

LEGISLATIVE BILL 177

Approved by the Governor February 14, 2018

Introduced by Bostelman, 23.

A BILL FOR AN ACT relating to motor vehicles; to amend sections 60-308, 66-1401, 66-1403, 66-1411, and 75-385, Reissue Revised Statutes of Nebraska, and sections 60-3,198 and 66-712, Revised Statutes Cumulative Supplement, 2016; to redefine apportionable vehicle and change provisions relating to fleet vehicles under the Motor Vehicle Registration Act; to change provisions relating to motor fuel tax collection and enforcement; to change provisions relating to the International Fuel Tax Agreement Act and the Compressed Fuel Tax Act; to eliminate the requirement of appointment of the Administrator of Motor Carrier Services by the Director of Motor Vehicles; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 60-308, Reissue Revised Statutes of Nebraska, is amended to read:

60-308 (1) Apportionable vehicle means any motor vehicle or trailer used or intended for use in two or more member jurisdictions that allocate or proportionally register motor vehicles or trailers and used for the transportation of persons for hire or designed, used, or maintained primarily for the transportation of property.

(2) Apportionable vehicle does not include any recreational vehicle, motor vehicle displaying restricted plates, city pickup and delivery vehicle, bus used in the transportation of chartered parties, or government-owned motor vehicle.

(3) An apportionable vehicle that is a power unit shall (a) have two axles and a gross vehicle weight or registered gross vehicle weight in excess of twenty-six thousand pounds or eleven thousand seven hundred ninety-three and four hundred one thousandths kilograms, (b) have three or more axles, regardless of weight, or (c) be used in combination when the weight of such combination exceeds twenty-six thousand pounds or eleven thousand seven hundred ninety-three and four hundred one thousandths kilograms gross vehicle weight. Vehicles or combinations of vehicles having a gross vehicle weight of twenty-six thousand pounds or eleven thousand seven hundred ninety-three and four hundred one thousandths kilograms or less and two-axle vehicles and buses used in the transportation of chartered parties may be proportionally registered at the option of the registrant.

Sec. 2. Section 60-3,198, Revised Statutes Cumulative Supplement, 2016, is amended to read:

60-3,198 (1) Any owner engaged in operating a fleet of apportionable vehicles in this state in interjurisdiction commerce may, in lieu of registration of such apportionable vehicles under the general provisions of the Motor Vehicle Registration Act, register and license such fleet for operation in this state by filing a statement and the application required by section 60-3,203 with the Division of Motor Carrier Services of the department. The statement shall be in such form and contain such information as the division requires, declaring the total mileage operated by such vehicles in all jurisdictions and in this state during the preceding year and describing and identifying each such apportionable vehicle to be operated in this state during the ensuing license year. Upon receipt of such statement and application, the division shall determine the total fee payment, which shall be equal to the amount of fees due pursuant to section 60-3,203 and the amount obtained by applying the formula provided in section 60-3,204 to a fee of thirty-two dollars per ton based upon gross vehicle weight of the empty weights of a truck or truck-tractor and the empty weights of any trailer or combination thereof with which it is to be operated in combination at any one time plus the weight of the maximum load to be carried thereon at any one time, and shall notify the applicant of the amount of payment required to be made. Mileage operated in noncontracting reciprocity jurisdictions by apportionable vehicles based in Nebraska shall be applied to the portion of the formula for determining the Nebraska jurisdiction fleet distance.

Temporary authority which permits the operation of a fleet or an addition to a fleet in this state while the application is being processed may be issued upon application to the division if necessary to complete processing of the application.

Upon completion of such processing and receipt of the appropriate fees, the division shall issue to the applicant a sufficient number of distinctive registration certificates which provide a list of the jurisdictions in which the apportionable vehicle has been apportioned, the weight for which registered, and such other evidence of registration for display on the apportionable vehicle as the division determines appropriate for each of the apportionable vehicles of his or her fleet, identifying it as a part of an interjurisdiction fleet proportionately registered. All fees received as provided in this section shall be remitted to the State Treasurer for credit to

the Motor Carrier Services Division Distributive Fund.

The apportionable vehicles so registered shall be exempt from all further registration and license fees under the Motor Vehicle Registration Act for movement or operation in the State of Nebraska except as provided in section 60-3,203. The proportional registration and licensing provision of this section shall apply to apportionable vehicles added to such fleets and operated in this state during the license year except with regard to permanent license plates issued under section 60-3,203.

The right of applicants to proportional registration under this section shall be subject to the terms and conditions of any reciprocity agreement, contract, or consent made by the division.

When a nonresident fleet owner has registered his or her apportionable vehicles, his or her apportionable vehicles shall be considered as fully registered for both interjurisdiction and intrajurisdiction commerce when the jurisdiction of base registration for such fleet accords the same consideration for fleets with a base registration in Nebraska. Each apportionable vehicle of a fleet registered by a resident of Nebraska shall be considered as fully registered for both interjurisdiction and intrajurisdiction commerce.

(2) Mileage proportions for interjurisdiction fleets not operated in this state during the preceding year shall be determined by the division upon the application of the applicant on forms to be supplied by the division which shall show the operations of the preceding year in other jurisdictions and estimated operations in Nebraska or, if no operations were conducted the previous year, a full statement of the proposed method of operation.

(3) Any owner complying with and being granted proportional registration shall preserve the records on which the application is made for a period of three years following the current registration year. Upon request of the division, the owner shall make such records available to the division at its office for audit as to accuracy of computation and payments or pay the costs of an audit at the home office of the owner by a duly appointed representative of the division if the office where the records are maintained is not within the State of Nebraska. The division may enter into agreements with agencies of other jurisdictions administering motor vehicle registration laws for joint audits of any such owner. All payments received to cover the costs of an audit shall be remitted by the division to the State Treasurer for credit to the Motor Carrier Division Cash Fund. No deficiency shall be assessed and no claim for credit shall be allowed for any license registration year for which records on which the application was made are no longer required to be maintained.

(4) If the division claims that a greater amount of fee is due under this section than was paid, the division shall notify the owner of the additional amount claimed to be due. The owner may accept such claim and pay the amount due, or he or she may dispute the claim and submit to the division any information which he or she may have in support of his or her position. If the dispute cannot otherwise be resolved within the division, the owner may petition for an appeal of the matter. The director shall appoint a hearing officer who shall hear the dispute and issue a written decision. Any appeal shall be in accordance with the Administrative Procedure Act. Upon expiration of the time for perfecting an appeal if no appeal is taken or upon final judicial determination if an appeal is taken, the division shall deny the owner the right to further registration for a fleet license until the amount finally determined to be due, together with any costs assessed against the owner, has been paid.

(5) Every applicant who licenses any apportionable vehicles under this section and section 60-3,203 shall have his or her registration certificates issued only after all fees under such sections are paid and, if applicable, proof has been furnished of payment, in the form prescribed by the director as directed by the United States Secretary of the Treasury, of the federal heavy vehicle use tax imposed by 26 U.S.C. 4481 of the Internal Revenue Code as defined in section 49-801.01.

(6)(a) In the event of the transfer of ownership of any registered apportionable vehicle, (b) in the case of loss of possession because of fire, theft, or wrecking, junking, or dismantling of any registered apportionable vehicle, (c) when a salvage branded certificate of title is issued for any registered apportionable vehicle, (d) whenever a type or class of registered apportioned vehicle is subsequently declared by legislative act or court decision to be illegal or ineligible to be operated or towed on the public roads and no longer subject to registration fees and taxes, (e) upon trade-in or surrender of a registered apportionable vehicle under a lease, or (f) in case of a change in the situs of a registered apportionable vehicle to a location outside of this state, its registration shall expire, except that if the registered owner or lessee applies to the division after such transfer or loss of possession and accompanies the application with a fee of one dollar and fifty cents, he or she may have any remaining credit of vehicle fees and taxes from the previously registered apportionable vehicle applied toward payment of any vehicle fees and taxes due and owing on another registered apportionable vehicle. If such registered apportionable vehicle has a greater gross vehicle weight than that of the previously registered apportionable vehicle, the registered owner or lessee of the registered apportionable vehicle shall additionally pay only the registration fee for the increased gross vehicle weight for the remaining months of the registration year based on the factors determined by the division in the original fleet application.

(7) Whenever a Nebraska-based fleet owner files an application with the division to delete a registered apportionable vehicle from a fleet of

registered apportionable vehicles (a) because of a transfer of ownership of the registered apportionable vehicle, (b) because of loss of possession due to fire, theft, or wrecking, junking, or dismantling of the registered apportionable vehicle, (c) because a salvage branded certificate of title is issued for the registered apportionable vehicle, (d) because a type or class of registered apportioned vehicle is subsequently declared by legislative act or court decision to be illegal or ineligible to be operated or towed on the public roads and no longer subject to registration fees and taxes, (e) because of a trade-in or surrender of the registered apportionable vehicle under a lease, or (f) because of a change in the situs of the registered apportionable vehicle to a location outside of this state, the registered owner may, by returning the registration certificate or certificates and such other evidence of registration used by the division or, if such certificate or certificates or such other evidence of registration is unavailable, then by making an affidavit to the division of such transfer or loss, receive a refund of that portion of the unused registration fee based upon the number of unexpired months remaining in the registration year from the date of transfer or loss. No refund shall be allowed for any fees paid under section 60-3,203. When such apportionable vehicle is transferred or lost within the same month as acquired, no refund shall be allowed for such month. Such refund may be in the form of a credit against any registration fees that have been incurred or are, at the time of the refund, being incurred by the registered apportionable vehicle owner. The Nebraska-based fleet owner shall make a claim for a refund under this subsection within the registration period or shall be deemed to have forfeited his or her right to the refund.

(8) Whenever a Nebraska-based fleet owner files an application with the division to delete a registered apportionable vehicle from a fleet of registered apportionable vehicles because the apportionable vehicle is disabled and has been removed from service, the registered owner may, by returning the registration certificate or certificates and such other evidence of registration used by the division or, in the case of the unavailability of such certificate or certificates or such other evidence of registration, then by making an affidavit to the division of such disablement and removal from service, receive a credit for that portion of the unused registration fee deposited in the Highway Trust Fund based upon the number of unexpired months remaining in the registration year. No credit shall be allowed for any fees paid under section 60-3,203. When such apportionable vehicle is removed from service within the same month in which it was registered, no credit shall be allowed for such month. Such credit may be applied against registration fees for new or replacement vehicles incurred within one year after cancellation of registration of the apportionable vehicle for which the credit was allowed. When any such apportionable vehicle is reregistered within the same registration year in which its registration has been canceled, the fee shall be that portion of the registration fee provided to be deposited in the Highway Trust Fund for the remainder of the registration year. The Nebraska-based fleet owner shall make a claim for a credit under this subsection within the registration period or shall be deemed to have forfeited his or her right to the credit.

(8) (9) In case of addition to the registered fleet during the registration year, the owner engaged in operating the fleet shall pay the proportionate registration fee from the date the vehicle was placed into service or, if the vehicle was previously registered, the date the prior registration expired or the date Nebraska became the base jurisdiction for the fleet, whichever is first, for the remaining balance of the registration year. The fee for any permanent license plate issued for such addition pursuant to section 60-3,203 shall be the full fee required by such section, regardless of the number of months remaining in the license year.

(9) (10) In lieu of registration under subsections (1) through (8) (9) of this section, the title holder of record may apply to the division for special registration, to be known as an unladen-weight registration, for any commercial motor vehicle or combination of vehicles which have been registered to a Nebraska-based fleet owner within the current or previous registration year. Such registration shall be valid only for a period of thirty days and shall give no authority to operate the vehicle except when empty. The fee for such registration shall be twenty dollars for each vehicle, which fee shall be remitted to the State Treasurer for credit to the Highway Trust Fund. The issuance of such permits shall be governed by section 60-3,179.

(10) (11) Any person may, in lieu of registration under subsections (1) through (8) (9) of this section or for other jurisdictions as approved by the director, purchase a trip permit for any nonresident truck, truck-tractor, bus, or truck or truck-tractor combination. A trip permit shall be issued before any person required to obtain a trip permit enters this state with such vehicle. The trip permit shall be issued by the director through Internet sales from the department's web site. The trip permit shall be valid for a period of seventy-two hours. The fee for the trip permit shall be twenty-five dollars for each truck, truck-tractor, bus, or truck or truck-tractor combination. The fee collected by the director shall be remitted to the State Treasurer for credit to the Highway Cash Fund.

Sec. 3. Section 66-712, Revised Statutes Cumulative Supplement, 2016, is amended to read:

66-712 For purposes of the Compressed Fuel Tax Act, the International Fuel Tax Agreement Act, and sections 66-482 to 66-4,149, 66-501 to 66-531, and 66-712 to 66-736:

(1) Department means the Motor Fuel Tax Enforcement and Collection Division of the Department of Revenue, except that for purposes of enforcement of the International Fuel Tax Agreement Act, department means the Division of Motor Carrier Services of the Department of Motor Vehicles;

(2) Motor fuel means any fuel defined as motor vehicle fuel in section 66-482, any fuel defined as diesel fuel in section 66-482, and any fuel defined as compressed fuel in section 66-6,100;

(3) Motor fuel laws means the Compressed Fuel Tax Act and sections 66-482 to 66-4,149, 66-501 to 66-531, and 66-712 to 66-736, except that for purposes of enforcement of the International Fuel Tax Agreement Act, motor fuel laws means the provisions of the International Fuel Tax Agreement Act and sections 66-712 to 66-736; and

(4) Person means any individual, firm, partnership, limited liability company, company, agency, association, corporation, state, county, municipality, or other political subdivision. Whenever a fine, imprisonment, or both are prescribed or imposed in sections 66-712 to 66-736, the word person as applied to a partnership, a limited liability company, or an association means the partners or members thereof.

Sec. 4. Section 66-1401, Reissue Revised Statutes of Nebraska, is amended to read:

66-1401 Sections 66-1401 to 66-1419 and sections 6, 7, 8, 9, 10, 11, 12, and 13 of this act shall be known and may be cited as the International Fuel Tax Agreement Act.

Sec. 5. Section 66-1403, Reissue Revised Statutes of Nebraska, is amended to read:

66-1403 For purposes of the International Fuel Tax Agreement Act, unless the context otherwise requires:

(1) Agreement means a cooperative fuel tax agreement entered into under section 66-1404 and, specifically, the International Fuel Tax Agreement;

(2) Base state means the state where (a) the motor vehicles are based for vehicle registration purposes, (b) the operational control and operational records of the licensee's motor vehicles are maintained or can be made available, and (c) some mileage is accrued by motor vehicles within the fleet;

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

(4) Director means the Director of Motor Vehicles or his or her designee and includes the Division of Motor Carrier Services of the Department of Motor Vehicles; and

(5) Licensee means a person licensed pursuant to the methods established in subdivision (2) of section 66-1406;

(6) Motor fuel means any fuel defined as motor vehicle fuel in section 66-482, any fuel defined as diesel fuel in section 66-482, and any fuel defined as compressed fuel in section 66-6,100; and

(7) Person means any individual, firm, partnership, limited liability company, company, agency, association, or corporation or state, county, city, town, village, or other political subdivision.

Sec. 6. (1) The department may require information as it deems necessary on any report, return, or other statement under the agreement.

(2) The department may require any of the reports, returns, or other filings due from any licensees to be filed electronically.

(3) The department shall prescribe the formats and procedures for electronic filing. The department shall adopt formats and procedures that are reasonably consistent with the formats and procedures of other states requiring electronic reporting of motor fuel information.

(4) Any person who does not file electronically when required or who fails to use the prescribed formats and procedures shall be considered to have not filed the return, report, or other filing.

Sec. 7. (1)(a) No penalty shall be imposed upon any person who voluntarily reports an underpayment of tax by filing an amended return if the original return is filed on time.

(b) Except as provided in subsection (3) of this section, interest shall not be waived on any additional tax due as reported on any amended return, and such interest shall be computed from the date such tax was due.

(2) The department may in its discretion waive all or any portion of the penalties incurred upon sufficient showing by the taxpayer that the failure to file or pay is not due to negligence, intentional disregard of the law, rules, or regulations, intentional evasion of the tax, or fraud committed with intent to evade the tax or that such penalties should otherwise be waived.

(3) The department may in its discretion waive any and all interest incurred upon sufficient showing by the taxpayer that such interest should be waived.

(4) All penalties collected by the department under this section shall be remitted to the State Treasurer for credit to the Highway Trust Fund.

Sec. 8. (1) Any license or permit issued by the department under the motor fuel laws may be suspended for the following reasons:

(a) Cancellation of security;

(b) Failure to provide additional security as required;

(c) Failure to file any report or return, filing an incomplete report or return, or not filing electronically, within the time provided;

(d) Failure to pay taxes due within the time provided;

(e) Filing of any false report, return, statement, or affidavit, knowing it to be false;

(f) Using or placing dyed diesel fuel in a motor vehicle except as

authorized under section 66-495.01;

(g) A licensee no longer being eligible to obtain a license or permit; or
(h) Any other violation by a licensee of the agreement or the rules and regulations.

(2) The department shall mail notice of suspension of any license or permit.

(3) The licensee or permitholder may, within thirty days after the mailing of the notice of such suspension, petition the department in writing for a hearing and reconsideration of such suspension. If a petition is filed, the department shall, within twenty days of receipt of the petition, set a hearing date at which the licensee or permitholder may show cause why his or her suspended license or permit should not be canceled. The department shall give the licensee or permitholder reasonable notice of the time and place of such hearing. Within a reasonable time after the conclusion of the hearing, the department shall issue an order either reinstating or revoking such license or permit.

(4) If a petition is not filed within the thirty-day period, the suspended license or permit shall be revoked by the department at the expiration of the period.

(5) Any reissuance of a permit or license to the same person within three years from the date of revocation shall require a reinstatement fee of one hundred dollars to be submitted to the department. The department shall remit the fee to the State Treasurer for credit to the Highway Cash Fund.

(6) Suspension or revocation of a license or permit issued by the department 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.

(7) The licensee or permitholder may request in writing that the department consider reinstating a revoked license. The department shall make a final determination to reinstate or not reinstate and communicate its decision in writing to the licensee or permitholder within thirty days of receipt of the request.

Sec. 9. All notices by the department required by the motor fuel laws shall be mailed or electronically transmitted to the address of the licensee or permitholder as shown on the records of the department.

Sec. 10. (1) As soon as practical after a return is filed, the department shall examine it to determine the correct amount of tax. If the department finds that the amount of tax shown on the return is less than the correct amount, it shall notify the taxpayer of the amount of the deficiency determined.

(2) If any person fails to file a return or has improperly purchased motor fuel without the payment of tax, the department shall estimate the person's liability from any available information and notify the person of the amount of the deficiency determined.

(3) The amount of the deficiency determined shall constitute a final assessment together with interest and penalties thirty days after the date on which notice was mailed to the taxpayer at his or her last-known address unless a written protest is filed with the department within such thirty-day period.

(4) The final assessment provisions of this section shall constitute a final decision of the agency for purposes of the Administrative Procedure Act.

(5) An assessment made by the department shall be presumed to be correct. In any case when the validity of the assessment is questioned, the burden shall be on the person who challenges the assessment to establish by a preponderance of the evidence that the assessment is erroneous or excessive.

(6)(a) Except in the case of a fraudulent return or of neglect or refusal to make a return, the notice of a proposed deficiency determination shall be mailed within three years after the last day of the month following the end of the period for which the amount proposed is to be determined or within three years after the return is filed, whichever period expires later.

(b) The taxpayer and the department may agree, prior to the expiration of the period in subdivision (a) of this subsection, to extend the period during which the notice of a deficiency determination can be mailed. The extension of the period for the mailing of a deficiency determination shall also extend the period during which a refund can be claimed.

Sec. 11. (1) Any corporate officer or employee with the authority to decide whether the corporation will pay the taxes imposed upon a corporation by the motor fuel laws, to file any reports or returns required by the motor fuel laws, or to perform any other act required of a corporation under the motor fuel laws shall be personally liable for the payment of the taxes, interest, penalties, or other administrative penalties in the event of willful failure on his or her part to have the corporation perform such act. Such taxes shall be collected in the same manner as provided under the Uniform State Tax Lien Registration and Enforcement Act.

(2) Within thirty days after the day on which the notice and demand are made for the payment of such taxes, any corporate officer or employee seeking to challenge the department's determination as to his or her personal liability for the corporation's unpaid taxes may petition for a redetermination. The petition may include a request for the redetermination of the personal liability of the corporate officer or employee, the redetermination of the amount of the corporation's unpaid taxes, or both. If a petition for redetermination is not filed within the thirty-day period, the determination becomes final at the expiration of the period.

(3) If the requirements prescribed in subsection (2) of this section are

satisfied, the department shall abate collection proceedings and shall grant the corporate officer or employee an oral hearing and give him or her ten days' notice of the time and place of such hearing. The department may continue the hearing from time to time as necessary.

(4) Any notice required under this section shall be served personally or by mail in the manner provided in section 66-1406.02.

(5) If the department determines that further delay in the collection of such taxes from the corporate officer or employee will jeopardize future collection proceedings, nothing in this section shall prevent the immediate collection of such taxes.

(6) For purposes of this section:

(a) Corporation means any corporation and any other entity that is taxed as a corporation under the Internal Revenue Code;

(b) Taxes means all taxes and additions to taxes including interest and penalties imposed under the agreement; and

(c) Willful failure means that failure which was the result of an intentional, conscious, and voluntary action.

Sec. 12. All deficiencies determined by the department and any tax paid after the time provided shall accrue interest at the rate specified in subdivision (7) of section 66-1406, as such rate may from time to time be adjusted, on such deficiency or late payment from the date such tax was due to the date of payment.

Sec. 13. The department may examine the records of any person holding a license or permit, required to hold a license or permit, or purchasing motor fuel without the payment of tax at any time during regular business hours and make such other investigations as it deems necessary for the proper and efficient administration and enforcement of the agreement.

Sec. 14. Section 66-1411, Reissue Revised Statutes of Nebraska, is amended to read:

66-1411 (1) The legal remedies for any person served with an order or assessment under the International Fuel Tax Agreement Act shall be as prescribed in such act. Appeals from a final order of the director shall be taken as prescribed in sections 84-917 to 84-919 Chapter 66, article 7, and the Administrative Procedure Act.

(2) The director may shall adopt and promulgate rules and regulations for enforcement, collection, and appeals pursuant to consistent with Chapter 66, article 7, the Administrative Procedure Act, and the International Fuel Tax Agreement Act. Any person filing a report or return for tax due shall follow the filing periods or due dates established by the agreement under section 66-1406.

Sec. 15. Section 75-385, Reissue Revised Statutes of Nebraska, is amended to read:

75-385 The Division of Motor Carrier Services is established within the Department of Motor Vehicles and shall be headed by . The Director of Motor Vehicles shall appoint the Administrator of Motor Carrier Services. The administrator shall administer the affairs of the division.

Sec. 16. Original sections 60-308, 66-1401, 66-1403, 66-1411, and 75-385, Reissue Revised Statutes of Nebraska, and sections 60-3,198 and 66-712, Revised Statutes Cumulative Supplement, 2016, are repealed.