

AMENDMENTS TO LB1069

Introduced by Business and Labor.

1 1. Strike original section 4 and insert the following new sections:

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

4 81-546 (1) Whenever the State Fire Marshal, after conducting an
5 inspection or investigation, has determined with a reasonable degree of
6 certainty that reason to believe any person has violated or is violating
7 any provision of subsection (1) of section 81-545 or any regulation under
8 the Nebraska Natural Gas Pipeline Safety Act of 1969, the State Fire
9 Marshal shall give notice of the determination of a probable violation to
10 such person and provide such person with the basis for the determination,
11 including all documentation or other evidence related to the inspection
12 or investigation.

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

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

26 (a) If the State Fire Marshal concludes that such person was not or
27 is not in violation or that such person has achieved or will achieve

1 compliance to no longer be in violation of any provision of subsection
2 (1) of section 81-545 or any regulation under the Nebraska Natural Gas
3 Pipeline Safety Act of 1969, the State Fire Marshal shall issue a letter
4 indicating settlement based on such compliance and close the matter; or

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

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

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

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

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

27 (5) After issuance of a final order under subdivision (4)(a)(i) or
28 (ii) of this section and if no appeal is timely filed, the State Fire
29 Marshal may request the Attorney General to bring an action under section
30 81-547 in the district court for the county in which the defendant's
31 principal place of business is located, ~~and the~~

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

6 (b) For a violation of the federal safety standards established by
7 the United States Secretary of Transportation pursuant to the federal
8 Natural Gas Pipeline Safety Act of 1968 that have been incorporated in
9 safety standards established by the State Fire Marshal under section
10 81-543, the district court may impose a civil penalty of up to two
11 hundred thousand dollars for each violation for each day that such
12 violation persists, except that the maximum civil penalty shall not
13 exceed two million dollars for any related series of violations.

14 (7) No person shall be subject to civil penalties under both section
15 81-547 and the One-Call Notification System Act for conduct which may
16 give rise to a violation under both the Nebraska Natural Gas Pipeline
17 Safety Act of 1969 and the One-Call Notification System Act, unless that
18 conduct is reckless or is done with willful disregard for the safety of
19 others or their property. In the absence of recklessness or willful
20 disregard for the safety of others or their property, such conduct shall
21 be enforced primarily in accordance with section 76-2325.

22 (8) ~~(2)~~ In determining the amount of a such penalty imposed under
23 subsection (6) of this section, the court shall consider the
24 appropriateness of such penalty to the size of the business of the person
25 charged, the gravity of the violation, the amount of harm or damage
26 resulting from the violation, prior offenses and compliance history of
27 the person charged, and the good faith of the person charged in
28 attempting to achieve compliance, remedial actions taken by the person
29 charged, and other such matters as justice may require. The amount of
30 such penalty, when finally determined, may be deducted from any sums
31 owing by the State of Nebraska to the person charged.

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

3 81-547 (1) The district courts shall have jurisdiction to restrain
4 violations of sections 81-503, 81-505, 81-525, and 81-542 to 81-552,
5 including the restraint of transportation of gas or the operation of a
6 pipeline facility, or to enforce standards established under the Nebraska
7 Natural Gas Pipeline Safety Act of 1969 ~~hereunder~~ upon petition by the
8 Attorney General on behalf of the State of Nebraska.—~~Whenever~~
9 ~~practicable, the State Fire Marshal shall give notice to any person~~
10 ~~against whom an action for injunctive relief is contemplated and afford~~
11 ~~him an opportunity to present his views, and, except in the case of a~~
12 ~~knowing and willful violation, shall afford him reasonable opportunity to~~
13 ~~achieve compliance. The failure to give such notice and afford such~~
14 ~~opportunity shall not preclude the granting of appropriate relief.~~

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

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

23 2. Renumber the remaining sections and correct the repealer
24 accordingly.