

AMENDMENTS TO LB451

Introduced by Business and Labor.

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

3           Section 1. Section 48-1102, Revised Statutes Cumulative Supplement,  
4 2020, is amended to read:

5           48-1102 For purposes of the Nebraska Fair Employment Practice Act,  
6 unless the context otherwise requires:

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

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

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

1 (4) Employment agency shall mean any person regularly undertaking  
2 with or without compensation to procure employees for an employer or to  
3 procure for employees opportunities to work for an employer and shall  
4 include an agent of such a person but shall not include an agency of the  
5 United States, except that such term shall include the United States  
6 Employment Service and the system of state and local employment services  
7 receiving federal assistance;

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

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

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

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

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

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

1 (b) Qualified individual with a disability shall not include any  
2 employee or applicant who is currently engaged in the illegal use of  
3 drugs when the covered entity acts on the basis of such use; and

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

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

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

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

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

1 (a) The nature and the cost of the accommodation needed under the  
2 Nebraska Fair Employment Practice Act;

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

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

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

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

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

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

31 (15) Unlawful under federal law or the laws of this state shall mean

1 acting contrary to or in defiance of the law or disobeying or  
2 disregarding the law;

3 (16) Drug shall mean a controlled substance as defined in section  
4 28-401;

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

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

20 (19) Race is inclusive of characteristics such as skin color, hair  
21 texture, and protective hairstyles; and

22 (20) Protective hairstyles includes braids, locks, and twists.

23 Sec. 2. Section 48-1108, Reissue Revised Statutes of Nebraska, is  
24 amended to read:

25 48-1108 Notwithstanding any other provision of the Nebraska Fair  
26 Employment Practice Act:

27 (1) It shall not be an unlawful employment practice for an employer  
28 to hire and employ employees, for an employment agency to classify or  
29 refer for employment any individual, for a labor organization to classify  
30 its membership or to classify or refer for employment any individual, or  
31 for an employer, labor organization, or joint labor-management committee

1 controlling apprenticeship or other training or retraining programs to  
2 admit or employ any individual in any such program on the basis of  
3 religion, sex, disability, marital status, or national origin in those  
4 certain instances when religion, sex, disability, marital status, or  
5 national origin is a bona fide occupational qualification reasonably  
6 necessary to the normal operation of that particular business or  
7 enterprise;~~and~~

8 (2) It shall not be an unlawful employment practice for a school,  
9 college, university, or other educational institution or institution of  
10 learning to hire and employ employees of a particular religion if such  
11 school, college, university, or other educational institution or  
12 institution of learning is, in whole or in substantial part, owned,  
13 supported, controlled, or managed by a particular religion or by a  
14 particular religious corporation, association, or society or if the  
15 curriculum of such school, college, university, or other educational  
16 institution of learning is directed toward the propagation of a  
17 particular religion; -

18 (3) It shall not be an unlawful employment practice for an employer  
19 to enact any bona fide health and safety standard that regulates  
20 characteristics associated with race if the employer demonstrates that:

21 (a) Without the implementation of such standard, it is reasonably  
22 certain that the health and safety of the applicant, employee, or other  
23 materially connected person will be impaired;

24 (b) The standard is adopted for non-discriminatory reasons;

25 (c) The standard is applied equally; and

26 (d) The employer has engaged in good faith efforts to reasonably  
27 accommodate the applicant or employee; and

28 (4) It shall not be an unlawful employment practice for the Nebraska  
29 State Patrol, a county sheriff, a city or village police department, or  
30 any other law enforcement agency in this state or the Nebraska National  
31 Guard to impose its own dress and grooming standards.

1           Sec. 3.   Original section 48-1108, Reissue Revised Statutes of  
2 Nebraska, and section 48-1102, Revised Statutes Cumulative Supplement,  
3 2020, are repealed.