

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 750

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, 38-190, 38-1,105, 38-1,106, 38-1,121, 38-1,129,
3 38-1,130, and 38-1,134, Reissue Revised Statutes of Nebraska,
4 sections 38-1,126 and 38-1,127, Revised Statutes Cumulative
5 Supplement, 2014, and sections 38-101 and 71-401, Revised Statutes
6 Supplement, 2015; to provide for confidentiality as prescribed; to
7 provide prohibitions on retaliation as prescribed; to harmonize
8 provisions; and to repeal the original sections.
9 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 retaliate against any person who
18 makes a report or provides information leading to the making of a report
19 under the act to the department relating to an act or omission of the
20 credential holder which results or could result in disciplinary action
21 against such credential holder or in referral of such credential holder
22 to the Licensee Assistance Program. For purposes of this section,
23 retaliation means taking action which adversely affects the employment or
24 reputation of the reporting person.

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

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

1 altering substance and shall be limited to voluntary participation by
2 credential holders.

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

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

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

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

28 (5) Any person who contacts the department for information on or
29 assistance in obtaining referral or treatment of himself or herself or
30 any other person credentialed by the department for abuse of, dependence
31 on, or active addiction to alcohol, any controlled substance, or any

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

11 Sec. 4. Section 38-190, Reissue Revised Statutes of Nebraska, is
12 amended to read:

13 38-190 (1) Any petition filed pursuant to section 38-186 may, at any
14 time prior to the entry of any order by the director, be disposed of by
15 stipulation, agreed settlement, consent order, or similar method as
16 agreed to between the parties. A proposed settlement shall be submitted
17 and considered in camera and shall not be a public record unless accepted
18 by the director. The director may review the input provided to the
19 Attorney General by the board pursuant to subsection (2) of this section.
20 If the settlement is acceptable to the director, he or she shall make it
21 the sole basis of any order he or she enters in the matter, and it may be
22 modified or added to by the director only upon the mutual consent of both
23 of the parties thereto. If the settlement is not acceptable to the
24 director, it shall not be admissible in any subsequent hearing and it
25 shall not be considered in any manner as an admission.

26 (2) The Attorney General shall not enter into any agreed settlement
27 or dismiss any petition without first having given notice of the proposed
28 action and an opportunity to the appropriate board to provide input into
29 the terms of the settlement or on dismissal. The board shall have fifteen
30 days from the date of the Attorney General's request to respond, but the
31 recommendation of the board, if any, shall not be binding on the Attorney

1 General. Meetings of the board for such purpose shall be in closed
2 session, and any recommendation by the board to the Attorney General
3 shall not be a public record until the pending action is complete, except
4 that if the director reviews the input provided to the Attorney General
5 by the board as provided in subsection (1) of this section, the
6 credential holder shall also be provided a copy of the input and
7 opportunity to respond in such manner as the director determines.

8 (3) The identity of any person making a report, providing
9 information leading to the making of a report, or otherwise providing
10 information to the department, a board, or the Attorney General leading
11 to the filing of a petition against a credential holder under section
12 38-186 shall be confidential whether or not the record of the
13 investigation becomes a public record.

14 Sec. 5. Section 38-1,105, Reissue Revised Statutes of Nebraska, is
15 amended to read:

16 38-1,105 (1) The department shall advise the appropriate board on
17 the progress of investigations. If ~~requested by the complainant~~ is an
18 individual, the identity of the complainant shall not be released to the
19 board.

20 (2) When the department determines that an investigation is
21 complete, the department shall consult with the board to obtain its
22 recommendation for submission to the Attorney General. In making a
23 recommendation, the board may review all investigative reports and have
24 full access to the investigational file of the department and any
25 previous investigational information in the files of the department on
26 the credential holder that may be relevant to the investigation, except
27 that (a) reports or other documents of any law enforcement agency
28 provided to the department shall not be available for board review except
29 to the extent such law enforcement agency gives permission for release to
30 the board and (b) reports provided by any other agency or public or
31 private entity, which reports are confidential in that agency's or

1 entity's possession and are provided with the express expectation that
2 the report will not be disclosed, may be withheld from board review.

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

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

9 (b) Matters which the board believes require additional
10 investigation; and

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

13 (4) If the department and the board disagree on the basis for
14 investigation or if the board recommends additional investigation and the
15 department and board disagree on the necessity of additional
16 investigation, the matter shall be forwarded to the Attorney General for
17 review and determination.

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

22 Sec. 6. Section 38-1,106, Reissue Revised Statutes of Nebraska, is
23 amended to read:

24 38-1,106 (1) Reports under sections 38-1,129 to 38-1,136,
25 complaints, and investigational records of the department shall not be
26 public records, shall not be subject to subpoena or discovery, and shall
27 be inadmissible in evidence in any legal proceeding of any kind or
28 character except a contested case before the department. Such reports,
29 complaints, or records shall be a public record if made part of the
30 record of a contested case before the department. No person, including,
31 but not limited to, department employees and members of a board, having

1 access to such reports, complaints, or investigational records shall
2 disclose such information in violation of this section, except that the
3 department may exchange such information with law enforcement and other
4 state licensing agencies as necessary and appropriate in the discharge of
5 the department's duties and only under circumstances to ensure against
6 unauthorized access to such information. Violation of this subsection is
7 a Class I misdemeanor.

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

12 (3) The identity of any person making a report, providing
13 information leading to the making of a report, or otherwise providing
14 information to the department, a board, or the Attorney General included
15 in such reports, complaints, or investigational records shall be
16 confidential whether or not the record of the investigation becomes a
17 public record.

18 Sec. 7. Section 38-1,121, Reissue Revised Statutes of Nebraska, is
19 amended to read:

20 38-1,121 A complaint submitted to the department regarding a
21 credential holder subject to section 38-1,119 and the identity of any
22 person making the complaint or providing information leading to the
23 making of the complaint shall be confidential. Such persons A person
24 ~~making such a complaint~~ shall be immune from criminal or civil liability
25 of any nature, whether direct or derivative, for filing a complaint or
26 for disclosure of documents, records, or other information to the
27 department.

28 Sec. 8. Section 38-1,126, Revised Statutes Cumulative Supplement,
29 2014, is amended to read:

30 38-1,126 (1) A report made to the department under section 38-1,124
31 or 38-1,125 shall be confidential. The identity of any person making such

1 report or providing information leading to the making of such report
2 shall be confidential.

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

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

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

18 Sec. 9. Section 38-1,127, Revised Statutes Cumulative Supplement,
19 2014, is amended to read:

20 38-1,127 (1) A health care facility licensed under the Health Care
21 Facility Licensure Act or a peer review organization or professional
22 association of a profession regulated under the Uniform Credentialing Act
23 shall report to the department, on a form and in the manner specified by
24 the department, any facts known to the facility, organization, or
25 association, including, but not limited to, the identity of the
26 credential holder and consumer, when the facility, organization, or
27 association:

28 (a) Has made payment due to adverse judgment, settlement, or award
29 of a professional liability claim against it or a credential holder,
30 including settlements made prior to suit, arising out of the acts or
31 omissions of the credential holder; or

1 (b) Takes action adversely affecting the privileges or membership of
2 a credential holder in such facility, organization, or association due to
3 alleged incompetence, professional negligence, unprofessional conduct, or
4 physical, mental, or chemical impairment.

5 The report shall be made within thirty days after the date of the
6 action or event.

7 (2) A report made to the department under this section and the
8 identity of any person making the report or providing information leading
9 to the making of the report shall be confidential. The facility,
10 organization, association, or person making such report shall be
11 completely immune from criminal or civil liability of any nature, whether
12 direct or derivative, for filing a report or for disclosure of documents,
13 records, or other information to the department under this section.
14 Nothing in this subsection shall be construed to require production of
15 records protected by the Health Care Quality Improvement Act or section
16 25-12,123 or patient safety work product under the Patient Safety
17 Improvement Act except as otherwise provided in either of such acts or
18 such section.

19 (3) Any health care facility, peer review organization, or
20 professional association that fails or neglects to make a report or
21 provide information as required under this section is subject to a civil
22 penalty of five hundred dollars for the first offense and a civil penalty
23 of up to one thousand dollars for a subsequent offense. Any civil penalty
24 collected under this subsection shall be remitted to the State Treasurer
25 to be disposed of in accordance with Article VII, section 5, of the
26 Constitution of Nebraska.

27 (4) For purposes of this section, the department shall accept
28 reports made to it under the Nebraska Hospital-Medical Liability Act or
29 in accordance with national practitioner data bank requirements of the
30 federal Health Care Quality Improvement Act of 1986, as the act existed
31 on January 1, 2007, and may require a supplemental report to the extent

1 such reports do not contain the information required by the department.

2 Sec. 10. Section 38-1,129, Reissue Revised Statutes of Nebraska, is
3 amended to read:

4 38-1,129 Unless such knowledge or information is based on
5 confidential medical records protected by the confidentiality provisions
6 of the federal Public Health Services Act, 42 U.S.C. 290dd-2, and federal
7 administrative rules and regulations, as such act and rules and
8 regulations existed on January 1, 2007:

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

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

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

20 Sec. 11. Section 38-1,130, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 38-1,130 Any insurer shall report to the department, on a form and
23 in the manner specified by the department by rule and regulation, any
24 facts known to the insurer, including, but not limited to, the identity
25 of the credential holder and consumer, when the insurer:

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

30 (2) Has made payment due to an adverse judgment, settlement, or
31 award resulting from a professional liability claim against the insurer,

1 a health care facility or health care service as defined in the Health
2 Care Facility Licensure Act, or a person required to be credentialed
3 whether or not such person is credentialed, including settlements made
4 prior to suit in which the consumer releases any professional liability
5 claim against the insurer, health care facility or health care service,
6 or person required to be credentialed, arising out of the acts or
7 omissions of such person;

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

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

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

20 Sec. 12. Section 38-1,134, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 38-1,134 To the extent that reports made under section 38-1,129 or
23 38-1,130 contain or relate to privileged communications between consumer
24 and credential holder, such reports shall be treated by the department as
25 privileged communications and shall be considered to be part of the
26 investigational records of the department. Such reports may not be
27 obtained by legal discovery proceedings or otherwise disclosed unless the
28 privilege is waived by the consumer involved or the reports are made part
29 of the record in a contested case under section 38-186, in which case
30 such reports shall only be disclosed to the extent they are made a part
31 of such record. The identity of any person making such report or

1 providing information leading to the making of such report shall be
2 confidential.

3 Sec. 13. Section 71-401, Revised Statutes Supplement, 2015, is
4 amended to read:

5 71-401 Sections 71-401 to 71-470 and section 14 of this act shall be
6 known and may be cited as the Health Care Facility Licensure Act.

7 Sec. 14. A health care facility licensed pursuant to the Health
8 Care Facility Licensure Act shall not retaliate against any person who
9 makes a report or provides information leading to the making of a report
10 under the Uniform Credentialing Act to the Department of Health and Human
11 Services relating to an act or omission of an individual employed or
12 under contract with a health care facility which results or could result
13 in disciplinary action against such employee or contractor under the
14 Uniform Credentialing Act or in referral of such credential holder to the
15 Licensee Assistance Program created under the act. For purposes of this
16 section, retaliation means taking action which adversely affects the
17 employment or reputation of the reporting person.

18 Sec. 15. Original sections 38-175, 38-190, 38-1,105, 38-1,106,
19 38-1,121, 38-1,129, 38-1,130, and 38-1,134, Reissue Revised Statutes of
20 Nebraska, sections 38-1,126 and 38-1,127, Revised Statutes Cumulative
21 Supplement, 2014, and sections 38-101 and 71-401, Revised Statutes
22 Supplement, 2015, are repealed.