

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 816

Introduced by Chambers, 11.

Read first time January 04, 2018

Committee: Judiciary

1 A BILL FOR AN ACT relating to the Nebraska State Patrol; to amend
2 sections 60-1304, 81-2002.01, and 81-2003, Reissue Revised Statutes
3 of Nebraska, and sections 60-1303 and 81-2014, Revised Statutes
4 Supplement, 2017; to designate the patrol as the agency to
5 investigate criminal activity within correctional facilities
6 operated by the Department of Correctional Services; to provide
7 powers and duties for the patrol; to harmonize provisions; to
8 provide an operative date; and to repeal the original sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 60-1303, Revised Statutes Supplement, 2017, is
2 amended to read:

3 60-1303 (1) The Nebraska State Patrol is hereby designated as the
4 agency to operate the weighing stations and portable scales and to
5 perform carrier enforcement duties.

6 (2)(a) On and after July 20, 2002, officers of the Nebraska State
7 Patrol appointed to operate the weighing stations and portable scales and
8 to perform carrier enforcement duties shall be known as the carrier
9 enforcement division. The Superintendent of Law Enforcement and Public
10 Safety shall appoint officers of the Nebraska State Patrol to the carrier
11 enforcement division, including officers as prescribed in sections
12 81-2001 to 81-2009 and section 6 of this act, and carrier enforcement
13 officers as prescribed in sections 60-1301 to 60-1309.

14 (b) The employees within the Nebraska State Patrol designated to
15 operate the weighing stations and portable scales and to perform carrier
16 enforcement duties before July 20, 2002, and not authorized to act under
17 subdivisions (1) through (8) of section 81-2005 shall be known as carrier
18 enforcement officers.

19 (3) All carrier enforcement officers shall be bonded or insured as
20 required by section 11-201. Premiums shall be paid from the money
21 appropriated for the construction, maintenance, and operation of the
22 state weighing stations.

23 (4) All employees of the Nebraska State Patrol who are carrier
24 enforcement officers and who are not officers of the Nebraska State
25 Patrol with the powers and duties prescribed in sections 81-2001 to
26 81-2009 and section 6 of this act shall be members of the State Employees
27 Retirement System of the State of Nebraska. Officers of the Nebraska
28 State Patrol who are carrier enforcement officers on July 20, 2002, who
29 subsequently become officers of the Nebraska State Patrol with the powers
30 and duties prescribed in sections 81-2001 to 81-2009 and section 6 of
31 this act, and who elect to remain members of the State Employees

1 Retirement System of the State of Nebraska shall continue to participate
2 in the State Employees Retirement System of the State of Nebraska.
3 Carrier enforcement officers shall not receive any expense allowance as
4 provided for by section 81-2002.

5 (5) The Nebraska State Patrol and the Department of Transportation
6 shall have the duty, power, and authority to contract with one another
7 for the staffing and operation of weighing stations and portable scales
8 and the performance of carrier enforcement duties to ensure that there is
9 adequate personnel in the carrier enforcement division to carry out the
10 duties specified in sections 60-1301 to 60-1309. Through June 30, 2005,
11 the number of full-time equivalent positions funded pursuant to such
12 contract shall be limited to eighty-eight officers, including carrier
13 enforcement officers as prescribed in sections 60-1301 to 60-1309 and
14 officers of the Nebraska State Patrol as prescribed in sections 81-2001
15 to 81-2009 and section 6 of this act assigned to the carrier enforcement
16 division. Pursuant to such contract, command of the personnel involved in
17 such carrier enforcement operations shall be with the Nebraska State
18 Patrol. The Department of Transportation may use any funds at its
19 disposal for its financing of such carrier enforcement activity in
20 accordance with such contract as long as such funds are used only to
21 finance those activities directly involved with the duties specified in
22 sections 60-1301 to 60-1309. The Nebraska State Patrol shall account for
23 all appropriations and expenditures related to the staffing and operation
24 of weighing stations and portable scales and the performance of carrier
25 enforcement duties in a budget program that is distinct and separate from
26 budget programs used for non-carrier-enforcement-division-related
27 activities.

28 (6) The Nebraska State Patrol may adopt, promulgate, and enforce
29 rules and regulations consistent with statutory provisions related to
30 carrier enforcement necessary for (a) the collection of fees, as outlined
31 in sections 60-3,177 and 60-3,179 to 60-3,182 and the International Fuel

1 Tax Agreement Act, (b) the inspection of licenses and permits required
2 under the motor fuel laws, and (c) weighing and inspection of buses,
3 motor trucks, truck-tractors, semitrailers, trailers, and towed vehicles.

4 Sec. 2. Section 60-1304, Reissue Revised Statutes of Nebraska, is
5 amended to read:

6 60-1304 (1) Carrier enforcement officers described in subdivision
7 (2)(b) of section 60-1303 who, on or after July 20, 2002, are transferred
8 to the Nebraska State Patrol and become officers of the Nebraska State
9 Patrol with the powers and duties prescribed in sections 81-2001 to
10 81-2009 and section 6 of this act shall, within ninety days of transfer,
11 elect to participate in the Nebraska State Patrol Retirement System or
12 elect to remain members of the State Employees Retirement System of the
13 State of Nebraska.

14 (2) An officer who elects to become a member of the Nebraska State
15 Patrol Retirement System pursuant to this section shall (a) receive
16 eligibility and vesting credit pursuant to subsection (2) of section
17 81-2016 for his or her years of participation in the State Employees
18 Retirement System of the State of Nebraska, (b) be vested in the employer
19 account with the State Employees Retirement System of the State of
20 Nebraska regardless of his or her period of participation in the State
21 Employees Retirement System, and (c) be treated for all other purposes of
22 the Nebraska State Patrol Retirement Act as a new member of the Nebraska
23 State Patrol Retirement System.

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

28 Sec. 3. Section 81-2002.01, Reissue Revised Statutes of Nebraska, is
29 amended to read:

30 81-2002.01 On and after July 20, 2002, officers of the Nebraska
31 State Patrol appointed to the carrier enforcement division shall be

1 officers of the Nebraska State Patrol with the powers and duties as
2 prescribed in sections 81-2001 to 81-2009 and section 6 of this act and
3 this section and shall receive training commensurate with such powers and
4 duties prior to appointment to the carrier enforcement division.

5 Sec. 4. Section 81-2003, Reissue Revised Statutes of Nebraska, is
6 amended to read:

7 81-2003 The Superintendent of Law Enforcement and Public Safety is
8 hereby authorized to adopt, promulgate, and enforce rules and
9 regulations, as may be necessary to carry out the duties of the Nebraska
10 State Patrol ~~consistent with this act~~, to carry out sections 81-2001 to
11 81-2009 and section 6 of this act, including the use, purpose, and
12 contents of warning and violation cards. The Superintendent of Law
13 Enforcement and Public Safety shall adopt an official seal for the use of
14 the Nebraska State Patrol. The Superintendent of Law Enforcement and
15 Public Safety shall maintain an office or offices for law enforcement and
16 public safety in such places in the state as he or she may deem necessary
17 to properly carry out the work and the administration of laws pertaining
18 to the Nebraska State Patrol.

19 Sec. 5. Section 81-2014, Revised Statutes Supplement, 2017, is
20 amended to read:

21 81-2014 For purposes of the Nebraska State Patrol Retirement Act:

22 (1)(a) Actuarial equivalent means the equality in value of the
23 aggregate amounts expected to be received under different forms of
24 payment or to be received at an earlier retirement age than the normal
25 retirement age.

26 (b) For an officer hired before July 1, 2017, the determinations
27 shall be based on the 1994 Group Annuity Mortality Table reflecting sex-
28 distinct factors blended using seventy-five percent of the male table and
29 twenty-five percent of the female table. An interest rate of eight
30 percent per annum shall be reflected in making the determinations until
31 such percent is amended by the Legislature.

1 (c) For an officer hired on or after July 1, 2017, or rehired on or
2 after July 1, 2017, after termination of employment and being paid a
3 retirement benefit, the determinations shall be based on a unisex
4 mortality table and an interest rate specified by the board. Both the
5 mortality table and the interest rate shall be recommended by the actuary
6 and approved by the board following an actuarial experience study, a
7 benefit adequacy study, or a plan valuation. The mortality table,
8 interest rate, and actuarial factors in effect on the officer's
9 retirement date will be used to calculate actuarial equivalency of any
10 retirement benefit. Such interest rate may be, but is not required to be,
11 equal to the assumed rate of return;

12 (2) Board means the Public Employees Retirement Board;

13 (3)(a)(i) Compensation means gross wages or salaries payable to the
14 member for personal services performed during the plan year. Compensation
15 does not include insurance premiums converted into cash payments,
16 reimbursement for expenses incurred, fringe benefits, per diems, or
17 bonuses for services not actually rendered, including, but not limited
18 to, early retirement inducements, cash awards, and severance pay, except
19 for retroactive salary payments paid pursuant to court order,
20 arbitration, or litigation and grievance settlements. Compensation
21 includes overtime pay, member retirement contributions, and amounts
22 contributed by the member to plans under sections 125 and 457 of the
23 Internal Revenue Code as defined in section 49-801.01 or any other
24 section of the code which defers or excludes such amounts from income.

25 (ii) For any officer employed on or prior to January 4, 1979,
26 compensation includes compensation for unused sick leave or unused
27 vacation leave converted to cash payments.

28 (iii) For any officer employed after January 4, 1979, and prior to
29 July 1, 2016, compensation does not include compensation for unused sick
30 leave or unused vacation leave converted to cash payments and includes
31 compensation for unused holiday compensatory time and unused compensatory

1 time converted to cash payments.

2 (iv) For any officer employed on or after July 1, 2016, compensation
3 does not include compensation for unused sick leave, unused vacation
4 leave, unused holiday compensatory time, unused compensatory time, or any
5 other type of unused leave, compensatory time, or similar benefits,
6 converted to cash payments.

7 (b) Compensation in excess of the limitations set forth in section
8 401(a)(17) of the Internal Revenue Code as defined in section 49-801.01
9 shall be disregarded. For an employee who was a member of the retirement
10 system before the first plan year beginning after December 31, 1995, the
11 limitation on compensation shall not be less than the amount which was
12 allowed to be taken into account under the retirement system as in effect
13 on July 1, 1993;

14 (4) Creditable service means service granted pursuant to section
15 81-2034 and all service rendered while a contributing member of the
16 retirement system. Creditable service includes working days, sick days,
17 vacation days, holidays, and any other leave days for which the officer
18 is paid regular wages except as specifically provided in the Nebraska
19 State Patrol Retirement Act. Creditable service does not include
20 eligibility and vesting credit nor service years for which member
21 contributions are withdrawn and not repaid;

22 (5) Current benefit means the initial benefit increased by all
23 adjustments made pursuant to the Nebraska State Patrol Retirement Act;

24 (6) DROP means the deferred retirement option plan as provided in
25 section 81-2041;

26 (7) DROP account means an individual DROP participant's defined
27 contribution account under section 414(k) of the Internal Revenue Code;

28 (8) DROP period means the amount of time the member elects to
29 participate in DROP which shall be for a period not to exceed five years
30 from and after the date of the member's DROP election;

31 (9) Eligibility and vesting credit means credit for years, or a

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

6 (10) Hire date or date of hire means the first day of compensated
7 service subject to retirement contributions;

8 (11) Initial benefit means the retirement benefit calculated at the
9 time of retirement;

10 (12) Officer means law enforcement officer as defined in section
11 81-1401 and as provided for in sections 81-2001 to 81-2009 and section 6
12 of this act, but does not include a law enforcement officer who has been
13 granted an appointment conditioned on satisfactory completion of a
14 training program approved by the Nebraska Police Standards Advisory
15 Council;

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

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

23 (15) Retirement application means the form approved and provided by
24 the retirement system for acceptance of a member's request for either
25 regular or disability retirement;

26 (16) Retirement date means (a) the first day of the month following
27 the date upon which a member's request for retirement is received on a
28 retirement application if the member is eligible for retirement and has
29 terminated employment or (b) the first day of the month following
30 termination of employment if the member is eligible for retirement and
31 has filed an application but has not yet terminated employment;

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

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

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

24 (20) Termination of employment occurs on the date on which the
25 Nebraska State Patrol determines that the officer's employer-employee
26 relationship with the patrol is dissolved. The Nebraska State Patrol
27 shall notify the board of the date on which such a termination has
28 occurred. Termination of employment does not include ceasing employment
29 with the Nebraska State Patrol if the officer returns to regular
30 employment with the Nebraska State Patrol or another agency of the State
31 of Nebraska and there are less than one hundred twenty days between the

1 date when the employee's employer-employee relationship ceased and the
2 date when the employer-employee relationship commenced with the Nebraska
3 State Patrol or another state agency. Termination of employment does not
4 occur upon an officer's participation in DROP pursuant to section
5 81-2041. It is the responsibility of the employer that is involved in the
6 termination of employment to notify the board of such change in
7 employment and provide the board with such information as the board deems
8 necessary. If the board determines that termination of employment has not
9 occurred and a retirement benefit has been paid to a member of the
10 retirement system pursuant to section 81-2026, the board shall require
11 the member who has received such benefit to repay the benefit to the
12 retirement system.

13 Sec. 6. (1) The Nebraska State Patrol is authorized to conduct
14 investigations of any criminal activity that takes place within any
15 correctional facility operated by the Department of Correctional
16 Services.

17 (2) On the operative date of this act, the Nebraska State Patrol
18 shall employ and have oversight over all correctional investigators
19 employed by the Department of Correctional Services.

20 (3) The Superintendent of Law Enforcement and Public Safety shall
21 conduct a study and issue a report, no later than July 1, 2019, regarding
22 whether the positions of correctional investigators of the Department of
23 Correctional Services that were transferred to the Nebraska State Patrol
24 shall become sworn employees of the patrol. The report shall be provided
25 to the Governor and electronically to the Legislature with the
26 superintendent's findings and recommendations no later than July 1, 2019.

27 (4) When the positions of correctional investigators are transferred
28 to the Nebraska State Patrol, all funds used by the Department of
29 Correctional Services for the administration of and salaries for
30 correctional investigators shall be transferred to the patrol.

31 Sec. 7. This act becomes operative on January 1, 2019.

1 Sec. 8. Original sections 60-1304, 81-2002.01, and 81-2003, Reissue
2 Revised Statutes of Nebraska, and sections 60-1303 and 81-2014, Revised
3 Statutes Supplement, 2017, are repealed.