

LEGISLATIVE BILL 35

Approved by the Governor February 15, 2013

Introduced by Hadley, 37.

FOR AN ACT relating to motor vehicles; to amend sections 60-3,113.04, 60-3,193.01, 60-462.01, 60-479.01, 60-4,147.02, 75-363, 75-364, 75-366, and 75-393, Revised Statutes Cumulative Supplement, 2012; to adopt and update references to certain federal provisions relating to handicapped or disabled parking permits, persons handling source documents, the International Registration Plan, operators' licenses, hazardous materials, motor carrier regulations and their enforcement, and the unified carrier registration plan; to repeal the original sections; and to declare an emergency.

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

Section 1. Section 60-3,113.04, Revised Statutes Cumulative Supplement, 2012, is amended to read:

60-3,113.04 (1) This section applies beginning on the implementation date designated by the director under section 60-3,113.01.

(2) A handicapped or disabled parking permit shall be of a design, size, configuration, color, and construction and contain such information as specified in the regulations adopted by the United States Department of Transportation in ~~the Uniform System for Parking for Persons with Disabilities~~, 23 C.F.R. part 1235, UNIFORM SYSTEM FOR PARKING FOR PERSONS WITH DISABILITIES, as such regulations existed on January 1, ~~2012~~, 2013.

(3) No handicapped or disabled parking permit shall be issued to any person or for any motor vehicle if any permit has been issued to such person or for such motor vehicle and such permit has been suspended pursuant to section 18-1741.02. At the expiration of such suspension, a permit may be renewed in the manner provided for renewal in sections 60-3,113.02, 60-3,113.03, and 60-3,113.05.

(4) A duplicate handicapped or disabled parking permit may be provided up to two times during any single permit period if a permit is destroyed, lost, or stolen. Such duplicate permit shall be issued as provided in section 60-3,113.02 or 60-3,113.03, whichever is applicable, except that a new certification by a physician, a physician assistant, or an advanced practice registered nurse need not be provided. A duplicate permit shall be valid for the remainder of the period for which the original permit was issued. If a person has been issued two duplicate permits under this subsection and needs another permit, such person shall reapply for a new permit under section 60-3,113.02 or 60-3,113.03, whichever is applicable.

Sec. 2. Section 60-3,193.01, Revised Statutes Cumulative Supplement, 2012, is amended to read:

60-3,193.01 For purposes of the Motor Vehicle Registration Act, the International Registration Plan is adopted and incorporated by reference as the plan existed on ~~January 1, 2012~~, January 1, 2013.

Sec. 3. Section 60-462.01, Revised Statutes Cumulative Supplement, 2012, is amended to read:

60-462.01 For purposes of the Motor Vehicle Operator's License Act, the following federal regulations are adopted as Nebraska law as they existed on January 1, ~~2012~~, 2013:

The parts, subparts, and sections of Title 49 of the Code of Federal Regulations, as referenced in the Motor Vehicle Operator's License Act.

Sec. 4. Section 60-479.01, Revised Statutes Cumulative Supplement, 2012, is amended to read:

60-479.01 (1) All persons handling source documents or engaged in the issuance of new, renewed, or reissued operators' licenses or state identification cards shall have periodic fraudulent document recognition training.

(2) This subsection applies beginning on an implementation date designated by the director on or before January 1, 2014. All persons and agents of the department involved in the recording of verified application information or verified operator's license and state identification card information, involved in the manufacture or production of licenses or cards, or who have the ability to affect information on such licenses or cards shall be subject to a criminal history record information check, including a check of prior employment references, and a lawful status check as required by 6 C.F.R. part 37, as such part existed on January 1, ~~2012~~, 2013. Such persons and agents shall provide fingerprints which shall be submitted to the Federal Bureau of Investigation. The bureau shall use its records for the criminal

history record information check.

(3) Upon receipt of a request pursuant to subsection (2) of this section, the Nebraska State Patrol shall undertake a search for criminal history record information relating to such applicant, including transmittal of the applicant's fingerprints to the Federal Bureau of Investigation for a national criminal history record information check. The criminal history record information check shall include information concerning the applicant from federal repositories of such information and repositories of such information in other states, if authorized by federal law. The Nebraska State Patrol shall issue a report to the employing public agency that shall include the criminal history record information concerning the applicant. The cost of any background check shall be borne by the employer of the person or agent.

(4) Any person convicted of any disqualifying offense as provided in 6 C.F.R. part 37, as such part existed on January 1, ~~2012~~, 2013, shall not be involved in the recording of verified application information or verified operator's license and state identification card information, involved in the manufacture or production of licenses or cards, or involved in any capacity in which such person would have the ability to affect information on such licenses or cards. Any employee or prospective employee of the department shall be provided notice that he or she will undergo such criminal history record information check prior to employment or prior to any involvement with the issuance of operators' licenses or state identification cards.

Sec. 5. Section 60-4,147.02, Revised Statutes Cumulative Supplement, 2012, is amended to read:

60-4,147.02 No endorsement authorizing the driver to operate a commercial motor vehicle transporting hazardous materials shall be issued, renewed, or transferred by the Department of Motor Vehicles unless the endorsement is issued, renewed, or transferred in conformance with the requirements of section 1012 of the federal Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, USA PATRIOT Act, 49 U.S.C. 5103a, including all amendments and federal regulations adopted pursuant thereto as of January 1, ~~2012~~, 2013, for the issuance of licenses to operate commercial motor vehicles transporting hazardous materials.

Sec. 6. Section 75-363, Revised Statutes Cumulative Supplement, 2012, is amended to read:

75-363 (1) The parts, subparts, and sections of Title 49 of the Code of Federal Regulations listed below, as modified in this section, or any other parts, subparts, and sections referred to by such parts, subparts, and sections, in existence and effective as of January 1, ~~2012~~, 2013, are adopted as Nebraska law.

(2) Except as otherwise provided in this section, the regulations shall be applicable to:

(a) All motor carriers, drivers, and vehicles to which the federal regulations apply; and

(b) All motor carriers transporting persons or property in intrastate commerce to include:

(i) All vehicles of such motor carriers with a gross vehicle weight rating, gross combination weight rating, gross vehicle weight, or gross combination weight over ten thousand pounds;

(ii) All vehicles of such motor carriers designed or used to transport more than eight passengers, including the driver, for compensation, or designed or used to transport more than fifteen passengers, including the driver, and not used to transport passengers for compensation;

(iii) All vehicles of such motor carriers transporting hazardous materials required to be placarded pursuant to section 75-364; and

(iv) All drivers of such motor carriers if the drivers are operating a commercial motor vehicle as defined in section 60-465 which requires a commercial driver's license.

(3) The Legislature hereby adopts, as modified in this section, the following parts of Title 49 of the Code of Federal Regulations:

(a) Part 382 - ~~Controlled Substances And Alcohol Use And Testing~~; CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING;

(b) Part 385 - ~~Safety Fitness Procedures~~; SAFETY FITNESS PROCEDURES;

(c) Part 386 - ~~Rules Of Practice For Motor Carrier, Intermodal Equipment Provider, Broker, Freight Forwarder, And Hazardous Materials Proceedings~~; RULES OF PRACTICE FOR MOTOR CARRIER, INTERMODAL EQUIPMENT PROVIDER, BROKER, FREIGHT FORWARDER, AND HAZARDOUS MATERIALS PROCEEDINGS;

(d) Part 387 - ~~Minimum Levels of Financial Responsibility for Motor Carriers~~; MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS;

(e) Part 390 - ~~Federal Motor Carrier Safety Regulations; General~~; FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL;

(f) Part 391 - ~~Qualifications Of Drivers And Longer Combination Vehicle (LCV) Driver Instructors,~~ QUALIFICATIONS OF DRIVERS AND LONGER COMBINATION VEHICLE (LCV) DRIVER INSTRUCTORS;

(g) Part 392 - ~~Driving Of Commercial Motor Vehicles,~~ DRIVING OF COMMERCIAL MOTOR VEHICLES;

(h) Part 393 - ~~Parts And Accessories Necessary For Safe Operation,~~ PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION;

(i) Part 395 - ~~Hours Of Service Of Drivers,~~ HOURS OF SERVICE OF DRIVERS;

(j) Part 396 - ~~Inspection, Repair, And Maintenance,~~ INSPECTION, REPAIR, AND MAINTENANCE;

(k) Part 397 - ~~Transportation Of Hazardous Materials, Driving And Parking Rules,~~ TRANSPORTATION OF HAZARDOUS MATERIALS; DRIVING AND PARKING RULES; and

(l) Part 398 - ~~Transportation Of Migrant Workers,~~ TRANSPORTATION OF MIGRANT WORKERS.

(4) The provisions of subpart E - Physical Qualifications And Examinations of 49 C.F.R. part 391 - ~~Qualifications Of Drivers And Longer Combination Vehicle (LCV) Driver Instructors~~ QUALIFICATIONS OF DRIVERS AND LONGER COMBINATION VEHICLE (LCV) DRIVER INSTRUCTORS shall not apply to any driver subject to this section who: (a) Operates a commercial motor vehicle exclusively in intrastate commerce; and (b) holds, or has held, a commercial driver's license issued by this state prior to July 30, 1996.

(5) The regulations adopted in subsection (3) of this section shall not apply to farm trucks registered pursuant to section 60-3,146 with a gross weight of sixteen tons or less. The following parts and sections of 49 C.F.R. chapter III shall not apply to drivers of farm trucks registered pursuant to section 60-3,146 and operated solely in intrastate commerce:

- (a) All of part 391;
- (b) Section 395.8 of part 395; and
- (c) Section 396.11 of part 396.

(6) Part 393 - ~~Parts And Accessories Necessary For Safe Operation~~ PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION and Part 396 - ~~Inspection, Repair, And Maintenance~~ INSPECTION, REPAIR, AND MAINTENANCE shall not apply to fertilizer and agricultural chemical application and distribution equipment transported in units with a capacity of three thousand five hundred gallons or less.

(7) For purposes of this section, intrastate motor carriers shall not include any motor carrier or driver excepted from 49 C.F.R. chapter III by section 390.3(f) of part 390.

(8) (a) Part 395 - ~~Hours Of Service Of Drivers~~ HOURS OF SERVICE OF DRIVERS shall apply to motor carriers and drivers who engage in intrastate commerce as defined in section 75-362, except that no motor carrier who engages in intrastate commerce shall permit or require any driver used by it to drive nor shall any driver drive:

(i) More than twelve hours following eight consecutive hours off duty; or

(ii) For any period after having been on duty sixteen hours following eight consecutive hours off duty.

(b) No motor carrier who engages in intrastate commerce shall permit or require a driver of a commercial motor vehicle, regardless of the number of motor carriers using the driver's services, to drive, nor shall any driver of a commercial motor vehicle drive, for any period after:

(i) Having been on duty seventy hours in any seven consecutive days if the employing motor carrier does not operate every day of the week; or

(ii) Having been on duty eighty hours in any period of eight consecutive days if the employing motor carrier operates motor vehicles every day of the week.

(9) Part 395 - ~~Hours Of Service Of Drivers,~~ HOURS OF SERVICE OF DRIVERS, as adopted in subsections (3) and (8) of this section, shall not apply to drivers transporting agricultural commodities or farm supplies for agricultural purposes when the transportation of such commodities or supplies occurs within a one-hundred-air-mile radius of the source of the commodities or the distribution point for the supplies when such transportation occurs during the period beginning on February 15 up to and including December 15 of each calendar year.

(10) 49 C.F.R. 390.21 - ~~Marking Of Self-Propelled CMVs And Intermodal Equipment~~ MARKING OF SELF-PROPELLED CMVS AND INTERMODAL EQUIPMENT shall not apply to farm trucks and farm truck-tractors registered pursuant to section 60-3,146 and operated solely in intrastate commerce.

(11) 49 C.F.R. 392.9a - Operating Authority shall not apply to Nebraska motor carriers operating commercial motor vehicles solely in

intrastate commerce.

(12) No motor carrier shall permit or require a driver of a commercial motor vehicle to violate, and no driver of a commercial motor vehicle shall violate, any out-of-service order.

Sec. 7. Section 75-364, Revised Statutes Cumulative Supplement, 2012, is amended to read:

75-364 The parts, subparts, and sections of Title 49 of the Code of Federal Regulations listed below, or any other parts, subparts, and sections referred to by such parts, subparts, and sections, in existence and effective as of January 1, ~~2012~~, 2013, are adopted as part of Nebraska law and shall be applicable to all motor carriers whether engaged in interstate or intrastate commerce, drivers of such motor carriers, and vehicles of such motor carriers:

(1) Part 107 - ~~Hazardous Materials Program Procedures~~, HAZARDOUS MATERIALS PROGRAM PROCEDURES, subpart F-Registration of Cargo Tank and Cargo Tank Motor Vehicle Manufacturers, Assemblers, Repairers, Inspectors, Testers, and Design Certifying Engineers;

(2) Part 107 - ~~Hazardous Materials Program Procedures~~, HAZARDOUS MATERIALS PROGRAM PROCEDURES, subpart G-Registration of Persons Who Offer or Transport Hazardous Materials;

(3) Part 171 - GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS;

(4) Part 172 - HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, TRAINING REQUIREMENTS, AND SECURITY PLANS;

(5) Part 173 - SHIPPERS - GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS;

(6) Part 177 - CARRIAGE BY PUBLIC HIGHWAY;

(7) Part 178 - SPECIFICATIONS FOR PACKAGINGS; and

(8) Part 180 - CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS.

Sec. 8. Section 75-366, Revised Statutes Cumulative Supplement, 2012, is amended to read:

75-366 For the purpose of enforcing Chapter 75, article 3, any officer of the Nebraska State Patrol may, upon demand, inspect the accounts, records, and equipment of any motor carrier or shipper. Any officer of the Nebraska State Patrol shall have the authority to enforce the federal motor carrier safety regulations, as such regulations existed on January 1, ~~2012~~, 2013, and federal hazardous materials regulations, as such regulations existed on January 1, ~~2012~~, 2013, and is authorized to enter upon, inspect, and examine any and all lands, buildings, and equipment of any motor carrier, any shipper, and any other person subject to the federal Interstate Commerce Act, the federal Department of Transportation Act, and other related federal laws and to inspect and copy any and all accounts, books, records, memoranda, correspondence, and other documents of a motor carrier, a shipper, and any other person subject to Chapter 75, article 3, for the purposes of enforcing Chapter 75, article 3. To promote uniformity of enforcement, the carrier enforcement division of the Nebraska State Patrol shall cooperate and consult with the Public Service Commission and the Division of Motor Carrier Services.

Sec. 9. Section 75-393, Revised Statutes Cumulative Supplement, 2012, is amended to read:

75-393 The director may participate in the unified carrier registration plan and agreement pursuant to the Unified Carrier Registration Act of 2005, 49 U.S.C. 13908, as the act existed on January 1, ~~2012~~, 2013, and may file on behalf of this state the plan required by such plan and agreement for enforcement of the act in this state.

Sec. 10. Original sections 60-3,113.04, 60-3,193.01, 60-462.01, 60-479.01, 60-4,147.02, 75-363, 75-364, 75-366, and 75-393, Revised Statutes Cumulative Supplement, 2012, are repealed.

Sec. 11. Since an emergency exists, this act takes effect when passed and approved according to law.