

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 173

Introduced by Morfeld, 46; Crawford, 45; Hansen, 26; Howard, 9; Kolowski, 31; McCollister, 20; Pansing Brooks, 28; Vargas, 7; Walz, 15; Wayne, 13; Wishart, 27.

Read first time January 10, 2017

Committee:

1 A BILL FOR AN ACT relating to discrimination; to amend sections 18-1724,
2 23-2525, 23-2531, 23-2541, 29-401, 48-215, 48-628.01, 48-1101,
3 48-1104, 48-1105, 48-1106, 48-1107, 48-1113, 48-1115, 48-1119,
4 48-1122, 48-1124, 49-801, 81-1355, and 81-1356, Reissue Revised
5 Statutes of Nebraska, and sections 48-1111 and 48-1117, Revised
6 Statutes Cumulative Supplement, 2016; to prohibit discrimination
7 based upon sexual orientation and gender identity as prescribed; to
8 change the Nebraska Fair Employment Practice Act; to define terms;
9 to harmonize provisions; and to repeal the original sections.
10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 18-1724, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 18-1724 Notwithstanding any other law or laws heretofore enacted,
4 all cities and villages in this state shall have the power by ordinance
5 to define, regulate, suppress, and prevent discrimination on the basis of
6 race, color, creed, religion, ancestry, sex, marital status, national
7 origin, familial status as defined in section 20-311, handicap as defined
8 in section 20-313, age, ~~or~~ disability, sexual orientation, or gender
9 identity in employment, public accommodation, and housing and may provide
10 for the enforcement of such ordinances by providing appropriate penalties
11 for the violation thereof. It shall not be an unlawful employment
12 practice to refuse employment based on a policy of not employing both
13 husband and wife if such policy is equally applied to both sexes.

14 Sec. 2. Section 23-2525, Reissue Revised Statutes of Nebraska, is
15 amended to read:

16 23-2525 The county personnel officer shall, with the assistance of
17 two advisory groups, one of classified employees and one of department
18 heads, prepare and submit to the personnel policy board proposed
19 personnel rules and regulations for the classified service. He or she
20 shall give reasonable notice thereof to the heads of all agencies,
21 departments, county employee associations, and institutions affected
22 thereby, and they shall be given an opportunity, upon request, to appear
23 before the board and present their views thereon. The personnel policy
24 board shall submit the rules and regulations for adoption or amendment
25 and adoption by resolution of the board of county commissioners.
26 Amendments thereto shall be made in the same manner. The rules and
27 regulations shall provide:

28 (1) For a single integrated classification plan covering all
29 positions in the county service except those expressly exempt from the
30 County Civil Service Act, which shall group all positions into defined
31 classes containing a descriptive class title and a code identifying each

1 class, and which shall be based on similarity of duties performed and
2 responsibilities assumed, so that the same qualifications may reasonably
3 be required and the same schedule of pay may be equitably applied to all
4 positions in the same class. After the classification plan has been
5 approved by the personnel policy board, the county personnel officer
6 shall be responsible for the administration and maintenance of the plan
7 and for the allocation of each classified position. Any employee affected
8 by the allocation of a position to a class shall, upon request, be given
9 a reasonable opportunity to be heard thereon by the personnel policy
10 board who shall issue an advisory opinion to the personnel officer;

11 (2) For a compensation plan for all employees in the classified
12 service, comprising salary schedules, hours of work, premium payments,
13 special allowances, and fringe benefits, considering the amount of money
14 available, the prevailing rates of pay in government and private
15 employment, the cost of living, the level of each class of position in
16 the classification plan, and other relevant factors. Initial,
17 intervening, and maximum rates of pay for each class shall be established
18 to provide for steps in salary advancement without change of duty in
19 recognition of demonstrated quality and length of service. The
20 compensation plan and amendments thereto shall be adopted in the manner
21 prescribed for rules and regulations and shall in no way limit the
22 authority of the board of county commissioners relative to appropriations
23 for salary and wage expenditures;

24 (3) For open competitive examinations to test the relative fitness
25 of applicants for the respective positions. Competitive examination shall
26 not be required for transferred employees transferring from positions in
27 the state or a political subdivision to positions in the county pursuant
28 to a merger of services or transferred employees transferring from
29 positions in the state or a political subdivision to positions in the
30 county due to the assumption of functions of the state or a political
31 subdivision by the county. The rules and regulations shall provide for

1 the public announcement of the holding of examinations and shall
2 authorize the personnel officer to prescribe examination procedures and
3 to place the names of successful candidates on eligible lists in
4 accordance with their respective ratings. Examinations may be assembled
5 or unassembled and may include various job-related examining techniques,
6 such as rating training and experience, written tests, oral interviews,
7 recognition of professional licensing, performance tests, investigations,
8 and any other measures of ability to perform the duties of the position.
9 Examinations shall be scored objectively and employment registers shall
10 be established in the order of final score. Certification of eligibility
11 for appointment to vacancies shall be in accordance with a formula which
12 limits selection by the hiring department from among the highest ranking
13 available and eligible candidates, but which also permits selective
14 certification under appropriate conditions as prescribed in the rules and
15 regulations;

16 (4) For promotions which shall give appropriate consideration to
17 examinations and to record of performance, seniority, and conduct.
18 Vacancies shall be filled by promotion whenever practicable and in the
19 best interest of the service, and preference may be given to employees
20 within the department in which the vacancy occurs;

21 (5) For the rejection of candidates who fail to comply with
22 reasonable requirements of the personnel officer in regard to such
23 factors as physical conditions, training, and experience or who have been
24 guilty of infamous or disgraceful conduct, who are addicted to alcohol or
25 narcotics, or who have attempted any deception or fraud in connection
26 with an examination;

27 (6) ~~For prohibiting~~ ~~Prohibiting~~ disqualification of any person from
28 taking an examination, from promotion or from holding a position because
29 of race, sex, unless it constitutes a bona fide occupational
30 qualification, or national origin, physical disabilities, age, political
31 or religious opinions or affiliations, sexual orientation, gender

1 identity, or other factors which have no bearing upon the individual's
2 fitness to hold the position;

3 (7) For a period of probation not to exceed one year before
4 appointment or promotion may be made complete, and during which period a
5 probationer may be separated from his or her position without the right
6 of appeal or hearing except as provided in section 23-2531. After a
7 probationer has been separated, he or she may again be placed on the
8 eligible list at the discretion of the personnel officer. The rules shall
9 provide that a probationer shall be dropped from the payroll at the
10 expiration of his or her probationary period if, within ten days prior
11 thereto, the appointing authority has notified the personnel officer in
12 writing that the services of the employee have been unsatisfactory;

13 (8) When an employee has been promoted but fails to satisfactorily
14 perform the duties of the new position during the probationary period, he
15 or she shall be returned to a position comparable to that held
16 immediately prior to promotion at the current salary of such position;

17 (9) For temporary or seasonal appointments of limited terms of not
18 to exceed one year;

19 (10) For part-time appointment where the employee accrues benefits
20 of full-time employment on a basis proportional to the time worked;

21 (11) For emergency employment for not more than thirty days with or
22 without examination, with the consent of the county personnel officer and
23 department head;

24 (12) For provisional employment without competitive examination when
25 there is no appropriate eligible list available. No such provisional
26 employment shall continue longer than six months, nor shall successive
27 provisional appointments be allowed;

28 (13) For transfer from a position in one department to a similar
29 position in another department involving similar qualifications, duties,
30 responsibilities, and salary ranges;

31 (14) For the transfer of employees of the state or a political

1 subdivision to the county pursuant to a merger of services or due to the
2 assumption of functions of the state or a political subdivision by the
3 county;

4 (15) For layoff by reason of lack of funds or work or abolition of
5 the position, or material change in duties or organization, for the
6 layoff of nontenured employees first, and for reemployment of permanent
7 employees so laid off, giving consideration in both layoff and
8 reemployment to performance record and seniority in service;

9 (16) For establishment of a plan for resolving employee grievances
10 and complaints;

11 (17) For hours of work, holidays, and attendance regulations in the
12 various classes of positions in the classified service, and for annual,
13 sick, and special leaves of absence, with or without pay, or at reduced
14 pay;

15 (18) For the development of employee morale, safety, and training
16 programs;

17 (19) For a procedure whereby an appointing authority may suspend,
18 reduce, demote, or dismiss an employee for misconduct, inefficiency,
19 incompetence, insubordination, malfeasance, or other unfitness to render
20 effective service and for the investigation and public hearing of appeals
21 of such suspended, reduced, demoted, or dismissed employee;

22 (20) For granting of leave without pay to a permanent employee to
23 accept a position in the unclassified service, and for his or her return
24 to a position comparable to that formerly held in the classified service
25 at the conclusion of such service;

26 (21) For regulation covering political activity of employees in the
27 classified service; and

28 (22) For other regulations not inconsistent with the County Civil
29 Service Act and which may be necessary for its effective implementation.

30 Sec. 3. Section 23-2531, Reissue Revised Statutes of Nebraska, is
31 amended to read:

1 23-2531 (1) Discrimination against any person in recruitment,
2 examination, appointment, training, promotion, retention, discipline, or
3 any other aspect of personnel administration because of political or
4 religious opinions or affiliations or because of race, national origin,
5 sexual orientation, gender identity, or other nonmerit factors shall be
6 prohibited. Discrimination on the basis of age or sex or physical
7 disability shall be prohibited unless specific age, sex, or physical
8 requirements constitute a bona fide occupational qualification necessary
9 to proper and efficient administration. The rules and regulations shall
10 provide for appeals in cases of alleged discrimination to the personnel
11 policy board whose determination shall be binding upon a finding of
12 discrimination.

13 (2) No person shall make any false statement, certificate, mark,
14 rating, or report with regard to any test, certification, or appointment
15 made under the County Civil Service Act or in any manner commit or
16 attempt to commit any fraud preventing the impartial execution of the act
17 and the rules and regulations promulgated pursuant to the act.

18 (3) No person shall, directly or indirectly, give, render, pay,
19 offer, solicit, or accept any money, service, or other valuable
20 consideration for or on account of any appointment, proposed appointment,
21 promotion, or proposed promotion to, or any advantage in, a position in
22 the classified service.

23 (4) No employee of the personnel office, examiner, or other person
24 shall defeat, deceive, or obstruct any person in his or her right to
25 examination, eligibility, certification, or appointment under the act, or
26 furnish to any person any special or secret information for the purpose
27 of affecting the rights or prospects of any persons with respect to
28 employment in the classified service.

29 Sec. 4. Section 23-2541, Reissue Revised Statutes of Nebraska, is
30 amended to read:

31 23-2541 The personnel policy board, if created, shall, with the

1 assistance of two advisory groups, one of classified employees and one of
2 department heads, adopt proposed personnel rules and regulations for the
3 classified service and provide reasonable notice of proposed rules and
4 regulations to the heads of all agencies, departments, county employee
5 associations, and institutions affected thereby. Any person affected by
6 such rules and regulations shall be given an opportunity, upon request,
7 to appear before the personnel policy board and present his or her views
8 on the rules and regulations. The personnel policy board shall submit
9 proposed rules and regulations or amendments for adoption by the county
10 board. The county board may consider and adopt only personnel rules and
11 regulations or amendments proposed by the personnel policy board and may
12 not repeal or revoke a rule or regulation except upon the recommendation
13 of the personnel policy board.

14 The rules and regulations or amendments may provide:

15 (1) For a single integrated classification plan covering all
16 positions in the county service except those expressly exempt from
17 sections 23-2534 to 23-2544, which shall (a) group all positions into
18 defined classes containing a descriptive class title and a code
19 identifying each class and (b) be based on similarity of duties performed
20 and responsibilities assumed, so that the same qualifications may
21 reasonably be required and the same schedule of pay may be equitably
22 applied to all positions in the same class. After the classification plan
23 has been approved by the personnel policy board, the county personnel
24 officer shall be responsible for the administration and maintenance of
25 the plan and for the allocation of each classified position. Any employee
26 affected by the allocation of a position to a class shall, upon request,
27 be given a reasonable opportunity to be heard on such allocation by the
28 personnel policy board which shall issue an advisory opinion to the
29 county personnel officer;

30 (2) For a compensation plan for all employees in the classified
31 service, comprising salary schedules, attendance regulations, premium

1 payments, special allowances, and fringe benefits, considering the amount
2 of money available, the prevailing rates of pay in government and private
3 employment, the cost of living, the level of each class of position in
4 the classification plan, and other relevant factors. The compensation
5 plan and amendments to such plan shall be adopted in the manner
6 prescribed for rules and regulations and shall in no way limit the
7 authority of the county board relative to appropriations for salary and
8 wage expenditures;

9 (3) For open competitive examinations to test the relative fitness
10 of applicants for the respective positions. The rules and regulations
11 shall provide for the public announcement of the holding of examinations
12 and shall authorize the county personnel officer to prescribe examination
13 procedures and to place the names of successful candidates on eligible
14 lists in accordance with their respective ratings. Examinations may be
15 assembled or unassembled and may include various job-related examining
16 techniques, such as rating training and experience, written tests, oral
17 interviews, recognition of professional licensing, performance tests,
18 investigations, and any other measures of ability to perform the duties
19 of the position. Examinations shall be scored objectively and employment
20 registers shall be established in the order of final score. Certification
21 of eligibility for appointment to vacancies shall be in accordance with a
22 formula which limits selection by the hiring department from among the
23 highest ranking available and eligible candidates, but which also permits
24 selective certification under appropriate conditions as prescribed in the
25 rules and regulations;

26 (4) For promotions which shall give appropriate consideration to
27 examinations and to record of performance, seniority, and conduct.
28 Vacancies shall be filled by promotion whenever practicable and in the
29 best interest of the service and preference may be given to employees
30 within the department in which the vacancy occurs;

31 (5) For the rejection of candidates who fail to comply with

1 reasonable requirements of the county personnel officer in regard to such
2 factors as physical conditions, training, and experience, who have been
3 guilty of infamous or disgraceful conduct, who are currently abusing
4 alcohol or narcotics, or who have attempted any deception or fraud in
5 connection with an examination;

6 (6) For prohibiting disqualification of any person from (a) taking
7 an examination, (b) promotion, or (c) holding a position, solely because
8 of race, sex, national origin, physical disabilities, age, political or
9 religious opinions or affiliations, sexual orientation, gender identity,
10 or other factors which have no bearing upon the individual's fitness to
11 hold the position;

12 (7) For a period of probation, not to exceed one year, before
13 appointment or promotion may be made complete and during which period a
14 probationer may be separated from his or her position without the right
15 of appeal or hearing. After a probationer has been separated, he or she
16 may again be placed on the eligible list at the discretion of the county
17 personnel officer. The rules and regulations shall provide that a
18 probationer shall be dropped from the payroll at the expiration of his or
19 her probationary period if, within ten days prior thereto, the appointing
20 authority has notified the county personnel officer in writing that the
21 services of the employee have been unsatisfactory;

22 (8) For temporary or seasonal appointments of limited terms of not
23 to exceed one year;

24 (9) For part-time appointment in which the employee accrues benefits
25 of full-time employment on a basis proportional to the time worked;

26 (10) For emergency employment for not more than thirty days with or
27 without examination with the consent of the county personnel officer and
28 department head;

29 (11) For provisional employment without competitive examination when
30 there is no appropriate eligible list available. Provisional employment
31 shall not continue longer than six months and successive provisional

1 appointments shall not be allowed;

2 (12) For transfer from a position in one department to a similar
3 position in another department involving similar qualifications, duties,
4 responsibilities, and salary ranges;

5 (13) For layoff by reason of lack of funds or work, abolition of the
6 position, or material change in duties or organization, for the layoff of
7 nontenured employees first, and for reemployment of permanent employees
8 so laid off, giving consideration in both layoff and reemployment to
9 performance record and seniority in service;

10 (14) For establishment of a plan for resolving employee grievances
11 and complaints;

12 (15) For holidays, for attendance regulations in the various classes
13 of positions in the classified service, and for annual, sick, and special
14 leaves of absence, with or without pay or at reduced pay;

15 (16) For the development of employee morale, safety, and training
16 programs;

17 (17) For a procedure whereby an appointing authority may suspend,
18 reduce, demote, or dismiss an employee for misconduct, inefficiency,
19 incompetence, insubordination, malfeasance, or other unfitness to render
20 effective service and for the investigation and public hearing of appeals
21 of such suspended, reduced, demoted, or dismissed employee;

22 (18) For granting of leave without pay to a permanent employee to
23 accept a position in the unclassified service and for his or her return
24 to a position comparable to that formerly held in the classified service
25 at the conclusion of such service;

26 (19) For regulation covering political activity of employees in the
27 classified service; and

28 (20) For other rules and regulations not inconsistent with sections
29 23-2534 to 23-2544 and the implementation of personnel policy in the
30 county.

31 Sec. 5. Section 29-401, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 29-401 Every sheriff, deputy sheriff, marshal, deputy marshal,
3 security guard, police officer, or peace officer as defined in
4 ~~subdivision (15)~~ of section 49-801 shall arrest and detain any person
5 found violating any law of this state or any legal ordinance of any city
6 or incorporated village until a legal warrant can be obtained, except
7 that (1) any such law enforcement officer taking a juvenile under the age
8 of eighteen years into his or her custody for any violation herein
9 defined shall proceed as set forth in sections 43-248, 43-248.01, 43-250,
10 43-251, 43-251.01, and 43-253 and (2) the court in which the juvenile is
11 to appear shall not accept a plea from the juvenile until finding that
12 the parents of the juvenile have been notified or that reasonable efforts
13 to notify such parents have been made as provided in section 43-250.

14 Sec. 6. Section 48-215, Reissue Revised Statutes of Nebraska, is
15 amended to read:

16 48-215 It shall be unlawful for any person, firm, or corporation,
17 engaged to any extent whatsoever in the State of Nebraska in the
18 production, manufacture, or distribution of military or naval material,
19 equipment, or supplies for the State of Nebraska or the government of the
20 United States, to refuse to employ any person in any capacity, if such
21 ~~said~~ person is a citizen and is qualified, on account of the race, color,
22 creed, religion, ~~or~~ national origin, sexual orientation, or gender
23 identity of such ~~said~~ person.

24 Sec. 7. Section 48-628.01, Reissue Revised Statutes of Nebraska, is
25 amended to read:

26 48-628.01 Good cause for voluntarily leaving employment shall
27 include, but not be limited to, the following reasons:

28 (1) An individual has made all reasonable efforts to preserve the
29 employment but voluntarily leaves his or her work for the necessary
30 purpose of escaping abuse at the place of employment or abuse as defined
31 in section 42-903 between household members;

1 (2) An individual left his or her employment voluntarily due to a
2 bona fide non-work-connected illness or injury that prevented him or her
3 from continuing the employment or from continuing the employment without
4 undue risk of harm to the individual;

5 (3) An individual left his or her employment to accompany his or her
6 spouse to the spouse's employment in a different city or new military
7 duty station;

8 (4) An individual left his or her employment because his or her
9 employer required the employee to relocate;

10 (5)(a) An individual is a construction worker and left his or her
11 employment voluntarily for the purpose of accepting previously secured
12 insured work in the construction industry if the commissioner finds that:

13 (i)(A) The quit occurred within thirty days immediately prior to the
14 established termination date of the job which the individual voluntarily
15 leaves, (B) the specific starting date of the new job is prior to the
16 established termination date of the job which the worker quits, (C) the
17 new job offered employment for a longer period of time than remained
18 available on the job which the construction worker voluntarily quit, and
19 (D) the worker had worked at least twenty days or more at the new job
20 after the established termination date of the previous job unless the new
21 job was terminated by a contract cancellation; or

22 (ii)(A) The construction worksite of the job which the worker quit
23 was more than fifty miles from his or her place of residence, (B) the new
24 construction job was fifty or more miles closer to his or her residence
25 than the job which he or she quit, and (C) the worker actually worked
26 twenty days or more at the new job unless the new job was terminated by a
27 contract cancellation.

28 (b) The provisions of this subdivision (5) shall not apply if the
29 individual is separated from the new job under conditions resulting in a
30 disqualification from benefits under subdivision (1) or (2) of section
31 48-628;

1 (6) An individual accepted a voluntary layoff to avoid bumping
2 another worker;

3 (7) An individual left his or her employment as a result of being
4 directed to perform an illegal act;

5 (8) An individual left his or her employment because of unlawful
6 discrimination or workplace harassment on the basis of race, sex, ~~or~~ age,
7 sexual orientation, or gender identity;

8 (9) An individual left his or her employment because of unsafe
9 working conditions; or

10 (10) Equity and good conscience demand a finding of good cause.

11 Sec. 8. Section 48-1101, Reissue Revised Statutes of Nebraska, is
12 amended to read:

13 48-1101 It is the policy of this state to foster the employment of
14 all employable persons in the state on the basis of merit regardless of
15 their race, color, religion, sex, disability, ~~or~~ national origin, sexual
16 orientation, or gender identity and to safeguard their right to obtain
17 and hold employment without discrimination because of their race, color,
18 religion, sex, disability, ~~or~~ national origin, sexual orientation, or
19 gender identity. Denying equal opportunity for employment because of
20 race, color, religion, sex, disability, ~~or~~ national origin, sexual
21 orientation, or gender identity is contrary to the principles of freedom
22 and is a burden on the objectives of the public policy of this state. The
23 policy of this state does not require any person to employ an applicant
24 for employment because of his or her race, color, religion, sex,
25 disability, ~~or~~ national origin, sexual orientation, or gender identity,
26 and the policy of this state does not require any employer, employment
27 agency, labor organization, or joint labor-management committee to grant
28 preferential treatment to any individual or to any group because of race,
29 color, religion, sex, disability, ~~or~~ national origin, sexual orientation,
30 or gender identity.

31 It is the public policy of this state that all people in Nebraska,

1 both with and without disabilities, shall have the right and opportunity
2 to enjoy the benefits of living, working, and recreating within this
3 state. It is the intent of the Legislature that state and local
4 governments, Nebraska businesses, Nebraska labor organizations, and
5 Nebraskans with disabilities understand their rights and responsibilities
6 under the law regarding employment discrimination and the prevention of
7 discrimination on the basis of disability.

8 Sec. 9. Section 48-1104, Reissue Revised Statutes of Nebraska, is
9 amended to read:

10 48-1104 It shall be an unlawful employment practice for an employer:

11 (1) To fail or refuse to hire, to discharge, or to harass any
12 individual, or otherwise to discriminate against any individual with
13 respect to compensation, terms, conditions, or privileges of employment,
14 because of such individual's race, color, religion, sex, disability,
15 marital status, ~~or~~ national origin, sexual orientation, or gender
16 identity; or

17 (2) To limit, advertise, solicit, segregate, or classify employees
18 in any way which would deprive or tend to deprive any individual of
19 employment opportunities or otherwise adversely affect such individual's
20 status as an employee, because of such individual's race, color,
21 religion, sex, disability, marital status, ~~or~~ national origin, sexual
22 orientation, or gender identity.

23 Sec. 10. Section 48-1105, Reissue Revised Statutes of Nebraska, is
24 amended to read:

25 48-1105 It shall be an unlawful employment practice for an
26 employment agency to fail or refuse to refer for employment, or otherwise
27 to discriminate against, any individual because of race, color, religion,
28 sex, disability, marital status, ~~or~~ national origin, sexual orientation,
29 or gender identity, or to classify or refer for employment any individual
30 on the basis of race, color, religion, sex, disability, marital status,
31 ~~or~~ national origin, sexual orientation, or gender identity.

1 Sec. 11. Section 48-1106, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 48-1106 It shall be an unlawful employment practice for a labor
4 organization:

5 (1) To exclude or to expel from its membership, or otherwise to
6 discriminate against, any individual because of race, color, religion,
7 sex, disability, marital status, ~~or~~ national origin, sexual orientation,
8 or gender identity;

9 (2) To limit, segregate, or classify its membership, or to classify
10 or fail or refuse to refer for employment any individual, in any way
11 which would deprive or tend to deprive any individual of employment
12 opportunities, or would limit such employment opportunities or otherwise
13 adversely affect such individual's status as an employee or as an
14 applicant for employment, because of such individual's race, color,
15 religion, sex, disability, marital status, ~~or~~ national origin, sexual
16 orientation, or gender identity; or

17 (3) To cause or attempt to cause an employer to discriminate against
18 an individual in violation of this section.

19 Sec. 12. Section 48-1107, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 48-1107 It shall be an unlawful employment practice for any
22 employer, labor organization, or joint labor-management committee
23 controlling apprenticeship or other training or retraining, including on-
24 the-job training programs to discriminate against any individual because
25 of race, color, religion, sex, disability, marital status, ~~or~~ national
26 origin, sexual orientation, or gender identity in admission to, or
27 employment in, any program established to provide apprenticeship or other
28 training.

29 Sec. 13. Section 48-1111, Revised Statutes Cumulative Supplement,
30 2016, is amended to read:

31 48-1111 (1) Except as otherwise provided in the Nebraska Fair

1 Employment Practice Act, it shall not be an unlawful employment practice
2 for an employer to apply different standards of compensation, or
3 different terms, conditions, or privileges of employment pursuant to a
4 bona fide seniority or merit system or a system which measures earnings
5 by quantity or quality of production or to employees who work in
6 different locations, if such differences are not the result of an
7 intention to discriminate because of race, color, religion, sex,
8 disability, marital status, ~~or~~ national origin, sexual orientation, or
9 gender identity, nor shall it be an unlawful employment practice for an
10 employer to give and to act upon the results of any professionally
11 developed ability test if such test, its administration, or action upon
12 the results is not designed, intended, or used to discriminate because of
13 race, color, religion, sex, disability, marital status, ~~or~~ national
14 origin, sexual orientation, or gender identity.

15 It shall not be an unlawful employment practice for a covered entity
16 to deny privileges of employment to an individual with a disability when
17 the qualification standards, tests, or selection criteria that screen out
18 or tend to screen out or otherwise deny a job or benefit to an individual
19 with a disability:

20 (a) Have been shown to be job-related and consistent with business
21 necessity and such performance cannot be accomplished by reasonable
22 accommodation, as required by the Nebraska Fair Employment Practice Act
23 and the federal Americans with Disabilities Act of 1990; or

24 (b) Include a requirement that an individual shall not pose a direct
25 threat, involving a significant risk to the health or safety of other
26 individuals in the workplace, that cannot be eliminated by reasonable
27 accommodation.

28 It shall not be an unlawful employment practice to refuse employment
29 based on a policy of not employing both husband and wife if such policy
30 is equally applied to both sexes.

31 (2) Except as otherwise provided in the Nebraska Fair Employment

1 Practice Act, women affected by pregnancy, childbirth, or related medical
2 conditions shall be treated the same for all employment-related purposes,
3 including receipt of employee benefits, as other persons not so affected
4 but similar in their ability or inability to work, and nothing in this
5 section shall be interpreted to provide otherwise.

6 This section shall not require an employer to provide employee
7 benefits for abortion except when medical complications have arisen from
8 an abortion.

9 Nothing in this section shall preclude an employer from providing
10 employee benefits for abortion under fringe benefit programs or otherwise
11 affect bargaining agreements in regard to abortion.

12 Sec. 14. Section 48-1113, Reissue Revised Statutes of Nebraska, is
13 amended to read:

14 48-1113 Nothing in the Nebraska Fair Employment Practice Act shall
15 be interpreted to require any employer, employment agency, labor
16 organization, or joint labor-management committee subject to the act to
17 grant preferential treatment to any individual or to any group because of
18 the race, color, religion, sex, disability, marital status, ~~or~~ national
19 origin, sexual orientation, or gender identity of such individual or
20 group on account of an imbalance which may exist with respect to the
21 total number or percentage of persons of any race, color, religion, sex,
22 disability, marital status, ~~or~~ national origin, sexual orientation, or
23 gender identity employed by any employer, referred or classified for
24 employment by any employment agency or labor organization, admitted to
25 membership or classified by any labor organization, or admitted to, or
26 employed in, any apprenticeship or other training program, in comparison
27 with the total number or percentage of persons of such race, color,
28 religion, sex, disability, marital status, ~~or~~ national origin, sexual
29 orientation, or gender identity in any community, section, or other area,
30 or in the available work force in any community, section, or other area.

31 Sec. 15. Section 48-1115, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 48-1115 It shall be an unlawful employment practice for an employer,
3 labor organization, or employment agency to print or publish or cause to
4 be printed or published any notice or advertisement relating to
5 employment by such an employer or membership in or any classification or
6 referral for employment by such a labor organization, or relating to any
7 classification or referral for employment by such an employment agency,
8 indicating any preference, limitation, specification, or discrimination
9 based on race, color, religion, sex, disability, marital status, ~~or~~
10 national origin, sexual orientation, or gender identity, except that such
11 a notice or advertisement may indicate a preference, limitation,
12 specification, or discrimination based on religion, sex, disability,
13 marital status, or national origin when religion, sex, disability,
14 marital status, or national origin is a bona fide occupational
15 qualification for employment.

16 Sec. 16. Section 48-1117, Revised Statutes Cumulative Supplement,
17 2016, is amended to read:

18 48-1117 The commission shall have the following powers and duties:

19 (1) To receive, investigate, and pass upon charges of unlawful
20 employment practices anywhere in the state;

21 (2) To hold hearings, subpoena witnesses, compel their attendance,
22 administer oaths, and take the testimony of any person under oath and, in
23 connection therewith, to require the production for examination of any
24 books and papers relevant to any allegation of unlawful employment
25 practice pending before the commission. The commission may make rules as
26 to the issuance of subpoenas, subject to the approval by a constitutional
27 majority of the elected members of the Legislature;

28 (3) To cooperate with the federal government and with local agencies
29 to effectuate the purposes of the Nebraska Fair Employment Practice Act,
30 including the sharing of information possessed by the commission on a
31 case that has also been filed with the federal government or local

1 agencies if both the employer and complainant have been notified of the
2 filing;

3 (4) To attempt to eliminate unfair employment practices by means of
4 conference, mediation, conciliation, arbitration, and persuasion;

5 (5) To require that every employer, employment agency, and labor
6 organization subject to the act shall (a) make and keep such records
7 relevant to the determinations of whether unlawful employment practices
8 have been or are being committed, (b) preserve such records for such
9 periods, and (c) make such reports therefrom, as the commission shall
10 prescribe by regulation or order, after public hearing, as reasonable,
11 necessary, or appropriate for the enforcement of the act or the
12 regulations or orders thereunder. The commission shall, by regulation,
13 require each employer, labor organization, and joint labor-management
14 committee subject to the act which controls an apprenticeship or other
15 training program to maintain such records as are reasonably necessary to
16 carry out the purposes of the act, including, but not limited to, a list
17 of applicants who wish to participate in such program, including the
18 chronological order in which such applications were received, and to
19 furnish to the commission, upon request, a detailed description of the
20 manner in which persons are selected to participate in the apprenticeship
21 or other training program. Any employer, employment agency, labor
22 organization, or joint labor-management committee which believes that the
23 application to it of any regulation or order issued under this section
24 would result in undue hardship may either apply to the commission for an
25 exemption from the application of such regulation or order or bring a
26 civil action in the district court for the district where such records
27 are kept. If the commission or the court, as the case may be, finds that
28 the application of the regulation or order to the employer, employment
29 agency, or labor organization in question would impose an undue hardship,
30 the commission or the court, as the case may be, may grant appropriate
31 relief;

1 (6) To report, not less than once every two years, to the Clerk of
2 the Legislature and the Governor, on the hearings it has conducted and
3 the decisions it has rendered, the other work performed by it to carry
4 out the purposes of the act, and to make recommendations for such further
5 legislation concerning abuses and discrimination because of race, color,
6 religion, sex, disability, marital status, ~~or~~ national origin, sexual
7 orientation, or gender identity, as may be desirable. The report shall
8 also include the number of complaints filed under the act alleging a
9 violation of subdivision (2) of section 48-1107.01 and the resolution of
10 such complaints. The report submitted to the Clerk of the Legislature
11 shall be submitted electronically. Each member of the Legislature shall
12 receive an electronic copy of the report required by this subdivision by
13 making a request for it to the chairperson of the commission; and

14 (7) To adopt and promulgate rules and regulations necessary to carry
15 out the duties prescribed in the act.

16 Sec. 17. Section 48-1119, Reissue Revised Statutes of Nebraska, is
17 amended to read:

18 48-1119 (1) In case of failure to eliminate any unlawful employment
19 practice by informal methods of conference, conciliation, persuasion,
20 mediation, or arbitration, the commission may order a public hearing. If
21 such hearing is ordered, the commission shall cause to be issued and
22 served a written notice, together with a copy of the complaint, requiring
23 the person, employer, labor organization, or employment agency named in
24 the complaint, hereinafter referred to as respondent, to answer such
25 charges at a hearing before the commission at a time and place which
26 shall be specified in such notice. Such hearing shall be within the
27 county where the alleged unlawful employment practice occurred. The
28 complainant shall be a party to the proceeding, and in the discretion of
29 the commission any other person whose testimony has a bearing on the
30 matter may be allowed to intervene therein. Both the complainant and the
31 respondent, in addition to the commission, may introduce witnesses at the

1 hearing. The respondent may file a verified answer to the allegations of
2 the complaint and may appear at such hearing in person and with or
3 without counsel. Testimony or other evidence may be introduced by either
4 party. All evidence shall be under oath and a record thereof shall be
5 made and preserved. Such proceedings shall, so far as practicable, be
6 conducted in accordance with the rules of evidence applicable in the
7 district courts of the State of Nebraska, and shall be of public record.

8 (2) No person shall be excused from testifying or from producing any
9 book, document, paper, or account in any investigation, or inquiry by, or
10 hearing before the commission when ordered to do so, upon the ground that
11 the testimony or evidence, book, document, paper, or account required of
12 such person may tend to incriminate such person in or subject such person
13 to penalty or forfeiture; but no person shall be prosecuted, punished, or
14 subjected to any forfeiture or penalty for or on account of any act,
15 transaction, matter, or thing concerning which such person shall have
16 been compelled under oath to testify or produce documentary evidence,
17 except that no person so testifying shall be exempt from prosecution or
18 punishment for any perjury committed by such person in his or her
19 testimony. Such immunity shall extend only to a natural person who, in
20 obedience to a subpoena, gives testimony under oath or produces evidence,
21 documentary or otherwise, under oath. Nothing in this subsection shall be
22 construed as precluding any person from claiming any right or privilege
23 available to such person under the fifth amendment to the Constitution of
24 the United States.

25 (3) After the conclusion of the hearing, the commission shall,
26 within ten days of the receipt of the transcript or the receipt of the
27 recommendations from the hearing officer, make and file its findings of
28 fact and conclusions of law and make and enter an appropriate order. The
29 hearing officer need not refer to the page and line numbers of the
30 transcript when making his or her recommendation to the commission. Such
31 findings of fact and conclusions of law shall be in sufficient detail to

1 enable a court on appeal to determine the controverted questions
2 presented by the proceedings and whether proper weight was given to the
3 evidence. If the commission determines that the respondent has
4 intentionally engaged in or is intentionally engaging in any unlawful
5 employment practice, it shall issue and cause to be served on such
6 respondent an order requiring such respondent to cease and desist from
7 such unlawful employment practice and order such other affirmative action
8 as may be appropriate which may include, but shall not be limited to,
9 reinstatement or hiring of employees, with or without backpay. Backpay
10 liability shall not accrue from a date more than two years prior to the
11 filing of the charge with the commission. Interim earnings or amounts
12 earnable with reasonable diligence by the person or persons discriminated
13 against shall operate to reduce the backpay otherwise allowable.

14 (4) A complainant who has suffered physical, emotional, or financial
15 harm as a result of a violation of section 48-1104 or 48-1114 may, at any
16 stage of the proceedings prior to dismissal, file an action directly in
17 the district court of the county where such alleged violation occurred.
18 If the complainant files a district court action on the charge, the
19 complainant shall provide written notice of such filing to the
20 commission, and such notification shall immediately terminate all
21 proceedings before the commission. The district court shall docket and
22 try such case as any other civil action, and any successful complainant
23 shall be entitled to appropriate relief, including temporary or permanent
24 injunctive relief, general and special damages, reasonable attorney's
25 fees, and costs.

26 (5) No order of the commission shall require the admission or
27 reinstatement of an individual as a member of a labor organization or the
28 hiring, reinstatement, or promotion of an individual as an employee, or
29 the payment to him or her of any backpay, if such individual was refused
30 admission, suspended, or expelled, or was refused employment or
31 advancement or was suspended or discharged for any reason other than

1 discrimination on account of race, color, religion, sex, disability,
2 marital status, ~~or~~ national origin, sexual orientation, or gender
3 identity or in violation of section 48-1114. If the commission finds that
4 a respondent has not engaged in any unfair employment practice, it shall
5 within thirty days state its findings of fact and conclusions of law. A
6 copy of any order shall be served upon the person against whom it runs or
7 his or her attorney and notice thereof shall be given to the other
8 parties to the proceedings or their attorneys. Such order shall take
9 effect twenty days after service thereof unless otherwise provided and
10 shall continue in force either for a period which may be designated
11 therein or until changed or revoked by the commission.

12 (6) Except as provided in subsection (4) of this section, until a
13 transcript of the record of the proceedings is filed in the district
14 court as provided in section 48-1120, the commission may, at any time
15 upon reasonable notice and in such a manner it shall deem proper, modify
16 or set aside, in whole or in part, any finding or order made by it.

17 Sec. 18. Section 48-1122, Reissue Revised Statutes of Nebraska, is
18 amended to read:

19 48-1122 Every contract to which the state or any of its political
20 subdivisions is a party shall contain a provision requiring the
21 contractor and his or her subcontractors not to discriminate against any
22 employee or applicant for employment, to be employed in the performance
23 of such contract, with respect to his or her hire, tenure, terms,
24 conditions, or privileges of employment, because of his or her race,
25 color, religion, sex, disability, ~~or~~ national origin, sexual orientation,
26 or gender identity.

27 Sec. 19. Section 48-1124, Reissue Revised Statutes of Nebraska, is
28 amended to read:

29 48-1124 Nothing contained in the Nebraska Fair Employment Practice
30 Act shall be deemed to repeal any of the provisions of the civil rights
31 law, any other law of this state, or any municipal ordinance relating to

1 discrimination because of race, creed, color, religion, sex, disability,
2 ~~or national origin, sexual orientation, or gender identity.~~

3 Sec. 20. Section 49-801, Reissue Revised Statutes of Nebraska, is
4 amended to read:

5 49-801 Unless the context is shown to intend otherwise, words and
6 phrases in the statutes of Nebraska hereafter enacted are used in the
7 following sense:

8 (1) Acquire when used in connection with a grant of power or
9 property right to any person shall include the purchase, grant, gift,
10 devise, bequest, and obtaining by eminent domain;

11 (2) Action shall include any proceeding in any court of this state;

12 (3) Attorney shall mean attorney at law;

13 (4) Company shall include any corporation, partnership, limited
14 liability company, joint-stock company, joint venture, or association;

15 (5) Domestic when applied to corporations shall mean all those
16 created by authority of this state;

17 (6) Federal shall refer to the United States;

18 (7) Foreign when applied to corporations shall include all those
19 created by authority other than that of this state;

20 (8) Gender identity shall mean the actual or perceived appearance,
21 expression, identity, or behavior of an individual, whether or not that
22 appearance, expression, identity, or behavior is different from the
23 individual's assigned sex at birth;

24 (9) (8) Grantee shall include every person to whom any estate or
25 interest passes in or by any conveyance;

26 (10) (9) Grantor shall include every person from or by whom any
27 estate or interest passes in or by any conveyance;

28 (11) (10) Inhabitant shall be construed to mean a resident in the
29 particular locality in reference to which that word is used;

30 (12) (11) Land or real estate shall include lands, tenements, and
31 hereditaments and all rights thereto and interest therein other than a

1 chattel interest;

2 ~~(13)~~ ~~(12)~~ Magistrate shall include judge of the county court and
3 clerk magistrate;

4 ~~(14)~~ ~~(13)~~ Month shall mean calendar month;

5 ~~(15)~~ ~~(14)~~ Oath shall include affirmation in all cases in which an
6 affirmation may be substituted for an oath;

7 ~~(16)~~ ~~(15)~~ Peace officer shall include sheriffs, coroners, jailers,
8 marshals, police officers, state highway patrol officers, members of the
9 National Guard on active service by direction of the Governor during
10 periods of emergency, and all other persons with similar authority to
11 make arrests;

12 ~~(17)~~ ~~(16)~~ Person shall include bodies politic and corporate,
13 societies, communities, the public generally, individuals, partnerships,
14 limited liability companies, joint-stock companies, and associations;

15 ~~(18)~~ ~~(17)~~ Personal estate shall include money, goods, chattels,
16 claims, and evidences of debt;

17 ~~(19)~~ ~~(18)~~ Process shall mean a summons, subpoena, or notice to
18 appear issued out of a court in the course of judicial proceedings;

19 ~~(20)~~ ~~(19)~~ Service animal shall have the same meaning as in 28 C.F.R.
20 36.104, as such regulation existed on January 1, 2008;

21 ~~(21)~~ Sexual orientation means actual or perceived homosexuality,
22 heterosexuality, or bisexuality;

23 ~~(22)~~ ~~(20)~~ State when applied to different states of the United
24 States shall be construed to extend to and include the District of
25 Columbia and the several territories organized by Congress;

26 ~~(23)~~ ~~(21)~~ Sworn shall include affirmed in all cases in which an
27 affirmation may be substituted for an oath;

28 ~~(24)~~ ~~(22)~~ The United States shall include territories, outlying
29 possessions, and the District of Columbia;

30 ~~(25)~~ ~~(23)~~ Violate shall include failure to comply with;

31 ~~(26)~~ ~~(24)~~ Writ shall signify an order or citation in writing issued

1 in the name of the state out of a court or by a judicial officer; and

2 (27) ~~(25)~~ Year shall mean calendar year.

3 Sec. 21. Section 81-1355, Reissue Revised Statutes of Nebraska, is
4 amended to read:

5 81-1355 It is declared to be in the best interest of the State of
6 Nebraska to insure that historic and any present patterns of sex and
7 racial discrimination are eliminated and that each agency pursue a course
8 of action in all areas of its operation to insure that all citizens are
9 provided with fair and equal opportunities for employment and advancement
10 regardless of race, color, religion, national origin, age, sex, marital
11 status, ~~or~~ physical or mental disability, sexual orientation, or gender
12 identity.

13 Affirmative action shall be taken to insure the implementation of a
14 policy in state government employment which provides equal employment
15 opportunity. Such policy shall apply to:

16 (1) Hiring, placement, upgrading, transfer, or demotion of
17 employees;

18 (2) Recruitment, advertising, or solicitation for employment;

19 (3) Treatment during employment;

20 (4) Rates of pay or other forms of compensation;

21 (5) Selection for training;

22 (6) Layoff, termination, or reinstatement; and

23 (7) Any other terms or conditions of employment.

24 Sec. 22. Section 81-1356, Reissue Revised Statutes of Nebraska, is
25 amended to read:

26 81-1356 As used in sections 81-1355 to 81-1368, unless the context
27 otherwise requires:

28 (1) Equal employment opportunity shall mean the right of all persons
29 to work and to advance on the basis of merit and ability without regard
30 to race, color, religion, national origin, age, sex, marital status, ~~or~~
31 physical or mental disability, sexual orientation, or gender identity;

1 (2) Affirmative action shall mean a deliberate and sustained effort
2 to identify and eliminate barriers to employment and advancement which
3 may discriminate against various groups. Particular emphasis shall be
4 focused on racial minorities, women, and the disabled but not to the
5 exclusion of the criteria set forth in subdivision (1) of this section.
6 The ultimate goal is to achieve, at all levels, a state government work
7 force which is representative of the state working population. The
8 composition of the state working population shall be determined annually
9 through reports of the Department of Labor. Such a goal is to be an
10 integral part of every aspect of personnel policy;

11 (3) Office shall mean the Affirmative Action Office;

12 (4) Program shall mean the Affirmative Action Program;

13 (5) Agency shall mean each department, agency, office, board,
14 commission, and committee of the State of Nebraska under the executive
15 authority of the Governor;

16 (6) Plan shall mean the Affirmative Action Plan prepared by the
17 individual agencies; and

18 (7) Administrator shall mean the Affirmative Action Administrator.

19 Sec. 23. Original sections 18-1724, 23-2525, 23-2531, 23-2541,
20 29-401, 48-215, 48-628.01, 48-1101, 48-1104, 48-1105, 48-1106, 48-1107,
21 48-1113, 48-1115, 48-1119, 48-1122, 48-1124, 49-801, 81-1355, and
22 81-1356, Reissue Revised Statutes of Nebraska, and sections 48-1111 and
23 48-1117, Revised Statutes Cumulative Supplement, 2016, are repealed.