

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 189

Introduced by Council, 11.

Read first time January 07, 2011

Committee: Business and Labor

A BILL

1 FOR AN ACT relating to public employment; to amend sections 9-808,
2 14-702, and 19-1831, Reissue Revised Statutes of
3 Nebraska; to adopt the Criminal Offender Employment Act;
4 to harmonize provisions; and to repeal the original
5 sections.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 6 of this act shall be known and
2 may be cited as the Criminal Offender Employment Act.

3 Sec. 2. The Legislature finds that the public is best
4 protected when criminal offenders or ex-convicts are given the
5 opportunity to secure public employment and that barriers to such
6 employment should be removed to make rehabilitation feasible.

7 Sec. 3. For purposes of the Criminal Offender Employment
8 Act:

9 (1) Moral turpitude means an act or behavior that gravely
10 violates the sentiment or accepted standard of the community or a
11 quality of dishonesty or other immorality that is determined by a
12 court to be present in the commission of a criminal offense;

13 (2) Otherwise qualified means an applicant that meets all
14 criteria for employment or consideration for such employment except
15 that the applicant has a criminal record; and

16 (3) Public employment means employment with the state or
17 any of its political subdivisions.

18 Sec. 4. (1) Subject to this section and section 5 of this
19 act: On an initial application for public employment, there shall be
20 no question or checkbox for the applicant regarding the applicant's
21 criminal record. Any criminal record of the applicant shall not
22 operate as an automatic bar to otherwise qualified applicants in
23 obtaining public employment and shall only be taken into
24 consideration after the applicant has been selected as a finalist for
25 employment.

1 (2) The following criminal records shall not be used,
2 distributed, or disseminated in connection with an application for
3 public employment:

4 (a) Records of arrest not followed by a valid conviction;
5 and

6 (b) Misdemeanor convictions not involving moral
7 turpitude.

8 Sec. 5. (1) A public employer may refuse to hire an
9 applicant or may suspend or terminate the employment of an employee:

10 (a) If the applicant or employee has been convicted of a
11 misdemeanor involving moral turpitude or convicted of a felony and
12 the criminal conviction directly relates to the particular
13 employment; or

14 (b) If the applicant or employee has been convicted of a
15 misdemeanor involving moral turpitude or convicted of a felony and
16 the criminal conviction does not directly relate to the particular
17 employment, if the public employer determines after investigation
18 that the person so convicted has not been sufficiently rehabilitated
19 to warrant the public trust. Completion of probation or parole
20 supervision or expiration of a period of three years after final
21 discharge or release from any term of imprisonment without any
22 subsequent conviction shall create a presumption of sufficient
23 rehabilitation.

24 (2) The public employer shall explicitly state in writing
25 the reasons for a decision which prohibits the person from engaging

1 in the employment if the decision is based in whole or in part on
2 subsection (1) of this section.

3 Sec. 6. The Criminal Offender Employment Act is
4 applicable to all public employment when the application process is
5 not specifically regulated by statute and to public employment when
6 the application process is regulated by statute if the statute is
7 specifically made subject to the Criminal Offender Employment Act.
8 The act is not applicable to any law enforcement agency, but a law
9 enforcement agency may adopt the policy set forth in the act.

10 Sec. 7. Section 9-808, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 9-808 (1) The Tax Commissioner shall employ or contract
13 with such personnel as necessary to carry out the responsibilities of
14 the division. The Tax Commissioner shall employ investigators or
15 security personnel who shall be vested with the authority and power
16 of a law enforcement officer to carry out the laws of this state
17 administered by the Tax Commissioner or the Department of Revenue.

18 (2) Investigators or security personnel of the division
19 may enter and search premises and seize all relevant materials
20 pursuant to a warrant issued by a court.

21 ~~(3)(a)~~ (3) Subject to the restrictions of the Criminal
22 Offender Employment Act:

23 (a) Investigators or security personnel shall, as deemed
24 necessary, conduct background investigations of all individuals
25 seeking employment in the division. Such background investigations

1 shall include, but not be limited to, police records checks,
2 conviction records checks, national and statewide criminal records
3 clearinghouse checks, and fingerprint checks; -

4 (b) It shall be a condition of employment in the division
5 that an individual supply investigators or security personnel with
6 his or her fingerprints for the purpose of conducting a background
7 investigation for employment purposes; -

8 (c) Any individual convicted of any crime involving moral
9 turpitude, fraud, theft, theft of services, and theft by deception
10 and any individual whose constitutional rights have been forfeited
11 and not restored shall not be eligible for employment in the
12 division; and -

13 (d) All information obtained through a background
14 investigation performed by the division shall be confidential, except
15 that the Tax Commissioner may exchange such confidential information
16 with state, federal, and local law enforcement agencies.

17 Sec. 8. Section 14-702, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 14-702 (1) The city council shall employ a chief of the
20 fire department and all other officers, firefighters, and assistants
21 as may be proper and necessary for the effective service of the fire
22 department to the extent and limit that the funds provided by the
23 city council for that purpose will allow.

24 (2) Subject to the restrictions of the Criminal Offender
25 Employment Act: Each fire department applicant shall, as a condition

1 of employment, submit to the city a full set of his or her
2 fingerprints along with written permission authorizing the city to
3 forward the set of fingerprints to the Federal Bureau of
4 Investigation, through either the Nebraska State Patrol or the police
5 department, to facilitate a check of his or her criminal history
6 record information by the Identification Division of the Federal
7 Bureau of Investigation. The fingerprint check provided for in this
8 section shall be solely for the purpose of confirming information
9 provided by the fire department applicant.

10 Sec. 9. Section 19-1831, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 19-1831 (1) An applicant for a position of any kind under
13 civil service shall be able to read and write the English language,
14 meet the minimum job qualifications of the position as established by
15 the appointing authority, and be of good moral character. Subject to
16 the restrictions of the Criminal Offender Employment Act: An
17 applicant shall be required to disclose his or her past employment
18 history and his or her criminal record, if any, and submit a full set
19 of his or her fingerprints and a written statement of permission
20 authorizing the appointing authority to forward the fingerprints for
21 identification. Prior to certifying to the appointing authority the
22 names of the persons eligible for the position or positions, the
23 commission shall validate the qualifications of such persons.

24 (2) The appointing authority shall require an applicant,
25 as part of the application process, to submit a full set of his or

1 her fingerprints along with written permission authorizing the
2 appointing authority to forward the fingerprints to the Federal
3 Bureau of Investigation through the Nebraska State Patrol, for
4 identification. The fingerprint identification shall be solely for
5 the purpose of confirming information provided by the applicant.

6 (3) Any fingerprints received by the commission or
7 appointing authority pursuant to a request made under subsection (2)
8 of this section and any information in the custody of the commission
9 or appointing authority resulting from inquiries or investigations
10 made with regard to those fingerprints initiated by the commission or
11 appointing authority shall not be a public record within the meaning
12 of sections 84-712 to 84-712.09 and shall be withheld from the public
13 by the lawful custodians of such fingerprints and information and
14 shall only be released to those lawfully entitled to the possession
15 of such fingerprints and information. Any member, officer, agent, or
16 employee of the commission, appointing authority, or municipality who
17 comes into possession of fingerprints and information gathered
18 pursuant to subsection (2) of this section shall be an official
19 within the meaning of section 84-712.09.

20 Sec. 10. Original sections 9-808, 14-702, and 19-1831,
21 Reissue Revised Statutes of Nebraska, are repealed.