

**ONE HUNDRED FIFTH LEGISLATURE - SECOND SESSION - 2018**  
**COMMITTEE STATEMENT**  
**LB791**

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**Hearing Date:** Monday February 12, 2018  
**Committee On:** Business and Labor  
**Introducer:** Ebke  
**One Liner:** Change Nebraska State Patrol employees' bargaining rights

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**Roll Call Vote - Final Committee Action:**  
Advanced to General File with amendment(s)

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**Vote Results:**

<b>Aye:</b>	5	Senators Albrecht, Chambers, Halloran, Howard, Lowe
<b>Nay:</b>		
<b>Absent:</b>	1	Senator Crawford
<b>Present Not Voting:</b>	1	Senator Hansen

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**Verbal Testimony:**

**Proponents:**

Laura Ebke  
Darrell Fisher  
John A. Bolduc  
Jason Jackson

**Representing:**

Senator, Introducer  
Commissioner, Nebraska Crime Commission  
Colonel, Nebraska State Patrol  
Governor's Office

**Opponents:**

Gary Young  
  
J. J. Pedersen  
  
Brienne Splittgerber  
Tina Cleveland  
Kurt Frazey  
  
Jim McGuire

**Representing:**

Attorney, State Troopers Association of Nebraska (STAN); State Law Enforcement Bargaining Council (SLEBC)  
Sergeant, Nebraska State Patrol, STAN; speaking on his behalf not the agency  
Trooper, Nebraska State Patrol, STAN  
Drug Investigator, Nebraska State Patrol, STAN  
Legislative Liaison Representative for STAN; Drug Investigator, Nebraska State Patrol  
Nebraska Fraternal Order of Police

**Neutral:**

**Representing:**

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**Summary of purpose and/or changes:**

Section 1  
Section 1 incorporates section 4 of LB 791 in the State Employees Collective Bargaining Act.

Section 2  
Section 2 removes sergeants of the Nebraska State Patrol from the law enforcement collective bargaining unit. Those below the rank of sergeant are still in the law enforcement bargaining unit.

LB 791 places sergeants of the Nebraska State Patrol in the supervisory bargaining unit.

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### Section 3

Section 3 provides that disciplinary and investigatory procedures of the Nebraska State Patrol shall not be bargainable.

### Section 4

Any labor contracts in effect through June 30, 2019 are not abrogated by LB 791.

### Section 5

Original sections 81-1369, 81-1373, and 81-1377 are repealed.

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### **Explanation of amendments:**

AM 2708 replaces LB 791.

### Section 1

Section 1 requires the chief of police, sheriff, Superintendent of Law Enforcement and Public Safety, or the head administrator of a law enforcement agency or agency employing a law enforcement officer to submit a personnel change in status form to the director of the Nebraska Law Enforcement Training Center within seven calendar days after the agency hires a law enforcement officer or a law enforcement officer leaves the agency.

Section 1 also requires each law enforcement agency or agency employing a law enforcement officer to maintain a record regarding the reason or reasons and circumstances for the separation. The law enforcement agency or agency employing a law enforcement officer shall keep this record for ten year following the officer's separation from the agency.

Each law enforcement agency or agency employing a law enforcement officer shall keep a record of misconduct, disciplinary actions, and complaints against the law enforcement officer, including records of incompetence, neglect of duty, incapacity, dishonesty, a felony violation of state or federal law, a misdemeanor violation of state or federal law if the violation has a rational connection with the officer's fitness or capacity to serve as a law enforcement officer, and a violation of the officer's oath of office, code of ethics, or statutory duties. This record shall be maintained for the duration they are there and the ten years following his or her separation from the agency.

If an officer is fired or allowed to resign in lieu of termination for conduct that could constitute incompetence, neglect of duty, incapacity, dishonesty, a felony violation of state or federal law, a misdemeanor violation of state or federal law, if the violation has a rational connection with the officer's fitness or capacity to serve as a law enforcement officer, or a violation of the officer's oath of office, code of ethics, or statutory duties, then the chief of police, sheriff, Superintendent of Law Enforcement and Public Safety, or the head administrator of the law enforcement agency or other agency shall make a report to the Nebraska Commission on Law Enforcement and Criminal Justice. Such report shall include, but not be limited to a summary of the allegations pertaining to the officer and identification of any witnesses relevant to the allegations. This report shall be filed with the commission within thirty (30) calendar days of the termination or resignation in lieu of termination.

It shall constitute neglect of duty if a person responsible for complying with Section 1 does not comply.

"Felony," "incapacity," "law enforcement agency," and "law enforcement officer" all have the same meaning as they do in Neb. Rev. Stat. Section 81-1401.

### Section 2

Section 2 requires a person who is certified under 81-1414 and who seeks to be employed as a law enforcement officer in this state to provide a signed waiver to the prospective employer upon a conditional offer of employment. This waiver must allow the prospective employer to contact the person's former employer(s) and obtain copies of any records created under section 1 (2) and (3). The prospective employer is responsible for providing this waiver form.

The waiver shall be on a form provided by the Nebraska Commission on Law Enforcement and Criminal Justice to all

agencies in this state that employ or administer oaths of office to law enforcement officers certified by the commission.

Upon the receipt of the waiver, a former employer shall provide the prospective employer any information required or allowed to be provided by law and copies of any records created under section 1 (2) and (3). Names and identifying information in any records created under subsections (2) and (3) of this section of any individual, witness, or law enforcement officer or officers other than the person who signed the waiver shall be confidential and not disclosed to employer.

A prospective employer cannot hire a law enforcement officer unless the prospective employer receives from each of the officer's former employers copies of the records created under Section 1 (2) and (3).

A prospective employer shall not hire a law enforcement officer if the former employer provided notice to the Nebraska Commission on Law Enforcement and Criminal Justice that the person's separation from the former employer occurred under circumstances that may justify the revocation of the person's certification under 81-1414 unless the commission has reviewed the notification and issued a determination that the person shall retain such certification.

"Former employer" means a law enforcement agency or other agency that currently employs or previously employed the person as a law enforcement officer.

"Incapacity," "law enforcement agency," and "law enforcement officer" have the same meaning as they do in Neb. Rev. Stat. Section 81-1401.

"Prospective employer" means the law enforcement agency or other agency that is considering hiring the person as a law enforcement officer.

### Section 3

Section 3 specifies that the disciplinary procedures or collective bargaining agreement of the Nebraska State Patrol cannot:

Limit the discretion of the Superintendent of Law Enforcement and Public Safety to disclose to the Legislature, the Nebraska Commission on Law Enforcement and Criminal Justice, or a complainant the status or outcome of an internal investigation or discipline;

Limit the consideration by the patrol, for purposes of progressive discipline, of disciplinary action in a prior case that occurred within the ten years preceding the date such progressive discipline is imposed;

Limit the time for which a disciplinary proceeding may be commenced to less than two years preceding the date the discipline is imposed;

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

Prevent, limit, or restrict access by the Nebraska Commission on Law Enforcement and Criminal Justice to internal investigation reports or materials.

### Section 4

Section 4 grants the executive director of the Nebraska Commission on Law Enforcement and Criminal Justice the power to subpoena witnesses and documents, files, internal investigation materials, administrative files, records, memoranda, reports, personnel records, disciplinary histories, or any materials the executive director determines to be relevant, relating to the law enforcement officer certification revocation, from any law enforcement agency in this state.

Section 5

Section 5 allows a state employee to make a report of sexual harassment to the Department of Administrative Services. The department shall investigate the report or ensure that an investigation is conducted by the agency which employs the reporting employee.

The confidentiality of those making the report or participating in the investigation shall be maintained by the department and the employing agency unless, (a) the disclosure is authorized in writing by such employee or other person, (b) the identity of the employee or other person making the report may be disclosed to the individual alleged to have committed the sexual harassment, and (c) when disclosure is necessary for conducting the investigation or imposing discipline.

The employing agency shall not retaliate against the reporting employee or any other person for (a) initiating or participating in the making of a report of sexual harassment or (b) testifying, assisting, or participating in an investigation, proceeding, or action concerning the sexual harassment.

Section 6

Section 6 provides that this bill shall not abrogate the labor contracts that are in effect through June 30, 2019.

Section 7

Original sections of 81-1377 and 81-1425 are repealed.

Section 8

Section 8 provides an emergency clause.

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Joni Albrecht, Chairperson