

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 808

Introduced by Transportation and Telecommunications Committee:
Fischer, 43, Chairperson; Campbell, 25; Gay, 14;
Hadley, 37; Lautenbaugh, 18; Louden, 49; Stuthman,
22.

Read first time January 08, 2010

Committee: Transportation and Telecommunications

A BILL

1 FOR AN ACT relating to the Motor Vehicle Operator's License Act;
2 to amend sections 60-4,169 and 75-362, Reissue Revised
3 Statutes of Nebraska, and sections 60-465 and 60-4,150,
4 Revised Statutes Cumulative Supplement, 2008; to change
5 provisions relating to commercial motor vehicles and
6 commercial drivers' licenses and to adopt certain federal
7 regulations relating to operating authority; and to
8 repeal the original sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 60-465, Revised Statutes Cumulative
2 Supplement, 2008, is amended to read:

3 60-465 (1) Commercial motor vehicle means a motor vehicle
4 or combination of motor vehicles used in commerce to transport
5 passengers or property if the motor vehicle:

6 (a) Has a gross combination weight rating of eleven
7 thousand seven hundred ninety-four kilograms or more (twenty-six
8 thousand one pounds or more) inclusive of a towed unit with a
9 gross vehicle weight rating of more than four thousand five hundred
10 thirty-six kilograms (ten thousand pounds);

11 (b) Has a gross vehicle weight rating of eleven thousand
12 seven hundred ninety-four or more kilograms (twenty-six thousand
13 one pounds or more);

14 (c) Is designed to transport sixteen or more passengers,
15 including the driver; or

16 (d) Is of any size and is used in the transportation of
17 materials found to be hazardous for the purposes of the federal
18 Hazardous Materials Transportation Act and which require the motor
19 vehicle to be placarded under 49 C.F.R. part 172, subpart F.

20 (2) Commercial motor vehicle does not include (a) a
21 ~~farm truck as defined in section 60-325~~ vehicle, other than
22 a combination of truck-tractors and semitrailers, which is (i)
23 controlled and operated by a farmer, including operation by
24 employees or family members of the farmer, (ii) used to transport
25 either agricultural products, farm machinery, farm supplies, or

1 both, to or from a farm or ranch, (iii) not used in the operations
2 of a common or contract motor carrier, and (iv) used when such farm
3 ~~truck is operated~~ within one hundred fifty miles of the registered
4 ~~owner's~~ farmer's farm or ranch, (b) any recreational vehicle as
5 defined in section 60-347 or motor vehicle towing a cabin trailer
6 as defined in sections 60-314 and 60-339, (c) any emergency vehicle
7 operated by a public or volunteer fire department, or (d) any
8 motor vehicle owned or operated by the United States Department
9 of Defense or Nebraska National Guard when such motor vehicle is
10 driven by persons identified in section 60-4,131.01.

11 Sec. 2. Section 60-4,150, Revised Statutes Cumulative
12 Supplement, 2008, is amended to read:

13 60-4,150 (1) Any person holding a commercial driver's
14 license who loses his or her license, who requires issuance of
15 a replacement license because of a change of name or address, or
16 whose license is mutilated or unreadable may obtain a duplicate or
17 replacement commercial driver's license by filing an application
18 ~~and affidavit~~ and by furnishing proof of identification in
19 accordance with section 60-484.

20 (2) The application for a replacement license because of
21 a change of name or address shall be made within sixty days after
22 the change of name or address.

23 (3)(a) This subdivision applies until the implementation
24 date designated by the director pursuant to section 60-462.02.
25 Upon the examiner being satisfied that a duplicate or replacement

1 commercial driver's license should be issued, the applicant shall
2 receive such license upon payment of the fee prescribed in section
3 60-4,115 to the county treasurer.

4 (b) This subdivision applies beginning on the
5 implementation date designated by the director pursuant to section
6 60-462.02. A duplicate or replacement commercial driver's license
7 shall be delivered to the applicant as provided in section
8 60-4,113 after the county treasurer collects the fee and surcharge
9 prescribed in section 60-4,115 and issues the applicant a receipt
10 with driving privileges which is valid for up to thirty days.

11 (4) Duplicate and replacement commercial drivers'
12 licenses shall be issued in the manner provided for the issuance of
13 original and renewal commercial drivers' licenses as provided for
14 by section 60-4,149. Upon issuance of any duplicate or replacement
15 commercial driver's license, the commercial driver's license for
16 which the duplicate or replacement license is issued shall be void.

17 Sec. 3. Section 60-4,169, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 60-4,169 Whenever it comes to the attention of the
20 director that any person when operating a ~~commercial~~ motor vehicle
21 has, based upon the records of the director, been convicted of
22 or administratively determined to have committed an offense for
23 which disqualification is required pursuant to section 60-4,146.01,
24 60-4,168, or 60-4,168.01, the director shall summarily revoke
25 (1) the commercial driver's license and privilege of such person

1 to operate a commercial motor vehicle in this state or (2)
2 the privilege, if such person is a nonresident, of operating a
3 commercial motor vehicle in this state. Any revocation ordered by
4 the director pursuant to this section shall commence on the date of
5 the signing of the order of revocation or the date of the release
6 of such person from the jail or a Department of Correctional
7 Services adult correctional facility, whichever is later, unless
8 the order of the court requires the jail time and the revocation to
9 run concurrently.

10 Sec. 4. Section 75-362, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 75-362 For purposes of sections 75-362 to 75-369.07,
13 unless the context otherwise requires:

14 (1) Accident means:

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

19 (i) A fatality;

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

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

1 vehicle.

2 (b) The term accident does not include:

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

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

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

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

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

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

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

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

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

1 motor vehicle; and

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

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

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

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

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

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

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

24 (d) Is used in transporting material found to be
25 hazardous and such material is transported in a quantity requiring

1 placarding pursuant to section 75-364;

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

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

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

19 (b) Exclusions:

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

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

24 (iii) Headlight or taillight damage; and

25 (iv) Damage to turnsignals, horn, or windshield wipers

1 which makes them inoperative;

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

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

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

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

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

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

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

8 (13) Exempt motor carrier means a person engaged in
9 transportation exempt from economic regulation under 49 U.S.C.
10 13506. An exempt motor carrier is subject to the safety regulations
11 adopted in sections 75-362 to 75-369.07;

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

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

18 (a) Are owned by that person; or

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

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

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

25 (18) Gross combination weight means the sum of the empty

1 weight of a motor vehicle plus the total weight of any load carried
2 thereon and the empty weight of the towed unit or units plus the
3 total weight of any load carried on such towed unit or units;

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

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

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

25 (22) Hazardous material means a substance or material

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

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

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

24 (25) Highway means the entire width between the boundary
25 limits of any street, road, avenue, boulevard, or way which is

1 publicly maintained when any part thereof is open to the use of the
2 public for purposes of vehicular travel;

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

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

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

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

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

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

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

25 (b) One percent by weight of the solution or mixture for

1 materials that are identified as severe marine pollutants in the
2 Hazardous Materials Table, 49 C.F.R. 172.101, Appendix B;

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

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

21 (31) Nonbulk packaging means a packaging which has:

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

24 (b) A maximum net mass of eight hundred eighty-two pounds
25 or less and a maximum capacity of one hundred nineteen gallons or

1 less as a receptacle for a solid; or

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

4 (32) Out-of-service order means a declaration by an
5 authorized enforcement officer of a federal, state, Canadian,
6 Mexican, or local jurisdiction that a driver, a commercial motor
7 vehicle, or a motor carrier operation is out of service pursuant
8 to 49 C.F.R. 386.72, 392.5, 392.9a, 395.13, or 396.9, or compatible
9 laws or the North American Uniform Out-of-Service Criteria;

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

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

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

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

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

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

19 Sec. 5. Original sections 60-4,169 and 75-362, Reissue
20 Revised Statutes of Nebraska, and sections 60-465 and 60-4,150,
21 Revised Statutes Cumulative Supplement, 2008, are repealed.