

LEGISLATIVE BILL 112

Approved by the Governor March 24, 1973

Introduced by S. Marsh, 29

AN ACT to amend 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.  
Be it enacted by the people of the State of Nebraska,

Section 1. That section 20-122, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

20-122: All persons within this state shall be entitled to a full and equal enjoyment of the accommodations, advantages, facilities and privileges of inns, hotels, motels, trailer courts, taverns, restaurants, public conveyances, barber shops, beauty parlors, places of amusement and recreation, and any other places providing similar accommodations, advantages, facilities and privileges, subject only to the conditions and limitations established by law and applicable alike to every person any place of public accommodation, as defined in this act, without discrimination or segregation on the grounds of race, color, sex, religion, national origin, or ancestry.

Sec. 2. As used in this act, 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, theater, 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.

Sec. 3. 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, religion, national origin, or ancestry, shall be guilty of discriminatory practice and shall be subject to the penalties of this act.

Sec. 4. Any person who aids, abets, incites, compels, or coerces any activity prohibited by the provisions of this act, or who attempts to do so, shall be guilty of discriminatory practice and shall be subject to the penalties of this act.

Sec. 5. Retaliation or discrimination, in any manner, against any person who has opposed any activity prohibited by the provisions of this act or who has testified, assisted, or participated in any manner in any investigation, proceeding, or hearing conducted pursuant to this act shall be discriminatory practice and shall be punishable according to the provisions of this act.

Sec. 6. 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.

Sec. 7. The provisions of this act 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 2 of this act.

Sec. 8. Provisions of this act and sections 20-105 to 20-110, 20-112 to 20-121, and 20-123 to 20-125 shall be administered by the Equal Opportunity Commission created by section 48-1116. The county attorneys are granted the authority to enforce this act and sections 20-105 to 20-110, 20-112 to 20-121, and 20-123 to 20-125 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 this act and sections 20-105 to 20-110, 20-112 to 20-121, and 20-123 to 20-125 shall be in addition to the provisions of Chapter 48, article 11, and shall not be construed to amend or restrict those provisions. In carrying out the provisions of this act and sections 20-105 to 20-110, 20-112 to 20-121, and 20-123 to 20-125, 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, or ancestry;

(2) Effectuate the purposes of this act by conference, conciliation, and persuasion so that persons may be guaranteed their civil rights and goodwill be fostered;

(3) Formulate policies to effectuate the purposes of this act and to make recommendations to agencies and officers of the state or local subdivisions of government in aid of such policies and purposes;

(4) Adopt rules and regulations to carry out the powers granted by this act and sections 20-105 to 20-110, 20-112 to 20-121, 20-123 to 20-125, subject to the provisions of Chapter 84, article 9;

(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, or ancestry, and to 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, and 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 complaints when it is determined there is not probable cause to credit the allegations of a complaint;

(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, or ancestry.

Sec. 9. 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 10 of this act. 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.

Sec. 10. (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 this act, 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 this act, 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.

Sec. 11. (1) Any party to a proceeding before the commission aggrieved by any decision and order of the commission and directly affected thereby may institute proceedings in the district court within any county wherein the alleged unlawful practice which is the subject of the order was committed, or wherein any respondent required in the order to cease and desist from an unlawful discriminatory practice or to take other affirmative action, resides or transacts business. The time for appeal from such order of the commission to the district court shall be limited to thirty days from the date of the entry of the order to which complaint is made. The order of the commission shall be stayed until the adjudication by the district court.

(2) Such proceeding shall be initiated by the filing of a petition in such court, together with a transcript of the record upon the hearing before the commission and the service of a copy of such petition upon the commission and upon all parties who appeared at the hearing. Thereupon the court shall have jurisdiction of the proceeding and of the question determined therein.

(3) The evidence presented before the commission as reported by its official stenographer and reduced to writing shall be duly certified to by the stenographer and the chairman of the commission as the true bill of exceptions which, together with the pleadings and filings duly certified in the case under the seal of the commission, shall constitute the complete record and the

evidence upon which the case shall be presented to the district court. The review on appeal shall extend to all questions of law and fact presented by the entire record. The commission's orders shall not be vacated, modified, or set aside unless:

(a) Such order is prohibited by the provisions of this act, or in violation of constitutional rights, or otherwise contrary to law; or

(b) The findings of the commission in support of such order are unreasonable or arbitrary or are not supported by a preponderance of the evidence.

(4) The jurisdiction of the court shall be exclusive and its judgment and order shall be final, subject to appellate review as provided by law.

(5) The commission's copy of the testimony shall be available at all reasonable times to all parties without cost for examination.

(6) In any action or proceeding under this act, wherein an appeal is lodged in the district court, the court in its discretion may allow the prevailing party a reasonable attorney's fee as part of the costs.

(7) 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 respondent is subject to the commission's jurisdiction and resides or transacts business within the county in which the petition for enforcement is brought.

Sec. 12. 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 this act, 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.

Sec. 13. That original section 20-122, Reissue Revised Statutes of Nebraska, 1943, and also section 20-111, Reissue Revised Statutes of Nebraska, 1943, are repealed.