

## LEGISLATIVE BILL 498

Approved by the Governor May 9, 1983

Introduced by Wagner, 41

AN ACT relating to the State Fire Marshal; to amend sections 71-1903, 71-2022, 81-503, and 81-528, Reissue Revised Statutes of Nebraska, 1943, and section 81-502, Revised Statutes Supplement, 1982; to provide the State Fire Marshal with certain inspection duties; to provide a fee schedule; to allow the Department of Health to request certain inspections; to change provisions relating to inspections; to require uniforms; to permit inspection of certain liquor licensees; to repeal the original sections; and to declare an emergency.

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

Section 1. The Nebraska Liquor Control Commission may request the State Fire Marshal to inspect for fire safety pursuant to section 81-502 any premises for which an annually renewable retail or bottle club license as defined in section 53-124, or renewal of such a license, is sought. The State Fire Marshal shall assess a fee for such inspection pursuant to section 7 of this act and payable by the licensee or applicant for a license. The authority to make such investigations may be delegated to qualified local fire prevention personnel pursuant to section 81-502.

Sec. 2. That section 71-1903, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-1903. The department, before issuance of a license, shall cause such investigation to be made, as it shall deem necessary, to determine if the character of the applicant or person in charge of the business and the place where the child care is to be furnished are such as to insure the proper care and treatment of children. The department may request the State Fire Marshal to inspect such places for fire safety pursuant to section 81-502. The State Fire Marshal shall assess a fee for such inspection pursuant to section 7 of this

act and payable by the licensee or applicant for a license. The department may request and the Department of Health to inspect such places to determine if they meet sanitation and health standards set by the Department of Health for the care and protection of such children. The authority to make such investigations may be delegated to qualified local fire prevention personnel pursuant to section 81-502 or environmental health personnel, as appropriate. The department may also, at any time it sees fit, cause an inspection to be made of the place where any licensee is furnishing child care, to see that such business is being properly conducted.

Sec. 3. That section 71-2022, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-2022. The Department of Health shall make or cause to be made such inspections as it may prescribe by regulation. The Department of Health may prescribe that any licensee or prospective applicant desiring to make specified types of alteration or addition to its facilities or to construct new facilities shall, before commencing such alteration, addition, or new construction, submit plans and specifications therefor to the Department of Health for inspection and approval or recommendations with respect to compliance with the regulations and standards herein authorized. The Department of Health may request the State Fire Marshal to inspect for fire safety any licensed facility or institution or facility or institution for which a license is sought, pursuant to section 81-502. The State Fire Marshal shall assess a fee for such inspection pursuant to section 7 of this act and payable by the licensee or applicant for a license. The authority to make such investigations may be delegated to qualified local fire prevention personnel pursuant to section 81-502.

Sec. 4. The Department of Health may request the State Fire Marshal to inspect for fire safety any mobile home park for which a license or renewal of a license is sought, pursuant to section 81-502. The State Fire Marshal shall assess a fee for such inspection pursuant to section 7 of this act and payable by the licensee or applicant for a license. The authority to make such investigations may be delegated to qualified local fire prevention personnel pursuant to section 81-502.

Sec. 5. That section 81-502, Revised Statutes Supplement, 1982, 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 ~~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 (2) 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 1 of this act;

(ii) Licensed child care facilities or applicants for licenses for child care facilities, upon request by the Department of Public Welfare, pursuant to section 71-1903;

(iii) Licensed hospitals, skilled nursing facilities, intermediate care facilities one, intermediate care facilities two, 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

(iv) Mobile home parks for which a license or renewal of a license is sought, upon request of the Department of Health pursuant to section 4 of this act; and

(d) After (3) after a careful study and investigation of relevant data bearing thereon, to promulgate, alter, and enforce rules and regulations covering:

(i) (a) The prevention of fires;

(ii) The (b) the storage, sale, and use of flammable liquids, combustibles, and explosives;

(iii) Electric (c) 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;

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

(e) chemicals (v) Chemicals, prozilyn plastics, X-ray nitrocellulose films, or any other hazardous material that may now or hereafter exist; and (4) to make an investigation for fire safety of all

licensed child-care facilities or applicants for licenses for child-care facilities within a reasonable time after request by the Department of Public Welfare:

(2) The State Fire Marshal may enter into contracts with private individuals, 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 81-5115 to 81-5146.

(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 local authority may be revoked by the State Fire Marshal for cause upon thirty days' notice after 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 this act, and as may be conferred and imposed by law.

(5) The rules and regulations adopted 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 safety of persons or property. This section and the rules and regulations adopted 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 such rules and regulations adopted pursuant to subdivision (1)(d) of this section shall be reviewed by the State Fire Marshal. Advisory Committee to grant variances from such rules and regulations when in the opinion of a majority of its members the site or structure is not hazardous to life and the proposed variance does not conflict with the public interest.

Sec. 6. That section 81-503, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-503. (1) The State Fire Marshal may appoint a first assistant fire marshal and such deputy fire marshals, possessing the qualifications hereinafter

set forth, as in his or her discretion may be necessary to carry into effect the provisions of sections 81-501.01 to 81-531 and 81-542 to 81-550. He or she may also, at his or her pleasure, remove such first assistant and any of such deputy fire marshals as he or she may deem advisable.

(2) The deputy fire marshals shall perform the duties imposed by said sections, given in subsection (1) of this section, and have and enjoy all the rights, privileges, and immunities granted by law. The first assistant fire marshal shall have been either an active member of an organized fire department for a period of five years, three years of which service shall have been in the capacity of an officer, or who shall have been engaged for five years in fire prevention and inspection work. Each deputy fire marshal, referred to in subsection (1) of this section who has been appointed to carry out the provisions of sections 81-501.01 to 81-531 and 81-542 to 81-550, shall have been an active member of an organized fire department for five years, three years of which shall have been in the capacity of an officer and he or she shall in addition hold a certificate from a recognized firefighter's fireman's training course, either from a fire department drill school, vocational course, or fire college. The State Fire Marshal also may appoint such deputy fire marshals as he deems necessary to carry out the provisions of sections 81-542 to 81-550.

(3) The State Fire Marshal may also employ such clerical assistants and office employees in his or her office as he or she may deem advisable and necessary to carry into effect the provisions of such sections, given in subsection (1) of this section.

(4) The State Fire Marshal, the first assistant fire marshal, and each deputy fire marshal shall wear full uniform when performing statutory duties. The State Fire Marshal shall determine the type of clothing, in relation to the duty being performed, necessary to meet the full uniform requirement.

Sec. 7. (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 twenty 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 officer 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 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 nor more than 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 nor more than one hundred dollars and shall be paid by the licensee or applicant for a license.

(3) The fee for providing investigation reports to insurance companies shall not exceed three dollars for each report provided.

(4) The fee for reviewing plans, blueprints, and shop drawings to determine compliance with rules and regulations adopted 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.

Sec. 8. That section 81-528, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-528. (1) Except as provided in subsection

(2) of this section, all ~~All~~ money received from inspection contracts, ~~with other agencies,~~ penalties, fees, or forfeitures, excepting fines collected under the provisions of sections 81-501.01 to 81-531, shall be paid into the treasury of the state for the benefit of the State Fire Marshal Fund. Any money in the State Fire Marshal Fund available for investment shall be invested by the state investment officer pursuant to the provisions of sections 72-1237 to ~~72-4259~~ 72-1269.

(2) All fees assessed pursuant to section 7 of this act for services performed by the State Fire Marshal shall be paid into the treasury of the state for the benefit of the State Fire Marshal Cash Fund, which is hereby created. Any money in the State Fire Marshal Cash Fund available for investment shall be invested by the state investment officer pursuant to the provisions of sections 72-1237 to 72-1269.

Sec. 9. That original sections 71-1903, 71-2022, 81-503, and 81-528, Reissue Revised Statutes of Nebraska, 1943, and section 81-502, Revised Statutes Supplement, 1982, are repealed.

Sec. 10. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.