

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 955

Introduced by Krist, 10.

Read first time January 10, 2018

Committee: Judiciary

1 A BILL FOR AN ACT relating to law enforcement; to amend sections
2 23-1701.01, 29-2264, 81-1401, 81-1403, 81-1414, and 81-1439, Reissue
3 Revised Statutes of Nebraska; to define terms; to provide for
4 reciprocal certification of law enforcement officers from other
5 jurisdictions and military police officers; to harmonize provisions;
6 and to repeal the original sections.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 23-1701.01, Reissue Revised Statutes of Nebraska,
2 is amended to read:

3 23-1701.01 (1) Any candidate for the office of sheriff who does not
4 have a law enforcement officer certificate or diploma issued by the
5 Nebraska Commission on Law Enforcement and Criminal Justice shall submit
6 with the candidate filing form required by section 32-607 a standardized
7 letter issued by the director of the Nebraska Law Enforcement Training
8 Center certifying that the candidate has:

9 (a) Within one calendar year prior to the deadline for filing the
10 candidate filing form, passed a background investigation performed by the
11 Nebraska Law Enforcement Training Center based on a check of his or her
12 criminal history record information maintained by the Federal Bureau of
13 Investigation through the Nebraska State Patrol. The candidate who has
14 not passed a background investigation shall apply for the background
15 investigation at least thirty days prior to the filing deadline for the
16 candidate filing form; and

17 (b) Received a minimum combined score on the reading comprehension
18 and English language portions of an adult basic education examination
19 designated by the Nebraska Law Enforcement Training Center.

20 (2) Each sheriff shall attend the Nebraska Law Enforcement Training
21 Center and receive a certificate attesting to satisfactory completion of
22 the Sheriff's Certification Course within eight months after taking
23 office unless such sheriff has already been awarded a certificate by the
24 Nebraska Commission on Law Enforcement and Criminal Justice attesting to
25 satisfactory completion of such course or unless such sheriff can
26 demonstrate to the Nebraska Police Standards Advisory Council that his or
27 her previous training and education is such that he or she will
28 professionally discharge the duties of the office. Any sheriff in office
29 prior to July 19, 1980, shall not be required to obtain a certificate
30 attesting to satisfactory completion of the Sheriff's Certification
31 Course but shall otherwise be subject to this section. Notwithstanding

1 sections 81-1401 to 81-1414.10 and section 6 of this act, each sheriff
2 shall attend twenty hours of continuing education in criminal justice and
3 law enforcement courses approved by the council each year following the
4 first year of such sheriff's term of office. Such continuing education
5 shall be offered through seminars, advanced education which may include
6 college or university classes, conferences, instruction conducted within
7 the sheriff's office, or instruction conducted over the Internet, except
8 that instruction conducted over the Internet shall be limited to ten
9 hours annually, and shall be of a type which has application to and seeks
10 to maintain and improve the skills of the sheriffs in carrying out the
11 responsibilities of their office.

12 (3) Notwithstanding section 81-1403, unless a sheriff is able to
13 show good cause for not complying with subsection (2) of this section or
14 obtains a waiver of the training requirements from the council, any
15 sheriff who violates subsection (2) of this section shall be punished by
16 a fine equal to such sheriff's monthly salary. Each month in which such
17 violation occurs shall constitute a separate offense.

18 Sec. 2. Section 29-2264, Reissue Revised Statutes of Nebraska, is
19 amended to read:

20 29-2264 (1) Whenever any person is placed on probation by a court
21 and satisfactorily completes the conditions of his or her probation for
22 the entire period or is discharged from probation prior to the
23 termination of the period of probation, the sentencing court shall issue
24 an order releasing the offender from probation. Such order in all felony
25 cases shall provide notice that the person's voting rights are restored
26 two years after completion of probation. The order shall include
27 information on restoring other civil rights through the pardon process,
28 including application to and hearing by the Board of Pardons.

29 (2) Whenever any person is convicted of a misdemeanor or felony and
30 is placed on probation by the court or is sentenced to a fine only, he or
31 she may, after satisfactory fulfillment of the conditions of probation

1 for the entire period or after discharge from probation prior to the
2 termination of the period of probation and after payment of any fine,
3 petition the sentencing court to set aside the conviction.

4 (3) In determining whether to set aside the conviction, the court
5 shall consider:

6 (a) The behavior of the offender after sentencing;

7 (b) The likelihood that the offender will not engage in further
8 criminal activity; and

9 (c) Any other information the court considers relevant.

10 (4) The court may grant the offender's petition and issue an order
11 setting aside the conviction when in the opinion of the court the order
12 will be in the best interest of the offender and consistent with the
13 public welfare. The order shall:

14 (a) Nullify the conviction; and

15 (b) Remove all civil disabilities and disqualifications imposed as a
16 result of the conviction.

17 (5) The setting aside of a conviction in accordance with the
18 Nebraska Probation Administration Act shall not:

19 (a) Require the reinstatement of any office, employment, or position
20 which was previously held and lost or forfeited as a result of the
21 conviction;

22 (b) Preclude proof of a plea of guilty whenever such plea is
23 relevant to the determination of an issue involving the rights or
24 liabilities of someone other than the offender;

25 (c) Preclude proof of the conviction as evidence of the commission
26 of the misdemeanor or felony whenever the fact of its commission is
27 relevant for the purpose of impeaching the offender as a witness, except
28 that the order setting aside the conviction may be introduced in
29 evidence;

30 (d) Preclude use of the conviction for the purpose of determining
31 sentence on any subsequent conviction of a criminal offense;

1 (e) Preclude the proof of the conviction as evidence of the
2 commission of the misdemeanor or felony in the event an offender is
3 charged with a subsequent offense and the penalty provided by law is
4 increased if the prior conviction is proved;

5 (f) Preclude the proof of the conviction to determine whether an
6 offender is eligible to have a subsequent conviction set aside in
7 accordance with the Nebraska Probation Administration Act;

8 (g) Preclude use of the conviction as evidence of commission of the
9 misdemeanor or felony for purposes of determining whether an application
10 filed or a license issued under sections 71-1901 to 71-1906.01, the Child
11 Care Licensing Act, or the Children's Residential Facilities and Placing
12 Licensure Act or a certificate issued under sections 79-806 to 79-815
13 should be denied, suspended, or revoked;

14 (h) Preclude use of the conviction as evidence of incompetence,
15 neglect of duty, physical, mental, or emotional incapacity, or final
16 conviction of or pleading guilty or nolo contendere to a felony for
17 purposes of determining whether an application filed or a certificate
18 issued under sections 81-1401 to 81-1414.10 and section 6 of this act
19 should be denied, suspended, or revoked;

20 (i) Preclude proof of the conviction as evidence whenever the fact
21 of the conviction is relevant to a determination of the registration
22 period under section 29-4005; or

23 (j) Relieve a person who is convicted of an offense for which
24 registration is required under the Sex Offender Registration Act of the
25 duty to register and to comply with the terms of the act.

26 (6) Except as otherwise provided for the notice in subsection (1) of
27 this section, changes made to this section by Laws 2005, LB 713, shall be
28 retroactive in application and shall apply to all persons, otherwise
29 eligible in accordance with the provisions of this section, whether
30 convicted prior to, on, or subsequent to September 4, 2005.

31 Sec. 3. Section 81-1401, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 81-1401 For purposes of sections 81-1401 to 81-1414.10 and section 6
3 of this act, unless the context otherwise requires:

4 (1) Commission means the Nebraska Commission on Law Enforcement and
5 Criminal Justice;

6 (2) Council means the Nebraska Police Standards Advisory Council;

7 (3) Director means the director of the Nebraska Law Enforcement
8 Training Center;

9 (4) Felony means a crime punishable by imprisonment for a term of
10 more than one year or a crime committed outside of Nebraska which would
11 be punishable by imprisonment for a term of more than one year if
12 committed in Nebraska;

13 (5) Handgun means any firearm with a barrel less than sixteen inches
14 in length or any firearm designed to be held and fired by the use of a
15 single hand;

16 (6) Incapacity means incapable of or lacking the ability to perform
17 or carry out the usual duties of a law enforcement officer in accordance
18 with the standards established by the commission due to physical, mental,
19 or emotional factors. Incapacity does not exist if a law enforcement
20 officer remains employed as a law enforcement officer, including
21 employment as a law enforcement officer in a restricted or limited-duty
22 status;

23 (7) Law enforcement agency means the police department or the town
24 marshal in incorporated municipalities, the office of sheriff in
25 unincorporated areas, and the Nebraska State Patrol;

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

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

1 (ii) A county sheriff;

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

4 (iv) A full-time, part-time, or reserve employee of a municipal or
5 village police agency;

6 (v) A full-time or part-time Game and Parks Commission conservation
7 officer;

8 (vi) A full-time or part-time deputy state sheriff; or

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

14 (b) Law enforcement officer does not include employees of the
15 Department of Correctional Services, probation officers under the
16 Nebraska Probation System, parole officers appointed by the Parole
17 Administrator, or employees of the Department of Revenue under section
18 77-366; and

19 (c) A law enforcement officer shall possess a valid law enforcement
20 officer certificate or diploma, as established by the council, in order
21 to be vested with the authority of this section, but this subdivision
22 does not prohibit an individual from receiving a conditional appointment
23 as an officer pursuant to subsection (2) of section 81-1414;

24 (9) Military police officer means a person who has been awarded a
25 military occupational specialty by one of the branches of the United
26 States Armed Forces, including the reserve components. This includes
27 military occupational specialties involving law enforcement, criminal
28 investigations, interment and resettlement, military police working dog
29 handler, and other police work;

30 (10) Reciprocity certification means law enforcement certification
31 issued by the council to a person who meets the necessary prerequisites

1 as established by the council in lieu of attending basic training and who
2 is:

3 (a) A law enforcement officer from another state or with a federal
4 agency; or

5 (b) A military police officer;

6 (11) (9) Training academy means the training center or such other
7 council-approved law enforcement training facility operated and
8 maintained by a law enforcement agency which offers certification
9 training that meets or exceeds the certification training curriculum of
10 the training center;

11 (12) (10) Training center means the Nebraska Law Enforcement
12 Training Center; and

13 (13) (11) Training school means a public or private institution of
14 higher education, including the University of Nebraska, the Nebraska
15 state colleges, and the community colleges of this state, that offers
16 training in a council-approved pre-certification course.

17 Sec. 4. Section 81-1403, Reissue Revised Statutes of Nebraska, is
18 amended to read:

19 81-1403 Subject to review and approval by the commission, the
20 council shall:

21 (1) Adopt and promulgate rules and regulations for law enforcement
22 pre-certification, certification, continuing education, and training
23 requirements. Such rules and regulations may include the authority to
24 impose a fine on any individual, political subdivision, or agency who or
25 which violates sections 81-1401 to 81-1414.10 and section 6 of this act
26 or any of such rules and regulations. The fine for each separate
27 violation of sections 81-1401 to 81-1414.10 and section 6 of this act or
28 of any rule or regulation adopted and promulgated by the council pursuant
29 to such sections shall not exceed either (a) a one-time maximum fine of
30 five hundred dollars or (b) a maximum fine of one hundred dollars per day
31 until the individual, political subdivision, or agency complies with such

1 rules or regulations. All fines collected pursuant to this subdivision
2 shall be remitted to the State Treasurer for distribution in accordance
3 with Article VII, section 5, of the Constitution of Nebraska;

4 (2) Adopt and promulgate rules and regulations for the operation of
5 the training center;

6 (3) Recommend to the executive director of the commission the names
7 of persons to be appointed to the position of director of the training
8 center;

9 (4) Establish requirements for satisfactory completion of pre-
10 certification programs, certification programs, and advanced training
11 programs;

12 (5) Issue certificates or diplomas attesting satisfactory completion
13 of pre-certification programs, certification programs, and advanced
14 training programs;

15 (6) Revoke or suspend such certificates or diplomas according to
16 rules and regulations adopted and promulgated by the council pursuant to
17 sections 81-1401 to 81-1414.10 and section 6 of this act for reasons
18 which shall include, but not be limited to, (a) incompetence, (b) neglect
19 of duty, (c) physical, mental, or emotional incapacity, and (d) final
20 conviction of or pleading guilty or nolo contendere to a felony. The
21 rules and regulations shall provide for the revocation of a certificate
22 or diploma without a hearing upon the certificate or diploma holder's
23 final conviction of or pleading guilty or nolo contendere to a felony.
24 When a law enforcement officer is separated from his or her agency due to
25 physical, mental, or emotional incapacity, the law enforcement agency
26 shall report the separation to the council, and the officer's law
27 enforcement certificate shall be suspended pursuant to rules and
28 regulations adopted and promulgated by the council until such time as the
29 officer demonstrates to the council that the incapacity no longer
30 prevents the officer from performing the essential duties of a law
31 enforcement officer. The council shall adopt and promulgate rules and

1 regulations to include a procedure for hearing appeals of any person who
2 feels that the revocation or suspension of his or her certificate or
3 diploma was in error;

4 (7) Set the tuition and fees for the training center and all
5 officers of other training academies not employed by that training
6 academy's agency. The tuition and fees set for the training center
7 pursuant to this subdivision shall be adjusted annually pursuant to the
8 training center budget approved by the Legislature. All other tuition and
9 fees shall be set in order to cover the costs of administering sections
10 81-1401 to 81-1414.10 and section 6 of this act. All tuition and fees
11 shall be remitted to the State Treasurer for credit to the Nebraska Law
12 Enforcement Training Center Cash Fund;

13 (8) Annually certify any training academies providing a basic course
14 of law enforcement training which complies with the qualifications and
15 standards promulgated by the council and offering training that meets or
16 exceeds training that is offered by the training center. The council
17 shall set the maximum and minimum applicant enrollment figures for
18 training academies training non-agency officers;

19 (9) Extend the programs of the training center throughout the state
20 on a regional basis;

21 (10) Establish the qualifications, standards, and continuing
22 education requirements and provide the training required by section
23 81-1439; and

24 (11) Do all things necessary to carry out the purpose of the
25 training center, except that functional authority for budget and
26 personnel matters shall remain with the commission.

27 Any administrative fine imposed under this section shall constitute
28 a debt to the State of Nebraska which may be collected by lien
29 foreclosure or sued for and recovered in any proper form of action by the
30 office of the Attorney General in the name of the State of Nebraska in
31 the district court of the county where the final agency action was taken.

1 All fines imposed by the council shall be remitted to the State Treasurer
2 for distribution in accordance with Article VII, section 5, of the
3 Constitution of Nebraska.

4 Sec. 5. Section 81-1414, Reissue Revised Statutes of Nebraska, is
5 amended to read:

6 81-1414 (1) On and after January 1, 1972, law enforcement officers
7 already serving under permanent appointment shall not be required to meet
8 any requirement of subsection (2) of this section as a condition of
9 tenure or continued employment.

10 (2) On and after January 1, 1972, no person shall receive
11 appointment as a law enforcement officer unless he or she has been
12 awarded a certificate or diploma by the commission attesting to
13 satisfactory completion of the minimum curriculum of the training center
14 as established by the council, ~~or~~ has been awarded a certificate or
15 diploma attesting to satisfactory completion of a training program which
16 the council finds equivalent thereto, or has received reciprocity
17 certification. Any person who has not been awarded such a certificate or
18 diploma or received reciprocity certification may receive an appointment
19 conditioned on satisfactory completion of such training if he or she
20 immediately applies for admission to the training center or any training
21 academy and enrolls in the next available basic training class. If such
22 training is not completed within one year after the appointment, the
23 person's employment shall not be renewed by a political subdivision
24 appointment or otherwise and such person shall no longer be recognized as
25 a law enforcement officer, except that in cases of extreme hardship, upon
26 application by the officer, the council may grant a waiver to allow the
27 officer to complete the basic training program as soon as is practicable
28 after the one-year time allowance. Any individual who is not certified in
29 accordance with this section and has worked as a law enforcement officer
30 for multiple law enforcement agencies or political subdivisions shall
31 have his or her time of employment aggregated in order to determine if he

1 or she has worked for more than one year. If that law enforcement
2 officer's aggregate time of employment exceeds one year, that officer
3 shall not be recognized as a law enforcement officer for any political
4 subdivision until he or she has satisfactorily completed such
5 certification training. For purposes of this section, the council shall
6 deem the successful completion of the federal Bureau of Indian Affairs
7 basic police training program as administered by the Federal Law
8 Enforcement Training Center to constitute such equivalent training, and
9 officers certified by virtue of such equivalent training may exercise
10 full law enforcement authority exclusively on tribal lands.

11 (3) Law enforcement officers who are promoted in rank shall
12 satisfactorily complete such council-approved training within one year of
13 such promotion.

14 (4) At the direction of the council, the director shall issue a
15 certificate or diploma attesting to a compliance with the requirements of
16 subsection (2) or (3) of this section to any applicant who presents
17 evidence of satisfactory completion of a council-approved training
18 program.

19 Sec. 6. (1) An applicant seeking reciprocity certification shall
20 submit to the training center for review and consideration by the
21 director such appropriate evidence, documentation, transcripts,
22 certificates, and curricula as the director deems necessary.

23 (2) A person who has received formalized training by another state
24 law enforcement agency or a federal law enforcement agency and has been
25 certified or licensed as a law enforcement officer by a recognized
26 certifying agency may receive reciprocity certification in lieu of
27 attending the state basic certification course so long as the person
28 meets the other requirements of this section and sections 81-1401 to
29 81-1414.10 and any other requirements under Nebraska law.

30 (3) The director shall review and consider applications for
31 reciprocity certification to determine whether an applicant's training

1 and education meet the standards for reciprocity certification. For
2 purposes of reciprocity certification, an applicant who is a military
3 police officer shall be deemed to meet the minimum standards for training
4 and education.

5 (4) Applicants approved by the director shall complete a reciprocity
6 officer training program established by the training center.

7 (5) The council may adopt and promulgate rules and regulations for
8 reciprocity certification, including such reciprocity certification for
9 supervisory or management positions.

10 Sec. 7. Section 81-1439, Reissue Revised Statutes of Nebraska, is
11 amended to read:

12 81-1439 (1) The Nebraska Commission on Law Enforcement and Criminal
13 Justice shall establish minimum physical, mental, educational, and moral
14 qualifications for all members of any law enforcement reserve force. The
15 commission shall also establish training and continuing education
16 standards and be responsible for providing such training for all members.
17 The commission shall delegate its responsibilities pursuant to this
18 section to the Nebraska Police Standards Advisory Council.

19 (2) Individuals appointed to a law enforcement reserve force shall
20 receive training through or under the supervision of the Nebraska Law
21 Enforcement Training Center and shall achieve the minimum training
22 standards within one year after the date of appointment. Such training
23 may be provided by the training center through regional workshops,
24 training sessions, or similar means of instruction anywhere in the state.

25 (3) Members of the law enforcement reserve force shall be subject to
26 the same continuing education requirements as all other law enforcement
27 officers pursuant to sections 81-1401 to 81-1414.10 and section 6 of this
28 act.

29 (4) The governing body establishing a law enforcement reserve force
30 shall adopt and publish a reserve force manual setting forth the minimum
31 qualifications, training standards, standard operating procedures, and

1 continuing education requirements for such force and such higher
2 qualifications, standards, and operating procedures as may actually be
3 used.

4 Sec. 8. Original sections 23-1701.01, 29-2264, 81-1401, 81-1403,
5 81-1414, and 81-1439, Reissue Revised Statutes of Nebraska, are repealed.