

LEGISLATIVE BILL 310

Approved by the Governor May 27, 1997

Introduced by Janssen, 15; Bohlke, 33; Schimek, 27

AN ACT relating to child care; to amend sections 29-2264, 71-1909 to 71-1911, 71-1912, and 71-1914 to 71-1917, Reissue Revised Statutes of Nebraska, and sections 43-2606 and 43-2618, Revised Statutes Supplement, 1996; to provide for nonexpiring licenses; to add and change provisions relating to inspections and enforcement; to provide penalties; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 29-2264, Reissue Revised Statutes of Nebraska, is amended to read:

29-2264. (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, and such order shall in all felony cases restore the offender's civil rights.

(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; or

(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 71-1905 or 71-1908 to 71-1917 and sections 8 to 10 of this act should be denied, suspended, or revoked.

(6) This section 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 June 11, 1993.

Sec. 2. Section 43-2606, Revised Statutes Supplement, 1996, is amended to read:

43-2606. (1) The Department of Health and Human Services Regulation and Licensure 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.

(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, or when renewing a registration, or on a yearly basis following licensure, or license-

Sec. 3. Section 43-2618, Revised Statutes Supplement, 1996, is amended to read:

43-2618. 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 such 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 thereafter after the initial inspection. It is the intent of the Legislature that such 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.

Sec. 4. Section 71-1909, Reissue Revised Statutes of Nebraska, is amended to read:

71-1909. (1) The purposes of sections 71-1908 to 71-1917 and sections 8 to 10 of this act are to provide:

(a) Statewide licensing of providers of child care programs; and
 (b) The Department of Health and Human Services Regulation and Licensure with authority to coordinate the imposition of standards on providers of programs.

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

Sec. 5. Section 71-1910, Reissue Revised Statutes of Nebraska, is amended to read:

71-1910. For purposes of sections 71-1908 to 71-1917 and sections 8 to 10 of this act, unless the context otherwise requires:

(1) Department shall mean means the Department of Health and Human Services Regulation and Licensure;

(2) Director shall mean means the Director of Regulation and Licensure; and

(3) Program shall mean 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 shall include 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. Program shall does not include casual care at irregular intervals, a recreation camp, 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, or foster care as defined in section 71-1901. The State Board of Education may adopt and promulgate rules and regulations which shall apply to any program and any school-age-care program operated or contracted by a public school district.

Sec. 6. Section 71-1911, Reissue Revised Statutes of Nebraska, is amended to read:

71-1911. (1) A person may furnish a program for three or less children without having a license issued by the department, except that if such person has had a license issued pursuant to subsection (2) of this section and such license has been suspended or revoked pursuant to section 71-1915, such person shall not furnish a program for three or less children

until the person is licensed pursuant to this section.

(2) No person shall furnish or offer to furnish 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 the provider 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, a probationary 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 furnished for two or three children from different families may continue to license providers of such programs. If the license of a person is suspended or revoked pursuant to section 71-1915, 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. Any provider not covered by sections 71-1908 to 71-1917 and sections 8 to 10 of this act may voluntarily subject himself, herself, or itself to coverage.

(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 or renew or refuse to renew the provisional license. The provisional license may be renewed once if the department determines that:

(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 issue a probationary license to a licensee holding an operating license for up to six months. The probationary license may be issued if the department determines that:

(a) A 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 sections 71-1908 to 71-1917 and sections 8 to 10 of this act shall remain in full force and effect subject to annual inspections and maintenance of complaint tracking. 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 for amendment of a family child care home I license for which 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, expire two years from the date of issuance and shall be subject to renewal under such terms as may be prescribed by the rules and regulations of the department in effect at the time of the renewal.

(6) There shall be a twenty-five-dollar fee charged for the issuance or renewal of each license for providers with a licensing capacity of less than thirty children and a fifty-dollar fee charged for the issuance or renewal of each license for providers with a licensing capacity of thirty or more children. An annual license fee of twenty-five dollars shall be paid by providers with a licensing capacity of less than thirty children and an annual license fee of fifty dollars shall be paid by providers with a licensing capacity of thirty or more children. The license fee shall be paid to the department which shall retain the fee, except that when a city, village, or county has adopted any rule, regulation, or ordinance which establishes standards for licensed providers pursuant to subsection (2) of section 71-1914 and conducts all necessary inspections of any licensed provider pursuant to such subsection, the department shall transmit the license fee fees paid by such provider to the city, village, or county conducting the inspections.

(7) A license may be denied for cause, after notice and hearing, in accordance with such rules and regulations as may be adopted and promulgated by the department. A person who has had a license suspended or revoked pursuant to section 71-1915 shall not be eligible to reapply for a license for a period of two years.

(8) A license shall be denied or revoked if an applicant or licensee has been found guilty of a crime involving the neglect, physical abuse, or

sexual abuse of a child or an adult.

Sec. 7. Section 71-1912, Reissue Revised Statutes of Nebraska, is amended to read:

71-1912. (1) The Except as provided in section 71-1910, the department shall adopt and promulgate rules and regulations establishing standards for the physical well-being, safety, and protection of children pursuant to the licensing of providers. Such standards shall insure that the provider of a 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. Before issuance or renewal 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. The department may investigate the character of prospective or existing licensees, any member of the 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. All inspections by the department shall be unannounced except for initial licensing visits and consultation visits. Initial licensing 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 provider for the purpose of consulting with a department specialist on ways of improving the program.

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 with a licensing capacity of less than thirty children and at least twice every year for a program with a licensing capacity of more than thirty children.

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 sections 71-1908 to 71-1917 and sections 8 to 10 of this act.

(2) The rules and regulations adopted and promulgated pursuant to subsection (1) of this section 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 in family child care homes. 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.

Sec. 8. 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 sections 71-1908 to 71-1911. If unlicensed child care is occurring in violation of such sections, the individual 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 individual has not initiated action to become licensed or ceased providing unlicensed child care, the department may involve law enforcement and may proceed under sections 9 and 10 of this act.

Sec. 9. The department may apply for a restraining order or a temporary or permanent injunction against any person violating sections 71-1908 to 71-1911 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.

Sec. 10. (1) Any person violating sections 71-1908 to 71-1911 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 sections 71-1908 to 71-1911 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.

Sec. 11. Section 71-1914, Reissue Revised Statutes of Nebraska, is amended to read:

71-1914. (1) The department shall be the state's coordinating agency for regulating programs in this state in order to (a) provide efficient services pursuant to sections 71-1908 to 71-1917 and sections 8 to 10 of this 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 71-1917.

(2) A city, village, or county may adopt rules, regulations, or ordinances establishing physical well-being and safety standards for providers of programs whether or not such providers are subject to licensure under section 71-1911. If a city, village, or county adopts any rules, regulations, or ordinances establishing physical well-being and safety standards for providers subject to licensure under section 71-1911, (a) such rules, regulations, or ordinances shall be identical to the department's rules and regulations for licensed providers pursuant to sections 71-1908 to 71-1917 and sections 8 to 10 of this act, except that a city, village, or county which has rules, regulations, or ordinances in effect on July 10, 1984, which apply to programs furnished for two or three children from different families may continue to license providers of such programs, and (b) the city, village, or county and the department shall coordinate the inspection and supervision of licensed providers to avoid duplication of inspections. A city, village, or county shall report any violation of its rules, regulations, or ordinances regulating providers subject to licensure to the director who may cause a written charge to be brought pursuant to section 71-1915. The city, village, or county may administer and enforce its rules, regulations, and ordinances establishing physical well-being and safety standards for providers of programs, except that the exclusive remedy for the violation of any rules, regulations, and ordinances regulating providers subject to licensure pursuant to section 71-1911 shall be by the director pursuant to section 71-1915.

Sec. 12. Section 71-1915, Reissue Revised Statutes of Nebraska, is amended to read:

71-1915. (1) Whenever the director has reason to believe that a violation of any provision of sections 71-1908 to 71-1914 or of any rule, regulation, or order of the department has occurred, he or she may cause a written charge to be served upon each alleged violator. The charge shall specify the provision of sections 71-1908 to 71-1914 or the rule, regulation, or order alleged to be violated and the facts alleged to constitute a violation of such section, rule, regulation, or order. The provisional or probationary license of a person may be suspended or revoked if periodic review or inspection by the department indicates that insufficient progress has been made toward compliance. The director shall provide for notice and, if requested by the alleged violator, a full and fair hearing at which each alleged violator shall answer the charges. The notice shall be delivered to each alleged violator by personal service, by certified or registered mail to his or her last-known address, or by publication. Notice by publication shall only be made if personal service or service by mail cannot be effectuated. The alleged violator may request a hearing within ten days after delivery of the notice. Following the hearing, if held, or within fifteen days after delivery of the notice if no hearing is held, the director shall determine whether the charges are true or not, and if true, the director may (a) issue a declaratory order finding the charges to be true, (b) revoke or suspend the provisional, probationary, or operating license, (c) issue a probationary license if the determinations of subsection (4) of section 71-1911 are applicable, or (d) impose a civil penalty of five dollars for each child in the program for each day in violation after the department issues its order finding a violation. If the department has initiated a license suspension or revocation action, (i) such action may continue to finality even if the license of the licensee has been surrendered and (ii) household members of the licensee or current staff members of such licensee shall not become the licensee of the program while such action is pending.

(2) Any civil penalty assessed and unpaid under subsection (1) of this section 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 violator resides or owns property.

(3) Whenever the director finds that an emergency exists requiring

immediate action to protect the physical well-being and safety of a child in a program, the director may, without notice or hearing, issue an order declaring the existence of such an emergency and requiring that such action be taken as the director deems necessary to meet the emergency. Notwithstanding the provisions of subsection (1) of this section, such order shall be effective immediately. Any person to whom the order is directed shall comply immediately, except that upon application to the director, 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 director shall continue to enforce his or her order or revoke or modify it.

(4) In addition to the powers provided to the director in this section, he or she may petition the appropriate district court for an injunction whenever he or she believes that any person is violating any provision of sections 71-1908 to 71-1917 and sections 8 to 10 of this act or any rule, regulation, or order adopted and promulgated pursuant to such sections. It shall be the duty of each county attorney or the Attorney General to whom the director reports a violation to cause appropriate proceedings to be instituted without delay to ensure compliance with such sections, rules, regulations, and orders.

Sec. 13. Section 71-1916, Reissue Revised Statutes of Nebraska, is amended to read:

71-1916. The department shall adopt and promulgate such rules and regulations, consistent with sections 71-1908 to 71-1915 and sections 8 to 10 of this act, as it shall deem necessary for (1) the proper care and protection of children by providers under such sections, (2) the issuance, suspension, and revocation of licenses for program providers, and (3) the proper administration of such sections. Hearings conducted by the department pursuant to section 71-1915 and any other contested cases of the department shall be in accordance with the Administrative Procedure Act. An appeal may be taken from the decision of the department. The appeal shall be in accordance with the act.

Sec. 14. Section 71-1917, Reissue Revised Statutes of Nebraska, is amended to read:

71-1917. The annual report required under subdivision (11) of section 43-2615 shall include:

(1) The number of license applications received under sections 71-1908 to 71-1917 and sections 8 to 10 of this act;

(2) The number of licenses issued under such sections;

(3) The number of license applications denied under such sections;

(4) The number of complaints investigated under such sections;

(5) The number of licenses revoked under such sections;

(6) The number and dollar amount of civil penalties levied pursuant to section 71-1915; and

(7) Information which may assist the Legislature in determining the extent of cooperation provided to the department by other state and local agencies pursuant to section 71-1914.

Sec. 15. Original sections 29-2264, 71-1909 to 71-1911, 71-1912, and 71-1914 to 71-1917, Reissue Revised Statutes of Nebraska, and sections 43-2606 and 43-2618, Revised Statutes Supplement, 1996, are repealed.