

AMENDMENTS TO LB 545

Introduced by Transportation and Telecommunications

1 1. Strike the original sections and insert the following
2 new sections:

3 Section 1. Section 57-1409, Revised Statutes Cumulative
4 Supplement, 2012, is amended to read:

5 57-1409 Any party aggrieved by a final order of the
6 commission regarding an application or assessment under the Major
7 Oil Pipeline Siting Act, including, but not limited to, a decision
8 relating to the public interest, may appeal. The appeal shall be in
9 accordance with ~~the Administrative Procedure Act, section 75-136.~~

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

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

23 (2) The issuance of seals may be suspended as to any

1 manufacturer who is convicted of violating section 71-1563 or
2 as to any manufacturer who violates any other provision of the
3 Nebraska Uniform Standards for Modular Housing Units Act or any
4 rule, regulation, commission order, or standard adopted pursuant
5 thereto, and issuance of the seals shall not be resumed until such
6 manufacturer submits sufficient proof that the conditions which
7 caused the violation have been remedied. Any such manufacturer
8 may request a hearing before the commission on the issue of such
9 suspension. Procedures for notice and opportunity for a hearing
10 before the commission shall be pursuant to the Administrative
11 Procedure Act. The suspension may be appealed, and the appeal shall
12 be in accordance with ~~the Administrative Procedure Act.~~ section
13 75-136.

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

16 71-4609 (1) The commission shall administer the Uniform
17 Standard Code for Manufactured Homes and Recreational Vehicles.
18 The commission may adopt and promulgate, amend, alter, or
19 repeal general rules and regulations of procedure for (a)
20 administering the provisions of the code, (b) issuing seals, (c)
21 obtaining statistical data respecting the manufacture and sale of
22 manufactured homes and recreational vehicles, and (d) prescribing
23 means, methods, and practices to make effective such provisions.

24 (2) The commission shall refuse to issue a seal to
25 any manufacturer or other person for any manufactured home or
26 recreational vehicle found to be not in compliance with its
27 standards governing body and frame design and construction or

1 plumbing, heating, or electrical systems for manufactured homes or
2 recreational vehicles or for which fees have not been paid. Except
3 in case of failure to pay the required fees, any such manufacturer
4 or other person may request a hearing before the commission on
5 the issue of such refusal. Procedures for notice and opportunity
6 for a hearing before the commission shall be pursuant to the
7 Administrative Procedure Act. The refusal by the commission may
8 be appealed, and the appeal shall be in accordance with ~~the act.~~
9 section 75-136.

10 (3) The issuance of seals may be suspended or revoked as
11 to any manufacturer or other person who has not complied with any
12 provision of the code or with any rule, regulation, or standard
13 adopted and promulgated under the code or who is convicted of
14 violating section 71-4608, and issuance of the seals shall not be
15 resumed until such manufacturer or other person submits sufficient
16 proof that the conditions which caused the lack of compliance or
17 the violation have been remedied. Any manufacturer or other person
18 may request a hearing before the commission on the issue of such
19 suspension or revocation. Procedures for notice and opportunity
20 for a hearing before the commission shall be pursuant to the
21 Administrative Procedure Act. The suspension or revocation by the
22 commission may be appealed, and the appeal shall be in accordance
23 with ~~the act.~~ section 75-136.

24 (4) The commission may conduct hearings and presentations
25 of views consistent with the regulations adopted by the United
26 States Department of Housing and Urban Development and adopt and
27 promulgate such rules and regulations as are necessary to carry out

1 this function.

2 (5) The commission shall establish a monitoring
3 inspection fee in an amount approved by the United States Secretary
4 of Housing and Urban Development, which fee shall be an amount paid
5 to the commission by the manufacturer for each manufactured-home
6 seal issued in the state. An additional monitoring inspection fee
7 established by the United States Secretary of Housing and Urban
8 Development shall be paid by the manufacturer to the secretary
9 who shall distribute the fees collected from all manufactured-home
10 manufacturers based on provisions developed and approved by the
11 secretary.

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

14 75-134 (1) A commission order entered after a hearing
15 shall be written and shall recite (a) a discussion of the facts
16 of a basic or underlying nature, (b) the ultimate facts, and (c)
17 the commission's reasoning or other authority relied upon by the
18 commission.

19 (2) Every order of the commission shall become effective
20 ten days after the date of the mailing of a copy of the order to
21 the parties of record except (a) when the commission prescribes a
22 ~~later~~ an alternate effective date, (b) as otherwise provided in
23 section 75-121 or 75-139, (c) for cease and desist orders issued
24 pursuant to section 75-133 which shall become effective on the date
25 of entry, or (d) for orders entered pursuant to section 75-319
26 which shall become effective on the date of entry.

27 (3) Except as otherwise provided in this section or

1 for rate orders provided for in section 75-139, any appeal of a
2 commission order shall not stay enforcement of such order unless
3 otherwise ordered ~~under subsection (3) of section 84-917.~~ by the
4 commission or the Court of Appeals.

5 (4) Notwithstanding subsection (3) of this section, any
6 appeal of a rate order under the State Natural Gas Regulation Act
7 entered pursuant to section 66-1838 shall stay enforcement of such
8 order pending resolution of the appeal.

9 Sec. 5. Section 75-136, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 75-136 (1) Except as otherwise provided by law, if a
12 party to any proceeding is not satisfied with the order entered by
13 the commission, such party may appeal.

14 (2) Any appeal filed on or after August 31, 2003, shall
15 be in accordance with the Administrative Procedure Act. October
16 1, 2013, shall be taken in the same manner and time as appeals
17 from the district court. Appeals shall be heard and disposed of
18 in the appellate court in the manner provided by law. Appeal of a
19 commission order shall be perfected by filing a notice of intention
20 to appeal with the executive director of the commission within
21 thirty days after the effective date of the order as determined
22 under section 75-134.

23 (3) Any appeal filed prior to August 31, 2003, October
24 1, 2013, shall be in accordance with sections 75-134, 75-136, ~~to~~
25 75-138, and 75-156 as such sections existed prior to the changes
26 made by Laws 2003, LB 187. this legislative bill.

27 (4) Any appeal of a rate order under the State Natural

1 Gas Regulation Act entered pursuant to section 66-1838 shall be
2 advanced by the Court of Appeals as other causes which involve the
3 public welfare and convenience are advanced.

4 Sec. 6. Section 75-139, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 75-139 (1) Except as otherwise provided in this section,
7 the effective date of a rate order that is appealed shall be the
8 first Monday following the date of the appellate court's mandate
9 if the order is affirmed, except that ~~(1)~~ (a) a shipper may
10 make effective a rate order reducing a fixed rate by filing a
11 supersedeas bond with the commission sufficient in amount to insure
12 refund of the difference between the rate appealed and the original
13 rate to the carrier entitled thereto if the order appealed is
14 reversed and ~~(2)~~ (b) a common carrier may make effective a rate
15 order increasing a fixed rate by filing a supersedeas bond with the
16 commission sufficient in amount to insure refund of the difference
17 between the rate finally approved and the rate appealed to shippers
18 or subscribers entitled thereto if the order appealed is reversed.

19 (2) A supersedeas bond may be filed by any affected
20 shipper or common carrier, including shippers or common carriers
21 that were not parties to the rate proceeding, at any time prior to
22 the issuance of the appellate court's mandate. Only the shipper or
23 common carrier filing a supersedeas bond shall benefit from such
24 filing.

25 (3) The commission shall approve a supersedeas bond which
26 meets the requirements of this section within seven days after a
27 written request therefor has been made, and failure to disapprove

1 the bond within the time specified shall be deemed to be an
2 approval.

3 (4) A carrier may put into effect rate increases
4 granted by a commission order while appealing that portion of
5 the commission's order denying a part of an application of the
6 carrier.

7 (5) This section does not apply to rate orders under
8 the State Natural Gas Regulation Act entered pursuant to section
9 66-1838.

10 Sec. 7. (1) Except with respect to rate orders under
11 the State Natural Gas Regulation Act entered pursuant to section
12 66-1838, any party may file a motion for reconsideration with
13 the commission within ten days after the effective date of the
14 order as determined under section 75-134. The filing of a motion
15 for reconsideration shall suspend the time for filing a notice of
16 intention to appeal pending resolution of the motion, except that
17 if the commission does not dispose of a motion for reconsideration
18 within sixty days after the filing of the motion, the motion shall
19 be deemed denied and the procedures for appeal in section 75-136
20 apply.

21 (2) Any party to a general rate proceeding under
22 the State Natural Gas Regulation Act may file a motion for
23 reconsideration within thirty days after the day an order setting
24 natural gas rates is entered by the commission. The filing of a
25 motion for reconsideration shall stay the order until the earlier
26 of the date the commission enters an order resolving the motion or
27 one hundred twenty days from the date of the order setting rates.

1 Either party shall have thirty days after the date the commission
2 enters an order resolving the motion or the expiration of the
3 one-hundred-twenty-day period for considering the motion, whichever
4 is earlier, in which to file an appeal.

5 Sec. 8. Section 75-156, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 75-156 (1) In addition to other penalties and relief
8 provided by law, the Public Service Commission may, upon a finding
9 that the violation is proven by clear and convincing evidence,
10 assess a civil penalty of up to ten thousand dollars per day
11 against any person, motor carrier, regulated motor carrier, common
12 carrier, contract carrier, grain dealer, or grain warehouseman
13 for each violation of (a) any provision of the laws of this
14 state within the jurisdiction of the commission as enumerated in
15 section 75-109.01, (b) any term, condition, or limitation of any
16 certificate, permit, or authority issued by the commission pursuant
17 to the laws of this state within the jurisdiction of the commission
18 as enumerated in section 75-109.01, or (c) any rule, regulation,
19 or order of the commission issued under authority delegated to
20 the commission pursuant to the laws of this state within the
21 jurisdiction of the commission as enumerated in section 75-109.01.

22 (2) In addition to other penalties and relief provided
23 by law, the Public Service Commission may, upon a finding that
24 the violation is proven by clear and convincing evidence, assess a
25 civil penalty not less than one hundred dollars and not more than
26 one thousand dollars against any jurisdictional utility for each
27 violation of (a) any provision of the State Natural Gas Regulation

1 Act, (b) any rule, regulation, order, or lawful requirement issued
2 by the commission pursuant to the act, (c) any final judgment
3 or decree made by any court upon appeal from any order of
4 the commission, or (d) any term, condition, or limitation of
5 any certificate issued by the commission issued under authority
6 delegated to the commission pursuant to the act. The amount of
7 the civil penalty assessed in each case shall be based on the
8 severity of the violation charged. The commission may compromise
9 or mitigate any penalty prior to hearing if all parties agree.
10 In determining the amount of the penalty, the commission shall
11 consider the appropriateness of the penalty in light of the gravity
12 of the violation and the good faith of the violator in attempting
13 to achieve compliance after notification of the violation is given.

14 (3) In addition to other penalties and relief provided
15 by law, the Public Service Commission may, upon a finding that
16 the violation is proven by clear and convincing evidence, assess
17 a civil penalty of up to ten thousand dollars per day against any
18 wireless carrier for each violation of the Enhanced Wireless 911
19 Services Act or any rule, regulation, or order of the commission
20 issued under authority delegated to the commission pursuant to the
21 act.

22 (4) In addition to other penalties and relief provided
23 by law, the Public Service Commission may, upon a finding that
24 the violation is proven by clear and convincing evidence, assess
25 a civil penalty of up to one thousand dollars against any person
26 for each violation of the Nebraska Uniform Standards for Modular
27 Housing Units Act or the Uniform Standard Code for Manufactured

1 Homes and Recreational Vehicles or any rule, regulation, or order
2 of the commission issued under the authority delegated to the
3 commission pursuant to either act. Each such violation shall
4 constitute a separate violation with respect to each modular
5 housing unit, manufactured home, or recreational vehicle, except
6 that the maximum penalty shall not exceed one million dollars for
7 any related series of violations occurring within one year from the
8 date of the first violation.

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

19 (6) Upon notice and hearing in accordance with this
20 section and section 75-157, the commission may enter an order
21 assessing a civil penalty of up to one hundred dollars against any
22 person, firm, partnership, limited liability company, corporation,
23 cooperative, or association for failure to file an annual report
24 or, ~~beginning January 1, 2004,~~ pay the fee as required by section
25 75-116 and as prescribed by commission rules and regulations or
26 for failure to register as required by section 86-125 and as
27 prescribed by commission rules and regulations. Each day during

1 which the violation continues after the commission has issued an
2 order finding that a violation has occurred constitutes a separate
3 offense. Any party aggrieved by an order of the commission under
4 this section may appeal. The appeal shall be in accordance with ~~the~~
5 ~~Administrative Procedure Act-~~ section 75-136.

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

18 Sec. 9. Section 75-722, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 75-722 Commission hearings concerning the provisions of
21 sections 75-709 to 75-724 and any appeals therefrom shall be
22 in accordance with the Administrative Procedure Act. Any appeals
23 therefrom shall be in accordance with section 75-136.

24 Sec. 10. Section 86-123, Reissue Revised Statutes of
25 Nebraska, is amended to read:

26 86-123 (1) The commission shall regulate the quality of
27 telecommunications service provided by telecommunications companies

1 and shall investigate and resolve subscriber complaints concerning
2 quality of telecommunications service, subscriber deposits, and
3 disconnection of telecommunications service. If such a complaint
4 cannot be resolved informally, then, upon petition by the
5 subscriber, the commission shall set the matter for hearing in
6 accordance with the commission's rules and regulations for notice
7 and hearing. The commission may by order grant or deny, in whole
8 or in part, the subscriber's petition or provide such other
9 relief as is reasonable based on the evidence presented at the
10 hearing. Any such order of the commission may be enforced against
11 any telecommunications company as provided in sections 75-140 to
12 75-144, and such order may be appealed by an interested party. The
13 appeal shall be in accordance with ~~the Administrative Procedure~~
14 ~~Act.~~ section 75-136.

15 (2) The commission may regulate telecommunications
16 company rates pursuant to sections 86-139 to 86-157.

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

21 Sec. 11. Section 86-158, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 86-158 (1) Except as otherwise provided in section
24 86-123, any order of the commission entered pursuant to authority
25 granted in the Nebraska Telecommunications Regulation Act may be
26 appealed by any interested party to the proceeding. The appeal
27 shall be in accordance with ~~the Administrative Procedure Act.~~

1 section 75-136.

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

9 Sec. 12. Section 86-209, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 86-209 (1) Notwithstanding section 75-156, the commission
12 may, after hearing, impose an administrative penalty for a
13 violation of the Telephone Consumer Slamming Prevention Act. The
14 penalty for a violation shall not exceed two thousand dollars.
15 Every violation associated with a specific access line within the
16 state shall be considered a separate and distinct violation.

17 (2) The amount of an administrative penalty shall be
18 based on:

19 (a) The nature, circumstances, extent, and gravity of a
20 prohibited act;

21 (b) The history of previous violations;

22 (c) The amount necessary to deter future violations; and

23 (d) Any efforts to correct the violation.

24 (3) The commission shall remit any administrative
25 penalty collected under this section to the State Treasurer for
26 distribution in accordance with Article VII, section 5, of the
27 Constitution of Nebraska.

1 (4) Any administrative penalty may be appealed. The
2 appeal shall be in accordance with ~~the Administrative Procedure~~
3 ~~Act, section 75-136.~~

4 Sec. 13. Section 86-255, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 86-255 Any decision of the commission made pursuant to
7 the Automatic Dialing-Announcing Devices Act or the rules and
8 regulations may be appealed. The appeal shall be in accordance with
9 ~~the Administrative Procedure Act, section 75-136.~~

10 Sec. 14. Section 86-269, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 86-269 (1) The commission shall adopt and promulgate
13 rules and regulations necessary to carry out the Intrastate
14 Pay-Per-Call Regulation Act.

15 (2) The commission may conduct investigations and shall
16 enforce the act.

17 (3) Upon written complaint and supporting affidavit that
18 an applicable rule or regulation or any provision of the act
19 has been or is being violated, the commission may enter a cease
20 and desist order on an ex parte basis against a party named in
21 a complaint alleging violation of the act. The order shall have
22 duration of no more than twenty days, and a hearing upon the
23 complaint shall be held no later than twenty days after the order
24 is entered by the commission.

25 (4) A decision of the commission made pursuant to the
26 act and rules and regulations of the commission may be appealed.
27 The appeal shall be in accordance with ~~the Administrative Procedure~~

1 ~~Act.~~ section 75-136.

2 Sec. 15. Section 86-578, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 86-578 In an original action concerning a violation
5 of any provision of sections 86-574 to 86-578 by an agency or
6 political subdivision of the state, the Public Service Commission
7 shall have the jurisdiction set forth in section 75-132.01. After
8 all administrative remedies before the Public Service Commission
9 have been exhausted, an appeal may be brought by an interested
10 party. Such appeal shall be in accordance with ~~the Administrative~~
11 ~~Procedure Act.~~ section 75-136.

12 Sec. 16. The Revisor of Statutes shall assign section 7
13 of this act within Chapter 75, article 1, and any reference to such
14 chapter or article shall be deemed to include such section.

15 Sec. 17. Original sections 71-1567, 71-4609, 75-134,
16 75-136, 75-139, 75-156, 75-722, 86-123, 86-158, 86-209, 86-255,
17 86-269, and 86-578, Reissue Revised Statutes of Nebraska, and
18 section 57-1409, Revised Statutes Cumulative Supplement, 2012, are
19 repealed.