

LEGISLATURE OF NEBRASKA

ONE HUNDRED THIRD LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 644

Introduced by Davis, 43; Conrad, 46; Crawford, 45; Howard, 9;
Kolowski, 31.

Read first time January 23, 2013

Committee: Transportation and Telecommunications

A BILL

- 1 FOR AN ACT relating to contract carriers; to adopt the Contract
- 2 Carrier Safety Act; and to provide civil penalties.
- 3 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 12 of this act shall be known
2 and may be cited as the Contract Carrier Safety Act.

3 Sec. 2. The Contract Carrier Safety Act applies to a
4 contract carrier that transports an operating employee of a railroad
5 on a road or highway of this state in a motor vehicle designed to
6 carry fifteen or fewer passengers.

7 Sec. 3. (1) A contract carrier shall not allow or require
8 a contract carrier driver to drive or remain on duty for more than:

9 (a) Ten hours after eight consecutive hours of
10 uninterrupted rest, off-duty. Uninterrupted rest for purposes of this
11 subsection means that the contract carrier shall not communicate with
12 the contract carrier driver by telephone, pager, or in any other
13 manner that could reasonably be expected to disrupt the contract
14 carrier driver's rest;

15 (b) Fifteen hours of combined on-duty time and drive time
16 since last obtaining eight consecutive hours of off-duty time; or

17 (c) Seventy hours of on-duty and drive time in any period
18 of seven consecutive days.

19 (2) After twenty-four hours off-duty, a contract carrier
20 driver begins a new seven-consecutive-day period and the contract
21 carrier driver's on-duty time is reset to zero.

22 (3) A contract carrier driver who encounters an emergency
23 and cannot, because of that emergency, safely complete a
24 transportation assignment within the ten-hour maximum driving time
25 permitted under this section may drive and be permitted or required

1 to drive a transport motor vehicle for not more than two additional
2 hours in order to complete that transportation assignment or to reach
3 a place offering safety for the occupants of the transport motor
4 vehicle and security for the transport motor vehicle if the
5 transportation assignment reasonably could have been completed within
6 the ten-hour period absent the emergency.

7 (4) A contract carrier shall maintain and retain for a
8 period of six months accurate time records that show:

9 (a) The time the contract carrier driver reports for duty
10 each day;

11 (b) The total number of hours of on-duty time for each
12 contract carrier driver for each day;

13 (c) The time the contract carrier driver is released from
14 duty each day; and

15 (d) The total number of hours driven each day.

16 Sec. 4. (1) A contract carrier shall maintain a contract
17 carrier driver qualification file for each contract carrier driver it
18 employs.

19 (2) The contract carrier driver qualification file may be
20 combined with the personnel file of the employee.

21 (3) The contract carrier driver qualification file shall
22 include:

23 (a) A certificate of physical examination conducted by a
24 physician that certifies the physical ability of the contract carrier
25 driver to operate a motor vehicle. Such physical examination shall be

1 conducted at least every two years;

2 (b) Documentation that establishes that the contract
3 carrier driver's driving record has been reviewed at least once every
4 year;

5 (c) Documentation related to the contract carrier
6 driver's violation of applicable motor vehicle laws or ordinances;

7 (d) Other documentation related to the contract carrier
8 driver's qualification or ability to drive a motor vehicle;

9 (e) The contract carrier driver's application for
10 employment as provided by 49 C.F.R. 391.21, as such regulation
11 existed on January 1, 2013;

12 (f) Responses from previous employers, if required by the
13 current employer; and

14 (g) A copy of the contract carrier driver's current
15 operator's license showing the contract carrier driver's
16 qualification or the equivalent thereof.

17 Sec. 5. A contract carrier driver shall be disqualified
18 from driving for a contract carrier if the contract carrier driver
19 has committed two or more serious traffic violations within a three-
20 year period. For purposes of this section, the term serious traffic
21 violations means any violation where the contract carrier driver's
22 operator's license or privilege to operate a motor vehicle has been
23 suspended or revoked in this state or any other state or any
24 violation in this state or any other state in which a contract
25 carrier driver has been found guilty of:

- 1 (1) Any alcohol or controlled substances-related traffic
2 offense;
- 3 (2) Any seat belt violation;
- 4 (3) Any commercial motor vehicle violation;
- 5 (4) Driving fifteen or more miles per hour over the speed
6 limit;
- 7 (5) Negligent homicide;
- 8 (6) Using a motor vehicle to commit a felony;
- 9 (7) Failure to maintain proof of financial responsibility
10 as required by law;
- 11 (8) Leaving the scene of an accident;
- 12 (9) Evading arrest;
- 13 (10) Fleeing by use of a motor vehicle;
- 14 (11) Careless and imprudent driving;
- 15 (12) Prohibited passing of another vehicle;
- 16 (13) Prohibited passing of a stopped school bus;
- 17 (14) Failure to obey a traffic signal or device;
- 18 (15) Failure to obey a railroad crossing barrier;
- 19 (16) Driving with a suspended, revoked, or cancelled
20 license; or
- 21 (17) Driving the wrong way down a one-way street.
- 22 Sec. 6. (1) Before a driver performs any duties for a
23 contract carrier, the driver shall undergo testing for alcohol and
24 controlled substances as provided by 49 C.F.R. parts 40 and 382, as
25 such regulations existed on January 1, 2013.

1 (2) A driver shall be qualified to drive for a contract
2 carrier if:

3 (a) The alcohol test result indicates an alcohol
4 concentration of zero; and

5 (b) The controlled substances test result from a medical
6 review officer as defined in 49 C.F.R. 40.3, as such regulations
7 existed on January 1, 2013, indicates a verified negative test
8 result.

9 (3) A contract carrier driver shall be disqualified from
10 driving for a contract carrier if:

11 (a) The alcohol test result and the controlled substances
12 test result are not in compliance with 49 C.F.R. parts 40 and 382;

13 (b) The contract carrier driver refuses to provide a
14 specimen for an alcohol test or the controlled substances test or
15 both; or

16 (c) The contract carrier driver submits an adulterated
17 specimen, a dilute positive specimen, or a substituted specimen for
18 an alcohol test or a controlled substances test that is performed.

19 (4)(a) As soon as practicable after an accident involving
20 a motor vehicle owned or operated by a contract carrier, the contract
21 carrier shall test each surviving contract carrier driver for alcohol
22 and controlled substances if:

23 (i) The accident involved the loss of human life; or

24 (ii) The contract carrier driver received a citation for
25 a moving traffic violation arising from the accident and the accident

1 involved:

2 (A) Bodily injury to a person who immediately received
3 medical treatment after the accident; or

4 (B) Disabling damage occurs to one or more motor vehicles
5 involved in a motor vehicle accident.

6 (b) Alcohol testing and controlled substances testing
7 shall be completed immediately following the accident. If alcohol
8 testing cannot be conducted immediately following the accident, it
9 shall be conducted within eight hours of the accident. If controlled
10 substances testing cannot be conducted immediately following the
11 accident, it shall be administered within thirty-two hours of the
12 accident. The results of such testing shall be submitted to the
13 Public Service Commission.

14 (c) The contract carrier of a contract carrier driver
15 shall maintain records of the alcohol testing and controlled
16 substances testing of each contract carrier driver for five years.
17 The records shall be maintained in a secure location.

18 Sec. 7. (1) A contract carrier shall inspect or cause to
19 be inspected a motor vehicle that it operates for passenger
20 transportation.

21 (2) If a contract carrier uses a motor vehicle for
22 passenger transportation, the contract carrier shall perform an
23 inspection on the motor vehicle and its components at least one time
24 in every twelve-month period in compliance with regulations adopted
25 and promulgated by the United States Department of Transportation as

1 provided in 49 C.F.R. 396.17, Appendix G, as such regulation existed
2 on January 1, 2013. The inspection under this section shall be
3 performed by an individual who is qualified to perform the inspection
4 as prescribed in 49 C.F.R. 396.19, as such regulation existed on
5 January 1, 2013.

6 (3) A contract carrier shall require each of its contract
7 carrier drivers to complete a written motor vehicle report upon
8 completion of each day's work on the motor vehicle that the contract
9 carrier driver operated as prescribed under 49 C.F.R. 396.11, as such
10 regulation existed on January 1, 2013.

11 Sec. 8. (1) A contract carrier shall establish a
12 maintenance and repair program to include at least weekly inspections
13 under this section.

14 (2) The contract carrier's maintenance and repair program
15 shall include checking parts and accessories for safety and proper
16 operation at all times, including, but not limited to, the items
17 listed under subsection (3) of this section and overall cleanliness
18 of the motor vehicle.

19 (3) A motor vehicle used by a contract carrier shall
20 have:

21 (a) Tires with sufficient tread as prescribed under 49
22 C.F.R. 393.75, as such regulation existed on January 1, 2013;

23 (b) A spare tire that is fully inflated;

24 (c) A secured location for personal baggage, including
25 proper restraints;

- 1 (d) Fully-operational seatbelts for all passenger seats;
- 2 (e) If the weather requires it, traction devices, studs,
3 or chains;
- 4 (f) A heater and air conditioner that is properly working
5 with properly working fans;
- 6 (g) An emergency road kit that contains at least a tire
7 inflated aerosol can, flares or reflective triangles, jumper cables,
8 and a fire extinguisher; and
- 9 (h) A readily available first aid kit complying with the
10 standards set forth in 29 C.F.R. 1910.151, as such regulation existed
11 on January 1, 2013. The first aid kit shall contain, at a minimum,
12 those articles described in the most recent American National
13 Standard (ANSI) Z308.1 as recommended by Appendix A to 29 C.F.R.
14 1910.151.
- 15 (4) All motor vehicles in a contract carrier's fleet
16 shall be equipped with an operable amber light or strobe light which
17 shall be mounted to the roof of the motor vehicle in the rear one-
18 third portion of the motor vehicle in order to provide warning to
19 other motorists whenever the motor vehicle has slowed or stopped on
20 or near the road or highway.
- 21 (5) A motor vehicle shall not be operated in a condition
22 that is likely to cause an accident or mechanical breakdown.
- 23 (6) A contract carrier shall maintain records for its
24 maintenance and repair program for each motor vehicle. The records
25 shall include:

1 (a) Identifying information for the motor vehicle to
2 include the motor vehicle identification number, make, year
3 manufactured, and company identification number, if one is provided;

4 (b) Owner information if the contract carrier is not the
5 owner of the motor vehicle; and

6 (c) The history of inspections, repairs, and maintenance
7 that describe the activity and the date the activity was performed.

8 (7) The records required to be maintained under this
9 section shall be maintained by the contract carrier at its principal
10 place of business for one year. If the motor vehicle leaves the
11 contract carrier's control, the records shall be maintained by the
12 contract carrier at its principal place of business for six months.

13 (8) A contract carrier and its officers, drivers, agents,
14 and employees who are concerned with the inspection or maintenance of
15 motor vehicles shall comply with and be knowledgeable of the contract
16 carriers' maintenance and repair program under this section.

17 Sec. 9. A contract carrier shall allow an employee of the
18 Public Service Commission or its designee access to:

19 (1) A facility to determine compliance with the Contract
20 Carrier Safety Act; and

21 (2) Records or information related to an accident
22 investigation.

23 Sec. 10. (1) A contract carrier shall obtain and maintain
24 an insurance policy of one million dollars per person for bodily
25 injury or death up to a maximum of five million dollars for each

1 motor vehicle that transports railroad employees.

2 (2) The contract carrier shall obtain and maintain
3 uninsured and underinsured insurance coverage for each passenger in
4 each motor vehicle in a minimum amount of one million dollars.

5 Sec. 11. (1) Any person, corporation, or entity that
6 violates the Contract Carrier Safety Act or any rule or regulation
7 adopted and promulgated under the act shall be subject to a civil
8 penalty in an amount of not more than two thousand dollars for each
9 offense or violation.

10 (2) Each violation of the act shall constitute a separate
11 and distinct offense and in the case of a continuing violation, each
12 day of a continuance of a violation shall be deemed to be a separate
13 and distinct offense.

14 Sec. 12. (1) The Contract Carrier Safety Act is not
15 intended to limit, and shall not be construed as limiting, the right
16 of a railroad to contract with a contract carrier or entity that
17 certifies to the railroad that it is in compliance with the Contract
18 Carrier Safety Act or any applicable federal requirements.

19 (2) The act shall be considered the minimum standards for
20 contract carrier regulation and safety and shall not be construed to
21 supersede or abrogate any law, rule, or regulation that imposes
22 stricter standards or rules or regulations upon the operation of
23 contract carriers that transport railroad employees.