

LEGISLATIVE BILL 499

Approved by the Governor March 18, 2002

Introduced by Erdman, 47; Baker, 44; Dierks, 40; Foley, 29; Smith, 48;
Tyson, 19

AN ACT relating to motor vehicles; to amend sections 60-4,132, 60-4,162, 60-1306, and 75-369.03, Reissue Revised Statutes of Nebraska, and sections 60-4,168, 75-363, and 75-364, Revised Statutes Supplement, 2001; to change provisions relating to intent, employers, and disqualification of commercial motor vehicle drivers; to change provisions relating to motor carrier safety; to adopt certain portions of the federal Motor Carrier Safety Regulations and the federal Hazardous Material Regulations; to repeal provisions regarding names displayed on commercial trucks and truck-tractors; to provide and eliminate penalties; to harmonize provisions; to repeal the original sections; and to outright repeal sections 60-305.12 and 60-305.13, Reissue Revised Statutes of Nebraska.

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

Section 1. Section 60-4,132, Reissue Revised Statutes of Nebraska, is amended to read:

60-4,132. The purposes of sections 60-4,137 to 60-4,172 are to implement the requirements mandated by the Commercial Motor Vehicle Safety Act of 1986, Public Law 99-570, Title XII, and federal regulations as they existed on January 1, 2002, and to reduce or prevent commercial motor vehicle accidents, fatalities, and injuries by: (1) Permitting drivers to hold only one operator's license; (2) disqualifying drivers for specified offenses and serious traffic violations; and (3) strengthening licensing and testing standards.

Sec. 2. Section 60-4,162, Reissue Revised Statutes of Nebraska, is amended to read:

60-4,162. (1) Each employer shall require prospective applicants for employment as a driver of a commercial motor vehicle to provide the information required by section 60-4,161.

(2) An employer shall not knowingly allow, permit, or authorize a person to operate a commercial motor vehicle in the United States during any period in which:

(a) The person's commercial driver's license is suspended, revoked, or canceled by any state;

(b) The person has lost the privilege to drive a commercial motor vehicle in any state;

(c) The person has been disqualified from driving a commercial motor vehicle; or

(d) The person has more than one operator's license.

(3) No employer may knowingly allow, permit, or authorize a person to operate a commercial motor vehicle in the United States in violation of a federal, state, or local law or regulation pertaining to highway-rail grade crossings.

(4) Any employer who violates this section shall, upon conviction, be guilty of a Class III misdemeanor.

Sec. 3. Section 60-4,168, Revised Statutes Supplement, 2001, is amended to read:

60-4,168. (1) Except as provided in subsection (2) of this section, a person shall be disqualified from driving a commercial motor vehicle for one year:

(a) Upon his or her first conviction, after April 1, 1992, in this or any other state for:

(i) Driving a commercial motor vehicle while under the influence of alcohol or a controlled substance;

(ii) Leaving the scene of an accident involving a commercial motor vehicle driven by the person; or

(iii) Using a commercial motor vehicle in the commission of a felony; or

(b) Upon a first administrative determination, after April 1, 1992, that such person while driving a commercial motor vehicle in this or any other state was requested to submit to a chemical test or tests of his or her blood, breath, or urine by a law enforcement officer and refused or had a concentration of four-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or four-hundredths of one gram or

more by weight of alcohol per two hundred ten liters of his or her breath.

(2) If any of the offenses described in this section occurred while the person was transporting hazardous material in a commercial motor vehicle which required placarding pursuant to section 75-364, the person shall, upon conviction or administrative determination, be disqualified from driving a commercial motor vehicle for three years.

(3) A person shall be disqualified from driving a commercial motor vehicle for life if, after April 1, 1992, he or she is convicted of or administratively determined to have committed a second or subsequent violation of any of the offenses described in subsection (1) of this section or any combination of those offenses arising from two or more separate incidents.

(4) A person shall be disqualified from driving a commercial motor vehicle for a period of not less than sixty days if he or she is convicted in this or any other state of two serious traffic violations or not less than one hundred twenty days if he or she is convicted in this or any other state of three serious traffic violations, arising from separate incidents occurring within a three-year period.

(5) (a) A person who is convicted of operating a commercial motor vehicle in violation of a federal, state, or local law or regulation pertaining to one of the following six offenses at a highway-rail grade crossing shall be disqualified for the period of time specified in subdivision (5) (b) of this section:

(i) For drivers who are not required to always stop, failing to slow down and check that the tracks are clear of an approaching train;

(ii) For drivers who are not required to always stop, failing to stop before reaching the crossing, if the tracks are not clear;

(iii) For drivers who are always required to stop, failing to stop before driving onto the crossing;

(iv) For all drivers, failing to have sufficient space to drive completely through the crossing without stopping;

(v) For all drivers, failing to obey a traffic control device or the directions of an enforcement official at the crossing; or

(vi) For all drivers, failing to negotiate a crossing because of insufficient undercarriage clearance.

(b) (i) A person shall be disqualified for not less than sixty days if the person is convicted of a first violation described in this subsection.

(ii) A person shall be disqualified for not less than one hundred twenty days if, during any three-year period, the person is convicted of a second violation described in this subsection in separate incidents.

(iii) A person shall be disqualified for not less than one year if, during any three-year period, the person is convicted of a third or subsequent violation described in this subsection in separate incidents.

(6) For purposes of this section, conviction shall mean an adjudication of guilt in a court of original jurisdiction, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, a plea of guilty or nolo contendere accepted by the court, a payment of a fine or court costs, or a violation of a condition of release without bail, regardless of whether the penalty is rebated, suspended, or probated.

~~(6)~~ (7) For purposes of this section, serious traffic violation shall mean:

(a) Speeding at or in excess of fifteen miles per hour over the legally posted speed limit;

(b) Willful reckless driving as described in section 60-6,214 or reckless driving as described in section 60-6,213;

(c) Improper lane change as described in section 60-6,139;

(d) Following the vehicle ahead too closely as described in section 60-6,140; and

(e) A violation of any law or ordinance related to motor vehicle traffic control, other than parking violations or overweight or vehicle defect violations, arising in connection with an accident or collision resulting in death to any person.

Sec. 4. Section 60-1306, Reissue Revised Statutes of Nebraska, is amended to read:

60-1306. The carrier enforcement officers shall have the power (1) of peace officers solely for the purpose of enforcing the laws relating to the trip permits provided for in section 66-492 and the International Fuel Tax Agreement Act and the laws relating to the size, weight, load, and registration of buses, motor trucks, truck-tractors, semitrailers, trailers, and towed vehicles, (2) when in uniform, to require the driver thereof to stop and exhibit his or her operator's license and registration issued for the vehicle and submit to an inspection of such vehicle, the plates, the registration thereon, and licenses and permits required under the motor fuel

laws, (3) to make arrests upon view and without warrant for any violation committed in their presence of the provisions of the Motor Vehicle Operator's License Act or of any other law regulating the operation of vehicles or the use of the highways while in the performance of their duties referred to in subdivisions (1) and (2) of this section and of sections ~~60-305.12~~, 60-1308, 60-1309, and 75-363 to 75-368, (4) to make arrests upon view and without warrant for any violation committed in their presence which is a misdemeanor or felony under the laws of this state while in the performance of their duties referred to in subdivisions (1) and (2) of this section and of sections ~~60-305.12~~, 60-1308, 60-1309, and 75-363 to 75-368, and (5) to make arrests on warrant for any violation which is a misdemeanor or felony under the laws of this state while in the performance of their duties referred to in subdivisions (1) and (2) of this section and of sections ~~60-305.12~~, 60-1308, 60-1309, and 75-363 to 75-368.

Any funds used to arm carrier enforcement officers shall be paid solely from the Carrier Enforcement Cash Fund. The amount of funds shall be determined by the Superintendent of Law Enforcement and Public Safety.

Sec. 5. Section 75-363, Revised Statutes Supplement, 2001, is amended to read:

75-363. (1) The parts of the federal Motor Carrier Safety Regulations, 49 C.F.R., as modified in this section and any other parts referred to by such parts, in existence and effective as of January 1, ~~2001~~ 2002, are adopted as Nebraska law. Except as otherwise provided in this section, the regulations shall be applicable to all carriers, drivers, and vehicles to which the federal regulations apply, to all vehicles of intrastate motor carriers with a gross vehicle weight rating, gross combination weight rating, gross vehicle weight, or gross combination weight over ten thousand pounds, to all vehicles of intrastate motor carriers designed or used to transport more than eight passengers, including the driver, for compensation, or designed or used to transport more than fifteen passengers, including the driver, and not used to transport passengers for compensation, to all intrastate motor carriers in the operation of vehicles with a gross vehicle weight rating, gross combination weight rating, gross vehicle weight, or gross combination weight over ten thousand pounds, to all intrastate motor carriers in the operation of vehicles designed or used to transport more than eight passengers, including the driver, for compensation, or designed or used to transport more than fifteen passengers, including the driver, and not used to transport passengers for compensation, and to all drivers of such vehicles if the drivers are operating a commercial motor vehicle as defined in section 60-465 which requires a commercial driver's license. The Legislature hereby adopts, as modified in this section:

- (a) Part 382 -- Controlled Substances And Alcohol Use And Testing;
- (b) Part 385 -- Safety Fitness Procedures;
- (c) Part 390 -- Federal Motor Carrier Safety Regulations; +
General;
- (d) Part 391 -- Qualifications Of Drivers;
- (e) Part 392 -- Driving Of Commercial Motor Vehicles;
- (f) Part 393 -- Parts And Accessories Necessary For Safe ~~Operations~~
Operation;
- (g) Part 395 -- Hours Of Service Of Drivers;
- (h) Part 396 -- Inspection, Repair, And Maintenance;
- (i) Part 397 -- Transportation Of Hazardous Materials; Driving And
Parking Rules; and
- (j) Part 398 -- Transportation Of Migrant Workers.

(2) The provisions of subpart E, Physical Qualifications And Examinations, of 49 C.F.R. part 391, Qualifications Of Drivers, shall not apply to any driver subject to this section who: (a) Operates a commercial motor vehicle exclusively in intrastate commerce; and (b) holds, or has held, a commercial driver's license issued by this state prior to July 30, 1996.

(3) The regulations adopted in subsection (1) of this section shall not apply to farm trucks registered pursuant to section 60-330 with a gross weight of sixteen tons or less or to fertilizer and agricultural chemical application and distribution equipment transported in units with a capacity of three thousand five hundred gallons or less if the equipment is not required to be placarded pursuant to section 75-364. The following parts and sections of the federal Motor Carrier Safety Regulations shall not apply to drivers of farm trucks registered pursuant to section 60-330 and operated solely in intrastate commerce:

- (a) All of part 391;
 - (b) Section 395.8 of part 395; and
 - (c) Section 396.11 of part 396.
- (4) For purposes of this section, intrastate motor carriers shall

not include any motor carrier or driver excepted from the federal Motor Carrier Safety Regulations by section 390.3(f) of part 390 or any nonprofit entity, operating solely in intrastate commerce, organized for the purpose of furnishing electric service.

(5) Part 395 -- Hours Of Service Of Drivers shall apply to motor carriers and drivers who engage in intrastate commerce as defined in section 75-302, except that no motor carrier who engages in intrastate commerce shall permit or require any driver used by it to drive nor shall any driver drive:

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

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

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

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

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

(6) Part 395 -- Hours Of Service Of Drivers, as adopted in subsections (1) and (5) of this section relating to maximum driving and on-duty time for drivers, shall not apply to drivers transporting agricultural commodities or farm supplies for agricultural purposes when the transportation of such commodities or supplies occurs within a one-hundred-air-mile radius of the source of the commodities or the distribution point for the supplies when such transportation occurs during the period beginning on February 15 up to and including December 15 of each calendar year.

(7) Section 390.21 of part 390 -- Federal Motor Carrier Safety Regulations; + General, 49 C.F.R. 390.21 -- ~~Marking Of Commercial Motor Vehicles~~ of commercial motor vehicles, shall not apply to farm trucks and farm truck-tractors registered pursuant to section 60-330 and operated solely in intrastate commerce.

Sec. 6. Section 75-364, Revised Statutes Supplement, 2001, is amended to read:

75-364. (1) The parts of the federal Hazardous Material Regulations, 49 C.F.R., listed below or any other parts referred to by such parts, in existence and effective as of January 1, ~~2001~~ 2002, are adopted as part of Nebraska law and, except as provided in subsections (2) and (3) of this section, shall be applicable to all private, common, and contract motor vehicle carriers, drivers of such carriers, and vehicles of such carriers whether engaged in interstate or intrastate commerce:

(a) Part 171 -- General Information, Regulations, And Definitions;

(b) Part 172 -- Hazardous Materials Table, Special Provisions, Hazardous Materials Communications, Emergency Response Information, and Training Requirements;

(c) Part 173 -- Shippers--General Requirements For Shipments And Packagings;

(d) Part 177 -- Carriage By Public Highway;

(e) Part 178 -- Specifications For Packagings; and

(f) Part 180 -- Continuing Qualification And Maintenance Of Packagings.

(2) Agricultural operations exceptions:

(a) The transportation of an agricultural product other than a Class 2 material (Compressed Gases), over roads, other than the National System of Interstate and Defense Highways, between fields of the same farm, is excepted from subsection (1) of this section when:

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

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

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

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

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

(A) Sixteen thousand ninety-four pounds of ammonium nitrate

fertilizer properly classed as Division 5.1, PGIII, in a bulk packaging; or

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

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

(iv) (A) Each person having any responsibility for transporting the agricultural product or preparing the agricultural product for shipment has been instructed in the applicable requirements of 49 C.F.R. adopted in this section; and

(B) Instruction by the Department of Agriculture required pursuant to the Pesticide Act shall be sufficient for instruction under subdivision (2) (b) (iv) (A) of this section, if it has been approved for that purpose by the carrier enforcement division of the Nebraska State Patrol; and

(c) Formulated liquid agricultural products in specification packagings of fifty-eight-gallon capacity or less, with closures manifolded to a closed mixing system and equipped with positive dry disconnect devices, may be transported by a private motor carrier between a final distribution point and an ultimate point of application or for loading aboard an airplane for aerial application.

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

(a) Nonspecification bulk packagings: Notwithstanding requirements for specification packagings in 49 C.F.R. part 173, subpart F, and 49 C.F.R. parts 178 and 180, of the hazardous material regulations, a nonspecification bulk packaging may be used for transportation of a hazardous material by an intrastate motor carrier until July 1, 2000, in accordance with subdivision (d) of this subsection;

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

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

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

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

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

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

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

(v) Not be used to transport a flammable cryogenic liquid, hazardous substance, hazardous waste, or marine pollutant; and

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

(4) For purposes of this section:

(a) Agricultural product means a hazardous material, other than a hazardous waste, whose end use directly supports the production of an agricultural commodity, including, but not limited to, a fertilizer, pesticide, soil amendment, or fuel. An agricultural product is limited to a material in Class 3 (Flammable Liquids), Class 8 (Corrosives), or Class 9 (Miscellaneous), Division 2.1 (Flammable Gas), Class 2.2 (Nonflammable Gas), Class 5.1 (Oxidizers), or Class 6.1 (Poisons), or an ORM-D material (Consumer Commodity);

(b) Bulk package means a packaging, including a transport vehicle or

freight container, in which hazardous materials are loaded with no other intermediate form of containment and which has:

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

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

(iii) A water capacity greater than one thousand pounds as a receptacle for a gas as defined in 49 C.F.R. 173.315;

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

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

Sec. 7. Section 75-369.03, Reissue Revised Statutes of Nebraska, is amended to read:

75-369.03. The Superintendent of Law Enforcement and Public Safety may issue an order imposing a civil penalty against an interstate motor carrier for a violation of sections 75-348 to 75-358 or against an intrastate motor carrier for violation 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, motor carrier, common carrier, contract carrier, exempt carrier, or private carrier as defined in 49 C.F.R. part 390.5 of the federal Motor Carrier Safety Regulations 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 an interstate motor carrier 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 an interstate motor carrier of section 75-307, 75-352, 75-363, or 75-364 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 an intrastate motor carrier of section 75-307 based upon such inspection, the superintendent shall refer such violation to the Public Service Commission for disposition.

Sec. 8. Original sections 60-4,132, 60-4,162, 60-1306, and 75-369.03, Reissue Revised Statutes of Nebraska, and sections 60-4,168, 75-363, and 75-364, Revised Statutes Supplement, 2001, are repealed.

Sec. 9. The following sections are outright repealed: Sections 60-305.12 and 60-305.13, Reissue Revised Statutes of Nebraska.