

LEGISLATURE OF NEBRASKA
 ONE HUNDRED THIRD LEGISLATURE
 FIRST SESSION
LEGISLATIVE BILL 265

Final Reading

(Second)

Introduced by Coash, 27; Campbell, 25.

Read first time January 16, 2013

Committee: Health and Human Services

A BILL

1 FOR AN ACT relating to child placement; to amend sections 28-710,
 2 43-1503, 68-1006.01, 71-428, 71-1901, 71-1903, 71-1907,
 3 81-502, 81-505.01, and 83-108.04, Reissue Revised
 4 Statutes of Nebraska, and sections 29-2264, 43-2,108.05,
 5 43-1301, 43-1302, 43-1304, 43-4308, 68-1207, 71-1902,
 6 71-1904, 75-302, and 77-2704.12, Revised Statutes
 7 Cumulative Supplement, 2012; to adopt the Children's
 8 Residential Facilities and Placing Licensure Act; to
 9 define and redefine terms; to change provisions relating
 10 to Indian child welfare and foster care placement and
 11 licensure; to provide requirements for kinship homes and
 12 relative homes; to provide for rules and regulations; to
 13 harmonize provisions; to repeal the original sections;
 14 and to declare an emergency.
 15 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 28 of this act shall be known
2 and may be cited as the Children's Residential Facilities and Placing
3 Licensure Act.

4 Sec. 2. The purpose of the Children's Residential
5 Facilities and Placing Licensure Act is to protect the public health
6 and the health, safety, and welfare of children who reside in or who
7 are placed in settings other than the home of their parent or legal
8 guardian by providing for the licensing of residential child-caring
9 agencies and child-placing agencies in the State of Nebraska. The act
10 provides for the development, establishment, and enforcement of basic
11 standards for residential child-caring agencies and child-placing
12 agencies.

13 Sec. 3. For purposes of the Children's Residential
14 Facilities and Placing Licensure Act:

15 (1) Care means the provision of room and board and the
16 exercise of concern and responsibility for the safety and welfare of
17 children on a twenty-four-hour-per-day basis in settings that serve
18 as the out-of-home placement for children;

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

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

25 (4) Department means the Division of Public Health of the

1 Department of Health and Human Services;

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

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

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

11 Sec. 4. (1) Except as provided in subsection (2) of this
12 section, a residential child-caring agency or child-placing agency
13 shall not be established, operated, or maintained in this state
14 without first obtaining a license issued by the department under the
15 Children's Residential Facilities and Placing Licensure Act. No
16 person shall hold itself out as a residential child-caring agency or
17 child-placing agency or as providing such services unless licensed
18 under the act. The department shall issue a license to a residential
19 child-caring agency or a child-placing agency that satisfies the
20 requirements for licensing under the act.

21 (2) A group home, child-caring agency, or child-placing
22 agency licensed under sections 71-1901 to 71-1906.01 on the effective
23 date of this act shall be deemed licensed under the Children's
24 Residential Facilities and Placing Licensure Act until the license
25 under such sections expires, and renewal shall be under the act.

1 (3) For purposes of requiring licensure, a residential
2 child-caring agency or child-placing agency does not include an
3 individual licensed as a foster family home under sections 71-1901 to
4 71-1906.01, a person licensed under the Health Care Facility
5 Licensure Act, a person operating a juvenile detention facility as
6 defined in section 83-4,125, a staff secure youth confinement
7 facility operated by a county, or a person providing only casual care
8 for children at irregular intervals. Such persons may voluntarily
9 apply for a license.

10 Sec. 5. (1) An applicant for an initial or renewal
11 license to operate a residential child-caring agency or a child-
12 placing agency shall file a written application with the department.
13 To be licensed as a child-placing agency, an applicant must be a
14 corporation, nonprofit corporation, or limited liability company. The
15 application shall be accompanied by the applicable fees under section
16 6 of this act and shall set forth the full name and address of the
17 agency to be licensed, the full name and address of the owner of the
18 agency, the names of all persons in control of the agency, and
19 additional information as required by the department, including
20 sufficient affirmative evidence of the applicant's ability to comply
21 with rules and regulations adopted and promulgated under the
22 Children's Residential Facilities and Placing Licensure Act and
23 evidence of adequate liability insurance or, if self-insured, of
24 sufficient funds to pay liability claims. The application shall
25 include the applicant's social security number if the applicant is an

1 individual. The social security number shall not be public record and
2 may only be used for administrative purposes.

3 (2) The application shall be signed by:

4 (a) The owner, if the applicant for licensure as a
5 residential child-caring agency is an individual or partnership;

6 (b) Two of its members, if the applicant for licensure as
7 a residential child-caring agency or as a child-placing agency is a
8 limited liability company;

9 (c) Two of its officers who have the authority to bind
10 the corporation to the terms of the application, if the applicant for
11 licensure as a residential child-caring agency or as a child-placing
12 agency is a corporation or a nonprofit corporation; or

13 (d) The head of the governmental unit having jurisdiction
14 over the residential child-caring agency or child-placing agency to
15 be licensed, if the applicant is a governmental unit.

16 Sec. 6. Fees applicable to an applicant for an initial or
17 renewal license under the Children's Residential Facilities and
18 Placing Licensure Act include:

19 (1) A nonrefundable license fee of twenty-five dollars;

20 (2) A nonrefundable renewal license fee of twenty-five
21 dollars;

22 (3) A reinstatement fee of twenty-five dollars if the
23 license has lapsed or has been suspended or revoked; and

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

1 Sec. 7. (1) Except as otherwise provided in the
2 Children's Residential Facilities and Placing Licensure Act:

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

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

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

13 Sec. 8. (1) An applicant for licensure under the
14 Children's Residential Facilities and Placing Licensure Act shall
15 obtain a separate license for each type of residential child-caring
16 agency or child-placing agency that the applicant seeks to operate. A
17 single license may be issued for a residential child-caring agency
18 operating in separate buildings or structures on the same premises
19 under one management.

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

1 may apply for individual licenses for each office location.

2 Sec. 9. A provisional license may be issued to an
3 applicant for an initial residential child-caring agency or child-
4 placing agency that substantially complies with requirements for
5 licensure under the Children's Residential Facilities and Placing
6 Licensure Act and the rules and regulations adopted and promulgated
7 under the act if the failure to fully comply with such requirements
8 does not pose a danger to the children residing in or served by the
9 residential child-caring agency or child-placing agency. Such
10 provisional license shall be valid for a period of up to one year,
11 shall not be renewed, and may be converted to a regular license upon
12 a showing that the agency fully complies with the requirements for
13 licensure under the act and rules and regulations.

14 Sec. 10. The department may inspect or provide for the
15 inspection of residential child-caring agencies or child-placing
16 agencies licensed under the Children's Residential Facilities and
17 Placing Licensure Act in such manner and at such times as provided in
18 rules and regulations adopted and promulgated by the department. The
19 department shall issue an inspection report and provide a copy of the
20 report to the agency within ten working days after the completion of
21 an inspection.

22 Sec. 11. (1) The department may request the State Fire
23 Marshal to inspect any residential child-caring agency for fire
24 safety under section 81-502. The State Fire Marshal shall assess a
25 fee for such inspection under section 81-505.01 payable by the

1 applicant or licensee. The State Fire Marshal may delegate the
2 authority to make such inspections to qualified local fire prevention
3 personnel under section 81-502.

4 (2) The department may investigate any residential child-
5 caring agency to determine if the place or places to be covered by
6 the license meet standards of sanitation and physical well-being set
7 by the department for the care and protection of the children who may
8 be placed with the residential child-caring agency. The department
9 may delegate this authority to qualified local environmental health
10 personnel.

11 Sec. 12. If the inspection report issued under section 10
12 of this act contains findings of noncompliance by a licensed
13 residential child-caring agency or child-placing agency with any
14 applicable provisions of the Children's Residential Facilities and
15 Placing Licensure Act or rules and regulations adopted and
16 promulgated under the act, the department shall review such findings
17 within twenty working days after such inspection. If the findings are
18 supported by the evidence, the department shall proceed under
19 sections 16 to 23 of this act, except that if the findings indicate
20 one or more violations that create no imminent danger of death or
21 serious physical harm and no direct or immediate adverse relationship
22 to the health, safety, or welfare of the children residing in or
23 served by the residential child-caring agency or child-placing
24 agency, the department may send a letter to the agency requesting a
25 statement of compliance. The letter shall include a description of

1 each violation, a request that the residential child-caring agency or
2 child-placing agency submit a statement of compliance within ten
3 working days, and a notice that the department may take further steps
4 if the statement of compliance is not submitted. The statement of
5 compliance shall indicate any steps which have been or will be taken
6 to correct each violation and the period of time estimated to be
7 necessary to correct each violation. If the residential child-caring
8 agency or child-placing agency fails to submit and implement a
9 statement of compliance which indicates a good faith effort to
10 correct the violations, the department may proceed under sections 16
11 to 23 of this act.

12 Sec. 13. (1) Any person may submit a complaint to the
13 department and request investigation of an alleged violation of the
14 Children's Residential Facilities and Placing Licensure Act or rules
15 and regulations adopted and promulgated under the act. The department
16 shall review all complaints and determine whether to conduct an
17 investigation. In making such determination, the department may
18 consider factors such as:

19 (a) Whether the complaint pertains to a matter within the
20 authority of the department to enforce;

21 (b) Whether the circumstances indicate that a complaint
22 is made in good faith;

23 (c) Whether the complaint is timely or has been delayed
24 too long to justify present evaluation of its merit;

25 (d) Whether the complainant may be a necessary witness if

1 action is taken and is willing to identify himself or herself and
2 come forward to testify if action is taken; or

3 (e) Whether the information provided or within the
4 knowledge of the complainant is sufficient to provide a reasonable
5 basis to believe that a violation has occurred or to secure necessary
6 evidence from other sources.

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

12 Sec. 14. Licensees shall not discriminate or retaliate
13 against an individual or the family of an individual residing in,
14 served by, or employed at the residential child-caring agency or
15 child-placing agency who has initiated or participated in any
16 proceeding authorized by the Children's Residential Facilities and
17 Placing Licensure Act or who has presented a complaint or provided
18 information to the administrator of the residential child-caring
19 agency or child-placing agency or the department. Such individual may
20 maintain an action for any type of relief, including injunctive and
21 declaratory relief, permitted by law.

22 Sec. 15. (1) Whenever the department finds that an
23 emergency exists requiring immediate action to protect the health,
24 safety, or welfare of a child in a residential child-caring agency or
25 child-placing agency, the department may, without notice or hearing,

1 issue an order declaring the existence of such an emergency and
2 requiring that such action be taken as the department deems necessary
3 to meet the emergency. The order may include an immediate prohibition
4 on the care or placement of children by the licensee. An order under
5 this subsection shall be effective immediately. Any person to whom
6 the order is directed shall comply immediately, and upon application
7 to the department, the person shall be afforded a hearing as soon as
8 possible and not later than ten days after his or her application for
9 the hearing. On the basis of such hearing, the department shall
10 continue to enforce such order or rescind or modify it.

11 (2) A copy of the order shall also be mailed to the
12 holder of the license if the holder is not actually involved in the
13 daily operation of the residential child-caring agency or child-
14 placing agency. If the holder of the license is a corporation, a copy
15 of the order shall be sent to the corporation's registered agent.

16 (3) The department may petition the appropriate district
17 court for an injunction whenever there is the belief that any person
18 is violating the Children's Residential Facilities and Placing
19 Licensure Act, an order issued under the act, or any rule or
20 regulation adopted and promulgated under the act. It shall be the
21 duty of each county attorney or the Attorney General to whom the
22 department reports a violation to cause appropriate proceedings to be
23 instituted without delay to ensure compliance with the act, rules,
24 regulations, and orders. In charging any defendant in a complaint in
25 such action, it shall be sufficient to charge that such defendant

1 did, upon a certain day and in a certain county, establish, operate,
2 or maintain a residential child-caring agency or a child-placing
3 agency without obtaining a license to do so, without alleging any
4 further or more particular facts concerning the charge.

5 Sec. 16. The department may deny or refuse to renew a
6 license under the Children's Residential Facilities and Placing
7 Licensure Act to any residential child-caring agency or child-placing
8 agency that fails to meet the requirements for licensure provided in
9 the act or in rules and regulations adopted and promulgated under the
10 act, including:

- 11 (1) Failing an inspection under section 10 of this act;
12 (2) Having had a license revoked within the two-year
13 period preceding application; or
14 (3) Any of the grounds listed in section 17 of this act.

15 Sec. 17. The department may deny, refuse to renew, or
16 take disciplinary action against a license issued under the
17 Children's Residential Facilities and Placing Licensure Act on any of
18 the following grounds:

- 19 (1) Failure to meet or violation of any of the
20 requirements of the act or the rules and regulations adopted and
21 promulgated under the act;
22 (2) Violation of an order of the department under the
23 act;
24 (3) Conviction, admission, or substantial evidence of
25 committing or permitting, aiding, or abetting another to commit any

1 unlawful act, including, but not limited to, unlawful acts committed
2 by an applicant or licensee under the act, household members who
3 reside at the place where children's residential care or child-
4 placing services are provided, or employees of the applicant or
5 licensee that involve:

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

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

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

11 (d) Homicide;

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

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

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

17 (4) Conduct or practices detrimental to the health,
18 safety, or welfare of any individual residing in, served by, or
19 employed at the residential child-caring agency or child-placing
20 agency;

21 (5) Failure to allow an agent or employee of the
22 department access to the residential child-caring agency or child-
23 placing agency for the purposes of inspection, investigation, or
24 other information collection activities necessary to carry out the
25 duties of the department;

1 (6) Failure to allow local or state inspectors,
2 investigators, or law enforcement officers access to the residential
3 child-caring agency or child-placing agency for the purposes of
4 investigation necessary to carry out their duties;

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

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

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

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

13 (11) A history of misconduct or violations by an
14 applicant or licensee involving children or vulnerable adults; or

15 (12) Violation of any federal, state, or local law
16 involving care of children.

17 Sec. 18. (1) The department may impose any one or a
18 combination of the following types of disciplinary actions against
19 the license of a residential child-caring agency or child-placing
20 agency:

21 (a) A fine not to exceed ten thousand dollars per
22 violation;

23 (b) A period of probation not to exceed two years, during
24 which time the residential child-caring agency or child-placing
25 agency may continue to operate under terms and conditions fixed by

1 the order of probation;

2 (c) Restrictions on new admissions to a residential
3 child-caring agency or acceptance of new referrals by a child-placing
4 agency;

5 (d) Restrictions or other limitations on the number,
6 gender, or age of children served by the residential child-caring
7 agency or child-placing agency;

8 (e) Other restrictions or limitations on the type of
9 service provided by the residential child-caring agency or child-
10 placing agency;

11 (f) Suspension of the license for a period not to exceed
12 three years, during which time the licensee shall not operate a
13 residential child-caring agency or child-placing agency; or

14 (g) Revocation of the license. A former licensee whose
15 license has been revoked shall not apply for a license for a minimum
16 of two years after the date of revocation.

17 (2) Any fine imposed and unpaid under the Children's
18 Residential Facilities and Placing Licensure Act shall constitute a
19 debt to the State of Nebraska which may be collected in the manner of
20 a lien foreclosure or sued for and recovered in any proper form of
21 action in the name of the State of Nebraska in the district court of
22 the county in which the residential child-caring agency or child-
23 placing agency is located. The department shall, within thirty days
24 after receipt, remit fines to the State Treasurer for distribution in
25 accordance with Article VII, section 5, of the Constitution of

1 Nebraska.

2 Sec. 19. In determining what type of disciplinary action
3 to impose, the department may consider:

4 (1) The gravity of the violation, including the
5 probability that death or serious physical or mental harm will
6 result, the severity of the actual or potential harm, and the extent
7 to which the provisions of applicable statutes, rules, and
8 regulations were violated;

9 (2) The reasonableness of the diligence exercised by the
10 licensee in identifying or correcting the violation;

11 (3) The degree of cooperation exhibited by the licensee
12 in the identification, disclosure, and correction of the violation;

13 (4) Any previous violations committed by the licensee;
14 and

15 (5) The financial benefit to the licensee of committing
16 or continuing the violation.

17 Sec. 20. (1) Except as provided in section 15 of this
18 act, if the department determines to deny, refuse renewal of, or take
19 disciplinary action against a license, the department shall send to
20 the applicant or licensee, by certified mail to the last-known
21 address shown on the records of the department, a notice setting
22 forth the determination, the particular reasons for the
23 determination, including a specific description of the nature of the
24 violation and the statute, rule, or regulation violated, and the type
25 of disciplinary action which is pending. The denial, refusal to

1 renew, or disciplinary action shall become final fifteen days after
2 the mailing of the notice unless the applicant or licensee, within
3 such fifteen-day period, makes a written request for a hearing under
4 section 21 of this act.

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

11 Sec. 21. (1) Within fifteen days after the mailing of a
12 notice under section 20 of this act, an applicant or licensee shall
13 notify the department in writing that the applicant or licensee:

14 (a) Desires to contest the notice and requests a hearing;
15 or

16 (b) Does not contest the notice.

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

20 Sec. 22. (1) If the applicant or licensee requests a
21 hearing under section 21 of this act, the department shall hold a
22 hearing and give the applicant or licensee the right to present such
23 evidence as may be proper. On the basis of such evidence, the
24 director shall affirm, modify, or set aside the determination. A copy
25 of such decision setting forth the findings of facts and the

1 particular reasons upon which the decision is based shall be sent by
2 either registered or certified mail to the applicant or licensee.

3 (2) The procedure governing hearings authorized by this
4 section shall be in accordance with rules and regulations adopted and
5 promulgated by the department. A full and complete record shall be
6 kept of all proceedings. Witnesses may be subpoenaed by either party
7 and shall be allowed fees at a rate prescribed by rule and
8 regulation.

9 Sec. 23. Any party to a decision of the department under
10 the Children's Residential Facilities and Placing Licensure Act may
11 appeal such decision. The appeal shall be in accordance with the
12 Administrative Procedure Act.

13 Sec. 24. (1) A license issued under the Children's
14 Residential Facilities and Placing Licensure Act that has lapsed for
15 nonpayment of fees is eligible for reinstatement at any time by
16 applying to the department and paying the fees as provided in section
17 6 of this act.

18 (2) A license that has been disciplined by being placed
19 on suspension is eligible for reinstatement at the end of the period
20 of suspension upon successful completion of an inspection and payment
21 of the fees as provided in section 6 of this act.

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

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

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

22 Sec. 25. A licensee may voluntarily surrender a license
23 issued under the Children's Residential Facilities and Placing
24 Licensure Act at any time, except that the department may refuse to
25 accept a voluntary surrender of a license if the licensee is under

1 investigation or if the department has initiated disciplinary action
2 against the licensee.

3 Sec. 26. (1) To protect the health, safety, and welfare
4 of the public and to insure to the greatest extent possible the
5 efficient, adequate, and safe care of children, the department may
6 adopt and promulgate rules and regulations consistent with the
7 Children's Residential Facilities and Placing Licensure Act as
8 necessary for:

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

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

14 (c) The proper administration of the act.

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

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

25 Sec. 27. Any person who establishes, operates, or

1 maintains a residential child-caring agency or child-placing agency
2 subject to the Children's Residential Facilities and Placing
3 Licensure Act without first obtaining a license as required under the
4 act or who violates any of the provisions of the act shall be guilty
5 of a Class I misdemeanor. Each day such person operates after a first
6 conviction shall be considered a subsequent offense.

7 Sec. 28. (1) All rules and regulations adopted and
8 promulgated prior to the effective date of this act under sections
9 71-1901 to 71-1906.01 or other statutes amended by this legislative
10 bill may continue to be effective under the Children's Residential
11 Facilities and Placing Licensure Act to the extent not in conflict
12 with the act.

13 (2) All licenses issued prior to the effective date of
14 this act in accordance with sections 71-1901 to 71-1906.01 or other
15 statutes amended by this legislative bill shall remain valid as
16 issued for purposes of the Children's Residential Facilities and
17 Placing Licensure Act unless revoked or otherwise terminated by law.

18 (3) Any suit, action, or other proceeding, judicial or
19 administrative, which was lawfully commenced prior to the effective
20 date of this act under sections 71-1901 to 71-1906.01 or other
21 statutes amended by this legislative bill shall be subject to the
22 provisions of sections 71-1901 to 71-1906.01 or such other statutes
23 as they existed prior to the effective date of this act.

24 Sec. 29. Section 28-710, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 28-710 (1) Sections 28-710 to 28-727 shall be known and
2 may be cited as the Child Protection Act.

3 (2) For purposes of the Child Protection Act:

4 (a) Child abuse or neglect means knowingly,
5 intentionally, or negligently causing or permitting a minor child to
6 be:

7 (i) Placed in a situation that endangers his or her life
8 or physical or mental health;

9 (ii) Cruelly confined or cruelly punished;

10 (iii) Deprived of necessary food, clothing, shelter, or
11 care;

12 (iv) Left unattended in a motor vehicle if such minor
13 child is six years of age or younger;

14 (v) Sexually abused; or

15 (vi) Sexually exploited by allowing, encouraging, or
16 forcing such person to solicit for or engage in prostitution,
17 debauchery, public indecency, or obscene or pornographic photography,
18 films, or depictions;

19 (b) Department means the Department of Health and Human
20 Services;

21 (c) Law enforcement agency means the police department or
22 town marshal in incorporated municipalities, the office of the
23 sheriff in unincorporated areas, and the Nebraska State Patrol;

24 (d) Out-of-home child abuse or neglect means child abuse
25 or neglect occurring in day care homes, foster homes, day care

1 centers, ~~group homes, residential child-caring agencies as defined in~~
2 section 3 of this act, and other child care facilities or
3 institutions; and

4 (e) Subject of the report of child abuse or neglect means
5 the person or persons identified in the report as responsible for the
6 child abuse or neglect.

7 Sec. 30. Section 29-2264, Revised Statutes Cumulative
8 Supplement, 2012, is amended to read:

9 29-2264 (1) Whenever any person is placed on probation by
10 a court and satisfactorily completes the conditions of his or her
11 probation for the entire period or is discharged from probation prior
12 to the termination of the period of probation, the sentencing court
13 shall issue an order releasing the offender from probation. Such
14 order in all felony cases shall provide notice that the person's
15 voting rights are restored two years after completion of probation.
16 The order shall include information on restoring other civil rights
17 through the pardon process, including application to and hearing by
18 the Board of Pardons.

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

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

3 (a) The behavior of the offender after sentencing;

4 (b) The likelihood that the offender will not engage in
5 further criminal activity; and

6 (c) Any other information the court considers relevant.

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

11 (a) Nullify the conviction; and

12 (b) Remove all civil disabilities and disqualifications
13 imposed as a result of the conviction.

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

16 (a) Require the reinstatement of any office, employment,
17 or position which was previously held and lost or forfeited as a
18 result of the conviction;

19 (b) Preclude proof of a plea of guilty whenever such plea
20 is relevant to the determination of an issue involving the rights or
21 liabilities of someone other than the offender;

22 (c) Preclude proof of the conviction as evidence of the
23 commission of the misdemeanor or felony whenever the fact of its
24 commission is relevant for the purpose of impeaching the offender as
25 a witness, except that the order setting aside the conviction may be

1 introduced in evidence;

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

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

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

12 (g) Preclude use of the conviction as evidence of
13 commission of the misdemeanor or felony for purposes of determining
14 whether an application filed or a license issued under sections
15 71-1901 to 71-1906.01, ~~or~~ the Child Care Licensing Act, or the
16 Children's Residential Facilities and Placing Licensure Act or a
17 certificate issued under sections 79-806 to 79-815 should be denied,
18 suspended, or revoked;

19 (h) Preclude use of the conviction as evidence of
20 incompetence, neglect of duty, physical, mental, or emotional
21 incapacity, or final conviction of or pleading guilty or nolo
22 contendere to a felony for purposes of determining whether an
23 application filed or a certificate issued under sections 81-1401 to
24 81-1414.10 should be denied, suspended, or revoked;

25 (i) Preclude proof of the conviction as evidence whenever

1 the fact of the conviction is relevant to a determination of the
2 registration period under section 29-4005; or

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

6 (6) Except as otherwise provided for the notice in
7 subsection (1) of this section, changes made to this section by Laws
8 2005, LB 713, shall be retroactive in application and shall apply to
9 all persons, otherwise eligible in accordance with the provisions of
10 this section, whether convicted prior to, on, or subsequent to
11 September 4, 2005.

12 Sec. 31. Section 43-2,108.05, Revised Statutes Cumulative
13 Supplement, 2012, is amended to read:

14 43-2,108.05 (1) If the court orders the record of a
15 juvenile sealed pursuant to section 43-2,108.04, the court shall:

16 (a) Order that all records, including any information or
17 other data concerning any proceedings relating to the offense,
18 including the arrest, taking into custody, petition, complaint,
19 indictment, information, trial, hearing, adjudication, correctional
20 supervision, dismissal, or other disposition or sentence, be deemed
21 never to have occurred;

22 (b) Send notice of the order to seal the record (i) to
23 the Nebraska Commission on Law Enforcement and Criminal Justice, (ii)
24 if the record includes impoundment or prohibition to obtain a license
25 or permit pursuant to section 43-287, to the Department of Motor

1 Vehicles, (iii) if the juvenile whose record has been ordered sealed
2 was a ward of the state at the time the proceeding was initiated or
3 if the Department of Health and Human Services was a party in the
4 proceeding, to such department, and (iv) to law enforcement agencies,
5 county attorneys, and city attorneys referenced in the court record;

6 (c) Order all notified under subdivision (1)(b) of this
7 section to seal all records pertaining to the offense;

8 (d) If the case was transferred from district court to
9 juvenile court or was transferred under section 43-282, send notice
10 of the order to seal the record to the transferring court; and

11 (e) Explain to the juvenile what sealing the record means
12 verbally if the juvenile is present in the court at the time the
13 court issues the sealing order or by written notice sent by regular
14 mail to the juvenile's last-known address if the juvenile is not
15 present in the court at the time the court issues the sealing order.

16 (2) The effect of having a record sealed under section
17 43-2,108.04 is that thereafter no person is allowed to release any
18 information concerning such record, except as provided by this
19 section. After a record is sealed, the person whose record was sealed
20 can respond to any public inquiry as if the offense resulting in such
21 record never occurred. A government agency and any other public
22 office or agency shall reply to any public inquiry that no
23 information exists regarding a sealed record. Except as provided in
24 subsection (3) of this section, an order to seal the record applies
25 to every government agency and any other public office or agency that

1 has a record relating to the offense, regardless of whether it
2 receives notice of the hearing on the sealing of the record or a copy
3 of the order. Upon the written request of a person whose record has
4 been sealed and the presentation of a copy of such order, a
5 government agency or any other public office or agency shall seal all
6 records pertaining to the offense.

7 (3) A sealed record is accessible to law enforcement
8 officers, county attorneys, and city attorneys in the investigation,
9 prosecution, and sentencing of crimes, to the sentencing judge in the
10 sentencing of criminal defendants, and to any attorney representing
11 the subject of the sealed record. Inspection of records that have
12 been ordered sealed under section 43-2,108.04 may be made by the
13 following persons or for the following purposes:

14 (a) By the court or by any person allowed to inspect such
15 records by an order of the court for good cause shown;

16 (b) By the court, city attorney, or county attorney for
17 purposes of collection of any remaining parental support or
18 obligation balances under section 43-290;

19 (c) By the Nebraska Probation System for purposes of
20 juvenile intake services, for presentence and other probation
21 investigations, and for the direct supervision of persons placed on
22 probation and by the Department of Correctional Services, the Office
23 of Juvenile Services, a juvenile assessment center, a criminal
24 detention facility, or a juvenile detention facility, for an
25 individual committed to it, placed with it, or under its care;

1 (d) By the Department of Health and Human Services for
2 purposes of juvenile intake services, the preparation of case plans
3 and reports, the preparation of evaluations, compliance with federal
4 reporting requirements, or the supervision and protection of persons
5 placed with the department or for licensing or certification purposes
6 under sections 71-1901 to 71-1906.01, ~~or~~ the Child Care Licensing
7 Act, or the Children's Residential Facilities and Placing Licensure
8 Act;

9 (e) Upon application, by the person who is the subject of
10 the sealed record and by persons authorized by the person who is the
11 subject of the sealed record who are named in that application;

12 (f) At the request of a party in a civil action that is
13 based on a case that has a sealed record, as needed for the civil
14 action. The party also may copy the sealed record as needed for the
15 civil action. The sealed record shall be used solely in the civil
16 action and is otherwise confidential and subject to this section;

17 (g) By persons engaged in bona fide research, with the
18 permission of the court, only if the research results in no
19 disclosure of the person's identity and protects the confidentiality
20 of the sealed record; or

21 (h) By a law enforcement agency if a person whose record
22 has been sealed applies for employment with the law enforcement
23 agency.

24 (4) Nothing in this section prohibits the Department of
25 Health and Human Services from releasing information from sealed

1 records in the performance of its duties with respect to the
2 supervision and protection of persons served by the department.

3 (5) In any application for employment, bonding, license,
4 education, or other right or privilege, any appearance as a witness,
5 or any other public inquiry, a person cannot be questioned with
6 respect to any offense for which the record is sealed. If an inquiry
7 is made in violation of this subsection, the person may respond as if
8 the offense never occurred. Applications for employment shall contain
9 specific language that states that the applicant is not obligated to
10 disclose a sealed record. Employers shall not ask if an applicant has
11 had a record sealed. The Department of Labor shall develop a link on
12 the department's web site to inform employers that employers cannot
13 ask if an applicant had a record sealed and that an application for
14 employment shall contain specific language that states that the
15 applicant is not obligated to disclose a sealed record.

16 (6) Any person who violates this section may be held in
17 contempt of court.

18 Sec. 32. Section 43-1301, Revised Statutes Cumulative
19 Supplement, 2012, is amended to read:

20 43-1301 For purposes of the Foster Care Review Act,
21 unless the context otherwise requires:

22 (1) Local board means a local foster care review board
23 created pursuant to section 43-1304;

24 (2) Office means the Foster Care Review Office created
25 pursuant to section 43-1302;

1 (3) Foster care facility means any foster family home as
2 defined in section 71-1901, residential child-caring agency as
3 defined in section 3 of this act, group home, child care facility,
4 public agency, private agency, or any other person or entity
5 receiving and caring for foster children;

6 (4) Foster care placements means all placements of
7 juveniles ~~as described in subdivision (3)(b) of section 43-247,~~
8 placements of neglected, dependent, or delinquent children, including
9 those made directly by parents or by third parties, and placements of
10 children who have been voluntarily relinquished pursuant to section
11 43-106.01 to the Department of Health and Human Services or any ~~child~~
12 ~~placement~~ child-placing agency as defined in section 3 of this act
13 licensed by the Department of Health and Human Services;

14 (5) Person or court in charge of the child means (a) the
15 Department of Health and Human Services, an association, or an
16 individual who has been made the guardian of a neglected, dependent,
17 or delinquent child by the court and has the responsibility of the
18 care of the child and has the authority by and with the assent of the
19 court to place such a child in a suitable family home or institution
20 or has been entrusted with the care of the child by a voluntary
21 placement made by a parent or legal guardian, (b) the court which has
22 jurisdiction over the child, or (c) the entity having jurisdiction
23 over the child pursuant to the Nebraska Indian Child Welfare Act;

24 (6) Voluntary placement means the placement by a parent
25 or legal guardian who relinquishes the possession and care of a child

1 to a third party, individual, or agency;

2 (7) Family unit means the social unit consisting of the
3 foster child and the parent or parents or any person in the
4 relationship of a parent, including a grandparent, and any siblings
5 with whom the foster child legally resided prior to placement in
6 foster care, except that for purposes of potential sibling placement,
7 the child's family unit also includes the child's siblings even if
8 the child has not resided with such siblings prior to placement in
9 foster care;

10 (8) ~~Child-caring~~ Residential child-caring agency has the
11 definition found in section ~~71-1902; 3~~ of this act;

12 (9) Child-placing agency has the definition found in
13 section ~~71-1902; 3~~ of this act; and

14 (10) Siblings means biological siblings and legal
15 siblings, including, but not limited to, half-siblings and
16 stepsiblings.

17 Sec. 33. Section 43-1302, Revised Statutes Cumulative
18 Supplement, 2012, is amended to read:

19 43-1302 (1)(a) The Foster Care Review Office is hereby
20 established. The purpose of the office is to provide information and
21 direct reporting to the courts, the Department of Health and Human
22 Services, and the Legislature regarding the foster care system in
23 Nebraska; to provide oversight of the foster care system; and to make
24 recommendations regarding foster care policy to the Legislature. The
25 executive director of the office shall provide information and

1 reporting services, provide analysis of information obtained, and
2 oversee foster care file audit case reviews and tracking of cases of
3 children in the foster care system. The executive director of the
4 office shall, through information analysis and with the assistance of
5 the Foster Care Advisory Committee, (i) determine key issues of the
6 foster care system and ways to resolve the issues and to otherwise
7 improve the system and (ii) make policy recommendations.

8 (b) All equipment and effects of the State Foster Care
9 Review Board on July 1, 2012, shall be transferred to the Foster Care
10 Review Office, and all staff of the board, except the executive
11 director and interim executive director, shall be transferred to the
12 office. The State Foster Care Review Board shall terminate on July 1,
13 2012. Beginning on July 1, 2012, the data coordinator of the board,
14 as such position existed prior to such date, shall serve as the
15 executive director of the office until the Foster Care Advisory
16 Committee hires an executive director as prescribed by this section.
17 It is the intent of the Legislature that the staff of the board
18 employed prior to July 1, 2012, shall continue to be employed by the
19 office until such time as the executive director is hired by the
20 committee.

21 (c) It is the intent of the Legislature that the funds
22 appropriated to the State Foster Care Review Board be transferred to
23 the Foster Care Review Office for FY2012-13.

24 (2)(a) The Foster Care Advisory Committee is created. The
25 committee shall have five members appointed by the Governor. The

1 members shall have no pecuniary interest in the foster care system
2 and shall not be employed by the office, the Department of Health and
3 Human Services, a county, a residential child-caring agency, a child-
4 placing agency, or a court.

5 (b) The Governor shall appoint three members from a list
6 of twelve local board members submitted by the Health and Human
7 Services Committee of the Legislature, one member from a list of four
8 persons with data analysis experience submitted by the Health and
9 Human Services Committee of the Legislature, and one member from a
10 list of four persons who are residents of the state and are
11 representative of the public at large submitted by the Health and
12 Human Services Committee of the Legislature. The Health and Human
13 Services Committee of the Legislature shall hold a confirmation
14 hearing for the appointees, and the appointments shall be subject to
15 confirmation by the Legislature, except that the initial members and
16 members appointed while the Legislature is not in session shall serve
17 until the next session of the Legislature, at which time a majority
18 of the members of the Legislature shall approve or disapprove of the
19 appointments.

20 (c) The terms of the members shall be for three years,
21 except that the Governor shall designate two of the initial
22 appointees to serve initial terms ending on March 1, 2014, and three
23 of the initial appointees to serve initial terms ending on March 1,
24 2015. The Governor shall make the initial appointments within thirty
25 days after July 1, 2012. Members shall not serve more than two

1 consecutive terms, except that members shall serve until their
2 successors have been appointed and qualified. The Governor shall
3 appoint members to fill vacancies in the same manner as the original
4 appointments to serve for the remainder of the unexpired term.

5 (d) The Foster Care Advisory Committee shall meet at
6 least four times each calendar year. Each member shall attend at
7 least two meetings each calendar year and shall be subject to removal
8 for failure to attend at least two meetings unless excused by a
9 majority of the members of the committee. Members shall be reimbursed
10 for their actual and necessary expenses as provided in sections
11 81-1174 to 81-1177.

12 (e) The duties of the Foster Care Advisory Committee are
13 to:

14 (i) Hire and fire an executive director for the office
15 who has training and experience in foster care; and

16 (ii) Support and facilitate the work of the office,
17 including the tracking of children in foster care and reviewing
18 foster care file audit case reviews.

19 (3) The executive director of the office shall hire,
20 fire, and supervise office staff and shall be responsible for the
21 duties of the office as provided by law, including the annual report
22 and other reporting, review, tracking, data collection and analysis,
23 and oversight and training of local boards.

24 Sec. 34. Section 43-1304, Revised Statutes Cumulative
25 Supplement, 2012, is amended to read:

1 43-1304 There shall be local foster care review boards to
2 conduct the foster care file audit case reviews of children in foster
3 care placement and carry out other powers and duties given to such
4 boards under the Foster Care Review Act. Members of local boards
5 serving on July 1, 2012, shall continue to serve the unexpired
6 portion of their terms. The executive director of the office shall
7 select members to serve on local boards from a list of applications
8 submitted to the office. Each local board shall consist of not less
9 than four and not more than ten members as determined by the
10 executive director. The members of the local board shall reasonably
11 represent the various social, economic, racial, and ethnic groups of
12 the county or counties from which its members may be appointed. A
13 person employed by the office, the Department of Health and Human
14 Services, a residential child-caring agency, a child-placing agency,
15 or a court shall not be appointed to a local board. A list of the
16 members of each local board shall be sent to the department.

17 Sec. 35. Section 43-1503, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 43-1503 For ~~the~~ purposes of the Nebraska Indian Child
20 Welfare Act, except as may be specifically provided otherwise, the
21 term:

22 (1) Child custody proceeding shall mean and include:

23 (a) Foster care placement which shall mean any action
24 removing an Indian child from ~~its~~ his or her parent or Indian
25 custodian for temporary placement in a foster home or institution or

1 the home of a guardian or conservator where the parent or Indian
2 custodian cannot have the child returned upon demand, but where
3 parental rights have not been terminated;

4 (b) Termination of parental rights which shall mean any
5 action resulting in the termination of the parent-child relationship;

6 (c) Preadoptive placement which shall mean the temporary
7 placement of an Indian child in a foster home or institution after
8 the termination of parental rights, but prior to or in lieu of
9 adoptive placement; and

10 (d) Adoptive placement which shall mean the permanent
11 placement of an Indian child for adoption, including any action
12 resulting in a final decree of adoption.

13 Such term or terms shall not include a placement based
14 upon an act which, if committed by an adult, would be deemed a crime
15 or upon an award, in a divorce proceeding, of custody to one of the
16 parents;

17 (2) Extended family member shall be as defined by the law
18 or custom of the Indian child's tribe or, in the absence of such law
19 or custom, shall be a person who has reached the age of eighteen and
20 who is the Indian child's parent, grandparent, aunt or uncle, brother
21 ~~or sister, clan member, band member, sibling, brother-in-law or~~
22 ~~sister-in-law, niece or nephew, first or second cousin, or~~
23 stepparent;

24 (3) Indian means any person who is a member of an Indian
25 tribe, or who is an Alaska Native and a member of a regional

1 corporation defined in section 7 of the Alaska Native Claims
2 Settlement Act, 43 U.S.C. 1606;

3 (4) Indian child means any unmarried person who is under
4 age eighteen and is either (a) a member of an Indian tribe or (b) is
5 eligible for membership in an Indian tribe and is the biological
6 child of a member of an Indian tribe;

7 (5) Indian child's tribe means (a) the Indian tribe in
8 which an Indian child is a member or eligible for membership or (b)
9 in the case of an Indian child who is a member of or eligible for
10 membership in more than one tribe, the Indian tribe with which the
11 Indian child has the more significant contacts;

12 (6) Indian custodian means any Indian person who has
13 legal custody of an Indian child under tribal law or custom or under
14 state law or to whom temporary physical care, custody, and control
15 has been transferred by the parent of such child;

16 (7) Indian organization means any group, association,
17 partnership, limited liability company, corporation, or other legal
18 entity owned or controlled by Indians or a majority of whose members
19 are Indians;

20 (8) Indian tribe means any Indian tribe, band, nation, or
21 other organized group or community of Indians recognized as eligible
22 for the services provided to Indians by the secretary because of
23 their status as Indians, including any Alaska Native village as
24 defined in section 3(c) of the Alaska Native Claims Settlement Act,
25 as amended, 43 U.S.C. 1602(c);

1 (9) Parent means any biological parent or parents of an
2 Indian child or any Indian person who has lawfully adopted an Indian
3 child, including adoptions under tribal law or custom. It does not
4 include the unwed father when paternity has not been acknowledged or
5 established;

6 (10) Reservation means Indian country as defined in 18
7 U.S.C. 1151 and any lands, not covered under such section, title to
8 which is either held by the United States in trust for the benefit of
9 any Indian tribe or individual or held by any Indian tribe or
10 individual subject to a restriction by the United States against
11 alienation;

12 (11) Secretary means the Secretary of the Interior;

13 (12) Tribal court means a court with jurisdiction over
14 child custody proceedings and which is either a Court of Indian
15 Offenses, a court established and operated under the code or custom
16 of an Indian tribe, or any other administrative body of a tribe which
17 is vested with authority over child custody proceedings; and

18 (13) Tribal service area means a geographic area in which
19 tribal services and programs are provided to Native American people.

20 Sec. 36. Section 43-4308, Revised Statutes Cumulative
21 Supplement, 2012, is amended to read:

22 43-4308 Licensed child care facility means a facility or
23 program licensed under the Child Care Licensing Act, the Children's
24 Residential Facilities and Placing Licensure Act, or sections 71-1901
25 to 71-1906.01.

1 Sec. 37. Section 68-1006.01, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 68-1006.01 The Department of Health and Human Services
4 shall include in the standard of need for eligible aged, blind, and
5 disabled persons at least fifty dollars per month for a personal
6 needs allowance if such persons reside in an alternative living
7 arrangement.

8 For purposes of this section, an alternative living
9 arrangement shall include board and room, a boarding home, a
10 certified adult family home, a licensed assisted-living facility, a
11 licensed ~~group home for children or residential~~ child-caring agency
12 as defined in section 3 of this act, a licensed center for the
13 developmentally disabled, and a long-term care facility.

14 Sec. 38. Section 68-1207, Revised Statutes Cumulative
15 Supplement, 2012, is amended to read:

16 68-1207 (1) The Department of Health and Human Services
17 shall supervise all public child welfare services as described by
18 law. The department and the pilot project described in section
19 68-1212 shall maintain caseloads to carry out child welfare services
20 which provide for adequate, timely, and indepth investigations and
21 services to children and families. Caseloads shall range between
22 twelve and seventeen cases as determined pursuant to subsection (2)
23 of this section. In establishing the specific caseloads within such
24 range, the department and the pilot project shall (a) include the
25 workload factors that may differ due to geographic responsibilities,

1 office location, and the travel required to provide a timely response
2 in the investigation of abuse and neglect, the protection of
3 children, and the provision of services to children and families in a
4 uniform and consistent statewide manner and (b) utilize the workload
5 criteria of the standards established as of January 1, 2012, by the
6 Child Welfare League of America. The average caseload shall be
7 reduced by the department in all service areas as designated pursuant
8 to section 81-3116 and by the pilot project to comply with the
9 caseload range described in this subsection by September 1, 2012.
10 Beginning September 15, 2012, the department shall include in its
11 annual report required pursuant to section 68-1207.01 a report on the
12 attainment of the decrease according to such caseload standards. The
13 department's annual report shall also include changes in the
14 standards of the Child Welfare League of America or its successor.

15 (2) Caseload size shall be determined in the following
16 manner: (a) If children are placed in the home, the family shall
17 count as one case regardless of how many children are placed in the
18 home; (b) if a child is placed out of the home, the child shall count
19 as one case; (c) if, within one family, one or more children are
20 placed in the home and one or more children are placed out of the
21 home, the children placed in the home shall count as one case and
22 each child placed out of the home shall count as one case; and (d)
23 any child receiving services from the department or a private entity
24 under contract with the department shall be counted as provided in
25 subdivisions (a) through (c) of this subsection whether or not such

1 child is a ward of the state. For purposes of this subsection, a
2 child is considered to be placed in the home if the child is placed
3 with his or her biological or adoptive parent or a legal guardian and
4 a child is considered to be placed out of the home if the child is
5 placed in a foster care, group home care, family home as defined in
6 section 71-1901, a residential child-caring agency as defined in
7 section 3 of this act, or any other setting which is not the child's
8 planned permanent home.

9 (3) To insure appropriate oversight of noncourt and
10 voluntary cases when any child welfare services are provided, either
11 by the department or by a lead agency participating in the pilot
12 project, as a result of a child safety assessment, the department or
13 lead agency shall develop a case plan that specifies the services to
14 be provided and the actions to be taken by the department or lead
15 agency and the family in each such case.

16 (4) To carry out the provisions of this section, the
17 Legislature shall provide funds for additional staff.

18 Sec. 39. Section 71-428, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 71-428 (1) Respite care service means a person or any
21 legal entity that provides short-term temporary care on an
22 intermittent basis to persons with special needs when the person's
23 primary caregiver is unavailable to provide such care.

24 (2) Respite care service does not include:

25 (a) A person or any legal entity which is licensed under

1 the Health Care Facility Licensure Act and which provides respite
2 care services at the licensed location;

3 (b) A person or legal entity which is licensed to provide
4 child care to thirteen or more children under the Child Care
5 Licensing Act or which is licensed as a ~~group home or residential~~
6 child-caring agency under ~~sections 71-1901 to 71-1906.01;~~ the
7 Children's Residential Facilities and Placing Licensure Act;

8 (c) An agency that recruits, screens, or trains a person
9 to provide respite care;

10 (d) An agency that matches a respite care service or
11 other providers of respite care with a person with special needs, or
12 refers a respite care service or other providers of respite care to a
13 person with special needs, unless the agency receives compensation
14 for such matching or referral from the service or provider or from or
15 on behalf of the person with special needs;

16 (e) A person who provides respite care to fewer than
17 eight unrelated persons in any seven-day period in his or her home or
18 in the home of the recipient of the respite care; or

19 (f) A nonprofit agency that provides group respite care
20 for no more than eight hours in any seven-day period.

21 Sec. 40. Section 71-1901, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 71-1901 For purposes of sections 71-1901 to 71-1906.01:

24 (1) Person includes a partnership, limited liability
25 company, firm, agency, association, or corporation;

1 (2) Child means an unemancipated minor;

2 (3) Child-placing agency has the definition found in
3 section 3 of this act;

4 ~~(3)-(4) Department means the Division of Public Health of~~
5 ~~the Department of Health and Human Services;~~

6 ~~(4)-(5) Foster care means engaged in the service of~~
7 ~~exercising twenty-four-hour daily care, supervision, custody, or~~
8 ~~control over children, for compensation or hire, in lieu of the care~~
9 ~~or supervision normally exercised by parents in their own home.~~
10 Foster care does not include casual care at irregular intervals or
11 programs as defined in section 71-1910; ~~and~~

12 (6) Foster family home means a home which provides foster
13 care to a child or children pursuant to a foster care placement as
14 defined in section 43-1301. Foster family homes include licensed
15 homes where the primary caretaker has no significant prior
16 relationship with the child or children in his or her care and both
17 licensed and unlicensed relative and kinship homes;

18 (7) Kinship home means a home where a child or children
19 receive foster care and at least one of the primary caretakers has
20 previously lived with or is a trusted adult that has a preexisting,
21 significant relationship with the child or children or a sibling of
22 such child or children pursuant to section 43-1311.02;

23 ~~(5)-(8) Native American means a person who is a member of~~
24 ~~an Indian tribe or eligible for membership in an Indian tribe; -~~

25 (9) Relative home means a home where a child or children

1 receive foster care and at least one of the primary caretakers is
2 related to the child or children, or to a sibling of such child or
3 children pursuant to section 43-1311.02, in his or her care by blood,
4 marriage, or adoption or, in the case of an Indian child, at least
5 one of the primary caretakers is an extended family member as defined
6 in section 43-1503; and

7 (10) Residential child-caring agency has the definition
8 found in section 3 of this act.

9 Sec. 41. Section 71-1902, Revised Statutes Cumulative
10 Supplement, 2012, is amended to read:

11 71-1902 (1) The department shall adopt and promulgate
12 rules and regulations on requirements for licenses, waivers,
13 variances, and approval of foster family homes taking into
14 consideration the health, safety, well-being, and best interests of
15 the child. An initial assessment of a foster family home shall be
16 completed and shall focus on the safety, protection, and immediate
17 health, educational, developmental, and emotional needs of the child
18 and the willingness and ability of the foster home, relative home, or
19 kinship home to provide a safe, stable, and nurturing environment for
20 a child for whom the department or child-placing agency has assumed
21 responsibility.

22 ~~(1)-(2)(a)~~ Except as otherwise provided in this section,
23 no person shall furnish or offer to furnish foster care for one or
24 more children ~~not related to such person by blood, marriage, or~~
25 ~~adoption~~ without having in full force and effect a written license

1 issued by the department upon such terms and conditions as may be
2 prescribed by general rules and regulations adopted and promulgated
3 by the department. The terms and conditions for licensure may allow
4 foster family homes to meet licensing standards through variances
5 equivalent to the established standards.

6 (b) The department may issue a time-limited, nonrenewable
7 provisional license to an applicant who is unable to comply with all
8 licensure requirements and standards, is making a good faith effort
9 to comply, and is capable of compliance within the time period stated
10 in the license. The department may issue a time-limited, nonrenewable
11 probationary license to a licensee who agrees to establish compliance
12 with rules and regulations that, when violated, do not present an
13 unreasonable risk to the health, safety, or well-being of the foster
14 children in the care of the applicant. ~~No license shall be issued~~
15 ~~pursuant to this section unless the applicant has completed the~~
16 ~~required hours of training in foster care as prescribed by the~~
17 ~~department.~~

18 (3) Kinship homes and relative homes are exempt from
19 licensure, however, such homes should make efforts to be licensed if
20 such license will facilitate the permanency plan of the child. The
21 department and child-placing agencies shall, when requested or as
22 part of the child's permanency plan, provide resources for and
23 assistance with licensure, including, but not limited to, information
24 on licensure, waivers for relative homes, kinship-specific and
25 relative-specific foster care training, referral to local service

1 providers and support groups, and funding and resources available to
2 address home safety or other barriers to licensure.

3 (4) Prior to placement in a nonlicensed relative home or
4 kinship home, approval shall be obtained from the department.
5 Requirements for initial approval shall include, but not be limited
6 to, the initial assessment provided for in subsection (1) of this
7 section, a home visit to assure adequate and safe housing, and a
8 criminal background check of all adult residents. Final approval
9 shall include, but not be limited to, requirements as appropriate
10 under section 71-1903. The department or child-placing agency shall
11 provide assistance to an approved relative home or kinship home to
12 support the care, protection, and nurturing of the child. Support may
13 include, but not be limited to, information on licensure, waivers,
14 and variances, kinship-specific and relative-specific foster care
15 training, mental and physical health care, options for funding for
16 needs of the child, and service providers and support groups to
17 address the needs of relative and kinship parents, families, and
18 children.

19 ~~(2)-(5)~~ All nonprovisional and nonprobationary licenses
20 issued under sections 71-1901 to 71-1906.01 shall expire two years
21 from the date of issuance and shall be subject to renewal under the
22 same terms and conditions as the original license, except that if a
23 licensee submits a completed renewal application thirty days or more
24 before the license's expiration date, the license shall remain in
25 effect until the department either renews the license or denies the

1 renewal application. No license issued pursuant to this section shall
2 be renewed unless the licensee has completed the required hours of
3 training in foster care in the preceding twelve months as prescribed
4 by the department. ~~For the issuance or renewal of each nonprovisional~~
5 ~~and nonprobationary license, the department shall charge a fee of~~
6 ~~fifty dollars for a group home, fifty dollars for a child caring~~
7 ~~agency, and fifty dollars for a child placing agency. For the~~
8 ~~issuance of each provisional license and each probationary license,~~
9 ~~the department shall charge a fee of twenty five dollars for a group~~
10 ~~home, twenty five dollars for a child caring agency, and twenty five~~
11 ~~dollars for a child placing agency.~~ A license may be revoked for
12 cause, after notice and hearing, in accordance with rules and
13 regulations adopted and promulgated by the department.

14 ~~(3) For purposes of this section:~~

15 ~~(a) Foster family home means any home which provides~~
16 ~~twenty four hour care to children who are not related to the foster~~
17 ~~parent by blood, marriage, or adoption;~~

18 ~~(b) Group home means a home which is operated under the~~
19 ~~auspices of an organization which is responsible for providing social~~
20 ~~services, administration, direction, and control for the home and~~
21 ~~which is designed to provide twenty four hour care for children and~~
22 ~~youth in a residential setting;~~

23 ~~(c) Child caring agency means an organization which is~~
24 ~~organized as a corporation or a limited liability company for the~~
25 ~~purpose of providing care for children in buildings maintained by the~~

1 ~~organization for that purpose; and~~

2 ~~(d) Child placing agency means an organization which is~~
3 ~~authorized by its articles of incorporation and by its license to~~
4 ~~place children in foster family homes.~~

5 Sec. 42. Section 71-1903, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 71-1903 (1) Before issuance of a license under sections
8 71-1901 to 71-1906.01, the department shall cause such investigation
9 to be made as it deems necessary to determine if the character of the
10 applicant, any member of the applicant's household, or the person in
11 charge of the service and the place where the foster care is to be
12 furnished are such as to ensure the proper care and treatment of
13 children. The department may request the State Fire Marshal to
14 inspect such places for fire safety pursuant to section 81-502. The
15 State Fire Marshal shall assess a fee for such inspection pursuant to
16 section 81-505.01, payable by the licensee or applicant for a
17 license, except that the department may pay the fee for inspection
18 for fire safety of ~~foster family homes~~ where foster care is provided.
19 ~~as defined in section 71-1902.~~ The department may conduct sanitation
20 and health standards investigations pursuant to subsection (2) of
21 this section. The department may also, at any time it sees fit, cause
22 an inspection to be made of the place where any licensee is
23 furnishing foster care to see that such service is being properly
24 conducted.

25 (2) The department shall make an investigation and report

1 of all facilities ~~and programs of licensed foster care providers of~~
2 ~~foster care programs~~ subject to this section or applicants for
3 licenses to provide such ~~programs~~ care to determine if ~~the place or~~
4 ~~places to be covered by such licenses~~ meet standards of health and
5 sanitation set by the department for the care and protection of the
6 child or children who may be placed in ~~such facilities and programs.~~
7 foster family homes are being met. The department may delegate the
8 investigation authority to qualified local environmental health
9 personnel.

10 (3) Before the foster care placement of any child in
11 Nebraska by the department, the department shall require a national
12 criminal history record information check of the prospective foster
13 parent of such child and each member of such prospective foster
14 parent's household who is eighteen years of age or older. The
15 department shall provide two sets of legible fingerprints for such
16 persons to the Nebraska State Patrol for submission to the Federal
17 Bureau of Investigation. The Nebraska State Patrol shall conduct a
18 criminal history record information check of such persons and shall
19 submit such fingerprints to the Federal Bureau of Investigation for a
20 national criminal history record information check. The criminal
21 history record information check shall include information from
22 federal repositories of such information and repositories of such
23 information in other states if authorized by federal law. The
24 Nebraska State Patrol shall issue a report of the results of such
25 criminal history record information check to the department. The

1 department shall pay a fee to the Nebraska State Patrol for
2 conducting such check. Information received from the criminal history
3 record information check required under this subsection shall be used
4 solely for the purpose of evaluating and confirming information
5 provided by such persons for providing foster care or for the
6 finalization of an adoption. A child may be placed in foster care by
7 the department prior to the completion of a criminal history record
8 information check under this subsection in emergency situations as
9 determined by the department.

10 Sec. 43. Section 71-1904, Revised Statutes Cumulative
11 Supplement, 2012, is amended to read:

12 71-1904 (1) The department shall adopt and promulgate
13 rules and regulations pursuant to sections 71-1901 to 71-1906.01 for
14 (a) the proper care and protection of children by licensees under
15 such sections, (b) the issuance, suspension, and revocation of
16 licenses to provide foster care, (c) the issuance, suspension, and
17 revocation of probationary licenses to provide foster care, (d) the
18 issuance, suspension, and revocation of provisional licenses to
19 provide foster care, (e) the provision of training in foster care,
20 which training shall be directly related to the skills necessary to
21 care for children in need of out-of-home care, including, but not
22 limited to, abused, neglected, dependent, and delinquent children,
23 and (f) the proper administration of sections 71-1901 to 71-1906.01.

24 ~~(2) The training required by subdivision (1)(e) of this~~
25 ~~section may be waived in whole or in part by the department for~~

1 ~~persons operating foster homes providing care only to relatives of~~
2 ~~the foster care provider. The department may issue a waiver for any~~
3 licensing standard not related to children's safety for a relative
4 home that is pursuing licensure. Such waivers shall be granted on a
5 case-by-case basis upon assessment by the department of ~~the~~
6 ~~appropriateness of the relative foster care placement.~~ based upon the
7 best interests of the child. A relative home that receives a waiver
8 pursuant to this subsection shall be considered fully licensed for
9 purposes of federal reimbursement under the federal Fostering
10 Connections to Success and Increasing Adoptions Act of 2008, Public
11 Law 110-351. The department shall submit electronically an annual
12 report to the Health and Human Services Committee of the Legislature
13 on the number of waivers granted under this subsection and the total
14 number of children placed in relative ~~foster~~-homes. For 2012, 2013,
15 and 2014, the department shall provide the report to the Health and
16 Human Services Committee of the Legislature on or before September
17 15.

18 Sec. 44. Section 71-1907, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 71-1907 Any person furnishing foster care who is subject
21 to licensure under section 71-1902 or the Children's Residential
22 Facilities and Placing Licensure Act, when transporting in a motor
23 vehicle any children for whom care is being furnished, shall use an
24 approved child passenger restraint system for each child, except that
25 an occupant protection system as defined in section 60-6,265 may be

1 used for any child six years of age or older.

2 Any person violating this section shall be guilty of an
3 infraction as defined in section 29-431 and shall have his or her
4 license to furnish foster care revoked or suspended by the Department
5 of Health and Human Services.

6 For purposes of this section, approved child passenger
7 restraint system shall mean a restraint system which meets Federal
8 Motor Vehicle Safety Standard 213 as developed by the National
9 Highway Traffic Safety Administration, as such standard existed on
10 July 20, 2002.

11 Sec. 45. Section 75-302, Revised Statutes Cumulative
12 Supplement, 2012, is amended to read:

13 75-302 For purposes of sections 75-301 to 75-322 and in
14 all rules and regulations adopted and promulgated by the commission
15 pursuant to such sections, unless the context otherwise requires:

16 (1) Attended services means an attendant or caregiver
17 accompanying a minor or ~~persons who are physically, mentally, or~~
18 ~~developmentally disabled and a person who has a physical, mental, or~~
19 developmental disability and is unable to travel or wait without
20 assistance or supervision;

21 (2) Carrier enforcement division means the carrier
22 enforcement division of the Nebraska State Patrol or the Nebraska
23 State Patrol;

24 (3) Certificate means a certificate of public convenience
25 and necessity issued under Chapter 75, article 3, to common carriers

1 by motor vehicle;

2 (4) Civil penalty means any monetary penalty assessed by
3 the commission or carrier enforcement division due to a violation of
4 Chapter 75, article 3, or section 75-126 as such section applies to
5 any person or carrier specified in Chapter 75, article 3; any term,
6 condition, or limitation of any certificate or permit issued pursuant
7 to Chapter 75, article 3; or any rule, regulation, or order of the
8 commission, the Division of Motor Carrier Services, or the carrier
9 enforcement division issued pursuant to Chapter 75, article 3;

10 (5) Commission means the Public Service Commission;

11 (6) Common carrier means any person who or which
12 undertakes to transport passengers or household goods for the general
13 public in intrastate commerce by motor vehicle for hire, whether over
14 regular or irregular routes, upon the highways of this state;

15 (7) Contract carrier means any motor carrier which
16 transports passengers or household goods for hire other than as a
17 common carrier designed to meet the distinct needs of each individual
18 customer or a specifically designated class of customers without any
19 limitation as to the number of customers it can serve within the
20 class;

21 (8) Division of Motor Carrier Services means the Division
22 of Motor Carrier Services of the Department of Motor Vehicles;

23 (9) Highway means the roads, highways, streets, and ways
24 in this state;

25 (10) Household goods means personal effects and property

1 used or to be used in a dwelling, when a part of the equipment or
2 supply of such dwelling, and similar property as the commission may
3 provide by regulation if the transportation of such effects or
4 property, is:

5 (a) Arranged and paid for by the householder, including
6 transportation of property from a factory or store when the property
7 is purchased by the householder with the intent to use in his or her
8 dwelling; or

9 (b) Arranged and paid for by another party;

10 (11) Intrastate commerce means commerce between any place
11 in this state and any other place in this state and not in part
12 through any other state;

13 (12) Licensed care transportation services means
14 transportation provided by an entity licensed by the Department of
15 Health and Human Services as a residential child-caring agency as
16 defined in section ~~71-1902-3~~ of this act or child-placing agency as
17 defined in ~~such~~ section 3 of this act or a child care facility
18 licensed under the Child Care Licensing Act to a client of the entity
19 or facility when the person providing transportation services also
20 assists and supervises the passenger or, if the client is a minor, to
21 a family member of a minor when it is necessary for agency or
22 facility staff to accompany or facilitate the transportation in order
23 to provide necessary services and support to the minor. Licensed care
24 transportation services must be incidental to and in furtherance of
25 the social services provided by the entity or facility to the

1 transported client;

2 (13) Motor carrier means any person other than a
3 regulated motor carrier who or which owns, controls, manages,
4 operates, or causes to be operated any motor vehicle used to
5 transport passengers or property over any public highway in this
6 state;

7 (14) Motor vehicle means any vehicle, machine, tractor,
8 trailer, or semitrailer propelled or drawn by mechanical power and
9 used upon the highways in the transportation of passengers or
10 property but does not include any vehicle, locomotive, or car
11 operated exclusively on a rail or rails;

12 (15) Permit means a permit issued under Chapter 75,
13 article 3, to contract carriers by motor vehicle;

14 (16) Person means any individual, firm, partnership,
15 limited liability company, corporation, company, association, or
16 joint-stock association and includes any trustee, receiver, assignee,
17 or personal representative thereof;

18 (17) Private carrier means any motor carrier which owns,
19 controls, manages, operates, or causes to be operated a motor vehicle
20 to transport passengers or property to or from its facility, plant,
21 or place of business or to deliver to purchasers its products,
22 supplies, or raw materials (a) when such transportation is within the
23 scope of and furthers a primary business of the carrier other than
24 transportation and (b) when not for hire. Nothing in sections 75-301
25 to 75-322 shall apply to private carriers;

1 (18) Regulated motor carrier means any person who or
2 which owns, controls, manages, operates, or causes to be operated any
3 motor vehicle used to transport passengers, other than those excepted
4 under section 75-303, or household goods over any public highway in
5 this state;

6 (19) Residential care means care for a minor or a person
7 who is physically, mentally, or developmentally disabled who resides
8 in a residential home or facility regulated by the Department of
9 Health and Human Services, including, but not limited to, a foster
10 home, treatment facility, ~~group home,~~ residential child-caring
11 agency, or shelter;

12 (20) Residential care transportation services means
13 transportation services to persons in residential care when such
14 residential care transportation services and residential care are
15 provided as part of a services contract with the Department of Health
16 and Human Services or pursuant to a subcontract entered into incident
17 to a services contract with the department; and

18 (21) Supported transportation services means
19 transportation services to a minor or for a person who is physically,
20 mentally, or developmentally disabled when the person providing
21 transportation services also assists and supervises the passenger or
22 transportation services to a family member of a minor when it is
23 necessary for provider staff to accompany or facilitate the
24 transportation in order to provide necessary services and support to
25 the minor. Supported transportation services must be provided as part

1 of a services contract with the Department of Health and Human
2 Services or pursuant to a subcontract entered into incident to a
3 services contract with the department, and the driver must meet
4 department requirements for (a) training or experience working with
5 minors or persons who are physically, mentally, or developmentally
6 disabled, (b) training with regard to the specific needs of the
7 client served, (c) reporting to the department, and (d) age.
8 Assisting and supervising the passenger shall not necessarily require
9 the person providing transportation services to stay with the
10 passenger after the transportation services have been provided.

11 Sec. 46. Section 77-2704.12, Revised Statutes Cumulative
12 Supplement, 2012, is amended to read:

13 77-2704.12 (1) Sales and use taxes shall not be imposed
14 on the gross receipts from the sale, lease, or rental of and the
15 storage, use, or other consumption in this state of purchases by (a)
16 any nonprofit organization created exclusively for religious
17 purposes, (b) any nonprofit organization providing services
18 exclusively to the blind, (c) any nonprofit private educational
19 institution established under sections 79-1601 to 79-1607, (d) any
20 regionally or nationally accredited, nonprofit, privately controlled
21 college or university with its primary campus physically located in
22 Nebraska, (e) any nonprofit (i) hospital, (ii) health clinic when one
23 or more hospitals or the parent corporations of the hospitals own or
24 control the health clinic for the purpose of reducing the cost of
25 health services or when the health clinic receives federal funds

1 through the United States Public Health Service for the purpose of
2 serving populations that are medically underserved, (iii) skilled
3 nursing facility, (iv) intermediate care facility, (v) assisted-
4 living facility, (vi) intermediate care facility for the mentally
5 retarded, (vii) nursing facility, (viii) home health agency, (ix)
6 hospice or hospice service, (x) respite care service, or (xi) mental
7 health center licensed under the Health Care Facility Licensure Act,
8 (f) any nonprofit licensed residential child-caring agency, (g) any
9 nonprofit licensed ~~child placement~~ child-placing agency, or (h) any
10 nonprofit organization certified by the Department of Health and
11 Human Services to provide community-based services for persons with
12 developmental disabilities.

13 (2) Any organization listed in subsection (1) of this
14 section shall apply for an exemption on forms provided by the Tax
15 Commissioner. The application shall be approved and a numbered
16 certificate of exemption received by the applicant organization in
17 order to be exempt from the sales and use tax.

18 (3) The appointment of purchasing agents shall be
19 recognized for the purpose of altering the status of the construction
20 contractor as the ultimate consumer of building materials which are
21 physically annexed to the structure and which subsequently belong to
22 the owner of the organization or institution. The appointment of
23 purchasing agents shall be in writing and occur prior to having any
24 building materials annexed to real estate in the construction,
25 improvement, or repair. The contractor who has been appointed as a

1 purchasing agent may apply for a refund of or use as a credit against
2 a future use tax liability the tax paid on inventory items annexed to
3 real estate in the construction, improvement, or repair of a project
4 for a licensed not-for-profit institution.

5 (4) Any organization listed in subsection (1) of this
6 section which enters into a contract of construction, improvement, or
7 repair upon property annexed to real estate without first issuing a
8 purchasing agent authorization to a contractor or repairperson prior
9 to the building materials being annexed to real estate in the project
10 may apply to the Tax Commissioner for a refund of any sales and use
11 tax paid by the contractor or repairperson on the building materials
12 physically annexed to real estate in the construction, improvement,
13 or repair.

14 (5) Any person purchasing, storing, using, or otherwise
15 consuming building materials in the performance of any construction,
16 improvement, or repair by or for any institution enumerated in
17 subsection (1) of this section which is licensed upon completion
18 although not licensed at the time of construction or improvement,
19 which building materials are annexed to real estate and which
20 subsequently belong to the owner of the institution, shall pay any
21 applicable sales or use tax thereon. Upon becoming licensed and
22 receiving a numbered certificate of exemption, the institution
23 organized not for profit shall be entitled to a refund of the amount
24 of taxes so paid in the performance of such construction,
25 improvement, or repair and shall submit whatever evidence is required

1 by the Tax Commissioner sufficient to establish the total sales and
2 use tax paid upon the building materials physically annexed to real
3 estate in the construction, improvement, or repair.

4 Sec. 47. Section 81-502, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 81-502 (1) It shall be the duty of the State Fire
7 Marshal, under authority of the Governor:

8 (a) To enforce all laws of the state relating to the
9 suppression of arson and investigation of the cause, origin, and
10 circumstances of fires;

11 (b) To promote safety and reduce loss by fire;

12 (c) To make an investigation for fire safety of the
13 premises and facilities of:

14 (i) Liquor establishments for which a license or renewal
15 of a license is sought, upon request of the Nebraska Liquor Control
16 Commission, pursuant to section 53-119.01;

17 (ii) Licensed foster care facilities or applicants for
18 licenses for foster care facilities, upon request by the Department
19 of Health and Human Services, pursuant to section 71-1903;

20 ~~(iii) Licensed providers of programs or applicants for~~
21 ~~licenses to provide such programs, upon~~ Upon request of the
22 Department of Health and Human Services, licensed providers of
23 programs or applicants for licenses to provide such programs pursuant
24 to section 71-1913 and licensed residential child-caring agencies or
25 applicants for such licensure pursuant to section 11 of this act. The

1 State Fire Marshal shall report the results of the investigation to
2 the department within thirty days after receipt of the request from
3 the department;

4 (iv) Licensed hospitals, skilled nursing facilities,
5 intermediate care facilities, or other health care facilities which
6 are licensed under the Health Care Facility Licensure Act or
7 applicants for licenses for such facilities or institutions, upon
8 request by the Department of Health and Human Services, pursuant to
9 section 71-441; and

10 (v) Mobile home parks for which a license or renewal of a
11 license is sought, upon request of the Department of Health and Human
12 Services, pursuant to section 71-4635; and

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

16 (i) The prevention of fires;

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

19 (iii) Electric wiring and heating, protection equipment
20 devices, materials, furnishings, and other safeguards within the
21 structure necessary to promote safety and reduce loss by fire, and
22 the means and adequacy of exits, in case of fire, in assembly,
23 educational, institutional, residential, mercantile, office, storage,
24 and industrial-type occupancies as such structures are defined in the
25 National Fire Protection Association, Pamphlet Number 101, and

1 associated pamphlets, and all other buildings, structures, and
2 enclosures in which numbers of persons congregate from time to time
3 for any purpose whether privately or publicly owned;

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

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

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

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

16 (2) The State Fire Marshal may enter into contracts with
17 private individuals or other agencies, boards, commissions, or
18 governmental bodies for the purpose of carrying out his or her duties
19 and responsibilities pursuant to the Arson Reporting Immunity Act,
20 the Nebraska Natural Gas Pipeline Safety Act of 1969, and sections
21 81-502 to 81-541.01, 81-5,132 to 81-5,146, and 81-5,151 to 81-5,157.

22 (3) The State Fire Marshal may delegate the authority set
23 forth in this section to qualified local fire prevention personnel.
24 The State Fire Marshal may overrule a decision, act, or policy of the
25 local fire prevention personnel. When the State Fire Marshal

1 overrules the local personnel, such local personnel may follow the
2 appeals procedure established by sections 81-502.01 to 81-502.03.
3 Such delegation of authority may be revoked by the State Fire Marshal
4 for cause upon thirty days' notice after a hearing.

5 (4) The State Fire Marshal, first assistant fire marshal,
6 and deputies shall have such other powers and perform such other
7 duties as are set forth in sections 81-501.01 to 81-531 and 81-5,151
8 to 81-5,157 and as may be conferred and imposed by law.

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

22 (6) Plans for compliance with the rules and regulations
23 adopted and promulgated pursuant to subdivision (1)(d) of this
24 section shall be reviewed by the State Fire Marshal. Plans submitted
25 after remodeling or construction has begun shall be accompanied by a

1 penalty of fifty dollars in addition to the plan review fee set out
2 in subdivision (4)(a) of section 81-505.01.

3 Sec. 48. Section 81-505.01, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 81-505.01 (1) The State Fire Marshal shall establish and
6 assess fees not to exceed the actual costs for the performance of
7 services by the State Fire Marshal or by qualified local fire
8 prevention personnel to whom the State Fire Marshal has delegated
9 authority to perform such services. Prior to establishing or altering
10 such fees, the State Fire Marshal shall hold a public hearing on the
11 question of the adoption of or change in fees. Notice of such hearing
12 shall be given at least thirty days prior thereto (a) by publication
13 in a newspaper having general circulation in the state and (b) by
14 notifying in writing the head of any agency or department having
15 jurisdiction over facilities that would be subject to the fees. Fees
16 for services performed by the State Fire Marshal shall be paid to the
17 State Fire Marshal and shall be remitted to the State Treasurer for
18 credit to the State Fire Marshal Cash Fund. Fees for services
19 performed by local fire prevention personnel shall be paid directly
20 to the office of the local fire prevention personnel.

21 (2) The fee for inspection for fire safety of any
22 premises or facility pursuant to section 81-502 shall be not less
23 than twenty-five nor more than one hundred fifty dollars and shall be
24 paid by the licensee or applicant for a license. The fee for
25 inspection for fire safety of the same premises or facility made

1 within twelve months after the last prior inspection shall be not
 2 less than twenty-five nor more than one hundred fifty dollars and
 3 shall be paid by the licensee or applicant for a license. The fees
 4 for inspection for fire safety of foster family homes as defined in
 5 section ~~71-1902~~71-1901 may be paid by the Department of Health and
 6 Human Services.

7 (3) The fee for providing investigation reports to
 8 insurance companies shall not exceed three dollars for each report
 9 provided. The State Fire Marshal may charge an amount not to exceed
 10 the actual cost of preparation for any other approved information
 11 release.

12 (4)(a) Except as provided in subdivision (b) of this
 13 subsection, the fee for reviewing plans, blueprints, and shop
 14 drawings to determine compliance with rules and regulations adopted
 15 and promulgated pursuant to section 81-502 shall be assessed
 16 according to the following schedule:

17 TOTAL VALUE OF PROPOSED

18 STRUCTURE OR IMPROVEMENT FEE

19 \$1 - \$5,000 \$5.00

20 \$5,001 - \$25,000 \$5.00 for the first \$5,000.00 plus

21 \$2.00 for each additional \$5,000.00

22 or fraction thereof.

23 \$25,001 - \$50,000 \$15.00 for the first \$25,000.00 plus

24 \$2.00 for each additional \$5,000.00

1 or fraction thereof.

2 \$50,001 - \$100,000 \$25.00 for the first \$50,000.00 plus

3 \$1.00 for each additional \$5,000.00

4 or fraction thereof.

5 \$100,001 - \$200,000 \$35.00 for the first \$100,000.00 plus

6 \$1.00 for each additional \$10,000.00

7 or fraction thereof.

8 \$200,001 or more \$50.00 for the first \$200,000.00 plus

9 \$1.00 for each additional \$10,000.00

10 or fraction thereof, except that the

11 total fee shall not exceed \$500.00.

12 (b) The fees set out in subdivision (a) of this

13 subsection shall not be assessed or collected by any political

14 subdivision to which the State Fire Marshal has delegated the

15 authority to conduct such review and which reviews plans, blueprints,

16 or shop drawings to determine compliance with such political

17 subdivision's own fire safety regulations. Nothing in this

18 subdivision shall be construed to prohibit such political subdivision

19 from assessing or collecting a fee set by its governing board for

20 such review.

21 (c) An additional fee equal to fifty percent of the fee

22 charged pursuant to subdivision (a) of this subsection shall be

23 assessed for reviewing plans, blueprints, and shop drawings to

1 determine compliance with the accessibility standards and
2 specifications adopted pursuant to section 81-5,147, except that the
3 additional fee assessed pursuant to this subdivision shall not exceed
4 two hundred fifty dollars.

5 Sec. 49. Section 83-108.04, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 83-108.04 (1) In addition to the institutions established
8 by law, the Department of Health and Human Services may maintain or
9 use the following facilities for the care of children in its legal
10 custody who have been adjudged to be as described in subdivision (1),
11 (2), (3)(b), or (4) of section 43-247: (a) Receiving homes to be used
12 for the temporary care of children; (b) foster homes; (c) ~~group~~
13 ~~homes; residential child-caring agencies as defined in section 3 of~~
14 this act; and (d) other facilities and services, including forestry
15 or conservation camps for the training and treatment of children.

16 (2) The Department of Health and Human Services also may
17 use other public facilities or contract for the use of private
18 facilities for the care and treatment of children in its legal
19 custody. Placement of children in private or public facilities not
20 under its jurisdiction shall not terminate the legal custody of the
21 department. No state funds may be paid for care of a child in the
22 home of a parent.

23 Sec. 50. Original sections 28-710, 43-1503, 68-1006.01,
24 71-428, 71-1901, 71-1903, 71-1907, 81-502, 81-505.01, and 83-108.04,
25 Reissue Revised Statutes of Nebraska, and sections 29-2264,

1 43-2,108.05, 43-1301, 43-1302, 43-1304, 43-4308, 68-1207, 71-1902,
2 71-1904, 75-302, and 77-2704.12, Revised Statutes Cumulative
3 Supplement, 2012, are repealed.

4 Sec. 51. Since an emergency exists, this act takes effect
5 when passed and approved according to law.