

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 1038

Introduced by Council, 11; Ashford, 20; Campbell, 25; Harr, 8;
Krist, 10; Lathrop, 12; McGill, 26; Mello, 5;
Nordquist, 7.

Read first time January 17, 2012

Committee: Education

A BILL

1 FOR AN ACT relating to children; to amend sections 79-219, 79-220,
2 79-221, and 79-222, Reissue Revised Statutes of Nebraska,
3 and section 79-217, Revised Statutes Cumulative
4 Supplement, 2010; to define terms; to require blood-lead
5 testing prior to school enrollment; to provide for
6 exceptions; to provide duties for the Department of
7 Health and Human Services regarding blood-lead testing
8 and notification of parents; to harmonize provisions; and
9 to repeal the original sections.

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

1 Section 1. Section 79-217, Revised Statutes Cumulative
2 Supplement, 2010, is amended to read:

3 79-217 (1) Except as provided in sections 79-221 and
4 79-222, the school board or board of education of each school
5 district and the governing authority of each private, denominational,
6 or parochial school in this state shall require each student to be
7 protected against measles, mumps, rubella, poliomyelitis, diphtheria,
8 pertussis, and tetanus by immunization prior to enrollment. ~~Any~~
9 ~~student who does not comply with this section shall not be permitted~~
10 ~~to continue in school until he or she so complies, except as provided~~
11 ~~by section 79-222.~~ Each school district shall make diligent efforts
12 to inform families prior to the date of school registration of the
13 immunization requirements of this ~~section.~~ subsection.

14 (2) Except as provided in sections 79-221 and 79-222, on
15 and after July 1, 2013, the school board or board of education of
16 each school district and the governing authority of each private,
17 denominational, or parochial school in this state shall require each
18 student entering kindergarten to have undergone blood-lead testing.
19 Parents and guardians are strongly encouraged to have their children
20 tested for elevated blood-lead levels after the age of twelve months
21 and before the age of four years. Each school district shall make
22 diligent efforts to inform families prior to the date of school
23 registration of the blood-lead testing requirements of this
24 subsection, including the desirable age for blood-lead testing.

25 (3) Except as provided in sections 79-221 and 79-222, on

1 and after July 1, 2010, every student entering the seventh grade
2 shall have a booster immunization containing diphtheria and tetanus
3 toxoids and an acellular pertussis vaccine which meets the standards
4 approved by the United States Public Health Service for such
5 biological products, as such standards existed on January 1, 2009.

6 (4) Except as otherwise provided in section 79-222, any
7 student who does not comply with this section shall not be permitted
8 to continue in school until he or she so complies.

9 ~~(3)~~(5)(a) Except as provided in the Childhood Vaccine
10 Act, the cost of such immunizations under subsection (1) or (3) of
11 this section shall be borne by the parent or guardian of each student
12 who is immunized or by the Department of Health and Human Services
13 for those students whose parent or guardian is financially unable to
14 meet such cost.

15 (b) The cost of such blood-lead testing shall be borne by
16 the parent or guardian of each student who is tested or, for those
17 students who are participating in medicaid or CHIP as such terms are
18 defined in section 68-969, by the Department of Health and Human
19 Services using funds appropriated by the Legislature from the
20 Nebraska Health Care Cash Fund.

21 (6) For purposes of this section and sections 79-219 to
22 79-222:

23 (a) Blood-lead testing means taking a capillary sample of
24 blood or venous sample of blood and sending it to a laboratory to
25 determine the level of lead in the blood;

1 (b) Capillary sample of blood means a blood sample taken
2 from the finger or heel;

3 (c) Laboratory means a clinical laboratory certified
4 pursuant to the federal Clinical Laboratories Improvement Act of
5 1967, as such act existed on January 1, 2011; and

6 (d) Venous sample of blood means a blood sample taken
7 from a vein in the arm.

8 Sec. 2. Section 79-219, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 79-219 The Department of Health and Human Services shall
11 adopt and promulgate rules and regulations relating to the required
12 levels of protection, blood-lead testing, provisional enrollment
13 under the provisions of section 79-222, the evidence necessary to
14 prove that the required examination, blood-lead testing, or
15 immunization has been received, and the reporting of each student's
16 immunization and blood-lead testing status. The department may
17 modify, add to, or delete from the list of required immunizations set
18 out in section 79-217. The department shall furnish local school
19 authorities with copies of such rules and regulations and any other
20 material which will assist in the carrying out of sections 79-214 and
21 79-217 to 79-223.

22 Sec. 3. Section 79-220, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 79-220 At the time the parent or guardian of any child is
25 notified that such child must have a physical examination and a

1 visual evaluation pursuant to section 79-214 or immunizations and
2 blood-lead testing pursuant to section 79-217, the parent or guardian
3 shall also be notified in writing of (1) his or her right to submit a
4 written statement refusing a physical examination, a visual
5 evaluation, blood-lead testing, or immunization for his or her child
6 and (2) a telephone number or other contact information to assist the
7 parent or guardian in receiving information regarding free or
8 reduced-cost visual evaluations for low-income families who qualify.

9 Sec. 4. Section 79-221, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 79-221 ~~Immunization~~—(1) The immunizations required by
12 section 79-217 shall not be required for a student's enrollment in
13 any school in this state if he or she submits to the admitting
14 official either of the following:

15 ~~(1)~~—(a) A statement signed by a physician, a physician
16 assistant, or an advanced practice registered nurse practicing under
17 and in accordance with his or her respective certification act,
18 stating that, in the health care provider's opinion, the
19 immunizations required would be injurious to the health and well-
20 being of the student or any member of the student's family or
21 household; or

22 ~~(2)~~—(b) An affidavit signed by the student or, if he or
23 she is a minor, by a legally authorized representative of the
24 student, stating that the immunization conflicts with the tenets and
25 practice of a recognized religious denomination of which the student

1 is an adherent or member or that immunization conflicts with the
2 personal and sincerely followed religious beliefs of the student.

3 (2) The blood-lead testing required by section 79-217
4 shall not be required for a student's enrollment in any school in
5 this state if he or she submits to the admitting official any of the
6 following:

7 (a) A statement signed by a physician, a physician
8 assistant, or an advanced practice registered nurse practicing under
9 and in accordance with his or her respective certification act,
10 stating that, in the health care provider's opinion, the blood-lead
11 testing required would be injurious to the health and well-being of
12 the student or any member of the student's family or household;

13 (b) An affidavit signed by the student or, if he or she
14 is a minor, by a legally authorized representative of the student,
15 stating that the blood-lead testing conflicts with the tenets and
16 practice of a recognized religious denomination of which the student
17 is an adherent or member or that blood-lead testing conflicts with
18 the personal and sincerely followed religious beliefs of the student;
19 or

20 (c) A statement signed by a physician, a physician
21 assistant, or an advanced practice registered nurse practicing under
22 and in accordance with his or her respective certification act,
23 stating that, in such physician's, physician assistant's, or advanced
24 practice registered nurse's opinion, the child has been assessed as
25 being at very low risk for elevated blood-lead levels, based upon

1 information provided by the parent or guardian. For purposes of this
2 subdivision, very low risk means that the child (i) has not lived in
3 or spent significant time in any building built before 1960, (ii) has
4 not eaten nonfood items, (iii) has not lived with or frequently come
5 in contact with an adult who works with lead on the job or as part of
6 a hobby, (iv) has not lived near a battery manufacturing plant,
7 battery recycling plant, lead smelter, or other source of significant
8 lead emissions, (v) was not born in or has not spent more than three
9 months in Mexico, Central America, Eastern Europe, or Southeast Asia,
10 (vi) has not ingested food, candy, or remedies containing lead, (vii)
11 has not played with toys, jewelry, or other items recalled by the
12 United States Consumer Product Safety Commission due to lead
13 contamination, and (viii) has not had significant exposure to any
14 other product or substance determined to contain lead by the United
15 States Environmental Protection Agency, the United States Department
16 of Housing and Urban Development, or the Centers for Disease Control
17 and Prevention or the Food and Drug Administration of the United
18 States Department of Health and Human Services.

19 Sec. 5. Section 79-222, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 79-222 (1) A student may be provisionally enrolled in a
22 school in Nebraska if he or she meets either of the following
23 qualifications:

24 (a)(i) The student, if having not received the
25 immunizations required by section 79-217, has begun the immunizations

1 required under such section 79-217—and is receiving the necessary
2 immunizations as rapidly as is medically feasible; and ~~or~~

3 (ii) The student, if having not undergone the blood-lead
4 testing required by section 79-217 for enrollment in any school in
5 the state, is scheduled to undergo blood-lead testing; or

6 (b) The student is the child or legal ward of an officer
7 or enlisted person on active duty in any branch of the military
8 services of the United States or of his or her spouse, enrolling in a
9 Nebraska school following residence in another state or in a foreign
10 country.

11 (2) As a condition for the provisional enrollment of a
12 student qualified for such enrollment under subdivision (1)(b) of
13 this section, a parent or adult legal guardian of the student shall
14 provide the school with a signed written statement certifying (a)
15 that the student has completed the course of immunizations required
16 by section 79-217 and (b) that the student will undergo blood-lead
17 testing within fifteen days or the date and results of the student's
18 blood-lead testing.

19 (3) The provisional enrollment of a student qualified for
20 such enrollment under subdivision (1)(b) of this section shall not
21 continue beyond sixty days from the date of such enrollment. At such
22 time the school shall be provided, with regard to the student,
23 written evidence of compliance with section 79-217. The student shall
24 not be permitted to continue in school until such evidence of
25 compliance is provided.

1 Sec. 6. If a child's blood-lead level is ten micrograms
2 or more of lead per deciliter of blood, the Department of Health and
3 Human Services shall notify such child's parent or guardian of (1)
4 the availability of special education services pursuant to the
5 Special Education Act for children with lead poisoning who are
6 classified as other health impaired as defined in section 79-1118.01
7 and the criteria necessary for a child to be classified as other
8 health impaired and (2) the contact information for and resources
9 available through a program operated by the State of Nebraska that
10 provides information to parents on child development and special
11 education for children from birth or date of diagnosis to age twenty-
12 one and helps parents access information on rights and resources to
13 help them advocate for an appropriate education for their child.

14 Sec. 7. Original sections 79-219, 79-220, 79-221, and
15 79-222, Reissue Revised Statutes of Nebraska, and section 79-217,
16 Revised Statutes Cumulative Supplement, 2010, are repealed.