

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1098

Introduced by Halloran, 33.

Read first time January 19, 2022

Committee: Business and Labor

1 A BILL FOR AN ACT relating to the State Fire Marshal; to amend sections
2 81-520.01 and 81-5,159, Reissue Revised Statutes of Nebraska, and
3 sections 81-5,172, 81-5,213, 81-5,216, 81-5,217, 81-5,218, 81-5,219,
4 81-5,223, 81-5,230, 81-5,237, and 81-5,239, Revised Statutes
5 Cumulative Supplement, 2020; to change provisions relating to
6 obtaining a permit to conduct open burning, contractor certificates,
7 the Boiler Inspection Act, and the Conveyance Safety Act; to
8 eliminate obsolete provisions; to harmonize provisions; and to
9 repeal the original sections.
10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 81-520.01, Reissue Revised Statutes of Nebraska,
2 is amended to read:

3 81-520.01 (1) There shall be a statewide open burning ban on all
4 bonfires, outdoor rubbish fires, and fires for the purpose of clearing
5 land.

6 (2) The fire chief of a local fire department may waive an open
7 burning ban under subsection (1) of this section for an area under the
8 local fire department's jurisdiction by issuing an open burning permit to
9 a person requesting permission to conduct open burning. The permit issued
10 and approved by the fire chief to a person desiring to conduct open
11 burning shall be in writing, signed by the fire chief, and on a form
12 prescribed by the local fire department State Fire Marshal. The State
13 Fire Marshal shall develop a model permit listing the minimum
14 requirements to conduct open burning provide local fire departments with
15 such forms.

16 (3) The fire chief of a local fire department may waive the open
17 burning ban in the local fire department's jurisdiction when conditions
18 are acceptable to the chief. Anyone intending to burn in such
19 jurisdiction when the open burning ban has been waived shall notify the
20 fire chief of his or her intention to burn prior to starting the burn.

21 (4) The fire chief of a local fire department may adopt additional
22 standards listing the conditions acceptable for issuing a permit to
23 conduct open burning under subsection (2) of this section.

24 (5) The local fire department may charge a fee, not to exceed ten
25 dollars, for each such permit issued. This fee shall be remitted to the
26 governing body for inclusion in the general funds allocated to the fire
27 department. Such funds shall not reduce the tax requirements for the fire
28 department. No such fee shall be collected from any state or political
29 subdivision to which such a permit is issued to conduct open burning
30 under subsection (2) of this section in the course of such state's or
31 political subdivision's official duties.

1 Sec. 2. Section 81-5,159, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 81-5,159 (1) Any water-based fire protection system contractor who
4 installs, repairs, alters, adds to, maintains, or inspects water-based
5 fire protection systems in this state shall first obtain a contractor
6 certificate.

7 (2) A water-based fire protection system contractor may apply to the
8 State Fire Marshal for a contractor certificate. The application shall be
9 made on a form prescribed by the State Fire Marshal and shall include a
10 certificate fee of up to one hundred dollars. Each applicant must
11 designate a responsible managing employee on the application, and such
12 ~~this~~ individual's name shall appear on the certificate with that of the
13 water-based fire protection system contractor upon issuance. Proof of
14 insurance required by section 81-5,160 shall also accompany the
15 application.

16 (3) Upon receipt of a complete application, proof of insurance, and
17 certificate fee, the State Fire Marshal shall schedule a time for an
18 examination of the responsible managing employee to demonstrate that he
19 or she is familiar with the procedures and rules of the State Fire
20 Marshal relating to water-based fire protection systems. If the
21 responsible managing employee passes the examination, the State Fire
22 Marshal shall issue the certificate to the water-based fire protection
23 system contractor within thirty days.

24 (4) A certificate shall expire on September 30 of the year following
25 issuance. An application for renewal shall be filed at least ten ~~thirty~~
26 days prior to expiration and shall be accompanied by a renewal fee of up
27 to one hundred dollars and a sworn affidavit that the responsible
28 managing employee is currently employed by the water-based fire
29 protection system contractor. A water-based fire protection system
30 contractor who fails to apply for renewal within the time stated in this
31 subsection must make a new application for a certificate.

1 (5) A responsible managing employee may only act as such for one
2 water-based fire protection system contractor at a time. When a
3 responsible managing employee terminates his or her association with a
4 water-based fire protection system contractor, the water-based fire
5 protection system contractor shall notify the State Fire Marshal within
6 thirty days after termination. The responsible managing employee shall
7 not be designated as the responsible managing employee for more than two
8 water-based fire protection system contractors in any twelve-month
9 period. The State Fire Marshal shall revoke the certificate of a water-
10 based fire protection system contractor whose responsible managing
11 employee has terminated his or her association with the water-based fire
12 protection system contractor unless an application designating a new
13 responsible managing employee is filed within six months after
14 termination or prior to expiration of the current certificate, whichever
15 is earlier.

16 Sec. 3. Section 81-5,172, Revised Statutes Cumulative Supplement,
17 2020, is amended to read:

18 81-5,172 The Boiler Inspection Act shall not apply to:

- 19 (1) Boilers of railway locomotives subject to federal inspection;
20 (2) Boilers operated and regularly inspected by railway companies
21 operating in interstate commerce;
22 (3) Boilers under the jurisdiction and subject to regular periodic
23 inspection by the United States Government;
24 (4) Boilers used exclusively for agricultural purposes;
25 (5) Steam heating boilers in single-family residences and apartment
26 houses with four or less units ~~using a pressure of less than fifteen~~
27 ~~pounds per square inch and having a safety valve set no at ~~not~~ higher~~
28 than fifteen pounds pressure per square inch;
29 (6) Heating boilers using water in single-family residences and
30 apartment houses with four or less units ~~using a pressure of less than~~
31 ~~thirty pounds per square inch and having a safety valve set no at ~~not~~~~

1 higher than thirty pounds pressure per square inch;

2 (7) Fire engine boilers brought into the state for temporary use in
3 times of emergency;

4 (8) Boilers of a miniature model locomotive or boat or tractor or
5 stationary engine constructed and maintained as a hobby and not for
6 commercial use and having a diameter of less than ten inches inside
7 diameter and a grate area not in excess of one and one-half square feet
8 and that are properly equipped with a safety valve;

9 (9) Boilers or fired pressure vessels not exceeding two ~~Hot water~~
10 ~~supply boilers if none of the following limitations is exceeded: (a) Two~~
11 ~~hundred thousand British thermal units of input; (b) one hundred twenty~~
12 ~~gallons of nominal capacity; or (c) two hundred ten degrees Fahrenheit~~
13 ~~output;~~

14 (10) Unfired pressure vessels not exceeding: (a) five cubic feet in
15 volume or (b) a pressure of two hundred fifty pounds per square inch;

16 (11) Unfired pressure vessels owned and maintained by a district or
17 corporation organized under the provisions of Chapter 70, article 6; and

18 (12) Unfired pressure vessels (a) not exceeding a maximum allowable
19 working pressure of five hundred pounds per square inch, (b) that contain
20 carbon dioxide, helium, oxygen, nitrogen, argon, hydrofluorocarbon
21 refrigerant, or any other nonflammable gas determined by the State Fire
22 Marshal not to be a risk to the public, (c) that are manufactured and
23 repaired in accordance with applicable American Society of Mechanical
24 Engineers standards, and (d) that are installed in accordance with the
25 manufacturer's specifications.

26 Sec. 4. Section 81-5,213, Revised Statutes Cumulative Supplement,
27 2020, is amended to read:

28 81-5,213 The committee:

29 (1) May consult with engineering authorities and organizations
30 concerned with standard safety codes;

31 (2) Shall recommend to the State Fire Marshal rules and regulations

1 governing the operation, maintenance, servicing, construction,
2 alteration, installation, and inspection of conveyances;

3 (3) Shall recommend to the State Fire Marshal qualifications for
4 licensure as an elevator mechanic or elevator contractor and conditions
5 for disciplinary actions, including suspension or revocation of a
6 license;

7 (4) Shall recommend to the State Fire Marshal rules and regulations
8 for temporary and emergency elevator mechanic thirty-day licenses;

9 (5) Shall recommend to the State Fire Marshal an enforcement program
10 which will ensure compliance with the Conveyance Safety Act and the rules
11 and regulations adopted and promulgated pursuant to the act. The
12 enforcement program shall include the identification of property
13 locations which are subject to the act, issuing notifications to
14 violating property owners or operators, random onsite inspections and
15 tests on existing installations, and assisting in development of public
16 awareness programs; and

17 (6) Shall make recommendations to the State Fire Marshal regarding
18 ~~variances under section 81-5,217,~~ continuing education providers under
19 ~~section 81-5,235, and license disciplinary actions under section~~
20 ~~81-5,237.~~

21 Sec. 5. Section 81-5,216, Revised Statutes Cumulative Supplement,
22 2020, is amended to read:

23 81-5,216 The Conveyance Safety Act does not apply to:

24 (1) Conveyances under the jurisdiction and subject to inspection by
25 the United States Government;

26 (2) Conveyances used exclusively for agricultural purposes;

27 (3) Personnel hoists within the scope of American National Standards
28 Institute A10.4;

29 (4) Material hoists within the scope of American National Standards
30 Institute A10.5;

31 (5) Manlifts within the scope of American Society of Mechanical

1 Engineers A90.1;

2 (6) Mobile scaffolds, towers, and platforms within the scope of
3 American National Standards Institute A92;

4 (7) Powered platforms and equipment for exterior and interior
5 maintenance within the scope of American National Standards Institute
6 120.1;

7 (8) Cranes, derricks, hoists, hooks, jacks, and slings within the
8 scope of American Society of Mechanical Engineers B30;

9 (9) Industrial trucks within the scope of American Society of
10 Mechanical Engineers B56;

11 (10) Portable equipment, except for portable escalators which are
12 covered by American National Standards Institute A17.1;

13 (11) Tiering or piling machines used to move materials to and from
14 storage located and operating entirely within one story;

15 (12) Equipment for feeding or positioning materials at machine
16 tools, printing presses, and similar equipment;

17 (13) Skip or furnace hoists;

18 (14) Wharf ramps;

19 (15) Railroad car lifts or dumpers;

20 (16) Line jacks, false cars, shafters, moving platforms, and similar
21 equipment used for installing a conveyance by an elevator contractor;

22 (17) Manlifts, hoists, or conveyances used in grain elevators or
23 feed mills;

24 (18) Dock levelators;

25 (19) Stairway chair lifts and platform lifts in noncommercial
26 buildings; and

27 (20) Conveyances in residences located in counties that have a
28 population of one hundred thousand or less inhabitants.

29 Sec. 6. Section 81-5,217, Revised Statutes Cumulative Supplement,
30 2020, is amended to read:

31 81-5,217 (1) The State Fire Marshal shall adopt and promulgate rules

1 and regulations which establish the regulations for conveyances under the
2 Conveyance Safety Act. The rules and regulations may include the Safety
3 Code for Elevators and Escalators, American Society of Mechanical
4 Engineers A17.1 except those parts exempted under section 81-5,216; the
5 standards for conveyors and related equipment, American Society of
6 Mechanical Engineers B20.1; and the Automated People Mover Standards,
7 American Society of Civil Engineers 21. The State Fire Marshal shall
8 annually review to determine if the most current form of such standards
9 should be adopted.

10 (2) The State Fire Marshal may grant an equivalency to a ~~variance~~
11 ~~from~~ the rules and regulations adopted in subsection (1) of this section
12 in individual situations upon good cause shown if the safety of those
13 riding or using the conveyance is not compromised by the equivalency
14 ~~variance~~. ~~The State Fire Marshal shall adopt and promulgate rules and~~
15 ~~regulations for the procedure to obtain a variance. The committee shall~~
16 ~~make recommendations to the State Fire Marshal regarding each variance~~
17 ~~requested.~~ The decision of the State Fire Marshal in granting or refusing
18 to grant an equivalency ~~a variance~~ may be appealed. The appeal shall be
19 in accordance with the Administrative Procedure Act.

20 Sec. 7. Section 81-5,218, Revised Statutes Cumulative Supplement,
21 2020, is amended to read:

22 81-5,218 Conveyances ~~upon which construction is started subsequent~~
23 ~~to January 1, 2008,~~ shall be registered at the time they are completed
24 and placed in service.

25 Sec. 8. Section 81-5,219, Revised Statutes Cumulative Supplement,
26 2020, is amended to read:

27 81-5,219 ~~On and after January 1, 2008:~~ Prior to any newly installed
28 conveyance being used for the first time, the property owner or lessee
29 shall obtain a certificate of inspection from the State Fire Marshal. A
30 fee established under section 81-5,214 shall be paid for the certificate
31 of inspection. A licensed elevator contractor shall complete and submit

1 first-time registrations for new installations to the state elevator
2 inspector for the inspector's approval. A certificate of inspection shall
3 be clearly displayed in an elevator car and on or in each other
4 conveyance.

5 Sec. 9. Section 81-5,223, Revised Statutes Cumulative Supplement,
6 2020, is amended to read:

7 81-5,223 (1) No inspection shall be required under the Conveyance
8 Safety Act when an owner or user of a conveyance obtains an inspection by
9 a representative of a third-party inspection ~~reputable insurance~~ company
10 licensed to do business in Nebraska, obtains a policy of insurance from a
11 licensed insurance ~~such~~ company upon the conveyance and files with the
12 State Fire Marshal a certificate of inspection by such third-party
13 inspection ~~insurance~~ company, files a statement that such conveyance is
14 insured, and pays an administrative fee established pursuant to section
15 81-5,214.

16 (2) No inspection shall be required under the act when there has
17 been an annual inspection under a city ordinance which meets the
18 standards of the act.

19 Sec. 10. Section 81-5,230, Revised Statutes Cumulative Supplement,
20 2020, is amended to read:

21 81-5,230 (1) Any person wishing to engage in the work of an elevator
22 mechanic shall apply for and obtain an elevator mechanic license from the
23 State Fire Marshal. The application shall be on a form provided by the
24 State Fire Marshal.

25 (2) The application shall contain:

26 (a) The name, physical address, email address, telephone number, and
27 social security number of the applicant;

28 (b) The number of years the applicant has engaged in the business of
29 installing, inspecting, maintaining, or servicing conveyances;

30 (c) The last three years of employment history of the applicant;

31 (d) Proof of passing the elevator mechanic examination from the

1 National Elevator Industry Educational Program or an equivalent
2 examination for new applicants or proof of eight hours of approved
3 training for renewal applicants;

4 (e) Permission for the State Fire Marshal to access the criminal
5 history record information of individuals, partners, or officers
6 maintained by the Federal Bureau of Investigation through the Nebraska
7 State Patrol; and

8 (f) Such other information as the State Fire Marshal may by rule and
9 regulation require.

10 ~~(3) (2)~~ Any person wishing to engage in the business of an elevator
11 contractor shall apply for and obtain an elevator contractor license from
12 the State Fire Marshal. The application shall be on a form provided by
13 the State Fire Marshal.

14 ~~(4) (3)~~ Each application shall contain:

15 ~~(a) The business name and address If an individual, the name,~~
16 ~~residence and business address, and social security number of the~~
17 ~~applicant;~~

18 ~~(b) The email address and telephone number of the applicant If a~~
19 ~~partnership, the name, residence and business address, and social~~
20 ~~security number of each partner;~~

21 ~~(c) The name and telephone number of a direct manager contact of the~~
22 ~~applicant If a domestic corporation, the name and business address of the~~
23 ~~corporation and the name, residence address, and social security number~~
24 ~~of the principal officer of the corporation; and if a corporation other~~
25 ~~than a domestic corporation, the name and address of an agent located~~
26 ~~locally who is authorized to accept service of process and official~~
27 ~~notices;~~

28 ~~(d) The number of years the applicant has engaged in the business of~~
29 ~~installing, inspecting, maintaining, or servicing conveyances;~~

30 ~~(e) The approximate number of individuals to be employed by the~~
31 ~~applicant and, if applicable, satisfactory evidence that the employees~~

1 are or will be covered by workers' compensation insurance;

2 (f) Satisfactory evidence that the applicant is or will be covered
3 by general liability, personal injury, and property damage insurance;

4 (g) Permission for the State Fire Marshal to access the criminal
5 history record information of individuals, partners, or officers
6 maintained by the Federal Bureau of Investigation through the Nebraska
7 State Patrol;

8 (h) A description of all accidents causing personal injury or
9 property damage in excess of one thousand dollars involving conveyances
10 installed, inspected, maintained, or serviced by the applicant; ~~and~~

11 (i) The name, telephone number, and elevator mechanic license number
12 of the licensed elevator mechanic on record with the business; and

13 (j) (i) Such other information as the State Fire Marshal may by rule
14 and regulation require.

15 (5) (4) Social security numbers on applications shall not be made
16 public or be considered a part of a public record.

17 Sec. 11. Section 81-5,237, Revised Statutes Cumulative Supplement,
18 2020, is amended to read:

19 81-5,237 (1) An elevator contractor license issued under the
20 Conveyance Safety Act may be revoked by the State Fire Marshal upon
21 verification that the elevator contractor licensee lacks the insurance
22 coverage required by section 81-5,236.

23 (2) An elevator mechanic license or an elevator contractor license
24 issued under the act may be suspended, revoked, or subject to a civil
25 penalty not to exceed five thousand dollars by the State Fire Marshal,
26 after notice and hearing, if the licensee:

27 (a) Makes a false statement as to material matter in the license
28 application;

29 (b) Commits fraud, misrepresentation, or bribery in obtaining the
30 license; or

31 (c) Violates any other provision of the act.

1 (3) No license shall be suspended, revoked, or subject to civil
2 penalty until after a hearing is held before ~~the committee and~~ the State
3 Fire Marshal or his or her designee. The hearing shall be held within
4 sixty days after notice of the violation is received and all interested
5 parties shall receive written notice of the hearing at least fifteen days
6 prior to the hearing. ~~Within fifteen days after the hearing, the~~
7 ~~committee shall make recommendations to the State Fire Marshal or his or~~
8 ~~her designee of appropriate penalties, if any, warranted under the~~
9 ~~circumstances of the case. The committee does not have the power to~~
10 ~~suspend or revoke licenses or impose civil penalties.~~ Within thirty days
11 after the hearing, the State Fire Marshal shall issue a decision which
12 may include license suspension, license revocation, and civil penalties.
13 The decision of the State Fire Marshal may be appealed. The appeal shall
14 be in accordance with the Administrative Procedure Act.

15 Sec. 12. Section 81-5,239, Revised Statutes Cumulative Supplement,
16 2020, is amended to read:

17 81-5,239 (1) Any person may make a request for an investigation into
18 an alleged violation of the Conveyance Safety Act by giving notice to the
19 State Fire Marshal or state elevator inspector of such violation or
20 danger.

21 (2) Upon receipt of a request for an investigation, the State Fire
22 Marshal or state elevator inspector shall perform a preliminary inquiry
23 into the charges contained in the request for investigation. A request
24 for an investigation may be made in person or in writing ~~by telephone~~
25 ~~call~~ and shall set forth with reasonable particularity the grounds for
26 the request for an investigation. During the preliminary inquiry, the
27 name, address, and telephone number of the person making the request for
28 an investigation shall be available only to the State Fire Marshal, state
29 elevator inspector, or other person carrying out the preliminary inquiry
30 on behalf of the State Fire Marshal or state elevator inspector. The
31 State Fire Marshal or state elevator inspector shall keep a record of

1 each request for an investigation received under this section for three
2 years after such request is made.

3 (3) If after the preliminary inquiry the State Fire Marshal or state
4 elevator inspector determines that there are reasonable grounds to
5 believe that such violation or danger exists and is likely to continue to
6 exist such that the operation of the conveyance endangers the public, the
7 State Fire Marshal or state elevator inspector shall cause a formal
8 investigation to be made. During the formal investigation, a statement
9 shall be taken from the person who made the request for an investigation
10 and the person's name, address, and telephone number shall be made
11 available to any opposing parties upon request.

12 (4) If the State Fire Marshal or state elevator inspector determines
13 that there are no reasonable grounds to believe that a violation or
14 danger exists under either subsection (2) or (3) of this section, the
15 State Fire Marshal shall notify the person requesting the investigation
16 in writing of such determination.

17 Sec. 13. Original sections 81-520.01 and 81-5,159, Reissue Revised
18 Statutes of Nebraska, and sections 81-5,172, 81-5,213, 81-5,216,
19 81-5,217, 81-5,218, 81-5,219, 81-5,223, 81-5,230, 81-5,237, and 81-5,239,
20 Revised Statutes Cumulative Supplement, 2020, are repealed.