

E AND R AMENDMENTS TO LB 791

Introduced by Wishart, 27, Chairman Enrollment and Review

1           1. Strike the original sections and all amendments thereto and  
2 insert the following new sections:

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

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

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

1 record shall be retained for the duration of the law enforcement  
2 officer's employment with the agency and for ten years following his or  
3 her separation from the agency.

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

20 (5) Failure to comply with this section shall constitute neglect of  
21 duty.

22 (6) For purposes of this section:

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

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

25 (c) Law enforcement agency has the same meaning as in section  
26 81-1401; and

27 (d) Law enforcement officer has the same meaning as in section  
28 81-1401.

29 Sec. 2. (1) A person who is certified under section 81-1414 and who  
30 seeks employment as a law enforcement officer in this state shall provide  
31 a signed waiver to the prospective employer upon a conditional offer of

1 employment. The waiver must expressly allow the prospective employer to  
2 contact the person's former employer or employers and obtain from each  
3 copies of any records created under subsections (2) and (3) of section 1  
4 of this act. The prospective employer is responsible for providing the  
5 waiver to each former employer.

6 (2) The waiver required by this section shall be executed on a form  
7 provided by the Nebraska Commission on Law Enforcement and Criminal  
8 Justice to all agencies in this state that employ or administer oaths of  
9 office to law enforcement officers certified by the commission.

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

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

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

1           (6) For purposes of this section:

2           (a) Former employer means the law enforcement agency or other agency  
3 that currently employs or previously employed the person as a law  
4 enforcement officer;

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

6           (c) Law enforcement agency has the same meaning as in section  
7 81-1401;

8           (d) Law enforcement officer has the same meaning as in section  
9 81-1401; and

10           (e) Prospective employer means the law enforcement agency or other  
11 agency that is considering hiring the person as a law enforcement  
12 officer.

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

15           81-1377 (1) The Chief Negotiator or any other employer-  
16 representative and the exclusive collective-bargaining agent for  
17 employees under the Chief Negotiator's or employer-representative's  
18 jurisdiction shall bargain and negotiate labor contracts in good faith  
19 and reasonably in advance of the budget-making process.

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

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

24           (a) Limit the discretion of the Superintendent of Law Enforcement  
25 and Public Safety to disclose to the Legislature, the Nebraska Commission  
26 on Law Enforcement and Criminal Justice, the Nebraska Police Standards  
27 Advisory Council, the Equal Opportunity Commission, or a complainant the  
28 status or outcome of an internal investigation or discipline;

29           (b) Limit the consideration by the patrol, for purposes of  
30 progressive discipline, of disciplinary action in a prior case that  
31 occurred within the ten years preceding the date such progressive

1 discipline is imposed;

2 (c) Limit the time during which a disciplinary investigation may be  
3 initiated or discipline may be imposed to less than two years after the  
4 occurrence of the conduct which is the subject of the investigation or  
5 discipline;

6 (d) Require the release to a member who is under internal  
7 investigation for an allegation that could result in a charge of a Class  
8 I misdemeanor or felony or an allegation involving dishonesty, prior to  
9 the initial internal investigation interview, of reports and materials  
10 concerning the internal investigation of such member, except that the  
11 member shall be entitled to know the nature of the complaint underlying  
12 the investigation;

13 (e) Limit or restrict access by the individual or individuals  
14 conducting the internal investigation to materials, including records of  
15 current or past discipline or misconduct, regarding the member under  
16 investigation; or

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

20 (4) ~~(3)~~ The obligation to negotiate in good faith shall not compel  
21 the Chief Negotiator or any other employer-representative or the  
22 exclusive collective-bargaining agent to agree to a proposal or make a  
23 concession.

24 (5) ~~(4)~~ All contracts involving state employees and negotiated  
25 pursuant to the Industrial Relations Act or the State Employees  
26 Collective Bargaining Act shall cover a two-year period coinciding with  
27 the biennial state budget, except that the first contract entered into by  
28 a bargaining unit may cover only the second fiscal year of the biennium.

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

31 81-1425 The executive director of the commission shall:

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

3 (2) Establish a Jail Standards subdivision and a Community  
4 Corrections Division within the commission and establish, consolidate, or  
5 abolish any administrative subdivision within the commission and appoint  
6 and remove for cause the heads thereof, and delegate appropriate powers  
7 and duties to them;

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

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

12 (5) Make rules and regulations for the management and the  
13 administration of policies of the commission and the conduct of employees  
14 under his or her jurisdiction;

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

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

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

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

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

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

30 (12) Subpoena witnesses and documents, files, internal investigation  
31 materials, administrative files, records, memoranda, reports, personnel

1 records, disciplinary histories, or any materials the executive director  
2 determines to be relevant, relating to law enforcement officer  
3 certification revocation, from the Nebraska State Patrol; and

4 (13) ~~(12)~~ Exercise all powers and perform all duties necessary and  
5 proper in carrying out his or her responsibilities.

6 Sec. 5. (1) A state employee may make a report of sexual harassment  
7 to the Department of Administrative Services. The department shall  
8 investigate the report or ensure that an investigation is conducted by  
9 the agency which employs the reporting employee.

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

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

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

18 (c) When necessary for conducting the investigation or imposing  
19 discipline.

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

22 (a) Initiating or participating in the making of a report of sexual  
23 harassment; or

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

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

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

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

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