

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 866

Introduced by Haar, 21; Avery, 28; Cook, 13; Council, 11; Dubas, 34;
Harr, 8; Howard, 9; Krist, 10; McGill, 26; Mello, 5;
Nordquist, 7.

Read first time January 06, 2012

Committee: Business and Labor

A BILL

1 FOR AN ACT relating to labor; to amend section 20-113, Reissue
2 Revised Statutes of Nebraska, and section 13-1102,
3 Revised Statutes Supplement, 2011; to adopt the Nebraska
4 Fair Employment Opportunity Act; to harmonize provisions;
5 and to repeal the original sections.
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
2 may be cited as the Nebraska Fair Employment Opportunity Act.

3 Sec. 2. For purposes of the Nebraska Fair Employment
4 Opportunity Act:

5 (1) Commission means the Equal Opportunity Commission;

6 (2) Employer means any person having in his or her employ
7 in the State of Nebraska twenty or more employees for each working
8 day in each of twenty or more calendar weeks in the current or
9 preceding calendar year and includes the State of Nebraska,
10 governmental agencies, and political subdivisions, regardless of the
11 number of employees, and any person acting for or in the interest of
12 an employer, directly or indirectly, but such term does not include
13 (a) the United States, (b) a corporation wholly owned by the
14 government of the United States, or (c) an Indian tribe;

15 (3) Employment agency means any person regularly
16 undertaking with or without compensation to procure employees for an
17 employer or to procure for individuals opportunities to work for an
18 employer and includes an agent of such a person, but does not include
19 an agency of the United States;

20 (4) Person includes one or more individuals,
21 partnerships, limited liability companies, associations, labor
22 organizations, corporations, business trusts, legal representatives,
23 or any organized group of persons; and

24 (5) Status as unemployed means an individual's present or
25 past unemployment regardless of the length of time such individual

1 was unemployed.

2 Sec. 3. (1) It shall be an unlawful employment practice
3 for an employer:

4 (a) To refuse to consider for employment or refuse to
5 offer employment to an individual because of the individual's status
6 as unemployed;

7 (b) To publish in print, on the Internet, or in any other
8 medium an advertisement or announcement for any job that includes:

9 (i) Any provision stating or indicating that an
10 individual's status as unemployed disqualifies the individual for a
11 job; or

12 (ii) Any provision stating or indicating that an employer
13 will not consider an applicant for employment based on that
14 individual's status as unemployed; or

15 (c) To direct or request that an employment agency take
16 an individual's status as unemployed into account in screening or
17 referring applicants for employment.

18 (2) It shall be an unlawful employment practice for an
19 employment agency:

20 (a) To refuse to consider or refer an individual for
21 employment based on the individual's status as unemployed;

22 (b) To limit, segregate, or classify individuals in any
23 manner that may limit their access to information about jobs or
24 referral for consideration of jobs because of their status as
25 unemployed; or

1 (c) To publish in print, on the Internet, or in any other
2 medium an advertisement or announcement for any job vacancy that
3 includes:

4 (i) Any provision stating or indicating that an
5 individual's status as unemployed disqualifies the individual for a
6 job; or

7 (ii) Any provision stating or indicating that an employer
8 will not consider individuals for employment based on that
9 individual's status as unemployed.

10 (3) It shall be an unlawful employment practice for any
11 employer or employment agency to refuse to hire, to discharge, or in
12 any other manner to discriminate against any individual because such
13 individual:

14 (a) Opposed any practice made unlawful under the Nebraska
15 Fair Employment Opportunity Act;

16 (b) Has filed any complaint or has caused to be filed any
17 complaint under the act;

18 (c) Has given or is about to give any information in
19 connection with any inquiry or proceeding under the act; or

20 (d) Has testified or is about to testify in any inquiry
21 or proceeding relating to a complaint filed under the act.

22 (4) Notwithstanding any other provision of the Nebraska
23 Fair Employment Opportunity Act, consideration by an employer or
24 employment agency of an individual's status as unemployed shall not
25 be an unlawful employment practice if an individual's employment in a

1 similar or related job for a period of time reasonably proximate to
2 the hiring of such individual is a bona fide occupational
3 qualification reasonably necessary to successful performance of the
4 job that is being filled.

5 Sec. 4. (1) Any person aggrieved by a suspected violation
6 of the Nebraska Fair Employment Opportunity Act shall file with the
7 commission a formal complaint in such manner and form prescribed by
8 the commission. Such complaint shall be filed within three hundred
9 days after the occurrence of the alleged unlawful employment
10 practice. Notice of the complaint, including a statement of the date,
11 place, and circumstances of the alleged unlawful employment practice,
12 shall be served upon the person against whom such complaint is made
13 within ten days after the complaint is filed, and such person may
14 file with the commission a written response to the complaint within
15 thirty days after service of notice.

16 (2) The commission shall investigate the complaint. As
17 part of any such investigation, the commission or its authorized
18 agents may, at any time after a complaint is filed, issue or cause to
19 be served interrogatories and shall have at all reasonable times
20 access to, for the purposes of examination, and the right to copy any
21 evidence or records of any person being investigated that relate to
22 unlawful employment practices covered by the act and are relevant to
23 the complaint under investigation. The commission may seek judicial
24 enforcement through the office of the Attorney General to require the
25 answering of interrogatories or to gain access to evidence or records

1 relevant to the complaint under investigation.

2 Sec. 5. (1) If, after an investigation pursuant to
3 section 4 of this act, the commission finds that a person violated
4 the Nebraska Fair Employment Opportunity Act, such person shall be
5 subject to a civil penalty imposed by the commission of one thousand
6 dollars for the first violation, five thousand dollars for the second
7 violation, and ten thousand dollars for each subsequent violation. No
8 civil penalty shall be imposed until written notice is sent pursuant
9 to subsection (2) of this section and a period of ten days has
10 elapsed in which the person may come into compliance if possible. If
11 any violation is a continuing one, each day a violation continues
12 after such ten-day period shall constitute a separate violation for
13 the purpose of computing the applicable civil penalty. The commission
14 may compromise, mitigate, or remit such penalties.

15 (2) Whenever the commission intends to impose a civil
16 penalty under this section, the commission shall notify the person in
17 writing (a) setting forth the date, facts, and nature of each
18 violation with which the person is charged, (b) specifically
19 identifying the particular provision or provisions of the section,
20 rule, or regulation involved in the violation, and (c) specifying the
21 amount of each penalty which the commission intends to impose. Such
22 written notice shall be sent by registered or certified mail to the
23 last-known address of such person. The notice shall also advise such
24 person of his or her right to a hearing and that failure to pay any
25 civil penalty subsequently imposed by the commission may result in a

1 civil action to collect such penalty. The person so notified may,
2 within thirty days after receipt of such notice, submit a written
3 request for a hearing to review any penalty to be imposed by the
4 commission. A hearing shall be held in accordance with the
5 Administrative Procedure Act, and any person upon whom a civil
6 penalty is subsequently imposed may appeal such penalty pursuant to
7 such act. On the request of the commission, the Attorney General or
8 county attorney may institute a civil action to collect a penalty
9 imposed pursuant to this section.

10 (3) The commission shall remit all penalties collected
11 under this section to the State Treasurer for distribution in
12 accordance with Article VII, section 5, of the Constitution of
13 Nebraska.

14 Sec. 6. The commission may adopt and promulgate rules and
15 regulations to carry out the Nebraska Fair Employment Opportunity
16 Act.

17 Sec. 7. Section 13-1102, Revised Statutes Supplement,
18 2011, is amended to read:

19 13-1102 (1) In addition to any other powers which it may
20 have, each municipality and each county shall have without any other
21 authority the following powers:

22 (a) To acquire, whether by construction, purchase,
23 devise, gift, or lease, or any one or more of such methods, one or
24 more projects, which shall be located within this state, and may be
25 located within, without, partially within, or partially without the

1 municipality or county;

2 (b) To lease to others any or all of its projects for
3 such rentals and upon such terms and conditions as the governing body
4 may deem advisable and as shall not conflict with sections 13-1101 to
5 13-1110;

6 (c) To finance the acquisition, construction,
7 rehabilitation, or purchase of projects in blighted areas. The power
8 to finance such projects in blighted areas means and includes the
9 power to enter into any type of agreement, including a loan
10 agreement, when the other party to the agreement agrees (i) to use
11 the proceeds of money provided under the agreement to pay the costs
12 of such acquisition, construction, rehabilitation, or purchase and
13 any costs incident to the issuance of the related bonds and the
14 funding of any reserve funds, (ii) to be bound by the terms of the
15 Age Discrimination in Employment Act, the Nebraska Fair Employment
16 Opportunity Act, the Nebraska Fair Employment Practice Act, and
17 sections 48-1219 to 48-1227, regardless of the number of employees,
18 and (iii) to make payments to the municipality or county sufficient
19 to enable it to pay on a timely basis all principal, redemption
20 premiums, and interest on the related revenue bonds issued to provide
21 such financing, and any amounts necessary to repay such municipality
22 or county for any and all costs incurred by it that are incidental to
23 such financing. Title to any such project in a blighted area need not
24 be in the name of the municipality or county, but may be in the name
25 of a private party;

1 (d) To acquire, own, develop, lease, or finance or
2 refinance the acquisition, construction, rehabilitation, or purchase
3 of one or more projects for use as a nonprofit enterprise, regardless
4 of whether such project or projects are within a blighted area. Such
5 projects shall be located within this state and may be located
6 within, without, partially within, or partially without the
7 municipality or county, except that ~~; provided,~~ for any project
8 located without the municipality or county, such municipality or
9 county shall find that a reasonable relationship exists between such
10 municipality or county and the project, borrower, or other party or
11 parties to the financing agreement, as applicable. The power to
12 finance such projects means and includes the power to enter into any
13 type of agreement, including a loan agreement, when the other party
14 to the agreement agrees (i) to use the proceeds of money provided
15 under the agreement to pay the costs of such acquisition,
16 construction, rehabilitation, or purchase and any costs incident to
17 the issuance of the related bonds and the funding of any reserve
18 funds and (ii) to make payments to the municipality or county
19 sufficient to enable it to pay on a timely basis all principal,
20 redemption premiums, and interest on the related revenue bonds issued
21 to provide such financing and any amounts necessary to repay such
22 municipality or county for any and all costs incurred by it that are
23 incidental to such financing. Title to any such project need not be
24 in the name of the municipality or county but may be in the name of a
25 private party;

1 (e) To issue revenue bonds for the purpose of defraying
2 the cost of acquiring, improving, or financing any project or
3 projects, including the cost of any real estate previously purchased
4 and used for such project or projects, or the cost of any option in
5 connection with acquiring such property, and to secure the payment of
6 such bonds as provided in sections 13-1101 to 13-1110, which revenue
7 bonds may be issued in two or more series or issues where deemed
8 advisable, and each such series or issue may contain different
9 maturity dates, interest rates, priorities on revenue available for
10 payment of such bonds and priorities on securities available for
11 guaranteeing payment thereof, and such other differing terms and
12 conditions as are deemed necessary and are not in conflict with
13 sections 13-1101 to 13-1110; and

14 (f) To sell and convey any real or personal property
15 acquired as provided by subdivision (1)(a) of this section and make
16 such order respecting the same as may be deemed conducive to the best
17 interest of the municipality or county, except that such sale or
18 conveyance shall be subject to the terms of any lease but shall be
19 free and clear of any other encumbrance.

20 (2) No municipality or county shall have the power to (a)
21 operate any project, referred to in this section, as a business or in
22 any manner except as the lessor thereof, (b) lease any project
23 acquired under powers conferred by this section for use principally
24 for commercial feeding of livestock, (c) issue bonds under this
25 section principally for the purpose of financing the construction or

1 acquisition of commercial feeding facilities for livestock, or (d)
2 acquire any project or any part thereof by condemnation.

3 Sec. 8. Section 20-113, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 20-113 Any incorporated city may enact ordinances and any
6 county may adopt resolutions which are substantially equivalent to
7 the Age Discrimination in Employment Act, the Nebraska Fair
8 Employment Opportunity Act, the Nebraska Fair Employment Practice
9 Act, the Nebraska Fair Housing Act, and sections 20-126 to 20-143 and
10 48-1219 to 48-1227 or which are more comprehensive than such acts and
11 sections in the protection of civil rights. No such ordinance or
12 resolution shall place a duty or liability on any person, other than
13 an employer, employment agency, or labor organization, for acts
14 similar to those prohibited by section 48-1115. Such ordinance or
15 resolution may include authority for a local agency to seek an award
16 of damages or other equitable relief on behalf of the complainant by
17 the filing of a petition in the district court in the county with
18 appropriate jurisdiction. The local agency shall have within its
19 authority jurisdiction substantially equivalent to or more
20 comprehensive than the Equal Opportunity Commission or other
21 enforcement agencies provided under such acts and sections and shall
22 have authority to order backpay and other equitable relief or to
23 enforce such orders or relief in the district court with appropriate
24 jurisdiction. Certified copies of such ordinances or resolutions
25 shall be transmitted to the commission. When the commission

1 determines that any such city or county has enacted an ordinance or
2 adopted a resolution that is substantially equivalent to such acts
3 and sections or is more comprehensive than such acts and sections in
4 the protection of civil rights and has established a local agency to
5 administer such ordinance or resolution, the commission may
6 thereafter refer all complaints arising in such city or county to the
7 appropriate local agency. All complaints arising within a city shall
8 be referred to the appropriate agency in such city when both the city
9 and the county in which the city is located have established agencies
10 pursuant to this section. When the commission refers a complaint to a
11 local agency, it shall take no further action on such complaint if
12 the local agency proceeds promptly to handle such complaint pursuant
13 to the local ordinance or resolution. If the commission determines
14 that a local agency is not handling a complaint with reasonable
15 promptness or that the protection of the rights of the parties or the
16 interests of justice require such action, the commission may regain
17 jurisdiction of the complaint and proceed to handle it in the same
18 manner as other complaints which are not referred to local agencies.
19 In cases of conflict between this section and section 20-332, for
20 complaints subject to the Nebraska Fair Housing Act, section 20-332
21 shall control.

22 Any club which has been issued a license by the Nebraska
23 Liquor Control Commission to sell, serve, or dispense alcoholic
24 liquor shall have that license revoked if the club discriminates
25 because of race, color, religion, sex, familial status as defined in

1 section 20-311, handicap as defined in section 20-313, or national
2 origin in the sale, serving, or dispensing of alcoholic liquor to any
3 person who is a guest of a member of such club. The procedure for
4 revocation shall be as prescribed in sections 53-134.04, 53-1,115,
5 and 53-1,116.

6 Sec. 9. Original section 20-113, Reissue Revised Statutes
7 of Nebraska, and section 13-1102, Revised Statutes Supplement, 2011,
8 are repealed.