

AMENDMENTS TO LB900

Introduced by Transportation and Telecommunications.

1 1. Strike the original sections and insert the following new
2 sections:

3 Section 1. Section 60-3,153, Reissue Revised Statutes of Nebraska,
4 is amended to read:

5 60-3,153 For the registration of every motorcycle, the fee shall be
6 six dollars. Beginning September 1, 2016, an additional fee of nineteen
7 dollars shall be collected which fee shall be remitted to the State
8 Treasurer for credit to the Motorcycle Safety and Brain Injury Trust
9 Fund.

10 Sec. 2. Section 60-4,105, Reissue Revised Statutes of Nebraska, is
11 amended to read:

12 60-4,105 (1) Unless otherwise provided by statute, any person
13 aggrieved by a final decision or order of the director or the Department
14 of Motor Vehicles to cancel, suspend, revoke, or refuse to issue or renew
15 any operator's license, ~~any decision of the director made after~~
16 ~~consideration of advice from the Health Advisory Board,~~ or suspension of
17 an operator's license under the License Suspension Act may appeal to
18 either the district court of the county in which the person originally
19 applied for the license or the district court of the county in which such
20 person resides or, in the case of a nonresident, to the district court of
21 Lancaster County within thirty days after the date of the final decision
22 or order.

23 (2) Summons shall be served on the department within thirty days
24 after the filing of the petition in the manner provided for service of a
25 summons in section 25-510.02. Within thirty days after service of the
26 petition and summons, the department shall prepare and transmit to the
27 petitioner a certified copy of the official record of the proceedings

1 before the department. The department shall require payment of a five-
2 dollar fee prior to the transmittal of the official record. The
3 petitioner shall file the transcript with the court within fourteen days
4 after receiving the transcript from the department.

5 (3) The district court shall hear the appeal as in equity without a
6 jury and determine anew all questions raised before the director. Either
7 party may appeal from the decision of the district court to the Court of
8 Appeals.

9 (4) The appeal procedures described in the Administrative Procedure
10 Act shall not apply to this section.

11 Sec. 3. Section 60-4,112, Revised Statutes Cumulative Supplement,
12 2014, is amended to read:

13 60-4,112 Sections 60-4,114.01 and 60-4,118.02 ~~60-4,118.01~~ to
14 60-4,130.05 shall apply to the operation of any motor vehicle except a
15 commercial motor vehicle.

16 Sec. 4. Section 60-4,114, Revised Statutes Supplement, 2015, is
17 amended to read:

18 60-4,114 (1) The county treasurer may employ such additional
19 clerical help as may be necessary to assist him or her in the performance
20 of the ministerial duties required of him or her under the Motor Vehicle
21 Operator's License Act and, for such additional expense, shall be
22 reimbursed as set out in section 60-4,115.

23 (2) The director may, in his or her discretion, appoint department
24 personnel to examine all applicants who apply for an initial license or
25 whose licenses have been revoked or canceled to ascertain such person's
26 ability to operate a motor vehicle properly and safely.

27 (3) Except as otherwise provided in section 60-4,122, the
28 application process, in addition to the other requisites of the act,
29 shall include the following:

30 (a) An inquiry into the medical condition and visual ability of the
31 applicant to operate a motor vehicle;

1 (b) An inquiry into the applicant's ability to drive and maneuver a
2 motor vehicle, except that no driving skills test shall be conducted
3 using an autocycle; and

4 (c) An inquiry touching upon the applicant's knowledge of the motor
5 vehicle laws of this state, which shall include sufficient questions to
6 indicate familiarity with the provisions thereof.

7 (4) If an applicant is denied or refused a certificate for license,
8 such applicant shall have the right to an immediate appeal to the
9 director from the decision. It shall be the duty of the director to
10 review the appeal and issue a final order, ~~to be made not later than ten~~
11 ~~days after the receipt of the appeal by the director, except that if the~~
12 ~~director requests the advice of the Health Advisory Board on the matter,~~
13 ~~the director shall have up to forty-five days after the day a medical or~~
14 ~~vision problem is referred to him or her to consult with members of the~~
15 ~~board to obtain the medical opinion necessary to make a decision and~~
16 ~~shall issue a final order not later than ten days following receipt of~~
17 ~~the medical opinion. After consideration of the advice of the board, the~~
18 ~~director shall make a determination of the applicant's physical or mental~~
19 ~~ability to operate a motor vehicle and shall issue a final order. The~~
20 order shall be in writing, shall be accompanied by findings of fact and
21 conclusions of law, and shall be sent by regular United States mail to
22 the applicant's last-known address. The order may be appealed as provided
23 in section 60-4,105.

24 Sec. 5. Section 60-4,118, Reissue Revised Statutes of Nebraska, is
25 amended to read:

26 60-4,118 (1) The Legislature finds and declares that:

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

31 (b) The approval or denial of an application for an operator's

1 license or the revocation of an operator's license may provide or prevent
2 an opportunity for the applicant or licensee to obtain or maintain
3 gainful employment; and

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

8 (2 ±) No operator's license shall be granted to any applicant until
9 such applicant satisfies the examiner that he or she possesses sufficient
10 powers of eyesight to enable him or her to obtain a Class 0 license and
11 to operate a motor vehicle on the highways of this state with a
12 reasonable degree of safety. The Department of Motor Vehicles, ~~with the~~
13 ~~advice of the Health Advisory Board,~~ shall adopt and promulgate rules and
14 regulations:

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

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

23 (3 2) If a vision aid is used by the applicant to meet the vision
24 requirements of this section, the operator's license of the applicant
25 shall be restricted to the use of such vision aid when operating the
26 motor vehicle. If the applicant fails to meet the vision requirements,
27 the examiner shall require the applicant to present an optometrist's or
28 ophthalmologist's statement certifying the vision reading obtained when
29 testing the applicant within ninety days of the applicant's license
30 examination. If the vision reading meets the vision requirements
31 prescribed by the department, the vision requirements of this section

1 shall have been met. If the vision reading demonstrates that the
2 applicant is required to use bioptic or telescopic lenses to operate a
3 motor vehicle, the statement from the optometrist or ophthalmologist
4 shall also indicate when the applicant needs to be reexamined for
5 purposes of meeting the vision requirements for an operator's license as
6 prescribed by the department. If such time period is two years or more
7 after the date of the application, the license shall be valid for two
8 years. If such time period is less than two years, the license shall be
9 valid for such time period.

10 (4) (3) If the applicant for an operator's license discloses that he
11 or she has any other physical impairment which may affect the safety of
12 operation by such applicant of a motor vehicle, the examiner shall
13 require the applicant to show cause why such license should be granted
14 and, through such personal examination and demonstration as may be
15 prescribed by the director ~~with the advice of the Health Advisory Board,~~
16 to show the necessary ability to safely operate a motor vehicle on the
17 highways. ~~The director may also require the person to appear before the~~
18 ~~board or a designee of the board.~~ If the examiner, ~~board,~~ or ~~designee~~ is
19 then satisfied that such applicant has the ability to safely operate a
20 motor vehicle, an operator's license may be issued to the applicant
21 subject, at the discretion of the director, to a limitation to operate
22 only such motor vehicles at such time, for such purpose, and within such
23 area as the license shall designate.

24 (5)(a) ~~(4)(a)~~ The director may, when requested by a law enforcement
25 officer, when the director has reason to believe that a person may be
26 physically or mentally incompetent to operate a motor vehicle, or when a
27 person's driving record appears to the department to justify an
28 examination, ~~request the advice of the Health Advisory Board and may give~~
29 notice to the person to appear before an examiner, ~~the board,~~ or a
30 designee of the director for examination concerning the person's ability
31 to operate a motor vehicle safely. Any such request by a law enforcement

1 officer shall be accompanied by written justification for such request
2 and shall be approved by a supervisory law enforcement officer, police
3 chief, or county sheriff.

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

8 (c) If the person cannot qualify at the examination by an examiner,
9 his or her operator's license shall be immediately surrendered to the
10 examiner and forwarded to the director who shall cancel the person's
11 operator's license.

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

20 (d e) Refusal to surrender an operator's license on demand shall be
21 unlawful, and any person failing to surrender his or her operator's
22 license as required by this subsection shall be guilty of a Class III
23 misdemeanor.

24 (6) No person examining any applicant or licensee shall be liable in
25 tort or otherwise for any opinion, recommendation, or report presented to
26 the director if such action was taken in good faith and without malice.

27 Sec. 6. Section 60-4,118.02, Reissue Revised Statutes of Nebraska,
28 is amended to read:

29 60-4,118.02 (1) There is hereby created the Health Advisory Board
30 which shall consist of six health care providers appointed by the
31 director with the advice and recommendation of the Department of Health

1 and Human Services. The members of the board shall consist of one general
2 practice physician, one physician engaged in the practice of
3 ophthalmology, one physician engaged in the practice of orthopedic
4 surgery, one physician engaged in the practice of neurological medicine
5 and surgery, one optometrist, and one psychiatrist. Each member of the
6 board shall be licensed to practice his or her profession pursuant to the
7 Uniform Credentialing Act. The board terminates on January 1, 2017.

8 (2) Of the initial members of the board described in subsection (1)
9 of this section, two shall be appointed for four years, two shall be
10 appointed for three years, and two shall be appointed for two years.
11 Thereafter, each member shall be appointed for a term of four years and
12 until a successor is appointed and qualified.

13 (3) If a vacancy on the board described in subsection (1) of this
14 section occurs for any reason other than the expiration of a term, the
15 Director of Motor Vehicles may appoint a person licensed in the same type
16 of professional practice as the member being replaced to serve out the
17 unexpired term. Members of the board shall be reimbursed for their actual
18 and necessary expenses as provided in sections 81-1174 to 81-1177.

19 (4 ~~3~~) The board described in subsection (1) of this section shall
20 meet as necessary at the call of the director. At the initial meeting of
21 the board following completion of the initial appointments, the board
22 shall select from among its members a chairperson and shall designate any
23 other officers or committees as it deems necessary. The board may select
24 officers and committees annually or as necessary to fill vacancies and to
25 carry out duties of the board.

26 (5) Beginning October 1, 2017, there is created the Brain Injury
27 Trust Board which shall consist of nine members. Three members shall be
28 physicians appointed by the Governor from any of the following areas of
29 medicine: General practice; neurological medicine and surgery; orthopedic
30 surgery; or psychiatry. Each physician member shall be licensed to
31 practice in this state pursuant to the Uniform Credentialing Act. The

1 remaining six members shall be appointed by the Governor and shall
2 consist of the following: One person from a public or private health
3 organization; one person from a disability advisory or planning group
4 within Nebraska; one person from a service provider for individuals with
5 brain injuries; an individual with a brain injury; a family member of an
6 individual with a brain injury; and one person from the general public.
7 The Director of Public Health of the Department of Health and Human
8 Services or his or her designee and the Director of Motor Vehicles or his
9 or her designee shall serve as ex officio members.

10 (6) Of the initial members of the board described under subsection
11 (5) of this section, three shall be appointed for four years, three shall
12 be appointed for three years, and three shall be appointed for two years.
13 Thereafter, each member shall be appointed for a term of four years and
14 until a successor is appointed and qualified.

15 (7) If a vacancy on the board described in subsection (5) of this
16 section occurs for any reason other than the expiration of a term, the
17 Governor shall appoint a qualified person to serve out the unexpired
18 term. Members of the board shall be reimbursed for their actual and
19 necessary expenses as provided in sections 81-1174 to 81-1177.

20 (8) The board described in subsection (5) of this section shall meet
21 as necessary at the call of the director, but shall not meet more than
22 once each calendar quarter. At the initial meeting of the board following
23 completion of the initial appointments, the board shall select from among
24 its members a chairperson and shall designate any other officers or
25 committees as it deems necessary. The board may select officers and
26 committees annually or as necessary to fill vacancies and to carry out
27 duties of the board.

28 Sec. 7. Section 60-4,118.03, Reissue Revised Statutes of Nebraska,
29 is amended to read:

30 60-4,118.03 The Brain Injury Trust Board shall administer the
31 Motorcycle Safety and Brain Injury Trust Fund pursuant to section 12 of

1 this act.

2 ~~Whenever the director requests the advice of the Health Advisory~~
3 ~~Board concerning the physical or mental ability of an applicant for or~~
4 ~~holder of an operator's license to operate a motor vehicle as provided in~~
5 ~~sections 60-4,114 and 60-4,118, the board may formulate its advice from~~
6 ~~records and reports or may cause an examination and report to be made by~~
7 ~~one or more members of the board or any qualified person designated by~~
8 ~~the board. The applicant or licensee may cause a written report to be~~
9 ~~forwarded to the board by a physician of his or her choice. The director~~
10 ~~shall give due consideration to any such report.~~

11 ~~Reports received or made by the board or any of its members for the~~
12 ~~purpose of assisting the director in determining whether a person is~~
13 ~~qualified to be licensed shall be for the confidential use of the board,~~
14 ~~the director, and any designees of the director and may not be divulged~~
15 ~~to any person other than the applicant or licensee or used in evidence in~~
16 ~~any legal proceeding, except that a report may be admitted in an appeal~~
17 ~~of an order of the director based on the report. Any person aggrieved by~~
18 ~~a decision of the director made after consideration of advice given by~~
19 ~~the board may appeal the decision as provided in section 60-4,105.~~

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

24 Sec. 8. Section 60-4,118.04, Reissue Revised Statutes of Nebraska,
25 is amended to read:

26 60-4,118.04 The director may ~~shall~~ adopt and promulgate rules and
27 regulations as necessary to carry out sections 60-4,118.02 and
28 60-4,118.01 to 60-4,118.03. Such rules and regulations shall include, but
29 not be limited to, setting meeting parameters for the Brain Injury Trust
30 Board, prescribing brain injury services program application forms,
31 establishing brain injury services program funding, awarding brain injury

1 services program funds based on available funds, prescribing the role of
2 the brain injury services program coordinator, and developing criteria to
3 be used in the evaluation of awarding brain injury services program
4 funds.

5 Sec. 9. Section 60-4,128, Reissue Revised Statutes of Nebraska, is
6 amended to read:

7 60-4,128 Any person violating the provisions of section 60-4,127
8 shall be guilty of a traffic infraction and shall upon conviction thereof
9 be fined not less than fifty ~~ten~~ dollars nor more than one hundred fifty
10 dollars. In addition, a person operating a motorcycle without a Class M
11 license may be required to complete the basic motorcycle safety course as
12 provided in the Motorcycle Safety Education Act.

13 Sec. 10. Section 60-4,146, Revised Statutes Cumulative Supplement,
14 2014, is amended to read:

15 60-4,146 (1) In addition to certifying himself or herself under this
16 section, an applicant shall also certify himself or herself under section
17 60-4,144.01.

18 (2) Upon making application pursuant to section 60-4,144, any
19 applicant who operates or expects to operate a commercial motor vehicle
20 in interstate or foreign commerce and who is not subject to 49 C.F.R.
21 part 391 shall certify that he or she is not subject to 49 C.F.R. part
22 391. Any applicant making certification pursuant to this subsection shall
23 meet the physical and vision requirements established in section 60-4,118
24 ~~and shall be subject to the provisions of such section relating to the~~
25 ~~Health Advisory Board.~~

26 (3) Upon making application pursuant to section 60-4,144, any
27 applicant who operates or expects to operate a commercial motor vehicle
28 solely in intrastate commerce and who is subject to 49 C.F.R. part 391
29 adopted pursuant to section 75-363 shall certify that the applicant meets
30 the qualification requirements of 49 C.F.R. part 391.

31 (4) Upon making application for a CLP-commercial learner's permit or

1 commercial driver's license, any applicant who operates or expects to
2 operate a commercial motor vehicle solely in intrastate commerce and who
3 is not subject to 49 C.F.R. part 391 adopted pursuant to section 75-363
4 shall certify that he or she is not subject to 49 C.F.R. part 391. Any
5 applicant making certification pursuant to this subsection shall meet the
6 physical and vision requirements established in section 60-4,118—and
7 shall be subject to the provisions of such section relating to the Health
8 Advisory Board.

9 (5) An applicant who certifies that he or she is not subject to 49
10 C.F.R. part 391 under subsection (2) or (4) of this section shall answer
11 the following questions on the application:

12 (a) Have you within the last three months (e.g. due to diabetes,
13 epilepsy, mental illness, head injury, stroke, heart condition,
14 neurological disease, etc.):

15 (i) lost voluntary control or consciousness ... yes ... no

16 (ii) experienced vertigo or multiple episodes of dizziness or
17 fainting ... yes ... no

18 (iii) experienced disorientation ... yes ... no

19 (iv) experienced seizures ... yes ... no

20 (v) experienced impairment of memory, memory loss ... yes ... no

21 Please explain:

22 (b) Do you experience any condition which affects your ability to
23 operate a motor vehicle? (e.g. due to loss of, or impairment of, foot,
24 leg, hand, arm; neurological or neuromuscular disease, etc.) ... yes ...
25 no

26 Please explain:

27 (c) Since the issuance of your last driver's license/permit has your
28 health or medical condition changed or worsened? ... yes ... no

29 Please explain, including how the above affects your ability to
30 drive:

31 Sec. 11. Section 60-6,279, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 60-6,279 (1) A person shall not operate a motorcycle or moped on
3 any highway in this state unless such person is wearing eye protection.

4 (2) No person under the age of eight years shall be a passenger on a
5 motorcycle or moped on any highway in this state.

6 (3) Except as otherwise provided in subsection (4) of this section,
7 a A person shall not operate or be a passenger on a motorcycle or moped
8 on any highway in this state unless such person is wearing a protective
9 helmet of the type and design manufactured for use by operators of such
10 vehicles and unless such helmet is secured properly on his or her head
11 with a chin strap while the vehicle is in motion. All such protective
12 helmets shall be designed to reduce injuries to the user resulting from
13 head impacts and shall be designed to protect the user by remaining on
14 the user's head, deflecting blows, resisting penetration, and spreading
15 the force of impact. Each such helmet shall consist of lining, padding,
16 and chin strap and shall meet or exceed the standards established in the
17 United States Department of Transportation's Federal Motor Vehicle Safety
18 Standard No. 218, 49 C.F.R. 571.218, for motorcycle helmets.

19 (4) A person who is at least twenty-one years of age is exempt from
20 subsection (3) of this section.

21 (5) For purposes of this section, eye protection means glasses that
22 cover the orbital region of a person's face, a protective face shield
23 attached to a protective helmet, goggles, or a windshield on the
24 motorcycle or moped that protects the operator's and passenger's
25 horizontal line of vision in all operating positions.

26 Sec. 12. (1) The Motorcycle Safety and Brain Injury Trust Fund is
27 created. The fund shall be administered and awards from the fund
28 determined by the Brain Injury Trust Board with additional fiscal
29 oversight provided by the Director of Motor Vehicles. The fund shall
30 consist of fees credited to it under section 60-3,153. Any money in the
31 fund available for investment shall be invested by the state investment

1 officer pursuant to the Nebraska Capital Expansion Act and the Nebraska
2 State Funds Investment Act.

3 (2) The fund shall be used for expenses relating to meeting the
4 needs of individuals with a brain injury in Nebraska, motorcycle safety
5 awareness and education programs, and providing for expenses of the Brain
6 Injury Trust Board. No more than two and one-half percent of the fund
7 shall be used for motorcycle safety awareness and education programs. No
8 more than ten percent of the annual revenue of the fund shall be used for
9 administration of the fund.

10 (3)(a) A brain injury services program shall be created on or before
11 October 1, 2017, and shall be administered by a program coordinator under
12 the direction of the Brain Injury Trust Board. The program coordinator
13 shall also coordinate decisions of the board with the interests of the
14 Department of Motor Vehicles. The Department of Motor Vehicles shall
15 provide administrative support to the board to aid in administering the
16 program.

17 (b) The purpose of the brain injury services program is to provide
18 services, service funding, or other support for individuals with a brain
19 injury who are not eligible for the Traumatic Brain Injury (TBI) Waiver
20 program with the Department of Health and Human Services or who do not
21 otherwise meet the income requirements of the program. Such services,
22 service funding, or other support shall be based upon funds available for
23 the program.

24 (4)(a) Application for services under the brain injury services
25 program shall use the same application as used for the Traumatic Brain
26 Injury (TBI) Waiver program used by the Department of Health and Human
27 Services. In order to apply for the brain injury services program, the
28 applicant shall authorize the Department of Health and Human Services to
29 provide the applicant's Traumatic Brain Injury (TBI) Waiver application
30 materials to the Department of Motor Vehicles brain injury services
31 program. The application materials provided shall include, but not be

1 limited to, the waiver application and any denial letter, financial
2 assessment, and functional assessment regarding the person.

3 (b) If a functional assessment for the Traumatic Brain Injury (TBI)
4 Waiver program has not been completed due to an individual's financial
5 ineligibility for the waiver, the brain injury services program may
6 provide for a functional assessment to determine the individual's needs.
7 The brain injury services program shall reimburse the Department of
8 Health and Human Services for the assessment.

9 (5) The Brain Injury Trust Board shall report annually on the status
10 of the Motorcycle Safety and Brain Injury Trust Fund and the brain injury
11 services program to the Governor and Legislature. The report to the
12 Legislature shall be made electronically.

13 Sec. 13. Original sections 60-3,153, 60-4,105, 60-4,118,
14 60-4,118.02, 60-4,118.03, 60-4,118.04, 60-4,128, and 60-6,279, Reissue
15 Revised Statutes of Nebraska, sections 60-4,112 and 60-4,146, Revised
16 Statutes Cumulative Supplement, 2014, and section 60-4,114, Revised
17 Statutes Supplement, 2015, are repealed.

18 Sec. 14. The following sections are outright repealed: Section
19 60-4,118.01, Reissue Revised Statutes of Nebraska, and section
20 60-2132.01, Revised Statutes Cumulative Supplement, 2014.