

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1069

Introduced by Halloran, 33.

Read first time January 08, 2024

Committee: Business and Labor

1 A BILL FOR AN ACT relating to the State Fire Marshal; to amend sections
2 28-1250, 81-520.01, 81-546, 81-550, and 81-5,159, Reissue Revised
3 Statutes of Nebraska, and sections 81-502 and 81-5,172, Revised
4 Statutes Cumulative Supplement, 2022; to change provisions relating
5 to obtaining a permit to conduct open burning, civil penalties, the
6 Nebraska Natural Gas Pipeline Safety Cash Fund, pipeline facility
7 assessments, contractor certificates, and the Boiler Inspection Act;
8 to eliminate the Nebraska Fire Safety Appeals Board, appeals
9 procedures, and obsolete provisions; to harmonize provisions; to
10 repeal the original sections; and to outright repeal section
11 81-502.01, Reissue Revised Statutes of Nebraska, section 81-502.02,
12 Revised Statutes Cumulative Supplement, 2022, and section 81-502.03,
13 Revised Statutes Supplement, 2023.
14 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-1250, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 28-1250 (1) Any person who violates any of the provisions of
4 sections 28-1244 to 28-1249 commits a Class III misdemeanor. If such
5 person is a licensed distributor or jobber, the State Fire Marshal may
6 suspend, cancel, or revoke the license for up to three years. The
7 suspension, cancellation, or revocation shall become effective upon the
8 failure to timely appeal the decision under the Administrative Procedure
9 Act ~~or upon an order of the Nebraska Fire Safety Appeals Board upholding~~
10 ~~the decision pursuant to a hearing under the Administrative Procedure~~
11 ~~Act.~~

12 (2) It shall be unlawful for any person, association, partnership,
13 limited liability company, or corporation to have in his, her, or its
14 possession any fireworks in violation of any of the provisions of
15 sections 28-1244 to 28-1249. If any person shall have in his, her, or its
16 possession any fireworks in violation of such sections, a warrant may be
17 issued for the seizure of such fireworks and when the warrant is executed
18 by the seizure of such fireworks, such fireworks shall be safely kept by
19 the magistrate to be used as evidence. Upon conviction of the offender,
20 the fireworks shall be destroyed, but if the offender is discharged, the
21 fireworks shall be returned to the person in whose possession they were
22 found. Nothing in such sections shall apply to the transportation of
23 fireworks by regulated carriers.

24 Sec. 2. Section 81-502, Revised Statutes Cumulative Supplement,
25 2022, is amended to read:

26 81-502 (1) It shall be the duty of the State Fire Marshal, under
27 authority of the Governor:

28 (a) To enforce all laws of the state relating to the suppression of
29 arson and investigation of the cause, origin, and circumstances of fires;

30 (b) To promote safety and reduce loss by fire; and

31 (c) To make an investigation for fire safety of the premises and

1 facilities of:

2 (i) Liquor establishments for which a license or renewal of a
3 license is sought, upon request of the Nebraska Liquor Control
4 Commission, pursuant to section 53-119.01;

5 (ii) Licensed foster care facilities or applicants for licenses for
6 foster care facilities, upon request by the Department of Health and
7 Human Services, pursuant to section 71-1903;

8 (iii) Upon request of the Department of Health and Human Services,
9 licensed providers of programs or applicants for licenses to provide such
10 programs pursuant to section 71-1913 and licensed residential child-
11 caring agencies or applicants for such licensure pursuant to section
12 71-1934. The State Fire Marshal shall report the results of the
13 investigation to the department within thirty days after receipt of the
14 request from the department;

15 (iv) Licensed hospitals, skilled nursing facilities, intermediate
16 care facilities, or other health care facilities which are licensed under
17 the Health Care Facility Licensure Act or applicants for licenses for
18 such facilities or institutions, upon request by the Department of Health
19 and Human Services, pursuant to section 71-441; and

20 (v) Mobile home parks for which a license or renewal of a license is
21 sought, upon request of the Department of Environment and Energy,
22 pursuant to section 81-15,291.

23 (2) The State Fire Marshal may enter into contracts with private
24 individuals or other agencies, boards, commissions, or governmental
25 bodies for the purpose of carrying out his or her duties and
26 responsibilities pursuant to the Arson Reporting Immunity Act, the
27 Nebraska Natural Gas Pipeline Safety Act of 1969, and sections 81-502 to
28 81-538, 81-5,132 to 81-5,146, and 81-5,151 to 81-5,157.

29 (3) The State Fire Marshal may delegate the authority set forth in
30 this section and section 81-503.01 to qualified local fire prevention
31 personnel. The State Fire Marshal may overrule a decision, act, or policy

1 of the local fire prevention personnel. ~~When the State Fire Marshal~~
2 ~~overrules the local personnel, such local personnel may follow the~~
3 ~~appeals procedure established by sections 81-502.01 to 81-502.03.~~ Such
4 delegation of authority may be revoked by the State Fire Marshal for
5 cause upon thirty days' notice after a hearing.

6 (4) The State Fire Marshal, first assistant fire marshal, and
7 deputies shall have such other powers and perform such other duties as
8 are set forth in sections 81-501.01 to 81-531 and 81-5,151 to 81-5,157
9 and as may be conferred and imposed by law.

10 Sec. 3. Section 81-520.01, Reissue Revised Statutes of Nebraska, is
11 amended to read:

12 81-520.01 (1) There shall be a statewide open burning ban on all
13 bonfires, outdoor rubbish fires, and fires for the purpose of clearing
14 land.

15 (2) The fire chief of a local fire department may waive an open
16 burning ban under subsection (1) of this section for an area under the
17 local fire department's jurisdiction by issuing an open burning permit to
18 a person requesting permission to conduct open burning. The permit issued
19 by the fire chief to a person desiring to conduct open burning shall at a
20 minimum contain (a) the name and telephone number of the land owner, (b)
21 the burn location, (c) the date and beginning and ending time of the
22 burn, (d) a description of the material to be burned, and (e) the name
23 and telephone number of the person responsible for the burn. The local
24 fire department may have additional requirements for a burn to be
25 permitted. The permit shall contain the signature, written or electronic,
26 of the local fire chief be in writing, signed by the fire chief, and on a
27 form prescribed by the State Fire Marshal. The State Fire Marshal shall
28 provide a sample form with the minimum requirements on the website of the
29 State Fire Marshal local fire departments with such forms.

30 (3) The fire chief of a local fire department may waive the open
31 burning ban in the local fire department's jurisdiction when conditions

1 are acceptable to the chief. Anyone intending to burn in such
2 jurisdiction when the open burning ban has been waived shall notify the
3 fire chief of his or her intention to burn prior to starting the burn.

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

7 (5) The local fire department may charge a fee, not to exceed ten
8 dollars, for each such permit issued. This fee shall be remitted to the
9 governing body for inclusion in the general funds allocated to the fire
10 department. Such funds shall not reduce the tax requirements for the fire
11 department. No such fee shall be collected from any state or political
12 subdivision to which such a permit is issued to conduct open burning
13 under subsection (2) of this section in the course of such state's or
14 political subdivision's official duties.

15 Sec. 4. Section 81-546, Reissue Revised Statutes of Nebraska, is
16 amended to read:

17 81-546 (1) Whenever the State Fire Marshal has reason to believe any
18 person is violating any provision of subsection (1) of section 81-545 or
19 any regulation under the Nebraska Natural Gas Pipeline Safety Act of
20 1969, the State Fire Marshal shall give notice to such person and permit
21 such person reasonable opportunity to achieve compliance. If compliance
22 has not been achieved in a reasonable time, the State Fire Marshal may
23 request the Attorney General to bring an action under section 81-547 in
24 the district court for the county in which the defendant's principal
25 place of business is located, and the district court may impose a civil
26 penalty of not to exceed two hundred thousand ~~ten thousand~~ dollars for
27 each violation for each day that such violation persists, except that the
28 maximum civil penalty shall not exceed two million ~~five hundred thousand~~
29 dollars for any related series of violations.

30 (2) In determining the amount of such penalty, the court shall
31 consider the appropriateness of such penalty to the size of the business

1 of the person charged, the gravity of the violation, and the good faith
2 of the person charged. The amount of such penalty, when finally
3 determined, may be deducted from any sums owing by the State of Nebraska
4 to the person charged.

5 Sec. 5. Section 81-550, Reissue Revised Statutes of Nebraska, is
6 amended to read:

7 81-550 (1) The Nebraska Natural Gas Pipeline Safety Cash Fund is
8 created. The fund shall consist of money received from assessments
9 pursuant to this section which shall be remitted to the State Treasurer
10 for credit to the fund. ~~Transfers may be made from the fund to the~~
11 ~~General Fund at the direction of the Legislature through June 30, 2010.~~
12 The Nebraska Natural Gas Pipeline Safety Cash Fund shall be used for
13 purposes of administering the Nebraska Natural Gas Pipeline Safety Act of
14 1969. The fund shall be administered by the State Fire Marshal. Any money
15 in the fund available for investment shall be invested by the state
16 investment officer pursuant to the Nebraska Capital Expansion Act and the
17 Nebraska State Funds Investment Act.

18 (2) To defray the cost of administering the Nebraska Natural Gas
19 Pipeline Safety Act of 1969, the State Fire Marshal shall on March 1 of
20 each year make an assessment against persons having pipeline facilities
21 in this state subject to the act, which assessment shall be paid within
22 thirty days thereafter.

23 (3) The assessment against each such person shall be based on the
24 number of meters such person has in service for the retail sale of gas in
25 this state at the end of the calendar year next preceding such
26 assessment. The amount of such assessment shall be set by the State Fire
27 Marshal in an amount not to exceed fifty ~~twenty~~ cents multiplied by the
28 number of such meters for each such person.

29 (4) It shall be the duty of the State Fire Marshal to make timely
30 application each year to the United States Government for the maximum
31 funds to which this state may be entitled from the United States

1 Government for the administration of the act.

2 Sec. 6. Section 81-5,159, Reissue Revised Statutes of Nebraska, is
3 amended to read:

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

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

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

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

1 subsection must make a new application for a certificate.

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

17 Sec. 7. Section 81-5,172, Revised Statutes Cumulative Supplement,
18 2022, is amended to read:

19 81-5,172 The Boiler Inspection Act shall not apply to:

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

1 ~~thirty pounds per square inch and having a safety valve set no at not~~
2 higher than thirty pounds pressure per square inch;

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

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

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

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

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

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

27 Sec. 8. Original sections 28-1250, 81-520.01, 81-546, 81-550, and
28 81-5,159, Reissue Revised Statutes of Nebraska, and sections 81-502 and
29 81-5,172, Revised Statutes Cumulative Supplement, 2022, are repealed.

30 Sec. 9. The following sections are outright repealed: Section
31 81-502.01, Reissue Revised Statutes of Nebraska, section 81-502.02,

- 1 Revised Statutes Cumulative Supplement, 2022, and section 81-502.03,
- 2 Revised Statutes Supplement, 2023.