

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 725

Introduced by Fischer, 43.

Read first time January 06, 2010

Committee: Transportation and Telecommunications

A BILL

1 FOR AN ACT relating to motor carriers; to amend sections 75-362 and
2 75-363, Reissue Revised Statutes of Nebraska; to define
3 fertilizer and agricultural chemical application and
4 distribution equipment and to change the applicability
5 of certain adopted federal rules; and to repeal the
6 original sections.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 75-362, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 75-362 For purposes of sections 75-362 to 75-369.07,
4 unless the context otherwise requires:

5 (1) Accident means:

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

10 (i) A fatality;

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

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

18 (b) The term accident does not include:

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

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

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

1 containment and which has:

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

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

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

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

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

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

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

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

24 (5) Commercial enterprise means any business activity
25 relating to or based upon the production, distribution, or

1 consumption of goods or services;

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

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

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

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

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

18 (7) Compliance review means an onsite examination of
19 motor carrier operations, such as drivers' hours of service,
20 maintenance and inspection, driver qualification, commercial
21 driver's license requirements, financial responsibility, accidents,
22 hazardous materials, and other safety and transportation records
23 to determine whether a motor carrier meets the safety fitness
24 standard. A compliance review may be conducted in response to
25 a request to change a safety rating, to investigate potential

1 violations of safety regulations by motor carriers, or to
2 investigate complaints or other evidence of safety violations. The
3 compliance review may result in the initiation of an enforcement
4 action with penalties;

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

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

10 (b) Exclusions:

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

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

15 (iii) Headlight or taillight damage; and

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

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

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

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

25 (b) Is in a liquid phase with a flash point at or above

1 one hundred degrees Fahrenheit that is intentionally heated and
2 offered for transportation or transported at or above its flash
3 point; or

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

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

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

24 (13) Exempt motor carrier means a person engaged in
25 transportation exempt from economic regulation under 49 U.S.C.

1 13506. An exempt motor carrier is subject to the safety regulations
2 adopted in sections 75-362 to 75-369.07;

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

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

9 (a) Are owned by that person; or

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

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

14 (17) Fertilizer and agricultural chemical application and
15 distribution equipment means:

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

20 (b) Towed equipment designed and used exclusively to
21 carry commercial fertilizer, as that term is defined in section
22 81-2,162.02, chemicals, or related products for use on agricultural
23 soil and crops, which are equipped with implement or flotation
24 tires;

25 ~~(17)~~ (18) For-hire motor carrier means a person engaged

1 in the transportation of goods or passengers for compensation;

2 ~~(18)~~ (19) Gross combination weight means the sum of the
3 empty weight of a motor vehicle plus the total weight of any load
4 carried thereon and the empty weight of the towed unit or units
5 plus the total weight of any load carried on such towed unit or
6 units;

7 ~~(19)~~ (20) Gross combination weight rating means the
8 value specified by the manufacturer as the loaded weight of a
9 combination (articulated) motor vehicle. In the absence of a value
10 specified by the manufacturer, gross combination weight rating will
11 be determined by adding either the gross vehicle weight rating or
12 gross vehicle weight of the motor vehicle plus the gross vehicle
13 weight rating or gross vehicle weight of the towed unit or units;

14 ~~(20)~~ (21) Gross vehicle weight means the sum of the empty
15 weight of a motor vehicle plus the total weight of any load carried
16 thereon;

17 ~~(21)~~ (22) Gross vehicle weight rating means the value
18 specified by the manufacturer as the loaded weight of a single
19 motor vehicle. In the absence of such value specified by the
20 manufacturer or the absence of any marking of such value on the
21 vehicle, the gross vehicle weight rating shall be determined from
22 the sum of the axle weight ratings of the vehicle or the sum of
23 the tire weight ratings as marked on the sidewall of the tires,
24 whichever is greater. In the absence of any tire sidewall marking,
25 the tire weight ratings shall be determined for the specified tires

1 from any of the publications of any of the organizations listed in
2 49 C.F.R. 571.119;

3 ~~(22)~~ (23) Hazardous material means a substance or
4 material that the Secretary of the United States Department of
5 Transportation has determined is capable of posing an unreasonable
6 risk to health, safety, and property when transported in commerce
7 and has designated as hazardous under 49 U.S.C. 5103. The term
8 includes hazardous substances, hazardous wastes, marine pollutants,
9 elevated temperature materials, materials designated as hazardous
10 in the Hazardous Materials Table, 49 C.F.R. 172.101, and materials
11 that meet the defining criteria for hazard classes and divisions
12 in 49 C.F.R. part 173;

13 ~~(23)~~ (24) Hazardous substance means a material, including
14 its mixtures and solutions, that is listed in 49 C.F.R. 172.101,
15 Appendix A, List Of Hazardous Substances and Reportable Quantities,
16 and is in a quantity, in one package, which equals or exceeds the
17 reportable quantity listed in 49 C.F.R. 172.101, Appendix A. This
18 definition does not apply to petroleum products that are lubricants
19 or fuels or to mixtures or solutions of hazardous substances if
20 in a concentration less than that shown in the table in 49 C.F.R.
21 171.8 under the definition of hazardous substance based on the
22 reportable quantity specified for the materials listed in 49 C.F.R.
23 172.101, Appendix A;

24 ~~(24)~~ (25) Hazardous waste means any material that is
25 subject to the hazardous waste manifest requirements of the United

1 States Environmental Protection Agency specified in 40 C.F.R. 262;

2 ~~(25)~~ (26) Highway means the entire width between the
3 boundary limits of any street, road, avenue, boulevard, or way
4 which is publicly maintained when any part thereof is open to the
5 use of the public for purposes of vehicular travel;

6 ~~(26)~~ (27) Interstate commerce means trade, traffic,
7 or transportation provided in the furtherance of a commercial
8 enterprise in the United States:

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

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

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

16 ~~(27)~~ (28) Intrastate commerce means any trade, traffic,
17 or transportation provided in the furtherance of a commercial
18 enterprise between any place in the State of Nebraska and any other
19 place in Nebraska and not through any other state;

20 ~~(28)~~ (29) Marine pollutant means a material which is
21 listed in the Hazardous Materials Table, 49 C.F.R. 172.101,
22 Appendix B, as a marine pollutant (see 49 C.F.R. 171.4 for
23 applicability to marine pollutants) and, when in a solution or
24 mixture of one or more marine pollutants, is packaged in a
25 concentration which equals or exceeds:

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

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

6 ~~(29)~~ (30) Motor carrier means a for-hire motor
7 carrier or a private motor carrier. The term includes a
8 motor carrier's agents, officers, and representatives as well
9 as employees responsible for hiring, supervising, training,
10 assigning, or dispatching of drivers and employees concerned with
11 the installation, inspection, and maintenance of motor vehicle
12 equipment or accessories. This definition includes the terms
13 employer and exempt motor carrier;

14 ~~(30)~~ (31) Motor vehicle means any vehicle, truck,
15 truck-tractor, trailer, or semitrailer propelled or drawn by
16 mechanical power except (a) farm tractors, (b) vehicles which
17 run only on rails or tracks, and (c) road and general-purpose
18 construction and maintenance machinery which by design and
19 function is obviously not intended for use on a public highway,
20 including, but not limited to, motor scrapers, earthmoving
21 equipment, backhoes, trenchers, motor graders, compactors,
22 tractors, bulldozers, bucket loaders, ditchdigging apparatus,
23 asphalt spreaders, leveling graders, power shovels, and crawler
24 tractors;

25 ~~(31)~~ (32) Nonbulk packaging means a packaging which has:

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

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

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

8 ~~(32)~~ (33) Out-of-service order means a declaration by
9 an authorized enforcement officer of a federal, state, Canadian,
10 Mexican, or local jurisdiction that a driver, a commercial motor
11 vehicle, or a motor carrier operation is out of service pursuant to
12 49 C.F.R. 386.72, 392.5, 395.13, or 396.9, or compatible laws or
13 the North American Uniform Out-of-Service Criteria;

14 ~~(33)~~ (34) Packaging means a receptacle and any other
15 components or materials necessary for the receptacle to perform
16 its containment function in conformance with the minimum packing
17 requirements of Title 49 of the Code of Federal Regulations. For
18 radioactive materials packaging, see 49 C.F.R. 173.403;

19 ~~(34)~~ (35) Person means any individual, partnership,
20 association, corporation, business trust, or any other organized
21 group of individuals;

22 ~~(35)~~ (36) Principal place of business means the
23 single location designated by the motor carrier, normally its
24 headquarters, for purposes of identification. The motor carrier
25 must make records required by the regulations referred to in

1 sections 75-363 to 75-369.07 and this section available for
2 inspection at this location within forty-eight hours, Saturdays,
3 Sundays, and state or federal holidays excluded, after a request
4 has been made by an officer of the Nebraska State Patrol;

5 ~~(36)~~ (37) Private motor carrier means a person who
6 provides transportation of property or passengers by commercial
7 motor vehicle and is not a for-hire motor carrier;

8 ~~(37)~~ (38) Safety audit means an examination of a
9 motor carrier's operations to provide educational and technical
10 assistance on drivers' hours of service, maintenance and
11 inspection, driver qualification, commercial driver's license
12 requirements, financial responsibility, accidents, hazardous
13 materials, and other safety and transportation records to determine
14 whether a motor carrier meets the safety fitness standard. The
15 purpose of a safety audit is to gather critical safety data needed
16 to make an assessment of the carrier's safety performance and basic
17 safety management controls. Safety audits do not result in safety
18 ratings; and

19 ~~(38)~~ (39) Tank means a container, consisting of a shell
20 and heads, that forms a pressure-tight vessel having openings
21 designed to accept pressure-tight fittings or closures, but
22 excludes any appurtenances, reinforcements, fittings, or closures.

23 Sec. 2. Section 75-363, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 75-363 (1) The parts, subparts, and sections of Title

1 49 of the Code of Federal Regulations listed below, as modified
2 in this section, or any other parts, subparts, and sections
3 referred to by such parts, subparts, and sections, in existence and
4 effective as of January 1, 2009, are adopted as Nebraska law.

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

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

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

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

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

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

23 (iv) All drivers of such motor carriers if the drivers
24 are operating a commercial motor vehicle as defined in section
25 60-465 which requires a commercial driver's license.

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

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

6 (b) Part 385 - Safety Fitness Procedures;

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

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

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

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

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

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

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

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

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

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

23 ~~(6)~~ (7) For purposes of this section, intrastate motor
 24 carriers shall not include any motor carrier or driver excepted
 25 from 49 C.F.R. chapter III by section 390.3(f) of part 390 or

1 any nonprofit entity, operating solely in intrastate commerce,
2 organized for the purpose of furnishing electric service.

3 ~~(7)~~ (8) Part 395 - Hours Of Service Of Drivers shall
4 apply to motor carriers and drivers who engage in intrastate
5 commerce as defined in section 75-362, except that no motor carrier
6 who engages in intrastate commerce shall permit or require any
7 driver used by it to drive nor shall any driver drive:

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

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

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

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

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

23 ~~(8)~~ (9) Part 395 - Hours Of Service Of Drivers, as
24 adopted in subsections (3) and (7) of this section, shall not
25 apply to drivers transporting agricultural commodities or farm

1 supplies for agricultural purposes when the transportation of such
2 commodities or supplies occurs within a one-hundred-air-mile radius
3 of the source of the commodities or the distribution point for
4 the supplies when such transportation occurs during the period
5 beginning on February 15 up to and including December 15 of each
6 calendar year.

7 ~~(9)~~ (10) 49 C.F.R. 390.21 - Marking Of Commercial Motor
8 Vehicles shall not apply to farm trucks and farm truck-tractors
9 registered pursuant to section 60-3,146 and operated solely in
10 intrastate commerce.

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

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

17 Sec. 3. Original sections 75-362 and 75-363, Reissue
18 Revised Statutes of Nebraska, are repealed.