

LEGISLATIVE BILL 939

Approved by the Governor February 26, 1996

Introduced by Kristensen, 37; Crosby, 29; Pedersen, 39

AN ACT relating to the Nebraska Rules of the Road; to amend sections 60-6,197 and 60-6,205, Reissue Revised Statutes of Nebraska, and section 60-484, Revised Statutes Supplement, 1995; to change provisions relating to operator's license applications and driving under the influence; to provide operative dates; to repeal the original sections; and to declare an emergency.

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

Section 1. Section 60-484, Revised Statutes Supplement, 1995, is amended to read:

60-484. (1) Except as otherwise provided in the Motor Vehicle Operator's License Act, no resident of the State of Nebraska shall operate a motor vehicle upon the alleys or highways of the State of Nebraska until the person has obtained an operator's license for that purpose. Application for an operator's license shall be made under oath or affirmation on uniform blanks prepared and furnished by the director to the county treasurers, the examiners of the Department of Motor Vehicles, and any local examiners. The standard application blanks shall be sufficient in form and content to substantially carry out the purposes of the act. In addition to any other information and questions necessary to comply with the requirements and purposes of the act, the application shall include the name, age, post office address, place of residence, date of birth, sex, social security number, and brief description of the applicant, the voter registration portion pursuant to section 32-308, the advisement language required by subsection (10) of section 60-6,197, and the following:

- (a) Do you suffer from any physical impairment that would detract from normal ability to safely operate a motor vehicle?
- (b) Have you suffered dismemberment of foot, leg, hand, or arm?
- (c) Are you subject to vertigo or fainting spells?
- (d) Has your operator's license ever been revoked or suspended in Nebraska or in any other state or jurisdiction in the United States and, if so, give date and period of and reason for each such occurrence.
- (e) Do you wish to register to vote as part of this application process?

OPTIONAL - YOU ARE NOT REQUIRED TO ANSWER ANY OF THE FOLLOWING QUESTIONS:

- (f) Do you wish to make an anatomical gift?\*
- If so, please complete the following:

I give:

- (i) ..... any needed organs or tissues.
- (ii) ..... only the following organs or tissues  
.....  
(specify the organ or tissue)

for transplantation, therapy, or medical or dental education or research.

- (iii) ..... my body for anatomical study if needed.\*\*

Limitations or special wishes if any .....

- (g) Do you wish to receive any additional specific information regarding anatomical gifts?

\*An anatomical gift means a gift of all or any part of your body for transplantation, therapy, or medical or dental education or research. For purposes of an anatomical gift, parts of your body include organs, tissues, eyes, bones, arteries, blood, other fluids, and other portions of a human body. You may make an anatomical gift if you are of sound mind. The anatomical gift is effective upon your death and the consent of your next of kin, guardian, or other person as listed in section 71-4802.

\*\*In order for you to donate your body to the State Anatomical Board, you must complete a bequeathal form which is available from the board.

.....	.....
Signature of Donor	Date of Birth of Donor
.....	.....
Date Signed	City and State
.....	.....
Witness	Witness

(2) The social security number shall not be printed on the operator's license and shall be used only (a) to furnish driver record information to the United States Selective Service System under section

60-483, (b) with the permission of the director in connection with the verification of the status of an individual's driving record in this state or any other state, or (c) for purposes of child support enforcement pursuant to section 42-358.08 or 43-512.06.

(3) Except for an individual under the age of eighteen years, each individual making an application for an operator's license or a state identification card shall furnish proof of date of birth and identity by a valid Nebraska operator's license, a valid Nebraska learner's permit, a valid Nebraska school permit, a valid operator's license from another state or jurisdiction of the United States, a certified birth certificate, a valid United States passport, a valid United States military identification card, United States military discharge papers, or other United States-based identification as approved by the director. Any individual under the age of eighteen years making an application for an operator's license or a state identification card shall provide either a certified copy of his or her birth certificate or other reliable proof of his or her identity and age accompanied by an affidavit signed by a parent or guardian explaining the inability to produce a copy of such birth certificate. The applicant may be required to furnish proof to the examiner that the parent or guardian signing any written information is in fact the parent or guardian of such applicant.

Sec. 2. Section 60-6,197, Reissue Revised Statutes of Nebraska, is amended to read:

60-6,197. (1) Any person who operates or has in his or her actual physical control a motor vehicle in this state shall be deemed to have given his or her consent to submit to a chemical test or tests of his or her blood, breath, or urine for the purpose of determining the concentration of alcohol or the presence of drugs in such blood, breath, or urine.

(2) Any peace officer who has been duly authorized to make arrests for violations of traffic laws of this state or of ordinances of any city or village may require any person arrested for any offense arising out of acts alleged to have been committed while the person was driving or was in actual physical control of a motor vehicle while under the influence of alcoholic liquor or drugs to submit to a chemical test or tests of his or her blood, breath, or urine for the purpose of determining the concentration of alcohol or the presence of drugs in such blood, breath, or urine when the officer has reasonable grounds to believe that such person was driving or was in the actual physical control of a motor vehicle in this state while under the influence of alcoholic liquor or drugs in violation of section 60-6,196.

(3) Any peace officer who has been duly authorized to make arrests for violation of traffic laws of this state or ordinances of any city or village may require any person who operates or has in his or her actual physical control a motor vehicle in this state to submit to a preliminary test of his or her breath for alcohol concentration if the officer has reasonable grounds to believe that such person has alcohol in his or her body, has committed a moving traffic violation, or has been involved in a traffic accident. Any person who refuses to submit to such preliminary breath test or whose preliminary breath test results indicate an alcohol concentration in violation of section 60-6,196 shall be placed under arrest. Any person who refuses to submit to such preliminary breath test shall be guilty of a Class V misdemeanor.

(4) Any person arrested as provided in this section may, upon the direction of a peace officer, be required to submit to a chemical test or tests of his or her blood, breath, or urine for a determination of the concentration of alcohol or the presence of drugs. If the chemical test discloses the presence of a concentration of alcohol in violation of subsection (1) of section 60-6,196, the person shall be subject to the administrative revocation procedures provided in sections 60-6,205 to 60-6,208 and upon conviction shall be punished as provided in section 60-6,196. Any person who refuses to submit to such test or tests required pursuant to this section shall be subject to the administrative revocation procedures provided in sections 60-6,205 to 60-6,208 and shall be guilty of a crime and upon conviction punished as follows:

(a) If such person (i) has not had a conviction under this section for refusal to submit to a chemical blood, breath, or urine test in the eight years prior to the date of the current conviction or (ii) has not been convicted under a city or village ordinance enacted pursuant to this section as authorized by section 60-6,196 in the eight years prior to the date of the current conviction, such person shall be guilty of a Class W misdemeanor, and the court shall, as part of the judgment of conviction, order such person not to drive any motor vehicle in the State of Nebraska for any purpose for a period of six months from the date ordered by the court and shall order that the operator's license of such person be revoked for a like period. Such

revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. Such revocation shall not run concurrently with any jail term imposed.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order such person not to drive any motor vehicle in the State of Nebraska for any purpose for a period of sixty days unless otherwise authorized by an order issued pursuant to section 60-6,211.05;

(b) If such person (i) has had one conviction under this section for refusal to submit to a chemical blood, breath, or urine test in the eight years prior to the date of the current conviction or (ii) has been convicted once under a city or village ordinance enacted pursuant to this section as authorized by section 60-6,196 in the eight years prior to the date of the current conviction, such person shall be guilty of a Class W misdemeanor, and the court shall, as part of the judgment of conviction, order such person not to drive any motor vehicle in the State of Nebraska for any purpose for a period of one year from the date ordered by the court and shall order that the operator's license of such person be revoked for a like period. Such revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. Such revocation shall not run concurrently with any jail term imposed.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order such person not to drive any motor vehicle in the State of Nebraska for any purpose for a period of six months from the date of the order unless otherwise authorized by an order issued pursuant to section 60-6,211.05, and such order of probation shall include as one of its conditions confinement in the city or county jail for forty-eight hours; and

(c) If such person (i) has had two or more convictions under this section for refusal to submit to a chemical blood, breath, or urine test in the eight years prior to the date of the current conviction, (ii) has been convicted two or more times under a city or village ordinance enacted pursuant to this section as authorized by section 60-6,196 in the eight years prior to the date of the current conviction, or (iii) has been convicted as described in subdivisions (i) and (ii) of this subdivision a total of two or more times in the eight years prior to the date of the current conviction, such person shall be guilty of a Class W misdemeanor, and the court shall, as part of the judgment of conviction, order such person not to drive any motor vehicle in the State of Nebraska for any purpose for a period of fifteen years from the date ordered by the court and shall order that the operator's license of such person be revoked for a like period. Such revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. Such revocation shall not run concurrently with any jail term imposed.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order such person not to drive any motor vehicle in the State of Nebraska for any purpose for a period of one year unless otherwise authorized by an order issued pursuant to section 60-6,211.05, and such order of probation shall include as one of its conditions confinement in the city or county jail for seven days.

(5) For each conviction under this section, the court shall, as part of the judgment of conviction, make a finding on the record as to the number of the defendant's prior convictions under this section and under a city or village ordinance enacted pursuant to this section or section 60-6,196 in the eight years prior to the date of the current conviction. The defendant shall be given the opportunity to review the record of his or her prior convictions, bring mitigating facts to the attention of the court prior to sentencing, and make objections on the record regarding the validity of such prior convictions.

(6) For purposes of this section, the eight-year period shall be computed from the date of the prior offense to the date of the offense which resulted in the current conviction and the terms conviction under this section and prior conviction shall include any conviction under this section as it existed at the time of such conviction regardless of subsequent amendments to such section.

(7) Any person operating a motor vehicle on the highways or streets of this state while his or her operator's license has been revoked pursuant to subdivision (4)(c) of this section shall be guilty of a Class IV felony.

(8) Any city or village may enact ordinances in conformance with

this section. Upon conviction of any person of a violation of such city or village ordinance, the provisions of this section with respect to the operator's license of such person shall be applicable the same as though it were a violation of this section.

(9) Any person involved in a motor vehicle accident in this state may be required to submit to a chemical test of his or her blood, breath, or urine by any peace officer if the officer has reasonable grounds to believe that the person was driving or was in actual physical control of a motor vehicle on a public highway in this state while under the influence of alcoholic liquor or drugs at the time of the accident. A person involved in a motor vehicle accident subject to the implied consent law of this state shall not be deemed to have withdrawn consent to submit to a chemical test of his or her blood, breath, or urine by reason of leaving this state. If the person refuses a test under this section and leaves the state for any reason following an accident, he or she shall remain subject to subsection (4) of this section and section 60-6,206 upon return.

(10) Any person who is required to submit to a preliminary breath test or to a chemical blood, breath, or urine test or tests pursuant to this section shall be advised that refusal to submit to such test or tests is a separate crime for which the person may be charged, of (a) the consequences of refusing to submit to such test or tests and (b) the consequences if he or she submits to such test and the test discloses the presence of a concentration of alcohol in violation of subsection (1) of section 60-6,196.

(11) Refusal to submit to such a chemical blood, breath, or urine test or tests pursuant to this section shall be admissible evidence in any action for a violation of section 60-6,196 or a city or village ordinance enacted pursuant to such section.

Sec. 3. Section 60-6,205, Reissue Revised Statutes of Nebraska, is amended to read:

60-6,205. (1) Because persons who drive while under the influence of alcohol present a hazard to the health and safety of all persons using the highways, a procedure is needed for the swift and certain revocation of the operator's license of any person who has shown himself or herself to be a health and safety hazard (a) by driving with an excessive concentration of alcohol in his or her body and to deter others from or (b) by driving while under the influence of alcohol.

(2) If a person arrested pursuant to section 60-6,197 refuses to submit to the chemical test of blood, breath, or urine required by that section, the test shall not be given except as provided in section 60-6,210 for the purpose of medical treatment and the arresting peace officer, as agent for the Director of Motor Vehicles, shall verbally serve notice to the arrested person of the intention to immediately impound and revoke the operator's license of such person and that the revocation will be automatic thirty days after the date of arrest unless a petition for hearing is filed within ten days after the date of arrest as provided in subsection (6) of this section. The arresting peace officer shall immediately forward to the director a sworn report stating (a) that the person was validly arrested pursuant to section 60-6,197 and the reasons for such arrest, (b) that the person was requested to submit to the required test, and (c) that the person was advised of the consequences of refusing to submit to such test, including that his or her operator's license would be immediately impounded and automatically revoked in thirty days, and (d) that the person refused to submit to the required test.

(3) If a person arrested pursuant to section 60-6,197 submits to the chemical test of blood or breath required by that section and the test discloses the presence of alcohol in any of the concentrations specified in section 60-6,196, the arresting peace officer, as agent for the director, shall verbally serve notice to the arrested person of the intention to immediately impound and revoke the operator's license of such person and that the revocation will be automatic thirty days after the date of arrest unless a petition for hearing is filed within ten days after the date of arrest as provided in subsection (6) of this section. The arresting peace officer shall immediately forward to the director a sworn report stating (a) that the person was validly arrested pursuant to section 60-6,197 and the reasons for such arrest, (b) that the person was requested to submit to the required test, and (c) that the person was advised of the consequences if the test disclosed the presence of alcohol in a concentration specified in section 60-6,196, including that his or her operator's license would be immediately impounded and automatically revoked in thirty days, and (d) that the person submitted to a test, the type of test to which he or she submitted, and that such test revealed the presence of alcohol in a concentration specified in such section 60-6,196.

(4) On behalf of the director, the arresting peace officer submitting a sworn report under subsection (2) or (3) of this section shall serve notice of the revocation on the arrested person, and the revocation shall be effective thirty days after the date of arrest. The notice of revocation shall contain a statement explaining the operation of the administrative revocation procedure, ~~and the rights of the arrested person.~~ The peace officer shall also provide to the arrested person an addressed envelope and a petition form which the arrested person may use to request a hearing before the director to contest the revocation. The petition form shall clearly state on its face that the petition must be completed and delivered to the Department of Motor Vehicles or postmarked within ten days after receipt or the person's right to a hearing to contest the revocation will be foreclosed. The director shall prepare and approve the form for the petition, the addressed envelope, and the notice of revocation and shall provide them to law enforcement agencies.

If the person has an operator's license, the arresting peace officer shall take possession of the license and issue a temporary operator's license valid for thirty days. The arresting peace officer shall forward the operator's license to the department along with the sworn report made under subsection (2) or (3) of this section.

(5)(a) If a peace officer is unable to serve the notice of revocation as required by subsection (4) of this section following the receipt of results of a chemical test which indicate the presence of alcohol in a concentration specified in section 60-6,196, the peace officer shall forward to the director a sworn report containing the information prescribed by subsection (3) of this section immediately upon receipt of the results of the chemical test.

(b) Upon receipt of the report, the director shall serve the notice of revocation on the arrested person by certified or registered mail to the address appearing on the records of the director. If the address on the director's records differs from the address on the arresting peace officer's report, the notice shall be sent to both addresses. The notice of revocation shall contain a statement explaining the operation of the administrative revocation procedure, ~~and the rights of the arrested person.~~ The director shall also provide to the arrested person an addressed envelope and a petition form which the arrested person may use to request a hearing before the director to contest the revocation. The petition form shall clearly state on its face that the petition must be completed and delivered to the department or postmarked within ten days after receipt or the person's right to a hearing to contest the revocation will be foreclosed. The director shall prepare and approve the form for the petition, the addressed envelope, and the notice of revocation. The revocation shall be effective thirty days after the date of mailing.

(c) If the records of the director indicate that the arrested person possesses an operator's license, the director shall include with the notice of revocation a temporary operator's license which expires thirty days after the date of mailing. Any arrested person who desires a hearing and has been served a notice of revocation pursuant to this subsection shall return his or her operator's license with the petition requesting the hearing. If the operator's license is not included with the petition requesting the hearing, the director shall reject the petition.

(6)(a) An arrested person's operator's license impounded pursuant to subsection (4) of this section shall be automatically revoked upon the expiration of thirty days after the date of arrest. An arrested person's operator's license impounded pursuant to subsection (5) of this section shall be automatically revoked upon the expiration of thirty days after the date of mailing of the notice of revocation by the director. The arrested person shall postmark or return to the director a petition within ten days after the receipt of the notice of revocation if the arrested person desires a hearing. The petition shall be in writing and shall state the grounds on which the person is relying to prevent the revocation from becoming effective. The hearing shall be conducted in the county in which the arrest occurred or in any other county agreed to by the parties.

(b) The director shall conduct the hearing within twenty days after a petition is filed. Upon receipt of a petition, the director shall notify the petitioner of the date and location for the hearing by certified or registered mail postmarked at least seven days prior to the hearing date. The filing of the petition shall not prevent the automatic revocation of the petitioner's operator's license at the expiration of the thirty-day period. A continuance of the hearing to a date beyond the expiration of the temporary operator's license shall stay the expiration of the temporary license when the request for continuance is made by the director.

(c) At hearing the issues under dispute shall be limited to:

(i) In the case of a refusal to submit to a chemical test of blood, breath, or urine:

(A) Did the peace officer have probable cause to believe the person was operating or in the actual physical control of a motor vehicle in violation of section 60-6,196 or a city or village ordinance enacted pursuant to such section; and

~~(B) Was a lawful arrest effected;~~

~~(C) Was the person advised of the consequences of refusing to submit to such test including that his or her operator's license would be immediately impounded and automatically revoked in thirty days; and~~

~~(D) (B) Did the person refuse to submit to or fail to complete a chemical test after being requested to do so by the peace officer; or~~

(ii) If the chemical test discloses the presence of alcohol in a concentration specified in such section 60-6,196:

(A) Did the peace officer have probable cause to believe the person was operating or in the actual physical control of a motor vehicle in violation of such section 60-6,196 or a city or village ordinance enacted pursuant to such section; and

~~(B) Was a lawful arrest effected;~~

~~(C) Was the person advised of the consequences if the chemical test disclosed the presence of alcohol in a concentration specified in such section; and~~

~~(D) (B) Was the person operating or in the actual physical control of a motor vehicle while having an alcohol concentration in violation of subsection (1) of such section 60-6,196.~~

(7) The director shall adopt and promulgate rules and regulations to govern the conduct of the hearing and insure that the hearing will proceed in an orderly manner. The director may appoint an examiner to preside at the hearing, administer oaths, examine witnesses, take testimony, and report to the director. All proceedings before the examiner shall be recorded. The director shall make a determination of the issues within seven days after the conclusion of the hearing. A person whose operator's license is revoked following a hearing requested pursuant to this section may appeal the order of revocation as provided in section 60-6,208.

Sec. 4. Sections 1 and 5 of this act become operative on July 1, 1996. The other sections of this act become operative on their effective date.

Sec. 5. Original section 60-484, Revised Statutes Supplement, 1995, is repealed.

Sec. 6. Original sections 60-6,197 and 60-6,205, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 7. Since an emergency exists, this act takes effect when passed and approved according to law.