

LEGISLATIVE BILL 191

Approved by the Governor April 12, 1993

Introduced by Crosby, 29

AN ACT relating to commercial motor vehicles; to amend sections 60-4,163 to 60-4,168, Revised Statutes Supplement, 1992; to provide for and change provisions relating to chemical tests to determine alcohol concentration as prescribed; to harmonize provisions; and to repeal the original sections.

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

Section 1. That section 60-4,163, Revised Statutes Supplement, 1992, be amended to read as follows:

60-4,163. No person shall operate or be in the actual physical control of a commercial motor vehicle while having any alcoholic liquor in his or her body. Any person who operates or is in the actual physical control of a commercial motor vehicle while having any alcoholic liquor in his or her body or who refuses to submit to a test or tests to determine the alcoholic content of his or her blood, breath, or urine shall be placed out of service for twenty-four hours, shall be subject to disqualification as provided in sections 60-4,167 and 60-4,168, and shall be subject to prosecution for any violation of sections 39-669.07 and 39-669.08.

Any order to place a person out of service for twenty-four hours issued by a law enforcement officer shall be made pursuant to section 392.5(c) of the federal Motor Carrier Safety Regulations adopted pursuant to section 75-363.

Sec. 2. That section 60-4,164, Revised Statutes Supplement, 1992, be amended to read as follows:

60-4,164. (1) Any person who operates or is in the actual physical control of a commercial motor vehicle upon a highway 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 amount of alcoholic content in his or her blood, breath, or urine.

(2) Any law enforcement 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 who, after stopping or detaining the operator of any commercial motor vehicle, has reasonable grounds to believe that the operator was driving or in the actual physical control of a commercial motor vehicle while having any alcoholic liquor in his or her body may require such operator to submit to a chemical test or tests of his or her blood, breath, or urine for the purpose of determining the alcoholic content of such blood, breath, or urine.

(3) Any law enforcement 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 who operates or has in his or her actual physical control a commercial motor vehicle upon a highway in this state to submit to a preliminary breath test of his or her breath for alcoholic content if the officer has reasonable grounds to believe that such person has any alcoholic liquor in his or her body, has committed a moving traffic violation, or has been involved in a traffic accident. Any such person who refuses to submit to a preliminary breath test shall be placed under arrest and shall be guilty of a Class V misdemeanor. Any person arrested for refusing to submit to a preliminary breath test or any person who submits to a preliminary breath test the results of which indicate the presence of any alcoholic liquor in such person's body may, upon the direction of a law enforcement officer, be required to submit to a chemical test or tests of his or her blood, breath, or urine for a determination of the alcoholic content.

(4) Any person operating or in the actual physical control of a commercial motor vehicle who submits to a chemical test or tests of his or her blood, breath, or urine which discloses the presence of any alcoholic liquor in his or her body shall be placed out of service for twenty-four hours by the law enforcement officer.

(5) Any person operating or in the actual physical control of a commercial motor vehicle who refuses to submit to a chemical test or tests of his or her blood, breath, or urine or any person operating or in the actual physical control of a commercial motor vehicle who submits to a chemical test or tests of his or her blood, breath, or urine which discloses an alcoholic concentration of: (a) Four-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood; (b) four-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath; or (c) four-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her urine shall be placed out of service for twenty-four hours by the law enforcement officer, and the officer shall forward to the director a sworn report. The report shall state that the person was operating or in the actual physical control of a commercial motor vehicle, was requested to submit to the required chemical test or tests, and refused to submit to the required chemical test or tests or submitted to the required chemical test or tests and possessed an alcohol concentration at or in excess of that specified by this subsection.

(6) Any person involved in a commercial motor vehicle accident in this state may be required to submit to a chemical test or tests of his or her blood, breath, or urine by any law enforcement officer if the officer has reasonable grounds to believe that such person was driving or was in actual physical control of a commercial motor vehicle on a highway in this state while under the influence of alcoholic liquor at the time of the accident. A person involved in a commercial 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 or tests of his or her blood, breath, or urine by reason of leaving this state. If the

person refuses a test or tests under this section and leaves the state for any reason following an accident, he or she shall remain subject to this section upon return.

Sec. 3. That section 60-4,165, Revised Statutes Supplement, 1992, be amended to read as follows:

60-4,165. The law enforcement officer who requires a chemical test or tests pursuant to section 60-4,164 may direct whether the test or tests will be of blood, breath, or urine. ~~When the officer directs that the test will be of a person's blood or urine, such person may choose whether the test shall be of his or her blood or urine.~~ The person tested shall be permitted to have a physician of his or her choice evaluate his or her condition and perform or have performed whatever laboratory tests are deemed appropriate in addition to and following the test or tests administered at the direction of the law enforcement officer. If the officer refuses to permit such additional test or tests to be taken, the original test or tests shall not be competent evidence. Upon the request of the person tested, the results of the test or tests taken at the direction of the law enforcement officer shall be made available to him or her.

Sec. 4. That section 60-4,166, Revised Statutes Supplement, 1992, be amended to read as follows:

60-4,166. Any person who is unconscious or who is in a condition rendering him or her incapable of refusal to submit to a chemical test or tests pursuant to section 60-4,164 shall be deemed not to have withdrawn the consent provided for in such section, and a chemical test or tests may be given.

Sec. 5. That section 60-4,167, Revised Statutes Supplement, 1992, be amended to read as follows:

60-4,167. Upon receipt of a law enforcement officer's sworn report provided for in section 60-4,164, the director shall notify the person who is the subject of the report of a date for hearing before the director to determine the reasonableness of the refusal to submit to the chemical test or tests or the results of the chemical test or tests if performed upon the person. Any chemical test or tests made in conformity with section 39-669.11 shall be competent evidence of the alcoholic content of such person's blood, breath, or urine. The notice of hearing shall be served by the director by mailing it to such person by certified or registered mail to the last-known residential address of such person or, if such address is unknown, to the last-known business address of such person at least ten days before the hearing. After granting the person an opportunity to be heard on such issue, if it is not shown to the director that such refusal to submit to such chemical test or tests was reasonable or if it is shown to the director that such person was operating or in the actual physical control of a commercial motor vehicle with an alcoholic concentration in his or her blood, breath, or urine equal to or in excess of that specified in subsection (5) of section 60-4,164, the director shall enter an order pursuant to section 60-4,169 disqualifying such person from operating a commercial motor vehicle for the period specified by section 60-4,168.

Sec. 6. That section 60-4,168, Revised Statutes Supplement, 1992, be amended to read as follows:

60-4,168. (1) Except as provided in subsection (2) of this section, a person shall be disqualified from driving a commercial motor vehicle for one year:

(a) Upon his or her first conviction, after April 1, 1992, in this or any other state for:

(i) Driving a commercial motor vehicle while under the influence of alcohol or a controlled substance;

(ii) Leaving the scene of an accident involving a commercial motor vehicle driven by the person; or

(iii) Using a commercial motor vehicle in the commission of a felony; or

(b) Upon a first administrative determination, after April 1, 1992, that such person while driving a commercial motor vehicle in this or any other state was requested to submit to a chemical test or tests of his or her blood, breath, or urine by a law enforcement officer and refused or had a concentration of four-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood, four-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath, or four-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her urine.

(2) If any of the offenses described in this section occurred while the person was transporting hazardous material in a commercial motor vehicle which required placarding pursuant to section 75-364, the person shall, upon conviction or administrative determination, be disqualified from driving a commercial motor vehicle for three years.

(3) A person shall be disqualified from driving a commercial motor vehicle for life if, after April 1, 1992, he or she is convicted of or administratively determined to have committed a second or subsequent violation of any of the offenses described in subsection (1) of this section or any combination of those offenses arising from two or more separate incidents.

(4) A person shall be disqualified from driving a commercial motor vehicle for a period of not less than sixty days if he or she is convicted in this or any other state of two serious traffic violations or not less than one hundred twenty days if he or she is convicted in this or any other state of three serious traffic violations, arising from separate incidents occurring within a three-year period.

(5) For purposes of this section, conviction shall mean an adjudication of guilt in a court of original jurisdiction, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, a plea of guilty or nolo contendere accepted by the court, a payment of a fine or court costs, or a violation of a condition of release without bail, regardless of whether the penalty is rebated, suspended, or probated.

(6) For purposes of this section, serious traffic violation shall mean:

(a) Speeding in excess of fifteen miles per hour over the legally posted speed limit;

(b) Willful reckless driving as described in section 39-669.03 or reckless driving as described in section 39-669.01;

(c) Improper lane change as described in section 39-628;

(d) Following the vehicle ahead too closely as described in section 39-629; and

(e) A violation of any law or ordinance related to motor vehicle traffic control, other than parking violations or overweight or vehicle defect violations, arising in connection with an accident or collision resulting in death to any person.

Sec. 7. That original sections 60-4,163 to 60-4,168, Revised Statutes Supplement, 1992, are repealed.