

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 369

Introduced by Riepe, 12.

Read first time January 15, 2015

Committee:

1 A BILL FOR AN ACT relating to the Uniform Credentialing Act; to amend
2 sections 38-1,106, 38-1,110, 38-1,111, and 38-1,113, Reissue Revised
3 Statutes of Nebraska, and section 38-1,126, Revised Statutes
4 Cumulative Supplement, 2014; to change provisions relating to
5 proceedings regarding impaired professionals; to harmonize
6 provisions; and to repeal the original sections.

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

1 Section 1. Section 38-1,106, Reissue Revised Statutes of Nebraska,
2 is amended to read:

3 38-1,106 (1) Reports or information received under section 38-1,110,
4 reports under sections 38-1,129 to 38-1,136, complaints, and
5 investigational records of a board or panel acting pursuant to section
6 38-1,110 or of the department shall not be public records, shall not be
7 subject to subpoena or discovery, and shall be inadmissible in evidence
8 in any legal proceeding of any kind or character except a contested case
9 before the department. Such reports, complaints, or records shall be a
10 public record if made part of the record of a contested case before the
11 department. No person, including, but not limited to, department
12 employees and members of a board, having access to such reports,
13 complaints, or investigational records shall disclose such information in
14 violation of this section, except that the department may exchange such
15 information with law enforcement and other state licensing agencies as
16 necessary and appropriate in the discharge of the department's duties and
17 only under circumstances to ensure against unauthorized access to such
18 information. Violation of this subsection is a Class I misdemeanor.

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

23 Sec. 2. Section 38-1,110, Reissue Revised Statutes of Nebraska, is
24 amended to read:

25 38-1,110 (1) When the department has received information indicating
26 ~~a complaint or report by any person or any report has been made to the~~
27 ~~director by the Licensee Assistance Program under section 38-175 alleging~~
28 that an applicant for a credential or a person credentialed to practice
29 any profession is suffering from abuse of, dependence on, or active
30 addiction to alcohol, any controlled substance, or any mind-altering
31 substance that impairs the ability to practice the profession or illness,

1 deterioration, or disability that impairs the ability to practice the
2 profession, the department may present the information to the appropriate
3 board to determine if director shall investigate such complaint to
4 determine if any reasonable cause exists to question the qualification of
5 the applicant or credential holder is qualified to practice or to
6 continue to practice such profession.

7 (2)(a) The board shall make an initial determination, based on
8 available information, as to whether reasonable cause exists to question
9 the qualification of such applicant or credential holder to practice or
10 to continue to practice the profession. If the board determines that
11 reasonable cause does not exist, the board shall report to the department
12 and the department shall document the report and such determination and
13 take no further action or inquiry in relation to the report. If the board
14 determines that reasonable cause exists to question the qualification of
15 such applicant or credential holder to practice or continue to practice
16 the profession, the board may do one or more of the following, in order
17 to formulate a recommendation to the director as to whether the applicant
18 or credential holder is qualified to practice:

19 (i) Determine that available information is sufficient to make a
20 final recommendation to the director as to whether the applicant or
21 credential holder is qualified to practice;

22 (ii) Receive and consider any reports of diagnostic examination
23 given by one or more physicians or other qualified professionals of the
24 applicant's or credential holder's choice, if the applicant or credential
25 holder chooses to make available such report or reports by his or her
26 physician or physicians or other qualified professionals, and any other
27 relevant information submitted by the applicant or credential holder;

28 (iii) Require the applicant or credential holder to submit to a
29 complete diagnostic examination or evaluation by a qualified physician or
30 other qualified professional selected or approved by the department. The
31 cost of the examination or evaluation shall be paid by the applicant or

1 credential holder; or

2 (iv) Appoint a panel of three qualified physicians or other
3 qualified professionals to review and analyze information regarding the
4 applicant's or credential holder's abuse of, dependence on, or active
5 addiction to alcohol, any controlled substance, or any mind-altering
6 substance that impairs the ability to practice the profession or the
7 applicant's or credential holder's illness, deterioration, or disability
8 that impairs the ability to practice the profession. Such information may
9 include, but not be limited to:

10 (A) Information or records submitted to the department in relation
11 to the applicant's or credential holder's ability to practice the
12 profession;

13 (B) Information or records of the department related to prior
14 credentialing reports, complaints, investigations, or disciplinary
15 actions against the applicant or credential holder; and

16 (C) Any information gathered pursuant to subdivisions (2)(a)(i) and
17 (ii) of this section.

18 ~~(2) If the director on the basis of such investigation or, in the~~
19 ~~absence of such complaint, upon the basis of his or her own independent~~
20 ~~knowledge finds that reasonable cause exists to question the~~
21 ~~qualification of the applicant or credential holder to practice such~~
22 ~~profession because of abuse of, dependence on, or active addiction to~~
23 ~~alcohol, any controlled substance, or any mind-altering substance that~~
24 ~~impairs the ability to practice the profession or illness, deterioration,~~
25 ~~or disability that impairs the ability to practice the profession, the~~
26 ~~director shall report such finding and evidence supporting it to the~~
27 ~~appropriate board.~~

28 ~~(3) If such board agrees that reasonable cause exists to question~~
29 ~~the qualification of such applicant or credential holder, the board shall~~
30 ~~appoint a committee of three qualified physicians or other qualified~~
31 ~~professionals to examine the applicant or credential holder and to report~~

~~1 their findings and conclusions to the board. The cost of the examination~~
2 (b) The panel shall submit to the board written findings and conclusions
3 regarding the applicant's or credential holder's ability to practice. The
4 cost of the panel shall be treated as a base cost of credentialing under
5 section 38-152.

6 (c) The board shall then consider all relevant information received
7 under this section, the findings and the conclusions of any panel
8 appointed under subdivision (2)(a)(iv) of this section if applicable, the
9 ~~physicians or other qualified professionals and any other evidence or~~
10 material which may be submitted to that board by the applicant or
11 credential holder, by the department director, or by any other person and
12 shall make a recommendation to the director as to whether then determine
13 ~~if the applicant or credential holder is qualified to practice or to~~
14 continue to practice such profession in the State of Nebraska.

15 (3) If the recommendation of the board is that the applicant or
16 credential holder is fully qualified to practice, the board shall
17 recommend that the director issue or renew a credential to the applicant
18 or credential holder. If the recommendation of the board is that (4) If
19 ~~such board finds the applicant or credential holder is to be not~~
20 qualified to practice or to continue to practice such profession because
21 of abuse of, dependence on, or active addiction to alcohol, any
22 controlled substance, or any mind-altering substance that impairs the
23 ability to practice the profession or illness, deterioration, or
24 disability that impairs the ability to practice the profession, the board
25 shall also recommend one of the following actions to the director: so
26 ~~certify that fact to the director with a recommendation for the denial,~~
27 ~~refusal of renewal, limitation, suspension, or revocation of such~~
28 ~~credential. The director shall thereupon deny, refuse renewal of,~~
29 ~~suspend, or revoke the credential or limit the ability of the credential~~
30 ~~holder to practice such profession in the state in such manner and to~~
31 ~~such extent as the director determines to be necessary for the protection~~

1 ~~of the public.~~

2 (a) Deny, refuse to renew, or revoke the credential;

3 (b) Issue or renew the credential with specific limitations, terms,
4 or conditions; or

5 (c) Suspend the credential.

6 (4)(a) Upon receipt of the board's recommendations, the director
7 shall make a finding as to whether the applicant or credential holder is
8 qualified to practice or to continue to practice such profession as a
9 result of abuse of, dependence on, or active addiction to alcohol, any
10 controlled substance, or any mind-altering substance that impairs the
11 ability to practice the profession or illness, deterioration, or
12 disability that impairs the ability to practice the profession. The
13 director may also review and consider any reports or materials utilized
14 by the board in making its recommendation or by a panel appointed under
15 subdivision (2)(a)(iv) of this section.

16 (b) If the director finds that the applicant or credential holder is
17 fully qualified to practice, the director shall issue or renew the
18 applicant's or credential holder's credential if all application
19 requirements have been met. If the subject of the report is a credential
20 holder who has not applied for renewal, the director shall enter a
21 written finding regarding the credential holder's qualification to
22 practice and take no further action.

23 (c) If the director finds that the applicant or credential holder is
24 not qualified to practice or to continue to practice such profession
25 because of abuse of, dependence on, or active addiction to alcohol, any
26 controlled substance, or any mind-altering substance that impairs the
27 ability to practice the profession or illness, deterioration, or
28 disability that impairs the ability to practice the profession, the
29 director shall, by written order:

30 (i) Deny, refuse to renew, or revoke the credential;

31 (ii) Issue or renew a credential with specific limitations, terms,

1 or conditions; or

2 (iii) Accept a voluntary limitation, suspension, or surrender of the
3 credential in accordance with section 38-1,109.

4 (5) Any action taken under subdivision (4)(c) of this section shall
5 not be considered a disciplinary action. Nothing in this section shall be
6 interpreted to limit or restrict the department's authority to take
7 disciplinary action for any of the grounds in section 38-178.

8 Sec. 3. Section 38-1,111, Reissue Revised Statutes of Nebraska, is
9 amended to read:

10 38-1,111 (1) The denial, refusal of renewal, revocation, limitation,
11 terms, conditions, or suspension of a credential as provided in section
12 38-1,110 shall continue in effect until reversed~~on appeal~~ pursuant to
13 section 38-1,113 or until the cause of such denial, refusal of renewal,
14 revocation, limitation, terms, conditions, or suspension no longer exists
15 and the director ~~appropriate board~~ finds, upon competent examination or
16 evaluation by a qualified physician or other qualified professional
17 selected or approved by the department, that the applicant or credential
18 holder is qualified to engage in the practice of the profession. The cost
19 of the examination or evaluation shall be paid by the applicant or
20 credential holder.

21 (2) Upon such finding the director, notwithstanding the provision of
22 any other statute, shall issue, return, or reinstate such credential or
23 remove any limitation, terms, or conditions on such credential if the
24 applicant or credential holder is otherwise qualified as determined by
25 the appropriate board to practice or to continue in the practice of the
26 profession.

27 Sec. 4. Section 38-1,113, Reissue Revised Statutes of Nebraska, is
28 amended to read:

29 38-1,113 Any applicant or credential holder shall have the right to
30 request a hearing on an order denying, refusing renewal of, revoking,
31 limiting, setting terms or conditions on, or suspending,~~or revoking a~~

1 credential to practice a profession because of abuse of, dependence on,
2 or active addiction to alcohol, any controlled substance, or any mind-
3 altering substance that impairs the ability to practice the profession or
4 illness, deterioration, or disability that impairs the ability to
5 practice the profession. Such hearing shall be conducted in accordance
6 with the Administrative Procedure Act. The denial, refusal of renewal,
7 revocation, limitation, terms, conditions, suspension, or revocation of a
8 credential as provided in section 38-1,110 shall continue in effect until
9 reversed ~~on appeal~~ unless otherwise disposed of pursuant to section
10 38-1,111.

11 Sec. 5. Section 38-1,126, Revised Statutes Cumulative Supplement,
12 2014, is amended to read:

13 38-1,126 (1) Any report or information received by ~~A report made to~~
14 the department under section 38-1,110, 38-1,124, or 38-1,125 shall be
15 confidential.

16 (2) Any person making such a report to the department, except a
17 person who is self-reporting, shall be completely immune from criminal or
18 civil liability of any nature, whether direct or derivative, for filing a
19 report or for disclosure of documents, records, or other information to
20 the department under section 38-1,110, 38-1,124, or 38-1,125.

21 (3) Persons who are members of committees established under the
22 Health Care Quality Improvement Act, the Patient Safety Improvement Act,
23 or section 25-12,123 or witnesses before such committees or members of or
24 witnesses before a panel appointed under subdivision (2)(a)(iv) of
25 section 38-1,110 shall not be required to report under section 38-1,124
26 or 38-1,125. Any person who is a witness before such a committee or panel
27 shall not be excused from reporting matters of first-hand knowledge that
28 would otherwise be reportable under section 38-1,124 or 38-1,125 only
29 because he or she attended or testified before such committee or panel.

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

1 Sec. 6. Original sections 38-1,106, 38-1,110, 38-1,111, and
2 38-1,113, Reissue Revised Statutes of Nebraska, and section 38-1,126,
3 Revised Statutes Cumulative Supplement, 2014, are repealed.