

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 230

Introduced by Hunt, 8; Cavanaugh, J., 9; Hansen, M., 26.

Read first time January 11, 2021

Committee: Judiciary

1 A BILL FOR AN ACT relating to civil rights; to amend sections 18-1724,
2 20-113, 20-132, 20-134, 20-139, 20-317, 20-318, 20-320, 20-321,
3 20-322, 20-325, 29-401, and 49-801, Reissue Revised Statutes of
4 Nebraska; to prohibit discrimination on the basis of sexual
5 orientation or gender identity in public accommodations and under
6 the Nebraska Fair Housing Act; to change powers of cities and
7 villages relating to discrimination; to define a term; to harmonize
8 provisions; and to repeal the original sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 18-1724, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 18-1724 Notwithstanding any other law or laws heretofore enacted,
4 all cities and villages in this state shall have the power by ordinance
5 to define, regulate, suppress, and prevent discrimination on the basis of
6 race, color, creed, religion, ancestry, sex, marital status, national
7 origin, familial status as defined in section 20-311, handicap as defined
8 in section 20-313, age, ~~or~~ disability, sexual orientation, or gender
9 identity in employment, public accommodation, and housing and may provide
10 for the enforcement of such ordinances by providing appropriate penalties
11 for the violation thereof. It shall not be an unlawful employment
12 practice to refuse employment based on a policy of not employing both
13 spouses husband and wife if such policy is equally applied to persons of
14 any sex, sexual orientation, or gender identity ~~both sexes~~.

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

17 20-113 (1)(a) Any incorporated city may enact ordinances and any
18 county may adopt resolutions which are substantially equivalent to the
19 Age Discrimination in Employment Act, the Nebraska Fair Employment
20 Practice Act, the Nebraska Fair Housing Act, and sections 20-126 to
21 20-143 and 48-1219 to 48-1227 or which are more comprehensive than such
22 acts and sections in the protection of civil rights.

23 (b) No such ordinance or resolution shall place a duty or liability
24 on any person, other than an employer, employment agency, or labor
25 organization, for acts similar to those prohibited by section 48-1115.

26 (c) Such ordinance or resolution may include authority for a local
27 agency to seek an award of damages or other equitable relief on behalf of
28 the complainant by the filing of a petition in the district court in the
29 county with appropriate jurisdiction. The local agency shall have within
30 its authority jurisdiction substantially equivalent to or more
31 comprehensive than the Equal Opportunity Commission or other enforcement

1 agencies provided under such acts and sections and shall have authority
2 to order backpay and other equitable relief or to enforce such orders or
3 relief in the district court with appropriate jurisdiction.

4 (d) Certified copies of such ordinances or resolutions shall be
5 transmitted to the commission. When the commission determines that any
6 such city or county has enacted an ordinance or adopted a resolution that
7 is substantially equivalent to such acts and sections or is more
8 comprehensive than such acts and sections in the protection of civil
9 rights and has established a local agency to administer such ordinance or
10 resolution, the commission may thereafter refer all complaints arising in
11 such city or county to the appropriate local agency. All complaints
12 arising within a city shall be referred to the appropriate agency in such
13 city when both the city and the county in which the city is located have
14 established agencies pursuant to this section.

15 (e) When the commission refers a complaint to a local agency, it
16 shall take no further action on such complaint if the local agency
17 proceeds promptly to handle such complaint pursuant to the local
18 ordinance or resolution. If the commission determines that a local agency
19 is not handling a complaint with reasonable promptness or that the
20 protection of the rights of the parties or the interests of justice
21 require such action, the commission may regain jurisdiction of the
22 complaint and proceed to handle it in the same manner as other complaints
23 which are not referred to local agencies.

24 (f) In cases of conflict between this section and section 20-332,
25 for complaints subject to the Nebraska Fair Housing Act, section 20-332
26 shall control.

27 (2) Any club which has been issued a license by the Nebraska Liquor
28 Control Commission to sell, serve, or dispense alcoholic liquor shall
29 have that license revoked if the club discriminates because of race,
30 color, religion, sex, familial status as defined in section 20-311,
31 handicap as defined in section 20-313, ~~or~~ national origin, sexual

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

5 Sec. 3. Section 20-132, Reissue Revised Statutes of Nebraska, is
6 amended to read:

7 20-132 All persons within this state shall be entitled to a full and
8 equal enjoyment of any place of public accommodation, as defined in
9 sections 20-132 to 20-143, without discrimination or segregation on the
10 grounds of race, color, sex, religion, national origin, ~~or~~ ancestry,
11 sexual orientation, or gender identity.

12 Sec. 4. Section 20-134, Reissue Revised Statutes of Nebraska, is
13 amended to read:

14 20-134 Any person who directly or indirectly refuses, withholds
15 from, denies, or attempts to refuse, withhold, or deny, to any other
16 person any of the accommodations, advantages, facilities, services, or
17 privileges, or who segregates any person in a place of public
18 accommodation on the basis of race, creed, color, sex, religion, national
19 origin, ~~or~~ ancestry, sexual orientation, or gender identity, shall be
20 guilty of discriminatory practice and shall be subject to the penalties
21 of sections 20-132 to 20-143.

22 Sec. 5. Section 20-139, Reissue Revised Statutes of Nebraska, is
23 amended to read:

24 20-139 The Nebraska Fair Housing Act and sections 20-123, 20-124,
25 and 20-132 to 20-143 shall be administered by the Equal Opportunity
26 Commission, except that the State Fire Marshal shall administer the act
27 and sections as they relate to accessibility standards and specifications
28 set forth in sections 81-5,147 and 81-5,148. The county attorneys are
29 granted the authority to enforce such act and sections 20-123, 20-124,
30 and 20-132 to 20-143 and shall possess the same powers and duties with
31 respect thereto as the commission. If a complaint is filed with the

1 county attorney, the commission shall be notified. Powers granted to and
2 duties imposed upon the commission pursuant to such act and sections
3 shall be in addition to the provisions of the Nebraska Fair Employment
4 Practice Act and shall not be construed to amend or restrict those
5 provisions. In carrying out the Nebraska Fair Housing Act and sections
6 20-123, 20-124, and 20-132 to 20-143, the commission shall have the power
7 to:

8 (1) Seek to eliminate and prevent discrimination in places of public
9 accommodation because of race, color, sex, religion, national origin,
10 familial status as defined in section 20-311, handicap as defined in
11 section 20-313, ~~or~~ ancestry, sexual orientation, or gender identity;

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

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

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

26 (5) Designate one or more members of the commission or a member of
27 the commission staff to conduct investigations of any complaint alleging
28 discrimination because of race, color, sex, religion, national origin,
29 familial status, handicap, ~~or~~ ancestry, sexual orientation, or gender
30 identity, attempt to resolve such complaint by conference, conciliation,
31 and persuasion, and conduct such conciliation meetings and conferences as

1 are deemed necessary to resolve a particular complaint, which meetings
2 shall be held in the county in which the complaint arose;

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

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

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

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

15 (10) Issue publications and the results of studies and research
16 which will tend to promote goodwill and minimize or eliminate
17 discrimination because of race, color, sex, religion, national origin,
18 familial status, handicap, ~~or~~ ancestry, sexual orientation, or gender
19 identity.

20 Sec. 6. Section 20-317, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 20-317 Restrictive covenant shall mean any specification limiting
23 the transfer, rental, or lease of any housing because of race, creed,
24 religion, color, national origin, sex, handicap, familial status, ~~or~~
25 ancestry, sexual orientation, or gender identity.

26 Sec. 7. Section 20-318, Reissue Revised Statutes of Nebraska, is
27 amended to read:

28 20-318 Except as exempted by section 20-322, it shall be unlawful
29 to:

30 (1) Refuse to sell or rent after the making of a bona fide offer,
31 refuse to negotiate for the sale or rental of or otherwise make

1 unavailable or deny, refuse to show, or refuse to receive and transmit an
2 offer for a dwelling to any person because of race, color, religion,
3 national origin, familial status, ~~or sex,~~ sexual orientation, or gender
4 identity;

5 (2) Discriminate against any person in the terms, conditions, or
6 privileges of sale or rental of a dwelling or in the provision of
7 services or facilities in connection therewith because of race, color,
8 religion, national origin, familial status, ~~or sex,~~ sexual orientation,
9 or gender identity;

10 (3) Make, print, publish, or cause to be made, printed, or published
11 any notice, statement, or advertisement with respect to the sale or
12 rental of a dwelling that indicates any preference, limitation, or
13 discrimination based on race, color, religion, national origin, handicap,
14 familial status, ~~or sex,~~ sexual orientation, or gender identity or an
15 intention to make any such preference, limitation, or discrimination;

16 (4) Represent to any person because of race, color, religion,
17 national origin, handicap, familial status, ~~or sex,~~ sexual orientation,
18 or gender identity that any dwelling is not available for inspection,
19 sale, or rental when such dwelling is in fact so available;

20 (5) Cause to be made any written or oral inquiry or record
21 concerning the race, color, religion, national origin, handicap, familial
22 status, ~~or sex,~~ sexual orientation, or gender identity of a person
23 seeking to purchase, rent, or lease any housing;

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

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

30 (8) Induce or attempt to induce, for profit, any person to sell or
31 rent any dwelling by representations regarding the entry or prospective

1 entry into the neighborhood of a person or persons of a particular race,
2 color, religion, national origin, handicap, familial status, ~~or~~ sex,
3 sexual orientation, or gender identity.

4 Sec. 8. Section 20-320, Reissue Revised Statutes of Nebraska, is
5 amended to read:

6 20-320 (1) It shall be unlawful for any person or other entity whose
7 business includes engaging in transactions related to residential real
8 estate to discriminate against any person in making available such a
9 transaction or in the terms or conditions of such a transaction because
10 of race, color, religion, sex, handicap, familial status, ~~or~~ national
11 origin, sexual orientation, or gender identity.

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

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

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

18 (ii) Secured by residential real estate; or

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

21 (3) Nothing in this section shall prohibit a person engaged in the
22 business of furnishing appraisals of real property from taking into
23 consideration factors other than race, color, religion, national origin,
24 sex, handicap, ~~or~~ familial status, sexual orientation, or gender
25 identity.

26 Sec. 9. Section 20-321, Reissue Revised Statutes of Nebraska, is
27 amended to read:

28 20-321 It shall be unlawful to deny any person access to or
29 membership or participation in any multiple listing service, real estate
30 brokers organization, or other service, organization, or facility
31 relating to the business of selling or renting dwellings or to

1 discriminate against any person in the terms or conditions of such
2 access, membership, or participation on account of race, color, religion,
3 national origin, handicap, familial status, ~~or sex,~~ sexual orientation,
4 or gender identity.

5 Sec. 10. Section 20-322, Reissue Revised Statutes of Nebraska, is
6 amended to read:

7 20-322 (1) Nothing in the Nebraska Fair Housing Act shall prohibit a
8 religious organization, association, or society or any nonprofit
9 institution or organization operated, supervised, or controlled by or in
10 conjunction with a religious organization, association, or society from
11 limiting the sale, rental, or occupancy of a dwelling which it owns or
12 operates for other than commercial purposes to persons of the same
13 religion or from giving preferences to such persons unless membership in
14 such religion is restricted on account of race, color, national origin,
15 handicap, familial status, ~~or sex,~~ sexual orientation, or gender
16 identity.

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

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

29 (4)(a) Nothing in the act shall limit the applicability of any
30 reasonable local restrictions regarding the maximum number of occupants
31 permitted to occupy a dwelling, and nothing in the act regarding familial

1 status shall apply with respect to housing for older persons.

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

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

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

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

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

19 (B) That at least eighty percent of the units are occupied by at
20 least one person fifty-five years of age or older per unit; and

21 (C) The publication of and adherence to policies and procedures
22 which demonstrate an intent by the owner or manager to provide housing
23 for persons fifty-five years of age or older.

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

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

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

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

5 Sec. 11. Section 20-325, Reissue Revised Statutes of Nebraska, is
6 amended to read:

7 20-325 The commission shall:

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

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

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

19 (b) Containing tabulations of the number of instances and the
20 reasons therefor in the preceding year in which:

21 (i) Investigations have not been completed as required by
22 subdivision (1)(b) of section 20-326;

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

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

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

31 (4) Electronically submit an annual report to the Legislature and

1 make available to the public data on the age, race, color, religion,
2 national origin, handicap, familial status, ~~and sex,~~ sexual orientation,
3 and gender identity of persons and households who are applicants for,
4 participants in, or beneficiaries or potential beneficiaries of programs
5 administered by the commission. In order to develop the data to be
6 included and made available to the public under this subdivision, the
7 commission shall, without regard to any other provision of law, collect
8 such information relating to those characteristics as the commission
9 determines to be necessary or appropriate;

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

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

23 Sec. 12. Section 29-401, Reissue Revised Statutes of Nebraska, is
24 amended to read:

25 29-401 Every sheriff, deputy sheriff, marshal, deputy marshal,
26 security guard, police officer, or peace officer as defined in
27 ~~subdivision (15) of section 49-801~~ shall arrest and detain any person
28 found violating any law of this state or any legal ordinance of any city
29 or incorporated village until a legal warrant can be obtained, except
30 that (1) any such law enforcement officer taking a juvenile under the age
31 of eighteen years into his or her custody for any violation herein

1 defined shall proceed as set forth in sections 43-248, 43-248.01, 43-250,
2 43-251, 43-251.01, and 43-253 and (2) the court in which the juvenile is
3 to appear shall not accept a plea from the juvenile until finding that
4 the parents of the juvenile have been notified or that reasonable efforts
5 to notify such parents have been made as provided in section 43-250.

6 Sec. 13. Section 49-801, Reissue Revised Statutes of Nebraska, is
7 amended to read:

8 49-801 Unless the context is shown to intend otherwise, words and
9 phrases in the statutes of Nebraska hereafter enacted are used in the
10 following sense:

11 (1) Acquire when used in connection with a grant of power or
12 property right to any person shall include the purchase, grant, gift,
13 devise, bequest, and obtaining by eminent domain;

14 (2) Action shall include any proceeding in any court of this state;

15 (3) Attorney shall mean attorney at law;

16 (4) Company shall include any corporation, partnership, limited
17 liability company, joint-stock company, joint venture, or association;

18 (5) Domestic when applied to corporations shall mean all those
19 created by authority of this state;

20 (6) Federal shall refer to the United States;

21 (7) Foreign when applied to corporations shall include all those
22 created by authority other than that of this state;

23 (8) Gender identity means an individual's internal sense of the
24 individual's own gender, regardless of the sex the individual was
25 assigned at birth;

26 (9) (8) Grantee shall include every person to whom any estate or
27 interest passes in or by any conveyance;

28 (10) (9) Grantor shall include every person from or by whom any
29 estate or interest passes in or by any conveyance;

30 (11) (10) Inhabitant shall be construed to mean a resident in the
31 particular locality in reference to which that word is used;

1 (12) ~~(11)~~ Land or real estate shall include lands, tenements, and
2 hereditaments and all rights thereto and interest therein other than a
3 chattel interest;

4 (13) ~~(12)~~ Magistrate shall include judge of the county court and
5 clerk magistrate;

6 (14) ~~(13)~~ Month shall mean calendar month;

7 (15) ~~(14)~~ Oath shall include affirmation in all cases in which an
8 affirmation may be substituted for an oath;

9 (16) ~~(15)~~ Peace officer shall include sheriffs, coroners, jailers,
10 marshals, police officers, state highway patrol officers, members of the
11 National Guard on active service by direction of the Governor during
12 periods of emergency, and all other persons with similar authority to
13 make arrests;

14 (17) ~~(16)~~ Person shall include bodies politic and corporate,
15 societies, communities, the public generally, individuals, partnerships,
16 limited liability companies, joint-stock companies, and associations;

17 (18) ~~(17)~~ Personal estate shall include money, goods, chattels,
18 claims, and evidences of debt;

19 (19) ~~(18)~~ Process shall mean a summons, subpoena, or notice to
20 appear issued out of a court in the course of judicial proceedings;

21 (20) ~~(19)~~ Service animal shall have the same meaning as in 28 C.F.R.
22 36.104, as such regulation existed on January 1, 2008;

23 (21) ~~(20)~~ State when applied to different states of the United
24 States shall be construed to extend to and include the District of
25 Columbia and the several territories organized by Congress;

26 (22) ~~(21)~~ Sworn shall include affirmed in all cases in which an
27 affirmation may be substituted for an oath;

28 (23) ~~(22)~~ The United States shall include territories, outlying
29 possessions, and the District of Columbia;

30 (24) ~~(23)~~ Violate shall include failure to comply with;

31 (25) ~~(24)~~ Writ shall signify an order or citation in writing issued

1 in the name of the state out of a court or by a judicial officer; and

2 (26) ~~(25)~~ Year shall mean calendar year.

3 Sec. 14. Original sections 18-1724, 20-113, 20-132, 20-134, 20-139,
4 20-317, 20-318, 20-320, 20-321, 20-322, 20-325, 29-401, and 49-801,
5 Reissue Revised Statutes of Nebraska, are repealed.