LEGISLATIVE BILL 1020

Introduced by Vargas, 7; Wishart, 27.

Read first time January 15, 2020

Committee: Judiciary

1 A BILL FOR AN ACT relating to the Nebraska Fair Housing Act; to amend sections 20-139, 20-301, 20-317, 20-318, 20-320, 20-321, 20-322, and 20-325, Reissue Revised Statutes of Nebraska; to define a term; to change provisions relating to discrimination; and to repeal the original sections.

6 Be it enacted by the people of the State of Nebraska,
Section 1. Section 20-139, Reissue Revised Statutes of Nebraska, is amended to read:

20-139 The Nebraska Fair Housing Act and sections 20-123, 20-124, and 20-132 to 20-143 shall be administered by the Equal Opportunity Commission, except that the State Fire Marshal shall administer the act and sections as they relate to accessibility standards and specifications set forth in sections 81-5,147 and 81-5,148. The county attorneys are granted the authority to enforce such act and sections 20-123, 20-124, and 20-132 to 20-143 and shall possess the same powers and duties with respect thereto as the commission. If a complaint is filed with the county attorney, the commission shall be notified. Powers granted to and duties imposed upon the commission pursuant to such act and sections shall be in addition to the provisions of the Nebraska Fair Employment Practice Act and shall not be construed to amend or restrict those provisions. In carrying out the Nebraska Fair Housing Act and sections 20-123, 20-124, and 20-132 to 20-143, the commission shall have the power to:

(1) Seek to eliminate and prevent discrimination in places of public accommodation because of race, color, sex, religion, national origin, familial status as defined in section 20-311, handicap as defined in section 20-313, or ancestry;

(2) Effectuate the purposes of sections 20-132 to 20-143 by conference, conciliation, and persuasion so that persons may be guaranteed their civil rights and goodwill may be fostered;

(3) Formulate policies to effectuate the purposes of sections 20-132 to 20-143 and make recommendations to agencies and officers of the state or local subdivisions of government in aid of such policies and purposes;

(4) Adopt and promulgate rules and regulations to carry out the powers granted by the Nebraska Fair Housing Act and sections 20-123, 20-124, and 20-132 to 20-143, subject to the provisions of the Administrative Procedure Act. The commission shall, not later than one
hundred eighty days after September 6, 1991, issue draft rules and regulations to implement subsection (3) of section 20-336, which regulations may incorporate regulations of the Department of Housing and Urban Development as applicable;

(5) Designate one or more members of the commission or a member of the commission staff to conduct investigations of any complaint alleging discrimination because of race, color, sex, religion, national origin, familial status, handicap, or ancestry, or lawful source of income, attempt to resolve such complaint by conference, conciliation, and persuasion, and conduct such conciliation meetings and conferences as are deemed necessary to resolve a particular complaint, which meetings shall be held in the county in which the complaint arose;

(6) Determine that probable cause exists for crediting the allegations of a complaint;

(7) Determine that a complaint cannot be resolved by conference, conciliation, or persuasion, such determination to be made only at a meeting where a quorum is present;

(8) Dismiss a complaint when it is determined there is not probable cause to credit the allegations;

(9) Hold hearings, subpoena witnesses and compel their attendance, administer oaths, take the testimony of any person under oath, and in connection therewith require for examination any books or papers relating to any matter under investigation or in question before the commission; and

(10) Issue publications and the results of studies and research which will tend to promote goodwill and minimize or eliminate discrimination because of race, color, sex, religion, national origin, familial status, handicap, or ancestry, or lawful source of income.

Sec. 2. Section 20-301, Reissue Revised Statutes of Nebraska, is amended to read:

20-301 Sections 20-301 to 20-344 and section 3 of this act shall be
Sec. 3. Lawful source of income includes, but is not limited to, income derived from social security, child support, foster care subsidies, alimony, veterans benefits, or any other form of federal, state, or local public general assistance or housing assistance whether or not such source of income or credit is paid directly, indirectly, or on behalf of a renter or buyer of housing, or is paid or attributed directly to a landlord, including, but not limited to, vouchers given as part of the federal low-income housing assistance authorized under 42 U.S.C. 1437f, as such section existed on January 1, 2020, or any other form of housing assistance payment or credit, and all other forms of lawful income.

Sec. 4. Section 20-317, Reissue Revised Statutes of Nebraska, is amended to read:

20-317 Restrictive covenant shall mean any specification limiting the transfer, rental, or lease of any housing because of race, creed, religion, color, national origin, sex, handicap, familial status, or ancestry, or lawful source of income.

Sec. 5. Section 20-318, Reissue Revised Statutes of Nebraska, is amended to read:

20-318 Except as exempted by section 20-322, it shall be unlawful to:

(1) Refuse to sell or rent after the making of a bona fide offer, refuse to negotiate for the sale or rental of or otherwise make unavailable or deny, refuse to show, or refuse to receive and transmit an offer for a dwelling to any person because of race, color, religion, national origin, familial status, sex, lawful source of income, or because of any requirement of any federal, state, or local public general assistance or housing assistance program;

(2) Discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling or in the provision of
services or facilities in connection therewith because of race, color, religion, national origin, familial status, or sex, lawful source of income, or because of any requirement of any federal, state, or local public general assistance or housing assistance program;

(3) Make, print, publish, or cause to be made, printed, or published any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, national origin, handicap, familial status, or sex, lawful source of income, or because of any requirement of any federal, state, or local public general assistance or housing assistance program or an intention to make any such preference, limitation, or discrimination;

(4) Represent to any person because of race, color, religion, national origin, handicap, familial status, or sex, lawful source of income, or because of any requirement of any federal, state, or local public general assistance or housing assistance program that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available;

(5) Cause to be made any written or oral inquiry or record concerning the race, color, religion, national origin, handicap, familial status, or sex, lawful source of income, or because of any requirement of any federal, state, or local public general assistance or housing assistance program of a person seeking to purchase, rent, or lease any housing;

(6) Include in any transfer, sale, rental, or lease of housing any restrictive covenants or honor or exercise or attempt to honor or exercise any restrictive covenant pertaining to housing;

(7) Discharge or demote an employee or agent or discriminate in the compensation of such employee or agent because of such employee's or agent's compliance with the Nebraska Fair Housing Act; and

(8) Induce or attempt to induce, for profit, any person to sell or
rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, national origin, handicap, familial status, or sex, or lawful source of income.

(9) Nothing in the act shall prohibit otherwise nondiscriminatory conduct intended to benefit recipients of public assistance, such as providing housing limited to recipients of public assistance, providing favorable conditions of loans, leases, mortgages, or contracts, or otherwise offering benefits that are limited to recipients of public assistance.

Sec. 6. Section 20-320, Reissue Revised Statutes of Nebraska, is amended to read:

20-320 (1) It shall be unlawful for any person or other entity whose business includes engaging in transactions related to residential real estate to discriminate against any person in making available such a transaction or in the terms or conditions of such a transaction because of race, color, religion, sex, handicap, familial status, or national origin, or lawful source of income.

(2) For purposes of this section, transaction related to residential real estate shall mean any of the following:

(a) The making or purchasing of loans or providing other financial assistance:

(i) For purchasing, constructing, improving, repairing, or maintaining a dwelling; or

(ii) Secured by residential real estate; or

(b) The selling, brokering, or appraising of residential real property.

(3) Nothing in this section shall prohibit a person engaged in the business of furnishing appraisals of real property from taking into consideration factors other than race, color, religion, national origin, sex, handicap, or familial status, or lawful source of income.
(4) Nothing in this section shall prohibit otherwise nondiscriminatory conduct intended to benefit recipients of public assistance, such as providing housing limited to recipients of public assistance, providing favorable conditions of loans, leases, mortgages, or contracts, or otherwise offering benefits that are limited to recipients of public assistance.

Sec. 7. Section 20-321, Reissue Revised Statutes of Nebraska, is amended to read:

20-321 It shall be unlawful to deny any person access to or membership or participation in any multiple listing service, real estate brokers organization, or other service, organization, or facility relating to the business of selling or renting dwellings or to discriminate against any person in the terms or conditions of such access, membership, or participation on account of race, color, religion, national origin, handicap, familial status, sex, or lawful source of income.

Sec. 8. Section 20-322, Reissue Revised Statutes of Nebraska, is amended to read:

20-322 (1) Nothing in the Nebraska Fair Housing Act shall prohibit a religious organization, association, or society or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society from limiting the sale, rental, or occupancy of a dwelling which it owns or operates for other than commercial purposes to persons of the same religion or from giving preferences to such persons unless membership in such religion is restricted on account of race, color, national origin, handicap, familial status, sex, or lawful source of income.

(2) Nothing in the act shall prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than commercial purposes, from limiting the rental or occupancy of such
lodging to its members or from giving preference to its members.

(3) Nothing in the act shall prohibit or limit the right of any person or his or her authorized representative to refuse to rent a room or rooms in his or her own home for any reason or for no reason or to change tenants in his or her own home as often as desired, except that this exception shall not apply to any person who makes available for rental or occupancy more than four sleeping rooms to a person or family within his or her own home.

(4)(a) Nothing in the act shall limit the applicability of any reasonable local restrictions regarding the maximum number of occupants permitted to occupy a dwelling, and nothing in the act regarding familial status shall apply with respect to housing for older persons.

(b) For purposes of this subsection, housing for older persons shall mean housing:

(i) Provided under any state program that the commission determines is specifically designed and operated to assist elderly persons as defined in the program;

(ii) Intended for and solely occupied by persons sixty-two years of age or older; or

(iii) Intended and operated for occupancy by at least one person fifty-five years of age or older per unit. In determining whether housing qualifies as housing for older persons under this subdivision, the commission shall develop regulations which require at least the following factors:

(A) The existence of significant facilities and services specifically designed to meet the physical or social needs of older persons or, if the provision of such facilities and services is not practicable, that such housing is necessary to provide important housing opportunities for older persons;

(B) That at least eighty percent of the units are occupied by at least one person fifty-five years of age or older per unit; and
(C) The publication of and adherence to policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons fifty-five years of age or older.

(c) Housing shall not fail to meet the requirements for housing for older persons by reason of:

   (i) Persons residing in the housing as of September 6, 1991, who do not meet the age requirements of subdivision (b)(ii) or (iii) of this subsection if succeeding occupants of the housing meet the age requirements; or

   (ii) Unoccupied units if the units are reserved for occupancy by persons who meet the age requirements.

(5) Nothing in the act shall prohibit conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in section 28-401.

Sec. 9. Section 20-325, Reissue Revised Statutes of Nebraska, is amended to read:

20-325 The commission shall:

(1) Make studies with respect to the nature and extent of discriminatory housing practices in representative urban, suburban, and rural communities throughout the state;

(2) Publish and disseminate reports, recommendations, and information derived from such studies, including an annual report to the Legislature to be submitted electronically:

   (a) Specifying the nature and extent of progress made statewide in eliminating discriminatory housing practices and furthering the purposes of the Nebraska Fair Housing Act, obstacles remaining to achieving equal housing opportunity, and recommendations for further legislative or executive action; and

   (b) Containing tabulations of the number of instances and the reasons therefor in the preceding year in which:
(i) Investigations have not been completed as required by subdivision (1)(b) of section 20-326;

(ii) Determinations have not been made within the time specified in section 20-333; and

(iii) Hearings have not been commenced or findings and conclusions have not been made as required by section 20-337;

(3) Cooperate with and render technical assistance to state, local, and other public or private agencies, organizations, and institutions which are formulating or carrying on programs to prevent or eliminate discriminatory housing practices;

(4) Electronically submit an annual report to the Legislature and make available to the public data on the age, race, color, religion, national origin, handicap, familial status, and sex, and source of income of persons and households who are applicants for, participants in, or beneficiaries or potential beneficiaries of programs administered by the commission. In order to develop the data to be included and made available to the public under this subdivision, the commission shall, without regard to any other provision of law, collect such information relating to those characteristics as the commission determines to be necessary or appropriate;

(5) Adopt and promulgate rules and regulations, subject to the approval of the members of the commission, regarding the investigative and conciliation process that provide for testing standards, fundamental due process, and notice to the parties of their rights and responsibilities; and

(6) Have authority to enter into agreements with the United States Department of Housing and Urban Development in cooperative agreements under the Fair Housing Assistance Program. The commission shall further have the authority to enter into agreements with testing organizations to assist in investigative activities. The commission shall not enter into any agreements under which compensation to the testing organization is
partially or wholly based on the number of conciliations, settlements, and reasonable cause determinations.