

LEGISLATIVE BILL 1007

Approved by the Governor March 6, 2006

Introduced by Baker, 44

AN ACT relating to government regulation; to amend sections 28-1241, 57-501, 60-4,138, 60-4,145, 60-4,146, 60-4,163, 60-6,251, 60-6,284, 75-368, 75-369, 75-369.01, 75-369.02, and 75-369.03, Reissue Revised Statutes of Nebraska, section 28-1213, Revised Statutes Cumulative Supplement, 2004, and sections 60-462.01, 60-465, 60-1306, 75-363, and 75-364, Revised Statutes Supplement, 2005; to change provisions relating to explosives, fireworks, liquefied petroleum gas, motor vehicle operators' licenses, motor vehicle equipment requirements, carrier enforcement officers, and motor carriers; to define terms; to prohibit certain exculpatory clauses in motor carrier transportation contracts as prescribed; to eliminate certain motor carrier enforcement provisions; to harmonize provisions; to repeal the original sections; to outright repeal sections 75-381 and 75-382, Reissue Revised Statutes of Nebraska; and to declare an emergency.

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

Section 1. Section 28-1213, Revised Statutes Cumulative Supplement, 2004, is amended to read:

28-1213 For purposes of sections 28-1213 to 28-1239, unless the context otherwise requires:

(1) Person ~~shall mean~~ means any individual, corporation, company, association, firm, partnership, limited liability company, society, or joint-stock company;

(2) Business enterprise ~~shall mean~~ means any corporation, partnership, limited liability company, company, or joint-stock company;

(3) Explosive materials ~~shall mean~~ means explosives, blasting agents, and detonators;

(4) Explosives ~~shall mean~~ means any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion, including, but not limited to, dynamite and other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, ignited cord, igniters, display fireworks as defined in section 28-1241, and firecrackers or devices containing more than one hundred thirty milligrams of explosive composition, but ~~shall~~ does not include common fireworks as defined in such section, gasoline, kerosene, naphtha, turpentine, benzine, acetone, ethyl ether, benzol, fixed ammunition and primers for small arms, safety fuses, or matches;

(5) Blasting agent ~~shall mean~~ means any material or mixture, intended for blasting which meets the requirements of ~~the federal Hazardous Material Regulations, 49 C.F.R. part 173, subpart C, as such subpart existed on July 20, 2002~~ the effective date of this act;

(6) Detonator ~~shall mean~~ means any device containing an initiating or primary explosive that is used for initiating detonation. Excluding ignition or delay charges, a detonator shall not contain more than ten grams of explosive material per unit. Detonator ~~shall include~~ includes an electric detonator of instantaneous or delay type, a detonator for use with safety fuses, a detonating cord delay connector, and a nonelectric detonator of instantaneous or delay type which consists of detonating cord, shock tube, or any other replacement for electric leg wires;

(7) (a) Destructive devices ~~shall mean~~ means:

(i) Any explosive, incendiary, chemical or biological poison, or poison gas (A) bomb, (B) grenade, (C) rocket having a propellant charge of more than four ounces, (D) missile having an explosive or incendiary charge of more than one-quarter ounce, (E) mine, (F) booby trap, (G) Molotov cocktail, (H) bottle bomb, (I) vessel or container intentionally caused to rupture or mechanically explode by expanding pressure from any gas, acid, dry ice, or other chemical mixture, or (J) any similar device, the primary or common purpose of which is to explode and to be used as a weapon against any person or property; or

(ii) Any combination of parts either designed or intended for use in converting any device into a destructive device as defined in subdivision (7) (a) (i) of this section from which a destructive device may be readily assembled.

(b) The term destructive device ~~shall~~ does not include (i) any device which is neither designed nor redesigned for use as a weapon to be

used against person or property, (ii) any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line-throwing, safety, or similar device, (iii) surplus ordnance sold, loaned, or given by the Secretary of the Army pursuant to 10 U.S.C. 4684(2), 4685, or 4686, as such sections existed on July 20, 2002 the effective date of this act, (iv) any other device which the Nebraska State Patrol finds is not likely to be used as a weapon or is an antique, or (v) any other device possessed under circumstances negating an intent that the device be used as a weapon against any person or property;

(8) Federal permittee ~~shall mean~~ means any lawful user of explosive materials who has obtained a federal user permit under 18 U.S.C. chapter 40, as such chapter existed on July 20, 2002 the effective date of this act;

(9) Federal licensee ~~shall mean~~ means any importer, manufacturer, or dealer in explosive materials who has obtained a federal importers', manufacturers', or dealers' license under 18 U.S.C. chapter 40, as such chapter existed on July 20, 2002 the effective date of this act; and

(10) Smokeless propellants ~~shall mean~~ means solid propellants commonly called smokeless powders in the trade and used in small arms ammunition.

Sec. 2. Section 28-1241, Reissue Revised Statutes of Nebraska, is amended to read:

28-1241 As used in sections 28-1239.01 and 28-1241 to 28-1252, unless the context otherwise requires:

(1) Distributor ~~shall mean~~ means any person engaged in the business of making sales of fireworks at wholesale in this state to any person engaged in the business of making sales of fireworks either as a jobber or as a retailer or both;

(2) Jobber ~~shall mean~~ means any person engaged in the business of making sales of fireworks at wholesale to any other person engaged in the business of making sales at retail;

(3) Retailer ~~shall mean~~ means any person engaged in the business of making sales of fireworks at retail to consumers or to persons other than distributors or jobbers;

(4) Sale ~~shall include~~ includes barter, exchange, or gift or offer therefor and each such transaction made by any person, whether as principal, proprietor, agent, servant, or employee;

(5) Fireworks ~~shall mean~~ means any composition or device designed for the purpose of producing a visible or audible effect by combustion, deflagration, or detonation and which meets the definition of common or special fireworks set forth by the United States Department of Transportation in 49 C.F.R. Title 49 of the Code of Federal Regulations;

(6) Common fireworks ~~shall mean~~ means any small firework device designed to produce visible effects by combustion and which is required to comply with the construction, chemical composition, and labeling regulations of the United States Consumer Product Safety Commission set forth in 16 C.F.R., small devices designed to produce audible effects such as whistling devices, ground devices containing fifty milligrams or less of explosive composition, and aerial devices and firecrackers containing one hundred thirty milligrams or less of explosive composition. Class C explosives as classified by the United States Department of Transportation shall be considered common fireworks;

(7) Permissible fireworks ~~shall mean~~ means only sparklers, vesuvius fountains, spray fountains, torches, color fire cones, star and comet type color aerial shells without explosive charge for the purpose of making a noise, lady fingers, not to exceed seven-eighths of an inch in length or one-eighth inch in diameter, total explosive composition not to exceed fifty milligrams in weight, color wheels, and any other fireworks approved under section 28-1247; and

(8) Display fireworks ~~shall mean~~ means those materials manufactured exclusively for use in public exhibitions or displays of fireworks designed to produce visible or audible effects by combustion, deflagration, or detonation. Display fireworks ~~shall include~~ includes, but ~~not be~~ is not limited to, firecrackers containing more than one hundred thirty milligrams of explosive composition, aerial shells containing more than forty grams of explosive composition, and other display pieces which exceed the limits for classification as common fireworks. Class B explosives as classified by the United States Department of Transportation shall be considered display fireworks. Display fireworks shall be considered an explosive as defined in section 28-1213 and shall be subject to sections 28-1213 to 28-1239, except that display fireworks may be purchased, received, and discharged by the holder of an approved display permit issued pursuant to section 28-1239.01.

Sec. 3. Section 57-501, Reissue Revised Statutes of Nebraska, is

amended to read:

57-501 As used in sections 57-501 to 57-507, unless the context otherwise requires:

- (1) Person means and includes any person, firm, or corporation;
- (2) Owner means and includes (a) any person who holds a written bill of sale or other instrument under which title to the container was transferred to such person, (b) any person who holds a paid or receipted invoice showing purchase and payment of such container, (c) any person whose name, initials, mark, or other identifying device has been plainly and legibly stamped or otherwise shown upon the surface of such container for a period of not less than one year prior to the final enactment and approval of sections 57-501 to 57-507, or (d) any manufacturer of a container who has not sold or transferred ownership thereof by written bill of sale or otherwise;
- (3) Liquefied petroleum gas means and includes any material which is composed predominantly of hydrocarbons or mixtures of the same, such as propane, propylene, butanes (normal butane and isobutane), and butylenes;
- (4) Container means any vessel, including a cylinder or tank, used for storing of liquefied petroleum gas; and
- (5) Cylinder means a container constructed in accordance with the United States Department of Transportation specifications in 49 C.F.R. Title 49 of the Code of Federal Regulations as they exist existed on September 1, 2001 the effective date of this act.

Sec. 4. Section 60-462.01, Revised Statutes Supplement, 2005, is amended to read:

60-462.01 For purposes of the Motor Vehicle Operator's License Act, the following federal regulations are adopted as Nebraska law as they existed on January 1, ~~2005~~ 2006:

- (1) Beginning on an implementation date designated by the director, the federal requirements for interstate shipment of etiologic agents, 42 C.F.R. part 72; and
- (2) The parts, subparts, and sections of 49 C.F.R. Title 49 of the Code of Federal Regulations, as referenced in the Motor Vehicle Operator's License Act.

Sec. 5. Section 60-465, Revised Statutes Supplement, 2005, is amended to read:

60-465 (1) Commercial motor vehicle means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

- (a) Has a gross combination weight rating of eleven thousand seven hundred ninety-four kilograms or more (twenty-six thousand one pounds or more) inclusive of a towed unit with a gross vehicle weight rating of more than four thousand five hundred thirty-six kilograms (ten thousand pounds);
- (b) Has a gross vehicle weight rating of eleven thousand seven hundred ninety-four or more kilograms (twenty-six thousand one pounds or more);
- (c) Is designed to transport sixteen or more passengers, including the driver; or
- (d) Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the federal Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under ~~the federal Hazardous Material Regulations~~, 49 C.F.R. part 172, subpart F.

(2) Commercial motor vehicle does not include (a) a farm truck as defined in section 60-325 other than a combination of truck-tractors and semitrailers when such farm truck is operated within one hundred fifty miles of the registered owner's farm or ranch, (b) any recreational vehicle as defined in section 60-347 or motor vehicle towing a cabin trailer as defined in sections 60-314 and 60-339, (c) any emergency vehicle operated by a public or volunteer fire department, or (d) any motor vehicle owned or operated by the United States Department of Defense or Nebraska National Guard when such motor vehicle is driven by uniformed, military operators performing duty in the active service of the United States or this state.

Sec. 6. Section 60-4,138, Reissue Revised Statutes of Nebraska, is amended to read:

60-4,138 (1) Commercial drivers' licenses and restricted commercial drivers' licenses shall be issued by the Department of Motor Vehicles, shall be classified as provided in subsection (2) of this section, and shall bear such endorsements and restrictions as are provided in subsections (3) and (4) of this section.

(2) Commercial motor vehicle classifications for purposes of commercial drivers' licenses shall be as follows:

(a) Class A Combination Vehicle — Any combination of motor vehicles and towed vehicles with a gross vehicle weight rating of more than twenty-six

thousand pounds if the gross vehicle weight rating of the vehicles being towed are in excess of ten thousand pounds;

(b) Class B Heavy Straight Vehicle — Any single commercial motor vehicle with a gross vehicle weight rating of twenty-six thousand one pounds or more or any such commercial motor vehicle towing a vehicle with a gross vehicle weight rating not exceeding ten thousand pounds; and

(c) Class C Small Vehicle — Any single commercial motor vehicle with a gross vehicle weight rating of less than twenty-six thousand one pounds or any such commercial motor vehicle towing a vehicle with a gross vehicle weight rating not exceeding ten thousand pounds comprising:

(i) Motor vehicles designed to transport sixteen or more passengers, including the driver; and

(ii) Motor vehicles used in the transportation of hazardous materials and required to be placarded pursuant to section 75-364.

(3) The endorsements to a commercial driver's license shall be as follows:

(a) T — Double/triple trailers;

(b) P — Passenger;

(c) N — Tank vehicle;

(d) H — Hazardous materials;

(e) X — Combination tank vehicle and hazardous materials; and

(f) S — School bus.

(4) The restrictions to a commercial driver's license shall be as follows:

(a) I — Operation of a commercial motor vehicle only in intrastate commerce due to an exemption from 49 C.F.R. part 391 pursuant to subsection ~~(2)~~ (4) of section 75-363;

(b) K — Operation of a commercial motor vehicle only in intrastate commerce;

(c) L — Operation of only a commercial motor vehicle which is not equipped with air brakes;

(d) M — Operation of a commercial motor vehicle which is not a Class A bus;

(e) N — Operation of a commercial motor vehicle which is not a Class A or Class B bus; and

(f) O — Operation of a commercial motor vehicle which is not a tractor-trailer combination.

Sec. 7. Section 60-4,145, Reissue Revised Statutes of Nebraska, is amended to read:

60-4,145 Upon making any application pursuant to section 60-4,144, any applicant who operates or expects to operate a commercial motor vehicle in interstate or foreign commerce and who is subject to 49 C.F.R. part 391 ~~of the federal Motor Carrier Safety Regulations~~ adopted pursuant to section 75-363 shall certify that the applicant meets the qualification requirements of 49 C.F.R. part 391. A commercial driver's license examiner may require any applicant making certification pursuant to this section to demonstrate with or without the aid of corrective devices sufficient powers of eyesight to enable him or her to operate a commercial motor vehicle in conformance with the minimum vision requirements of 49 C.F.R. part 391 ~~of the federal Motor Carrier Safety Regulations~~ adopted pursuant to section 75-363. If from the examination given it appears that any applicant's powers of eyesight are such that he or she cannot meet the minimum vision requirements, the examiner shall allow the applicant to present an ophthalmologist's or optometrist's certificate to the effect that the applicant has sufficient powers of eyesight for such purpose before issuing a commercial driver's license to the applicant. If the examination given by the commercial driver's license examiner or the ophthalmologist's or optometrist's certificate indicates that the applicant must wear a corrective device to meet the minimum vision requirements established by this section, the applicant shall have the use of the commercial driver's license issued to him or her restricted to wearing a corrective device while operating a motor vehicle. An applicant who has been issued a waiver or exemption by the Federal Highway Motor Carrier Safety Administration from the vision requirements set forth in 49 C.F.R. 391.41(b)(10) may be issued an interstate commercial driver's license without meeting the vision requirements set forth in 49 C.F.R. 391.41(b)(10).

Sec. 8. Section 60-4,146, Reissue Revised Statutes of Nebraska, is amended to read:

60-4,146 (1) Upon making application pursuant to section 60-4,144, any applicant who operates or expects to operate a commercial motor vehicle solely in intrastate commerce and who is not subject to 49 C.F.R. part 391 ~~of the federal Motor Carrier Safety Regulations~~ adopted pursuant to section 75-363 shall certify that he or she is not subject to 49 C.F.R. part 391.

Any applicant for a Class A commercial driver's license shall satisfy the examiner that he or she is eighteen years of age or older. Any applicant for a Class B or C commercial driver's license shall satisfy the examiner that he or she is eligible for issuance of a Class O operator's license. Any applicant making certification pursuant to this section shall meet the physical and vision requirements established in section 60-4,118 and shall be subject to the provisions of such section relating to the Health Advisory Board.

(2) An applicant who certifies that he or she is exempt from the physical qualifications and examination requirements of 49 C.F.R. part 391 pursuant to subsection ~~(2)~~ (4) of section 75-363 shall meet the physical and vision requirements established in section 60-4,118 and shall be subject to the provisions of such section relating to the Health Advisory Board. A successful applicant shall be issued a commercial driver's license which restricts the holder to operating a commercial motor vehicle solely in intrastate commerce and which also indicates that the holder is exempt from the physical qualifications and examination requirements prescribed by 49 C.F.R. part 391. Two years after the initial issuance of such license and upon renewal, and every two years following renewal, the holder of the commercial driver's license shall present to the Department of Motor Vehicles upon request, on a form to be prescribed by the department, a statement from a physician detailing that based upon his or her examination of the applicant the medical or physical condition in existence prior to July 30, 1996, which would otherwise render the individual not qualified under federal standards, has not significantly worsened or that another nonqualifying medical or physical condition has not developed.

(3) An applicant who certifies that he or she is not subject to 49 C.F.R. part 391 under subsection (1) of this section or who certifies that he or she is exempt from 49 C.F.R. part 391 under subsection (2) of this section shall answer the following questions on the application:

(a) Have you within the last three months (e.g. due to diabetes, epilepsy, mental illness, head injury, stroke, heart condition, neurological disease, etc.):

- (i) lost voluntary control or consciousness ... yes ... no
- (ii) experienced vertigo or multiple episodes of dizziness or fainting ... yes ... no
- (iii) experienced disorientation ... yes ... no
- (iv) experienced seizures ... yes ... no
- (v) experienced impairment of memory, memory loss ... yes ... no

Please explain:

(b) Do you experience any condition which affects your ability to operate a motor vehicle? (e.g. due to loss of, or impairment of, foot, leg, hand, arm; neurological or neuromuscular disease, etc.) ... yes ... no Please explain:

(c) Since the issuance of your last driver's license/permit has your health or medical condition changed or worsened? ... yes ... no Please explain, including how the above affects your ability to drive:

Sec. 9. Section 60-4,163, Reissue Revised Statutes of Nebraska, is amended to read:

60-4,163 No person shall operate or be in the actual physical control of a commercial motor vehicle while having any alcoholic liquor in his or her body. Any person who operates or is in the actual physical control of a commercial motor vehicle while having any alcoholic liquor in his or her body or who refuses to submit to a test or tests to determine the alcoholic content of his or her blood or breath shall be placed out of service for twenty-four hours, shall be subject to disqualification as provided in sections 60-4,167 and 60-4,168, and shall be subject to prosecution for any violation of sections 60-6,196 and 60-6,197.

Any order to place a person out of service for twenty-four hours issued by a law enforcement officer shall be made pursuant to section 49 C.F.R. 392.5(c) of the federal Motor Carrier Safety Regulations adopted pursuant to section 75-363, as such regulation existed on September 1, 2001.

Sec. 10. Section 60-6,251, Reissue Revised Statutes of Nebraska, is amended to read:

60-6,251 (1) No person shall alter the traction surface of pneumatic tires by regrooving.

(2) No person shall knowingly operate on any highway in this state any motor vehicle on which the traction surface of any pneumatic tire thereof has been regrooved. No person shall sell, exchange, or offer for sale or exchange such a tire.

(3) This section shall not apply to regrooved commercial vehicle tires which are designed and constructed in such a manner that any regrooving

complies with the federal Motor Carrier Safety parts, subparts, and sections of Title 49 of the Code of Federal Regulations adopted pursuant to section 75-363.

Sec. 11. Section 60-6,284, Reissue Revised Statutes of Nebraska, is amended to read:

60-6,284 The drawbar or other connection between any two vehicles, one of which is towing or drawing the other on a highway, shall not exceed fifteen feet in length from one vehicle to the other, except a vehicle being towed with a connection device that is an integral component of the vehicle and is designed to attach to a lead unit with construction in such a manner as to allow articulation at the attachment point on the chassis of the towed vehicle but not to allow lateral or side-to-side movement. Such connecting device shall meet the safety standards for towbar failure or disconnection in the federal Motor Carrier Safety parts, subparts, and sections of Title 49 of the Code of Federal Regulations adopted pursuant to section 75-363 and shall have displayed at approximately the halfway point between the towing vehicle and the towed vehicle on the connecting mechanism a red flag or other signal or cloth not less than twelve inches both in length and width that shall be at least five feet and not more than ten feet from the level of the paving and shall be displayed along the outside line on both sides of the towing and towed vehicles. Whenever such connection consists of a chain, rope, or cable, there shall be displayed upon such connection a red flag or other signal or cloth not less than twelve inches both in length and width.

Sec. 12. Section 60-1306, Revised Statutes Supplement, 2005, 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 International Fuel Tax Agreement Act and the provisions of law relating to the size, weight, and load and the Motor Vehicle Registration Act pertaining to 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 license 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 60-1308, 60-1309, and 75-363 to 75-369.07 and section 14 of this act, (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 60-1308, 60-1309, and 75-363 to 75-369.07 and section 14 of this act, 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 60-1308, 60-1309, and 75-363 to 75-369.07 and section 14 of this act.

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. 13. Section 75-363, Revised Statutes Supplement, 2005, is amended to read:

75-363 (1) The parts, subparts, and sections of the federal Motor Carrier Safety Regulations, 49 C.F.R. Title 49 of the Code of Federal Regulations listed below, as modified in this section, or and any other parts, subparts, and sections referred to by such parts, subparts, and sections, in existence and effective as of January 1, 2005 2006, are adopted as Nebraska law.

(2) Except as otherwise provided in this section, the regulations shall be applicable to:

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

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

(i) All ~~to~~ all vehicles of intrastate such motor carriers with a gross vehicle weight rating, gross combination weight rating, gross vehicle weight, or gross combination weight over ten thousand pounds;

(ii) All ~~to~~ all vehicles of intrastate such 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;

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

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

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

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

(b) Part 385 - Safety Fitness Procedures;

(c) Part 387 - Minimum Levels of Financial Responsibility for Motor Carriers;

(d) Part 390 - Federal Motor Carrier Safety Regulations; General;

~~(e)~~ (e) Part 391 - Qualifications Of Drivers And Longer Combination Vehicle (LCV) Driver Instructors;

~~(f)~~ (f) Part 392 - Driving Of Commercial Motor Vehicles;

~~(g)~~ (g) Part 393 - Parts And Accessories Necessary For Safe Operation;

~~(h)~~ (h) Part 395 - Hours Of Service Of Drivers;

~~(i)~~ (i) Part 396 - Inspection, Repair, And Maintenance;

~~(j)~~ (j) Part 397 - Transportation Of Hazardous Materials; Driving And Parking Rules; and

~~(k)~~ (k) Part 398 - Transportation Of Migrant Workers.

~~(2)~~ (4) The provisions of subpart E, - Physical Qualifications And Examinations, of 49 C.F.R. part 391, - Qualifications Of Drivers, And Longer Combination Vehicle (LCV) Driver Instructors 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)~~ (5) The regulations adopted in subsection (1) (3) of this section shall not apply to farm trucks registered pursuant to section 60-3,146 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 49 C.F.R. chapter III shall not apply to drivers of farm trucks registered pursuant to section 60-3,146 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)~~ (6) For purposes of this section, intrastate motor carriers shall not include any motor carrier or driver excepted from the federal Motor Carrier Safety Regulations 49 C.F.R. chapter III 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)~~ (7) 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 14 of this act, 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)~~ (8) Part 395 - Hours Of Service Of Drivers, as adopted in

subsections ~~(1)~~ (3) and ~~(5)~~ (7) 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)~~ (9) 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 60-3,146 and operated solely in intrastate commerce.

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

Sec. 14. For purposes of sections 75-363 to 75-369.07 and this section, unless the context otherwise requires:

(1) Accident means:

(a) Except as provided in subdivision (b) of this subdivision, an occurrence involving a commercial motor vehicle operating on a highway in interstate or intrastate commerce which results in:

(i) A fatality;

(ii) Bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or

(iii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicles to be transported away from the scene by a tow truck or other motor vehicle.

(b) The term accident does not include:

(i) An occurrence involving only boarding and alighting from a stationary motor vehicle; or

(ii) An occurrence involving only the loading or unloading of cargo;

(2) Bulk packaging means a packaging, other than a vessel or a barge, including a transport vehicle or freight container, in which hazardous materials are loaded with no intermediate form of containment and which has:

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

(b) 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

(c) A water capacity greater than one thousand pounds as a receptacle for a gas as defined in 49 C.F.R. 173.115;

(3) Cargo tank means a bulk packaging that:

(a) Is a tank intended primarily for the carriage of liquids or gases and includes appurtenances, reinforcements, fittings, and closures;

(b) Is permanently attached to or forms a part of a motor vehicle or is not permanently attached to a motor vehicle but which, by reason of its size, construction, or attachment to a motor vehicle, is loaded or unloaded without being removed from the motor vehicle; and

(c) Is not fabricated under a specification for cylinders, intermediate bulk containers, multi-unit tank-car tanks, portable tanks, or tank cars;

(4) Cargo tank motor vehicle means a motor vehicle with one or more cargo tanks permanently attached to or forming an integral part of the motor vehicle;

(5) Commercial enterprise means any business activity relating to or based upon the production, distribution, or consumption of goods or services;

(6) Commercial motor vehicle means any self-propelled or towed motor vehicle used on a highway in interstate commerce or intrastate commerce to transport passengers or property when the vehicle:

(a) Has a gross vehicle weight rating or gross combination weight rating or gross vehicle weight or gross combination weight of ten thousand one pounds or more, whichever is greater;

(b) Is designed or used to transport more than eight passengers, including the driver, for compensation;

(c) Is designed or used to transport more than fifteen passengers, including the driver, and is not used to transport passengers for compensation; or

(d) Is used in transporting material found to be hazardous and such material is transported in a quantity requiring placarding pursuant to section 75-364;

(7) Compliance review means an onsite examination of motor

carrier operations, such as drivers' hours of service, maintenance and inspection, driver qualification, commercial driver's license requirements, financial responsibility, accidents, hazardous materials, and other safety and transportation records to determine whether a motor carrier meets the safety fitness standard. A compliance review may be conducted in response to a request to change a safety rating, to investigate potential violations of safety regulations by motor carriers, or to investigate complaints or other evidence of safety violations. The compliance review may result in the initiation of an enforcement action with penalties;

(8) Disabling damage means damage which precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs.

(a) Inclusions: Damage to motor vehicles that could have been driven but would have been further damaged if so driven.

(b) Exclusions:

(i) Damage which can be remedied temporarily at the scene of the accident without special tools or parts;

(ii) Tire disablement without other damage even if no spare tire is available;

(iii) Headlight or taillight damage; and

(iv) Damage to turn signals, horn, or windshield wipers which makes them inoperative;

(9) Driver means any person who operates any commercial motor vehicle;

(10) Elevated temperature material means a material which, when offered for transportation or transported in a bulk packaging:

(a) Is in a liquid phase and at a temperature at or above two hundred twelve degrees Fahrenheit;

(b) Is in a liquid phase with a flash point at or above one hundred degrees Fahrenheit that is intentionally heated and offered for transportation or transported at or above its flash point; or

(c) Is in a solid phase and at a temperature at or above four hundred sixty-four degrees Fahrenheit;

(11) Employee means any individual, other than an employer, who is employed by an employer and who in the course of his or her employment directly affects commercial motor vehicle safety. Such term includes a driver of a commercial motor vehicle, including an independent contractor while in the course of operating a commercial motor vehicle, a mechanic, and a freight handler. Such term does not include an employee of the United States, any state, any political subdivision of a state, or any agency established under a compact between states and approved by the Congress of the United States who is acting within the course of such employment;

(12) Employer means any person engaged in a business affecting commerce who owns or leases a commercial motor vehicle in connection with that business or assigns employees to operate it. Such term does not include the United States, any state, any political subdivision of a state, or an agency established under a compact between states approved by the Congress of the United States;

(13) Exempt motor carrier means a person engaged in transportation exempt from economic regulation under 49 U.S.C. 13506. An exempt motor carrier is subject to the safety regulations adopted in sections 75-363 to 75-369.07 and this section;

(14) Farm vehicle driver means a person who drives only a commercial motor vehicle that is controlled and operated by a farmer as a private motor carrier of property;

(15) Farmer means any person who operates a farm or is directly involved in the cultivation of land, crops, or livestock which:

(a) Are owned by that person; or

(b) Are under the direct control of that person;

(16) Fatality means any injury which results in the death of a person at the time of the motor vehicle accident or within thirty days after the accident;

(17) For-hire motor carrier means a person engaged in the transportation of goods or passengers for compensation;

(18) Gross combination weight means the sum of the empty weight of a motor vehicle plus the total weight of any load carried thereon and the empty weight of the towed unit or units plus the total weight of any load carried on such towed unit or units;

(19) Gross combination weight rating means the value specified by the manufacturer as the loaded weight of a combination (articulated) motor vehicle. In the absence of a value specified by the manufacturer, gross combination weight rating will be determined by adding either the gross

vehicle weight rating or gross vehicle weight of the motor vehicle plus the gross vehicle weight rating or gross vehicle weight of the towed unit or units;

(20) Gross vehicle weight means the sum of the empty weight of a motor vehicle plus the total weight of any load carried thereon;

(21) Gross vehicle weight rating means the value specified by the manufacturer as the loaded weight of a single motor vehicle. In the absence of such value specified by the manufacturer or the absence of any marking of such value on the vehicle, the gross vehicle weight rating shall be determined from the sum of the axle weight ratings of the vehicle or the sum of the tire weight ratings as marked on the sidewall of the tires, whichever is greater. In the absence of any tire sidewall marking, the tire weight ratings shall be determined for the specified tires from any of the publications of any of the organizations listed in 49 C.F.R. 571.119;

(22) Hazardous material means a substance or material that the Secretary of the United States Department of Transportation has determined is capable of posing an unreasonable risk to health, safety, and property when transported in commerce and has designated as hazardous under 49 U.S.C. 5103. The term includes hazardous substances, hazardous wastes, marine pollutants, elevated temperature materials, materials designated as hazardous in the Hazardous Materials Table, 49 C.F.R. 172.101, and materials that meet the defining criteria for hazard classes and divisions in 49 C.F.R. part 173;

(23) Hazardous substance means a material, including its mixtures and solutions, that is listed in 49 C.F.R. 172.101, Appendix A, List Of Hazardous Substances and Reportable Quantities, and is in a quantity, in one package, which equals or exceeds the reportable quantity listed in 49 C.F.R. 172.101, Appendix A. This definition does not apply to petroleum products that are lubricants or fuels or to mixtures or solutions of hazardous substances if in a concentration less than that shown in the table in 49 C.F.R. 171.8 under the definition of hazardous substance based on the reportable quantity specified for the materials listed in 49 C.F.R. 172.101, Appendix A;

(24) Hazardous waste means any material that is subject to the hazardous waste manifest requirements of the United States Environmental Protection Agency specified in 40 C.F.R. 262;

(25) Highway means the entire width between the boundary limits of any street, road, avenue, boulevard, or way which is publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel;

(26) Interstate commerce means trade, traffic, or transportation provided in the furtherance of a commercial enterprise in the United States:

(a) Between a place in a state and a place outside of such state, including a place outside of the United States;

(b) Between two places in a state through another state or a place outside of the United States; or

(c) Between two places in a state as part of trade, traffic, or transportation originating or terminating outside the state or the United States;

(27) Intrastate commerce means any trade, traffic, or transportation provided in the furtherance of a commercial enterprise between any place in the State of Nebraska and any other place in Nebraska and not through any other state;

(28) Marine pollutant means a material which is listed in the Hazardous Materials Table, 49 C.F.R. 172.101, Appendix B, as a marine pollutant (see 49 C.F.R. 171.4 for applicability to marine pollutants) and, when in a solution or mixture of one or more marine pollutants, is packaged in a concentration which equals or exceeds:

(a) Ten percent by weight of the solution or mixture for materials listed in 49 C.F.R. 172.101, Appendix B; or

(b) One percent by weight of the solution or mixture for materials that are identified as severe marine pollutants in the Hazardous Materials Table, 49 C.F.R. 172.101, Appendix B;

(29) Motor carrier means a for-hire motor carrier or a private motor carrier. The term includes a motor carrier's agents, officers, and representatives as well as employees responsible for hiring, supervising, training, assigning, or dispatching of drivers and employees concerned with the installation, inspection, and maintenance of motor vehicle equipment or accessories. This definition includes the terms employer and exempt motor carrier;

(30) Motor vehicle means any vehicle, truck, truck-tractor, trailer, or semitrailer propelled or drawn by mechanical power except (a) farm tractors, (b) vehicles which run only on rails or tracks, and (c) road and general-purpose construction and maintenance machinery which by design and

function is obviously not intended for use on a public highway, including, but not limited to, motor scrapers, earthmoving equipment, backhoes, trenchers, motor graders, compactors, tractors, bulldozers, bucket loaders, ditchdigging apparatus, asphalt spreaders, leveling graders, power shovels, and crawler tractors;

(31) Nonbulk packaging means a packaging which has:

(a) A maximum capacity of one hundred nineteen gallons or less as a receptacle for a liquid;

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

(c) A water capacity of one thousand pounds or less as a receptacle for a gas as defined in 49 C.F.R. 173.115;

(32) Out-of-service order means a declaration by an authorized enforcement officer of a federal, state, Canadian, Mexican, or local jurisdiction that a driver, a commercial motor vehicle, or a motor carrier operation is out of service pursuant to 49 C.F.R. 386.72, 392.5, 395.13, or 396.9, or compatible laws or the North American Uniform Out-of-Service Criteria;

(33) Packaging means a receptacle and any other components or materials necessary for the receptacle to perform its containment function in conformance with the minimum packing requirements of Title 49 of the Code of Federal Regulations. For radioactive materials packaging, see 49 C.F.R. 173.403;

(34) Person means any individual, partnership, association, corporation, business trust, or any other organized group of individuals;

(35) Principal place of business means the single location designated by the motor carrier, normally its headquarters, for purposes of identification. The motor carrier must make records required by the regulations referred to in sections 75-363 to 75-369.07 and this section available for inspection at this location within forty-eight hours, Saturdays, Sundays, and state or federal holidays excluded, after a request has been made by an officer of the Nebraska State Patrol;

(36) Private motor carrier means a person who provides transportation of property or passengers by commercial motor vehicle and is not a for-hire motor carrier;

(37) Safety audit means an examination of a motor carrier's operations to provide educational and technical assistance on drivers' hours of service, maintenance and inspection, driver qualification, commercial driver's license requirements, financial responsibility, accidents, hazardous materials, and other safety and transportation records to determine whether a motor carrier meets the safety fitness standard. The purpose of a safety audit is to gather critical safety data needed to make an assessment of the carrier's safety performance and basic safety management controls. Safety audits do not result in safety ratings; and

(38) Tank means a container, consisting of a shell and heads, that forms a pressure-tight vessel having openings designed to accept pressure-tight fittings or closures, but excludes any appurtenances, reinforcements, fittings, or closures.

Sec. 15. Section 75-364, Revised Statutes Supplement 2005, is amended to read:

75-364 (1) The parts, subparts, and sections of the federal Hazardous Material Regulations, 49 C.F.R., Title 49 of the Code of Federal Regulations listed below, or any other parts, subparts, and sections referred to by such parts, subparts, and sections, in existence and effective as of January 1, 2005-2006, 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 motor carriers whether engaged in interstate or intrastate commerce, drivers of such motor carriers, and vehicles of such motor carriers: whether engaged in interstate or intrastate commerce:

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

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

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

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

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

~~(d)~~ (f) Part 177 — Carriage By Public Highway;
~~(e)~~ (g) Part 178 — Specifications For Packagings; and
~~(f)~~ (h) 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) as defined in 49 C.F.R. 171.8, 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), and from the specific packaging requirements of subsection (1) of this section 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)~~ (iv) 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. the parts, subparts, and sections of Title 49 of the Code of Federal Regulations 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 as defined in 49 C.F.R. 171.8; 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 Division 2.2 (Nonflammable Gas), Class Division 5.1 (Oxidizers), or Class Division 6.1 (Poisons),~~ or an ORM-D material (Consumer Commodity), as defined in 49 C.F.R. 171.8;

(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, pursuant to standards set forth as defined in 49 C.F.R. 173.315 173.115;

(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. 16. Section 75-368, Reissue Revised Statutes of Nebraska, is amended to read:

75-368 (1) The Nebraska State Patrol or the carrier enforcement division may adopt and promulgate rules and regulations as are necessary to carry out and enforce sections 75-363 to 75-369.07 and section 14 of this act.

(2) The rules and regulations utilized by the Public Service Commission to administer any function or duty transferred to the Division of Motor Carrier Services on January 1, 1997, shall be administered as if adopted by the Division of Motor Carrier Services and shall remain effective until repealed, amended, modified, or reenacted by the Division of Motor Carrier Services.

Sec. 17. Section 75-369, Reissue Revised Statutes of Nebraska, is amended to read:

75-369 The Nebraska State Patrol shall provide each county treasurer and the Department of Motor Vehicles with copies of a declaration which states that the motor carrier safety regulations in sections 75-363 to 75-369.07 and section 14 of this act have been enacted into state law. The declaration shall be distributed by the county treasurers and the Department of Motor Vehicles to each applicant for registration of commercial motor vehicles subject to sections 75-363 and 75-364. The applicant shall sign the registration form to acknowledge that the applicant has read the declaration and is aware that the motor carrier safety regulations are part of state law. Nothing in this section shall be construed to impose any liability upon any county treasurer or the Department of Motor Vehicles or any employee thereof as a result of any act or failure to act under this section.

Sec. 18. Section 75-369.01, Reissue Revised Statutes of Nebraska, is amended to read:

75-369.01 Any officer ~~of the carrier enforcement division of the Nebraska State Patrol~~ carrier enforcement division ~~or any officer of the Nebraska State Patrol~~ may conduct a safety ~~review~~ audit or safety compliance ~~audit~~ review of a motor carrier.

Sec. 19. Section 75-369.02, Reissue Revised Statutes of Nebraska, is amended to read:

75-369.02 Following a ~~safety review or safety~~ safety review of an intrastate motor carrier by an officer of the Nebraska State Patrol carrier enforcement division, of the Nebraska State Patrol or any officer of the Nebraska State Patrol, the Nebraska State Patrol shall issue a safety rating of that motor carrier. The safety rating shall be based upon factors prescribed in 49 C.F.R. part 385 — Safety Fitness Procedures of the federal Motor Carrier Safety Regulations adopted in section 75-363, ~~the federal Hazardous Material Regulations portions of 49 C.F.R. chapter I~~ adopted in section 75-364, and insurance requirements for intrastate motor carriers set forth by the Public Service Commission pursuant to section 75-307. The motor carrier shall be notified by the Nebraska State Patrol of such safety rating by certified or registered mail.

Sec. 20. 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 a~~ a motor carrier transporting persons or property in interstate commerce for a violation of sections 75-348 to 75-358 or against ~~an intrastate a~~ a motor carrier transporting persons or property in intrastate commerce for a violation or violations of section 75-363 or 75-364 based upon an inspection conducted pursuant to section 75-366 in an amount which shall not exceed five hundred dollars for any single violation in any proceeding or series of related proceedings against any person, ~~or motor carrier, 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 a~~ a motor carrier transporting persons or property in interstate commerce for a violation of subsection (3) of section 60-4,162 based upon a conviction of such a violation. Upon the discovery of any violation by ~~an interstate a~~ a motor carrier transporting persons or property in interstate commerce 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 a~~ a motor carrier transporting persons or property in intrastate commerce of section 75-307 based upon such inspection, the superintendent shall refer such violation to the Public Service Commission for disposition.

Sec. 21. (1) A provision, a clause, a covenant, or an agreement contained in, collateral to, or affecting a motor carrier transportation contract that purports to indemnify, defend, or hold harmless or has the effect of indemnifying, defending, or holding harmless the motor carrier transportation contract's promisee from or against any liability for loss or damage resulting from the negligence or intentional acts or omissions of the motor carrier transportation contract's promisee or any agents, employees, servants, or independent contractors who are directly responsible to the motor carrier transportation contract's promisee, is against the public policy of this state and is unenforceable.

(2) Nothing contained in this section affects a provision, a clause, a covenant, or an agreement in which a motor carrier indemnifies or holds harmless a motor carrier transportation contract's promisee against liability for damages to the extent that the damages were caused by and resulting from the negligence of the motor carrier or its agents, employees, servants, or independent contractors who are directly responsible to the motor carrier.

(3) As used in this section:

(a) Motor carrier means any person who or which owns, controls, manages, operates, or causes to be operated any motor vehicle used to transport goods over any public highway in this state, whether in intrastate or interstate commerce;

(b) Motor carrier transportation contract means a contract, agreement, or understanding covering:

(i) The transportation of property for compensation or hire by a motor carrier;

(ii) The entrance on property by a motor carrier for the purpose of loading, unloading, or transporting property for compensation or for hire; or

(iii) A service incidental to activity described in subdivision (i) or (ii) of this subdivision, including, but not limited to, storage of property.

A motor carrier transportation contract does not include provisions of the Uniform Intermodal Interchange and Facilities Access Agreement

administered by the Intermodal Association of North America or any other provision, clause, covenant, or agreement providing for the interchange, use, or possession of intermodal chassis, containers, or other intermodal equipment; and

(c) Promisee means the party to a motor carrier transportation contract who or which is not a motor carrier or, if the promisee is a motor carrier, is not the motor carrier actually doing the transporting.

Sec. 22. Original sections 28-1241, 57-501, 60-4,138, 60-4,145, 60-4,146, 60-4,163, 60-6,251, 60-6,284, 75-368, 75-369, 75-369.01, 75-369.02, and 75-369.03, Reissue Revised Statutes of Nebraska, section 28-1213, Revised Statutes Cumulative Supplement, 2004, and sections 60-462.01, 60-465, 60-1306, 75-363, and 75-364, Revised Statutes Supplement, 2005, are repealed.

Sec. 23. The following sections are outright repealed: Sections 75-381 and 75-382, Reissue Revised Statutes of Nebraska.

Sec. 24. Since an emergency exists, this act takes effect when passed and approved according to law.