

LEGISLATIVE BILL 750

Approved by the Governor April 06, 2016

Introduced by Lindstrom, 18.

A BILL FOR AN ACT relating to the Uniform Credentialing Act; to amend sections 38-175, 38-1,106, 38-1,121, 38-1,129, 38-1,130, 38-1,134, and 71-445, Reissue Revised Statutes of Nebraska, section 38-1,126, Revised Statutes Cumulative Supplement, 2014, and section 38-101, Revised Statutes Supplement, 2015; to prohibit discrimination and retaliation for making reports under the act as prescribed; to provide for confidentiality of persons involved in making reports under the act as prescribed; to harmonize provisions; and to repeal the original sections.

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

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

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

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

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

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

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

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

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

(2)(a) Participation in the program shall be confidential, except that if any evaluation by the program determines that the abuse, dependence, or active addiction may be of a nature which constitutes a danger to the public health and safety by the person's continued practice or if the person fails to comply

with any term or condition of a treatment plan, the program shall report the same to the director.

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

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

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

(5) Any person who contacts the department for information on or assistance in obtaining referral or treatment of himself or herself or any other person credentialed by the department for abuse of, dependence on, or active addiction to alcohol, any controlled substance, or any mind-altering substance that impairs the ability to practice the profession shall be referred to the program. Such inquiries shall not be used by the department as the basis for investigation for disciplinary action, except that such limitation shall not apply to complaints or any other reports or inquiries made to the department concerning persons who may be suffering from abuse of, dependence on, or active addiction to alcohol, any controlled substance, or any mind-altering substance that impairs the ability to practice the profession or when a complaint has been filed or an investigation or disciplinary or other administrative proceeding is in process.

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

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

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

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

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

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

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

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

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

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

because he or she attended or testified before such committee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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