

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 239

FINAL READING

Introduced by Fischer, 43

Read first time January 10, 2007

Committee: Transportation and Telecommunications

A BILL

1 FOR AN ACT relating to motor vehicles; to amend sections 60-311,
2 60-342, 60-3,196, 60-462.01, 60-4,147.02, 60-6,265,
3 60-6,267, 75-363, and 75-364, Revised Statutes Cumulative
4 Supplement, 2006; to update references to federal law; to
5 delete obsolete language; to harmonize provisions; and to
6 repeal the original sections.

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

1 Section 1. Section 60-311, Revised Statutes Cumulative
2 Supplement, 2006, is amended to read:

3 60-311 Base jurisdiction means, for purposes of fleet
4 registration, the jurisdiction where the registrant has an
5 established place of business, where miles or kilometers are
6 accrued by the fleet, and where operational records of such
7 fleet are maintained or can be made available. For such purpose,
8 there is hereby adopted and incorporated by reference section
9 1602 of Article XVI, International Registration Plan, adopted by
10 the American Association of Motor Vehicle Administrators, as such
11 section existed on October 1, ~~2005-~~2006.

12 Sec. 2. Section 60-342, Revised Statutes Cumulative
13 Supplement, 2006, is amended to read:

14 60-342 Owner means a person, firm, or corporation which
15 holds a legal title of a motor vehicle or trailer. If (1) a
16 motor vehicle or trailer is the subject of an agreement for
17 the conditional sale thereof with the right of purchase upon
18 performance of the conditions stated in the agreement and with an
19 immediate right of possession vested in the conditional vendee,
20 (2) a motor vehicle or trailer is subject to a lease of thirty
21 days or more with an immediate right of possession vested in
22 the lessee, or (3) a mortgagor of a motor vehicle or trailer is
23 entitled to possession, then such conditional vendee, lessee, or
24 mortgagor shall be deemed the owner for purposes of the Motor
25 Vehicle Registration Act. For such purpose, there are hereby

1 adopted and incorporated by reference the provisions of Article
2 XI, International Registration Plan, adopted by the American
3 Association of Motor Vehicle Administrators, as such provisions
4 existed on October 1, ~~2005-~~2006.

5 Sec. 3. Section 60-3,196, Revised Statutes Cumulative
6 Supplement, 2006, is amended to read:

7 60-3,196 Apportionable vehicles registered as provided in
8 section 60-3,198 and apportionable vehicles covered under section
9 404 of Article IV, International Registration Plan, adopted by
10 the American Association of Motor Vehicle Administrators, as such
11 section existed on October 1, ~~2005-~~2006, which is hereby adopted
12 and incorporated by reference, shall be deemed fully registered
13 in all jurisdictions where apportioned or granted reciprocity
14 for any type of movement or operation. The registrant must have
15 proper interjurisdiction or intrajurisdiction authority from the
16 appropriate regulatory agency of each jurisdiction of this state if
17 not exempt from regulation by the regulatory agency.

18 Sec. 4. Section 60-462.01, Revised Statutes Cumulative
19 Supplement, 2006, is amended to read:

20 60-462.01 For purposes of the Motor Vehicle Operator's
21 License Act, the following federal regulations are adopted as
22 Nebraska law as they existed on January 1, ~~2006-~~2007:

23 (1) Beginning on an implementation date designated by
24 the director, the federal requirements for interstate shipment of
25 etiologic agents, 42 C.F.R. part 72; and

1 (2) The parts, subparts, and sections of Title 49 of the
2 Code of Federal Regulations, as referenced in the Motor Vehicle
3 Operator's License Act.

4 Sec. 5. Section 60-4,147.02, Revised Statutes Cumulative
5 Supplement, 2006, is amended to read:

6 60-4,147.02 No endorsement authorizing the driver to
7 operate a commercial motor vehicle transporting hazardous materials
8 shall be issued, renewed, or transferred by the Department of Motor
9 Vehicles unless the endorsement is issued, renewed, or transferred
10 in conformance with the requirements of section 1012 of the federal
11 Uniting and Strengthening America by Providing Appropriate Tools
12 Required to Intercept and Obstruct Terrorism Act of 2001, USA
13 PATRIOT Act, 49 U.S.C. 5103a, including all amendments and federal
14 rules and regulations adopted and promulgated pursuant thereto as
15 of January 1, ~~2006~~, 2007, for the issuance of licenses to operate
16 commercial motor vehicles transporting hazardous materials.

17 Sec. 6. Section 60-6,265, Revised Statutes Cumulative
18 Supplement, 2006, is amended to read:

19 60-6,265 For purposes of sections 60-6,266 to 60-6,273,
20 occupant protection system means a system utilizing a lap belt, a
21 shoulder belt, or any combination of belts installed in a motor
22 vehicle which (1) restrains drivers and passengers and (2) conforms
23 to Federal Motor Vehicle Safety Standards, 49 C.F.R. 571.207,
24 571.208, 571.209, and 571.210, as such standards existed on January
25 1, ~~2006~~, 2007, or to the federal motor vehicle safety standards

1 for passenger restraint systems applicable for the motor vehicle's
2 model year.

3 Sec. 7. Section 60-6,267, Revised Statutes Cumulative
4 Supplement, 2006, is amended to read:

5 60-6,267 (1) Any person in Nebraska who drives any motor
6 vehicle which has or is required to have an occupant protection
7 system shall ensure that:

8 (a) All children up to six years of age being transported
9 by such vehicle use a child passenger restraint system of a type
10 which meets Federal Motor Vehicle Safety Standard 213 as developed
11 by the National Highway Traffic Safety Administration, as such
12 standard existed on January 1, ~~2006,~~ 2007, and which is correctly
13 installed in such vehicle; and

14 (b) All children six years of age and less than eighteen
15 years of age being transported by such vehicle use an occupant
16 protection system.

17 This subsection shall apply to every motor vehicle which
18 is equipped with an occupant protection system or is required to be
19 equipped with restraint systems pursuant to Federal Motor Vehicle
20 Safety Standard 208, as such standard existed on January 1, ~~2006,~~
21 2007, except taxicabs, mopeds, motorcycles, and any motor vehicle
22 designated by the manufacturer as a 1963 year model or earlier
23 which is not equipped with an occupant protection system.

24 (2) Whenever any licensed physician determines, through
25 accepted medical procedures, that use of a child passenger

1 restraint system by a particular child would be harmful by reason
2 of the child's weight, physical condition, or other medical reason,
3 the provisions of subsection (1) of this section shall be waived.
4 The driver of any vehicle transporting such a child shall carry
5 on his or her person or in the vehicle a signed written statement
6 of the physician identifying the child and stating the grounds for
7 such waiver.

8 (3) The drivers of authorized emergency vehicles shall
9 not be subject to the requirements of subsection (1) of this
10 section when operating such authorized emergency vehicles pursuant
11 to their employment.

12 (4) A driver of a motor vehicle shall not be subject to
13 the requirements of subsection (1) of this section if the motor
14 vehicle is being operated in a parade or exhibition and the parade
15 or exhibition is being conducted in accordance with applicable
16 state law and local ordinances and resolutions.

17 (5) The Department of Motor Vehicles shall develop and
18 implement an ongoing statewide public information and education
19 program regarding the use of child passenger restraint systems and
20 occupant protection systems and the availability of distribution
21 and discount programs for child passenger restraint systems.

22 (6) All persons being transported by a motor vehicle
23 operated by a holder of a provisional operator's permit or a school
24 permit shall use such motor vehicle's occupant protection system.

25 Sec. 8. Section 75-363, Revised Statutes Cumulative

1 Supplement, 2006, is amended to read:

2 75-363 (1) The parts, subparts, and sections of Title
3 49 of the Code of Federal Regulations listed below, as modified
4 in this section, or any other parts, subparts, and sections
5 referred to by such parts, subparts, and sections, in existence and
6 effective as of January 1, ~~2006~~, 2007, are adopted as Nebraska law.

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

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

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

13 (i) All vehicles of such motor carriers with a gross
14 vehicle weight rating, gross combination weight rating, gross
15 vehicle weight, or gross combination weight over ten thousand
16 pounds;

17 (ii) All vehicles of such motor carriers designed or
18 used to transport more than eight passengers, including the driver,
19 for compensation, or designed or used to transport more than
20 fifteen passengers, including the driver, and not used to transport
21 passengers for compensation;

22 (iii) All vehicles of such motor carriers transporting
23 hazardous materials required to be placarded pursuant to section
24 75-364; and

25 (iv) All drivers of such motor carriers if the drivers

1 are operating a commercial motor vehicle as defined in section
2 60-465 which requires a commercial driver's license.

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

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

8 (b) Part 385 - Safety Fitness Procedures;

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

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

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

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

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

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

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

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

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

23 (4) The provisions of subpart E - Physical Qualifications
24 And Examinations of 49 C.F.R. part 391 - Qualifications Of Drivers
25 And Longer Combination Vehicle (LCV) Driver Instructors shall not

1 apply to any driver subject to this section who: (a) Operates a
2 commercial motor vehicle exclusively in intrastate commerce; and
3 (b) holds, or has held, a commercial driver's license issued by
4 this state prior to July 30, 1996.

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

- 15 (a) All of part 391;
16 (b) Section 395.8 of part 395; and
17 (c) Section 396.11 of part 396.

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

23 (7) Part 395 - Hours Of Service Of Drivers shall apply
24 to motor carriers and drivers who engage in intrastate commerce as
25 defined in section 75-362, except that no motor carrier who engages

1 in intrastate commerce shall permit or require any driver used by
2 it to drive nor shall any driver drive:

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

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

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

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

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

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

1 calendar year.

2 (9) 49 C.F.R. 390.21 - Marking Of Commercial Motor
3 Vehicles shall not apply to farm trucks and farm truck-tractors
4 registered pursuant to section 60-3,146 and operated solely in
5 intrastate commerce.

6 (10) 49 C.F.R. 392.9a - Operating Authority shall
7 not apply to Nebraska motor carriers operating commercial motor
8 vehicles solely in intrastate commerce.

9 Sec. 9. Section 75-364, Revised Statutes Cumulative
10 Supplement, 2006, is amended to read:

11 75-364 (1) The parts, subparts, and sections of Title
12 49 of the Code of Federal Regulations listed below, or any other
13 parts, subparts, and sections referred to by such parts, subparts,
14 and sections, in existence and effective as of January 1, ~~2006,~~
15 2007, are adopted as part of Nebraska law and, except as provided
16 in subsections (2) and (3) of this section, shall be applicable
17 to all motor carriers whether engaged in interstate or intrastate
18 commerce, drivers of such motor carriers, and vehicles of such
19 motor carriers:

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

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

1 Hazardous Materials; ~~---~~

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

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

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

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

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

11 (h) Part 180 - Continuing Qualification And Maintenance
12 Of Packagings.

13 (2) Agricultural operations exceptions:

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

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

21 (ii) The movement of the agricultural product conforms to
22 all other laws in effect on or before July 1, 1998, and 49 C.F.R.
23 173.24, 173.24a, and 173.24b;

24 (b) The transportation of an agricultural product to or
25 from a farm, within one hundred fifty miles of the farm, is

1 excepted from the requirements in 49 C.F.R. part 172, subparts G
2 (emergency response information) and H (training), and from the
3 specific packaging requirements of subsection (1) of this section
4 when:

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

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

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

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

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

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

24 (c) Formulated liquid agricultural products in
25 specification packagings of fifty-eight-gallon capacity or less,

1 with closures manifolded to a closed mixing system and equipped
2 with positive dry disconnect devices, may be transported by a
3 private motor carrier between a final distribution point and an
4 ultimate point of application or for loading aboard an airplane for
5 aerial application.

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

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

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

23 ~~(e) (b) Permanently secured nonbulk tanks for petroleum~~
24 ~~products: Notwithstanding requirements for specification packagings~~
25 ~~in 49 C.F.R. part 173, subpart F, and 49 C.F.R. parts 178~~

1 and 180, a nonspecification metal tank permanently secured to a
2 transport vehicle and protected against leakage or damage in the
3 event of a turnover, having a capacity of less than one hundred
4 nineteen gallons, may be used by an intrastate motor carrier
5 for transportation of a flammable liquid petroleum product in
6 accordance with subdivision ~~(d)~~ (c) of this subsection; and

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

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

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

14 (iii) Be specifically authorized by state law in effect
15 before July 1, 1998, for use as a packaging for the hazardous
16 material being transported and by 49 C.F.R. 173.24, 173.24a, and
17 173.24b;

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

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

24 (vi) On and after July 1, 2000, for a tank authorized
25 under subdivision ~~(b)~~ (a) or ~~(e)~~ (b) of this subsection, conform

1 to all requirements in 49 C.F.R. part 180, except for 49 C.F.R.
2 180.405(g), in the same manner as required for a United States
3 Department of Transportation specification MC306 cargo tank motor
4 vehicle.

5 (4) For purposes of this section:

6 (a) Agricultural product means a hazardous material,
7 other than a hazardous waste, whose end use directly supports
8 the production of an agricultural commodity, including, but not
9 limited to, a fertilizer, pesticide, soil amendment, or fuel. An
10 agricultural product is limited to a material in Class 3 (Flammable
11 Liquids), Class 8 (Corrosives), or Class 9 (Miscellaneous),
12 Division 2.1 (Flammable Gas), Division 2.2 (Nonflammable Gas),
13 Division 5.1 (Oxidizers), or Division 6.1 (Poisons), or an ORM-D
14 material (Consumer Commodity), as defined in 49 C.F.R. 171.8;

15 (b) Bulk package means a packaging, including a transport
16 vehicle or freight container, in which hazardous materials are
17 loaded with no other intermediate form of containment and which
18 has:

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

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

24 (iii) A water capacity greater than one thousand pounds
25 as a receptacle for a gas, pursuant to standards set forth in 49

1 C.F.R. 173.115;

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

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

7 Sec. 10. Original sections 60-311, 60-342, 60-3,196,
8 60-462.01, 60-4,147.02, 60-6,265, 60-6,267, 75-363, and 75-364,
9 Revised Statutes Cumulative Supplement, 2006, are repealed.