

LEGISLATIVE BILL 938

Approved by the Governor March 25, 1996

Introduced by Kristensen, 37

AN ACT relating to motor carriers; to amend sections 60-4,138 and 60-4,149.01, Reissue Revised Statutes of Nebraska, section 60-4,146, Revised Statutes Supplement, 1994, and sections 75-363 and 75-364, Revised Statutes Supplement, 1995; to change provisions relating to commercial drivers' licenses; to adopt certain portions of the federal Motor Carrier Safety Regulations and updated federal Hazardous Material Regulations as Nebraska law; to change the applicability of the federal Motor Carrier Safety 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 60-4,138, Reissue Revised Statutes of Nebraska, is amended to read:

60-4,138. (1) Commercial drivers' licenses and restricted commercial drivers' licenses shall be issued by the Department of Motor Vehicles, shall be classified as provided in subsection (2) of this section, and shall bear such endorsements and restrictions as are provided in subsections (3) and (4) of this section.

(2) Commercial motor vehicle classifications for purposes of commercial drivers' licenses shall be as follows:

(a) Class A Combination Vehicle -- Any combination of commercial motor vehicles and towed vehicles with a gross vehicle weight rating of more than twenty-six thousand pounds if the gross vehicle weight rating of the vehicles being towed are in excess of ten thousand pounds;

(b) Class B Heavy Straight Vehicle -- Any single commercial motor vehicle with a gross vehicle weight rating of twenty-six thousand one pounds or more or any such commercial motor vehicle towing a vehicle with a gross vehicle weight rating not exceeding ten thousand pounds; and

(c) Class C Small Vehicle -- Any single commercial motor vehicle with a gross vehicle weight rating of less than twenty-six thousand one pounds or any such commercial motor vehicle towing a vehicle with a gross vehicle weight rating not exceeding ten thousand pounds comprising:

(i) Motor vehicles designed to transport sixteen or more passengers, including the driver; and

(ii) Motor vehicles used in the transportation of hazardous materials and required to be placarded pursuant to section 75-364.

(3) The endorsements to a commercial driver's license shall be as follows:

(a) T -- Double/triple trailers;

(b) P -- Passengers;

(c) N -- Tank vehicles;

(d) H -- Hazardous materials; and

(e) X -- Combination tank vehicle and hazardous materials.

(4) The restrictions to a commercial driver's license shall be as follows:

(a) I -- Operation of a commercial motor vehicle only in intrastate commerce due to an exemption from 49 C.F.R. part 391 pursuant to subsection (2) of section 75-363;

(b) K -- Operation of a commercial motor vehicle only in intrastate commerce;

~~(b)~~ (c) L -- Operation of only a commercial motor vehicle which is not equipped with air brakes;

~~(c)~~ (d) M -- Operation of a commercial motor vehicle which is not a Class A bus;

~~(d)~~ (e) N -- Operation of a commercial motor vehicle which is not a Class A or Class B bus; and

~~(e)~~ (f) O -- Operation of a commercial motor vehicle which is not a tractor-trailer combination.

Sec. 2. Section 60-4,146, Revised Statutes Supplement, 1994, is amended to read:

60-4,146. (1) Upon making application pursuant to section 60-4,144, any applicant who operates or expects to operate a commercial motor vehicle solely in intrastate commerce or and who is not subject to 49 C.F.R. part 391 of the federal Motor Carrier Safety Regulations adopted pursuant to section 75-363 shall certify that he or she is not subject to 49 C.F.R. part 391.

Any applicant for a Class A commercial driver's license making certification pursuant to this section shall satisfy the examiner that he or she is eighteen years of age or older. Any applicant for a Class B or C commercial driver's license making certification pursuant to this section shall satisfy the examiner that he or she is sixteen years of age or older. Any applicant making certification pursuant to this section shall meet the physical and vision requirements established in section 60-4,118 and shall be subject to the provisions of such section relating to the Health Advisory Board.

(2) An applicant who certifies that he or she is exempt from the physical qualifications and examination requirements of 49 C.F.R. part 391 pursuant to subsection (2) of section 75-363 shall meet the physical and vision requirements established in section 60-4,118 and shall be subject to the provisions of such section relating to the Health Advisory Board. A successful applicant shall be issued a commercial driver's license which restricts the holder to operating a commercial motor vehicle solely in intrastate commerce and which also indicates that the holder is exempt from the physical qualifications and examination requirements prescribed by 49 C.F.R. part 391. Two years after the initial issuance of such license and upon renewal, and every two years following renewal, the holder of the commercial driver's license shall present to the Department of Motor Vehicles upon request, on a form to be prescribed by the department, a statement from a physician detailing that based upon his or her examination of the applicant the medical or physical condition in existence prior to July 30, 1996, which would otherwise render the individual not qualified under federal standards, has not significantly worsened or that another nonqualifying medical or physical condition has not developed.

Sec. 3. Section 60-4,149.01, Reissue Revised Statutes of Nebraska, is amended to read:

60-4,149.01. A commercial driver's license examiner may waive the written knowledge examination, except the hazardous material portion of the test, if the applicant:

(1) Has a valid commercial driver's license from another state which was issued within the two years immediately preceding the date of application for a commercial driver's license from this state; and

(2) Provides suitable evidence that within at least two years immediately preceding the date of application he or she has taken a written test which was given by a state with a classified licensing and testing system, which was the same as the test that would otherwise be given by this state, and which was for the class of commercial motor vehicle the applicant is applying to operate.

Any commercial driver's license applicant who renews his or her license prior to its expiration is not required to take the written portion of the examination, except for the hazardous material portion of the examination, if his or her driving record abstract maintained in the department's computerized records shows that he or she has not had a traffic violation as described in section 60-4,182 from the date his or her commercial driver's license was issued to the date his or her application for renewal was made.

Sec. 4. Section 75-363, Revised Statutes Supplement, 1995, 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, 1995 1996, 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;

(a) (b) Part 385 -- Safety Fitness Procedures;

(b) (c) Part 390 -- Federal Motor Carrier Safety Regulations:

General;

(c) (d) Part 391, except subpart H, sections 391-81 through 391-123;

Controlled Substance Testing -- Qualifications Of Drivers;

(d) (e) Part 392 -- Driving Of Motor Vehicles;

(e) (f) Part 393 -- Parts And Accessories Necessary For Safe

Operations;

(f) Part 394 -- Notification, Reporting And Recording Of Accidents;

(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. Subpart H, sections 391.81 through 391.123, Controlled Substance Testing of part 391 of the federal Motor Carrier Safety Regulations, 49 C.F.R., or any other parts referred to by such subpart as in existence and effective as of January 17, 1995, is adopted as Nebraska law. Subpart H of part 391 shall apply to all carriers and drivers to which the federal regulations apply and to all motor carriers and drivers of motor carriers who operate a commercial motor vehicle as defined in section 60-465 in intrastate commerce.

(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)(a)(i) Part 395 -- Hours Of Service Of Drivers, of the federal Motor Carrier Safety Regulations, 49 C.F.R., adopted in subsection (1) of this section, shall not apply to the driver of any motor vehicle requiring a Class B or C commercial driver's license engaged in the private transportation of persons or property in intrastate commerce.

(ii) Subdivisions (a)(i) and (a)(ii) of this subsection shall terminate on October 1, 1995.

(b)(i) (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) (a) More than twelve hours following eight consecutive hours off duty; or

(B) (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) (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) (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.

(ii) Subdivisions (b)(i) and (b)(ii) of this subsection become operative on October 1, 1995.

(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. 5. Section 75-364, Revised Statutes Supplement, 1995, 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, ~~1995~~ 1996, 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~~ And Maintenance ~~of~~ 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. 6. Original sections 60-4,138 and 60-4,149.01, Reissue Revised Statutes of Nebraska, section 60-4,146, Revised Statutes Supplement, 1994, and sections 75-363 and 75-364, Revised Statutes Supplement, 1995, are repealed.

Sec. 7. Since an emergency exists, this act takes effect when passed and approved according to law.