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LEGISLATURE OF NEBRASKA

ONE HUNDRED SIXTH LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 627

Introduced by Pansing Brooks, 28; Hunt, 8; McCollister, 20; Morfeld, 46.

Read first time January 23, 2019

Committee:

A BILL FOR AN ACT relating to discrimination; to amend sections 18-1724, 23-2525, 23-2531, 23-2541, 29-401, 48-215, 48-1101, 48-1104, 48-1105, 48-1106, 48-1107, 48-1113, 48-1115, 48-1122, 48-1124, 49-801, 81-1355, and 81-1356, Reissue Revised Statutes of Nebraska, and sections 48-628.13, 48-1111, 48-1117, and 48-1119, Revised Statutes Cumulative Supplement, 2018; to prohibit discrimination based upon sexual orientation and gender identity as prescribed; to define terms; to harmonize provisions; and to repeal the original sections.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The rules and regulations or amendments may provide:

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

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

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

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

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

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

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

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

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

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

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

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

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

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appointments shall not be allowed;

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

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

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

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

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

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

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

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

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

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

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amended to read:

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

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

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

Sec. 7. Section 48-628.13, Revised Statutes Cumulative Supplement, 2018, is amended to read:

48-628.13 Good cause for voluntarily leaving employment shall include, but not be limited to, the following reasons:

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

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

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

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

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

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

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

(b) The provisions of this subdivision (5) shall not apply if the individual is separated from the new job under conditions resulting in a disqualification from benefits under section 48-628.10 or 48-628.12;

(6) An individual accepted a voluntary layoff to avoid bumping

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another worker;

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

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

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

(10) An individual left his or her employment to attend school; or

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

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

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, sexual orientation, or gender identity and to safeguard their right to obtain and hold employment without discrimination because of their race, color, religion, sex, disability, ~~or~~ national origin, sexual orientation, or gender identity. Denying equal opportunity for employment because of race, color, religion, sex, disability, ~~or~~ national origin, sexual orientation, or gender identity 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 or her race, color, religion, sex, disability, ~~or~~ national origin, sexual orientation, or gender identity, 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, sexual orientation, or gender identity.

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

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

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

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

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

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

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

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 race, color, religion, sex, disability, marital status, ~~or~~ national origin, sexual orientation, or gender identity or to classify or refer for employment any individual on the basis of race, color, religion, sex, disability, marital status, ~~or~~ national origin, sexual orientation, or gender identity.

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

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 race, color, religion, sex, disability, marital status, ~~or~~ national origin, sexual orientation, or gender identity;

(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 such individual's status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, disability, marital status, ~~or~~ national origin, sexual orientation, or gender identity; or

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

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

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 race, color, religion, sex, disability, marital status, ~~or~~ national origin, sexual orientation, or gender identity in admission to, or employment in, any program established to provide apprenticeship or other training.

Sec. 13. Section 48-1111, Revised Statutes Cumulative Supplement, 2018, is amended to read:

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

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Employment Practice Act, 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, marital status, ~~or~~ national origin, sexual orientation, or gender identity, 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, marital status, ~~or~~ national origin, sexual orientation, or gender identity.

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

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

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

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

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

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

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

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

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

48-1113 Nothing in the Nebraska Fair Employment Practice Act shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to the act to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, disability, marital status, ~~or~~ national origin, sexual orientation, or gender identity 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, marital status, ~~or~~ national origin, sexual orientation, or gender identity 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, marital status, ~~or~~ national origin, sexual orientation, or gender identity in any community, section, or other area, or in the available work force in any community, section, or other area.

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

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amended to read:

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, marital status, ~~or~~ national origin, sexual orientation, or gender identity, except that such a notice or advertisement may indicate a preference, limitation, specification, or discrimination based on religion, sex, disability, marital status, or national origin when religion, sex, disability, marital status, or national origin is a bona fide occupational qualification for employment.

Sec. 16. Section 48-1117, Revised Statutes Cumulative Supplement, 2018, is amended to read:

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, and 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 the Nebraska Fair Employment Practice Act, including the sharing of information possessed by the commission on a case that has also been filed with the federal government or local

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

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

(5) To require that every employer, employment agency, and labor organization subject to the act 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 the act or the regulations or orders thereunder. The commission shall, by regulation, require each employer, labor organization, and joint labor-management committee subject to the act which controls an apprenticeship or other training program to maintain such records as are reasonably necessary to carry out the purposes of the act, 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;

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(6) To report, not less than once every two years, to the Clerk of 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 the act, and to make recommendations for such further legislation concerning abuses and discrimination because of race, color, religion, sex, disability, marital status, ~~or~~ national origin, sexual orientation, or gender identity, as may be desirable. The report shall also include the number of complaints filed under the act alleging a violation of subdivision (2) of section 48-1107.01 and the resolution of such complaints. The report submitted to the Clerk of the Legislature shall be submitted electronically. Each member of the Legislature shall receive an electronic copy of the report required by this subdivision by making a request for it to the chairperson of the commission; and

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

Sec. 17. Section 48-1119, Revised Statutes Cumulative Supplement, 2018, is amended to read:

48-1119 (1) In case of failure to eliminate any unlawful employment practice by informal methods of conference, conciliation, persuasion, mediation, or arbitration, the commission may order a public hearing. If such hearing is ordered, 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 unlawful employment 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

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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 such person may tend to incriminate such person in or subject such person 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 such person shall have been compelled under oath to testify or produce documentary evidence, except that no person so testifying shall be exempt from prosecution or punishment for any perjury committed by such person in his or her testimony. Such 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 such person under the fifth amendment to the Constitution of the United States.

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

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enable a court on appeal to determine the controverted questions presented by the proceedings and whether proper weight was given to the evidence. If the commission determines 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, but shall not be limited to, reinstatement or hiring of employees, with or without backpay. Backpay liability shall not accrue from a date more than two years prior to the filing of the charge with the commission. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the backpay otherwise allowable.

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

(5) 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 or her of any backpay, 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

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discrimination on account of race, color, religion, sex, disability, marital status, ~~or~~ national origin, sexual orientation, or gender identity or in violation of section 48-1114. If the commission finds that a respondent has not engaged in any unfair employment practice, it shall within thirty days state its findings of fact and conclusions of law. A copy of any order shall be served upon the person against whom it runs or his or her 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 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.

(6) Except as provided in subsection (4) of this section, until a transcript of the record of the proceedings is filed in the district 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. 18. Section 48-1122, Reissue Revised Statutes of Nebraska, is amended to read:

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 or her subcontractors not to discriminate against any employee or applicant for employment, to be employed in the performance of such contract, with respect to his or her hire, tenure, terms, conditions, or privileges of employment, because of his or her race, color, religion, sex, disability, ~~or~~ national origin, sexual orientation, or gender identity.

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

48-1124 Nothing contained in the Nebraska Fair Employment Practice Act 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

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

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

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

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

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

(3) Attorney shall mean attorney at law;

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

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

(6) Federal shall refer to the United States;

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

(8) Gender identity shall mean the actual or perceived appearance, expression, identity, or behavior of an individual, whether or not that appearance, expression, identity, or behavior is different from that traditionally or stereotypically associated with the individual's assigned sex at birth;

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

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

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

(12) ~~(11)~~ Land or real estate shall include lands, tenements, and

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hereditaments and all rights thereto and interest therein other than a chattel interest;

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

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

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

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

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

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

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

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

(21) Sexual orientation shall mean actual or perceived homosexuality, heterosexuality, or bisexuality;

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

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

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

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

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(26) ~~(24)~~ Writ shall signify an order or citation in writing issued in the name of the state out of a court or by a judicial officer; and

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

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

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

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

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

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

(3) Treatment during employment;

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

(5) Selection for training;

(6) Layoff, termination, or reinstatement; and

(7) Any other terms or conditions of employment.

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

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

(1) Equal employment opportunity shall mean the right of all persons to work and to advance on the basis of merit and ability without regard to race, color, religion, national origin, age, sex, marital status, ~~or~~

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physical or mental disability, sexual orientation, or gender identity;

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

(3) Office shall mean the Affirmative Action Office;

(4) Program shall mean the Affirmative Action Program;

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

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

(7) Administrator shall mean the Affirmative Action Administrator.

Sec. 23. Original sections 18-1724, 23-2525, 23-2531, 23-2541, 29-401, 48-215, 48-1101, 48-1104, 48-1105, 48-1106, 48-1107, 48-1113, 48-1115, 48-1122, 48-1124, 49-801, 81-1355, and 81-1356, Reissue Revised Statutes of Nebraska, and sections 48-628.13, 48-1111, 48-1117, and 48-1119, Revised Statutes Cumulative Supplement, 2018, are repealed.