

LEGISLATURE OF NEBRASKA
ONE HUNDRED SECOND LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 220

Introduced by Fischer, 43.

Read first time January 10, 2011

Committee: Transportation and Telecommunications

A BILL

1 FOR AN ACT relating to the Public Service Commission; to amend
2 sections 71-1567, 71-4609, 75-134, 75-136, 75-156,
3 75-722, 86-123, 86-158, 86-209, 86-255, 86-269, and
4 86-578, Reissue Revised Statutes of Nebraska; to change
5 appeal procedures as prescribed; to harmonize provisions;
6 to provide an operative date; to repeal the original
7 sections; and to declare an emergency.
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 71-1567, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 71-1567 (1) The commission shall refuse to issue a seal
4 to a manufacturer for any modular housing unit not found to be in
5 compliance with its standards governing the construction of or the
6 structural, plumbing, heating, or electrical systems for modular
7 housing units or for which fees have not been paid. Except in case of
8 failure to pay the required fees, any such manufacturer may request a
9 hearing before the commission on the issue of such refusal.
10 Procedures for notice and opportunity for a hearing before the
11 commission shall be pursuant to the Administrative Procedure Act. The
12 refusal may be appealed, and the appeal shall be in accordance with
13 ~~the Administrative Procedure Act.~~ section 75-136.

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

1 be in accordance with ~~the Administrative Procedure Act.~~ section
2 75-136.

3 Sec. 2. Section 71-4609, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 71-4609 (1) The commission shall administer the Uniform
6 Standard Code for Manufactured Homes and Recreational Vehicles. The
7 commission may adopt and promulgate, amend, alter, or repeal general
8 rules and regulations of procedure for (a) administering the
9 provisions of the code, (b) issuing seals, (c) obtaining statistical
10 data respecting the manufacture and sale of manufactured homes and
11 recreational vehicles, and (d) prescribing means, methods, and
12 practices to make effective such provisions.

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

25 (3) The issuance of seals may be suspended or revoked as

1 to any manufacturer or other person who has not complied with any
2 provision of the code or with any rule, regulation, or standard
3 adopted and promulgated under the code or who is convicted of
4 violating section 71-4608, and issuance of the seals shall not be
5 resumed until such manufacturer or other person submits sufficient
6 proof that the conditions which caused the lack of compliance or the
7 violation have been remedied. Any manufacturer or other person may
8 request a hearing before the commission on the issue of such
9 suspension or revocation. Procedures for notice and opportunity for a
10 hearing before the commission shall be pursuant to the Administrative
11 Procedure Act. The suspension or revocation by the commission may be
12 appealed, and the appeal shall be in accordance with ~~the act.~~ section
13 75-136.

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

19 (5) The commission shall establish a monitoring
20 inspection fee in an amount approved by the United States Secretary
21 of Housing and Urban Development, which fee shall be an amount paid
22 to the commission by the manufacturer for each manufactured-home seal
23 issued in the state. An additional monitoring inspection fee
24 established by the United States Secretary of Housing and Urban
25 Development shall be paid by the manufacturer to the secretary who

1 shall distribute the fees collected from all manufactured-home
2 manufacturers based on provisions developed and approved by the
3 secretary.

4 Sec. 3. Section 75-134, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 75-134 (1) A commission order entered after a hearing
7 shall be written and shall recite (a) a discussion of the facts of a
8 basic or underlying nature, (b) the ultimate facts, and (c) the
9 commission's reasoning or other authority relied upon by the
10 commission.

11 (2) Every order of the commission shall become effective
12 ten days after the date of the mailing of a copy of the order to the
13 parties of record except (a) when the commission prescribes a ~~later~~
14 an alternate effective date, (b) as otherwise provided in section
15 75-121 or 75-139, (c) for cease and desist orders issued pursuant to
16 section 75-133 which shall become effective on the date of entry, or
17 (d) for orders entered pursuant to section 75-319 which shall become
18 effective on the date of entry.

19 (3) Except as otherwise provided in this section or for
20 rate orders provided for in section 75-139, any appeal of a
21 commission order shall ~~not~~ stay enforcement of such order, ~~unless~~
22 ~~otherwise ordered under subsection (3) of section 84-917.~~

23 Sec. 4. Section 75-136, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 75-136 Except as otherwise provided by law, if a party to

1 any proceeding is not satisfied with the order entered by the
2 commission, such party may appeal. Any appeal filed on or after
3 August 31, ~~2003, 2011,~~ shall be ~~in accordance with~~ filed in the
4 ~~Administrative Procedure Act. Court of Appeals under the rules~~
5 provided by law for appeals in civil cases. Any appeal filed prior to
6 August 31, ~~2003, 2011,~~ shall be in accordance with sections 75-134,
7 75-136, ~~to 75-138,~~ and 75-156 as such sections existed prior to the
8 changes made by ~~Laws 2003, LB 187.~~ this legislative bill.

9 Sec. 5. Section 75-156, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 75-156 (1) In addition to other penalties and relief
12 provided by law, the Public Service Commission may, upon a finding
13 that the violation is proven by clear and convincing evidence, assess
14 a civil penalty of up to ten thousand dollars per day against any
15 person, motor carrier, regulated motor carrier, common carrier,
16 contract carrier, grain dealer, or grain warehouseman for each
17 violation of (a) any provision of the laws of this state within the
18 jurisdiction of the commission as enumerated in section 75-109.01,
19 (b) any term, condition, or limitation of any certificate, permit, or
20 authority issued by the commission pursuant to the laws of this state
21 within the jurisdiction of the commission as enumerated in section
22 75-109.01, or (c) any rule, regulation, or order of the commission
23 issued under authority delegated to the commission pursuant to the
24 laws of this state within the jurisdiction of the commission as
25 enumerated in section 75-109.01.

1 (2) In addition to other penalties and relief provided by
2 law, the Public Service Commission may, upon a finding that the
3 violation is proven by clear and convincing evidence, assess a civil
4 penalty not less than one hundred dollars and not more than one
5 thousand dollars against any jurisdictional utility for each
6 violation of (a) any provision of the State Natural Gas Regulation
7 Act, (b) any rule, regulation, order, or lawful requirement issued by
8 the commission pursuant to the act, (c) any final judgment or decree
9 made by any court upon appeal from any order of the commission, or
10 (d) any term, condition, or limitation of any certificate issued by
11 the commission issued under authority delegated to the commission
12 pursuant to the act. The amount of the civil penalty assessed in each
13 case shall be based on the severity of the violation charged. The
14 commission may compromise or mitigate any penalty prior to hearing if
15 all parties agree. In determining the amount of the penalty, the
16 commission shall consider the appropriateness of the penalty in light
17 of the gravity of the violation and the good faith of the violator in
18 attempting to achieve compliance after notification of the violation
19 is given.

20 (3) In addition to other penalties and relief provided by
21 law, the Public Service Commission may, upon a finding that the
22 violation is proven by clear and convincing evidence, assess a civil
23 penalty of up to ten thousand dollars per day against any wireless
24 carrier for each violation of the Enhanced Wireless 911 Services Act
25 or any rule, regulation, or order of the commission issued under

1 authority delegated to the commission pursuant to the act.

2 (4) In addition to other penalties and relief provided by
3 law, the Public Service Commission may, upon a finding that the
4 violation is proven by clear and convincing evidence, assess a civil
5 penalty of up to one thousand dollars against any person for each
6 violation of the Nebraska Uniform Standards for Modular Housing Units
7 Act or the Uniform Standard Code for Manufactured Homes and
8 Recreational Vehicles or any rule, regulation, or order of the
9 commission issued under the authority delegated to the commission
10 pursuant to either act. Each such violation shall constitute a
11 separate violation with respect to each modular housing unit,
12 manufactured home, or recreational vehicle, except that the maximum
13 penalty shall not exceed one million dollars for any related series
14 of violations occurring within one year from the date of the first
15 violation.

16 (5) The civil penalty assessed under this section shall
17 not exceed two million dollars per year for each violation except as
18 provided in subsection (4) of this section. The amount of the civil
19 penalty assessed in each case shall be based on the severity of the
20 violation charged. The commission may compromise or mitigate any
21 penalty prior to hearing if all parties agree. In determining the
22 amount of the penalty, the commission shall consider the
23 appropriateness of the penalty in light of the gravity of the
24 violation and the good faith of the violator in attempting to achieve
25 compliance after notification of the violation is given.

1 (6) Upon notice and hearing in accordance with this
2 section and section 75-157, the commission may enter an order
3 assessing a civil penalty of up to one hundred dollars against any
4 person, firm, partnership, limited liability company, corporation,
5 cooperative, or association for failure to file an annual report or
6 ~~beginning January 1, 2004,~~ pay the fee as required by section 75-116
7 and as prescribed by commission rules and regulations or for failure
8 to register as required by section 86-125 and as prescribed by
9 commission rules and regulations. Each day during which the violation
10 continues after the commission has issued an order finding that a
11 violation has occurred constitutes a separate offense. Any party
12 aggrieved by an order of the commission under this section may
13 appeal. The appeal shall be in accordance with ~~the Administrative~~
14 ~~Procedure Act.~~ section 75-136.

15 (7) When any person or party is accused of any violation
16 listed in this section, the commission shall notify such person or
17 party in writing (a) setting forth the date, facts, and nature of
18 each act or omission upon which each charge of a violation is based,
19 (b) specifically identifying the particular statute, certificate,
20 permit, rule, regulation, or order purportedly violated, (c) that a
21 hearing will be held and the time, date, and place of the hearing,
22 (d) that in addition to the civil penalty, the commission may enforce
23 additional penalties and relief as provided by law, and (e) that upon
24 failure to pay any civil penalty determined by the commission, the
25 penalty may be collected by civil action in the district court of

1 Lancaster County.

2 Sec. 6. Section 75-722, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 75-722 Commission hearings concerning the provisions of
5 sections 75-709 to 75-724 ~~and any appeals therefrom~~ shall be in
6 accordance with the Administrative Procedure Act. Any appeals
7 therefrom shall be in accordance with section 75-136.

8 Sec. 7. Section 86-123, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 86-123 (1) The commission shall regulate the quality of
11 telecommunications service provided by telecommunications companies
12 and shall investigate and resolve subscriber complaints concerning
13 quality of telecommunications service, subscriber deposits, and
14 disconnection of telecommunications service. If such a complaint
15 cannot be resolved informally, then, upon petition by the subscriber,
16 the commission shall set the matter for hearing in accordance with
17 the commission's rules and regulations for notice and hearing. The
18 commission may by order grant or deny, in whole or in part, the
19 subscriber's petition or provide such other relief as is reasonable
20 based on the evidence presented at the hearing. Any such order of the
21 commission may be enforced against any telecommunications company as
22 provided in sections 75-140 to 75-144, and such order may be appealed
23 by an interested party. The appeal shall be in accordance with ~~the~~
24 ~~Administrative Procedure Act.~~ section 75-136.

25 (2) The commission may regulate telecommunications

1 company rates pursuant to sections 86-139 to 86-157.

2 (3) The Nebraska Telecommunications Regulation Act shall
3 preempt and prohibit any regulation of a telecommunications company
4 by counties, cities, villages, townships, or any other local
5 governmental entity.

6 Sec. 8. Section 86-158, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 86-158 (1) Except as otherwise provided in section
9 86-123, any order of the commission entered pursuant to authority
10 granted in the Nebraska Telecommunications Regulation Act may be
11 appealed by any interested party to the proceeding. The appeal shall
12 be in accordance with ~~the Administrative Procedure Act.~~ section
13 75-136.

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

21 Sec. 9. Section 86-209, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 86-209 (1) Notwithstanding section 75-156, the commission
24 may, after hearing, impose an administrative penalty for a violation
25 of the Telephone Consumer Slamming Prevention Act. The penalty for a

1 violation shall not exceed two thousand dollars. Every violation
2 associated with a specific access line within the state shall be
3 considered a separate and distinct violation.

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

- 6 (a) The nature, circumstances, extent, and gravity of a
7 prohibited act;
8 (b) The history of previous violations;
9 (c) The amount necessary to deter future violations; and
10 (d) Any efforts to correct the violation.

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

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

18 Sec. 10. Section 86-255, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 86-255 Any decision of the commission made pursuant to
21 the Automatic Dialing-Announcing Devices Act or the rules and
22 regulations may be appealed. The appeal shall be in accordance with
23 ~~the Administrative Procedure Act.~~ section 75-136.

24 Sec. 11. Section 86-269, Reissue Revised Statutes of
25 Nebraska, is amended to read:

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

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

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

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

18 Sec. 12. Section 86-578, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 86-578 In an original action concerning a violation of
21 any provision of sections 86-574 to 86-578 by an agency or political
22 subdivision of the state, the Public Service Commission shall have
23 the jurisdiction set forth in section 75-132.01. After all
24 administrative remedies before the Public Service Commission have
25 been exhausted, an appeal may be brought by an interested party. Such

1 appeal shall be in accordance with ~~the Administrative Procedure Act.~~
2 section 75-136.

3 Sec. 13. This act becomes operative on August 31, 2011.

4 Sec. 14. Original sections 71-1567, 71-4609, 75-134,
5 75-136, 75-156, 75-722, 86-123, 86-158, 86-209, 86-255, 86-269, and
6 86-578, Reissue Revised Statutes of Nebraska, are repealed.

7 Sec. 15. Since an emergency exists, this act takes effect
8 when passed and approved according to law.