

LEGISLATIVE BILL 266

Approved by the Governor May 10, 1973

Introduced by Snyder, 14

AN ACT to amend sections 48-1101, 48-1104, 48-1105, 48-1106, 48-1107, 48-1108, 48-1111, 48-1113, 48-1115, 48-1117, 48-1119, 48-1122, and 48-1124, Reissue Revised Statutes of Nebraska, 1943, and section 48-1102, Revised Statutes Supplement, 1972, as amended by section 2, Legislative Bill 265, Eighty-third Legislature, First Session, 1973, relating to the Nebraska Fair Employment Practice Act; to include disabled persons in the Nebraska Fair Employment Practice Act as prescribed; and to repeal the original sections.

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

Section 1. That section 48-1101, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-1101. It is the policy of this state to foster the employment of all employable persons in the state on the basis of merit regardless of their race, color, religion, sex, disability, or national origin, and to safeguard their right to obtain and hold employment without discrimination because of their race, color, religion, sex, disability, or national origin. Denying equal opportunity for employment because of race, color, religion, sex, disability, or national origin is contrary to the principles of freedom and is a burden on the objectives of the public policy of this state. The policy of this state does not require any person to employ an applicant for employment because of his race, color, religion, sex, disability, or national origin; and the policy of this state does not require any employer, employment agency, labor organization, or joint labor-management committee to grant preferential treatment to any individual or to any group because of race, color, religion, sex, disability, or national origin.

Sec. 2. That section 48-1102, Revised Statutes Supplement, 1972, as amended by section 2, Legislative Bill 265, Eighty-third Legislature, First Session, 1973, be amended to read as follows:

48-1102. As used in sections 48-1101 to 48-1125, unless the context otherwise requires:

(1) Person includes one or more individuals, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, or receivers;

(2) Employer shall mean a person engaged in an industry who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (a) the United States, a corporation wholly owned by the government of the United States, or an Indian tribe, or (b) a bona fide private membership club, other than a labor organization, which is exempt from taxation under section 501 (c) of the Internal Revenue Code of 1954; Provided, that in accordance with the fundamental condition accepted by the people of the State of Nebraska as shown by the acts of admission of this state into the Union that there shall be no denial of any right to any person by reason of race or color, it shall be the policy of the State of Nebraska and of its political subdivisions to insure equal employment opportunities for employees of the state and of its political subdivisions without discrimination because of race or color, and all officers of the state and of its political subdivisions shall use their existing powers to effectuate this policy;

(3) Labor organization shall mean any organization which exists wholly or in part for one or more of the following purposes: Collective bargaining; dealing with employers concerning grievances, terms, or conditions of employment; or of mutual aid or protection in relation to employment;

(4) Employment agency shall mean any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person; but shall not include an agency of the United States, except that such term shall include the United States Employment Service and the system of state and local employment services receiving federal assistance;

(5) Privileges of employment shall mean terms and conditions of any employer-employee relationship, opportunities for advancement of employees, and plant conveniences;

(6) Employee shall mean an individual employed by an employer; and

(7) Commission shall mean the Equal Opportunity Commission; and

(8) Disability shall mean any physical or mental condition, infirmity, malformation, or disfigurement which is caused by bodily injury, birth defect, or illness, including epilepsy or seizure disorders, and which shall include, but not be limited to, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a dog guide, wheelchair, or other remedial appliance or device and shall also mean the physical or mental condition of a person which constitutes a substantial handicap, as determined by a physician, but is unrelated to such person's ability to engage in a particular occupation.

Sec. 3. That section 48-1104, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

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

(1) To fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, disability, or national origin; or

(2) To limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, disability, or national origin.

Sec. 4. That section 48-1105, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-1105. It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his race, color, religion, sex, disability, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, sex, disability, or

national origin.

Sec. 5. That section 48-1106, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

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

(1) To exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, disability, or national origin;

(2) To limit, segregate, or classify its membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, disability, or national origin; or

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

Sec. 6. That section 48-1107, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-1107. It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of his race, color, religion, sex, disability, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.

Sec. 7. That section 48-1108, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-1108. Notwithstanding any other provision of sections 48-1101 to 48-1125, (1) it shall not be an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify, or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual, or for an employer,

labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program, on the basis of his religion, sex, disability, or national origin in those certain instances where religion, sex, disability, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise, and (2) it shall not be an unlawful employment practice for a school, college, university, or other educational institution or institution of learning to hire and employ employees of a particular religion if such school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of such school, college, university, or other educational institution of learning is directed toward the propagation of a particular religion.

Sec. 8. That section 48-1111, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-1111. Notwithstanding any other provision of sections 48-1101 to 48-1125, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, if such differences are not the result of an intention to discriminate because of race, color, religion, sex, disability, or national origin, nor shall it be an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test if such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex, disability, or national origin. It shall not be an unlawful employment practice under sections 48-1101 to 48-1125 for any employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid or to be paid to employees of such employer if such differentiation is authorized by the provisions of section 6 (d) of the Fair Labor Standards Act of 1938, as amended.

It shall not be an unlawful employment practice for an employer, employment agency, labor organization, or joint labor-management committee to deny privileges of

employment when the nature and extent of a disability reasonably precludes the performance of the particular employment.

Sec. 9. That section 48-1113, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-1113. Nothing contained in sections 48-1101 to 48-1125 shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to sections 48-1101 to 48-1125 to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, disability, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, disability, or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, disability, or national origin in any community, section, or other area, or in the available work force in any community, section, or other area.

Sec. 10. That section 48-1115, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-1115. It shall be an unlawful employment practice for an employer, labor organization, or employment agency to print or publish or cause to be printed or published any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, indicating any preference, limitation, specification, or discrimination based on race, color, religion, sex, disability, or national origin, except that such a notice or advertisement may indicate a preference, limitation, specification or discrimination based on religion, sex, disability, or national origin when religion, sex, disability, or national origin is a bona fide occupational qualification for employment.

Sec. 11. That section 48-1117, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

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

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

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

(3) To cooperate with the federal government and with local agencies to effectuate the purposes of sections 48-1101 to 48-1125;

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

(5) To require that every employer, employment agency, and labor organization subject to sections 48-1101 to 48-1125, shall (a) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed, (b) preserve such records for such periods, and (c) make such reports therefrom, as the commission shall prescribe by regulation or order, after public hearing, as reasonable, necessary, or appropriate for the enforcement of sections 48-1101 to 48-1125 or the regulations or orders thereunder. The commission shall, by regulation, require each employer, labor organization, and joint labor-management committee subject to sections 48-1101 to 48-1125 which controls an apprenticeship or other training program to maintain such records as are reasonably necessary to carry out the purposes of sections 48-1101 to 48-1125, including but not limited to, a list of applicants who wish to participate in such program, including the chronological order in which such applications were received, and to furnish to the commission, upon request, a detailed description of the manner in which persons are selected to participate in the apprenticeship or other training program. Any employer, employment agency, labor organization, or joint labor-management committee which believes that the application to it of any regulation or order issued under this section would result in undue hardship may either apply to the commission for an exemption from the

application of such regulation or order, or bring a civil action in the district court for the district where such records are kept. If the commission or the court, as the case may be, finds that the application of the regulation or order to the employer, employment agency, or labor organization in question would impose an undue hardship, the commission or the court, as the case may be, may grant appropriate relief; and

(6) To report, not less than once a year, to the Legislature and the Governor, on the hearings it has conducted and the decisions it has rendered, the other work performed by it to carry out the purposes of sections 48-1101 to 48-1125, and to make recommendations for such further legislation concerning abuses and discrimination because of race, color, religion, sex, disability, or national origin, as may be desirable.

Sec. 12. That section 48-1119, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-1119. (1) In case of failure to eliminate any unlawful employment practice by informal methods of conference, conciliation, and persuasion, the commission shall cause to be issued and served a written notice, together with a copy of the complaint, requiring the person, employer, labor organization or employment agency named in the complaint, hereinafter referred to as respondent, to answer such charges at a hearing before the commission at a time and place which shall be specified in such notice. Such hearing shall be within the county where the alleged unfair practice occurred. The complainant shall be a party to the proceeding, and in the discretion of the commission any other person whose testimony has a bearing on the matter may be allowed to intervene therein. Both the complainant and the respondent, in addition to the commission, may introduce witnesses at the hearing. The respondent may file a verified answer to the allegations of the complaint and may appear at such hearing in person and with or without counsel. Testimony or other evidence may be introduced by either party. All evidence shall be under oath and a record thereof shall be made and preserved. Such proceedings shall, so far as practicable, be conducted in accordance with the rules of evidence applicable in the district courts of the State of Nebraska, and shall be of public record.

(2) No person shall be excused from testifying or from producing any book, document, paper, or account in any investigation, or inquiry by, or hearing before the commission when ordered to do so, upon the ground that



the testimony or evidence, book, document, paper, or account required of him may tend to incriminate him in or subject him to penalty or forfeiture; but no person shall be prosecuted, punished or subjected to any forfeiture or penalty for or on account of any act, transaction, matter or thing concerning which he shall have been compelled under oath to testify or produce documentary evidence; Provided, that no person so testifying shall be exempt from prosecution or punishment for any perjury committed by him in his testimony; and provided further, that the immunity shall extend only to a natural person who, in obedience to a subpoena, gives testimony under oath or produces evidence, documentary or otherwise, under oath. Nothing in this subsection shall be construed as precluding any person from claiming any right or privilege available to him under the fifth amendment to the Constitution of the United States.

(3) After the conclusion of the hearing, the commission shall make and file its findings of fact and conclusions thereon, and make and enter an appropriate order. Such findings shall be in sufficient detail to enable the court on appeal to determine the controverted questions presented by the proceedings and whether proper weight was given to the evidence. If the commission shall determine that the respondent has intentionally engaged in or is intentionally engaging in any unlawful employment practice, it shall issue and cause to be served on such respondent an order requiring such respondent to cease and desist from such unlawful employment practice and order such other affirmative action as may be appropriate, which may include reinstatement or hiring of employees, with or without back pay. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable. No order of the commission shall require the admission or reinstatement of an individual as a member of a labor organization or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if such individual was refused admission, suspended, or expelled, or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex, disability, or national origin, or in violation of section 48-1114. If the commission shall find that respondent has not engaged in any unfair employment practice, it shall state its findings of fact and conclusion thereon. A copy of any order shall be served upon the person against whom it runs, or his attorney, and notice thereof shall be given to the other parties to the proceedings or their attorneys. Such order shall

take effect twenty days after the service thereof, unless otherwise provided, and shall continue in force, either for a period which may be designated therein or until changed or revoked by the commission.

(4) Until a transcript of the record of the proceedings shall be filed in a court as provided in section 48-1120, the commission may, at any time, upon reasonable notice, and in such a manner it shall deem proper, modify or set aside, in whole or in part, any finding or order made by it.

Sec. 13. That section 48-1122, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-1122. Every contract to which the state or any of its political subdivisions is a party shall contain a provision requiring the contractor and his subcontractors not to discriminate against any employee or applicant for employment, to be employed in the performance of such contract, with respect to his hire, tenure, terms, conditions, or privileges of employment, because of his race, color, religion, sex, disability, or national origin.

Sec. 14. That section 48-1124, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-1124. Nothing contained in sections 48-1101 to 48-1125 shall be deemed to repeal any of the provisions of the civil rights law, any other law of this state, or any municipal ordinance relating to discrimination because of race, creed, color, religion, sex, disability, or national origin.

Sec. 15. That original sections 48-1101, 48-1104, 48-1105, 48-1106, 48-1107, 48-1108, 48-1111, 48-1113, 48-1115, 48-1117, 48-1119, 48-1122, and 48-1124, Reissue Revised Statutes of Nebraska, 1943, and section 48-1102, Revised Statutes Supplement, 1972, as amended by section 2, Legislative Bill 265, Eighty-third Legislature, First Session, 1973, are repealed.