

LEGISLATIVE BILL 358

Approved by the Governor May 31, 2007

Introduced by Hudkins, 21

FOR AN ACT relating to motor carriers; to amend section 75-307, Reissue Revised Statutes of Nebraska, and sections 60-3,137, 60-3,205, 66-1406.02, 75-302, 75-369.03, 75-370, 75-371, and 75-386, Revised Statutes Cumulative Supplement, 2006; to authorize registration under the unified carrier registration plan and agreement; to provide powers and duties for the Director of Motor Vehicles and the Division of Motor Carrier Services; to provide a penalty; to change and eliminate certain motor carrier provisions; to harmonize provisions; to repeal the original sections; and to outright repeal sections 75-307.01, 75-307.02, 75-307.03, and 75-352, Reissue Revised Statutes of Nebraska.

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

Section 1. For purposes of sections 1 to 8 of this act:

(1) Director means the Director of Motor Vehicles;

(2) Division means the Division of Motor Carrier Services of the Department of Motor Vehicles; and

(3) Unified carrier registration plan and agreement means the plan and agreement established and authorized pursuant to 49 U.S.C. 14504, as such section existed on January 1, 2007.

Sec. 2. (1) On and after the date the United States Secretary of Transportation establishes the Unified Carrier Registration System in accordance with the Unified Carrier Registration Act of 2005, 49 U.S.C. 13908, as such act existed on January 1, 2007, the director may designate a date to begin enforcement of such act in this state.

(2) The director may participate in the unified carrier registration plan and agreement and may file on behalf of this state the plan required by such plan and agreement.

Sec. 3. (1) On and after the date designated by the director pursuant to section 2 of this act, no foreign or domestic motor carrier, private carrier, leasing company, broker, or freight forwarder shall operate any motor vehicle on a highway of this state or in interstate commerce without first being registered in this state or another jurisdiction pursuant to the unified carrier registration plan and agreement and having paid all fees required under the unified carrier registration plan and agreement for such registration. A motor carrier, private carrier, leasing company, broker, or freight forwarder with its principal place of business in this state shall register in this state with and pay its required registration fees to the division. The division shall remit the fees to the State Treasurer for credit to the General Fund.

(2) On and after the date designated by the director pursuant to section 2 of this act, the division may accept the registration of and fees required from a foreign or domestic motor carrier, private carrier, leasing company, broker, or freight forwarder that maintains an office in this state but does not have its principal place of business in the United States or that maintains an office in this state but has its principal place of business in another jurisdiction that does not participate in the unified carrier registration plan and agreement. The division shall remit the fees to the State Treasurer for credit to the General Fund.

Sec. 4. The single state insurance registration system, the previous registration system for common, contract, and private carriers, and sections 75-348 to 75-358 shall terminate on the date designated by the director pursuant to section 2 of this act.

Sec. 5. On and after the date designated by the director pursuant to section 2 of this act, the director may adopt and promulgate rules and regulations to carry out the unified carrier registration plan and agreement.

Sec. 6. On and after the date designated by the director pursuant to section 2 of this act, the director may prescribe the appropriate forms and implement the appropriate electronic systems to allow filings with the division pursuant to the unified carrier registration plan and agreement.

Sec. 7. On and after the date designated by the director pursuant to section 2 of this act, any foreign or domestic motor carrier, private carrier, leasing company, broker, or freight forwarder operating any motor vehicle in violation of sections 1 to 8 of this act, any rule or regulation adopted and promulgated pursuant to such sections, or any order of the division issued pursuant to such sections is guilty of a Class IV misdemeanor and shall also

be subject to section 75-369.03. Each day of the violation constitutes a separate offense.

Sec. 8. Sections 1 to 8 of this act do not apply to a foreign or domestic motor carrier, private carrier, leasing company, broker, or freight forwarder, including a transporter of waste or recyclable materials, engaged exclusively in intrastate commerce.

Sec. 9. Section 60-3,137, Revised Statutes Cumulative Supplement, 2006, is amended to read:

60-3,137 Each insurance company doing business in this state shall provide information shown on each automobile liability policy issued in this state as required by the department pursuant to sections 60-3,136 to 60-3,139 for inclusion in the motor vehicle insurance data base in a form and manner acceptable to the department. Any person who qualifies as a self-insurer under sections 60-562 to 60-564 or any person who provides financial responsibility under sections 75-348 to 75-358 or sections 1 to 8 of this act shall not be required to provide information to the department for inclusion in the motor vehicle insurance data base.

Sec. 10. Section 60-3,205, Revised Statutes Cumulative Supplement, 2006, is amended to read:

60-3,205 (1)(a) The director may suspend, revoke, cancel, or refuse to issue or renew a registration certificate under the International Registration Plan Act:

(i) 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

(ii) If the applicant or certificate holder is in violation of sections 75-348 to 75-358 or sections 1 to 8 of this act.

(b) 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 subdivision (c) of this subsection.

(c) 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.

(d) Except as provided in subsections (2) and (3) of this section, 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.

(e) Except as provided in subsections (2) and (3) of this section, 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.

(f) 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 subsection, the director may reinstate the registration certificate without delay.

(2)(a) The director may suspend, revoke, cancel, or refuse to issue or renew a registration certificate under the International Registration Plan Act or a license under the International Fuel Tax Agreement Act if the applicant, licensee, or certificate holder has issued to the department a check or draft which has been returned because of insufficient funds, no funds, or a stop-payment order. The director may take such action no sooner than seven days after the written notice required in subdivision (1)(b) of this section has been provided. Any petition to contest such action filed pursuant to subdivision (1)(c) of this section shall not stay such action of the director.

(b) If the director takes an action pursuant to this subsection, the director shall reinstate the registration certificate or license without delay upon the payment of certified funds by the applicant, licensee, or certificate holder for any fees due and reasonable administrative costs, not to exceed twenty-five dollars, incurred in taking such action.

(c) The rules, regulations, and orders of the director and the department that pertain to hearings commenced in accordance with this section

and that are in effect prior to March 17, 2006, shall remain in effect, unless changed or eliminated by the director or the department, except for those portions involving a stay upon the filing of a petition to contest any action taken pursuant to this subsection, in which case this subsection shall supersede those provisions.

(3) Any person who receives notice from the director of action taken pursuant to subsection (1) or (2) of this section shall, within three business days, return such registration certificate and license plates to the department as provided in this section. If any person fails to return the registration certificate and license plates to the department, the department shall notify the Nebraska State Patrol that any such person is in violation of this section.

Sec. 11. Section 66-1406.02, Revised Statutes Cumulative Supplement, 2006, is amended to read:

66-1406.02 (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 the International Registration Plan Act 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 or sections 1 to 8 of this act;

(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 subsection (1) of 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) Except as provided in subsection (2) of section 60-3,205 and subsection (8) of this section, 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) Except as provided in subsection (2) of section 60-3,205 and subsection (8) of this section, 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) Except as provided in subsection (2) of section 60-3,205 and subsection (8) of this section, 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.

(8) Any person who receives notice from the director of action taken pursuant to subsection (1) of this section shall, within three business days, return such registration certificate and license plates issued pursuant to section 60-3,198 to the department. If any person fails to return the registration certificate and license plates to the department, the department shall notify the Nebraska State Patrol that any such person is in violation of this section.

Sec. 12. Section 75-302, Revised Statutes Cumulative Supplement, 2006, is amended to read:

75-302 For purposes of sections 75-301 to 75-322 and in all rules and regulations adopted and promulgated by the commission pursuant to such sections, unless the context otherwise requires:

(1) Carrier enforcement division means the carrier enforcement division of the Nebraska State Patrol or the Nebraska State Patrol;

(2) Certificate means a certificate of public convenience and necessity issued under Chapter 75, article 3, to common carriers by motor vehicle;

(3) Civil penalty means any monetary penalty assessed by the commission or carrier enforcement division due to a violation of Chapter 75, article 3, or section 75-126 as such section applies to any person or carrier specified in Chapter 75, article 3; any term, condition, or limitation of any certificate or permit issued pursuant to Chapter 75, article 3; or any rule, regulation, or order of the commission, the Division of Motor Carrier Services, or the carrier enforcement division issued pursuant to Chapter 75, article 3;

(4) Commission means the Public Service Commission;

(5) Common carrier means any person who or which undertakes to transport passengers or household goods for the general public in intrastate commerce by motor vehicle for hire, whether over regular or irregular routes, upon the highways of this state;

(6) Contract carrier means any motor carrier which transports passengers or household goods for hire other than as a common carrier designed to meet the distinct needs of each individual customer or a specifically designated class of customers without any limitation as to the number of customers it can serve within the class;

(7) Division of Motor Carrier Services means the Division of Motor Carrier Services of the Department of Motor Vehicles;

(8) Escort services means an attendant or caregiver accompanying a minor or persons who are physically, mentally, or developmentally disabled and unable to travel or wait without assistance or supervision;

(9) Highway means the roads, highways, streets, and ways in this state;

(10) Household goods means personal effects and property used or to be used in a dwelling, when a part of the equipment or supply of such dwelling, and similar property as the commission may provide by regulation if the transportation of such effects or property, is:

(a) Arranged and paid for by the householder, including transportation of property from a factory or store when the property is purchased by the householder with the intent to use in his or her dwelling; or

(b) Arranged and paid for by another party;

(11) Intrastate commerce means commerce between any place in this state and any other place in this state and not in part through any other state;

(12) Motor carrier means any person other than a regulated motor carrier who or which owns, controls, manages, operates, or causes to be operated any motor vehicle used to transport passengers or property over any public highway in this state;

(13) Motor vehicle means any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highways in the transportation of passengers or property but does not include any vehicle, locomotive, or car operated exclusively on a rail or rails;

(14) Permit means a permit issued under Chapter 75, article 3, to contract carriers by motor vehicle;

(15) Person means any individual, firm, partnership, limited liability company, corporation, company, association, or joint-stock association and includes any trustee, receiver, assignee, or personal

representative thereof;

(16) Private carrier means any motor carrier which owns, controls, manages, operates, or causes to be operated a motor vehicle to transport passengers or property to or from its facility, plant, or place of business or to deliver to purchasers its products, supplies, or raw materials (a) when such transportation is within the scope of and furthers a primary business of the carrier other than transportation and (b) when not for hire. Nothing in sections 75-301 to 75-322 shall apply to private carriers; and except sections 75-307 to 75-307.03 as they apply to private carriers; and

(17) Regulated motor carrier means any person who or which owns, controls, manages, operates, or causes to be operated any motor vehicle used to transport passengers, other than those excepted under section 75-303, or household goods over any public highway in this state.

Sec. 13. Section 75-307, Reissue Revised Statutes of Nebraska, is amended to read:

75-307 (1) Intrastate Certificated intrastate motor carriers, including common ~~and~~ contract ~~and~~ private carriers, shall comply with reasonable rules and regulations prescribed by the commission governing the filing with the commission, the approval of the filings, and the maintenance of proof at such carrier's principal place of business of surety bonds, policies of insurance, qualifications as a self-insurer, or other securities or agreements, in such reasonable amount as required by the commission, conditioned to pay, within the amount of such surety bonds, policies of insurance, qualifications as a self-insurer, or other securities or agreements, any final judgment recovered against such motor carrier for bodily injuries to or the death of any person resulting from the negligent operation, maintenance, or use of motor vehicles under such certificate or permit or for loss or damage to property of others. No certificate or permit shall be issued to a common or contract carrier or remain in force unless such carrier complies with this section and the rules and regulations prescribed by the commission pursuant to this section.

(2) The commission may, in its discretion and under its rules and regulations, require any certificated carrier to file a surety bond, policies of insurance, qualifications as a self-insurer, or other securities or agreements, in a sum to be determined by the commission, to be conditioned upon such carrier making compensation to shippers or consignees for all property belonging to shippers or consignees and coming into the possession of such carrier in connection with its transportation service. Any carrier which may be required by law to compensate a shipper or consignee for any loss, damage, or default for which a connecting motor common carrier is legally responsible shall be subrogated to the rights of such shipper or consignee under any such bond, policies of insurance, or other securities or agreements to the extent of the sum so paid.

(3) In carrying out this section, the commission may classify motor carriers and regulated motor carriers taking into consideration the hazards of the operations of such carriers and the value of the household goods carried. Nothing contained in this section shall be construed to authorize the commission to compel motor carriers other than common carriers of household goods to carry cargo insurance.

Sec. 14. Section 75-369.03, Revised Statutes Cumulative Supplement, 2006, is amended to read:

75-369.03 The Superintendent of Law Enforcement and Public Safety may issue an order imposing a civil penalty against a motor carrier transporting persons or property in interstate commerce for a violation of sections 75-348 to 75-358 or sections 1 to 8 of this act or against a motor carrier transporting persons or property in intrastate commerce for a violation or violations of section 75-363 or 75-364 based upon an inspection conducted pursuant to section 75-366 in an amount which shall not exceed five hundred dollars for any single violation in any proceeding or series of related proceedings against any person or motor carrier as defined in 49 C.F.R. part 390.5 as adopted in section 75-363. The superintendent shall issue an order imposing a civil penalty in an amount not to exceed ten thousand dollars against a motor carrier transporting persons or property in interstate commerce for a violation of subsection (3) of section 60-4,162 based upon a conviction of such a violation. Upon the discovery of any violation by a motor carrier transporting persons or property in interstate commerce for section 75-307, ~~75-352,~~ 75-363, or 75-364 or sections 1 to 8 of this act based upon an inspection conducted pursuant to section 75-366, the superintendent shall immediately refer such violation to the appropriate federal agency for disposition, and upon the discovery of any violation by a motor carrier transporting persons or property in intrastate commerce of section 75-307 based upon such inspection, the superintendent shall refer such violation to

the Public Service Commission for disposition.

Sec. 15. Section 75-370, Revised Statutes Cumulative Supplement, 2006, is amended to read:

75-370 Enforcement of sections 75-307 ~~to 75-307.03~~ and 75-309 shall be carried out by the carrier enforcement division of the Nebraska State Patrol or the Nebraska State Patrol pursuant to the rules and regulations adopted and promulgated by the commission to enforce such sections. Any violation of such sections by any regulated motor carrier, motor carrier, or private carrier shall be referred to the commission for disposition under section 75-156, and the commission may take any other action provided by section 75-133.

Sec. 16. Section 75-371, Revised Statutes Cumulative Supplement, 2006, is amended to read:

75-371 Any person, private carrier, common carrier, or contract carrier which operates any motor vehicle in violation of section 75-307, ~~75-307.01, 75-307.02, or 75-307.03~~ or any rule, regulation, or order of the commission pertaining to ~~any of such sections~~ such section shall be guilty of a Class IV misdemeanor. Each day of such violation shall constitute a separate offense.

Sec. 17. Section 75-386, Revised Statutes Cumulative Supplement, 2006, is amended to read:

75-386 The Division of Motor Carrier Services shall:

(1) Foster, promote, and preserve the motor carrier industry of the State of Nebraska;

(2) Protect and promote the public health and welfare of the citizens of the state by ensuring that the motor carrier industry is operated in an efficient and safe manner;

(3) Promote and provide for efficient and uniform governmental oversight of the motor carrier industry;

(4) Promote financial responsibility on the part of motor carriers operating in and through the State of Nebraska;

(5) Administer all provisions of the International Fuel Tax Agreement Act, the International Registration Plan Act, and the single state insurance registration system pursuant to sections 75-348 to 75-358 or sections 1 to 8 of this act;

(6) Provide for the issuance of certificates of title to apportioned registered motor vehicles as provided for by subsection (6) of section 60-144; and

~~(7) Serve as the agent of the Public Service Commission in the filing of proof of insurance by intrastate common, contract, and private motor carriers as prescribed by sections 75-307 to 75-307.03; and~~

~~(8)~~ (7) Carry out such other duties and responsibilities as directed by the Legislature.

Sec. 18. Original section 75-307, Reissue Revised Statutes of Nebraska, and sections 60-3,137, 60-3,205, 66-1406.02, 75-302, 75-369.03, 75-370, 75-371, and 75-386, Revised Statutes Cumulative Supplement, 2006, are repealed.

Sec. 19. The following sections are outright repealed: Sections 75-307.01, 75-307.02, 75-307.03, and 75-352, Reissue Revised Statutes of Nebraska.