

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 322

FINAL READING

Introduced by Avery, 28; Hansen, 42; Pirsch, 4.

Read first time January 15, 2009

Committee: Government, Military and Veterans Affairs

A BILL

1 FOR AN ACT relating to state government; to amend section 81-108,
2 Reissue Revised Statutes of Nebraska, and sections
3 49-1401 and 49-1499.03, Revised Statutes Cumulative
4 Supplement, 2008; to define terms; to prohibit nepotism;
5 to eliminate provisions relating to employment of family
6 members; to eliminate a penalty; to harmonize provisions;
7 to repeal the original sections; and to outright
8 repeal section 49-1499.01, Revised Statutes Cumulative
9 Supplement, 2008.
10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 49-1401, Revised Statutes Cumulative
2 Supplement, 2008, is amended to read:

3 49-1401 Sections 49-1401 to 49-14,141 and section 2 of
4 this act shall be known and may be cited as the Nebraska Political
5 Accountability and Disclosure Act.

6 Sec. 2. (1) For purposes of this section:

7 (a) Family member means an individual who is the spouse,
8 child, parent, brother, sister, grandchild, or grandparent, by
9 blood, marriage, or adoption, of an official or employee in the
10 executive branch of state government;

11 (b) Nepotism means the act of hiring, promoting, or
12 advancing a family member in state government or recommending the
13 hiring, promotion, or advancement of a family member in state
14 government, including initial appointment and transfer to other
15 positions in state government; and

16 (c) Supervisor means an individual having authority,
17 in the interest of the state, to hire, transfer, suspend, lay
18 off, recall, promote, discharge, assign, reward, or discipline
19 employees, responsibility to direct them or to adjust their
20 grievances, or effectively to recommend any such action, if the
21 exercise of such authority is not merely of a routine or clerical
22 nature but requires the use of independent judgment.

23 (2) Except as authorized in subsection (5) of this
24 section, an official or employee in the executive branch of state
25 government shall not engage in nepotism.

1 (3) Except as authorized in subsection (5) of this
2 section, an official or employee in the executive branch of state
3 government shall not act as a supervisor to his or her family
4 member.

5 (4) In addition to the other penalties authorized under
6 the Nebraska Political Accountability and Disclosure Act, any
7 person violating this section may be subject to disciplinary
8 action.

9 (5) (a) The head of an agency may, upon a written showing
10 of good cause, grant an exception to subsection (2) or (3) of this
11 section. The written showing of good cause shall be filed with the
12 commission and shall be considered a public record.

13 (b) An official or employee in the executive branch of
14 state government who becomes a supervisor to his or her family
15 member other than by means of nepotism shall notify the head of the
16 agency within seven days of becoming aware of such situation and
17 may continue to act as a supervisor until the head of the agency
18 remedies the situation. The head of the agency shall act as soon as
19 practicable.

20 (6) It is the intent of the Legislature that the
21 legislative branch and the judicial branch of state government
22 develop and implement internal policies prohibiting nepotism and
23 the supervision of a family member.

24 Sec. 3. Section 49-1499.03, Revised Statutes Cumulative
25 Supplement, 2008, is amended to read:

1 49-1499.03 (1) (a) An official of a political subdivision
2 designated in section 49-1493 who would be required to take any
3 action or make any decision in the discharge of his or her official
4 duties that may cause financial benefit or detriment to him or her,
5 a member of his or her immediate family, or a business with which
6 he or she is associated, which is distinguishable from the effects
7 of such action on the public generally or a broad segment of the
8 public, shall take the following actions as soon as he or she is
9 aware of such potential conflict or should reasonably be aware of
10 such potential conflict, whichever is sooner:

11 (i) Prepare a written statement describing the matter
12 requiring action or decision and the nature of the potential
13 conflict; and

14 (ii) Deliver a copy of the statement to the commission
15 and to the person in charge of keeping records for the political
16 subdivision who shall enter the statement onto the public records
17 of the subdivision.

18 (b) The official shall take such action as the commission
19 shall advise or prescribe to remove himself or herself from
20 influence over the action or decision on the matter.

21 (c) This subsection does not prevent such a person from
22 making or participating in the making of a governmental decision to
23 the extent that the individual's participation is legally required
24 for the action or decision to be made. A person acting pursuant to
25 this subdivision shall report the occurrence to the commission.

1 (2) (a) Any person holding an elective office of a city or
2 village not designated in section 49-1493 and any person holding
3 an elective office of a school district who would be required to
4 take any action or make any decision in the discharge of his or her
5 official duties that may cause financial benefit or detriment to
6 him or her, a member of his or her immediate family, or a business
7 with which he or she is associated, which is distinguishable from
8 the effects of such action on the public generally or a broad
9 segment of the public, shall take the following actions as soon as
10 he or she is aware of such potential conflict or should reasonably
11 be aware of such potential conflict, whichever is sooner:

12 (i) Prepare a written statement describing the matter
13 requiring action or decision and the nature of the potential
14 conflict;

15 (ii) Deliver a copy of the statement to the person in
16 charge of keeping records for the city, village, or school district
17 who shall enter the statement onto the public records of the city,
18 village, or school district; and

19 (iii) Abstain from participating or voting on the matter
20 in which the person holding elective office has a conflict of
21 interest.

22 (b) The person holding elective office may apply to the
23 commission for an opinion as to whether the person has a conflict
24 of interest.

25 (3) Matters involving an interest in a contract are

1 governed either by sections 49-14,102 and 49-14,103 or by sections
2 49-14,103.01 to 49-14,103.06. Matters involving the hiring of an
3 immediate family member are governed by section ~~49-1499.01~~ ~~or~~
4 49-1499.04. Matters involving nepotism or the supervision of a
5 family member by an official or employee in the executive branch of
6 state government are governed by section 2 of this act.

7 Sec. 4. Section 81-108, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 81-108 (1) Except as provided in subsection (2) of this
10 section, no head of any department referred to in section 81-101
11 shall hold any other public office or receive any profit from any
12 other public or private employment. For purposes of this section,
13 employment shall not be interpreted to mean membership on the board
14 of directors of any corporation, business, or association, whether
15 or not the head of the department receives compensation for such
16 membership.

17 (2) Nothing in this section shall be interpreted as
18 prohibiting the head of one of the departments referred to in
19 section 81-101 from serving on any public advisory or policymaking
20 board, commission, committee, or council.

21 ~~(3) No person shall be hired as an employee of any~~
22 ~~department referred to in section 81-101 while a member of his~~
23 ~~or her family is serving as the head of the department. This~~
24 ~~subsection shall not require the termination of employment of (a)~~
25 ~~any person who is an employee of a department at the time a member~~

1 of his or her family is appointed to head the department or (b) any
2 person who is an employee of a department on May 18, 1991.

3 (4) For purposes of this section, member of his or her
4 family shall mean any individual related to the employee by blood,
5 marriage, or adoption as the employee's spouse, child, parent,
6 brother, sister, grandchild, or grandparent or any individual so
7 related to the employee's spouse.

8 Sec. 5. Original section 81-108, Reissue Revised Statutes
9 of Nebraska, and sections 49-1401 and 49-1499.03, Revised Statutes
10 Cumulative Supplement, 2008, are repealed.

11 Sec. 6. The following section is outright repealed:
12 Section 49-1499.01, Revised Statutes Cumulative Supplement, 2008.