

LEGISLATIVE BILL 361

Approved by the Governor April 27, 2005

Introduced by Bourne, 8; Chambers, 11

AN ACT relating to public health and welfare; to amend sections 20-325, 20-327, 29-3303, 71-168, 71-168.02, 71-6736, 76-250, and 76-802, Reissue Revised Statutes of Nebraska, and sections 20-326, 20-330, 24-517, 25-21,280, and 84-712.05, Revised Statutes Supplement, 2004; to adopt the Patient Safety Improvement Act; to provide requirements and prohibit certain acts related to DNA; to provide for filings related to dissolution of marriage; to change provisions relating to discriminatory housing practices, county court jurisdiction, immunity for certain educational personnel, and judicial orders; to harmonize provisions; to provide a duty for the Revisor of Statutes; to provide severability; to repeal the original sections; and to declare an emergency.

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

Section 1. Sections 1 to 21 of this act shall be known and may be cited as the Patient Safety Improvement Act.

Sec. 2. (1) The Legislature finds that:

(a) In 1999, the Institute of Medicine released a report entitled "To Err is Human" that described medical errors as the eighth leading cause of death in the United States;

(b) To address these errors, the health care system must be able to create a learning environment in which health care providers and facilities will feel safe reporting adverse health events and near misses in order to improve patient safety;

(c) To facilitate the learning environment, health care providers and facilities must have legal protections that will allow them to review protected health information so that they may collaborate in the development and implementation of patient safety improvement strategies;

(d) To carry out a program to promote patient safety, a policy should be established which provides for and promotes patient safety organizations; and

(e) There are advantages to having private nonprofit corporations act as patient safety organizations rather than a state agency, including the enhanced ability to obtain grants and donations to carry out patient safety improvement programs.

(2) It is the intent of the Legislature to encourage the establishment of broad-based patient safety organizations.

Sec. 3. The purposes of the Patient Safety Improvement Act are to (1) encourage a culture of safety and quality by providing for legal protection of information reported for the purposes of quality improvement and patient safety, (2) provide for the reporting of aggregate information about occurrences, and (3) provide for the reporting and sharing of information designed to improve health care delivery systems and reduce the incidence of adverse health events and near misses. The ultimate goal of the act is to ensure the safety of all individuals who seek health care in Nebraska's health care facilities or from Nebraska's health care professionals.

Sec. 4. For purposes of the Patient Safety Improvement Act, unless the context otherwise requires, the definitions found in sections 5 to 9 of this act apply.

Sec. 5. Identifiable information means information that is presented in a form and manner that allows the identification of any provider, patient, or reporter of patient safety work product. With respect to patients, such information includes any individually identifiable health information as that term is defined in the regulations promulgated pursuant to section 264(c) of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as such regulations existed on the effective date of this act.

Sec. 6. Nonidentifiable information means information presented in a form and manner that prevents the identification of any provider, patient, or reporter of patient safety work product. With respect to patients, such information must be de-identified consistent with the regulations promulgated pursuant to section 264(c) of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as such regulations existed on the effective date of this act.

Sec. 7. Patient safety organization means an organization described

in section 14 of this act that contracts with one or more providers subject to the Patient Safety Improvement Act and that performs the following activities:

(1) The conduct, as the organization's primary activity, of efforts to improve patient safety and the quality of health care delivery;

(2) The collection and analysis of patient safety work product that is submitted by providers;

(3) The development and dissemination of evidence-based information to providers with respect to improving patient safety, such as recommendations, protocols, or information regarding best practices;

(4) The utilization of patient safety work product to carry out activities limited to those described under this section and for the purposes of encouraging a culture of safety and of providing direct feedback and assistance to providers to effectively minimize patient risk;

(5) The maintenance of confidentiality with respect to identifiable information;

(6) The provision of appropriate security measures with respect to patient safety work product; and

(7) The possible submission, if authorized by federal law, of nonidentifiable information to a national patient safety data base.

Sec. 8. (1) Patient safety work product means any data, reports, records, memoranda, analyses, deliberative work, statements, root cause analyses, or quality improvement processes that are:

(a) Created or developed by a provider solely for the purposes of reporting to a patient safety organization;

(b) Reported to a patient safety organization for patient safety or quality improvement processes;

(c) Requested by a patient safety organization, including the contents of such request;

(d) Reported to a provider by a patient safety organization;

(e) Created by a provider to evaluate corrective actions following a report by or to a patient safety organization;

(f) Created or developed by a patient safety organization; or

(g) Reported among patient safety organizations after obtaining authorization.

(2) Patient safety work product does not include information, documents, or records otherwise available from original sources merely because they were collected for or submitted to a patient safety organization. Patient safety work product also does not include documents, investigations, records, or reports otherwise required by law.

(3) Patient safety work product does not include reports and information disclosed pursuant to sections 19 and 20 of this act.

Sec. 9. Provider means a person that is either:

(1) A facility licensed under the Health Care Facility Licensure Act; or

(2) A health care professional licensed under the Nurse Practice Act or the Uniform Licensing Law.

Sec. 10. (1) Patient safety work product shall be privileged and confidential.

(2) Patient safety work product shall not be:

(a) Subject to a civil, criminal, or administrative subpoena or order;

(b) Subject to discovery in connection with a civil, criminal, or administrative proceeding;

(c) Subject to disclosure pursuant to the Freedom of Information Act, 5 U.S.C. 552, as such act existed on the effective date of this act, or any other similar federal or state law, including sections 84-712 to 84-712.09;

(d) Offered in the presence of the jury or other factfinder or received into evidence in any civil, criminal, or administrative proceeding before any local, state, or federal tribunal; or

(e) If the patient safety work product is identifiable information and is received by a national accreditation organization in its capacity:

(i) Used by a national accreditation organization in an accreditation action against the provider that reported the information;

(ii) Shared by such organization with its survey team; or

(iii) Required as a condition of accreditation by a national accreditation organization.

Sec. 11. No person shall disclose the actions, decisions, proceedings, discussions, or deliberations occurring at a meeting of a patient safety organization except to the extent necessary to carry out one or more of the purposes of a patient safety organization. The proceedings and records of a patient safety organization shall not be subject to discovery or

introduction into evidence in any civil action against a provider arising out of the matter or matters that are the subject of consideration by a patient safety organization. Information, documents, or records otherwise available from original sources shall not be immune from discovery or use in any civil action merely because they were presented during proceedings of a patient safety organization. This section shall not be construed to prevent a person from testifying to or reporting information obtained independently of the activities of a patient safety organization or which is public information. A person who knowingly violates this section shall be guilty of a Class IV misdemeanor.

Sec. 12. Any reference to, or offer into evidence in the presence of the jury or other factfinder or admission into evidence of, patient safety work product during any proceeding contrary to the Patient Safety Improvement Act shall constitute grounds for a mistrial or a similar termination of the proceeding and reversible error on appeal from any judgment or order entered in favor of any party who discloses or offers into evidence patient safety work product in violation of the act.

Sec. 13. The prohibition in the Patient Safety Improvement Act against discovery, disclosure, or admission into evidence of patient safety work product is in addition to any other protections provided by law.

Sec. 14. A patient safety organization shall meet the following conditions:

(1) It shall be a Nebraska nonprofit corporation described in section 501(c)(3) of the Internal Revenue Code as defined in section 49-801.01, contributions to which are deductible under section 170 of the code;

(2) The purposes of the organization shall include carrying out the activities of a patient safety organization as described in the Patient Safety Improvement Act; and

(3) It shall have a representative board of directors as described in section 15 of this act.

Sec. 15. The board of directors of a patient safety organization shall include at least one representative each from a statewide association of Nebraska hospitals, Nebraska physicians and surgeons, Nebraska nurses, Nebraska pharmacists, and Nebraska physician assistants as recommended by such associations. At least one consumer shall be a member of the board. The board shall consist of at least twelve but no more than fifteen members as established at the discretion of the board.

Sec. 16. (1) A patient safety organization shall contract with providers that elect to be subject to the Patient Safety Improvement Act. The patient safety organization shall establish a formula for determining fees and assessments uniformly within categories of providers.

(2) A provider may elect to be subject to the Patient Safety Improvement Act by contracting with a patient safety organization to make reports as described in the act.

Sec. 17. (1) Every provider subject to the Patient Safety Improvement Act shall track and report pursuant to section 18 of this act the following occurrences of patient safety events:

(a) Surgery or procedures performed on the wrong patient or the wrong body part of a patient;

(b) Foreign object accidentally left in a patient during a procedure or surgery;

(c) Hemolytic transfusion reaction in a patient resulting from the administration of blood or blood products with major blood group incompatibilities;

(d) Sexual assault of a patient during treatment or while the patient was on the premises of a facility;

(e) Abduction of a newborn infant patient from the hospital or the discharge of a newborn infant patient from the hospital into the custody of an individual in circumstances in which the hospital knew, or in the exercise of ordinary care should have known, that the individual did not have legal custody of the infant;

(f) Suicide of a patient in a setting in which the patient received care twenty-four hours a day;

(g) Medication error resulting in a patient's unanticipated death or permanent or temporary loss of bodily function, including (i) treatment intervention, temporary harm, (ii) initial-prolonged hospitalization, temporary harm, (iii) permanent patient harm, and (iv) near death event in circumstances unrelated to the natural course of the illness or underlying condition of the patient, including, but not limited to, errors involving the wrong drug, the wrong dose, the wrong patient, the wrong time, the wrong rate, the wrong preparation, or the wrong route of administration, but excluding

reasonable differences in clinical judgment on drug selection and dose;

(h) Patient death or serious disability associated with the use of adulterated drugs, devices, or biologics provided by the provider;

(i) Patient death or serious disability associated with the use or function of a device in patient care in which the device is used or functions other than as intended; and

(j) Unanticipated death or major permanent loss of function associated with health care associated nosocomial infection.

(2) A patient safety organization, based on a review of new indicators of patient safety events identified by the Joint Commission on Accreditation of Healthcare Organizations, shall recommend changes, additions, or deletions to the list of reportable patient safety events, which changes, additions, or deletions shall be binding on the providers. Providers may voluntarily report any other patient safety events not otherwise identified.

Sec. 18. (1) Every provider subject to the Patient Safety Improvement Act shall report aggregate numbers of occurrences for each patient safety event category listed in section 17 of this act to a patient safety organization. Reporting shall be done on an annual basis by March 31 for the prior calendar year.

(2) For each occurrence listed in section 17 of this act, a root cause analysis shall be completed and an action plan developed within forty-five days after such occurrence. The action plan shall (a) identify changes that can be implemented to reduce risk of the patient safety event occurring again or formulate a rationale for not implementing change and (b) if an improvement action is planned, identify who is responsible for implementation, when the action will be implemented, and how the effectiveness of the action will be evaluated. The provider shall, within thirty days after the development of an action plan, provide a summary report to a patient safety organization which includes a brief description of the patient safety event, a brief description of the root cause analysis, and a description of the action plan steps.

(3) The facility where a reportable event occurred shall be responsible for coordinating the reporting of information required under the Patient Safety Improvement Act and ensuring that the required reporting is completed, and such coordination satisfies the obligation of reporting imposed on each individual provider under the act.

Sec. 19. A patient safety organization may disclose nonidentifiable information, including nonidentifiable aggregate trend data and educational material developed as a result of the patient safety work product reported to it.

Sec. 20. A patient safety organization shall release to the public nonidentifiable aggregate trend data identifying the number and types of patient safety events that occur. A patient safety organization shall publish educational and evidenced-based information from the summary reports, which shall be available to the public, that can be used by all providers to improve the care they provide.

Sec. 21. Any person who receives or releases information in the form and manner prescribed by the Patient Safety Improvement Act and the procedures established by a patient safety organization shall not be civilly or criminally liable for such receipt or release unless the receipt or release is done with actual malice, fraudulent intent, or bad faith. A patient safety organization shall not be liable civilly for the release of nonidentifiable aggregate trend data identifying the number and types of patient safety events that occur. Because the candid and conscientious evaluation of patient safety events is essential to the improvement of medical care and to encourage improvements in patient safety, any provider furnishing services to a patient safety organization shall not be liable for civil damages as a result of such acts, omissions, decisions, or other such conduct in connection with the duties on behalf of a patient safety organization if done pursuant to the Patient Safety Improvement Act except for acts done with actual malice, fraudulent intent, or bad faith.

Sec. 22. Notwithstanding any other provision of law:

(1) No DNA sample shall be obtained from any person for any law enforcement purpose in connection with an investigation of a crime without probable cause, a court order, or voluntary consent as described in subdivision (2) of this section;

(2) In the absence of probable cause, if any person is requested by a law enforcement person or agency to consent to the taking of a DNA sample in connection with a law enforcement investigation of a particular crime, such consent shall be deemed voluntary only if:

(a) The sample is knowingly and voluntarily given in connection with the investigation of a particular crime;

(b) The person was informed by a written advisory prepared by the law enforcement agency that the request may be refused and that such refusal does not provide probable cause or reasonable suspicion to believe that the person has committed a crime, and the person signs the advisory; and

(c) No threat, pressure, duress, or coercion of any kind was employed, whether (i) direct or indirect, (ii) express or implied, or (iii) physical or psychological;

(3) Any DNA sample obtained in violation of this section is not admissible in any proceeding for any purpose whatsoever;

(4) A person shall be notified in writing by the law enforcement agency immediately upon the determination that he or she has not been implicated by his or her DNA sample in the commission of the particular crime in connection with which the DNA sample was obtained;

(5) Such sample and all identifying information pertaining to the person shall be delivered to the person within ten days after the notification required by subdivision (4) of this section with a written explanation that the materials are being turned over in compliance with this section;

(6) The law enforcement agency shall purge all records and identifiable information pertaining to the person specified in subdivisions (4) and (5) of this section;

(7) Any aggrieved person may file an action in district court against any person, including any law enforcement agency, to enjoin such person or law enforcement agency from violating this section; and

(8) Any person aggrieved by a knowing violation of this section may bring an action in district court for damages. A person found by the court to be aggrieved by a violation of this section shall receive damages of not less than one thousand dollars and may recover reasonable costs and attorney's fees.

For purposes of this section, DNA means deoxyribonucleic acid.

Sec. 23. (1) When a decree of dissolution of marriage assigns real estate to either party, the party to whom the real estate is assigned may (a) prepare and file with the clerk of the district court an affidavit identifying the real estate by legal description and affirmatively identifying the person entitled to the real estate and (b) prepare for signature and seal by the clerk one or more certificates in a form substantially similar to the following:

CERTIFICATE OF DISSOLUTION OF MARRIAGE

....., Clerk of the District Court of County, Nebraska, certifies that in Case No., Docket, Page, in such Court, entitled vs., the Court entered its decree of dissolution of marriage in which the interest of in the following described real estate in County, Nebraska:

.....
.....
.....
.....

has been assigned to

Dated:

(SEAL) Clerk of the District Court
..... County, Nebraska.

(2) A certificate may include more than one parcel of real estate, but there shall be separate certificates for each party to whom real estate is assigned and separate certificates for each county in which real estate is located. The certificate or certificates shall be delivered by the clerk to the person applying for the same, and such person shall be responsible for recording the certificate or certificates with the register of deeds in the appropriate county or counties as provided in section 24 of this act.

Sec. 24. A certificate of dissolution of marriage executed by the clerk of the district court under section 23 of this act may be recorded in the office of the register of deeds of the county or counties where the real estate is located. A certificate of dissolution of marriage shall not be used in lieu of a deed or other conveyance of real estate to carry out the terms of the dissolution decree or as evidence of title.

Sec. 25. Section 20-325, Reissue Revised Statutes of Nebraska, is amended to read:

20-325. The commission shall:

(1) Make studies with respect to the nature and extent of discriminatory housing practices in representative urban, suburban, and rural communities throughout the state;

(2) Publish and disseminate reports, recommendations, and information derived from such studies, including an annual report to the

Legislature:

(a) Specifying the nature and extent of progress made statewide in eliminating discriminatory housing practices and furthering the purposes of the Nebraska Fair Housing Act, obstacles remaining to achieving equal housing opportunity, and recommendations for further legislative or executive action; and

(b) Containing tabulations of the number of instances and the reasons therefor in the preceding year in which:

(i) Investigations have not been completed as required by subdivision (1)(b) of section 20-326;

(ii) Determinations have not been made within the time specified in section 20-333; and

(iii) Hearings have not been commenced or findings and conclusions have not been made as required by section 20-337;

(3) Cooperate with and render technical assistance to state, local, and other public or private agencies, organizations, and institutions which are formulating or carrying on programs to prevent or eliminate discriminatory housing practices; ~~and~~

(4) Annually report to the Legislature and make available to the public data on the age, race, color, religion, national origin, handicap, familial status, and sex of persons and households who are applicants for, participants in, or beneficiaries or potential beneficiaries of programs administered by the commission. In order to develop the data to be included and made available to the public under this subdivision, the commission shall, without regard to any other provision of law, collect such information relating to those characteristics as the commission determines to be necessary or appropriate;

(5) Adopt and promulgate rules and regulations, subject to the approval of the members of the commission, regarding the investigative and conciliation process that provide for testing standards, fundamental due process, and notice to the parties of their rights and responsibilities; and

(6) Have authority to enter into agreements with the United States Department of Housing and Urban Development in cooperative agreements under the Fair Housing Assistance Program. The commission shall further have the authority to enter into agreements with testing organizations to assist in investigative activities. The commission shall not enter into any agreements under which compensation to the testing organization is partially or wholly based on the number of conciliations, settlements, and reasonable cause determinations.

Sec. 26. Section 20-326, Revised Statutes Supplement, 2004, is amended to read:

20-326. (1)(a)(i) An aggrieved person may, not later than one year after an alleged discriminatory housing practice has occurred or terminated, file a complaint with the commission alleging such discriminatory housing practice. The commission, on its own initiative, may also file such a complaint.

(ii) The complaint shall be in writing and shall contain such information and be in such form as the commission requires.

(iii) The commission may also investigate housing practices to determine whether a complaint should be brought under this section.

(b) Upon the filing of a complaint:

(i) The commission shall serve notice upon the aggrieved person acknowledging such filing and advising the aggrieved person of the time limits and choice of forums provided under the Nebraska Fair Housing Act;

(ii) The commission shall, not later than ten days after such filing or the identification of an additional respondent under subsection (2) of this section, serve on the respondent a notice identifying the alleged discriminatory housing practice, and advising such respondent of the procedural rights and obligations of respondents under the act, ~~and informing the respondent of the right at any time, upon request, to obtain information derived from an investigation and any investigative report relating to that investigation as provided in subsections (2) and (3) of section 20-330,~~ together with a copy of the original complaint;

(iii) Each respondent may file, not later than ten days after receipt of notice from the commission, an answer to the complaint; and

(iv) Unless it is impracticable to do so, the commission shall investigate the alleged discriminatory housing practice and complete such investigation within one hundred days after the filing of the complaint or, when the commission takes further action under section 20-332 with respect to a complaint, within one hundred days after the commencement of such further action.

(c) If the commission is unable to complete the investigation within

one hundred days after the filing of the complaint or after the commencement of such further action, the commission shall notify the complainant and respondent in writing of the reasons for not doing so.

(d) Complaints and answers shall be under oath and may be reasonably and fairly amended at any time.

(2) (a) A person who is not named as a respondent in a complaint but who is identified as a respondent in the course of investigation may be joined as an additional or substitute respondent upon written notice under subdivision (1) (b) (ii) of this section to such person from the commission.

(b) The notice shall explain the basis for the commission's belief that the person to whom the notice is addressed is properly joined as a respondent.

Sec. 27. Section 20-327, Reissue Revised Statutes of Nebraska, is amended to read:

20-327. (1) During the period beginning with the filing of the complaint and ending with the issuance of a charge or a dismissal by the commission, the commission shall, to the extent feasible, engage in conciliation with respect to the complaint.

(2) A conciliation agreement shall be an agreement between the complainant and the respondent and shall be subject to the approval of the members of the commission, which approval may not be delegated.

(3) A conciliation agreement arising out of such conciliation shall be an agreement between the respondent and the complainant and shall be subject to approval by the commission.

~~(3)~~ (4) A conciliation agreement may provide for binding arbitration of the dispute arising from the complaint. Any such arbitration that results from a conciliation agreement may award appropriate relief, including monetary relief.

~~(4)~~ (5) Each conciliation agreement shall be made public unless the complainant and respondent otherwise agree and the commission determines that disclosure is not required to further the purposes of the Nebraska Fair Housing Act.

~~(5)~~ (6) A conciliation agreement between a respondent and complainant which has been approved by the commission shall not be deemed an adjudication that the respondent has committed a discriminatory housing practice nor shall the conciliation agreement be the subject of an order for relief under section 20-337, unless the conciliation agreement is entered after an adjudication pursuant to an administrative proceeding or a civil action pursuant to state or federal law in which the respondent was found to have committed a discriminatory housing practice.

Sec. 28. Section 20-330, Revised Statutes Supplement, 2004, is amended to read:

20-330. (1) Except as provided in subsection ~~(4)~~ (5) of section 20-327, nothing said or done in the course of conciliation may be made public or used as evidence in a subsequent proceeding under the Nebraska Fair Housing Act without the written consent of the persons concerned. All records compiled in the course of conciliation activities shall be exempt from public release. The commission may release any fully executed conciliation agreement.

~~(2)~~ (2) (a) Notwithstanding subsection (1) of this section, the commission shall make available to the aggrieved person and the respondent, ~~at any time,~~ upon request, following the completion of an investigation, information derived from an investigation and any final investigative report relating to that investigation.

(b) The commission's release of information pursuant to subdivision (2) (a) of this section is subject to the federal Privacy Act of 1974, Public Law 93-579, as such act existed on January 1, 2005, and any other state or federal laws limiting the release of confidential information obtained in the course of an investigation under the Nebraska Fair Housing Act.

(3) Notwithstanding subsections (1) and (2) of this section, materials in the investigative file shall be disclosed to the complainant and respondent to the extent reasonably necessary to further the investigation or conciliation discussions.

~~(3)~~ Notwithstanding subsection (1) of this section, in any case in which the complaint is filed by the commission and there is no aggrieved person, or in which a complaint is filed and the only aggrieved person is a tester or a testing organization, the commission shall provide to the respondent at any time, upon request, copies of all information derived from an investigation and copies of any final investigative report relating to that investigation. All personal identification information of testers shall be removed from the copies provided. The commission may charge a fee, not to exceed actual cost, for copies provided under this subsection.

Sec. 29. Section 24-517, Revised Statutes Supplement, 2004, is amended to read:

24-517. Each county court shall have the following jurisdiction:

(1) Exclusive original jurisdiction of all matters relating to decedents' estates, including the probate of wills and the construction thereof, except as provided in subsection (c) of section 30-2464 and section 30-2486;

(2) Exclusive original jurisdiction in all matters relating to the guardianship of a person, except if a separate juvenile court already has jurisdiction over a child in need of a guardian, concurrent original jurisdiction with the separate juvenile court in such guardianship;

(3) Exclusive original jurisdiction of all matters relating to conservatorship of any person, including (a) original jurisdiction to consent to and authorize a voluntary selection, partition, and setoff of a ward's interest in real estate owned in common with others and to exercise any right of the ward in connection therewith which the ward could exercise if competent and (b) original jurisdiction to license the sale of such real estate for cash or on such terms of credit as shall seem best calculated to produce the highest price subject only to the requirements set forth in section 30-3201;

(4) Concurrent jurisdiction with the district court to involuntarily partition a ward's interest in real estate owned in common with others;

(5) Concurrent original jurisdiction with the district court in all civil actions of any type when the amount in controversy is forty-five thousand dollars or less through June 30, 2005, and as set by the Supreme Court pursuant to subdivision (b) of this subdivision on and after July 1, 2005.

(a) When the pleadings or discovery proceedings in a civil action indicate that the amount in controversy is greater than the jurisdictional amount of subdivision (5) of this section, the county court shall, upon the request of any party, certify the proceedings to the district court as provided in section 25-2706. An award of the county court which is greater than the jurisdictional amount of subdivision (5) of this section is not void or unenforceable because it is greater than such amount, however, if an award of the county court is greater than the jurisdictional amount, the county court shall tax as additional costs the difference between the filing fee in district court and the filing fee in county court.

(b) The Supreme Court shall adjust the jurisdictional amount for the county court every fifth year commencing July 1, 2005. The adjusted jurisdictional amount shall be equal to the then current jurisdictional amount adjusted by the average percentage change in the unadjusted Consumer Price Index for All Urban Consumers published by the Federal Bureau of Labor Statistics for the five-year period preceding the adjustment date. The jurisdictional amount shall be rounded to the nearest one-thousand-dollar amount;

(6) Concurrent original jurisdiction with the district court in any criminal matter classified as a misdemeanor or for any infraction;

(7) Concurrent original jurisdiction with the district court in domestic relations matters as defined in section 25-2740 and with the district court and separate juvenile court in paternity determinations as provided in section 25-2740;

(8) Concurrent original jurisdiction with the district court in matters arising under the Nebraska Uniform Trust Code;

(9) Exclusive original jurisdiction in any action based on violation of a city or village ordinance;

(10) Exclusive original jurisdiction in juvenile matters in counties which have not established separate juvenile courts;

(11) Exclusive original jurisdiction in matters of adoption, except if a separate juvenile court already has jurisdiction over the child to be adopted, concurrent original jurisdiction with the separate juvenile court; and

(12) All other jurisdiction heretofore provided and not specifically repealed by Laws 1972, Legislative Bill 1032, and such other jurisdiction as hereafter provided by law.

Sec. 30. Section 25-21,280, Revised Statutes Supplement, 2004, is amended to read:

25-21,280. (1) ~~Until July 1, 2005, any~~ Any person employed by a school approved or accredited by the State Department of Education, employed by an educational service unit and working in a school approved or accredited by the department, or employed by an early childhood education program approved by the department who serves as a school nurse or medication aide or who has been designated and trained by the school, educational service unit, or program as a nonmedical staff person to implement the emergency response to

life-threatening asthma or systemic allergic reactions protocols adopted by the school, educational service unit, or program shall be immune from civil liability for any act or omission in rendering emergency care for a person experiencing a potentially life-threatening asthma or allergic reaction event on school grounds, in a vehicle being used for school purposes, in a vehicle being used for educational service unit purposes, at a school-sponsored activity or athletic event, at a facility used by the early childhood education program, in a vehicle being used for early childhood education program purposes, or at an activity sponsored by the early childhood education program which results in damage or injury unless such damage or injury was caused by the willful or wanton act or omission of such employee.

(2) The individual immunity granted by subsection (1) of this section shall not extend to the school district, educational service unit, or early childhood education program and shall not extend to any act or omission of such employee which results in damage or injury if the damage or injury is caused by such employee while impaired by alcohol or any controlled substance enumerated in section 28-405.

Sec. 31. Section 29-3303, Reissue Revised Statutes of Nebraska, is amended to read:

29-3303. The order may issue upon a showing by affidavit of a peace officer that (1) there is probable cause to believe that an offense has been committed; (2) there is probable cause to believe that the person subject to the order has committed the offense; (3) ~~that~~ procurement of evidence of identifying physical characteristics through nontestimonial identification procedures from an identified or particularly described individual may contribute to the identification of the individual who committed such offense; and ~~(3)~~ (4) ~~that~~ the identified or described individual has refused, or there is reason to believe he or she will refuse, to voluntarily provide the desired evidence of identifying physical characteristics. The contents of the affidavit may be supplemented or augmented by the affidavits of other persons or by sworn testimony given to the issuing judge or magistrate.

Sec. 32. Section 71-168, Reissue Revised Statutes of Nebraska, is amended to read:

71-168. (1) The department shall enforce the Uniform Licensing Law and for that purpose shall make necessary investigations. Every credentialed person listed under subsection (4) of this section and every member of a professional board shall furnish the department such evidence as he or she may have relative to any alleged violation which is being investigated.

(2) Every credentialed person listed under subsection (4) of this section shall report to the department the name of every person without a credential that he or she has reason to believe is engaged in practicing any profession for which a credential is required by the Uniform Licensing Law. The department may, along with the Attorney General and other law enforcement agencies, investigate such reports or other complaints of unauthorized practice. The professional board may issue an order to cease and desist the unauthorized practice of such profession as a measure to obtain compliance with the applicable credentialing requirements by the person prior to referral of the matter to the Attorney General for action. Practice of such profession without a credential after receiving a cease and desist order is a Class III felony.

(3) Any credentialed person listed under subsection (4) of this section who is required to file a report of loss or theft of a controlled substance to the federal Drug Enforcement Administration shall provide a copy of such report to the department.

(4) Every credentialed person regulated under the Advanced Practice Registered Nurse Act, the Emergency Medical Services Act, the Licensed Practical Nurse-Certified Act, the Nebraska Certified Nurse Midwifery Practice Act, the Nebraska Cosmetology Act, the Nurse Practice Act, the Occupational Therapy Practice Act, the Uniform Controlled Substances Act, the Uniform Licensing Law, the Wholesale Drug Distributor Licensing Act, or sections 71-3702 to 71-3715, 71-4701 to 71-4719, or 71-6053 to 71-6068 shall, within thirty days of an occurrence described in this subsection, report to the department in such manner and form as the department may require by rule and regulation whenever he or she:

(a) Has first-hand knowledge of facts giving him or her reason to believe that any person in his or her profession has committed acts indicative of gross incompetence, a pattern of negligent conduct as defined in subdivision (5)(e) of section 71-147, or unprofessional conduct, may be practicing while his or her ability to practice is impaired by alcohol, controlled substances, narcotic drugs, or physical, mental, or emotional disability, or has otherwise violated such regulatory provisions governing the practice of the profession;

(b) Has first-hand knowledge of facts giving him or her reason to believe that any person in another profession regulated under such regulatory provisions has committed acts indicative of gross incompetence or may be practicing while his or her ability to practice is impaired by alcohol, controlled substances, narcotic drugs, or physical, mental, or emotional disability. The requirement to file a report under subdivision (a) or (b) of this subsection shall not apply (i) to the spouse of the person, (ii) to a practitioner who is providing treatment to such person in a practitioner-patient relationship concerning information obtained or discovered in the course of treatment unless the treating practitioner determines that the condition of the person may be of a nature which constitutes a danger to the public health and safety by the person's continued practice, or (iii) when a credentialed person who is chemically impaired enters the Licensee Assistance Program authorized by section 71-172.01 except as provided in such section; or

(c) Has been the subject of any of the following actions:

(i) Loss of privileges in a hospital or other health care facility due to alleged incompetence, negligence, unethical or unprofessional conduct, or physical, mental, or chemical impairment or the voluntary limitation of privileges or resignation from staff of any health care facility when that occurred while under formal or informal investigation or evaluation by the facility or a committee of the facility for issues of clinical competence, unprofessional conduct, or physical, mental, or chemical impairment;

(ii) Loss of employment due to alleged incompetence, negligence, unethical or unprofessional conduct, or physical, mental, or chemical impairment;

(iii) Adverse judgments, settlements, or awards arising out of professional liability claims, including settlements made prior to suit, or adverse action by an insurance company affecting professional liability coverage. The department may define by rule and regulation what constitutes a settlement that would be reportable when a credentialed person refunds or reduces a fee or makes no charge for reasons related to a patient or client complaint other than costs;

(iv) Denial of a credential or other form of authorization to practice by any state, territory, or jurisdiction, including any military or federal jurisdiction, due to alleged incompetence, negligence, unethical or unprofessional conduct, or physical, mental, or chemical impairment;

(v) Disciplinary action against any credential or other form of permit he or she holds taken by another state, territory, or jurisdiction, including any federal or military jurisdiction, the settlement of such action, or any voluntary surrender of or limitation on any such credential or other form of permit;

(vi) Loss of membership in a professional organization due to alleged incompetence, negligence, unethical or unprofessional conduct, or physical, mental, or chemical impairment; or

(vii) Conviction of any misdemeanor or felony in this or any other state, territory, or jurisdiction, including any federal or military jurisdiction.

(5) A report made to the department under this section shall be confidential and treated in the same manner as complaints and investigative files under subsection (7) of section 71-168.01. Any person making a report to the department under this section except those self-reporting shall be completely immune from criminal or civil liability of any nature, whether direct or derivative, for filing a report or for disclosure of documents, records, or other information to the department under this section. Persons who are members of committees established under the Patient Safety Improvement Act and sections 25-12,123, 71-2046 to 71-2048, and 71-7901 to 71-7903 or witnesses before such committees shall not be required to report such activities. Any person who is a witness before a committee established under such sections shall not be excused from reporting matters of first-hand knowledge that would otherwise be reportable under this section only because he or she attended or testified before such committee. Documents from original sources shall not be construed as immune from discovery or use in actions under subsection (4) of this section.

Sec. 33. Section 71-168.02, Reissue Revised Statutes of Nebraska, is amended to read:

71-168.02. (1) A health care facility licensed under the Health Care Facility Licensure Act or a peer review organization or professional association of a health care profession regulated under the Advanced Practice Registered Nurse Act, the Emergency Medical Services Act, the Licensed Practical Nurse-Certified Act, the Nebraska Certified Nurse Midwifery Practice Act, the Nebraska Cosmetology Act, the Nurse Practice Act, the Occupational

Therapy Practice Act, the Uniform Controlled Substances Act, the Uniform Licensing Law, the Wholesale Drug Distributor Licensing Act, or sections 71-3702 to 71-3715, 71-4701 to 71-4719, or 71-6053 to 71-6068 shall report to the department, on a form and in the manner specified by the department by rule and regulation, any facts known to them, including, but not limited to, the identity of the practitioner and patient, when the facility, organization, or association:

(a) Has made payment due to adverse judgment, settlement, or award of a professional liability claim against it or a licensee, certificate holder, or registrant, including settlements made prior to suit, arising out of the acts or omissions of the licensee, certificate holder, or registrant; or

(b) Takes action adversely affecting the privileges or membership of a licensee, certificate holder, or registrant in such facility, organization, or association due to alleged incompetence, professional negligence, unprofessional conduct, or physical, mental, or chemical impairment.

The report shall be made within thirty days after the date of the action or event.

(2) A report made to the department under this section shall be confidential and treated in the same manner as complaints and investigative files under subsection (7) of section 71-168.01. The facility, organization, association, or person making such report shall be completely immune from criminal or civil liability of any nature, whether direct or derivative, for filing a report or for disclosure of documents, records, or other information to the department under this section. The reports and information shall be subject to the investigatory and enforcement provisions of the regulatory provisions listed in subsection (1) of this section. Nothing in this subsection shall be construed to require production of records protected by section 25-12,123, 71-2048, or 71-7903 or patient safety work product under the Patient Safety Improvement Act except as otherwise provided in any of such sections or such act.

(3) For purposes of this section, the department shall accept reports made to it under the Nebraska Hospital-Medical Liability Act or in accordance with national practitioner data bank requirements of the federal Health Care Quality Improvement Act of 1986, as amended, and may require a supplemental report to the extent such reports do not contain the information required by rules and regulations of the department.

Sec. 34. Section 71-6736, Reissue Revised Statutes of Nebraska, is amended to read:

71-6736. (1) Any facility or person using the services of a medication aide shall report to the department, in the manner specified by the department by rule and regulation, any facts known to him, her, or it, including, but not limited to, the identity of the medication aide and the recipient, when it takes action adversely affecting a medication aide due to alleged incompetence. The report shall be made within thirty days after the date of the action or event.

(2) Any person may report to the department any facts known to him or her concerning any alleged incompetence of a medication aide.

(3) A report made to the department under this section shall be confidential. The facility, organization, association, or person making such report shall be immune from criminal or civil liability of any nature, whether direct or derivative, for filing a report or for disclosure of documents, records, or other information to the department under this section. The reports and information shall be subject to the investigatory and enforcement provisions of the regulatory provisions listed in the Medication Aide Act. This subsection does not require production of records protected by section 25-12,123 or 71-2048 or patient safety work product under the Patient Safety Improvement Act except as otherwise provided in either of such sections or such act.

Sec. 35. Section 76-250, Reissue Revised Statutes of Nebraska, is amended to read:

76-250. On recording any ~~such~~ will, exemplification, ~~or~~ decree, or certificate of dissolution of marriage, the register of deeds shall index the same in the indices of deeds, and as nearly as may be as deeds are indexed, placing the name of the deviser, petitioner, or plaintiff, with the grantors, and the devisee, respondent, or defendant with the grantees.

Sec. 36. Section 76-802, Reissue Revised Statutes of Nebraska, is amended to read:

76-802. For purposes of the Condominium Property Act, unless the context otherwise requires:

(1) Condominium property regime shall mean a project whereby four or more apartments are separately offered or proposed to be offered for sale;

(2) Apartment shall mean an enclosed space consisting of one or more rooms occupying all or part of a floor in a building of one or more floors or stories regardless of whether it is designed for residence, for office, for the operation of any industry or business, or for any other type of independent use, if it has a direct exit to a thoroughfare or to a given common space leading to a thoroughfare;

(3) Co-owner shall mean a person, firm, corporation, partnership, limited liability company, association, trust, or other legal entity, or any combination thereof, which owns an apartment within the building;

(4) Association of co-owners shall mean all the co-owners as defined in subdivision (3) of this section, but a majority as defined in subdivision (8) of this section shall, except as otherwise provided in the act, constitute a quorum for the adoption of decisions;

(5) Board of administrators shall mean the governing board of the regime, consisting of not less than three members selected by and from the co-owners;

(6) General common elements shall mean and include:

(a) The land or leasehold interest in land on which the building stands;

(b) The foundations, main walls, roofs, halls, lobbies, stairways, and entrances and exit or communication ways;

(c) The basements, roofs, yards, and gardens except as otherwise provided or stipulated;

(d) The premises for the lodging of janitors or persons in charge of the building except as otherwise provided or stipulated;

(e) The compartments or installations of central services such as power, light, gas, cold and hot water, refrigeration, reservoirs, water tanks and pumps, and the like;

(f) The elevators, garbage incinerators, and, in general, all devices or installations existing for common use; and

(g) All other elements of the building rationally of common use or necessary to its existence, upkeep, and safety;

(7) Limited common elements shall mean and include those common elements which are agreed upon by all the co-owners to be reserved for the use of a certain number of apartments to the exclusion of the other apartments, such as special corridors, stairways and elevators, sanitary services common to the apartments of a particular floor, and the like;

(8) Majority of co-owners shall mean more than fifty percent of the basic value of the property as a whole, in accordance with the percentages computed in accordance with the provisions of section 76-806;

(9) Master deed shall mean the deed establishing the condominium property regime;

(10) Person shall mean an individual, firm, corporation, partnership, limited liability company, association, trust, or other legal entity or any combination thereof;

(11) Property shall mean and include the land, leasehold interests in land, any building, all improvements and structures thereon, and all easements, rights, and appurtenances belonging thereto or any of them alone;

(12) To record shall mean to record in accordance with sections 76-237 to 76-257 and section 24 of this act or other applicable recording statutes;

(13) Common expense shall mean and include:

(a) All sums lawfully assessed against the apartment owner;

(b) Expense of administration, maintenance, repair, or replacement of common elements; and

(c) Expenses agreed upon as common expenses by the association of co-owners; and

(14) All pronouns used in the Condominium Property Act shall include the male, female, and neuter genders and include the singular or plural numbers, as the case may be.

For condominiums created in this state before January 1, 1984, the definitions in section 76-827 shall apply to the extent necessary in construing the provisions of sections 76-827, 76-829 to 76-831, 76-840, 76-841, 76-869, 76-874, 76-876, 76-884, and 76-891.01, and subdivisions (a)(1) through (a)(6) and (a)(11) through (a)(16) of section 76-860 which apply to events and circumstances which occur after January 1, 1984.

Sec. 37. Section 84-712.05, Revised Statutes Supplement, 2004, is amended to read:

84-712.05. The following records, unless publicly disclosed in an open court, open administrative proceeding, or open meeting or disclosed by a public entity pursuant to its duties, may be withheld from the public by the lawful custodian of the records:

(1) Personal information in records regarding a student, prospective student, or former student of any educational institution or exempt school that has effectuated an election not to meet state approval or accreditation requirements pursuant to section 79-1601 when such records are maintained by and in the possession of a public entity, other than routine directory information specified and made public consistent with 20 U.S.C. 1232g, as such section existed on January 1, 2003;

(2) Medical records, other than records of births and deaths and except as provided in subdivision (5) of this section, in any form concerning any person; ~~and also~~ records of elections filed under section 44-2821; and patient safety work product under the Patient Safety Improvement Act;

(3) Trade secrets, academic and scientific research work which is in progress and unpublished, and other proprietary or commercial information which if released would give advantage to business competitors and serve no public purpose;

(4) Records which represent the work product of an attorney and the public body involved which are related to preparation for litigation, labor negotiations, or claims made by or against the public body or which are confidential communications as defined in section 27-503;

(5) Records developed or received by law enforcement agencies and other public bodies charged with duties of investigation or examination of persons, institutions, or businesses, when the records constitute a part of the examination, investigation, intelligence information, citizen complaints or inquiries, informant identification, or strategic or tactical information used in law enforcement training, except that this subdivision shall not apply to records so developed or received relating to the presence of and amount or concentration of alcohol or drugs in any body fluid of any person;

(6) Appraisals or appraisal information and negotiation records concerning the purchase or sale, by a public body, of any interest in real or personal property, prior to completion of the purchase or sale;

(7) Personal information in records regarding personnel of public bodies other than salaries and routine directory information;

(8) Information solely pertaining to protection of the security of public property and persons on or within public property, such as specific, unique vulnerability assessments or specific, unique response plans, either of which is intended to prevent or mitigate criminal acts the public disclosure of which would create a substantial likelihood of endangering public safety or property; computer or communications network schema, passwords, and user identification names; guard schedules; or lock combinations;

(9) The security standards, procedures, policies, plans, specifications, diagrams, access lists, and other security-related records of the Lottery Division of the Department of Revenue and those persons or entities with which the division has entered into contractual relationships. Nothing in this subdivision shall allow the division to withhold from the public any information relating to amounts paid persons or entities with which the division has entered into contractual relationships, amounts of prizes paid, the name of the prize winner, and the city, village, or county where the prize winner resides;

(10) With respect to public utilities and except as provided in sections 43-512.06 and 70-101, personally identified private citizen account payment information, credit information on others supplied in confidence, and customer lists;

(11) Records or portions of records kept by a publicly funded library which, when examined with or without other records, reveal the identity of any library patron using the library's materials or services;

(12) Correspondence, memoranda, and records of telephone calls related to the performance of duties by a member of the Legislature in whatever form. The lawful custodian of the correspondence, memoranda, and records of telephone calls, upon approval of the Executive Board of the Legislative Council, shall release the correspondence, memoranda, and records of telephone calls which are not designated as sensitive or confidential in nature to any person performing an audit of the Legislature. A member's correspondence, memoranda, and records of confidential telephone calls related to the performance of his or her legislative duties shall only be released to any other person with the explicit approval of the member;

(13) Records or portions of records kept by public bodies which would reveal the location, character, or ownership of any known archaeological, historical, or paleontological site in Nebraska when necessary to protect the site from a reasonably held fear of theft, vandalism, or trespass. This section shall not apply to the release of information for the purpose of scholarly research, examination by other public bodies for the protection of the resource or by recognized tribes, the Unmarked Human Burial

Sites and Skeletal Remains Protection Act, or the federal Native American Graves Protection and Repatriation Act;

(14) Records or portions of records kept by public bodies which maintain collections of archaeological, historical, or paleontological significance which reveal the names and addresses of donors of such articles of archaeological, historical, or paleontological significance unless the donor approves disclosure, except as the records or portions thereof may be needed to carry out the purposes of the Unmarked Human Burial Sites and Skeletal Remains Protection Act or the federal Native American Graves Protection and Repatriation Act;

(15) Job application materials submitted by applicants, other than finalists, who have applied for employment by any public body as defined in section 84-1409. For purposes of this subdivision, job application materials means employment applications, resumes, reference letters, and school transcripts, and finalist means any applicant who is offered and who accepts an interview by a public body or its agents, representatives, or consultants for any public employment position; and

(16) Social security numbers; credit card, charge card, or debit card numbers and expiration dates; and financial account numbers supplied to state and local governments by citizens.

Sec. 38. The Revisor of Statutes shall assign section 23 of this act within sections 42-347 to 42-381 and section 24 of this act within sections 76-201 to 76-281.

Sec. 39. If any section in this act or any part of any section is declared invalid or unconstitutional, the declaration shall not affect the validity or constitutionality of the remaining portions.

Sec. 40. Original sections 20-325, 20-327, 29-3303, 71-168, 71-168.02, 71-6736, 76-250, and 76-802, Reissue Revised Statutes of Nebraska, and sections 20-326, 20-330, 24-517, 25-21,280, and 84-712.05, Revised Statutes Supplement, 2004, are repealed.

Sec. 41. Since an emergency exists, this act takes effect when passed and approved according to law.