

LEGISLATIVE BILL 878

Approved by the Governor March 19, 2004

Introduced by Baker, 44

AN ACT relating to motor carriers; to amend sections 75-363 and 75-364, Reissue Revised Statutes of Nebraska; to adopt updated federal Motor Carrier Safety Regulations and federal Hazardous Material Regulations; to repeal the original sections; and to declare an emergency.

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., as modified in this section and any other parts referred to by such parts, in existence and effective as of January 1, ~~2003~~ 2004, are adopted as Nebraska law. Except as otherwise provided in this section, 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, gross combination weight rating, gross vehicle weight, or gross combination weight over ten thousand pounds, to all vehicles of intrastate motor carriers designed or used to transport more than eight passengers, including the driver, for compensation, or designed or used to transport more than fifteen passengers, including the driver, and not used to transport passengers for compensation, to all intrastate motor carriers in the operation of vehicles with a gross vehicle weight rating, gross combination weight rating, gross vehicle weight, or gross combination weight over ten thousand pounds, to all intrastate motor carriers in the operation of vehicles designed or used to transport more than eight passengers, including the driver, for compensation, or designed or used to transport more than fifteen passengers, including the driver, and not used to transport passengers for compensation, 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. The Legislature hereby adopts, as modified in this section:

- (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 Commercial Motor Vehicles;
- (f) Part 393 -- Parts And Accessories Necessary For Safe Operation;
- (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 subsection (1) of this section shall not apply to farm trucks registered pursuant to section 60-330 with a gross weight of sixteen tons or less or to fertilizer and agricultural chemical application and distribution equipment transported in units with a capacity of three thousand five hundred gallons or less if the equipment is not required to be placarded pursuant to section 75-364. 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 395.8 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 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, nor shall any driver of a commercial motor vehicle 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, as 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.

(7) Section 390.21 of part 390 -- Federal Motor Carrier Safety Regulations; General, 49 C.F.R. 390.21 -- Marking of commercial motor vehicles, shall not apply to farm trucks and farm truck-tractors registered pursuant to section 60-330 and operated solely in intrastate commerce.

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, ~~2003~~ 2004, are adopted as part of Nebraska law and, except as provided in subsections (2) and (3) 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 Table, Special Provisions, Hazardous Materials Communications, Emergency Response Information, and Training Requirements;

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

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

(e) Part 178 -- Specifications For Packagings; and

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

(2) Agricultural operations exceptions:

(a) The transportation of an agricultural product other than a Class 2 material (Compressed Gases), over roads, other than the National System of Interstate and Defense Highways, between fields of the same farm, is excepted from subsection (1) of this section when:

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

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

(b) The transportation of an agricultural product to or from a farm, within one hundred fifty miles of the farm, is excepted from the requirements in 49 C.F.R. part 172, subparts G (emergency response information) and H (training) when:

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

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

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

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

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

(iv) (A) Each person having any responsibility for transporting the agricultural product or preparing the agricultural product for shipment has been instructed in the applicable requirements of 49 C.F.R. adopted in this section; and

(B) Instruction by the Department of Agriculture required pursuant to the Pesticide Act shall be sufficient for instruction under subdivision (2) (b) (iv) (A) of this section, if it has been approved for that purpose by the carrier enforcement division of the Nebraska State Patrol; and

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

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

(a) Nonspecification bulk packagings: Notwithstanding requirements for specification packagings in 49 C.F.R. part 173, subpart F, and 49 C.F.R. parts 178 and 180, of the hazardous material regulations, a nonspecification bulk packaging may be used for transportation of a hazardous material by an intrastate motor carrier until July 1, 2000, in accordance with subdivision (d) of this subsection;

(b) Nonspecification cargo tanks for petroleum products: Notwithstanding requirements for specification packagings in 49 C.F.R. part 173, subpart F, and 49 C.F.R. parts 178 and 180, a nonspecification metal tank permanently secured to a transport vehicle and protected against leakage or damage in the event of a turnover, having a capacity of less than three thousand five hundred gallons, may be used by an intrastate motor carrier for transportation of a flammable liquid petroleum product in accordance with subdivision (d) of this subsection;

(c) Permanently secured nonbulk tanks for petroleum products: Notwithstanding requirements for specification packagings in 49 C.F.R. part 173, subpart F, and 49 C.F.R. parts 178 and 180, a nonspecification metal tank permanently secured to a transport vehicle and protected against leakage or damage in the event of a turnover, having a capacity of less than one hundred nineteen gallons, may be used by an intrastate motor carrier for transportation of a flammable liquid petroleum product in accordance with subdivision (d) of this subsection; and

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

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

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

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

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

(v) Not be used to transport a flammable cryogenic liquid, hazardous substance, hazardous waste, or marine pollutant; and

(vi) On and after July 1, 2000, for a tank authorized under subdivision (b) or (c) of this subsection, conform to all requirements in 49 C.F.R. part 180, except for 49 C.F.R. 180.405(g) of the hazardous material regulations, in the same manner as required for a United States Department of Transportation specification MC306 cargo tank motor vehicle.

(4) For purposes of this section:

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

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

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

(ii) A maximum net mass greater than eight hundred eighty-two pounds and a maximum capacity greater than one hundred nineteen gallons as a

receptacle for a solid; or

(iii) A water capacity greater than one thousand pounds as a receptacle for a gas as defined in 49 C.F.R. 173.315;

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

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

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

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