

LEGISLATIVE BILL 1357

Approved by the Governor April 8, 1972

Introduced by Fred W. Carstens, 30th District

AN ACT to amend sections 48-1001, 48-1002, 48-1003, 48-1004, 48-1005, and 48-1006, Reissue Revised Statutes of Nebraska, 1943, relating to labor; to redefine terms; to change provisions prohibiting discrimination because of age; to give jurisdiction to the Equal Opportunity Commission; to provide procedures; to change penalties; and to repeal the original sections.

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

Section 1. That section 48-1001, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-1001. (1) The Legislature hereby finds that the practice of discriminating in employment against properly qualified persons because of their age is contrary to American principles of liberty and equality of opportunity, is incompatible with the Constitution, deprives the state of the fullest utilization of its capacities for production, and endangers the general welfare.

(2) Hiring bias against workers over forty years of age deprives the state of its most important resource of experienced employees, adds to the number of persons receiving public assistance, and deprives older people of the dignity and status of self-support.

(3) The right to employment otherwise lawful without discrimination because of age, where the reasonable demands of the position do not require such an age distinction, is hereby recognized as and declared to be a right of all the people of the state which shall be protected as provided in ~~sections 48-1001 to 48-1006~~ this act.

(4) It is hereby declared to be the policy of the state to protect the right recognized and declared in subsection (3) of this section and to eliminate all such discrimination to the fullest extent permitted. ~~Sections 48-1001 to 48-1006~~ This act shall be construed to effectuate such policy.

Sec. 2. That section 48-1002, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-1002. As used in sections ~~48-1001 to 48-1006~~ this act, unless the context otherwise requires:

(1) Person shall include one or more individuals, partnerships, associations, labor organizations, or corporations, business trusts, legal representatives, or any organized group of persons;

(2) Employer shall mean a person ~~in this state~~ having in his employ one twenty-five or more individuals, and any person acting for or in the interest of an employer, directly or indirectly, but such term does not include the United States or a corporation wholly owned by the government of the United States; and

(3) Labor organization shall mean any organization of employees which exists for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms, or conditions of employment, or for other mutual aid or protection in connection with employment; and

(4) Employee shall mean an individual employed by any employer.

Sec. 3. That section 48-1003, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-1003. ~~The provisions of sections 48-1001 to 48-1006 shall not be construed to prevent the termination of the employment of any person who is physically unable to perform his duties or to affect the retirement policy or system of any employer where such policy or system is not merely a subterfuge to evade the purposes of sections 48-1001 to 48-1006; nor shall the provisions of sections 48-1001 to 48-1006 be deemed to preclude the varying of insurance coverages according to an employee's age.~~ (1) The prohibitions of this act shall be limited to the employment of individuals who are at least forty years of age but less than sixty-five years of age.

(2) Nothing contained in this act shall be construed as making it unlawful for an employer, employment agency, or labor organization (a) to take action otherwise prohibited under the provisions of this act when the differentiation is based on reasonable factors other than age, such as physical conditions; (b) to observe the terms of a bona fide seniority system or

any bona fide employee benefit plan such as a retirement, pension, or insurance plan, which is not a subterfuge to evade the purposes of this act, except that no employee benefit plan shall excuse the unlawful employment practices enumerated in this act; or (c) to discharge or otherwise discipline an employee for good cause.

Sec. 4. That section 48-1004, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-1004. (1) It shall be an unlawful employment practice for an employer:

(a) To refuse to hire, to discharge, or otherwise to discriminate against any individual with respect to his terms, conditions, or privileges of employment, otherwise lawful, because of such individual's age, when the reasonable demands of the position do not require such an age distinction; or

(b) To willfully utilize in the hiring or recruitment of individuals for employment otherwise lawful, any employment agency, placement service, training school or center, labor organization, or any other source which so discriminates against such individuals because of their age.

(2) It shall be an unlawful employment practice for any labor organization to so discriminate against any individual or to limit, segregate, or classify its membership in any way which would deprive or tend to deprive such individual of otherwise lawful employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, or would affect adversely his wages, hours, or employment.

(3) It shall be an unlawful employment practice for any employer or labor organization to discharge, expel or otherwise discriminate against any person, because he opposed any unlawful employment practice specified in sections ~~48-1004 to 48-1006~~ this act or has filed a charge or suit, testified, participated, or assisted in any proceeding under sections ~~48-1004 to 48-1006~~ the provisions of this act.

Sec. 5. This act shall be administered by the Equal Opportunity Commission as established by section 48-1106. The commission shall have the power (1) to make delegations, to appoint such agents and employees and to pay for technical assistance, including legal assistance, on a fee-for-service basis, as it deems necessary to

assist it in the performance of its functions under this act; (2) to cooperate with other federal, state, and local agencies, and to cooperate with and furnish technical assistance to employers, labor organizations, and employment agencies to aid in effectuating the purposes of this act; (3) to make investigations and require keeping of records necessary or appropriate for the administration of this act; and (4) to bring civil action in its name in any court of competent jurisdiction against any person deemed to be violating any of the provisions of this act to compel compliance with the provisions of this act or to enjoin any such person from continuing any practice that is deemed to be in violation of this act.

Sec. 6. Any person aggrieved by a suspected violation of the provisions of this act shall file with the Equal Opportunity Commission a formal complaint in such manner and form prescribed by the commission. The commission shall have a period of thirty days to make an investigation and initiate an action to enforce the rights of such employee under the provisions of this act. If the commission does not initiate such action within the thirty-day period, the person aggrieved may bring a civil action in any court of competent jurisdiction for such legal or equitable relief as will effectuate the purposes of this act.

Sec. 7. In any action brought to enforce the provisions of this act, the court shall have jurisdiction to grant such legal or equitable relief as the court may deem appropriate to effectuate the purposes of this act, including judgments compelling employment, reinstatement, or promotion, or enforcing liability for amounts deemed to be unpaid minimum wages or unpaid overtime compensation.

Sec. 8. That section 48-1005, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-1005. Any person who violates any provision of sections-48-1001-to-48-1006 this act or who forcibly resists, opposes, impedes, intimidates, or interferes with such commission or any of its duly authorized representatives while engaged in its or his duties under this act shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined in a sum not to exceed ten dollars one hundred dollars or be imprisoned in the county jail for a period of not more than thirty days, or be both so fined and imprisoned; Provided, that no person shall be imprisoned under this section except for a second or subsequent conviction.

Sec. 9. That section 48-1006, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-1006. ~~Sections-48-1001-to--48-1006~~ This act may be cited as the Act Prohibiting Unjust Discrimination in Employment Because of Age.

Sec. 10. That original sections 48-1001, 48-1002, 48-1003, 48-1004, 48-1005, and 48-1006, Reissue Revised Statutes of Nebraska, 1943, are repealed.