

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

**LEGISLATIVE BILL 725**

FINAL READING

Introduced by Fischer, 43; Coash, 27.

Read first time January 06, 2010

Committee: Transportation and Telecommunications

A BILL

1 FOR AN ACT relating to agricultural vehicles; to amend sections  
2 75-362 and 75-363, Reissue Revised Statutes of Nebraska,  
3 and section 60-363, Revised Statutes Cumulative  
4 Supplement, 2008; to change provisions relating to  
5 fertilizer trailer registration certificates; to define  
6 fertilizer and agricultural chemical application and  
7 distribution equipment and to change the applicability of  
8 certain adopted federal rules; and to repeal the original  
9 sections.

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

1           Section 1. Section 60-363, Revised Statutes Cumulative  
2 Supplement, 2008, is amended to read:

3           60-363 No person shall operate or park a motor vehicle or  
4 tow or park a trailer on the highways unless such motor vehicle or  
5 trailer at all times carries in or upon it, subject to inspection  
6 by any peace officer, the registration certificate issued for  
7 it, except fertilizer trailers as defined in section 60-326. The  
8 registration certificate for a fertilizer trailer shall be kept at  
9 the principal place of business of the owner of the fertilizer  
10 trailer. In the case of a motorcycle, the registration certificate  
11 shall be carried either in plain sight, affixed to the motorcycle,  
12 or in the tool bag or some convenient receptacle attached to the  
13 motorcycle.

14           Sec. 2. Section 75-362, Reissue Revised Statutes of  
15 Nebraska, is amended to read:

16           75-362 For purposes of sections 75-362 to 75-369.07,  
17 unless the context otherwise requires:

18           (1) Accident means:

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

23           (i) A fatality;

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

1 of the accident; or

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

6 (b) The term accident does not include:

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

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

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

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

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

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

22 (3) Cargo tank means a bulk packaging that:

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

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

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

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

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

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

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

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

25           (c) Is designed or used to transport more than fifteen

1 passengers, including the driver, and is not used to transport  
2 passengers for compensation; or

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

6 (7) Compliance review means an onsite examination of  
7 motor carrier operations, such as drivers' hours of service,  
8 maintenance and inspection, driver qualification, commercial  
9 driver's license requirements, financial responsibility, accidents,  
10 hazardous materials, and other safety and transportation records  
11 to determine whether a motor carrier meets the safety fitness  
12 standard. A compliance review may be conducted in response to  
13 a request to change a safety rating, to investigate potential  
14 violations of safety regulations by motor carriers, or to  
15 investigate complaints or other evidence of safety violations. The  
16 compliance review may result in the initiation of an enforcement  
17 action with penalties;

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

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

23 (b) Exclusions:

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

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

3           (iii) Headlight or taillight damage; and

4           (iv) Damage to turnsignals, horn, or windshield wipers  
5 which makes them inoperative;

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

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

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

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

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

19           (11) Employee means any individual, other than an  
20 employer, who is employed by an employer and who in the course  
21 of his or her employment directly affects commercial motor  
22 vehicle safety. Such term includes a driver of a commercial motor  
23 vehicle, including an independent contractor while in the course  
24 of operating a commercial motor vehicle, a mechanic, and a freight  
25 handler. Such term does not include an employee of the United

1 States, any state, any political subdivision of a state, or any  
2 agency established under a compact between states and approved by  
3 the Congress of the United States who is acting within the course  
4 of such employment;

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

12 (13) Exempt motor carrier means a person engaged in  
13 transportation exempt from economic regulation under 49 U.S.C.  
14 13506. An exempt motor carrier is subject to the safety regulations  
15 adopted in sections 75-362 to 75-369.07;

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

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

22 (a) Are owned by that person; or

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

24 (16) Fatality means any injury which results in the death  
25 of a person at the time of the motor vehicle accident or within

1 thirty days after the accident;

2 (17) Fertilizer and agricultural chemical application and  
3 distribution equipment means:

4 (a) Self-propelled or towed equipment, designed and used  
5 exclusively to apply commercial fertilizer, as that term is  
6 defined in section 81-2,162.02, chemicals, or related products  
7 to agricultural soil and crops; or

8 (b) Towed equipment designed and used exclusively to  
9 carry commercial fertilizer, as that term is defined in section  
10 81-2,162.02, chemicals, or related products for use on agricultural  
11 soil and crops, which are equipped with implement or floatation  
12 tires;

13 ~~(17)~~ (18) For-hire motor carrier means a person engaged  
14 in the transportation of goods or passengers for compensation;

15 ~~(18)~~ (19) Gross combination weight means the sum of the  
16 empty weight of a motor vehicle plus the total weight of any load  
17 carried thereon and the empty weight of the towed unit or units  
18 plus the total weight of any load carried on such towed unit or  
19 units;

20 ~~(19)~~ (20) Gross combination weight rating means the  
21 value specified by the manufacturer as the loaded weight of a  
22 combination (articulated) motor vehicle. In the absence of a value  
23 specified by the manufacturer, gross combination weight rating will  
24 be determined by adding either the gross vehicle weight rating or  
25 gross vehicle weight of the motor vehicle plus the gross vehicle



1 weight rating or gross vehicle weight of the towed unit or units;

2 ~~(20)~~ (21) Gross vehicle weight means the sum of the empty  
3 weight of a motor vehicle plus the total weight of any load carried  
4 thereon;

5 ~~(21)~~ (22) Gross vehicle weight rating means the value  
6 specified by the manufacturer as the loaded weight of a single  
7 motor vehicle. In the absence of such value specified by the  
8 manufacturer or the absence of any marking of such value on the  
9 vehicle, the gross vehicle weight rating shall be determined from  
10 the sum of the axle weight ratings of the vehicle or the sum of  
11 the tire weight ratings as marked on the sidewall of the tires,  
12 whichever is greater. In the absence of any tire sidewall marking,  
13 the tire weight ratings shall be determined for the specified tires  
14 from any of the publications of any of the organizations listed in  
15 49 C.F.R. 571.119;

16 ~~(22)~~ (23) Hazardous material means a substance or  
17 material that the Secretary of the United States Department of  
18 Transportation has determined is capable of posing an unreasonable  
19 risk to health, safety, and property when transported in commerce  
20 and has designated as hazardous under 49 U.S.C. 5103. The term  
21 includes hazardous substances, hazardous wastes, marine pollutants,  
22 elevated temperature materials, materials designated as hazardous  
23 in the Hazardous Materials Table, 49 C.F.R. 172.101, and materials  
24 that meet the defining criteria for hazard classes and divisions  
25 in 49 C.F.R. part 173;

1           ~~(23)~~ (24) Hazardous substance means a material, including  
2 its mixtures and solutions, that is listed in 49 C.F.R. 172.101,  
3 Appendix A, List Of Hazardous Substances and Reportable Quantities,  
4 and is in a quantity, in one package, which equals or exceeds the  
5 reportable quantity listed in 49 C.F.R. 172.101, Appendix A. This  
6 definition does not apply to petroleum products that are lubricants  
7 or fuels or to mixtures or solutions of hazardous substances if  
8 in a concentration less than that shown in the table in 49 C.F.R.  
9 171.8 under the definition of hazardous substance based on the  
10 reportable quantity specified for the materials listed in 49 C.F.R.  
11 172.101, Appendix A;

12           ~~(24)~~ (25) Hazardous waste means any material that is  
13 subject to the hazardous waste manifest requirements of the United  
14 States Environmental Protection Agency specified in 40 C.F.R. 262;

15           ~~(25)~~ (26) Highway means the entire width between the  
16 boundary limits of any street, road, avenue, boulevard, or way  
17 which is publicly maintained when any part thereof is open to the  
18 use of the public for purposes of vehicular travel;

19           ~~(26)~~ (27) Interstate commerce means trade, traffic,  
20 or transportation provided in the furtherance of a commercial  
21 enterprise in the United States:

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

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

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

4           ~~(27)~~ (28) Intrastate commerce means any trade, traffic,  
5 or transportation provided in the furtherance of a commercial  
6 enterprise between any place in the State of Nebraska and any other  
7 place in Nebraska and not through any other state;

8           ~~(28)~~ (29) Marine pollutant means a material which is  
9 listed in the Hazardous Materials Table, 49 C.F.R. 172.101,  
10 Appendix B, as a marine pollutant (see 49 C.F.R. 171.4 for  
11 applicability to marine pollutants) and, when in a solution or  
12 mixture of one or more marine pollutants, is packaged in a  
13 concentration which equals or exceeds:

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

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

19           ~~(29)~~ (30) Motor carrier means a for-hire motor  
20 carrier or a private motor carrier. The term includes a  
21 motor carrier's agents, officers, and representatives as well  
22 as employees responsible for hiring, supervising, training,  
23 assigning, or dispatching of drivers and employees concerned with  
24 the installation, inspection, and maintenance of motor vehicle  
25 equipment or accessories. This definition includes the terms

1 employer and exempt motor carrier;

2 ~~(30)~~ (31) Motor vehicle means any vehicle, truck,  
3 truck-tractor, trailer, or semitrailer propelled or drawn by  
4 mechanical power except (a) farm tractors, (b) vehicles which  
5 run only on rails or tracks, and (c) road and general-purpose  
6 construction and maintenance machinery which by design and  
7 function is obviously not intended for use on a public highway,  
8 including, but not limited to, motor scrapers, earthmoving  
9 equipment, backhoes, trenchers, motor graders, compactors,  
10 tractors, bulldozers, bucket loaders, ditchdigging apparatus,  
11 asphalt spreaders, leveling graders, power shovels, and crawler  
12 tractors;

13 ~~(31)~~ (32) Nonbulk packaging means a packaging which has:

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

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

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

21 ~~(32)~~ (33) Out-of-service order means a declaration by  
22 an authorized enforcement officer of a federal, state, Canadian,  
23 Mexican, or local jurisdiction that a driver, a commercial motor  
24 vehicle, or a motor carrier operation is out of service pursuant to  
25 49 C.F.R. 386.72, 392.5, 395.13, or 396.9, or compatible laws or

1 the North American Uniform Out-of-Service Criteria;

2 ~~(33)~~ (34) Packaging means a receptacle and any other  
3 components or materials necessary for the receptacle to perform  
4 its containment function in conformance with the minimum packing  
5 requirements of Title 49 of the Code of Federal Regulations. For  
6 radioactive materials packaging, see 49 C.F.R. 173.403;

7 ~~(34)~~ (35) Person means any individual, partnership,  
8 association, corporation, business trust, or any other organized  
9 group of individuals;

10 ~~(35)~~ (36) Principal place of business means the  
11 single location designated by the motor carrier, normally its  
12 headquarters, for purposes of identification. The motor carrier  
13 must make records required by the regulations referred to in  
14 sections 75-363 to 75-369.07 and this section available for  
15 inspection at this location within forty-eight hours, Saturdays,  
16 Sundays, and state or federal holidays excluded, after a request  
17 has been made by an officer of the Nebraska State Patrol;

18 ~~(36)~~ (37) Private motor carrier means a person who  
19 provides transportation of property or passengers by commercial  
20 motor vehicle and is not a for-hire motor carrier;

21 ~~(37)~~ (38) Safety audit means an examination of a  
22 motor carrier's operations to provide educational and technical  
23 assistance on drivers' hours of service, maintenance and  
24 inspection, driver qualification, commercial driver's license  
25 requirements, financial responsibility, accidents, hazardous

1 materials, and other safety and transportation records to determine  
2 whether a motor carrier meets the safety fitness standard. The  
3 purpose of a safety audit is to gather critical safety data needed  
4 to make an assessment of the carrier's safety performance and basic  
5 safety management controls. Safety audits do not result in safety  
6 ratings; and

7 ~~(38)~~ (39) Tank means a container, consisting of a shell  
8 and heads, that forms a pressure-tight vessel having openings  
9 designed to accept pressure-tight fittings or closures, but  
10 excludes any appurtenances, reinforcements, fittings, or closures.

11 Sec. 3. Section 75-363, Reissue Revised Statutes of  
12 Nebraska, is amended to read:

13 75-363 (1) The parts, subparts, and sections of Title  
14 49 of the Code of Federal Regulations listed below, as modified  
15 in this section, or any other parts, subparts, and sections  
16 referred to by such parts, subparts, and sections, in existence and  
17 effective as of January 1, 2009, are adopted as Nebraska law.

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

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

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

24 (i) All vehicles of such motor carriers with a gross  
25 vehicle weight rating, gross combination weight rating, gross

1 vehicle weight, or gross combination weight over ten thousand  
2 pounds;

3 (ii) All vehicles of such motor carriers designed or  
4 used to transport more than eight passengers, including the driver,  
5 for compensation, or designed or used to transport more than  
6 fifteen passengers, including the driver, and not used to transport  
7 passengers for compensation;

8 (iii) All vehicles of such motor carriers transporting  
9 hazardous materials required to be placarded pursuant to section  
10 75-364; and

11 (iv) All drivers of such motor carriers if the drivers  
12 are operating a commercial motor vehicle as defined in section  
13 60-465 which requires a commercial driver's license.

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

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

19 (b) Part 385 - Safety Fitness Procedures;

20 (c) Part 386 - Rules Of Practice For Motor Carrier,  
21 Broker, Freight Forwarder, And Hazardous Materials Proceedings;

22 (d) Part 387 - Minimum Levels of Financial Responsibility  
23 for Motor Carriers;

24 (e) Part 390 - Federal Motor Carrier Safety Regulations;  
25 General;

- 1 (f) Part 391 - Qualifications Of Drivers And Longer  
2 Combination Vehicle (LCV) Driver Instructors;
- 3 (g) Part 392 - Driving Of Commercial Motor Vehicles;
- 4 (h) Part 393 - Parts And Accessories Necessary For Safe  
5 Operation;
- 6 (i) Part 395 - Hours Of Service Of Drivers;
- 7 (j) Part 396 - Inspection, Repair, And Maintenance;
- 8 (k) Part 397 - Transportation Of Hazardous Materials;  
9 Driving And Parking Rules; and
- 10 (l) Part 398 - Transportation Of Migrant Workers.
- 11 (4) The provisions of subpart E - Physical Qualifications  
12 And Examinations of 49 C.F.R. part 391 - Qualifications Of Drivers  
13 And Longer Combination Vehicle (LCV) Driver Instructors shall not  
14 apply to any driver subject to this section who: (a) Operates a  
15 commercial motor vehicle exclusively in intrastate commerce; and  
16 (b) holds, or has held, a commercial driver's license issued by  
17 this state prior to July 30, 1996.
- 18 (5) The regulations adopted in subsection (3) of this  
19 section shall not apply to farm trucks registered pursuant to  
20 section 60-3,146 with a gross weight of sixteen tons or less, ~~or to~~  
21 ~~fertilizer and agricultural chemical application and distribution~~  
22 ~~equipment transported in units with a capacity of three thousand~~  
23 ~~five hundred gallons or less if the equipment is not required to~~  
24 ~~be placarded pursuant to section 75-364.~~ The following parts and  
25 sections of 49 C.F.R. chapter III shall not apply to drivers of



1 farm trucks registered pursuant to section 60-3,146 and operated  
2 solely in intrastate commerce:

3 (a) All of part 391;

4 (b) Section 395.8 of part 395; and

5 (c) Section 396.11 of part 396.

6 (6) Part 393 - Parts And Accessories Necessary For Safe  
7 Operation and Part 396 - Inspection, Repair, And Maintenance shall  
8 not apply to fertilizer and agricultural chemical application and  
9 distribution equipment transported in units with a capacity of  
10 three thousand five hundred gallons or less.

11 ~~(6)~~ (7) For purposes of this section, intrastate motor  
12 carriers shall not include any motor carrier or driver excepted  
13 from 49 C.F.R. chapter III by section 390.3(f) of part 390 or  
14 any nonprofit entity, operating solely in intrastate commerce,  
15 organized for the purpose of furnishing electric service.

16 ~~(7)~~ (8) Part 395 - Hours Of Service Of Drivers shall  
17 apply to motor carriers and drivers who engage in intrastate  
18 commerce as defined in section 75-362, except that no motor carrier  
19 who engages in intrastate commerce shall permit or require any  
20 driver used by it to drive nor shall any driver drive:

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

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

25 No motor carrier who engages in intrastate commerce

1 shall permit or require a driver of a commercial motor vehicle,  
2 regardless of the number of motor carriers using the driver's  
3 services, to drive, nor shall any driver of a commercial motor  
4 vehicle drive, for any period after:

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

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

11 ~~(8)~~ (9) Part 395 - Hours Of Service Of Drivers, as  
12 adopted in subsections (3) and ~~(7)~~ (8) of this section, shall  
13 not apply to drivers transporting agricultural commodities or farm  
14 supplies for agricultural purposes when the transportation of such  
15 commodities or supplies occurs within a one-hundred-air-mile radius  
16 of the source of the commodities or the distribution point for  
17 the supplies when such transportation occurs during the period  
18 beginning on February 15 up to and including December 15 of each  
19 calendar year.

20 ~~(9)~~ (10) 49 C.F.R. 390.21 - Marking Of Commercial Motor  
21 Vehicles shall not apply to farm trucks and farm truck-tractors  
22 registered pursuant to section 60-3,146 and operated solely in  
23 intrastate commerce.

24 ~~(10)~~ (11) 49 C.F.R. 392.9a - Operating Authority shall  
25 not apply to Nebraska motor carriers operating commercial motor

1 vehicles solely in intrastate commerce.

2           ~~(11)~~ (12) No motor carrier shall permit or require a  
3 driver of a commercial motor vehicle to violate, and no driver of a  
4 commercial motor vehicle shall violate, any out-of-service order.

5           Sec. 4. Original sections 75-362 and 75-363, Reissue  
6 Revised Statutes of Nebraska, and section 60-363, Revised Statutes  
7 Cumulative Supplement, 2008, are repealed.