

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 805

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 75-363
2 and 75-364, Reissue Revised Statutes of Nebraska,
3 and sections 18-1739, 60-3,193.01, 60-462.01, and
4 60-4,147.02, Revised Statutes Supplement, 2009; to adopt
5 by reference updates to the International Registration
6 Plan and certain federal laws and regulations relating to
7 parking permits for persons with disabilities, operators'
8 licenses, transporting hazardous materials, and motor
9 carrier safety and procedure; and to repeal the original
10 sections.

11 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 60-4,147.02, Revised Statutes Supplement,
6 2009, is amended to read:

7 60-4,147.02 No endorsement authorizing the driver to
8 operate a commercial motor vehicle transporting hazardous materials
9 shall be issued, renewed, or transferred by the Department of Motor
10 Vehicles unless the endorsement is issued, renewed, or transferred
11 in conformance with the requirements of section 1012 of the federal
12 Uniting and Strengthening America by Providing Appropriate Tools
13 Required to Intercept and Obstruct Terrorism Act of 2001, USA
14 PATRIOT Act, 49 U.S.C. 5103a, including all amendments and federal
15 rules and regulations adopted and promulgated pursuant thereto as
16 of January 1, 2009, 2010, for the issuance of licenses to operate
17 commercial motor vehicles transporting hazardous materials.

18 Sec. 5. Section 75-363, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 75-363 (1) The parts, subparts, and sections of Title
21 49 of the Code of Federal Regulations listed below, as modified
22 in this section, or any other parts, subparts, and sections
23 referred to by such parts, subparts, and sections, in existence and
24 effective as of January 1, 2009, 2010, are adopted as Nebraska law.

25 (2) Except as otherwise provided in this section, the

1 regulations shall be applicable to:

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

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

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

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

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

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

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

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

- 1 (b) Part 385 - Safety Fitness Procedures;
- 2 (c) Part 386 - Rules Of Practice For Motor Carrier,
3 Broker, Freight Forwarder, And Hazardous Materials Proceedings;
- 4 (d) Part 387 - Minimum Levels of Financial Responsibility
5 for Motor Carriers;
- 6 (e) Part 390 - Federal Motor Carrier Safety Regulations;
7 General;
- 8 (f) Part 391 - Qualifications Of Drivers And Longer
9 Combination Vehicle (LCV) Driver Instructors;
- 10 (g) Part 392 - Driving Of Commercial Motor Vehicles;
- 11 (h) Part 393 - Parts And Accessories Necessary For Safe
12 Operation;
- 13 (i) Part 395 - Hours Of Service Of Drivers;
- 14 (j) Part 396 - Inspection, Repair, And Maintenance;
- 15 (k) Part 397 - Transportation Of Hazardous Materials;
16 Driving And Parking Rules; and
- 17 (l) Part 398 - Transportation Of Migrant Workers.
- 18 (4) The provisions of subpart E - Physical Qualifications
19 And Examinations of 49 C.F.R. part 391 - Qualifications Of Drivers
20 And Longer Combination Vehicle (LCV) Driver Instructors shall not
21 apply to any driver subject to this section who: (a) Operates a
22 commercial motor vehicle exclusively in intrastate commerce; and
23 (b) holds, or has held, a commercial driver's license issued by
24 this state prior to July 30, 1996.
- 25 (5) The regulations adopted in subsection (3) of this

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

10 (a) All of part 391;

11 (b) Section 395.8 of part 395; and

12 (c) Section 396.11 of part 396.

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

18 ~~(7)~~ (7)(a) Part 395 - Hours Of Service Of Drivers shall
19 apply to motor carriers and drivers who engage in intrastate
20 commerce as defined in section 75-362, except that no motor carrier
21 who engages in intrastate commerce shall permit or require any
22 driver used by it to drive nor shall any driver drive:

23 ~~(a)~~ (i) More than twelve hours following eight
24 consecutive hours off duty; or

25 ~~(b)~~ (ii) For any period after having been on duty sixteen

1 hours following eight consecutive hours off duty.

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

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

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

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

22 (9) 49 C.F.R. 390.21 - Marking Of Commercial Motor
23 Vehicles shall not apply to farm trucks and farm truck-tractors
24 registered pursuant to section 60-3,146 and operated solely in
25 intrastate commerce.

1 (10) 49 C.F.R. 392.9a - Operating Authority shall
2 not apply to Nebraska motor carriers operating commercial motor
3 vehicles solely in intrastate commerce.

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

7 Sec. 6. Section 75-364, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 75-364 (1) The parts, subparts, and sections of Title
10 49 of the Code of Federal Regulations listed below, or any other
11 parts, subparts, and sections referred to by such parts, subparts,
12 and sections, in existence and effective as of January 1, ~~2009,~~
13 2010, are adopted as part of Nebraska law and, except as provided
14 in subsections (2) and (3) of this section, shall be applicable
15 to all motor carriers whether engaged in interstate or intrastate
16 commerce, drivers of such motor carriers, and vehicles of such
17 motor carriers:

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

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

25 (c) Part 171-General Information, Regulations, And

1 Definitions;

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

5 (e) Part 173-Shippers-General Requirements For Shipments
6 And Packagings;

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

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

9 (h) Part 180-Continuing Qualification And Maintenance Of
10 Packagings.

11 (2) Agricultural operations exceptions:

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

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

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

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

1 specific packaging requirements of subsection (1) of this section
2 when:

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

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

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

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

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

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

22 (c) Formulated liquid agricultural products in
23 specification packagings of fifty-eight-gallon capacity or less,
24 with closures manifolded to a closed mixing system and equipped
25 with positive dry disconnect devices, may be transported by a

1 private motor carrier between a final distribution point and an
2 ultimate point of application or for loading aboard an airplane for
3 aerial application.

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

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

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

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

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

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

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

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

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

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

21 (4) For purposes of this section:

22 (a) Agricultural product means a hazardous material,
23 other than a hazardous waste, whose end use directly supports
24 the production of an agricultural commodity, including, but not
25 limited to, a fertilizer, pesticide, soil amendment, or fuel. An

1 agricultural product is limited to a material in Class 3 (Flammable
2 Liquids), Class 8 (Corrosives), or Class 9 (Miscellaneous),
3 Division 2.1 (Flammable Gas), Division 2.2 (Nonflammable Gas),
4 Division 5.1 (Oxidizers), or Division 6.1 (Poisons), or an ORM-D
5 material (Consumer Commodity), as defined in 49 C.F.R. 171.8;

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

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

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

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

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

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

23 Sec. 7. Original sections 75-363 and 75-364, Reissue
24 Revised Statutes of Nebraska, and sections 18-1739, 60-3,193.01,
25 60-462.01, and 60-4,147.02, Revised Statutes Supplement, 2009, are

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1 repealed.