

Act Providing Equal Enjoyment of Public Accommodations

Law Relating to Civil Rights Act of 1969.

LB 112, 1973; LB 681, 1974; LB 447, 1983; LB 253, 1987; LB 352, 1989.

Section - Explanation

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AN ACT to amend Nebraska Civil Rights Act of 1969 section 20-122, Reissue Revised Statutes of Nebraska, 1943, relating to civil rights; to define unlawful discriminatory practices; to provide duties for the Equal Opportunity Commission; to provide complaint procedures; to provide penalties; and to repeal the original section, and also section 20-111, Reissue Revised Statutes of Nebraska, 1943.

20-132. Full and equal enjoyment of accommodations.

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

20-133. Places of public accommodation, defined.

As used in sections 20-132 to 20-143, unless the context otherwise requires, places of public accommodation shall mean all places or businesses offering or holding out to the general public goods, services, privileges, facilities, advantages, and accommodations for the peace, comfort, health, welfare, and safety of the general public and such public places providing food, shelter, recreation, and amusement including, but not limited to:

(1) Any inn, hotel, motel, or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his residence;

(2) Any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including but not limited to any such facility located on the premises of any retail establishment;

(3) Any gasoline station, including all facilities located on the premises of such station and made available to the patrons thereof;

(4) Any motion picture house, theatre, concert hall, sports arena, stadium, or other place of exhibition or entertainment;

(5) Any public facility owned, operated, or managed by or on behalf of this state or any agency or subdivision thereof, or any public corporation, and any such facility supported in whole or in part by public funds; and

(6) Any establishment which is physically located within the premises of any establishment otherwise covered by this section or within the premises of which is physically located any such covered establishment and which holds itself out as serving patrons of such covered establishment.

20-134. Discriminatory practices; violation; penalty.

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

20-135. Prohibited acts; violation; penalty.

Any person who aids, abets, incites, compels, or coerces any activity prohibited by the provisions of sections 20-132 to 20-143, or who attempts to do so, shall be guilty of discriminatory practice and shall be subject to the penalties of sections 20-132 to 20-143.

20-136. Retaliation; discrimination; violation; penalty.

Retaliation or discrimination, in any manner, against any person who has opposed any activity prohibited by the provisions of sections 20-132 to 20-143 or who has testified, assisted, or participated in any manner in any investigation, proceeding, or hearing conducted pursuant to sections 20-132 to 20-143 shall be discriminatory practice and shall be punishable according to the provisions of sections 20-132 to 20-143.

20-137. Religious preference; not violation of discriminatory practice.

Any place of public accommodation owned by or operated on behalf of a religious corporation, association, or society which gives preference in the use of such place to members of the same faith as that of the administering body shall not be guilty of discriminatory practice.

20-138. Private club or establishment not open to public; applicability of sections.

The provisions of sections 20-132 to 20-143 shall not apply to a private club or other establishment not in fact open to the public, except to the extent that the facilities of such establishments are made available to the customers or patrons of an establishment within the scope of section 20-133.

20-139. Nebraska Fair Housing Act, free speech, and public accommodations law; administered by Equal Opportunity Commission; powers.

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 (section 84-917). 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, 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.

20-140. Unlawful discriminatory practice; complaint; file with commission; contents; resolution of complaint; confidential; violation; penalty.

Any person claiming to be aggrieved by an unlawful discriminatory practice may by himself, his agent, or his attorney file with the commission a verified complaint in writing which shall state the name and address of the person alleged to have committed the unlawful discriminatory practice complained of and which shall set forth the particulars thereof and contain such other information as may be required by the commission. The Attorney General shall, in like manner, make, sign, and file such complaint.

After the filing of such complaint, the commission shall furnish the person named in the complaint with a copy of the charge and make an investigation of such charge, but such charge shall not be made public by the commission. If the commission determines after such investigation that there is reasonable cause to believe that the charge is true, the commission shall endeavor to eliminate any such alleged unlawful practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during or as a part of such endeavors may be made public by the commission without the written consent of the parties or used as evidence in a subsequent proceeding except as provided in subsection (2) of section 20-141. Any officer or employee of the commission who shall make public in any manner whatever any information in violation of this subsection shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than one hundred dollars or imprisoned not more than thirty days.

20-141. Failure to eliminate unlawful practice by conference, conciliation, and persuasion; written notice; hearing; procedure.

(1) In case of failure to eliminate any unlawful practice by informal methods of conference, conciliation, and persuasion, the commission shall cause to be issued and served in the name of the commission a written notice, together with a copy of the complaint, requiring the person named in the complaint, hereinafter referred to as respondent, to answer the charges of the complaint at a public hearing, at a time and place to be specified in the notice. The place of the hearing shall be in the county in which the alleged discrimination occurred.

(2) The case in support of the complaint shall be presented before the commission by an attorney on the staff of the Attorney General, and the investigator who made the investigation shall not participate in the hearings except as a witness, nor shall he participate in the deliberation of the commission in the case. Evidence concerning endeavors at conciliation may be included.

(3) The respondent may file a written verified answer to the complaint and appear at the hearing with or without counsel, submit testimony, and compel the appearance of witnesses and records in his behalf. At the discretion of the commission, the complainant may be allowed to intervene and present testimony in person or by counsel. The commission may reasonably and fairly amend any complaint either prior to or during the hearing in accordance with facts developed by the investigation or adduced in evidence at the hearing, and the respondent may amend his answer in the same manner. The testimony taken at the hearing shall be under oath and be transcribed.

(4) If, upon all the evidence at the hearing, the commission finds that a respondent has engaged in an unlawful discriminatory practice as defined in sections 20-132 to 20-143, the commission shall state its findings of fact and shall issue and cause to be served on the respondent an order requiring the respondent to cease and desist from the unlawful discriminatory practice and to take such affirmative action, including, but not limited to, the extension of full, equal, and unsegregated accommodations, advantages, facilities, and privileges to all persons as in the judgment of the commission will effectuate the purposes of sections 20-132 to 20-143, including a requirement for a report of the manner of compliance.

(5) If, upon all the evidence, the commission finds that a respondent has not engaged in any unlawful discriminatory practice, the commission shall state its findings of fact and shall issue and

cause to be served on the complainant an order dismissing the complaint as to the respondent. A copy of the order shall be delivered in all cases to the Attorney General and such other public officers as the commission deems proper.

(6) The commission shall establish rules of practice to govern, expedite, and effectuate the procedure set forth in this section and its own actions thereunder. Any complaint filed pursuant to this section must be so filed within ten days after the alleged act of discrimination and the complainant shall give written notice of the filing of the complaint and furnish a copy thereof to the party complained against.

20-142. Appeal; procedure; attorney's fees; failure to appeal; effect.

(1) Any party to a proceeding before the commission aggrieved by any decision and order of the commission and directly affected thereby may appeal the decision and order, and the appeal shall be in accordance with the Administrative Procedure Act (section 84-917).

(2) In any action or proceeding under sections 20-132 to 20-143, wherein an appeal is lodged in the district court, the court in its discretion may allow the prevailing party reasonable attorney's fees as part of the costs.

(3) If no proceeding to obtain judicial review is instituted by a respondent within thirty days from the service of an order of the commission, the commission may obtain a decree of the court for the enforcement of such order upon showing that the respondent is subject to the commission's jurisdiction and resides or transacts business within the county in which the petition for enforcement is brought.

84-917. Contested case; appeal; right to cross-appeal; procedure.

(1) Any person aggrieved by a final decision in a contested case, whether such decision is affirmative or negative in form, shall be entitled to judicial review under the Administrative Procedure Act (section 84-917). Nothing in this section shall be deemed to prevent resort to other means of review, redress, or relief provided by law.

(2)(a)(i) Proceedings for review shall be instituted by filing a petition in the district court of the county where the action is taken within thirty days after the service of the final decision by the agency. All parties of record shall be made parties to the proceedings for review. If an agency's only role in a contested case is to act as a neutral factfinding body, the agency shall not be a party of record. In all other cases, the agency shall be a party of record. Summons shall be served within thirty days of the filing of the petition in the manner provided for service of a summons in section 25-510.02. If the agency whose decision is appealed from is not a party of record, the petitioner shall serve a copy of the petition and a request for preparation of the official record upon the agency within thirty days of the filing of the petition. The court, in its discretion, may permit other interested persons to intervene.

(ii) The filing of a petition for review shall vest in a responding party of record the right to a cross-appeal against any other party of record. A respondent shall serve its cross-appeal within thirty days after being served with the summons and petition for review.

(b) A petition for review shall set forth: (i) The name and mailing address of the petitioner; (ii) the name and mailing address of the agency whose action is at issue; (iii) identification of the final decision at issue together with a duplicate copy of the final decision; (iv) identification of the parties in the contested case that led to the final decision; (v) facts to demonstrate proper venue; (vi) the petitioner's reasons for believing that relief should be granted; and (vii) a request for relief, specifying the type and extent of the relief requested.

(3) The filing of the petition or the service of summons upon such agency shall not stay enforcement of a decision. The agency may order a stay. The court may order a stay after notice of the application therefor to such agency and to all parties of record. If the agency has found that its action on an application for stay or other temporary remedies is justified to protect against a substantial threat to the public health, safety, or welfare, the court may not grant relief unless the court finds that: (a) The applicant is likely to prevail when the court finally disposes of the matter; (b) without relief, the applicant will suffer irreparable injuries; (c) the grant of relief to the applicant will not substantially harm other parties to the proceedings; and (d) the threat to the public health, safety, or welfare relied on by the agency is not sufficiently serious to justify the agency's action in the circumstances. The court may require the party requesting such stay to give bond in such amount and conditioned as the court may direct.

(4) Within thirty days after service of the petition or within such further time as the court for good cause shown may allow, the agency shall prepare and transmit to the court a certified copy of the official record of the proceedings had before the agency. Such official record shall include: (a) Notice of all proceedings; (b) any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the agency pertaining to the contested case; (c) the transcribed record of the hearing before the agency, including all exhibits and evidence introduced during such hearing, a statement of matters officially noticed by the agency during the proceeding, and all proffers of proof and objections and rulings thereon; and (d) the final order appealed from. The agency shall charge the petitioner with the reasonable direct cost or require the petitioner to pay the cost for preparing the official record for transmittal to the court in all cases except when the petitioner is not required to pay a filing fee. The agency may require payment or bond prior to the transmittal of the record.

(5)(a) When the petition instituting proceedings for review was filed in the district court before July 1, 1989, the review shall be conducted by the court without a jury on the record of the agency, and review may not be obtained of any issue that was not raised before the agency unless such issue involves one of the grounds for reversal or modification enumerated in subdivision (6)(a) of this section. When the petition instituting proceedings for review is filed in the district court on or after July 1, 1989, the review shall be conducted by the court without a jury de novo on the record of the agency.

(b)(i) If the court determines that the interest of justice would be served by the resolution of any other issue not raised before the agency, the court may remand the case to the agency for further proceedings.

(ii) The agency shall affirm, modify, or reverse its findings and decision in the case by reason of the additional proceedings and shall file the decision following remand with the reviewing court. The agency shall serve a copy of the decision following remand upon all parties to the district court proceedings. The agency decision following remand shall become final unless a petition for further review is filed with the reviewing court within thirty days after the decision following remand being filed with the district court. The party filing the petition for further review shall serve a copy of the petition for further review upon all parties to the district court proceeding in accordance with the rules of pleading in civil actions promulgated by the Supreme Court pursuant to section 25-801.01 within thirty days after the petition for further review is filed. Within thirty days after service of the petition for further review or within such further time as the court for good cause shown may allow, the agency shall prepare and transmit to the court a certified copy of the official record of the additional proceedings had before the agency following remand.

(6)(a) When the petition instituting proceedings for review was filed in the district court before July 1, 1989, the court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if the substantial rights of the petitioner may have been prejudiced because the agency decision is:

(i) In violation of constitutional provisions;

(ii) In excess of the statutory authority or jurisdiction of the agency;

(iii) Made upon unlawful procedure;

(iv) Affected by other error of law;

(v) Unsupported by competent, material, and substantial evidence in view of the entire record as made on review; or

(vi) Arbitrary or capricious.

(b) When the petition instituting proceedings for review is filed in the district court on or after July 1, 1989, the court may affirm, reverse, or modify the decision of the agency or remand the case for further proceedings.

(7) The review provided by this section shall not be available in any case where other provisions of law prescribe the method of appeal.

20-143. Violations; penalty.

Any person or place of public accommodation who or which shall willfully resist, prevent, impede, or interfere with the commission or any of its members or representatives in the performance of duty under sections 20-132 to 20-143, or shall willfully violate an order of the commission shall, upon conviction thereof, be imprisoned in the county jail for not more than thirty days, or be fined not more than one hundred dollars, or be both so fined and imprisoned. Procedure for the review of an order of the commission shall not be deemed to be such willful conduct.