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NO.
STATE OF NEBRASKA
OFFICIAL
AUG 4 1993
DEPT. OF JUSTICE

DATE: August 2, 1993

SUBJECT: Whether an individual operating a commercial motor vehicle and not subject to the ALR law because his/her blood, breath or urine is .04 and less than .10 is subject to the administrative hearing provided in Neb. Rev. Stat. §§ 60-4,164 through 60-4,167?

ANSWER: The operator is subject to the administrative hearing provided in Neb. Rev. Stat. §§ 60-4,164 through 60-4,167.

Whether an individual operating a commercial motor vehicle with an amount of alcohol in his/her blood, breath or urine is .10 or greater is subject to the administrative hearing provided in Neb. Rev. Stat. § 39-669.15?

ANSWER: The individual is subject to the administrative hearing provided in Neb. Rev. Stat. § 39-669.15.

Whether an ALR advisory, CDL advisory, or both advisories should be read by law enforcement officers to operators of commercial motor vehicles?

ANSWER: Both advisements should be read to the operator by the law enforcement officer.

REQUESTED BY: Alvin Abramson, Director, Nebraska Department of Motor Vehicles

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An individual operating a commercial motor vehicles with an alcoholic concentration of .04 and less than .10 is subject to an administrative hearing as stated in Neb. Rev. Stat. §§ 60-4,164 through 60-4,167 (1992 Cum.Supp.). By definition, the individual is not subject to the Nebraska ALR law in that Neb. Rev. Stat. § 39-669.15(3) (1992 Cum.Supp.) provides for the presence of alcohol in a concentration as specified in § 39-669.07 (1992 Cum.Supp.). Section 39-669.07 provides .10 or more concentration of alcohol.

If the person operating the commercial motor vehicle has an amount of alcohol in his or her blood, breath or urine that is greater than .10, then an argument may be made that the CDL hearing provided in § 60-4,167 could control over the ALR hearing provided in § 39-669.15.

The Nebraska Supreme Court, however, has held: "[i]t is the duty of the court, as far as practicable, to give effect to the language of the statute and to reconcile the different provisions of it so they are consistent, harmonious, and sensible." ***State v. Black***, 195 Neb. 367, 238 N.W.2d 231 (1976). However, the court has also stated that: "[s]tatutes in pari materia should be construed together so as to give force and effect to each whenever possible, but where plain and unavoidable repugnancy exists between the statutes, the later will control." ***Worley v. Schaefer, II***, 228 Neb. 484, 423 N.W.2d 748 (1988).

The Nebraska CDL law was passed by the Unicameral in 1989 with an effective date of January 1, 1990. The Nebraska ALR law was passed by the Unicameral in 1992 with an effective date of January 1, 1993. Therefore, the ALR provision would control and the individual would be afforded the hearing provided in Neb. Rev. State. § 39-669.15.

Finally, if separate ALR and CDL advisement forms are being provided by the Department of Motor Vehicles to law enforcement officers for the administrative revocation process provided in both § 39-669.15 and § 60-4,167, then until the concentration of alcohol is determined by the officer, it would be necessary to provide the

commercial motor vehicle operator with the information provided in both advisements.

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