

2022

STATE OF NEBRASKA

**STATUTES RELATING TO
CHILD CARE LICENSURE**

NEBRASKA

Good Life. Great Mission.

DEPT. OF HEALTH AND HUMAN SERVICES

Department of Health and Human Services
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NEBRASKA CREDENTIALLED PROVIDERS OF CHILD CARE PROGRAMS

(Statutes relating to Licensing of Providers of Child Care Programs listed in alphabetical order)

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STATUTES RELATING TO CHILD CARE LICENSURE

71-1908. Child Care Licensing Act; act, how cited; legislative findings.

(1) Sections 71-1908 to 71-1923 shall be known and may be cited as the Child Care Licensing Act.

(2) The Legislature finds that there is a present and growing need for quality child care programs and facilities. There is a need to establish and maintain licensure of persons providing such programs to ensure that such persons are competent and are using safe and adequate facilities. The Legislature further finds and declares that the development and supervision of programs are a matter of statewide concern and should be dealt with uniformly on the state and local levels. There is a need for cooperation among the various state and local agencies which impose standards on licensees, and there should be one agency which coordinates the enforcement of such standards and informs the Legislature about cooperation among the various agencies.

Source: Laws 1984, LB 130, § 1; Laws 1995, LB 401, § 29; Laws 2004, LB 1005, § 67; Laws 2013, LB105, § 1; Laws 2018, LB1034, § 60; Laws 2020, LB1185, § 2.

71-1909. Purposes of act; legislative intent.

(1) The purposes of the Child Care Licensing Act are to provide:

(a) Statewide licensure standards for persons providing child care programs; and

(b) The department with authority to coordinate the enforcement of standards on licensees.

(2) It is the intent of the Legislature that the licensing and regulation of programs under the act exist for the protection of children and to assist parents in making informed decisions concerning enrollment and care of their children in such programs.

Source: Laws 1984, LB 130, § 2; Laws 1995, LB 401, § 30; Laws 1996, LB 1044, § 587; Laws 1997, LB 307, § 175; Laws 1997, LB 310, § 4; Laws 1999, LB 594, § 50; Laws 2004, LB 1005, § 68; Laws 2007, LB296, § 498.

71-1910. Terms, defined.

For purposes of the Child Care Licensing Act, unless the context otherwise requires:

(1) Department means the Department of Health and Human Services; and

(2)(a) Program means the provision of services in lieu of parental supervision for children under thirteen years of age for compensation, either directly or indirectly, on the average of less than twelve hours per day, but more than two hours per week, and includes any employer-sponsored child care, family child care home, child care center, school-age child care program, school-age services pursuant to section 79-1104, or preschool or nursery school.

(b) Program does not include casual care at irregular intervals, a recreation camp as defined in section 81-15,271, a recreation facility, center, or program operated by a political or governmental subdivision pursuant to the authority provided in section 13-304, classes or services provided by a religious organization other than child care or a preschool or nursery school, a preschool program conducted in a school approved pursuant to section 79-318, services provided only to school-age children during the summer and other extended breaks in the school year, or foster care as defined in section 71-1901.

Source: Laws 1984, LB 130, § 3; Laws 1986, LB 68, § 1; Laws 1987, LB 472, § 1; Laws 1991, LB 836, § 29; Laws 1995, LB 401, § 31; Laws 1995, LB 451, § 9; Laws 1996, LB 900, § 1058; Laws 1996, LB 1044, § 588; Laws 1997, LB 307, § 176; Laws 1997, LB 310, § 5; Laws 1999, LB 594, § 51; Laws 2004, LB 1005, § 69; Laws 2006, LB 994, § 97; Laws 2007, LB296, § 499; Laws 2008, LB928, § 19; Laws 2021, LB148, § 68.

71-1911. Licenses; when required; issuance; corrective action status; display of license.

(1) A person may operate child care for three or fewer children without having a license issued by the department. A person who is not required to be licensed may choose to apply for a license and, upon obtaining a license, shall be subject to the Child Care Licensing Act. A person who has had a license issued pursuant to this section and has had such license suspended or revoked other than for nonpayment of fees shall not operate or offer to operate a program for or provide care to any number of children until the person is licensed pursuant to this section.

(2) No person shall operate or offer to operate a program for four or more children under his or her direct supervision, care, and control at any one time from families other than that of such person without having in full force and effect a written license issued by the department upon such terms as may be prescribed by the rules and regulations adopted and promulgated by the department. The license may be a provisional license or an operating license. A city, village, or county which has rules, regulations, or ordinances in effect on July 10, 1984, which apply to programs operating for two or three children from different families may continue to license persons providing such programs. If the license of a person is suspended or revoked other than for nonpayment of fees, such person shall not be licensed by any city, village, or county rules, regulations, or ordinances until the person is licensed pursuant to this section.

(3) A provisional license shall be issued to all applicants following the completion of preservice orientation training approved or delivered by the department for the first year of operation. At the end of one year of operation, the department shall either issue an operating license, extend the provisional license, or deny the operating license. The provisional license may be extended once for a period of no more than six months. The decision regarding extension of the provisional license is not appealable. The provisional license may be extended if:

(a) A licensee is unable to comply with all licensure requirements and standards, is making a good faith effort to comply, and is capable of compliance within the next six months;

(b) The effect of the current inability to comply with a rule or regulation does not present an unreasonable risk to the health, safety, or well-being of children or staff; and

(c) The licensee has a written plan of correction that has been approved by the department which is to be completed within the renewal period.

(4) The department may place a provisional or operating license on corrective action status. Corrective action status is voluntary and may be in effect for up to six months. The decision regarding placement on corrective action status is not a disciplinary action and is not appealable. If the written plan of correction is not approved by the department, the department may discipline the license. A probationary license may be issued for the licensee to operate under corrective action status if the department determines that:

(a) The licensee is unable to comply with all licensure requirements and standards or has had a history of noncompliance;

(b) The effect of noncompliance with any rule or regulation does not present an unreasonable risk to the health, safety, or well-being of children or staff; and

(c) The licensee has a written plan of correction that has been approved by the department.

(5) Operating licenses issued under the Child Care Licensing Act shall remain in full force and effect subject to annual inspections and fees. The department may amend a license upon change of ownership or location.

Amending a license requires a site inspection by the department at the time of amendment. When a program is to be permanently closed, the licensee shall return the license to the department within one week after the closing.

(6) The license, including any applicable status or amendment, shall be displayed by the licensee in a prominent place so that it is clearly visible to parents and others. License record information and inspection reports shall be made available by the licensee for public inspection upon request.

Source: Laws 1984, LB 130, § 4; Laws 1988, LB 1013, § 1; Laws 1991, LB 836, § 30; Laws 1993, LB 510, § 1; Laws 1995, LB 401, § 32; Laws 1997, LB 310, § 6; Laws 1997, LB 752, § 177; Laws 1998, LB 1354, § 33; Laws 1999, LB 594, § 52; Laws 2004, LB 1005, § 70; Laws 2006, LB 994, § 98; Laws 2014, LB1050, § 2.

Annotations

- Denial of license for cause must be based on reasonable grounds, as distinguished from frivolous, arbitrary, or incompetent grounds. *Ballard v. Nebraska Dept. of Soc. Servs.*, 2 Neb. App. 809, 515 N.W.2d 437 (1994).

71-1911.01. Fees.

(1) For a license to operate a program for fewer than thirty children, each applicant for a license and each licensee shall pay to the department, at the time of initial application and annually thereafter, a license fee of twenty-five dollars.

(2) For a license to operate a program for thirty or more children, each applicant for a license and each licensee shall pay to the department, at the time of initial application and annually thereafter, a license fee of fifty dollars.

(3) If the department denies an application for a license and has not completed an inspection prior to such denial, the department shall return the license fee to the applicant.

Source: Laws 1993, LB 510, § 2; Laws 2004, LB 1005, § 72.

71-1911.02. Application; contents.

(1) An applicant for a license to operate a program required to be licensed under the Child Care Licensing Act shall file a written application with the department. The application shall be accompanied by the license fee pursuant to section 71-1911.01 and shall set forth the full name and address of the program to be licensed, the full name and address of the owner of such program, the names of all household members if the program is located in a residence, the names of all persons in control of the program, and additional information as required by the department, including affirmative evidence of the applicant's ability to comply with rules and regulations adopted and promulgated under the act. The application shall include the applicant's social security number if the applicant is an individual. The social security number shall not be public record and may only be used for administrative purposes.

(2) The application shall be signed by (a) the owner, if the applicant is an individual, a partnership, or the sole owner of a limited liability company or a corporation, (b) two of its members, if the applicant is a limited liability company, or (c) two of its officers, if the applicant is a corporation.

Source: Laws 2004, LB 1005, § 71; Laws 2006, LB 994, § 99.

71-1911.03. Applicant; liability insurance.

An applicant for a license under the Child Care Licensing Act shall provide to the department written proof of liability insurance coverage of at least one hundred thousand dollars per occurrence prior to issuance of the license. A licensee subject to the Child Care Licensing Act on July 1, 2014, shall obtain such liability insurance coverage and provide written proof to the department within thirty days after July 1, 2014. Failure by a licensee to maintain the required level of liability insurance coverage shall be deemed noncompliance with the Child Care Licensing Act. If the licensee is the State of Nebraska or a political subdivision, the licensee may utilize a risk retention group or a risk management pool for purposes of providing such liability insurance coverage or may self-insure all or part of such coverage.

Source: Laws 2013, LB105, § 2.

71-1912. Department; investigation; inspections; national criminal history record information check; procedure; cost; background checks; person ineligible for employment; when.

(1) Before issuance of a license, the department shall investigate or cause an investigation to be made, when it deems necessary, to determine if the applicant or person in charge of the program meets or is capable of meeting the physical well-being, safety, and protection standards and the other rules and regulations of the department adopted and promulgated under the Child Care Licensing Act. The department may investigate the character of applicants and licensees, any member of the applicant's or licensee's household, and the staff and employees of programs. The department may at any time inspect or cause an inspection to be made of any place where a program is operating to determine if such program is being properly conducted.

(2) All inspections by the department shall be unannounced except for initial licensure visits and consultation visits. Initial licensure visits are announced visits necessary for a provisional license to be issued to a family child care home I, family child care home II, child care center, or school-age-only or preschool program. Consultation visits are announced visits made at the request of a licensee for the purpose of consulting with a department specialist on ways of improving the program.

(3) An unannounced inspection of any place where a program is operating shall be conducted by the department or the city, village, or county pursuant to subsection (2) of section 71-1914 at least annually for a program licensed to provide child care for fewer than thirty children and at least twice every year for a program licensed to provide child care for thirty or more children.

(4) Whenever an inspection is made, the findings shall be recorded in a report designated by the department. The public shall have access to the results of these inspections upon a written or oral request to the department. The request must include the name and address of the program. Additional unannounced inspections shall be performed as often as is necessary for the efficient and effective enforcement of the Child Care Licensing Act.

(5)(a) A person applying for a license as a child care provider or a licensed child care provider under the Child Care Licensing Act shall submit a request for a national criminal history record information check for each child care staff member, including a prospective child care staff member of the child care provider, at the applicant's or licensee's expense, as set forth in this section. Beginning on October 1, 2019, a prospective child care staff member shall submit to a national criminal history record information check (i) prior to employment, except as otherwise permitted under 45 C.F.R. 98.43, as such regulation existed on January 1, 2019, or (ii) prior to residing in a family child care home. A child care staff member who was employed by a child care provider prior to October 1, 2019, or who resided in a family child care home prior to October 1, 2019, shall submit to a national criminal history record information check by October 1, 2021, unless the child care staff member ceases to be a child care staff member prior to such date.

(b) A child care staff member shall be required to undergo a national criminal history record information check not less than once during each five-year period. A child care staff member shall submit a complete set of his or her fingerprints to the Nebraska State Patrol. The Nebraska State Patrol shall transmit a copy of the child care staff member's fingerprints to the Federal Bureau of Investigation for a national criminal history record information check. The national criminal history record information check shall include information concerning child care staff members from federal repositories of such information and repositories of such information in other states, if authorized by federal law for use by the Nebraska State Patrol. The Nebraska State Patrol shall issue a report to the department that includes the information collected from the national criminal history record information check concerning child care staff members. The department shall seek federal funds, if available, to assist child care providers and child care staff members with the costs of the fingerprinting and national criminal history record information check. If the department does not receive sufficient federal funds to assist child care providers and staff members with such costs, then the child care staff member being screened, applicant for a license, or licensee shall pay the actual cost of the fingerprinting and national criminal history record information check, except that the department may pay all or part of the cost if funding becomes available. The department and the Nebraska State Patrol may adopt and promulgate rules and regulations concerning the costs associated with the fingerprinting and the national criminal history record information check. The department may adopt and promulgate rules and regulations implementing national criminal history record information check requirements for child care providers and child care staff members.

(c) A child care staff member shall also submit to the following background checks at his or her expense not less than once during each five-year period:

(i) A search of the National Crime Information Center's National Sex Offender Registry; and

(ii) A search of the following registries, repositories, or databases in the state where the child care provider is located or where the child care staff member resides and each state where the child care provider was located or where the child care staff member resided during the preceding five years:

(A) State criminal registries or repositories;

(B) State sex offender registries or repositories; and

(C) State-based child abuse and neglect registries and databases.

(d) Any individual shall be ineligible for employment by a child care provider if such individual:

(i) Refuses to consent to the national criminal history record information check or a background check described in this subsection;

(ii) Knowingly makes a materially false statement in connection with the national criminal history record information check or a background check described in this subsection;

(iii) Is registered, or required to be registered, on a state sex offender registry or repository or the National Sex Offender Registry; or

(iv) Has been convicted of a crime of violence, a crime of moral turpitude, or a crime of dishonesty.

(e) The department may adopt and promulgate rules and regulations for purposes of this section.

(f) A child care provider shall be ineligible for a license under the Child Care Licensing Act and shall be ineligible to participate in the child care subsidy program if the provider employs a child care staff member who is ineligible for employment under subdivisions (d) or (e) of this subsection.

(g) National criminal history record information and information from background checks described in this subsection subject to state or federal confidentiality requirements may only be used for purposes of granting a child care license or approving a child care provider for participation in the child care subsidy program.

(h) For purposes of this subsection:

(i) Child care provider means a child care program required to be licensed under the Child Care Licensing Act; and

(ii) Child care staff member means an individual who is not related to all of the children for whom child care services are provided and:

(A) Who is employed by a child care provider for compensation, including contract employees or self-employed individuals;

(B) Whose activities involve the care or supervision of children for a child care provider or unsupervised access to children who are cared for or supervised by a child care provider; or

(C) Who is residing in a family child care home and who is eighteen years of age or older.

Source: Laws 1984, LB 130, § 5; Laws 1985, LB 447, § 38; Laws 1987, LB 386, § 5; Laws 1988, LB 1013, § 2; Laws 1995, LB 401, § 33; Laws 1997, LB 310, § 7; Laws 2004, LB 1005, § 73; Laws 2014, LB1050, § 3; Laws 2019, LB460, § 3; Laws 2020, LB1185, § 3.

71-1912.01. Child care staff member; national criminal history record information check; required, when; federal Child Care Subsidy program; eligibility to participate.

(1) For purposes of this section, child care staff member means an individual who is not related to all of the children for whom child care services are provided and:

- (a) Who is employed for compensation by a child care provider not required to be licensed under the Child Care Licensing Act, including contract employees or self-employed individuals;
- (b) Whose activities involve the care or supervision of children for a child care provider or unsupervised access to children who are cared for or supervised by a child care provider; or
- (c) Who is residing in a family child care home and who is eighteen years of age or older.

(2) Beginning on November 14, 2020, an individual who is not required to be licensed under the Child Care Licensing Act but seeks to participate as a provider in the federal Child Care Subsidy program shall submit a request for a national criminal history record information check for each child care staff member, including a prospective child care staff member of the child care provider, (a) prior to the child care provider being approved to participate as a child care provider in the federal Child Care Subsidy program, except as otherwise permitted under 45 C.F.R. 98.43, as such regulation existed on January 1, 2020, or (b) prior to residing in a family child care home. A child care staff member who was a provider in the federal Child Care Subsidy program prior to November 14, 2020, or who resided in a family child care home prior to November 14, 2020, shall submit to a national criminal history record information check by October 1, 2021, unless the child care staff member ceases to be a child care staff member prior to such date. The child care staff member or the child care provider seeking to participate in the subsidy program shall pay the cost of such national criminal history record information check. A person who undergoes a national criminal history record information check to obtain a license under the Child Care Licensing Act or work as a child care staff member and is in good standing with the department shall not be required to undergo an additional national criminal history record information check to become a child care provider in the federal Child Care Subsidy program if the person has not been separated from employment from a child care provider within the state for a period of not more than one hundred eighty consecutive days.

(3) Any individual, entity, or provider shall be ineligible to participate in the federal Child Care Subsidy program if such individual, entity, or provider:

- (a) Refuses to consent to the national criminal history record information check described in this section;
- (b) Knowingly makes a materially false statement in connection with the national criminal history record information check described in this section;
- (c) Is registered, or required to be registered, on a state sex offender registry or repository or the National Sex Offender Registry; or
- (d) Has been convicted of a crime of violence, a crime of moral turpitude, or a crime of dishonesty.

Source: Laws 2020, LB1185, § 4.

71-1913. Fire and health inspections.

(1) The department may request the State Fire Marshal to inspect any program for fire safety pursuant to section 81-502. The State Fire Marshal shall immediately notify the department whenever he or she delegates authority for such inspections under such section.

(2) The department may investigate all facilities and programs of licensed providers of child care programs as defined in section 71-1910 or applicants for licenses to provide such programs to determine if the place or places to be covered by such licenses meet standards of sanitation and physical well-being set by the department for the care and protection of the child or children who may be placed in such facilities and programs. The department may delegate this authority to qualified local environmental health personnel.

(3) This section does not apply to school-age child care programs which are licensed pursuant to section 71-1917.

Source: Laws 1984, LB 130, § 6; Laws 1991, LB 836, § 31; Laws 1995, LB 401, § 34; Laws 1996, LB 1044, § 589; Laws 1997, LB 307, § 177; Laws 1997, LB 622, § 102; Laws 1999, LB 594, § 53; Laws 2018, LB1034, § 61.

71-1913.01. Immunization requirements; record; report.

(1) Each program shall require the parent or guardian of each child enrolled in such program to present within thirty days after enrollment and periodically thereafter (a) proof that the child is protected by age-appropriate immunization against measles, mumps, rubella, poliomyelitis, diphtheria, pertussis, tetanus, haemophilus influenzae type B, and invasive pneumococcal disease and such other diseases as the department may from time to time specify based on then current medical and scientific knowledge, (b) certification by a physician, an advanced practice registered nurse practicing under and in accordance with his or her respective certification act, or a physician assistant that immunization is not appropriate for a stated medical reason, or (c) a written statement that the parent or guardian does not wish to have such child so immunized and the reasons therefor.

The program shall exclude a child from attendance until such proof, certification, or written statement is provided. At the time the parent or guardian is notified that such information is required, he or she shall be notified in writing of his or her right to submit a certification or written statement pursuant to subdivision (b) or (c) of this subsection.

(2) Each program shall keep the written record of immunization, the certification, or the written statement of the parent or guardian. Such record, certification, or statement shall be kept by the program as part of the child's file, shall be available onsite to the department, and shall be filed with the department for review and inspection. Each program shall report to the department by November 1 of each year the status of immunization for children enrolled as of September 30 of that year, and children who have reached kindergarten age and who are enrolled in public or private school need not be included in the report.

Source: Laws 1987, LB 472, § 2; Laws 1992, LB 431, § 6; Laws 1995, LB 401, § 35; Laws 1996, LB 414, § 49; Laws 1996, LB 1044, § 590; Laws 1998, LB 1073, § 103; Laws 1999, LB 594, § 54; Laws 2000, LB 1115, § 70; Laws 2005, LB 256, § 92; Laws 2005, LB 301, § 38; Laws 2007, LB247, § 50; Laws 2007, LB296, § 500.

Cross References

- **Childhood Vaccine Act**, see section 71-526.
- **School-age children**, immunization requirements, see section 79-217 et seq.

71-1913.02. Immunization reports; audit; deficiencies; duties.

(1) The department shall perform annually a random audit of the reports submitted under section 71-1913.01 to check for compliance with such section on an annual basis and such other audits and inspections as are necessary to prevent the introduction or spread of disease. Audit results shall be reported to the department.

(2) If the department discovers noncompliance with section 71-1913.01, the department shall allow a noncomplying program thirty days to correct deficiencies.

(3) The department shall develop and provide educational and other materials to programs and the public as may be necessary to implement section 71-1913.01.

Source: Laws 1987, LB 472, § 3; Laws 1995, LB 401, § 36; Laws 1996, LB 1044, § 591; Laws 1997, LB 307, § 178; Laws 1998, LB 1073, § 104; Laws 1999, LB 594, § 55; Laws 2005, LB 301, § 39; Laws 2007, LB296, § 501.

71-1913.03. Immunization; department; adopt rules and regulations.

The department shall adopt and promulgate rules and regulations relating to the required levels of protection, using as a guide the recommendations of the American Academy of Pediatrics and the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention of the United States Department of Health and Human Services, Public Health Service, and the methods, manner, and frequency of reporting of each child's immunization status. The department shall furnish each program with copies of such rules and regulations and any other material which will assist in carrying out section 71-1913.01.

Source: Laws 1987, LB 472, § 4; Laws 1992, LB 431, § 7; Laws 1995, LB 401, § 37; Laws 1996, LB 1044, § 592; Laws 1998, LB 1073, § 105; Laws 2005, LB 301, § 40; Laws 2007, LB296, § 502.

71-1914. Department; serve as coordinating agency; local rules and regulations; report of violation.

(1) The department shall be the state's coordinating agency for licensure and regulation of programs in this state in order to (a) provide efficient services pursuant to the Child Care Licensing Act, (b) avoid duplication of services, and (c) prevent an unnecessary number of inspections of any program. The department may request cooperation and assistance from local and state agencies and such agencies shall promptly respond. The extent of an agency's cooperation may be included in the report to the Legislature pursuant to section 43-3402.

(2) A city, village, or county may adopt rules, regulations, or ordinances establishing physical well-being and safety standards for programs whether or not the persons providing such programs are subject to licensure under section 71-1911. Such rules, regulations, or ordinances shall be as stringent as or more stringent than the department's rules and regulations for licensees pursuant to the Child Care Licensing Act. The city, village, or county adopting such rules, regulations, or ordinances and the department shall coordinate the inspection and supervision of licensees to avoid duplication of inspections. A city, village, or county shall report any violation of such rules, regulations, or ordinances to the department. The city, village, or county may administer and enforce such rules, regulations, and ordinances. Enforcement of provisions of the Child Care Licensing Act or rules or regulations adopted and promulgated under the act shall be by the department pursuant to sections 71-1919 to 71-1923.

Source: Laws 1984, LB 130, § 7; Laws 1995, LB 401, § 38; Laws 1997, LB 310, § 11; Laws 1997, LB 752, § 178; Laws 2001, LB 213, § 1; Laws 2004, LB 1005, § 74; Laws 2006, LB 994, § 100; Laws 2007, LB296, § 503.

71-1914.01. Unlicensed child care; investigation.

When the department receives a complaint of allegedly improper unlicensed care, the department shall investigate the claim and shall go to the premises of the alleged unlicensed program to ascertain if child care is being provided there which must be licensed according to the Child Care Licensing Act. If unlicensed child care is occurring in violation of the act, the person providing the unlicensed care shall have thirty days to either become licensed or cease providing unlicensed child care. The department shall visit the program again after such thirty-day period. If the person has not initiated action to become licensed or ceased providing unlicensed child care, the department may involve law enforcement and may proceed under sections 71-1914.02 and 71-1914.03.

Source: Laws 1997, LB 310, § 8; Laws 2004, LB 1005, § 75.

71-1914.02. Unlicensed child care; restraining order or injunction; department; powers.

The department may apply for a restraining order or a temporary or permanent injunction against any person violating the Child Care Licensing Act by providing unlicensed child care when a license is required. The district court of the county where the violation is occurring shall have jurisdiction to grant such relief upon good cause shown. Relief may be granted notwithstanding the existence of any other remedy at law and shall be granted without bond.

Source: Laws 1997, LB 310, § 9; Laws 2004, LB 1005, § 76.

71-1914.03. Unlicensed child care; violations; penalty; county attorney; duties.

(1) Any person violating the Child Care Licensing Act by providing unlicensed child care when a license is required is guilty of a Class IV misdemeanor. Each day the violation continues shall be a separate offense.

(2) The county attorney of the county in which any provision of unlicensed child care in violation of the act is occurring shall, when notified of such violation by the department or a law enforcement agency, cause appropriate proceedings under subsection (1) of this section to be instituted and pursued in a court of competent jurisdiction.

Source: Laws 1997, LB 310, § 10; Laws 2004, LB 1005, § 77.

71-1915. Department; emergency powers; injunction.

(1) Whenever the department finds that an emergency exists requiring immediate action to protect the physical well-being and safety of a child in a program, the department may, without notice or hearing, issue an order declaring the existence of such an emergency and requiring that such action be taken as the department deems necessary to meet the emergency. The order may include an immediate prohibition on the care of children by the licensee other than children of the licensee. An order under this subsection shall be effective immediately. Any person to whom the order is directed shall comply immediately, and upon application to the department, the person shall be afforded a hearing as soon as possible and not later than ten days after his or her application for the hearing. On the basis of such hearing the department shall continue to enforce such order or rescind or modify it.

(2) The department may petition the appropriate district court for an injunction whenever there is the belief that any person is violating the Child Care Licensing Act, an order issued pursuant to the act, or any rule or regulation adopted and promulgated pursuant to the act. It shall be the duty of each county attorney or the Attorney General to whom the department reports a violation to cause appropriate proceedings to be instituted without delay to ensure compliance with the act, rules, regulations, and orders.

Source: Laws 1984, LB 130, § 8; Laws 1987, LB 472, § 5; Laws 1988, LB 1013, § 3; Laws 1993, LB 510, § 3; Laws 1995, LB 401, § 39; Laws 1997, LB 310, § 12; Laws 1999, LB 594, § 56; Laws 2001, LB 213, § 2; Laws 2004, LB 1005, § 78; Laws 2007, LB296, § 504.

71-1916. Department; administrative procedures.

(1) The department shall adopt and promulgate such rules and regulations, consistent with the Child Care Licensing Act, as necessary for (a) the proper care and protection of children in programs regulated under the act, (b) the issuance and discipline of licenses, and (c) the proper administration of the act.

(2) The department shall adopt and promulgate rules and regulations establishing standards for the physical well-being, safety, and protection of children in programs licensed under the Child Care Licensing Act. Such standards shall insure that the program is providing proper care for and treatment of the children served and that such care and treatment is consistent with the children's physical well-being, safety, and protection. Such standards shall not require the use of any specific instructional materials or affect the contents of any course of instruction which may be offered by a program. The rules and regulations shall contain provisions which encourage the involvement of parents in child care for their children and insure the availability, accessibility, and high quality of services for children.

(3) The rules and regulations shall be adopted and promulgated pursuant to the Administrative Procedure Act, except that the department shall hold a public hearing in each geographic area of the state prior to the adoption, amendment, or repeal of any rule or regulation. The department shall review and provide recommendations to the Governor for updating such rules and regulations at least every five years.

(4) The rules and regulations applicable to programs required to be licensed under the Child Care Licensing Act do not apply to any program operated or contracted by a public school district and subject to the rules and regulations of the State Department of Education as provided in section 79-1104.

(5) Contested cases of the department under the Child Care Licensing Act shall be in accordance with the Administrative Procedure Act.

Source: Laws 1984, LB 130, § 9; Laws 1988, LB 352, § 124; Laws 1995, LB 401, § 40; Laws 1997, LB 310, § 13; Laws 2001, LB 213, § 3; Laws 2004, LB 1005, § 79; Laws 2006, LB 994, § 101.

Cross References

- **Administrative Procedure Act**, see section 84-920.

71-1917. School-age child care program; inspections; Department of Health and Human Services; duties.

(1) For purposes of licensing a school-age child care program, a school-age child care program which operates in an accredited or approved school under the rules and regulations of the State Department of Education shall be deemed to meet the standards of the State Department of Education for the care and protection of children. The Department of Health and Human Services shall provide for inspections of school-age child care programs to determine compliance with this section. If a school-age child care program accepts reimbursement from a state or federal program, the Department of Health and Human Services shall also determine whether the school-age child care program complies with the requirements of the state or federal program for such reimbursement.

(2) The Department of Health and Human Services may, in consultation with the State Department of Education, adopt and promulgate rules and regulations as necessary to implement this section.

Source: Laws 2018, LB1034, § 62.

71-1918. Complaint tracking system.

The department shall maintain a complaint tracking system for licensees under the Child Care Licensing Act.

Source: Laws 2004, LB 1005, § 81.

71-1919. License denial; disciplinary action; grounds.

The department may deny the issuance of or take disciplinary action against a license issued under the Child Care Licensing Act on any of the following grounds:

(1) Failure to meet or violation of any of the requirements of the Child Care Licensing Act or the rules and regulations adopted and promulgated under the act;

(2) Violation of an order of the department under the act;

(3) Conviction of, or substantial evidence of committing or permitting, aiding, or abetting another to commit, any unlawful act, including, but not limited to, unlawful acts committed by an applicant or licensee under the act, household members who reside at the place where the program is provided, or employees of the applicant or licensee that involve:

(a) Physical abuse of children or vulnerable adults as defined in section 28-371;

(b) Endangerment or neglect of children or vulnerable adults;

(c) Sexual abuse, sexual assault, or sexual misconduct;

(d) Homicide;

(e) Use, possession, manufacturing, or distribution of a controlled substance listed in section 28-405;

(f) Property crimes, including, but not limited to, fraud, embezzlement, and theft by deception; and

(g) Use of a weapon in the commission of an unlawful act;

- (4) Conduct or practices detrimental to the health or safety of a person served by or employed at the program;
- (5) Failure to allow an agent or employee of the department access to the program for the purposes of inspection, investigation, or other information collection activities necessary to carry out the duties of the department;
- (6) Failure to allow state or local inspectors, investigators, or law enforcement officers access to the program for the purposes of investigation necessary to carry out their duties;
- (7) Failure to meet requirements relating to sanitation, fire safety, and building codes;
- (8) Failure to comply with or violation of the Medication Aide Act;
- (9) Failure to file a report of suspected abuse or neglect as required by sections 28-372 and 28-711;
- (10) Violation of any city, village, or county rules, regulations, or ordinances regulating licensees;
- (11) Failure to pay fees required under the Child Care Licensing Act; or
- (12) Failure to comply with the Step Up to Quality Child Care Act.

Source: Laws 2004, LB 1005, § 82; Laws 2007, LB296, § 505; Laws 2013, LB507, § 16.

Cross References

- **Medication Aide Act**, see section 71-6718.
- **Step Up to Quality Child Care Act**, see section 71-1952.

Annotations

- The Legislature has authorized the Department of Health and Human Services to make various rules and regulations necessary for the care and protection of children. That authorization extends to making rules for childcare providers and facilities. Failure to abide by those rules may be cause for discipline against a licensee or the revocation of a license to operate. *Marion's v. Nebraska Dept. of Health & Human Servs.*, 289 Neb. 982, 858 N.W.2d 178 (2015).

71-1920. Disciplinary action; types; fines; disposition.

- (1) The department may impose any one or a combination of the following types of disciplinary action against a license issued under the Child Care Licensing Act:
- (a) Issue a probationary license;
 - (b) Suspend or revoke a provisional, probationary, or operating license;
 - (c) Impose a civil penalty of up to five dollars per child, based upon the number of children for which the program is authorized to provide child care on the effective date of the finding of violation, for each day the program is in violation;
 - (d) Establish restrictions on new enrollment in the program;
 - (e) Establish restrictions or other limitations on the number of children or the age of the children served in the program; or
 - (f) Establish other restrictions or limitations on the type of service provided by the program.
- (2) A person who has had a license revoked for any cause other than nonpayment of fees shall not be eligible to reapply for a license for a period of two years.
- (3) Any fine imposed and unpaid under the Child Care Licensing Act shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in any proper form of action in the name of the State of Nebraska in the district court of the county in which the program is located. The department shall, within thirty days after receipt, remit fines to the State Treasurer for credit to the permanent school fund.

Source: Laws 2004, LB 1005, § 83.

71-1921. Disciplinary action; considerations.

- (1) In determining what type of disciplinary action to impose, the department shall consider:
- (a) The gravity of the violation, including the probability that death or serious physical or mental harm will result, the severity of the actual or potential harm, and the extent to which the provisions of applicable statutes, rules, and regulations were violated;
 - (b) The diligence exercised by the program in identifying or correcting the violation;
 - (c) The degree of cooperation exhibited by the licensee in the identification, disclosure, and correction of the violation;
 - (d) Any previous violations committed by the program; and
 - (e) The financial benefit to the program of committing or continuing the violation.
- (2) If the licensee fails to correct a violation or to comply with a particular type of disciplinary action, the department may take additional disciplinary action as described in section 71-1920.

Source: Laws 2004, LB 1005, § 84.

71-1922. Denial of license; disciplinary action; notice; final; when.

(1) If the department determines to deny the issuance of or take disciplinary action against a license under the Child Care Licensing Act, the department shall send to the applicant or licensee, by certified mail to the address of the applicant or licensee, a notice setting forth the determination, the particular reasons for the determination, including a specific description of the nature of the violation and the statute, rule, regulation, or order violated, and the type of disciplinary action which is pending. A copy of the notice shall also be mailed to the person in charge of the program if the licensee is not actually involved in the daily operation of the program. If the licensee is a corporation, a copy of the notice shall be sent to the corporation's registered agent.

(2) The denial or disciplinary action shall become final fifteen days after the mailing of the notice unless the applicant or licensee, within such fifteen-day period, makes a written request for a hearing. The license shall continue in effect until the final order of the department if a hearing is requested. If the department does not receive such request within such fifteen-day period, the action of the department shall be final.

Source: Laws 2004, LB 1005, § 85; Laws 2007, LB296, § 506.

71-1923. Voluntary surrender of license.

A licensee may voluntarily surrender the license issued under the Child Care Licensing Act at any time, except that the department may refuse to accept a voluntary surrender of a license if the licensee is under investigation or if the department has initiated disciplinary action against the licensee.

Source: Laws 2004, LB 1005, § 86.

STATUTES RELATING TO RECREATIONAL FACILITIES

13-304. Recreational facilities; authorization; tax levy.

Any city, village, school district, township, or county shall have the power to join with any other political or governmental subdivision, with any agency or public corporation, whether federal, state, or local, or with any number or combinations thereof by contract or otherwise in the joint ownership, operation, or performance of any property, facility, power, or function or in agreements containing the provisions that one or more thereof operate or perform for the other or others, this power as set forth in this section to be only for the express purpose of acquiring, holding, improving, and operating any park, playground, swimming pool, recreation center, or other recreational use or facility. Each such political or governmental subdivision shall also individually have power to acquire, hold, improve, and operate any park, playground, swimming pool, recreation center, or other recreational use or facility. For the exercise of the powers set forth in this section, each such political or governmental subdivision shall have the power to levy a tax, to be known as a park and recreation tax, upon all the taxable property in its jurisdiction. This levy may be accumulated as a sinking fund from fiscal year to fiscal year to provide funds for the purpose of acquisition, holding, improvement, and operation of any park, playground, swimming pool, recreation center, or other recreational use or facility.

Source: Laws 1963, c. 481, § 1, p. 1549; Laws 1969, c. 86, § 8, p. 434; R.S.1943, (1983), § 23-820; Laws 1992, LB 719A, § 29.

Annotations

City may join with airport authority in acquisition of property for a park. *Bowley v. City of Omaha*, 181 Neb. 515, 149 N.W.2d 417 (1967).

STATUTES RELATING TO OFFENSES INVOLVING THE FAMILY RELATION

28-711. Child subjected to abuse or neglect; report; contents; toll-free number.

(1) When any physician, any medical institution, any nurse, any school employee, any social worker, the Inspector General appointed under section 43-4317, or any other person has reasonable cause to believe that a child has been subjected to child abuse or neglect or observes such child being subjected to conditions or circumstances which reasonably would result in child abuse or neglect, he or she shall report such incident or cause a report of child abuse or neglect to be made to the proper law enforcement agency or to the department on the toll-free number established by subsection (2) of this section. Such report may be made orally by telephone with the caller giving his or her name and address, shall be followed by a written report, and to the extent available shall contain the address and age of the abused or neglected child, the address of the person or persons having custody of the abused or neglected child, the nature and extent of the child abuse or neglect or the conditions and circumstances which would reasonably result in such child abuse or neglect, any evidence of previous child abuse or neglect including the nature and extent, and any other information which in the opinion of the person may be helpful in establishing the cause of such child abuse or neglect and the identity of the perpetrator or perpetrators. Law enforcement agencies receiving any reports of child abuse or neglect under this subsection shall notify the department pursuant to section 28-718 on the next working day by telephone or mail.

(2) The department shall establish a statewide toll-free number to be used by any person any hour of the day or night, any day of the week, to make reports of child abuse or neglect. Reports of child abuse or neglect not previously made to or by a law enforcement agency shall be made immediately to such agency by the department.

Source: Laws 1977, LB 38, § 150; Laws 1979, LB 505, § 2; Laws 1982, LB 522, § 4; Laws 1988, LB 463, § 43; Laws 2002, LB 1105, § 432; Laws 2005, LB 116, § 2; Laws 2012, LB821, § 39.

28-725. Information, report; confidential; violation; penalty.

All information of the department concerning reports of child abuse or neglect of noninstitutional children, including information in the tracking system of child protection cases maintained pursuant to section 28-715 or records in the central registry of child protection cases maintained pursuant to section 28-718, and all information of the department generated as a result of such reports or records, shall be confidential and shall not be disclosed except as specifically authorized by the Child Protection and Family Safety Act and section 81-3126 or other applicable law. The subject of the report of child abuse or neglect may authorize any individual or organization to receive the following information from the central registry of child protection cases maintained pursuant to section 28-718 which relates or pertains to him or her: (1) The date of the alleged child abuse or neglect; and (2) the classification of the case pursuant to section 28-720. Permitting, assisting, or encouraging the unauthorized release of any information contained in such reports or records shall be a Class V misdemeanor.

Source: Laws 1979, LB 505, § 13; Laws 1982, LB 522, § 8; Laws 2002, LB 642, § 7; Laws 2005, LB 116, § 17; Laws 2008, LB782, § 2; Laws 2014, LB853, § 15.

28-726. Information; access.

Except as provided in this section and sections 28-722 and 81-3126, no person, official, or agency shall have access to information in the tracking system of child protection cases maintained pursuant to section 28-715 or in records in the central registry of child protection cases maintained pursuant to section 28-718 unless in furtherance of purposes directly connected with the administration of the Child Protection and Family Safety Act. Such persons, officials, and agencies having access to such information shall include, but not be limited to:

- (1) A law enforcement agency investigating a report of known or suspected child abuse or neglect;
- (2) A county attorney in preparation of a child abuse or neglect petition or termination of parental rights petition;
- (3) A physician who has before him or her a child whom he or she reasonably suspects may be abused or neglected;
- (4) An agency having the legal responsibility or authorization to care for, treat, or supervise an abused or neglected child or a parent, a guardian, or other person responsible for the abused or neglected child's welfare who is the subject of the report of child abuse or neglect;
- (5) Any person engaged in bona fide research or auditing. No information identifying the subjects of the report of child abuse or neglect shall be made available to the researcher or auditor;
- (6) The Foster Care Review Office and the designated local foster care review board when the information relates to a child in a foster care placement as defined in section 43-1301. The information provided to the office and local board shall not include the name or identity of any person making a report of suspected child abuse or neglect;
- (7) The designated protection and advocacy system authorized pursuant to the Developmental Disabilities Assistance and Bill of Rights Act of 2000, 42 U.S.C. 15001, as the act existed on January 1, 2005, and the Protection and Advocacy for Mentally Ill Individuals Act, 42 U.S.C. 10801, as the act existed on September 1, 2001, acting upon a complaint received from or on behalf of a person with developmental disabilities or mental illness;
- (8) The person or persons having custody of the abused or neglected child in situations of alleged out-of-home child abuse or neglect;
- (9) The department, as required or authorized by state law, federal law, federal regulation, or applicable federal program provisions and in furtherance of its programs;
- (10) A probation officer administering juvenile intake services pursuant to section 29-2260.01, conducting court-ordered predispositional investigations prior to disposition, or supervising a juvenile upon disposition; and
- (11) A child advocacy center pursuant to team protocols and in connection with a specific case under review or investigation by a child abuse and neglect investigation team or a child abuse and neglect treatment team convened by a county attorney.

Source: Laws 1979, LB 505, § 14; Laws 1982, LB 522, § 9; Laws 1988, LB 463, § 47; Laws 1990, LB 1222, § 1; Laws 1992, LB 643, § 2; Laws 1994, LB 1035, § 7; Laws 1997, LB 119, § 4; Laws 2001, LB 214, § 2; Laws 2002, LB 642, § 8; Laws 2005, LB 116, § 18; Laws 2007, LB296, § 39; Laws 2008, LB782, § 3; Laws 2012, LB998, § 1; Laws 2013, LB561, § 1; Laws 2014, LB853, § 16; Laws 2020, LB1148, § 5.

STATUTES RELATING TO JUDGMENT ON CONVICTION - PROBATION

29-2264. Probation; completion; conviction may be set aside; conditions; retroactive effect.

(1) Whenever any person is placed on probation by a court and satisfactorily completes the conditions of his or her probation for the entire period or is discharged from probation prior to the termination of the period of probation, the sentencing court shall issue an order releasing the offender from probation. Such order in all felony cases shall provide notice that the person's voting rights are restored two years after completion of probation. The order shall include information on restoring other civil rights through the pardon process, including application to and hearing by the Board of Pardons.

(2) Whenever any person is convicted of an offense and is placed on probation by the court, is sentenced to a fine only, or is sentenced to community service, he or she may, after satisfactory fulfillment of the conditions of probation for the entire period or after discharge from probation prior to the termination of the period of probation and after payment of any fine and completion of any community service, petition the sentencing court to set aside the conviction.

(3)(a) Except as provided in subdivision (3)(b) of this section, whenever any person is convicted of an offense and is sentenced other than as provided in subsection (2) of this section, but is not sentenced to a term of imprisonment of more than one year, such person may, after completion of his or her sentence, petition the sentencing court to set aside the conviction.

(b) A petition under subdivision (3)(a) of this section shall be denied if filed:

- (i) By any person with a criminal charge pending in any court in the United States or in any other country;
- (ii) During any period in which the person is required to register under the Sex Offender Registration Act;
- (iii) For any misdemeanor or felony motor vehicle offense under section 28-306 or the Nebraska Rules of the Road; or

(iv) Within two years after a denial of a petition to set aside a conviction under this subsection.

(4) In determining whether to set aside the conviction, the court shall consider:

- (a) The behavior of the offender after sentencing;
- (b) The likelihood that the offender will not engage in further criminal activity; and
- (c) Any other information the court considers relevant.

(5) The court may grant the offender's petition and issue an order setting aside the conviction when in the opinion of the court the order will be in the best interest of the offender and consistent with the public welfare. The order shall:

- (a) Nullify the conviction;
 - (b) Remove all civil disabilities and disqualifications imposed as a result of the conviction; and
 - (c) Notify the offender that he or she should consult with an attorney regarding the effect of the order, if any, on the offender's ability to possess a firearm under state or federal law.
- (6) The setting aside of a conviction in accordance with the Nebraska Probation Administration Act shall not:
- (a) Require the reinstatement of any office, employment, or position which was previously held and lost or forfeited as a result of the conviction;
 - (b) Preclude proof of a plea of guilty whenever such plea is relevant to the determination of an issue involving the rights or liabilities of someone other than the offender;
 - (c) Preclude proof of the conviction as evidence of the commission of the offense whenever the fact of its commission is relevant for the purpose of impeaching the offender as a witness, except that the order setting aside the conviction may be introduced in evidence;
 - (d) Preclude use of the conviction for the purpose of determining sentence on any subsequent conviction of a criminal offense;
 - (e) Preclude the proof of the conviction as evidence of the commission of the offense in the event an offender is charged with a subsequent offense and the penalty provided by law is increased if the prior conviction is proved;
 - (f) Preclude the proof of the conviction to determine whether an offender is eligible to have a subsequent conviction set aside in accordance with the Nebraska Probation Administration Act;
 - (g) Preclude use of the conviction as evidence of commission of the offense for purposes of determining whether an application filed or a license issued under sections 71-1901 to 71-1906.01, the Child Care Licensing Act, or the Children's Residential Facilities and Placing Licensure Act or a certificate issued under sections 79-806 to 79-815 should be denied, suspended, or revoked;
 - (h) Preclude use of the conviction as evidence of serious misconduct or final conviction of or pleading guilty or nolo contendere to a felony or misdemeanor for purposes of determining whether an application filed or a certificate issued under sections 81-1401 to 81-1414.19 should be denied, suspended, or revoked;
 - (i) Preclude proof of the conviction as evidence whenever the fact of the conviction is relevant to a determination of the registration period under section 29-4005;

(j) Relieve a person who is convicted of an offense for which registration is required under the Sex Offender Registration Act of the duty to register and to comply with the terms of the act;

(k) Preclude use of the conviction for purposes of section 28-1206;

(l) Affect the right of a victim of a crime to prosecute or defend a civil action;

(m) Affect the assessment or accumulation of points under section 60-4,182; or

(n) Affect eligibility for, or obligations relating to, a commercial driver's license.

(7) For purposes of this section, offense means any violation of the criminal laws of this state or any political subdivision of this state including, but not limited to, any felony, misdemeanor, infraction, traffic infraction, violation of a city or village ordinance, or violation of a county resolution.

(8) Except as otherwise provided for the notice in subsection (1) of this section, changes made to this section by Laws 2005, LB 713, shall be retroactive in application and shall apply to all persons, otherwise eligible in accordance with the provisions of this section, whether convicted prior to, on, or subsequent to September 4, 2005.

(9) The changes made to this section by Laws 2018, LB146, and Laws 2020, LB881, shall apply to all persons otherwise eligible under this section, without regard to the date of the conviction sought to be set aside.

Source: Laws 1971, LB 680, § 19; Laws 1993, LB 564, § 1; Laws 1994, LB 677, § 1; Laws 1995, LB 401, § 1; Laws 1997, LB 310, § 1; Laws 1998, Spec. Sess., LB 1, § 3; Laws 2002, LB 1054, § 6; Laws 2003, LB 685, § 2; Laws 2004, LB 1005, § 3; Laws 2005, LB 53, § 3; Laws 2005, LB 713, § 3; Laws 2009, LB285, § 2; Laws 2012, LB817, § 2; Laws 2013, LB265, § 30; Laws 2018, LB146, § 1; Laws 2020, LB881, § 24; Laws 2021, LB51, § 3.

Cross References

Child Care Licensing Act, see section 71-1908.

Children's Residential Facilities and Placing Licensure Act, see section 71-1924.

Nebraska Rules of the Road, see section 60-601.

Sex Offender Registration Act, see section 29-4001.

Annotations

1. Application

2. Probation and civil disabilities

3. Convictions, set aside

4. Miscellaneous

1. Application

Being placed on probation is not a prerequisite to the application of this section. *State v. Wester*, 269 Neb. 295, 691 N.W.2d 536 (2005).

Subsection (2) of this section applies after (1) the satisfactory fulfillment of the conditions of probation for the entire period, (2) the discharge from probation prior to termination of the period of probation, or (3) after the payment of any fine if the defendant has been sentenced to a fine only. *State v. Wester*, 269 Neb. 295, 691 N.W.2d 536 (2005).

2. Probation and civil disabilities

While the Legislature is free to expand the statutory list of civil disabilities which are not restored by a judgment setting aside and nullifying a conviction pursuant to this section, such amendments cannot impair rights vested by judgments entered under prior versions of this section. *McCray v. Nebraska State Patrol*, 271 Neb. 1, 710 N.W.2d 300 (2006).

The removal of civil disabilities operates prospectively from the date of the order setting aside a defendant's conviction. *McCray v. Nebraska State Patrol*, 270 Neb. 225, 701 N.W.2d 349 (2005).

The provisions for discharge from probation and removal of civil disabilities and disqualifications do not apply to a jail sentence already served. *State v. Adamson*, 194 Neb. 592, 233 N.W.2d 925 (1975).

The Nebraska court's expunction of the defendant's conviction for possession of marijuana with intent to distribute, after defendant had served approximately half of probation, did not expunge the record for purposes of federal statute relating to receipt of firearms in interstate commerce by persons previously convicted of a crime punishable by imprisonment exceeding one year. *United States v. Germaine*, 720 F.2d 998 (8th Cir. 1983).

3. Convictions, set aside

Confinement in the county jail as a condition of probation does not bar a person from seeking to have a conviction set aside pursuant to subsection (2) of this section. *State v. Kudlacz*, 288 Neb. 656, 850 N.W.2d 755 (2014).

Subsection (2) of this section authorizes any person convicted of a misdemeanor or a felony and placed on probation or sentenced to a fine only to petition the sentencing court to set aside the conviction after satisfactory fulfillment of the conditions of probation for the entire period, or after early discharge, and payment of any fine. *State v. Kudlacz*, 288 Neb. 656, 850 N.W.2d 755 (2014).

Amendments to this section that allow a set-aside conviction to be used for purposes of determining risk under the Sex Offender Registration Act do not apply retroactively to a sex offender whose prior convictions for non-sex-offenses were set aside prior to the amendments, and thus, the offender's set-aside convictions could not be used for risk assessment under the act. Orders setting aside the offender's convictions vested him with the right to have the set-aside convictions used only for those purposes listed in this section at the time the orders were entered. *McCray v. Nebraska State Patrol*, 271 Neb. 1, 710 N.W.2d 300 (2006).

An order setting aside a conviction is a final judgment which nullifies the conviction and removes all civil disabilities which were not exempted from restoration by this section as it existed on the date of the order. *McCray v. Nebraska State Patrol*, 271 Neb. 1, 710 N.W.2d 300 (2006).

The fact that use of a conviction that has been set aside under this section is logically consistent with other uses enumerated in this section does not permit a court to read such language into this section. *McCray v. Nebraska State Patrol*, 271 Neb. 1, 710 N.W.2d 300 (2006).

This section indicates that it is the province of the sentencing court to set aside a conviction and gives guidelines for determination of whether to set aside a conviction. *State v. Wester*, 269 Neb. 295, 691 N.W.2d 536 (2005).

When the Legislature enacted the 1993 amendment to subsection (2) of this section, it intended to include those who had been fined only within the class of those who could have their convictions set aside. *State v. Wester*, 269 Neb. 295, 691 N.W.2d 536 (2005).

4. Miscellaneous

This section is constitutional. It does not violate the separation of powers clause of the Nebraska Constitution, article II, section 1, as an infringement of the power expressly delegated to the Board of Pardons. *State v. Spady*, 264 Neb. 99, 645 N.W.2d 539 (2002).

Where defendant admitted a felony conviction, his introduction of order terminating probation was permissible and did not open matter to further development. *State v. Boss*, 195 Neb. 467, 238 N.W.2d 639 (1976).

STATUTES RELATING TO QUALITY CHILD CARE ACT

43-2601. Act, how cited.

Sections 43-2601 to 43-2625 shall be known and may be cited as the Quality Child Care Act.

Source: Laws 1991, LB 836, § 1; Laws 1995, LB 401, § 2.

43-2602. Legislative intent.

It is the intent of the Legislature to promote the growth and development of a comprehensive child care system which meets the needs of families in Nebraska by encouraging high-quality, affordable, and accessible child care services that are educationally and developmentally appropriate. The Legislature finds that existing child care resources are inadequate to meet the need for services and that high-quality services can substantially increase the well-being of children and families.

Source: Laws 1991, LB 836, § 2.

43-2603. Legislative declarations.

The Legislature declares that it shall be the policy of the State of Nebraska to:

(1) Recognize the family as the most important social and economic unit of society and support the central role parents play in raising children. All parents are encouraged to care for and nurture their children through the traditional methods of parental care at home. However, to the extent early childhood care and education and school-age-care programs are used, parents are encouraged to participate fully in the effort to improve the quality of such programs;

(2) Promote a variety of culturally and developmentally appropriate child care programs of high quality;

(3) Promote the growth, development, and safety of children by working with community groups and agencies, including providers and parents, to establish standards for high-quality programs, training of providers, fair and equitable monitoring, and salary levels commensurate with provider responsibilities and support services;

(4) Promote equal access to high-quality, affordable, and socioeconomically integrated programs for all children and families; and

(5) Facilitate broad community and private sector involvement in the provision of high-quality programs to foster economic development and assist business.

The Legislature supports the full integration of children with special needs into the same child care environments serving children with no identified handicapping conditions.

The Legislature also finds that family child care homes should be the primary focus in upgrading child care programs in Nebraska at this time. There is a need for a larger, more visible, and better trained supply of family child care homes.

Source: Laws 1991, LB 836, § 3; Laws 1995, LB 401, § 3.

43-2604. Legislative findings and priorities.

The Legislature finds that since the majority of children of prekindergarten age will continue to be served in private child care settings and programs, an investment of public resources in upgrading the training levels of staff will be an investment in all the children of the state. Coordination of existing training opportunities offered by agencies would greatly enhance the ability of providers in local communities to gain access to relevant training and would also enhance efforts to provide training which is sensitive to local needs. The Legislature also finds that training which brings together staff from various programs can provide a setting in which to initiate and promote collaborative efforts at the local level.

The Legislature finds that the highest priority need for training is for family child care home providers.

The Legislature further finds that the funding provided by the federal Child Care and Development Block Grant Act of 1990 will provide significant new funding to improve child care and early childhood education and school-age care in Nebraska.

Source: Laws 1991, LB 836, § 4; Laws 1995, LB 401, § 4.

43-2605. Terms, defined.

For purposes of the Quality Child Care Act:

(1) Child care shall mean the care and supervision of children in lieu of parental care and supervision and shall include programs; and

(2) Programs shall mean the programs listed in subdivision (2) of section 71-1910.

Source: Laws 1991, LB 836, § 5; Laws 1995, LB 401, § 5; Laws 2007, LB296, § 148.

43-2606. Providers of child care and school-age-care programs; training requirements; use of Nebraska Early Childhood Professional Record System.

(1) The Department of Health and Human Services shall adopt and promulgate rules and regulations for mandatory training requirements for providers of child care and school-age-care programs. Such requirements shall include preservice orientation and at least four hours of annual inservice training. All child care programs required to be licensed under section 71-1911 shall show completion of a preservice orientation approved or delivered by the department prior to receiving a provisional license.

(2) Beginning January 1, 2020, for programs that report to the Nebraska Early Childhood Professional Record System created under section 71-1962, the department shall use the Nebraska Early Childhood Professional Record System to (a) document the training levels of staff in specific child care settings to assist parents in selecting optimal care settings and (b) verify minimum training requirements of employees of such programs.

(3) The training requirements shall be designed to meet the health, safety, and developmental needs of children and shall be tailored to the needs of licensed providers of child care programs. Preservice orientation and the training requirements for providers of child care programs shall include, but not be limited to, information on sudden unexpected infant death syndrome, abusive head trauma in infants and children, crying plans, and child abuse.

(4) The department shall provide or arrange for training opportunities throughout the state and shall provide information regarding training opportunities to all providers of child care programs at the time of registration or licensure, when renewing a registration, or on a yearly basis following licensure.

(5) Each provider of child care and school-age-care programs receiving orientation or training shall provide his or her social security number to the department.

(6) The department shall review and provide recommendations to the Governor for updating rules and regulations adopted and promulgated under this section at least every five years.

Source: Laws 1991, LB 836, § 6; Laws 1995, LB 401, § 6; Laws 1996, LB 1044, § 219; Laws 1997, LB 307, § 89; Laws 1997, LB 310, § 2; Laws 1997, LB 752, § 106; Laws 1999, LB 594, § 22; Laws 1999, LB 828, § 4; Laws 2006, LB 994, § 62; Laws 2007, LB296, § 149; Laws 2018, LB717, § 1; Laws 2019, LB60, § 1; Laws 2019, LB590, § 1.

43-2607. Early Childhood Program Training Fund; created; use; investment; contracts authorized.

There is hereby created the Early Childhood Program Training Fund. The fund shall be administered by the State Department of Education and shall be used to enhance, provide, and coordinate training for providers of programs. Emphasis shall be placed on the coordination of and dissemination of information about existing training opportunities. Such training may include:

(1) Programs targeted to parents needing or using child care to assist them in selecting optimum child care settings;

(2) Specialized training regarding the care of children with special needs; and

(3) Programs concerning health, safety, or developmental needs of children.

The department may contract with any public or private entity to provide such training. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1991, LB 836, § 7; Laws 1994, LB 1066, § 28; Laws 1995, LB 401, § 7.

Cross References

- **Nebraska Capital Expansion Act**, see section 72-1269.
- **Nebraska State Funds Investment Act**, see section 72-1260.

43-2608. Toll-free hotline for providers; established.

The Department of Health and Human Services shall establish a statewide toll-free hotline to provide immediate responses to the needs of providers of programs. Such hotline may be operated by the department, or the department may contract with a state agency or with any other public or private entity capable of providing such service to operate the hotline.

Source: Laws 1991, LB 836, § 8; Laws 1995, LB 401, § 8; Laws 1996, LB 1044, § 220; Laws 1997, LB 307, § 90.

43-2609. Family child care homes; voluntary registration; department; powers and duties; payments; restricted.

(1) The Legislature finds that a system of voluntary registration would provide a mechanism for participation in the food programs offered by the United States Department of Agriculture, for eligibility to receive funds under the federal Child Care Subsidy program, for support and assistance to unlicensed family child care home providers, and for voluntary participation in training.

(2) The Department of Health and Human Services shall institute a system of voluntary registration for family child care homes not required to be licensed under section 71-1911. The department shall promulgate standards for such voluntary registration. The application for registration shall include the applicant's social security number. The department shall not make payments for child care, from any state or federal funds, to any family child care home provider not voluntarily registered under this section.

(3) The department shall issue a certificate of registration to any family child care home provider registered pursuant to this section.

(4) For purposes of implementing voluntary registration, the department may contract with family child care home associations or full-service community-based agencies to carry out such voluntary registration procedures for the department.

Source: Laws 1991, LB 836, § 9; Laws 1995, LB 401, § 9; Laws 1996, LB 1044, § 221; Laws 1997, LB 307, § 91; Laws 1997, LB 752, § 107.

43-2610. Repealed. Laws 2000, LB 1135, § 34.

43-2611. Repealed. Laws 2000, LB 1135, § 34.

43-2612. Repealed. Laws 2000, LB 1135, § 34.

43-2613. Repealed. Laws 2000, LB 1135, § 34.

43-2614. Repealed. Laws 2000, LB 1135, § 34.

43-2615. Repealed. Laws 2000, LB 1135, § 34.

43-2616. Family child care home; location.

Notwithstanding any other provision of law, including section 71-1914, family child care homes licensed by the Department of Health and Human Services pursuant to section 71-1911 or by a city, village, or county pursuant to subsection (2) of section 71-1914 may be established and operated in any residential zone within the exercised zoning jurisdiction of any city or village.

Source: Laws 1991, LB 836, § 16; Laws 1995, LB 401, § 16; Laws 1996, LB 1044, § 227; Laws 1997, LB 307, § 97; Laws 1999, LB 594, § 25; Laws 2007, LB296, § 150.

43-2617. Program provider; communicable disease; notice to parents.

A provider of a program shall notify the parents of enrolled children of the outbreak of any communicable disease in any child in the program on the same day the provider is informed of or observes the outbreak. The Department of Health and Human Services shall develop appropriate procedures to carry out this section.

Source: Laws 1991, LB 836, § 17; Laws 1995, LB 401, § 17; Laws 1996, LB 1044, § 228; Laws 1997, LB 307, § 98; Laws 2007, LB296, § 151.

43-2618. Family child care homes; inspections.

All family child care homes which are registered pursuant to section 43-2609 shall be inspected within sixty days of registration. All family child care homes registered under section 43-2609 shall be inspected at least every two

years after the initial inspection. It is the intent of the Legislature that registered family child care homes be inspected annually if sufficient funds are made available under the federal Child Care and Development Block Grant Act of 1990 for such purposes.

Source: Laws 1991, LB 836, § 18; Laws 1995, LB 401, § 18; Laws 1997, LB 310, § 3; Laws 2014, LB1050, § 1.

43-2619. Office for child development and early childhood education services.

There is hereby created within the State Department of Education an office for child development and early childhood education services.

Source: Laws 1991, LB 836, § 19.

43-2620. Collaboration of activities; duties.

The Department of Health and Human Services and the State Department of Education shall collaborate in their activities and may:

- (1) Encourage the development of comprehensive systems of child care programs and early childhood education programs which promote the wholesome growth and educational development of children, regardless of the child's level of ability;
- (2) Encourage and promote the provision of parenting education, developmentally appropriate activities, and primary prevention services by program providers;
- (3) Facilitate cooperation between the private and public sectors in order to promote the expansion of child care;
- (4) Promote continuing study of the need for child care and early childhood education and the most effective methods by which these needs can be served through governmental and private programs;
- (5) Coordinate activities with other state agencies serving children and families;
- (6) Strive to make the state a model employer by encouraging the state to offer a variety of child care benefit options to its employees;
- (7) Provide training for early childhood education providers as authorized in sections 79-1101 to 79-1103;
- (8) Develop and support resource and referral services for parents and providers that will be in place statewide by January 1, 1994;
- (9) Promote the involvement of businesses and communities in the development of child care throughout the state by providing technical assistance to providers and potential providers of child care;
- (10) Establish a voluntary accreditation process for public and private child care and early childhood education providers, which process promotes program quality;
- (11) At least biennially, develop an inventory of programs and early childhood education programs provided to children in Nebraska and identify the number of children receiving and not receiving such services, the types of programs under which the services are received, and the reasons children not receiving the services are not being served; and
- (12) Support the identification and recruitment of persons to provide child care for children with special needs.

Source: Laws 1991, LB 836, § 20; Laws 1995, LB 401, § 19; Laws 1996, LB 900, § 1052; Laws 1996, LB 1044, § 229; Laws 1997, LB 307, § 99; Laws 1999, LB 594, § 26; Laws 2000, LB 1135, § 10; Laws 2007, LB296, § 152.

43-2620.01. State Board of Education; voluntary accreditation process; rules and regulations.

The State Board of Education may adopt and promulgate reasonable rules and regulations to establish the voluntary accreditation process referred to in subdivision (10) of section 43-2620.

Source: Laws 1995, LB 401, § 21.

43-2621. Block grant funds; use.

- (1) Funds provided to the State of Nebraska pursuant to the Child Care and Development Block Grant Act of 1990, 42 U.S.C. 9857 et seq., as such act and sections existed on January 1, 2015, shall be used to implement the Quality Child Care Act, except as provided in subsections (3) and (4) of this section.
- (2) The Legislature finds that the reservations and allocations contained in subsections (3) and (4) of this section are made pursuant to the 2014 reauthorization of such federal act. The Legislature also finds that such reservations and allocations are designed to improve the quality of child care services and increase parental options for, and access to, high-quality child care and are in alignment with its comprehensive system of child care and early education programs.
- (3)(a)(i) Beginning October 1, 2015, the Department of Health and Human Services shall increase its reservation of federal funds received from the child care and development block grant under such federal act from four percent to seven percent for activities relating to the quality of child care services.
- (ii) Beginning October 1, 2017, the department shall increase its reservation of federal funds received from such block grant from seven percent to eight percent for activities relating to the quality of child care services.

(iii) Beginning October 1, 2019, the department shall increase its reservation of federal funds received from such block grant from eight percent to nine percent for activities relating to the quality of child care services.

(b) In addition to the percentages reserved in subdivision (3)(a) of this section for activities relating to the quality of child care services, beginning October 1, 2016, the department shall reserve three percent of the federal funds received from such block grant for activities relating to the quality of care for infants and toddlers.

(4)(a)(i) Beginning October 1, 2015, the increase from four percent to seven percent in reservation of federal funds for activities relating to the quality of child care services described in subdivision (3)(a)(i) of this section shall be allocated for quality rating and improvement system incentives and support under the Step Up to Quality Child Care Act.

(ii) Beginning October 1, 2017, the increase from seven percent to eight percent in the reservation of federal funds for activities relating to the quality of child care services described in subdivision (3)(a)(ii) of this section, plus the percentage allocated as described in subdivision (4)(a)(i) of this section, which together total four percent, shall be allocated for quality rating and improvement system incentives and support under the Step Up to Quality Child Care Act.

(iii) Beginning October 1, 2019, the increase from eight percent to nine percent in the reservation of federal funds for activities relating to the quality of child care services described in subdivision (3)(a)(iii) of this section, plus the percentage allocated as described in subdivision (4)(a)(ii) of this section, which together total five percent, shall be allocated for quality rating and improvement system incentives and support under the Step Up to Quality Child Care Act.

(iv) After the federal fiscal year beginning on October 1, 2019, five percent of federal funds provided to the State of Nebraska pursuant to the Child Care and Development Block Grant Act of 1990, 42 U.S.C. 9857 et seq., as such act and sections existed on January 1, 2015, which have been reserved for activities relating to the quality of child care services as described in subdivision (3)(a)(iii) of this section, shall be allocated for quality rating and improvement system incentives and support under the Step Up to Quality Child Care Act.

(b) Beginning October 1, 2016, the three-percent reservation of federal funds for activities relating to the quality of care for infants and toddlers described in subdivision (3)(b) of this section shall be allocated for providing grants to programs described in section 79-1104.02 that enter into agreements with child care providers.

(c) Funds distributed pursuant to this subsection shall comply with federal regulations contained in 45 C.F.R. 98.11, as such regulations existed on January 1, 2015.

(d) Nothing in this section shall prohibit the Department of Health and Human Services from allocating additional percentages of the child care and development block grant or other dollar amounts for activities relating to the quality of child care services or the quality of care for infants and toddlers.

Source: Laws 1991, LB 836, § 21; Laws 2015, LB547, § 1.

Cross References

- **Step Up to Quality Child Care Act**, see section 71-1952.

43-2622. Child Care Grant Fund; established; use; investment.

The Child Care Grant Fund is hereby established to be administered by the Department of Health and Human Services. The fund shall be used to make grants pursuant to section 43-2624. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1991, LB 836, § 23; Laws 1994, LB 1066, § 29; Laws 1996, LB 1044, § 230; Laws 1997, LB 307, § 100.

Cross References

- **Nebraska Capital Expansion Act**, see section 72-1269.
- **Nebraska State Funds Investment Act**, see section 72-1260.

43-2623. Appropriation to Child Care Grant Fund; legislative intent.

The Legislature recognizes that a shortage of quality, affordable, and accessible child care exists to the detriment of families and employers throughout the state. Workers are unable to enter or remain in the work force due to a shortage of child care resources. The high costs of starting or expanding a child care business creates a barrier to the creation of additional space, especially for infants and children with special needs. It is the intent of the Legislature to appropriate two hundred fifty thousand dollars annually to the Child Care Grant Fund from funds designated by the State of Nebraska under the Child Care and Development Block Grant Act of 1990.

Source: Laws 1991, LB 836, § 22.

43-2624. Child care grants.

The Department of Health and Human Services shall award grants to persons, community-based organizations, or schools needing assistance to start or improve a child care program or needing assistance to provide staff

training for a child care program. No grant shall exceed ten thousand dollars. A recipient of a grant shall not be eligible for a grant more than once in a three-year period. Child care grants shall be awarded on the basis of need for the proposed services in the community. Grants shall be given only to grantees who do not discriminate against children with disabilities or children whose care is funded by any state or federal funds. When considering grant applications of equal merit, the department shall award the grant to the applicant which has not previously received a grant from the Child Care Grant Fund.

Source: Laws 1991, LB 836, § 24; Laws 1995, LB 401, § 20; Laws 1996, LB 1044, § 231; Laws 1997, LB 307, § 101; Laws 1998, LB 1073, § 32.

43-2625. Child care grants; rules and regulations.

The Department of Health and Human Services shall adopt and promulgate rules and regulations setting forth criteria, application procedures, and methods to assure compliance with the criteria for grants to be awarded pursuant to section 43-2624.

Source: Laws 1991, LB 836, § 25; Laws 1996, LB 1044, § 232; Laws 1997, LB 307, § 102.

STATUTES RELATING TO EARLY CHILDHOOD INTERAGENCY COORDINATING COUNCIL

43-3401. Early Childhood Interagency Coordinating Council; created; membership; terms; expenses.

The Early Childhood Interagency Coordinating Council is created. The council shall advise and assist the collaborating agencies in carrying out the provisions of the Early Intervention Act, the Quality Child Care Act, sections 79-1101 to 79-1104, and other early childhood care and education initiatives under state supervision. Membership and activities of the council shall comply with all applicable provisions of federal law. Members of the council shall be appointed by the Governor and shall include, but not be limited to:

- (1) Parents of children who require early intervention services, early childhood special education, and other early childhood care and education services; and
- (2) Representatives of school districts, social services, health and medical services, family child care and center-based early childhood care and education programs, agencies providing training to staff of child care programs, resource and referral agencies, mental health services, developmental disabilities services, educational service units, Head Start, higher education, physicians, the Legislature, business persons, and the collaborating agencies.

Terms of the members shall be for three years, and a member shall not serve more than two consecutive three-year terms. Members shall be reimbursed for expenses as provided in sections 81-1174 to 81-1177, including child care expenses, with funds provided for such purposes through the Early Intervention Act, the Quality Child Care Act, and sections 79-1101 to 79-1104.

Members of the Nebraska Interagency Coordinating Council serving on July 13, 2000, shall constitute the Early Childhood Interagency Coordinating Council and shall serve for the remainder of their terms. The Governor shall make additional appointments as required by this section and to fill vacancies as needed. The Governor shall set the initial terms of additional appointees to result in staggered terms for members of the council. The Department of Health and Human Services and the State Department of Education shall provide and coordinate staff assistance to the council.

Source: Laws 2000, LB 1135, § 6; Laws 2006, LB 994, § 63; Laws 2007, LB296, § 170; Laws 2020, LB381, § 34.

Cross References

- **Early Intervention Act**, see section 43-2501.
- **Quality Child Care Act**, see section 43-2601.

43-3402. Council; advisory duties.

With respect to the Early Intervention Act, the Quality Child Care Act, and sections 79-1101 to 79-1104, the Early Childhood Interagency Coordinating Council shall serve in an advisory capacity to state agencies responsible for early childhood care and education, including care for school-age children, in order to:

- (1) Promote the policies set forth in the Early Intervention Act, the Quality Child Care Act, and sections 79-1101 to 79-1104;
- (2) Facilitate collaboration with the federally administered Head Start program;
- (3) Make recommendations to the Department of Health and Human Services, the State Department of Education, and other state agencies responsible for the regulation or provision of early childhood care and education programs on the needs, priorities, and policies relating to such programs throughout the state;
- (4) Make recommendations to the lead agency or agencies which prepare and submit applications for federal funding;
- (5) Review new or proposed revisions to rules and regulations governing the registration or licensing of early childhood care and education programs;

(6) Study and recommend additional resources for early childhood care and education programs; and
(7) Report biennially to the Governor and Legislature on the status of early intervention and early childhood care and education in the state. The report submitted to the Legislature shall be submitted electronically. Such report shall include (a) the number of license applications received under section 71-1911, (b) the number of such licenses issued, (c) the number of such license applications denied, (d) the number of complaints investigated regarding such licensees, (e) the number of such licenses revoked, (f) the number and dollar amount of civil penalties levied pursuant to section 71-1920, and (g) information which may assist the Legislature in determining the extent of cooperation provided to the Department of Health and Human Services by other state and local agencies pursuant to section 71-1914.

Source: Laws 2000, LB 1135, § 7; Laws 2006, LB 994, § 64; Laws 2007, LB296, § 171; Laws 2012, LB782, § 51.

Cross References

- **Early Intervention Act**, see section 43-2501.
- **Quality Child Care Act**, see section 43-2601.

43-3403. Council; Early Intervention Act; duties.

With respect to the Early Intervention Act, the Early Childhood Interagency Coordinating Council and collaborating agencies shall make recommendations to the lead agency or agencies relating to:

- (1) The general administration, supervision, and monitoring of programs and activities receiving federal funds under the federal early intervention program to ensure compliance with federal law;
- (2) The identification and coordination of all available resources within the state from federal, state, local, and private sources;
- (3) The development of procedural safeguards, including procedures for complaints and appeals, to ensure that services coordination is provided to eligible infants or toddlers with disabilities or possible disabilities and their families in a timely manner pending the resolution of any disputes among public agencies or service providers;
- (4) The entry into formal interagency agreements that include components necessary to ensure meaningful cooperation and coordination; and
- (5) The coordination of interagency rules and regulations pursuant to the Early Intervention Act.

Source: Laws 2000, LB 1135, § 8.

Cross References

- **Early Intervention Act**, see section 43-2501.

STATUTES RELATING TO NEBRASKA RULES OF THE ROAD - OCCUPANT PROTECTION SYSTEMS

60-6,267. Use of restraint system, occupant protection system, or three-point safety belt system; when; information and education program.

- (1) Any person in Nebraska who drives any motor vehicle which has or is required to have an occupant protection system or a three-point safety belt system shall ensure that all children up to eight years of age being transported by such vehicle (a) use a child passenger restraint system of a type which meets Federal Motor Vehicle Safety Standard 213 as developed by the National Highway Traffic Safety Administration, as such standard existed on January 1, 2009, and which is correctly installed in such vehicle and (b) occupy a seat or seats, other than a front seat, if such seat or seats are so equipped with such passenger restraint system and such seat or seats are not already occupied by a child or children under eight years of age. In addition, all children up to two years of age shall use a rear-facing child passenger restraint system until the child outgrows the child passenger restraint system manufacturer's maximum allowable height or weight.
- (2) Any person in Nebraska who drives any motor vehicle which has or is required to have an occupant protection system or a three-point safety belt system shall ensure that all children eight years of age and less than eighteen years of age being transported by such vehicle use an occupant protection system.
- (3) Subsections (1) and (2) of this section apply to autocycles and to every motor vehicle which is equipped with an occupant protection system or is required to be equipped with restraint systems pursuant to Federal Motor Vehicle Safety Standard 208, as such standard existed on January 1, 2009, except taxicabs, mopeds, motorcycles, and any motor vehicle designated by the manufacturer as a 1963 year model or earlier which is not equipped with an occupant protection system.
- (4) Whenever any licensed physician determines, through accepted medical procedures, that use of a child passenger restraint system by a particular child would be harmful by reason of the child's weight, physical condition, or other medical reason, the provisions of subsection (1) or (2) of this section shall be waived. The driver of any vehicle transporting such a child shall carry on his or her person or in the vehicle a signed written statement of the physician identifying the child and stating the grounds for such waiver.
- (5) The drivers of authorized emergency vehicles shall not be subject to the requirements of subsection (1) or (2) of this section when operating such authorized emergency vehicles pursuant to their employment.

(6) A driver of a motor vehicle shall not be subject to the requirements of subsection (1) or (2) of this section if the motor vehicle is being operated in a parade or exhibition and the parade or exhibition is being conducted in accordance with applicable state law and local ordinances and resolutions.

(7) The Department of Transportation shall develop and implement an ongoing statewide public information and education program regarding the use of child passenger restraint systems and occupant protection systems and the availability of distribution and discount programs for child passenger restraint systems.

(8) All persons being transported by a motor vehicle operated by a holder of a provisional operator's permit or a school permit shall use such motor vehicle's occupant protection system or a three-point safety belt system.

(9) For purposes of this section, motorcycle does not include an autocycle.

Source: Laws 1983, LB 306, § 2; Laws 1985, LB 259, § 1; Laws 1990, LB 958, § 1; Laws 1992, LB 958, § 3; R.S.Supp.,1992, § 39-6,103.01; Laws 1993, LB 370, § 363; Laws 2000, LB 410, § 1; Laws 2002, LB 1073, § 1; Laws 2004, LB 227, § 2; Laws 2006, LB 853, § 20; Laws 2007, LB239, § 7; Laws 2008, LB756, § 22; Laws 2009, LB219, § 1; Laws 2009, LB331, § 12; Laws 2011, LB67, § 1; Laws 2015, LB231, § 35; Laws 2017, LB339, § 219; Laws 2018, LB42, § 2; Laws 2018, LB909, § 104.

60-6,268. Use of restraint system or occupant protection system; violations; penalty; enforcement; when.

(1) A person violating any provision of subsection (1) or (2) of section 60-6,267 shall be guilty of an infraction as defined in section 29-431 and shall be fined twenty-five dollars for each violation. The failure to provide a child restraint system for more than one child in the same vehicle at the same time, as required in such subsection, shall not be treated as a separate offense.

(2) Enforcement of subsection (2) or (8) of section 60-6,267 shall be accomplished only as a secondary action when an operator of a motor vehicle has been cited or charged with a violation or some other offense unless the violation involves a person under the age of eighteen years riding in or on any portion of the vehicle not designed or intended for the use of passengers when the vehicle is in motion.

Source: Laws 1983, LB 306, § 3; R.S.1943, (1988), § 39-6,103.02; Laws 1993, LB 370, § 364; Laws 2000, LB 410, § 2; Laws 2002, LB 1073, § 2; Laws 2004, LB 227, § 3; Laws 2011, LB67, § 2.

STATUTES RELATING TO STEP UP TO QUALITY CHILD CARE ACT

71-1952. Step Up to Quality Child Care Act; act, how cited.

Sections 71-1952 to 71-1964 shall be known and may be cited as the Step Up to Quality Child Care Act.

Source:Laws 2013, LB507, § 1.

71-1953. Purposes of act.

The purposes of the Step Up to Quality Child Care Act are to (1) provide accountability for public funds invested in child care and early childhood education programs, (2) provide a path to higher quality for child care and early childhood education programs, (3) provide parents a tool by which to evaluate the quality of child care and early childhood education programs, and (4) improve child development and school readiness outcomes.

Source:Laws 2013, LB507, § 2.

71-1954. Terms, defined.

For purposes of the Step Up to Quality Child Care Act:

(1) Applicable child care and early childhood education programs include:

(a) Child care programs licensed under the Child Care Licensing Act which serve children from birth to kindergarten-entrance age;

(b) Prekindergarten services and prekindergarten programs established pursuant to section 79-1104; and

(c) The federal Head Start programs, 42 U.S.C. 9831 et seq., and Early Head Start programs, 42 U.S.C. 9840a; and

(2) Fiscal year means the fiscal year of the State of Nebraska.

Source:Laws 2013, LB507, § 3.

Cross References

- **Child Care Licensing Act**, see section 71-1908.

71-1955. Quality rating and improvement system; State Department of Education; Department of Health and Human Services; duties.

The State Department of Education and the Department of Health and Human Services shall collaborate (1) to develop, implement, and provide oversight for a quality rating and improvement system for participating applicable child care and early childhood education programs, (2) to establish quality rating criteria for the system as provided in sections 71-1956 and 71-1958, (3) to use the quality rating criteria to assign quality scale ratings to

participating applicable child care and early childhood education programs as provided in sections 71-1956 and 71-1958, and (4) to provide incentives and support, including professional development, training, and postsecondary education opportunities, to participating applicable child care and early childhood education programs as provided in section 71-1961.

Source:Laws 2013, LB507, § 4.

71-1956. Child care and early childhood education program; rating; quality rating criteria.

(1) Each applicable child care and early childhood education program which applies under section 71-1957 to participate in the quality rating and improvement system developed pursuant to section 71-1955 shall be rated on a quality scale using ratings labeled steps one through five and based on quality rating criteria.

(2) Quality rating criteria shall be used to assign a quality scale rating as appropriate for the specific step. The criteria shall include, but not be limited to:

(a) Licensing requirements as specified in the Child Care Licensing Act;

(b) Facility safety and management;

(c) Child development and school readiness outcomes;

(d) Program curriculum, learning environment, and adult-child interactions;

(e) Professional development and training;

(f) Family engagement;

(g) Program administration;

(h) Standards used by nationally recognized accrediting bodies approved by the State Department of Education; and

(i) Other standards as required by the State Department of Education for prekindergarten services and prekindergarten programs established pursuant to section 79-1104 and federal performance standards for Head Start and Early Head Start programs.

Source: Laws 2013, LB507, § 5.

Cross References

- **Child Care Licensing Act**, see section 71-1908.

71-1957. Participation in quality rating and improvement system.

Application to participate in the quality rating and improvement system shall be voluntary for applicable child care and early childhood education programs with the following exceptions:

(1) Beginning July 1, 2014, and not later than December 31, 2014, each applicable child care or early childhood education program that received over five hundred thousand dollars in child care assistance pursuant to section 68-1202 for FY2011-12 shall apply to participate in the quality rating and improvement system and shall be assigned a quality scale rating as provided in sections 71-1956 and 71-1958;

(2) Beginning July 1, 2015, and not later than December 31, 2015, each applicable child care or early childhood education program that received over two hundred fifty thousand dollars in child care assistance pursuant to section 68-1202 for FY2011-12 shall apply to participate in the quality rating and improvement system and shall be assigned a quality scale rating as provided in sections 71-1956 and 71-1958; and

(3) Beginning July 1, 2016, each applicable child care or early childhood education program that received over two hundred fifty thousand dollars in child care assistance pursuant to section 68-1202 in the preceding fiscal year shall, not later than December 31 of the applicable year or six months after actual receipt of such assistance, whichever is later, apply to participate in the quality rating and improvement system and shall be assigned a quality scale rating as provided in sections 71-1956 and 71-1958.

Source: Laws 2013, LB507, § 6.

71-1958. Quality scale rating; application; assignment of rating.

(1) Quality rating criteria shall be used as provided in this section to assign a quality scale rating to each applicable child care or early childhood education program if the program applies under section 71-1957 to participate in the quality rating and improvement system developed pursuant to section 71-1955.

(2) Licensure under the Child Care Licensing Act for a program which serves children from birth to kindergarten-entrance age shall be sufficient criteria to be rated at step one.

(3) Meeting criteria established by the State Department of Education for a prekindergarten service or prekindergarten program established pursuant to section 79-1104 and reporting to the Nebraska Early Childhood Professional Record System created under section 71-1962 shall be sufficient criteria to be rated at step three.

(4) Meeting performance standards required by the federal government for a federal Head Start program or Early Head Start program and reporting to the Nebraska Early Childhood Professional Record System created under section 71-1962 shall be sufficient criteria to be rated at step three.

(5) Accreditation by a nationally recognized accrediting body approved by the State Department of Education and reporting to the Nebraska Early Childhood Professional Record System created under section 71-1962 shall be sufficient criteria to be rated at step three.

(6) A participating applicable child care or early childhood education program operating under a provisional license shall have a quality scale rating at step one even if it meets other quality rating criteria. A participating applicable child care or early childhood education program in good standing operating under a provisional license due to a change in license type may be rated above step one. If a participating applicable child care or early childhood education program is at a quality scale rating higher than step one and the program's license is placed on disciplinary limitation, probation, or suspension, such program shall have its quality scale rating changed to step one. If an applicable child care or early childhood education program's license is revoked, the program is not eligible to participate in or receive a quality scale rating under the quality rating and improvement system until the program has an operating license which is in full force and effect.

Source: Laws 2013, LB507, § 7; Laws 2016, LB1066, § 1; Laws 2021, LB351, § 1.

Cross References

- **Child Care Licensing Act**, see section 71-1908.

71-1959. Quality scale rating review; reevaluation.

(1) An applicable child care or early childhood education program participating in the quality rating and improvement system developed pursuant to section 71-1955 may apply no more than once each fiscal year to have its quality scale rating reviewed.

(2) A participant shall meet all of the quality rating criteria for a step-two rating prior to applying for a step-three, step-four, or step-five rating. To meet quality rating criteria for a step-three, step-four, or step-five rating, a participant shall be independently evaluated based upon the quality rating criteria.

(3) A participant with a quality scale rating at step two through step four shall be reevaluated at least once every two fiscal years but no more than once in any fiscal year, including any review pursuant to subsection (1) of this section. A participant with a quality scale rating at step five shall be reevaluated at least once every five years but no more than once in any fiscal year. If a participant has achieved accreditation and is being reevaluated by a nationally recognized accrediting body approved by the State Department of Education, the state shall make reasonable efforts to conduct its reevaluation in the same fiscal year that the accrediting body is reevaluating the program.

Source: Laws 2013, LB507, § 8.

71-1960. License under Child Care Licensing Act; denial of license or disciplinary act authorized.

The Department of Health and Human Services may deny the issuance of or take disciplinary action against a license issued under the Child Care Licensing Act to a participating applicable child care or early childhood education program for failure to comply with the Step Up to Quality Child Care Act.

Source: Laws 2013, LB507, § 9.

Cross References

- **Child Care Licensing Act**, see section 71-1908.

71-1961. Quality rating and improvement system incentives and support.

Quality rating and improvement system incentives and support under the Step Up to Quality Child Care Act shall include, but not be limited to:

(1) Tiered child care subsidy reimbursements as provided in section 68-1206 based upon quality scale ratings of step three or higher that reflect the cost of higher quality programs and promote affordability of high-quality child care and early childhood education programs for all families;

(2) Incentive bonuses given to providers of child care and early childhood education programs upon completion of specific requirements of step two ratings or higher to improve quality based upon the quality rating criteria established pursuant to sections 71-1956 and 71-1958;

(3) Professional development, training, and scholarships developed in collaboration with community-based organizations, postsecondary education representatives, and other stakeholders;

(4) Support that expands family engagement in and understanding of high-quality early childhood education in ways that are inclusive and respectful of diversity of families and children with special needs; and

(5) Other incentives as necessary to carry out the Step Up to Quality Child Care Act.

Source: Laws 2013, LB507, § 10.

71-1962. Nebraska Early Childhood Professional Record System; creation and operation; State Department of Education; duties; develop classification system for eligible staff members; use.

(1) Not later than March 1, 2014, the State Department of Education shall create and operate the Nebraska Early Childhood Professional Record System. The system shall be designed in order to:

- (a) Establish a database of Nebraska's early childhood education workforce;
- (b) Verify educational degrees and professional credentials held and relevant training completed by employees of participating applicable child care and early childhood education programs; and
- (c) Provide such information to the Department of Health and Human Services for use in evaluating applications to be rated at a step above step one under section 71-1959.

(2) When an applicable child care or early childhood education program participating in the quality rating and improvement system developed pursuant to section 71-1955 applies under section 71-1959 to be rated at a step above step one, the child care or early childhood education program shall report the educational degrees and professional credentials held and relevant training completed by its child care and early childhood education employees to the Nebraska Early Childhood Professional Record System for the program to be eligible for a quality scale rating above step one.

(3) Any child care or early childhood education provider residing or working in Nebraska may report his or her educational degrees and professional credentials held, relevant training completed, and work history to the Nebraska Early Childhood Professional Record System.

(4) The State Department of Education shall develop a classification system for all eligible staff members as defined in section 77-3603 who are employees of or who are self-employed individuals providing services for applicable child care and early childhood education programs listed in the Nebraska Early Childhood Professional Record System. The classification system shall be based on the eligible staff members' educational degrees and professional credentials held, relevant training completed, and work history and shall be made up of four levels, with level one being the least qualified and level four being the most qualified. The minimum qualification for an eligible staff member to be classified as level one shall be a Child Development Associate Credential or a one-year certificate or diploma in early childhood education or child development. The classification system shall be used for purposes of the tax credit granted in section 77-3605.

Source: Laws 2013, LB507, § 11; Laws 2015, LB525, § 1; Laws 2016, LB889, § 9; Laws 2020, LB266, § 1.

71-1963. Quality scale ratings available on website; when.

By July 1, 2017, the Department of Health and Human Services in collaboration with the State Department of Education shall make the quality scale ratings of participating applicable child care and early childhood education programs under the quality rating and improvement system developed pursuant to section 71-1955 available on a publicly accessible website to provide parents a tool by which to evaluate the quality of child care and early childhood education programs and to promote accountability for public funding of such programs.

Source: Laws 2013, LB507, § 12.

71-1964. Rules and regulations.

The State Department of Education and the Department of Health and Human Services may adopt and promulgate rules and regulations to carry out the Step Up to Quality Child Care Act.

Source: Laws 2013, LB507, § 13.

STATUTES RELATING TO NEBRASKA CLEAN INDOOR AIR ACT

71-5716. Act, how cited.

Sections 71-5716 to 71-5735 shall be known and may be cited as the Nebraska Clean Indoor Air Act.

Source: Laws 2008, LB395, § 1; Laws 2015, LB118, § 8; Laws 2020, LB840, § 1.

71-5717. Purpose of act.

The purpose of the Nebraska Clean Indoor Air Act is to protect the public health and welfare by prohibiting smoking in public places and places of employment with limited exceptions for guestrooms and suites, research, tobacco retail outlets, electronic smoking device retail outlets, and cigar shops. The limited exceptions permit smoking in public places where the public would reasonably expect to find persons smoking, including guestrooms and suites which are subject to expectations of privacy like private residences, institutions engaged in research related to smoking, and tobacco retail outlets, electronic smoking device retail outlets, and cigar shops which provide the public legal retail outlets to sample, use, and purchase tobacco products and products related to smoking. The act shall not be construed to prohibit or otherwise restrict smoking in outdoor areas. The act shall not be construed to permit smoking where it is prohibited or otherwise restricted by other applicable law, ordinance, or resolution. The act shall be liberally construed to further its purpose.

Source: Laws 2008, LB395, § 2; Laws 2015, LB118, § 9; Laws 2020, LB840, § 2.

71-5718. Definitions, where found.

For purposes of the Nebraska Clean Indoor Air Act, the definitions found in sections 71-5718.01 to 71-5728 apply.

Source: Laws 2008, LB395, § 3; Laws 2020, LB840, § 3.

71-5718.01. Electronic smoking device, defined.

Electronic smoking device means an electronic nicotine delivery system as defined in section 28-1418.01. The term includes any such device regardless of whether it is manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen or under any other product name or descriptor. The term also includes any substance that is used in an electronic smoking device. The term does not include a diffuser, humidifier, prescription inhaler, or similar device.

Source: Laws 2020, LB840, § 4.

71-5718.02. Electronic smoking device retail outlet, defined; persons allowed to enter; employees; age restrictions.

(1) Electronic smoking device retail outlet means a store that:

(a) Is licensed as provided under sections 28-1421 and 28-1422;

(b) Sells electronic smoking devices and products directly related to electronic smoking devices;

(c) Does not sell alcohol or gasoline;

(d) Derives no more than twenty percent of its revenue from the sale of food and food ingredients as defined in section 77-2704.24; and

(e) Prohibits persons under twenty-one years of age from entering the store in accordance with subsection (2) of this section.

(2)(a) Prior to January 1, 2022, an electronic smoking device retail outlet shall not allow a person under twenty-one years of age to enter the store but may allow an employee who is under twenty-one years of age to work in the store.

(b) On and after January 1, 2022, an electronic smoking device retail outlet shall not allow a person under twenty-one years of age to enter the store and shall not allow an employee who is under twenty-one years of age to work in the store.

Source: Laws 2020, LB840, § 5.

71-5719. Employed, defined.

Employed means hired, contracted, subcontracted, or otherwise engaged to furnish goods or services.

Source: Laws 2008, LB395, § 4.

71-5720. Employee, defined.

Employee means a person who is employed by an employer in consideration for direct or indirect monetary wages, profit, or other remuneration.

Source: Laws 2008, LB395, § 5.

71-5721. Employer, defined.

Employer means a person, nonprofit entity, sole proprietorship, partnership, joint venture, corporation, limited partnership, limited liability company, cooperative, firm, trust, association, organization, or other business entity, including retail establishments where goods or services are sold, who or which employs one or more employees.

Source: Laws 2008, LB395, § 6.

71-5722. Guestroom or suite, defined.

Guestroom or suite means a sleeping room and directly associated private areas, such as a bathroom, a living room, and a kitchen area, if any, rented to the public for their exclusive transient occupancy, including, but not limited to, a guestroom or suite in a hotel, motel, inn, lodge, or other such establishment.

Source: Laws 2008, LB395, § 7.

71-5723. Indoor area, defined.

Indoor area means an area enclosed by a floor, a ceiling, and walls on all sides that are continuous and solid except for closeable entry and exit doors and windows and in which less than twenty percent of the total wall area is permanently open to the outdoors. For walls in excess of eight feet in height, only the first eight feet shall be used in determining such percentage.

Source: Laws 2008, LB395, § 8.

71-5724. Place of employment, defined.

Place of employment means an indoor area under the control of a proprietor that an employee accesses as part of his or her employment without regard to whether the employee is present or work is occurring at any given time. The indoor area includes, but is not limited to, any work area, employee breakroom, restroom, conference room, meeting room, classroom, employee cafeteria, and hallway. A private residence is a place of employment when such residence is being used as a licensed child care program and one or more children who are not occupants of such residence are present.

Source: Laws 2008, LB395, § 9.

71-5725. Proprietor, defined.

Proprietor means any employer, owner, operator, supervisor, manager, or other person who controls, governs, or directs the activities in a place of employment or public place.

Source :Laws 2008, LB395, § 10.

71-5726. Public place, defined.

Public place means an indoor area to which the public is invited or in which the public is permitted, whether or not the public is always invited or permitted. A private residence is not a public place.

Source: Laws 2008, LB395, § 11.

71-5727. Smoke or smoking, defined.

Smoke or smoking means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, hookah, or any other lighted or heated tobacco or plant product intended for inhalation, whether natural or synthetic, in any manner or in any form. The term includes the use of an electronic smoking device which creates an aerosol or vapor, in any manner or in any form.

Source: Laws 2008, LB395, § 12; Laws 2020, LB840, § 6.

71-5728. Tobacco retail outlet, defined.

Tobacco retail outlet means a store that sells only tobacco and products directly related to tobacco. Products directly related to tobacco do not include alcohol, coffee, soft drinks, candy, groceries, or gasoline.

Source: Laws 2008, LB395, § 13.

71-5729. Smoking in place of employment or public place prohibited.

Except as otherwise provided in section 71-5730, it is unlawful for any person to smoke in a place of employment or a public place.

Source: Laws 2008, LB395, § 14.

71-5730. Exemptions; legislative findings; legislative intent.

(1) The following indoor areas are exempt from section 71-5729:

- (a) Guestrooms and suites that are rented to guests and that are designated as smoking rooms, except that not more than twenty percent of rooms rented to guests in an establishment may be designated as smoking rooms. All smoking rooms on the same floor shall be contiguous, and smoke from such rooms shall not infiltrate into areas where smoking is prohibited under the Nebraska Clean Indoor Air Act;
- (b) Indoor areas used in connection with a research study on the health effects of smoking conducted in a scientific or analytical laboratory under state or federal law or at a college or university approved by the Coordinating Commission for Postsecondary Education;
- (c) Tobacco retail outlets; and
- (d) Cigar shops as defined in section 53-103.08.

(2) Electronic smoking device retail outlets are exempt from section 71-5729 as it relates to the use of electronic smoking devices only.

(3)(a) The Legislature finds that allowing smoking in tobacco retail outlets as a limited exception to the Nebraska Clean Indoor Air Act does not interfere with the original intent that the general public and employees not be unwillingly subjected to second-hand smoke since the general public does not frequent tobacco retail outlets and should reasonably expect that there would be second-hand smoke in tobacco retail outlets and could choose to avoid such exposure. The products that tobacco retail outlets sell are legal for customers who meet the age requirement. Customers should be able to try them within the tobacco retail outlet, especially given the way that tobacco customization may occur in how tobacco is blended and cigars are produced. The Legislature finds that exposure to second-hand smoke is inherent in the selling and sampling of cigars and pipe tobacco and that this

exposure is inextricably connected to the nature of selling this legal product, similar to other inherent hazards in other professions and employment.

(b) It is the intent of the Legislature to allow cigar and pipe smoking in tobacco retail outlets that meet specific statutory criteria not inconsistent with the fundamental nature of the business. This exception to the Nebraska Clean Indoor Air Act is narrowly tailored in accordance with the intent of the act to protect public places and places of employment.

(4)(a) The Legislature finds that allowing smoking in cigar shops as a limited exception to the Nebraska Clean Indoor Air Act does not interfere with the original intent that the general public and employees not be unwillingly subjected to second-hand smoke. This exception poses a de minimis restriction on the public and employees given the limited number of cigar shops compared to other businesses that sell alcohol, cigars, and pipe tobacco, and any member of the public should reasonably expect that there would be second-hand smoke in a cigar shop given the nature of the business and could choose to avoid such exposure.

(b) The Legislature finds that (i) cigars and pipe tobacco have different characteristics than other forms of tobacco such as cigarettes, (ii) cigars are customarily paired with various spirits such as cognac, single malt whiskey, bourbon, rum, rye, port, and others, and (iii) unlike cigarette smokers, cigar and pipe smokers may take an hour or longer to enjoy a cigar or pipe while cigarettes simply serve as a mechanism for delivering nicotine. Cigars paired with selected liquor creates a synergy unique to the particular pairing similar to wine paired with particular foods. Cigars are a pure, natural product wrapped in a tobacco leaf that is typically not inhaled in order to enjoy the taste of the smoke, unlike cigarettes that tend to be processed with additives and wrapped in paper and are inhaled. Cigars have a different taste and smell than cigarettes due to the fermentation process cigars go through during production. Cigars tend to cost considerably more than cigarettes, and their quality and characteristics vary depending on the type of tobacco plant, the geography and climate where the tobacco was grown, and the overall quality of the manufacturing process. Not only does the customized blending of the tobacco influence the smoking experience, so does the freshness of the cigars, which is dependent on how the cigars were stored and displayed. These variables are similar to fine wines, which can also be very expensive to purchase. It is all of these variables that warrant a customer wanting to sample the product before making such a substantial purchase.

(c) The Legislature finds that exposure to second-hand smoke is inherent in the selling and sampling of cigars and pipe tobacco and that this exposure is inextricably connected to the nature of selling this legal product, similar to other inherent hazards in other professions and employment.

(d) It is the intent of the Legislature to allow cigar and pipe smoking in cigar shops that meet specific statutory criteria not inconsistent with the fundamental nature of the business. This exception to the Nebraska Clean Indoor Air Act is narrowly tailored in accordance with the intent of the act to protect public places and places of employment.

Source: Laws 2008, LB395, § 15; Laws 2009, LB355, § 6; Laws 2010, LB861, § 82; Laws 2015, LB118, § 10; Laws 2020, LB840, § 7.

Annotations

- The statutory exemptions for tobacco retail outlets and cigar bars are unconstitutional special legislation. *Big John's Billiards v. State*, 288 Neb. 938, 852 N.W.2d 727 (2014).

71-5731. Proprietor; duties.

A proprietor of a place of employment or public place where smoking is prohibited under the Nebraska Clean Indoor Air Act shall take necessary and appropriate steps to ensure compliance with the act at such place.

Source: Laws 2008, LB395, § 16.

71-5732. Department of Health and Human Services; local public health department; enjoin violations; retaliation prohibited; waiver of act.

(1) The Department of Health and Human Services or a local public health department as defined in section 71-1626 may institute an action in any court with jurisdiction to enjoin a violation of the Nebraska Clean Indoor Air Act. Any interested party may report possible violations of the act to such departments.

(2) No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or customer because such employee, applicant, or customer reports or attempts to report a violation of the act.

(3) The Department of Health and Human Services may waive provisions of the Nebraska Clean Indoor Air Act upon good cause shown and shall provide for appropriate protection of the public health and safety in the granting of such waivers.

Source: Laws 2008, LB395, § 17.

71-5733. Prohibited acts; penalties; act of employee or agent; how construed.

(1) A person who smokes in a place of employment or a public place in violation of the Nebraska Clean Indoor Air Act is guilty of a Class V misdemeanor for the first offense and a Class IV misdemeanor for the second and any subsequent offenses. A person charged with such offense may voluntarily participate, at his or her own expense, in a smoking cessation program approved by the Department of Health and Human Services, and such charge shall be dismissed upon successful completion of the program.

(2) A proprietor who fails, neglects, or refuses to perform a duty under the Nebraska Clean Indoor Air Act is guilty of a Class V misdemeanor for the first offense and a Class IV misdemeanor for the second and any subsequent offenses.

(3) Each day that a violation continues to exist shall constitute a separate and distinct violation.

(4) Every act or omission constituting a violation of the Nebraska Clean Indoor Air Act by an employee or agent of a proprietor is deemed to be the act or omission of such proprietor, and such proprietor shall be subject to the same penalty as if the act or omission had been committed by such proprietor.

Source: Laws 2008, LB395, § 18.

71-5734. Rules and regulations.

The Department of Health and Human Services shall adopt and promulgate rules and regulations necessary to implement the Nebraska Clean Indoor Air Act. The department shall consult with interested persons and professional organizations before adopting such rules and regulations.

Source: Laws 2008, LB395, § 19.

STATUTES RELATING TO EARLY CHILDHOOD EDUCATION

79-1102. Early Childhood Training Center; established; purpose; duties; statewide training program; established.

(1) An Early Childhood Training Center shall be established within the State Department of Education. The purpose of the center is to train individuals who provide education and development activities for infants and young children and their parents. The center, taking into consideration existing public and private training efforts, shall provide support and assistance to schools and public and private providers of early childhood education services in developing training programs for staff. The center, in consultation with the Department of Health and Human Services, shall approve training that is used to satisfy child care licensing criteria for required training, annual inservice training, and training needed for participation or advancement in the quality rating and improvement system established pursuant to the Step Up to Quality Child Care Act. The center, taking into consideration existing public and private training efforts, shall also provide clearinghouse information and publications on available early childhood education training opportunities throughout the state.

(2) The center shall establish a statewide training program to support the development of parent education programs in local communities. The goal of this project is to train individuals who will be able to work with public and private providers of early childhood services to establish parent education programs in their communities.

Source: Laws 1990, LB 567, § 2; R.S.1943, (1994), § 79-3702; Laws 1996, LB 900, § 784; Laws 2007, LB231, § 1; Laws 2014, LB967, § 20.

Cross References

Step Up to Quality Child Care Act, see section 71-1952.

STATUTES RELATING TO STATE FIRE MARSHAL - GENERAL PROVISIONS

(Italicized language may affect the License of a Provider of a Child Care Program)

81-502. State Fire Marshal; fire prevention and safety; duties; delegation of authority to local fire prevention personnel.

(1) It shall be the duty of the State Fire Marshal, under authority of the Governor:

(a) 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 promote safety and reduce loss by fire; and

(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 53-119.01;

(ii) *Licensed foster care facilities or applicants for licenses for foster care facilities, upon request by the Department of Health and Human Services, pursuant to section 71-1903;*

(iii) *Upon request of the Department of Health and Human Services, licensed providers of programs or applicants for licenses to provide such programs pursuant to section 71-1913 and licensed residential child-caring agencies*

or applicants for such licensure pursuant to section 71-1934. The State Fire Marshal shall report the results of the investigation to the department within thirty days after receipt of the request from the department;

(iv) Licensed hospitals, skilled nursing facilities, intermediate care facilities, or other health care facilities which are licensed under the Health Care Facility Licensure Act or applicants for licenses for such facilities or institutions, upon request by the Department of Health and Human Services, pursuant to section 71-441; and

(v) Mobile home parks for which a license or renewal of a license is sought, upon request of the Department of Environment and Energy, pursuant to section 81-15,291.

(2) The State Fire Marshal may enter into contracts with private individuals or other agencies, boards, commissions, or governmental bodies for the purpose of carrying out his or her duties and responsibilities pursuant to the Arson Reporting Immunity Act, the Nebraska Natural Gas Pipeline Safety Act of 1969, and sections 81-502 to 81-538, 81-5,132 to 81-5,146, and 81-5,151 to 81-5,157.

(3) The State Fire Marshal may delegate the authority set forth in this section and section 81-503.01 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 authority may be revoked by the State Fire Marshal for cause upon thirty days' notice after a 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 81-5,151 to 81-5,157 and as may be conferred and imposed by law.

Source: Laws 1925, c. 183, § 2, p. 479; C.S.1929, § 81-5502; R.S.1943, § 81-502; Laws 1947, c. 313, § 1, p. 949; Laws 1967, c. 446, § 3, p. 1389; Laws 1969, c. 794, § 1, p. 3000; Laws 1972, LB 782, § 1; Laws 1973, LB 180, § 1; Laws 1976, LB 986, § 3; Laws 1981, LB 266, § 2; Laws 1982, LB 792, § 1; Laws 1983, LB 498, § 5; Laws 1984, LB 130, § 15; Laws 1985, LB 253, § 9; Laws 1986, LB 217, § 12; Laws 1987, LB 459, § 6; Laws 1989, LB 215, § 18; Laws 1993, LB 251, § 4; Laws 1993, LB 348, § 79; Laws 1993, LB 377, § 7; Laws 1995, LB 401, § 44; Laws 1996, LB 1044, § 837; Laws 1997, LB 307, § 215; Laws 1999, LB 594, § 70; Laws 2000, LB 819, § 153; Laws 2007, LB296, § 728; Laws 2013, LB265, § 47; Laws 2018, LB889, § 1; Laws 2021, LB148, § 81.

Cross References

Arson Reporting Immunity Act, see section 81-5,115.

Health Care Facility Licensure Act, see section 71-401.

Inspection of businesses credentialed under the Uniform Credentialing Act, see section 38-139.

Motor vehicle fuel, aboveground tanks, powers, see section 81-1577.01.

Nebraska Natural Gas Pipeline Safety Act of 1969, see section 81-552.

Annotations

Where state fire marshals had reliable information about existence of incendiary device, action of going upon property and inspecting for existence of fire without actual entry or search of building was proper. *State v. Howard*, 184 Neb. 274, 167 N.W.2d 80 (1969).

81-505.01. State Fire Marshal; establish and assess fees; procedures.

(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 thirty 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 agency 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 remitted to the State Treasurer for credit 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 or 81-503.01 shall be not less than twenty-five nor more than one hundred 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 twenty-five nor more than one hundred fifty dollars and shall be paid by the licensee or applicant for a license. The fees for inspection for fire safety of foster family homes as defined in section 71-1901 may be paid by the Department of Health and Human Services.

(3) The fee for providing investigation reports to insurance companies shall not exceed three dollars for each report provided. The State Fire Marshal may charge an amount not to exceed the actual cost of preparation for any other approved information release.

(4)(a) The State Fire Marshal shall charge a fee for reviewing plans, blueprints, and shop drawings to determine compliance with rules and regulations adopted and promulgated pursuant to section 81-503.01 or 81-5,147. The

State Fire Marshal shall establish such fee in rules and regulations adopted and promulgated to be effective on January 1, 2022. Such fee shall meet the costs of administering the plan review requirement found in sections 81-503.01 and 81-5,147 but shall not exceed five hundred dollars. The fee schedule as it existed prior to August 28, 2021, shall be used through December 31, 2021.

(b) The fees established pursuant to subdivision (a) of this subsection shall not be assessed or collected by any political subdivision to which the State Fire Marshal has delegated the authority to conduct such review and which reviews plans, blueprints, or shop drawings to determine compliance with such political subdivision's own fire safety regulations. Nothing in this subdivision shall be construed to prohibit such political subdivision from assessing or collecting a fee set by its governing board for such review.

(c) An additional fee equal to fifty percent of the fee charged pursuant to subdivision (a) of this subsection shall be assessed for reviewing plans, blueprints, and shop drawings to determine compliance with the accessibility standards and specifications adopted pursuant to section 81-5,147, except that the additional fee assessed pursuant to this subdivision shall not exceed two hundred fifty dollars.

Source: Laws 1983, LB 498, § 7; Laws 1986, LB 471, § 1; Laws 1988, LB 893, § 10; Laws 1988, LB 930, § 3; Laws 1993, LB 251, § 6; Laws 1993, LB 377, § 8; Laws 1996, LB 1044, § 839; Laws 1997, LB 307, § 216; Laws 2013, LB265, § 48; Laws 2019, LB195, § 3; Laws 2021, LB37, § 3.

STATUTES RELATING TO DEPARTMENT OF HEALTH AND HUMAN SERVICES

81-3126. Chief executive officer; disclosure of information relating to certain children authorized; limitations; release of criminal history record check results.

(1) For purposes of this section:

(a) Chief executive officer means the chief executive officer of the Department of Health and Human Services;

(b) Child abuse or neglect has the same meaning as in section 28-710;

(c) Child fatality means the death of a child from suspected abuse, neglect, or maltreatment as determined by the county coroner or county attorney;

(d) Department means the Department of Health and Human Services;

(e) Director means the Director of Children and Family Services;

(f) Division means the Division of Children and Family Services of the Department of Health and Human Services; and

(g) Near fatality means a case in which an examining physician determines that a child is in serious or critical condition as the result of sickness or injury caused by suspected abuse, neglect, or maltreatment.

(2) Notwithstanding any other provision of state law, the chief executive officer or director may disclose information regarding child abuse or neglect and the investigation of and any services related to the child abuse and neglect if the chief executive officer or director determines that such disclosure is not contrary to the best interests of the child, the child's siblings, or other children in the household, and any one of the following factors is present:

(a) The alleged perpetrator of the child abuse or neglect has been charged with committing a crime related to the report of child abuse or neglect maintained by the division;

(b) A judge, a law enforcement agency official, a county attorney, or another state or local investigative agency or official has publicly disclosed the provision of services related to or the investigation of the child abuse or neglect;

(c) An individual who is the parent, custodian, foster parent, provider, or guardian of the victim or a child victim over fourteen years of age has made a prior knowing, voluntary, public disclosure;

(d) The information relates to a child fatality or near fatality;

(e) The information is released to confirm, clarify, or correct information concerning an allegation or actual instance of child abuse or neglect which has been made public by sources outside the department; or

(f) A child who is in the custody of the department is missing from his or her placement, in which case the chief executive officer or director may release the name and physical description of the child.

(3) Information that may be disclosed includes, but is not limited to, child placement, whether in-home or out-of-home, terms of contact, hearing dates, the reason for removal from parents or placement, the number of placements and type, permanency objectives, court-ordered services or other services provided by the division, and status of the court process. The following information shall not be released by the chief executive officer or director absent a court order: Date of birth, social security number, protected health information, the name of the person who made the report of child abuse or neglect pursuant to section 28-711, and names of foster parents, unless the foster parent is the alleged perpetrator.

(4) The chief executive officer or director may release the results of criminal history record checks that have been completed by the division as authorized by law.

(5) For purposes of this section, the best interests of the child, the child's siblings, or other children in the household does not allow the disclosure of information that would impede a pending or current criminal investigation by a law enforcement agency.

(6) The division may adopt and promulgate rules and regulations to carry out this section.

Source: Laws 2008, LB782, § 1.