

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SEVENTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 451**

Introduced by McKinney, 11; Cavanaugh, M., 6.

Read first time January 15, 2021

Committee: Business and Labor

1 A BILL FOR AN ACT relating to the Nebraska Fair Employment Practice Act;  
2 to amend section 48-1108, Reissue Revised Statutes of Nebraska, and  
3 section 48-1102, Revised Statutes Cumulative Supplement, 2020; to  
4 define terms; to change provisions relating to racial discrimination  
5 and unlawful employment practices; to harmonize provisions; and to  
6 repeal the original sections.

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

1 Section 1. Section 48-1102, Revised Statutes Cumulative Supplement,  
2 2020, is amended to read:

3 48-1102 For purposes of the Nebraska Fair Employment Practice Act,  
4 unless the context otherwise requires:

5 (1) Person shall include one or more individuals, labor unions,  
6 partnerships, limited liability companies, associations, corporations,  
7 legal representatives, mutual companies, joint-stock companies, trusts,  
8 unincorporated organizations, trustees, trustees in bankruptcy, or  
9 receivers;

10 (2) Employer shall mean a person engaged in an industry who has  
11 fifteen or more employees for each working day in each of twenty or more  
12 calendar weeks in the current or preceding calendar year, any agent of  
13 such a person, and any party whose business is financed in whole or in  
14 part under the Nebraska Investment Finance Authority Act regardless of  
15 the number of employees and shall include the State of Nebraska,  
16 governmental agencies, and political subdivisions, but such term shall  
17 not include (a) the United States, a corporation wholly owned by the  
18 government of the United States, or an Indian tribe or (b) a bona fide  
19 private membership club, other than a labor organization, which is exempt  
20 from taxation under section 501(c) of the Internal Revenue Code;

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

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

1 receiving federal assistance;

2 (5) Covered entity shall mean an employer, an employment agency, a  
3 labor organization, or a joint labor-management committee;

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

7 (7) Employee shall mean an individual employed by an employer;

8 (8) Commission shall mean the Equal Opportunity Commission;

9 (9) Disability shall mean (a) a physical or mental impairment that  
10 substantially limits one or more of the major life activities of such  
11 individual, (b) a record of such an impairment, or (c) being regarded as  
12 having such an impairment. Disability shall not include homosexuality,  
13 bisexuality, transvestism, transsexualism, pedophilia, exhibitionism,  
14 voyeurism, gender-identity disorders not resulting in physical  
15 impairments, other sexual behavior disorders, problem gambling,  
16 kleptomania, pyromania, or psychoactive substance use disorders resulting  
17 from current illegal use of drugs;

18 (10)(a) Qualified individual with a disability shall mean an  
19 individual with a disability who, with or without reasonable  
20 accommodation, can perform the essential functions of the employment  
21 position that such individual holds or desires. Consideration shall be  
22 given to the employer's judgment as to what functions of a job are  
23 essential, and if an employer has prepared a written description before  
24 advertising or interviewing applicants for the job, this description  
25 shall be considered evidence of the essential functions of the job;

26 (b) Qualified individual with a disability shall not include any  
27 employee or applicant who is currently engaged in the illegal use of  
28 drugs when the covered entity acts on the basis of such use; and

29 (c) Nothing in this subdivision shall be construed to exclude as a  
30 qualified individual with a disability an individual who:

31 (i) Has successfully completed a supervised drug rehabilitation

1 program or otherwise been rehabilitated successfully and is no longer  
2 engaging in the illegal use of drugs;

3 (ii) Is participating in a supervised rehabilitation program and is  
4 no longer engaging in such use; or

5 (iii) Is erroneously regarded as engaging in such use but is not  
6 engaging in such use;

7 (11) Reasonable accommodation, with respect to disability, shall  
8 include making existing facilities used by employees readily accessible  
9 to and usable by individuals with disabilities, job restructuring, part-  
10 time or modified work schedules, reassignment to a vacant position,  
11 acquisition or modification of equipment or devices, appropriate  
12 adjustment or modification of examinations, training manuals, or  
13 policies, the provision of qualified readers or interpreters, and other  
14 similar accommodations for individuals with disabilities. Reasonable  
15 accommodation, with respect to pregnancy, childbirth, or related medical  
16 conditions, shall include acquisition of equipment for sitting, more  
17 frequent or longer breaks, periodic rest, assistance with manual labor,  
18 job restructuring, light-duty assignments, modified work schedules,  
19 temporary transfers to less strenuous or hazardous work, time off to  
20 recover from childbirth, or break time and appropriate facilities for  
21 breast-feeding or expressing breast milk. Reasonable accommodation shall  
22 not include accommodations which the covered entity can demonstrate  
23 require significant difficulty or expense thereby posing an undue  
24 hardship upon the covered entity. Factors to be considered in determining  
25 whether an accommodation would pose an undue hardship shall include:

26 (a) The nature and the cost of the accommodation needed under the  
27 Nebraska Fair Employment Practice Act;

28 (b) The overall financial resources of the facility or facilities  
29 involved in the provision of the reasonable accommodation, the number of  
30 persons employed at such facility, the effect on expenses and resources,  
31 or the impact otherwise of such accommodation upon the operation of the

1 facility;

2 (c) The overall financial resources of the covered entity, the  
3 overall size of the business of a covered entity with respect to the  
4 number of its employees, and the number, type, and location of its  
5 facilities; and

6 (d) The type of operation or operations of the covered entity,  
7 including the composition, structure, and functions of the work force of  
8 such entity, and the geographic separateness and administrative or fiscal  
9 relationship of the facility or facilities in question to the covered  
10 entity;

11 (12) Marital status shall mean the status of a person whether  
12 married or single;

13 (13) Because of sex or on the basis of sex shall include, but not be  
14 limited to, because of or on the basis of pregnancy, childbirth, or  
15 related medical conditions;

16 (14) Harass because of sex shall include making unwelcome sexual  
17 advances, requesting sexual favors, and engaging in other verbal or  
18 physical conduct of a sexual nature if (a) submission to such conduct is  
19 made either explicitly or implicitly a term or condition of an  
20 individual's employment, (b) submission to or rejection of such conduct  
21 by an individual is used as the basis for employment decisions affecting  
22 such individual, or (c) such conduct has the purpose or effect of  
23 unreasonably interfering with an individual's work performance or  
24 creating an intimidating, hostile, or offensive working environment;

25 (15) Unlawful under federal law or the laws of this state shall mean  
26 acting contrary to or in defiance of the law or disobeying or  
27 disregarding the law;

28 (16) Drug shall mean a controlled substance as defined in section  
29 28-401;

30 (17) Illegal use of drugs shall mean the use of drugs, the  
31 possession or distribution of which is unlawful under the Uniform

1 Controlled Substances Act, but shall not include the use of a drug taken  
2 under supervision by a licensed health care professional or any other use  
3 authorized by the Uniform Controlled Substances Act or other provisions  
4 of state law; ~~and~~

5 (18) Individual who is pregnant, who has given birth, or who has a  
6 related medical condition shall mean an individual with a known  
7 limitation who, with or without reasonable accommodation, can perform the  
8 essential functions of the employment position that such individual  
9 holds, desires, or may be temporarily assigned to. Consideration shall be  
10 given to the employer's judgment as to what functions of a job are  
11 essential, and if an employer has prepared a written description before  
12 advertising or interviewing applicants for the job, this description  
13 shall be considered evidence of the essential functions of the job; -

14 (19) Race is inclusive of characteristics that are associated with  
15 race, culture, and personhood, including, but not limited to, skin color,  
16 hair texture, and protective hairstyles; and

17 (20) Protective hairstyles includes, but is not limited to,  
18 hairstyles such as braids, locks, and twists.

19 Sec. 2. Section 48-1108, Reissue Revised Statutes of Nebraska, is  
20 amended to read:

21 48-1108 Notwithstanding any other provision of the Nebraska Fair  
22 Employment Practice Act:

23 (1) It shall not be an unlawful employment practice for an employer  
24 to hire and employ employees, for an employment agency to classify or  
25 refer for employment any individual, for a labor organization to classify  
26 its membership or to classify or refer for employment any individual, or  
27 for an employer, labor organization, or joint labor-management committee  
28 controlling apprenticeship or other training or retraining programs to  
29 admit or employ any individual in any such program on the basis of  
30 religion, sex, disability, marital status, or national origin in those  
31 certain instances when religion, sex, disability, marital status, or

1 national origin is a bona fide occupational qualification reasonably  
2 necessary to the normal operation of that particular business or  
3 enterprise;~~and~~

4 (2) It shall not be an unlawful employment practice for a school,  
5 college, university, or other educational institution or institution of  
6 learning to hire and employ employees of a particular religion if such  
7 school, college, university, or other educational institution or  
8 institution of learning is, in whole or in substantial part, owned,  
9 supported, controlled, or managed by a particular religion or by a  
10 particular religious corporation, association, or society or if the  
11 curriculum of such school, college, university, or other educational  
12 institution of learning is directed toward the propagation of a  
13 particular religion; ~~and -~~

14 (3) It shall not be an unlawful employment practice for an employer  
15 to enact bona fide health and safety standards that regulate the  
16 expression of an applicant's or employee's race, national origin, or  
17 religion if the employer demonstrates that:

18 (a) Without the implementation of such standard, it is reasonably  
19 certain that the health and safety of the applicant, employee, or other  
20 materially connected person will be impaired;

21 (b) The standard is adopted for non-discriminatory reasons;

22 (c) The standard is applied equally; and

23 (d) The employer has engaged in good faith efforts to reasonably  
24 accommodate the applicant or employee.

25 Sec. 3. Original section 48-1108, Reissue Revised Statutes of  
26 Nebraska, and section 48-1102, Revised Statutes Cumulative Supplement,  
27 2020, are repealed.