

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

**LEGISLATIVE BILL 812**

Introduced by Karpisek, 32.

Read first time January 08, 2010

Committee: Health and Human Services

A BILL

1 FOR AN ACT relating to the Uniform Credentialing Act; to amend  
2 sections 38-1,104, 38-1,105, and 38-1,106, Reissue  
3 Revised Statutes of Nebraska; to require notice and an  
4 opportunity to be heard for credential holders subject  
5 to investigation regarding a complaint; to harmonize  
6 provisions; and to repeal the original sections.  
7 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 38-1,104, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           38-1,104 (1) If the department determines that a  
4 complaint will not be investigated, the department shall notify  
5 the complainant of such determination. At the request of the  
6 complainant, the appropriate board may review the complaint and  
7 provide its recommendation to the department on whether the  
8 complaint merits investigation.

9           ~~(2) The department shall notify the credential holder~~  
10 ~~that a complaint has been filed and that an investigation will be~~  
11 ~~conducted except when the department determines that such notice~~  
12 ~~may prejudice an investigation.~~

13           (2) If the department intends to interview the credential  
14 holder as part of an investigation and if the date for the  
15 interview with the department investigator is more than thirty days  
16 after the date the complaint was filed, the department shall notify  
17 the credential holder in writing of the specifics of the complaint  
18 and the rule, regulation, or law that has been allegedly violated  
19 at least two weeks prior to the date of the interview. The name  
20 of the complainant shall not be provided in such notification. If  
21 there are any additions or addendums filed to the complaint, the  
22 department shall notify the credential holder in writing of the  
23 specifics of the additions or addendums and the rule, regulation,  
24 or law that has been allegedly violated at least two weeks prior to  
25 the date of the interview in regard to the additions or addendums.

1           Sec. 2. Section 38-1,105, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           38-1,105 (1) The department shall advise the appropriate  
4 board on the progress of investigations. If requested by the  
5 complainant, the identity of the complainant shall not be released  
6 to the board.

7           (2) When the department determines that an investigation  
8 is complete, the department shall consult with the board to  
9 obtain its recommendation for submission to the Attorney General.  
10 In making a recommendation, the board ~~may~~ shall review all  
11 investigative reports and have full access to the investigational  
12 file of the department and any previous investigational information  
13 in the files of the department on the credential holder that may  
14 be relevant to the investigation, except that (a) reports or other  
15 documents of any law enforcement agency provided to the department  
16 shall not be available for board review except to the extent such  
17 law enforcement agency gives permission for release to the board  
18 and (b) reports provided by any other agency or public or private  
19 entity, which reports are confidential in that agency's or entity's  
20 possession and are provided with the express expectation that the  
21 report will not be disclosed, may be withheld from board review.  
22 If the credential holder decides to present a defense before the  
23 board to any alleged violation of a rule, regulation, or law which  
24 is contained in a complaint or any additions or addendums to a  
25 complaint, the credential holder shall give the department fourteen

1 days' notice prior to the presentation of investigatory material to  
2 the board. The department and the board shall allow a credential  
3 holder who gives such notice to witness the presentation of the  
4 investigative reports and evidence in the investigational file to  
5 the board in a closed session regarding the complaint and any  
6 additions or addendums to the complaint. The board shall allow the  
7 credential holder a reasonable amount of time, not to exceed thirty  
8 minutes to refute the complaint and make a summary statement. The  
9 credential holder shall not be present during the deliberations of  
10 the board regarding the complaint.

11 (3) The recommendation of the board shall be made part  
12 of the completed investigational report of the department and  
13 submitted to the Attorney General. The recommendation of the board  
14 shall include, but not be limited to:

15 (a) The specific violations of any statute, rule, or  
16 regulation that the board finds substantiated based upon the  
17 investigation;

18 (b) Matters which the board believes require additional  
19 investigation; and

20 (c) The disposition or possible dispositions that the  
21 board believes appropriate under the circumstances.

22 (4) If the department and the board disagree on the  
23 basis for investigation or if the board recommends additional  
24 investigation and the department and board disagree on the  
25 necessity of additional investigation, the matter shall be

1 forwarded to the Attorney General for review and determination.

2 (5) All meetings of the boards or between a board and  
3 staff of the department or the Attorney General on investigatory  
4 matters shall be held in closed session, including the voting  
5 of the board on any matter pertaining to the investigation or  
6 recommendation.

7 Sec. 3. Section 38-1,106, Reissue Revised Statutes of  
8 Nebraska, is amended to read:

9 38-1,106 (1) Reports under sections 38-1,129 to 38-1,136,  
10 complaints, and investigational records of the department shall not  
11 be public records, shall not be subject to subpoena or discovery  
12 except as provided in subsection (2) of section 38-1,104 and  
13 subsection (2) of section 38-1,105, and shall be inadmissible in  
14 evidence in any legal proceeding of any kind or character except  
15 a contested case before the department. Such reports, complaints,  
16 or records shall be a public record if made part of the record of  
17 a contested case before the department. No person, including, but  
18 not limited to, department employees and members of a board, having  
19 access to such reports, complaints, or investigational records  
20 shall disclose such information in violation of this section,  
21 except that the department may exchange such information with law  
22 enforcement and other state licensing agencies as necessary and  
23 appropriate in the discharge of the department's duties and only  
24 under circumstances to ensure against unauthorized access to such  
25 information. Violation of this subsection is a Class I misdemeanor.

1                   (2)   Investigational   records,   reports,   and   files  
2   pertaining to an application for a credential shall not be a public  
3   record until action is taken to grant or deny the application and  
4   may be withheld from disclosure thereafter under section 84-712.05.

5                   Sec.   4.   Original   sections   38-1,104,   38-1,105,   and  
6   38-1,106, Reissue Revised Statutes of Nebraska, are repealed.