but not be limited to, a comparison of final costs and appropriations made for the project, change orders, and modifications and whether the construction complied with the related approved program statement. Such reports shall be required on all projects costing five hundred thousand dollars or more and on such other projects as may be designated by the division.

(5) Subdivisions (4)(a) through (4)(e) of this section shall not apply to (a) state-owned facilities to be rented to state agencies or other parties by the University of Nebraska, the Nebraska state colleges, the Department of Aeronautics, the Department of Roads, and the Board of Educational Lands and Funds, (b) buildings and grounds owned or leased for use by the University of Nebraska, the Nebraska state colleges, and the Board of Educational Lands and Funds, (c) buildings and grounds owned, leased, or operated by the Department of Correctional Services, (d) facilities to be leased for nonoffice use by the Department of Roads, (e) buildings or grounds owned or leased by the Game and Parks Commission if the application of such subdivisions to the buildings or grounds would result in ineligibility for or repayment of federal funding, (f) buildings or grounds of the state park system, state recreation areas, state historical parks, state wildlife management areas, or state recreational trails, or (g) other buildings or grounds owned or leased by the State of Nebraska which are specifically exempted by the division because the application of such subdivisions would result in the ineligibility for federal funding or would result in hardship on an agency, board, or commission due to other exceptional or unusual circumstances.

(6) Each member of the Legislature shall receive a copy of the reports required by subdivisions (4)(f), (h), and (i) of this section by making a request for them to the administrator. The information on such reports shall be submitted to the division by the agency responsible for the project.

Sec. 11. Original sections 18-1738.01 and 18-1738.02, Reissue Revised Statutes of Nebraska, sections 18-1736, 18-1737, 18-1738, 18-1741.01, and 81-1108.15, Revised Statutes Supplement, 2000, and sections 18-1739 to 18-1741, Reissue Revised Statutes of Nebraska, as amended by sections 1 to 3, respectively, Legislative Bill 31, Ninety-seventh Legislature, First Session, 2001, are repealed.

Sec. 12. Since an emergency exists, this act takes effect when passed and approved according to law.