

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FOURTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 983**

Introduced by Harr, 8.

Read first time January 14, 2016

Committee: Business and Labor

- 1 A BILL FOR AN ACT relating to the Nebraska Fair Employment Practice Act;
- 2 to amend section 48-1102, Revised Statutes Supplement, 2015; to
- 3 redefine a term; and to repeal the original section.
- 4 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 48-1102, Revised Statutes Supplement, 2015, is  
2 amended to read:

3 48-1102 For purposes of the Nebraska Fair Employment Practice Act,  
4 unless the context otherwise requires:

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

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

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

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

1 receiving federal assistance;

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

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

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

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

9 (9)(a) Disability shall mean (i a) a physical or mental impairment  
10 that substantially limits one or more of the major life activities of  
11 such individual, (ii b) a record of such an impairment, or (iii e) being  
12 regarded as having such an impairment. Homosexuality and bisexuality are  
13 not impairments and as such are not disabilities under the Nebraska Fair  
14 Employment Practice Act; and

15 (b) Disability shall not include the following conditions:  
16 homosexuality, bisexuality, transvestism,

17 (i) Transvestism, transsexualism, pedophilia, exhibitionism,  
18 voyeurism, gender-identity disorders not resulting from in physical  
19 impairments, or other sexual behavior disorders; 7

20 (ii) Compulsive or problem gambling, kleptomania, or pyromania; 7 or

21 (iii) Psychoactive psychoactive substance use disorders resulting  
22 from current illegal use of drugs;

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

31 (b) Qualified individual with a disability shall not include any

1 employee or applicant who is currently engaged in the illegal use of  
2 drugs when the covered entity acts on the basis of such use; and

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

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

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

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

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

31 (a) The nature and the cost of the accommodation needed under the

1 Nebraska Fair Employment Practice Act;

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

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

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

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

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

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

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

1 disregarding the law;

2 (16) Drug shall mean a controlled substance as defined in section  
3 28-401;

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

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

19 Sec. 2. Original section 48-1102, Revised Statutes Supplement,  
20 2015, is repealed.