

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 309

Introduced by Clements, 2; Bostelman, 23; Erdman, 47; Lowe, 37.

Read first time January 12, 2021

Committee:

- 1 A BILL FOR AN ACT relating to civil rights; to amend sections 38-178 and
- 2 38-2894, Revised Statutes Cumulative Supplement, 2020; to adopt the
- 3 Assistance Animal Integrity in Housing Act; to provide for
- 4 disciplinary action for violation of such act; to harmonize
- 5 provisions; and to repeal the original sections.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 6 of this act shall be known and may be
2 cited as the Assistance Animal Integrity in Housing Act.

3 Sec. 2. (1) The Legislature finds that certain web sites target and
4 mislead consumers with disabilities. The sole purpose of such web sites
5 is to sell unnecessary and unreliable documentation to certify assistance
6 animals for use in obtaining reasonable accommodations in housing under
7 state and federal acts.

8 (2) The Legislature further finds that similar web sites encourage
9 acts of fraud by persons without a disability, enabling such persons to
10 purchase such documentation to falsely claim a disability or that their
11 pets are actual assistance animals in order to evade pet restrictions,
12 pet rent, pet deposits, and pet fees and receive reasonable
13 accommodations in housing under state and federal acts.

14 (3) It is the intent of the Legislature through the Assistance
15 Animal Integrity in Housing Act to mitigate the financial harm caused by
16 misleading persons with disabilities to purchase unnecessary
17 documentation and the financial harm caused by acts of fraud committed
18 against housing providers.

19 Sec. 3. For purposes of the Assistance Animal Integrity in Housing
20 Act:

21 (1) Assistance animal means an animal that works, provides
22 assistance, or performs tasks for the benefit of a person with a
23 disability or that provides emotional support to such person that
24 alleviates one or more identified symptoms or effects of a person's
25 disability;

26 (2) Disability means a physical or mental impairment that
27 substantially limits one or more major life activities of a person, a
28 record of having such an impairment, or being regarded as having such an
29 impairment;

30 (3) Dwelling means any building, structure, or portion thereof which
31 is occupied as, or designed or intended for, occupancy as a residence for

1 one or more families;

2 (4) Health service provider means a physician, psychiatrist,
3 psychologist, social worker, or mental health practitioner licensed to
4 practice in Nebraska under the Uniform Credentialing Act or duly licensed
5 in another state. Health service provider does not include any such
6 licensee (a) whose license has been suspended or revoked in Nebraska or
7 any other state within the five years previous to providing written
8 verification under section 4 of this act, (b) who has no personal
9 knowledge of an individual requesting a reasonable accommodation for an
10 assistance animal in a dwelling pursuant to state and federal acts, or
11 (c) whose sole service to such individual is providing written
12 verification under section 4 of this act, including written verification
13 from an Internet source or web site in exchange for a fee;

14 (5) Personal knowledge means knowledge of the type that a health
15 service provider ordinarily uses for diagnosis and treatment of a
16 specific individual's disability and disability-related needs that is
17 based on firsthand observation or experience of a specific individual;

18 (6) Reliable disability-related information means information that
19 verifies a disability that is not readily apparent, and includes:

20 (a) A disability determination from a government agency;

21 (b) Documented receipt of disability benefits; or

22 (c) Written verification from a health service provider with
23 personal knowledge of the individual with a disability who is seeking
24 accommodation under state and federal acts stating that such individual
25 has a disability and disability-related need for assistance that is or
26 will be provided by an assistance animal; and

27 (7) State and federal acts means the Nebraska Fair Housing Act, the
28 federal Fair Housing Act of 1968, and the federal Fair Housing Amendments
29 Act of 1988.

30 Sec. 4. Any person who offers to rent or otherwise make available a
31 dwelling to an individual in this state who has a disability that is not

1 readily apparent and who seeks a reasonable accommodation for an
2 assistance animal in such dwelling may require that such individual
3 provide reliable disability-related information that verifies:

4 (a) The individual has a disability;

5 (b) There is a disability-related need for the assistance animal;
6 and

7 (c) The assistance animal assists the individual in managing the
8 individual's disability.

9 Sec. 5. (1) It shall be unlawful for an individual requesting a
10 reasonable accommodation for an assistance animal in a dwelling to
11 intentionally:

12 (a) Misrepresent to another person who offers to rent or otherwise
13 make such dwelling available that such individual has a disability or has
14 a disability-related need that requires the use of an assistance animal
15 in a dwelling;

16 (b) Make a materially false statement to a health service provider
17 to obtain reliable disability-related information;

18 (c) Provide any document that is not reliable disability-related
19 information to a person who offers to rent or otherwise make available a
20 dwelling that misrepresents that an animal is an assistance animal; or

21 (d) Fit an animal that is not an assistance animal with a harness,
22 collar, vest, or sign that would cause a reasonable person to believe
23 that such animal is an assistance animal.

24 (2) A violation of this section is a Class III misdemeanor for the
25 first offense and a Class II misdemeanor for a second or subsequent
26 offense.

27 Sec. 6. (1) It shall be unlawful for any person other than a health
28 service provider to knowingly provide written verification, as defined in
29 subdivision (6)(c) of section 3 of this act, for purposes of subsection 4
30 of this act.

31 (2) It shall be unlawful for a health service provider to knowingly

1 provide reliable disability-related information pursuant to section 4 of
2 this act without personal knowledge of a person with a disability who is
3 seeking accommodation under state and federal acts.

4 (3) A violation of subsection (1) of this section is a Class III
5 misdemeanor for the first offense and a Class II misdemeanor for a second
6 or subsequent offense.

7 (4) Any person who violates subsection (2) of this section may be
8 subject to disciplinary action by the Division of Public Health of the
9 Department of Health and Human Services under the Uniform Credentialing
10 Act.

11 Sec. 7. Section 38-178, Revised Statutes Cumulative Supplement,
12 2020, is amended to read:

13 38-178 Except as otherwise provided in sections 38-1,119 to
14 38-1,123, a credential to practice a profession may be denied, refused
15 renewal, or have other disciplinary measures taken against it in
16 accordance with section 38-185 or 38-186 on any of the following grounds:

17 (1) Misrepresentation of material facts in procuring or attempting
18 to procure a credential;

19 (2) Immoral or dishonorable conduct evidencing unfitness to practice
20 the profession in this state;

21 (3) Abuse of, dependence on, or active addiction to alcohol, any
22 controlled substance, or any mind-altering substance;

23 (4) Failure to comply with a treatment program or an aftercare
24 program, including, but not limited to, a program entered into under the
25 Licensee Assistance Program established pursuant to section 38-175;

26 (5) Conviction of (a) a misdemeanor or felony under Nebraska law or
27 federal law, or (b) a crime in any jurisdiction which, if committed
28 within this state, would have constituted a misdemeanor or felony under
29 Nebraska law and which has a rational connection with the fitness or
30 capacity of the applicant or credential holder to practice the
31 profession;

1 (6) Practice of the profession (a) fraudulently, (b) beyond its
2 authorized scope, (c) with gross incompetence or gross negligence, or (d)
3 in a pattern of incompetent or negligent conduct;

4 (7) Practice of the profession while the ability to practice is
5 impaired by alcohol, controlled substances, drugs, mind-altering
6 substances, physical disability, mental disability, or emotional
7 disability;

8 (8) Physical or mental incapacity to practice the profession as
9 evidenced by a legal judgment or a determination by other lawful means;

10 (9) Illness, deterioration, or disability that impairs the ability
11 to practice the profession;

12 (10) Permitting, aiding, or abetting the practice of a profession or
13 the performance of activities requiring a credential by a person not
14 credentialed to do so;

15 (11) Performing or offering to perform scleral tattooing as defined
16 in section 38-10,172 by a person not credentialed to do so;

17 (12) Having had his or her credential denied, refused renewal,
18 limited, suspended, revoked, or disciplined in any manner similar to
19 section 38-196 by another state or jurisdiction based upon acts by the
20 applicant or credential holder similar to acts described in this section;

21 (13) Use of untruthful, deceptive, or misleading statements in
22 advertisements, including failure to comply with section 38-124;

23 (14) Conviction of fraudulent or misleading advertising or
24 conviction of a violation of the Uniform Deceptive Trade Practices Act;

25 (15) Distribution of intoxicating liquors, controlled substances, or
26 drugs for any other than lawful purposes;

27 (16) Violations of the Uniform Credentialing Act or the rules and
28 regulations relating to the particular profession;

29 (17) Unlawful invasion of the field of practice of any profession
30 regulated by the Uniform Credentialing Act which the credential holder is
31 not credentialed to practice;

1 (18) Violation of the Uniform Controlled Substances Act or any rules
2 and regulations adopted pursuant to the act;

3 (19) Failure to file a report required by section 38-1,124,
4 38-1,125, or 71-552;

5 (20) Failure to maintain the requirements necessary to obtain a
6 credential;

7 (21) Violation of an order issued by the department;

8 (22) Violation of an assurance of compliance entered into under
9 section 38-1,108;

10 (23) Failure to pay an administrative penalty;

11 (24) Unprofessional conduct as defined in section 38-179;~~or~~

12 (25) Violation of the Automated Medication Systems Act; or ~~or~~

13 (26) Violation of subsection (2) of section 6 of this act.

14 Sec. 8. Section 38-2894, Revised Statutes Cumulative Supplement,
15 2020, is amended to read:

16 38-2894 (1) A registration to practice as a pharmacy technician may
17 be denied, refused renewal, removed, or suspended or have other
18 disciplinary measures taken against it by the department, with the
19 recommendation of the board, for failure to meet the requirements of or
20 for violation of any of the provisions of subdivisions (1) through (18)
21 and (20) through (26) ~~(25)~~ of section 38-178 and sections 38-2890 to
22 38-2897 or the rules and regulations adopted under such sections.

23 (2) If the department proposes to deny, refuse renewal of, or remove
24 or suspend a registration, it shall send the applicant or registrant a
25 notice setting forth the action to be taken and the reasons for the
26 determination. The denial, refusal to renew, removal, or suspension shall
27 become final thirty days after mailing the notice unless the applicant or
28 registrant gives written notice to the department of his or her desire
29 for an informal conference or for a formal hearing.

30 (3) Notice may be served by any method specified in section
31 25-505.01, or the department may permit substitute or constructive

1 service as provided in section 25-517.02 when service cannot be made with
2 reasonable diligence by any of the methods specified in section
3 25-505.01.

4 (4) Pharmacy technicians may participate in the Licensee Assistance
5 Program described in section 38-175.

6 Sec. 9. Original sections 38-178 and 38-2894, Revised Statutes
7 Cumulative Supplement, 2020, are repealed.