

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

1 A BILL FOR AN ACT relating to employment; to amend sections 81-1377 and
2 81-1425, Reissue Revised Statutes of Nebraska; to provide duties for
3 agencies employing law enforcement officers relating to changes in
4 employment status, maintenance and retention of records relating to
5 separation from service and certain types of conduct, and reporting
6 as prescribed; to require a waiver by certain law enforcement
7 officer candidates as prescribed; to provide duties for former and
8 prospective employers; to provide for certain disclosures and access
9 relating to disciplinary actions and investigations of Nebraska
10 State Patrol employees; to authorize the executive director of the
11 Nebraska Commission on Law Enforcement and Criminal Justice to issue
12 subpoenas of witnesses and documents from the Nebraska State Patrol
13 as prescribed; to provide for reports of sexual harassment to the
14 Department of Administrative Services and to provide powers, duties,
15 and prohibitions related to such reports; to provide for
16 applicability; to repeal the original sections; and to declare an
17 emergency.
18 Be it enacted by the people of the State of Nebraska,

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

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

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

29 (4) The chief of police, sheriff, Superintendent of Law Enforcement
30 and Public Safety, or the head administrator of a law enforcement agency
31 or an agency employing a law enforcement officer shall make a report to

1 the Nebraska Commission on Law Enforcement and Criminal Justice of any
2 law enforcement officer who is terminated from employment or allowed to
3 resign in lieu of termination for conduct that could constitute: (a)
4 Incompetence; (b) neglect of duty; (c) incapacity; (d) dishonesty; (e) a
5 felony violation of state or federal law; (f) a misdemeanor violation of
6 state or federal law, if the violation has a rational connection with the
7 officer's fitness or capacity to serve as a law enforcement officer; or
8 (g) a violation of the officer's oath of office, code of ethics, or
9 statutory duties. The report shall include, but not be limited to, a
10 summary of the allegations pertaining to the officer and identification
11 of any witnesses relevant to the allegations, and shall be filed with the
12 commission within thirty calendar days of the termination or resignation
13 in lieu of termination.

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

16 (6) For purposes of this section:

17 (a) Felony has the same meaning as in section 81-1401;

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

19 (c) Law enforcement agency has the same meaning as in section
20 81-1401; and

21 (d) Law enforcement officer has the same meaning as in section
22 81-1401.

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

31 (2) The waiver required by this section shall be executed on a form

1 provided by the Nebraska Commission on Law Enforcement and Criminal
2 Justice to all agencies in this state that employ or administer oaths of
3 office to law enforcement officers certified by the commission.

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

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

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

26 (6) For purposes of this section:

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

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

31 (c) Law enforcement agency has the same meaning as in section

1 81-1401;

2 (d) Law enforcement officer has the same meaning as in section
3 81-1401; and

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

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

9 81-1377 (1) The Chief Negotiator or any other employer-
10 representative and the exclusive collective-bargaining agent for
11 employees under the Chief Negotiator's or employer-representative's
12 jurisdiction shall bargain and negotiate labor contracts in good faith
13 and reasonably in advance of the budget-making process.

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

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

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

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

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

31 (d) Require the release to a member who is under internal

1 investigation for an allegation that could result in a charge of a Class
2 I misdemeanor or felony or an allegation involving dishonesty, prior to
3 the initial internal investigation interview, of reports and materials
4 concerning the internal investigation of such member, except that the
5 member shall be entitled to know the nature of the complaint underlying
6 the investigation;

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

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

14 (4) ~~(3)~~ The obligation to negotiate in good faith shall not compel
15 the Chief Negotiator or any other employer-representative or the
16 exclusive collective-bargaining agent to agree to a proposal or make a
17 concession.

18 (5) ~~(4)~~ All contracts involving state employees and negotiated
19 pursuant to the Industrial Relations Act or the State Employees
20 Collective Bargaining Act shall cover a two-year period coinciding with
21 the biennial state budget, except that the first contract entered into by
22 a bargaining unit may cover only the second fiscal year of the biennium.

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

25 81-1425 The executive director of the commission shall:

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

28 (2) Establish a Jail Standards subdivision and a Community
29 Corrections Division within the commission and establish, consolidate, or
30 abolish any administrative subdivision within the commission and appoint
31 and remove for cause the heads thereof, and delegate appropriate powers

1 and duties to them;

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

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

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

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

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

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

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

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

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

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

29 (13) (12) Exercise all powers and perform all duties necessary and
30 proper in carrying out his or her responsibilities.

31 Sec. 5. (1) A state employee may make a report of sexual harassment

1 to the Department of Administrative Services. The department shall
2 investigate the report or ensure that an investigation is conducted by
3 the agency which employs the reporting employee.

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

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

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

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

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

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

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

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

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

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