

LEGISLATIVE BILL 25

Approved by the Governor April 10, 1973

Introduced by C. Carsten, 2

AN ACT relating to liquors; to provide an alternative penalty; to provide duties; to provide employee status for certain offenders working as a condition of probation; to amend section 53-180.05, Revised Statutes Supplement, 1972, section 48-115, Revised Statutes Supplement, 1972, as amended by section 2, Legislative Bill 239, Eighty-third Legislature, First Session, 1973, and section 48-126.01, Revised Statutes Supplement, 1972, as amended by section 3, Legislative Bill 239, Eighty-third Legislature, First Session, 1973; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 48-115, Revised Statutes Supplement, 1972, as amended by section 2, Legislative Bill 239, Eighty-third Legislature, First Session, 1973, be amended to read as follows:

48-115. The terms employee and workman are used interchangeably and have the same meaning throughout this act. The said terms include the plural and all ages and both sexes, and shall be construed to mean:

(1) Every person in the service of the state or of any governmental agency created by it including the Nebraska National Guard and members of the military forces of the State of Nebraska, under any appointment or contract of hire, expressed or implied, oral or written; Provided, that (a) for the purposes of this act, volunteer firemen of any fire department of any rural or suburban fire protection district, city or village, which fire department is regularly organized under the laws of the State of Nebraska, shall be deemed employees of such rural or suburban fire protection district, city or village while in the performance of their duties as members of such department, and shall be considered as having entered and as acting in the regular course of their employment when traveling from any place from which they have been called to active duty to a fire station or other place where firefighting equipment that their company or unit is to use is located or to any emergency that the volunteer firemen may be officially called to participate in; (b) members of such volunteer fire department, before they are entitled to benefits under

this act, shall be recommended by the chief of the fire department for membership therein to the board of directors, the mayor and city commission, the mayor and council or the chairman and board of trustees, as the case may be, and upon confirmation, shall be deemed employees of the rural or suburban fire protection district, city or village; (c) members of such fire department after confirmation to membership may be removed by a majority vote of such board of directors, commission, council or board, and thereafter shall not be considered employees of such rural or suburban fire protection district, city or village; (d) firemen of any fire department of any rural or suburban fire protection district, city or village shall be considered as acting in the performance and within the scope of their duties in fighting fire or saving property or life outside of the corporate limits of their respective districts, cities or villages, but only if directed to do so by the chief of the fire department or some person authorized to act for such chief; (e) any members of the state Civil Defense Agency, any local organization for civil defense or civil defense mobile support unit, which state Civil Defense Agency, local organization for civil defense or civil defense mobile support unit is regularly organized under the laws of the State of Nebraska, shall be deemed employees of such state Civil Defense Agency, local organization for civil defense or civil defense mobile support unit while in the performance of their duties as members of such state Civil Defense Agency, local organization or mobile support unit; (f) any person fulfilling conditions of probation pursuant to any order of ~~a juvenile or municipal~~ any court of this state who shall be working for a governmental body pursuant to any condition of probation shall be deemed an employee of such governmental body for the purposes of this act; (g) volunteer ambulance drivers and attendants who provide ambulance service for any county, city, or village or any combination of such county, city, or village under the authority of section 23-378 shall be deemed employees of the county, city, or village or combination thereof while in the performance of their duties as such ambulance drivers or attendants and shall be considered as having entered into and as acting in the regular course of their employment when traveling from any place from which they have been called to active duty to a hospital or other place where the ambulance they are to use is located or to any emergency in which the volunteer drivers or attendants may be officially called to participate, but such volunteer ambulance drivers or attendants shall be considered as acting in the performance and within the scope of their duties outside of the corporate limits of their respective county, city, or village only if officially directed to do so; and (h) before such

volunteer ambulance drivers or attendants shall be entitled to benefits under this act, they shall be confirmed to perform such duties by the county board, or the governing body of the city or village or combination thereof, as the case may be, and upon such confirmation shall be deemed employees of the county, city, or village or combination thereof. Such volunteer ambulance drivers or attendants may be removed by majority vote of such county board or governing body of the city or village; and

(2) Every person in the service of an employer who is engaged in any trade, occupation, business, or profession as described in section 48-106, under any contract of hire, expressed or implied, oral or written, including aliens and also including minors, who for the purpose of making election of remedies under this act shall have the same power of contracting and electing as adult employees.

Every executive officer of a corporation elected or appointed under the provisions or authority of the charter, articles of incorporation or by-laws of such corporation shall be an employee of such corporation under the provisions of this act.

The said terms shall not be construed to include (a) any person whose employment is casual, and which is not in the usual course of the trade, business, profession or occupation of his employer; the term casual shall be construed to mean occasional, coming at certain times without regularity, in distinction from stated or regular; or (b) any person to whom articles and materials are given to be made up, cleaned, washed, finished, repaired or adapted for sale in the worker's own home or on other premises not under the control or management of the employer, unless the employee is required to perform the work at a place designated by the employer.

If an employee subject to this act suffers an injury on account of which he or, in the event of his death, his dependents would otherwise have been entitled to the benefits provided by this act, the employee or, in the event of his death, his dependents shall be entitled to the benefits provided under this act if the injury or injury resulting in death occurred within this state, or if at the time of such injury (a) the employment was principally localized within this state, (b) the employer was performing work within this state, or (c) the contract of hire was made within this state.

Sec. 2. That section 48-126.01, Revised Statutes Supplement, 1972, as amended by section 3,

Legislative Bill 239, Eighty-third Legislature, First Session, 1973, be amended to read as follows:

48-126.01. In determining the compensation to be paid any member of the military forces of this state, or any member of a volunteer fire department in any rural or suburban fire protection district, city or village, or any member of the state Civil Defense Agency, any local organization for civil defense or civil defense mobile support unit, or member of a volunteer ambulance unit, which military forces, fire department, state Civil Defense Agency, local organization for civil defense or civil defense mobile support unit, or volunteer ambulance unit is regularly organized under the laws of the State of Nebraska, or any person fulfilling conditions of probation pursuant to any order of ~~a--juvenile---~~ ~~or municipal~~ any court of this state who shall be working for a governmental body pursuant to any condition of probation, for injuries resulting in disability or death received in the performance of his duties as a member of such military forces, department, agency, organization or unit, or pursuant to an order of ~~a--juvenile-or--municipal~~ any court, the wages of such a member or person shall be taken to be those received by him from his regular employer, and he shall receive such proportion thereof as he is entitled to under the provisions of section 48-121; Provided, if such member or person is not regularly employed by some other person, for the purpose of such determination, it shall be deemed and assumed that he is receiving income from his business or from other employment equivalent to wages in an amount one and one half times the maximum compensation rate for total disability. If the wages received for the performance of duties as a member of such military forces, department, agency, organization or unit exceed the wages received from a regular employer, such member shall be entitled to a rate of compensation based upon wages received as a member of such military forces, department, agency, organization or unit.

Sec. 3. That section 53-180.05, Revised Statutes Supplement, 1972, be amended to read as follows:

53-180.05. (1) Any person, except a person licensed pursuant to Chapter 53 or an employee of such licensee, violating any of the provisions of section 53-180 shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not less than two hundred fifty dollars nor more than five hundred dollars or imprisoned in the county jail for fifteen days or be both so fined and imprisoned. Any person violating any of the provisions of sections 53-180.01 to 53-180.04 not involving the use of false or altered identification

shall be guilty of a misdemeanor, and shall, upon conviction thereof, be fined not less than one hundred dollars nor more than two hundred fifty dollars, or imprisoned in the county jail or detention home not to exceed sixty days, or both so fined and imprisoned and any person violating any of the provisions of sections 53-180.01 to 53-180.04 involving the use of false or altered identification shall be guilty of a misdemeanor, and shall, upon conviction thereof, be punished by a fine of not less than one hundred dollars and not more than two hundred fifty dollars and by imprisonment for not less than three days nor more than five days; and any person violating subsection (2) of section 53-186.01 shall be guilty of a misdemeanor, and shall, upon conviction thereof, be fined not less than one hundred dollars nor more than two hundred fifty dollars, or imprisoned in the county jail for a period not to exceed sixty days, or both so fined and imprisoned. Any person violating any of the provisions of section 53-180.02 shall be guilty of a misdemeanor, and in lieu of the above penalties, the court may sentence such person to work on public streets, parks, or other public property for a period not exceeding ten working days. Such work shall be under the supervision of the county sheriff. Upon the written certification by the county sheriff of the performance of such work, the sentence shall be deemed to be satisfied.

(2) Any licensee or employee thereof who violates any of the provisions of section 53-180 shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than two hundred fifty dollars nor more than five hundred dollars, or by imprisonment in the county jail for fifteen days, or by both such fine and imprisonment. Prosecution pursuant to this subsection shall be limited to the person who is alleged to have been involved in the actual transaction with a minor, and there shall be no prosecution of a licensee as the result of actions by an employee without the knowledge of the licensee.

Sec. 4. That original section 53-180.05, Revised Statutes Supplement, 1972, section 48-115, Revised Statutes Supplement, 1972, as amended by section 2, Legislative Bill 239, Eighty-third Legislature, First Session, 1973, and section 48-126.01, Revised Statutes Supplement, 1972, as amended by section 3, Legislative Bill 239, Eighty-third Legislature, First Session, 1973, are repealed.