

CORRECTED COPY

LEGISLATIVE BILL 251

Approved by the Governor February 20, 1993

Introduced by Robak, 22

AN ACT relating to the State Fire Marshal; to amend sections 28-1239.01, 28-1245, 28-1246, and 81-512, Reissue Revised Statutes of Nebraska, 1943, and sections 81-502, 81-505, 81-505.01, 81-513, and 81-520, Revised Statutes Supplement, 1992; to eliminate firework display licenses; to provide an additional fee for certain retail firework licenses; to change powers and duties; to change fees; to provide and classify penalties; to eliminate provisions regulating public buildings; to harmonize provisions; and to repeal the original sections, and also sections 28-1434 to 28-1436, Reissue Revised Statutes of Nebraska, 1943.

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

Section 1. That section 28-1239.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-1239.01. (1) No person shall conduct a public exhibition or display of fireworks without first procuring a display permit from the State Fire Marshal. Such permit shall be accompanied by a fee of ten dollars to be deposited in the State Fire Marshal Cash Fund.

(2) No display fireworks shall be sold or delivered by a licensed distributor ~~or holder of a display license~~ to any person who is not in possession of an approved display permit. Sales of display fireworks to persons without an approved display permit shall be subject to ~~the provisions of~~ sections 28-1213 to 28-1239.

Sec. 2. That section 28-1245, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-1245. Section 28-1244 shall not apply to:

(1) Any display fireworks purchased from a licensed distributor; ~~or or the holder of a display license to be issued by the State Fire Marshal upon payment of a fee of two hundred fifty dollars, which display license shall be good only for the calendar year in which issued and shall not authorize the holder to sell or hold for sale any permissible fireworks as defined in section 28-1241 or any other fireworks of any description, whether soft shell or hard shell; or~~

(2) Any display fireworks purchased by the holder of a display permit issued pursuant to section 28-1239.01; or

~~(3) Any public exhibition or display under the auspices of any governmental subdivision of this state, fair, or agricultural society; or~~

(3) (4) Any fireworks brought into this state for storage

by a licensed distributor and held for sale outside of this state; or

(4) ~~(5)~~ Any fireworks furnished for agricultural purposes pursuant to written authorization from the State Fire Marshal to any holder of a distributor's license; or

(5) ~~(6)~~ Toy cap pistols or toy caps, each of which does not contain more than twenty-five hundredths of a grain of explosive material.

Sec. 3. That section 28-1246, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-1246. (1) It shall be unlawful for any person to sell, hold for sale, or offer for sale as a distributor, jobber, or retailer any fireworks in this state unless such person has first obtained a license as a distributor, jobber, or retailer. Application for each such license shall be made to the State Fire Marshal on forms prescribed by him or her. Each application shall be accompanied by the required fee, which shall be five hundred dollars for a distributor's license, two hundred dollars for a jobber's license, and twenty-five dollars for a retailer's license. Each application for a license as a retailer postmarked after June 10 shall be accompanied by an additional fee of fifty dollars. All licenses ~~The license~~ shall be good only for the calendar year in which issued and shall at all times be displayed at the place of business of the holder thereof.

(2) The funds received pursuant to this section shall be ~~deposited in~~ remitted to the State Treasurer for credit to the State Fire Marshal Cash Fund.

Sec. 4. That section 81-502, Revised Statutes Supplement, 1992, be amended to read as follows:

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;

(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 child care facilities or applicants for licenses for child care facilities, upon request by the Department of Social Services, pursuant to section 71-1903;

(iii) Licensed providers of early childhood programs or applicants for licenses to provide such programs, upon request of the Department of Social Services, pursuant to section 71-1913. 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 facilities or institutions which are mentioned in subdivision (1) of section 71-2017 or applicants for licenses

for such facilities or institutions, upon request by the Department of Health, pursuant to section 71-2022; and

(v) Mobile home parks for which a license or renewal of a license is sought, upon request of the Department of Health, pursuant to section 71-4635; and

(d) After a careful study and investigation of relevant data bearing thereon, to adopt, promulgate, alter, and enforce, through inspections and code compliance orders, rules and regulations covering:

(i) The prevention of fires;

(ii) The storage, sale, and use of flammable liquids, combustibles, and fireworks;

(iii) Electric wiring and heating, protection equipment devices, materials, furnishings, and other safeguards within the structure necessary to promote safety and reduce loss by fire, and the means and adequacy of exits, in case of fire, in assembly, educational, institutional, residential, mercantile, office, storage, and industrial-type occupancies as such structures are defined in the National Fire Protection Association, Pamphlet Number 101, and associated pamphlets, and all other buildings, structures, and enclosures in which numbers of persons congregate from time to time for any purpose whether privately or publicly owned;

(iv) Design, construction, location, installation, and operation of equipment for storing, handling, and utilization of liquefied petroleum gases, specifying the odorization of such gases and the degree thereof;

(v) Chemicals, prozylin plastics, X-ray nitrocellulose films, or any other hazardous material that may now or hereafter exist; and

(vi) Tanks used for the storage of regulated substances pursuant to the Petroleum Products and Hazardous Substances Storage and Handling Act.

(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 sections 81-502 to 81-552 and 81-5,115 to 81-5,146.

(3) The State Fire Marshal may delegate the authority set forth in this section 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 as may be conferred and imposed by law.

(5) The rules and regulations adopted and promulgated pursuant to subdivision (1)(d) of this section may conform generally to the

standards recommended by the National Fire Protection Association, Pamphlet Number 101, known as the Life Safety Code, and associated pamphlets, but not when doing so would impose an unduly severe or costly burden without substantially contributing to the safety of persons or property. This section and the rules and regulations adopted and promulgated pursuant to subdivision (1)(d) of this section shall apply to existing as well as new buildings, structures, and enclosures. Such rules and regulations shall also apply to sites or structures in public ownership listed on the National Register of Historic Places but without destroying the historic quality thereof.

(6) Plans for compliance with the rules and regulations adopted and promulgated pursuant to subdivision (1)(d) of this section shall be reviewed by the State Fire Marshal. Plans submitted after remodeling or construction has begun shall be accompanied by a penalty of fifty dollars in addition to the plan review fee set out in subdivision (4)(a) of section 81-505.01.

Sec. 5. That section 81-505, Revised Statutes Supplement, 1992, be amended to read as follows:

81-505. The duties of the first assistant and the deputies shall be to operate under the direction of and to assist the State Fire Marshal in the execution of sections 81-501.01 to 81-531, ~~and~~ the Nebraska Natural Gas Pipeline Safety Act of 1969, the Petroleum Products and Hazardous Substances Storage and Handling Act, and any other statutory duties imposed upon the State Fire Marshal. In the event of a vacancy in the office of State Fire Marshal and until a successor is appointed or during the absence or disability of that officer, the first assistant fire marshal, with the assent and approval of the Governor, shall assume the duties of that office.

Sec. 6. That section 81-505.01, Revised Statutes Supplement, 1992, be amended to read as follows:

81-505.01. (1) The State Fire Marshal shall establish and assess fees not to exceed the actual costs for the performance of services by the State Fire Marshal or by qualified local fire prevention personnel to whom the State Fire Marshal has delegated authority to perform such services. Prior to establishing or altering such fees, the State Fire Marshal shall hold a public hearing on the question of the adoption of or change in fees. Notice of such hearing shall be given at least thirty days prior thereto (a) by publication in a newspaper having general circulation in the state and (b) by notifying in writing the head of any agency or department having jurisdiction over facilities that would be subject to the fees. Fees for services performed by the State Fire Marshal shall be paid to the State Fire Marshal and shall be ~~deposited in the state treasury and credited~~ remitted to the State Treasurer for credit to the State Fire Marshal Cash Fund. Fees for services performed by local fire prevention personnel shall be paid directly to the office of the local fire prevention personnel.

(2) The fee for inspection for fire safety of any premises or facility pursuant to section 81-502 shall be not less than fifteen twenty-five nor more than one hundred fifty dollars and shall be paid by

the licensee or applicant for a license. The fee for inspection for fire safety of the same premises or facility made within twelve months after the last prior inspection shall be not less than ~~fifteen~~ twenty-five nor more than one hundred fifty dollars and shall be paid by the licensee or applicant for a license. The fees for inspection for fire safety of foster family homes as defined in section 71-1902 may be paid by the Department of Social Services.

(3) The fee for providing investigation reports to insurance companies shall not exceed three dollars for each report provided. The State Fire Marshal may charge an amount not to exceed the actual cost of preparation for any other approved information release.

(4)(a) Except as provided in subdivision (b) of this subsection, the fee for reviewing plans, blueprints, and shop drawings to determine compliance with rules and regulations adopted and promulgated pursuant to section 81-502 shall be assessed according to the following schedule:

TOTAL VALUE OF PROPOSED STRUCTURE OR IMPROVEMENT	FEE
\$1 - \$5,000	\$5.00
\$5,001 - \$25,000	\$5.00 for the first \$5,000.00 plus \$2.00 for each additional \$5,000.00 or fraction thereof.
\$25,001 - \$50,000	\$15.00 for the first \$25,000.00 plus \$2.00 for each additional \$5,000.00 or fraction thereof.
\$50,001 - \$100,000	\$25.00 for the first \$50,000.00 plus \$1.00 for each additional \$5,000.00 or fraction thereof.
\$100,001 - \$200,000	\$35.00 for the first \$100,000.00 plus \$1.00 for each additional \$10,000.00 or fraction thereof.
\$200,001 or more	\$50.00 for the first \$200,000.00 plus \$1.00 for each additional \$10,000.00 or fraction thereof, except that the total fee shall not exceed \$100.00 <u>\$500.00</u> .

(b) The fees set out in subdivision (a) of this subsection shall not be assessed or collected by any political subdivision to which the State Fire Marshal has delegated the authority to conduct such review and which reviews plans, blueprints, or shop drawings to determine compliance with such political subdivision's own fire safety regulations. Nothing in this subdivision shall be construed to prohibit such political subdivision from assessing or collecting a fee set by its governing board for

such review.

Sec. 7. That section 81-512, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-512. The State Fire Marshal, his or her first assistant, deputies, and subordinates, the chief of the fire department of each city or village where a fire department is established, the mayor of a city, the ~~chairman~~ chairperson of the board of trustees of a village where no fire department exists, or the clerk of a township or the county commissioner of a commissioner district in territory without the limits of a city or village, at all reasonable hours, may enter into all buildings and upon all premises within ~~their~~ his or her jurisdiction for the purposes of examination, in harmony with ~~the provisions of~~ sections 81-501.01 to 81-531, the Nebraska Natural Gas Pipeline Safety Act of 1969, the Petroleum Products and Hazardous Substances Storage and Handling Act, and any other statutory duties imposed upon the State Fire Marshal.

Sec. 8. That section 81-513, Revised Statutes Supplement, 1992, be amended to read as follows:

81-513. The State Fire Marshal may condemn and by order direct the destruction, repair, or alteration of any building or structure which by reason of age, dilapidated condition, defective chimneys, defective electric wiring, gas connections, heating apparatus, or other defect is especially liable to fire and which, in his or her judgment, is so situated as to endanger life or limb or other buildings or property in the vicinity. Before he or she condemns or orders the destruction, closing, or nonoccupancy of any building or structure owned by ~~the public a~~ governmental entity for any other cause than fire prevention, he or she shall be required to submit a written report from a building contractor, a registered architect, or a registered engineer stating the condition of the building and the reason why such building or structure should be condemned, destroyed, closed, or ordered to remain unoccupied, and a copy of the report shall be attached to the order. In case the order requires the repair of a building, the owner, lessee, or other person upon whom rests the duty to keep the structure in repair and upon whom such order is served shall make such repairs as are thereby directed within the limit of time stated in the order. The order, if considered necessary by ~~the fire marshal~~ State Fire Marshal for the protection of life or property, may direct that the structure be closed and not further used or occupied until such repairs are made. Any person who shall willfully disobey the order directing the closing of such buildings, pending the making of such repairs, shall be guilty of a Class III misdemeanor. Each day such person shall neglect or refuse to obey the order ~~aforsaid~~ shall be deemed a separate and distinct offense in violation thereof.

Sec. 9. That section 81-520, Revised Statutes Supplement, 1992, be amended to read as follows:

81-520. The State Fire Marshal or any deputy or inspector who finds in any building or upon or beneath any premises any combustibles or explosive material, rubbish, rags, waste, oil, gasoline, or inflammable matter of any kind endangering the safety of such building or

property or the occupants thereof or the occupants of adjoining buildings shall order such materials removed or such dangerous condition abated ~~forthwith~~ within a specified time. Such order shall be in writing and directed generally to the owner, lessee, agent, or occupant of such building or premises, and any such owner, lessee, agent, or occupant upon whom such order shall be served who fails to comply with such order within ~~twenty-four hours after receiving the order, unless the order prescribes a longer period within which it may be complied with,~~ the time prescribed in the order shall be guilty of a Class V misdemeanor. Such material may be removed or dangerous condition abated at the expense of the owner of such building and premises or the person upon whom such service is so made, or both, and the State Fire Marshal may maintain all necessary actions for the recovery thereof.

Sec. 10. That original sections 28-1239.01, 28-1245, 28-1246, and 81-512, Reissue Revised Statutes of Nebraska, 1943, and sections 81-502, 81-505, 81-505.01, 81-513, and 81-520, Revised Statutes Supplement, 1992, and also sections 28-1434 to 28-1436, Reissue Revised Statutes of Nebraska, 1943, are repealed.