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15-009
NO.
STATE OF NEBRASKA
OFFICIAL
JUN 19 2015
DEPT. OF JUSTICE

SUBJECT: Authority of the Nebraska Public Service Commission to Establish Minimum Uninsured and Underinsured Motorist Coverage Requirements for Contract Carriers Under L.B. 629, § 24, Which Exceed the Maximum Amounts Established in Neb. Rev. Stat. § 44-6408(2) (2010).

REQUESTED BY: Tim Schram, Vice-Chairman
Nebraska Public Service Commission

WRITTEN BY: Douglas J. Peterson, Attorney General
L. Jay Bartel, Assistant Attorney General

INTRODUCTION

The Uninsured and Underinsured Motorist Coverage Act provides that insurers are not required to provide uninsured and undersinsured motorist ["UM/UIM"] coverage at "limits higher than one hundred thousand dollars per person and three hundred thousand dollars per accident." Neb. Rev. Stat. § 44-6408(2) (2010). In *Op. Att'y Gen. No. 15-003* (March 4, 2015), we concluded that the Nebraska Public Service Commission ["Commission"] did not have authority to require contract carriers to carry UM/UIM coverage. We reasoned that, as the Commission's jurisdiction to regulate contract carriers is established solely by statute, and Neb. Rev. Stat. § 75-307 (2009) provided only that the Commission could adopt regulations to require reasonable amounts to cover liability for negligent operation, maintenance, or use of motor vehicles by motor carriers, the Commission was not permitted to impose any requirement that contract carriers provide UM/UIM coverage, as it does not involve insurance providing benefits as a result of negligence of the regulated carrier. We did, however, recognize that the Commission, in exercising its constitutional authority to regulate common carriers, could require common carriers to obtain UM/UIM coverage, but only in

amounts not exceeding the maximums established in § 44-6408(2). We concluded that the specific provisions of § 44-6408(2) controlled over any general authority possessed by the Commission to require UM/UIM coverage for common carriers, and that the Commission was thus limited in requiring such coverage by the maximum coverage amounts in § 44-6408(2).

Subsequent to issuance of our opinion, the Legislature enacted 2015 Neb. Laws L.B. 629. The primary focus of L.B. 629 is the establishment of a mechanism to regulate the operation of Transportation Network Companies. L.B. 629, §§ 2-22. L.B. 629 also, however, amends Neb. Rev. Stat. § 75-304 (2009), which provides for the Commission's establishment of classifications or groups of motor carries, by adding a new subsection which provides: "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." L.B. 629, § 24 (*to be codified at* Neb. Rev. Stat. § 75-304(2)). You ask for our "opinion as to the effect of § 44-6408(2) on the newly adopted § 75-304(2)...."

ANALYSIS

The introduced version of L.B. 629 did not contain the provision ultimately adopted as subsection (2) of § 77-304 authorizing the Commission to establish UM/UIM coverage minimums for contract carriers. L.B. 629, § 23 (Introduced Copy). New subsection (2) was added to renumbered section 24 as part of the Transportation and Telecommunications Committee's amendment to L.B. 629 (AM1075). Committee Records on L.B. 629, 104th Leg., 1st Sess. 5 (March 2, 2015). The only mention of this provision during floor debate occurred during the explanation of the Committee amendment, when Senator Brasch stated:

> And finally, section 24, the Committee amendment, makes a substantive change to section 75-304. This section provides for the classification of motor carriers subject to regulation by the Public Service Commission. The amendment provides that contract drivers shall obtain and maintain uninsured and underinsured insurance coverage for each passenger in each motor vehicle operated by the contract carrier in minimum amounts to be established by the Public Service Commission. Floor Debate on L.B. 629, 104th Leg., 1st Sess. 7 (April 21, 2015) (Rough Draft) (Statement of Sen. Brasch).

"In discerning the meaning of a statute, [a court] must determine and give effect to the purpose and intent of the Legislature as ascertained from the entire language of the statute considered in its plain, ordinary and popular sense." *Bridgeport Ethanol, LLC v. Nebraska Dep't of Revenue,* 284 Neb. 291, 296, 818 N.W.2d 600, 605 (2012). "A court will construe statutes relating to the same subject matter together so as to maintain a consistent and sensible scheme, giving effect to every provision." *Archer Daniels Midland Co. v. State,* 290 Neb. 780, 788, 861 N.W.2d 733, 740 (2015).

By its plain terms, § 75-304(2) authorizes the Commission to establish minimum amounts of UM/UIM insurance coverage for contract carriers. No maximum amounts of

coverage are provided in the statute. Section 44-6408(2), however, provides that the maximum limits of UM/UIM insurance coverage that an insurer can be required to provide under the Uninsured and Underinsured Motorist Coverage Insurance Act are one hundred thousand dollars per person and three hundred thousand dollars per accident. Both § 75-304(2) and § 44-6408(2) deal with the subject of UM/UIM insurance coverage. By establishing no maximum amounts of UM/UIM coverage in § 75-304(2), we believe that this statute must be construed together with § 44-6408(2), and conclude that the maximum UM/UIM coverages in § 44-6408(2) apply to limit the amounts of UM/UIM insurance coverage the Commission may establish for contract carriers. Thus, the maximum amounts of UM/UIM coverage the Commission may establish under § 75-304(2) are $100,000 per person and $300,000 per accident.

In addition, we note that L.B. 597, introduced in the recent legislative session, included a provision requiring contract carriers transporting railroad employees to obtain a minimum of $500,000 UM/UIM coverage for each passenger in each motor vehicle that transported such employees. L.B. 597, § 3. L.B. 597, however, was not advanced by the Transportation and Telecommunications Committee. "'[T]he intent of the Legislature may be derived from both the words that it used in a statute and those that it did not.'" *Nebraska Accountability and Disclosure Comm'n v. Skinner,* 288 Neb. 804, 814, 853 N.W.2d 1, 10 (2014). Had the Legislature intended to allow the Commission to establish UM/UIM coverage amounts for contract carriers that differed from the maximum amounts in § 44-6408(2), or to require a specific amount of coverage greater than those amounts, it could have used language such as proposed in L.B. 597.[1] The Legislature's omission of a specific amount or maximum amount of UM/UIM insurance coverage which may be required by the Commission for contract carriers in L.B. 629 further supports concluding that the maximum coverage amounts in § 44-6408(2) were intended to apply to any UM/UIM insurance coverage for contract carriers established by the Commission.

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[1] Indeed, as noted in our prior opinion, other states have enacted legislation requiring motor carriers transporting railroad or other employees to carry specific amounts of UM/UIM coverage. *Op. Atty Gen. No. 15-003* at 10 (*citing* Minn. Stat. § 221.0255 subd. 4(b)(5) (2014) (Requiring motor carrier transporting railroad employees to "maintain uninsured and underinsured coverage in a minimum amount of $1,000,000..."); N.D. Cen. Code § 8-02-08.1 (2014) ("Insurance standards for contract carriers that carry employees with the employer must include uninsured and underinsured motorist coverage of not less than one million dollars per occurrence for the benefit of passengers being transported."); and 625 Ill. Comp. Stat. Ann. § 5/8-101(c) (2014) ("As part of proof of financial responsibility, a contract carrier transporting employees in the course of their employment is required to verify hit and run and uninsured motorist motor vehicle coverage,..., and underinsured motor vehicle coverage,..., in a total amount of not less than $250,000 per passenger.").

CONCLUSION

In conclusion, it is our opinion that the maximum UM/UIM coverages in § 44-6408(2) apply to limit the amounts of UM/UIM insurance coverage the Commission may establish for contract carriers under § 75-304(2). Accordingly, the maximum amounts of UM/UIM coverage for contract carriers the Commission may establish under § 75-304(2) are $100,000 per person and $300,000 per accident.

Very truly yours,

DOUGLAS J. PETERSON
Attorney General

L. Jay Bartel
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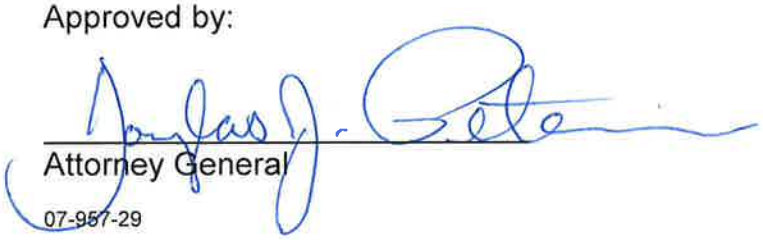
Approved by:



Attorney General

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