

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 496

Introduced by Fulton, 29; Coash, 27; Lathrop, 12.

Read first time January 20, 2009

Committee: Judiciary

A BILL

1 FOR AN ACT relating to traffic enforcement; to amend sections
2 18-1729 and 60-680, Reissue Revised Statutes of Nebraska,
3 and sections 60-4,182, 60-601, and 60-605, Revised
4 Statutes Cumulative Supplement, 2008; to authorize
5 enforcement of traffic control signal violations by an
6 automated traffic enforcement system as prescribed; and
7 to repeal the original sections.

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

1 Section 1. Section 18-1729, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 18-1729 Any incorporated city or village may, by
4 ordinance, establish a violations bureau for the collection of
5 penalties for nonmoving traffic violations and for any traffic
6 control signal violations enforced pursuant to an ordinance enacted
7 under subdivision (1)(w) of section 60-680. Such violations shall
8 not be subject to prosecution in the courts except when payment of
9 the penalty or civil fee is not made within the time prescribed by
10 ordinance. When payment is not made within such time, ~~the~~ nonmoving
11 violations may be prosecuted in the same manner as other ordinance
12 violations. Traffic control signal violations enforced pursuant to
13 an ordinance enacted under subdivision (1)(w) of section 60-680
14 shall be prosecuted in the same manner as civil actions.

15 Sec. 2. Section 60-4,182, Revised Statutes Cumulative
16 Supplement, 2008, is amended to read:

17 60-4,182 In order to prevent and eliminate successive
18 traffic violations, there is hereby provided a point system dealing
19 with traffic violations as disclosed by the files of the director.
20 The following point system shall be adopted:

21 (1) Conviction of motor vehicle homicide - 12 points;

22 (2) Third offense drunken driving in violation of any
23 city or village ordinance or of section 60-6,196, as disclosed by
24 the records of the director, regardless of whether the trial court
25 found the same to be a third offense - 12 points;

1 (3) Failure to stop and render aid as required under
2 section 60-697 in the event of involvement in a motor vehicle
3 accident resulting in the death or personal injury of another - 6
4 points;

5 (4) Failure to stop and report as required under section
6 60-696 or any city or village ordinance in the event of a motor
7 vehicle accident resulting in property damage - 6 points;

8 (5) Driving a motor vehicle while under the influence
9 of alcoholic liquor or any drug or when such person has a
10 concentration of eight-hundredths of one gram or more by weight of
11 alcohol per one hundred milliliters of his or her blood or per two
12 hundred ten liters of his or her breath in violation of any city or
13 village ordinance or of section 60-6,196 - 6 points;

14 (6) Willful reckless driving in violation of any city or
15 village ordinance or of section 60-6,214 or 60-6,217 - 6 points;

16 (7) Careless driving in violation of any city or village
17 ordinance or of section 60-6,212 - 4 points;

18 (8) Negligent driving in violation of any city or village
19 ordinance - 3 points;

20 (9) Reckless driving in violation of any city or village
21 ordinance or of section 60-6,213 - 5 points;

22 (10) Speeding in violation of any city or village
23 ordinance or any of sections 60-6,185 to 60-6,190 and 60-6,313:

24 (a) Not more than five miles per hour over the speed
25 limit - 1 point;

1 (b) More than five miles per hour but not more than ten
2 miles per hour over the speed limit - 2 points;

3 (c) More than ten miles per hour but not more than
4 thirty-five miles per hour over the speed limit - 3 points, except
5 that one point shall be assessed upon conviction of exceeding by
6 not more than ten miles per hour, two points shall be assessed
7 upon conviction of exceeding by more than ten miles per hour but
8 not more than fifteen miles per hour, and three points shall be
9 assessed upon conviction of exceeding by more than fifteen miles
10 per hour but not more than thirty-five miles per hour the speed
11 limits provided for in subdivision (1)(e), (f), (g), or (h) of
12 section 60-6,186; and

13 (d) More than thirty-five miles per hour over the speed
14 limit - 4 points;

15 (11) Failure to yield to a pedestrian not resulting in
16 bodily injury to a pedestrian - 2 points;

17 (12) Failure to yield to a pedestrian resulting in bodily
18 injury to a pedestrian - 4 points; and

19 (13) All other traffic violations involving the operation
20 of motor vehicles by the operator for which reports to the
21 Department of Motor Vehicles are required under sections 60-497.01
22 and 60-497.02 and violations enforced pursuant to an ordinance
23 or resolution enacted under subdivision (1)(w) of section 60-680,
24 not including violations involving an occupant protection system
25 pursuant to section 60-6,270, parking violations, violations for

1 operating a motor vehicle without a valid operator's license in the
2 operator's possession, muffler violations, overwidth, overheight,
3 or overlength violations, motorcycle or moped protective helmet
4 violations, or overloading of trucks - 1 point.

5 All such points shall be assessed against the driving
6 record of the operator as of the date of the violation for which
7 conviction was had. Points may be reduced by the department under
8 section 60-4,188.

9 In all cases, the forfeiture of bail not vacated shall be
10 regarded as equivalent to the conviction of the offense with which
11 the operator was charged.

12 The point system shall not apply to persons convicted
13 of traffic violations committed while operating a bicycle or an
14 electric personal assistive mobility device as defined in section
15 60-618.02.

16 Sec. 3. Section 60-601, Revised Statutes Cumulative
17 Supplement, 2008, is amended to read:

18 60-601 Sections 60-601 to 60-6,377 and sections 5 and 7
19 of this act shall be known and may be cited as the Nebraska Rules
20 of the Road.

21 Sec. 4. Section 60-605, Revised Statutes Cumulative
22 Supplement, 2008, is amended to read:

23 60-605 For purposes of the Nebraska Rules of the Road,
24 the definitions found in sections 60-606 to 60-676 and section 5 of
25 this act shall be used.

1 Sec. 5. Automated traffic enforcement system shall mean
 2 an integrated system or device utilizing a photographic, a video,
 3 or an electronic camera or cameras and vehicle sensors which work
 4 in conjunction with a traffic control signal and is capable of
 5 producing photographs, video images, or digital images of a vehicle
 6 violating a traffic control signal. An automated traffic control
 7 system may be installed, monitored, or operated by an employee of
 8 the local authority or by a private contractor authorized by the
 9 local authority.

10 Sec. 6. Section 60-680, Reissue Revised Statutes of
 11 Nebraska, is amended to read:

12 60-680 (1) Any local authority with respect to highways
 13 under its jurisdiction and within the reasonable exercise of the
 14 police power may:

- 15 (a) Regulate or prohibit stopping, standing, or parking;
- 16 (b) Regulate traffic by means of peace officers or
- 17 traffic control devices;
- 18 (c) Regulate or prohibit processions or assemblages on
- 19 the highways;
- 20 (d) Designate highways or roadways for use by traffic
- 21 moving in one direction;
- 22 (e) Establish speed limits for vehicles in public parks;
- 23 (f) Designate any highway as a through highway or
- 24 designate any intersection as a stop or yield intersection;
- 25 (g) Restrict the use of highways as authorized in section

1 60-681;

2 (h) Regulate operation of bicycles and require
3 registration and inspection of such, including requirement of a
4 registration fee;

5 (i) Regulate operation of electric personal assistive
6 mobility devices;

7 (j) Regulate or prohibit the turning of vehicles or
8 specified types of vehicles;

9 (k) Alter or establish speed limits authorized in the
10 Nebraska Rules of the Road;

11 (l) Designate no-passing zones;

12 (m) Prohibit or regulate use of controlled-access
13 highways by any class or kind of traffic except those highways
14 which are a part of the state highway system;

15 (n) Prohibit or regulate use of heavily traveled highways
16 by any class or kind of traffic it finds to be incompatible
17 with the normal and safe movement of traffic, except that such
18 regulations shall not be effective on any highway which is part
19 of the state highway system unless authorized by the Department of
20 Roads;

21 (o) Establish minimum speed limits as authorized in the
22 rules;

23 (p) Designate hazardous railroad grade crossings as
24 authorized in the rules;

25 (q) Designate and regulate traffic on play streets;

1 (r) Prohibit pedestrians from crossing a roadway in a
2 business district or any designated highway except in a crosswalk
3 as authorized in the rules;

4 (s) Restrict pedestrian crossings at unmarked crosswalks
5 as authorized in the rules;

6 (t) Regulate persons propelling push carts;

7 (u) Regulate persons upon skates, coasters, sleds, and
8 other toy vehicles;

9 (v) Notwithstanding any other provision of law, adopt and
10 enforce an ordinance or resolution prohibiting the use of engine
11 brakes on the National System of Interstate and Defense Highways
12 that has a grade of less than five degrees within its jurisdiction.
13 For purposes of this subdivision, engine brake means a device
14 that converts a power producing engine into a power-absorbing air
15 compressor, resulting in a net energy loss;

16 (w) Adopt an ordinance or resolution authorizing
17 enforcement of traffic violations by means of an automated traffic
18 enforcement system at intersections controlled by a traffic control
19 signal as prescribed in section 7 of this act;

20 ~~(w)~~ (x) Adopt and enforce such temporary or experimental
21 regulations as may be necessary to cover emergencies or special
22 conditions; and

23 ~~(x)~~ (y) Adopt other traffic regulations except as
24 prohibited by state law or contrary to state law.

25 (2) No local authority, except an incorporated city with

1 more than forty thousand inhabitants, shall erect or maintain any
2 traffic control device at any location so as to require the traffic
3 on any state highway or state-maintained freeway to stop before
4 entering or crossing any intersecting highway unless approval in
5 writing has first been obtained from the Department of Roads.

6 (3) No ordinance or regulation enacted under subdivision
7 (1)(d), (e), (f), (g), (j), (k), (l), (m), (n), (p), (q), or (s)
8 of this section shall be effective until traffic control devices
9 giving notice of such local traffic regulations are erected upon or
10 at the entrances to such affected highway or part thereof affected
11 as may be most appropriate.

12 Sec. 7. (1) An owner or lessee of a vehicle shall only
13 be subject to prosecution for a traffic control signal violation
14 proved by means of photographic evidence authorized pursuant to an
15 ordinance or resolution enacted under subdivision (1)(w) of section
16 60-680 as provided in subsection (2) of this section.

17 (2) The owner or lessee may be proved to have committed
18 a traffic control signal violation by introducing, as evidence, a
19 series of at least two photographs, video images, or digital images
20 showing the vehicle entering or passing through an intersection
21 against a traffic control signal while the traffic control signal
22 was displaying a red light or otherwise directing traffic to stop.
23 The photographs, video images, or digital images shall be taken
24 from an automated traffic enforcement system installed by a local
25 authority pursuant to an ordinance or resolution enacted under

1 subdivision (1)(w) of section 60-680. Such photographs, a certified
2 record or testimony as to ownership or registration of the vehicle,
3 or positive identification of the operator of the vehicle, and
4 an affidavit or testimony as to the proper functioning of the
5 traffic control device, shall be prima facie evidence of a traffic
6 violation.

7 (3) Notice of a traffic control signal violation for
8 which prima facie evidence exists under this section shall:

9 (a) Be sent by the local authority by first-class mail
10 within fifteen days after the alleged violation to the owner or
11 lessee, after review of the recorded images by the local authority
12 and a determination by the local authority that a violation
13 occurred;

14 (b) Include the date, time, and location of the
15 violation;

16 (c) Include a copy of such photographic evidence obtained
17 of the violation;

18 (d) Include the amount of the civil fee; and

19 (e) Instruct the owner or lessee accused of the violation
20 of the process for paying the civil fee and the process for
21 contesting the traffic control signal violation and assessment of
22 the civil fee.

23 (4) The owner or lessee may contest the traffic control
24 signal violation by submitting detailed reasons, in writing, why
25 the notice of violation should be cancelled. The local authority

1 shall appoint an examiner to review the challenge. The appointed
2 examiner shall be an employee of the local authority. In the
3 event the examiner determines the violation did occur, the owner
4 or lessee may request a hearing before an administrative hearing
5 officer appointed by the local authority. The request shall be
6 made, in writing, within fifteen days after the determination by
7 the examiner.

8 (5) If the owner or lessee receiving notice of such
9 a traffic control signal violation fails to pay the civil fee
10 or request a hearing within thirty days after the mailing of
11 such notice or fails to appear at any hearing set by a hearing
12 officer to hear this matter, the city or village attorney or
13 county attorney may seek to collect the civil fee, in the same
14 manner as any other civil action. If the civil fee is not paid
15 or a hearing requested within thirty days after notice pursuant to
16 this subsection, an additional fee of twenty-five dollars shall be
17 assessed.

18 (6) If the owner or lessee was not the actual operator
19 of the motor vehicle at the time of the traffic control signal
20 violation, he or she may provide evidence in a sworn affidavit,
21 under penalty of perjury, setting forth the name and address of
22 the person who leased, rented, or otherwise had care, custody, or
23 control of the vehicle. The local authority may bring an action
24 under this section against the person named in the affidavit for
25 such violation.

1 (7) The civil fee imposed for a traffic control signal
2 violation shall be established by the local authority. The local
3 authority shall set the amount of the civil fee imposed for
4 a traffic control signal violation after consideration of all
5 administrative costs incurred as a result of the violation. The
6 maximum amount of the initial civil fee imposed for a traffic
7 control signal violation shall not exceed one hundred dollars.

8 Sec. 8. Original sections 18-1729 and 60-680, Reissue
9 Revised Statutes of Nebraska, and sections 60-4,182, 60-601, and
10 60-605, Revised Statutes Cumulative Supplement, 2008, are repealed.