

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 750

FINAL READING

Introduced by Lindstrom, 18.

Read first time January 06, 2016

Committee: Health and Human Services

1 A BILL FOR AN ACT relating to the Uniform Credentialing Act; to amend
2 sections 38-175, 38-1,106, 38-1,121, 38-1,129, 38-1,130, 38-1,134,
3 and 71-445, Reissue Revised Statutes of Nebraska, section 38-1,126,
4 Revised Statutes Cumulative Supplement, 2014, and section 38-101,
5 Revised Statutes Supplement, 2015; to prohibit discrimination and
6 retaliation for making reports under the act as prescribed; to
7 provide for confidentiality of persons involved in making reports
8 under the act as prescribed; to harmonize provisions; and to repeal
9 the original sections.
10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 38-101, Revised Statutes Supplement, 2015, is
2 amended to read:

3 38-101 Sections 38-101 to 38-1,141 and section 2 of this act and the
4 following practice acts shall be known and may be cited as the Uniform
5 Credentialing Act:

- 6 (1) The Advanced Practice Registered Nurse Practice Act;
- 7 (2) The Alcohol and Drug Counseling Practice Act;
- 8 (3) The Athletic Training Practice Act;
- 9 (4) The Audiology and Speech-Language Pathology Practice Act;
- 10 (5) The Certified Nurse Midwifery Practice Act;
- 11 (6) The Certified Registered Nurse Anesthetist Practice Act;
- 12 (7) The Chiropractic Practice Act;
- 13 (8) The Clinical Nurse Specialist Practice Act;
- 14 (9) The Cosmetology, Electrology, Esthetics, Nail Technology, and
15 Body Art Practice Act;
- 16 (10) The Dentistry Practice Act;
- 17 (11) The Emergency Medical Services Practice Act;
- 18 (12) The Environmental Health Specialists Practice Act;
- 19 (13) The Funeral Directing and Embalming Practice Act;
- 20 (14) The Genetic Counseling Practice Act;
- 21 (15) The Hearing Instrument Specialists Practice Act;
- 22 (16) The Licensed Practical Nurse-Certified Practice Act;
- 23 (17) The Massage Therapy Practice Act;
- 24 (18) The Medical Nutrition Therapy Practice Act;
- 25 (19) The Medical Radiography Practice Act;
- 26 (20) The Medicine and Surgery Practice Act;
- 27 (21) The Mental Health Practice Act;
- 28 (22) The Nurse Practice Act;
- 29 (23) The Nurse Practitioner Practice Act;
- 30 (24) The Nursing Home Administrator Practice Act;
- 31 (25) The Occupational Therapy Practice Act;

- 1 (26) The Optometry Practice Act;
- 2 (27) The Perfusion Practice Act;
- 3 (28) The Pharmacy Practice Act;
- 4 (29) The Physical Therapy Practice Act;
- 5 (30) The Podiatry Practice Act;
- 6 (31) The Psychology Practice Act;
- 7 (32) The Respiratory Care Practice Act;
- 8 (33) The Veterinary Medicine and Surgery Practice Act; and
- 9 (34) The Water Well Standards and Contractors' Practice Act.

10 If there is any conflict between any provision of sections 38-101 to
11 38-1,139 and 38-1,141 and any provision of a practice act, the provision
12 of the practice act shall prevail.

13 The Revisor of Statutes shall assign the Uniform Credentialing Act,
14 including the practice acts enumerated in subdivisions (1) through (33)
15 of this section, to articles within Chapter 38.

16 Sec. 2. An individual or a business credentialed pursuant to the
17 Uniform Credentialing Act shall not discriminate or retaliate against any
18 person who has initiated or participated in the making of a report under
19 the act to the department. Such person may maintain an action for any
20 type of relief, including injunctive and declaratory relief, permitted by
21 law.

22 Sec. 3. Section 38-175, Reissue Revised Statutes of Nebraska, is
23 amended to read:

24 38-175 (1) The department may contract to provide a Licensee
25 Assistance Program to credential holders regulated by the department. The
26 program shall be limited to providing education, referral assistance, and
27 monitoring of compliance with treatment for abuse of, dependence on, or
28 active addiction to alcohol, any controlled substance, or any mind-
29 altering substance and shall be limited to voluntary participation by
30 credential holders.

31 (2)(a) Participation in the program shall be confidential, except

1 that if any evaluation by the program determines that the abuse,
2 dependence, or active addiction may be of a nature which constitutes a
3 danger to the public health and safety by the person's continued practice
4 or if the person fails to comply with any term or condition of a
5 treatment plan, the program shall report the same to the director.

6 (b) Participation in the program shall not preclude the
7 investigation of alleged statutory violations which could result in
8 disciplinary action against the person's credential or criminal action
9 against the person.

10 (3) Any report from any person or from the program to the department
11 indicating that a credential holder is suffering from abuse of,
12 dependence on, or active addiction to alcohol, any controlled substance,
13 or any mind-altering substance that impairs the ability to practice the
14 profession shall be treated as a complaint against such credential and
15 shall subject such credential holder to discipline under sections 38-186
16 to 38-1,100.

17 (4) No person who makes such a report to the program or from the
18 program to the department shall be liable in damages to any person for
19 slander, libel, defamation of character, breach of any privileged
20 communication, or other criminal or civil action of any nature, whether
21 direct or derivative, for making such report or providing information to
22 the program or department in accordance with this section. The identity
23 of any person making such a report or providing information leading to
24 the making of a report shall be confidential.

25 (5) Any person who contacts the department for information on or
26 assistance in obtaining referral or treatment of himself or herself or
27 any other person credentialed by the department for abuse of, dependence
28 on, or active addiction to alcohol, any controlled substance, or any
29 mind-altering substance that impairs the ability to practice the
30 profession shall be referred to the program. Such inquiries shall not be
31 used by the department as the basis for investigation for disciplinary

1 action, except that such limitation shall not apply to complaints or any
2 other reports or inquiries made to the department concerning persons who
3 may be suffering from abuse of, dependence on, or active addiction to
4 alcohol, any controlled substance, or any mind-altering substance that
5 impairs the ability to practice the profession or when a complaint has
6 been filed or an investigation or disciplinary or other administrative
7 proceeding is in process.

8 Sec. 4. Section 38-1,106, Reissue Revised Statutes of Nebraska, is
9 amended to read:

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

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

29 (3) The identity of any person making a report, providing
30 information leading to the making of a report, or otherwise providing
31 information to the department, a board, or the Attorney General included

1 in such reports, complaints, or investigational records shall be
2 confidential whether or not the record of the investigation becomes a
3 public record.

4 Sec. 5. Section 38-1,121, Reissue Revised Statutes of Nebraska, is
5 amended to read:

6 38-1,121 A complaint submitted to the department regarding a
7 credential holder subject to section 38-1,119 and the identity of any
8 person making the complaint or providing information leading to the
9 making of the complaint shall be confidential. Such persons A person
10 ~~making such a complaint~~ shall be immune from criminal or civil liability
11 of any nature, whether direct or derivative, for filing a complaint or
12 for disclosure of documents, records, or other information to the
13 department.

14 Sec. 6. Section 38-1,126, Revised Statutes Cumulative Supplement,
15 2014, is amended to read:

16 38-1,126 (1) A report made to the department under section 38-1,124
17 or 38-1,125 shall be confidential. The identity of any person making such
18 report or providing information leading to the making of such report
19 shall be confidential.

20 (2) Any person making such a report to the department, except a
21 person who is self-reporting, shall be completely immune from criminal or
22 civil liability of any nature, whether direct or derivative, for filing a
23 report or for disclosure of documents, records, or other information to
24 the department under section 38-1,124 or 38-1,125.

25 (3) Persons who are members of committees established under the
26 Health Care Quality Improvement Act, the Patient Safety Improvement Act,
27 or section 25-12,123 or witnesses before such committees shall not be
28 required to report under section 38-1,124 or 38-1,125. Any person who is
29 a witness before such a committee shall not be excused from reporting
30 matters of first-hand knowledge that would otherwise be reportable under
31 section 38-1,124 or 38-1,125 only because he or she attended or testified

1 before such committee.

2 (4) Documents from original sources shall not be construed as immune
3 from discovery or use in actions under section 38-1,125.

4 Sec. 7. Section 38-1,129, Reissue Revised Statutes of Nebraska, is
5 amended to read:

6 38-1,129 Unless such knowledge or information is based on
7 confidential medical records protected by the confidentiality provisions
8 of the federal Public Health Services Act, 42 U.S.C. 290dd-2, and federal
9 administrative rules and regulations, as such act and rules and
10 regulations existed on January 1, 2007:

11 (1) Any insurer having knowledge of any violation of any of the
12 Uniform Credentialing Act governing the profession of the person being
13 reported whether or not such person is credentialed shall report the
14 facts of such violation as known to such insurer to the department; and

15 (2) All insurers shall cooperate with the department and provide
16 such information as requested by the department concerning any possible
17 violations by any person required to be credentialed whether or not such
18 person is credentialed.

19 The identity of any person making such report on behalf of an
20 insurer or providing information leading to the making of such report
21 shall be confidential.

22 Sec. 8. Section 38-1,130, Reissue Revised Statutes of Nebraska, is
23 amended to read:

24 38-1,130 Any insurer shall report to the department, on a form and
25 in the manner specified by the department by rule and regulation, any
26 facts known to the insurer, including, but not limited to, the identity
27 of the credential holder and consumer, when the insurer:

28 (1) Has reasonable grounds to believe that a person required to be
29 credentialed has committed a violation of the provisions of the Uniform
30 Credentialing Act governing the profession of such person whether or not
31 such person is credentialed;

1 (2) Has made payment due to an adverse judgment, settlement, or
2 award resulting from a professional liability claim against the insurer,
3 a health care facility or health care service as defined in the Health
4 Care Facility Licensure Act, or a person required to be credentialed
5 whether or not such person is credentialed, including settlements made
6 prior to suit in which the consumer releases any professional liability
7 claim against the insurer, health care facility or health care service,
8 or person required to be credentialed, arising out of the acts or
9 omissions of such person;

10 (3) Takes an adverse action affecting the coverage provided by the
11 insurer to a person required to be credentialed, whether or not such
12 person is credentialed, due to alleged incompetence, negligence,
13 unethical or unprofessional conduct, or physical, mental, or chemical
14 impairment. For purposes of this section, adverse action does not include
15 raising rates for professional liability coverage unless it is based upon
16 grounds that would be reportable and no prior report has been made to the
17 department; or

18 (4) Has been requested by the department to provide information.

19 The identity of any person making such report on behalf of an
20 insurer or providing information leading to the making of such report
21 shall be confidential.

22 Sec. 9. Section 38-1,134, Reissue Revised Statutes of Nebraska, is
23 amended to read:

24 38-1,134 To the extent that reports made under section 38-1,129 or
25 38-1,130 contain or relate to privileged communications between consumer
26 and credential holder, such reports shall be treated by the department as
27 privileged communications and shall be considered to be part of the
28 investigational records of the department. Such reports may not be
29 obtained by legal discovery proceedings or otherwise disclosed unless the
30 privilege is waived by the consumer involved or the reports are made part
31 of the record in a contested case under section 38-186, in which case

1 such reports shall only be disclosed to the extent they are made a part
2 of such record. The identity of any person making such report or
3 providing information leading to the making of such report shall be
4 confidential.

5 Sec. 10. Section 71-445, Reissue Revised Statutes of Nebraska, is
6 amended to read:

7 71-445 (1) A health care facility or health care service shall not
8 discriminate or retaliate against a person residing in, served by, or
9 employed at such facility or service who has initiated or participated in
10 any proceeding authorized by the Health Care Facility Licensure Act or
11 who has presented a complaint or provided information to the
12 administrator of such facility or service or the Department of Health and
13 Human Services. Such person may maintain an action for any type of
14 relief, including injunctive and declaratory relief, permitted by law.

15 (2) A health care facility licensed pursuant to the Health Care
16 Facility Licensure Act shall not discriminate or retaliate against any
17 person who has initiated or participated in the making of a report under
18 the Uniform Credentialing Act to the department. Such person may maintain
19 an action for any type of relief, including injunctive and declaratory
20 relief, permitted by law.

21 Sec. 11. Original sections 38-175, 38-1,106, 38-1,121, 38-1,129,
22 38-1,130, 38-1,134, and 71-445, Reissue Revised Statutes of Nebraska,
23 section 38-1,126, Revised Statutes Cumulative Supplement, 2014, and
24 section 38-101, Revised Statutes Supplement, 2015, are repealed.