

LEGISLATIVE BILL 211

Approved by the Governor March 25, 1994

Introduced by Hillman, 48; Horgan, 4; Wesely, 26; Ashford, 6

AN ACT relating to the Motor Vehicle Operator's License Act; to amend sections 60-484, 60-4,105, 60-4,114, and 60-4,146, Revised Statutes Supplement, 1992, and sections 60-462, 60-4,112, and 60-4,118, Revised Statutes Supplement, 1993; to change requirements for proof of age and identity; to state intent; to create the Health Advisory Board; to provide powers and duties; to change provisions relating to issuance and cancellation of operators' licenses; to harmonize provisions; to provide an operative date; and to repeal the original sections.

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

Section 1. That section 60-462, Revised Statutes Supplement, 1993, be amended to read as follows:

60-462. Sections 60-462 to 60-4,188 and sections 5 to 8 of this act shall be known and may be cited as the Motor Vehicle Operator's License Act.

Sec. 2. That section 60-484, Revised Statutes Supplement, 1992, be amended to read as follows:

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 and the following:

(a) Do you suffer from any physical defects 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(d) Has your operator's license ever been revoked or suspended in Nebraska or in any other state or jurisdiction in the United States and, if so, give date and period of and reason for each such occurrence.

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

(e) 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

(f) 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 42-358.06 or 43-512.06.

(3) ~~Each~~ Except for an individual under the age of eighteen years, each individual who is 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. A parent or legal guardian of any applicant under the age of eighteen years may sign an affidavit located on the application for an operator's license affirming such applicant's date of birth and identity. 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. 3. That section 60-4,105, Revised Statutes Supplement, 1992, be amended to read as follows:

60-4,105. ~~(1)~~ Any person who feels aggrieved because of any order of the director on account of a refusal to issue any operator's license contemplated under sections 60-4,101 and 60-4,107 or any decision of the director made after consideration of advice from the Health Advisory Board may appeal to the district court of the county in which the application for the license was originally made or to the district court of the county in which such person resides as provided in this section.

The director shall reduce the ruling, order, or decision to writing, file a copy in his or her office, and furnish a copy together with a statement of reasons for the ruling to the applicant or licensee, as the case may be, upon request. The ruling, order, or decision of the director in refusing to issue or reinstate such license or in suspending, canceling, or revoking the same shall be as final and binding as the final order or judgment of a court of general jurisdiction.

The applicant, licensee, or appellant shall, within thirty days from the date of the final order complained of, execute a bond for costs to the State of Nebraska in the sum of two hundred dollars with sufficient surety to be approved by the Auditor of Public Accounts. The bond shall be filed in the office of the director. In lieu of the bond, the sum of two hundred dollars in cash, certified check, or money order may be deposited at the office of the director.

It shall be the duty of the director, on payment or tender of the cost of preparing the transcript at the rate of ten cents per hundred words, to prepare a complete transcript of the proceedings relating to the refusal to issue or to reinstate any license or relating to the proceedings concerning the suspension, cancellation, or revocation of such license.

The applicant or licensee shall file a petition in such district court within thirty days from the date of filing of the director's final order in the matter and shall file the transcript before answer day as provided in section 25-821. The district court shall hear the appeal as in equity without a jury and determine anew all questions raised before the director. Either party may appeal from the decision of the district court to the Court of Appeals.

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

Sec. 4. That section 60-4,112, Revised Statutes Supplement, 1993, be amended to read as follows:

60-4,112. Sections 60-4,113 to 60-4,130.02 and sections 5 to 8 of this act shall apply to the operation of any motor vehicle except a commercial motor vehicle.

Sec. 5. The Legislature finds and declares that:

(1) The operation of a motor vehicle on the highways of the state is a privilege and that no person should operate a motor vehicle on the highways of this state if not physically or mentally capable of safely doing so.

(2) The approval or denial of an application for an operator's license or the revocation of an operator's license may provide or prevent an opportunity for the applicant or licensee to obtain or maintain gainful employment; and

(3) Under certain circumstances, careful medical review and evaluation of an applicant for an operator's license or of a licensee is necessary to protect the interest of the applicant or licensee and the health, safety, and welfare of the public.

Sec. 6. (1) There is hereby created the Health Advisory Board which shall consist of six health care providers appointed by the director with the advice and recommendation of the Director of Health. The members of the board shall consist of one general practice physician, one physician engaged in the practice of ophthalmology, one physician engaged in the practice of orthopedic surgery, one physician engaged in the practice of neurological medicine and surgery, one optometrist, and one psychiatrist. Each member of the board shall be licensed to practice his or her profession pursuant to the Uniform Licensing Law.

(2) Of the initial members of the board, two shall be appointed for four years, two shall be appointed for three years, and two shall be appointed for two years. Thereafter, each member shall be appointed for a term of four years and until a successor is appointed and qualified. If a vacancy occurs for any reason other than the expiration of a term, the director may appoint a person licensed in the same type of professional practice as the member being replaced to serve out the unexpired term. Members of the board shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

(3) The board shall meet as necessary at the call of the director. At the initial meeting of the board following completion of the initial appointments, the board shall select from among its members a chairperson and shall designate any other officers or committees as it deems necessary. The board may select officers and committees annually or as necessary to fill vacancies and to carry out duties of the board.

Sec. 7. Whenever the director requests the advice of the Health Advisory Board concerning the physical or mental ability of an applicant for or holder of an operator's license to operate a motor vehicle as provided in sections 60-4.114 and 60-4.118, the board may formulate its advice from records and reports or may cause an examination and report to be made by one or more members of the board or any qualified person designated by the board. The applicant or licensee may cause a written report to be forwarded to the board by a physician of his or her choice. The director shall give due consideration to any such report.

Reports received or made by the board or any of its members for the purpose of assisting the director in determining whether a person is qualified to be licensed shall be for the confidential use of the board, the director, and any designees of the director and may not be divulged to any person other than the applicant or licensee or used in evidence in any legal proceeding, except that a report may be admitted in an appeal of an order of the director based on the report. Any person aggrieved by a decision of the director made after consideration of advice given by the board may appeal the decision as provided in section 60-4.105.

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

Sec. 8. The director shall adopt and promulgate rules and regulations as necessary to carry out sections 5 to 7 of this act.

Sec. 9. That section 60-4.114, Revised Statutes Supplement, 1992, be amended to read as follows:

60-4.114. The county treasurer may employ such additional clerical help as may be necessary to assist him or her in the performance of the ministerial duties required of him or her under the Motor Vehicle Operator's License Act and, for such additional expense, shall be reimbursed as set out in section 60-4.115.

The director may, in his or her discretion, appoint one or more examining officers who shall personally examine all applicants who do not possess and who cannot present an operator's license and whose licenses have been revoked, canceled, or suspended in accordance with rules and regulations of the director to ascertain such person's ability to operate a motor vehicle properly and safely. Such examination shall, in addition to the other requisites of the act, include:

(1) an inquiry into the physical fitness of the applicant to operate a motor vehicle; 7

(2) ~~an~~ An inquiry into the applicant's ability to drive and maneuver a motor vehicle; 7

(3) ~~an~~ An inquiry touching upon the applicant's knowledge of the motor vehicle laws of this state, which shall include sufficient questions to indicate familiarity with the provisions thereof; 7 and

(4) ~~an~~ An inquiry into the applicant's knowledge of the laws for operating a motor vehicle to avoid arrest.

If an applicant is denied or refused a certificate for license by the examiners, such applicant shall have the right to an immediate appeal to the director from the decision of such examiners. It 7 and it shall be the duty of the director to pass upon the appeal and to render a prompt finding, to be made in any event not later than ten days from the receipt of the appeal by the director, except that if the director requests the advice of the Health Advisory Board on the matter, the director shall have up to forty-five days from the day a medical or vision problem is referred to him or her to consult with members of the board to obtain the medical opinion necessary to make a decision and shall render a prompt finding not later than ten days following receipt of the medical opinion. If after consideration of the advice of the board the director determines that the applicant lacks the physical or mental ability to operate a motor vehicle, the director shall notify the applicant in writing of the decision.

Sec. 10. That section 60-4,118, Revised Statutes Supplement, 1993, be amended to read as follows:

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

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

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

(2) If a vision aid is used by the applicant to meet the vision requirements of this section, the operator's license of the applicant shall be restricted to the use of such vision aid when operating the motor vehicle. If the applicant fails to meet the vision requirements, the examiner shall require the applicant to present an optometrist's or ophthalmologist's statement certifying the vision reading obtained when testing the applicant within ninety days of the applicant's license examination. If the vision reading meets the vision requirements prescribed by the department, the vision requirements of this section shall have been met.

(3) If the application for an operator's license discloses that the applicant for such license suffers from any other physical defect or defects of a character which may affect the safety of operation by such applicant of a motor vehicle, the examiner shall require the applicant to show cause why such license should be granted and, through such personal examination and demonstration as may be prescribed by the director with the advice of the Health Advisory Board, to show the necessary ability to safely operate a motor vehicle on the highways. The director may also require the person to appear before the board or a designee of the board. If the examiner, board, or designee is then ~~is~~ satisfied, after the demonstration; that such applicant has the ability to safely operate a motor vehicle, an operator's license may be issued to the applicant subject, at the discretion of the director, to a limitation to operate only such motor vehicles at such time, for such purpose, and within such area as the license shall designate.

(4)(a) The director may, when requested by a law enforcement officer, when the director has reason to believe that a person may be physically or mentally incompetent to operate a motor vehicle, or when a person's driving record appears to the department to justify an examination, request the advice of the Health Advisory Board and may give notice to the holder of an operator's license person to appear before an examiner, the board, or a designee of the director for examination concerning the person's ability to operate a motor vehicle safely.

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

(c) If the license holder person cannot qualify at the examination by an examiner, his or her operator's license shall be immediately surrendered to the examiner and forwarded to the director who shall cancel his or her license and privilege to operate a motor vehicle. the person's operator's license.

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

(e) ~~Refusal to appear before an examiner for examination after notice to do so or to surrender an operator's license on demand shall be unlawful, and any person failing to surrender his or her operator's license as required by this section subsection shall be guilty of a Class III misdemeanor.~~

(5) No operator's license referred to in this section shall, under any circumstances, be issued to any person who has not attained the age of sixteen years, but upon application therefor and proof of age in the manner provided in section 60-484, any such person may take the examination required by this section at any time within sixty days prior to his or her sixteenth birthday.

(6)(a) Upon receipt of a certified copy of a court order issued pursuant to section 60-6,211.05 and of sufficient evidence that the defendant has surrendered his or her operator's license to the department and installed an approved ignition interlock device in accordance with such court order and upon payment by the defendant of the fee provided in section 60-4,115, the director shall issue to the defendant a Class O license restricted to the operation of a motor vehicle equipped with an ignition interlock device.

(b) Upon expiration of the court order issued pursuant to section 60-6,211.05, the defendant may apply to the department in writing for issuance of an operator's license which does not contain such restriction. If the license surrendered by the defendant under subdivision (a) of this subsection has not expired, the director shall return such license to the defendant. If such license has expired, the defendant shall reapply for an operator's license pursuant to the Motor Vehicle Operator's License Act.

Sec. 11. That section 60-4,146, Revised Statutes Supplement, 1992, be amended to read as follows:

60-4,146. Upon making application pursuant to section 60-4,144, any applicant who operates or expects to operate a commercial motor vehicle solely in intrastate commerce or who is not subject to part 391 of the federal Motor Carrier Safety Regulations adopted pursuant to section 75-363 shall certify that he or she is not subject to part 391. Any applicant for a Class A commercial driver's license making certification pursuant to this section shall satisfy the examiner that he or she is eighteen years of age or older. Any applicant for a Class B or C commercial driver's license making certification pursuant to this section shall satisfy the examiner that he or she is sixteen years of age or older. Any applicant making certification pursuant to this section shall meet the physical and vision requirements established in section 60-4,118 and shall be subject to the provisions of such section relating to the Health Advisory Board.

Sec. 12. This act shall become operative on January 1, 1995.

Sec. 13. That original sections 60-484, 60-4,105, 60-4,114, and 60-4,146, Revised Statutes Supplement, 1992, and sections 60-462, 60-4,112, and 60-4,118, Revised Statutes Supplement, 1993, are repealed.