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## Requirements for Grain Dealers:

*Nebraska*



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**A National Agricultural Law Center Research Publication**  
**Requirements for Grain Dealers: Nebraska**

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- 1) Licensing: [Neb. Rev. Stat. §§ 75-903 to 904](#)
- 2) Bonding: [Neb. Rev. Stat. §§ 75-903\(4\); 905 to 906](#)
- 3) Auditing: [Neb. Rev. Stat. § 75-907.01](#)
- 4) Indemnity Fund:
- 5) Failure/Liquidation:
- 6) Prompt Payment: [Neb. Rev. Stat. § 75-905](#)
- 7) Penalties: [Neb. Rev. Stat. §§ 75-908 to 910](#)
- 8) Lien:

**[Neb. Rev. Stat. Ch. 75, Art. 9](#)**

*Current through legislation effective March 26, 2020, of the 2nd Regular Session of the 106th Legislature (2020).*

**75-101. Public Service Commission; members; qualifications; terms, defined**

(1) The members of the Public Service Commission shall be resident citizens of this state, registered voters, and, if members of or practitioners in any profession, in good standing according to the established standards of such profession. The members of the Public Service Commission shall be elected as provided in section 32-509. A candidate for the office of public service commissioner shall be a resident of the district from which he or she seeks election. Each public service commissioner shall be a resident of the district from which he or she is elected. Removal from the district shall cause a vacancy in the office of public service commissioner for the unexpired term.

(2) No person shall be eligible to the office of public service commissioner who is directly or indirectly interested in any common carrier or jurisdictional utility in the state or out of it or who is in any way or manner pecuniarily interested in any common carrier subject to Chapter 75 or 86. If any commissioner becomes so interested after election or appointment, his or her office shall become vacant, except that if any commissioner becomes so interested otherwise than voluntarily, he or she shall, within a reasonable time, divest himself or herself of such interest, and failing to do so, his or her office shall become vacant.

(3) A commissioner shall not hold any other office under the government of the United States, of this state, or of any other state and shall not, while such commissioner, engage in any other occupation.

For purposes of Chapter 75:

(a) Commission, when referring to a state agency, means the Public Service Commission; and

(b) Commissioner means a member of the commission.

**75-101.01. Public Service Commission; districts; numbers; boundaries; established by maps; Clerk of Legislature; Secretary of State; duties**

(1) Based on the 2010 Census of Population by the United States Department of Commerce, Bureau of the Census, the State of Nebraska is hereby divided into five public service commissioner districts, and each public service commissioner district shall be entitled to one member.

(2) The numbers and boundaries of the districts are designated and established by maps identified and labeled as maps PSC11-1, PSC11-2, PSC11-3, PSC11-4, and PSC11-5, filed with the Clerk of the Legislature, and incorporated by reference as part of Laws 2011, LB 700.

(3)(a) The Clerk of the Legislature shall transfer possession of the maps referred to in subsection (2) of this section to the Secretary of State on May 27, 2011.

(b) When questions of interpretation of district boundaries arise, the maps referred to in subsection (2) of this section in possession of the Secretary of State shall serve as the indication of the legislative intent in drawing the district boundaries.

(c) Each election commissioner or county clerk shall obtain copies of the maps referred to in subsection (2) of this section for the election commissioner's or clerk's county from the Secretary of State.

(d) The Secretary of State shall also have available for viewing on his or her web site the maps referred to in subsection (2) of this section identifying the boundaries for the districts.

**75-101.02. Public Service Commission; districts; population figures and maps; basis**

For purposes of section 75-101.01, the Legislature adopts the official population figures and maps from the 2010 Census Redistricting (Public Law 94-171) TIGER/Line Shapefiles published by the United States Department of Commerce, Bureau of the Census.

**75-102. Commissioners; official oath**

Before entering upon the duties of office, each of the commissioners shall take and subscribe to the oath of office prescribed in the Constitution of Nebraska and shall, in addition thereto, swear that he or she is not directly or indirectly interested in any common carrier or jurisdictional utility, subject to the provisions of Chapter 75, nor in the bonds, stock, mortgages, securities, contracts, or earnings of any such common carrier or jurisdictional utility, and that he or she will, to the best of his or her ability, faithfully and justly execute and enforce the duties devolving upon him or her as such commissioner, which oath shall be filed with the Secretary of State.

**75-103. Vacancies; appointment**

The Governor shall fill all vacancies in the office of commissioner by appointment, and a person so appointed shall fill such office for the unexpired term.

**75-104. Commissioners; salary; commissioners and employees; expenses; when allowed**

(1) Until January 4, 2007, the annual salary of each commissioner shall be fifty thousand dollars. Commencing January 4, 2007, the annual salary of each commissioner shall be seventy-five thousand dollars.

(2) Each commissioner shall be entitled to receive from the state his or her mileage expenses incurred while traveling in the line of duty to and from his or her residence to the office of the Public Service Commission in Lincoln pursuant to the following conditions:

(a) The Public Service Commission has adopted and promulgated rules and regulations establishing guidelines for allowable reimbursement of such mileage expenses, except that such mileage rate shall not exceed the mileage rate established by the Department of Administrative Services pursuant to section 81-1176;

(b) The request for such reimbursement falls within such guidelines; and

(c) The total amounts authorized for such reimbursement of mileage expenses in any fiscal year does not cause the total expenses to exceed the total funds appropriated to the program established for commissioners' expenses. In addition thereto, the commissioners, executive director, clerks, and other employees of the commission shall be entitled to receive from the

state their actual necessary traveling expenses, including the cost of transportation while traveling on the business of the commission, to be paid in the same manner as other requests for payment or reimbursement from the state. In computing the cost of transportation for the commissioners, executive director, clerks, and other employees, no mileage or other traveling expense shall be requested or allowed unless sections 81-1174 to 81-1177 are strictly complied with.

**75-104.01. Commissioner; salary increase; when effective**

Section 75-104 shall be so interpreted as to effectuate its general purpose, to provide, in the public interest, adequate compensation as therein provided for public service commissioners, and to permit a change in such salaries as soon as the same may become operative under the Constitution of the State of Nebraska.

**75-105. Seal; office; employees**

The commissioners shall be known collectively as the Public Service Commission and shall have a seal, which may be either an engraved or ink stamp seal, similar to the seal of this state, with the words Public Service Commission of Nebraska included thereon. They shall be furnished with offices and with necessary furniture, stationery, and supplies. Immediately after a newly elected member of the commission has taken the oath of office prescribed in section 75-102, the commission shall meet at Lincoln and organize. The commission shall also appoint employees as may be necessary to perform the duties which may be required of the commission.

**75-106. Executive director; qualifications; salary; duties; fees for transcripts**

Any person who is eligible to hold the office of commissioner shall also be eligible to hold the office of executive director. The salary of the executive director shall be fixed by the commission, payable monthly. The executive director shall take the same oath as the commissioners. The executive director shall keep full and correct minutes of all transactions and proceedings of the commission, and it shall be his or her duty to, upon request and being paid the lawful fees therefor, furnish a transcript, duly authenticated by the commission, of any public record of the commission and to perform such duties as may be required by the commission. The executive director shall charge such fees for furnishing a transcript as are allowed by law on appeal from the district court to the Court of Appeals and shall turn such fees into the fund provided for the expenses of the commission.

**75-108. Attorney General; act as legal advisor**

The commission may consult the Attorney General with reference to any matter upon which it may require advice, and the Attorney General shall give such advice as the commission may require and perform such other services within the line of duty as the commission may require.

**75-109. Commission; regulatory powers; scope**

Except as provided in the Agricultural Suppliers Lease Protection Act and sections 86-124 and 86-143, the commission shall regulate and exercise general control as provided by law over all common and contract carriers engaged in the transportation of freight or passengers for hire or furnishing telecommunications services for hire in Nebraska intrastate commerce.

**75-109.01. Jurisdiction**

Except as otherwise specifically provided by law, the Public Service Commission shall have jurisdiction, as prescribed, over the following subjects:

- (1) Common carriers, generally, pursuant to sections 75-101 to 75-158;
- (2) Grain pursuant to the Grain Dealer Act and the Grain Warehouse Act and sections 89-1,104 to 89-1,108;
- (3) Manufactured homes and recreational vehicles pursuant to the Uniform Standard Code for Manufactured Homes and Recreational Vehicles;
- (4) Modular housing units pursuant to the Nebraska Uniform Standards for Modular Housing Units Act;
- (5) Motor carrier registration and safety pursuant to sections 75-301 to 75-343, 75-369.03, 75-370, and 75-371;
- (6) Pipeline carriers and rights-of-way pursuant to the Major Oil Pipeline Siting Act, the State Natural Gas Regulation Act, and sections 75-501 to 75-503. If the provisions of Chapter 75 are inconsistent with the provisions of the Major Oil Pipeline Siting Act, the provisions of the Major Oil Pipeline Siting Act control;
- (7) Railroad carrier safety pursuant to sections 74-918, 74-919, 74-1323, and 75-401 to 75-430;
- (8) Telecommunications carriers pursuant to the Automatic Dialing-Announcing Devices Act, the Emergency Telephone Communications Systems Act, the Enhanced Wireless 911 Services Act, the Intrastate Pay-Per-Call Regulation Act, the Nebraska Telecommunications Regulation Act, the Nebraska Telecommunications Universal Service Fund Act, the Telecommunications Relay

System Act, the Telephone Consumer Slamming Prevention Act, and sections 86-574 to 86-580;

(9) Transmission lines and rights-of-way pursuant to sections 70-301 and 75-702 to 75-724;

(10) Water service pursuant to the Water Service Regulation Act; and

(11) Jurisdictional utilities governed by the State Natural Gas Regulation Act. If the provisions of Chapter 75 are inconsistent with the provisions of the State Natural Gas Regulation Act, the provisions of the State Natural Gas Regulation Act control.

#### **75-110. Rules and regulations**

(1) The Public Service Commission shall adopt and promulgate rules and regulations for the government of its proceedings, including rules of procedure for notice and hearing. The commission shall adopt and promulgate rules and regulations which the commission deems necessary to regulate persons within the commission's jurisdiction. The commission shall not take any action affecting persons subject to the commission's jurisdiction unless such action is taken pursuant to a rule, regulation, or statute.

(2) For purposes of granting or denying a petition for intervention, the commission shall be exempt from section 84-912.02.

#### **75-110.01. Application or petition for authority or relief; procedures**

A summary of the authority or relief sought in an application or petition shall be set out in the notice given according to the rules the commission shall adopt. After notice of an application or petition has been given as provided by the rules for notice, the commission may process the application or petition without a hearing by use of affidavits if the application or petition is not opposed. The commission shall not deny an application or petition of a common carrier, pipeline carrier, or jurisdictional utility until after it has either given the applicant a hearing thereon, or received the applicant's affidavits and made them a part of the record.

#### **75-111. Commission; investigatory powers**

The commission shall investigate any and all cases of alleged neglect or violation of the laws of this state within the jurisdiction of the commission as enumerated in section 75-109.01 and take such action with reference to the neglect or violation as may be provided by law.

**75-112. Commissioners and examiners; powers; certification of official acts**

(1) For purposes of carrying out the powers and duties of the commission related to the subjects under its jurisdiction enumerated in section 75-109.01, each commissioner and examiner of the commission may:

(a) Administer oaths;

(b) Compel the attendance of witnesses;

(c) Examine any of the books, papers, documents, and records of any motor carrier or regulated motor carrier as defined in section 75-302 or common, contract, or pipeline carrier subject to the jurisdiction of the commission under section 75-109.01 or any jurisdictional utility or have such examination made by any person that the commission may employ for that purpose;

(d) Compel the production of such books, papers, documents, and records; or

(e) Examine under oath or otherwise any officer, director, agent, or employee of any such carrier or jurisdictional utility or any other person.

(2) Any person employed by the commission to examine such books, papers, documents, or records shall produce his or her authority, under the hand and seal of the commission, to make such examination.

(3) The commissioners may certify to all official acts of the commission.

**75-113. Records; prescribe; inspection**

The commission may prescribe the forms of any and all accounts and records to be kept by a regulated motor carrier as defined in section 75-302 or common carriers subject to its jurisdiction, including the accounts, records, and memoranda of the movement of traffic as well as the receipts and expenditures of money. The commission shall not prohibit any such carrier from capitalizing on its balance sheet the value of any certificate or permit held by such carrier. The commission shall at all times have access to all accounts, records, and memoranda kept by such carriers, and it shall be unlawful for such carriers to keep any other accounts, records, or memoranda than those prescribed or approved by the commission, except as provided in this section.



**75-114. Records; refusal to permit examination; penalty**

Any motor carrier or regulated motor carrier as defined in section 75-302, any common carrier, or any other person who has in his or her possession any book, paper, document, or record belonging to any carrier subject to the jurisdiction of the commission and who, upon proper demand, fails or refuses to exhibit to any commissioner or any person authorized by the commission to investigate the same any book, paper, document, or record of such carrier, which is in the possession or under the control of such carrier or any officer, agent, or employee thereof, shall be guilty of a Class III misdemeanor. Any officer, agent, or employee of any carrier or any other person who, upon proper demand, fails or refuses to exhibit to any commissioner or any person authorized by the commission to investigate the same any book, paper, document, or record of such carrier, which is in the possession or under the control of such person, shall be guilty of a Class III misdemeanor for each offense.

**75-115. Examinations and inspections; authorized; duty and power to repair; notice; injunctions; carrier enforcement division; powers**

(1) The commission shall have the power to examine and inspect, from time to time, the condition of each motor carrier or regulated motor carrier as defined in section 75-302 or each common carrier, the carrier's equipment, and the manner of the carrier's conduct and management, with regard to the public safety and convenience in the state.

(2) If any equipment is found in an unsafe and dangerous condition, the commission shall immediately notify such carrier whose duty it is to put the same in repair, which shall be done by it within a reasonable time after receiving such notice. If any such carrier fails to perform this duty, the commission may enjoin and prevent it from operating the same while in such unsafe and dangerous condition or may after notice and hearing order such carrier to make reasonable improvements of its service, facilities, and equipment as are necessary.

(3) It is the policy of the Legislature that the on-road enforcement of the provisions of law related to regulated motor carriers and motor carriers administered by the commission shall be carried out by the carrier enforcement division of the Nebraska State Patrol.

**75-116. Annual report; filing requirements; fee**

Each regulated motor carrier as defined in section 75-302 or common carrier required to furnish an annual report with a federal regulatory agency shall file a copy of the report with the commission on or before the date on which such report is filed with such agency. Each such carrier not required to file an annual report with a federal regulatory agency may be required to file an annual report with the commission in the form prescribed by the commission on or before April 30 of each year. Each carrier which files an annual report or a copy of an annual report under this section shall submit a fee of twenty-five dollars with the filing. The commission shall remit the fees received to the State Treasurer for credit to the General Fund.

**75-117. Order of commission; failure to comply; penalty**

Any motor carrier or regulated motor carrier as defined in section 75-302 or common carrier which fails, neglects, or refuses to comply with any order of the commission shall be guilty of a Class IV misdemeanor. Each day during which such failure, neglect, or refusal continues shall constitute a separate offense. If a motion is filed for reconsideration or to set aside the order, the carrier shall not be subject to such penalty during the pendency of such motion.

**75-118. Commission; duties**

The commission shall:

(1) Fix all necessary rates, charges, and regulations governing and regulating the transportation, storage, or handling of household goods and passengers by any common carrier in Nebraska intrastate commerce;

(2) Make all necessary classifications of household goods that may be transported, stored, or handled by any common carrier in Nebraska intrastate commerce, such classifications applying to and being the same for all common carriers;

(3) Prevent and correct the unjust discriminations set forth in section 75-126;

(4) Enforce all statutes and commission regulations pertaining to rates and, if necessary, institute actions in the appropriate court of any county in which the common carrier involved operates except actions instituted pursuant to sections 75-140 and 75-156 to 75-158. All suits shall be brought and penalties recovered in the name of the state by or under the direction of the Attorney General; and

(5) Enforce the Major Oil Pipeline Siting Act and the State Natural Gas Regulation Act.

**75-118.01. Certificate, permit, tariff, rule, or regulation; interpretation; jurisdiction**

Except as otherwise provided in the Administrative Procedure Act, the commission shall have original exclusive jurisdiction to determine the validity of a rule or regulation and the scope or meaning of a certificate, permit, tariff, rule, or regulation. Upon petition or complaint by any common carrier or other interested person to determine the validity, scope, or meaning of a certificate, permit, tariff, rule, or regulation, the commission shall cause notice thereof to be given according to its rules and shall proceed to hear evidence and argument on the petition or complaint. After notice and hearing, the commission shall by order render its decision.

**75-119. Rate, rule, or regulation; petition to prescribe or fix; procedure**

When any common carrier or other interested person petitions the commission alleging that a rate, rule, or regulation should be prescribed when none exists or alleging that an existing rule, regulation, or rate is unreasonably high or low, unjust, or discriminatory, notice shall be given to the common carriers affected in accordance with the commission's rules for notice and hearing. The minimum notice to be given under this section shall be ten days. The order granting or denying the petition or application shall be mailed to the parties of record. If a petition or application is not opposed after notice has been given, the commission may act upon such petition or application without a hearing.

**75-121. Emergency rate orders; when authorized**

To prevent interstate rate wars and injury to any common carrier or other person or in case of any other emergency to be judged by the commission, the commission shall temporarily alter, amend, or suspend any existing rates in force in respect to any common carrier or fix any such rates if none exist. The order prescribing an emergency rate shall describe the emergency and may be entered and made effective immediately. Within five days after the effective date of such order, notice of the rate shall be given to the common carriers affected in accordance with the commission's rules for notice. If an affected common carrier or other interested person files a protest to the granting of such rate within fifteen days after notice has been given, the commission shall notify the rate applicant and the protestant, hold a hearing, and issue an order within thirty days after the expiration of the time to file a protest. Emergency rate orders shall be subject to the provisions of section 75-139 and subject to review as provided in section 75-136.

**75-123. Rates; hearing; criteria**

The following criteria shall be among those considered by the commission in fixing, modifying, or annulling any rate:

- (1) The lowest rates published or charged by any common carrier for substantially the same kind of service, whether in this state or another state, shall, when introduced into evidence, be accepted as prima facie evidence of a reasonable rate for the services inquired into; and
- (2) If any common carrier involved in the proceedings operates outside of this state, the rate charged for substantially the same or greater service by it in the other state shall be considered in determining what is a reasonable rate.

**75-124. Rates; publication**

The commission may compile and reproduce tariffs containing the schedules of rates and charges for transportation of persons and property and may make a charge for copies of such tariffs to cover the cost of reproducing, supplementing, and mailing the same. Every common carrier shall reproduce, keep for public inspection, and file with the commission in the manner

prescribed by the commission, schedules showing the rates, fares, and charges for the transportation of passengers and household goods which have been fixed and established as provided in Chapter 75, articles 1 and 3, and which are in force at the time with respect to such common carrier.

**75-125. Rate schedule; failure to publish; mandamus**

Any common carrier which fails, refuses, or neglects to file or publish any schedule of rates, fares, and charges, or any part of the same, shall, in addition to other penalties prescribed in sections 75-101 to 75-155, be subject to a writ of mandamus to be issued by any district court of this state in the judicial district in which its principal office is situated or in which the offense may be committed. If the common carrier is a foreign corporation, then the writ may be issued by any district court in the judicial district where it accepts traffic and has an agent to perform such service to compel compliance with the provisions of section 75-124. The writ shall issue in the name of the state on the relation or upon the petition of the commission, and the failure to comply with the requirements shall be punishable as for contempt and shall make such common carrier liable to a penalty of one thousand dollars for each day's failure to comply with the writ. Whenever any such writ of mandamus is applied for, no bond shall be required.

**75-126. Unjust discrimination and practices prohibited; exceptions**

(1) Except as otherwise provided in this section, no common carrier shall:

(a) Charge, demand, collect, or receive from any person a greater or lesser compensation for any services rendered than it charges, demands, collects, or receives from any other person for doing a like or contemporaneous service unless required under section 86-465;

(b) Make or give any undue or unreasonable preference or advantage to any particular person;

(c) Subject any type of traffic to any undue or unreasonable prejudice, delay, or disadvantage in any respect whatsoever;

(d) Charge or receive any greater compensation in the aggregate for the transportation of a like kind of property or passengers for a shorter than for a longer distance over the same line or route, except as the commission may prescribe in special cases to prevent manifest injuries, except that no manifest injustice shall be imposed upon any person at intermediate points. This section shall not prevent the commission from making group or emergency rates;

(e) Demand, charge, or collect, by any device whatsoever, a lesser or greater compensation for any service rendered than that filed with or prescribed by the commission; or

(f) Change any rate, schedule, or classification in any manner whatsoever before application has been made to the commission and permission granted for that purpose, except as otherwise provided in section 86-155.

(2) This section shall not prohibit any common carrier from, and a common carrier shall not be subject to any fine, penalty, or forfeiture for, performing services free or at reduced rates to:

(a) The United States, the State of Nebraska, or any governmental subdivision thereof;

(b) The employees, both present and retired, of such common carrier;

(c) Any person when the object is to provide relief in case of any disaster;

(d) Any person who transports property for charitable purposes;

(e) Ministers and others giving their entire time to religious or charitable work; or

(f) Any person who is legally blind or visually handicapped.

**75-127. Unjust discrimination and practices; violations; penalties**

Any common carrier, shipper, or consignee who willfully violates any provision of section 75-126 shall be guilty of a Class I misdemeanor. Any officer, agent, or employee who, for or on behalf of any common carrier, shipper, or consignee, willfully violates any provision of section 75-126 shall be guilty of a Class II misdemeanor. Each day of violation shall constitute a separate offense.

**75-128. Hearings; when held; filing fee**

(1) It is hereby declared to be the policy of the Legislature that all matters presented to the commission be heard and determined without delay. All matters requiring a hearing shall be set for hearing at the earliest practicable date and in no event, except for good cause shown, which showing shall be recited in the order, shall the time fixed for hearing be more than six months after the date of filing of the application, complaint, or petition on which such hearing is to be had. Except in case of an emergency and upon a motion to proceed with less than a quorum made by all parties and supported by a showing of clear and convincing evidence of such

emergency and benefit to all parties, a quorum of the commission shall hear all matters set for hearing. Except as otherwise provided in the Major Oil Pipeline Siting Act or section 75-121 and except for good cause shown, a decision of the commission shall be made and filed within thirty days after completion of the hearing or after submission of affidavits in nonhearing proceedings.

(2) In the case of any proceeding upon which a hearing is held, the transcript of testimony shall be prepared and submitted to the commission prior to entry of an order, except that it shall not be necessary to have prepared prior to a commission decision the transcripts of testimony on hearings involving noncontested proceedings and hearings involving emergency rate applications under section 75-121.

(3) For each application, complaint, or petition filed with the commission, except those filed under sections 75-303.01 to 75-303.03, the Major Oil Pipeline Siting Act, or the State Natural Gas Regulation Act, the commission shall charge a filing fee to be determined by the commission, but in an amount not to exceed the sum of five hundred dollars, payable at the time of such filing. The commission shall also charge to persons regulated by the commission, except persons regulated under the Major Oil Pipeline Siting Act or the State Natural Gas Regulation Act, a hearing fee to be determined by the commission, but in an amount not to exceed the sum of two hundred fifty dollars, for each half day of hearings if the person regulated by the commission files an application, complaint, or petition which necessitates a hearing.

(4) For each new tariff filed with the commission, except those filed under sections 75-301 to 75-322, the commission shall charge a fee not to exceed fifty dollars. This subsection does not apply to amendments to existing tariffs.

(5) The commission shall remit the fees received to the State Treasurer for credit to the General Fund.

**75-129. Sessions and hearings; when and where held**

The commission may hold sessions at any place in the state when deemed necessary to facilitate the discharge of its duties and may conduct the hearing and other proceedings provided for in sections 75-101 to 75-801, in the Major Oil Pipeline Siting Act, in the State Natural Gas Regulation Act, or under any other law of this state at such place or places in the state as may, in the judgment of the commission, be the most convenient and practicable for determining the particular matter before the commission. The commission may hold public meetings as provided in section 57-1407.

**75-130. Witnesses; failure to testify or comply with subpoena; penalty; depositions; witness and other fees**

In case any witness shall fail or refuse to obey any subpoena issued by the commission, or to produce before the commission such books, papers, documents or records as shall have been enumerated and required in any subpoena, or shall fail or refuse, when before the commission, to give testimony lawfully required by it, or fail or refuse to answer such questions as may be propounded by it which such witness would be required to answer if in court, he shall be guilty of a misdemeanor, and upon conviction thereof, for each offense, shall be fined in any sum not exceeding five thousand dollars. The claim that any such testimony may tend to incriminate the witness shall not excuse the witness from testifying, but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding. Testimony may be taken by deposition as in suits at law. Witness fees shall be paid as provided by law in attendance at any district court in this state. The sheriff or constable executing any process of the commission shall receive such compensation as is provided by law for performing similar services.

**75-130.01. Contested case; ex parte communication prohibited; applicability of section**

With respect to any matter of fact or law at issue in a contested case and notwithstanding any other provision of law, a member, staff, or agent of the Public Service Commission shall not during the pendency of any contested case heard before the commission have any ex parte communication with any party having an interest in the outcome of the contested case. For purposes of this section, the definitions in section 84-901 shall apply. Notwithstanding subdivision (4)(c) of section 84-901, this section applies to all communications by a party in contested cases under the State Natural Gas Regulation Act, including, but not limited to, general rate filings under section 66-1838.

**75-131. Common or contract carriers; jurisdictional utility; complaint of violation; service; other proceedings**

Any person who complains of anything done or omitted to be done by any common or contract carrier or jurisdictional utility may request that the commission investigate and impose sanctions on such carrier or jurisdictional utility by filing a petition which briefly states the facts constituting the complaint. Notice of the complaint shall be served upon the respondent carrier or utility as in civil cases in district court, and the respondent shall be required to answer or satisfy the complaint within a reasonable time fixed by the commission. This section shall not prevent any person from proceeding against any common or contract carrier or utility under the laws of this state for such cases made and provided.

**75-132. Complaint; hearing; notice; order**

If a carrier or jurisdictional utility does not satisfy a complaint filed pursuant to section 75-131 within the time allowed and there appears to be a reasonable ground for investigation of the complaint upon its merits, the commission shall convene a hearing on the matters complained of pursuant to its rules of procedure and shall give the parties written notice of the time and place for such hearing. After the hearing, the commission shall make such order with respect to

the complaint as it deems just and reasonable. Such order must be consistent with the statutory authority that formed the basis for the complaint.

**75-132.01. Exclusive original jurisdiction; appeal**

(1) Notwithstanding the provisions of section 75-131, the commission shall have exclusive original jurisdiction over any action concerning a violation of any provision of (a) the Automatic Dialing-Announcing Devices Act, the Emergency Telephone Communications Systems Act, the Enhanced Wireless 911 Services Act, the Intrastate Pay-Per-Call Regulation Act, the Nebraska Telecommunications Regulation Act, the Nebraska Telecommunications Universal Service Fund Act, the Telecommunications Relay System Act, or the Telephone Consumer Slamming Prevention Act by any person providing telecommunications service for a fee in Nebraska intrastate commerce pursuant to such acts or (b) sections 86-574 to 86-578 by an agency or political subdivision of the state.

(2) If the commission enters an order declining jurisdiction under subsection (1) of this section, any interested person may petition the district court of the county in which such alleged violation has occurred. If it appears to the court, after a hearing, that a provision of such acts or sections has been violated, the court may issue an injunction or other proper process to restrain the telecommunications company and its directors, officers, employees, or agents or the agency or political subdivision of the state from continuing such violation and may order additional relief. Any party to the case shall have the right to appeal the decision of the district court to the Court of Appeals under the rules provided by law for appeals in civil cases.

**75-133. Regulated parties; proceeding by commission upon own motion; hearing; order**

Whenever the commission has reason to believe that any motor carrier, regulated motor carrier, other common or contract carrier as described in section 75-109, competitive natural gas provider as defined in section 66-1848, or jurisdictional utility as defined in section 66-1802 is in neglect or violation of a statute or rule or regulation under the jurisdiction of the commission, the commission shall at once institute an investigation and fix a time and place for hearing thereon, upon its own motion, and shall make any order as it deems just and reasonable, including, but not limited to, an order revoking, suspending, or modifying the certificate of public convenience and necessity, permit, registration, license, or other authority granted by the commission or a cease and desist order.

**75-134. Commission order; requirements; when effective; rate order under State Natural Gas Regulation Act; appeal; stay enforcement**

(1) A commission order entered after a hearing shall be written and shall recite (a) a discussion of the facts of a basic or underlying nature, (b) the ultimate facts, and (c) the commission's reasoning or other authority relied upon by the commission.



(2) Every order of the commission shall become effective ten days after the date of the mailing of a copy of the order to the parties of record except (a) when the commission prescribes an alternate effective date, (b) as otherwise provided in section 75-121 or 75-139, (c) for cease and desist orders issued pursuant to section 75-133 which shall become effective on the date of entry, or (d) for orders entered pursuant to section 75-319 which shall become effective on the date of entry.

(3) Except as otherwise provided in this section or for rate orders provided for in section 75-139, any appeal of a commission order shall not stay enforcement of such order unless otherwise ordered by the commission or the Court of Appeals.

(4) Notwithstanding subsection (3) of this section, any appeal of a rate order under the State Natural Gas Regulation Act entered pursuant to section 66-1838 shall stay enforcement of such order pending resolution of the appeal.

**75-134.01. Order; enjoin, when**

Except as otherwise provided in sections 75-132.01, 75-134, 75-144, and 75-1012 and the State Natural Gas Regulation Act, the district courts shall have jurisdiction to enjoin a commission order only when the order was not entered (1) in accordance with Chapter 75 or 86 and the commission's rules and regulations adopted and promulgated pursuant to such chapters or (2) in accordance with other statutory authority underlying the commission's order.

**75-134.02. Motion for reconsideration**

(1) Except with respect to rate orders under the State Natural Gas Regulation Act entered pursuant to section 66-1838, any party may file a motion for reconsideration with the commission within ten days after the effective date of the order as determined under section 75-134. The filing of a motion for reconsideration shall suspend the time for filing a notice of intention to appeal pending resolution of the motion, except that if the commission does not dispose of a motion for reconsideration within sixty days after the filing of the motion, the motion shall be deemed denied and the procedures for appeal in section 75-136 apply.

(2) Any party to a general rate proceeding under the State Natural Gas Regulation Act may file a motion for reconsideration within thirty days after the day an order setting natural gas rates is entered by the commission. The filing of a motion for reconsideration shall stay the order until the earlier of the date the commission enters an order resolving the motion or one hundred twenty days from the date of the order setting rates. Either party shall have thirty days after the date the commission enters an order resolving the motion or the expiration of the one-hundred-twenty-day period for considering the motion, whichever is earlier, in which to file an appeal.

**75-135. Commission order; authentication**

When certified to be a true and correct copy of the original by the executive director of the commission or a commissioner, a commission order shall be admitted in evidence in all courts and tribunals of this state, without further proof, as prima facie evidence of every fact found and that such order is prima facie just and reasonable.

**75-136. Orders; right to appeal; manner and time; advancement of appeal of rate order under State Natural Gas Regulation Act**

(1) Except as otherwise provided by law, if a party to any proceeding is not satisfied with the order entered by the commission, such party may appeal.

(2) Any appeal filed on or after October 1, 2013, shall be taken in the same manner and time as appeals from the district court, except that the appellate court shall conduct a review of the matter de novo on the record. Appeals shall be heard and disposed of in the appellate court in the manner provided by law. Appeal of a commission order shall be perfected by filing a notice of intention to appeal with the executive director of the commission within thirty days after the effective date of the order as determined under section 75-134.

(3) Any appeal filed prior to October 1, 2013, shall be in accordance with sections 75-134, 75-136, and 75-156 as such sections existed prior to the changes made by Laws 2013, LB 545.

(4) Any appeal of a rate order under the State Natural Gas Regulation Act entered pursuant to section 66-1838 shall be advanced by the Court of Appeals as other causes which involve the public welfare and convenience are advanced.

**75-139. Rate order; appeal; when effective; supersedeas bond; effect; applicability of section**

(1) Except as otherwise provided in this section, the effective date of a rate order that is appealed shall be the first Monday following the date of the appellate court's mandate if the order is affirmed, except that (a) a shipper may make effective a rate order reducing a fixed rate by filing a supersedeas bond with the commission sufficient in amount to insure refund of the difference between the rate appealed and the original rate to the carrier entitled thereto if the order appealed is reversed and (b) a common carrier may make effective a rate order increasing a fixed rate by filing a supersedeas bond with the commission sufficient in amount to insure refund of the difference between the rate finally approved and the rate appealed to shippers or subscribers entitled thereto if the order appealed is reversed.

(2) A supersedeas bond may be filed by any affected shipper or common carrier, including shippers or common carriers that were not parties to the rate proceeding, at any time prior to the

issuance of the appellate court's mandate. Only the shipper or common carrier filing a supersedeas bond shall benefit from such filing.

(3) The commission shall approve a supersedeas bond which meets the requirements of this section within seven days after a written request therefor has been made, and failure to disapprove the bond within the time specified shall be deemed to be an approval.

(4) A carrier may put into effect rate increases granted by a commission order while appealing that portion of the commission's order denying a part of an application of the carrier.

(5) This section does not apply to rate orders under the State Natural Gas Regulation Act entered pursuant to section 66-1838.

**75-139.01. Person, defined**

For purposes of sections 75-101 to 75-158, person shall mean any individual, corporation, governmental agency or subdivision, partnership, limited liability company, company, or association and any other legal or commercial entity, including any common or contract carrier or jurisdictional utility and its owners, directors, officers, limited liability company members, agents, and employees.

**75-140. Orders; enforcement; petition; notice**

Whenever any person violates or disobeys an order issued by the commission which has been finally established, the commission or any person interested in such order may petition to the district court of Lancaster County alleging violation or disobedience thereof. The court may determine the matter on such notice to the person complained of as the court deems reasonable. The notice may be served on such person as the court directs.

**75-141. Order; proceeding to enforce; duty of Attorney General**

Whenever any petition authorized by section 75-140 is filed or is prosecuted by the commission or by its direction, the Attorney General shall prosecute the petition at the request of the commission, and the costs and expenses on the part of the commission of any such prosecution shall be paid out of the appropriations for the expenses of the commission.

**75-142. Order; enforcement; procedure**

The court shall proceed to determine the matter speedily as a court of equity and without the formal pleadings and proceedings applicable to ordinary suits in equity but in such manner as to do justice in the premises. To this end, the court may direct and prosecute, in such manner and

by such persons as it may appoint, all such inquiries as the court may think needful to enable it to form a just judgment in the matter of such petition.

**75-143. Order; appeal; effect; attorney's fees**

The commission and any person interested in the court's decision may appeal to the Court of Appeals under the rules provided by law as to security for an appeal to the Court of Appeals, except that in no case shall security for an appeal be required when the appeal is taken by the commission. An appeal to the Court of Appeals shall not operate to stay or supersede the order of the court or the issuance of execution thereon, and the court may in every such matter order the payment of such costs and attorney's fees as it deems reasonable.

**75-144. Order; violation; injunction; penalty**

(1) If it appears to the court after a hearing that an order of the commission has been violated or disobeyed, the court may issue an injunction or other proper process, mandatory or otherwise, to restrain the person from further continuing such violation or disobedience of the order and enjoining disobedience to the order.

(2) In case of any disobedience of any injunction or other proper process, mandatory or otherwise, the person to whom it was directed shall be guilty of contempt of court. The court may issue a writ of attachment or other process of the court incident or applicable to an injunction or other proper process, mandatory or otherwise, against the person to pay any sum of money, not exceeding, for each such person, the sum of one thousand dollars for every day after a day to be named in the order that the person fails to obey the injunction or other proper process, mandatory or otherwise.

(3) The money shall, when paid, be disposed of according to law. The payment of the money may, without prejudice to any other motive covering the same, be enforced by attachment or order in the nature of a writ of execution, in like manner as if the money had been recovered by final decree in personam in such court.

**75-146. Common carrier other than a railroad; consolidation or increase in stock; jurisdiction of commission**

The capital stock of any common carrier other than a railroad shall not be increased for any purpose except after public notice for sixty days. No common carrier other than a railroad shall consolidate its stock, property, franchise, or earnings, in whole or in part, with any other competing common carrier without permission of the commission, and in no case shall any consolidation take place except on public notice of at least thirty days to all stockholders as provided in the rules of the commission.

**75-148. Common carrier; issuance of securities; conditions**

A common carrier may issue stock, bonds, notes, or other evidence of indebtedness, payable at periods of more than twelve months after the date thereof, when necessary for the acquisition of property, the construction, completion, extension, or improvement of facilities, the improvement or maintenance of its service, or the discharge or lawful refunding of its obligations if the common carrier first secures from the commission an order authorizing such issue and the amount thereof and stating that in the opinion of the commission the use of the capital to be secured by the issue of such stock, bonds, notes, or other evidence of indebtedness is reasonably required for the purposes of the carrier. A common carrier may issue notes or other evidence of indebtedness for proper corporate purposes and not in violation of any provision of law, payable in periods of not more than twelve months, without such consent if no such note is, in whole or in part, directly or indirectly, refunded by any issue of such stock or bonds, or by any evidence of indebtedness running more than twelve months, without the consent of the commission. The provisions of this section shall not apply to the security issuances of common carriers who are under the control of a federal regulatory agency.

**75-149. Consolidation; securities; issuance; limitation**

The capital stock of a corporation formed by the merger or consolidation of two or more other corporations, shall not exceed the sum of the capital stock of the corporations so merged or consolidated at par value thereof, or such sum and any additional sum actually paid in cash; nor shall any contract, or consolidation or lease be capitalized in the stock of any corporation whatsoever; nor after October 19, 1963, shall any corporation issue any bonds against or as a lien upon any contract for consolidation or merger.

**75-150. Securities; issuance; fees; expenses**

No order authorizing the issuance of securities shall become operative until the applicant pays to the commission fees as follows: Upon applications totaling not more than twenty-five thousand dollars, the fee shall be twenty-five dollars; and upon applications totaling more than twenty-five thousand dollars, the fee shall be twenty-five dollars for the first twenty-five thousand dollars, one dollar per one thousand dollars for the next seventy-five thousand dollars, and twenty-five cents per one thousand dollars for all amounts in excess of one hundred thousand dollars, except that the total fee shall in no case exceed the sum of two thousand five hundred dollars. The fee shall be computed on the par value principal amount of the stock, or in the case of no par stock, on the declared or offering price, whichever is greater. The commission shall remit the fees received to the State Treasurer for credit to the General Fund. The actual and necessary expenses of the commission incurred in investigating the application to sell securities shall be paid by the applicant, who may be required by the commission to deposit in advance a sum sufficient therefor. Any balance thereof shall be returned to the applicant.

**75-151. Securities; violation; penalty**

Any common carrier which violates any of the provisions of sections 75-146 to 75-150 or which fails, omits, or neglects to obey, observe, or comply with any order, direction, or requirement of the commission under the provisions of such sections shall forfeit to the State of Nebraska a

sum not to exceed five thousand dollars for each and every offense. Each violation of any such order or direction or requirement of such sections shall be a separate and distinct offense, and in case of a continuing violation, each day's continuance thereof shall be a separate and distinct offense. Each officer and agent of any common carrier who violates or procures, aids, or abets any violation by any such common carrier of any of the provisions of sections 75-146 to 75-150, who fails to obey, observe, and comply with any order of the commission or any provision of an order of the commission under the terms of such sections, or who procures, aids, or abets any such common carrier in its failure to obey, observe, and comply with any such order or provision shall be guilty of a Class III felony.

**75-152. Common carriers; consignor; designation of means and routing of shipment**

When transportation is involved in connection with the sale of personal property and the price at which such personal property is sold is a delivered price at destination, the consignor may determine the means of transportation to be used and the routing of the shipment.

**75-153. Common carriers; consignee; designation of means and routing of shipment; exception**

Where transportation is involved in the sale of personal property and the price at which such property is sold is determined f.o.b. shipping point, the consignee may determine the means of transportation to be used and the routing of the shipment, except that if the consignor has not received written shipping instructions from the consignee designating a specific carrier a reasonable time prior to the making of the shipment, the consignor may determine the means of transportation to be used and the routing of the shipment.

**75-154. Common carriers; consignor; violation of shipping instructions; damages**

If, under section 75-153, a consignor of personal property violates written shipping instructions given by the consignee to the consignor a reasonable time prior to the making of the shipment, the consignor shall be liable for actual damages to the consignee or any public carrier injured by the failure of the consignor to comply with the written shipping instructions given the consignor by the consignee.

**75-155. Violations; general penalty**

Unless a more specific criminal penalty is provided, any person who knowingly and willfully violates Chapter 75 or 86, any rule, regulation, or order of the commission, or any term or condition of any permit or certificate issued by the commission is guilty of a Class IV misdemeanor. Each day of such violation constitutes a separate offense.

**75-156. Civil penalty; procedure; order; appeal**

(1) In addition to other penalties and relief provided by law, the Public Service Commission may, upon a finding that the violation is proven by clear and convincing evidence, assess a civil

penalty of up to ten thousand dollars per day against any person, motor carrier, regulated motor carrier, common carrier, contract carrier, grain dealer, or grain warehouseman for each violation of (a) any provision of the laws of this state within the jurisdiction of the commission as enumerated in section 75-109.01, (b) any term, condition, or limitation of any certificate, permit, or authority issued by the commission pursuant to the laws of this state within the jurisdiction of the commission as enumerated in section 75-109.01, or (c) any rule, regulation, or order of the commission issued under authority delegated to the commission pursuant to the laws of this state within the jurisdiction of the commission as enumerated in section 75-109.01.

(2) In addition to other penalties and relief provided by law, the Public Service Commission may, upon a finding that the violation is proven by clear and convincing evidence, assess a civil penalty not less than one hundred dollars and not more than one thousand dollars against any jurisdictional utility for each violation of (a) any provision of the State Natural Gas Regulation Act, (b) any rule, regulation, order, or lawful requirement issued by the commission pursuant to the act, (c) any final judgment or decree made by any court upon appeal from any order of the commission, or (d) any term, condition, or limitation of any certificate issued by the commission issued under authority delegated to the commission pursuant to the act. The amount of the civil penalty assessed in each case shall be based on the severity of the violation charged. The commission may compromise or mitigate any penalty prior to hearing if all parties agree. In determining the amount of the penalty, the commission shall consider the appropriateness of the penalty in light of the gravity of the violation and the good faith of the violator in attempting to achieve compliance after notification of the violation is given.

(3) In addition to other penalties and relief provided by law, the Public Service Commission may, upon a finding that the violation is proven by clear and convincing evidence, assess a civil penalty of up to ten thousand dollars per day against any wireless carrier for each violation of the Enhanced Wireless 911 Services Act or any rule, regulation, or order of the commission issued under authority delegated to the commission pursuant to the act.

(4) In addition to other penalties and relief provided by law, the Public Service Commission may, upon a finding that the violation is proven by clear and convincing evidence, assess a civil penalty of up to one thousand dollars against any person for each violation of the Nebraska Uniform Standards for Modular Housing Units Act or the Uniform Standard Code for Manufactured Homes and Recreational Vehicles or any rule, regulation, or order of the commission issued under the authority delegated to the commission pursuant to either act. Each such violation shall constitute a separate violation with respect to each modular housing unit, manufactured home, or recreational vehicle, except that the maximum penalty shall not exceed one million dollars for any related series of violations occurring within one year from the date of the first violation.

(5) The civil penalty assessed under this section shall not exceed two million dollars per year for each violation except as provided in subsection (4) of this section. The amount of the civil

penalty assessed in each case shall be based on the severity of the violation charged. The commission may compromise or mitigate any penalty prior to hearing if all parties agree. In determining the amount of the penalty, the commission shall consider the appropriateness of the penalty in light of the gravity of the violation and the good faith of the violator in attempting to achieve compliance after notification of the violation is given.

(6) Upon notice and hearing in accordance with this section and section 75-157, the commission may enter an order assessing a civil penalty of up to one hundred dollars against any person, firm, partnership, limited liability company, corporation, cooperative, or association for failure to file an annual report or pay the fee as required by section 75-116 and as prescribed by commission rules and regulations or for failure to register as required by section 86-125 and as prescribed by commission rules and regulations. Each day during which the violation continues after the commission has issued an order finding that a violation has occurred constitutes a separate offense. Any party aggrieved by an order of the commission under this section may appeal. The appeal shall be in accordance with section 75-136.

(7) When any person or party is accused of any violation listed in this section, the commission shall notify such person or party in writing (a) setting forth the date, facts, and nature of each act or omission upon which each charge of a violation is based, (b) specifically identifying the particular statute, certificate, permit, rule, regulation, or order purportedly violated, (c) that a hearing will be held and the time, date, and place of the hearing, (d) that in addition to the civil penalty, the commission may enforce additional penalties and relief as provided by law, and (e) that upon failure to pay any civil penalty determined by the commission, the penalty may be collected by civil action in the district court of Lancaster County.

#### **75-157. Hearing; order; requirements**

Any hearing held pursuant to section 75-156 shall be held pursuant to rules and regulations adopted and promulgated by the Public Service Commission. Every decision and order rendered by the commission after the hearing is held shall be in writing and accompanied by findings of facts and conclusions of law. The decision or order shall be sent to the parties by certified or registered mail.

#### **75-158. Unpaid civil penalty; how treated**

A civil penalty assessed pursuant to section 75-156 and unpaid shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in a proper form of action in the name of the state in the district court of Lancaster County. Any civil penalty collected shall be transmitted within thirty days from receipt to the State Treasurer for credit to the permanent school fund.



**75-159. Public Service Commission Housing and Recreational Vehicle Cash Fund; created; use; investment**

(1) The Public Service Commission Housing and Recreational Vehicle Cash Fund is created. The fund shall consist of fees collected under the Nebraska Uniform Standards for Modular Housing Units Act and fees collected pursuant to the Uniform Standard Code for Manufactured Homes and Recreational Vehicles.

(2) Money credited to the fund shall be used by the Public Service Commission for the purposes of administering the Nebraska Uniform Standards for Modular Housing Units Act and the Uniform Standard Code for Manufactured Homes and Recreational Vehicles.

(3) Transfers from the fund to the General Fund may be made at the direction of the Legislature. Any money in the Public Service Commission Housing and Recreational Vehicle Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(4) On July 1, 2010, the State Treasurer shall transfer any money in the Modular Housing Units Cash Fund and any money in the Manufactured Homes and Recreational Vehicles Cash Fund to the Public Service Commission Housing and Recreational Vehicle Cash Fund.

**75-160. Wireless telecommunications service; registry for complaints regarding lack of appropriate coverage; use**

(1) The Public Service Commission shall establish and maintain a registry of locations within the State of Nebraska for complaints made to the commission regarding the lack of appropriate coverage for wireless telecommunications service.

(2) The commission may utilize the information maintained in the registry only for making any determination related to the granting of funds through any program administered by the commission to support the construction of wireless telecommunications service facilities.

(3) For purposes of this section, lack of appropriate coverage means a geographic area where a wireless device is not able to receive a signal from the wireless service provider's network whereby an individual is unable to use a wireless device.

(4) The commission shall adopt and promulgate any rules and regulations required to carry out this section.

**75-160. Wireless telecommunications service; registry for complaints regarding lack of appropriate coverage; use**

(1) The Public Service Commission shall establish and maintain a registry of locations within the State of Nebraska for complaints made to the commission regarding the lack of appropriate coverage for wireless telecommunications service.

(2) The commission may utilize the information maintained in the registry only for making any determination related to the granting of funds through any program administered by the commission to support the construction of wireless telecommunications service facilities.

(3) For purposes of this section, lack of appropriate coverage means a geographic area where a wireless device is not able to receive a signal from the wireless service provider's network whereby an individual is unable to use a wireless device.

(4) The commission shall adopt and promulgate any rules and regulations required to carry out this section.

**75-301. Motor carriers; regulation; legislative policy**

(1) It is the policy of the Legislature to comply with the laws of the United States, to promote uniformity of regulation, to prevent motor vehicle accidents, deaths, and injuries, to protect the public safety, to reduce redundant regulation, to promote financial responsibility on the part of all motor carriers operating in and through the state, and to foster the development, coordination, and preservation of a safe, sound, adequate, and productive motor carrier system which is vital to the economy of the state.

(2) It is the policy of the Legislature to (a) regulate transportation by motor carriers of passengers and household goods in intrastate commerce upon the public highways of Nebraska in such manner as to recognize and preserve the inherent advantages of and foster sound economic conditions in such transportation and among such carriers, in the public interest, (b) promote adequate economical and efficient service by motor carriers and reasonable charges therefor without unjust discrimination, undue preferences or advantages, and unfair or destructive competitive practices, (c) improve the relations between and coordinate transportation by and regulation of such motor carriers and other carriers, (d) develop and preserve a highway transportation system properly adapted to the needs of the commerce of Nebraska, (e) cooperate with the several states and the duly authorized officials thereof, and (f) cooperate with the United States Government in the administration and enforcement of the unified carrier registration plan and agreement.

The commission, the Division of Motor Carrier Services, and the carrier enforcement division shall enforce all provisions of section 75-126 and Chapter 75, article 3, so as to promote,

encourage, and ensure a safe, dependable, responsive, and adequate transportation system for the public as a whole.

**75-302. Terms, defined**

For purposes of sections 75-301 to 75-343 and in all rules and regulations adopted and promulgated by the commission pursuant to such sections, unless the context otherwise requires:

(1) Attended services means an attendant or caregiver accompanying a minor or a person who has a physical, mental, or developmental disability and is unable to travel or wait without assistance or supervision;

(2) Carrier enforcement division means the carrier enforcement division of the Nebraska State Patrol or the Nebraska State Patrol;

(3) Certificate means a certificate of public convenience and necessity issued under Chapter 75, article 3, to common carriers by motor vehicle;

(4) Civil penalty means any monetary penalty assessed by the commission or carrier enforcement division due to a violation of Chapter 75, article 3, or section 75-126 as such section applies to any person or carrier specified in Chapter 75, article 3; any term, condition, or limitation of any certificate or permit issued pursuant to Chapter 75, article 3; or any rule, regulation, or order of the commission, the Division of Motor Carrier Services, or the carrier enforcement division issued pursuant to Chapter 75, article 3;

(5) Commission means the Public Service Commission;

(6) Common carrier means any person who or which undertakes to transport passengers or household goods for the general public in intrastate commerce by motor vehicle for hire, whether over regular or irregular routes, upon the highways of this state;

(7) Contract carrier means any motor carrier which transports passengers or household goods for hire other than as a common carrier designed to meet the distinct needs of each individual customer or a specifically designated class of customers without any limitation as to the number of customers it can serve within the class;

(8) Division of Motor Carrier Services means the Division of Motor Carrier Services of the Department of Motor Vehicles;

(9) Highway means the roads, highways, streets, and ways in this state;

(10) Household goods means personal effects and property used or to be used in a dwelling, when a part of the equipment or supply of such dwelling, and similar property as the commission may provide by regulation if the transportation of such effects or property, is:

(a) Arranged and paid for by the householder, including transportation of property from a factory or store when the property is purchased by the householder with the intent to use in his or her dwelling; or

(b) Arranged and paid for by another party;

(11) Intrastate commerce means commerce between any place in this state and any other place in this state and not in part through any other state;

(12) Licensed care transportation services means transportation provided by an entity licensed by the Department of Health and Human Services as a residential child-caring agency as defined in section 71-1926 or child-placing agency as defined in section 71-1926 or a child care facility licensed under the Child Care Licensing Act to a client of the entity or facility when the person providing transportation services also assists and supervises the passenger or, if the client is a minor, to a family member of a minor when it is necessary for agency or facility staff to accompany or facilitate the transportation in order to provide necessary services and support to the minor. Licensed care transportation services must be incidental to and in furtherance of the social services provided by the entity or facility to the transported client;

(13) Motor carrier means any person other than a regulated motor carrier who or which owns, controls, manages, operates, or causes to be operated any motor vehicle used to transport passengers or property over any public highway in this state;

(14) Motor vehicle means any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highways in the transportation of passengers or property but does not include any vehicle, locomotive, or car operated exclusively on a rail or rails;

(15) Permit means a permit issued under Chapter 75, article 3, to contract carriers by motor vehicle;

(16) Person means any individual, firm, partnership, limited liability company, corporation, company, association, or joint-stock association and includes any trustee, receiver, assignee, or personal representative thereof;

(17) Private carrier means any motor carrier which owns, controls, manages, operates, or causes to be operated a motor vehicle to transport passengers or property to or from its facility, plant, or place of business or to deliver to purchasers its products, supplies, or raw materials (a) when such transportation is within the scope of and furthers a primary business of the carrier other than transportation and (b) when not for hire. Nothing in sections 75-301 to 75-322 shall apply to private carriers;

(18) Regulated motor carrier means any person who or which owns, controls, manages, operates, or causes to be operated any motor vehicle used to transport passengers, other than those excepted under section 75-303, or household goods over any public highway in this state;

(19) Residential care means care for a minor or a person who is physically, mentally, or developmentally disabled who resides in a residential home or facility regulated by the Department of Health and Human Services, including, but not limited to, a foster home, treatment facility, residential child-caring agency, or shelter;

(20) Residential care transportation services means transportation services to persons in residential care when such residential care transportation services and residential care are provided as part of a services contract with the Department of Health and Human Services or pursuant to a subcontract entered into incident to a services contract with the department;

(21) Supported transportation services means transportation services to a minor or for a person who is physically, mentally, or developmentally disabled when the person providing transportation services also assists and supervises the passenger or transportation services to a family member of a minor when it is necessary for provider staff to accompany or facilitate the transportation in order to provide necessary services and support to the minor. Supported transportation services must be provided as part of a services contract with the Department of Health and Human Services or pursuant to a subcontract entered into incident to a services contract with the department, and the driver must meet department requirements for (a) training or experience working with minors or persons who are physically, mentally, or developmentally disabled, (b) training with regard to the specific needs of the client served, (c) reporting to the department, and (d) age. Assisting and supervising the passenger shall not necessarily require

the person providing transportation services to stay with the passenger after the transportation services have been provided; and

(22) Transportation network company has the definition found in section 75-323. A transportation network company shall not own, control, operate, or manage drivers' personal vehicles.

**75-303. Motor carriers; scope of law**

Sections 75-301 to 75-322 shall apply to transportation by a motor carrier or the transportation of passengers and household goods by a regulated motor carrier for hire in intrastate commerce except for the following:

(1) A motor carrier for hire in the transportation of school children and teachers to and from school;

(2) A motor carrier for hire operated in connection with a part of a streetcar system;

(3) An ambulance, ambulance owner, hearse, or automobile used exclusively as an incident to conducting a funeral;

(4) A motor carrier exempt by subdivision (1) of this section which hauls for hire (a) persons of a religious, fraternal, educational, or charitable organization, (b) pupils of a school to athletic events, (c) players of American Legion baseball teams when the point of origin or termination is within five miles of the domicile of the carrier, and (d) the elderly as defined in section 13-1203 and their spouses and dependents under a contract with a municipality or county authorized in section 13-1208;

(5) A motor carrier operated by a city and engaged in the transportation of passengers, and such exempt operations shall be no broader than those authorized in intrastate commerce at the time the city or other political subdivision assumed ownership of the operation;

(6) A motor vehicle owned and operated by a nonprofit organization which is exempt from payment of federal income taxes, as provided by section 501(c)(4), Internal Revenue Code, transporting solely persons over age sixty, persons who are spouses and dependents of persons over age sixty, and handicapped persons;

(7) A motor carrier engaged in the transportation of passengers operated by a transit authority or regional metropolitan transit authority established under and acting pursuant to the laws of the State of Nebraska;

(8) A motor carrier operated by a municipality or county, as authorized in section 13-1208, in the transportation of elderly persons;

(9) A motor vehicle having a seating capacity of twenty or less which is operated by a governmental subdivision or a qualified public-purpose organization as defined in section 13-1203 engaged in the transportation of passengers in the state;

(10) A motor vehicle owned and operated by a nonprofit entity organized for the purpose of furnishing electric service;

(11) A motor carrier engaged in attended services under contract or subcontract with the Department of Health and Human Services or with any agency organized under the Nebraska Community Aging Services Act;

(12) A motor carrier engaged in residential care transportation services if the motor carrier complies with the requirements of the Department of Health and Human Services adopted, promulgated, and enforced to protect the safety and well-being of the passengers, including insurance, training, and age requirements;

(13) A motor carrier engaged in supported transportation services if the motor carrier complies with the requirements of the Department of Health and Human Services adopted, promulgated, and enforced to protect the safety and well-being of the passengers, including insurance, training, and age requirements; and

(14) A motor carrier engaged in licensed care transportation services if the motor carrier files a certificate with the commission that such provider meets the minimum driver standards, insurance requirements, and equipment standards prescribed by the commission. Insurance requirements established by the commission shall be consistent with the insurance requirements established by the Department of Health and Human Services for attended services, residential care transportation services, and supported transportation services.

**75-303.01. Nonemergency medical transportation for medicaid clients; contracts authorized**

(1) The Department of Health and Human Services, a medicaid-managed care organization under contract with the department, or another agent working on the department's behalf may contract for nonemergency medical transportation for medicaid clients with a regulated motor carrier holding a designation of authority issued pursuant to subsection (3) of section 75-311 to provide medicaid nonemergency medical transportation services or that has been authorized to provide such services by the commission prior to April 28, 2017.

(2) While operating under a designation of authority issued pursuant to subsection (3) of section 75-311, a regulated motor carrier shall comply with (a) the requirements of the Department of Health and Human Services to protect the safety and well-being of department clients, including training, driver standards, background checks, and the provision and quality of service and (b) the rules and regulations adopted, promulgated, and enforced by the commission governing insurance requirements, equipment standards, and background checks.

**75-303.02. Contracts for transportation; requirements**

(1) The Department of Health and Human Services or any agency organized under the Nebraska Community Aging Services Act may contract for the transportation of clients with a contractor which does not hold a certificate or which is not otherwise exempt under section 75-303 only if:

(a) The proposed contractor is the individual who will personally drive the vehicle in question;

(b) The only compensation to the contractor for the transportation is paid by the department at a rate no greater than that provided for reimbursement of state employees pursuant to section 81-1176 for the costs incurred in the transportation; and

(c)(i) There is no regulated motor carrier serving the area in which the client needs transportation, (ii) the regulated motor carrier serving the area is incapable of providing the specific service in question by its own written statement or as determined by the commission upon application of the regulated motor carrier or the department, or (iii) the regulated carrier cannot or will not provide such service at the rate specified in subsection (2) of section 75-303.03.

(2) This section does not apply to a regulated motor carrier holding a designation of authority issued pursuant to subsection (3) of section 75-311.



**75-303.03. Reimbursement for transportation costs; conditions; exemption from commission regulation or commission rate regulation**

(1) The commission, in consultation with the Department of Health and Human Services, shall adopt and promulgate rules and regulations governing minimum liability insurance requirements, equipment standards, driver qualification requirements, and the issuance and filing of notice for any contractor utilized by the department or any agency organized under the Nebraska Community Aging Services Act pursuant to section 75-303.02.

(2) The Department of Health and Human Services or any agency organized under the Nebraska Community Aging Services Act shall reimburse common and contract carriers for transportation of passengers at a rate not to exceed the rate of reimbursement pursuant to section 81-1176 multiplied by three. The maximum reimbursement rate provided for in this subsection shall not apply when the carrier (a) transports such person wholly within the corporate limits of the city or village where the transportation of the person originated, (b) transports a disabled person as defined by the federal Americans with Disabilities Act of 1990 in a vehicle that is compliant with the regulations providing for the transportation of such disabled person, or (c) provides nonemergency medical transportation of medicaid clients pursuant to subsection (3) of section 75-311.

(3) Rates for nonemergency medical transportation service providers with a designation of authority issued pursuant to subsection (3) of section 75-311 are not subject to commission regulation, and regulated motor carriers with such a designation reimbursed under this section are not subject to commission rate regulation for such reimbursement rates.

(4)(a) The Department of Health and Human Services may reimburse an individual for the costs incurred by such individual in the transportation of a person eligible to receive transportation services through the department if:

(i) The individual is under contract with the department and provides transportation to the eligible person; and

(ii) The eligible person has chosen the individual to provide the transportation.

(b) The department shall reimburse for the costs incurred in the transportation at a rate no greater than that provided for reimbursement of state employees pursuant to section 81-1176.

(c) Transportation provided to an eligible person by an individual pursuant to this section does not constitute transportation for hire.

(d) The department may adopt and promulgate rules and regulations to implement this subsection.

**75-304. Classification of carriers; rules and regulations; contract carriers; insurance; applicability of rules and regulations**

(1) The commission may establish such just and reasonable classifications of groups of carriers, included in the terms common carrier and contract carrier, as the special nature of the services performed by such carriers require and adopt and promulgate such just and reasonable rules, regulations, and requirements, to be observed by the carrier so classified or grouped, as the commission deems necessary or desirable in the public interest and as are consistent with the provisions of sections 75-301 to 75-322. All certificates and permits issued by the commission shall be construed and interpreted, and the operations authorized thereunder shall be tested and determined, in accordance with such classification so established and any rule, regulation, or requirement prescribed by the commission relating to such carrier so classified.

(2) Contract carriers shall obtain and maintain uninsured and underinsured insurance coverage for each passenger in each motor vehicle in minimum amounts to be established by the commission.

(3) The commission shall adopt and promulgate rules and regulations to carry out sections 75-323 to 75-343. The rules and regulations found in chapter 3 of title 291 of the Nebraska Administrative Code shall not apply to transportation network companies. If there is any conflict between sections 75-301 to 75-322 and sections 75-323 to 75-343 regarding the regulation of transportation network companies, the provisions of sections 75-323 to 75-343 shall apply.

**75-304.01. Rates, fares, and charges; commission prescribe; when**

The commission shall prescribe minimum rates, fares, and charges for contract carriers. No reduction shall be made in any such charge, either directly or by means of any change in any rule, regulation, or practice affecting such charge or the value of service thereunder, except after ten days' notice of the proposed change filed in the form and manner provided for common carrier rate changes. The notice shall plainly state the change proposed and the time when the change will take effect. No contract carrier shall demand, charge, or collect less compensation for such transportation than the charges to be made by common carriers for the same transportation in accordance with sections 75-118 to 75-155 and 75-301 to 75-322, as affected by any rule, regulation, or practice so filed or as prescribed by the commission. It is unlawful for any such carrier to charge less than the rates, fares, and charges approved by the commission.

**75-304.02. Mover of household goods; certificate or permit, when required**

(1) Any mover of household goods operating in a city or village of this state or within a radius of five miles of the corporate limits of such city or village and engaged in the transportation for hire of household goods in such city or village or within such five-mile radius prior to January 1, 1996, may continue operations for a period of up to one year after April 4, 1996, without obtaining a certificate of public convenience and necessity or a permit issued by the commission authorizing such operations. Beginning on and after one year after April 4, 1996, such mover of household goods shall be subject to sections 75-301 to 75-322.

(2) During the one-year period after April 4, 1996, the commission shall grant the authority to engage in the transportation for hire of household goods in such city or village or within such five-mile radius to any such mover of household goods which applies to the commission and furnishes evidence of its operations in a manner and form as directed by the commission by rule and regulation. The authority to engage in the transportation of household goods shall become effective one year after April 4, 1996.

**75-305. Fees; amount; when due; disposition**

(1) Every regulated motor carrier subject to sections 75-301 to 75-322 other than transportation network companies shall pay an annual fee not exceeding the sum of eighty dollars for each motor vehicle operated, which fee shall be fixed by the commission and shall not exceed the amount actually necessary to sustain the administration and enforcement of such sections. When the applicant has registered his or her motor vehicles under section 60-3,198, such fee shall be payable on whichever shall be the lesser of (a) the proportion of his or her fleet so registered or (b) the number of motor vehicles owned by him or her and actually used in intrajurisdiction business within this state, except that such annual fee for any truck-trailer or tractor-trailer combination shall be one hundred twenty dollars. In the case of a truck-trailer or tractor-trailer combination, only one license plate shall be required for such combination.

(2) Every transportation network company shall pay an annual fee. The company may choose to pay either twenty-five thousand dollars or not to exceed eighty dollars for each personal vehicle operated by a driver of the transportation network company. The commission shall establish the amount per vehicle so that the amount collected does not exceed the amount actually necessary to sustain the administration and enforcement of laws, rules, and regulations governing transportation network companies.

(3) Such annual fees shall be due and payable on or before January 1 and shall be delinquent on March 1 of each year after such permit or certificate has been issued. If the initial certificate or permit is issued to a motor carrier on or after July 1, the fee shall be fifty percent of the annual fee. Such fees shall be paid to and collected by the commission and remitted to the State Treasurer within thirty days of receipt. The State Treasurer shall credit fees received pursuant to subsection (2) of this section to the Transportation Network Company Regulation Cash Fund for enforcement of laws, rules, and regulations governing transportation network

companies. The State Treasurer shall credit fees received pursuant to subsection (1) of this section to the General Fund.

**75-306. Receipt for fees; license plates and renewal tabs**

Receipt for the payment of annual fees shall be issued by the commission. The commission shall issue sufficient license plates and renewal tabs to any regulated motor carrier who is in compliance with sections 75-301 to 75-322 and the rules and regulations of the commission, except contractors operating pursuant to section 75-303.02 and transportation network companies, for the purpose of identification of regulated motor carriers subject to sections 75-301 to 75-322 and to distinguish those regulated motor carriers from other commercial motor carriers not subject to such sections. The Director of Motor Vehicles shall prepare a form of license plate and renewal tab for such regulated motor carriers and furnish a sufficient supply of them to the commission.

**75-307. Insurance and bond requirements; subrogation; applicability of section**

(1) Certificated intrastate motor carriers, including common and contract carriers, shall comply with reasonable rules and regulations prescribed by the commission governing the filing with the commission, the approval of the filings, and the maintenance of proof at such carrier's principal place of business of surety bonds, policies of insurance, qualifications as a self-insurer, or other securities or agreements, in such reasonable amount as required by the commission, conditioned to pay, within the amount of such surety bonds, policies of insurance, qualifications as a self-insurer, or other securities or agreements, any final judgment recovered against such motor carrier for bodily injuries to or the death of any person resulting from the negligent operation, maintenance, or use of motor vehicles under such certificate or permit or for loss or damage to property of others. No certificate or permit shall be issued to a common or contract carrier or remain in force unless such carrier complies with this section and the rules and regulations prescribed by the commission pursuant to this section.

(2) The commission may, in its discretion and under its rules and regulations, require any certificated carrier to file a surety bond, policies of insurance, qualifications as a self-insurer, or other securities or agreements, in a sum to be determined by the commission, to be conditioned upon such carrier making compensation to shippers or consignees for all property belonging to shippers or consignees and coming into the possession of such carrier in connection with its transportation service. Any carrier which may be required by law to compensate a shipper or consignee for any loss, damage, or default for which a connecting motor common carrier is legally responsible shall be subrogated to the rights of such shipper or consignee under any such bond, policies of insurance, or other securities or agreements to the extent of the sum so paid.

(3) In carrying out this section, the commission may classify motor carriers and regulated motor carriers taking into consideration the hazards of the operations of such carriers and the value of the household goods carried. Nothing contained in this section shall be construed to authorize

the commission to compel motor carriers other than common carriers of household goods to carry cargo insurance.

(4) This section does not apply to transportation network companies.

**75-308. Tariff; publication; unlawful practices**

It is unlawful for a regulated motor carrier to engage in the transportation of passengers or household goods in intrastate commerce unless the motor carrier has filed, published, and kept open for inspection its tariff schedule as provided in section 75-124 in the manner prescribed by the commission pursuant to such section. No such motor carrier shall engage in the transportation of household goods in intrastate commerce unless it has obtained a copy of the most current applicable tariff, or a tariff prepared by a tariff publishing bureau or an individual, which conforms with the rates and charges prescribed by the commission.

**75-308.01. Operational conditions; meetings of motor carriers authorized; purposes; joint-line arrangements authorized; joint rates; how treated**

(1) Any two or more motor carriers authorized to operate under a common tariff approved by the commission under section 75-118 or 75-304.01 shall be permitted to meet and review operational conditions of affected motor carriers for the following purposes:

- (a) To study the ratio of expenses to income and general financial condition of the motor carrier industry in Nebraska;
- (b) To determine whether any change or changes should be made in any commission-approved tariff;
- (c) To consider the joint employment of technical assistance to accomplish the purposes set forth in this section;
- (d) To determine whether it is necessary to file an application to make tariff changes; and
- (e) To do all other acts necessary to accomplish the filing of a rate application with the commission.

(2) Motor carriers may establish joint-line arrangements for intrastate transportation of property to exchange or to interline freight that each motor carrier transports over a part of the joint route

and to agree to a joint rate for the transportation service. Motor carriers may also collectively participate in, establish, and use a freight classification system and mileage guide that can be used to determine the rates for intrastate transportation.

(3) The laws of this state relating to competition shall not apply to motor carriers and other persons who carry out the activities described in subsection (2) of this section. The commission may regulate the activities described in subsection (2) of this section and shall investigate and issue orders when necessary to preserve the sound and efficient transportation of property by motor carriers.

**75-309. Certificate of public convenience and necessity or permit; required; exception**

Except for operations pursuant to a contract authorized by sections 75-303.02 and 75-303.03, it shall be unlawful for any common or contract carrier by motor vehicle subject to the provisions of sections 75-101 to 75-155 and 75-301 to 75-322 to engage in any intrastate operations on any public highway in Nebraska unless there is in force with respect to such common carrier a certificate of public convenience and necessity, a permit to such contract carrier, or a permit to a transportation network company under section 75-324, issued by the commission which authorizes such operations.

**75-309.01. Transportation of passengers for hire; operation without certificate; nuisance; penalty**

Each motor vehicle owned, used, or attempted to be used by any person as a common or contract carrier to transport passengers for hire in violation of section 75-309 is declared to be a public nuisance and subject to seizure and confiscation by any person charged with the enforcement of this section. Any motor vehicle which is owned, used, or attempted to be used by any person as a common or contract carrier to transport passengers for hire in violation of section 75-309 may be seized upon the arrest of the person who uses or owns the motor vehicle, and upon the conviction of the person for the violation of such section, the motor vehicle shall, as a part of the element of the violation, at the discretion of the court, be forfeited to the state and delivered to the commission to be disposed of as provided by law. The sale shall be subject to any liens of record. The commission shall remit the proceeds of the sale to the State Treasurer for credit to the permanent school fund.

**75-310. Application for certificate or permit; petition for relief; requirements**

Except for applications to operate a transportation network company, applications for certificates or permits and petitions for relief shall be made to the commission in writing and shall be in such form and contain such information as the commission shall by rule require. A summary of the authority or relief sought in an application or petition shall be given to interested persons according to the rules the commission shall adopt. After notice of an application or petition has been given to interested persons as provided by the rules for notice, the commission may

process the application or petition without a hearing by use of affidavits if the application or petition is not opposed.

**75-311. Certificates; permits; designation of authority; issuance; review by commission; effect**

(1) A certificate shall be issued to any qualified applicant authorizing the whole or any part of the operations covered by the application if it is found after notice and hearing that (a) the applicant is fit, willing, and able properly to perform the service proposed and to conform to the provisions of sections 75-301 to 75-322 and the requirements, rules, and regulations of the commission under such sections and (b) the proposed service, to the extent to be authorized by the certificate, whether regular or irregular, passenger or household goods, is or will be required by the present or future public convenience and necessity. Otherwise the application shall be denied.

(2) A permit shall be issued to any qualified applicant therefor authorizing in whole or in part the operations covered by the application if it appears after notice and hearing from the application or from any hearing held on the application that (a) the applicant is fit, willing, and able properly to perform the service of a contract carrier by motor vehicle and to conform to the provisions of such sections and the lawful requirements, rules, and regulations of the commission under such sections and (b) the proposed operation, to the extent authorized by the permit, will be consistent with the public interest by providing services designed to meet the distinct needs of each individual customer or a specifically designated class of customers as defined in subdivision (7) of section 75-302. Otherwise the application shall be denied.

(3) A designation of authority shall be issued to any regulated motor carrier holding a certificate under subsection (1) of this section or a permit under subsection (2) of this section authorizing such carrier to provide medicaid nonemergency medical transportation services pursuant to a contract with (i) the Department of Health and Human Services, (ii) a medicaid-managed care organization under contract with the department, or (iii) another agent working on the department's behalf as provided under section 75-303.01, if it is found after notice and hearing from the application or from any hearing held on the application that the authorization is or will be required by the present or future convenience and necessity to serve the distinct needs of medicaid clients. In determining whether the authorization is or will be required by the present or future convenience and necessity to serve the distinct needs of medicaid clients, the commission shall consult with the Director of Medicaid and Long-Term Care of the Division of Medicaid and Long-Term Care of the department or his or her designee.

(4) No person shall at the same time hold a certificate as a common carrier and a permit as a contract carrier for transportation of household goods by motor vehicles over the same route or within the same territory unless the commission finds that it is consistent with the public interest and with the policy declared in section 75-301.

(5) After the issuance of a certificate or permit, the commission shall review the operations of all common or contract carriers who hold authority from the commission to determine whether there are insufficient operations in the transportation of household goods to justify the commission's finding that such common or contract carrier has willfully failed to perform transportation under sections 75-301 to 75-322 and rules and regulations promulgated under such sections. If the commission determines that there are insufficient operations, then the commission shall commence proceedings under section 75-315 to revoke the certificate or permit involved.

(6) This section shall not apply to transportation network companies holding a permit under section 75-324 or operations pursuant to a contract authorized by sections 75-303.02 and 75-303.03.

**75-313. Certificate; permit; terms**

(1) Except as provided in subsection (2) of this section, each certificate shall specify the service to be rendered, the routes, the fixed termini, if any, and the intermediate and off-route points, if any, and in case of operations not over specified routes or between fixed termini, the territory within which such carrier is authorized to operate. Each permit shall specify the business of the contract carrier covered thereby and the scope thereof. There shall, at the time of issuance, and from time to time thereafter, be attached to the exercise of the privileges granted by the certificate or permit such reasonable terms, conditions, and limitations as the public convenience and necessity, or the character of the holder as a contract carrier, may from time to time require, including terms, conditions, and limitations as to the extension of the route or routes of the carrier, and such terms and conditions as are necessary to carry out, with respect to the operations of the carrier, the requirements established by the commission. No terms, conditions, or limitations shall restrict the right of a contract carrier to substitute or add contracts within the scope of the permit, or to add to the equipment and facilities within the scope of the permit, as the development of the business and the demands of the public may require.

(2) This section does not apply to a transportation network company.

**75-314. Deviation from route; special or charter parties**

A common carrier by motor vehicle operating under any certificate issued under section 75-311 may occasionally deviate from the route over which or the fixed termini between which it is authorized to operate under the certificate under such general or special rules and regulations as the commission may prescribe. Any common carrier by motor vehicle who transports passengers under its certificate may operate in intrastate commerce to any place carrying special or charter parties under such rules and regulations as prescribed by the commission.



**75-315. Certificates; permits; effective date; revocation or suspension; grounds**

Permits and certificates shall be effective from the dates specified in the permits and certificates and shall remain in effect until terminated as provided in this section and section 75-316. A permit or certificate may, upon application of the permit or certificate holder, in the discretion of the commission, be revoked or may, upon complaint or on the commission's own initiative, after notice and hearing, be suspended, changed, or revoked, in whole or in part, for willful failure to comply with any of the provisions of sections 75-101 to 75-801, with any lawful order, rule, or regulation of the commission promulgated under such sections, or with any term, condition, or limitation of the permit or certificate. The commission may, after notice and a hearing, suspend or revoke the permit or certificate of a motor carrier who refuses or subjects to any undue or unreasonable delay any pickup, delivery, or connecting line service, to any shipper, consignee, carrier, or any other person or persons, at any point authorized to be served by such carrier, notwithstanding any hot cargo agreement or other agreement between such motor carrier and a labor organization or any other organization or person.

**75-316. Suspension of service; approval of commission; voluntary revocation of certificate or permit**

Except for circumstances beyond the control of the regulated motor carrier, such as strikes against such carrier, acts of God, and the common enemy, service under a certificate of public convenience and necessity or a permit shall not be suspended without first obtaining approval of the commission. Nothing in sections 75-101 to 75-801 shall prevent the holder of a certificate or permit from requesting revocation of such certificate or permit as provided for in section 75-315.

**75-318. Sale, transfer, lease, or consolidation; application; hearing; approval of commission required**

It shall be lawful, only under the conditions specified in this section, for any regulated motor carrier or person or for two or more regulated motor carriers to:

- (1) Consolidate or merge their properties or any part thereof or certificates of public convenience and necessity or permits, or any part thereof, into one ownership, management, or operation of the properties, certificates, or permits theretofore in separate ownership;
- (2) Purchase, lease, or contract to operate the properties or any part thereof or the certificates or permits, or any part thereof, of another regulated motor carrier; or
- (3) Acquire control of another regulated motor carrier or carriers through purchase of stock.

Whenever a consolidation, merger, purchase, lease, operating contract, or acquisition of control of the properties, certificates, or permits is proposed, the carrier or carriers or person seeking

authority therefor shall present an application to the commission, and thereupon the commission shall notify such carriers and other parties known to have an interest of the time and place for a public hearing in accordance with the rules of the commission. If, after such hearing, the commission finds that the transaction proposed will be consistent with the public interest and does not unduly restrict competition and that the applicant is fit, willing, and able to properly perform the proposed service, it may enter an order approving and authorizing such consolidation, merger, purchase, lease, operating contract, or acquisition of control of the properties, or any part thereof, or certificates or permits of the whole, or any part thereof, upon such terms and conditions as it deems just and reasonable. If any of the certificates or permits proposed to be merged, consolidated, transferred, or leased are dormant, the commission may approve an application for consolidation, merger, transfer, or lease only upon proof of and a finding that such merger, consolidation, transfer, or lease is or will be required by the present and future public convenience and necessity, in the same manner as provided in section 75-311. If the proposed merger, consolidation, transfer, or lease of the certificates or permits will permit or result in a new or different service or operation as to territorial scope than that which is or may be rendered or engaged in by the respective parties or, as to passenger motor carriers, will tend to enlarge competition over that then existing, the commission may approve an application for merger, consolidation, transfer, or lease only upon proof of and a finding that the proposed merger, consolidation, transfer, or lease is or will be required by the present and future public convenience and necessity, in the same manner as provided in section 75-311. Any restrictions, qualifications, or conditions applicable to and contained in a particular certificate of public convenience and necessity or a permit at the time of the issuance thereof or thereafter made a part of such certificate or permit, excluding any restrictions, qualifications, or conditions of general application applicable to all regulated motor carriers or a segment thereof as a class and imposed by regulation of the commission, proposed to be merged, consolidated, transferred, or leased shall not be changed, altered, or removed without the proof required in section 75-311 for certificates and permits.

When authority is transferred as provided in this section, the commission shall simultaneously cancel the authority of the transferor which is transferred.

**75-320. Sale or transfer of stock ownership; change in partnership or limited liability company; approval of commission; hearing**

No transfer, assignment, or sale of stock or change of stock ownership or any interest therein which will directly or indirectly result in a transfer, assignment, sale, or change in the control of the corporation holding a certificate or permit, and no change of one or more of the partners or members, when the certificate holder is a partnership or a limited liability company, will be effective or valid, unless the carrier or person seeking to acquire control of the corporation or unless the applicant seeking to effect a change in one or more of the partners or members in a partnership or limited liability company holding a certificate or permit, respectively, obtains approval of the commission under such rules and regulations as the commission may prescribe. Approval of the proposed transaction, either in whole or in part, may be given, after notice and hearing, only upon findings by the commission that such transaction will be consistent with the

public interest, that it will not unduly restrict competition, and that the applicant is fit, willing, and able to properly perform the proposed service.

**75-321. Certificate; permit; death or incompetency of holder; transfer; approval of commission**

Upon the death of an individual holder of a certificate or permit, or upon an individual certificate or permit holder being legally declared mentally incompetent, the authority conferred by such certificate shall continue with the legal representative of the deceased or mentally incompetent holder thereof for a period of one year from the date of the holder's death or the declaration of mental incompetency, after which the authority conferred thereby shall cease and the certificate or permit be revoked and canceled without further order of the commission, unless application has been made to transfer such authority, in which case the authority shall continue with the legal representative until there has been a final determination of the application. In the event that application is made by the legal representative not less than thirty days prior to the end of such period of one year, the commission may, at its discretion and for cause shown, allow the transfer of the authority to the executors, administrators, guardians, trustees, or other legal representatives of the deceased holder for a period to be fixed by the commission. In considering such application, pertinent orders or decrees of the court having jurisdiction over the estate of the decedent or mentally incompetent person may be deemed cause for the granting thereof. When the individual holder of a certificate or permit dies or is declared legally incompetent and an application is made to transfer the authority issued under the certificate or permit to his or her legal representative, the commission may dispose of the application without hearing, if notice is given to all interested parties.

**75-322. Certificate; permit; trustee, receiver, or assignee; continue operations; petition; order of commission**

If a trustee, receiver, assignee, custodian, or similar officer or officers, shall be appointed by a court of competent jurisdiction, or shall be selected by creditors in accordance with provisions of law, with authority to take or retain possession and to operate the property and business of a certificate or permit holder, such officer or officers shall have authority to perform the service authorized in the certificate or permit of the debtor carrier for a period of ninety days from his or their appointment or selection. Such officer or officers may petition the commission for authority to conduct the operations for an additional period of time, and the commission may, for good cause shown, grant such authority. If such petition is filed within ninety days of the appointment or selection of the petitioner or petitioners, he or they shall have the authority to continue such operations pending decision by the commission on the petition. In considering such petitions, pertinent orders or decrees of the court having jurisdiction may be deemed cause for the granting thereof.

**75-323. Terms, defined**

For purposes of sections 75-301 to 75-343, unless the context otherwise requires:

(1) Application open stage means the time period from the moment a participating driver logs on to the transportation network company's online-enabled application or platform until the driver accepts a request to transport a passenger and from the moment the driver completes the transaction on the online-enabled application or platform or the passenger exits the vehicle, whichever is later, until the driver either accepts another ride request on the online-enabled application or platform or logs off the online-enabled application or platform;

(2) Engaged stage means the time period from the moment a participating driver accepts a ride request on the transportation network company online-enabled application or platform until the driver completes the transaction on the online-enabled application or platform or until the passenger exits the vehicle, whichever is later;

(3) Insurance policy means a policy placed with an authorized Nebraska insurer or with a surplus lines insurer pursuant to Chapter 44;

(4) Participating driver or driver means any person who uses a personal vehicle in connection with a transportation network company's online-enabled application or platform to connect with passengers;

(5) Passenger means a passenger in a personal vehicle for whom a driver provides transportation and who is connected with a driver by a transportation network company's online-enabled application or platform;

(6) Passengers on board stage means the time period when there are passengers in the vehicle pursuant to the driver's participation in a transportation network company;

(7) Personal vehicle means a passenger car as defined in section 60-345 that a driver owns, leases, or is otherwise authorized to use to provide services on a transportation network company's online-enabled application or platform;

(8) Prearranged ride means a ride in which a participating driver is matched to a passenger through a transportation network company's online-enabled application or platform and does not include the on-demand summoning of a ride or street hail. Prearranged ride does not include shared-expense carpool or vanpool arrangements;

(9) Service means the provision of transportation by a driver to a passenger with whom a transportation network company matches the driver;

(10) Transportation network company means an organization, including a corporation, a limited liability company, a partnership, a sole proprietor, or any other entity, operating in this state that provides prearranged transportation services for compensation using an online-enabled application or platform to connect passengers with participating drivers using a personal vehicle. Transportation network company does not include medicaid nonemergency medical transportation brokerage services provided pursuant to a contract with the Department of Health and Human Services; and

(11) Transportation network company insurance means an insurance policy that covers loss arising from a participating driver's use of a personal vehicle in connection with a transportation network company's online-enabled application or platform.

**75-324. Operation of transportation network company; permit required; application; contents; commission; duties**

(1) No person shall operate a transportation network company in Nebraska without first obtaining a permit from the commission. The application for a permit shall be in writing, under oath, submitted to the commission, and accompanied by the fee required under section 75-305. A duly authorized official of the applicant who possesses the full power and authority to make binding representations on the applicant's behalf shall subscribe to the oath on the application. The application shall contain the following information:

(a) The legal name of the applicant;

(b) Any name under which the applicant will or does conduct business in Nebraska;

(c) The applicant's primary business address and telephone number;

(d) A copy of the articles of organization or certificate to transact business in Nebraska;

(e) The name, address, and telephone number of the applicant's registered agent in Nebraska;  
and

(f) A statement that the applicant agrees to adhere to the statutes of Nebraska and to the rules and regulations of the commission regulating transportation network companies.

(2)(a) The commission shall review the application for completeness and verify the information submitted. If the commission finds any information incomplete or inaccurate, the commission shall notify the applicant and give the applicant the opportunity to complete the application.

(b) If an applicant is duly certified or permitted to operate a transportation network company in at least one other state, the commission shall, within sixty days after receiving a complete application, issue a permit to the applicant if the applicant meets the requirements of sections 75-323 to 75-343.

(c) If an applicant is not duly certified or permitted to operate a transportation network company in at least one other state, the applicant shall bear the burden of demonstrating that (i) the applicant has sufficient financial resources to provide transportation network company services in the proposed service territory, (ii) the applicant has sufficient technical competency to provide transportation network company services in the proposed service territory, and (iii) the applicant has sufficient managerial resources to provide transportation network company services in the proposed service territory. If the requirements of subdivisions (i) through (iii) of this subdivision are met and the applicant has satisfactorily provided all of the information in the application required under this section, the commission shall, within ninety days after receiving a complete application, issue a permit to the applicant if the applicant meets the requirements of sections 75-323 to 75-343.

(3) A participating driver contracting with a transportation network company holding a valid permit from the commission shall not be required to obtain a permit or certificate from the commission when driving pursuant to the terms of the contract with the transportation network company.

**75-325. Transportation network company; duties; driver; duties; complaints; commission; powers**

(1) Every transportation network company shall:

(a) Provide the commission with its email address and customer service telephone number;

(b) Display for the passenger either a picture of the driver's personal vehicle and a picture of the driver or the license plate number of the driver's personal vehicle on the online-enabled application or platform that a transportation network company uses to connect drivers and passengers;

(c) Maintain an agent for service of process in Nebraska;

(d) Maintain accurate and up-to-date records of all drivers providing services on behalf of the transportation network company, including the vehicle identification number for all personal vehicles to be operated in connection with the transportation network company;

(e)(i) Implement, enforce, and maintain a zero-tolerance policy on the use of drugs or alcohol applicable to any driver providing service for the transportation network company that prohibits a driver from using any amount of drugs or alcohol while the driver is providing service, (ii) provide a copy of the policy to the commission promptly upon adoption, and (iii) provide a copy of any revision to the policy promptly upon adoption;

(f) Implement an anti-discrimination policy that prohibits discrimination by any driver providing service for the company on the basis of race, national origin, religion, gender, physical or mental disability, medical condition, marital status, or age and file the policy with the commission;

(g) Maintain a web site that provides a customer service telephone number or email address of the transportation network company and that provides the telephone number and email address of the commission;

(h) Establish a driver training program designed to ensure that each driver safely operates his or her personal vehicle prior to the driver being able to offer services on the transportation network company's online-enabled application or platform;

(i) Maintain records required under sections 75-301 to 75-343 to be collected by the transportation network company, including records regarding participating drivers; and

(j) Cooperate with the commission and any employees, investigators, or duly authorized agents of the commission in the investigation of complaints received by the commission from the public or in investigations initiated by the commission.

(2) A transportation network company shall not allow a driver to provide service if the company finds the driver to be in violation of its zero-tolerance policy required pursuant to subdivision (1)(e) of this section or if the driver has not successfully completed driver training pursuant to subdivision (1)(h) of this section. The transportation network company shall provide on its web site and its online-enabled application or platform notice of the zero-tolerance policy and the procedures to report a complaint about a driver with whom the passenger was matched when the passenger reasonably suspects the driver was under the influence of drugs or alcohol during the course of the prearranged ride. Upon receiving a complaint, a transportation network

company shall immediately suspend the driver against whom the complaint was issued and conduct an investigation of the alleged violation. The suspension shall last for the duration of the investigation.

(3) If the commission has reasonable cause to believe a transportation network company is not enforcing the zero-tolerance policy filed with the commission, the commission shall investigate and, after notice and hearing, may enter an order requiring the transportation network company to enforce such policy, which may include suspension of the participating driver.

**75-326. Participating driver; requirements; criminal history record information check**

(1) A participating driver must possess a valid driver's license, proof of registration, and proof of automobile liability insurance and be at least twenty-one years of age.

(2) Prior to permitting a person to act as a driver, the transportation network company shall obtain and review a national criminal history record information check. The criminal disposition information retrieved by the transportation network company's national criminal history record information check shall be at least as comprehensive as the criminal disposition information retrieved by a national criminal history record information check performed by the Federal Bureau of Investigation pursuant to section 81-6,120. Nothing in this subsection shall be construed to require fingerprinting as part of the national criminal history record information check.

(3) A person who has four or more moving traffic violations or one or more major traffic violations in the three years prior to the date of the criminal background check shall not serve as a driver. For purposes of this subsection, the following offenses shall constitute major traffic violations:

(a) Failure to stop and report or render aid as required under section 60-696 or 60-697;

(b) Reckless driving in violation of any city or village ordinance or of section 60-6,213, 60-6,214, or 60-6,217;

(c) Speeding of more than thirty-five miles per hour over the speed limit; and

(d) Failure to yield to a pedestrian resulting in bodily injury to a pedestrian.



(4) A person who has been convicted of or pled guilty or nolo contendere to driving under the influence of drugs or alcohol in the previous seven years in this state or any other state or territory prior to the date of the criminal background check shall not serve as a driver.

(5) A person who is required to register as a sex offender or who has been convicted of or pled guilty or nolo contendere to any offense involving fraud, use of a motor vehicle to commit a felony, a crime involving property damage, theft, acts of violence, or acts of terror shall not serve as a driver.

**75-327. Prearranged ride required; limit on hours; dynamic pricing; filing of rates; receipt; contents**

(1) A participating driver shall not provide a ride unless it is a prearranged ride. No person shall be a participating driver for a period of more than twelve hours during each twenty-four-hour period.

(2)(a) A transportation network company may offer service for compensation, no charge, or suggested compensation.

(b) Except as provided in this section, transportation network companies shall not be subject to rate regulation by the commission and shall not be subject to provisions relating to rates and charges prescribed in sections 75-101 to 75-158.

(c) A transportation network company shall file with the commission the rates it uses to determine any compensation or suggested compensation on its online-enabled application or platform, including any use of dynamic pricing. The transportation network company shall keep the rate filing current and shall charge rates consistent with the rates it files with the commission.

(d) The following requirements apply if the transportation network company uses dynamic pricing through its online-enabled application or platform:

(i) The transportation network company's online-enabled application or platform shall provide clear visible indication that dynamic pricing is in effect prior to the passenger requesting a ride;

(ii) The transportation network company's online-enabled application or platform shall include a feature that requires the passenger to expressly confirm that he or she understands that dynamic pricing will be used in order for the ride request to be completed;

(iii) The transportation network company's online-enabled application or platform shall provide a fare estimator that enables the passenger to estimate the cost under dynamic pricing prior to requesting the ride; and

(iv) Dynamic pricing shall not be permitted during any state of emergency declared by the Governor.

(3) Upon completion of a prearranged ride, a transportation network company shall transmit an electronic receipt to the passenger's email address or online-enabled application documenting the following:

(a) The point of origin and destination of the prearranged ride;

(b) The total duration and distance of the prearranged ride;

(c) The total amount paid, if any, including the base fare and any additional charges incurred for distance traveled or duration of the prearranged ride; and

(d) The driver's first name.

**75-328. Use of personal vehicle; requirements; initial safety inspection; annual inspection; reports available**

(1) In order to be used under sections 75-323 to 75-343, a personal vehicle shall be in compliance with the Motor Vehicle Registration Act as required for a passenger car as defined in section 60-345.

(2) A transportation network company or a certified mechanic shall perform an initial safety inspection on each personal vehicle prior to approving it for use as a personal vehicle. The inspection shall include inspection of at least the following components and such components shall be in good working order:

(a) Foot brakes;

- (b) Parking or emergency brakes;
- (c) Steering mechanism;
- (d) Windshield;
- (e) Rear window and other glass;
- (f) Windshield wipers;
- (g) Headlights;
- (h) Taillights;
- (i) Turn indicator lights;
- (j) Stop lights;
- (k) Front seat adjustment mechanism;
- (l) The opening, closing, and locking capability of doors;
- (m) Horn;
- (n) Speedometer;
- (o) Bumpers;
- (p) Muffler and exhaust system;

(q) Tire conditions, including tread depth;

(r) Interior and exterior rear-view mirrors; and

(s) Safety belts for driver and passengers.

(3) Annually thereafter, a driver shall obtain such an inspection and approval of the driver's personal vehicle in order to continue its use as a personal vehicle. A driver shall maintain proof of the current inspection.

(4) A transportation network company shall make the initial and annual inspection reports available to the commission upon request.

**75-329. Inspection of records; complaint; commission powers; treatment of records**

(1) The commission or the employees or duly authorized agents of the commission may, in a mutually agreed-upon setting, inspect any records held by a transportation network company which the commission determines are necessary to review to ensure public safety, including information obtained pursuant to section 75-326. Such inspection of records shall occur no more than once each calendar quarter unless the commission finds it necessary pursuant to rules and regulations adopted and promulgated by the commission. Such inspection shall be conducted on an audit basis rather than a comprehensive basis.

(2) In response to a specific complaint, the commission may inspect any records held by a transportation network company which the commission determines are necessary to investigate and resolve the complaint, including information obtained pursuant to section 75-326.

(3) Any records obtained or inspected pursuant to this section shall not be considered public records subject to sections 84-712 to 84-712.09 and shall not be subject to disclosure by the commission except when publicly disclosed as evidence in a civil penalty proceeding pursuant to section 75-156 or in a criminal proceeding prosecuted by the state.

**75-330. Noncompete provision**

A transportation network company shall not require a participating driver to sign an agreement not to compete with the company in order to be matched with passengers through the company's online-enabled application or platform.

**75-331. Transportation Network Company Regulation Cash Fund; created; use; investment**

The Transportation Network Company Regulation Cash Fund is created. The commission shall use the fund to carry out the policies described in section 75-301, including, but not limited to, the regulation of transportation network companies and the enforcement of sections 75-323 to 75-343 and the rules and regulations adopted and promulgated by the commission under such sections, and for the costs associated with the administration of the fund. The fund shall contain the fees remitted pursuant to section 75-305. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**75-332. Driver; disclosure by transportation network company; contents; acknowledgment; notice to lienholder; record**

(1) Prior to permitting a person to act as a driver, a transportation network company shall disclose in writing to each participating driver:

(a) The insurance coverage, the limits of liability, and any deductible amounts that the transportation network company maintains while the driver uses a personal vehicle in connection with a transportation network company's online-enabled application or platform;

(b) That in many personal automobile insurance policies, the driver's policy does not provide coverage for damage to the vehicle used by the driver, uninsured and underinsured motorist coverage, and other first-party claims from the moment the driver logs on to the transportation network company's online-enabled application or platform to the moment the driver logs off the transportation network company's online-enabled application or platform. The driver should contact his or her insurer to determine coverage;

(c) That if the driver is planning to use a vehicle that has a lien against it to provide service in connection with a transportation network company, the driver of the vehicle must notify the lienholder at least seven days prior to using the vehicle to provide such service that the driver intends to use the vehicle to provide service in connection with a transportation network company by complying with subsection (3) of this section; and

(d) That the driver is responsible to know the laws, rules, and regulations that govern the service he or she provides in connection with a transportation network company.

(2) The transportation network company shall make the disclosure required by subdivision (1)(c) of this section a distinctive part of the driver's terms of service and shall require a separate acknowledgment of this disclosure by each driver by electronic or handwritten signature.

(3) The commission shall adopt and promulgate rules and regulations to establish a procedure to confirm that drivers have notified lienholders as required by subdivision (1)(c) of this section. The commission shall keep a record of such confirmation for at least five years and shall make such record available to lienholders.

**75-333. Transportation network company insurance; requirements**

(1) Beginning on September 1, 2015, a transportation network company and a participating driver shall maintain transportation network company insurance as provided in this section. Unless otherwise specified, the following requirements shall apply to transportation network company insurance during the engaged stage and during the passengers on board stage:

(a) Primary liability coverage in the amount of at least one million dollars for death, personal injury, and property damage; and

(b) Uninsured and underinsured motorist coverage for both the driver and passengers in the amounts required by the Uninsured and Underinsured Motorist Insurance Coverage Act.

(2) The requirements for the coverage required by this section may be satisfied by any of the following:

(a) Transportation network company insurance maintained by a participating driver;

(b) Transportation network company insurance maintained by a transportation network company; or

(c) Any combination of subdivisions (2)(a) and (b) of this section.

(3) The insurer providing transportation network company insurance under this section shall have the duty to defend and indemnify the insured.

(4) An insurance policy required under sections 75-332 to 75-341 shall be placed with an authorized Nebraska insurer or with a surplus-lines insurer pursuant to Chapter 44.

**75-334. Transportation network company insurance during application open stage; requirements**

(1) Beginning on September 1, 2015, the following requirements shall apply to transportation network company insurance during the application open stage:

(a) Transportation network company insurance shall be primary and in the amount of at least twenty-five thousand dollars for death and personal injury per person, fifty thousand dollars for death and personal injury per incident, and twenty-five thousand dollars for property damage; and

(b) Uninsured motorist coverage pursuant to the Uninsured and Underinsured Motorist Insurance Coverage Act.

(2) The requirements for the coverage required by this section may be satisfied by any of the following:

(a) Transportation network company insurance maintained by a participating driver;

(b) Transportation network company insurance maintained by a transportation network company; or

(c) Any combination of subdivisions (2)(a) and (b) of this section.

(3) The insurer providing transportation network company insurance under this section shall have the duty to defend and indemnify the insured.

**75-335. Coverage of insurance; certificate of insurance; filing required**

(1) Coverage under a transportation network company insurance policy shall not be dependent on a personal automobile insurance policy first denying a claim nor shall a personal automobile insurance policy, including a personal liability umbrella policy, be required to first deny a claim.

(2) When transportation network company insurance maintained by a participating driver to fulfill the insurance obligations of sections 75-332 to 75-341 has lapsed or ceased to exist, the transportation network company shall provide the coverage required by sections 75-332 to 75-341 beginning with the first dollar of a claim.

(3) For transportation network company insurance maintained by a transportation network company to meet the requirements of sections 75-332 to 75-341, a certificate of insurance shall be filed with the commission specifying that on cancellation or nonrenewal of the transportation network company insurance, the insurer must send written notice of the cancellation or nonrenewal to the commission at least thirty days before the effective date of the cancellation or nonrenewal.

**75-336. Liability; certain payments; how treated**

(1) Sections 75-323 to 75-343 shall not limit the liability of a transportation network company arising out of an automobile accident involving a participating driver in any action for damages against a transportation network company for an amount above the required insurance coverage.

(2) In the event of a loss involving a personal vehicle used in connection with a transportation network company and if such personal vehicle is subject to a lien, the transportation network company insurance carrier shall make payment for a claim covered under collision physical damage coverage or comprehensive physical damage coverage directly to the business repairing the vehicle or jointly to the owner of the vehicle and the primary lienholder on the covered vehicle.

**75-337. Owner of personal vehicle; duty**

The owner of any personal vehicle used in connection with a transportation network company shall have the duty to maintain collision physical damage coverage and comprehensive physical damage coverage for transportation network company activity if the vehicle is required to carry such coverage due to a contractual obligation.

**75-338. Sections; how construed**

Nothing in sections 75-323 to 75-343 shall be construed to require a private passenger automobile insurance policy to provide primary or excess coverage during the period of time from the moment a participating driver logs on to a transportation network company's online-enabled application or platform until the driver logs off the online-enabled application or platform or the passenger exits the personal vehicle, whichever is later.

**75-339. Personal automobile insurer; policy, amendment, or endorsement; contents**

Notwithstanding any other law, a personal automobile insurer may, at its discretion, offer an automobile insurance policy, or an amendment or endorsement to an existing policy, that covers a private passenger motor vehicle, station wagon type vehicle, sport utility vehicle, or similar type of motor vehicle with a passenger capacity of eight persons or less, including the driver, while used in connection with a transportation network company's online-enabled application or platform only if the policy expressly provides for the coverage during all or the defined portion of



the time periods specified in sections 75-333 and 75-334, with or without a separate charge, or the policy contains an amendment or an endorsement to provide that coverage, for which a separately stated premium may be charged. The policy, amendment, or endorsement may include, but not be limited to:

- (1) Comprehensive physical damage coverage;
- (2) Collision physical damage coverage;
- (3) Liability coverage for bodily injury and property damage;
- (4) Medical payments coverage; and
- (5) Uninsured and underinsured motorist coverage.

**75-340. Cooperation with insurers; maintenance of records**

(1) In a claims coverage investigation, a transportation network company or its insurer shall cooperate with insurers that are involved in the claims coverage investigation to facilitate the exchange of information, including the provision of dates and times at which an accident occurred that involved a participating driver and the precise times that the participating driver logged on and off the transportation network company's online-enabled application or platform in the twenty-four-hour period preceding the accident.

(2) All records, including electronic records, showing the time when a driver has logged in as active or logged out as inactive on the transportation network company's online-enabled application or platform, and any data or reports with information about the personal vehicle's involvement in a motor vehicle accident, that are maintained by the transportation network company shall be maintained for a minimum of five years after the date the loss is reported to the transportation network company.

**75-341. Participating driver; proof of insurance coverage**

A participating driver shall carry proof of transportation network company insurance coverage with him or her at all times during his or her use of a vehicle in connection with a transportation network company's online-enabled application or platform. In the event of an accident, a participating driver shall, upon request, provide this insurance coverage information to any other party involved in the accident and to a law enforcement officer.

**75-342. Certain services; specific authorization from commission required**

No transportation network company or participating driver shall provide transportation for any person under contract with the Department of Health and Human Services or any contractors of the Department of Health and Human Services without specific authorization from the commission. In order to receive such authorization, the transportation network company or participating driver shall demonstrate that such service is or will be required by the present or future public convenience and necessity.

**75-343. Report; contents**

The commission shall electronically provide the Legislature with an annual report before December 31 of each year on the status of the implementation of sections 75-323 to 75-342. The report shall describe (1) the number of permits issued pursuant to section 75-324, (2) a description of any revocation proceedings involving permits issued under sections 75-323 to 75-342, (3) the number of rides provided by taxicab carriers relative to historical numbers, (4) the number of taxicabs operated by taxicab carriers relative to historical numbers, (5) the number of drivers either employed or contracted by taxicab carriers relative to historical numbers, (6) the number of taxicab carriers authorized by the commission relative to historical numbers, and (7) any other information in its possession that the commission believes will assist the Legislature in evaluating the effectiveness of sections 75-323 to 75-342. The report shall also address the question of the need for further legislation to achieve the purposes of sections 75-323 to 75-342.

**75-362. Federal regulations; terms, defined**

For purposes of sections 75-362 to 75-369.07, unless the context otherwise requires:

(1) Accident means:

(a) Except as provided in subdivision (b) of this subdivision, an occurrence involving a commercial motor vehicle operating on a highway in interstate or intrastate commerce which results in:

(i) A fatality;

(ii) Bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or

(iii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicles to be transported away from the scene by a tow truck or other motor vehicle.

(b) The term accident does not include:

(i) An occurrence involving only boarding and alighting from a stationary motor vehicle; or

(ii) An occurrence involving only the loading or unloading of cargo

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

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

(b) 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

(c) A water capacity greater than one thousand pounds as a receptacle for a gas as defined in 49 C.F.R. 173.115;

(3) Cargo tank means a bulk packaging that:

(a) Is a tank intended primarily for the carriage of liquids or gases and includes appurtenances, reinforcements, fittings, and closures;

(b) Is permanently attached to or forms a part of a motor vehicle or is not permanently attached to a motor vehicle but which, by reason of its size, construction, or attachment to a motor vehicle, is loaded or unloaded without being removed from the motor vehicle; and

(c) Is not fabricated under a specification for cylinders, intermediate bulk containers, multi-unit tank-car tanks, portable tanks, or tank cars;

(4) Cargo tank motor vehicle means a motor vehicle with one or more cargo tanks permanently attached to or forming an integral part of the motor vehicle;

(5) Commercial enterprise means any business activity relating to or based upon the production, distribution, or consumption of goods or services;

(6) Commercial motor vehicle means any self-propelled or towed motor vehicle used on a highway in interstate commerce or intrastate commerce to transport passengers or property when the vehicle:

(a) Has a gross vehicle weight rating or gross combination weight rating or gross vehicle weight or gross combination weight of ten thousand one pounds or more, whichever is greater;

(b) Is designed or used to transport more than eight passengers, including the driver, for compensation;

(c) Is designed or used to transport more than fifteen passengers, including the driver, and is not used to transport passengers for compensation; or

(d) Is used in transporting material found to be hazardous and such material is transported in a quantity requiring placarding pursuant to section 75-364;

(7) Compliance review means an onsite examination of motor carrier operations, such as drivers' hours of service, maintenance and inspection, driver qualification, commercial driver's license requirements, financial responsibility, accidents, hazardous materials, and other safety and transportation records to determine whether a motor carrier meets the safety fitness standard. A compliance review may be conducted in response to a request to change a safety rating, to investigate potential violations of safety regulations by motor carriers, or to investigate complaints or other evidence of safety violations. The compliance review may result in the initiation of an enforcement action with penalties;

(8)(a) Covered farm vehicle means a motor vehicle, including an articulated motor vehicle:

(i) That:

(A) Is traveling in the state in which the vehicle is registered or another state;

(B) Is operated by:

(I) A farm owner or operator;

(II) A ranch owner or operator; or

(III) An employee or family member of an individual specified in subdivision (8)(a)(i)(B)(I) or (8)(a)(i)(B)(II) of this section;

(C) Is transporting to or from a farm or ranch:

(I) Agricultural commodities;

(II) Livestock; or

(III) Machinery or supplies;

(D) Except as provided in subdivision (8)(b) of this section, is not used in the operations of a for-hire motor carrier; and

(E) Is equipped with a special license plate or other designation by the state in which the vehicle is registered to allow for identification of the vehicle as a farm vehicle by law enforcement personnel; and

(ii) That has a gross vehicle weight rating or gross vehicle weight, whichever is greater, that is:

(A) Less than twenty-six thousand one pounds; or

(B) Twenty-six thousand one pounds or more and is traveling within the state or within one hundred fifty air miles of the farm or ranch with respect to which the vehicle is being operated.

(b) Covered farm vehicle includes a motor vehicle that meets the requirements of subdivision (8)(a) of this section, except for subdivision (8)(a)(i)(D) of this section, and:

(i) Is operated pursuant to a crop share farm lease agreement;

(ii) Is owned by a tenant with respect to that agreement; and

(iii) Is transporting the landlord's portion of the crops under that agreement.

(c) Covered farm vehicle does not include:

(i) A combination of truck-tractor and semitrailer which is operated by a person under eighteen years of age; or

(ii) A combination of truck-tractor and semitrailer which is used in the transportation of materials found to be hazardous for the purposes of the federal Hazardous Materials Transportation Act and which require the combination to be placarded under 49 C.F.R. part 172, subpart F;

(9) Disabling damage means damage which precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs.

(a) Inclusions: Damage to motor vehicles that could have been driven but would have been further damaged if so driven.

(b) Exclusions:

(i) Damage which can be remedied temporarily at the scene of the accident without special tools or parts;

(ii) Tire disablement without other damage even if no spare tire is available;

(iii) Headlight or taillight damage; and

(iv) Damage to turnsignals, horn, or windshield wipers which makes them inoperative;

(10) Driver means any person who operates any commercial motor vehicle;

(11) Elevated temperature material means a material which, when offered for transportation or transported in a bulk packaging:

(a) Is in a liquid phase and at a temperature at or above two hundred twelve degrees Fahrenheit;

(b) Is in a liquid phase with a flash point at or above one hundred degrees Fahrenheit that is intentionally heated and offered for transportation or transported at or above its flash point; or

(c) Is in a solid phase and at a temperature at or above four hundred sixty-four degrees Fahrenheit;

(12) Employee means any individual, other than an employer, who is employed by an employer and who in the course of his or her employment directly affects commercial motor vehicle safety. Such term includes a driver of a commercial motor vehicle, including an independent contractor while in the course of operating a commercial motor vehicle, a mechanic, and a freight handler. Such term does not include an employee of the United States, any state, any political subdivision of a state, or any agency established under a compact between states and approved by the Congress of the United States who is acting within the course of such employment;

(13) Employer means any person engaged in a business affecting commerce who owns or leases a commercial motor vehicle in connection with that business or assigns employees to operate it. Such term does not include the United States, any state, any political subdivision of a state, or an agency established under a compact between states approved by the Congress of the United States;

(14) Exempt motor carrier means a person engaged in transportation exempt from economic regulation under 49 U.S.C. 13506. An exempt motor carrier is subject to the safety regulations adopted in sections 75-362 to 75-369.07;

(15) Farm vehicle driver means a person who drives only a commercial motor vehicle that is controlled and operated by a farmer as a private motor carrier of property;

(16) Farmer means any person who operates a farm or is directly involved in the cultivation of land, crops, or livestock which:

(a) Are owned by that person; or

(b) Are under the direct control of that person;

(17) Fatality means any injury which results in the death of a person at the time of the motor vehicle accident or within thirty days after the accident;

(18) Fertilizer and agricultural chemical application and distribution equipment means:

(a) Self-propelled or towed equipment, designed and used exclusively to apply commercial fertilizer, as that term is defined in section 81-2,162.02, chemicals, or related products to agricultural soil and crops; or

(b) Towed equipment designed and used exclusively to carry commercial fertilizer, as that term is defined in section 81-2,162.02, chemicals, or related products for use on agricultural soil and crops, which are equipped with implement or floatation tires;

(19) For-hire motor carrier means a person engaged in the transportation of goods or passengers for compensation;

(20) Gross combination weight means the sum of the empty weight of a motor vehicle plus the total weight of any load carried thereon and the empty weight of the towed unit or units plus the total weight of any load carried on such towed unit or units;

(21) Gross combination weight rating means the greater of (a) a value specified by the manufacturer of the power unit, if such value is displayed on the Federal Motor Vehicle Safety Standard certification label required by the National Highway Traffic Safety Administration, or (b) the sum of the gross vehicle weight ratings or the gross vehicle weights of the power unit and



the towed unit or units, or any combination thereof, that produces the highest value. Gross combination weight rating does not apply to a commercial motor vehicle if the power unit is not towing another vehicle;

(22) Gross vehicle weight means the sum of the empty weight of a motor vehicle plus the total weight of any load carried thereon;

(23) Gross vehicle weight rating means the value specified by the manufacturer as the loaded weight of a single motor vehicle. In the absence of such value specified by the manufacturer or the absence of any marking of such value on the vehicle, the gross vehicle weight rating shall be determined from the sum of the axle weight ratings of the vehicle or the sum of the tire weight ratings as marked on the sidewall of the tires, whichever is greater. In the absence of any tire sidewall marking, the tire weight ratings shall be determined for the specified tires from any of the publications of any of the organizations listed in 49 C.F.R. 571.119;

(24) Hazardous material means a substance or material that the Secretary of the United States Department of Transportation has determined is capable of posing an unreasonable risk to health, safety, and property when transported in commerce and has designated as hazardous under 49 U.S.C. 5103. The term includes hazardous substances, hazardous wastes, marine pollutants, elevated temperature materials, materials designated as hazardous in the Hazardous Materials Table, 49 C.F.R. 172.101, and materials that meet the defining criteria for hazard classes and divisions in 49 C.F.R. part 173;

(25) Hazardous substance means a material, including its mixtures and solutions, that is listed in 49 C.F.R. 172.101, Appendix A, List Of Hazardous Substances and Reportable Quantities, and is in a quantity, in one package, which equals or exceeds the reportable quantity listed in 49 C.F.R. 172.101, Appendix A. This definition does not apply to petroleum products that are lubricants or fuels or to mixtures or solutions of hazardous substances if in a concentration less than that shown in the table in 49 C.F.R. 171.8 under the definition of hazardous substance based on the reportable quantity specified for the materials listed in 49 C.F.R. 172.101, Appendix A;

(26) Hazardous waste means any material that is subject to the hazardous waste manifest requirements of the United States Environmental Protection Agency specified in 40 C.F.R. 262;

(27) Highway means the entire width between the boundary limits of any street, road, avenue, boulevard, or way which is publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel;

(28) Interstate commerce means trade, traffic, or transportation provided in the furtherance of a commercial enterprise in the United States:

(a) Between a place in a state and a place outside of such state, including a place outside of the United States;

(b) Between two places in a state through another state or a place outside of the United States;  
or

(c) Between two places in a state as part of trade, traffic, or transportation originating or terminating outside the state or the United States;

(29) Intrastate commerce means any trade, traffic, or transportation provided in the furtherance of a commercial enterprise between any place in the State of Nebraska and any other place in Nebraska and not through any other state;

(30) Marine pollutant means a material which is listed in the Hazardous Materials Table, 49 C.F.R. 172.101, Appendix B, as a marine pollutant (see 49 C.F.R. 171.4 for applicability to marine pollutants) and, when in a solution or mixture of one or more marine pollutants, is packaged in a concentration which equals or exceeds:

(a) Ten percent by weight of the solution or mixture for materials listed in 49 C.F.R. 172.101, Appendix B; or

(b) One percent by weight of the solution or mixture for materials that are identified as severe marine pollutants in the Hazardous Materials Table, 49 C.F.R. 172.101, Appendix B;

(31) Motor carrier means a for-hire motor carrier or a private motor carrier. The term includes a motor carrier's agents, officers, and representatives as well as employees responsible for hiring, supervising, training, assigning, or dispatching of drivers and employees concerned with the installation, inspection, and maintenance of motor vehicle equipment or accessories. This definition includes the terms employer and exempt motor carrier;

(32) Motor vehicle means any vehicle, truck, truck-tractor, trailer, or semitrailer propelled or drawn by mechanical power except (a) farm tractors, (b) vehicles which run only on rails or tracks, and (c) road and general-purpose construction and maintenance machinery which by

design and function is obviously not intended for use on a public highway, including, but not limited to, motor scrapers, earthmoving equipment, backhoes, trenchers, motor graders, compactors, tractors, bulldozers, bucket loaders, ditchdigging apparatus, asphalt spreaders, leveling graders, power shovels, and crawler tractors;

(33) Nonbulk packaging means a packaging which has:

(a) A maximum capacity of one hundred nineteen gallons or less as a receptacle for a liquid;

(b) A maximum net mass of eight hundred eighty-two pounds or less and a maximum capacity of one hundred nineteen gallons or less as a receptacle for a solid; or

(c) A water capacity of one thousand pounds or less as a receptacle for a gas as defined in 49 C.F.R. 173.115;

(34) Out-of-service order means a declaration by an authorized enforcement officer of a federal, state, Canadian, Mexican, or local jurisdiction that a driver, a commercial motor vehicle, or a motor carrier operation is out of service pursuant to 49 C.F.R. 386.72, 392.5, 392.9a, 395.13, or 396.9, or compatible laws or the North American Uniform Out-of-Service Criteria;

(35) Packaging means a receptacle and any other components or materials necessary for the receptacle to perform its containment function in conformance with the minimum packing requirements of Title 49 of the Code of Federal Regulations. For radioactive materials packaging, see 49 C.F.R. 173.403;

(36) Person means any individual, partnership, association, corporation, business trust, or any other organized group of individuals;

(37) Planting and harvesting season means the period beginning on January 1 up to and including December 31 of each calendar year;

(38) Principal place of business means the single location designated by the motor carrier, normally its headquarters, for purposes of identification. The motor carrier must make records required by the regulations referred to in sections 75-362 to 75-369.07 available for inspection at this location within forty-eight hours, Saturdays, Sundays, and state or federal holidays excluded, after a request has been made by an officer of the Nebraska State Patrol;

(39) Private motor carrier means a person who provides transportation of property or passengers by commercial motor vehicle and is not a for-hire motor carrier;

(40) Safety audit means an examination of a motor carrier's operations to provide educational and technical assistance on drivers' hours of service, maintenance and inspection, driver qualification, commercial driver's license requirements, financial responsibility, accidents, hazardous materials, and other safety and transportation records to determine whether a motor carrier meets the safety fitness standard. The purpose of a safety audit is to gather critical safety data needed to make an assessment of the carrier's safety performance and basic safety management controls. Safety audits do not result in safety ratings; and

(41) Tank means a container, consisting of a shell and heads, that forms a pressure-tight vessel having openings designed to accept pressure-tight fittings or closures, but excludes any appurtenances, reinforcements, fittings, or closures.

**75-363. Federal motor carrier safety regulations; provisions adopted; exceptions**

(1) The parts, subparts, and sections of Title 49 of the Code of Federal Regulations listed below, as modified in this section, or any other parts, subparts, and sections referred to by such parts, subparts, and sections, in existence and effective as of January 1, 2019, are adopted as Nebraska law.

(2) Except as otherwise provided in this section, the regulations shall be applicable to:

(a) All motor carriers, drivers, and vehicles to which the federal regulations apply; and

(b) All motor carriers transporting persons or property in intrastate commerce to include:

(i) All vehicles of such motor carriers with a gross vehicle weight rating, gross combination weight rating, gross vehicle weight, or gross combination weight over ten thousand pounds;

(ii) All vehicles of such 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;

(iii) All vehicles of such motor carriers transporting hazardous materials required to be placarded pursuant to section 75-364; and

(iv) All drivers of such motor carriers if the drivers are operating a commercial motor vehicle as defined in section 60-465 which requires a commercial driver's license.

(3) The Legislature hereby adopts, as modified in this section, the following parts of Title 49 of the Code of Federal Regulations:

(a) Part 382--CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING;

(b) Part 385--SAFETY FITNESS PROCEDURES;

(c) Part 386--RULES OF PRACTICE FOR FMCSA PROCEEDINGS;

(d) Part 387--MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS;

(e) Part 390--FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL;

(f) Part 391--QUALIFICATIONS OF DRIVERS AND LONGER COMBINATION VEHICLE (LCV) DRIVER INSTRUCTORS;

(g) Part 392--DRIVING OF COMMERCIAL MOTOR VEHICLES;

(h) Part 393--PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION;

(i) Part 395--HOURS OF SERVICE OF DRIVERS;

(j) Part 396--INSPECTION, REPAIR, AND MAINTENANCE;

(k) Part 397--TRANSPORTATION OF HAZARDOUS MATERIALS; DRIVING AND PARKING RULES; and

(I) Part 398--TRANSPORTATION OF MIGRANT WORKERS.

(4) The provisions of subpart E--Physical Qualifications And Examinations of 49 C.F.R. part 391--QUALIFICATIONS OF DRIVERS AND LONGER COMBINATION VEHICLE (LCV) DRIVER INSTRUCTORS 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.

(5) The regulations adopted in subsection (3) of this section shall not apply to farm trucks registered pursuant to section 60-3,146 with a gross weight of sixteen tons or less. The following parts and sections of 49 C.F.R. chapter III shall not apply to drivers of farm trucks registered pursuant to section 60-3,146 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.

(6) The following parts and subparts of 49 C.F.R. chapter III shall not apply to the operation of covered farm vehicles:

(a) Part 382--CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING;

(b) Part 391, subpart E--Physical Qualifications and Examinations;

(c) Part 395--HOURS OF SERVICE OF DRIVERS; and

(d) Part 396--INSPECTION, REPAIR, AND MAINTENANCE.

(7) Part 393--PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION and Part 396--INSPECTION, REPAIR, AND MAINTENANCE shall not apply to fertilizer and agricultural

chemical application and distribution equipment transported in units with a capacity of three thousand five hundred gallons or less.

(8) For purposes of this section, intrastate motor carriers shall not include any motor carrier or driver excepted from 49 C.F.R. chapter III by section 390.3(f) of part 390.

(9)(a) Part 395--HOURS OF SERVICE OF DRIVERS shall apply to motor carriers and drivers who engage in intrastate commerce as defined in section 75-362, 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:

(i) More than twelve hours following ten consecutive hours off duty; or

(ii) For any period after having been on duty sixteen hours following ten consecutive hours off duty.

(b) 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.

(10) Part 395--HOURS OF SERVICE OF DRIVERS, as adopted in subsections (3) and (9) of this section, shall not apply to drivers transporting agricultural commodities or farm supplies for agricultural purposes during planting and harvesting season when:

(a) The transportation of such agricultural commodities is from the source of the commodities to a location within a one-hundred-fifty-air-mile radius of the source of the commodities;

(b) The transportation of such farm supplies is from a wholesale or retail distribution point of the farm supplies to a farm or other location where the farm supplies are intended to be used which is within a one-hundred-fifty-air-mile radius of the wholesale or retail distribution point; or

(c) The transportation of such farm supplies is from a wholesale distribution point of the farm supplies to a retail distribution point of the farm supplies which is within a one-hundred-fifty-air-mile radius of the wholesale distribution point.

(11) 49 C.F.R. 390.21--Marking of self-propelled CMVs and intermodal equipment shall not apply to farm trucks and farm truck-tractors registered pursuant to section 60-3,146 and operated solely in intrastate commerce.

(12) 49 C.F.R. 392.9a--Operating authority shall not apply to Nebraska motor carriers operating commercial motor vehicles solely in intrastate commerce.

(13) No motor carrier shall permit or require a driver of a commercial motor vehicle to violate, and no driver of a commercial motor vehicle shall violate, any out-of-service order.

**75-364. Additional federal motor carrier regulations; provisions adopted**

The parts, subparts, and sections of Title 49 of the Code of Federal Regulations listed below, or any other parts, subparts, and sections referred to by such parts, subparts, and sections, in existence and effective as of January 1, 2019, are adopted as part of Nebraska law and shall be applicable to all motor carriers whether engaged in interstate or intrastate commerce, drivers of such motor carriers, and vehicles of such motor carriers:

(1) Part 107--HAZARDOUS MATERIALS PROGRAM PROCEDURES, subpart F--Registration of Cargo Tank and Cargo Tank Motor Vehicle Manufacturers, Assemblers, Repairers, Inspectors, Testers, and Design Certifying Engineers;

(2) Part 107--HAZARDOUS MATERIALS PROGRAM PROCEDURES, subpart G--Registration of Persons Who Offer or Transport Hazardous Materials;

(3) Part 171--GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS;



(4) Part 172--HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, TRAINING REQUIREMENTS, AND SECURITY PLANS;

(5) Part 173--SHIPPERS--GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS;

(6) Part 177--CARRIAGE BY PUBLIC HIGHWAY;

(7) Part 178--SPECIFICATIONS FOR PACKAGINGS; and

(8) Part 180--CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS.

**75-365. Definitions; applicability; report; requirements**

(1) Definitions contained in the regulations referred to in sections 75-363 and 75-364 shall only apply to such regulations.

(2) When the regulations referred to in sections 75-363 and 75-364 require that any person submit a report to the United States Department of Transportation or any other federal agency, that person shall also submit a copy of the report to the Nebraska State Patrol.

**75-366. Enforcement powers**

For the purpose of enforcing Chapter 75, article 3, any officer of the Nebraska State Patrol may, upon demand, inspect the accounts, records, and equipment of any motor carrier or shipper. Any officer of the Nebraska State Patrol shall have the authority to enforce the federal motor carrier safety regulations, as such regulations existed on January 1, 2019, and federal hazardous materials regulations, as such regulations existed on January 1, 2019, and is authorized to enter upon, inspect, and examine any and all lands, buildings, and equipment of any motor carrier, any shipper, and any other person subject to the federal Interstate Commerce Act, the federal Department of Transportation Act, and other related federal laws and to inspect and copy any and all accounts, books, records, memoranda, correspondence, and other documents of a motor carrier, a shipper, and any other person subject to Chapter 75, article 3, for the purposes of enforcing Chapter 75, article 3. To promote uniformity of enforcement, the carrier enforcement division of the Nebraska State Patrol shall cooperate and consult with the Public Service Commission and the Division of Motor Carrier Services.

**75-367. Violations; penalty**

Any person who violates any of the provisions adopted under section 75-363 or 75-364 shall be guilty of a Class III misdemeanor.

**75-368. Nebraska State Patrol; carrier enforcement division; adopt rules and regulations; prior rules and regulations; effect**

(1) The Nebraska State Patrol or the carrier enforcement division may adopt and promulgate rules and regulations as are necessary to carry out and enforce sections 75-362 to 75-369.07.

(2) The rules and regulations utilized by the Public Service Commission to administer any function or duty transferred to the Division of Motor Carrier Services on January 1, 1997, shall be administered as if adopted by the Division of Motor Carrier Services and shall remain effective until repealed, amended, modified, or reenacted by the Division of Motor Carrier Services.

**75-369. Nebraska State Patrol; provide declaration of safety regulations; distribution; acknowledgment of applicant**

The Nebraska State Patrol shall provide each county treasurer and the Department of Motor Vehicles with copies of a declaration which states that the motor carrier safety regulations in sections 75-362 to 75-369.07 have been enacted into state law. The declaration shall be distributed by the county treasurers and the Department of Motor Vehicles to each applicant for registration of commercial motor vehicles subject to sections 75-363 and 75-364. The applicant shall sign the registration form to acknowledge that the applicant has read the declaration and is aware that the motor carrier safety regulations are part of state law. Nothing in this section shall be construed to impose any liability upon any county treasurer or the Department of Motor Vehicles or any employee thereof as a result of any act or failure to act under this section.

**75-369.01. Nebraska State Patrol carrier enforcement division; safety audit or compliance review**

Any officer of the Nebraska State Patrol carrier enforcement division may conduct a safety audit or compliance review of a motor carrier.

**75-369.02. Safety rating; factors; notice**

Following a compliance review of an intrastate motor carrier by an officer of the Nebraska State Patrol carrier enforcement division, the Nebraska State Patrol shall issue a safety rating of that motor carrier. The safety rating shall be based upon factors prescribed in 49 C.F.R. part 385 -- Safety Fitness Procedures adopted in section 75-363, portions of 49 C.F.R. chapter I adopted in section 75-364, and insurance requirements for intrastate motor carriers set forth by the Public Service Commission pursuant to section 75-307. The motor carrier shall be notified by the Nebraska State Patrol of such safety rating by certified or registered mail.

**75-369.03. Violations; civil penalty; referral to federal agency or Public Service Commission; when**

(1) The Superintendent of Law Enforcement and Public Safety may issue an order imposing a civil penalty against a motor carrier transporting persons or property in interstate commerce for a violation of sections 75-392 to 75-399 or against a motor carrier transporting persons or property in intrastate commerce for a violation or violations of section 75-363 or 75-364 based upon an inspection conducted pursuant to section 75-366 in an amount which shall not exceed eight hundred dollars for any single violation in any proceeding or series of related proceedings against any person or motor carrier as defined in 49 C.F.R. 390.5 as adopted in section 75-363.

(2) The superintendent shall issue an order imposing a civil penalty in an amount not to exceed fifteen thousand seven hundred twenty-seven dollars against a motor carrier transporting persons or property in interstate commerce for a violation of subdivision (2)(e) of section 60-4,162 based upon a conviction of such a violation.

(3) The superintendent shall issue an order imposing a civil penalty against a driver operating a commercial motor vehicle, as defined in section 60-465, that requires a commercial driver's license or CLP-commercial learner's permit, in violation of an out-of-service order. The civil penalty shall be in an amount not less than three thousand thirty-four dollars for a first violation and not less than six thousand sixty-eight dollars for a second or subsequent violation.

(4) The superintendent shall issue an order imposing a civil penalty against a motor carrier who knowingly allows, requires, permits, or authorizes the operation of a commercial motor vehicle, as defined in section 60-465, that requires a commercial driver's license or CLP-commercial learner's permit, in violation of an out-of-service order. The civil penalty shall be not less than five thousand four hundred seventy-nine dollars but not more than thirty thousand three hundred thirty-seven dollars per violation.

(5) Upon the discovery of any violation by a motor carrier transporting persons or property in interstate commerce of section 75-307, 75-363, or 75-364 or sections 75-392 to 75-399 based upon an inspection conducted pursuant to section 75-366, the superintendent shall immediately refer such violation to the appropriate federal agency for disposition, and upon the discovery of any violation by a motor carrier transporting persons or property in intrastate commerce of section 75-307 based upon such inspection, the superintendent shall refer such violation to the Public Service Commission for disposition.

**75-369.04. Civil penalty; order; contents; collection**

Any order issued by the Superintendent of Law Enforcement and Public Safety under section 75-369.03 shall include at least (1) the date of the order, (2) a description of each act or

omission upon which the violation is based, (3) the manner in which and the place where the respondent may pay the civil penalty or request a hearing within fifteen business days after receipt of the order, and (4) a notice that if the respondent fails to respond to the order within fifteen business days after receipt of the order, the order shall automatically become final and the civil penalty may be collected by civil action in the district court of Lancaster County.

**75-369.05. Notice or order; service**

Any notice or order provided for in sections 75-369.01 to 75-369.07 shall be personally served on the respondent or on the person authorized by the respondent to receive notices and orders or shall be sent by registered mail or certified mail, return receipt requested, to the last-known address of the respondent or the person authorized to receive such notices and orders. A copy of the notice or order shall be filed in the records of the carrier enforcement division of the Nebraska State Patrol.

**75-369.06. Unpaid civil penalties; collection**

Civil penalties assessed pursuant to section 75-369.03 and unpaid shall constitute a debt to the State of Nebraska which may be collected in the form of a lien foreclosure or recovered in a proper form of action in the name of the State of Nebraska in the district court of Lancaster County. Any civil penalty collected shall be remitted on a monthly basis to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

**75-369.07. Summary order; hearing; procedure; final order; appeal**

(1) If no hearing is requested and none is ordered by the Superintendent of Law Enforcement and Public Safety, the summary order shall automatically become a final order after fifteen business days after receipt of the order pursuant to section 75-369.05.

(2) If a hearing is requested or ordered, the superintendent shall appoint as hearing officer an attorney licensed to practice law in Nebraska. Every hearing pursuant to sections 75-369.01 to 75-369.07 shall be conducted in accordance with the Administrative Procedure Act.

(3) Every hearing in an administrative proceeding under this section shall be public unless the hearing officer grants a request joined in by all the respondents that the hearing be conducted privately.

(4) Upon agreement by all the parties any time before or during the hearing under this section, the hearing officer may compromise, mitigate, or aggravate any civil penalty. In determining the amount of the civil penalty, the hearing officer shall consider the appropriateness of the civil penalty in light of the gravity of the violation and the good faith of such violator in attempting to achieve compliance after notification of the violation.

(5) The hearing officer, within ten days after the conclusion of the hearing, shall make written findings of fact and conclusions of law to the superintendent. Such findings of fact and conclusions of law shall not be binding upon the superintendent.

(6) If a hearing is requested or ordered, the superintendent, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination.

(7) No final order or order after hearing may be returned by the superintendent without (a) appropriate notice to all interested persons, (b) opportunity for hearing to all interested persons, and (c) entry of written findings of fact and conclusions of law. Any order or decision of the superintendent may be appealed. The appeal shall be in accordance with the Administrative Procedure Act.

**75-370. Insurance, bond, certificate, and permit requirements; enforcement; duties**

Enforcement of sections 75-307 and 75-309 shall be carried out by the carrier enforcement division of the Nebraska State Patrol or the Nebraska State Patrol pursuant to the rules and regulations adopted and promulgated by the commission to enforce such sections. Any violation of such sections by any regulated motor carrier, motor carrier, or private carrier shall be referred to the commission for disposition under section 75-156, and the commission may take any other action provided by section 75-133.

**75-371. Insurance, bond, certificate, and permit requirements; violations; penalty**

Any person, private carrier, common carrier, or contract carrier which operates any motor vehicle in violation of section 75-307 or any rule, regulation, or order of the commission pertaining to such section shall be guilty of a Class IV misdemeanor. Each day of such violation shall constitute a separate offense.

**75-385. Division of Motor Carrier Services; established; Administrator of Motor Carrier Services**

The Division of Motor Carrier Services is established within the Department of Motor Vehicles and shall be headed by the Administrator of Motor Carrier Services. The administrator shall administer the affairs of the division.

**75-386. Division of Motor Carrier Services; duties**

The Division of Motor Carrier Services shall:

- (1) Foster, promote, and preserve the motor carrier industry of the State of Nebraska;
- (2) Protect and promote the public health and welfare of the citizens of the state by ensuring that the motor carrier industry is operated in an efficient and safe manner;
- (3) Promote and provide for efficient and uniform governmental oversight of the motor carrier industry;
- (4) Promote financial responsibility on the part of motor carriers operating in and through the State of Nebraska;
- (5) Administer all provisions of the International Fuel Tax Agreement Act, the International Registration Plan Act, and the unified carrier registration plan and agreement pursuant to sections 75-392 to 75-399;
- (6) Provide for the issuance of certificates of title to apportioned registered motor vehicles as provided for by subsection (6) of section 60-144; and
- (7) Carry out such other duties and responsibilities as directed by the Legislature.

**75-389. Rules and regulations**

The Division of Motor Carrier Services shall adopt and promulgate rules and regulations necessary to carry out its powers and duties.

**75-391. Motor carrier transportation contracts; exculpatory provisions prohibited**

(1) A provision, a clause, a covenant, or an agreement contained in, collateral to, or affecting a motor carrier transportation contract that purports to indemnify, defend, or hold harmless or has the effect of indemnifying, defending, or holding harmless the motor carrier transportation contract's promisee from or against any liability for loss or damage resulting from the negligence or intentional acts or omissions of the motor carrier transportation contract's promisee or any agents, employees, servants, or independent contractors who are directly responsible to the motor carrier transportation contract's promisee, is against the public policy of this state and is unenforceable.

(2) Nothing contained in this section affects a provision, a clause, a covenant, or an agreement in which a motor carrier indemnifies or holds harmless a motor carrier transportation contract's promisee against liability for damages to the extent that the damages were caused by and resulting from the negligence of the motor carrier or its agents, employees, servants, or independent contractors who are directly responsible to the motor carrier.

(3) As used in this section:

(a) Motor carrier means any person who or which owns, controls, manages, operates, or causes to be operated any motor vehicle used to transport goods over any public highway in this state, whether in intrastate or interstate commerce;

(b) Motor carrier transportation contract means a contract, agreement, or understanding covering:

(i) The transportation of property for compensation or hire by a motor carrier;

(ii) The entrance on property by a motor carrier for the purpose of loading, unloading, or transporting property for compensation or for hire; or

(iii) A service incidental to activity described in subdivision (i) or (ii) of this subdivision, including, but not limited to, storage of property.

A motor carrier transportation contract does not include provisions of the Uniform Intermodal Interchange and Facilities Access Agreement administered by the Intermodal Association of North America or any other provision, clause, covenant, or agreement providing for the interchange, use, or possession of intermodal chassis, containers, or other intermodal equipment; and

(c) Promisee means the party to a motor carrier transportation contract who or which is not a motor carrier or, if the promisee is a motor carrier, is not the motor carrier actually doing the transporting.

### **75-392. Terms, defined**

For purposes of sections 75-392 to 75-399:

(1) Director means the Director of Motor Vehicles;

(2) Division means the Division of Motor Carrier Services of the Department of Motor Vehicles;  
and

(3) Unified carrier registration plan and agreement means the plan and agreement established and authorized pursuant to 49 U.S.C. 14504a, as such section existed on January 1, 2019.

**75-401. Public Service Commission; jurisdiction; railroad safety; enforcement**

The commission shall exercise jurisdiction over the service, facilities, and equipment of all railroad carriers in this state. This jurisdiction shall extend and apply to the general public, as well as those having business relations with the railroad carrier. Sections 75-401 to 75-430 shall not be construed as giving the commission jurisdiction or control over the relations between any railroad carrier and its employees, or its employees' order, union, or other bargaining agent, either contractual or otherwise, except as provided in sections 75-419 to 75-426.

The commission shall enforce the standards of railroad safety set forth in 49 C.F.R. parts 213, 215, 223, 229, 231, and 232.

**75-401.01. Railroads; discontinue agency service or close station; hearing**

In all applications before the commission to discontinue agency service or to close a railroad station or the substitution therefor of other methods of transacting business with patrons of the carrier, which applications have been protested, the commission shall conduct a hearing within the city or village served by the station sought to be affected at a suitable place meeting the convenience of the public to appear at such hearing or at the county seat of the county in which the station sought to be affected is located. If more than one city or village is included in the application, the hearing shall be held at as centrally located a meeting place as practicable to the cities or villages involved or at the county seat of the most centrally located city or village involved. If the stations involved are situated in more than one county and when the stations involved are more than thirty miles from the point where the hearing is initially held, a hearing shall be held in the seat of each such county unless waived by the affected protestants. When more than one hearing is required under this section, the commission shall designate the first hearing for the taking of testimony of the applicant and such evidence as any protestant may wish to offer. Subsequent hearings shall be for the purpose of taking the testimony of other protestants.

**75-402. Terms, defined**

As used in sections 75-401 to 75-430, and in all rules and regulations prescribed by the commission, unless the context otherwise requires:



(1) Railroad carrier shall mean any common carrier engaged in the carrying of freight or passengers over any line of railroad, or part thereof, within the State of Nebraska; and

(2) Railroad shall mean any line of railroad track, or part thereof, located within the State of Nebraska.

**75-403. Railroads; violation of orders of commission; civil liability; defenses precluded**

Any railroad carrier shall be liable for any damage or injury that shall be caused or contributed to by a violation of any commission order, issued after due notice and hearing, relating to the efficiency, sufficiency, and safety of the service, facilities, or equipment furnished by such carrier. In such case, the railroad carrier shall not be entitled to the defenses of assumption of risk or contributory negligence.

**75-405. Reciprocal demurrage; annual agreement**

Every railroad carrier which operates lines within this state shall make an annual agreement with each shipper that receives or sends ten or more cars annually which provides the terms under which reciprocal demurrage charges shall be made on the part of the railroad carrier or shipper. Such terms shall be equal for all shippers. Any agreement made under this section shall control the relation between the parties thereto, the provisions of sections 75-401 to 75-430 to the contrary notwithstanding. Monthly settlements may be entered into, but all credits due a shipper for the current month shall be carried to the shipper's credit for the succeeding month, except that at the termination of the agreement, any credits due the shipper shall be eliminated.

**75-419. Employees; hours of labor**

It shall be unlawful for any railroad carrier, its officers or agents, to require or permit any employee to be or remain on duty for a longer period than sixteen consecutive hours. For the purposes of this section, employees shall mean any person actually engaged in or connected with the movements of any train. Whenever any such employee of such common carrier shall have been continuously on duty for sixteen hours, he shall be relieved and not be permitted or required to again go on duty without having at least ten consecutive hours' rest off duty, and no such employee, who has been on duty sixteen hours in the aggregate in any twenty-four-hour period, shall be required or permitted to continue or again go on duty without having had at least eight consecutive hours off duty; *Provided*, no operator, train dispatcher, or other employee who by the use of the telegraph, or telephone, dispatches reports, or transmits, receives, or delivers orders pertaining to or affecting train movements shall be required or permitted to be or remain on duty for a longer period than nine hours in any twenty-four-hour period in all towers, offices, places, and stations continuously operated day and night nor for a longer period than thirteen hours in all towers, offices, places, and stations operated only during the daytime, except in cases of emergency, when the employees named in this proviso may be permitted to be or remain on duty for four additional hours in a twenty-four-hour period and not to exceed three

days in any one week. The commission may, after full hearing in a particular case, and for good cause shown, extend the period within which a common carrier shall comply with the provisions of this section.

**75-420. Employees; hours of labor; violation; penalty**

Any such common carrier, or any officer or agent thereof, requiring or permitting any employee to go, be or remain on duty in violation of section 75-419, shall be liable to a penalty of not to exceed five hundred dollars for each and every violation thereof, to be recovered in a suit or suits to be brought by the county attorney of the county in the state having jurisdiction in the locality where the violation shall have been committed. It shall be the duty of such county attorney to bring such suits upon satisfactory information being lodged with him, but no such suit shall be brought after the expiration of one year from the date of such violations as may come to his knowledge. In all prosecutions under this section the common carrier shall be deemed to have had knowledge of all acts of its officers and agents. The provisions of sections 75-419 and 75-420 shall not apply in any case of casualty or unavoidable accident or the act of God; nor where the delay was the result of a cause not known to the carrier or its officers and agents in charge of such employee at the time such employee left a terminal, and which could not have been foreseen; nor to the crews of wrecking or relief trains.

**75-426. Accidents; reports; filing; investigation; violation; penalty**

Upon the occurrence of any serious personal injury or loss of life to persons other than railroad employees resulting from an accident at a railroad crossing or from an accident involving an explosion, fire, or release of noxious fumes occurring upon any railroad within the State of Nebraska, the corporation which operates the railroad upon which the accident occurred shall report such accident in writing or by telephone to the commission within twenty-four hours of the time such accident occurred. The commission shall promptly investigate any such accident and a report shall be made a part of the commission's official files. The corporation which operates the railroad shall also furnish to the commission a copy of the same report that it is required to furnish to the Federal Railroad Administration. Neither of such reports shall be evidence or referred to in any case in any court. Any railroad carrier violating any of the provisions of this section shall be guilty of a Class IV misdemeanor.

**75-428. Intersections; transfer facilities; duty to provide; violation; penalty**

Each owner of a railroad may cross, intersect, join, and unite its railroad with any other railroad at any point on its route and upon the grounds of the owner of such other railroad with the necessary turnouts, sidings, and switches and other conveniences in furtherance of the objects of its connection. Each owner of a railroad which is intersected by any new railroad shall unite with the owners of such new railroad to form such intersections and connections and grant the facilities specified in this section. If the two owners cannot agree upon the amount of compensation to be made therefor or the points and manner of such crossings and connections, they shall be ascertained and determined by the commission.

All owners of railroads in this state, at all points of connection, intersection, or crossing at grade of different railroads, where it is practicable, shall provide reasonable, ample, and equal facilities by track connection, passenger platforms, and otherwise, for transferring cars, passengers, and property between their respective roads without unreasonable delay. At any place where the tracks of the two owners are within five hundred feet apart, whether on the same grade or not, when it is practicable and deemed reasonably necessary, the commission, upon application of any interested person, may require such track connection. No owner shall discriminate in its rates or charges between such connecting lines or on freight coming over them, but no such owner shall be required to furnish to another owner its tracks, equipment, or terminal facilities without reasonable compensation. Each of the connecting lines shall pay its proportionate share for the building and maintenance of such track and switches as may be necessary to furnish the transfer facilities required by this section. In case they cannot agree on the amount which each line shall pay, the amount shall, upon application by either party, be determined and adjusted by the commission. When the commission has refused to require track connection as requested by the applicant, if the applicant agrees in writing to pay the cost of making and maintaining the track connection and offers adequate security, the commission shall order such track connection to be made by such owners whether the commission deems the track connection practicable or reasonably necessary or not. The railroad tracks, at the point where the connection is to be made, shall run within one mile of the corporate limits of any city or village.

Any owner of a railroad who fails or neglects to comply with the order within the time fixed shall be guilty of a Class II misdemeanor.

**75-429. Switch stand lights and signals; operation; violation; penalty**

Each operator of any railroad in this state shall equip with proper lights all switch stands to each switch leading from all main tracks of such road on which trains are generally operated at night except lines fully equipped with automatic block signals. Lights or other signals may be ordered by the commission to be installed on switch stands to other switches, including crossover switches and lead track switches in yards adjacent to main tracks, when they are found reasonably necessary to safe operation after hearing held upon complaint or upon the commission's own motion. The lights upon such switch stands shall be in good condition constantly and shall be lighted and kept burning between sundown and sunrise and at such other times when, by reason of excessively foggy weather, the condition of such lights or signals would render operations unsafe both for the employees of such railroad and for the general public. Signals with reflex lenses may be substituted for lighted lamps under regulations prescribed by the commission and subject to the jurisdiction of the commission to order the removal of them, after complaint and hearing, if the signals with reflex lenses are found to be unsafe.

Any operator of a railroad in this state who violates any of the provisions of this section or who permits any such violation on the part of any employee shall be guilty of a Class V misdemeanor.

**75-430. Railroad signals; interference with view; authority of commission**

It shall be unlawful to locate, maintain, or allow to remain any light at any place within this state in such a place or manner that the light interferes with the view of any railroad signal to an extent which causes danger in the operation of trains.

Whenever any light has been located, maintained, or allowed to remain in such a place or manner that it interferes with the view of any railroad signal to an extent which causes danger in the operation of trains, the commission shall, upon its own motion or upon the complaint of an affected owner of a railroad or other interested party, set the complaint for hearing and issue a formal order to enforce compliance with this section if it finds that the light does interfere to such an extent.

**75-501. Common carrier, declaration; commission jurisdiction; rules and regulations; validity**

Any person who transports, transmits, conveys, or stores liquid or gas by pipeline for hire in Nebraska intrastate commerce shall be a common carrier subject to commission regulation. The commission shall adopt, promulgate, and enforce reasonable rules and regulations establishing minimum state safety standards for the design, construction, maintenance, and operation of pipelines which transport liquefied petroleum gas or anhydrous ammonia in intrastate commerce by common carriers. Such rules and regulations, and the interpretations thereof, shall conform with the rules, regulations, and interpretations of the appropriate federal agencies with authority to regulate pipeline common carriers in interstate commerce. Any person may determine the validity of any such rule or regulation in such manner as provided by law.

**75-502. Pipeline carriers; powers**

Pipeline carriers which are declared common carriers under section 75-501, pipeline carriers approved under the Major Oil Pipeline Siting Act, and pipeline carriers for which the Governor approves a route under section 57-1503 may store, transport, or convey any liquid or gas, or the products thereof, and make reasonable charges therefor, may lay down, construct, maintain, and operate pipelines, tanks, pump stations, connections, fixtures, storage plants, and such machinery, apparatus, devices, and arrangement as may be necessary to operate such pipes or pipelines between different points in this state, and may use and occupy such lands, rights-of-way, easements, franchises, buildings, and structures as may be necessary to construct and maintain them.

**75-503. Pipeline carriers; tapping pipeline; commission may authorize**

Upon written application of any person who operates or proposes to operate any refinery in this state, after hearing, if in the judgment of the commission the public good shall require, the commission shall enter an order authorizing the tapping of any pipeline at or near any point where the refinery is established or is proposed to be established. In the order, the commission

shall provide for the reimbursement of the owner of the pipeline for any expense incident to the tapping thereof for the purposes provided in this section.

**75-801. Prior license, certificate, permit, authorization; remain in force until their expiration; rights of parties not affected**

No license, certificate, permit, or other authorization in force on October 19, 1963, shall be invalidated by the passage of sections 75-101 to 75-801, but all such shall remain in force until their expiration under the terms of the law in effect at the time of their original issuance or until their renewal, surrender, suspension, or revocation under the provisions of sections 75-101 to 75-801. No rights, privileges, or immunities vested or accrued by and under prior statutes repealed by sections 75-101 to 75-801, no suits pending, no proceedings pending before the commission, no rights of action conferred, and no duties, restrictions, liabilities, or penalties imposed or required by and under such statutes shall be impaired, diminished, or affected by the repeal thereof.

**75-901. Act, how cited**

Sections 75-901 to 75-910 shall be known and may be cited as the Grain Dealer Act.

**75-902. Terms, defined**

For purposes of the Grain Dealer Act, unless the context otherwise requires:

- (1) Commission means the Public Service Commission;
- (2) Direct delivery grain has the same meaning as in section 88-526;
- (3) Direct delivery obligation has the same meaning as in section 88-526;
- (4) Grain includes, but is not limited to, all unprocessed beans, whole corn, milo and other sorghum, wheat, rye, barley, oats, millet, safflower seed and processed plant pellets, alfalfa pellets, and any other bulk pelleted agricultural storable commodity, except grain which has been processed or packaged for distribution as seed;
- (5)(a) Grain dealer means any person, partnership, limited liability company, corporation, or association that (i) buys grain from the producer of the grain within this state for purposes of selling such grain or (ii) acts as an employee or agent of a buyer or seller for purposes of collective bargaining in the marketing of grain.

(b) Grain dealer does not include (i) a feeder or custom feeder of livestock or poultry or (ii) a warehouse licensee under the Grain Warehouse Act or a warehouse licensee under the United States Warehouse Act of a warehouse located in Nebraska if the warehouse licensee does not buy, sell, or transport grain other than grain that is received at its licensed warehouse facilities;

(6) In-store transfer has the same meaning as in section 88-526;

(7) Post-direct delivery storage position has the same meaning as in section 88-526; and

(8) Producer means the owner, tenant, or operator of land in this state who has an interest in and receives all or part of the proceeds from the sale of grain produced on that land.

**75-903. Grain dealer; licensure; requirements; fee**

All grain dealers doing business in this state shall be licensed by the commission. If the applicant is an individual, the application shall include the applicant's social security number. To procure and maintain a license, each grain dealer shall:

(1) Pay an annual fee of one hundred dollars which shall be due on or before the date established by the commission for each license. Such fees shall be paid to the State Treasurer and credited to the General Fund;

(2) File security which may be a bond issued by a corporate surety company and payable to the commission, an irrevocable letter of credit, or a certificate of deposit, subject to the approval of the commission, for the benefit of any producer who files a valid claim arising from a sale to a grain dealer. The security shall be in the amount of thirty-five thousand dollars or seven percent of grain purchases or exchanges by the grain dealer in the grain dealer's preceding fiscal year, whichever is greater, not to exceed three hundred thousand dollars. Amounts used in the calculation of the security shall include all direct delivery grain purchases and exchanges valued on the date delivery is made. Amounts used in the calculation of the security shall not include any transactions in which direct delivery grain is exchanged for a post-direct delivery storage position and the post-direct delivery storage position is created by an in-store transfer on the same date as the delivery of the direct delivery grain. Such security shall be furnished on the condition that the licensee will pay for any grain purchased upon demand, not later than fifteen days after the date of the last shipment of any contract. The liability of the surety shall cover purchases made by the grain dealer during the time the bond is in force. A grain dealer's bond filed with the commission shall be in continuous force and effect until canceled by the surety. The liability of the surety on any bond required by this section shall not accumulate for each successive license period during which the bond is in force; and

(3) File a reviewed or audited fiscal year-end financial statement prepared by an independent certified public accounting firm. If licensing as an individual, the financial statement shall be prepared in accordance with Other Comprehensive Basis of Accountancy, as filed with the board, for a personal financial statement, using historical cost and accrual basis of accounting. If licensing as a partnership, corporation, or limited liability company, the financial statement shall be prepared in accordance with accounting principles generally accepted. The financial statement shall include: (a) A statement of income showing profit or loss; (b) a balance sheet; (c) a statement of cash flow; (d) a statement of proprietor's capital or retained earnings; (e) the volume and dollar value of the grain purchases the licensee made in Nebraska during the fiscal year; (f) the volume and dollar value of transactions in which direct delivery grain is exchanged for a post-direct delivery storage position and the post-direct delivery storage position is not created by an in-store transfer on the same date as the delivery of the direct delivery grain; and (g) the accounting firm's certification, assurances, opinions, and comments and the notes with respect to the financial statement. If the volume and dollar value of the grain purchases is not reported, the grain dealer shall file the maximum grain dealer security as required by the Grain Dealer Act.

If an applicant for a grain dealer license is a wholly owned subsidiary of a parent company and such a financial statement is not prepared for the subsidiary, the parent company shall submit its reviewed or audited fiscal year-end financial statement and shall execute an unconditional guarantee agreement as prescribed by the commission.

#### **75-903.01. License; suspension or revocation; procedure**

The commission may, upon complaint filed by it or any person and after a hearing, suspend or revoke the license of any grain dealer for failure to comply with the requirements of the Grain Dealer Act or any rule or regulation adopted and promulgated pursuant to such act. The complaint shall state the grounds for suspension or revocation and shall be filed with the commission pursuant to the commission's rules of procedure. The commission shall serve the grain dealer with a copy of the complaint and a copy of the order of the commission stating the time for hearing, which shall be at least twenty days from the date of service. If the commission determines that the public good requires it, the commission may, upon the filing of a complaint and without hearing, temporarily suspend a grain dealer's license pending the determination of the complaint.

#### **75-903.02. Criminal history record information check; fingerprinting; when**

For each application filed under section 75-903 after January 1, 2004, one of the following primary parties shall be subject to fingerprinting and a check of his or her criminal history record information maintained by the Federal Bureau of Investigation through the Nebraska State Patrol: (1) If the applicant is not an individual, the chief executive officer, president, or general manager; or (2) if the applicant is an individual, the individual. If the primary party has been subject to a check of his or her criminal history record information pursuant to this section on a

prior application, he or she is not subject to another such check upon a subsequent application. If a primary party has been subject to a check of his or her criminal history record information pursuant to another law, the commission may waive such requirement under this section. A primary party shall furnish to the Nebraska State Patrol a full set of fingerprints to enable a criminal background investigation to be conducted. The primary party shall request that the Nebraska State Patrol submit the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The primary party shall pay the actual cost, if any, of the fingerprinting and check of his or her criminal history record information. The primary party shall authorize release of the national criminal history record check to the commission. The criminal history record information check shall be completed within ninety days after the date the application for a license is received in the commission's office, and if not, the application shall be returned to the applicant. The commission shall deny a grain dealer license to any applicant whose primary party has been convicted of a felony financial crime.

**75-904. Grain dealer; receipt, contract, bill of lading, other written communication requirements**

Each grain dealer or his or her agent upon taking possession of grain from a seller shall issue a receipt, contract, bill of lading, or other written communication to the seller or his or her agent. The grain dealer receipt, contract, bill of lading, or other written communication issued by the grain dealer shall include the provisions of section 75-905 and be in such form as the Public Service Commission may by rule and regulation require.

**75-905. Recourse to grain dealer's security; when**

(1) No seller shall have recourse to the grain dealer's security unless the seller:

(a) Demands payment from the grain dealer within fifteen days after the date of the last shipment of any contract;

(b) Negotiates any negotiable instrument issued as payment for grain by the grain dealer within fifteen days after its issuance; and

(c) Notifies the commission within fifteen days after any apparent loss to be covered under the terms of the grain dealer's security.

(2) The grain dealer's security shall provide security for direct delivery grain until any post-direct delivery storage position is created for a period not to exceed fifteen days after the date of the last shipment of the contract.



**75-906. Violation of security; commission; powers**

In the event the commission determines that the conditions of a grain dealer's security have been violated, the commission may demand that such dealer's security be forfeited and may place the proceeds of the security in an interest-bearing trust until it fully determines each claim on the security. The commission shall disburse the security according to each claim determined. If the amount of the security is less than the claims against it, the security shall be distributed pro rata among the claimants. If the security is a bond or letter of credit, the surety or the issuer of such letter shall pay over the security on demand by the commission. If such issuer of a letter of credit or surety for a grain dealer fails or refuses to pay the security to the commission within ten days, the commission may file a lawsuit in an appropriate court and recover the amount of the security plus interest at the highest legal rate from the date of its demand on the issuer of a letter of credit or surety if the court finds that any claim determined by the commission against the grain dealer's security was valid.

**75-907. Commission; adopt rules and regulations**

The commission may adopt and promulgate all rules and regulations necessary to carry out the Grain Dealer Act.

**75-907.01. Commission; inspection; powers**

The property, books, records, accounts, papers, and proceedings of every grain dealer shall, at all times during business hours, be subject to inspection by the commission.

**75-908. Enforcement of act**

The commission, county and municipal law enforcement agencies, and the Attorney General shall enforce the Grain Dealer Act.

**75-909. Violation; penalty**

Any person or partner, limited liability company member, officer, or agent of any person who knowingly and intentionally violates any of the provisions of the Grain Dealer Act shall be guilty of a Class IV felony and, in addition, shall be liable for any damages suffered as a result of such violation.

**75-910. Civil penalty**

The commission may assess a civil penalty, pursuant to section 75-156, against any person who violates the Grain Dealer Act.

**75-1001. Act, how cited**

Sections 75-1001 to 75-1012 shall be known and may be cited as the Water Service Regulation Act.

**75-1002. Terms, defined**

For purposes of the Water Service Regulation Act:

(1) Commission shall mean the Public Service Commission; and

(2) Private water company shall mean a privately owned entity organized for the purpose of furnishing water for domestic use or sewer services or both to the public, cities, villages, special districts, or other political subdivisions but shall not include (a) any entity that furnishes water for domestic use or sewer services to a mobile home park, (b) bottled water suppliers, or (c) any group of property owners who cooperatively own a water well for the sole purpose of providing water for domestic use to their property if each owner has an equal vote in determining the rates charged for the water.

**75-1003. Private water company; rates and charges; regulation by commission**

The rates and charges of a private water company shall be regulated by the commission as provided in the Water Service Regulation Act. On or before July 1 each year, each private water company shall file a schedule of its rates and charges with the commission and shall also certify to the commission the number of customers it serves.

**75-1004. Commission; access to books and records**

The commission and its agents shall be entitled to access to all books, records, and other information of a private water company which may be necessary for the commission to determine whether it may exercise regulatory authority under the Water Service Regulation Act and to carry out its regulatory authority under the act.

**75-1005. Review of rates and charges; petition; hearing; notice**

Within ninety days after July 1, 1994, a petition may be filed with the commission requesting a review of the established rates and charges. The petition shall be signed by at least twenty-five percent of the private water company's customers. Upon receipt of a petition, the commission shall set a time, place, and date for a public hearing to consider the established rates or charges. The hearing shall be held within ninety days after the filing of the petition pursuant to the rules and regulations of the commission. Notice of a hearing shall be given in the same manner as prescribed in subsection (2) of section 75-1007.

**75-1006. Change to rates or charges; notice**

A private water company which proposes to change any of its rates or charges shall provide sixty days' notice to its customers and the commission of the proposed rates or charges.

**75-1007. Change to rates or charges; petition; hearing; notice; procedure**

(1) Prior to the effective date of the proposed rates or charges, a petition may be filed with the commission requesting a review of the proposed rates and charges. The petition shall be signed by at least twenty-five percent of the private water company's customers. Upon receipt of a petition, the commission shall set a time, place, and date for a public hearing to consider the proposed rates or charges. The hearing shall be held within ninety days after the filing of the petition pursuant to the rules and regulations of the commission.

(2) Notice of a hearing shall be served on customers by the commission at least fifteen days prior to the day of the hearing. Notice of the hearing shall also be published by the commission at least once a week for two successive weeks in a newspaper of general circulation in each service area affected by or to be affected by the proposed rates or charges with the date of last publication at least ten days prior to the hearing.

(3) At least ten days prior to the hearing, the commission shall make all files and information gathered by it and its employees and agents relating to the matter to be heard available for inspection during regular office hours.

(4) Any person may appear at the hearing and present testimony, evidence, exhibits, or other information and may do so in person or by counsel, or both, pursuant to the rules and regulations of the commission.

**75-1008. Commission; issue order; appeal; denial; effect**

(1) After the conclusion of any hearing held pursuant to section 75-1005 or 75-1007, the commission shall grant or deny the rates or charges that were considered at the hearing and, if other rates or charges are to be adopted, shall decide on any modifications to the rates or charges that the commission considers necessary based on the evidence adduced at the hearing.

(2) The commission shall issue a written order setting out its findings and reasoning for its decision. The commission's order may be appealed by a party to the proceeding. Such appeal shall be in accordance with section 75-136.

(3) If the hearing is held pursuant to a petition filed pursuant to section 75-1007, if the proposed rates or charges become effective before the decision of the commission, and if the decision denies the proposed rates or charges, then the proposed rates or charges shall be denied retroactively and any amounts collected under the proposed rates or charges shall be refunded by the private water company. If the hearing is held pursuant to a petition filed pursuant to section 75-1005 and if the decision of the commission modifies the established rates or charges, then the established rates or charges shall be modified as of the date of the decision and shall not be retroactive.

**75-1009. Rate or charge; yield authorized**

(1) No rate or charge determined by the commission pursuant to the Water Service Regulation Act may yield more than a fair return on the fair value of property used and useful in rendering service to the public.

(2) The commission shall not include in the basis for establishment of the rate or charge any amounts spent by the private water company for advertising or other public relations expenses.

**75-1010. Rules and regulations**

The commission may adopt and promulgate rules and regulations necessary to carry out the Water Service Regulation Act.

**75-1011. Violation; civil penalty**

Notwithstanding section 75-156, any private water company that violates any provision of the Water Service Regulation Act or any rule, regulation, or order of the commission shall be subject to a civil penalty of not less than fifty dollars nor more than one thousand dollars for each act of violation and for each day of violation to be recovered as provided in section 75-1012.

**75-1012. Enforcement of act**

(1) Notwithstanding section 75-156, whenever it appears that a private water company has violated, is violating, or is threatening to violate any provision of the Water Service Regulation Act or any rule, regulation, or order of the commission, the commission may institute a civil suit in the district court of Lancaster County for (a) injunctive relief to restrain the private water company from continuing the violation or threat of violation, (b) the assessment and recovery of a civil penalty as provided in section 75-1011, or (c) both injunctive relief and civil penalty.

(2) On application for injunctive relief and a finding that a private water company is violating or threatening to violate any provisions of the act or any rule, regulation, or order of the commission, the district court shall grant the injunctive relief as the facts may warrant.

(3) At the request of the commission, the county attorney shall institute and pursue a suit in the name of the state for injunctive relief or to recover the civil penalty, or both, as authorized in subsection (1) of this section.

**75-1101. 211 Information and Referral Network; Public Service Commission; award grant; application; eligibility; use; 211 Cash Fund; created; use; investment**

(1) For purposes of this section, 211 Information and Referral Network means a statewide information and referral network providing information to the public regarding disaster and emergency response and health and human services provided by public and private entities throughout the state.

(2) The Public Service Commission shall award a grant annually to a 211 Information and Referral Network which submits an application and meets the requirements of this section. The amount of each grant shall be three hundred thousand dollars.

(3) To be eligible for a grant, the 211 Information and Referral Network shall update the information and referral services on the network at least annually, shall geographically index the services to provide information on a county-by-county basis, and shall be accredited as meeting the standards for service delivery and quality by the Alliance of Information and Referral Systems or a similar organization approved by the commission.

(4) The grant may be used to establish a web site which includes links to providers of health and human services, the name, address, and telephone number of any organization listed on the web site, a description of the type of services provided by the organization, and other information to educate the public about the health and human services available on a geographic basis. The grant may also be used to provide access to the network twenty-four hours per day, seven days per week, through telephone access and web site access.

(5) There is hereby created the 211 Cash Fund. The fund shall be used solely for the purpose of providing grants pursuant to this section and associated administrative costs. All money received by the Public Service Commission for such grants shall be remitted to the State Treasurer for credit to such fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

