

One Hundred Third Legislature - First Session - 2013

Introducer's Statement of Intent

LB267

Chairperson: Senator Brad Ashford

Committee: Judiciary

Date of Hearing: February 07, 2013

The following constitutes the reasons for this bill and the purposes which are sought to be accomplished thereby:

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Legislative Bill 267 prohibits the use of inmates, persons on parole, probation or work release from acting as undercover agents or employees of law enforcement, and suppresses any evidence obtained in violation of its provisions.

The language of LB 267 is identical to that of former section 29-2262.01 which was repealed by way of a repealer clause in LB 63 (2009), a bulky 59-page hodge-podge bill dealing with nearly three dozen miscellaneous statutes.

No mention of section 29-2262.01 was made during the Judiciary committee hearing or floor debate.

Parole Board Chair Esther Casmer responded to a letter I addressed to her and Probation Administrator Ellen Brokofsky (copy attached) regarding the repeal. In her letter (copy attached), she acknowledged that LB 63 "was not read in its entirety", and that the repealer clause was "not discovered." She stated further:

Since receiving your letter, the opinions of the Board of Parole and the Department of Correctional Services have been shared, and a course of action to prevent parolees from being utilized in the manner of what they seek will be thwarted.

Also attached is a copy of my 1978 Statement of Intent on LB 695 (the initial version of the section) presenting supportive opinions of Parole Board Chairman Greenholtz, Parole Administrator Tewes, District Judge Whitehead (Columbus) and State Patrol Superintendent Karthaus.

My opening paragraph provided the rationale for the proposal:

LB 695 grows out of information obtained during an interim study by the State Patrol Study Committee. It is not good policy or practice to use persons who are under state "jurisdiction", "custody" or "supervision", as undercover agents. Their vulnerable status renders them susceptible to improper pressures from law enforcement "supervisors".

In 2003, the Nebraska Supreme Court (State v. Rathjen, 266 Neb. 62), spoke of “obvious . . . public policy reasons” justifying the statute:

In construing section 29-2262.01, it is rather obvious that the Legislature, for a number of public policy reasons, did not want inmates, probationers or parolees acting as undercover agents in any capacity for state or local law enforcement agencies. The issues of institutional control, public safety, and evidentiary reliability (emphasis added) were so important that the Legislature determined that any violation of section 29-2262.01 would result in the suppression of evidence from a tainted undercover source.

As stated in my letter to Parole Board Chair Casmer: “The radical policy change discussed herein, should not occur through the casual process of a repealer clause in a lengthy bill.”

The language of former section 29-2262.01 should be reinstated.

Principal Introducer: _____

Senator Ernie Chambers