

LEGISLATURE OF NEBRASKA  
ONE HUNDRED THIRD LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 485**

Introduced by Conrad, 46; Chambers, 11; Howard, 9.

Read first time January 22, 2013

Committee:

A BILL

1 FOR AN ACT relating to discrimination; to amend sections 23-2525,  
2 23-2531, 23-2541, 48-215, 48-1101, 48-1103, 48-1104,  
3 48-1105, 48-1106, 48-1107, 48-1108, 48-1111, 48-1113,  
4 48-1115, 48-1119, 48-1122, 48-1124, 81-1355, and 81-1356,  
5 Reissue Revised Statutes of Nebraska, and section  
6 48-1117, Revised Statutes Cumulative Supplement, 2012; to  
7 prohibit discrimination based upon sexual orientation or  
8 marital status as prescribed; to eliminate obsolete  
9 provisions; to repeal the original sections; and to  
10 outright repeal section 48-1109, Reissue Revised Statutes  
11 of Nebraska.

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

1                   Section 1. Section 23-2525, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3                   23-2525 The county personnel officer shall, with the  
4 assistance of two advisory groups, one of classified employees and  
5 one of department heads, prepare and submit to the personnel policy  
6 board proposed personnel rules and regulations for the classified  
7 service. He or she shall give reasonable notice thereof to the heads  
8 of all agencies, departments, county employee associations, and  
9 institutions affected thereby, and they shall be given an  
10 opportunity, upon request, to appear before the board and present  
11 their views thereon. The personnel policy board shall submit the  
12 rules and regulations for adoption or amendment and adoption by  
13 resolution of the board of county commissioners. Amendments thereto  
14 shall be made in the same manner. The rules and regulations shall  
15 provide:

16                   (1) For a single integrated classification plan covering  
17 all positions in the county service except those expressly exempt  
18 from the County Civil Service Act, which shall group all positions  
19 into defined classes containing a descriptive class title and a code  
20 identifying each class, and which shall be based on similarity of  
21 duties performed and responsibilities assumed, so that the same  
22 qualifications may reasonably be required and the same schedule of  
23 pay may be equitably applied to all positions in the same class.  
24 After the classification plan has been approved by the personnel  
25 policy board, the county personnel officer shall be responsible for

1 the administration and maintenance of the plan and for the allocation  
2 of each classified position. Any employee affected by the allocation  
3 of a position to a class shall, upon request, be given a reasonable  
4 opportunity to be heard thereon by the personnel policy board who  
5 shall issue an advisory opinion to the personnel officer;

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

20 (3) For open competitive examinations to test the  
21 relative fitness of applicants for the respective positions.  
22 Competitive examination shall not be required for transferred  
23 employees transferring from positions in the state or a political  
24 subdivision to positions in the county pursuant to a merger of  
25 services or transferred employees transferring from positions in the

1 state or a political subdivision to positions in the county due to  
2 the assumption of functions of the state or a political subdivision  
3 by the county. The rules and regulations shall provide for the public  
4 announcement of the holding of examinations and shall authorize the  
5 personnel officer to prescribe examination procedures and to place  
6 the names of successful candidates on eligible lists in accordance  
7 with their respective ratings. Examinations may be assembled or  
8 unassembled and may include various job-related examining techniques,  
9 such as rating training and experience, written tests, oral  
10 interviews, recognition of professional licensing, performance tests,  
11 investigations, and any other measures of ability to perform the  
12 duties of the position. Examinations shall be scored objectively and  
13 employment registers shall be established in the order of final  
14 score. Certification of eligibility for appointment to vacancies  
15 shall be in accordance with a formula which limits selection by the  
16 hiring department from among the highest ranking available and  
17 eligible candidates, but which also permits selective certification  
18 under appropriate conditions as prescribed in the rules and  
19 regulations;

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

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

7                   (6) ~~Prohibiting~~ For prohibiting disqualification of any  
8 person from taking an examination, from promotion or from holding a  
9 position because of race, sex, unless it constitutes a bona fide  
10 occupational qualification, or marital status, national origin,  
11 physical disabilities, age, political or religious opinions or  
12 affiliations, sexual orientation, or other factors which have no  
13 bearing upon the individual's fitness to hold the position;

14                   (7) For a period of probation not to exceed one year  
15 before appointment or promotion may be made complete, and during  
16 which period a probationer may be separated from his or her position  
17 without the right of appeal or hearing except as provided in section  
18 23-2531. After a probationer has been separated, he or she may again  
19 be placed on the eligible list at the discretion of the personnel  
20 officer. The rules shall provide that a probationer shall be dropped  
21 from the payroll at the expiration of his or her probationary period  
22 if, within ten days prior thereto, the appointing authority has  
23 notified the personnel officer in writing that the services of the  
24 employee have been unsatisfactory;

25                   (8) ~~When~~ That when an employee has been promoted but

1 fails to satisfactorily perform the duties of the new position during  
2 the probationary period, he or she shall be returned to a position  
3 comparable to that held immediately prior to promotion at the current  
4 salary of such position;

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

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

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

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

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

20 (14) For the transfer of employees of the state or a  
21 political subdivision to the county pursuant to a merger of services  
22 or due to the assumption of functions of the state or a political  
23 subdivision by the county;

24 (15) For layoff by reason of lack of funds or work or  
25 abolition of the position, or material change in duties or

1 organization, for the layoff of nontenured employees first, and for  
2 reemployment of permanent employees so laid off, giving consideration  
3 in both layoff and reemployment to performance record and seniority  
4 in service;

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

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

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

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

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

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

25 (22) For other regulations not inconsistent with the

1 County Civil Service Act and which may be necessary for its effective  
2 implementation.

3 Sec. 2. Section 23-2531, Reissue Revised Statutes of  
4 Nebraska, is amended to read:

5 23-2531 (1) Discrimination against any person in  
6 recruitment, examination, appointment, training, promotion,  
7 retention, discipline, or any other aspect of personnel  
8 administration because of political or religious opinions or  
9 affiliations or because of race, marital status, national origin,  
10 sexual orientation, or other nonmerit factors shall be prohibited.  
11 Discrimination on the basis of age or sex or physical disability  
12 shall be prohibited unless specific age, sex, or physical  
13 requirements constitute a bona fide occupational qualification  
14 necessary to proper and efficient administration. The rules and  
15 regulations shall provide for appeals in cases of alleged  
16 discrimination to the personnel policy board whose determination  
17 shall be binding upon a finding of discrimination.

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

24 (3) No person shall, directly or indirectly, give,  
25 render, pay, offer, solicit, or accept any money, service, or other



1 valuable consideration for or on account of any appointment, proposed  
2 appointment, promotion, or proposed promotion to, or any advantage  
3 in, a position in the classified service.

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

10 Sec. 3. Section 23-2541, Reissue Revised Statutes of  
11 Nebraska, is amended to read:

12 23-2541 The personnel policy board, if created, shall,  
13 with the assistance of two advisory groups, one of classified  
14 employees and one of department heads, adopt proposed personnel rules  
15 and regulations for the classified service and provide reasonable  
16 notice of proposed rules and regulations to the heads of all  
17 agencies, departments, county employee associations, and institutions  
18 affected thereby. Any person affected by such rules and regulations  
19 shall be given an opportunity, upon request, to appear before the  
20 personnel policy board and present his or her views on the rules and  
21 regulations. The personnel policy board shall submit proposed rules  
22 and regulations or amendments for adoption by the county board. The  
23 county board may consider and adopt only personnel rules and  
24 regulations or amendments proposed by the personnel policy board and  
25 may not repeal or revoke a rule or regulation except upon the

1 recommendation of the personnel policy board.

2 The rules and regulations or amendments may provide:

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

19 (2) For a compensation plan for all employees in the  
20 classified service, comprising salary schedules, attendance  
21 regulations, premium payments, special allowances, and fringe  
22 benefits, considering the amount of money available, the prevailing  
23 rates of pay in government and private employment, the cost of  
24 living, the level of each class of position in the classification  
25 plan, and other relevant factors. The compensation plan and

1 amendments to such plan shall be adopted in the manner prescribed for  
2 rules and regulations and shall in no way limit the authority of the  
3 county board relative to appropriations for salary and wage  
4 expenditures;

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

23           (4) For promotions which shall give appropriate  
24 consideration to examinations and to record of performance,  
25 seniority, and conduct. Vacancies shall be filled by promotion

1 whenever practicable and in the best interest of the service and  
2 preference may be given to employees within the department in which  
3 the vacancy occurs;

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

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

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

1    been unsatisfactory;

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

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

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

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

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

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

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

25                   (15) For holidays, for attendance regulations in the

1 various classes of positions in the classified service, and for  
2 annual, sick, and special leaves of absence, with or without pay or  
3 at reduced pay;

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

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

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

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

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

21 Sec. 4. Section 48-215, Reissue Revised Statutes of  
22 Nebraska, is amended to read:

23 48-215 It shall be unlawful for any person, firm, or  
24 corporation, engaged to any extent whatsoever in the State of  
25 Nebraska in the production, manufacture, or distribution of military

1 or naval material, equipment, or supplies for the State of Nebraska  
2 or the government of the United States, to refuse to employ any  
3 person in any capacity, if ~~said such~~ person is a citizen and is  
4 qualified, on account of the race, color, ~~creed,~~ religion, sex,  
5 disability, marital status, or national origin, or sexual  
6 orientation, of ~~said such~~ person.

7 Sec. 5. Section 48-1101, Reissue Revised Statutes of  
8 Nebraska, is amended to read:

9 48-1101 It is the policy of this state to foster the  
10 employment of all employable persons in the state on the basis of  
11 merit regardless of their race, color, religion, sex, disability, ~~or~~  
12 marital status, national origin, or sexual orientation and to  
13 safeguard their right to obtain and hold employment without  
14 discrimination because of their race, color, religion, sex,  
15 disability, ~~or marital status, national origin, or sexual~~  
16 orientation. Denying equal opportunity for employment because of  
17 race, color, religion, sex, disability, ~~or marital status, national~~  
18 origin, or sexual orientation is contrary to the principles of  
19 freedom and is a burden on the objectives of the public policy of  
20 this state. The policy of this state does not require any person to  
21 employ an applicant for employment because of his or her race, color,  
22 religion, sex, disability, ~~or marital status, national origin, or~~  
23 sexual orientation and the policy of this state does not require any  
24 employer, employment agency, labor organization, or joint labor-  
25 management committee to grant preferential treatment to any

1 individual or to any group because of race, color, religion, sex,  
2 disability, ~~or~~ marital status, national origin, or sexual  
3 orientation.

4           It is the public policy of this state that all people in  
5 Nebraska, both with and without disabilities, shall have the right  
6 and opportunity to enjoy the benefits of living, working, and  
7 recreating within this state. It is the intent of the Legislature  
8 that state and local governments, Nebraska businesses, Nebraska labor  
9 organizations, and Nebraskans with disabilities understand their  
10 rights and responsibilities under the law regarding employment  
11 discrimination and the prevention of discrimination on the basis of  
12 disability.

13           Sec. 6. Section 48-1103, Reissue Revised Statutes of  
14 Nebraska, is amended to read:

15           48-1103 The Nebraska Fair Employment Practice Act shall  
16 not apply to:

17           (1) A religious corporation, organization, association,  
18 or society with respect to the employment of individuals of a  
19 particular religion to perform work connected with the carrying on by  
20 such corporation, organization, association, or society of its  
21 religious activities; or

22           (2) The employment of any individual (a) by his or her  
23 parent, grandparent, spouse, child, or grandchild or (b) in the  
24 domestic service of any person.

25           Sec. 7. Section 48-1104, Reissue Revised Statutes of



1 Nebraska, is amended to read:

2           48-1104 It shall be an unlawful employment practice for  
3 an employer:

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

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

16           Sec. 8. Section 48-1105, Reissue Revised Statutes of  
17 Nebraska, is amended to read:

18           48-1105 It shall be an unlawful employment practice for  
19 an employment agency to fail or refuse to refer for employment, or  
20 otherwise to discriminate against, any individual because of race,  
21 color, religion, sex, disability, marital status, or national origin,  
22 or to classify or refer for employment any individual on the basis of  
23 race, color, religion, sex, disability, marital status, ~~or~~ national  
24 origin, or sexual orientation.

25           Sec. 9. Section 48-1106, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2           48-1106 It shall be an unlawful employment practice for a  
3 labor organization:

4           (1) To exclude or to expel from its membership, or  
5 otherwise to discriminate against, any individual because of race,  
6 color, religion, sex, disability, marital status, ~~or~~ national origin,  
7 or sexual orientation;

8           (2) To limit, segregate, or classify its membership, or  
9 to classify or fail or refuse to refer for employment any individual,  
10 in any way which would deprive or tend to deprive any individual of  
11 employment opportunities, or would limit such employment  
12 opportunities or otherwise adversely affect such individual's status  
13 as an employee or as an applicant for employment, because of such  
14 individual's race, color, religion, sex, disability, marital status,  
15 ~~or~~ national origin, or sexual orientation; or

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

18           Sec. 10. Section 48-1107, Reissue Revised Statutes of  
19 Nebraska, is amended to read:

20           48-1107 It shall be an unlawful employment practice for  
21 any employer, labor organization, or joint labor-management committee  
22 controlling apprenticeship or other training or retraining, including  
23 on-the-job training programs to discriminate against any individual  
24 because of race, color, religion, sex, disability, marital status, ~~or~~  
25 national origin, or sexual orientation in admission to, or employment

1 in, any program established to provide apprenticeship or other  
2 training.

3           Sec. 11. Section 48-1108, Reissue Revised Statutes of  
4 Nebraska, is amended to read:

5           48-1108 Notwithstanding any other provision of the  
6 Nebraska Fair Employment Practice Act:

7           (1) It shall not be an unlawful employment practice for  
8 an employer to hire and employ employees, for an employment agency to  
9 classify or refer for employment any individual, for a labor  
10 organization to classify its membership or to classify or refer for  
11 employment any individual, or for an employer, labor organization, or  
12 joint labor-management committee controlling apprenticeship or other  
13 training or retraining programs to admit or employ any individual in  
14 any such program on the basis of religion, sex, disability, marital  
15 status, ~~or~~ national origin, or sexual orientation in those certain  
16 instances when religion, sex, disability, marital status, or national  
17 origin is a bona fide occupational qualification reasonably necessary  
18 to the normal operation of that particular business or enterprise;  
19 and

20           (2) It shall not be an unlawful employment practice for a  
21 school, college, university, or other educational institution or  
22 institution of learning to hire and employ employees of a particular  
23 religion if such school, college, university, or other educational  
24 institution or institution of learning is, in whole or in substantial  
25 part, owned, supported, controlled, or managed by a particular

1 religion or by a particular religious corporation, association, or  
2 society or if the curriculum of such school, college, university, or  
3 other educational institution of learning is directed toward the  
4 propagation of a particular religion.

5           Sec. 12. Section 48-1111, Reissue Revised Statutes of  
6 Nebraska, is amended to read:

7           48-1111 (1) Except as otherwise provided in the Nebraska  
8 Fair Employment Practice Act, it shall not be an unlawful employment  
9 practice for an employer to apply different standards of  
10 compensation, or different terms, conditions, or privileges of  
11 employment pursuant to a bona fide seniority or merit system or a  
12 system which measures earnings by quantity or quality of production  
13 or to employees who work in different locations, if such differences  
14 are not the result of an intention to discriminate because of race,  
15 color, religion, sex, disability, marital status, or national origin,  
16 nor shall it be an unlawful employment practice for an employer to  
17 give and to act upon the results of any professionally developed  
18 ability test if such test, its administration, or action upon the  
19 results is not designed, intended, or used to discriminate because of  
20 race, color, religion, sex, disability, marital status, ~~or~~ national  
21 origin, or sexual orientation.

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

1 job or benefit to an individual with a disability:

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

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

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

14 (2) Women affected by pregnancy, childbirth, or related  
15 medical conditions shall be treated the same for all employment-  
16 related purposes, including receipt of employee benefits, as other  
17 persons not so affected but similar in their ability or inability to  
18 work, and nothing in this section shall be interpreted to provide  
19 otherwise.

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

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

1 abortion.

2           Sec. 13. Section 48-1113, Reissue Revised Statutes of  
3 Nebraska, is amended to read:

4           48-1113 Nothing in the Nebraska Fair Employment Practice  
5 Act shall be interpreted to require any employer, employment agency,  
6 labor organization, or joint labor-management committee subject to  
7 the act to grant preferential treatment to any individual or to any  
8 group because of the race, color, religion, sex, disability, marital  
9 status, ~~or~~ national origin, or sexual orientation of such individual  
10 or group on account of an imbalance which may exist with respect to  
11 the total number or percentage of persons of any race, color,  
12 religion, sex, disability, marital status, ~~or~~ national origin, or  
13 sexual orientation employed by any employer, referred or classified  
14 for employment by any employment agency or labor organization,  
15 admitted to membership or classified by any labor organization, or  
16 admitted to, or employed in, any apprenticeship or other training  
17 program, in comparison with the total number or percentage of persons  
18 of such race, color, religion, sex, disability, marital status, ~~or~~  
19 national origin, or sexual orientation in any community, section, or  
20 other area, or in the available work force in any community, section,  
21 or other area.

22           Sec. 14. Section 48-1115, Reissue Revised Statutes of  
23 Nebraska, is amended to read:

24           48-1115 It shall be an unlawful employment practice for  
25 an employer, labor organization, or employment agency to print or

1 publish or cause to be printed or published any notice or  
2 advertisement relating to employment by such an employer or  
3 membership in or any classification or referral for employment by  
4 such a labor organization, or relating to any classification or  
5 referral for employment by such an employment agency, indicating any  
6 preference, limitation, specification, or discrimination based on  
7 race, color, religion, sex, disability, marital status, ~~or~~ national  
8 origin, or sexual orientation, except that such a notice or  
9 advertisement may indicate a preference, limitation, specification or  
10 discrimination based on religion, sex, disability, marital status, ~~or~~  
11 national origin, or sexual orientation, when religion, sex,  
12 disability, marital status, ~~or~~ national origin, or sexual  
13 orientation, is a bona fide occupational qualification for  
14 employment.

15           Sec. 15. Section 48-1117, Revised Statutes Cumulative  
16 Supplement, 2012, is amended to read:

17           48-1117 The commission shall have the following powers  
18 and duties:

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

21           (2) To hold hearings, subpoena witnesses, compel their  
22 attendance, administer oaths, and take the testimony of any person  
23 under oath and, in connection therewith, to require the production  
24 for examination of any books and papers relevant to any allegation of  
25 unlawful employment practice pending before the commission. The

1 commission may make rules as to the issuance of subpoenas, subject to  
2 the approval by a constitutional majority of the elected members of  
3 the Legislature;

4 (3) To cooperate with the federal government and with  
5 local agencies to effectuate the purposes of the Nebraska Fair  
6 Employment Practice Act, including the sharing of information  
7 possessed by the commission on a case that has also been filed with  
8 the federal government or local agencies if both the employer and  
9 complainant have been notified of the filing;

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

13 (5) To require that every employer, employment agency,  
14 and labor organization subject to the act shall (a) make and keep  
15 such records relevant to the determinations of whether unlawful  
16 employment practices have been or are being committed, (b) preserve  
17 such records for such periods, and (c) make such reports therefrom,  
18 as the commission shall prescribe by regulation or order, after  
19 public hearing, as reasonable, necessary, or appropriate for the  
20 enforcement of the act or the regulations or orders thereunder. The  
21 commission shall, by regulation, require each employer, labor  
22 organization, and joint labor-management committee subject to the act  
23 which controls an apprenticeship or other training program to  
24 maintain such records as are reasonably necessary to carry out the  
25 purposes of the act, including, but not limited to, a list of



1 applicants who wish to participate in such program, including the  
2 chronological order in which such applications were received, and to  
3 furnish to the commission, upon request, a detailed description of  
4 the manner in which persons are selected to participate in the  
5 apprenticeship or other training program. Any employer, employment  
6 agency, labor organization, or joint labor-management committee which  
7 believes that the application to it of any regulation or order issued  
8 under this section would result in undue hardship may either apply to  
9 the commission for an exemption from the application of such  
10 regulation or order or bring a civil action in the district court for  
11 the district where such records are kept. If the commission or the  
12 court, as the case may be, finds that the application of the  
13 regulation or order to the employer, employment agency, or labor  
14 organization in question would impose an undue hardship, the  
15 commission or the court, as the case may be, may grant appropriate  
16 relief;

17 (6) To report, not less than once every two years, to the  
18 Clerk of the Legislature and the Governor, on the hearings it has  
19 conducted and the decisions it has rendered, the other work performed  
20 by it to carry out the purposes of the act, and to make  
21 recommendations for such further legislation concerning abuses and  
22 discrimination because of race, color, religion, sex, disability,  
23 marital status, ~~or~~ national origin, or sexual orientation, as may be  
24 desirable. The report submitted to the Clerk of the Legislature shall  
25 be submitted electronically. Each member of the Legislature shall

1 receive an electronic copy of the report required by this subdivision  
2 by making a request for it to the chairperson of the commission; and

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

5 Sec. 16. Section 48-1119, Reissue Revised Statutes of  
6 Nebraska, is amended to read:

7 48-1119 (1) In case of failure to eliminate any unlawful  
8 employment practice by informal methods of conference, conciliation,  
9 persuasion, mediation, or arbitration, the commission may order a  
10 public hearing. If such hearing is ordered, the commission shall  
11 cause to be issued and served a written notice, together with a copy  
12 of the complaint, requiring the person, employer, labor organization,  
13 or employment agency named in the complaint, hereinafter referred to  
14 as respondent, to answer such charges at a hearing before the  
15 commission at a time and place which shall be specified in such  
16 notice. Such hearing shall be within the county where the alleged  
17 unlawful employment practice occurred. The complainant shall be a  
18 party to the proceeding, and in the discretion of the commission any  
19 other person whose testimony has a bearing on the matter may be  
20 allowed to intervene therein. Both the complainant and the  
21 respondent, in addition to the commission, may introduce witnesses at  
22 the hearing. The respondent may file a verified answer to the  
23 allegations of the complaint and may appear at such hearing in person  
24 and with or without counsel. Testimony or other evidence may be  
25 introduced by either party. All evidence shall be under oath and a

1 record thereof shall be made and preserved. Such proceedings shall,  
2 so far as practicable, be conducted in accordance with the rules of  
3 evidence applicable in the district courts of the State of Nebraska,  
4 and shall be of public record.

5 (2) No person shall be excused from testifying or from  
6 producing any book, document, paper, or account in any investigation  
7 by, ~~or~~-inquiry by, or hearing before the commission when ordered to  
8 do so, upon the ground that the testimony or evidence, book,  
9 document, paper, or account required of such person may tend to  
10 incriminate such person in or subject such person to penalty or  
11 forfeiture; but no person shall be prosecuted, punished, or subjected  
12 to any forfeiture or penalty for or on account of any act,  
13 transaction, matter, or thing concerning which such person shall have  
14 been compelled under oath to testify or produce documentary evidence,  
15 except that no person so testifying shall be exempt from prosecution  
16 or punishment for any perjury committed by such person in his or her  
17 testimony. Such immunity shall extend only to a natural person who,  
18 in obedience to a subpoena, gives testimony under oath or produces  
19 evidence, documentary or otherwise, under oath. Nothing in this  
20 subsection shall be construed as precluding any person from claiming  
21 any right or privilege available to such person under the fifth  
22 amendment to the Constitution of the United States.

23 (3) After the conclusion of the hearing, the commission  
24 shall, within ten days ~~of the~~after receipt of the transcript or the  
25 receipt of the recommendations from the hearing officer, make and

1 file its findings of fact and conclusions of law and make and enter  
2 an appropriate order. The hearing officer need not refer to the page  
3 and line numbers of the transcript when making his or her  
4 recommendation to the commission. Such findings of fact and  
5 conclusions of law shall be in sufficient detail to enable a court on  
6 appeal to determine the controverted questions presented by the  
7 proceedings and whether proper weight was given to the evidence. If  
8 the commission determines that the respondent has intentionally  
9 engaged in or is intentionally engaging in any unlawful employment  
10 practice, ~~it~~the commission shall issue and cause to be served on  
11 such respondent an order requiring such respondent to cease and  
12 desist from such unlawful employment practice and order such other  
13 affirmative action as may be appropriate which may include, but shall  
14 not be limited to, reinstatement or hiring of employees, with or  
15 without backpay. Backpay liability shall not accrue from a date more  
16 than two years prior to the filing of the charge with the commission.  
17 Interim earnings or amounts earnable with reasonable diligence by the  
18 person or persons discriminated against shall operate to reduce the  
19 backpay otherwise allowable.

20 (4) A complainant who has suffered physical, emotional,  
21 or financial harm as a result of a violation of section 48-1104 or  
22 48-1114 may, at any stage of the proceedings prior to dismissal, file  
23 an action directly in the district court of the county where such  
24 alleged violation occurred. If the complainant files a district court  
25 action on the charge, the complainant shall provide written notice of

1 such filing to the commission, and such notification shall  
2 immediately terminate all proceedings before the commission. The  
3 district court shall docket and try such case as any other civil  
4 action, and any successful complainant shall be entitled to  
5 appropriate relief, including temporary or permanent injunctive  
6 relief, general and special damages, reasonable attorney's fees, and  
7 costs.

8 (5) No order of the commission shall require the  
9 admission or reinstatement of an individual as a member of a labor  
10 organization or the hiring, reinstatement, or promotion of an  
11 individual as an employee, or the payment to him or her of any  
12 backpay, if such individual was refused admission, suspended, or  
13 expelled, or was refused employment or advancement or was suspended  
14 or discharged for any reason other than discrimination on account of  
15 race, color, religion, sex, disability, marital status, ~~or~~ national  
16 origin, or sexual orientation or in violation of section 48-1114. If  
17 the commission finds that a respondent has not engaged in any ~~unfair~~  
18 unlawful employment practice, it shall within thirty days state its  
19 findings of fact and conclusions of law. A copy of any order shall be  
20 served upon the person against whom it runs or his or her attorney  
21 and notice thereof shall be given to the other parties to the  
22 proceedings or their attorneys. Such order shall take effect twenty  
23 days after service thereof unless otherwise provided and shall  
24 continue in force either for a period which may be designated therein  
25 or until changed or revoked by the commission.

1                   (6) Except as provided in subsection (4) of this section,  
2 until a transcript of the record of the proceedings is filed in the  
3 district court as provided in section 48-1120, the commission may, at  
4 any time upon reasonable notice and in such a manner it ~~shall deem~~  
5 deems proper, modify or set aside, in whole or in part, any finding  
6 or order made by it.

7                   Sec. 17. Section 48-1122, Reissue Revised Statutes of  
8 Nebraska, is amended to read:

9                   48-1122 Every contract to which the state or any of its  
10 political subdivisions is a party shall contain a provision requiring  
11 the contractor and his or her subcontractors not to discriminate  
12 against any employee or applicant for employment, to be employed in  
13 the performance of such contract, with respect to his or her hire,  
14 tenure, terms, conditions, or privileges of employment, because of  
15 his or her race, color, religion, sex, disability, marital status, ~~or~~  
16 national origin, or sexual orientation.

17                  Sec. 18. Section 48-1124, Reissue Revised Statutes of  
18 Nebraska, is amended to read:

19                  48-1124 Nothing contained in the Nebraska Fair Employment  
20 Practice Act shall be deemed to repeal any of the provisions of the  
21 civil rights law, any other law of this state, or any municipal  
22 ordinance relating to discrimination because of race, ~~creed~~, color,  
23 religion, sex, disability, marital status, ~~or~~ national origin, or  
24 sexual orientation.

25                  Sec. 19. Section 81-1355, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2           81-1355 It is declared to be in the best interest of the  
3 State of Nebraska to insure that historic and any present patterns of  
4 sex and racial discrimination are eliminated and that each agency  
5 pursue a course of action in all areas of its operation to insure  
6 that all citizens are provided with fair and equal opportunities for  
7 employment and advancement regardless of race, color, religion,  
8 national origin, sexual orientation, age, sex, marital status, or  
9 physical or mental disability.

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

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

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

17           (3) Treatment during employment;

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

19           (5) Selection for training;

20           (6) Layoff, termination, or reinstatement; and

21           (7) Any other terms or conditions of employment.

22           Sec. 20. Section 81-1356, Reissue Revised Statutes of  
23 Nebraska, is amended to read:

24           81-1356 As used in sections 81-1355 to 81-1368, unless  
25 the context otherwise requires:

1           (1) Equal employment opportunity shall mean the right of  
2 all persons to work and to advance on the basis of merit and ability  
3 without regard to race, color, religion, national origin, sexual  
4 orientation, age, sex, marital status, or physical or mental  
5 disability;

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

17           (3) Office shall mean the Affirmative Action Office;

18           (4) Program shall mean the Affirmative Action Program;

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

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

24           (7) Administrator shall mean the Affirmative Action  
25 Administrator.



1                   Sec. 21. Original sections 23-2525, 23-2531, 23-2541,  
2 48-215, 48-1101, 48-1103, 48-1104, 48-1105, 48-1106, 48-1107,  
3 48-1108, 48-1111, 48-1113, 48-1115, 48-1119, 48-1122, 48-1124,  
4 81-1355, and 81-1356, Reissue Revised Statutes of Nebraska, and  
5 section 48-1117, Revised Statutes Cumulative Supplement, 2012, are  
6 repealed.

7                   Sec. 22. The following section is outright repealed:  
8 Section 48-1109, Reissue Revised Statutes of Nebraska.