

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 460

Introduced by Smith, 14.

Read first time January 17, 2017

Committee: Transportation and Telecommunications

1 A BILL FOR AN ACT relating to motor carriers; to amend sections
2 75-303.01, 75-303.02, and 75-303.03, Reissue Revised Statutes of
3 Nebraska, and sections 75-128, 75-306, 75-309, and 75-311, Revised
4 Statutes Cumulative Supplement, 2016; to change provisions
5 regulating the transportation of clients of the Department of Health
6 and Human Services and other authorized agencies as prescribed; to
7 change provisions relating to the issuance of permits by the Public
8 Service Commission; to harmonize provisions; to repeal the original
9 sections; and to declare an emergency.
10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 75-128, Revised Statutes Cumulative Supplement,
2 2016, is amended to read:

3 75-128 (1) It is hereby declared to be the policy of the Legislature
4 that all matters presented to the commission be heard and determined
5 without delay. All matters requiring a hearing shall be set for hearing
6 at the earliest practicable date and in no event, except for good cause
7 shown, which showing shall be recited in the order, shall the time fixed
8 for hearing be more than six months after the date of filing of the
9 application, complaint, or petition on which such hearing is to be had.
10 Except in case of an emergency and upon a motion to proceed with less
11 than a quorum made by all parties and supported by a showing of clear and
12 convincing evidence of such emergency and benefit to all parties, a
13 quorum of the commission shall hear all matters set for hearing. Except
14 as otherwise provided in the Major Oil Pipeline Siting Act or section
15 75-121 and except for good cause shown, a decision of the commission
16 shall be made and filed within thirty days after completion of the
17 hearing or after submission of affidavits in nonhearing proceedings.

18 (2) In the case of any proceeding upon which a hearing is held, the
19 transcript of testimony shall be prepared and submitted to the commission
20 prior to entry of an order, except that it shall not be necessary to have
21 prepared prior to a commission decision the transcripts of testimony on
22 hearings involving noncontested proceedings and hearings involving
23 emergency rate applications under section 75-121.

24 (3) For each application, complaint, or petition filed with the
25 commission, except those filed under sections 75-303.01 to 75-303.03 and
26 ~~75-303.02~~, the Major Oil Pipeline Siting Act, or the State Natural Gas
27 Regulation Act, the commission shall charge a filing fee to be determined
28 by the commission, but in an amount not to exceed the sum of five hundred
29 dollars, payable at the time of such filing. The commission shall also
30 charge to persons regulated by the commission, except persons regulated
31 under the Major Oil Pipeline Siting Act or the State Natural Gas

1 Regulation Act, a hearing fee to be determined by the commission, but in
2 an amount not to exceed the sum of two hundred fifty dollars, for each
3 half day of hearings if the person regulated by the commission files an
4 application, complaint, or petition which necessitates a hearing.

5 (4) For each new tariff filed with the commission, except those
6 filed under sections 75-301 to 75-322, the commission shall charge a fee
7 not to exceed fifty dollars. This subsection does not apply to amendments
8 to existing tariffs.

9 (5) The commission shall remit the fees received to the State
10 Treasurer for credit to the General Fund.

11 Sec. 2. Section 75-303.01, Reissue Revised Statutes of Nebraska, is
12 amended to read:

13 75-303.01 (1) The Department of Health and Human Services, a
14 medicaid-managed care organization under contract with the department, or
15 another agent working on the department's behalf or any agency organized
16 under the Nebraska Community Aging Services Act may contract for
17 nonemergency medical transportation for medicaid its clients with a
18 contract carrier holding a permit that has been authorized pursuant to
19 subsection (3) of section 75-311 to provide medicaid nonemergency medical
20 transportation services or that has been authorized to provide such
21 services by the commission prior to the effective date of this act.
22 ~~contractor which does not hold a certificate or which is not otherwise~~
23 ~~exempt under section 75-303 only if:~~

24 (2) While operating under the authority of a permit issued pursuant
25 to subsection (3) of section 75-311, a contract carrier shall comply with
26 (a) the requirements of the Department of Health and Human Services to
27 protect the safety and well-being of department clients, including
28 training, driver standards, background checks, and the provision and
29 quality of service and (b) the rules and regulations adopted,
30 promulgated, and enforced by the commission governing insurance
31 requirements, equipment standards, and background checks.

1 ~~(1) The proposed contractor is the individual who will personally~~
2 ~~drive the vehicle in question;~~

3 ~~(2) The only compensation to the contractor for the transportation~~
4 ~~is paid by the department at a rate no greater than that provided for~~
5 ~~reimbursement of state employees pursuant to section 81-1176 for the~~
6 ~~costs incurred in the transportation; and~~

7 ~~(3)(a) There is no regulated motor carrier serving the area in which~~
8 ~~the client needs transportation, (b) the regulated motor carrier serving~~
9 ~~the area is incapable of providing the specific service in question by~~
10 ~~its own written statement or as determined by the commission upon~~
11 ~~application of the regulated motor carrier or the department, or (c) the~~
12 ~~regulated carrier cannot or will not provide such service at the rate~~
13 ~~specified in subsection (2) of section 75-303.02.~~

14 Sec. 3. Section 75-303.02, Reissue Revised Statutes of Nebraska, is
15 amended to read:

16 75-303.02 (1) The Department of Health and Human Services or any
17 agency organized under the Nebraska Community Aging Services Act may
18 contract for the transportation of clients with a contractor which does
19 not hold a certificate or which is not otherwise exempt under section
20 75-303 only if: The commission, in consultation with the Department of
21 Health and Human Services, shall adopt and promulgate rules and
22 regulations governing minimum liability insurance requirements, equipment
23 standards, driver qualification requirements, and the issuance and filing
24 of notice for any contractor utilized by the department or any agency
25 organized under the Nebraska Community Aging Services Act pursuant to
26 section 75-303.01.

27 (a) The proposed contractor is the individual who will personally
28 drive the vehicle in question;

29 (b) The only compensation to the contractor for the transportation
30 is paid by the department at a rate no greater than that provided for
31 reimbursement of state employees pursuant to section 81-1176 for the

1 costs incurred in the transportation; and

2 (c)(i) There is no regulated motor carrier serving the area in which
3 the client needs transportation, (ii) the regulated motor carrier serving
4 the area is incapable of providing the specific service in question by
5 its own written statement or as determined by the commission upon
6 application of the regulated motor carrier or the department, or (iii)
7 the regulated carrier cannot or will not provide such service at the rate
8 specified in subsection (2) of section 75-303.03.

9 (2) This section does not apply to a common carrier holding a
10 certificate of public convenience and necessity issued under subsection
11 (1) of section 75-311 or to a contract carrier holding a permit issued
12 under subsection (3) of section 75-311 authorized to provide medicaid
13 nonemergency medical transportation services under a permit as provided
14 in section 75-303.01.

15 ~~(2) The department or any agency organized under the Nebraska~~
16 ~~Community Aging Services Act shall reimburse common and contract carriers~~
17 ~~for transportation of passengers at a rate not to exceed the rate of~~
18 ~~reimbursement pursuant to section 81-1176 multiplied by three. The~~
19 ~~maximum reimbursement rate provided for in this subsection shall not~~
20 ~~apply when the carrier (a) transports such person wholly within the~~
21 ~~corporate limits of the city or village where the transportation of the~~
22 ~~person originated or (b) transports a disabled person as defined by the~~
23 ~~federal Americans with Disabilities Act of 1990 in a vehicle that is~~
24 ~~compliant with the regulations providing for the transportation of such~~
25 ~~disabled person.~~

26 Sec. 4. Section 75-303.03, Reissue Revised Statutes of Nebraska, is
27 amended to read:

28 75-303.03 (1) The commission, in consultation with the Department of
29 Health and Human Services, shall adopt and promulgate rules and
30 regulations governing minimum liability insurance requirements, equipment
31 standards, driver qualification requirements, and the issuance and filing

1 of notice for any contractor utilized by the department or any agency
2 organized under the Nebraska Community Aging Services Act pursuant to
3 section 75-303.02. The Department of Health and Human Services may
4 reimburse an individual for the costs incurred by such individual in the
5 transportation of a person eligible to receive transportation services
6 through the department if:

7 (a) The individual is under contract with the department and
8 provides transportation to the eligible person; and

9 (b) The eligible person has chosen the individual to provide the
10 transportation.

11 (2) The Department of Health and Human Services or any agency
12 organized under the Nebraska Community Aging Services Act shall reimburse
13 common and contract carriers for transportation of passengers at a rate
14 not to exceed the rate of reimbursement pursuant to section 81-1176
15 multiplied by three. The maximum reimbursement rate provided for in this
16 subsection shall not apply when the carrier (a) transports such person
17 wholly within the corporate limits of the city or village where the
18 transportation of the person originated, (b) transports a disabled person
19 as defined by the federal Americans with Disabilities Act of 1990 in a
20 vehicle that is compliant with the regulations providing for the
21 transportation of such disabled person, or (c) provides nonemergency
22 medical transportation of medicaid clients pursuant to section 75-303.01
23 The department shall reimburse for the costs incurred in the
24 transportation at a rate no greater than that provided for reimbursement
25 of state employees pursuant to section 81-1176.

26 (3)(a) The Department of Health and Human Services may reimburse an
27 individual for the costs incurred by such individual in the
28 transportation of a person eligible to receive transportation services
29 through the department if:

30 (i) The individual is under contract with the department and
31 provides transportation to the eligible person; and

1 (ii) The eligible person has chosen the individual to provide the
2 transportation.

3 (b) The department shall reimburse for the costs incurred in the
4 transportation at a rate no greater than that provided for reimbursement
5 of state employees pursuant to section 81-1176.

6 (c) Transportation provided to an eligible person by an individual
7 pursuant to this section does not constitute transportation for hire.

8 (d) The department may adopt and promulgate rules and regulations to
9 implement this subsection.

10 ~~(3) Transportation provided to an eligible person by an individual~~
11 ~~pursuant to this section does not constitute transportation for hire.~~

12 ~~(4) The department may adopt and promulgate rules and regulations to~~
13 ~~implement this section.~~

14 Sec. 5. Section 75-306, Revised Statutes Cumulative Supplement,
15 2016, is amended to read:

16 75-306 Receipt for the payment of annual fees shall be issued by the
17 commission. The commission shall issue sufficient license plates and
18 renewal tabs to any regulated motor carrier who is in compliance with
19 sections 75-301 to 75-322 and the rules and regulations of the
20 commission, except contractors ~~contract carriers~~ operating pursuant to
21 section 75-303.02 ~~75-303.01~~ and transportation network companies, for the
22 purpose of identification of regulated motor carriers subject to sections
23 75-301 to 75-322 and to distinguish those regulated motor carriers from
24 other commercial motor carriers not subject to such sections. The
25 Director of Motor Vehicles shall prepare a form of license plate and
26 renewal tab for such regulated motor carriers and furnish a sufficient
27 supply of them to the commission.

28 Sec. 6. Section 75-309, Revised Statutes Cumulative Supplement,
29 2016, is amended to read:

30 75-309 Except for operations pursuant to a contract authorized by
31 sections ~~75-303.01~~ and 75-303.02 and 75-303.03, it shall be unlawful for

1 any common or contract carrier by motor vehicle subject to the provisions
2 of sections 75-101 to 75-155 and 75-301 to 75-322 to engage in any
3 intrastate operations on any public highway in Nebraska unless there is
4 in force with respect to such common carrier a certificate of public
5 convenience and necessity, a permit to such contract carrier, or a permit
6 to a transportation network company under section 75-324, issued by the
7 commission which authorizes such operations.

8 Sec. 7. Section 75-311, Revised Statutes Cumulative Supplement,
9 2016, is amended to read:

10 75-311 (1) A certificate shall be issued to any qualified applicant
11 authorizing the whole or any part of the operations covered by the
12 application if it is found after notice and hearing that (a) the
13 applicant is fit, willing, and able properly to perform the service
14 proposed and to conform to the provisions of sections 75-301 to 75-322
15 and the requirements, rules, and regulations of the commission under such
16 sections and (b) the proposed service, to the extent to be authorized by
17 the certificate, whether regular or irregular, passenger or household
18 goods, is or will be required by the present or future public convenience
19 and necessity. Otherwise the application shall be denied.

20 (2) A permit shall be issued to any qualified applicant therefor
21 authorizing in whole or in part the operations covered by the application
22 if it appears after notice and hearing from the application or from any
23 hearing held on the application that (a) the applicant is fit, willing,
24 and able properly to perform the service of a contract carrier by motor
25 vehicle and to conform to the provisions of such sections and the lawful
26 requirements, rules, and regulations of the commission under such
27 sections and (b) the proposed operation, to the extent authorized by the
28 permit, will be consistent with the public interest by providing services
29 designed to meet the distinct needs of each individual customer or a
30 specifically designated class of customers as defined in subdivision (7)
31 of section 75-302. Otherwise the application shall be denied.

1 (3) Authorizing authority shall be required for any contract carrier
2 holding a permit under subsection (2) of this section or for any
3 qualified applicant seeking a permit to provide medicaid nonemergency
4 medical transportation services pursuant to a contract with the
5 Department of Health and Human Services, a medicaid-managed care
6 organization under contract with the department, or another agent working
7 on the department's behalf as provided under section 75-303.01. Such
8 permit shall be issued to any qualified applicant authorizing such
9 operations if it is found after notice and hearing that (a) the applicant
10 is fit, willing, and able properly to perform the service proposed and to
11 conform to the provisions of section 75-303.01 and the other lawful
12 requirements, rules, and regulations of the commission and the Department
13 of Health and Human Services, and (b) the proposed operation, to the
14 extent authorized by the permit, will be consistent with the public
15 interest by providing services designed to meet the distinct needs of the
16 Department of Health and Human Services, a medicaid-managed care
17 organization under contract with the department, or another agent working
18 on the department's behalf, as attested to by the Director of Medicaid
19 and Long-Term Care or his or her designee. Otherwise the application
20 shall be denied.

21 (4) ~~(3)~~ No person shall at the same time hold a certificate as a
22 common carrier and a permit as a contract carrier for transportation of
23 household goods by motor vehicles over the same route or within the same
24 territory unless the commission finds that it is consistent with the
25 public interest and with the policy declared in section 75-301.

26 (5) ~~(4)~~ After the issuance of a certificate or permit, the
27 commission shall review the operations of all common or contract carriers
28 who hold authority from the commission to determine whether there are
29 insufficient operations in the transportation of household goods to
30 justify the commission's finding that such common or contract carrier has
31 willfully failed to perform transportation under sections 75-301 to

1 75-322 and rules and regulations promulgated under such sections. If the
2 commission determines that there are insufficient operations, then the
3 commission shall commence proceedings under section 75-315 to revoke the
4 certificate or permit involved.

5 (6) ~~(5)~~ This section shall not apply to transportation network
6 companies holding a permit under section 75-324 or operations pursuant to
7 a contract authorized by sections ~~75-303.01 and 75-303.02 and 75-303.03.~~

8 Sec. 8. Original sections 75-303.01, 75-303.02, and 75-303.03,
9 Reissue Revised Statutes of Nebraska, and sections 75-128, 75-306,
10 75-309, and 75-311, Revised Statutes Cumulative Supplement, 2016, are
11 repealed.

12 Sec. 9. Since an emergency exists, this act takes effect when
13 passed and approved according to law.