

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 432**

Introduced by Friend, 10

Read first time January 16, 2007

Committee: Business and Labor

A BILL

1 FOR AN ACT relating to labor and employment; to amend sections  
2 20-113, 48-1001, 48-1002, 48-1003, 48-1004, 48-1005,  
3 48-1007, 48-1008, 48-1009, and 48-1010, Reissue Revised  
4 Statutes of Nebraska; to rename and change and eliminate  
5 provisions of the Act Prohibiting Unjust Discrimination  
6 in Employment Because of Age; to harmonize provisions;  
7 to repeal the original sections; and to outright repeal  
8 section 48-1006, Reissue Revised Statutes of Nebraska.  
9 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 20-113, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           20-113 Any incorporated city may enact ordinances and any  
4 county may adopt resolutions which are substantially equivalent to  
5 the ~~Act Prohibiting Unjust Discrimination in Employment Because of~~  
6 ~~Age,~~ Age Discrimination in Employment Act, the Nebraska Fair  
7 Employment Practice Act, the Nebraska Fair Housing Act, and  
8 sections 20-126 to 20-143 and 48-1219 to 48-1227 or which are  
9 more comprehensive than such acts and sections in the protection of  
10 civil rights. No such ordinance or resolution shall place a duty or  
11 liability on any person, other than an employer, employment agency,  
12 or labor organization, for acts similar to those prohibited by  
13 section 48-1115. Such ordinance or resolution may include authority  
14 for a local agency to seek an award of damages or other equitable  
15 relief on behalf of the complainant by the filing of a petition  
16 in the district court in the county with appropriate jurisdiction.  
17 The local agency shall have within its authority jurisdiction  
18 substantially equivalent to or more comprehensive than the Equal  
19 Opportunity Commission or other enforcement agencies provided under  
20 such acts and sections and shall have authority to order backpay  
21 and other equitable relief or to enforce such orders or relief  
22 in the district court with appropriate jurisdiction. Certified  
23 copies of such ordinances or resolutions shall be transmitted to  
24 the commission. When the commission determines that any such city  
25 or county has enacted an ordinance or adopted a resolution that

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

21 Any club which has been issued a license by the Nebraska  
22 Liquor Control Commission to sell, serve, or dispense alcoholic  
23 liquor shall have that license revoked if the club discriminates  
24 because of race, color, religion, sex, familial status as defined  
25 in section 20-311, handicap as defined in section 20-313, or

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

5 Sec. 2. Section 48-1001, Reissue Revised Statutes of  
6 Nebraska, is amended to read:

7 48-1001 (1) Sections 48-1001 to 48-1010 shall be known  
8 and may be cited as the Age Discrimination in Employment Act.

9 ~~(1)~~ (2)(a) The Legislature hereby finds that the practice  
10 of discriminating in employment against properly qualified persons  
11 because of their age is contrary to American principles of liberty  
12 and equality of opportunity, is incompatible with the Constitution,  
13 deprives the state of the fullest utilization of its capacities for  
14 production, and endangers the general welfare.

15 ~~(2)~~ (b) Hiring bias against workers over forty years  
16 of age deprives the state of its most important resource of  
17 experienced employees, adds to the number of persons receiving  
18 public assistance, and deprives older people of the dignity and  
19 status of self-support.

20 ~~(3)~~ (c) The right to employment otherwise lawful without  
21 discrimination because of age, where the reasonable demands of  
22 the position do not require such an age distinction, is hereby  
23 recognized as and declared to be a right of all the people of the  
24 state which shall be protected as provided in ~~sections 48-1001 to~~  
25 ~~48-1009.~~ the act.

1           ~~(4)~~ (d) It is hereby declared to be the policy of the  
2 state to protect the right recognized and declared in ~~subsection~~  
3 ~~(3)~~ subdivision (2)(c) of this section and to eliminate all such  
4 discrimination to the fullest extent permitted. ~~Sections 48-1001 to~~  
5 ~~48-1009~~ The Age Discrimination in Employment Act shall be construed  
6 to effectuate such policy.

7           Sec. 3. Section 48-1002, Reissue Revised Statutes of  
8 Nebraska, is amended to read:

9           48-1002 For purposes of the Age Discrimination in  
10 Employment Act: As used in sections 48-1001 to 48-1010, unless the  
11 ~~context otherwise requires:~~

12           (1) Person shall ~~include~~ includes one or more  
13 individuals, partnerships, limited liability companies,  
14 associations, labor organizations, corporations, business  
15 trusts, legal representatives, or any organized group of persons;

16           (2) Employer shall ~~mean~~ means any person having in his  
17 or her employ ~~twenty-five~~ twenty or more ~~individuals~~ employees  
18 for each working day in each of twenty or more calendar weeks  
19 in the current or preceding calendar year and includes the State  
20 of Nebraska, governmental agencies, and political subdivisions,  
21 regardless of the number of employees, any person acting for or in  
22 the interest of an employer, directly or indirectly, and any party  
23 whose business is financed in whole or in part under the Nebraska  
24 Investment Finance Authority Act, but such term shall ~~shall~~ does not  
25 include (a) the United States or (b) a corporation wholly owned by

1 the government of the United States;

2 (3) Labor organization ~~shall mean~~ means any organization  
3 of employees which exists for the purpose, in whole or in part,  
4 of collective bargaining or of dealing with employers concerning  
5 grievances, terms, or conditions of employment, or for other mutual  
6 aid or protection in connection with employment;

7 (4) Employee ~~shall mean~~ means an individual employed by  
8 any employer; and

9 (5) Employment agency ~~shall mean~~ means any person  
10 regularly undertaking with or without compensation to procure  
11 employees for an employer or to procure for employees opportunities  
12 to work for an employer and includes an agent of such a person, but  
13 ~~shall~~ does not include an agency of the United States, except that  
14 such term ~~shall~~ does include the United States Employment Service  
15 and the system of state and local employment services receiving  
16 federal assistance.

17 Sec. 4. Section 48-1003, Reissue Revised Statutes of  
18 Nebraska, is amended to read:

19 48-1003 (1) The prohibitions of ~~sections 48-1001 to~~  
20 ~~48-1009~~ the Age Discrimination in Employment Act shall be limited  
21 to the employment of individuals who are ~~at least~~ forty years or  
22 more of age ~~but less than seventy years of age~~.

23 (2) Nothing contained in ~~sections 48-1001 to 48-1009~~ the  
24 act shall be construed as making it unlawful for an employer,  
25 employment agency, or labor organization (a) to take action

1 otherwise prohibited under the ~~provisions of sections 48-1001 to~~  
2 ~~48-1009~~ the act when age is a bona fide occupational qualification  
3 reasonably necessary to the normal operation of the particular  
4 business, or when the differentiation is based on reasonable  
5 factors other than age, such as physical conditions; or (b) to  
6 discharge or otherwise discipline an employee for good cause.

7           Sec. 5. Section 48-1004, Reissue Revised Statutes of  
8 Nebraska, is amended to read:

9           48-1004 (1) It shall be an unlawful employment practice  
10 for an employer:

11           (a) To refuse to hire, to discharge, or otherwise  
12 to discriminate against any individual with respect to ~~his~~  
13 the employer's terms, conditions, or privileges of employment,  
14 otherwise lawful, because of such individual's age, when the  
15 reasonable demands of the position do not require such an age  
16 distinction; or

17           (b) To willfully utilize in the hiring or recruitment of  
18 individuals for employment otherwise lawful, any employment agency,  
19 placement service, training school or center, labor organization,  
20 or any other source which so discriminates against ~~such~~ individuals  
21 because of their age.

22           (2) It shall be an unlawful employment practice for any  
23 labor organization to so discriminate against any individual or  
24 to limit, segregate, or classify its membership in any way which  
25 would deprive or tend to deprive ~~such~~ an individual of otherwise

1 lawful employment opportunities, or would limit such employment  
2 opportunities or otherwise adversely affect his or her status as  
3 an employee or as an applicant for employment, or would affect  
4 adversely his or her wages, hours, or employment.

5 (3) It shall be an unlawful employment practice for an  
6 employment agency to fail or refuse to refer for employment, or  
7 otherwise to discriminate against any individual because of such  
8 individual's age, or to classify or refer for employment any  
9 individual on the basis of his or her age.

10 ~~(3)~~ (4) It shall be an unlawful employment practice  
11 for any employer, employment agency, or labor organization to  
12 discharge, expel, or otherwise discriminate against any person,  
13 because he or she opposed any unlawful employment practice  
14 specified in sections 48-1001 to 48-1009 the Age Discrimination  
15 in Employment Act or has filed a charge or suit, testified,  
16 participated, or assisted in any proceeding under the provisions of  
17 sections 48-1001 to 48-1009. act.

18 ~~(4)~~ It shall be an unlawful employment practice for an  
19 employment agency to fail or refuse to refer for employment, or  
20 otherwise to discriminate against any individual because of such  
21 individual's age, or to classify or refer for employment any  
22 individual on the basis of his or her age.

23 Sec. 6. Section 48-1005, Reissue Revised Statutes of  
24 Nebraska, is amended to read:

25 48-1005 Any person who violates any provision of sections

1 48-1001 to 48-1009 or who forcibly resists, opposes, impedes,  
2 intimidates, or interferes with such commission or any of its duly  
3 authorized representatives while engaged in its, ~~or his,~~ or her  
4 duties under sections 48-1001 to 48-1009 shall be guilty of a Class  
5 III misdemeanor. No person shall be imprisoned under this section  
6 except for a second or subsequent conviction.

7           Sec. 7. Section 48-1007, Reissue Revised Statutes of  
8 Nebraska, is amended to read:

9           48-1007    ~~Sections 48-1001 to 48-1009~~   The Age  
10 Discrimination in Employment Act shall be administered by  
11 the Equal Opportunity Commission as established by section 48-1116.  
12 The commission shall have the power (1) to make delegations,  
13 to appoint such agents and employees and to pay for technical  
14 assistance, including legal assistance, on a fee-for-service basis,  
15 as it deems necessary to assist it in the performance of its  
16 functions under ~~sections 48-1001 to 48-1009;~~ the act; (2) to  
17 cooperate with other federal, state, and local agencies, and to  
18 cooperate with and furnish technical assistance to employers, labor  
19 organizations, and employment agencies to aid in effectuating the  
20 purposes of ~~sections 48-1001 to 48-1009;~~ the act; (3) to make  
21 investigations, to issue or cause to be served interrogatories,  
22 and to require keeping of records necessary or appropriate for  
23 the administration of ~~sections 48-1001 to 48-1009;~~ the act; and  
24 (4) to bring civil action in its name in any court of competent  
25 jurisdiction against any person deemed to be violating ~~any of~~

1 ~~the provisions of sections 48-1001 to 48-1009 the act~~ to compel  
2 compliance with the ~~provisions of sections 48-1001 to 48-1009 act~~  
3 or to enjoin any such person from continuing any practice that is  
4 deemed to be in violation of ~~sections 48-1001 to 48-1009. the act.~~  
5 The commission may seek judicial enforcement through the office of  
6 the Attorney General to require the answering of interrogatories  
7 and to gain access to evidence or records relevant to the charge  
8 under investigation.

9           Sec. 8. Section 48-1008, Reissue Revised Statutes of  
10 Nebraska, is amended to read:

11           48-1008 (1) Any person aggrieved by a suspected violation  
12 of the ~~provisions of sections 48-1001 to 48-1009 Age Discrimination~~  
13 in Employment Act shall file with the Equal Opportunity Commission  
14 a formal complaint in such manner and form prescribed by the  
15 commission. The commission shall make an investigation and may  
16 initiate an action to enforce the rights of such employee under  
17 the provisions of ~~sections 48-1001 to 48-1009. the act.~~ If the  
18 commission does not initiate an action within ~~thirty~~ sixty days  
19 after receipt of a complaint, the person aggrieved may bring a  
20 civil action in any court of competent jurisdiction for such legal  
21 or equitable relief as will effectuate the purposes of ~~sections~~  
22 ~~48-1001 to 48-1009. the act.~~ Filing of an action by either the  
23 commission or the person aggrieved shall be a bar to the filing of  
24 the action by the other.

25           (2) A written charge alleging violation of the Age

1 Discrimination in Employment Act shall be filed within three  
2 hundred days after the occurrence of the alleged unlawful  
3 employment practice, and notice of the charge, including a  
4 statement of the date, place, and circumstances of the alleged  
5 unlawful employment practice, shall be served upon the person  
6 against whom such charge is made within ten days thereafter.

7 (3) A respondent shall file with the commission a  
8 written response to the written charge of violation within  
9 thirty days after service upon the respondent. Failure to file  
10 a written response within thirty days, except for good cause  
11 shown, shall result in a mandatory reasonable cause finding against  
12 the respondent by the commission. Failure by any complainant to  
13 cooperate with the commission, its investigators, or staff, except  
14 for good cause shown, shall result in dismissal of the complaint by  
15 the commission.

16 (4) In connection with any investigation of a charge  
17 filed under this section, the commission or its authorized agents  
18 may, at any time after a charge is filed, issue or cause to be  
19 served interrogatories and shall have at all reasonable times  
20 access to, for the purposes of examination, and the right to  
21 copy any evidence or records of any person being investigated or  
22 proceeded against that relates to unlawful employment practices  
23 covered by the act and are relevant to the charge under  
24 investigation. The commission may seek preparation of and judicial  
25 enforcement of any legal process or interrogatories through the

1 office of the Attorney General.

2           Sec. 9. Section 48-1009, Reissue Revised Statutes of  
3 Nebraska, is amended to read:

4           48-1009 In any action brought to enforce the ~~provisions~~  
5 ~~of sections 48-1001 to 48-1009,~~ Age Discrimination in Employment  
6 Act, the court shall have jurisdiction to grant such legal  
7 or equitable relief as the court ~~may deem~~ deems appropriate  
8 to effectuate the purposes of ~~sections 48-1001 to 48-1009,~~ the  
9 act, including judgments compelling employment, reinstatement, or  
10 promotion, or enforcing liability for amounts deemed to be unpaid  
11 minimum wages or unpaid overtime compensation.

12           Sec. 10. Section 48-1010, Reissue Revised Statutes of  
13 Nebraska, is amended to read:

14           48-1010 The state, governmental agencies, and political  
15 subdivisions may be sued upon claims arising under the ~~Act~~  
16 ~~Prohibiting Unjust Discrimination in Employment Because of Age~~  
17 Age Discrimination in Employment Act in the same manner as provided  
18 by such act for suits against other employers.

19           Sec. 11. Original sections 20-113, 48-1001, 48-1002,  
20 48-1003, 48-1004, 48-1005, 48-1007, 48-1008, 48-1009, and 48-1010,  
21 Reissue Revised Statutes of Nebraska, are repealed.

22           Sec. 12. The following section is outright repealed:  
23 Section 48-1006, Reissue Revised Statutes of Nebraska.