Nebraska’s Statutory Rules of the Road and the Uniform Vehicle Code: A General Appraisal

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NEBRASKA'S STATUTORY RULES OF THE ROAD AND THE UNIFORM VEHICLE CODE: A GENERAL APPRAISAL

In conjunction and cooperation with the Legislation Committee of the Nebraska State Bar Association, and the Nebraska Department of Roads and Irrigation, a comparative section by section analysis and report of act V of the Uniform Vehicle Code with the related Nebraska statutes has been made.¹ The Uniform Vehicle Code consists of five separate acts: Act I—Uniform Motor-Vehicle Administration, Registration, Certificate of Title, and Antitheft Act; Act II—Uniform Motor-Vehicle Operator's and Chauffeur's License Act; Act III—Uniform Motor-Vehicle Civil Liability Act; Act IV—Uniform Motor-Vehicle Safety Responsibility Act; Act V—Uniform Act Regulating Traffic on Highways. Of the twenty-one articles contained in act V, only the first fifteen were closely analyzed. These fifteen articles deal primarily with the regulations commonly referred to as the "rules of the road."

Shortly after the statutory analysis was conducted, the National Committee on Uniform Traffic Laws and Ordinances completed a consolidation of the five acts, thereby eliminating any

¹ For an excellent over-all survey of the legal and economic problems of fair trade legislation, see Fulda, Resale Price Maintenance, 21 U. Chi. L. Rev. 175 (1954).

¹ On October 12, 1954 the Committee on Legislation of the Nebraska State Bar Association submitted a report to the Bar Association’s House of Delegates recommending recodification of the highway laws, using as a basis act V of the Uniform Vehicle Code. This recommendation was unanimously approved by the House. See 34 Neb. L. Rev. 166-172 (1955).
duplicate provisions which theretofore existed in the separate acts. Insofar as act V is concerned, only a few minor changes were made in the consolidation. Since the provisions relating to the rules of the road (and also those provisions relating to accidents and accident reports) now found in chapters ten and eleven of the consolidated act are in effect the same as those provisions used in the statutory analysis, the provisions of the Uniform Vehicle Code referred to in this article are those contained in the former version of act V.

The Uniform Vehicle Code is the product of compromise reached after research was conducted upon the laws of all the states and the District of Columbia. Law enforcement officials, safety experts, lawyers, judges, motor vehicle administrators, traffic engineers and many others participated in discussions of the provisions and were responsible for the drafting of the Code in its present form.

The adoption of the Uniform Vehicle Code has been recommended by the American Bar Association, the Commissioners on Uniform State Laws, the National Safety Council and by many other professional and non-professional groups. It has even taken on an international flavor since many motor vehicle laws in the Canadian provinces are based upon act V.

The purpose of this article is, generally, to point out deficiencies in the present statutory rules of the road of Nebraska, to stimulate thought for future recodification of the rules of the road and to give the reader a general comparative appraisal of the present statutes with those found in act V of the Uniform Vehicle Code.

The comparative study revealed many similarities and differences. It would unduly lengthen this article to discuss each point of comparison. Those points which were thought to be most relevant have been singled out for discussion in Part IV of this article in addition to the general comments found in Part III.

I. PURPOSES OF THE ANALYSIS

The purposes of the analysis were (1) to determine the shortcomings of the present laws relating to the movement of traffic; (2) to determine any similarity between Nebraska's present laws and those provisions of act V of the Uniform Vehicle Code; (3) to determine which Nebraska statutes should be repealed and which statutes should be retained or modified in the event that act V is adopted; and (4) to determine whether
the provisions of act V would conflict with other Nebraska statutes not repealed.

II. THE UNIFORM VEHICLE CODE IN OTHER STATES

The most comprehensive state study of act V was conducted in New York, following a report by a New York legislative committee which clearly revealed that the rules of the road in the state were in urgent need of revision. After receipt of this report, the New York Legislature adopted a resolution in 1953 which directed a revision of the Vehicle and Traffic Law in accordance with modern traffic and safety needs.

In response to this resolution, the Joint Legislative Committee on Motor Vehicle Problems prepared a report consisting of a section comparison of the first fifteen articles of act V with existing New York law. This report not only analyzed New York statutes, but also statutes of the other forty-seven states and the District of Columbia.

Aligning all the states which do or do not have a particular section of act V or a substantial portion of it would require more detail than would be appropriate here. It is sufficient to state

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3 The report compares in table form the various state laws and makes the following observation:

This compilation of statutes is extremely valuable in showing the legislators why specific rules should be uniform. For example, with respect to passing to the right, our tables show that a motorist must be a master of comparative traffic law if he is to make even a short trip from Washington D. C., to New Haven, Connecticut. Since the laws of each state he passes through are different, he never knows from moment to moment what he is expected to do or what to expect other drivers to do. It is obvious that great hazards can result from this intolerable situation.

In addition to being valuable for our purposes, the tables throw some interesting light on national statutory patterns. They clearly reveal that every time a change was made in the Uniform Vehicle Code, many states which had previously adopted the Code failed to enact the amendments. For example, the present provision of subsection (b) of Section 76 of Act V, covering left turns on two-way roadways, was incorporated into Act V in 1945. Eighteen states have this new version but fifteen states have retained earlier versions of subsection (b). Eleven states, one of which is New York, have provisions contrary to Act V, and only three states have no provisions covering left turns.

Supra note 2, at 13.
that more than one-half of the states have adopted all or nearly all of act V while most others have adopted substantial parts of it.

III. THE NEBRASKA STATUTES AND THE UNIFORM VEHICLE CODE

Analysis of the Nebraska statutes revealed, generally, that which was also found to be true in the state of New York, i.e., that the statutes were poorly organized and lacked efficient application to modern day traffic problems. More specifically, the analysis may be divided into the following categories: Sequence and Orderliness; Ambiguity and Incompleteness; Attempts to Change the Nebraska Statutes; Conflicting Provisions; Outdated Statutes; Lack of Subject Matter; and Policy Differences.

A. Sequence and Orderliness

Act V of the Uniform Vehicle Code has been drafted in a manner which presents a logical and orderly sequence requiring a minimum of effort to locate provisions on any particular subject matter. Provisions relating to a particular subject matter, such as accidents or right of way, are contained wholly within articles appropriately headed and not scattered in several others. Contrast this organization with that of the related Nebraska provisions. For example, in Nebraska the statutes requiring vehicles to stop and also those statutes giving local authorities powers to erect traffic signs and devices, establish maximum speeds for vehicles, prohibit or limit traffic movement and regulate parking are scattered throughout article 7 of chapter 39. This same disorganization exists in the statutes covering vehicle right of way and vehicle speeds, to mention but a few.

Even one familiar with the present Nebraska statutes could easily overlook a relevant provision unless he first makes a diligent search. This point is evidenced by the many hours of research which were required to find and analyze only those statutes relating to the powers of local authorities.4

B. Ambiguity and Incompleteness

Act V of the Uniform Vehicle Code is drafted in clear language. The provisions are complete and do not depend upon inferences to gain their full meaning. The opposite is true of several of Nebraska's statutes. For example, section 39-742 provides that it is unlawful for more than three persons over the

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4In 1931 a version of the Uniform Vehicle Code was enacted. This enactment now appears as sections 39-741 to 39-799 of the Nebraska statutes. Even the provisions of this act are not grouped by subject matter.
age of twelve years to occupy the driver’s seat of an automobile, but nothing in the statute limits the number of persons under the age of twelve years.

Section 39-631 provides that the Department of Roads and Irrigation shall have exclusive jurisdiction over placing warning signs, stop signs, and other safety devices on state highways routed through cities where the population is less than twenty-five thousand. The inference is that there is not exclusive jurisdiction regarding the placement of signs on state highways routed through the cities of Omaha and Lincoln. Present practice shows that this inference is acted upon.

A glaring example of incompleteness of the Nebraska provisions is the definitions section (39-741) in article 7 of chapter 39. Act V contains fifty-three separate definitions, while Nebraska defines only thirteen terms. The definitions section (39-741), however, applies only to sections 39-741 to 39-799. It might be argued, therefore, that the statutes appearing before section 39-741 (i.e., sections 39-701 to 39-740) and those following (i.e., 39-7,100 to 39-7,133) are not included. However, in Krepik v. Interstate Transit Lines, the Nebraska Supreme Court liberally construed the definitions section to cover more than sections 39-741 to 39-799. The case involved the meaning of a “business district” as used in section 39-7,108. This term was defined in section 39-741. The court held that the definitions section applied, reasoning as follows:

The provision in section 39-741 . . . referring to sections 39-741 to 39-799 was put in the Revised Statutes of 1943 to identify the remaining sections of the original act of 1931 in lieu of the words “this act”. This does not alter the fact that section 39-7,108 . . . is in effect an amendment of the 1931 act. Words defined in a prior statute will be understood in the same sense in subsequent statutes unless the contrary appears. . . . It necessarily follows that the definitions in the original act apply to amendatory sections. There appears no legislative intent to the contrary. The definition, then, of “business district” in section 39-741 . . . applies to the provisions of section 39-7,108 . . . .

Whether a statute is an amendment to the 1931 act must be left for court determination. It would seem, therefore, that statutes enacted prior to 1931 could not qualify. Act V would not present this problem since it contains no reference to specific sections to be covered by the definitions. It would be applicable to all sections presently in existence and to any subsequently added.

5 154 Neb. 39, 48 N.W.2d 839 (1951).
6 Id. at 679, 680, 48 N.W.2d at 844.
Some of the present ambiguous statutes refer to important subjects. For example, section 39-742 provides that vehicles shall stop upon *approaching* a place where passengers are getting on or off school buses. What is meant by the term "approaching"? Does it mean that vehicles must stop both when meeting and passing a school bus? Does the provision apply to vehicles operated on four-lane highways or divided highways? The increasing use of school buses in the expanding school systems together with the tremendous growth of vehicular travel has increased the need for legislation covering the dangers presented by school buses traveling and stopping on high speed roadways.

One further example of an incomplete provision is section 39-751 which provides only that a driver shall yield the right of way to a pedestrian who is crossing a highway within a clearly marked crosswalk or to a pedestrian who crosses at an intersection within the prolongation of the lateral boundary lines of the adjacent sidewalks at the end of a block; at all other places the pedestrian is to yield the right of way to vehicles on the highways. This statute does not provide for the regulation of pedestrians who walk along the sides of highways or pedestrians who solicit rides from passing motorists. Further, the statute does not require that drivers exercise due care and caution when observing children or incapacitated persons on or near the highway.

C. *Attempts to Change the Nebraska Statutes*

Many of the present statutes were adopted in 1933 or before. When these statutes were adopted, motor vehicles did not create the difficult problems of traffic control that they create today. The increased use of motor vehicles, higher speed rates, and better road networks have created problems which must be regulated by modern-day statutes. To a large extent the changes which have been made to improve Nebraska's statutes have been accomplished by piecemeal amendments rather than through comprehensive analysis and redrafting. This patchwork method has produced several deficiencies, for the correction of which further patchwork legislation has been required.

For example, section 39-723 establishes a speed limit of sixty miles per hour. Before a 1953 amendment, section 39-725 (the penalty section) directly referred to section 39-723 (the speed provisions). However, the amended law made no reference to section 39-723. Section 39-7,127, a "catch-all" statute, provides penalties for violations of laws relating to the operation
of motor vehicles where no specific penalty is provided. The "catch-all" penalty statute (section 39-7,127) was not the equivalent of the old penalty section (39-725). For example, the old penalty section (39-725) provided for a fine of not less than ten dollars nor more than one hundred dollars or thirty days imprisonment or both. For a first offense section 39-7,127 provides the same penalty except that fifty dollars is the maximum fine. And section 39-725, prior to its amendment, contained no distinction between a first and subsequent violation. Further amendment by the 1955 session of the Legislature was necessary to clear any doubt on this subject. Section 39-7,127 was amended to apply to violations of section 39-723, and for a first violation the maximum fine was raised to one hundred dollars.

Another illustration of a possible hiatus created by piecemeal statutory treatment is found in the penalty provision for trucks which violate the provision prohibiting a load greater than twenty percent heavier than that for which a registration fee has been paid (section 39-723.03). Until 1953, section 39-723.05 provided a fine of not less than ten dollars nor more than one hundred dollars, and in addition it provided for a revocation of the vehicle license upon the third conviction. A 1953 amendment to section 39-723.05 expressly provides a penalty for the first and second offenses of not less than ten dollars and not more than one hundred dollars if the operator violates the load limit mentioned above. It might be doubted whether an operator who violates the statute for the third, the fourth, or the fifth time may be fined and whether his vehicle license may be revoked since the statute, as amended, is silent upon these points.

D. Conflicting Provisions

The analysis revealed a few inconsistent provisions in the Nebraska statutes. Section 39-729 confers power upon the Department of Roads and Irrigation to devise and supervise the manufacture and erection of stop signs, red flares, traffic signals, traffic lights, or warning signs, and, where necessary, to

7 Neb. Rev. Stat. § 39-7,127 (Reissue 1952) provides: "Any person who shall violate any of the provisions of sections 39-726, 39-7,108 to 39-7,112 and 39-7,115 to 39-7,117, or any other law of this state relating to the operation of motor vehicles, shall, except as otherwise specifically provided ... be punished as follows ... ." Since § 39-725 no longer "specifically" provides a penalty for a violation of § 39-723, the latter relating to "the operation of a motor vehicle," then, § 39-7,127 should apply and it was held to apply in Hyslop v. State, 159 Neb. 802, 68 N.W.2d 698 (1955).

erect them on state highways and at railroad crossings upon state highways. Section 39-631 grants the Department exclusive jurisdiction as to stop signs, warning signs or other safety devices to be erected and maintained on state highways routed through cities of less than 25,000 inhabitants. However, section 39-631 also provides that such signs shall be placed on any highway within a city having a population of more than 2,500 inhabitants only after due notice and consultation by the Department with city officials. This limitation is not found in section 39-729. Clarification is needed to define with more certainty those powers of the Department relating to erection and maintenance of signs or other traffic devices on state highways without and within corporate city limits.

Another inconsistency exists between sections 39-742 and 39-755. Section 39-742 provides that a vehicle must stop when approaching a place where passengers are boarding or descending from streetcars. Section 39-755 also requires a full stop but provides exceptions where safety zones are established or where traffic at an intersection is controlled by an officer or traffic lights.

**E. Outdated Statutes**

At the present time there are many Nebraska statutes which are literally worthless because of automotive changes, integrated road networks and added vehicular travel. Good examples of these statutes are: (1) section 39-701, which deals with leaving horses and mules unhitched upon the highways; (2) sections 39-708 to 39-712 relating to camping upon the highways; and (3) section 39-718, which pertains to carriages meeting on the roads of the state.

Any carefully planned recodification of the present rules of the road should eliminate these obsolete statutes. Act V of the Uniform Vehicle Code contains only provisions which are applicable to present-day traffic needs. As any of the provisions of the Uniform Vehicle Code become obsolete or are no longer adequate to cope with traffic problems, new provisions drafted only after exhaustive research are recommended to the states for adoption. This relieves the states of a large amount of research which otherwise would be necessary.

**F. Lack of Subject Matter**

Probably the most critical deficiency in the Nebraska provisions is insufficient coverage of subject matter. In plain words, the present rules of the road do not regulate many situations which have arisen as a result of increased vehicular travel. The
present statutes are almost totally lacking in the following subjects: (1) traffic on divided highways, controlled access highways, and multiple lane undivided highways; (2) motor-driven cycles and bicycles; (3) traffic regulations for school buses; (4) traffic signal legends; and (5) regulations defining pedestrians' rights and duties.

Some of the present statutes briefly refer to important topics but fall short of adequate coverage. For example, section 39-788 provides that it shall be unlawful to drive any vehicle upon a highway with a red or green light visible from the front but such section shall not apply to police or fire patrol vehicles. It would appear that ambulances are not permitted to display red warning lights.

Another example of insufficient coverage of a topic is in relation to duties placed upon a driver involved in an accident. Sections 39-762 and 39-762.01 provide that a driver who is involved in an accident resulting in personal injury, death, or property damage shall stop at the scene of the accident, render aid if necessary, and give certain information. Unlike act V, the present statutes place no duty upon a driver to give immediate notice of an accident to law enforcement officials.

G. Policy Differences

The analysis revealed that act V and the related Nebraska statutes have some general policy differences.

Act V would give the state authorities almost exclusive control of the state highways for all purposes relating to the regulation of traffic; whereas, present Nebraska laws give local authorities power, though limited, to place signs, traffic signals, and speed limits on highways routed through municipalities. The policy behind act V visualizes the state as a more efficient body to provide for traffic regulation where the traffic problems of the entire state are considered, a point well taken where the state contains large cities and numerous congested highways. This argument loses some of its vigor when applied to Nebraska, however. In this state there are only two cities which approach metropolitan size. All other cities are relatively small and have no seriously congested traffic areas. Because of this, an argument can be made in favor of allowing a city some voice in regulating traffic upon state highways extending through its corporate limits. An optional provision of act V would impose a
duty upon the state to erect and maintain traffic control devices on county roads.  

Present Nebraska statutes provide for channeling accident reports through local police departments if a city ordinance so requires; otherwise, such reports are sent directly to a state agency. Act V would require that all such reports be sent to a state agency. The advantage of the present system is that police officials have an opportunity to collect data relating to accidents within their jurisdiction without having to resort to separate and different reports. The advantage in the use of the system under act V is that the state agency is assured of a more prompt receipt of the accident report.

As stated in the preceding section, act V places more specific duties upon a driver involved in an accident than do the present statutes. This has been done in an effort to safeguard more adequately the rights of property owners by requiring that the driver involved in the accident give immediate notice to law enforcement officials as well as to property owners and injured persons.

9 Uniform Vehicle Code, act V, § 31(a) (1952) provides, “The (State Highway Commission) shall place and maintain such traffic-control devices, conforming to its manual and specifications, upon all State (and county) highways as it shall deem necessary to indicate and to carry out the provisions of this act or to regulate, warn, or guide traffic.”

10 Neb. Rev. Stat. § 60-505(1) (Supp. 1953) provides:

The operator of every motor vehicle which is in any manner involved in an accident within this state, in which any person is killed or injured or in which damage... in excess of one hundred dollars is sustained to the property of any one person, including such operator, shall within ten days report the matter in writing to the department... [Roads and Irrigation], except when a report is made as provided in section 39-764 or 60-505.01 to the local police or police headquarters of a city or village.

Neb. Rev. Stat. § 60-505.01 (Supp. 1953) provides:

When any city or village by ordinance requires reports of accidents to be filed with local police or police headquarters, such police or police headquarters shall within forty-eight hours after receiving such a report, or making a report, send a copy of such report to the Department of Roads and Irrigation if the amount of damage to the property of any one person, including such operator, is... in excess of one hundred dollars or if injuries to any person or the death of any person resulted from such accident.

11 Uniform Vehicle Code, act V, § 45(a) (1952) provides: “The driver of a vehicle (or streetcar) which is in any manner involved in an accident resulting in bodily injury to or death of a person or total property damage to an apparent extent of $25 ($50, $100) or more shall, within 5 days after such accident, forward a written report of such accident to the department. (Revised 1952).”
In many cases fines and prison or jail sentences are more severe in Nebraska than those in act V, especially for the more serious offenses such as motor vehicle homicide, reckless and willful reckless driving, and drunk driving. Several sections of act V authorize revocation of a driver's license but do not specify the duration of the period of revocation.12 The Nebraska statutes contain a number of provisions which authorize revocation of licenses and ordinarily prescribe the length of time the license will remain revoked.13

Penalties for violations of Nebraska statutes are often found within the same statute14 or in a separate statute which refers to one or a group of statutes.15 Except for special penalties imposed upon a conviction for negligent homicide, driving while intoxicated, and reckless driving, act V treats all violations as misdemeanors, and imposes the same penalty.

Section 39-741(5) of the present statutes defines the term “highway” as “every way or place of whatever nature open to the use of the public . . . but shall not be deemed to include a roadway or driveway upon grounds owned by . . . colleges, universities or other institutions.” The reason for excluding roadways on grounds owned by “colleges, universities or other institutions” is that under the state administrative organization, agencies other than the Department of Roads and Irrigation have supervisory powers over various state owned grounds, including the roadways thereon. Because of this, separate statutes provide for speeds, right of way for traffic, and erection and maintenance of traffic signs on such roadways.16 Section 14(a) of act V defines a “street or highway” as “the entire width between the boundary lines of every way publicly maintained when any part is open to the use of the public . . . .” Act V draws no distinction between roadways on grounds of “colleges, universities or other institutions.” If act V is adopted, a decision must be made whether the various state agencies are to relinquish their

12 Uniform Vehicle Code, act V, § 53(c) (1952), a typical illustration, reads: “The commissioner shall revoke the license or permit to drive and any nonresident operating privilege of any person convicted of negligent homicide.”
13 For example, see Neb. Rev. Stat. § 39-7,106 (Reissue 1952) and § 39-723.05(2) (Supp. 1953).
14 Neb. Rev. Stat. § 39-706 (Reissue 1952) is typical. It provides: “Whoever shall plow up or upon any public highway without the consent or direction of the overseer of roads shall be fined not less than five dollars nor more than twenty-five dollars.”
present control over such roadways and place such roadways in the same category as any other highway for traffic regulation purposes.

Section 39-738 of the present statutes confers power upon the Department of Roads and Irrigation, when the officials of a state institution shall so request, to devise and supervise the erection of stop signs, slow signs, or warning signs on roadways through, along or within the grounds of the institution. The officials of an institution may be in the best position to judge the needs for traffic safety within the grounds. This is the basis for the requirement that such officials first initiate a request for traffic signs. Section 39-737 provides that the rate of speed for vehicles operated on any “road, avenue or boulevard” running within, through or along the grounds of a state institution shall be reasonable and proper. The rates of speed declared to be lawful in other statutes do not apply to these roadways. Regardless of whether the distinction between ordinary highways and roadways on grounds of state institutions is removed in the event that act V is adopted, it is difficult to foresee any real difficulties which should disrupt an efficient method of regulating traffic on state institutional roadways.

The Nebraska statutes prohibit careless driving, reckless driving, and willful reckless driving. The reason for the distinction drawn in these statutes is that each is designed for application to a standard of driving conduct depending upon the gravity of the violation. As a result of these distinctions, a prosecutor may choose to prosecute under one statute rather than another because the facts of his case may warrant a greater or lesser penalty. Act V does not allow a prosecutor such a choice because the act provides only for the offense of reckless driving. A disadvantage of this single offense is that a violation by one driver may be much less flagrant than that of another and yet the stigma of the term “reckless driving” will attach equally to both.

IV. RECOMMENDED CHANGES

A set of uniform laws recommended to the states for adop-
tion seldom fits the exact needs of a particular state. This would be especially true where driving laws are concerned since each state's highway system and highway administration system are unique. It was not surprising that the detailed report of the one hundred and twenty-nine sections of act V which were analyzed showed that thirty-three sections had recommendations other than "Adopt UVC." The following recommendations were made to the Legislation Committee of the Nebraska State Bar Association.

A. Minor Changes for Clarity

Fifteen of the sections not recommended for adoption required only minor changes for clarity, omitted provisions, terms to fit appropriate state agencies, and terminology to harmonize with the other statutes. None of these fifteen changes would

21 The following sections of the Uniform Vehicle Code were recommended with minor modifications: (1) § 2(e): the definition of "authorized emergency vehicle" would be amended to allow state authorities to declare certain vehicles as "authorized emergency vehicles" if the need should arise. (2) § 10(a): the provision would be amended to change the term "commissioner" to "State Engineer." (3) § 11(e): the definition of the term "driver" would be amended to include one who controls a vehicle by electronic device. (4) § 14(a): the definition of "street or highway" would be amended to exclude roadways upon grounds of state institutions if it is deemed advisable to retain the present statutory distinction found in § 39-741(5) of the present laws. (5) § 18(b): the definition of "business district" would be amended to clarify the meaning regarding the required number of feet for frontage contiguous to a highway. (6) § 25.1: the definition of "authorized emergency vehicle" would be amended to include "conservation vehicles." (7) § 34: a provision relating to the use of colored traffic lights would be amended to insure proper sequence of colored lights for traffic movement. (8) § 37: a provision relating to displaying unauthorized signs would be amended to permit the organization making or authorizing the sign to have its name placed thereon. (9) § 41: a provision requiring a driver to give information and render aid to those involved in an accident would be amended to include giving the same type of information to an investigating law officer. (10) § 47.1: a provision providing a penalty for failing to make a written report of an accident would be amended to provide that the one reporting would be required to give correct information on such report. (11) § 48: a provision requiring that coroners submit monthly reports of traffic deaths would be amended to place the date of submitting such report on a date which is convenient for the receiving state agency. (12) § 69: a provision which gives state authorities power to determine those portions of any highway on which no-passing signs may be erected would be amended to permit local authorities to designate such portions of highway under their jurisdiction and to erect signs thereon. (13) § 79: a provision requiring an arm signal when intending to stop a vehicle would be amended so such signal would not be necessary at a traffic stop signal or at a place where a traffic officer signals that a stop be made. (14) § 112: a provision pro-
disrupt to any significant extent the desired uniformity.

B. Jurisdiction over Traffic Control Devices

(1) Cities of less than twenty-five thousand

The adoption of sections 28(b), 31(b), 58(d), 69 and 113(c) depends upon whether the Legislature will repeal or modify section 39-631 of the present statutes. This section gives state authorities exclusive jurisdiction over warning signs, stop signs and safety devices located on state highways routed through cities and villages of less than twenty-five thousand inhabitants. The five sections of act V will conflict with this section unless it is modified.

(2) County roads

Section 31 places upon state authorities the duty of maintaining traffic control devices upon all state and county roads and no local authority may place or maintain such devices on roadways under its jurisdiction without permission from state authorities. Section 32(a) provides that local authorities in their respective jurisdictions shall place and maintain such traffic control devices under their jurisdiction as deemed necessary. However, section 32(b) (an optional provision) provides that the local authorities referred to in section 32(a) shall be subject to the direction and control of state authorities. That part of section 31 which gives state authorities the duty to maintain traffic control devices on county roads should be deleted. Nebraska has many miles of these roads, and the proposed provision of act V would require that the Department of Roads and Irrigation be responsible for knowing all the danger points upon such roads and for giving notice of them by proper signs. Maintenance of these roads by the county places the county in a better position to judge safety needs.

(3) State control over erection of traffic devices by local authorities

Optional provision (b) of section 32 would vest in the De-
partment of Roads and Irrigation authority to direct and control location and number of traffic control devices which might be erected by local authorities. This may be objectionable to some local authorities although it is recognized that in certain instances local authorities having a free hand in this matter have erected such numbers of regulatory signs and signals as to unduly delay traffic and invite disobedience by the motoring public. This optional provision was not recommended for adoption partly on the grounds that it takes away a primary function of municipal government and partly because most Nebraska cities (except Lincoln and Omaha) are relatively small and any serious local problem could be remedied by the municipality.

C. Restrictions Which May Not Fit Nebraska’s Needs

It was recommended that sections 56, 58(d), 60, 72, 105, and 109.5 of act V be closely analyzed by the Traffic Engineering Division of the Department of Roads and Irrigation because it may be that these sections impose driving restrictions which do not fit the particular needs of Nebraska. Changes in these sections would involve speeds for vehicles outside cities and villages, prima facie speed limits within cities and villages, speeds for motor-driven cycles, distances to be maintained when following vehicles, stops for school busses, and certain stops at railroad crossings.

D. Penalties and License Revocation

It was recommended that the penalties for violation of sections 39 and 53 be referred to the Legislature for study. Section 39, which compels any driver involved in an accident to stop when injury or death occurs therefrom, has a less severe penalty than the present statute, section 39-763.

Section 53 relates to negligent homicide while operating a motor vehicle. Section 28-403.01 of the Nebraska statutes provides that whoever shall be deemed guilty of motor vehicle homicide shall be punished by (1) a fine not exceeding five hundred dollars, (2) imprisonment in the county jail for a period not to exceed six months, (3) imprisonment in the penitentiary for a period not less than one year nor more than ten years, or (4) both such fine and imprisonment. Section 53(b) of act V provides that “any person convicted of negligent homicide shall be punished by imprisonment for not more than one year or by fine

22 Uniform Vehicle Code, act V, § 56 would place a maximum speed of fifty miles per hour on highways outside business or residence districts during the daytime and forty-five miles per hour during nighttime.
of not less than $100 nor more than $1,000, or by both such fine and imprisonment.” This imprisonment penalty barely puts negligent homicide within the category of a felony. The Nebraska Legislature has seen fit to prescribe a very severe penalty for this offense. One factor which must be considered in providing a penalty for this offense is that such penalty must be one which prosecutors will use with some degree of assurance that a conviction may be obtained. It cannot be doubted that there is feeling among many people that the possibility of a person being imprisoned for ten years for a violation of this statute is shocking. Undoubtedly this springs from the belief that almost everyone who drives a vehicle may be involved in an accident for which he is at least partly to blame. Opposition springing from this attitude can well prevent the statute being applied with vigor regardless of the fact that some person has lost his life upon the highways.23

Both sections 39(c) and 53(c), relating to revocation of operators’ licenses, should be amended to provide a definite duration for the period of revocation. Otherwise it would be possible to withhold the license indefinitely.

E. Admission of Accident Reports in Evidence

Section 50 of act V, relating to accident reports, provides, as does section 39-764 of the present statutes, that such reports may not be introduced as evidence in any civil or criminal trial except to prove a compliance or noncompliance with the law requiring submission of such reports. Under the present statutes, inadmissibility of accident reports as evidence hampers enforcement of the financial responsibility law. If the person reporting damage in excess of one hundred dollars (or an accident which caused a personal injury) cannot meet the requirements of the financial responsibility law, he receives a notice that his operator’s license will be suspended unless he makes a security deposit in the amount stated in the notice.24 If he fails to comply, the director of financial responsibility sends him a notice that his operator’s license has been suspended. The operator may challenge this action of suspension in a district court.25 Suspension depends upon whether the accident resulted in injury or death or whether there was property damage to an apparent extent of over one hundred dollars. Use of the accident reports at trial to prove a basis for the director’s action is a violation.

of section 39-764. To obtain other proof of the amount of the damage requires that the Attorney General, who must defend the action against the director, make a diligent investigation of the damage in each action. Limited time and lack of personnel to conduct investigations of this type preclude the Attorney General from performing this function. The result is that the operator cannot be deprived of his license since the director is unable to prove the basis for the suspension.

It was suggested that a provision be made in section 50 of act V that the court may direct that the accident report be produced. After examining the report, the court would state for the record whether certain statements contained therein provided a proper basis for the director's action. The Nebraska constitutional provision against compelling any person to give evidence against himself in any criminal case would appear not to conflict with the above suggested provision since the court action is one instigated by the operator and not the state.

F. Statutory Presumption of Drunkenness

Section 54 relates to persons under the influence of intoxicating liquor or drugs. The present Nebraska statute, section 39-727.01, provides for certain statutory presumptions of drunkenness based upon alcoholic content of the body fluid. It also provides that a presumption of guilt shall not arise against one who refuses to submit to a test designed to calculate the alcoholic content.

This latter provision seems to indicate that consent by the accused would be necessary to admit as evidence the results of any test of a specimen of the accused's body fluid for alcoholic content, although the provision does not specifically so state. If this latter provision were deleted from the statute, it would then appear that consent is not necessary for the use of the results of a test for alcohol as evidence to prove drunkenness. Taking a sample of body fluid for an alcohol test when the accused is incapable of giving consent involves the question of violation of the rights of the accused against self-incrimination. The present trend in the law is to draw a distinction between information elicited by "word of mouth" and information which comes by way of scientific analysis even though it is the accused's body fluid that provides the substance to be analyzed. The latter type of information is held not to be self-incriminating, i.e., the

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26 See Annot., 127 A.L.R. 1514 (1940); 159 A.L.R. 209 (1945); 164 A.L.R. 967 (1946); 25 A.L.R.2d 1407 (1952).
NOTES

giving of evidence against oneself, because it is not derived from statements which are controlled by the thought process of the accused. It is, rather, the results of scientific analysis which provide the information.

Section 54 of act V contains the same statutory presumptions of drunkenness based upon the alcoholic content of the blood, but the section does not have a provision that a presumption shall not arise from a person’s refusing to submit to a blood test. If section 54 were adopted, the questions of necessity of consent, and of self-incrimination would be thrown open for litigation. For this reason the adoption of section 54 was not recommended.

G. Reckless Driving

Section 55 of act V relates only to the offense of “reckless driving.” Nebraska has a similar statute and also separate provisions for the offenses of careless driving and willful reckless driving. The purpose of the three separate provisions, as outlined earlier in this article, was to avoid attaching the stigma of “reckless driver” to all, regardless of the degree of their lack of care. For this reason, it was recommended that the present statute, with minor modification, be retained.

H. Duty to Lock Ignition

Section 114 of act V would place a duty upon a driver of a vehicle to lock the ignition and remove the key. Such a provision could cause a harsh result in that failure to comply with the statute might provide the basis for a finding that the driver is negligent when his vehicle is wrongfully taken and later involved in an accident. Application of the doctrine of negligence per se to this situation would render inapplicable the common law rules regarding foreseeability of risk.

Statutes requiring that a driver set his hand brakes and turn his vehicle’s wheels toward the curb when parking are perfectly reasonable because of the inherent risk that the vehicle may move and cause injury to person and property. Resulting damages can be traced to the driver’s personal negligence. However, a statute prohibiting the leaving of ignition keys in a vehicle and thereby providing a wrongdoer an opportunity to steal the vehicle which later produces an injury seems remote and perhaps unreasonable in comparison. This section was not recommended for adoption.
CONCLUSION

It is hoped that the report which this article summarizes will be of help to those in this state who are trying to make our roads safer. The study of Nebraska laws pertaining to the rules of the road demonstrated a real need for recodification. There is no reason to doubt that similar studies in other states would support substantially the same conclusion. It would be desirable for other states to reexamine their statutes as Nebraska has done, and to consider adoption of those parts of the Uniform Vehicle Code which fit their traffic conditions. Through this technique possibly some degree of uniformity may result.

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