

LEGISLATIVE BILL 722

Approved by the Governor March 13, 1997

Introduced by Transportation Committee: Kristensen, 37, Chairperson;
 Bruning, 3; Coordsen, 32; Elmer, 44; Matzke, 47;
 Dw. Pedersen, 39; C. Peterson, 35; Robinson, 16

AN ACT relating to motor carriers; to amend sections 75-363 and 75-364, Reissue Revised Statutes of Nebraska; to update state adoption of federal Motor Carrier Safety Regulations and federal Hazardous Material Regulations; and to repeal the original sections.

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

Section 1. Section 75-363, Reissue Revised Statutes of Nebraska, is amended to read:

75-363. (1) The parts of the federal Motor Carrier Safety Regulations, 49 C.F.R., listed in subdivisions (a) through (j) of this subsection or any other parts referred to by such parts, in existence and effective as of January 1, ~~1996~~ 1997, are adopted as Nebraska law. The regulations shall be applicable to all carriers, drivers, and vehicles to which the federal regulations apply, to all vehicles of intrastate motor carriers with a gross vehicle weight rating over ten thousand pounds, to all intrastate motor carriers in the operation of vehicles with a gross vehicle weight rating over ten thousand pounds, and to all drivers of such vehicles if the drivers are operating a commercial motor vehicle as defined in section 60-465 which requires a commercial driver's license except as provided in subsections (2) and (3) of this section. The Legislature hereby adopts:

- (a) Part 382 -- Controlled Substances And Alcohol Use And Testing;
- (b) Part 385 -- Safety Fitness Procedures;
- (c) Part 390 -- Federal Motor Carrier Safety Regulations: General;
- (d) Part 391 -- Qualifications Of Drivers;
- (e) Part 392 -- Driving Of Motor Vehicles;
- (f) Part 393 -- Parts And Accessories Necessary For Safe Operations;
- (g) Part 395 -- Hours Of Service Of Drivers;
- (h) Part 396 -- Inspection, Repair And Maintenance;
- (i) Part 397 -- Transportation Of Hazardous Materials; Driving And Parking Rules; and
- (j) Part 398 -- Transportation Of Migrant Workers.

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

(3) The regulations adopted in subsections (1) and (2) of this section shall not apply to farm trucks registered pursuant to section 60-330 with a gross weight of sixteen tons or less, liquefied petroleum gas tanks with a capacity of three thousand five hundred gallons or less, flammable liquid tanks with a capacity of three thousand gallons or less, and fertilizer and agricultural chemical application and distribution equipment transported in units with a capacity of three thousand five hundred gallons or less. The following parts and sections of the federal Motor Carrier Safety Regulations shall not apply to drivers of farm trucks registered pursuant to section 60-330 and operated solely in intrastate commerce:

- (a) All of part 391;
- (b) Section 395.08 of part 395; and
- (c) Section 396.11 of part 396.

(4) For purposes of this section, intrastate motor carriers shall not include any motor carrier or driver excepted from the federal Motor Carrier Safety Regulations by section 390.3(f) of part 390 or any nonprofit entity, operating solely in intrastate commerce, organized for the purpose of furnishing electric service.

(5) Part 395 -- Hours Of Service Of Drivers, of the federal Motor Carrier Safety Regulations adopted in subsection (1) of this section, shall apply to motor carriers and drivers who engage in intrastate commerce as defined in section 75-302, except that no motor carrier who engages in intrastate commerce shall permit or require any driver used by it to drive nor shall any driver drive:

- (a) More than twelve hours following eight consecutive hours off duty; or
- (b) For any period after having been on duty sixteen hours following

eight consecutive hours off duty.

No motor carrier who engages in intrastate commerce shall permit or require a driver of a commercial motor vehicle, regardless of the number of motor carriers using the driver's services, to drive for any period after:

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

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

(6) Part 395 -- Hours of Service Of Drivers, of the federal Motor Carrier Safety Regulations adopted in subsections (1) and (5) of this section relating to maximum driving and on-duty time for drivers, shall not apply to drivers transporting agricultural commodities or farm supplies for agricultural purposes when the transportation of such commodities or supplies occurs within a one-hundred-air-mile radius of the source of the commodities or the distribution point for the supplies when such transportation occurs during the period beginning on February 15 up to and including December 15 of each calendar year.

Sec. 2. Section 75-364, Reissue Revised Statutes of Nebraska, is amended to read:

75-364. (1) The parts of the federal Hazardous Material Regulations, 49 C.F.R., listed below or any other parts referred to by such parts, in existence and effective as of ~~January 1, 1996~~ October 1, 1997, are adopted as part of Nebraska law and, except as provided in subsection (2) of this section, shall be applicable to all private, common, and contract motor vehicle carriers, drivers of such carriers, and vehicles of such carriers whether engaged in interstate or intrastate commerce:

(a) Part 171 -- General Information, Regulations, And Definitions;

(b) Part 172 -- Hazardous Materials Tables And Hazardous Materials Communications Regulations;

(c) Part 173 -- Shippers-General Requirements For Shipments And Packaging;

(d) Part 177 -- Carriage By Public Highway;

(e) Part 178 -- Shipping Container Specifications; and

(f) Part 180 -- Continuing Qualification And Maintenance Of Packaging.

(2) The provisions of subsection (1) of this section shall not apply to the use of fuels, fertilizers, and agricultural chemicals in a normal farming or ranching operation on the farm or ranch.

(3) Liquefied petroleum gas tanks with a capacity of three thousand five hundred gallons or less, anhydrous ammonia tanks with a capacity of three thousand gallons or less, and flammable liquid tanks with a capacity of three thousand gallons or less shall be exempt from the requirements of part 173 and part 177 when such liquefied petroleum gas tanks, anhydrous ammonia tanks, or flammable liquid tanks are transported by a motor vehicle registered pursuant to Chapter 60, article 3, and operated solely in intrastate commerce.

(4) Liquefied petroleum gas tanks with a capacity of three thousand five hundred gallons or less shall be exempt from the provisions of section 173.315(k)(5) adopted under subdivision (1)(c) of this section if such tanks have been inspected and tested in accordance with the State Fire Marshal's rules and regulations.

Sec. 3. Original sections 75-363 and 75-364, Reissue Revised Statutes of Nebraska, are repealed.