

LEGISLATIVE BILL 545

Approved by the Governor June 4, 2013

Introduced by Dubas, 34.

FOR AN ACT relating to the Public Service Commission; to amend sections 71-1567, 71-4609, 75-134, 75-136, 75-139, 75-156, 75-722, 86-123, 86-158, 86-209, 86-255, 86-269, and 86-578, Reissue Revised Statutes of Nebraska, and section 57-1409, Revised Statutes Cumulative Supplement, 2012; to change appeal procedures as prescribed; to provide for motions for reconsideration; to harmonize provisions; to provide a duty for the Revisor of Statutes; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 57-1409, Revised Statutes Cumulative Supplement, 2012, is amended to read:

57-1409 Any party aggrieved by a final order of the commission regarding an application or assessment under the Major Oil Pipeline Siting Act, including, but not limited to, a decision relating to the public interest, may appeal. The appeal shall be in accordance with ~~the Administrative Procedure Act, section 75-136.~~

Sec. 2. Section 71-1567, Reissue Revised Statutes of Nebraska, is amended to read:

71-1567 (1) The commission shall refuse to issue a seal to a manufacturer for any modular housing unit not found to be in compliance with its standards governing the construction of or the structural, plumbing, heating, or electrical systems for modular housing units or for which fees have not been paid. Except in case of failure to pay the required fees, any such manufacturer may request a hearing before the commission on the issue of such refusal. Procedures for notice and opportunity for a hearing before the commission shall be pursuant to the Administrative Procedure Act. The refusal may be appealed, and the appeal shall be in accordance with ~~the Administrative Procedure Act, section 75-136.~~

(2) The issuance of seals may be suspended as to any manufacturer who is convicted of violating section 71-1563 or as to any manufacturer who violates any other provision of the Nebraska Uniform Standards for Modular Housing Units Act or any rule, regulation, commission order, or standard adopted pursuant thereto, and issuance of the seals shall not be resumed until such manufacturer submits sufficient proof that the conditions which caused the violation have been remedied. Any such manufacturer may request a hearing before the commission on the issue of such suspension. Procedures for notice and opportunity for a hearing before the commission shall be pursuant to the Administrative Procedure Act. The suspension may be appealed, and the appeal shall be in accordance with ~~the Administrative Procedure Act, section 75-136.~~

Sec. 3. Section 71-4609, Reissue Revised Statutes of Nebraska, is amended to read:

71-4609 (1) The commission shall administer the Uniform Standard Code for Manufactured Homes and Recreational Vehicles. The commission may adopt and promulgate, amend, alter, or repeal general rules and regulations of procedure for (a) administering the provisions of the code, (b) issuing seals, (c) obtaining statistical data respecting the manufacture and sale of manufactured homes and recreational vehicles, and (d) prescribing means, methods, and practices to make effective such provisions.

(2) The commission shall refuse to issue a seal to any manufacturer or other person for any manufactured home or recreational vehicle found to be not in compliance with its standards governing body and frame design and construction or plumbing, heating, or electrical systems for manufactured homes or recreational vehicles or for which fees have not been paid. Except in case of failure to pay the required fees, any such manufacturer or other person may request a hearing before the commission on the issue of such refusal. Procedures for notice and opportunity for a hearing before the commission shall be pursuant to the Administrative Procedure Act. The refusal by the commission may be appealed, and the appeal shall be in accordance with ~~the act, section 75-136.~~

(3) The issuance of seals may be suspended or revoked as to any manufacturer or other person who has not complied with any provision of the code or with any rule, regulation, or standard adopted and promulgated under the code or who is convicted of violating section 71-4608, and issuance of the seals shall not be resumed until such manufacturer or other person submits sufficient proof that the conditions which caused the lack of compliance or

the violation have been remedied. Any manufacturer or other person may request a hearing before the commission on the issue of such suspension or revocation. Procedures for notice and opportunity for a hearing before the commission shall be pursuant to the Administrative Procedure Act. The suspension or revocation by the commission may be appealed, and the appeal shall be in accordance with ~~the act.~~ section 75-136.

(4) The commission may conduct hearings and presentations of views consistent with the regulations adopted by the United States Department of Housing and Urban Development and adopt and promulgate such rules and regulations as are necessary to carry out this function.

(5) The commission shall establish a monitoring inspection fee in an amount approved by the United States Secretary of Housing and Urban Development, which fee shall be an amount paid to the commission by the manufacturer for each manufactured-home seal issued in the state. An additional monitoring inspection fee established by the United States Secretary of Housing and Urban Development shall be paid by the manufacturer to the secretary who shall distribute the fees collected from all manufactured-home manufacturers based on provisions developed and approved by the secretary.

Sec. 4. Section 75-134, Reissue Revised Statutes of Nebraska, is amended to read:

75-134 (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 a ~~later~~ 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 ~~under subsection (3) of section 84-917.~~ 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.

Sec. 5. Section 75-136, Reissue Revised Statutes of Nebraska, is amended to read:

75-136 (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 August 31, 2003, shall be in accordance with the Administrative Procedure Act. 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 August 31, 2003, October 1, 2013, shall be in accordance with sections 75-134, 75-136, ~~to 75-138,~~ and 75-156 as such sections existed prior to the changes made by Laws 2003, LB 187. this legislative bill.

(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.

Sec. 6. Section 75-139, Reissue Revised Statutes of Nebraska, is amended to read:

75-139 (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 ~~(1)~~ (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 ~~(2)~~ (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.

Sec. 7. (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.

Sec. 8. Section 75-156, Reissue Revised Statutes of Nebraska, is amended to read:

75-156 (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 ~~beginning January 1, 2004,~~ 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 ~~the Administrative Procedure Act,~~ 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.

Sec. 9. Section 75-722, Reissue Revised Statutes of Nebraska, is amended to read:

75-722 Commission hearings concerning the provisions of sections 75-709 to 75-724 ~~and any appeals therefrom~~ shall be in accordance with the Administrative Procedure Act. Any appeals therefrom shall be in accordance with section 75-136.

Sec. 10. Section 86-123, Reissue Revised Statutes of Nebraska, is amended to read:

86-123 (1) The commission shall regulate the quality of telecommunications service provided by telecommunications companies and shall investigate and resolve subscriber complaints concerning quality of telecommunications service, subscriber deposits, and disconnection of telecommunications service. If such a complaint cannot be resolved informally, then, upon petition by the subscriber, the commission shall set the matter for hearing in accordance with the commission's rules and regulations for notice and hearing. The commission may by order grant or deny, in whole or in part, the subscriber's petition or provide such other relief as is reasonable based on the evidence presented at the hearing. Any such order of the commission may be enforced against any telecommunications company as provided in sections 75-140 to 75-144, and such order may be appealed by an interested party. The appeal shall be in accordance with ~~the Administrative Procedure Act,~~ section 75-136.

(2) The commission may regulate telecommunications company rates pursuant to sections 86-139 to 86-157.

(3) The Nebraska Telecommunications Regulation Act shall preempt and

prohibit any regulation of a telecommunications company by counties, cities, villages, townships, or any other local governmental entity.

Sec. 11. Section 86-158, Reissue Revised Statutes of Nebraska, is amended to read:

86-158 (1) Except as otherwise provided in section 86-123, any order of the commission entered pursuant to authority granted in the Nebraska Telecommunications Regulation Act may be appealed by any interested party to the proceeding. The appeal shall be in accordance with ~~the Administrative Procedure Act,~~ section 75-136.

(2) In an original action concerning a violation of the Nebraska Telecommunications Regulation Act by a telecommunications company, the commission shall have jurisdiction as set forth in section 75-132.01. After all administrative remedies before the commission have been exhausted, an appeal may be brought by an interested party to an action. Such appeal shall be in accordance with ~~the Administrative Procedure Act,~~ section 75-136.

Sec. 12. Section 86-209, Reissue Revised Statutes of Nebraska, is amended to read:

86-209 (1) Notwithstanding section 75-156, the commission may, after hearing, impose an administrative penalty for a violation of the Telephone Consumer Slamming Prevention Act. The penalty for a violation shall not exceed two thousand dollars. Every violation associated with a specific access line within the state shall be considered a separate and distinct violation.

(2) The amount of an administrative penalty shall be based on:

(a) The nature, circumstances, extent, and gravity of a prohibited act;

(b) The history of previous violations;

(c) The amount necessary to deter future violations; and

(d) Any efforts to correct the violation.

(3) The commission shall remit any administrative penalty collected under this section to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

(4) Any administrative penalty may be appealed. The appeal shall be in accordance with ~~the Administrative Procedure Act,~~ section 75-136.

Sec. 13. Section 86-255, Reissue Revised Statutes of Nebraska, is amended to read:

86-255 Any decision of the commission made pursuant to the Automatic Dialing-Announcing Devices Act or the rules and regulations may be appealed. The appeal shall be in accordance with ~~the Administrative Procedure Act,~~ section 75-136.

Sec. 14. Section 86-269, Reissue Revised Statutes of Nebraska, is amended to read:

86-269 (1) The commission shall adopt and promulgate rules and regulations necessary to carry out the Intrastate Pay-Per-Call Regulation Act.

(2) The commission may conduct investigations and shall enforce the act.

(3) Upon written complaint and supporting affidavit that an applicable rule or regulation or any provision of the act has been or is being violated, the commission may enter a cease and desist order on an ex parte basis against a party named in a complaint alleging violation of the act. The order shall have duration of no more than twenty days, and a hearing upon the complaint shall be held no later than twenty days after the order is entered by the commission.

(4) A decision of the commission made pursuant to the act and rules and regulations of the commission may be appealed. The appeal shall be in accordance with ~~the Administrative Procedure Act,~~ section 75-136.

Sec. 15. Section 86-578, Reissue Revised Statutes of Nebraska, is amended to read:

86-578 In an original action concerning a violation of any provision of sections 86-574 to 86-578 by an agency or political subdivision of the state, the Public Service Commission shall have the jurisdiction set forth in section 75-132.01. After all administrative remedies before the Public Service Commission have been exhausted, an appeal may be brought by an interested party. Such appeal shall be in accordance with ~~the Administrative Procedure Act,~~ section 75-136.

Sec. 16. The Revisor of Statutes shall assign section 7 of this act within Chapter 75, article 1, and any reference to such chapter or article shall be deemed to include such section.

Sec. 17. Original sections 71-1567, 71-4609, 75-134, 75-136, 75-139, 75-156, 75-722, 86-123, 86-158, 86-209, 86-255, 86-269, and 86-578, Reissue Revised Statutes of Nebraska, and section 57-1409, Revised Statutes Cumulative Supplement, 2012, are repealed.