

## LEGISLATIVE BILL 791

Approved by the Governor April 23, 2018

Introduced by Ebke, 32; at the request of the Governor.

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) ~~(3)~~ 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) ~~(4)~~ 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) ~~(12)~~ 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.