

**2008**

**STATE OF NEBRASKA**

**STATUTES RELATING TO  
CHILD CARE LICENSURE**



Department of Health and Human Services  
Division of Public Health  
Licensure Unit

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**NEBRASKA CREDENTIALLED PROVIDERS OF CHILD CARE PROGRAMS**  
(Statutes relating to Licensing of Providers of Child Care Programs listed in alphabetical order)

CHILD ABUSE OR NEGLECT  
28-711, 28-725, and 28-726.

CHILD CARE LICENSURE  
71-1908 to 71-1923.

CHILD TRANSPORTATION  
60-6,267 and 60-6,268.

CLEAN INDOOR AIR  
71-5707.

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
81-3126.

QUALITY CHILD CARE ACT  
43-2601 to 43-2625.

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## STATUTES RELATING TO CHILD CARE LICENSURE

**71-1908. Act, how cited; legislative findings.** (1) Sections 71-1908 to 71-1923 shall be known and may be cited as the Child Care Licensing Act.

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

Source: Laws 1984, LB 130, § 1; Laws 1995, LB 401, § 29; Laws 2004, LB 1005, § 67. Operative date July 16, 2004.

**71-1909. Purposes of act; legislative intent.** (1) The purposes of the Child Care Licensing Act are to provide:

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

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

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

Source: Laws 1984, LB 130, § 2; Laws 1995, LB 401, § 30; Laws 1996, LB 1044, § 587; Laws 1997, LB 307, § 175; Laws 1997, LB 310, § 4; Laws 1999, LB 594, § 50; Laws 2004, LB 1005, § 68; Laws 2007, LB296, § 498. Operative date July 1, 2007.

**71-1910. Terms, defined.** For purposes of the Child Care Licensing Act, unless the context otherwise requires:

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

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

(b) Program does not include casual care at irregular intervals, a recreation camp as defined in section 71-3101, a recreation facility, center, or program operated by a political or governmental subdivision pursuant to the authority provided in section 13-304, classes or services provided by a religious organization other than child care or a preschool or nursery school, a preschool program conducted in a school approved pursuant to section 79-318, services provided only to school-age children during the summer and other extended breaks in the school year, or foster care as defined in section 71-1901.

Source: Laws 1984, LB 130, § 3; Laws 1986, LB 68, § 1; Laws 1987, LB 472, § 1; Laws 1991, LB 836, § 29; Laws 1995, LB 401, § 31; Laws 1995, LB 451, § 9; Laws 1996, LB 900, § 1058; Laws 1996, LB 1044, § 588; Laws 1997, LB 307, § 176; Laws 1997, LB 310, § 5; Laws 1999, LB 594, § 51; Laws 2004, LB 1005, § 69; Laws 2006, LB 994, § 97; Laws 2007, LB296, § 499; Laws 2008, LB928, § 19. Operative date July 18, 2008.

**71-1911. Licenses; when required; issuance; corrective action status; display of license.** (1) A person may operate child care for three or fewer children without having a license issued by the department. A person who is not required to be licensed may choose to apply for a license and, upon obtaining a license, shall be subject to the Child Care Licensing Act. A person who has had a license issued pursuant to this section and has had such license suspended or revoked other than for nonpayment of fees shall not operate or offer to operate a program for or provide care to any number of children until the person is licensed pursuant to this section.

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

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

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

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

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

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

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

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

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

(5) Operating licenses issued under the Child Care Licensing Act shall remain in full force and effect subject to annual inspections and fees. The department may amend a license upon change of ownership or location. Amending a license requires a site inspection by the department at the time of amendment, except that for amendment of a family child care home I license, an inspection shall occur within sixty days. When a program is to be permanently closed, the licensee shall return the license to the department within one week after the closing.

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

Source: Laws 1984, LB 130, § 4; Laws 1988, LB 1013, § 1; Laws 1991, LB 836, § 30; Laws 1993, LB 510, § 1; Laws 1995, LB 401, § 32; Laws 1997, LB 310, § 6; Laws 1997, LB 752, § 177; Laws 1998, LB 1354, § 33; Laws 1999, LB 594, § 52; Laws 2004, LB 1005, § 70; Laws 2006, LB 994, § 98. Operative date July 14, 2006.

**71-1911.01. Fees.** (1) For a license to operate a program for fewer than thirty children, each applicant for a license and each licensee shall pay to the department, at the time of initial application and annually thereafter, a license fee of twenty-five dollars.

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

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

Source: Laws 1993, LB 510, § 2; Laws 2004, LB 1005, § 72. Operative date July 16, 2004.

**71-1911.02. Application; contents.** (1) An applicant for a license to operate a program required to be licensed under the Child Care Licensing Act shall file a written application with the department. The application shall be accompanied by the license fee pursuant to section 71-1911.01 and shall set forth the full name and address of the program to be licensed, the full name and address of the owner of such program, the names of all household members if the program is located in a residence, the names of all persons in control of the program, and additional information as required by the department, including affirmative evidence of the applicant's ability to comply with rules and regulations adopted and promulgated under the act. The application shall include the applicant's social security number if the applicant is an individual. The social security number shall not be public record and may only be used for administrative purposes.

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

Source: Laws 2004, LB 1005, § 71; Laws 2006, LB 994, § 99. Operative date July 14, 2006.

**71-1912. Department; investigation; inspections.** (1) Before issuance of a license, the department shall investigate or cause an investigation to be made, when it deems necessary, to determine if the applicant or person in charge of the program meets or is capable of meeting the physical well-being, safety, and protection standards and the other rules and regulations of the department adopted and promulgated under the Child Care Licensing Act. The department may investigate the character of applicants and licensees, any member of the applicant's or licensee's household, and the staff and employees of programs by making a national criminal history record information check. The department may at any time inspect or cause an inspection to be made of any place where a program is operating to determine if such program is being properly conducted.

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

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

fewer than thirty children and at least twice every year for a program licensed to provide child care for thirty or more children.

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

Source: Laws 1984, LB 130, § 5; Laws 1985, LB 447, § 38; Laws 1987, LB 386, § 5; Laws 1988, LB 1013, § 2; Laws 1995, LB 401, § 33; Laws 1997, LB 310, § 7; Laws 2004, LB 1005, § 73. Operative date July 16, 2004.

**71-1913. Fire and health inspections.** (1) The department may request the State Fire Marshal to inspect any program for fire safety pursuant to section 81-502. The State Fire Marshal shall immediately notify the department whenever he or she delegates authority for such inspections under such section.

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

Source: Laws 1984, LB 130, § 6; Laws 1991, LB 836, § 31; Laws 1995, LB 401, § 34; Laws 1996, LB 1044, § 589; Laws 1997, LB 307, § 177; Laws 1997, LB 622, § 102; Laws 1999, LB 594, § 53. Operative date July 1, 1999.

**71-1913.01. Immunization requirements; record; report.** (1) Each program shall require the parent or guardian of each child enrolled in such program to present within thirty days after enrollment and periodically thereafter (a) proof that the child is protected by age-appropriate immunization against measles, mumps, rubella, poliomyelitis, diphtheria, pertussis, tetanus, haemophilus influenzae type B, and invasive pneumococcal disease and such other diseases as the department may from time to time specify based on then current medical and scientific knowledge, (b) certification by a physician, an advanced practice registered nurse practicing under and in accordance with his or her respective certification act, or a physician assistant that immunization is not appropriate for a stated medical reason, or (c) a written statement that the parent or guardian does not wish to have such child so immunized and the reasons therefor. The program shall exclude a child from attendance until such proof, certification, or written statement is provided. At the time the parent or guardian is notified that such information is required, he or she shall be notified in writing of his or her right to submit a certification or written statement pursuant to subdivision (b) or (c) of this subsection.

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

Source: Laws 1987, LB 472, § 2; Laws 1992, LB 431, § 6; Laws 1995, LB 401, § 35; Laws 1996, LB 414, § 49; Laws 1996, LB 1044, § 590; Laws 1998, LB 1073, § 103; Laws 1999, LB 594, § 54; Laws 2000, LB 1115, § 70; Laws 2005, LB 256, § 92; Laws 2005, LB 301, § 38; Laws 2007, LB247, § 50; Laws 2007, LB296, § 500. The changes made by LB 247 became operative June 1, 2007. The changes made by LB 296 became operative July 1, 2007.

**71-1913.02. Immunization reports; audit; deficiencies; duties.** (1) The department shall perform annually a random audit of the reports submitted under section 71-1913.01 to check for compliance with such section on an annual basis and such other audits and inspections as are necessary to prevent the introduction or spread of disease. Audit results shall be reported to the department.

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

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

Source: Laws 1987, LB 472, § 3; Laws 1995, LB 401, § 36; Laws 1996, LB 1044, § 591; Laws 1997, LB 307, § 178; Laws 1998, LB 1073, § 104; Laws 1999, LB 594, § 55; Laws 2005, LB 301, § 39; Laws 2007, LB296, § 501. Operative date July 1, 2007.

**71-1913.03. Immunization; department; adopt rules and regulations.** The department shall adopt and promulgate rules and regulations relating to the required levels of protection, using as a guide the recommendations of the American Academy of Pediatrics and the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention of the United States Department of Health and Human Services, Public Health Service, and the methods, manner, and frequency of reporting of each child's immunization status. The department shall furnish each program with copies of such rules and regulations and any other material which will assist in carrying out section 71-1913.01.

Source: Laws 1987, LB 472, § 4; Laws 1992, LB 431, § 7; Laws 1995, LB 401, § 37; Laws 1996, LB 1044, § 592; Laws 1998, LB 1073, § 105; Laws 2005, LB 301, § 40; Laws 2007, LB296, § 502. Operative date July 1, 2007.

**71-1914. Department; serve as coordinating agency; local rules and regulations; report of violation.** (1) The department shall be the state's coordinating agency for licensure and regulation of programs in this state in order to (a) provide efficient services pursuant to the Child Care Licensing Act, (b) avoid duplication of services, and (c) prevent an unnecessary number of inspections of any program. The department may request cooperation and assistance from local and state agencies and such agencies shall promptly respond. The extent of an agency's cooperation may be included in the report to the Legislature pursuant to section 43-3402.

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

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

**71-1914.01. Unlicensed child care; investigation.** When the department receives a complaint of allegedly improper unlicensed care, the department shall investigate the claim and shall go to the premises of the alleged unlicensed program to ascertain if child care is being provided there which must be licensed according to the Child Care Licensing Act. If unlicensed child care is occurring in violation of the act, the person providing the unlicensed care shall have thirty days to either become licensed or cease providing unlicensed child care. The department shall visit the program again after such thirty-day period. If the person has not initiated action to become licensed or ceased providing unlicensed child care, the department may involve law enforcement and may proceed under sections 71-1914.02 and 71-1914.03.

Source: Laws 1997, LB 310, § 8; Laws 2004, LB 1005, § 75. Operative date July 16, 2004.

**71-1914.02. Unlicensed child care; restraining order or injunction; department; powers.** The department may apply for a restraining order or a temporary or permanent injunction against any person violating the Child Care Licensing Act by providing unlicensed child care when a license is required. The district court of the county where the violation is occurring shall have jurisdiction to grant such relief upon good cause shown. Relief may be granted notwithstanding the existence of any other remedy at law and shall be granted without bond.

Source: Laws 1997, LB 310, § 9; Laws 2004, LB 1005, § 76. Operative date July 16, 2004.

**71-1914.03. Unlicensed child care; violations; penalty; county attorney; duties.** (1) Any person violating the Child Care Licensing Act by providing unlicensed child care when a license is required is guilty of a Class IV misdemeanor. Each day the violation continues shall be a separate offense.

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

Source: Laws 1997, LB 310, § 10; Laws 2004, LB 1005, § 77. Operative date July 16, 2004.

**71-1915. Department; emergency powers; injunction.** (1) Whenever the department finds that an emergency exists requiring immediate action to protect the physical well-being and safety of a child in a program, the department may, without notice or hearing, issue an order declaring the existence of such an emergency and requiring that such action be taken as the department deems necessary to meet the emergency. The order may include an immediate prohibition on the care of children by the licensee other than children of the licensee. An order under this subsection shall be effective immediately. Any person to whom the order is directed shall comply immediately, and upon application to the department, the person shall be afforded a hearing as soon as possible and not later than ten days after his or her application for the hearing. On the basis of such hearing the department shall continue to enforce such order or rescind or modify it.

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

Source: Laws 1984, LB 130, § 8; Laws 1987, LB 472, § 5; Laws 1988, LB 1013, § 3; Laws 1993, LB 510, § 3; Laws 1995, LB 401, § 39; Laws 1997, LB 310, § 12; Laws 1999, LB 594, § 56; Laws 2001, LB 213, § 2; Laws 2004, LB 1005, § 78; Laws 2007, LB296, § 504. Operative date July 1, 2007.

**71-1916. Department; administrative procedures.** (1) The department shall adopt and promulgate such rules and regulations, consistent with the Child Care Licensing Act, as necessary for (a) the proper care and protection of children in programs regulated under the act, (b) the issuance and discipline of licenses, and (c) the proper administration of the act.

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

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

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

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

Source: Laws 1984, LB 130, § 9; Laws 1988, LB 352, § 124; Laws 1995, LB 401, § 40; Laws 1997, LB 310, § 13; Laws 2001, LB 213, § 3; Laws 2004, LB 1005, § 79; Laws 2006, LB 994, § 101. Operative date July 14, 2006.

**71-1917. Repealed.** Laws 2006, LB 994, s. 162.

**71-1918. Complaint tracking system.** The department shall maintain a complaint tracking system for licensees under the Child Care Licensing Act.

Source: Laws 2004, LB 1005, § 81. Operative date July 16, 2004.

**71-1919. License denial; disciplinary action; grounds.** The department may deny the issuance of or take disciplinary action against a license issued under the Child Care Licensing Act on any of the following grounds:

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

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

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

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

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

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

(d) Homicide;

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

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

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

(4) Conduct or practices detrimental to the health or safety of a person served by or employed at the program;

(5) Failure to allow an agent or employee of the department access to the program for the purposes of inspection, investigation, or other information collection activities necessary to carry out the duties of the department;

(6) Failure to allow state or local inspectors, investigators, or law enforcement officers access to the program for the purposes of investigation necessary to carry out their duties;

(7) Failure to meet requirements relating to sanitation, fire safety, and building codes;

(8) Failure to comply with or violation of the Medication Aide Act;

(9) Failure to file a report of suspected abuse or neglect as required by sections 28-372 and 28-711;

(10) Violation of any city, village, or county rules, regulations, or ordinances regulating licensees; or

(11) Failure to pay fees required under the Child Care Licensing Act.

Source: Laws 2004, LB 1005, § 82; Laws 2007, LB296, § 505. Operative date July 1, 2007.

**71-1920. Disciplinary action; types; fines; disposition.** (1) The department may impose any one or a combination of the following types of disciplinary action against a license issued under the Child Care Licensing Act:

- (a) Issue a probationary license;
- (b) Suspend or revoke a provisional, probationary, or operating license;
- (c) Impose a civil penalty of up to five dollars per child, based upon the number of children for which the program is authorized to provide child care on the effective date of the finding of violation, for each day the program is in violation;
- (d) Establish restrictions on new enrollment in the program;
- (e) Establish restrictions or other limitations on the number of children or the age of the children served in the program; or
- (f) Establish other restrictions or limitations on the type of service provided by the program.

(2) A person who has had a license revoked for any cause other than nonpayment of fees shall not be eligible to reapply for a license for a period of two years.

(3) Any fine imposed and unpaid under the Child Care Licensing Act shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in any proper form of action in the name of the State of Nebraska in the district court of the county in which the program is located. The department shall, within thirty days after receipt, remit fines to the State Treasurer for credit to the permanent school fund.

Source: Laws 2004, LB 1005, § 83. Operative date July 16, 2004.

**71-1921. Disciplinary action; considerations.** (1) In determining what type of disciplinary action to impose, the department shall consider:

- (a) The gravity of the violation, including the probability that death or serious physical or mental harm will result, the severity of the actual or potential harm, and the extent to which the provisions of applicable statutes, rules, and regulations were violated;
- (b) The diligence exercised by the program in identifying or correcting the violation;
- (c) The degree of cooperation exhibited by the licensee in the identification, disclosure, and correction of the violation;
- (d) Any previous violations committed by the program; and
- (e) The financial benefit to the program of committing or continuing the violation.

(2) If the licensee fails to correct a violation or to comply with a particular type of disciplinary action, the department may take additional disciplinary action as described in section 71-1920.

Source: Laws 2004, LB 1005, § 84. Operative date July 16, 2004.

**71-1922. Denial of license; disciplinary action; notice; final; when.** (1) If the department determines to deny the issuance of or take disciplinary action against a license under the Child Care Licensing Act, the department shall send to the applicant or licensee, by certified mail to the address of the applicant or licensee, a notice setting forth the determination, the particular reasons for the determination, including a specific description of the nature of the violation and the statute, rule, regulation, or order violated, and the type of disciplinary action which is pending. A copy of the notice shall also be mailed to the person in charge of the program if the licensee is not actually involved in the daily operation of the program. If the licensee is a corporation, a copy of the notice shall be sent to the corporation's registered agent.

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

Source: Laws 2004, LB 1005, § 85; Laws 2007, LB296, § 506. Operative date July 1, 2007.

**71-1923. Voluntary surrender of license.** A licensee may voluntarily surrender the license issued under the Child Care Licensing Act at any time, except that the department may refuse to accept a voluntary surrender of a license if the licensee is under investigation or if the department has initiated disciplinary action against the licensee.

Source: Laws 2004, LB 1005, § 86. Operative date July 16, 2004.

## **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, medical institution, nurse, school employee, social worker, or 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 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. Effective date September 4, 2005.

**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 register 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 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 register 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. Effective date March 11, 2008.

**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 register of child protection cases maintained pursuant to section 28-718 unless in furtherance of purposes directly connected with the administration of the Child Protection 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 State 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 state 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; and
- (9) For purposes of licensing providers of child care programs, the Department of Health and Human Services.

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. Effective date March 11, 2008.

## STATUTES RELATING TO JUDGMENT ON CONVICTION - PROBATION

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

**29-2264. Probation; completion; conviction may be set aside; conditions; retroactive effect.** *(1) Whenever any person is placed on probation by a court and satisfactorily completes the conditions of his or her probation for the entire period or is discharged from probation prior to the termination of the period of probation, the sentencing court shall issue an order releasing the offender from probation. Such order in all felony cases shall provide notice that the person's voting rights are restored two years after completion of probation. The order shall include information on restoring other civil rights through the pardon process, including application to and hearing by the Board of Pardons.*

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

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

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

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

- (a) Nullify the conviction; and
- (b) Remove all civil disabilities and disqualifications imposed as a result of the conviction.

(5) *The setting aside of a conviction in accordance with the Nebraska Probation Administration Act shall not:*

- (a) Require the reinstatement of any office, employment, or position which was previously held and lost or forfeited as a result of the conviction;
- (b) Preclude proof of a plea of guilty whenever such plea is relevant to the determination of an issue involving the rights or liabilities of someone other than the offender;
- (c) Preclude proof of the conviction as evidence of the commission of the misdemeanor or felony whenever the fact of its commission is relevant for the purpose of impeaching the offender as a witness, except that the order setting aside the conviction may be introduced in evidence;

(d) Preclude use of the conviction for the purpose of determining sentence on any subsequent conviction of a criminal offense;

(e) Preclude the proof of the conviction as evidence of the commission of the misdemeanor or felony in the event an offender is charged with a subsequent offense and the penalty provided by law is increased if the prior conviction is proved;

(f) Preclude the proof of the conviction to determine whether an offender is eligible to have a subsequent conviction set aside in accordance with the Nebraska Probation Administration Act;

(g) *Preclude use of the conviction as evidence of commission of the misdemeanor or felony for purposes of determining whether an application filed or a license issued under sections 71-1901 to 71-1906.01 or the Child Care Licensing Act or a certificate issued under sections 79-806 to 79-815 should be denied, suspended, or revoked;*

(h) Preclude proof of the conviction as evidence whenever the fact of the conviction is relevant to a determination of risk of recidivism under section 29-4013; or

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

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

Source: Laws 1971, LB 680, §19; Laws 1993, LB 564, §1; Laws 1994, LB 677, §1; Laws 1995, LB 401, §1; Laws 1997, LB 310, §1; Laws 1998, Spec. Sess., LB 1, §3; Laws 2002, LB 1054, §6; Laws 2003, LB 685, §2; Laws 2004, LB 1005, §3; Laws 2005, LB 53, §3; Laws 2005, LB 713, §3. Effective date September 4, 2005.

## STATUTES RELATING TO QUALITY CHILD CARE ACT

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

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

**43-2602. Legislative intent.** It is the intent of the Legislature to promote the growth and development of a comprehensive child care system which meets the needs of families in Nebraska by encouraging high-quality, affordable, and accessible child care services that are educationally and developmentally appropriate. The Legislature finds that existing child care resources are inadequate to meet the need for services and that high-quality services can substantially increase the well-being of children and families.

Source: Laws 1991, LB 836, § 2.

**43-2603. Legislative declarations.** The Legislature declares that it shall be the policy of the State of Nebraska to:

- (1) Recognize the family as the most important social and economic unit of society and support the central role parents play in raising children. All parents are encouraged to care for and nurture their children through the traditional methods of parental care at home. However, to the extent early childhood care and education and school-age-care programs are used, parents are encouraged to participate fully in the effort to improve the quality of such programs;
- (2) Promote a variety of culturally and developmentally appropriate child care programs of high quality;
- (3) Promote the growth, development, and safety of children by working with community groups and agencies, including

providers and parents, to establish standards for high-quality programs, training of providers, fair and equitable monitoring, and salary levels commensurate with provider responsibilities and support services;

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

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

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

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

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

**43-2604. Legislative findings and priorities.** The Legislature finds that since the majority of children of prekindergarten age will continue to be served in private child care settings and programs, an investment of public resources in upgrading the training levels of staff will be an investment in all the children of the state. Coordination of existing training opportunities offered by agencies would greatly enhance the ability of providers in local communities to gain access to relevant training and would also enhance efforts to provide training which is sensitive to local needs. The Legislature also finds that training which brings together staff from various programs can provide a setting in which to initiate and promote collaborative efforts at the local level.

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

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

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

**43-2605. Terms, defined.** For purposes of the Quality Child Care Act:

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

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

Source: Laws 1991, LB 836, § 5; Laws 1995, LB 401, § 5; Laws 2007, LB296, § 148. Operative date July 1, 2007.

**43-2606. Providers of child care and school-age-care programs; training requirements.** (1) The Department of Health and Human Services shall adopt and promulgate rules and regulations for mandatory training requirements for providers of child care and school-age-care programs. Such requirements shall include preservice orientation and at least four hours of annual inservice training. All child care programs required to be licensed under section 71-1911 shall show completion of a preservice orientation approved or delivered by the department prior to receiving a provisional license.

(2) The department shall initiate a system of documenting the training levels of staff in specific child care settings to assist parents in selecting optimal care settings.

(3) The training requirements shall be designed to meet the health, safety, and developmental needs of children and shall be tailored to the needs of licensed providers of child care programs. The training requirements for providers of child care programs shall include, but not be limited to, information on sudden infant death syndrome, shaken baby syndrome, and child abuse.

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

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

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

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

**43-2607. Early Childhood Program Training Fund; created; use; investment; contracts authorized.** There is hereby created the Early Childhood Program Training Fund. The fund shall be administered by the State Department of Education and shall be used to enhance, provide, and coordinate training for providers of programs. Emphasis shall be placed on the coordination of and dissemination of information about existing training opportunities. Such training may include:

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

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

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

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

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

**43-2608. Toll-free hotline for providers; established.** The Department of Health and Human Services shall establish a statewide toll-free hotline to provide immediate responses to the needs of providers of programs. Such hotline may be operated by the department, or the department may contract with a state agency or with any other public or private entity capable of providing such service to operate the hotline.

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

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

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

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

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

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

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

**43-2610 to 43-2615. Repealed.** Laws 2000, LB 1135, §34.

**43-2616. Family child care home; location.** Notwithstanding any other provision of law, including section 71-1914, family child care homes licensed by the Department of Health and Human Services pursuant to section 71-1911 or by a city, village, or county pursuant to subsection (2) of section 71-1914 may be established and operated in any residential zone within the exercised zoning jurisdiction of any city or village.

Source: Laws 1991, LB 836, § 16; Laws 1995, LB 401, § 16; Laws 1996, LB 1044, § 227; Laws 1997, LB 307, § 97; Laws 1999, LB 594, § 25; Laws 2007, LB296, § 150. Operative date July 1, 2007.

**43-2617. Program provider; communicable disease; notice to parents.** A provider of a program shall notify the parents of enrolled children of the outbreak of any communicable disease in any child in the program on the same day the provider is informed of or observes the outbreak. The Department of Health and Human Services shall develop appropriate procedures to carry out this section.

Source: Laws 1991, LB 836, § 17; Laws 1995, LB 401, § 17; Laws 1996, LB 1044, § 228; Laws 1997, LB 307, § 98; Laws 2007, LB296, § 151. Operative date July 1, 2007.

**43-2618. Family child care homes; inspections.** All family child care homes required to be licensed under section 71-1911 or which are registered pursuant to section 43-2609 shall be inspected within sixty days of licensure or registration. All family child care homes licensed under section 71-1911 shall be inspected after the initial inspection pursuant to section 71-1912. All family child care homes registered under section 43-2609 shall be inspected at least every two years after the initial inspection. It is the intent of the Legislature that registered family child care homes be inspected annually if sufficient funds are made available under the federal Child Care and Development Block Grant Act of 1990 for such purposes.

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

**43-2619. Office for child development and early childhood education services.** There is hereby created within the State Department of Education an office for child development and early childhood education services.

Source: Laws 1991, LB 836, § 19.

**43-2620. Collaboration of activities; duties.** The Department of Health and Human Services and the State Department of Education shall collaborate in their activities and may:

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

Source: Laws 1991, LB 836, § 20; Laws 1995, LB 401, § 19; Laws 1996, LB 900, § 1052; Laws 1996, LB 1044, § 229; Laws 1997, LB 307, § 99; Laws 1999, LB 594, § 26; Laws 2000, LB 1135, § 10; Laws 2007, LB296, § 152. Operative date July 1, 2007.

**43-2620.01. State Board of Education; voluntary accreditation process; rules and regulations.** The State Board of Education may adopt and promulgate reasonable rules and regulations to establish the voluntary accreditation process referred to in subdivision (10) of section 43-2620.

Source: Laws 1995, LB 401, § 21.

**43-2621. Block grant funds; use.** Funds provided to the State of Nebraska pursuant to the Child Care and Development Block Grant Act of 1990 shall be used to implement the Quality Child Care Act.

Source: Laws 1991, LB 836, § 21.

**43-2622. Child Care Grant Fund; established; use; investment.** The Child Care Grant Fund is hereby established to be administered by the Department of Health and Human Services. The fund shall be used to make grants pursuant to section 43-2624. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

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

**43-2623. Appropriation to Child Care Grant Fund; legislative intent.** The Legislature recognizes that a shortage of quality, affordable, and accessible child care exists to the detriment of families and employers throughout the state. Workers are unable to enter or remain in the work force due to a shortage of child care resources. The high costs of starting or expanding a child care business creates a barrier to the creation of additional space, especially for infants and children with special needs. It is the intent of the Legislature to appropriate two hundred fifty thousand dollars annually to the Child Care Grant Fund from funds designated by the State of Nebraska under the Child Care and Development Block Grant Act of 1990.

Source: Laws 1991, LB 836, § 22.

**43-2624. Child care grants.** The Department of Health and Human Services shall award grants to persons, community-based organizations, or schools needing assistance to start or improve a child care program or needing assistance to provide staff training for a child care program. No grant shall exceed ten thousand dollars. A recipient of a grant shall not be eligible for a grant more than once in a three-year period. Child care grants shall be awarded on the basis of need for the proposed services in the community. Grants shall be given only to grantees who do not discriminate against children with disabilities or children whose care is funded by any state or federal funds. When considering grant applications of equal merit, the department shall award the grant to the applicant which has not previously received a grant from the Child Care Grant Fund.

Source: Laws 1991, LB 836, § 24; Laws 1995, LB 401, § 20; Laws 1996, LB 1044, § 231; Laws 1997, LB 307, § 101; Laws 1998, LB 1073, § 32. Operative date April 15, 1998.

**43-2625. Child care grants; rules and regulations.** The Department of Health and Human Services shall adopt and promulgate rules and regulations setting forth criteria, application procedures, and methods to assure compliance with the

criteria for grants to be awarded pursuant to section 43-2624.

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

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

**60-6,267. Use of restraint system or occupant protection system; when; information and education program.** (1) Any person in Nebraska who drives any motor vehicle which has or is required to have an occupant protection system shall ensure that:

(a) All children up to six years of age being transported by such vehicle use a child passenger restraint system of a type which meets Federal Motor Vehicle Safety Standard 213 as developed by the National Highway Traffic Safety Administration, as such standard existed on January 1, 2008, and which is correctly installed in such vehicle; and

(b) All children six years of age and less than eighteen years of age being transported by such vehicle use an occupant protection system.

This subsection shall apply to every motor vehicle which is equipped with an occupant protection system or is required to be equipped with restraint systems pursuant to Federal Motor Vehicle Safety Standard 208, as such standard existed on January 1, 2008, except taxicabs, mopeds, motorcycles, and any motor vehicle designated by the manufacturer as a 1963 year model or earlier which is not equipped with an occupant protection system.

(2) Whenever any licensed physician determines, through accepted medical procedures, that use of a child passenger restraint system by a particular child would be harmful by reason of the child's weight, physical condition, or other medical reason, the provisions of subsection (1) of this section shall be waived. The driver of any vehicle transporting such a child shall carry on his or her person or in the vehicle a signed written statement of the physician identifying the child and stating the grounds for such waiver.

(3) The drivers of authorized emergency vehicles shall not be subject to the requirements of subsection (1) of this section when operating such authorized emergency vehicles pursuant to their employment.

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

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

(6) All persons being transported by a motor vehicle operated by a holder of a provisional operator's permit or a school permit shall use such motor vehicle's occupant protection system.

Source: Laws 1983, LB 306, § 2; Laws 1985, LB 259, § 1; Laws 1990, LB 958, § 1; Laws 1992, LB 958, § 3; R.S.Supp., 1992, § 39-6,103.01; Laws 1993, LB 370, § 363; Laws 2000, LB 410, § 1; Laws 2002, LB 1073, § 1; Laws 2004, LB 227, § 2; Laws 2006, LB 853, § 20; Laws 2007, LB239, § 7; Laws 2008, LB756, § 22. Operative date July 1, 2008.

**60-6,268. Use of restraint system or occupant protection system; violations; penalty; enforcement; when.** (1) A person violating any provision of subsection (1) of section 60-6,267 shall be guilty of an infraction as defined in section 29-431 and shall be fined twenty-five dollars for each violation. The failure to provide a child restraint system for more than one child in the same vehicle at the same time, as required in such subsection, shall not be treated as a separate offense.

(2) Enforcement of subdivision (1)(b) and subsection (6) of section 60-6,267 shall be accomplished only as a secondary action when an operator of a motor vehicle has been cited or charged with a violation or some other offense unless the violation involves a person under the age of eighteen years riding in or on any portion of the vehicle not designed or intended for the use of passengers when the vehicle is in motion.

Source: Laws 1983, LB 306, § 3; R.S.1943, (1988), § 39-6,103.02; Laws 1993, LB 370, § 364; Laws 2000, LB 410, § 2; Laws 2002, LB 1073, § 2; Laws 2004, LB 227, § 3. Effective date July 16, 2004.

## STATUTES RELATING TO CLEAN INDOOR AIR

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

**71-5707. Smoking; designated areas; exceptions. (Effective until June 1, 2009)** (1) No person shall smoke in a public place or at a public meeting except in designated smoking areas. This subsection does not apply in cases in which an entire room or hall is used for a private social function and seating arrangements are under the control of the sponsor of the function and not of the proprietor or person in charge of such room or hall.

(2) With respect to factories, warehouses, and similar places of work not usually frequented by the general public, the Department of Health and Human Services shall, in consultation with the Department of Labor, establish rules to restrict or prohibit smoking in those places of work where the close proximity of workers or the inadequacy of ventilation causes smoke pollution detrimental to the health and comfort of nonsmoking employees.

*(3) No person shall smoke at a site where child care programs required to be licensed under section 71-1911 are*

*provided. This subsection applies to a child care program located in the home of the provider only during times one or more client's children are present in any part of the home.*

(4) Smoking is prohibited in all vehicles owned or leased by the state and in all buildings, and the area within ten feet of any entrance of such buildings, which are owned, leased, or occupied by the state except as provided in subsections (5), (6), and (7) of this section.

(5) The following buildings or areas within buildings in which persons reside or lodge may be exempt from this section: (a) Nebraska veterans homes established pursuant to section 80-315; (b) private residences; (c) facilities and institutions under the control of the Department of Health and Human Services; and (d) overnight lodging facilities and buildings managed by the Game and Parks Commission, but no more than twenty-five percent of the overnight lodging facilities at each park location shall permit smoking.

(6) Designated smoking areas not to exceed fifty percent of the space used by the public may be established in state-owned buildings at the Nebraska State Fairgrounds that possess a Class C, I, or M license for the sale of alcoholic liquor for consumption on the premises under the Nebraska Liquor Control Act.

(7) Smoking may be permitted in no more than forty percent of the residential housing rooms or units owned or leased on each campus under the control of the Board of Regents of the University of Nebraska or the Board of Trustees of the Nebraska State Colleges.

Source: Laws 1979, LB 344, § 7; Laws 1996, LB 1044, § 732; Laws 1999, LB 211, § 1; Laws 2000, LB 1115, § 85; Laws 2004, LB 1005, § 109; Laws 2007, LB296, § 629. Operative date July 1, 2007.

**71-5707. Repealed. Laws 2008, LB 395, § 22. (Operative date June 1, 2009).**

**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; rules and regulations; compliance; late penalty.** (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;

(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) *Licensed providers of programs or applicants for licenses to provide such programs, upon request of the Department of Health and Human Services, pursuant to section 71-1913. 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; and

(d) *After a careful study and investigation of relevant data, to adopt, promulgate, alter, and enforce, through inspections and code compliance, orders, rules, and regulations covering:*

(i) *The prevention of fires;*

(ii) *The storage, sale, and use of flammable liquids, combustibles, and fireworks;*

(iii) *Electric wiring and heating, protection equipment devices, materials, furnishings, and other safeguards within the structure necessary to promote safety and reduce loss by fire, and the means and adequacy of exits, in case of fire, in assembly, educational, institutional, residential, mercantile, office, storage, and industrial-type occupancies as such structures are defined in the National Fire Protection Association, Pamphlet Number 101, and associated pamphlets, and all other buildings, structures, and enclosures in which numbers of persons congregate from time to time for any purpose whether privately or publicly owned;*

(iv) Design, construction, location, installation, and operation of equipment for storing, handling, and utilization of liquefied petroleum gases, specifying the odorization of such gases and the degree thereof;

(v) Chemicals, prozylin plastics, X-ray nitrocellulose films, or any other hazardous material that may now or hereafter exist;

(vi) Tanks used for the storage of regulated substances pursuant to the Petroleum Products and Hazardous Substances Storage and Handling Act; and

(vii) *Accessibility standards and specifications adopted pursuant to section 81-5,147.*

(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 81-541.01, 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 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.*

(5) *The rules and regulations adopted and promulgated pursuant to subdivision (1)(d) of this section may conform generally to the standards recommended by the National Fire Protection Association, Pamphlet Number 101, known as the Life Safety Code, and associated pamphlets, but not when doing so would impose an unduly severe or costly burden without substantially contributing to the safety of persons or property. This section and the rules and regulations adopted and promulgated pursuant to subdivision (1)(d) of this section shall apply to existing as well as new buildings, structures, and enclosures. Such rules and regulations shall also apply to sites or structures in public ownership listed on the National Register of Historic Places but without destroying the historic quality thereof.*

(6) *Plans for compliance with the rules and regulations adopted and promulgated pursuant to subdivision (1)(d) of this section shall be reviewed by the State Fire Marshal. Plans submitted after remodeling or construction has begun shall be accompanied by a penalty of fifty dollars in addition to the plan review fee set out in subdivision (4)(a) of section 81-505.01.*

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. Operative date July 1, 2007.

**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 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 71-1902 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 81-502 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

thereof.

\$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.

## 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. Effective date March 11, 2008.