

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1014

Introduced by Pansing Brooks, 28.

Read first time January 16, 2018

Committee: Business and Labor

1 A BILL FOR AN ACT relating to employment; to amend sections 13-1102,
2 20-113, 48-1221, 48-1222, 48-1223, 48-1224, 48-1225, 48-1226, and
3 48-1227, Reissue Revised Statutes of Nebraska, and sections 48-1220
4 and 48-1228, Revised Statutes Cumulative Supplement, 2016; to name
5 the Discriminatory Wage Practices Act; to define a term; to
6 eliminate obsolete provisions; to change provisions relating to wage
7 discrimination on the basis of sex; to provide for an employer pay-
8 practices model for self-evaluation; to provide for enforcement by
9 the Attorney General; to provide an affirmative defense for
10 employers as prescribed; to provide protections for employees
11 relating to wage disclosure; to harmonize provisions; and to repeal
12 the original sections.
13 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 13-1102, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 13-1102 (1) In addition to any other powers which it may have, each
4 municipality and each county shall have without any other authority the
5 following powers:

6 (a) To acquire, whether by construction, purchase, devise, gift, or
7 lease, or any one or more of such methods, one or more projects, which
8 shall be located within this state, and may be located within, without,
9 partially within, or partially without the municipality or county;

10 (b) To lease to others any or all of its projects for such rentals
11 and upon such terms and conditions as the governing body may deem
12 advisable and as shall not conflict with sections 13-1101 to 13-1110;

13 (c) To finance the acquisition, construction, rehabilitation, or
14 purchase of projects in blighted areas. The power to finance such
15 projects in blighted areas means and includes the power to enter into any
16 type of agreement, including a loan agreement, when the other party to
17 the agreement agrees (i) to use the proceeds of money provided under the
18 agreement to pay the costs of such acquisition, construction,
19 rehabilitation, or purchase and any costs incident to the issuance of the
20 related bonds and the funding of any reserve funds, (ii) to be bound by
21 the terms of the Age Discrimination in Employment Act, the Discriminatory
22 Wage Practices Act, and the Nebraska Fair Employment Practice Act, and
23 ~~sections 48-1219 to 48-1227,~~ regardless of the number of employees, and
24 (iii) to make payments to the municipality or county sufficient to enable
25 it to pay on a timely basis all principal, redemption premiums, and
26 interest on the related revenue bonds issued to provide such financing,
27 and any amounts necessary to repay such municipality or county for any
28 and all costs incurred by it that are incidental to such financing. Title
29 to any such project in a blighted area need not be in the name of the
30 municipality or county, but may be in the name of a private party;

31 (d) To acquire, own, develop, lease, or finance or refinance the

1 acquisition, construction, rehabilitation, or purchase of one or more
2 projects for use as a nonprofit enterprise, regardless of whether such
3 project or projects are within a blighted area. Such projects shall be
4 located within this state and may be located within, without, partially
5 within, or partially without the municipality or county; Provided, for
6 any project located without the municipality or county, such municipality
7 or county shall find that a reasonable relationship exists between such
8 municipality or county and the project, borrower, or other party or
9 parties to the financing agreement, as applicable. The power to finance
10 such projects means and includes the power to enter into any type of
11 agreement, including a loan agreement, when the other party to the
12 agreement agrees (i) to use the proceeds of money provided under the
13 agreement to pay the costs of such acquisition, construction,
14 rehabilitation, or purchase and any costs incident to the issuance of the
15 related bonds and the funding of any reserve funds and (ii) to make
16 payments to the municipality or county sufficient to enable it to pay on
17 a timely basis all principal, redemption premiums, and interest on the
18 related revenue bonds issued to provide such financing and any amounts
19 necessary to repay such municipality or county for any and all costs
20 incurred by it that are incidental to such financing. Title to any such
21 project need not be in the name of the municipality or county but may be
22 in the name of a private party;

23 (e) To issue revenue bonds for the purpose of defraying the cost of
24 acquiring, improving, or financing any project or projects, including the
25 cost of any real estate previously purchased and used for such project or
26 projects, or the cost of any option in connection with acquiring such
27 property, and to secure the payment of such bonds as provided in sections
28 13-1101 to 13-1110, which revenue bonds may be issued in two or more
29 series or issues where deemed advisable, and each such series or issue
30 may contain different maturity dates, interest rates, priorities on
31 revenue available for payment of such bonds and priorities on securities

1 available for guaranteeing payment thereof, and such other differing
2 terms and conditions as are deemed necessary and are not in conflict with
3 sections 13-1101 to 13-1110; and

4 (f) To sell and convey any real or personal property acquired as
5 provided by subdivision (1)(a) of this section and make such order
6 respecting the same as may be deemed conducive to the best interest of
7 the municipality or county, except that such sale or conveyance shall be
8 subject to the terms of any lease but shall be free and clear of any
9 other encumbrance.

10 (2) No municipality or county shall have the power to (a) operate
11 any project, referred to in this section, as a business or in any manner
12 except as the lessor thereof, (b) lease any project acquired under powers
13 conferred by this section for use principally for commercial feeding of
14 livestock, (c) issue bonds under this section principally for the purpose
15 of financing the construction or acquisition of commercial feeding
16 facilities for livestock, or (d) acquire any project or any part thereof
17 by condemnation.

18 Sec. 2. Section 20-113, Reissue Revised Statutes of Nebraska, is
19 amended to read:

20 20-113 Any incorporated city may enact ordinances and any county may
21 adopt resolutions which are substantially equivalent to the Age
22 Discrimination in Employment Act, the Discriminatory Wage Practices Act,
23 the Nebraska Fair Employment Practice Act, the Nebraska Fair Housing Act,
24 and sections 20-126 to 20-143 and ~~48-1219 to 48-1227~~ or which are more
25 comprehensive than such acts and sections in the protection of civil
26 rights. No such ordinance or resolution shall place a duty or liability
27 on any person, other than an employer, employment agency, or labor
28 organization, for acts similar to those prohibited by section 48-1115.
29 Such ordinance or resolution may include authority for a local agency to
30 seek an award of damages or other equitable relief on behalf of the
31 complainant by the filing of a petition in the district court in the

1 county with appropriate jurisdiction. The local agency shall have within
2 its authority jurisdiction substantially equivalent to or more
3 comprehensive than the Equal Opportunity Commission or other enforcement
4 agencies provided under such acts and sections and shall have authority
5 to order backpay and other equitable relief or to enforce such orders or
6 relief in the district court with appropriate jurisdiction. Certified
7 copies of such ordinances or resolutions shall be transmitted to the
8 commission. When the commission determines that any such city or county
9 has enacted an ordinance or adopted a resolution that is substantially
10 equivalent to such acts and sections or is more comprehensive than such
11 acts and sections in the protection of civil rights and has established a
12 local agency to administer such ordinance or resolution, the commission
13 may thereafter refer all complaints arising in such city or county to the
14 appropriate local agency. All complaints arising within a city shall be
15 referred to the appropriate agency in such city when both the city and
16 the county in which the city is located have established agencies
17 pursuant to this section. When the commission refers a complaint to a
18 local agency, it shall take no further action on such complaint if the
19 local agency proceeds promptly to handle such complaint pursuant to the
20 local ordinance or resolution. If the commission determines that a local
21 agency is not handling a complaint with reasonable promptness or that the
22 protection of the rights of the parties or the interests of justice
23 require such action, the commission may regain jurisdiction of the
24 complaint and proceed to handle it in the same manner as other complaints
25 which are not referred to local agencies. In cases of conflict between
26 this section and section 20-332, for complaints subject to the Nebraska
27 Fair Housing Act, section 20-332 shall control.

28 Any club which has been issued a license by the Nebraska Liquor
29 Control Commission to sell, serve, or dispense alcoholic liquor shall
30 have that license revoked if the club discriminates because of race,
31 color, religion, sex, familial status as defined in section 20-311,

1 handicap as defined in section 20-313, or national origin in the sale,
2 serving, or dispensing of alcoholic liquor to any person who is a guest
3 of a member of such club. The procedure for revocation shall be as
4 prescribed in sections 53-134.04, 53-1,115, and 53-1,116.

5 Sec. 3. Sections 48-1219 to 48-1227.01 and sections 3 and 8 of this
6 act shall be known and may be cited as the Discriminatory Wage Practices
7 Act.

8 Sec. 4. Section 48-1220, Revised Statutes Cumulative Supplement,
9 2016, is amended to read:

10 48-1220 As used in the Discriminatory Wage Practices Act sections
11 ~~48-1219 to 48-1227.01~~, unless the context otherwise requires:

12 (1) Commission means the Equal Opportunity Commission;

13 (2) Comparable work means work that is substantially similar in that
14 it requires substantially similar skill, effort, and responsibility and
15 is performed under similar working conditions. A job title or job
16 description alone shall not determine comparability;

17 (3) Employ includes to suffer or permit to work;

18 (4) (1) Employee means shall mean any individual employed by an
19 employer, including individuals employed by the state or any of its
20 political subdivisions including public bodies;

21 (5) (2) Employer means shall mean any person engaged in an industry
22 who has two or more employees for each working day in each of twenty or
23 more calendar weeks in the current or preceding calendar year, any agent
24 of such person, and any party whose business is financed in whole or in
25 part under the Nebraska Investment Finance Authority Act, and includes
26 the State of Nebraska, its governmental agencies, and political
27 subdivisions, regardless of the number of employees, but such term shall
28 not include the United States, a corporation wholly owned by the
29 government of the United States, or an Indian tribe;

30 ~~(3) Wage rate shall mean all compensation for employment including~~
31 ~~payment in kind and amounts paid by employers for employee benefits as~~

1 ~~defined by the commission in regulations issued under sections 48-1219 to~~
2 ~~48-1227;~~

3 ~~(4) Employ shall include to suffer or permit to work;~~

4 ~~(5) Commission shall mean the Equal Opportunity Commission; and~~

5 (6) Person includes ~~shall include~~ one or more individuals,
6 partnerships, limited liability companies, corporations, legal
7 representatives, trustees, trustees in bankruptcy, or voluntary
8 associations; and -

9 (7) Wage rate means all compensation for employment, including
10 payment in kind and amounts paid by employers for employee benefits as
11 defined by the commission in regulations issued under the Discriminatory
12 Wage Practices Act.

13 Sec. 5. Section 48-1221, Reissue Revised Statutes of Nebraska, is
14 amended to read:

15 48-1221 (1) No employer shall discriminate between employees in the
16 same establishment on the basis of sex, by paying wages to any employee
17 in such establishment at a wage rate less than the rate at which the
18 employer pays any employee of the opposite sex in such establishment for
19 comparable equal work on jobs which require equal skill, effort and
20 responsibility under similar working conditions. Wage differentials are
21 not within this prohibition where such wage differentials payments are
22 job-related with respect to the position in question, consistent with
23 business necessity, and made pursuant to: (a) An established seniority
24 system; (b) a merit increase system; or (c) a system which measures
25 earning by quantity or quality of production or any factor other than
26 sex.

27 (2) An employer who is paying a wage differential in violation of
28 the Discriminatory Wage Practices Act provisions of sections 48-1219 to
29 48-1227 shall not, in order to comply with it, reduce the wage rates of
30 any employee.

31 (3) No person shall cause or attempt to cause an employer to

1 discriminate against any employee in violation of the Discriminatory Wage
2 Practices Act ~~provisions of sections 48-1219 to 48-1227.~~

3 (4) No employer may discharge or discriminate against any employee
4 by reason of any action taken by such employee to invoke or assist in any
5 manner the enforcement of the Discriminatory Wage Practices Act
6 ~~provisions of sections 48-1219 to 48-1227.~~

7 Sec. 6. Section 48-1222, Reissue Revised Statutes of Nebraska, is
8 amended to read:

9 48-1222 (1) The commission shall have the power and the duty to
10 carry out the Discriminatory Wage Practices Act ~~provisions of sections~~
11 ~~48-1219 to 48-1227.~~

12 (2) For this purpose, the commission shall have the power to enter
13 the place of employment of any employer to inspect and copy payrolls and
14 other employment records, to compare character of work and operations on
15 which persons employed by the employer ~~him~~ are engaged, to question such
16 person, and to obtain such other information as is reasonably necessary
17 to the administration and enforcement of the Discriminatory Wage
18 Practices Act ~~provisions of sections 48-1219 to 48-1227.~~

19 (3) The commission shall have power to examine witnesses under oath,
20 and to require by subpoena the attendance and testimony of witnesses and
21 the production of any documentary evidence relating to the subject matter
22 of any investigation undertaken pursuant to this section. Witnesses
23 summoned by the commission shall be paid the same fees as are allowed
24 witnesses attending the district court. In the event of the failure of a
25 person to attend, testify, or produce documents under or in response to a
26 subpoena, the district court for the county in which the appearance is
27 requested on application of the commission may issue an order requiring
28 such person to appear before the commission, or to produce documentary
29 evidence, and any failure to obey such order of the court may be punished
30 by the court as a contempt thereof.

31 (4) The commission is authorized to endeavor to eliminate pay

1 practices unlawful under the Discriminatory Wage Practices Act provisions
2 of ~~sections 48-1219 to 48-1227~~, by informal methods of conference,
3 conciliation, and persuasion, and to supervise the payment of wages owing
4 to any employee under the act provisions of ~~sections 48-1219 to 48-1227~~.

5 (5) The commission shall have power to issue such regulations, not
6 inconsistent with the purpose of the Discriminatory Wage Practices Act
7 ~~sections 48-1219 to 48-1227~~, as it deems necessary or appropriate to
8 carry out its provisions.

9 (6) The commission may issue regulations to develop a standard model
10 for self-evaluation of pay practices for employers to implement in
11 eliminating wage differentials for comparable work based on sex.

12 Sec. 7. Section 48-1223, Reissue Revised Statutes of Nebraska, is
13 amended to read:

14 48-1223 (1) Any employer who violates the provisions of section
15 48-1221 shall be liable to the employee or employees affected in the
16 amount of their unpaid wages, and, in instances of willful violation, in
17 employee suits under subsection (2) of this section up to an additional
18 equal amount as liquidated damages.

19 (2) Action to recover such liability may be maintained in any court
20 of competent jurisdiction by any one or more employees for and in behalf
21 of himself, herself, or themselves and other employees similarly
22 situated. The court in such action shall, in cases of violation in
23 addition to any judgment awarded to the plaintiff or plaintiffs, allow a
24 reasonable attorney's fee to be paid by the defendant, and costs of the
25 action.

26 (3) No agreement by any such employee to work for less than the wage
27 to which such employee is entitled under the Discriminatory Wage
28 Practices Act provisions of ~~sections 48-1219 to 48-1227~~ shall be a bar to
29 any such action or to a voluntary wage restitution of the full amount due
30 under the act provisions of ~~sections 48-1219 to 48-1227~~.

31 (4) At the written request of any employee claiming to have been

1 paid less than the wage to which he or she may be entitled under the act
2 ~~provisions of sections 48-1219 to 48-1227~~, the commission or Attorney
3 General may bring any legal action necessary on behalf of the employee to
4 collect such claim for unpaid wages. The commission or Attorney General
5 shall not be required to pay the filing fee, or other costs, in
6 connection with such action. The commission or Attorney General shall
7 have power to join various claims against the employer in one cause of
8 action.

9 (5) In proceedings under ~~the provisions of~~ this section, the court
10 may order other affirmative action as appropriate, including
11 reinstatement of employees discharged in violation of the act provisions
12 ~~of sections 48-1219 to 48-1227~~.

13 (6) The commission or Attorney General shall have power to petition
14 any court of competent jurisdiction to restrain violations of section
15 48-1221 and for such affirmative relief as the court may deem
16 appropriate, including restoration of unpaid wages and reinstatement of
17 employees, consistent with the purpose of the act sections 48-1219 to
18 48-1227.

19 Sec. 8. (1) An employer against whom an action is brought alleging
20 a violation of section 48-1221 and who, within the previous three years
21 and prior to the commencement of the action, has both completed a self-
22 evaluation of its pay practices in good faith and can demonstrate that
23 reasonable progress has been made toward eliminating any wage
24 differentials for comparable work based on sex in accordance with that
25 evaluation, shall have an affirmative defense to liability for a
26 violation of section 48-1221. For purposes of this subsection, an
27 employer's self-evaluation may be of the employer's own design, so long
28 as it is reasonable in detail and scope in light of the size of the
29 employer, or may be consistent with standard templates or forms issued by
30 the commission.

31 (2) An employer who has completed a self-evaluation in good faith

1 within the previous three years and prior to the commencement of the
2 action and who can demonstrate that reasonable progress has been made
3 towards eliminating wage differentials for comparable work based on sex
4 in accordance with that evaluation, but who cannot demonstrate that the
5 evaluation was reasonable in detail and scope, shall not be entitled to
6 an affirmative defense under subsection (1) of this section.

7 (3) Evidence of a self-evaluation or remedial steps undertaken in
8 accordance with this section shall not be admissible in any proceeding as
9 evidence of a violation of section 48-1221 that occurred prior to the
10 date the self-evaluation was completed or that occurred either (a) within
11 six months thereafter or (b) within two years thereafter if the employer
12 can demonstrate that it has developed and begun implementing in good
13 faith a plan to address any wage differentials for comparable work based
14 on sex.

15 (4) An employer who has not completed a self-evaluation shall not be
16 subject to any negative or adverse inference as a result of not having
17 completed a self-evaluation.

18 Sec. 9. Section 48-1224, Reissue Revised Statutes of Nebraska, is
19 amended to read:

20 48-1224 Court action for a violation of the Discriminatory Wage
21 Practices Act ~~under the provisions of sections 48-1219 to 48-1227~~ may be
22 commenced no later than four years after the cause of action accrues.

23 Sec. 10. Section 48-1225, Reissue Revised Statutes of Nebraska, is
24 amended to read:

25 48-1225 Every employer subject to the Discriminatory Wage Practices
26 Act ~~provisions of sections 48-1219 to 48-1227~~ shall make, keep, and
27 maintain such records of the wages and wage rates, job classifications,
28 and other terms and conditions of employment of the persons employed by
29 such employer ~~him~~, and shall preserve such records for such periods of
30 time, and shall make such reports therefrom as the commission shall
31 prescribe.

1 Sec. 11. Section 48-1226, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 48-1226 Every person subject to the Discriminatory Wage Practices
4 Act ~~provisions of sections 48-1219 to 48-1227~~ shall keep an abstract or
5 copy of the act sections 48-1219 to 48-1227 posted in a conspicuous place
6 in or about the premises wherein any employee is employed. Employers
7 shall be furnished copies of abstracts of the act sections 48-1219 to
8 48-1227 by the state on request without charge.

9 Sec. 12. Section 48-1227, Reissue Revised Statutes of Nebraska, is
10 amended to read:

11 48-1227 (1) A person shall be guilty of a Class III misdemeanor if
12 such person:

13 (a) Discharges or in any other manner discriminates against any
14 employee because such employee:

15 (i) Has made any complaint to his or her employer, the commission,
16 the Attorney General, or any other person;

17 (ii) Has instituted or caused to be instituted any proceeding under
18 or related to the Discriminatory Wage Practices Act; or

19 (iii) Has testified or is about to testify in any proceeding under
20 or related to the act; or

21 (b) Otherwise violates the act, except as provided in subsection (2)
22 of this section.

23 (2) An employer shall be guilty of a Class V misdemeanor if such
24 employer:

25 (a) Fails to keep the records required by the Discriminatory Wage
26 Practices Act;

27 (b) Fails to furnish such records to the commission upon request;

28 (c) Falsifies such records;

29 (d) Hinders, delays, or otherwise interferes with the commission or
30 the Attorney General in the performance of the commission's or the
31 Attorney General's duties in the enforcement of the act; or

1 (e) Refuses the commission entry into any place of employment which
2 the commission is authorized by the act to inspect.

3 ~~(1) Any person who violates any provision of sections 48-1219 to~~
4 ~~48-1227, or who discharges or in any other manner discriminates against~~
5 ~~any employee because such employee has made any complaint to his~~
6 ~~employer, the commission, or any other person, or has instituted, or~~
7 ~~caused to be instituted any proceeding under or related to sections~~
8 ~~48-1219 to 48-1227, or has testified or is about to testify in any such~~
9 ~~proceeding, shall be guilty of a Class III misdemeanor.~~

10 ~~(2) Any employer who violates the provisions of sections 48-1219 to~~
11 ~~48-1227 by failing to keep the records required hereunder, or to furnish~~
12 ~~such records to the commission upon request, or who falsifies such~~
13 ~~records, or who hinders, delays, or otherwise interferes with the~~
14 ~~commission in the performance of its duties in the enforcement of the~~
15 ~~provisions of sections 48-1219 to 48-1227, or refuses official entry into~~
16 ~~any place of employment which it is authorized by the provisions of~~
17 ~~sections 48-1219 to 48-1227 to inspect, shall be guilty of a Class V~~
18 ~~misdemeanor.~~

19 Sec. 13. Section 48-1228, Revised Statutes Cumulative Supplement,
20 2016, is amended to read:

21 48-1228 Sections 48-1228 to 48-1234 and section 14 of this act shall
22 be known and may be cited as the Nebraska Wage Payment and Collection
23 Act.

24 Sec. 14. (1) An employer shall not:

25 (a) Require nondisclosure by an employee of his or her wages as a
26 condition of employment;

27 (b) Require an employee to sign a waiver or other document which
28 purports to deny an employee the right to disclose the employee's wages;

29 (c) Take any adverse employment action against an employee for
30 disclosing the employee's own wages or discussing another employee's
31 wages which have been disclosed voluntarily;

1 (d) Coerce, intimidate, or threaten an employee to discourage that
2 employee's disclosure of his or her wages, interfere with an employee's
3 efforts to disclose his or her wages, or discipline an employee for
4 disclosing his or her wages;

5 (e) Retaliate against an employee for asserting rights or remedies
6 under this section; or

7 (f) Discharge or in any other manner retaliate against any employee
8 because such employee has inquired about, discussed, or disclosed
9 comparative compensation information for the purpose of determining
10 whether the employer is compensating an employee in a manner that
11 provides equal pay for equal work, except that this subdivision shall not
12 apply to instances in which an employee who has access to the wage
13 information of other employees as a part of such employee's job functions
14 discloses the wages of such other employees to an individual who does not
15 otherwise have access to such information, unless such disclosure is in
16 response to a charge or complaint or in furtherance of an investigation,
17 proceeding, hearing, or action, including an investigation conducted by
18 the employer.

19 (2) Nothing in this section shall be construed to:

20 (a) Create an obligation on any employer or employee to disclose
21 wages;

22 (b) Permit an employee, without the written consent of the employer,
23 to disclose proprietary information, trade secret information, or
24 information that is otherwise subject to a legal privilege or protected
25 by law;

26 (c) Diminish any existing rights under the National Labor Relations
27 Act, 29 U.S.C. 151 et seq.; or

28 (d) Permit the employee to disclose wage information of other
29 employees to a competitor of their employer.

30 (3) An employer that provides an employee handbook to its employees
31 must include in the handbook notice of employee rights and remedies under

1 this section.

2 (4) In addition to any other remedies provided under the Nebraska
3 Wage Payment and Collection Act, an employee may bring a civil action
4 against an employer for a violation of subsection (1) of this section. If
5 a court finds that an employer has violated subsection (1) of this
6 section, the court shall, in addition to any judgment awarded to the
7 employee, order costs of the action and reasonable attorney's fees to be
8 paid by the employer. In such an action, the court may order
9 reinstatement, back pay, restoration of lost service credit, if
10 appropriate, the expungement of any related adverse records of an
11 employee who was the subject of the violation, as well as any money
12 damages that the court deems appropriate to compensate the employee for
13 the violation.

14 Sec. 15. Original sections 13-1102, 20-113, 48-1221, 48-1222,
15 48-1223, 48-1224, 48-1225, 48-1226, and 48-1227, Reissue Revised Statutes
16 of Nebraska, and sections 48-1220 and 48-1228, Revised Statutes
17 Cumulative Supplement, 2016, are repealed.