LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 791
FINAL READING

Introduced by Ebke, 32; at the request of the Governor.
Read first time January 04, 2018
Committee: Business and Labor

A BILL FOR AN ACT relating to employment; to amend sections 81-1377 and
81-1425, Reissue Revised Statutes of Nebraska; to provide duties for
agencies employing law enforcement officers relating to changes in
employment status, maintenance and retention of records relating to
separation from service and certain types of conduct, and reporting
as prescribed; to require a waiver by certain law enforcement
officer candidates as prescribed; to provide duties for former and
prospective employers; to provide for certain disclosures and access
relating to disciplinary actions and investigations of Nebraska
State Patrol employees; to authorize the executive director of the
Nebraska Commission on Law Enforcement and Criminal Justice to issue
subpoenas of witnesses and documents from the Nebraska State Patrol
as prescribed; to provide for reports of sexual harassment to the
Department of Administrative Services and to provide powers, duties,
and prohibitions related to such reports; to provide for
applicability; to repeal the original sections; and to declare an
emergency.

Be it enacted by the people of the State of Nebraska,
Section 1. (1) The chief of police, sheriff, Superintendent of Law Enforcement and Public Safety, or the head administrator of a law enforcement agency or an agency employing a law enforcement officer shall submit a personnel change in status form as approved by the Nebraska Police Standards Advisory Council to the director of the Nebraska Law Enforcement Training Center within seven calendar days after the date a law enforcement officer is hired by the agency or leaves employment with the agency.

(2) Each law enforcement agency or agency employing a law enforcement officer shall maintain a record regarding the reason or reasons for, and circumstances surrounding, a separation of service for each law enforcement officer employed by that agency. Such record shall be retained for five years following a law enforcement officer's separation from the agency.

(3) Each law enforcement agency or agency employing a law enforcement officer shall maintain any and all records of officer conduct which could constitute grounds for revocation or suspension of a law enforcement certification by the Nebraska Commission on Law Enforcement and Criminal Justice. Such record shall include any and all records of conduct which could constitute: (a) Incompetence; (b) neglect of duty; (c) incapacity; (d) dishonesty; (e) a felony violation of state or federal law; (f) a misdemeanor violation of state or federal law, if the violation has a rational connection with the officer's fitness or capacity to serve as a law enforcement officer; or (g) a violation of the officer's oath of office, code of ethics, or statutory duties. Such record shall be retained for the duration of the law enforcement officer's employment with the agency and for ten years following his or her separation from the agency.

(4) The chief of police, sheriff, Superintendent of Law Enforcement and Public Safety, or the head administrator of a law enforcement agency or an agency employing a law enforcement officer shall make a report to
the Nebraska Commission on Law Enforcement and Criminal Justice of any law enforcement officer who is terminated from employment or allowed to resign in lieu of termination for conduct that could constitute: (a) Incompetence; (b) neglect of duty; (c) incapacity; (d) dishonesty; (e) a felony violation of state or federal law; (f) a misdemeanor violation of state or federal law, if the violation has a rational connection with the officer's fitness or capacity to serve as a law enforcement officer; or (g) a violation of the officer's oath of office, code of ethics, or statutory duties. The report shall include, but not be limited to, a summary of the allegations pertaining to the officer and identification of any witnesses relevant to the allegations, and shall be filed with the commission within thirty calendar days of the termination or resignation in lieu of termination.

(5) Failure to comply with this section shall constitute neglect of duty.

(6) For purposes of this section:
(a) Felony has the same meaning as in section 81-1401;
(b) Incapacity has the same meaning as in section 81-1401;
(c) Law enforcement agency has the same meaning as in section 81-1401; and
(d) Law enforcement officer has the same meaning as in section 81-1401.

Sec. 2. (1) A person who is certified under section 81-1414 and who seeks employment as a law enforcement officer in this state shall provide a signed waiver to the prospective employer upon a conditional offer of employment. The waiver must expressly allow the prospective employer to contact the person's former employer or employers and obtain from each copies of any records created under subsections (2) and (3) of section 1 of this act. The prospective employer is responsible for providing the waiver to each former employer.

(2) The waiver required by this section shall be executed on a form
provided by the Nebraska Commission on Law Enforcement and Criminal
Justice to all agencies in this state that employ or administer oaths of
office to law enforcement officers certified by the commission.

(3) Within ten calendar days after receipt of the waiver, a former
employer shall provide the prospective employer, along with other
information required or allowed to be provided by law, copies of any
records created under subsections (2) and (3) of section 1 of this act.
The names and any identifying information in any records created under
subsections (2) and (3) of this section of any individual, witness, or
law enforcement officer or officers other than the person who signed the
waiver shall be confidential and not disclosed to the prospective
employer.

(4) A prospective employer shall not hire as a law enforcement
officer a person to whom subsection (1) of this section applies unless
the prospective employer receives, from each of the person's former
employers, copies of any records created under subsections (2) and (3) of
section 1 of this act.

(5) A prospective employer shall not hire as a law enforcement
officer a person to whom subsection (1) of this section applies if such
person's former employer has provided notice to the Nebraska Commission
on Law Enforcement and Criminal Justice that the person's separation from
the former employer occurred under circumstances that may justify
revocation of the person's certification unless the commission has
reviewed the notification and issued a determination that the person
shall retain such certification.

(6) For purposes of this section:

(a) Former employer means the law enforcement agency or other agency
that currently employs or previously employed the person as a law
enforcement officer;

(b) Incapacity has the same meaning as in section 81-1401;

(c) Law enforcement agency has the same meaning as in section
81-1401;

(d) Law enforcement officer has the same meaning as in section 81-1401; and

(e) Prospective employer means the law enforcement agency or other agency that is considering hiring the person as a law enforcement officer.

Sec. 3. Section 81-1377, Reissue Revised Statutes of Nebraska, is amended to read:

81-1377 (1) The Chief Negotiator or any other employer-representative and the exclusive collective-bargaining agent for employees under the Chief Negotiator's or employer-representative's jurisdiction shall bargain and negotiate labor contracts in good faith and reasonably in advance of the budget-making process.

(2) Retirement programs shall not be bargainable by or on behalf of any state employee.

(3) Nothing in the disciplinary procedures or collective bargaining agreement of the Nebraska State Patrol shall:

(a) Limit the discretion of the Superintendent of Law Enforcement and Public Safety to disclose to the Legislature, the Nebraska Commission on Law Enforcement and Criminal Justice, the Nebraska Police Standards Advisory Council, the Equal Opportunity Commission, or a complainant the status or outcome of an internal investigation or discipline;

(b) Limit the consideration by the patrol, for purposes of progressive discipline, of disciplinary action in a prior case that occurred within the ten years preceding the date such progressive discipline is imposed;

(c) Limit the time during which a disciplinary investigation may be initiated or discipline may be imposed to less than two years after the occurrence of the conduct which is the subject of the investigation or discipline;

(d) Require the release to a member who is under internal
investigation for an allegation that could result in a charge of a Class I misdemeanor or felony or an allegation involving dishonesty, prior to the initial internal investigation interview, of reports and materials concerning the internal investigation of such member, except that the member shall be entitled to know the nature of the complaint underlying the investigation:

(e) Limit or restrict access by the individual or individuals conducting the internal investigation to materials, including records of current or past discipline or misconduct, regarding the member under investigation; or

(f) Prevent, limit, or restrict access by the Nebraska Commission on Law Enforcement and Criminal Justice to internal investigation reports or materials.

(4) The obligation to negotiate in good faith shall not compel the Chief Negotiator or any other employer-representative or the exclusive collective-bargaining agent to agree to a proposal or make a concession.

(5) All contracts involving state employees and negotiated pursuant to the Industrial Relations Act or the State Employees Collective Bargaining Act shall cover a two-year period coinciding with the biennial state budget, except that the first contract entered into by a bargaining unit may cover only the second fiscal year of the biennium.

Sec. 4. Section 81-1425, Reissue Revised Statutes of Nebraska, is amended to read:

81-1425 The executive director of the commission shall:

(1) Supervise and be responsible for the administration of the policies established by the commission;

(2) Establish a Jail Standards subdivision and a Community Corrections Division within the commission and establish, consolidate, or abolish any administrative subdivision within the commission and appoint and remove for cause the heads thereof, and delegate appropriate powers
and duties to them;

(3) Establish and administer projects and programs for the operation of the commission;

(4) Appoint and remove employees of the commission and delegate appropriate powers and duties to them;

(5) Make rules and regulations for the management and the administration of policies of the commission and the conduct of employees under his or her jurisdiction;

(6) Collect, develop, maintain, and analyze statistical information, records, and reports as the commission may determine relevant to its functions, including, but not limited to, the statistical information set forth in section 47-627;

(7) Transmit monthly to the commission a report of the operations of the commission for the preceding calendar month;

(8) Execute and carry out the provisions of all contracts, leases, and agreements authorized by the commission with agencies of federal, state, or local government, corporations, or persons;

(9) Perform such additional duties as may be assigned to him or her by the commission, by the chairperson of the commission, or by law;

(10) Appoint and remove for cause the director of the Nebraska Law Enforcement Training Center;

(11) Appoint and remove for cause the director of the Office of Violence Prevention; and

(12) Subpoena witnesses and documents, files, internal investigation materials, administrative files, records, memoranda, reports, personnel records, disciplinary histories, or any materials the executive director determines to be relevant, relating to law enforcement officer certification revocation, from the Nebraska State Patrol; and

(13) Exercise all powers and perform all duties necessary and proper in carrying out his or her responsibilities.

Sec. 5. (1) A state employee may make a report of sexual harassment
to the Department of Administrative Services. The department shall
investigate the report or ensure that an investigation is conducted by
the agency which employs the reporting employee.

(2) The department and the agency which employs the reporting
employee shall maintain the confidentiality of the reporting employee and
any other person making a report of sexual harassment or participating in
an investigation or internal agency proceeding under this section except:

(a) When disclosure is authorized in writing by such employee or
other person;

(b) The identity of such employee or other person may be disclosed
to the individual alleged to have committed the sexual harassment; and

(c) When necessary for conducting the investigation or imposing
discipline.

(3) The agency employing the reporting employee shall not retaliate
or discriminate against the reporting employee or any other person for:

(a) Initiating or participating in the making of a report of sexual
harassment; or

(b) Testifying, assisting, or participating in an investigation,
proceeding, or action concerning the sexual harassment.

Sec. 6. The changes made by this legislative bill shall not
abrogate any labor contracts that are in effect through June 30, 2019.

Sec. 7. Original sections 81-1377 and 81-1425, Reissue Revised
Statutes of Nebraska, are repealed.

Sec. 8. Since an emergency exists, this act takes effect when
passed and approved according to law.