

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL 845

FINAL READING

Introduced by Fischer, 43.

Read first time January 10, 2008

Committee: Transportation and Telecommunications

A BILL

1 FOR AN ACT relating to motor carriers; to amend section 75-369.06,
2 Reissue Revised Statutes of Nebraska, and sections 75-363
3 and 75-369.03, Revised Statutes Supplement, 2007; to
4 create a penalty for out-of-service order violations and
5 to authorize administrative fines for such violations;
6 to change provisions governing distribution of civil
7 penalties; and to repeal the original sections.
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 75-363, Revised Statutes Supplement,
2 2007, is amended to read:

3 75-363 (1) The parts, subparts, and sections of Title
4 49 of the Code of Federal Regulations listed below, as modified
5 in this section, or any other parts, subparts, and sections
6 referred to by such parts, subparts, and sections, in existence and
7 effective as of January 1, 2007, are adopted as Nebraska law.

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

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

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

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

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

23 (iii) All vehicles of such motor carriers transporting
24 hazardous materials required to be placarded pursuant to section
25 75-364; and

1 (iv) All drivers of such motor carriers if the drivers
2 are operating a commercial motor vehicle as defined in section
3 60-465 which requires a commercial driver's license.

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

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

9 (b) Part 385 - Safety Fitness Procedures;

10 (c) Part 387 - Minimum Levels of Financial Responsibility
11 for Motor Carriers;

12 (d) Part 390 - Federal Motor Carrier Safety Regulations;
13 General;

14 (e) Part 391 - Qualifications Of Drivers And Longer
15 Combination Vehicle (LCV) Driver Instructors;

16 (f) Part 392 - Driving Of Commercial Motor Vehicles;

17 (g) Part 393 - Parts And Accessories Necessary For Safe
18 Operation;

19 (h) Part 395 - Hours Of Service Of Drivers;

20 (i) Part 396 - Inspection, Repair, And Maintenance;

21 (j) Part 397 - Transportation Of Hazardous Materials;
22 Driving And Parking Rules; and

23 (k) Part 398 - Transportation Of Migrant Workers.

24 (4) The provisions of subpart E - Physical Qualifications
25 And Examinations of 49 C.F.R. part 391 - Qualifications Of Drivers

1 And Longer Combination Vehicle (LCV) Driver Instructors shall not
2 apply to any driver subject to this section who: (a) Operates a
3 commercial motor vehicle exclusively in intrastate commerce; and
4 (b) holds, or has held, a commercial driver's license issued by
5 this state prior to July 30, 1996.

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

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

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

24 (7) Part 395 - Hours Of Service Of Drivers shall apply
25 to motor carriers and drivers who engage in intrastate commerce as

1 defined in section 75-362, except that no motor carrier who engages
2 in intrastate commerce shall permit or require any driver used by
3 it to drive nor shall any driver drive:

4 (a) More than twelve hours following eight consecutive
5 hours off duty; or

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

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

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

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

19 (8) Part 395 - Hours Of Service Of Drivers, as adopted
20 in subsections (3) and (7) of this section, shall not apply to
21 drivers transporting agricultural commodities or farm supplies for
22 agricultural purposes when the transportation of such commodities
23 or supplies occurs within a one-hundred-air-mile radius of
24 the source of the commodities or the distribution point for
25 the supplies when such transportation occurs during the period

1 beginning on February 15 up to and including December 15 of each
2 calendar year.

3 (9) 49 C.F.R. 390.21 - Marking Of Commercial Motor
4 Vehicles shall not apply to farm trucks and farm truck-tractors
5 registered pursuant to section 60-3,146 and operated solely in
6 intrastate commerce.

7 (10) 49 C.F.R. 392.9a - Operating Authority shall
8 not apply to Nebraska motor carriers operating commercial motor
9 vehicles solely in intrastate commerce.

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

13 Sec. 2. Section 75-369.03, Revised Statutes Supplement,
14 2007, is amended to read:

15 75-369.03 (1) The Superintendent of Law Enforcement and
16 Public Safety may issue an order imposing a civil penalty against
17 a motor carrier transporting persons or property in interstate
18 commerce for a violation of sections 75-348 to 75-358 or 75-392 to
19 75-399 or against a motor carrier transporting persons or property
20 in intrastate commerce for a violation or violations of section
21 75-363 or 75-364 based upon an inspection conducted pursuant to
22 section 75-366 in an amount which shall not exceed five hundred
23 dollars for any single violation in any proceeding or series of
24 related proceedings against any person or motor carrier as defined
25 in 49 C.F.R. part 390.5 as adopted in section 75-363.

1 (2) The superintendent shall issue an order imposing a
2 civil penalty in an amount not to exceed ten thousand dollars
3 against a motor carrier transporting persons or property in
4 interstate commerce for a violation of subsection (3) of section
5 60-4,162 based upon a conviction of such a violation.

6 (3) The superintendent shall issue an order imposing
7 a civil penalty against a driver operating a commercial motor
8 vehicle, as defined in section 60-465, that requires a commercial
9 driver's license, in violation of an out-of-service order. The
10 civil penalty shall be in an amount not less than two thousand five
11 hundred dollars but not more than five thousand dollars for a first
12 violation and not less than five thousand one dollars but not more
13 than seven thousand five hundred dollars for a second or subsequent
14 violation.

15 (4) The superintendent shall issue an order imposing
16 a civil penalty against a motor carrier who knowingly allows,
17 requires, permits, or authorizes the operation of a commercial
18 motor vehicle, as defined in section 60-465, that requires a
19 commercial driver's license, in violation of an out-of-service
20 order. The civil penalty shall be not less than two thousand
21 seven hundred fifty dollars but not more than twenty-five thousand
22 dollars per violation.

23 (5) Upon the discovery of any violation by a motor
24 carrier transporting persons or property in interstate commerce of
25 section 75-307, 75-363, or 75-364 or sections 75-392 to 75-399

1 based upon an inspection conducted pursuant to section 75-366,
2 the superintendent shall immediately refer such violation to the
3 appropriate federal agency for disposition, and upon the discovery
4 of any violation by a motor carrier transporting persons or
5 property in intrastate commerce of section 75-307 based upon such
6 inspection, the superintendent shall refer such violation to the
7 Public Service Commission for disposition.

8 Sec. 3. Section 75-369.06, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 75-369.06 Civil penalties assessed pursuant to section
11 75-369.03 and unpaid shall constitute a debt to the State of
12 Nebraska which may be collected in the form of a lien foreclosure
13 or recovered in a proper form of action in the name of the State
14 of Nebraska in the district court of Lancaster County. Any civil
15 penalty collected shall be remitted on a monthly basis to the State
16 Treasurer for ~~credit to the permanent school fund.~~ distribution
17 in accordance with Article VII, section 5, of the Constitution of
18 Nebraska.

19 Sec. 4. Original section 75-369.06, Reissue Revised
20 Statutes of Nebraska, and sections 75-363 and 75-369.03, Revised
21 Statutes Supplement, 2007, are repealed.