

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 837

Introduced by Arch, 14.

Read first time January 08, 2020

Committee: Health and Human Services

- 1 A BILL FOR AN ACT relating to child care; to amend sections 71-1912 and
- 2 71-1928.01, Revised Statutes Supplement, 2019; to change provisions
- 3 relating to funding of a national criminal history record
- 4 information check as prescribed; and to repeal the original
- 5 sections.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 71-1912, Revised Statutes Supplement, 2019, is
2 amended to read:

3 71-1912 (1) Before issuance of a license, the department shall
4 investigate or cause an investigation to be made, when it deems
5 necessary, to determine if the applicant or person in charge of the
6 program meets or is capable of meeting the physical well-being, safety,
7 and protection standards and the other rules and regulations of the
8 department adopted and promulgated under the Child Care Licensing Act.
9 The department may investigate the character of applicants and licensees,
10 any member of the applicant's or licensee's household, and the staff and
11 employees of programs. The department may at any time inspect or cause an
12 inspection to be made of any place where a program is operating to
13 determine if such program is being properly conducted.

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

21 (3) An unannounced inspection of any place where a program is
22 operating shall be conducted by the department or the city, village, or
23 county pursuant to subsection (2) of section 71-1914 at least annually
24 for a program licensed to provide child care for fewer than thirty
25 children and at least twice every year for a program licensed to provide
26 child care for thirty or more children.

27 (4) Whenever an inspection is made, the findings shall be recorded
28 in a report designated by the department. The public shall have access to
29 the results of these inspections upon a written or oral request to the
30 department. The request must include the name and address of the program.
31 Additional unannounced inspections shall be performed as often as is

1 necessary for the efficient and effective enforcement of the Child Care
2 Licensing Act.

3 (5)(a) A person applying for a license as a child care provider or a
4 licensed child care provider under the Child Care Licensing Act shall
5 submit a request for a national criminal history record information check
6 for each child care staff member, including a prospective child care
7 staff member of the child care provider, at the applicant's or licensee's
8 expense, as set forth in this section. Beginning on October 1, 2019, a
9 prospective child care staff member shall submit to a national criminal
10 history record information check (i) prior to employment, except as
11 otherwise permitted under 45 C.F.R. 98.43, as such regulation existed on
12 January 1, 2019, or (ii) prior to residing in a family child care home. A
13 child care staff member who was employed by a child care provider prior
14 to October 1, 2019, or who resided in a family child care home prior to
15 October 1, 2019, shall submit to a national criminal history record
16 information check by October 1, 2021, unless the child care staff member
17 ceases to be a child care staff member prior to such date.

18 (b) A child care staff member shall be required to undergo a
19 national criminal history record information check not less than once
20 during each five-year period. A child care staff member shall submit a
21 complete set of his or her fingerprints to the Nebraska State Patrol. The
22 Nebraska State Patrol shall transmit a copy of the child care staff
23 member's fingerprints to the Federal Bureau of Investigation for a
24 national criminal history record information check. The national criminal
25 history record information check shall include information concerning
26 child care staff members from federal repositories of such information
27 and repositories of such information in other states, if authorized by
28 federal law for use by the Nebraska State Patrol. The Nebraska State
29 Patrol shall issue a report to the department that includes the
30 information collected from the national criminal history record
31 information check concerning child care staff members. The department

1 shall seek to maximize federal funding to develop and implement a program
2 to assist child care providers and child care staff members with the
3 costs of the fingerprinting and national criminal history record
4 information check. If the department does not receive federal funds
5 sufficient to fund the implementation, administration, and maintenance of
6 such program, then a A child care staff member being screened shall pay
7 the actual cost of the fingerprinting and national criminal history
8 record information check, except that the department may pay all or part
9 of the cost if funding becomes available. ~~The department and the Nebraska~~
10 ~~State Patrol may adopt and promulgate rules and regulations concerning~~
11 ~~the costs associated with the fingerprinting and the national criminal~~
12 ~~history record information check.~~ The department may adopt and promulgate
13 rules and regulations implementing national criminal history record
14 information check requirements for child care providers and child care
15 staff members.

16 (c) A child care staff member shall also submit to the following
17 background checks at his or her expense not less than once during each
18 five-year period:

19 (i) A search of the National Crime Information Center's National Sex
20 Offender Registry; and

21 (ii) A search of the following registries, repositories, or data
22 bases in the state where the child care provider is located or where the
23 child care staff member resides and each state where the child care
24 provider was located or where the child care staff member resided during
25 the preceding five years:

26 (A) State criminal registries or repositories;

27 (B) State sex offender registries or repositories; and

28 (C) State-based child abuse and neglect registries and data bases.

29 (d) Any individual shall be ineligible for employment by a child
30 care provider if such individual:

31 (i) Refuses to consent to the national criminal history record

1 information check or a background check described in this subsection;

2 (ii) Knowingly makes a materially false statement in connection with
3 the national criminal history record information check or a background
4 check described in this subsection;

5 (iii) Is registered, or required to be registered, on a state sex
6 offender registry or repository or the National Sex Offender Registry; or

7 (iv) Has been convicted of a crime of violence, a crime of moral
8 turpitude, or a crime of dishonesty.

9 (e) The department may adopt and promulgate rules and regulations
10 prohibiting the employment of any child care staff member with one or
11 more criminal convictions as the department deems necessary to protect
12 the health and safety of children receiving child care.

13 (f) A child care provider shall be ineligible for a license under
14 the Child Care Licensing Act and shall be ineligible to participate in
15 the child care subsidy program if the provider employs a child care staff
16 member who is ineligible for employment under subdivisions (d) or (e) of
17 this subsection.

18 (g) National criminal history record information and information
19 from background checks described in this subsection subject to state or
20 federal confidentiality requirements may only be used for purposes of
21 granting a child care license or approving a child care provider for
22 participation in the child care subsidy program.

23 (h) For purposes of this subsection:

24 (i) Child care provider means a child care program required to be
25 licensed under the Child Care Licensing Act; and

26 (ii) Child care staff member means an individual who is not related
27 to all of the children for whom child care services are provided and:

28 (A) Who is employed by a child care provider for compensation,
29 including contract employees or self-employed individuals;

30 (B) Whose activities involve the care or supervision of children for
31 a child care provider or unsupervised access to children who are cared

1 for or supervised by a child care provider; or

2 (C) Who is residing in a family child care home and who is eighteen
3 years of age or older.

4 Sec. 2. Section 71-1928.01, Revised Statutes Supplement, 2019, is
5 amended to read:

6 71-1928.01 (1) Any individual eighteen years of age or older working
7 in a residential child-caring agency shall be required to undergo a
8 national criminal history record information check not less than once
9 during each five-year period that he or she is working in such an agency.
10 The individual shall submit a complete set of his or her fingerprints to
11 the Nebraska State Patrol. The Nebraska State Patrol shall transmit a
12 copy of the individual's fingerprints to the Federal Bureau of
13 Investigation for a national criminal history record information check.
14 The national criminal history record information check shall include
15 information concerning the individual from federal repositories of such
16 information and repositories of such information in other states, if
17 authorized by federal law for use by the Nebraska State Patrol. The
18 Nebraska State Patrol shall issue a report to the department that
19 includes the information collected from the national criminal history
20 record information check concerning the individual. The department shall
21 seek to maximize federal funding to develop and implement a program to
22 assist residential child-caring agencies and individuals working in a
23 residential child-caring agency with the costs of the fingerprinting and
24 national criminal history record information check. If the department
25 does not receive federal funds sufficient to fund the implementation,
26 administration, and maintenance of such program, then the The individual
27 being screened shall pay the actual cost of the fingerprinting and
28 national criminal history record information check, except that the
29 department may pay all or part of the cost if funding becomes available.
30 ~~The department and the Nebraska State Patrol may adopt and promulgate~~
31 ~~rules and regulations concerning the costs associated with the~~

1 ~~fingerprinting and the national criminal history record information~~
2 ~~check.~~ The department may adopt and promulgate rules and regulations
3 implementing national criminal history record information check
4 requirements for residential child-caring agencies.

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

- 11 (a) State criminal registries or repositories;
- 12 (b) State sex offender registries or repositories; and
- 13 (c) State-based child abuse and neglect registries and data bases.

14 Sec. 3. Original sections 71-1912 and 71-1928.01, Revised Statutes
15 Supplement, 2019, are repealed.