

2019

STATE OF NEBRASKA

**STATUTES RELATING TO FOSTER CARE LICENSURE
CHILDREN'S RESIDENTIAL FACILITIES
AND PLACING LICENSURE ACT**

NEBRASKA

Good Life. Great Mission.

DEPT. OF HEALTH AND HUMAN SERVICES

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STATUTES PERTAINING TO FOSTER CARE LICENSURE

71-1901. Terms, defined. For purposes of sections 71-1901 to 71-1906.01:

- (1) Person includes a partnership, limited liability company, firm, agency, association, or corporation;
- (2) Child means an unemancipated minor;
- (3) Child-placing agency has the definition found in section 71-1926;
- (4) Department means the Department of Health and Human Services;
- (5) Foster care means engaged in the service of exercising twenty-four-hour daily care, supervision, custody, or control over children, for compensation or hire, in lieu of the care or supervision normally exercised by parents in their own home. Foster care does not include casual care at irregular intervals or programs as defined in section 71-1910;
- (6) Foster family home means a home which provides foster care to a child or children pursuant to a foster care placement as defined in section 43-1301. Foster family homes include licensed homes where the primary caretaker has no significant prior relationship with the child or children in his or her care and both licensed and unlicensed relative and kinship homes;
- (7) Kinship home means a home where a child or children receive foster care and at least one of the primary caretakers has previously lived with or is a trusted adult that has a preexisting, significant relationship with the child or children or a sibling of such child or children pursuant to section 43-1311.02;
- (8) Native American means a person who is a member of an Indian tribe or eligible for membership in an Indian tribe;
- (9) Relative home means a home where a child or children receive foster care and at least one of the primary caretakers is related to the child or children, or to a sibling of such child or children pursuant to section 43-1311.02, in his or her care by blood, marriage, or adoption or, in the case of an Indian child, at least one of the primary caretakers is an extended family member as defined in section 43-1503; and
- (10) Residential child-caring agency has the definition found in section 71-1926.

Source: Laws 1943, c. 154, § 1, p. 563; R.S.1943, § 71-1901; Laws 1945, c. 171, § 1, p. 548; Laws 1961, c. 415, § 25, p. 1258; Laws 1984, LB 130, § 13; Laws 1987, LB 386, § 1; Laws 1993, LB 121, § 425; Laws 1995, LB 401, § 24; Laws 1995, LB 451, § 1; Laws 1996, LB 1044, § 583; Laws 1997, LB 307, § 171; Laws 2001, LB 209, § 19; Laws 2002, LB 93, § 7; Laws 2008, LB797, § 12; Laws 2013, LB265, § 40.

71-1902. Foster care; license required; license renewal; kinship homes and relative homes; department and child-placing agencies; duties; placement in nonlicensed relative home or kinship home; approval by department; when; license revocation; procedure.

(1) The department shall adopt and promulgate rules and regulations on requirements for licenses, waivers, variances, and approval of foster family homes taking into consideration the health, safety, well-being, and best interests of the child. An initial assessment of a foster family home shall be completed and shall focus on the safety, protection, and immediate health, educational, developmental, and emotional needs of the child and the willingness and ability of the foster home, relative home, or kinship home to provide a safe, stable, and nurturing environment for a child for whom the department or child-placing agency has assumed responsibility.

(2)(a) Except as otherwise provided in this section, no person shall furnish or offer to furnish foster care for one or more children without having in full force and effect a written license issued by the department upon such terms and conditions as may be prescribed by general rules and regulations adopted and promulgated by the department. The terms and conditions for licensure may allow foster family homes to meet licensing standards through variances equivalent to the established standards.

(b) The department may issue a time-limited, nonrenewable provisional license to an applicant who 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 time period stated in the license. The department may issue a time-limited, nonrenewable probationary license to a licensee who agrees to establish compliance with rules and regulations that, when violated, do not present an unreasonable risk to the health, safety, or well-being of the foster children in the care of the applicant.

(3) Kinship homes and relative homes are exempt from licensure, however, such homes should make efforts to be licensed if such license will facilitate the permanency plan of the child. The department and child-placing agencies shall, when requested or as part of the child's permanency plan, provide resources for and assistance with licensure, including, but not limited to, information on licensure, waivers for relative homes, kinship-specific and relative-specific foster care training, referral to local service providers and support groups, and funding and resources available to address home safety or other barriers to licensure.

(4) Prior to placement in a nonlicensed relative home or kinship home, approval shall be obtained from the department. Requirements for initial approval shall include, but not be limited to, the initial assessment provided for in subsection (1) of this section, a home visit to assure adequate and safe housing, and a criminal background

check of all adult residents. Final approval shall include, but not be limited to, requirements as appropriate under section 71-1903. The department or child-placing agency shall provide assistance to an approved relative home or kinship home to support the care, protection, and nurturing of the child. Support may include, but not be limited to, information on licensure, waivers, and variances, kinship-specific and relative-specific foster care training, mental and physical health care, options for funding for needs of the child, and service providers and support groups to address the needs of relative and kinship parents, families, and children.

(5) All nonprovisional and nonprobationary licenses issued under sections 71-1901 to 71-1906.01 shall expire two years from the date of issuance and shall be subject to renewal under the same terms and conditions as the original license, except that if a licensee submits a completed renewal application thirty days or more before the license's expiration date, the license shall remain in effect until the department either renews the license or denies the renewal application. No license issued pursuant to this section shall be renewed unless the licensee has completed the required hours of training in foster care in the preceding twelve months as prescribed by the department. A license may be revoked for cause, after notice and hearing, in accordance with rules and regulations adopted and promulgated by the department.

(6) A young adult continuing to reside in a foster family home as provided in subdivision (2) of section 43-4505 does not constitute an unrelated adult for the purpose of determining eligibility of the family to be licensed as a foster family home.

Source: Laws 1943, c. 154, § 2, p. 564; R.S.1943, § 71-1902; Laws 1945, c. 171, § 2, p. 549; Laws 1949, c. 207, § 1, p. 595; Laws 1961, c. 415, § 26, p. 1258; Laws 1982, LB 928, § 52; Laws 1984, LB 130, § 14; Laws 1987, LB 386, § 2; Laws 1988, LB 930, § 1; Laws 1990, LB 1222, § 12; Laws 1995, LB 401, § 25; Laws 1995, LB 402, § 1; Laws 1995, LB 451, § 2; Laws 2001, LB 209, § 20; Laws 2002, LB 93, § 8; Laws 2011, LB648, § 3; Laws 2012, LB820, § 7; Laws 2013, LB216, § 18; Laws 2013, LB265, § 41.

71-1903. Foster care; investigation by department; State Fire Marshal; fee; criminal history record

information check. (1) Before issuance of a license under sections 71-1901 to 71-1906.01, the department shall cause such investigation to be made as it deems necessary to determine if the character of the applicant, any member of the applicant's household, or the person in charge of the service and the place where the foster care is to be furnished are such as to ensure the proper care and treatment of children. The department may request the State Fire Marshal to inspect such places for fire safety pursuant to section 81-502. The State Fire Marshal shall assess a fee for such inspection pursuant to section 81-505.01, payable by the licensee or applicant for a license, except that the department may pay the fee for inspection for fire safety of homes where foster care is provided. The department may conduct sanitation and health standards investigations pursuant to subsection (2) of this section. The department may also, at any time it sees fit, cause an inspection to be made of the place where any licensee is furnishing foster care to see that such service is being properly conducted.

(2) The department shall make an investigation and report of all licensed foster care providers subject to this section or applicants for licenses to provide such care to determine if standards of health and sanitation set by the department for the care and protection of the child or children who may be placed in foster family homes are being met. The department may delegate the investigation authority to qualified local environmental health personnel.

(3) Before the foster care placement of any child in Nebraska by the department, the department shall require a national criminal history record information check of the prospective foster parent of such child and each member of such prospective foster parent's household who is eighteen years of age or older. The department shall provide two sets of legible fingerprints for such persons to the Nebraska State Patrol for submission to the Federal Bureau of Investigation. The Nebraska State Patrol shall conduct a criminal history record information check of such persons and shall submit such fingerprints to the Federal Bureau of Investigation for a national criminal history record information check. The criminal history record information check shall include information from federal repositories of such information and repositories of such information in other states if authorized by federal law. The Nebraska State Patrol shall issue a report of the results of such criminal history record information check to the department. The department shall pay a fee to the Nebraska State Patrol for conducting such check. Information received from the criminal history record information check required under this subsection shall be used solely for the purpose of evaluating and confirming information provided by such persons for providing foster care or for the finalization of an adoption. A child may be placed in foster care by the department prior to the completion of a criminal history record information check under this subsection in emergency situations as determined by the department.

Source: Laws 1943, c. 154, § 3, p. 564; R.S.1943, § 71-1903; Laws 1945, c. 171, § 3, p. 549; Laws 1961, c. 415, § 27, p. 1259; Laws 1967, c. 446, § 2, p. 1388; Laws 1983, LB 498, § 2; Laws 1985, LB 447, § 37; Laws 1987, LB 386, § 3; Laws 1988, LB 930, § 2; Laws 1991, LB 836, § 28; Laws 1995, LB 401, § 26; Laws 1995, LB 451, § 3; Laws 1996, LB 1044, § 584; Laws 1997, LB 307, § 172; Laws 1997, LB 622, § 101; Laws 2001, LB 209, § 21; Laws 2002, LB 93, § 9; Laws 2004, LB 1005, § 66; Laws 2007, LB296, § 497; Laws 2013, LB265, § 42.

71-1904. Rules and regulations; waiver of licensing standard; when. (1) The department shall adopt and promulgate rules and regulations pursuant to sections 71-1901 to 71-1906.01 for (a) the proper care and protection of children by licensees under such sections, (b) the issuance, suspension, and revocation of licenses to provide foster care, (c) the issuance, suspension, and revocation of probationary licenses to provide foster care, (d) the issuance, suspension, and revocation of provisional licenses to provide foster care, (e) the provision of training in foster care, which training shall be directly related to the skills necessary to care for children in need of out-of-home care, including, but not limited to, abused, neglected, dependent, and delinquent children, and (f) the proper administration of sections 71-1901 to 71-1906.01.

(2) The department may issue a waiver for any licensing standard not related to children's safety for a relative home that is pursuing licensure. Such waivers shall be granted on a case-by-case basis upon assessment by the department based upon the best interests of the child. A relative home that receives a waiver pursuant to this subsection shall be considered fully licensed for purposes of federal reimbursement under the federal Fostering Connections to Success and Increasing Adoptions Act of 2008, Public Law 110-351.

(3) The department shall adopt and promulgate rules and regulations establishing new foster home licensing requirements that ensure children's safety, health, and well-being but minimize the use of licensing mandates for nonsafety issues. Such rules and regulations shall provide alternatives to address nonsafety issues regarding housing and provide assistance to families in overcoming licensing barriers, especially in child-specific relative and kinship placements, to maximize appropriate reimbursement under Title IV-E of the federal Social Security Act, as amended, including expanding the use of kinship guardianship assistance payments under 42 U.S.C. 673(d), as such act and section existed on January 1, 2013.

Source: Laws 1943, c. 154, § 4, p. 564; R.S.1943, § 71-1904; Laws 1945, c. 171, § 4, p. 550; Laws 1961, c. 415, § 28, p. 1259; Laws 1990, LB 1222, § 13; Laws 1995, LB 401, § 27; Laws 1995, LB 402, § 2; Laws 1995, LB 451, § 4; Laws 2001, LB 209, § 22; Laws 2002, LB 93, § 10; Laws 2003, LB 54, § 1; Laws 2012, LB782, § 114; Laws 2012, LB1160, § 17; Laws 2013, LB222, § 26; Laws 2013, LB265, § 43; Laws 2013, LB269, § 9; Laws 2017, LB417, § 12.

71-1905. Violation; penalty. Any person who violates any of the provisions of sections 71-1901 to 71-1906.01 shall be deemed guilty of a Class III misdemeanor.

Source: Laws 1943, c. 154, § 5, p. 564; R.S.1943, § 71-1905; Laws 1945, c. 171, § 5, p. 550; Laws 1977, LB 39, § 163; Laws 1995, LB 451, § 5; Laws 2001, LB 209, § 23; Laws 2002, LB 93, § 11.

71-1906. Native American foster homes; legislative intent. In order to achieve the goals and further the purposes of the federal Indian Child Welfare Act of 1978 and the Nebraska Indian Child Welfare Act, it is the intent of the Legislature that Native American families have the option to meet separate licensing standards for Native American foster homes located outside the boundaries of any Indian reservation or tribal service area as defined in section 43-1503.

Source: Laws 1995, LB 451, § 6; Laws 1999, LB 475, § 4.

Cross References

Nebraska Indian Child Welfare Act, see section 43-1501.

71-1906.01. Native American foster homes; rules and regulations. The department may adopt and promulgate rules and regulations establishing separate licensing standards for Native American foster homes located outside the boundaries of any Indian reservation or tribal service area as defined in section 43-1503. The department shall, in consultation with the Commission on Indian Affairs, develop appropriate standards for the licensing of such foster homes. Such standards shall comply with the federal Indian Child Welfare Act of 1978, 25 U.S.C. 1901 et seq., the Nebraska Indian Child Welfare Act, and all other applicable federal and state laws.

Source: Laws 1995, LB 451, § 7; Laws 1999, LB 475, § 5.

Cross References

Nebraska Indian Child Welfare Act, see section 43-1501.

71-1906.02. Repealed. Laws 2002, LB 93, § 27.

71-1906.03. Repealed. Laws 2002, LB 93, § 27.

71-1906.02 and 71-1906.03. Repealed. Laws 2002, LB 93, s. 27.

71-1907. Child passenger restraint; requirements; violation; penalty. Any person furnishing foster care who is subject to licensure under section 71-1902 or the Children's Residential Facilities and Placing Licensure Act, when transporting in a motor vehicle any children for whom care is being furnished, shall use an approved child

passenger restraint system for each child, except that an occupant protection system or a three-point safety belt system as defined in section 60-6,265 may be used for any child as prescribed in section 60-6,267. Any person violating this section shall be guilty of an infraction as defined in section 29-431 and shall have his or her license to furnish foster care revoked or suspended by the Department of Health and Human Services. For purposes of this section, approved child passenger restraint system shall mean a restraint system which meets Federal Motor Vehicle Safety Standard 213 as developed by the National Highway Traffic Safety Administration, as such standard existed on July 20, 2002.

Source: Laws 1982, LB 69, § 1; Laws 1987, LB 386, § 4; Laws 1992, LB 958, § 10; Laws 1993, LB 370, § 475; Laws 1995, LB 401, § 28; Laws 1996, LB 1044, § 586; Laws 1997, LB 307, § 174; Laws 2000, LB 410, § 3; Laws 2002, LB 1073, § 3; Laws 2013, LB265, § 44; Laws 2015, LB231, § 43; Laws 2018, LB42, § 3.

Cross References

Child passenger restraint system violation, see sections 60-6,267 and 60-6,268.

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

STATUTES PERTAINING TO CHILDREN'S RESIDENTIAL FACILITIES AND PLACING LICENSURE ACT

71-1924. Act, how cited. Sections 71-1924 to 71-1951 shall be known and may be cited as the Children's Residential Facilities and Placing Licensure Act.

Source: Laws 2013, LB265, § 1; Laws 2019, LB460, § 4.

Operative Date: May 31, 2019

71-1925. Purpose of act. The purpose of the Children's Residential Facilities and Placing Licensure Act is to protect the public health and the health, safety, and welfare of children who reside in or who are placed in settings other than the home of their parent or legal guardian by providing for the licensing of residential child-caring agencies and child-placing agencies in the State of Nebraska. The act provides for the development, establishment, and enforcement of basic standards for residential child-caring agencies and child-placing agencies.

Source: Laws 2013, LB265, § 2.

71-1926. Terms, defined. For purposes of the Children's Residential Facilities and Placing Licensure Act: (1) Care means the provision of room and board and the exercise of concern and responsibility for the safety and welfare of children on a twenty-four-hour-per-day basis in settings that serve as the out-of-home placement for children;

(2) Child means a minor less than nineteen years of age;

(3) Child-placing agency means any person other than the parent or legal guardian of a child that receives the child for placement and places or arranges for the placement of a child in a foster family home, adoptive home, residential child-caring agency, or independent living;

(4) Department means the Division of Public Health of the Department of Health and Human Services;

(5) Director means the Director of Public Health of the Division of Public Health;

(6) Person includes bodies politic and corporate, societies, communities, the public generally, individuals, partnerships, limited liability companies, joint-stock companies, and associations; and

(7) Residential child-caring agency means a person that provides care for four or more children and that is not a foster family home as defined in section 71-1901.

Source: Laws 2013, LB265, § 3.

71-1927. Residential child-caring agency or child-placing agency; license required; current license holders; how treated. (1) Except as provided in subsection (2) of this section, a residential child-caring agency or child-placing agency shall not be established, operated, or maintained in this state without first obtaining a license issued by the department under the Children's Residential Facilities and Placing Licensure Act. No person shall hold itself out as a residential child-caring agency or child-placing agency or as providing such services unless licensed under the act. The department shall issue a license to a residential child-caring agency or a child-placing agency that satisfies the requirements for licensing under the act.

(2) A group home, child-caring agency, or child-placing agency licensed under sections 71-1901 to 71-1906.01 on May 26, 2013, shall be deemed licensed under the Children's Residential Facilities and Placing Licensure Act until the license under such sections expires, and renewal shall be under the act.

(3) For purposes of requiring licensure, a residential child-caring agency or child-placing agency does not include an individual licensed as a foster family home under sections 71-1901 to 71-1906.01, a person licensed under the Health Care Facility Licensure Act, a person operating a juvenile detention facility as defined in section 83-4,125,

a staff secure youth confinement facility operated by a county, or a person providing only casual care for children at irregular intervals. Such persons may voluntarily apply for a license.

Source: Laws 2013, LB265, § 4.

Cross References

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

71-1928. Applicant for license or renewal; application; requirements; contents. (1) An applicant for an initial or renewal license to operate a residential child-caring agency or a child-placing agency shall file a written application with the department. To be licensed as a child-placing agency, an applicant must be a corporation, nonprofit corporation, or limited liability company. The application shall be accompanied by the applicable fees under section 71-1929 and shall set forth the full name and address of the agency to be licensed, the full name and address of the owner of the agency, the names of all persons in control of the agency, and additional information as required by the department, including sufficient affirmative evidence of the applicant's ability to comply with rules and regulations adopted and promulgated under the Children's Residential Facilities and Placing Licensure Act and evidence of adequate liability insurance or, if self-insured, of sufficient funds to pay liability claims. 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 for licensure as a residential child-caring agency is an individual or partnership;
- (b) Two of its members, if the applicant for licensure as a residential child-caring agency or as a child-placing agency is a limited liability company;
- (c) Two of its officers who have the authority to bind the corporation to the terms of the application, if the applicant for licensure as a residential child-caring agency or as a child-placing agency is a corporation or a nonprofit corporation; or
- (d) The head of the governmental unit having jurisdiction over the residential child-caring agency or child-placing agency to be licensed, if the applicant is a governmental unit.

Source: Laws 2013, LB265, § 5.

71-1928.01. National criminal history record information check; procedure; cost; background checks. (1) Any individual eighteen years of age or older working in a residential child-caring agency shall be required to undergo a national criminal history record information check not less than once during each five-year period that he or she is working in such an agency. The individual 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 individual'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 the individual 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 the individual. The individual being screened 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 residential child-caring agencies.

(2) An individual eighteen years of age or older working in a residential child-caring agency shall also submit to the following background checks not less than once during each five-year period: A search of the following registries, repositories, or data bases in the state where the individual resides and each state where the individual 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 data bases.

Source: Laws 2019, LB460, § 5.

Operative Date: May 31, 2019

71-1929. Fees. Fees applicable to an applicant for an initial or renewal license under the Children's Residential Facilities and Placing Licensure Act include:

- (1) A nonrefundable license fee of twenty-five dollars;
- (2) A nonrefundable renewal license fee of twenty-five dollars;
- (3) A reinstatement fee of twenty-five dollars if the license has lapsed or has been suspended or revoked; and

(4) A duplicate original license fee of ten dollars when a duplicate is requested.

Source: Laws 2013, LB265, § 6.

71-1930. Licenses; expiration date; not transferable or assignable; public inspection and display.

(1) Except as otherwise provided in the Children's Residential Facilities and Placing Licensure Act:

(a) Licenses issued under the act shall expire on uniform annual dates established by the department specified in rules and regulations; and

(b) Licenses shall be issued only for the premises and individuals named in the application and shall not be transferable or assignable.

(2) Licenses, license record information, and inspection reports shall be made available by the licensee for public inspection upon request and may be displayed in a conspicuous place on the licensed premises.

Source: Laws 2013, LB265, § 7.

71-1931. Separate license required; duties of licensee. (1) An applicant for licensure under the Children's Residential Facilities and Placing Licensure Act shall obtain a separate license for each type of residential child-caring agency or child-placing agency that the applicant seeks to operate. A single license may be issued for a residential child-caring agency operating in separate buildings or structures on the same premises under one management.

(2) An applicant for licensure shall obtain a separate license for each type of placement service the applicant seeks to provide. When a child-placing agency has more than one office location, the child-placing agency shall inform the department of each office location and the services provided at each location. A single license may be issued for multiple offices, or the applicant may apply for individual licenses for each office location.

Source: Laws 2013, LB265, § 8.

71-1932. Provisional license; period valid; conversion to regular license. A provisional license may be issued to an applicant for an initial residential child-caring agency or child-placing agency that substantially complies with requirements for licensure under the Children's Residential Facilities and Placing Licensure Act and the rules and regulations adopted and promulgated under the act if the failure to fully comply with such requirements does not pose a danger to the children residing in or served by the residential child-caring agency or child-placing agency. Such provisional license shall be valid for a period of up to one year, shall not be renewed, and may be converted to a regular license upon a showing that the agency fully complies with the requirements for licensure under the act and rules and regulations.

Source: Laws 2013, LB265, § 9.

71-1933. Inspection by department; inspection report. The department may inspect or provide for the inspection of residential child-caring agencies or child-placing agencies licensed under the Children's Residential Facilities and Placing Licensure Act in such manner and at such times as provided in rules and regulations adopted and promulgated by the department. The department shall issue an inspection report and provide a copy of the report to the agency within ten working days after the completion of an inspection.

Source: Laws 2013, LB265, § 10.

71-1934. State Fire Marshal; inspection; fee; delegation of authority; department; investigations authorized; delegation of authority. (1) The department may request the State Fire Marshal to inspect any residential child-caring agency for fire safety under section 81-502. The State Fire Marshal shall assess a fee for such inspection under section 81-505.01 payable by the applicant or licensee. The State Fire Marshal may delegate the authority to make such inspections to qualified local fire prevention personnel under section 81-502. (2) The department may investigate any residential child-caring agency to determine if the place or places to be covered by the license meet standards of sanitation and physical well-being set by the department for the care and protection of the children who may be placed with the residential child-caring agency. The department may delegate this authority to qualified local environmental health personnel.

Source: Laws 2013, LB265, § 11.

71-1935. Inspection report; findings of noncompliance; department; proceedings; letter requesting statement of compliance; contents; failure to correct; additional proceedings. If the inspection report issued under section 71-1933 contains findings of noncompliance by a licensed residential child-caring agency or child-placing agency with any applicable provisions of the Children's Residential Facilities and Placing Licensure Act or rules and regulations adopted and promulgated under the act, the department shall review such findings within twenty working days after such inspection. If the findings are supported by the evidence, the department shall proceed under sections 71-1939 to 71-1946, except that if the findings indicate one or more violations that create

no imminent danger of death or serious physical harm and no direct or immediate adverse relationship to the health, safety, or welfare of the children residing in or served by the residential child-caring agency or child-placing agency, the department may send a letter to the agency requesting a statement of compliance. The letter shall include a description of each violation, a request that the residential child-caring agency or child-placing agency submit a statement of compliance within ten working days, and a notice that the department may take further steps if the statement of compliance is not submitted. The statement of compliance shall indicate any steps which have been or will be taken to correct each violation and the period of time estimated to be necessary to correct each violation. If the residential child-caring agency or child-placing agency fails to submit and implement a statement of compliance which indicates a good faith effort to correct the violations, the department may proceed under sections 71-1939 to 71-1946.

Source: Laws 2013, LB265, § 12.

71-1936. Alleged violation of act; complaint; investigation; department; duties; confidentiality; immunity; report. (1) Any person may submit a complaint to the department and request investigation of an alleged violation of the Children's Residential Facilities and Placing Licensure Act or rules and regulations adopted and promulgated under the act. The department shall review all complaints, including complaints of such violations received pursuant to section 28-711, and determine whether to conduct an investigation within five working days after receiving the complaint. In making such determination, the department may consider factors such as:

- (a) Whether the complaint pertains to a matter within the authority of the department to enforce;
- (b) Whether the circumstances indicate that a complaint is made in good faith;
- (c) Whether the complaint is timely or has been delayed too long to justify present evaluation of its merit;
- (d) Whether the complainant may be a necessary witness if action is taken and is willing to identify himself or herself and come forward to testify if action is taken; or
- (e) Whether the information provided or within the knowledge of the complainant is sufficient to provide a reasonable basis to believe that a violation has occurred or to secure necessary evidence from other sources.

(2) A complaint submitted to the department shall be confidential. An individual submitting a complaint shall be immune from criminal or civil liability of any nature, whether direct or derivative, for submitting a complaint or for disclosure of documents, records, or other information to the department.

(3) If an investigation is conducted under this section, an investigation report shall be issued within sixty days after the determination is made to conduct the investigation, except that the final investigation report may be issued within ninety days after such determination if an interim report is issued within sixty days after such determination.

Source: Laws 2013, LB265, § 13; Laws 2019, LB59, § 1.

Effective Date: September 1, 2019

71-1937. Licensee; discrimination or retaliation prohibited; cause of action for relief. Licensees shall not discriminate or retaliate against an individual or the family of an individual residing in, served by, or employed at the residential child-caring agency or child-placing agency who has initiated or participated in any proceeding authorized by the Children's Residential Facilities and Placing Licensure Act or who has presented a complaint or provided information to the administrator of the residential child-caring agency or child-placing agency or the department. Such individual may maintain an action for any type of relief, including injunctive and declaratory relief, permitted by law.

Source: Laws 2013, LB265, § 14.

71-1938. Emergency; department; powers; order; contents; hearing; order; petition for injunction; other enforcement measures. (1) Whenever the department finds that an emergency exists requiring immediate action to protect the health, safety, or welfare of a child in a residential child-caring agency or child-placing agency, 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 or placement of children by 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) A copy of the order shall also be mailed to the holder of the license if the holder is not actually involved in the daily operation of the residential child-caring agency or child-placing agency. If the holder of the license is a corporation, a copy of the order shall be sent to the corporation's registered agent.

(3) The department may petition the appropriate district court for an injunction whenever there is the belief that any person is violating the Children's Residential Facilities and Placing Licensure Act, an order issued under the act, or any rule or regulation adopted and promulgated under 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. In charging any defendant in a complaint in such action, it shall be sufficient to charge that such defendant did, upon a certain day and in a certain county, establish, operate, or maintain a residential child-caring agency or a child-placing agency without obtaining a license to do so, without alleging any further or more particular facts concerning the charge.

Source: Laws 2013, LB265, § 15.

71-1939. Department; deny or refuse renewal of license; grounds. The department may deny or refuse to renew a license under the Children's Residential Facilities and Placing Licensure Act to any residential child-caring agency or child-placing agency that fails to meet the requirements for licensure provided in the act or in rules and regulations adopted and promulgated under the act, including:

- (1) Failing an inspection under section 71-1933;
- (2) Having had a license revoked within the two-year period preceding application; or
- (3) Any of the grounds listed in section 71-1940.

Source: Laws 2013, LB265, § 16.

71-1940. Deny, refuse renewal, or take disciplinary action against license; grounds. The department may deny, refuse to renew, or take disciplinary action against a license issued under the Children's Residential Facilities and Placing Licensure Act on any of the following grounds:

- (1) Failure to meet or violation of any of the requirements of the 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, admission, 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 children's residential care or child-placing services are 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; or
 - (g) Use of a weapon in the commission of an unlawful act;
- (4) Conduct or practices detrimental to the health, safety, or welfare of any individual residing in, served by, or employed at the residential child-caring agency or child-placing agency;
- (5) Failure to allow an agent or employee of the department access to the residential child-caring agency or child-placing agency for the purposes of inspection, investigation, or other information collection activities necessary to carry out the duties of the department;
- (6) Failure to allow local or state inspectors, investigators, or law enforcement officers access to the residential child-caring agency or child-placing agency 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, resolutions, or ordinances regulating licensees;
- (11) A history of misconduct or violations by an applicant or licensee involving children or vulnerable adults;
- (12) Violation of the requirements of section 83-4,134.01; or
- (13) Violation of any federal, state, or local law involving care of children.

Source: Laws 2013, LB265, § 17; Laws 2018, LB670, § 15.

Cross References

Medication Aide Act, see section 71-6718.

71-1941. License; department; impose disciplinary actions; fine; how treated; recovery. (1) The department may impose any one or a combination of the following types of disciplinary actions against the license of a residential child-caring agency or child-placing agency:

- (a) A fine not to exceed ten thousand dollars per violation;
- (b) A period of probation not to exceed two years, during which time the residential child-caring agency or child-placing agency may continue to operate under terms and conditions fixed by the order of probation;
- (c) Restrictions on new admissions to a residential child-caring agency or acceptance of new referrals by a child-placing agency;

- (d) Restrictions or other limitations on the number, gender, or age of children served by the residential child-caring agency or child-placing agency;
- (e) Other restrictions or limitations on the type of service provided by the residential child-caring agency or child-placing agency;
- (f) Suspension of the license for a period not to exceed three years, during which time the licensee shall not operate a residential child-caring agency or child-placing agency; or
- (g) Revocation of the license. A former licensee whose license has been revoked shall not apply for a license for a minimum of two years after the date of revocation.

(2) Any fine imposed and unpaid under the Children's Residential Facilities and Placing Licensure 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 residential child-caring agency or child-placing agency is located. The department shall, within thirty days after receipt, remit fines to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 2013, LB265, § 18.

71-1942. Disciplinary action; department; considerations. In determining what type of disciplinary action to impose, the department may consider:

- (1) 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;
- (2) The reasonableness of the diligence exercised by the licensee in identifying or correcting the violation;
- (3) The degree of cooperation exhibited by the licensee in the identification, disclosure, and correction of the violation;
- (4) Any previous violations committed by the licensee; and
- (5) The financial benefit to the licensee of committing or continuing the violation.

Source: Laws 2013, LB265, § 19.

71-1943. Deny, refuse renewal of, or take disciplinary action against license; department; notice; contents; hearing. (1) Except as provided in section 71-1938, if the department determines to deny, refuse renewal of, or take disciplinary action against a license, the department shall send to the applicant or licensee, by certified mail to the last-known address shown on the records of the department, 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, or regulation violated, and the type of disciplinary action which is pending. The denial, refusal to renew, 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 under section 71-1944.

(2) A copy of the notice in subsection (1) of this section shall also be mailed to the holder of the license if the holder is not actually involved in the daily operation of the residential child-caring agency or child-placing agency. If the holder of the license is a corporation, a copy of the notice shall be sent to the corporation's registered agent.

Source: Laws 2013, LB265, § 20.

71-1944. Applicant or licensee; notification to department; failure to notify department; effect. (1)

Within fifteen days after the mailing of a notice under section 71-1943, an applicant or licensee shall notify the department in writing that the applicant or licensee:

- (a) Desires to contest the notice and requests a hearing; or
- (b) Does not contest the notice.

(2) If the department does not receive notification within the fifteen-day period, the action of the department shall be final.

Source: Laws 2013, LB265, § 21.

71-1945. Applicant or licensee; hearing; procedure; director; decision; contents. (1) If the applicant or licensee requests a hearing under section 71-1944, the department shall hold a hearing and give the applicant or licensee the right to present such evidence as may be proper. On the basis of such evidence, the director shall affirm, modify, or set aside the determination. A copy of such decision setting forth the findings of facts and the particular reasons upon which the decision is based shall be sent by either registered or certified mail to the applicant or licensee.

(2) The procedure governing hearings authorized by this section shall be in accordance with rules and regulations adopted and promulgated by the department. A full and complete record shall be kept of all proceedings.

Witnesses may be subpoenaed by either party and shall be allowed fees at a rate prescribed by rule and regulation.

Source: Laws 2013, LB265, § 22.

71-1946. Decision of department; appeal; procedure. Any party to a decision of the department under the Children's Residential Facilities and Placing Licensure Act may appeal such decision. The appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 2013, LB265, § 23.

Cross References

Administrative Procedure Act, see section 84-920.

71-1947. Lapsed license; reinstatement; suspension; probation; reinstatement; procedure; hearing; revoked license; revocation period. (1) A license issued under the Children's Residential Facilities and Placing Licensure Act that has lapsed for nonpayment of fees is eligible for reinstatement at any time by applying to the department and paying the fees as provided in section 71-1929.

(2) A license that has been disciplined by being placed on suspension is eligible for reinstatement at the end of the period of suspension upon successful completion of an inspection and payment of the fees as provided in section 71-1929.

(3) A license that has been disciplined by being placed on probation is eligible for reinstatement at the end of the period of probation upon successful completion of an inspection if the department determines an inspection is warranted.

(4) A license that has been disciplined by being placed on probation or suspension may be reinstated prior to the completion of the term of such probation or suspension as provided in this subsection. Upon petition from a licensee and after consideration of materials submitted with such petition, the director may order an inspection or other investigation of the licensee. On the basis of material submitted by the licensee and the results of any inspection or investigation by the department, the director shall determine whether to grant full reinstatement of the license, to modify the probation or suspension, or to deny the petition for reinstatement. The director's decision shall become final fifteen days after mailing the decision to the licensee unless the licensee requests a hearing within such fifteen-day period. Any requested hearing shall be held according to rules and regulations of the department for administrative hearings in contested cases. Any party to the decision shall have a right to judicial review under the Administrative Procedure Act.

(5) A license that has been disciplined by being revoked is not eligible for relicensure until two years after the date of such revocation. An application for an initial license may be made at the end of such two-year period.

Source: Laws 2013, LB265, § 24.

Cross References

Administrative Procedure Act, see section 84-920.

71-1948. Voluntary surrender of license. A licensee may voluntarily surrender a license issued under the Children's Residential Facilities and Placing Licensure 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 2013, LB265, § 25.

71-1949. Rules and regulations; contested cases; procedure. (1) To protect the health, safety, and welfare of the public and to insure to the greatest extent possible the efficient, adequate, and safe care of children, the department may adopt and promulgate rules and regulations consistent with the Children's Residential Facilities and Placing Licensure Act as necessary for:

(a) The proper care and protection of children in residential child-caring agencies and child-placing agencies regulated under the act;

(b) The issuance, discipline, and reinstatement of licenses; and

(c) The proper administration of the act.

(2) Such rules and regulations shall establish standards for levels of care and services which may include, but are not limited to, supervision and structured activities designed to address the social, emotional, educational, rehabilitative, medical, and physical needs of children residing in or being placed by a residential child-caring agency or child-placing agency and may include the use of community resources to meet the needs of children and qualifications of staff.

(3) Contested cases of the department under the act shall be in accordance with the Administrative Procedure Act.

Source: Laws 2013, LB265, § 26.

Cross References

Administrative Procedure Act, see section 84-920.

71-1950. Violations; penalty. Any person who establishes, operates, or maintains a residential child-caring agency or child-placing agency subject to the Children's Residential Facilities and Placing Licensure Act without first obtaining a license as required under the act or who violates any of the provisions of the act shall be guilty of a Class I misdemeanor. Each day such person operates after a first conviction shall be considered a subsequent offense.

Source: Laws 2013, LB265, § 27.

71-1951. Existing rules and regulations, licenses, and proceedings; how treated. (1) All rules and regulations adopted and promulgated prior to May 26, 2013, under sections 71-1901 to 71-1906.01 or other statutes amended by Laws 2013, LB265, may continue to be effective under the Children's Residential Facilities and Placing Licensure Act to the extent not in conflict with the act.

(2) All licenses issued prior to May 26, 2013, in accordance with sections 71-1901 to 71-1906.01 or other statutes amended by Laws 2013, LB265, shall remain valid as issued for purposes of the Children's Residential Facilities and Placing Licensure Act unless revoked or otherwise terminated by law.

(3) Any suit, action, or other proceeding, judicial or administrative, which was lawfully commenced prior to May 26, 2013, under sections 71-1901 to 71-1906.01 or other statutes amended by Laws 2013, LB265, shall be subject to the provisions of sections 71-1901 to 71-1906.01 or such other statutes as they existed prior to May 26, 2013.

Source: Laws 2013, LB265, § 28.

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) For purposes of licensing providers of child care programs, the Department of Health and Human Services; and
- (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.

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.

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 Health and Human Services, pursuant to section 71-4635.

(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.

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.

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

Storage tank registration, see sections 81-1575 to 81-1577.01.

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) Except as provided in subdivision (b) of this subsection, the fee for reviewing plans, blueprints, and shop drawings to determine compliance with rules and regulations adopted and promulgated pursuant to section 81-503.01 shall be assessed according to the following schedule:

TOTAL VALUE OF PROPOSED	
STRUCTURE OR IMPROVEMENT	FEE
\$1 - \$5,000	\$5.00

\$5,001 - \$25,000	\$5.00 for the first \$5,000.00 plus \$2.00 for each additional \$5,000.00 or fraction thereof.
\$25,001 - \$50,000	\$15.00 for the first \$25,000.00 plus \$2.00 for each additional \$5,000.00 or fraction thereof.
\$50,001 - \$100,000	\$25.00 for the first \$50,000.00 plus \$1.00 for each additional \$5,000.00 or fraction thereof.
\$100,001 - \$200,000	\$35.00 for the first \$100,000.00 plus \$1.00 for each additional \$10,000.00 or fraction thereof.
\$200,001 or more	\$50.00 for the first \$200,000.00 plus \$1.00 for each additional \$10,000.00 or fraction thereof, except that the total fee shall not exceed \$500.00.

(b) The fees set out in 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.

Effective Date: September 1, 2019

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.