

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 48**

FINAL READING

Introduced by Fischer, 43.

Read first time January 8, 2009

Committee: Transportation and Telecommunications

A BILL

1 FOR AN ACT relating to motor carriers; to amend sections 75-363 and  
2 75-364, Revised Statutes Cumulative Supplement, 2008; to  
3 change provisions relating to adoption of federal Motor  
4 Carrier Safety Regulations and federal Hazardous Material  
5 Regulations; to repeal the original sections; and to  
6 declare an emergency.

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

1           Section 1. Section 75-363, Revised Statutes Cumulative  
2 Supplement, 2008, is amended to read:

3           75-363 (1) The parts, subparts, and sections of Title  
4 49 of the Code of Federal Regulations listed below, as modified  
5 in this section, or any other parts, subparts, and sections  
6 referred to by such parts, subparts, and sections, in existence and  
7 effective as of January 1, ~~2008~~, 2009, are adopted as Nebraska law.

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

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

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

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

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

23           (iii) All vehicles of such motor carriers transporting  
24 hazardous materials required to be placarded pursuant to section  
25 75-364; and

1           (iv) All drivers of such motor carriers if the drivers  
2 are operating a commercial motor vehicle as defined in section  
3 60-465 which requires a commercial driver's license.

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

7           (a) Part 382—Controlled Substances And Alcohol Use And  
8 Testing;

9           (b) Part 385—Safety Fitness Procedures;

10           (c) Part 386—Rules Of Practice For Motor Carrier, Broker,  
11 Freight Forwarder, And Hazardous Materials Proceedings;

12           ~~(e)~~ (d) Part 387—Minimum Levels of Financial  
13 Responsibility for Motor Carriers;

14           ~~(d)~~ (e) Part 390—Federal Motor Carrier Safety  
15 Regulations; General;

16           ~~(e)~~ (f) Part 391—Qualifications Of Drivers And Longer  
17 Combination Vehicle (LCV) Driver Instructors;

18           ~~(f)~~ (g) Part 392—Driving Of Commercial Motor Vehicles;

19           ~~(g)~~ (h) Part 393—Parts And Accessories Necessary For Safe  
20 Operation;

21           ~~(h)~~ (i) Part 395—Hours Of Service Of Drivers;

22           ~~(i)~~ (j) Part 396—Inspection, Repair, And Maintenance;

23           ~~(j)~~ (k) Part 397—Transportation Of Hazardous Materials;  
24 Driving And Parking Rules; and

25           ~~(k)~~ (l) Part 398—Transportation Of Migrant Workers.

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

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

- 18           (a) All of part 391;  
19           (b) Section 395.8 of part 395; and  
20           (c) Section 396.11 of part 396.

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

1           (7) Part 395—Hours Of Service Of Drivers shall apply to  
2 motor carriers and drivers who engage in intrastate commerce as  
3 defined in section 75-362, except that no motor carrier who engages  
4 in intrastate commerce shall permit or require any driver used by  
5 it to drive nor shall any driver drive:

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

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

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

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

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

21           (8) Part 395—Hours Of Service Of Drivers, as adopted  
22 in subsections (3) and (7) of this section, shall not apply to  
23 drivers transporting agricultural commodities or farm supplies for  
24 agricultural purposes when the transportation of such commodities  
25 or supplies occurs within a one-hundred-air-mile radius of

1 the source of the commodities or the distribution point for  
2 the supplies when such transportation occurs during the period  
3 beginning on February 15 up to and including December 15 of each  
4 calendar year.

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

9 (10) 49 C.F.R. 392.9a—Operating Authority shall not apply  
10 to Nebraska motor carriers operating commercial motor vehicles  
11 solely in intrastate commerce.

12 (11) No motor carrier shall permit or require a driver  
13 of a commercial motor vehicle to violate, and no driver of a  
14 commercial motor vehicle shall violate, any out-of-service order.

15 Sec. 2. Section 75-364, Revised Statutes Cumulative  
16 Supplement, 2008, is amended to read:

17 75-364 (1) The parts, subparts, and sections of Title  
18 49 of the Code of Federal Regulations listed below, or any other  
19 parts, subparts, and sections referred to by such parts, subparts,  
20 and sections, in existence and effective as of January 1, ~~2008,~~  
21 2009, are adopted as part of Nebraska law and, except as provided  
22 in subsections (2) and (3) of this section, shall be applicable  
23 to all motor carriers whether engaged in interstate or intrastate  
24 commerce, drivers of such motor carriers, and vehicles of such  
25 motor carriers:

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

5 (b) Part 107—Hazardous Materials Program Procedures,  
6 subpart G—Registration Of Persons Who Offer Or Transport Hazardous  
7 Materials;

8 (c) Part 171—General Information, Regulations, And  
9 Definitions;

10 (d) Part 172—Hazardous Materials Table, Special  
11 Provisions, Hazardous Materials Communications, Emergency Response  
12 Information, and Training Requirements;

13 (e) Part 173—Shippers—General Requirements For Shipments  
14 And Packagings;

15 (f) Part 177—Carriage By Public Highway;

16 (g) Part 178—Specifications For Packagings; and

17 (h) Part 180—Continuing Qualification And Maintenance Of  
18 Packagings.

19 (2) Agricultural operations exceptions:

20 (a) The transportation of an agricultural product other  
21 than a Class 2 material (Compressed Gases) as defined in 49 C.F.R.  
22 171.8, over roads, other than the National System of Interstate and  
23 Defense Highways, between fields of the same farm, is excepted from  
24 subsection (1) of this section when:

25 (i) The agricultural product is transported by a farmer

1 who is an intrastate private motor carrier; and

2 (ii) The movement of the agricultural product conforms to  
3 all other laws in effect on or before July 1, 1998, and 49 C.F.R.  
4 173.24, 173.24a, and 173.24b;

5 (b) The transportation of an agricultural product to or  
6 from a farm, within one hundred fifty miles of the farm, is  
7 excepted from the requirements in 49 C.F.R. part 172, subparts G  
8 (emergency response information) and H (training), and from the  
9 specific packaging requirements of subsection (1) of this section  
10 when:

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

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

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

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

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

25 (iv) Each person having any responsibility for

1 transporting the agricultural product or preparing the agricultural  
2 product for shipment has been instructed in the applicable  
3 requirements of the parts, subparts, and sections of Title 49 of  
4 the Code of Federal Regulations adopted in this section; and

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

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

14 (a) Nonspecification cargo tanks for petroleum products:  
15 Notwithstanding requirements for specification packagings in 49  
16 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 (c) of this subsection;

23 (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 (c) of this subsection; and

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

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

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

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

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

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

23 (vi) On and after July 1, 2000, for a tank authorized  
24 under subdivision (a) or (b) of this subsection, conform to  
25 all requirements in 49 C.F.R. part 180, except for 49 C.F.R.

1 180.405(g), in the same manner as required for a United States  
2 Department of Transportation specification MC306 cargo tank motor  
3 vehicle.

4 (4) For purposes of this section:

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

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

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

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

23 (iii) A water capacity greater than one thousand pounds  
24 as a receptacle for a gas, pursuant to standards set forth in 49  
25 C.F.R. 173.115;

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

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

6                   Sec. 3. Original sections 75-363 and 75-364, Revised  
7 Statutes Cumulative Supplement, 2008, are repealed.

8                   Sec. 4. Since an emergency exists, this act takes effect  
9 when passed and approved according to law.