

LEGISLATURE OF NEBRASKA  
ONE HUNDRED EIGHTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 678**

Introduced by Day, 49.

Read first time January 18, 2023

Committee:

1 A BILL FOR AN ACT relating to the Nebraska Fair Employment Practice Act;  
2 to amend sections 48-1102, 48-1111, and 48-1125, Reissue Revised  
3 Statutes of Nebraska; to change, provide, eliminate, and transfer  
4 definitions and provisions relating to discrimination on the basis  
5 of disability or pregnancy; to harmonize provisions; and to repeal  
6 the original sections.

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

1 Section 1. Section 48-1102, Reissue Revised Statutes of Nebraska, is  
2 amended to read:

3 48-1102 For purposes of the Nebraska Fair Employment Practice Act,  
4 unless the context otherwise requires, the following definitions and the  
5 definitions found in sections 2 to 15 of this act apply:

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

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

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

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

1 Employment Service and the system of state and local employment services  
2 receiving federal assistance;

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

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

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

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

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

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

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

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

1           ~~(i) Has successfully completed a supervised drug rehabilitation~~  
2 ~~program or otherwise been rehabilitated successfully and is no longer~~  
3 ~~engaging in the illegal use of drugs;~~

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

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

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

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

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

1 ~~or the impact otherwise of such accommodation upon the operation of the~~  
2 ~~facility;~~

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

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

12 ~~(9) (12)~~ Marital status shall mean the status of a person whether  
13 married or single;

14 ~~(10) (13)~~ Because of sex or on the basis of sex shall include, but  
15 not be limited to, because of or on the basis of pregnancy, childbirth,  
16 or related medical conditions;

17 ~~(11) (14)~~ Harass because of sex shall include making unwelcome  
18 sexual advances, requesting sexual favors, and engaging in other verbal  
19 or physical conduct of a sexual nature if (a) submission to such conduct  
20 is made either explicitly or implicitly a term or condition of an  
21 individual's employment, (b) submission to or rejection of such conduct  
22 by an individual is used as the basis for employment decisions affecting  
23 such individual, or (c) such conduct has the purpose or effect of  
24 unreasonably interfering with an individual's work performance or  
25 creating an intimidating, hostile, or offensive working environment;

26 ~~(12) (15)~~ Unlawful under federal law or the laws of this state shall  
27 mean acting contrary to or in defiance of the law or disobeying or  
28 disregarding the law;

29 ~~(13) (16)~~ Drug shall mean a controlled substance as defined in  
30 section 28-401;

31 ~~(14) (17)~~ Illegal use of drugs shall mean the use of drugs, the

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

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

15 ~~(15) (19) Race is inclusive of characteristics such as skin color,~~  
16 ~~hair texture, and protective hairstyles; and~~

17 ~~(16) (20) Protective hairstyles includes braids, locks, and twists.~~

18 Sec. 2. (1) Disability means, with respect to an individual:

19 (a) A physical or mental impairment that substantially limits one or  
20 more of the major life activities of such individual;

21 (b) A record of such an impairment; or

22 (c) Being regarded as having such an impairment. This means that the  
23 individual has been subjected to an action prohibited by the Nebraska  
24 Fair Employment Practice Act because of:

25 (i) An actual or perceived impairment that is not both transitory  
26 and minor as provided in section 17 of this act; or

27 (ii) The known disability of another person with whom the individual  
28 is known to have a relationship or association.

29 (2) An individual may establish disability under any one or more of  
30 the three prongs of the definition of disability in subsection (1) of  
31 this section: Subdivision (1)(a), the "actual disability" prong;

1 subdivision (1)(b), the "record of" prong; or subdivision (1)(c), the  
2 "regarded as" prong.

3 (3) When an individual is not challenging a covered entity's failure  
4 to make reasonable accommodations and does not require a reasonable  
5 accommodation, it is generally unnecessary to proceed under the "actual  
6 disability" or "record of" prongs, which require a showing of an  
7 impairment that substantially limits a major life activity or a record of  
8 such an impairment. In these cases, the evaluation of coverage can be  
9 made solely under the "regarded as" prong of the definition of  
10 disability, which does not require a showing of an impairment that  
11 substantially limits a major life activity or a record of such an  
12 impairment. An individual may choose, however, to proceed under the  
13 "actual disability" or "record of" prong regardless of whether the  
14 individual is challenging a covered entity's failure to make reasonable  
15 accommodations or requires a reasonable accommodation.

16 (4)(a) The terms disability and qualified individual with a  
17 disability do not include individuals currently engaging in the illegal  
18 use of drugs, when the covered entity acts on the basis of such use.

19 (b) However, the terms disability and qualified individual with a  
20 disability may not exclude an individual who:

21 (i) Has successfully completed a supervised drug rehabilitation  
22 program and is no longer engaging in the illegal use of drugs, or has  
23 otherwise been rehabilitated successfully and is no longer engaging in  
24 the illegal use of drugs; or

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

27 (iii) Is erroneously regarded as engaging in such use, but is not  
28 engaging in such use.

29 (5) Disability does not include:

30 (a) Transvestism, transsexualism, pedophilia, exhibitionism,  
31 voyeurism, gender identity disorders not resulting from physical

1 impairments, or other sexual behavior disorders;

2 (b) Compulsive gambling, kleptomania, or pyromania; or

3 (c) Psychoactive substance use disorders resulting from current  
4 illegal use of drugs.

5 (6) Homosexuality and bisexuality are not impairments and so are not  
6 disabilities.

7 Sec. 3. Physical or mental impairment means:

8 (1) Any physiological disorder or condition, cosmetic disfigurement,  
9 or anatomical loss affecting one or more body systems, such as  
10 neurological, musculoskeletal, special sense organs, respiratory  
11 (including speech organs), cardiovascular, reproductive, digestive,  
12 genitourinary, immune, circulatory, hemic, lymphatic, skin, and  
13 endocrine; or

14 (2) Any mental or psychological disorder, such as an intellectual  
15 disability (formerly termed "mental retardation"), organic brain  
16 syndrome, emotional or mental illness, and specific learning  
17 disabilities.

18 Sec. 4. (1) Major life activities include, but are not limited to:

19 (a) Caring for oneself, performing manual tasks, seeing, hearing,  
20 eating, sleeping, walking, standing, sitting, reaching, lifting, bending,  
21 speaking, breathing, learning, reading, concentrating, thinking,  
22 communicating, interacting with others, and working; and

23 (b) The operation of a major bodily function, including functions of  
24 the immune system, special sense organs and skin; normal cell growth; and  
25 digestive, genitourinary, bowel, bladder, neurological, brain,  
26 respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic,  
27 musculoskeletal, and reproductive functions. The operation of a major  
28 bodily function includes the operation of an individual organ within a  
29 body system.

30 (2) In determining other examples of major life activities, the term  
31 "major" shall not be interpreted strictly to create a demanding standard



1 for disability. Whether an activity is a "major life activity" is not  
2 determined by reference to whether it is of "central importance to daily  
3 life."

4       Sec. 5.    (1) The following rules of construction apply when  
5 determining whether an impairment substantially limits an individual in a  
6 major life activity:

7       (a) The term "substantially limits" shall be construed broadly in  
8 favor of expansive coverage, to the maximum extent permitted by the terms  
9 of the Nebraska Fair Employment Practice Act. "Substantially limits" is  
10 not meant to be a demanding standard;

11       (b) An impairment is a disability within the meaning of the Nebraska  
12 Fair Employment Practice Act if it substantially limits the ability of an  
13 individual to perform a major life activity as compared to most people in  
14 the general population. An impairment need not prevent, or significantly  
15 or severely restrict, the individual from performing a major life  
16 activity in order to be considered substantially limiting. Nonetheless,  
17 not every impairment will constitute a disability within the meaning of  
18 this section;

19       (c) The primary object of attention in cases brought under the  
20 Nebraska Fair Employment Practice Act should be whether covered entities  
21 have complied with their obligations and whether discrimination has  
22 occurred, not whether an individual's impairment substantially limits a  
23 major life activity. Accordingly, the threshold issue of whether an  
24 impairment "substantially limits" a major life activity should not demand  
25 extensive analysis;

26       (d) The determination of whether an impairment substantially limits  
27 a major life activity requires an individualized assessment;

28       (e) The comparison of an individual's performance of a major life  
29 activity to the performance of the same major life activity by most  
30 people in the general population usually will not require scientific,  
31 medical, or statistical analysis. Nothing in this section is intended,

1 however, to prohibit the presentation of scientific, medical, or  
2 statistical evidence to make such a comparison where appropriate;

3 (f) The determination of whether an impairment substantially limits  
4 a major life activity shall be made without regard to the ameliorative  
5 effects of mitigating measures. However, the ameliorative effects of  
6 ordinary eyeglasses or contact lenses shall be considered in determining  
7 whether an impairment substantially limits a major life activity;

8 (g) An impairment that is episodic or in remission is a disability  
9 if it would substantially limit a major life activity when active;

10 (h) An impairment that substantially limits one major life activity  
11 need not substantially limit other major life activities in order to be  
12 considered a substantially limiting impairment; and

13 (i) The six-month "transitory" part of the "transitory and minor"  
14 exception to "regarded as" coverage in section 2 of this act does not  
15 apply to the definition of "disability" under subdivision (1)(a) of  
16 section 2 of this act (the "actual disability" prong) or subdivision (1)  
17 (b) of section 2 of this act (the "record of" prong). The effects of an  
18 impairment lasting or expected to last fewer than six months can be  
19 substantially limiting within the meaning of this section.

20 (2) Whether an individual's impairment "substantially limits" a  
21 major life activity is not relevant to coverage under subdivision (1)(c)  
22 of section 2 of this act (the "regarded as" prong).

23 (3)(a) The principles set forth in subsection (1) of this section  
24 are intended to provide for more generous coverage and application of the  
25 Nebraska Fair Employment Practice Act's prohibition on discrimination  
26 through a framework that is predictable, consistent, and workable for all  
27 individuals and entities with rights and responsibilities under the  
28 Nebraska Fair Employment Practice Act as amended.

29 (b) Applying the principles set forth in subsection (1) of this  
30 section, the individualized assessment of some types of impairments will,  
31 in virtually all cases, result in a determination of coverage under

1 subdivision (1)(a) of section 2 of this act (the "actual disability"  
2 prong) or subdivision (1)(b) of section 2 of this act (the "record of"  
3 prong). Given their inherent nature, these types of impairments will, as  
4 a factual matter, virtually always be found to impose a substantial  
5 limitation on a major life activity. Therefore, with respect to these  
6 types of impairments, the necessary individualized assessment should be  
7 particularly simple and straightforward.

8 (c) For example, applying the principles set forth in subsection (1)  
9 of this section, it should easily be concluded that the following types  
10 of impairments will, at a minimum, substantially limit the major life  
11 activities indicated: Deafness substantially limits hearing; blindness  
12 substantially limits seeing; an intellectual disability (formerly termed  
13 mental retardation) substantially limits brain function; partially or  
14 completely missing limbs or mobility impairments requiring the use of a  
15 wheelchair substantially limit musculoskeletal function; autism  
16 substantially limits brain function; cancer substantially limits normal  
17 cell growth; cerebral palsy substantially limits brain function; diabetes  
18 substantially limits endocrine function; epilepsy substantially limits  
19 neurological function; Human Immunodeficiency Virus (HIV) infection  
20 substantially limits immune function; multiple sclerosis substantially  
21 limits neurological function; muscular dystrophy substantially limits  
22 neurological function; and major depressive disorder, bipolar disorder,  
23 post-traumatic stress disorder, obsessive compulsive disorder, and  
24 schizophrenia substantially limit brain function. The types of  
25 impairments described in this subdivision may substantially limit  
26 additional major life activities not explicitly listed above.

27 (4) Condition, manner, or duration.

28 (a) At all times taking into account the principles in subsection  
29 (1) of this section, in determining whether an individual is  
30 substantially limited in a major life activity, it may be useful in  
31 appropriate cases to consider, as compared to most people in the general

1 population, the condition under which the individual performs the major  
2 life activity; the manner in which the individual performs the major life  
3 activity; and the duration of time it takes the individual to perform the  
4 major life activity, or for which the individual can perform the major  
5 life activity.

6 (b) Consideration of facts such as condition, manner, or duration  
7 may include, among other things, consideration of the difficulty, effort,  
8 or time required to perform a major life activity; pain experienced when  
9 performing a major life activity; the length of time a major life  
10 activity can be performed; and the way an impairment affects the  
11 operation of a major bodily function. In addition, the non-ameliorative  
12 effects of mitigating measures, such as negative side effects of  
13 medication or burdens associated with following a particular treatment  
14 regimen, may be considered when determining whether an individual's  
15 impairment substantially limits a major life activity.

16 (c) In determining whether an individual has a disability under the  
17 "actual disability" or "record of" prongs of the definition of  
18 disability, the focus is on how a major life activity is substantially  
19 limited, and not on what outcomes an individual can achieve. For example,  
20 someone with a learning disability may achieve a high level of academic  
21 success, but may nevertheless be substantially limited in the major life  
22 activity of learning because of the additional time or effort he or she  
23 must spend to read, write, or learn compared to most people in the  
24 general population.

25 (d) Given the rules of construction set forth in subsection (1) of  
26 this section, it may often be unnecessary to conduct an analysis  
27 involving most or all of these types of facts. This is particularly true  
28 with respect to impairments such as those described in subdivision (3)(c)  
29 of this section, which by their inherent nature should be easily found to  
30 impose a substantial limitation on a major life activity, and for which  
31 the individualized assessment should be particularly simple and

1 straightforward.

2 (5) Mitigating measures include, but are not limited to:

3 (a) Medication, medical supplies, equipment, or appliances, low-  
4 vision devices (defined as devices that magnify, enhance, or otherwise  
5 augment a visual image, but not including ordinary eyeglasses or contact  
6 lenses), prosthetics including limbs and devices, hearing aids and  
7 cochlear implants or other implantable hearing devices, mobility devices,  
8 and oxygen therapy equipment and supplies;

9 (b) Use of assistive technology;

10 (c) Reasonable accommodations or "auxiliary aids and services" as  
11 defined in 42 U.S.C. 12103;

12 (d) Learned behavioral or adaptive neurological modifications; or

13 (e) Psychotherapy, behavioral therapy, or physical therapy.

14 Sec. 6. Ordinary eyeglasses or contact lenses are lenses that are  
15 intended to fully correct visual acuity or to eliminate refractive error.

16 Sec. 7. (1) An individual has a record of a disability if the  
17 individual has a history of, or has been misclassified as having, a  
18 mental or physical impairment that substantially limits one or more major  
19 life activities.

20 (2) Whether an individual has a record of an impairment that  
21 substantially limited a major life activity shall be construed broadly to  
22 the maximum extent permitted by the Nebraska Fair Employment Practice Act  
23 and should not demand extensive analysis. An individual will be  
24 considered to have a record of a disability if the individual has a  
25 history of an impairment that substantially limited one or more major  
26 life activities when compared to most people in the general population,  
27 or was misclassified as having had such an impairment. In determining  
28 whether an impairment substantially limited a major life activity, the  
29 principles articulated in section 5 of this act apply.

30 (3) An individual with a record of a substantially limiting  
31 impairment may be entitled, absent undue hardship, to a reasonable

1 accommodation if needed and related to the past disability. For example,  
2 an employee with an impairment that previously limited, but no longer  
3 substantially limits, a major life activity may need leave or a schedule  
4 change to permit him or her to attend follow-up or "monitoring"  
5 appointments with a health care provider.

6 Sec. 8. The following principles apply under the "regarded as"  
7 prong of the definition of disability under subdivision (1)(c)(i) of  
8 section 2 of this act:

9 (1) Except as provided in section 17 of this act, an individual is  
10 "regarded as having such an impairment" if the individual is subjected to  
11 an unlawful employment practice because of an actual or perceived  
12 physical or mental impairment, whether or not that impairment  
13 substantially limits, or is perceived to substantially limit, a major  
14 life activity. Unlawful employment practices include, but are not limited  
15 to, refusal to hire, demotion, placement on involuntary leave,  
16 termination, exclusion for failure to meet a qualification standard,  
17 harassment, or denial of any other term, condition, or privilege of  
18 employment;

19 (2) Except as provided in section 17 of this act, an individual is  
20 "regarded as having such an impairment" any time a covered entity engages  
21 in an unlawful employment practice against the individual because of an  
22 actual or perceived impairment, even if the entity asserts, or may or  
23 does ultimately establish, a defense to such action; and

24 (3) Establishing that an individual is "regarded as having such an  
25 impairment" does not, by itself, establish liability. Liability is  
26 established under the Nebraska Fair Employment Practice Act only when an  
27 individual proves that a covered entity engaged in an unlawful employment  
28 practice under the Nebraska Fair Employment Practice Act.

29 Sec. 9. Qualified individual means an individual who, with or  
30 without reasonable accommodation, can perform the essential functions of  
31 the employment position that such individual holds or desires. For the

1 purposes of the Nebraska Fair Employment Practice Act, consideration  
2 shall be given to the employer's judgment as to what functions of a job  
3 are essential, and if an employer has prepared a written description  
4 before advertising or interviewing applicants for the job, this  
5 description shall be considered evidence of the essential functions of  
6 the job.

7       Sec. 10. (1) Essential functions means the fundamental job duties  
8 of the employment position the individual with a disability holds or  
9 desires. Essential functions does not include the marginal functions of  
10 the position.

11       (2) A job function may be considered essential for any of several  
12 reasons, including, but not limited to, the following:

13       (a) The function may be essential because the reason the position  
14 exists is to perform that function;

15       (b) The function may be essential because of the limited number of  
16 employees available among whom the performance of that job function can  
17 be distributed; or

18       (c) The function may be highly specialized so that the incumbent in  
19 the position is hired for his or her expertise or ability to perform the  
20 particular function.

21       (3) Evidence of whether a particular function is essential includes,  
22 but is not limited to:

23       (a) The employer's judgment as to which functions are essential;

24       (b) Written job descriptions prepared before advertising or  
25 interviewing applicants for the job;

26       (c) The amount of time spent on the job performing the function;

27       (d) The consequences of not requiring the incumbent to perform the  
28 function;

29       (e) The terms of a collective bargaining agreement;

30       (f) The work experience of past incumbents in the job; and

31       (g) The current work experience of incumbents in similar jobs.

1           Sec. 11. (1) The term reasonable accommodation means, with respect  
2 to disability:

3           (a) Modifications or adjustments to a job application process that  
4 enable a qualified individual with a disability to be considered for the  
5 position such individual desires; or

6           (b) Modifications or adjustments to the work environment, or to the  
7 manner or circumstances under which the position held or desired is  
8 customarily performed, that enable a qualified individual to perform the  
9 essential functions of that position; or

10           (c) Modifications or adjustments that enable a covered entity's  
11 employee with a disability to enjoy equal benefits and privileges of  
12 employment as are enjoyed by its other similarly situated employees  
13 without disabilities.

14           (2) Reasonable accommodation, with respect to disability, may  
15 include, but is not limited to:

16           (a) Making existing facilities used by employees readily accessible  
17 to and usable by individuals with disabilities; and

18           (b) Job restructuring; part-time or modified work schedules;  
19 reassignment to a vacant position; acquisition or modifications of  
20 equipment or devices; appropriate adjustment or modifications of  
21 examinations, training materials, or policies; the provision of qualified  
22 readers or interpreters; a leave of absence; and other similar  
23 accommodations for individuals with disabilities.

24           (3) Reasonable accommodation, with respect to pregnancy, childbirth,  
25 or related medical conditions, includes acquisition of equipment for  
26 sitting, more frequent or longer breaks, periodic rest, assistance with  
27 manual labor, job restructuring, light-duty assignments, modified work  
28 schedules, temporary transfers to less strenuous or hazardous work, time  
29 off to recover from childbirth, or break time and appropriate facilities  
30 for breast-feeding or expressing breast milk.

31           (4) To determine the appropriate reasonable accommodation for a



1 disability or pregnancy it may be necessary for the covered entity to  
2 initiate an informal, interactive process with the individual with a  
3 disability or who is pregnant in need of the accommodation. This process  
4 should identify the precise limitations resulting from the disability or  
5 pregnancy and potential reasonable accommodations that could overcome  
6 those limitations.

7 (5) A covered entity is required, absent undue hardship, to provide  
8 a reasonable accommodation to an otherwise qualified individual who meets  
9 the definition of disability under the "actual disability" prong  
10 (subdivision (1)(a) of section 2 of this act) or the "record of" prong  
11 (subdivision (1)(b) of section 2 of this act) or who is pregnant; but is  
12 not required to provide a reasonable accommodation to an individual who  
13 meets the definition of disability solely under the "regarded as" prong  
14 (subdivision (1)(c) of section 2 of this act).

15 Sec. 12. (1) Undue hardship means, with respect to the provision of  
16 an accommodation, significant difficulty or expense incurred by a covered  
17 entity, when considered in light of the factors set forth in subsection  
18 (2) of this section.

19 (2) In determining whether an accommodation would impose an undue  
20 hardship on a covered entity, factors to be considered include:

21 (a) The nature and net cost of the accommodation needed under this  
22 part, taking into consideration the availability of tax credits and  
23 deductions, or outside funding;

24 (b) The overall financial resources of the facility or facilities  
25 involved in the provision of the reasonable accommodation, the number of  
26 persons employed at such facility, and the effect on expenses and  
27 resources;

28 (c) The overall financial resources of the covered entity, the  
29 overall size of the business of the covered entity with respect to the  
30 number of its employees, and the number, type and location of its  
31 facilities;

1        (d) The type of operation or operations of the covered entity,  
2 including the composition, structure and functions of the workforce of  
3 such entity, and the geographic separateness and administrative or fiscal  
4 relationship of the facility or facilities in question to the covered  
5 entity; and

6        (e) The impact of the accommodation upon the operation of the  
7 facility, including the impact on the ability of other employees to  
8 perform their duties and the impact on the facility's ability to conduct  
9 business.

10        Sec. 13.        Qualification standards means the personal and  
11 professional attributes including the skill, experience, education,  
12 physical, medical, safety and other requirements established by a covered  
13 entity as requirements which an individual must meet in order to be  
14 eligible for the position held or desired.

15        Sec. 14.        (1) Direct threat means a significant risk of substantial  
16 harm to the health or safety of the individual or others that cannot be  
17 eliminated or reduced by reasonable accommodation.

18        (2) The determination that an individual poses a direct threat shall  
19 be based on an individualized assessment of the individual's present  
20 ability to safely perform the essential functions of the job. This  
21 assessment shall be based on a reasonable medical judgment that relies on  
22 the most current medical knowledge and on the best available objective  
23 evidence.

24        (3) In determining whether an individual would pose a direct threat,  
25 the factors to be considered include:

26        (a) The duration of the risk;

27        (b) The nature and severity of the potential harm;

28        (c) The likelihood that the potential harm will occur; and

29        (d) The imminence of the potential harm.

30        Sec. 15.        (1) Individual who is pregnant, who has given birth, or  
31 who has a related medical condition means an individual with a known

1 limitation who, with or without reasonable accommodation, can perform the  
2 essential functions of the employment position that such individual  
3 holds, desires, or may be temporarily assigned to.

4 (2) Consideration shall be given to the employer's judgment as to  
5 what functions of a job are essential, and if an employer has prepared a  
6 written description before advertising or interviewing applicants for the  
7 job, this description shall be considered evidence of the essential  
8 functions of the job.

9 Sec. 16. Section 48-1111, Reissue Revised Statutes of Nebraska, is  
10 amended to read:

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

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

30 (a) Have been shown to be job-related and consistent with business  
31 necessity and such performance cannot be accomplished by reasonable

1 accommodation, as required by the Nebraska Fair Employment Practice Act  
2 and the federal Americans with Disabilities Act of 1990; or

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

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

10 (4) ~~(2)~~ Except as otherwise provided in the Nebraska Fair Employment  
11 Practice Act, women affected by pregnancy, childbirth, or related medical  
12 conditions shall be treated the same for all employment-related purposes,  
13 including receipt of employee benefits, as other persons not so affected  
14 but similar in their ability or inability to work, and nothing in this  
15 section shall be interpreted to provide otherwise.

16 (5) This section shall not require an employer to provide employee  
17 benefits for abortion except when medical complications have arisen from  
18 an abortion.

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

22 Sec. 17. (1) It may be a defense to a charge of discrimination by  
23 an individual claiming coverage under subdivision (1)(c)(i) of section 2  
24 of this act (the "regarded as" prong of the definition of disability)  
25 that the impairment is (in the case of an actual impairment) or would be  
26 (in the case of a perceived impairment) both transitory and minor.

27 (2) To establish this defense, a covered entity must demonstrate  
28 that the impairment is both transitory and minor. This must be determined  
29 objectively.

30 (3) A covered entity may not defeat "regarded as" coverage of an  
31 individual simply by demonstrating that the entity subjectively believed

1 the impairment was transitory and minor. Rather, the covered entity must  
2 demonstrate that the impairment is (in the case of an actual impairment)  
3 or would be (in the case of a perceived impairment) both transitory and  
4 minor.

5 (4) For purposes of this section, transitory means lasting or  
6 expected to last six months or less.

7 Sec. 18. Section 48-1125, Reissue Revised Statutes of Nebraska, is  
8 amended to read:

9 48-1125 Sections 48-1101 to 48-1125 and sections 2 to 15 and 17 of  
10 this act shall be known and may be cited as the Nebraska Fair Employment  
11 Practice Act.

12 Sec. 19. Original sections 48-1102, 48-1111, and 48-1125, Reissue  
13 Revised Statutes of Nebraska, are repealed.