

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SEVENTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 1136**

Introduced by Hunt, 8.

Read first time January 19, 2022

Committee:

- 1 A BILL FOR AN ACT relating to health care; to amend section 71-448,
- 2 Reissue Revised Statutes of Nebraska; to adopt the Senior Care LGBTQ
- 3 Discrimination Prevention Act; to provide for enforcement under the
- 4 Health Care Facility Licensure Act; and to repeal the original
- 5 section.
- 6 Be it enacted by the people of the State of Nebraska,

1           Section 1. Sections 1 to 6 of this act shall be known and may be  
2 cited as the Senior Care LGBTQ Discrimination Prevention Act.

3           Sec. 2. For purposes of the Senior Care LGBTQ Discrimination  
4 Prevention Act:

5           (1) Discrimination includes:

6           (a) Denying admission to a facility, transferring or refusing to  
7 transfer a resident within a facility or to another facility, or  
8 discharging or evicting a resident from a facility;

9           (b) Denying a request by residents to share a room in a facility;

10          (c) If rooms are assigned by gender in a facility, assigning,  
11 reassigning, or refusing to assign a room to a transgender resident other  
12 than in accordance with the transgender resident's gender identity,  
13 unless at the transgender resident's request;

14          (d) Prohibiting a resident in a facility from using, or harassing a  
15 resident who seeks to use, or does use, a restroom available to other  
16 individuals of the same gender identity, regardless of whether the  
17 resident is making a gender transition or appears to be gender-  
18 nonconforming;

19          (e) Willfully and repeatedly failing to use a resident's preferred  
20 name or pronouns after being clearly informed of the preferred name or  
21 pronouns;

22          (f) Denying a resident the right to wear or be dressed in clothing,  
23 accessories, or cosmetics that are allowed for any other resident;

24          (g) Restricting a resident's right to associate with other residents  
25 or visitors, including the right to consensual sexual relations, unless  
26 the restriction uniformly applies to all residents in a nondiscriminatory  
27 manner; and

28          (h) Denying or restricting medical or nonmedical care that is  
29 appropriate to a resident's organs and bodily needs; or

30          (i) Providing medical or nonmedical care to a resident in a manner  
31 that, to a similarly situated reasonable individual, would unduly demean

1 such individual's dignity or cause avoidable discomfort;

2 (2) Facility means any of the following as defined in the Health  
3 Care Facility Licensure Act: An assisted-living facility, an intermediate  
4 care facility, a long-term care hospital, a PACE center, or a skilled  
5 nursing facility;

6 (3) Gender expression means the representation of gender as  
7 expressed by an individual's name, pronouns, clothing, hairstyle,  
8 behavior, voice, or similar characteristics;

9 (4) Gender identity means the gender-related identity, appearance,  
10 expression, or behavior of a person, regardless of the person's assigned  
11 sex at birth, which may be demonstrated by:

12 (a) Consistent and uniform assertion of the person's gender  
13 identity; or

14 (b) Any other evidence that the gender identity is sincerely held as  
15 part of the person's core identity;

16 (5) Gender-nonconforming means a person whose gender expression does  
17 not conform to stereotypical expectations of how a man or woman should  
18 appear or act;

19 (6) Harassment includes requiring a resident of a facility to show  
20 identity documents to gain entrance to a restroom available to other  
21 individuals of the same gender identity;

22 (7) Sexual orientation means actual or perceived homosexuality,  
23 heterosexuality, or bisexuality; and

24 (8) Transgender means an individual whose gender identity differs  
25 from the individual's assigned or presumed sex at birth.

26 Sec. 3. A facility or the staff of a facility shall not  
27 discriminate against an individual or a resident of such facility based  
28 on the individual's or resident's sexual orientation, gender identity,  
29 gender expression, or human immunodeficiency virus status.

30 Sec. 4. (1) Each facility shall post a notice in one or more  
31 prominent locations within the facility that is in substantially the form

1 provided in this section.

2 (2) The notice shall:

3 (a) Explain that state law prohibits the facility from  
4 discriminating or allowing discrimination, including bullying, abuse, or  
5 harassment on the basis of:

6 (i) Sexual orientation, gender identity, gender expression, or human  
7 immunodeficiency virus status; or

8 (ii) An individual's association with another individual on account  
9 of that other individual's sexual orientation, gender identity, gender  
10 expression, or human immunodeficiency virus status;

11 (b) Contain information on how to file a complaint under section  
12 71-444; and

13 (c) Contain information regarding the prohibition on retaliation  
14 provided in section 71-445.

15 Sec. 5. A facility shall:

16 (1) Keep records for a resident at the time of admission that  
17 include the resident's gender identity and preferred name and pronouns;  
18 and

19 (2) Comply with all appropriate federal and state laws regarding the  
20 privacy of the resident.

21 Sec. 6. (1) A facility shall use doors, curtains, screens, or other  
22 visual barriers to provide privacy for residents, including transgender  
23 or gender-nonconforming residents, whenever the resident is partially or  
24 fully unclothed.

25 (2) Facility staff who are not directly involved with providing  
26 direct care to a resident, including a transgender or gender-  
27 nonconforming resident, shall not be present during a physical  
28 examination or the provision of personal care to a resident if the  
29 resident is partially or fully unclothed without the permission of the  
30 resident or the resident's legally authorized representative.

31 (3)(a) All residents of a facility, including transgender or gender-

1 nonconforming residents, shall be informed of and have the right to  
2 refuse to be examined, observed, or treated by facility staff if the  
3 primary purpose of the examination, observation, or treatment is  
4 educational or informational.

5 (b) A facility shall not diminish a resident's access to care, if  
6 the primary purpose of the care is for diagnosis or treatment, because  
7 the resident exercises the right provided in this subsection.

8 Sec. 7. Section 71-448, Reissue Revised Statutes of Nebraska, is  
9 amended to read:

10 71-448 The Division of Public Health of the Department of Health and  
11 Human Services may take disciplinary action against a license issued  
12 under the Health Care Facility Licensure Act on any of the following  
13 grounds:

14 (1) Violation of any of the provisions of the Assisted-Living  
15 Facility Act, the Health Care Facility Licensure Act, the Nebraska  
16 Nursing Home Act, or the rules and regulations adopted and promulgated  
17 under such acts;

18 (2) Committing or permitting, aiding, or abetting the commission of  
19 any unlawful act;

20 (3) Conduct or practices detrimental to the health or safety of a  
21 person residing in, served by, or employed at the health care facility or  
22 health care service;

23 (4) A report from an accreditation body or public agency  
24 sanctioning, modifying, terminating, or withdrawing the accreditation or  
25 certification of the health care facility or health care service;

26 (5) Failure to allow an agent or employee of the Department of  
27 Health and Human Services access to the health care facility or health  
28 care service for the purposes of inspection, investigation, or other  
29 information collection activities necessary to carry out the duties of  
30 the Department of Health and Human Services;

31 (6) Discrimination or retaliation against a person residing in,

1 served by, or employed at the health care facility or health care service  
2 who has submitted a complaint or information to the Department of Health  
3 and Human Services;

4 (7) Discrimination or retaliation against a person residing in,  
5 served by, or employed at the health care facility or health care service  
6 who has presented a grievance or information to the office of the state  
7 long-term care ombudsman;

8 (8) Failure to allow a state long-term care ombudsman or an  
9 ombudsman advocate access to the health care facility or health care  
10 service for the purposes of investigation necessary to carry out the  
11 duties of the office of the state long-term care ombudsman as specified  
12 in the rules and regulations adopted and promulgated by the Department of  
13 Health and Human Services;

14 (9) Violation of the Emergency Box Drug Act or the Pharmacy Practice  
15 Act;

16 (10) Failure to file a report required by section 38-1,127 or  
17 71-552;

18 (11) Violation of the Medication Aide Act;

19 (12) Failure to file a report of suspected abuse or neglect as  
20 required by sections 28-372 and 28-711;

21 (13) Violation of the Automated Medication Systems Act;~~or~~

22 (14) Violation of the Dialysis Patient Care Technician Registration  
23 Act; or -

24 (15) Violation of the Senior Care LGBTQ Discrimination Prevention  
25 Act.

26 Sec. 8. Original section 71-448, Reissue Revised Statutes of  
27 Nebraska, is repealed.