

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 167

Introduced by Hunt, 8; Pansing Brooks, 28.

Read first time January 11, 2019

Committee: Judiciary

1 A BILL FOR AN ACT relating to the Uniform Credentialing Act; to amend
2 sections 38-178 and 38-2894, Reissue Revised Statutes of Nebraska,
3 and section 38-101, Revised Statutes Cumulative Supplement, 2018; to
4 provide for disciplinary action for providing conversion therapy as
5 prescribed; to prohibit the provision and advertising of conversion
6 therapy as prescribed; to define terms; to prohibit the use of funds
7 for conversion therapy as prescribed; to harmonize provisions; and
8 to repeal the original sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 38-101, Revised Statutes Cumulative Supplement,
2 2018, is amended to read:

3 38-101 Sections 38-101 to 38-1,142 and sections 3 and 4 of this act
4 and the following practice acts shall be known and may be cited as the
5 Uniform Credentialing Act:

- 6 (1) The Advanced Practice Registered Nurse Practice Act;
- 7 (2) The Alcohol and Drug Counseling Practice Act;
- 8 (3) The Athletic Training Practice Act;
- 9 (4) The Audiology and Speech-Language Pathology Practice Act;
- 10 (5) The Certified Nurse Midwifery Practice Act;
- 11 (6) The Certified Registered Nurse Anesthetist Practice Act;
- 12 (7) The Chiropractic Practice Act;
- 13 (8) The Clinical Nurse Specialist Practice Act;
- 14 (9) The Cosmetology, Electrology, Esthetics, Nail Technology, and
15 Body Art Practice Act;
- 16 (10) The Dentistry Practice Act;
- 17 (11) The Dialysis Patient Care Technician Registration Act;
- 18 (12) The Emergency Medical Services Practice Act;
- 19 (13) The Environmental Health Specialists Practice Act;
- 20 (14) The Funeral Directing and Embalming Practice Act;
- 21 (15) The Genetic Counseling Practice Act;
- 22 (16) The Hearing Instrument Specialists Practice Act;
- 23 (17) The Licensed Practical Nurse-Certified Practice Act until
24 November 1, 2017;
- 25 (18) The Massage Therapy Practice Act;
- 26 (19) The Medical Nutrition Therapy Practice Act;
- 27 (20) The Medical Radiography Practice Act;
- 28 (21) The Medicine and Surgery Practice Act;
- 29 (22) The Mental Health Practice Act;
- 30 (23) The Nurse Practice Act;
- 31 (24) The Nurse Practitioner Practice Act;

- 1 (25) The Nursing Home Administrator Practice Act;
- 2 (26) The Occupational Therapy Practice Act;
- 3 (27) The Optometry Practice Act;
- 4 (28) The Perfusion Practice Act;
- 5 (29) The Pharmacy Practice Act;
- 6 (30) The Physical Therapy Practice Act;
- 7 (31) The Podiatry Practice Act;
- 8 (32) The Psychology Practice Act;
- 9 (33) The Respiratory Care Practice Act;
- 10 (34) The Surgical First Assistant Practice Act;
- 11 (35) The Veterinary Medicine and Surgery Practice Act; and
- 12 (36) The Water Well Standards and Contractors' Practice Act.

13 If there is any conflict between any provision of sections 38-101 to
14 38-1,142 and sections 3 and 4 of this act and any provision of a practice
15 act, the provision of the practice act shall prevail.

16 The Revisor of Statutes shall assign the Uniform Credentialing Act,
17 including the practice acts enumerated in subdivisions (1) through (35)
18 of this section, to articles within Chapter 38.

19 Sec. 2. Section 38-178, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 38-178 Except as otherwise provided in sections 38-1,119 to
22 38-1,123, a credential to practice a profession may be denied, refused
23 renewal, or have other disciplinary measures taken against it in
24 accordance with section 38-185 or 38-186 on any of the following grounds:

25 (1) Misrepresentation of material facts in procuring or attempting
26 to procure a credential;

27 (2) Immoral or dishonorable conduct evidencing unfitness to practice
28 the profession in this state;

29 (3) Abuse of, dependence on, or active addiction to alcohol, any
30 controlled substance, or any mind-altering substance;

31 (4) Failure to comply with a treatment program or an aftercare

1 program, including, but not limited to, a program entered into under the
2 Licensee Assistance Program established pursuant to section 38-175;

3 (5) Conviction of (a) a misdemeanor or felony under Nebraska law or
4 federal law, or (b) a crime in any jurisdiction which, if committed
5 within this state, would have constituted a misdemeanor or felony under
6 Nebraska law and which has a rational connection with the fitness or
7 capacity of the applicant or credential holder to practice the
8 profession;

9 (6) Practice of the profession (a) fraudulently, (b) beyond its
10 authorized scope, (c) with gross incompetence or gross negligence, or (d)
11 in a pattern of incompetent or negligent conduct;

12 (7) Practice of the profession while the ability to practice is
13 impaired by alcohol, controlled substances, drugs, mind-altering
14 substances, physical disability, mental disability, or emotional
15 disability;

16 (8) Physical or mental incapacity to practice the profession as
17 evidenced by a legal judgment or a determination by other lawful means;

18 (9) Illness, deterioration, or disability that impairs the ability
19 to practice the profession;

20 (10) Permitting, aiding, or abetting the practice of a profession or
21 the performance of activities requiring a credential by a person not
22 credentialed to do so;

23 (11) Having had his or her credential denied, refused renewal,
24 limited, suspended, revoked, or disciplined in any manner similar to
25 section 38-196 by another state or jurisdiction based upon acts by the
26 applicant or credential holder similar to acts described in this section;

27 (12) Use of untruthful, deceptive, or misleading statements in
28 advertisements, including failure to comply with section 38-124;

29 (13) Conviction of fraudulent or misleading advertising or
30 conviction of a violation of the Uniform Deceptive Trade Practices Act;

31 (14) Distribution of intoxicating liquors, controlled substances, or

1 drugs for any other than lawful purposes;

2 (15) Violations of the Uniform Credentialing Act or the rules and
3 regulations relating to the particular profession;

4 (16) Unlawful invasion of the field of practice of any profession
5 regulated by the Uniform Credentialing Act which the credential holder is
6 not credentialed to practice;

7 (17) Violation of the Uniform Controlled Substances Act or any rules
8 and regulations adopted pursuant to the act;

9 (18) Failure to file a report required by section 38-1,124,
10 38-1,125, or 71-552;

11 (19) Failure to maintain the requirements necessary to obtain a
12 credential;

13 (20) Violation of an order issued by the department;

14 (21) Violation of an assurance of compliance entered into under
15 section 38-1,108;

16 (22) Failure to pay an administrative penalty;

17 (23) Unprofessional conduct as defined in section 38-179; ~~or~~

18 (24) Violation of the Automated Medication Systems Act; or ~~or~~

19 (25) Providing or advertising conversion therapy in violation of
20 section 3 of this act.

21 Sec. 3. (1) A person holding a credential under the Uniform
22 Credentialing Act shall not provide conversion therapy to any individual
23 under eighteen years of age.

24 (2) It shall be unlawful for any person to:

25 (a) Provide conversion therapy to any individual if such person
26 receives monetary compensation in exchange for such services; or

27 (b) Advertise for the provision of conversion therapy if such
28 advertising:

29 (i) Proposes to change an individual's sexual orientation or gender
30 identity;

31 (ii) Proposes to eliminate or reduce sexual or romantic attractions

1 or feelings toward individuals of the same gender; or

2 (iii) States that such efforts are harmless or without risk to
3 individuals receiving such therapy.

4 (3) A violation of subsection (2) of this section shall constitute a
5 deceptive trade practice under the Uniform Deceptive Trade Practices Act
6 and shall be subject to any remedies or penalties available for a
7 violation under the act.

8 (4) For purposes of this section:

9 (a)(i) Conversion therapy means practices or treatments that seek to
10 change an individual's sexual orientation or gender identity, including
11 efforts to change behaviors or gender expressions or to eliminate or
12 reduce sexual or romantic attractions or feelings toward individuals of
13 the same gender; and

14 (ii) Conversion therapy does not include:

15 (A) Counseling that provides support to an individual undergoing
16 gender transition;

17 (B) Counseling that provides acceptance, support, and understanding
18 of an individual or facilitates an individual's coping, social support,
19 and identity exploration and development, including sexual-orientation-
20 neutral interventions to prevent or address unlawful conduct or unsafe
21 sexual practices, as long as such counseling does not seek to change an
22 individual's sexual orientation or gender identity;

23 (b) Gender expression means an individual's gender-related
24 appearance and behavior, whether or not that appearance or behavior is
25 different from that traditionally or stereotypically associated with the
26 individual's assigned sex at birth; and

27 (c) Gender identity means an individual's internal sense of their
28 own gender, regardless of the sex the individual was assigned at birth.

29 Sec. 4. (1) No state funds nor any funds belonging to a political
30 subdivision of this state shall be expended for the purpose of:

31 (a) Conducting conversion therapy;

- 1 (b) Referring a person for conversion therapy;
- 2 (c) Health benefits coverage for conversion therapy; or
- 3 (d) Providing a grant to or contracting with any entity that
- 4 conducts conversion therapy or refers individuals for conversion therapy.

5 (2) For purposes of this section, conversion therapy has the same
6 meaning as in section 3 of this act.

7 Sec. 5. Section 38-2894, Reissue Revised Statutes of Nebraska, is
8 amended to read:

9 38-2894 (1) A registration to practice as a pharmacy technician may
10 be denied, refused renewal, removed, or suspended or have other
11 disciplinary measures taken against it by the department, with the
12 recommendation of the board, for failure to meet the requirements of or
13 for violation of any of the provisions of subdivisions (1) through (17)
14 and (19) through (25) ~~{24}~~ of section 38-178 and sections 38-2890 to
15 38-2897 or the rules and regulations adopted under such sections.

16 (2) If the department proposes to deny, refuse renewal of, or remove
17 or suspend a registration, it shall send the applicant or registrant a
18 notice setting forth the action to be taken and the reasons for the
19 determination. The denial, refusal to renew, removal, or suspension shall
20 become final thirty days after mailing the notice unless the applicant or
21 registrant gives written notice to the department of his or her desire
22 for an informal conference or for a formal hearing.

23 (3) Notice may be served by any method specified in section
24 25-505.01, or the department may permit substitute or constructive
25 service as provided in section 25-517.02 when service cannot be made with
26 reasonable diligence by any of the methods specified in section
27 25-505.01.

28 (4) Pharmacy technicians may participate in the Licensee Assistance
29 Program described in section 38-175.

30 Sec. 6. Original sections 38-178 and 38-2894, Reissue Revised
31 Statutes of Nebraska, and section 38-101, Revised Statutes Cumulative

1 Supplement, 2018, are repealed.