

## LEGISLATIVE BILL 205

Approved by the Governor April 10, 1981

Introduced by Newell, 13

AN ACT relating to fire investigations; to amend section 81-509, Reissue Revised Statutes of Nebraska, 1943, and section 81-1401, Revised Statutes Supplement, 1980; to provide certain local officers with additional powers during investigations as prescribed; to provide subpoena and examination powers; to provide for training such officers; to change provisions relating to contempt; and to repeal the original sections.

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

Section 1. Any person who is a sworn member of an organized and paid fire department of any city of the metropolitan class and who is an authorized arson investigator for such city in order to determine the cause, origin, and circumstances of fires, shall be classified as a peace officer while on duty and in the course of any such investigation. Such person shall possess the same powers of arrest, search and seizure, and the securing and service of warrants as police officers of such city. While on duty and in the course of any such investigation, such person may carry such weapons as may be necessary, but only if that person has satisfactorily completed a training program offered or approved by the Nebraska Law Enforcement Training Center or equivalent training offered by such city. Such training need not include exposure to vehicle and traffic law, traffic control and accident investigation, or first aid. Such person shall in addition have been an active member of an organized fire department for a minimum of six years, and shall meet the minimum qualifications and training standards established by the city for all firefighters.

Any person granted the powers enumerated in this section may exercise such powers only while on duty and during the course of investigating the cause, origin, and circumstances of a fire.

Sec. 2. That section 81-509, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-509. (1) The State Fire Marshal, first assistant fire marshal, and deputy state fire marshals shall each have the power in any county of the State of

Nebraska to summon and compel the attendance of witnesses before them, or either of them, to testify in relation to any matter which is by the provisions of sections 81-501.01 to 81-531 a subject of inquiry and investigation, and may require the production of any book, paper, or document deemed pertinent thereto by them or either of them. Such summons shall be served in the same manner and have the same effect as subpoenas from district courts. All witnesses shall receive the same compensation as is paid to witnesses in district courts, which shall be paid out of the fire marshal fund, upon vouchers signed by the State Fire Marshal, first assistant fire marshal, or deputy fire marshal before whom any witnesses shall have attended, and such officer shall, at the close of the investigation wherein such witness was subpoenaed, certify to the attendance and mileage of such witness, which certificate shall be filed in the office of the State Fire Marshal. All investigations held by or under the direction of the State Fire Marshal, or his or her subordinates, may, in his or her discretion, be private, and persons other than those required to be present by the provisions of said sections may be excluded from the place where such investigation is held, and witnesses may be kept separate and apart from each other and not allowed to communicate with each other until they have been examined. (2) The State Fire Marshal, first assistant state fire marshal, and deputy state fire marshals are each authorized and empowered to administer oaths and affirmations to any persons appearing as witnesses before them; and false swearing in any manner or proceeding aforesaid shall be deemed perjury, and shall be punished as such upon conviction in any court of competent jurisdiction. (3) Any witness who refuses to be sworn, or who refuses to testify, or who disobeys any lawful order of the State Fire Marshal, first assistant state fire marshal, or deputy state fire marshal, in relation to any investigation, or who fails or refuses to produce any paper, book, or document touching any matter under examination, or who ~~is guilty of~~ commits any contemptuous conduct, after being summoned to appear before the State Fire Marshal, first assistant, or deputy, to give testimony in relation to any matter or subject under examination or investigation as aforesaid, shall be guilty of subject to conviction for contempt, and, upon conviction of such contempt before any court of competent jurisdiction, shall be punished as provided by law for contempt of the orders of a district court; Provided, no person shall be compelled to give testimony which might tend to incriminate him or her, or to give testimony which is considered privileged by the laws of the State of Nebraska.

Sec. 3. That section 81-1401, Revised Statutes Supplement, 1980, be amended to read as follows:

81-1401. As used in sections 81-1401 to 81-1414, unless the context otherwise requires:

(1) Commission shall mean the Nebraska Commission on Law Enforcement and Criminal Justice;

(2) Council shall mean the Nebraska Police Standards Advisory Council;

(3) (a) Law enforcement officer shall mean any person who is responsible for the prevention or detection of crime or the enforcement of the penal, traffic, or highway laws of the state or any political subdivision thereof for more than one hundred hours per year and is authorized by law to make arrests, and includes but is not limited to:

(i) A full or part-time member of the Nebraska State Patrol;

(ii) A county sheriff;

(iii) A full or part-time employee of a county sheriff's office; or

(iv) A full or part-time employee of a municipal or village police agency; but or

(v) A full-time employee of an organized and paid fire department of any city of the metropolitan class, who is an authorized arson investigator, and whose duties consist of determining the cause, origin, and circumstances of fires or explosions, while on duty in the course of an investigation; but

(b) Law enforcement officer shall not include employees of the Department of Correctional Services, probation officers under the Field Probation Service or appointed under section 43-236, parole officers appointed by the Parole Administrator, or employees of the Department of Revenue under section 77-366;

(4) Director shall mean the director of the Nebraska Law Enforcement Training Center; and

(5) Training center shall mean the Nebraska Law Enforcement Training Center.

Sec. 4. That original section 81-509, Reissue Revised Statutes of Nebraska, 1943, and section 81-1401,

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Revised Statutes Supplement, 1980, are repealed.