

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 805

FINAL READING

Introduced by Transportation and Telecommunications Committee:
Fischer, 43, Chairperson; Campbell, 25; Gay, 14;
Hadley, 37; Lautenbaugh, 18; Louden, 49; Stuthman,
22.

Read first time January 08, 2010

Committee: Transportation and Telecommunications

A BILL

1 FOR AN ACT relating to motor vehicles; to amend sections
2 60-4,129, 60-4,169, 60-6,123, 60-6,190, 75-362, 75-363,
3 and 75-364, Reissue Revised Statutes of Nebraska,
4 sections 60-465 and 60-4,150, Revised Statutes Cumulative
5 Supplement, 2008, and sections 18-1739, 60-3,193.01,
6 60-462.01, 60-484.02, and 60-4,147.02, Revised Statutes
7 Supplement, 2009; to adopt by reference updates to the
8 International Registration Plan and certain federal laws
9 and regulations relating to parking permits for persons
10 with disabilities, operators' licenses, transporting
11 hazardous materials, and motor carrier safety and

1 procedure; to allow the release of digital image or
2 signature information to local law enforcement officers;
3 to change provisions relating to commercial motor
4 vehicles, employment driving permits, commercial drivers'
5 licenses, traffic control signals, and speed limits;
6 to harmonize provisions; and to repeal the original
7 sections.

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

1 Section 1. Section 18-1739, Revised Statutes Supplement,
2 2009, is amended to read:

3 18-1739 (1) The permit to be issued pursuant to section
4 18-1738 or 18-1738.01 shall be constructed of a durable plastic
5 designed to resist normal wear or fading for the term of the
6 permit's issuance and printed so as to minimize the possibility of
7 alteration following issuance. The permit shall be of a design,
8 size, configuration, color, and construction and contain such
9 information as specified in the rules and regulations adopted and
10 promulgated by the United States Department of Transportation in
11 the Uniform System for Parking for Persons with Disabilities, 23
12 C.F.R. part 1235, as such regulations existed on January 1, ~~2009~~,
13 2010.

14 (2) In addition to the requirements of subsection (1) of
15 this section, the permit shall show the expiration date and such
16 identifying information with regard to the handicapped or disabled
17 person or temporarily handicapped or disabled person to whom it is
18 issued as is necessary to the enforcement of sections 18-1736 to
19 18-1741.07 as determined by the Department of Motor Vehicles. The
20 expiration date information shall be distinctively color-coded so
21 as to identify by color the year in which the permit is due to
22 expire.

23 (3) No permit shall be issued to any person or for any
24 motor vehicle if any parking permit has been issued to such person
25 or for such motor vehicle and such permit has been suspended

1 pursuant to section 18-1741. At the expiration of such suspension,
2 a permit may be renewed in the manner provided for renewal in
3 sections 18-1738, 18-1738.01, and 18-1740.

4 (4) A duplicate permit may be provided without cost if
5 the original permit is destroyed, lost, or stolen. Such duplicate
6 permit shall be issued in the same manner as the original permit,
7 except that a newly completed medical form need not be provided if
8 a completed medical form submitted at the time of the most recent
9 application for a permit or its renewal is on file with the clerk
10 or designated county official or the Department of Motor Vehicles.
11 A duplicate permit shall be valid for the remainder of the period
12 for which the original permit was issued.

13 Sec. 2. Section 60-3,193.01, Revised Statutes Supplement,
14 2009, is amended to read:

15 60-3,193.01 For purposes of the Motor Vehicle
16 Registration Act, the International Registration Plan is adopted
17 and incorporated by reference as the plan existed on ~~July 1, 2009.~~
18 January 1, 2010.

19 Sec. 3. Section 60-462.01, Revised Statutes Supplement,
20 2009, is amended to read:

21 60-462.01 For purposes of the Motor Vehicle Operator's
22 License Act, the following federal regulations are adopted as
23 Nebraska law as they existed on January 1, ~~2009.~~ 2010:

24 (1) Beginning on an implementation date designated by
25 the director, the federal requirements for interstate shipment of

1 etiologic agents, 42 C.F.R. part 72; and

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

5 Sec. 4. Section 60-465, Revised Statutes Cumulative
6 Supplement, 2008, is amended to read:

7 60-465 (1) Commercial motor vehicle means a motor vehicle
8 or combination of motor vehicles used in commerce to transport
9 passengers or property if the motor vehicle:

10 (a) Has a gross combination weight rating of eleven
11 thousand seven hundred ninety-four kilograms or more (twenty-six
12 thousand one pounds or more) inclusive of a towed unit with a
13 gross vehicle weight rating of more than four thousand five hundred
14 thirty-six kilograms (ten thousand pounds);

15 (b) Has a gross vehicle weight rating of eleven thousand
16 seven hundred ninety-four or more kilograms (twenty-six thousand
17 one pounds or more);

18 (c) Is designed to transport sixteen or more passengers,
19 including the driver; or

20 (d) Is of any size and is used in the transportation of
21 materials found to be hazardous for the purposes of the federal
22 Hazardous Materials Transportation Act and which require the motor
23 vehicle to be placarded under 49 C.F.R. part 172, subpart F.

24 (2) Commercial motor vehicle does not include (a) a
25 farm ~~truck as defined in section 60-325~~ vehicle, other than

1 a combination of truck-tractors and semitrailers, which is (i)
2 controlled and operated by a farmer, including operation by
3 employees or family members of the farmer, (ii) used to transport
4 either agricultural products, farm machinery, farm supplies, or
5 both, to or from a farm or ranch, (iii) not used in the operations
6 of a common or contract motor carrier, and (iv) used ~~when such farm~~
7 ~~truck is operated~~ within one hundred fifty miles of the ~~registered~~
8 ~~owner's~~ farmer's farm or ranch, (b) any recreational vehicle as
9 defined in section 60-347 or motor vehicle towing a cabin trailer
10 as defined in sections 60-314 and 60-339, (c) any emergency vehicle
11 operated by a public or volunteer fire department, or (d) any
12 motor vehicle owned or operated by the United States Department
13 of Defense or Nebraska National Guard when such motor vehicle is
14 driven by persons identified in section 60-4,131.01.

15 Sec. 5. Section 60-484.02, Revised Statutes Supplement,
16 2009, is amended to read:

17 60-484.02 (1) Each applicant for an operator's license
18 or state identification card shall have his or her digital image
19 taken. Digital images shall be preserved for use as prescribed in
20 sections 60-4,119, 60-4,151, and 60-4,180. The images shall be used
21 for issuing operators' licenses and state identification cards. The
22 images may be retrieved only by the Department of Motor Vehicles
23 for issuing renewal, duplicate, and replacement operators' licenses
24 and state identification cards and may not be otherwise released
25 except in accordance with subsection (3) of this section.

1 (2) Upon application for an operator's license or
2 state identification card, each applicant shall provide his
3 or her signature in a form prescribed by the department.
4 Digital signatures shall be preserved for use on original,
5 renewal, duplicate, and replacement operators' licenses and state
6 identification cards and may not be otherwise released except in
7 accordance with subsection (3) of this section.

8 (3) No officer, employee, agent, or contractor of the
9 department or a law enforcement officer shall release a digital
10 image or a digital signature except to a federal, state, or
11 local law enforcement agency, a certified law enforcement officer
12 employed in an investigative position by a ~~state or federal~~, state,
13 or local agency, or a driver licensing agency of another state
14 for the purpose of carrying out the functions of the agency or
15 assisting another agency in carrying out its functions upon the
16 verification of the identity of the person requesting the release
17 of the information and the verification of the purpose of the
18 requester in requesting the release. Any officer, employee, agent,
19 or contractor of the department or law enforcement officer that
20 knowingly discloses or knowingly permits disclosure of a digital
21 image or digital signature in violation of this section shall be
22 guilty of a Class I misdemeanor.

23 Sec. 6. Section 60-4,129, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 60-4,129 (1) Any individual whose operator's license

1 is revoked under section 60-498.02, 60-4,183, or 60-4,186 or
2 suspended under section 43-3318 shall be eligible to operate any
3 motor vehicle, except a commercial motor vehicle, in this state
4 under an employment driving permit. An employment driving permit
5 issued due to a revocation under section 60-498.02, 60-4,183, or
6 60-4,186 is valid for the period of revocation. An employment
7 driving permit issued due to a suspension of an operator's license
8 under section 43-3318 is valid for no more than three months
9 and cannot be renewed. An employment driving permit shall not
10 be issued to any person subject to an administrative license
11 revocation who submitted to a chemical test pursuant to section
12 60-6,197 which disclosed the presence of a concentration of alcohol
13 in violation of section 60-6,196 if the person's driving record
14 abstract maintained in the department's computerized records shows
15 one or more prior administrative license revocations on which
16 final orders have been issued during the immediately preceding
17 twelve-year period at the time the order of revocation is issued.

18 (2) Any person whose operator's license has been
19 suspended or revoked pursuant to any law of this state, except such
20 ~~sections,~~ section 43-3318, 60-498.02, 60-4,183, or 60-4,186, shall
21 not be eligible to receive an employment driving permit during the
22 period of such suspension or revocation.

23 (3) An individual who is issued an employment driving
24 permit may operate any motor vehicle, except a commercial motor
25 vehicle, (a) from his or her residence to his or her place

1 of employment and return and (b) during the normal course of
2 employment if the use of a motor vehicle is necessary in the course
3 of such employment. Such permit shall indicate for which purposes
4 the permit may be used. All permits issued pursuant to this section
5 shall indicate that the permit is not valid for the operation of
6 any commercial motor vehicle.

7 (4) The operation of a motor vehicle by the holder of
8 an employment driving permit, except as provided in this section,
9 shall be unlawful. Any person who violates this section shall be
10 guilty of a Class IV misdemeanor.

11 (5) The director shall revoke the employment driving
12 permit for an individual upon receipt of an abstract of conviction,
13 other than a conviction which is based upon actions which resulted
14 in the application for such employment driving permit, indicating
15 that the individual committed an offense for which points are
16 assessed pursuant to section 60-4,182. If the permit is revoked
17 in this manner, the individual shall not be eligible to receive
18 an employment driving permit for the remainder of the period of
19 suspension or revocation of his or her operator's license.

20 Sec. 7. Section 60-4,147.02, Revised Statutes Supplement,
21 2009, is amended to read:

22 60-4,147.02 No endorsement authorizing the driver to
23 operate a commercial motor vehicle transporting hazardous materials
24 shall be issued, renewed, or transferred by the Department of Motor
25 Vehicles unless the endorsement is issued, renewed, or transferred

1 in conformance with the requirements of section 1012 of the federal
2 Uniting and Strengthening America by Providing Appropriate Tools
3 Required to Intercept and Obstruct Terrorism Act of 2001, USA
4 PATRIOT Act, 49 U.S.C. 5103a, including all amendments and federal
5 rules and regulations adopted and promulgated pursuant thereto as
6 of January 1, ~~2009~~, 2010, for the issuance of licenses to operate
7 commercial motor vehicles transporting hazardous materials.

8 Sec. 8. Section 60-4,150, Revised Statutes Cumulative
9 Supplement, 2008, is amended to read:

10 60-4,150 (1) Any person holding a commercial driver's
11 license who loses his or her license, who requires issuance of
12 a replacement license because of a change of name or address, or
13 whose license is mutilated or unreadable may obtain a duplicate or
14 replacement commercial driver's license by filing an application
15 ~~and affidavit~~ and by furnishing proof of identification in
16 accordance with section 60-484.

17 (2) The application for a replacement license because of
18 a change of name or address shall be made within sixty days after
19 the change of name or address.

20 (3) (a) This subdivision applies until the implementation
21 date designated by the director pursuant to section 60-462.02.
22 Upon the examiner being satisfied that a duplicate or replacement
23 commercial driver's license should be issued, the applicant shall
24 receive such license upon payment of the fee prescribed in section
25 60-4,115 to the county treasurer.

1 (b) This subdivision applies beginning on the
2 implementation date designated by the director pursuant to section
3 60-462.02. A duplicate or replacement commercial driver's license
4 shall be delivered to the applicant as provided in section
5 60-4,113 after the county treasurer collects the fee and surcharge
6 prescribed in section 60-4,115 and issues the applicant a receipt
7 with driving privileges which is valid for up to thirty days.

8 (4) Duplicate and replacement commercial drivers'
9 licenses shall be issued in the manner provided for the issuance of
10 original and renewal commercial drivers' licenses as provided for
11 by section 60-4,149. Upon issuance of any duplicate or replacement
12 commercial driver's license, the commercial driver's license for
13 which the duplicate or replacement license is issued shall be void.

14 Sec. 9. Section 60-4,169, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 60-4,169 Whenever it comes to the attention of the
17 director that any person when operating a ~~commercial~~ motor vehicle
18 has, based upon the records of the director, been convicted of
19 or administratively determined to have committed an offense for
20 which disqualification is required pursuant to section 60-4,146.01,
21 60-4,168, or 60-4,168.01, the director shall summarily revoke
22 (1) the commercial driver's license and privilege of such person
23 to operate a commercial motor vehicle in this state or (2)
24 the privilege, if such person is a nonresident, of operating a
25 commercial motor vehicle in this state. Any revocation ordered by

1 the director pursuant to this section shall commence on the date of
2 the signing of the order of revocation or the date of the release
3 of such person from the jail or a Department of Correctional
4 Services adult correctional facility, whichever is later, unless
5 the order of the court requires the jail time and the revocation to
6 run concurrently.

7 Sec. 10. Section 60-6,123, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 60-6,123 Whenever traffic is controlled by traffic
10 control signals exhibiting different colored lights or colored
11 lighted arrows, successively one at a time or in combination, only
12 the colors green, red, and yellow shall be used, except for special
13 pedestrian signals carrying a word legend, number, or symbol, and
14 such lights shall indicate and apply to drivers of vehicles and
15 pedestrians as follows:

16 (1)(a) Vehicular traffic facing a circular green
17 indication may proceed straight through or turn right or left
18 unless a sign at such place prohibits either such turn, but
19 vehicular traffic, including vehicles turning right or left,
20 shall yield the right-of-way to other vehicles and to pedestrians
21 lawfully within the intersection or an adjacent crosswalk at the
22 time such indication is exhibited;

23 (b) Vehicular traffic facing a green arrow indication,
24 shown alone or in combination with another indication, may
25 cautiously enter the intersection only to make the movement

1 indicated by such arrow or such other movement as is permitted
2 by other indications shown at the same time, and such vehicular
3 traffic shall yield the right-of-way to pedestrians lawfully within
4 an adjacent crosswalk and to other traffic lawfully using the
5 intersection; and

6 (c) Unless otherwise directed by a pedestrian-control
7 signal, pedestrians facing any green indication, except when the
8 sole green indication is a turn arrow, may proceed across the
9 roadway within any marked or unmarked crosswalk;

10 (2)(a) Vehicular traffic facing a steady yellow
11 indication is thereby warned that the related green movement
12 is being terminated or that a red indication will be exhibited
13 immediately thereafter when vehicular traffic shall not enter the
14 intersection, and upon display of a steady yellow indication,
15 vehicular traffic shall stop before entering the nearest crosswalk
16 at the intersection, but if such stop cannot be made in safety, a
17 vehicle may be driven cautiously through the intersection; and

18 (b) Pedestrians facing a steady yellow indication, unless
19 otherwise directed by a pedestrian-control signal, are thereby
20 advised that there is insufficient time to cross the roadway before
21 a red indication is shown and no pedestrian shall then start to
22 cross the roadway;

23 (3)(a) Vehicular traffic facing a steady red indication
24 alone shall stop at a clearly marked stop line or shall stop,
25 if there is no such line, before entering the crosswalk on the

1 near side of the intersection or, if there is no crosswalk,
2 before entering the intersection. The traffic shall remain standing
3 until an indication to proceed is shown except as provided in
4 subdivisions (3)(b) and (3)(c) of this section;

5 (b) Except where a traffic control device is in
6 place prohibiting a turn, vehicular traffic facing a steady red
7 indication may cautiously enter the intersection to make a right
8 turn after stopping as required by subdivision (3)(a) of this
9 section. Such vehicular traffic shall yield the right-of-way to
10 pedestrians lawfully within an adjacent crosswalk and to other
11 traffic lawfully using the intersection;

12 (c) Except where a traffic control device is in
13 place prohibiting a turn, vehicular traffic facing a steady
14 red indication at the intersection of two one-way streets may
15 cautiously enter the intersection to make a left turn after
16 stopping as required by subdivision (3)(a) of this section. Such
17 vehicular traffic shall yield the right-of-way to pedestrians
18 lawfully within an adjacent crosswalk and to other traffic lawfully
19 using the intersection; and

20 (d) Unless otherwise directed by a pedestrian-control
21 signal, pedestrians facing a steady red indication alone shall not
22 enter the roadway; and

23 (4) If a traffic control signal is erected and maintained
24 at a place other than an intersection, the provisions of this
25 section shall be applicable except as to those provisions which by

1 their nature can have no application. Any stop required shall be
2 made at a sign or marking on the pavement indicating where the stop
3 shall be made, but in the absence of any such sign or marking, the
4 stop shall be made at the signal; ~~and-~~

5 (5) (a) If a traffic control signal at an intersection
6 is not operating because of a power failure or other cause and
7 no peace officer, flagperson, or other traffic control device
8 is providing direction for traffic at the intersection, the
9 intersection shall be treated as a multi-way stop; and

10 (b) If a traffic control signal is not in service and the
11 signal heads are turned away from traffic or covered with opaque
12 material, subdivision (a) of this subdivision shall not apply.

13 Sec. 11. Section 60-6,190, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 60-6,190 (1) Whenever the Department of Roads determines,
16 upon the basis of an engineering and traffic investigation, that
17 any maximum speed limit is greater or less than is reasonable
18 or safe under the conditions found to exist at any intersection,
19 place, or part of the state highway system outside of the corporate
20 limits of cities and villages as well as inside the corporate
21 limits of cities and villages on freeways which are part of the
22 state highway system, it may determine and set a reasonable and
23 safe maximum speed limit for such intersection, place, or part of
24 such highway which shall be the lawful speed limit when appropriate
25 signs giving notice thereof are erected at such intersection,

1 place, or part of the highway, except that the maximum rural and
2 freeway limits shall not be exceeded. Such a maximum speed limit
3 may be set to be effective at all times or at such times as are
4 indicated upon such signs.

5 (2) The speed limits set by the department shall not be
6 a departmental rule, regulation, or order subject to the statutory
7 procedures for such rules, regulations, or orders but shall be
8 an authorization over the signature of the Director-State Engineer
9 and shall be maintained on permanent file at the headquarters of
10 the department. Certified copies of such authorizations shall
11 be available from the department at a reasonable cost for
12 duplication. Any change to such an authorization shall be made
13 by a new authorization which cancels the previous authorization
14 and establishes the new limit, but the new limit shall not become
15 effective until signs showing the new limit are erected as provided
16 in subsection (1) of this section.

17 (3) On county highways which are not part of the state
18 highway system or within the limits of any state institution or any
19 area under control of the Game and Parks Commission or a natural
20 resources district and which are outside of the corporate limits
21 of cities and villages, county boards shall have the same power
22 and duty to alter the maximum speed limits as the department if
23 the change is based on an engineering and traffic investigation
24 comparable to that made by the department. The limit outside of
25 a business or residential district shall not be decreased to less

1 than thirty-five miles per hour.

2 (4) On all highways within their corporate limits, except
3 on state-maintained freeways which are part of the state highway
4 system, incorporated cities and villages shall have the same power
5 and duty to alter the maximum speed limits as the department if the
6 change is based on engineering and traffic investigation, except
7 that no imposition of speed limits on highways which are part
8 of the state highway system in cities and villages under forty
9 thousand inhabitants shall be effective without the approval of the
10 department.

11 (5) The director of any state institution, the Game and
12 Parks Commission, or a natural resources district, with regard to
13 highways which are not a part of the state highway system, which
14 are within the limits of such institution or area under Game and
15 Parks Commission or natural resources district control, and which
16 are outside the limits of any incorporated city or village, shall
17 have the same power and duty to alter the maximum speed limits as
18 the department if the change is based on an engineering and traffic
19 investigation comparable to that made by the department.

20 (6) Not more than six such speed limits shall be set
21 per mile along a highway, except in the case of reduced limits
22 at intersections. The 7 and the difference between adjacent speed
23 limits along a highway shall not be reduced by more than twenty
24 miles per hour, and there shall be no limit on the difference
25 between adjacent speed limits for increasing speed limits along a

1 highway.

2 (7) When the department or a local authority determines
3 by an investigation that certain vehicles in addition to those
4 specified in sections 60-6,187, 60-6,305, and 60-6,313 cannot
5 with safety travel at the speeds provided in sections 60-6,186,
6 60-6,187, 60-6,189, 60-6,305, and 60-6,313 or set pursuant to
7 this section or section 60-6,188 or 60-6,189, the department or
8 local authority may restrict the speed limit for such vehicles
9 on highways under its respective jurisdiction and post proper and
10 adequate signs.

11 Sec. 12. Section 75-362, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 75-362 For purposes of sections 75-362 to 75-369.07,
14 unless the context otherwise requires:

15 (1) Accident means:

16 (a) Except as provided in subdivision (b) of this
17 subdivision, an occurrence involving a commercial motor vehicle
18 operating on a highway in interstate or intrastate commerce which
19 results in:

20 (i) A fatality;

21 (ii) Bodily injury to a person who, as a result of the
22 injury, immediately receives medical treatment away from the scene
23 of the accident; or

24 (iii) One or more motor vehicles incurring disabling
25 damage as a result of the accident, requiring the motor vehicles to

1 be transported away from the scene by a tow truck or other motor
2 vehicle.

3 (b) The term accident does not include:

4 (i) An occurrence involving only boarding and alighting
5 from a stationary motor vehicle; or

6 (ii) An occurrence involving only the loading or
7 unloading of cargo;

8 (2) Bulk packaging means a packaging, other than a vessel
9 or a barge, including a transport vehicle or freight container, in
10 which hazardous materials are loaded with no intermediate form of
11 containment and which has:

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

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

17 (c) A water capacity greater than one thousand pounds as
18 a receptacle for a gas as defined in 49 C.F.R. 173.115;

19 (3) Cargo tank means a bulk packaging that:

20 (a) Is a tank intended primarily for the carriage
21 of liquids or gases and includes appurtenances, reinforcements,
22 fittings, and closures;

23 (b) Is permanently attached to or forms a part of a
24 motor vehicle or is not permanently attached to a motor vehicle
25 but which, by reason of its size, construction, or attachment to a

1 motor vehicle, is loaded or unloaded without being removed from the
2 motor vehicle; and

3 (c) Is not fabricated under a specification for
4 cylinders, intermediate bulk containers, multi-unit tank-car tanks,
5 portable tanks, or tank cars;

6 (4) Cargo tank motor vehicle means a motor vehicle with
7 one or more cargo tanks permanently attached to or forming an
8 integral part of the motor vehicle;

9 (5) Commercial enterprise means any business activity
10 relating to or based upon the production, distribution, or
11 consumption of goods or services;

12 (6) Commercial motor vehicle means any self-propelled or
13 towed motor vehicle used on a highway in interstate commerce or
14 intrastate commerce to transport passengers or property when the
15 vehicle:

16 (a) Has a gross vehicle weight rating or gross
17 combination weight rating or gross vehicle weight or gross
18 combination weight of ten thousand one pounds or more, whichever
19 is greater;

20 (b) Is designed or used to transport more than eight
21 passengers, including the driver, for compensation;

22 (c) Is designed or used to transport more than fifteen
23 passengers, including the driver, and is not used to transport
24 passengers for compensation; or

25 (d) Is used in transporting material found to be

1 hazardous and such material is transported in a quantity requiring
2 placarding pursuant to section 75-364;

3 (7) Compliance review means an onsite examination of
4 motor carrier operations, such as drivers' hours of service,
5 maintenance and inspection, driver qualification, commercial
6 driver's license requirements, financial responsibility, accidents,
7 hazardous materials, and other safety and transportation records
8 to determine whether a motor carrier meets the safety fitness
9 standard. A compliance review may be conducted in response to
10 a request to change a safety rating, to investigate potential
11 violations of safety regulations by motor carriers, or to
12 investigate complaints or other evidence of safety violations. The
13 compliance review may result in the initiation of an enforcement
14 action with penalties;

15 (8) Disabling damage means damage which precludes
16 departure of a motor vehicle from the scene of the accident in its
17 usual manner in daylight after simple repairs.

18 (a) Inclusions: Damage to motor vehicles that could have
19 been driven but would have been further damaged if so driven.

20 (b) Exclusions:

21 (i) Damage which can be remedied temporarily at the scene
22 of the accident without special tools or parts;

23 (ii) Tire disablement without other damage even if no
24 spare tire is available;

25 (iii) Headlight or taillight damage; and

1 (iv) Damage to turnsignals, horn, or windshield wipers
2 which makes them inoperative;

3 (9) Driver means any person who operates any commercial
4 motor vehicle;

5 (10) Elevated temperature material means a material
6 which, when offered for transportation or transported in a bulk
7 packaging:

8 (a) Is in a liquid phase and at a temperature at or above
9 two hundred twelve degrees Fahrenheit;

10 (b) Is in a liquid phase with a flash point at or above
11 one hundred degrees Fahrenheit that is intentionally heated and
12 offered for transportation or transported at or above its flash
13 point; or

14 (c) Is in a solid phase and at a temperature at or above
15 four hundred sixty-four degrees Fahrenheit;

16 (11) Employee means any individual, other than an
17 employer, who is employed by an employer and who in the course
18 of his or her employment directly affects commercial motor
19 vehicle safety. Such term includes a driver of a commercial motor
20 vehicle, including an independent contractor while in the course
21 of operating a commercial motor vehicle, a mechanic, and a freight
22 handler. Such term does not include an employee of the United
23 States, any state, any political subdivision of a state, or any
24 agency established under a compact between states and approved by
25 the Congress of the United States who is acting within the course

1 of such employment;

2 (12) Employer means any person engaged in a business
3 affecting commerce who owns or leases a commercial motor vehicle
4 in connection with that business or assigns employees to operate
5 it. Such term does not include the United States, any state, any
6 political subdivision of a state, or an agency established under
7 a compact between states approved by the Congress of the United
8 States;

9 (13) Exempt motor carrier means a person engaged in
10 transportation exempt from economic regulation under 49 U.S.C.
11 13506. An exempt motor carrier is subject to the safety regulations
12 adopted in sections 75-362 to 75-369.07;

13 (14) Farm vehicle driver means a person who drives only
14 a commercial motor vehicle that is controlled and operated by a
15 farmer as a private motor carrier of property;

16 (15) Farmer means any person who operates a farm or is
17 directly involved in the cultivation of land, crops, or livestock
18 which:

19 (a) Are owned by that person; or

20 (b) Are under the direct control of that person;

21 (16) Fatality means any injury which results in the death
22 of a person at the time of the motor vehicle accident or within
23 thirty days after the accident;

24 (17) For-hire motor carrier means a person engaged in the
25 transportation of goods or passengers for compensation;

1 (18) Gross combination weight means the sum of the empty
2 weight of a motor vehicle plus the total weight of any load carried
3 thereon and the empty weight of the towed unit or units plus the
4 total weight of any load carried on such towed unit or units;

5 (19) Gross combination weight rating means the value
6 specified by the manufacturer as the loaded weight of a combination
7 (articulated) motor vehicle. In the absence of a value specified
8 by the manufacturer, gross combination weight rating will be
9 determined by adding either the gross vehicle weight rating or
10 gross vehicle weight of the motor vehicle plus the gross vehicle
11 weight rating or gross vehicle weight of the towed unit or units;

12 (20) Gross vehicle weight means the sum of the empty
13 weight of a motor vehicle plus the total weight of any load carried
14 thereon;

15 (21) Gross vehicle weight rating means the value
16 specified by the manufacturer as the loaded weight of a single
17 motor vehicle. In the absence of such value specified by the
18 manufacturer or the absence of any marking of such value on the
19 vehicle, the gross vehicle weight rating shall be determined from
20 the sum of the axle weight ratings of the vehicle or the sum of
21 the tire weight ratings as marked on the sidewall of the tires,
22 whichever is greater. In the absence of any tire sidewall marking,
23 the tire weight ratings shall be determined for the specified tires
24 from any of the publications of any of the organizations listed
25 in 49 C.F.R. 571.119;

1 (22) Hazardous material means a substance or material
2 that the Secretary of the United States Department of
3 Transportation has determined is capable of posing an unreasonable
4 risk to health, safety, and property when transported in commerce
5 and has designated as hazardous under 49 U.S.C. 5103. The term
6 includes hazardous substances, hazardous wastes, marine pollutants,
7 elevated temperature materials, materials designated as hazardous
8 in the Hazardous Materials Table, 49 C.F.R. 172.101, and materials
9 that meet the defining criteria for hazard classes and divisions
10 in 49 C.F.R. part 173;

11 (23) Hazardous substance means a material, including its
12 mixtures and solutions, that is listed in 49 C.F.R. 172.101,
13 Appendix A, List Of Hazardous Substances and Reportable Quantities,
14 and is in a quantity, in one package, which equals or exceeds the
15 reportable quantity listed in 49 C.F.R. 172.101, Appendix A. This
16 definition does not apply to petroleum products that are lubricants
17 or fuels or to mixtures or solutions of hazardous substances if
18 in a concentration less than that shown in the table in 49 C.F.R.
19 171.8 under the definition of hazardous substance based on the
20 reportable quantity specified for the materials listed in 49 C.F.R.
21 172.101, Appendix A;

22 (24) Hazardous waste means any material that is subject
23 to the hazardous waste manifest requirements of the United States
24 Environmental Protection Agency specified in 40 C.F.R. 262;

25 (25) Highway means the entire width between the boundary

1 limits of any street, road, avenue, boulevard, or way which is
2 publicly maintained when any part thereof is open to the use of the
3 public for purposes of vehicular travel;

4 (26) Interstate commerce means trade, traffic, or
5 transportation provided in the furtherance of a commercial
6 enterprise in the United States:

7 (a) Between a place in a state and a place outside of
8 such state, including a place outside of the United States;

9 (b) Between two places in a state through another state
10 or a place outside of the United States; or

11 (c) Between two places in a state as part of trade,
12 traffic, or transportation originating or terminating outside the
13 state or the United States;

14 (27) Intrastate commerce means any trade, traffic,
15 or transportation provided in the furtherance of a commercial
16 enterprise between any place in the State of Nebraska and any other
17 place in Nebraska and not through any other state;

18 (28) Marine pollutant means a material which is listed
19 in the Hazardous Materials Table, 49 C.F.R. 172.101, Appendix B,
20 as a marine pollutant (see 49 C.F.R. 171.4 for applicability to
21 marine pollutants) and, when in a solution or mixture of one or
22 more marine pollutants, is packaged in a concentration which equals
23 or exceeds:

24 (a) Ten percent by weight of the solution or mixture for
25 materials listed in 49 C.F.R. 172.101, Appendix B; or

1 (b) One percent by weight of the solution or mixture for
2 materials that are identified as severe marine pollutants in the
3 Hazardous Materials Table, 49 C.F.R. 172.101, Appendix B;

4 (29) Motor carrier means a for-hire motor carrier or a
5 private motor carrier. The term includes a motor carrier's agents,
6 officers, and representatives as well as employees responsible
7 for hiring, supervising, training, assigning, or dispatching of
8 drivers and employees concerned with the installation, inspection,
9 and maintenance of motor vehicle equipment or accessories. This
10 definition includes the terms employer and exempt motor carrier;

11 (30) Motor vehicle means any vehicle, truck,
12 truck-tractor, trailer, or semitrailer propelled or drawn by
13 mechanical power except (a) farm tractors, (b) vehicles which
14 run only on rails or tracks, and (c) road and general-purpose
15 construction and maintenance machinery which by design and
16 function is obviously not intended for use on a public highway,
17 including, but not limited to, motor scrapers, earthmoving
18 equipment, backhoes, trenchers, motor graders, compactors,
19 tractors, bulldozers, bucket loaders, ditchdigging apparatus,
20 asphalt spreaders, leveling graders, power shovels, and crawler
21 tractors;

22 (31) Nonbulk packaging means a packaging which has:

23 (a) A maximum capacity of one hundred nineteen gallons or
24 less as a receptacle for a liquid;

25 (b) A maximum net mass of eight hundred eighty-two pounds

1 or less and a maximum capacity of one hundred nineteen gallons or
2 less as a receptacle for a solid; or

3 (c) A water capacity of one thousand pounds or less as a
4 receptacle for a gas as defined in 49 C.F.R. 173.115;

5 (32) Out-of-service order means a declaration by an
6 authorized enforcement officer of a federal, state, Canadian,
7 Mexican, or local jurisdiction that a driver, a commercial motor
8 vehicle, or a motor carrier operation is out of service pursuant
9 to 49 C.F.R. 386.72, 392.5, 392.9a, 395.13, or 396.9, or compatible
10 laws or the North American Uniform Out-of-Service Criteria;

11 (33) Packaging means a receptacle and any other
12 components or materials necessary for the receptacle to perform
13 its containment function in conformance with the minimum packing
14 requirements of Title 49 of the Code of Federal Regulations. For
15 radioactive materials packaging, see 49 C.F.R. 173.403;

16 (34) Person means any individual, partnership,
17 association, corporation, business trust, or any other organized
18 group of individuals;

19 (35) Principal place of business means the single
20 location designated by the motor carrier, normally its
21 headquarters, for purposes of identification. The motor carrier
22 must make records required by the regulations referred to in
23 sections 75-363 to 75-369.07 and this section available for
24 inspection at this location within forty-eight hours, Saturdays,
25 Sundays, and state or federal holidays excluded, after a request

1 has been made by an officer of the Nebraska State Patrol;

2 (36) Private motor carrier means a person who provides
3 transportation of property or passengers by commercial motor
4 vehicle and is not a for-hire motor carrier;

5 (37) Safety audit means an examination of a motor
6 carrier's operations to provide educational and technical
7 assistance on drivers' hours of service, maintenance and
8 inspection, driver qualification, commercial driver's license
9 requirements, financial responsibility, accidents, hazardous
10 materials, and other safety and transportation records to determine
11 whether a motor carrier meets the safety fitness standard. The
12 purpose of a safety audit is to gather critical safety data needed
13 to make an assessment of the carrier's safety performance and basic
14 safety management controls. Safety audits do not result in safety
15 ratings; and

16 (38) Tank means a container, consisting of a shell and
17 heads, that forms a pressure-tight vessel having openings designed
18 to accept pressure-tight fittings or closures, but excludes any
19 appurtenances, reinforcements, fittings, or closures.

20 Sec. 13. Section 75-363, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 75-363 (1) The parts, subparts, and sections of Title
23 49 of the Code of Federal Regulations listed below, as modified
24 in this section, or any other parts, subparts, and sections
25 referred to by such parts, subparts, and sections, in existence and

1 effective as of January 1, ~~2009~~, 2010, are adopted as Nebraska law.

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

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

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

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

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

17 (iii) All vehicles of such motor carriers transporting
18 hazardous materials required to be placarded pursuant to section
19 75-364; and

20 (iv) All drivers of such motor carriers if the drivers
21 are operating a commercial motor vehicle as defined in section
22 60-465 which requires a commercial driver's license.

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

- 1 (a) Part 382 - Controlled Substances And Alcohol Use And
2 Testing;
- 3 (b) Part 385 - Safety Fitness Procedures;
- 4 (c) Part 386 - Rules Of Practice For Motor Carrier,
5 Broker, Freight Forwarder, And Hazardous Materials Proceedings;
- 6 (d) Part 387 - Minimum Levels of Financial Responsibility
7 for Motor Carriers;
- 8 (e) Part 390 - Federal Motor Carrier Safety Regulations;
9 General;
- 10 (f) Part 391 - Qualifications Of Drivers And Longer
11 Combination Vehicle (LCV) Driver Instructors;
- 12 (g) Part 392 - Driving Of Commercial Motor Vehicles;
- 13 (h) Part 393 - Parts And Accessories Necessary For Safe
14 Operation;
- 15 (i) Part 395 - Hours Of Service Of Drivers;
- 16 (j) Part 396 - Inspection, Repair, And Maintenance;
- 17 (k) Part 397 - Transportation Of Hazardous Materials;
18 Driving And Parking Rules; and
- 19 (l) Part 398 - Transportation Of Migrant Workers.
- 20 (4) The provisions of subpart E - Physical Qualifications
21 And Examinations of 49 C.F.R. part 391 - Qualifications Of Drivers
22 And Longer Combination Vehicle (LCV) Driver Instructors shall not
23 apply to any driver subject to this section who: (a) Operates a
24 commercial motor vehicle exclusively in intrastate commerce; and
25 (b) holds, or has held, a commercial driver's license issued by

1 this state prior to July 30, 1996.

2 (5) The regulations adopted in subsection (3) of this
3 section shall not apply to farm trucks registered pursuant to
4 section 60-3,146 with a gross weight of sixteen tons or less or to
5 fertilizer and agricultural chemical application and distribution
6 equipment transported in units with a capacity of three thousand
7 five hundred gallons or less if the equipment is not required to
8 be placarded pursuant to section 75-364. The following parts and
9 sections of 49 C.F.R. chapter III shall not apply to drivers of
10 farm trucks registered pursuant to section 60-3,146 and operated
11 solely in intrastate commerce:

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

15 (6) For purposes of this section, intrastate motor
16 carriers shall not include any motor carrier or driver excepted
17 from 49 C.F.R. chapter III by section 390.3(f) of part 390 or
18 any nonprofit entity, operating solely in intrastate commerce,
19 organized for the purpose of furnishing electric service.

20 ~~(7)~~ (7)(a) Part 395 - Hours Of Service Of Drivers shall
21 apply to motor carriers and drivers who engage in intrastate
22 commerce as defined in section 75-362, except that no motor carrier
23 who engages in intrastate commerce shall permit or require any
24 driver used by it to drive nor shall any driver drive:

25 ~~(a)~~ (i) More than twelve hours following eight

1 consecutive hours off duty; or

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

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

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

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

15 (8) Part 395 - Hours Of Service Of Drivers, as adopted
16 in subsections (3) and (7) of this section, shall not apply to
17 drivers transporting agricultural commodities or farm supplies for
18 agricultural purposes when the transportation of such commodities
19 or supplies occurs within a one-hundred-air-mile radius of
20 the source of the commodities or the distribution point for
21 the supplies when such transportation occurs during the period
22 beginning on February 15 up to and including December 15 of each
23 calendar year.

24 (9) 49 C.F.R. 390.21 - Marking Of Commercial Motor
25 Vehicles shall not apply to farm trucks and farm truck-tractors

1 registered pursuant to section 60-3,146 and operated solely in
2 intrastate commerce.

3 (10) 49 C.F.R. 392.9a - Operating Authority shall
4 not apply to Nebraska motor carriers operating commercial motor
5 vehicles solely in intrastate commerce.

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

9 Sec. 14. Section 75-364, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 75-364 (1) The parts, subparts, and sections of Title
12 49 of the Code of Federal Regulations listed below, or any other
13 parts, subparts, and sections referred to by such parts, subparts,
14 and sections, in existence and effective as of January 1, ~~2009,~~
15 2010, are adopted as part of Nebraska law and, except as provided
16 in subsections (2) and (3) of this section, shall be applicable
17 to all motor carriers whether engaged in interstate or intrastate
18 commerce, drivers of such motor carriers, and vehicles of such
19 motor carriers:

20 (a) Part 107-Hazardous Materials Program Procedures,
21 subpart F-Registration Of Cargo Tank And Cargo Tank Motor Vehicle
22 Manufacturers, Assemblers, Repairers, Inspectors, Testers, and
23 Design Certifying Engineers;

24 (b) Part 107-Hazardous Materials Program Procedures,
25 subpart G-Registration Of Persons Who Offer Or Transport Hazardous

1 Materials;

2 (c) Part 171-General Information, Regulations, And
3 Definitions;

4 (d) Part 172-Hazardous Materials Table, Special
5 Provisions, Hazardous Materials Communications, Emergency Response
6 Information, and Training Requirements;

7 (e) Part 173-Shippers-General Requirements For Shipments
8 And Packagings;

9 (f) Part 177-Carriage By Public Highway;

10 (g) Part 178-Specifications For Packagings; and

11 (h) Part 180-Continuing Qualification And Maintenance Of
12 Packagings.

13 (2) Agricultural operations exceptions:

14 (a) The transportation of an agricultural product other
15 than a Class 2 material (Compressed Gases) as defined in 49 C.F.R.
16 171.8, over roads, other than the National System of Interstate and
17 Defense Highways, between fields of the same farm, is excepted from
18 subsection (1) of this section when:

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

21 (ii) The movement of the agricultural product conforms to
22 all other laws in effect on or before July 1, 1998, and 49 C.F.R.
23 173.24, 173.24a, and 173.24b;

24 (b) The transportation of an agricultural product to or
25 from a farm, within one hundred fifty miles of the farm, is

1 excepted from the requirements in 49 C.F.R. part 172, subparts G
2 (emergency response information) and H (training), and from the
3 specific packaging requirements of subsection (1) of this section
4 when:

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

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

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

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

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

19 (iv) Each person having any responsibility for
20 transporting the agricultural product or preparing the agricultural
21 product for shipment has been instructed in the applicable
22 requirements of the parts, subparts, and sections of Title 49 of
23 the Code of Federal Regulations adopted in this section; and

24 (c) Formulated liquid agricultural products in
25 specification packagings of fifty-eight-gallon capacity or less,

1 with closures manifolded to a closed mixing system and equipped
2 with positive dry disconnect devices, may be transported by a
3 private motor carrier between a final distribution point and an
4 ultimate point of application or for loading aboard an airplane for
5 aerial application.

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

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

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

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

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

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

7 (iii) Be specifically authorized by state law in effect
8 before July 1, 1998, for use as a packaging for the hazardous
9 material being transported and by 49 C.F.R. 173.24, 173.24a, and
10 173.24b;

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

14 (v) Not be used to transport a flammable cryogenic
15 liquid, hazardous substance, hazardous waste, or marine pollutant
16 as defined in 49 C.F.R. 171.8; and

17 (vi) On and after July 1, 2000, for a tank authorized
18 under subdivision (a) or (b) of this subsection, conform to
19 all requirements in 49 C.F.R. part 180, except for 49 C.F.R.
20 180.405(g), in the same manner as required for a United States
21 Department of Transportation specification MC306 cargo tank motor
22 vehicle.

23 (4) For purposes of this section:

24 (a) Agricultural product means a hazardous material,
25 other than a hazardous waste, whose end use directly supports

1 the production of an agricultural commodity, including, but not
2 limited to, a fertilizer, pesticide, soil amendment, or fuel. An
3 agricultural product is limited to a material in Class 3 (Flammable
4 Liquids), Class 8 (Corrosives), or Class 9 (Miscellaneous),
5 Division 2.1 (Flammable Gas), Division 2.2 (Nonflammable Gas),
6 Division 5.1 (Oxidizers), or Division 6.1 (Poisons), or an ORM-D
7 material (Consumer Commodity), as defined in 49 C.F.R. 171.8;

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

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

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

17 (iii) A water capacity greater than one thousand pounds
18 as a receptacle for a gas, pursuant to standards set forth in 49
19 C.F.R. 173.115;

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

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

25 Sec. 15. Original sections 60-4,129, 60-4,169, 60-6,123,

LB 805

LB 805

1 60-6,190, 75-362, 75-363, and 75-364, Reissue Revised Statutes of
2 Nebraska, sections 60-465 and 60-4,150, Revised Statutes Cumulative
3 Supplement, 2008, and sections 18-1739, 60-3,193.01, 60-462.01,
4 60-484.02, and 60-4,147.02, Revised Statutes Supplement, 2009, are
5 repealed.