

LEGISLATIVE BILL 470

Approved by the Governor April 16, 2002

Introduced by Transportation and Telecommunications Committee:
 Bromm, 23, Chairperson; Baker, 44; Byars, 30; Hudkins, 21;
 Jones, 43; and Thompson, 14; Smith, 48

AN ACT relating to the Nebraska State Patrol; to amend sections 60-1301, 60-1303, 81-2003, 81-2005, and 81-2033, Reissue Revised Statutes of Nebraska, sections 81-2016 and 84-1301, Revised Statutes Supplement, 2000, and section 81-2014, Revised Statutes Supplement, 2001; to change powers and duties relating to patrol officers and carrier enforcement officers; to provide and change retirement provisions; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 60-1301, Reissue Revised Statutes of Nebraska, is amended to read:

60-1301. In order to promote public safety, to preserve and protect the state highways and bridges and prevent immoderate and destructive use of the same, and to enforce the motor vehicle registration laws, the Department of Roads shall have the responsibility to construct, maintain, provide, and contract with the Nebraska State Patrol for the operation of weighing stations and provide the funding for the same. The Nebraska State Patrol shall operate the weighing stations, including portable scales, for the weighing and inspection of buses, motor trucks, truck-tractors, semitrailers, trailers, and towed vehicles. Each of the weighing stations shall be located near, on, or adjacent to a state highway upon real estate owned by the State of Nebraska or upon real estate acquired for that purpose. Weights determined on such weighing stations and portable scales shall be presumed to be accurate and shall be accepted in court as prima facie evidence of a violation of the laws relating to the size, weight, load, and registration of buses, motor trucks, truck-tractors, semitrailers, trailers, and towed vehicles. The owner or driver of a vehicle found to be in violation of such laws by the use of portable scales shall be advised by the officer operating the portable scale that he or she has the right to demand an immediate reweighing at his or her expense at the nearest permanent state-approved scale capable of weighing the vehicle, and if a variance exists between the weights of the permanent and portable scales, then the weights determined on the permanent scale shall prevail. Sections 60-1301 to 60-1309 and section 4 of this act shall not apply to pickup trucks with a factory-rated capacity of one ton or less, except as may be provided by rules and regulations of the Nebraska State Patrol, or to recreational vehicles as defined in subdivision (2) of section 71-4603. The Nebraska State Patrol may adopt and promulgate rules and regulations concerning the weighing of pickup trucks with a factory-rated capacity of one ton or less which tow vehicles. Such rules and regulations shall require trucks towing vehicles to comply with sections 60-1301 to 60-1309 and section 4 of this act when it is necessary to promote the public safety and preserve and protect the state highways and bridges.

Sec. 2. Section 60-1303, Reissue Revised Statutes of Nebraska, is amended to read:

60-1303. (1) The Nebraska State Patrol is hereby designated as the agency to operate the weighing stations and portable scales and to perform carrier enforcement duties.

(2) (a) On and after the effective date of this act, officers of the Nebraska State Patrol appointed to operate the weighing stations and portable scales and to perform carrier enforcement duties shall be known as the carrier enforcement division. The Superintendent of Law Enforcement and Public Safety shall appoint officers of the Nebraska State Patrol to the carrier enforcement division, including officers as prescribed in sections 81-2001 to 81-2009 and section 3 of this act, and carrier enforcement officers as prescribed in sections 60-1301 to 60-1309 and section 4 of this act.

(b) The employees within the Nebraska State Patrol designated to operate the weighing stations and portable scales and to perform carrier enforcement duties before the effective date of this act and not authorized to act under subsections (1) through (8) of section 81-2005 shall be known as carrier enforcement officers. and, as a separate group within the Nebraska State Patrol, shall be known as the carrier enforcement division.

(3) All carrier enforcement officers shall be bonded under the blanket surety bond required by section 11-201. Premiums on the bond shall be

paid from the money appropriated for the construction, maintenance, and operation of the state weighing stations.

(4) All employees of the Nebraska State Patrol who are carrier enforcement officers ~~retirement annuities shall be provided by the~~ and who are not officers of the Nebraska State Patrol with the powers and duties prescribed in sections 81-2001 to 81-2009 and section 3 of this act shall be members of the State Employees Retirement System of the State of Nebraska. Officers of the Nebraska State Patrol who are carrier enforcement officers on the effective date of this act, who subsequently become officers of the Nebraska State Patrol with the powers and duties prescribed in sections 81-2001 to 81-2009 and section 3 of this act, and who elect to remain members of the State Employees Retirement System of the State of Nebraska shall continue to participate in the State Employees Retirement System of the State of Nebraska. Carrier enforcement officers shall not receive any expense allowance as provided for by section 81-2002.

(5) The Nebraska State Patrol and the Department of Roads shall have the duty, power, and authority to contract with one another for the staffing and operation of weighing stations and portable scales and the performance of carrier enforcement duties to ensure that there is adequate personnel in the carrier enforcement division to carry out the duties specified in sections 60-1301 to 60-1309 and section 4 of this act. Through June 30, 2005, the number of full-time equivalent positions funded pursuant to such contract shall be limited to eighty-eight officers, including carrier enforcement officers as prescribed in sections 60-1301 to 60-1309 and section 4 of this act and officers of the Nebraska State Patrol as prescribed in sections 81-2001 to 81-2009 and section 3 of this act assigned to the carrier enforcement division. Pursuant to such contract, command of the personnel involved in such carrier enforcement operations shall be with the Nebraska State Patrol. The Department of Roads may use any funds at its disposal for its financing of such carrier enforcement activity in accordance with such contract as long as such funds are used only to finance those activities directly involved with the duties specified in sections 60-1301 to 60-1309 and section 4 of this act. The Nebraska State Patrol shall account for all appropriations and expenditures related to the staffing and operation of weighing stations and portable scales and the performance of carrier enforcement duties in a budget program that is distinct and separate from budget programs used for non-carrier-enforcement-division-related activities.

(6) The Nebraska State Patrol may adopt, promulgate, and enforce rules and regulations consistent with statutory provisions related to carrier enforcement necessary for (a) the collection of fees, as outlined in sections 60-305.03 and 66-492 and the International Fuel Tax Agreement Act, (b) the inspection of licenses and permits required under the motor fuel laws, and (c) weighing and inspection of buses, motor trucks, truck-tractors, semitrailers, trailers, and towed vehicles.

(7) There is hereby created the Carrier Enforcement Cash Fund which shall be used for the operation of the carrier enforcement division. Any money in the Carrier Enforcement Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 3. On and after the effective date of this act, officers of the Nebraska State Patrol appointed to the carrier enforcement division shall be officers of the Nebraska State Patrol with the powers and duties as prescribed in sections 81-2001 to 81-2009 and this section and shall receive training commensurate with such powers and duties prior to appointment to the carrier enforcement division.

Sec. 4. (1) Carrier enforcement officers described in subdivision (2) (b) of section 60-1303 who, on or after the effective date of this act, are transferred to the Nebraska State Patrol and become officers of the Nebraska State Patrol with the powers and duties prescribed in sections 81-2001 to 81-2009 and section 3 of this act shall, within ninety days of transfer, elect to participate in the Nebraska State Patrol Retirement System or elect to remain members of the State Employees Retirement System of the State of Nebraska.

(2) An officer who elects to become a member of the Nebraska State Patrol Retirement System pursuant to this section shall (a) receive eligibility and vesting credit pursuant to subsection (2) of section 81-2016 for his or her years of participation in the State Employees Retirement System of the State of Nebraska, (b) be vested in the employer account with the State Employees Retirement System of the State of Nebraska regardless of his or her period of participation in the State Employees Retirement System, and (c) be treated for all other purposes of the Nebraska State Patrol Retirement Act as a new member of the Nebraska State Patrol Retirement System.

(3) Transferring participation from the State Employees Retirement System of the State of Nebraska to the Nebraska State Patrol Retirement System pursuant to this section does not constitute a termination for purposes of the State Employees Retirement Act.

Sec. 5. Section 81-2003, Reissue Revised Statutes of Nebraska, is amended to read:

81-2003. The Superintendent of Law Enforcement and Public Safety is hereby authorized to adopt, promulgate, and enforce rules and regulations, consistent with this act, to carry out sections 81-2001 to 81-2009 and section 3 of this act, including the use, purpose, and contents of warning and violation cards. The Superintendent of Law Enforcement and Public Safety shall adopt an official seal for the use of the Nebraska State Patrol. The Superintendent of Law Enforcement and Public Safety shall maintain an office or offices for law enforcement and public safety in such places in the state as he or she may deem necessary to properly carry out the work and the administration of laws pertaining to the Nebraska State Patrol.

Sec. 6. Section 81-2005, Reissue Revised Statutes of Nebraska, is amended to read:

81-2005. The On and after the effective date of this act, the Superintendent of Law Enforcement and Public Safety and all officers of the Nebraska State Patrol, except all carrier enforcement officers assigned to the carrier enforcement division, shall have the power:

(1) Of peace officers for the purpose of enforcing the provisions of the Motor Vehicle Operator's License Act and any other law regulating the registration or operation of vehicles or the use of the highways;

(2) To make arrests upon view and without warrant for any violation committed in their presence of any of the provisions of the act or of any other law regulating the operation of vehicles or the use of the highways, if and when designated or called upon to do so as provided by law;

(3) To make arrests upon view and without warrant for any violation committed in their presence of any provision of the laws of the state relating to misdemeanors or felonies, if and when designated or called upon to do so as provided by law;

(4) At all times to direct all traffic in conformity with law or, in the event of a fire or other emergency or in order to expedite traffic or insure safety, to direct traffic as conditions may require notwithstanding the provisions of law;

(5) When in uniform, to require the driver of a vehicle to stop and exhibit his or her operator's license and registration card issued for the vehicle and submit to an inspection of such vehicle and the registration plates and registration card thereon and to require the drivers of motor vehicles to present such vehicles within five days for correction of any defects revealed by such motor vehicle inspection as may lead the inspecting officer to reasonably believe that such motor vehicle is being operated in violation of the statutes of Nebraska or the rules and regulations of the Director of Motor Vehicles;

(6) To inspect any vehicle of a type required to be registered according to law in any public garage or repair shop or in any place where such vehicles are held for sale or wrecking;

(7) To serve warrants relating to the enforcement of the laws regulating the operation of vehicles or the use of the highways; ~~and~~

(8) To investigate traffic accidents for the purpose of carrying on a study of traffic accidents and enforcing motor vehicle and highway safety laws; and

(9) To operate weighing stations and portable scales and to perform carrier enforcement powers and duties prescribed in sections 60-1301 to 60-1309 and section 4 of this act.

Carrier enforcement officers appointed to the carrier enforcement division before the effective date of this act shall have the powers and duties prescribed in sections 60-1301 to 60-1309 and section 4 of this act.

Sec. 7. Section 81-2014, Revised Statutes Supplement, 2001, is amended to read:

81-2014. For purposes of the Nebraska State Patrol Retirement Act:

(1) Actuarial equivalent means the equality in value of the aggregate amounts expected to be received under different forms of payment or to be received at an earlier retirement age than the normal retirement age. The determinations shall be based on the 1983 Group Annuity Mortality Table reflecting sex-distinct factors blended using seventy-five percent of the male table and twenty-five percent of the female table. An interest rate of seven percent per annum shall be reflected in making the determinations until such percent is amended by the Legislature;

(2) Board means the Public Employees Retirement Board;

(3) (a) Compensation means gross wages or salaries payable to the member for personal services performed during the plan year. Compensation does not include insurance premiums converted into cash payments, reimbursement for expenses incurred, fringe benefits, or bonuses for services not actually rendered, including, but not limited to, early retirement inducements, cash awards, and severance pay, except for retroactive salary payments paid pursuant to court order, arbitration, or litigation and grievance settlements. For any officer employed after January 4, 1979, compensation does not include compensation for unused sick leave or unused vacation leave converted to cash payments. Compensation includes overtime pay, member retirement contributions, and amounts contributed by the member to plans under sections 125 and 457 of the Internal Revenue Code as defined in section 49-801.01 or any other section of the code which defers or excludes such amounts from income.

(b) Compensation in excess of the limitations set forth in section 401(a)(17) of the Internal Revenue Code as defined in section 49-801.01 shall be disregarded. For an employee who was a member of the retirement system before the first plan year beginning after December 31, 1995, the limitation on compensation shall not be less than the amount which was allowed to be taken into account under the retirement system as in effect on July 1, 1993;

(4) Creditable service means service granted pursuant to section 81-2034 and all service rendered while a contributing member of the retirement system. Creditable service includes working days, sick days, vacation days, holidays, and any other leave days for which the officer is paid regular wages. Creditable service does not include eligibility and vesting credit nor service years for which member contributions are withdrawn and not repaid;

(5) Current benefit means (a) until July 1, 2000, the initial benefit increased by all adjustments made pursuant to section 81-2027.04 and (b) on or after July 1, 2000, the initial benefit increased by all adjustments made pursuant to the Nebraska State Patrol Retirement Act;

(6) Eligibility and vesting credit means credit for years, or a fraction of a year, of participation in a Nebraska government plan for purposes of determining eligibility for benefits under the Nebraska State Patrol Retirement Act. Such credit shall be used toward the vesting percentage pursuant to subsection (2) of section 81-2031 but shall not be included as years of service in the benefit calculation;

(7) Initial benefit means the retirement benefit calculated at the time of retirement;

(8) Officer means an officer provided for in sections 81-2001 to 81-2009 and section 3 of this act;

(9) Plan year means the twelve-month period beginning on July 1 and ending on June 30 of the following year;

(10) Regular interest means interest fixed at a rate equal to the daily treasury yield curve for one-year treasury securities, as published by the Secretary of the Treasury of the United States, that applies on July 1 of each year, which may be credited monthly, quarterly, semiannually, or annually as the board may direct;

(11) Retirement system or system means the Nebraska State Patrol Retirement System as provided in the act;

(12) Service means employment as a member of the Nebraska State Patrol and shall not be deemed to be interrupted by (a) temporary or seasonal suspension of service that does not terminate the employee's employment, (b) leave of absence authorized by the employer for a period not exceeding twelve months, (c) leave of absence because of disability, or (d) military service, when properly authorized by the board. Service does not include any period of disability for which disability retirement benefits are received under subsection (1) of section 81-2025;

(13) Surviving spouse means (a) the spouse married to the member on the date of the member's death if married for at least one year prior to death or if married on the date of the member's retirement or (b) the spouse or former spouse of the member if survivorship rights are provided under a qualified domestic relations order filed with the board pursuant to the Spousal Pension Rights Act. The spouse or former spouse shall supersede the spouse married to the member on the date of the member's death as provided under a qualified domestic relations order. If the benefits payable to the spouse or former spouse under a qualified domestic relations order are less than the value of benefits entitled to the surviving spouse, the spouse married to the member on the date of the member's death shall be the surviving spouse for the balance of the benefits; and

(14) Termination of employment occurs on the date on which the Nebraska State Patrol determines that the officer's employer-employee relationship with the patrol is dissolved. The Nebraska State Patrol shall

notify the board within two weeks after the date such a termination is deemed to have occurred. Termination of employment does not include ceasing employment with the Nebraska State Patrol if the officer returns to regular employment with the Nebraska State Patrol within one hundred twenty days.

Sec. 8. Section 81-2016, Revised Statutes Supplement, 2000, is amended to read:

81-2016. (1) Every member of the Nebraska State Patrol who was employed by the State of Nebraska as such, on September 7, 1947, and every person employed as a member of such patrol thereafter, shall be a member of this system, except for those members of the Nebraska State Patrol who elected pursuant to section 4 of this act to remain members of the State Employees Retirement System of the State of Nebraska.

(2) Within the first thirty days of employment, a member may apply to the board for eligibility and vesting credit for years of participation in another Nebraska governmental plan, as defined by section 414(d) of the Internal Revenue Code. During the years of participation in the other Nebraska governmental plan, the employee must have been a full-time employee, as defined in the Nebraska governmental plan in which the credit was earned.

(3) Any officer who qualifies for membership pursuant to subsection (1) of this section may not be disqualified for membership in the retirement system solely because such officer also maintains separate employment which qualifies the officer for membership in another public retirement system, nor may membership in this retirement system disqualify such an officer from membership in another public retirement system solely by reason of separate employment which qualifies such officer for membership in this retirement system.

(4) Information necessary to determine membership shall be provided by the Nebraska State Patrol.

Sec. 9. Section 81-2033, Reissue Revised Statutes of Nebraska, is amended to read:

81-2033. In computing length of creditable service under the Nebraska State Patrol Retirement Act, such service shall include the years of service with the Nebraska State Patrol, permanent force, as established by the law creating the Nebraska State Patrol computed to the nearest one-twelfth year and shall only include such years during which the person was a contributing member of the Nebraska State Patrol Retirement System. Length of creditable service shall also include credit for time served in the armed forces pursuant to section 81-2034. For subsection (2) of section 81-2031 only, service shall also include credit for vesting pursuant to sections 81-2016 and 81-2031.02 and section 4 of this act.

Sec. 10. Section 84-1301, Revised Statutes Supplement, 2000, is amended to read:

84-1301. For purposes of the State Employees Retirement Act, unless the context otherwise requires:

(1)(a) Compensation means gross wages or salaries payable to the member for personal services performed during the plan year. Compensation does not include insurance premiums converted into cash payments, reimbursement for expenses incurred, fringe benefits, or bonuses for services not actually rendered, including, but not limited to, early retirement inducements, cash awards, and severance pay, except for retroactive salary payments paid pursuant to court order, arbitration, or litigation and grievance settlements. Compensation includes overtime pay, member retirement contributions, and amounts contributed by the member to plans under sections 125, 403(b), and 457 of the Internal Revenue Code or any other section of the code which defers or excludes such amounts from income.

(b) Compensation in excess of the limitations set forth in section 401(a)(17) of the Internal Revenue Code shall be disregarded. For an employee who was a member of the retirement system before the first plan year beginning after December 31, 1995, the limitation on compensation shall not be less than the amount which was allowed to be taken into account under the retirement system as in effect on July 1, 1993;

(2) Date of disability means the date on which a member is determined to be disabled by the board;

(3) Disability means an inability to engage in a substantially gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration;

(4) Eligibility and vesting credit means credit for years, or a fraction of a year, of participation in a Nebraska governmental plan for purposes of determining membership in the system and vesting the employer account;

(5) Employee means any employee of the State Board of Agriculture

who is a member of the state retirement system on July 1, 1982, and any person or officer employed by the State of Nebraska whose compensation is paid out of state funds or funds controlled or administered by a state department through any of its executive or administrative officers when acting exclusively in their respective official, executive, or administrative capacities. Employee does not include (a) judges as defined in section 24-701, (b) members of the Nebraska State Patrol, except for those members of the Nebraska State Patrol who elected pursuant to section 4 of this act to remain members of the State Employees Retirement System of the State of Nebraska, (c) employees of the University of Nebraska, (d) employees of the state colleges, (e) employees of community colleges, (f) employees of the Department of Labor employed prior to July 1, 1984, and paid from funds provided pursuant to Title III of the federal Social Security Act or funds from other federal sources, (g) the Commissioner of Labor employed prior to July 1, 1984, (h) employees of the State Board of Agriculture who are not members of the state retirement system on July 1, 1982, (i) the Nebraska National Guard air and army technicians, (j) persons eligible for membership under the School Retirement System of the State of Nebraska who have not elected to become members of the retirement system pursuant to section 79-920 or been made members of the system pursuant to such section, except that those persons so eligible and who as of September 2, 1973, are contributing to the State Employees Retirement System of the State of Nebraska shall continue as members of such system, or (k) employees of the Coordinating Commission for Postsecondary Education who are eligible for and have elected to become members of a qualified retirement program approved by the commission which is commensurate with retirement programs at the University of Nebraska. Any individual appointed by the Governor may elect not to become a member of the State Employees Retirement System of the State of Nebraska;

(6) Five-year break in service means five consecutive one-year breaks in service;

(7) Full-time employee means an employee who is employed to work one-half or more of the regularly scheduled hours during each pay period;

(8) Fund means the State Employees Retirement Fund created by section 84-1309;

(9) Group annuity contract means the contract or contracts issued by one or more life insurance companies to the board in order to provide the benefits described in sections 84-1319, 84-1320, 84-1321, 84-1323, and 84-1323.01;

(10) Guaranteed investment contract means an investment contract or account offering a return of principal invested plus interest at a specified rate. For investments made after July 19, 1996, guaranteed investment contract does not include direct obligations of the United States or its instrumentalities, bonds, participation certificates or other obligations of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Government National Mortgage Association, or collateralized mortgage obligations and other derivative securities. This subdivision shall not be construed to require the liquidation of investment contracts or accounts entered into prior to July 19, 1996;

(11) One-year break in service means a plan year during which the member has not completed more than five hundred hours of service;

(12) Part-time employee means an employee who is employed to work less than one-half of the regularly scheduled hours during each pay period;

(13) Plan year means the twelve-month period beginning on January 1 and ending on December 31;

(14) Prior service means service before January 1, 1964;

(15) Regular interest means the rate of interest earned each calendar year commencing January 1, 1975, as determined by the retirement board in conformity with actual and expected earnings on the investments;

(16) Required contribution means the deduction to be made from the compensation of employees as provided in section 84-1308;

(17) Retirement means qualifying for and terminating employment after becoming qualified to receive the retirement allowance granted under the State Employees Retirement Act;

(18) Retirement board or board means the Public Employees Retirement Board;

(19) Retirement system means the State Employees Retirement System of the State of Nebraska;

(20) Service means the actual total length of employment as an employee and shall not be deemed to be interrupted by (a) temporary or seasonal suspension of service that does not terminate the employee's employment, (b) leave of absence authorized by the employer for a period not exceeding twelve months, (c) leave of absence because of disability, or (d)

military service, when properly authorized by the retirement board. Service does not include any period of disability for which disability retirement benefits are received under section 84-1317;

(21) State department means any department, bureau, commission, or other division of state government not otherwise specifically defined or exempted in the act, the employees and officers of which are not already covered by a retirement plan;

(22) Straight life annuity means an ordinary annuity payable for the life of the primary annuitant only and terminating at his or her death without refund or death benefit of any kind;

(23) Surviving spouse means (a) the spouse married to the member on the date of the member's death or (b) the spouse or former spouse of the member if survivorship rights are provided under a qualified domestic relations order filed with the board pursuant to the Spousal Pension Rights Act. The spouse or former spouse shall supersede the spouse married to the member on the date of the member's death as provided under a qualified domestic relations order. If the benefits payable to the spouse or former spouse under a qualified domestic relations order are less than the value of benefits entitled to the surviving spouse, the spouse married to the member on the date of the member's death shall be the surviving spouse for the balance of the benefits; and

(24) Termination of employment occurs on the date on which the agency which employs the member determines that the member's employer-employee relationship with the State of Nebraska is dissolved. The agency which employs the member shall notify the board within two weeks after the date such a termination is deemed to have occurred. Termination of employment does not occur if an employee whose employer-employee relationship with the State of Nebraska is dissolved enters into an employer-employee relationship with the same or another agency of the State of Nebraska and there are less than one hundred twenty days between the date when the employee's employer-employee relationship ceased with the state and the date when the employer-employee relationship commenced with the same or another agency which qualifies the employee for participation in the plan. It shall be the responsibility of the current employer to notify the board of such change in employment and provide the board with such information as the board deems necessary. If the board determines that termination of employment has not occurred and a termination benefit has been paid to a member of the retirement system pursuant to section 84-1321, the board shall require the member who has received such benefit to repay the benefit to the retirement system.

Sec. 11. Original sections 60-1301, 60-1303, 81-2003, 81-2005, and 81-2033, Reissue Revised Statutes of Nebraska, sections 81-2016 and 84-1301, Revised Statutes Supplement, 2000, and section 81-2014, Revised Statutes Supplement, 2001, are repealed.