

LEGISLATIVE BILL 1069

Approved by the Governor April 15, 2024

Introduced by Halloran, 33.

A BILL FOR AN ACT relating to the State Fire Marshal; to amend sections 28-1250, 81-520.01, 81-546, 81-547, 81-550, and 81-5,159, Reissue Revised Statutes of Nebraska, and sections 81-502 and 81-5,172, Revised Statutes Cumulative Supplement, 2022; to eliminate the Nebraska Fire Safety Appeals Board; to change open burning permit requirements; to change and provide enforcement, civil penalty, and appeals procedures under the Nebraska Natural Gas Pipeline Safety Act of 1969; to change a pipeline facility assessment under the Nebraska Natural Gas Pipeline Safety Cash Fund; to change a renewal application deadline for a contractor certificate relating to fire protection systems; to change exception provisions under the Boiler Inspection Act; to eliminate obsolete provisions; to harmonize provisions; to repeal the original sections; to outright repeal section 81-502.01, Reissue Revised Statutes of Nebraska, section 81-502.02, Revised Statutes Cumulative Supplement, 2022, and section 81-502.03, Revised Statutes Supplement, 2023; and to declare an emergency.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) The State Fire Marshal may delegate the authority set forth in this section and section 81-503.01 to qualified local fire prevention personnel. The State Fire Marshal may overrule a decision, act, or policy of the local fire prevention personnel. ~~When the State Fire Marshal overrules the local personnel, such local personnel may follow the appeals procedure established by sections 81-502.01 to 81-502.03.~~ Such delegation of authority may be revoked by the State Fire Marshal for cause upon thirty days' notice after a hearing.

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

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

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

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

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

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

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

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

81-546 (1) Whenever the State Fire Marshal, after conducting an inspection or investigation, has determined with a reasonable degree of certainty that reason to believe any person has violated or is violating any provision of subsection (1) of section 81-545 or any regulation under the Nebraska Natural Gas Pipeline Safety Act of 1969, the State Fire Marshal shall give notice of the determination of a probable violation to such person and provide such person with the basis for the determination, including all documentation or other evidence related to the inspection or investigation.

(2) Such person shall have sixty business days to respond to the notice of a probable violation by either (a) agreeing with the determination and providing any details on what has been or will be done to achieve compliance or (b) disputing the determination and providing documentation or evidence to support that such person should not be found in violation of such section or regulations.

(3) In response to an answer made pursuant to subsection (2) of this section, the State Fire Marshal shall review the information provided. The State Fire Marshal may request any additional information from such person as the State Fire Marshal may require in order to reach a conclusion pursuant to subdivisions (a) and (b) of this subsection. Such person shall have thirty business days to respond to each such request for additional information. After such review:

(a) If the State Fire Marshal concludes that such person was not or is not in violation or that such person has achieved or will achieve compliance to no longer be in violation of any provision of subsection (1) of section 81-545 or any regulation under the Nebraska Natural Gas Pipeline Safety Act of 1969, the State Fire Marshal shall issue a letter indicating settlement based on such compliance and close the matter; or

(b) If the State Fire Marshal concludes that such person has not or will not achieve compliance to no longer be in violation of any provision of subsection (1) of section 81-545 or any regulation under the Nebraska Natural Gas Pipeline Safety Act of 1969 and permit such person reasonable opportunity to achieve compliance. If compliance has not been achieved in a reasonable time, the State Fire Marshal shall issue an order finding such person in violation and providing notice of the right to a hearing pursuant to subdivision (4)(a) of this section.

(4)(a) If the State Fire Marshal issues an order pursuant to subdivision (3)(b) of this section, such person may request a hearing. If such person:

(i) Fails to request a hearing within thirty business days after the date of the order, the State Fire Marshal shall issue a final order finding such person in violation; or

(ii) Requests a hearing, the hearing officer shall conduct the proceeding in accordance with the Administrative Procedure Act. After the hearing, the hearing officer shall prepare findings of fact and conclusions of law. The State Fire Marshal shall issue a final order based on such findings of fact and conclusions of law.

(b) A final order issued pursuant to subdivision (4)(a)(i) or (ii) of this section may be appealed. The appeal shall be in accordance with the Administrative Procedure Act.

(5) After issuance of a final order under subdivision (4)(a)(i) or (ii) of this section and if no appeal is timely filed, the State Fire Marshal may request the Attorney General to bring an action under section 81-547 in the district court for the county in which the defendant's principal place of business is located, ~~and the~~

(6)(a) Except as provided in subdivision (b) of this subsection, the district court may impose a civil penalty of not to exceed ten thousand dollars for each violation for each day that such violation persists, except that the maximum civil penalty shall not exceed five hundred thousand dollars for any related series of violations.

(b) For a violation of the federal safety standards established by the United States Secretary of Transportation pursuant to the federal Natural Gas Pipeline Safety Act of 1968 that have been incorporated in safety standards established by the State Fire Marshal under section 81-543, the district court may impose a civil penalty of up to two hundred thousand dollars for each violation for each day that such violation persists, except that the maximum civil penalty shall not exceed two million dollars for any related series of violations.

(7) No person shall be subject to civil penalties under both section 81-547 and the One-Call Notification System Act for conduct which may give rise to a violation under both the Nebraska Natural Gas Pipeline Safety Act of 1969 and the One-Call Notification System Act, unless that conduct is reckless or is done with willful disregard for the safety of others or their property. In the absence of recklessness or willful disregard for the safety of others or their property, such conduct shall be enforced primarily in accordance with section 76-2325.

(8) ~~(2)~~ In determining the amount of a such penalty imposed under subsection (6) of this section, the court shall consider the appropriateness of such penalty to the size of the business of the person charged, the gravity of the violation, the amount of harm or damage resulting from the violation, prior offenses and compliance history of the person charged, and the good faith of the person charged in attempting to achieve compliance, remedial actions taken by the person charged, and other such matters as justice may require. The amount of such penalty, when finally determined, may be deducted from any sums owing by the State of Nebraska to the person charged.

Sec. 5. Section 81-547, Reissue Revised Statutes of Nebraska, is amended to read:

81-547 (1) The district courts shall have jurisdiction to restrain violations of sections 81-503, 81-505, 81-525, and 81-542 to 81-552, including the restraint of transportation of gas or the operation of a pipeline facility, or to enforce standards established under the Nebraska Natural Gas Pipeline Safety Act of 1969 hereunder upon petition by the Attorney General on behalf of the State of Nebraska. ~~Whenever practicable, the State Fire Marshal shall give notice to any person against whom an action for injunctive relief is contemplated and afford him an opportunity to present his views, and, except in the case of a knowing and willful violation, shall afford him reasonable opportunity to achieve compliance. The failure to give such notice and afford such opportunity shall not preclude the granting of appropriate relief.~~

(2) Actions under subsection (1) of this section and section 81-546 shall be brought in the county in the State of Nebraska in which the defendant's principal place of business is located, and process in such cases may be served in any other county in the State of Nebraska where the defendant may be found or in which the defendant is an inhabitant or transacts business.

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

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

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

(3) The assessment against each such person shall be based on the number of meters such person has in service for the retail sale of gas in this state at the end of the calendar year next preceding such assessment. The amount of

such assessment shall be set by the State Fire Marshal in an amount not to exceed ~~fifty twenty~~ cents multiplied by the number of such meters for each such person.

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

Sec. 7. Section 81-5,159, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

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

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

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

Sec. 8. Section 81-5,172, Revised Statutes Cumulative Supplement, 2022, is amended to read:

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

- (1) Boilers of railway locomotives subject to federal inspection;
- (2) Boilers operated and regularly inspected by railway companies operating in interstate commerce;
- (3) Boilers under the jurisdiction and subject to regular periodic inspection by the United States Government;
- (4) Boilers used exclusively for agricultural purposes;
- (5) Steam heating boilers in single-family residences and apartment houses with four or less units ~~using a pressure of less than fifteen pounds per square inch and having a safety valve set no at not~~ higher than fifteen pounds pressure per square inch;
- (6) Heating boilers using water in single-family residences and apartment houses with four or less units ~~using a pressure of less than thirty pounds per square inch and having a safety valve set no at not~~ higher than thirty pounds pressure per square inch;
- (7) Fire engine boilers brought into the state for temporary use in times of emergency;
- (8) Boilers of a miniature model locomotive or boat or tractor or stationary engine constructed and maintained as a hobby and not for commercial use and having a diameter of less than ten inches inside diameter and a grate area not in excess of one and one-half square feet and that are properly equipped with a safety valve;
- (9) ~~Boilers or fired pressure vessels not exceeding two Hot water supply boilers if none of the following limitations is exceeded: (a) Two hundred thousand British thermal units of input; (b) one hundred twenty gallons of nominal capacity; or (c) two hundred ten degrees Fahrenheit output;~~
- (10) Unfired pressure vessels not exceeding (a) five cubic feet in volume or (b) a pressure of two hundred fifty pounds per square inch;
- (11) Unfired pressure vessels owned and maintained by a district or corporation organized under the provisions of Chapter 70, article 6; and
- (12) Unfired pressure vessels (a) not exceeding a maximum allowable working pressure of five hundred pounds per square inch, (b) that contain

carbon dioxide, helium, oxygen, nitrogen, argon, hydrofluorocarbon refrigerant, or any other nonflammable gas determined by the State Fire Marshal not to be a risk to the public, (c) that are manufactured and repaired in accordance with applicable American Society of Mechanical Engineers standards, and (d) that are installed in accordance with the manufacturer's specifications.

Sec. 9. Original sections 28-1250, 81-520.01, 81-546, 81-547, 81-550, and 81-5,159, Reissue Revised Statutes of Nebraska, and sections 81-502 and 81-5,172, Revised Statutes Cumulative Supplement, 2022, are repealed.

Sec. 10. The following sections are outright repealed: Section 81-502.01, Reissue Revised Statutes of Nebraska, section 81-502.02, Revised Statutes Cumulative Supplement, 2022, and section 81-502.03, Revised Statutes Supplement, 2023.

Sec. 11. Since an emergency exists, this act takes effect when passed and approved according to law.