

LEGISLATIVE BILL 1056

Approved by the Governor April 3, 1998 .

Introduced by Bromm, 23; Coordsen, 32; Dw. Pedersen, 39; C. Peterson, 35

AN ACT relating to motor carriers; to amend sections 60-6,173, 66-1401, and 75-126, Reissue Revised Statutes of Nebraska, and sections 66-1414, 75-363, and 75-364, Revised Statutes Supplement, 1997; to provide powers for the Director of Motor Vehicles with respect to certificates and licenses under the International Registration Plan and International Fuel Tax Agreement Act; to provide for licenses and hearings; to eliminate obsolete provisions; to change provisions relating to state adoption of federal Motor Carrier Safety Regulations and federal Hazardous Material Regulations; to provide for certain common carrier services to be performed free or at a reduced rate; to harmonize provisions; to provide an operative date; to repeal the original sections; and to declare an emergency.

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

Section 1. Section 60-6,173, Reissue Revised Statutes of Nebraska, is amended to read:

60-6,173. (1) The driver of any vehicle which is required to be placarded pursuant to section 75-364, ~~or is specified in subsection (2) of such section,~~ before crossing at a grade any track of a railroad on streets and highways, shall stop such vehicle not more than fifty feet nor less than fifteen feet from the nearest rail or railroad and while stopped shall listen and look in both directions along the track for an approaching train. The driver shall not proceed until precaution has been taken to ascertain that the course is clear.

(2) The requirements of subsection (1) of this section shall not apply:

(a) When a peace officer or a flagperson directs traffic to proceed; (b) At an abandoned or exempted grade crossing which is clearly marked as such by or with the consent of competent authority when such markings can be read from the driver's position; or

(c) At railroad tracks used exclusively for industrial switching purposes within a business district.

(3) Nothing in this section shall be deemed to exempt the driver of any vehicle from compliance with the other requirements contained in the Nebraska Rules of the Road.

Sec. 2. (1) The Director of Motor Vehicles may suspend, revoke, cancel, or refuse to issue or renew a registration certificate under sections 60-305.09 to 60-305.16;

(a) If the applicant or certificate holder has issued to the Department of Motor Vehicles a check or draft which has been returned because of insufficient funds, no funds, or a stop-payment order;

(b) If the applicant or certificate holder has had his or her license issued under the International Fuel Tax Agreement Act revoked or the director refused to issue or refused to renew such license; or

(c) If the applicant or certificate holder is in violation of sections 75-348 to 75-358.

(2) Prior to taking action under this section, the director shall notify and advise the applicant or certificate holder of the proposed action and the reasons for such action in writing, by registered or certified mail, to his or her last-known business address as shown on the application for the certificate or renewal. The notice shall also include an advisement of the procedures in subsection (3) of this section.

(3) The applicant or certificate holder may, within thirty days after the date of the mailing of the notice, petition the director for a hearing to contest the proposed action. The hearing shall be commenced in accordance with the rules and regulations adopted and promulgated by the department. If a petition is filed, the director shall, within twenty days after receipt of the petition, set a hearing date at which the applicant or certificate holder may show cause why the proposed action should not be taken. The director shall give the applicant or certificate holder reasonable notice of the time and place of the hearing. If the director's decision is adverse to the applicant or certificate holder, the applicant or certificate holder may appeal the decision in accordance with the Administrative Procedure Act.

(4) The filing of the petition shall stay any action by the director until a hearing is held and a final decision and order is issued.

(5) If no petition is filed at the expiration of thirty days after the date on which the notification was mailed, the director may take the proposed action described in the notice.

(6) If, in the judgment of the director, the applicant or certificate holder has complied with or is no longer in violation of the provisions for which the director took action under this section, the director may reinstate the registration certificate without delay.

Sec. 3. Section 66-1401, Reissue Revised Statutes of Nebraska, is amended to read:

66-1401. Sections 66-1401 to 66-1415 and sections 4 and 5 of this act shall be known and may be cited as the International Fuel Tax Agreement Act.

Sec. 4. Any motor carrier involved in interstate commerce who is required to pay motor fuel taxes shall obtain a license from the director pursuant to an agreement entered into under the International Fuel Tax Agreement Act.

Sec. 5. (1) The director may suspend, revoke, cancel, or refuse to issue or renew a license under the International Fuel Tax Agreement Act:

(a) If the applicant's or licensee's registration certificate issued pursuant to sections 60-305.09 to 60-305.16 has been suspended, revoked, or canceled or the director refused to issue or renew such certificate;

(b) If the applicant or licensee is in violation of sections 75-348 to 75-358;

(c) If the applicant's or licensee's security has been canceled;

(d) If the applicant or licensee failed to provide additional security as required;

(e) If the applicant or licensee failed to file any report or return required by the motor fuel laws, filed an incomplete report or return required by the motor fuel laws, did not file any report or return required by the motor fuel laws electronically, or did not file a report or return required by the motor fuel laws on time;

(f) If the applicant or licensee failed to pay taxes required by the motor fuel laws due within the time provided;

(g) If the applicant or licensee filed any false report, return, statement, or affidavit, required by the motor fuel laws, knowing it to be false;

(h) If the applicant or licensee would no longer be eligible to obtain a license; or

(i) If the applicant or licensee committed any other violation of the International Fuel Tax Agreement Act or the rules and regulations adopted and promulgated under the act.

(2) Prior to taking any action pursuant to this section, the director shall notify and advise the applicant or licensee of the proposed action and the reasons for such action in writing, by registered or certified mail, to his or her last-known business address as shown on the application or license. The notice shall also include an advisement of the procedures in subsection (3) of this section.

(3) The applicant or licensee may, within thirty days after the mailing of the notice, petition the director in writing for a hearing to contest the proposed action. The hearing shall be commenced in accordance with the rules and regulations adopted and promulgated by the Department of Motor Vehicles. If a petition is filed, the director shall, within twenty days after receipt of the petition, set a hearing date at which the applicant or licensee may show cause why the proposed action should not be taken. The director shall give the applicant or licensee reasonable notice of the time and place of the hearing. If the director's decision is adverse to the applicant or licensee, the applicant or licensee may appeal the decision in accordance with the Administrative Procedure Act.

(4) The filing of the petition shall stay any action by the director until a hearing is held and a final decision and order is issued.

(5) If no petition is filed at the expiration of thirty days after the date on which the notification was mailed, the director may take the proposed action described in the notice.

(6) If, in the judgment of the director, the applicant or licensee has complied with or is no longer in violation of the provisions for which the director took action under this section, the director may reinstate the license without delay. An applicant for reinstatement, issuance, or renewal of a license within three years after the date of suspension, revocation, cancellation, or refusal to issue or renew shall submit a fee of one hundred dollars to the director. The director shall remit the fee to the State Treasurer for credit to the Highway Cash Fund.

(7) Suspension of, revocation of, cancellation of, or refusal to

issue or renew a license by the director shall not relieve any person from making or filing the reports or returns required by the motor fuel laws in the manner or within the time required.

Sec. 6. Section 66-1414, Revised Statutes Supplement, 1997, is amended to read:

66-1414. (1) Any fuel tax collected pursuant to the agreement shall be remitted to the State Treasurer for credit to the Motor Carrier Services Division Distributive Fund to carry out the International Fuel Tax Agreement Act.

(2) The Motor Carrier Services Division Distributive Fund is created. The fund shall be set apart and maintained by the State Treasurer to carry out the International Registration Plan and the International Fuel Tax Agreement Act. ~~Any money in the Base State Fuels Tax Fund and in the International Registration Plan Distributive Fund on July 1, 1997, shall be transferred to the Motor Carrier Services Division Distributive Fund.~~ Any money in the Motor Carrier Services Division Distributive Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Any interest received on money in the Motor Carrier Services Division Distributive Fund shall be credited to the Highway Trust Fund.

Sec. 7. Section 75-126, Reissue Revised Statutes of Nebraska, is amended to read:

75-126. (1) Except as otherwise provided in this section, no common carrier shall:

(a) Charge, demand, collect, or receive from any person a greater or lesser compensation for any services rendered than it charges, demands, collects, or receives from any other person for doing a like or contemporaneous service;

(b) Make or give any undue or unreasonable preference or advantage to any particular person;

(c) Subject any type of traffic to any undue or unreasonable prejudice, delay, or disadvantage in any respect whatsoever;

(d) Charge or receive any greater compensation in the aggregate for the transportation of a like kind of property or passengers for a shorter than for a longer distance over the same line or route, except as the commission may prescribe in special cases to prevent manifest injuries, except that no manifest injustice shall be imposed upon any person at intermediate points. This section shall not prevent the commission from making group or emergency rates;

(e) Demand, charge, or collect, by any device whatsoever, a lesser or greater compensation for any service rendered than that filed with or prescribed by the commission; or

(f) Change any rate, schedule, or classification in any manner whatsoever before application has been made to the commission and permission granted for that purpose, except as otherwise provided in section 75-128.

(2) This section shall not prohibit any common carrier from, and a common carrier shall not be subject to any fine, penalty, or forfeiture for, performing services free or at reduced rates to:

(a) The United States, the State of Nebraska, or any governmental subdivision thereof;

(b) The employees, both present and retired, of such common carrier;

(c) Any person when the object is to provide relief in case of any disaster;

(d) Any person who transports property for charitable purposes; ~~or~~

(e) Ministers and others giving their entire time to religious or charitable work; ~~or~~

(f) Any person who is legally blind or visually handicapped.

Sec. 8. Section 75-363, Revised Statutes Supplement, 1997, is amended to read:

75-363. (1) The parts of the federal Motor Carrier Safety Regulations, 49 C.F.R., listed in subdivisions (a) through (j) of this subsection or any other parts referred to by such parts, in existence and effective as of ~~January 1, 1997~~ July 1, 1998, are adopted as Nebraska law. The regulations shall be applicable to all carriers, drivers, and vehicles to which the federal regulations apply, to all vehicles of intrastate motor carriers with a gross vehicle weight rating over ten thousand pounds, to all intrastate motor carriers in the operation of vehicles with a gross vehicle weight rating over ten thousand pounds, and to all drivers of such vehicles if the drivers are operating a commercial motor vehicle as defined in section 60-465 which requires a commercial driver's license except as provided in subsections (2) and (3) of this section. The Legislature hereby adopts:

(a) Part 382 -- Controlled Substances And Alcohol Use And Testing;

- (b) Part 385 -- Safety Fitness Procedures;
- (c) Part 390 -- Federal Motor Carrier Safety Regulations: General;
- (d) Part 391 -- Qualifications Of Drivers;
- (e) Part 392 -- Driving Of Motor Vehicles;
- (f) Part 393 -- Parts And Accessories Necessary For Safe Operations;
- (g) Part 395 -- Hours Of Service Of Drivers;
- (h) Part 396 -- Inspection, Repair And Maintenance;
- (i) Part 397 -- Transportation Of Hazardous Materials; Driving And

Parking Rules; and

- (j) Part 398 -- Transportation Of Migrant Workers.

(2) The provisions of subpart E, Physical Qualifications And Examinations, of 49 C.F.R. part 391, Qualifications Of Drivers, 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.

(3) The regulations adopted in ~~subsections (1) and (2)~~ subsection (1) of this section shall not apply to farm trucks registered pursuant to section 60-330 with a gross weight of sixteen tons or less, liquefied petroleum gas tanks with a capacity of three thousand five hundred gallons or less, flammable liquid tanks with a capacity of three thousand gallons or less, and fertilizer and agricultural chemical application and distribution equipment transported in units with a capacity of three thousand five hundred gallons or less. The following parts and sections of the federal Motor Carrier Safety Regulations shall not apply to drivers of farm trucks registered pursuant to section 60-330 and operated solely in intrastate commerce:

- (a) All of part 391;
- (b) Section 395.08 of part 395; and
- (c) Section 396.11 of part 396.

(4) For purposes of this section, intrastate motor carriers shall not include any motor carrier or driver excepted from the federal Motor Carrier Safety Regulations by section 390.3(f) of part 390 or any nonprofit entity, operating solely in intrastate commerce, organized for the purpose of furnishing electric service.

(5) Part 395 -- Hours Of Service Of Drivers, of the federal Motor Carrier Safety Regulations adopted in subsection (1) of this section, shall apply to motor carriers and drivers who engage in intrastate commerce as defined in section 75-302, 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:

- (a) More than twelve hours following eight consecutive hours off duty; or
- (b) For any period after having been on duty sixteen hours following eight consecutive hours off duty.

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 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.

(6) Part 395 -- Hours Of Service Of Drivers, of the federal Motor Carrier Safety Regulations adopted in subsections (1) and (5) of this section relating to maximum driving and on-duty time for drivers, 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.

(7) Part 390 -- Federal Motor Carrier Safety Regulations: General, of the federal Motor Carrier Safety Regulations, adopted in subsection (1) of this section relating to 49 C.F.R. 390.21 -- Marking of motor vehicles, shall apply to all Nebraska intrastate motor carriers operating vehicles solely in intrastate commerce and:

(a) All motor vehicles or combinations of vehicles in intrastate commerce that transport property or passengers and have a manufacturer's gross vehicle weight rating over ten thousand pounds; or

(b) All farm trucks and farm truck tractors, except for those farm trucks and farm truck tractors registered pursuant to section 60-330 with a gross weight of sixteen tons or less; or

(c) All motor vehicles required to be placarded pursuant to section 75-364.

Sec. 9. Section 75-364, Revised Statutes Supplement, 1997, is amended to read:

75-364. (1) The parts of the federal Hazardous Material Regulations, 49 C.F.R., listed below or any other parts referred to by such parts, in existence and effective as of ~~October 17, 1997~~ July 1, 1998, are adopted as part of Nebraska law and, except as provided in ~~subsection (2)~~ subsections (2) and (3) of this section, shall be applicable to all private, common, and contract motor vehicle carriers, drivers of such carriers, and vehicles of such carriers whether engaged in interstate or intrastate commerce:

(a) Part 171 -- General Information, Regulations, And Definitions;

(b) Part 172 -- Hazardous Materials Tables And Hazardous Materials Communications Regulations Table, Special Provisions, Hazardous Materials Communications, Emergency Response Information, and Training Requirements;

(c) Part 173 -- Shippers-General Requirements For Shipments And Packaging Packagings;

(d) Part 177 -- Carriage By Public Highway;

(e) Part 178 -- Shipping Container Specifications For Packagings;

and

(f) Part 180 -- Continuing Qualification And Maintenance Of Packaging Packagings.

(2) The provisions of subsection (1) of this section shall not apply to the use of fuels, fertilizers, and agricultural chemicals in a normal farming or ranching operation on the farm or ranch.

(3) Liquefied petroleum gas tanks with a capacity of three thousand five hundred gallons or less, anhydrous ammonia tanks with a capacity of three thousand gallons or less, and flammable liquid tanks with a capacity of three thousand gallons or less shall be exempt from the requirements of part 173 and part 177 when such liquefied petroleum gas tanks, anhydrous ammonia tanks, or flammable liquid tanks are transported by a motor vehicle registered pursuant to Chapter 60, article 3, and operated solely in intrastate commerce.

(4) Liquefied petroleum gas tanks with a capacity of three thousand five hundred gallons or less shall be exempt from the provisions of section 173-315(k)(5) adopted under subdivision (1)(c) of this section if such tanks have been inspected and tested in accordance with the State Fire Marshal's rules and regulations.

(2) Agricultural operations exceptions:

(a) The transportation of an agricultural product other than a Class 2 material (Compressed Gases), over roads, other than the National System of Interstate and Defense Highways, between fields of the same farm, is excepted from subsection (1) of this section when:

(i) The agricultural product is transported by a farmer who is an intrastate private motor carrier; and

(ii) The movement of the agricultural product conforms to all other laws in effect on or before July 1, 1998, and 49 C.F.R. 173.24, 173.24a, and 173.24b;

(b) The transportation of an agricultural product to or from a farm, within one hundred fifty miles of the farm, is excepted from the requirements in 49 C.F.R. part 172, subparts G (emergency response information) and H (training requirements) when:

(i) The agricultural product is transported by a farmer who is an intrastate private motor carrier;

(ii) The total amount of agricultural product being transported on a single vehicle does not exceed:

(A) Sixteen thousand ninety-four pounds of ammonium nitrate fertilizer properly classed as Division 5.1, PGIII, in a bulk packaging; or

(B) Five hundred two gallons for liquids or gases, or five thousand seventy pounds for solids, of any other agricultural product;

(iii) The packaging conforms to the requirements of state law and is specifically authorized for transportation of the agricultural product by state law and such state law has been in effect on or before July 1, 1998; and

(iv) (A) Each person having any responsibility for transporting the agricultural product or preparing the agricultural product for shipment has been instructed in the applicable requirements of 49 C.F.R. adopted in this section; and

(B) Instruction by the Department of Agriculture required pursuant to the Pesticide Act shall be sufficient for instruction under subdivision (2)(b)(iv)(A) of this section, if it has been approved for that purpose by the carrier enforcement division of the Nebraska State Patrol; and

(c) Formulated liquid agricultural products in specification

packagings of fifty-eight-gallon capacity or less, with closures manifolded to a closed mixing system and equipped with positive dry disconnect devices, may be transported by a private motor carrier between a final distribution point and an ultimate point of application or for loading aboard an airplane for aerial application.

(3) Exceptions for nonspecification packagings used in intrastate transportation:

(a) Nonspecification bulk packagings: Notwithstanding requirements for specification packagings in 49 C.F.R. part 173, subpart F, and 49 C.F.R. parts 178 and 180, of the hazardous material regulations, a nonspecification bulk packaging may be used for transportation of a hazardous material by an intrastate motor carrier until July 1, 2000, in accordance with subdivision (d) of this subsection;

(b) Nonspecification cargo tanks for petroleum products: Notwithstanding requirements for specification packagings in 49 C.F.R. part 173, subpart F, and 49 C.F.R. parts 178 and 180, a nonspecification metal tank permanently secured to a transport vehicle and protected against leakage or damage in the event of a turnover, having a capacity of less than three thousand five hundred gallons, may be used by an intrastate motor carrier for transportation of a flammable liquid petroleum product in accordance with subdivision (d) of this subsection;

(c) Permanently secured nonbulk tanks for petroleum products: Notwithstanding requirements for specification packagings in 49 C.F.R. part 173, subpart F, and 49 C.F.R. parts 178 and 180, a nonspecification metal tank permanently secured to a transport vehicle and protected against leakage or damage in the event of a turnover, having a capacity of less than one hundred nineteen gallons, may be used by an intrastate motor carrier for transportation of a flammable liquid petroleum product in accordance with subdivision (d) of this subsection; and

(d) Additional requirements: A packaging used pursuant to subdivision (a), (b), or (c) of this subsection must:

(i) Be operated by an intrastate motor carrier and in use as a packaging for hazardous material before July 1, 1998;

(ii) Be operated in conformance with the requirements of the State of Nebraska;

(iii) Be specifically authorized by state law in effect before July 1, 1998, for use as a packaging for the hazardous material being transported and by 49 C.F.R. 173.24, 173.24a, and 173.24b;

(iv) Be offered for transportation and transported in conformance with all other applicable requirements of the hazardous material regulations;

(v) Not be used to transport a flammable cryogenic liquid, hazardous substance, hazardous waste, or marine pollutant; and

(vi) On and after July 1, 2000, for a tank authorized under subdivision (b) or (c) of this subsection, conform to all requirements in 49 C.F.R. part 180, except for 49 C.F.R. 180.405(g) of the hazardous material regulations, in the same manner as required for a United States Department of Transportation specification MC306 cargo tank motor vehicle.

(4) For purposes of this section:

(a) Agricultural product means a hazardous material, other than a hazardous waste, whose end use directly supports the production of an agricultural commodity, including, but not limited to, a fertilizer, pesticide, soil amendment, or fuel. An agricultural product is limited to a material in Class 3 (Flammable Liquids), Class 8 (Corrosives), or Class 9 (Miscellaneous), Division 2.1 (Flammable Gas), Class 2.2 (Nonflammable Gas), Class 5.1 (Oxidizers), or 6.1 (Poisons), or an ORM-D material (Consumer Commodity);

(b) Bulk package means a packaging, including a transport vehicle or freight container, in which hazardous materials are loaded with no other intermediate form of containment and which has:

(i) A maximum capacity greater than one hundred nineteen gallons as a receptacle for a liquid;

(ii) A maximum net mass greater than eight hundred eighty-two pounds and a maximum capacity greater than one hundred nineteen gallons as a receptacle for a solid; or

(iii) A water capacity greater than one thousand pounds as a receptacle for a gas as defined in 49 C.F.R. 173.315;

(c) Farmer means a person engaged in the production or raising of crops, poultry, or livestock; and

(d) Private motor carrier means a person or persons engaged in the transportation of persons or product while in commerce, but not for hire.

Sec. 10. This act becomes operative on July 1, 1998.

Sec. 11. Original sections 60-6,173, 66-1401, and 75-126, Reissue

Revised Statutes of Nebraska, and sections 66-1414, 75-363, and 75-364, Revised Statutes Supplement, 1997, are repealed.

Sec. 12. Since an emergency exists, this act takes effect when passed and approved according to law.