

LEGISLATIVE BILL 323

Approved by the Governor April 12, 1996

Introduced by Kristensen, 37

AN ACT relating to commercial motor vehicles; to amend sections 60-4,131, 60-4,146.01, 60-4,156, 60-4,164, 60-4,165, and 60-4,167 to 60-4,169, Reissue Revised Statutes of Nebraska, and section 60-462, Revised Statutes Supplement, 1995; to extend the applicability of sections to the Republic of Mexico; to provide for disqualification for violation of an out-of-service order; to eliminate urine testing under commercial driver's license implied consent provisions; to change hearing requirements; to provide for the automatic disqualification of a commercial driver's license; to redefine a term; to provide for an appeal; to harmonize provisions; to provide operative dates; and to repeal the original sections.

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

Section 1. Section 60-462, Revised Statutes Supplement, 1995, is amended to read:

60-462. Sections 60-462 to 60-4,188 and sections 5, 9, and 10 of this act shall be known and may be cited as the Motor Vehicle Operator's License Act.

Sec. 2. Section 60-4,131, Reissue Revised Statutes of Nebraska, is amended to read:

60-4,131. (1) Sections 60-4,132 to 60-4,172 and sections 5, 9, and 10 of this act shall apply to the operation of any commercial motor vehicle.

(2) For purposes of such sections:

(a) Employer shall mean any person, including the United States, a state, or a political subdivision of a state, who or which owns or leases a commercial motor vehicle or assigns employees to operate a commercial motor vehicle; and

(b) State, when applied to different states of the United States, shall be construed to extend to and include any state of the United States, the District of Columbia, the Republic of Mexico, and any province of the Dominion of Canada.

Sec. 3. Section 60-4,146.01, Reissue Revised Statutes of Nebraska, is amended to read:

60-4,146.01. (1) Any resident of this state who is a seasonal commercial motor vehicle operator for a farm-related or ranch-related service industry may make application for a restricted commercial driver's license. A restricted commercial driver's license shall authorize the holder to operate any Class B Heavy Straight Vehicle commercial motor vehicle or any Class B Heavy Straight Vehicle or Class C Small Vehicle commercial motor vehicle required to be placarded pursuant to section 75-364 when the hazardous material being transported is (a) diesel fuel in quantities of one thousand gallons or less, (b) liquid fertilizers in vehicles or implements of husbandry with total capacities of three thousand gallons or less, or (c) solid fertilizers that are not transported or mixed with any organic substance within one hundred fifty miles of the employer's place of business or the farm or ranch being served.

(2) Any applicant for a restricted commercial driver's license or seasonal permit shall be eighteen years of age or older, shall have possessed a valid operator's license during the twelve-month period immediately preceding application, and shall demonstrate, in a manner to be prescribed by the director, that:

(a) If the applicant has possessed a valid operator's license for two or more years, that in the two-year period immediately preceding application the applicant:

(i) Has not possessed more than one operator's license at one time;

(ii) Has not been subject to any order of suspension, revocation, or cancellation of any type;

(iii) Has no convictions involving any type or classification of motor vehicle of the disqualification offenses enumerated in section 60-4,168 and section 5 of this act; and

(iv) Has no convictions for traffic law violations that are accident-connected and no record of at-fault accidents; and

(b) If the applicant has possessed a valid operator's license for more than one but less than two years, the applicant shall demonstrate that he or she meets the requirements prescribed in subdivision (a) of this subsection

for the entire period of his or her driving record history.

(3) The commercial motor vehicle operating privilege as conferred by the restricted commercial driver's license shall be valid for four years if annually revalidated by the seasonal permit which shall be valid for no more than one hundred eighty consecutive days in any twelve-month period. To revalidate the restricted commercial driver's license, the applicant shall meet the requirements of subsection (2) of this section and shall designate a time period he or she desires the commercial motor vehicle operating privilege to be valid. The time period designated by the applicant shall appear and be clearly indicated on the seasonal permit. A seasonal permit shall not be issued to any person more than once in any twelve-month period. The holder of a restricted commercial driver's license shall operate commercial motor vehicles in the course or scope of his or her employment within one hundred fifty miles of the employer's place of business or the farm or ranch currently being served.

(4) Any person who violates any provision of this section shall, upon conviction, be guilty of a Class III misdemeanor. In addition to any penalty imposed by the court, the director shall also revoke such person's restricted commercial driver's license and shall disqualify such person from operating any commercial motor vehicle in Nebraska for a period of five years.

(5) The Department of Motor Vehicles shall adopt and promulgate rules and regulations to carry out the requirements of this section.

(6) For purposes of this section:

(a) Agricultural chemical business shall mean any business that transports agricultural chemicals predominately to or from a farm or ranch;

(b) Farm-related or ranch-related service industry shall mean any custom harvester, retail agricultural outlet or supplier, agricultural chemical business, or livestock feeder which operates commercial motor vehicles for the purpose of transporting agricultural products, livestock, farm machinery and equipment, or farm supplies to or from a farm or ranch;

(c) Retail agricultural outlet or supplier shall mean any retail outlet or supplier that transports either agricultural products, farm machinery, farm supplies, or both, predominately to or from a farm or ranch; and

(d) Seasonal commercial motor vehicle operator shall mean any person who, exclusively on a seasonal basis, operates a commercial motor vehicle for a farm-related or ranch-related service industry.

Sec. 4. Section 60-4,156, Reissue Revised Statutes of Nebraska, is amended to read:

60-4,156. A commercial driver's license examiner may waive the driving skills examination when an applicant provides, on a form prescribed by the director, certification that during the two-year period immediately prior to the date of application he or she:

(1) Has not possessed more than one operator's license at any one time;

(2) Has not had any operator's license suspended, revoked, or canceled;

(3) Has not been convicted in any type of motor vehicle for any of the disqualification offenses provided for in section 60-4,168 and section 5 of this act;

(4) Has not been convicted of any violation of state law or local ordinance related to motor vehicle traffic control arising in connection with any traffic accident and has no record of an accident when the applicant was at fault; and

(5) Provides suitable evidence that he or she has previously taken a driving skills examination given by a state with a classified licensing and testing system and that the examination included operation of a representative vehicle for the applicant's commercial driver's license classification or that the applicant has operated, for at least two years immediately preceding application, a vehicle representative of the commercial motor vehicle the applicant operates or expects to operate.

Sec. 5. (1) A person who is convicted of violating an out-of-service order while operating a commercial motor vehicle shall be subject to disqualification as follows except as provided in subsection (2) of this section:

(a) A person shall be disqualified from operating a commercial motor vehicle for a period of ninety days upon conviction for violating an out-of-service order;

(b) A person shall be disqualified from operating a commercial motor vehicle for a period of one year upon a second conviction for violating an out-of-service order, which arises out of a separate incident, during any ten-year period beginning on or after the operative date of this section; and

(c) A person shall be disqualified from operating a commercial motor vehicle for a period of three years upon a third or subsequent conviction for violating an out-of-service order, which arises out of a separate incident, during any ten-year period beginning on or after the operative date of this section.

(2) A person who is convicted of violating an out-of-service order while operating a commercial motor vehicle while transporting hazardous materials required to be placarded pursuant to section 75-364 or while operating a commercial motor vehicle designed or used to transport fifteen or more passengers, including the driver, shall be subject to disqualification as follows:

(a) A person shall be disqualified from operating a commercial motor vehicle for a period of one hundred eighty days upon conviction for violating an out-of-service order; and

(b) A person shall be disqualified from operating a commercial motor vehicle for a period of three years upon a second or subsequent conviction for violating an out-of-service order, which arises out of a separate incident, during any ten-year period beginning on or after the operative date of this section.

(3) For purposes of this section, out-of-service order shall mean a declaration by an authorized enforcement officer of a federal, state, Canadian, Mexican, or local authority that a driver is out of service pursuant to 49 C.F.R. 386.72, 392.5, 395.13, or 396.9; compatible laws enacted by other jurisdictions; 49 C.F.R. 392.5, 395.13, or 396.9 as adopted pursuant to section 75-363; or the North American Uniform Out-of-Service Criteria.

Sec. 6. Section 60-4,164, Reissue Revised Statutes of Nebraska, is amended to read:

60-4,164. (1) Any person who operates or is in the actual physical control of a commercial motor vehicle upon a highway in this state shall be deemed to have given his or her consent to submit to a chemical test or tests of his or her blood, ~~or~~ breath, ~~or~~ urine for the purpose of determining the amount of alcoholic content in his or her blood, ~~or~~ breath, ~~or~~ urine.

(2) Any law enforcement officer who has been duly authorized to make arrests for violations of traffic laws of this state or of ordinances of any city or village who, after stopping or detaining the operator of any commercial motor vehicle, has reasonable grounds to believe that the operator was driving or in the actual physical control of a commercial motor vehicle while having any alcoholic liquor in his or her body may require such operator to submit to a chemical test or tests of his or her blood, ~~or~~ breath, ~~or~~ urine for the purpose of determining the alcoholic content of such blood, ~~or~~ breath, ~~or~~ urine.

(3) Any law enforcement officer who has been duly authorized to make arrests for violations of traffic laws of this state or of ordinances of any city or village may require any person who operates or has in his or her actual physical control a commercial motor vehicle upon a highway in this state to submit to a preliminary breath test of his or her breath for alcoholic content if the officer has reasonable grounds to believe that such person has any alcoholic liquor in his or her body, has committed a moving traffic violation, or has been involved in a traffic accident. Any such person who refuses to submit to a preliminary breath test shall be placed under arrest and shall be guilty of a Class V misdemeanor. Any person arrested for refusing to submit to a preliminary breath test or any person who submits to a preliminary breath test the results of which indicate the presence of any alcoholic liquor in such person's body may, upon the direction of a law enforcement officer, be required to submit to a chemical test or tests of his or her blood, ~~or~~ breath, ~~or~~ urine for a determination of the alcoholic content.

(4) Any person operating or in the actual physical control of a commercial motor vehicle who submits to a chemical test or tests of his or her blood, ~~or~~ breath, ~~or~~ urine which discloses the presence of any alcoholic liquor in his or her body shall be placed out of service for twenty-four hours by the law enforcement officer.

(5) Any person operating or in the actual physical control of a commercial motor vehicle who refuses to submit to a chemical test or tests of his or her blood, ~~or~~ breath, ~~or~~ urine or any person operating or in the actual physical control of a commercial motor vehicle who submits to a chemical test or tests of his or her blood, ~~or~~ breath, ~~or~~ urine which discloses an alcoholic concentration of: (a) Four-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood; or (b) four-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath; or (c) four-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her urine shall be placed out of service for

twenty-four hours by the law enforcement officer, and the officer shall forward to the director a sworn report. The report shall state that the person was operating or in the actual physical control of a commercial motor vehicle, was requested to submit to the required chemical test or tests, and refused to submit to the required chemical test or tests or submitted to the required chemical test or tests and possessed an alcohol concentration at or in excess of that specified by this subsection.

(6) Any person involved in a commercial motor vehicle accident in this state may be required to submit to a chemical test or tests of his or her blood, or breath, or urine by any law enforcement officer if the officer has reasonable grounds to believe that such person was driving or was in actual physical control of a commercial motor vehicle on a highway in this state while under the influence of alcoholic liquor at the time of the accident. A person involved in a commercial motor vehicle accident subject to the implied consent law of this state shall not be deemed to have withdrawn consent to submit to a chemical test or tests of his or her blood, or breath, or urine by reason of leaving this state. If the person refuses a test or tests under this section and leaves the state for any reason following an accident, he or she shall remain subject to this section upon return.

Sec. 7. Section 60-4,165, Reissue Revised Statutes of Nebraska, is amended to read:

60-4,165. The law enforcement officer who requires a chemical test or tests pursuant to section 60-4,164 may direct whether the test or tests will be of blood, or breath, or urine. The person tested shall be permitted to have a physician of his or her choice evaluate his or her condition and perform or have performed whatever laboratory tests are deemed appropriate in addition to and following the test or tests administered at the direction of the law enforcement officer. If the officer refuses to permit such additional test or tests to be taken, the original test or tests shall not be competent evidence. Upon the request of the person tested, the results of the test or tests taken at the direction of the law enforcement officer shall be made available to him or her.

Sec. 8. Section 60-4,167, Reissue Revised Statutes of Nebraska, is amended to read:

60-4,167. Upon receipt of a law enforcement officer's sworn report provided for in section 60-4,164, the director shall notify the person who is the subject of the report of a date for hearing before the director to determine the reasonableness of the refusal to submit to the chemical test or tests or the results of the chemical test or tests if performed upon the person serve the notice of disqualification to the person who is the subject of the report by registered or certified mail to the person's last-known address appearing on the records of the director. If the address on the director's records differs from the address on the arresting officer's report, the notice of disqualification shall be sent to both addresses. The notice of disqualification shall contain a statement explaining the operation of the disqualification procedure and the rights of the person. The director shall also provide to the person a self-addressed envelope and a petition form which the person may use to request a hearing before the director to contest the disqualification. The petition form shall clearly state on its face that the petition must be completed and delivered to the department or postmarked within ten days after receipt or the person's right to a hearing to contest the disqualification will be foreclosed. The director shall prescribe and approve the form for the petition, the self-addressed envelope, and the notice of disqualification. If not contested, the disqualification shall automatically take effect thirty days after the date of mailing of the notice of disqualification by the director. Any chemical test or tests made under section 60-4,164, if made in conformity with the requirements of section 60-6,201 shall be competent evidence of the alcoholic content of such person's blood, or breath, or urine. The commercial driver's license of the person who is the subject of the report shall be automatically disqualified upon the expiration of thirty days after the date of the mailing of the notice of disqualification by the director. The director shall conduct the hearing in the county in which the violation occurred or in any county agreed to by the parties. Upon receipt of a petition, the director shall notify the petitioner of the date and location for the hearing by certified or registered mail postmarked at least seven days prior to the hearing date. Notice of hearing shall be served by the director by mailing it to such person by certified or registered mail to the last-known residential address of such person or, if such address is unknown, to the last-known business address of such person at least ten days before the hearing.

After granting the person petitioner an opportunity to be heard on such issue, if it is not shown to the director that such the petitioner's

refusal to submit to such chemical test or tests was reasonable or ~~if unless~~ it is shown to the director that ~~such person the petitioner~~ was not operating or in the actual physical control of a commercial motor vehicle with an alcoholic concentration in his or her blood, or breath, or urine equal to or in excess of that specified in subsection (5) of section 60-4,164, the director shall enter an order pursuant to section 60-4,169 ~~disqualifying such person revoking the petitioner's commercial driver's license and privilege to operate a commercial motor vehicle in this state and disqualifying the person from operating a commercial motor vehicle for the period specified by section 60-4,168.~~

Sec. 9. (1) The director shall reduce the decision disqualifying a commercial driver from operating a commercial motor vehicle pursuant to a hearing under section 60-4,167 to writing and the director shall notify the person in writing of the disqualification within seven days following a hearing. The decision shall set forth the period of disqualification and be served by mailing it to such person by certified or registered mail to the address provided to the director at the hearing or, if the person does not appear at the hearing, to the address appearing on the records of the director. If the address on the director's records differs from the address on the arresting peace officer's report, the notice shall be sent to both addresses.

(2) If the director does not disqualify the commercial driver from operating a commercial motor vehicle, the director shall notify the person in writing of the decision within seven days following a hearing. The notice shall be mailed by certified or registered mail as provided in subsection (1) of this section. No reinstatement fee shall be charged.

Sec. 10. Any person who feels himself or herself aggrieved because of such disqualification pursuant to a hearing under section 60-4,167 may appeal to the district court of the county where the alleged violation occurred in accordance with the Administrative Procedure Act. The appeal shall not suspend the disqualification unless a stay is allowed by the court pending a final determination of the review. If a stay is allowed and the final judgment of the court finds against the person appealing, the period of disqualification shall commence at the time of the final judgment of the court for the full period of the time of disqualification.

Sec. 11. Section 60-4,168, Reissue Revised Statutes of Nebraska, is amended to read:

60-4,168. (1) Except as provided in subsection (2) of this section, a person shall be disqualified from driving a commercial motor vehicle for one year:

(a) Upon his or her first conviction, after April 1, 1992, in this or any other state for:

(i) Driving a commercial motor vehicle while under the influence of alcohol or a controlled substance;

(ii) Leaving the scene of an accident involving a commercial motor vehicle driven by the person; or

(iii) Using a commercial motor vehicle in the commission of a felony; or

(b) Upon a first administrative determination, after April 1, 1992, that such person while driving a commercial motor vehicle in this or any other state was requested to submit to a chemical test or tests of his or her blood, breath, or urine by a law enforcement officer and refused or had a concentration of four-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood, four-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath, or four-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her urine.

(2) If any of the offenses described in this section occurred while the person was transporting hazardous material in a commercial motor vehicle which required placarding pursuant to section 75-364, the person shall, upon conviction or administrative determination, be disqualified from driving a commercial motor vehicle for three years.

(3) A person shall be disqualified from driving a commercial motor vehicle for life if, after April 1, 1992, he or she is convicted of or administratively determined to have committed a second or subsequent violation of any of the offenses described in subsection (1) of this section or any combination of those offenses arising from two or more separate incidents.

(4) A person shall be disqualified from driving a commercial motor vehicle for a period of not less than sixty days if he or she is convicted in this or any other state of two serious traffic violations or not less than one hundred twenty days if he or she is convicted in this or any other state of three serious traffic violations, arising from separate incidents occurring

within a three-year period.

(5) For purposes of this section, conviction shall mean an adjudication of guilt in a court of original jurisdiction, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, a plea of guilty or nolo contendere accepted by the court, a payment of a fine or court costs, or a violation of a condition of release without bail, regardless of whether the penalty is rebated, suspended, or probated.

(6) For purposes of this section, serious traffic violation shall mean:

(a) Speeding at or in excess of fifteen miles per hour over the legally posted speed limit;

(b) Willful reckless driving as described in section 60-6,214 or reckless driving as described in section 60-6,213;

(c) Improper lane change as described in section 60-6,139;

(d) Following the vehicle ahead too closely as described in section 60-6,140; and

(e) A violation of any law or ordinance related to motor vehicle traffic control, other than parking violations or overweight or vehicle defect violations, arising in connection with an accident or collision resulting in death to any person.

Sec. 12. Section 60-4,169, Reissue Revised Statutes of Nebraska, is amended to read:

60-4,169. Whenever it comes to the attention of the director that any person when operating a commercial motor vehicle has, based upon the records of the director, been convicted of or administratively determined to have committed an offense for which disqualification is required pursuant to section 60-4,146.01 or 60-4,168 or section 5 of this act, the director shall summarily revoke (1) the commercial driver's license and privilege of such person to operate a commercial motor vehicle in this state or (2) the privilege, if such person is a nonresident, of operating a commercial motor vehicle in this state. Any revocation ordered by the director pursuant to this section shall commence on the date of the signing of the order of revocation or the date of the release of such person from the jail or a Department of Correctional Services adult correctional facility, whichever is later.

Sec. 13. Sections 4, 5, 12, and 14 of this act become operative on October 1, 1996. The other sections of this act become operative on their effective date.

Sec. 14. Original sections 60-4,156 and 60-4,169, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 15. Original sections 60-4,131, 60-4,146.01, 60-4,164, 60-4,165, 60-4,167, and 60-4,168, Reissue Revised Statutes of Nebraska, and section 60-462, Revised Statutes Supplement, 1995, are repealed.