AMENDMENTS TO LB627

Introduced by Business and Labor.

1. Strike the original sections and insert the following new sections:

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

48-1102 For purposes of the Nebraska Fair Employment Practice Act, unless the context otherwise requires:

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

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

(3) Labor organization shall mean any organization which exists wholly or in part for one or more of the following purposes: Collective bargaining; dealing with employers concerning grievances, terms, or conditions of employment; or mutual aid or protection in relation to employment;
(4) Employment agency shall mean any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and shall include an agent of such a person but shall not include an agency of the United States, except that such term shall include the United States Employment Service and the system of state and local employment services receiving federal assistance;

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

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

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

(8) Commission shall mean the Equal Opportunity Commission;

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

(10)(a) Qualified individual with a disability shall mean an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. Consideration shall be given to the employer's judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job;
(b) Qualified individual with a disability shall not include any employee or applicant who is currently engaged in the illegal use of drugs when the covered entity acts on the basis of such use; and

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

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

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

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

(11) Reasonable accommodation, with respect to disability, shall include making existing facilities used by employees readily accessible to and usable by individuals with disabilities, job-restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modification of examinations, training manuals, or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities. Reasonable accommodation, with respect to pregnancy, childbirth, or related medical conditions, shall include acquisition of equipment for sitting, more frequent or longer breaks, periodic rest, assistance with manual labor, job restructuring, light duty assignments, modified work schedules, temporary transfers to less strenuous or hazardous work, time off to recover from childbirth, or break time and appropriate facilities for breast-feeding or expressing breast milk. Reasonable accommodation shall not include accommodations which the covered entity can demonstrate require significant difficulty or expense thereby posing an undue hardship upon the covered entity. Factors to be considered in determining whether an accommodation would pose an undue hardship shall include:
(a) The nature and the cost of the accommodation needed under the Nebraska Fair Employment Practice Act;

(b) The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation, the number of persons employed at such facility, the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;

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

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

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

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

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

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

(16) Drug shall mean a controlled substance as defined in section 28-401; and

(17) Illegal use of drugs shall mean the use of drugs, the possession or distribution of which is unlawful under the Uniform Controlled Substances Act, but shall not include the use of a drug taken under supervision by a licensed health care professional or any other use authorized by the Uniform Controlled Substances Act or other provisions of state law.

Sec. 2. Section 48-1107.01, Reissue Revised Statutes of Nebraska, is amended to read:

48-1107.01 It shall be an unlawful employment practice for a covered entity to:

(1) Discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment; or

(2) Discriminate against an individual affected by pregnancy, childbirth, or related medical conditions in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

Sec. 3. Section 48-1107.02, Reissue Revised Statutes of Nebraska, is amended to read:

48-1107.02 (1) When referring to a qualified individual with a disability, discrimination shall include:

(a) Limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of the applicant or employee because of the disability of the applicant or
employee;

(b) Participating in a contractual or other arrangement or relationship that has the effect of subjecting a qualified individual with a disability to discrimination in the application or employment process, including a relationship with an employment agency, a labor union, an organization providing fringe benefits to an employee of the covered entity, or an organization providing training and apprenticeship programs;

(c) Utilizing standards, criteria, or methods of administration (i) that have the effect of discrimination on the basis of disability or (ii) that perpetuate the discrimination against others who are subject to common administrative control;

(d) Excluding or otherwise denying equal jobs or benefits to a qualified individual with a disability because of the known disability of an individual with whom the qualified individual with a disability is known to have a relationship or association;

(e) Not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of the covered entity;

(f) Denying employment opportunities to a job applicant or employee who is otherwise a qualified individual with a disability if the denial is based upon the need of such covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant;

(g) Using qualification standards, employment tests, or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test, or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is
consistent with business necessity;

(h) Failing to select and administer tests concerning employment in the most effective manner to ensure that, when the test is administered to a job applicant or employee who has a disability that impairs sensory, manual, or speaking skills, the test results accurately reflect the skills, aptitude, or whatever other factor of the applicant or employee that the test purports to measure rather than reflecting the impaired sensory, manual, or speaking skills of the employee or applicant except when such skills are the factors that the test purports to measure;

(i) Conducting a medical examination or making inquiries of a job applicant as to whether the applicant is an individual with a disability or as to the nature or severity of the disability, except that:

(ii a) A covered entity may make preemployment inquiries into the ability of an applicant to perform job-related functions;

(ii b) A test to determine the illegal use of drugs shall not be considered a medical examination; and

(iii c) A covered entity may require a medical examination after an offer of employment has been made to a job applicant and prior to the commencement of the employment duties of the applicant and may condition an offer of employment on the results of the examination if:

(A i) All entering employees are subjected to such an examination regardless of disability;

(B ii) Information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except that (I A) supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations, (II B) first-aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment, (III C) government officials investigating compliance with the
Nebraska Fair Employment Practice Act shall be provided relevant information on request, and (IV D) information shall be made available in accordance with the Nebraska Workers' Compensation Act; and

(C iii) The results of the examination are used only in a manner not inconsistent with the Nebraska Fair Employment Practice Act; and

(j 10) Requiring a medical examination or making inquiries of an employee as to whether the employee is an individual with a disability or as to the nature or severity of the disability, unless the examination or inquiry is shown to be job-related and consistent with business necessity. A test to determine the illegal use of drugs shall not be considered a medical examination. A covered entity may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at the worksite and may make inquiries into the ability of an employee to perform job-related functions if the information obtained regarding the medical condition or history of the employee is subject to the requirements in subdivisions (l)(i)(iii)(B) (9)(c)(ii) and (C iii) of this section.

(2) When referring to an individual affected by pregnancy, childbirth, or related medical conditions, discrimination shall include:

(a) Limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of the applicant or employee because of the pregnancy, childbirth, or related medical conditions of the applicant or employee;

(b) Participating in a contractual or other arrangement or relationship that has the effect of subjecting an individual affected by pregnancy, childbirth, or related medical conditions to discrimination in the application or employment process, including a relationship with an employment agency, a labor union, an organization providing fringe benefits to an employee of the covered entity, or an organization providing training and apprenticeship programs;

(c) Utilizing standards, criteria, or methods of administration (i)
that have the effect of discrimination on the basis of pregnancy, childbirth, or related medical conditions or (ii) that perpetuate the discrimination against others who are subject to common administrative control;

(d) Not making reasonable accommodations to the known physical limitations of an individual affected by pregnancy, childbirth, or related medical conditions who is an applicant or employee unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of the covered entity;

(e) Denying employment opportunities to a job applicant or employee who is affected by pregnancy, childbirth, or related medical conditions if the denial is based upon the need of such covered entity to make reasonable accommodation to the physical limitations due to the pregnancy, childbirth, or related medical conditions of the employee or applicant;

(f) Using qualification standards, employment tests, or other selection criteria that screen out or tend to screen out an individual or a class of individuals who are affected by pregnancy, childbirth, or related medical conditions unless the standard, test, or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity;

(g) Conducting a medical examination or making inquiries of a job applicant as to whether the applicant is affected by pregnancy, childbirth, or related medical conditions, except that:

(i) A covered entity may make preemployment inquiries into the ability of an applicant to perform job-related functions;

(ii) A test to determine the illegal use of drugs shall not be considered a medical examination; and

(iii) A covered entity may require a medical examination after an offer of employment has been made to a job applicant and prior to the commencement of the employment duties of the applicant and may condition
an offer of employment on the results of the examination if:

(A) All entering employees are subjected to such an examination;

(B) Information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except that (I) supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations, (II) first-aid and safety personnel may be informed, when appropriate, if the pregnancy, childbirth, or related medical conditions might require emergency treatment, (III) government officials investigating compliance with the Nebraska Fair Employment Practice Act shall be provided relevant information on request, and (IV) information shall be made available in accordance with the Nebraska Workers' Compensation Act; and

(C) The results of the examination are used only in a manner not inconsistent with the Nebraska Fair Employment Practice Act;

(h) Requiring a medical examination or making inquiries of an employee as to whether the employee is affected by pregnancy, childbirth, or related medical conditions unless the examination or inquiry is shown to be job-related and consistent with business necessity. A test to determine the illegal use of drugs shall not be considered a medical examination. A covered entity may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at the worksite and may make inquiries into the ability of an employee to perform job-related functions if the information obtained regarding the medical condition or history of the employee is subject to the requirements in subdivisions (2)(g)(iii)(B) and (C) of this section;

(i) Requiring a job applicant or employee affected by pregnancy, childbirth, or related medical conditions to accept an accommodation that such applicant or employee chooses not to accept if such applicant or
employee does not have a known limitation related to pregnancy, childbirth, or related medical conditions or if such accommodation is unnecessary for the applicant or employee to perform the essential duties of the job;

(j) Requiring an employee to take leave under any leave law or policy of the covered entity if another reasonable accommodation can be provided to the known limitations related to the pregnancy, childbirth, or related medical conditions of the employee; and

(k) Taking adverse action against an employee in the terms, conditions, or privileges of employment for requesting or using a reasonable accommodation to the known limitations related to the pregnancy, childbirth, or related medical conditions of the employee.

Sec. 4. Section 48-1111, Reissue Revised Statutes of Nebraska, is amended to read:

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

It shall not be an unlawful employment practice for a covered entity to deny privileges of employment to an individual with a disability when the qualification standards, tests, or selection criteria that screen out
1 or tend to screen out or otherwise deny a job or benefit to an individual
2 with a disability:
3
4 (a) Have been shown to be job-related and consistent with business
5 necessity and such performance cannot be accomplished by reasonable
6 accommodation, as required by the Nebraska Fair Employment Practice Act
7 and the federal Americans with Disabilities Act of 1990; or
8
9 (b) Include a requirement that an individual shall not pose a direct
10 threat, involving a significant risk to the health or safety of other
11 individuals in the workplace, that cannot be eliminated by reasonable
12 accommodation.
13
14 It shall not be an unlawful employment practice to refuse employment
15 based on a policy of not employing both husband and wife if such policy
16 is equally applied to both sexes.
17
18 (2) Except as otherwise provided in the Nebraska Fair Employment
19 Practice Act, women affected by pregnancy, childbirth, or related
20 medical conditions shall be treated the same for all employment-related
21 purposes, including receipt of employee benefits, as other persons not so
22 affected but similar in their ability or inability to work, and nothing
23 in this section shall be interpreted to provide otherwise.
24
25 This section shall not require an employer to provide employee
26 benefits for abortion except when medical complications have arisen from
27 an abortion.
28
29 Nothing in this section shall preclude an employer from providing
30 employee benefits for abortion under fringe benefit programs or otherwise
31 affect bargaining agreements in regard to abortion.
32
33 Sec. 5. Section 48-1117, Revised Statutes Cumulative Supplement,
34 2014, is amended to read:
35
36 48-1117 The commission shall have the following powers and duties:
37
38 (1) To receive, investigate, and pass upon charges of unlawful
39 employment practices anywhere in the state;
40
41 (2) To hold hearings, subpoena witnesses, compel their attendance,
administer oaths, and take the testimony of any person under oath and, in connection therewith, to require the production for examination of any books and papers relevant to any allegation of unlawful employment practice pending before the commission. The commission may make rules as to the issuance of subpoenas, subject to the approval by a constitutional majority of the elected members of the Legislature;

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

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

(5) To require that every employer, employment agency, and labor organization subject to the act shall (a) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed, (b) preserve such records for such periods, and (c) make such reports therefrom, as the commission shall prescribe by regulation or order, after public hearing, as reasonable, necessary, or appropriate for the enforcement of the act or the regulations or orders thereunder. The commission shall, by regulation, require each employer, labor organization, and joint labor-management committee subject to the act which controls an apprenticeship or other training program to maintain such records as are reasonably necessary to carry out the purposes of the act, including, but not limited to, a list of applicants who wish to participate in such program, including the chronological order in which such applications were received, and to furnish to the commission, upon request, a detailed description of the manner in which persons are selected to participate in the apprenticeship or other training program. Any employer, employment agency, labor
organization, or joint labor-management committee which believes that the
application to it of any regulation or order issued under this section
would result in undue hardship may either apply to the commission for an
exemption from the application of such regulation or order or bring a
civil action in the district court for the district where such records
are kept. If the commission or the court, as the case may be, finds that
the application of the regulation or order to the employer, employment
agency, or labor organization in question would impose an undue hardship,
the commission or the court, as the case may be, may grant appropriate
relief;

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

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

Sec. 6. Original sections 48-1102, 48-1107.01, 48-1107.02, and
48-1111, Reissue Revised Statutes of Nebraska, and section 48-1117,
Revised Statutes Cumulative Supplement, 2014, are repealed.