

LEGISLATIVE BILL 14A

Approved by the Governor April 12, 1984

Introduced by Kilgarin, 7

AN ACT relating to the Nebraska Fair Employment Practice Act; to amend section 48-1111, Reissue Revised Statutes of Nebraska, 1943, section 48-1117, Revised Statutes Supplement, 1982, and section 48-1102, Revised Statutes Supplement, 1983; to define a term; to change provisions relating to lawful employment practices; to provide duties; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 48-1102, Revised Statutes Supplement, 1983, be amended to read as follows:
48-1102. As used in sections 48-1101 to 48-1125, unless the context otherwise requires:

(1) Person includes one or more individuals, labor unions, partnerships, 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; and shall include the State of Nebraska, governmental agencies, and political subdivisions, regardless of the number of employees, 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 of 1954;

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

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

(7) Commission shall mean the Equal Opportunity Commission;

(8) Disability shall mean any physical or mental condition, infirmity, malformation, or disfigurement which is caused by bodily injury, birth defect, or illness, including epilepsy or seizure disorders, and which shall include, but not be limited to, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a dog guide, wheelchair, or other remedial appliance or device and shall also mean the physical or mental condition of a person which constitutes a substantial handicap, as determined by a physician, but is unrelated to such person's ability to engage in a particular occupation; and

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

(10) 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.

Sec. 2. That section 48-1111, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-1111. (1) Notwithstanding any other provision of sections 48-1101 to 48-1125, 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 an employer, employment agency, labor organization, or joint labor-management committee to deny privileges of employment when the nature and extent of a disability reasonably ~~precludes~~ preclude the performance of the

particular employment.

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) 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. 3. That section 48-1117, Revised Statutes Supplement, 1982, be amended to read as follows:

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, 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 sections 48-1101 to 48-1125, 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, conciliation, and persuasion;

(5) To require that every employer, employment agency, and labor organization subject to sections 48-1101 to 48-1125, 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 sections 48-1101 to

48-1125 or the regulations or orders thereunder. The commission shall, by regulation, require each employer, labor organization, and joint labor-management committee subject to sections 48-1101 to 48-1125 which controls an apprenticeship or other training program to maintain such records as are reasonably necessary to carry out the purposes of sections 48-1101 to 48-1125, 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; and

(6) To report, not less than once each 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 sections 48-1101 to 48-1125, 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; and

(7) To adopt and promulgate rules and regulations necessary to carry out the duties prescribed in sections 48-1101 to 48-1125.

Each member of the Legislature shall receive a copy of the report required by subdivision (6) of this section by making a request for it to the chairperson of the commission.

Sec. 4. That original section 48-1111, Reissue Revised Statutes of Nebraska, 1943, section 48-1117, Revised Statutes Supplement, 1982, and section 48-1102, Revised Statutes Supplement, 1983, are repealed.