A BILL FOR AN ACT relating to the Nebraska Fair Employment Practice Act; to amend sections 48-1101, 48-1104, 48-1105, 48-1106, 48-1107, 48-1108, 48-1113, 48-1115, 48-1119, 48-1122, and 48-1124, Reissue Revised Statutes of Nebraska, and sections 48-1102, 48-1111, and 48-1117, Revised Statutes Cumulative Supplement, 2016; to provide protections for employees with family care responsibilities; to define a term; to harmonize provisions; to provide an operative date; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,
Section 1. Section 48-1101, Reissue Revised Statutes of Nebraska, is amended to read:

48-1101 It is the policy of this state to foster the employment of all employable persons in the state on the basis of merit regardless of their race, color, religion, sex, disability, or national origin, or family care responsibilities and to safeguard their right to obtain and hold employment without discrimination because of their race, color, religion, sex, disability, or national origin, or family care responsibilities. Denying equal opportunity for employment because of race, color, religion, sex, disability, or national origin, or family care responsibilities is contrary to the principles of freedom and is a burden on the objectives of the public policy of this state. The policy of this state does not require any person to employ an applicant for employment because of his or her race, color, religion, sex, disability, or national origin, or family care responsibilities, and the policy of this state does not require any employer, employment agency, labor organization, or joint labor-management committee to grant preferential treatment to any individual or to any group because of race, color, religion, sex, disability, or national origin, or family care responsibilities.

It is the public policy of this state that all people in Nebraska, both with and without disabilities, shall have the right and opportunity to enjoy the benefits of living, working, and recreating within this state. It is the intent of the Legislature that state and local governments, Nebraska businesses, Nebraska labor organizations, and Nebraskans with disabilities understand their rights and responsibilities under the law regarding employment discrimination and the prevention of discrimination on the basis of disability.

Sec. 2. Section 48-1102, Revised Statutes Cumulative Supplement, 2016, 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 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;

(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;—and

(18) Individual who is pregnant, who has given birth, or who has a related medical condition shall mean an individual with a known limitation who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds, desires, or may be temporarily assigned to. 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; and—

(19) Family care responsibility shall mean providing direct and ongoing care for a person's spouse, child, parent, sibling, grandchild, or grandparent or a child or parent of such person's spouse.

Sec. 3. Section 48-1104, Reissue Revised Statutes of Nebraska, is amended to read:

48-1104 It shall be an unlawful employment practice for an employer:

(1) To fail or refuse to hire, to discharge, or to harass any individual, or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, disability, marital status, or national origin, or family care responsibilities; or

(2) To limit, advertise, solicit, segregate, or classify employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect such individual's status as an employee, because of such individual's race, color, religion, sex, disability, marital status, or national origin, or family care responsibilities.

Sec. 4. Section 48-1105, Reissue Revised Statutes of Nebraska, is amended to read:

48-1105 It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise
to discriminate against, any individual because of race, color, religion, sex, disability, marital status, or national origin, or family care responsibilities, or to classify or refer for employment any individual on the basis of race, color, religion, sex, disability, marital status, or national origin, or family care responsibilities.

Sec. 5. Section 48-1106, Reissue Revised Statutes of Nebraska, is amended to read:

48-1106 It shall be an unlawful employment practice for a labor organization:

(1) To exclude or to expel from its membership, or otherwise to discriminate against, any individual because of race, color, religion, sex, disability, marital status, or national origin, or family care responsibilities;

(2) To limit, segregate, or classify its membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect such individual's status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, disability, marital status, or national origin, or family care responsibilities; or

(3) To cause or attempt to cause an employer to discriminate against an individual in violation of this section.

Sec. 6. Section 48-1107, Reissue Revised Statutes of Nebraska, is amended to read:

48-1107 It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of race, color, religion, sex, disability, marital status, or national origin, or family care responsibilities in admission to, or employment
in, any program established to provide apprenticeship or other training.

Sec. 7. Section 48-1108, Reissue Revised Statutes of Nebraska, is amended to read:

48-1108 Notwithstanding any other provision of the Nebraska Fair Employment Practice Act:

(1) It shall not be an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual, or for an employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program on the basis of religion, sex, disability, marital status, or national origin, or family care responsibilities in those certain instances when religion, sex, disability, marital status, or national origin, or a family care responsibility is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise; and

(2) It shall not be an unlawful employment practice for a school, college, university, or other educational institution or institution of learning to hire and employ employees of a particular religion if such school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society or if the curriculum of such school, college, university, or other educational institution of learning is directed toward the propagation of a particular religion.

Sec. 8. Section 48-1111, Revised Statutes Cumulative Supplement, 2016, 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, or family care responsibilities, 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, or family care responsibilities.

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 or tend to screen out or otherwise deny a job or benefit to an individual with a disability:

(a) Have been shown to be job-related and consistent with business necessity and such performance cannot be accomplished by reasonable accommodation, as required by the Nebraska Fair Employment Practice Act and the federal Americans with Disabilities Act of 1990; or

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

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

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

This section shall not require an employer to provide employee benefits for abortion except when medical complications have arisen from an abortion.

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

Sec. 9. Section 48-1113, Reissue Revised Statutes of Nebraska, is amended to read:

48-1113 Nothing in the Nebraska Fair Employment Practice Act shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to the act to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, disability, marital status, or national origin, or family care responsibilities of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, disability, marital status, or national origin, or family care responsibilities employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, disability, marital status, or national origin, or family care responsibilities in any community, section, or other area, or in the available work force in any community, section, or other area.

Sec. 10. Section 48-1115, Reissue Revised Statutes of Nebraska, is
amended to read:

48-1115 It shall be an unlawful employment practice for an employer, labor organization, or employment agency to print or publish or cause to be printed or published any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, indicating any preference, limitation, specification, or discrimination based on race, color, religion, sex, disability, marital status, or national origin, or family care responsibilities, except that such a notice or advertisement may indicate a preference, limitation, specification, or discrimination based on religion, sex, disability, marital status, or national origin, or family care responsibilities when religion, sex, disability, marital status, or national origin, or a family care responsibility is a bona fide occupational qualification for employment.

Sec. 11. Section 48-1117, Revised Statutes Cumulative Supplement, 2016, is amended to read:

48-1117 The commission shall have the following powers and duties:

(1) To receive, investigate, and pass upon charges of unlawful employment practices anywhere in the state;

(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, or family care responsibilities, 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. 12. Section 48-1119, Reissue Revised Statutes of Nebraska, is amended to read:

    48-1119 (1) In case of failure to eliminate any unlawful employment practice by informal methods of conference, conciliation, persuasion, mediation, or arbitration, the commission may order a public hearing. If such hearing is ordered, the commission shall cause to be issued and served a written notice, together with a copy of the complaint, requiring the person, employer, labor organization, or employment agency named in the complaint, hereinafter referred to as respondent, to answer such charges at a hearing before the commission at a time and place which shall be specified in such notice. Such hearing shall be within the county where the alleged unlawful employment practice occurred. The complainant shall be a party to the proceeding, and in the discretion of the commission any other person whose testimony has a bearing on the matter may be allowed to intervene therein. Both the complainant and the
respondent, in addition to the commission, may introduce witnesses at the
hearing. The respondent may file a verified answer to the allegations of
the complaint and may appear at such hearing in person and with or
without counsel. Testimony or other evidence may be introduced by either
party. All evidence shall be under oath and a record thereof shall be
made and preserved. Such proceedings shall, so far as practicable, be
conducted in accordance with the rules of evidence applicable in the
district courts of the State of Nebraska, and shall be of public record.

(2) No person shall be excused from testifying or from producing any
book, document, paper, or account in any investigation, or inquiry by, or
hearing before the commission when ordered to do so, upon the ground that
the testimony or evidence, book, document, paper, or account required of
such person may tend to incriminate such person in or subject such person
to penalty or forfeiture; but no person shall be prosecuted, punished, or
subjected to any forfeiture or penalty for or on account of any act,
transaction, matter, or thing concerning which such person shall have
been compelled under oath to testify or produce documentary evidence,
except that no person so testifying shall be exempt from prosecution or
punishment for any perjury committed by such person in his or her
testimony. Such immunity shall extend only to a natural person who, in
obedience to a subpoena, gives testimony under oath or produces evidence,
documentary or otherwise, under oath. Nothing in this subsection shall be
construed as precluding any person from claiming any right or privilege
available to such person under the fifth amendment to the Constitution of
the United States.

(3) After the conclusion of the hearing, the commission shall,
within ten days of the receipt of the transcript or the receipt of the
recommendations from the hearing officer, make and file its findings of
fact and conclusions of law and make and enter an appropriate order. The
hearing officer need not refer to the page and line numbers of the
transcript when making his or her recommendation to the commission. Such
findings of fact and conclusions of law shall be in sufficient detail to enable a court on appeal to determine the controverted questions presented by the proceedings and whether proper weight was given to the evidence. If the commission determines that the respondent has intentionally engaged in or is intentionally engaging in any unlawful employment practice, it shall issue and cause to be served on such respondent an order requiring such respondent to cease and desist from such unlawful employment practice and order such other affirmative action as may be appropriate which may include, but shall not be limited to, reinstatement or hiring of employees, with or without backpay. Backpay liability shall not accrue from a date more than two years prior to the filing of the charge with the commission. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the backpay otherwise allowable.

(4) A complainant who has suffered physical, emotional, or financial harm as a result of a violation of section 48-1104 or 48-1114 may, at any stage of the proceedings prior to dismissal, file an action directly in the district court of the county where such alleged violation occurred. If the complainant files a district court action on the charge, the complainant shall provide written notice of such filing to the commission, and such notification shall immediately terminate all proceedings before the commission. The district court shall docket and try such case as any other civil action, and any successful complainant shall be entitled to appropriate relief, including temporary or permanent injunctive relief, general and special damages, reasonable attorney's fees, and costs.

(5) No order of the commission shall require the admission or reinstatement of an individual as a member of a labor organization or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him or her of any backpay, if such individual was refused admission, suspended, or expelled, or was refused employment or
advancement or was suspended or discharged for any reason other than
discrimination on account of race, color, religion, sex, disability,
marital status, or national origin, or family care responsibilities or in
violation of section 48-1114. If the commission finds that a respondent
has not engaged in any unfair employment practice, it shall within thirty
days state its findings of fact and conclusions of law. A copy of any
order shall be served upon the person against whom it runs or his or her
attorney and notice thereof shall be given to the other parties to the
proceedings or their attorneys. Such order shall take effect twenty days
after service thereof unless otherwise provided and shall continue in
force either for a period which may be designated therein or until
changed or revoked by the commission.

(6) Except as provided in subsection (4) of this section, until a
transcript of the record of the proceedings is filed in the district
court as provided in section 48-1120, the commission may, at any time
upon reasonable notice and in such a manner it shall deem proper, modify
or set aside, in whole or in part, any finding or order made by it.

Sec. 13. Section 48-1122, Reissue Revised Statutes of Nebraska, is
amended to read:

48-1122 Every contract to which the state or any of its political
subdivisions is a party shall contain a provision requiring the
contractor and his or her subcontractors not to discriminate against any
employee or applicant for employment, to be employed in the performance
of such contract, with respect to his or her hire, tenure, terms,
conditions, or privileges of employment, because of his or her race,
color, religion, sex, disability, or national origin, or family care
responsibilities.

Sec. 14. Section 48-1124, Reissue Revised Statutes of Nebraska, is
amended to read:

48-1124 Nothing contained in the Nebraska Fair Employment Practice
Act shall be deemed to repeal any of the provisions of the civil rights
law, any other law of this state, or any municipal ordinance relating to
discrimination because of race, creed, color, religion, sex, disability,
or national origin, or family care responsibilities.

Sec. 15. This act becomes operative on January 1, 2018.

Sec. 16. Original sections 48-1101, 48-1104, 48-1105, 48-1106,
48-1107, 48-1108, 48-1113, 48-1115, 48-1119, 48-1122, and 48-1124,
Reissue Revised Statutes of Nebraska, and sections 48-1102, 48-1111, and
48-1117, Revised Statutes Cumulative Supplement, 2016, are repealed.