

# Nebraska Fair Housing Act

Legislative Bill 825

Amended by Legislative Bill 361

Effective Date: September 6, 1991

Amended Effective Date: April 28, 2005

## Article 3 - Housing

### Section - Explanation

20-301 - Act, how cited.

20-302 - Civil rights; policy of state.

20-303 - Definitions, where found.

20-304 - Aggrieved person, defined.

20-305 - Commission, defined.

20-306 - Complainant, defined.

20-307 - Conciliation, defined.

20-308 - Conciliation agreement, defined.

20-309 - Discriminatory housing practice, defined.

20-310 - Dwelling, defined.

20-311 - Familial status, defined.

20-312 - Family, defined.

20-313 - Handicap, defined.

20-314 - Person, defined.

20-315 - Rent, defined.

20-316 - Respondent, defined.

20-317 - Restrictive covenant, defined.

20-318 - Unlawful acts enumerated.

20-319 - Handicapped person; discriminatory practices prohibited; design and construction standards; enforcement of act.

20-320 - Transaction related to residential real estate; discriminatory practices prohibited.

20-321 - Multiple listing service; other service, organization, or faculty; discriminatory practices prohibited.

20-322 - Religious organization, private home, private club, or housing for older persons; restricting use not prohibited; local restrictions; how treated; controlled substances; illegal activities; effect.

20-323 - Affirmative action required; cooperation with commission.

20-324 - Equal Opportunity Commission; educational and conciliatory activities; programs of compliance and enforcement.

20-325 - Commission; duties.

20-326 - Discriminatory housing practice; complaint; procedure; investigation.

20-327 - Complaint; conciliation; conciliation agreement; contents, restrictions.

20-328 - Final investigative report; contents; amendment.

20-329 - Conciliation agreement; breach; civil action authorized.

20-330 - Conciliation proceedings; investigations; restrictions on use of information.

20-331 - Temporary or preliminary relief; other proceedings; actions authorized.

20-332 - Complaint; referral to local agency; procedure; certification of local agency.

20-333 - Commission; discriminatory housing practice; determination; charge; contents; service; referral to Attorney General; dismissal of complaint.

20-334 - Commission; investigations; hearings; powers and duties; violation; penalty.

20-335 - Civil action in lieu of hearing; election authorized.

20-336 - Commission; hearings; hearing officer; appearance; discovery; discontinuance of proceedings; when.

20-337 - Hearing officer; powers and duties; civil penalties; order; effect.

20-338 - Finding, conclusion, or order; review; final order; service.

20-339 - Appeal; enforcement of hearing officer's order; procedure.

20-340 - Civil action in lieu of hearing; relief authorized.

20-341 - Attorney's fees and costs; when allowed.

20-342 - Statute of limitations; civil action; rights and duties of parties; remedies allowed; attorney's fees and costs.

20-343 - Attorney General; civil action; powers and duties; relief authorized; intervention; when permitted.

20-344 - Violations; penalty.

## **Section 20-301. Act, how cited.**

Sections 20-301 to 20-344 shall be known and may be cited as the Nebraska Fair Housing Act.

## **Section 20-302. Civil rights; policy of state.**

It is the policy of the State of Nebraska that there shall be no discrimination in the acquisition, ownership, possession, or enjoyment of housing throughout the State of Nebraska in accordance with Article I, section 25, of the Constitution of Nebraska.

## **Section 20-303. Definitions, where found.**

For purpose of the Nebraska Fair Housing Act, the definitions found in sections 20-304 to 20-317 shall be used.

## **Section 20-304. Aggrieved person, defined.**

Aggrieved person shall include any person who:

- (1) Claims to have been injured by a discriminatory housing practice; or
- (2) Believes that he or she will be injured by a discriminatory housing practice that is about to occur.

## **Section 20-305. Commission, defined.**

Commission shall mean the Equal Opportunity Commission.

## **Section 20-306. Complainant, defined.**

Complainant shall mean the person, including the commission, who files a complaint under section 20-326.

## **Section 20-307. Conciliation, defined.**

Conciliation shall mean the attempted resolution of issues raised by a complaint or by the investigation of a complaint through informal negotiations involving the aggrieved person, the respondent, and the commission.

## **Section 20-308. Conciliation agreement, defined.**

Conciliation agreement shall mean a written agreement setting forth the resolution of the issues in conciliation.

## **Section 20-309. Discriminatory housing practice, defined.**

Discriminatory housing practice shall mean an act that is unlawful under section 20-318, 20-319, 20-320, 20-321, or 20-344.

## **Section 20-310. Dwelling, defined.**

Dwelling shall mean any building, structure, or portion thereof which is occupied as or designed or intended for occupancy as a residence for one or more families and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

## **Section 20-311. Familial status, defined.**

Familial status shall mean one or more minors being domiciled with:

- (1) A parent or another person having legal custody of such individual; or
- (2) The designee of a parent or other person having legal custody, with the written permission of the parent or other person.

The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any minor.

### **Section 20-312. Family, defined.**

Family shall include a single individual.

### **Section 20-313. Handicap, defined.**

Handicap shall mean, with respect to a person:

- (1) A physical or mental impairment which substantially limits one or more of such person's major life activities;
- (2) A record of having such an impairment; or
- (3) Being regarded as having such an impairment.

Handicap shall not include current, illegal use of or addiction to a controlled substance as defined in section 28-401.

### **Section 20-314. Person, defined.**

Person shall include one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, and fiduciaries.

### **Section 20-315. Rent, defined.**

Rent shall include lease, sublease, let, and otherwise grant for consideration the right to occupy premises not owned by the occupant.

### **Section 20-316. Respondent, defined.**

Respondent shall mean:

- (1) The person or other entity accused in a complaint of a discriminatory housing practice; and
- (2) Any other person or entity identified in the course of investigation and notified as required with respect to respondents so identified under section 20-326.

### **Section 20-317. Restrictive covenant, defined.**

Restrictive covenant shall mean any specification limiting the transfer, rental, or lease of any housing because of race, creed, religion, color, national origin, sex, handicap, familial status, or ancestry.

## **Section 20-318. Unlawful acts enumerated.**

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

(1) Refuse to sell or rent after the making of a bona fide offer, refuse to negotiate for the sale or rental of or otherwise make unavailable or deny, refuse to show, or refuse to receive and transmit an offer for a dwelling to any person because of race, color, religion, national origin, familial status, or sex;

(2) Discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling or in the provision of services or facilities in connection therewith because of race, color, religion, national origin, familial status, or sex;

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

1. Represent to any person because of race, color, religion, national origin, handicap, familial status, or sex that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available;

2. Cause to be made any written or oral inquiry or record concerning the race, color, religion, national origin, handicap, familial status, or sex of a person seeking to purchase, rent, or lease any housing;

3. Include in any transfer, sale, rental, or lease of housing any restrictive covenants or honor or exercise or attempt to honor or exercise any restrictive covenant pertaining to housing;

4. Discharge or demote an employee or agent or discriminate in the compensation of such employee or agent because of such employee's or agent's compliance with the Nebraska Fair Housing Act; and

5. Induce or attempt to induce, for profit, any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, national origin, handicap, familial status, or sex.

## **Section 20-319. Handicapped person; discriminatory practices prohibited; design and construction standards; enforcement of act.**

(1) Except as exempted by section 20-322, it shall be unlawful to:

(a) Discriminate in the sale or rental of or otherwise make unavailable or deny a dwelling to any buyer or renter because of a handicap of:

(i) The buyer or renter;

(ii) Any person associated with the buyer or renter; or

(iii) A person residing in or intending to reside in the dwelling after it is so sold, rented, or made available; or

(b) Discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling or in the provision of services or facilities in connection with a dwelling because of a handicap of:

(i) Such person;

(ii) Any person associated with such person; or

(iii) A person residing in or intending to reside in the dwelling after it is so sold, rented, or made available.

(2) For purposes of this section, discrimination shall include:

(a) A refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by the person if the modifications may be necessary to afford the person full enjoyment of the premises, except that in the case of a rental, the landlord may, when it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.

(b) A refusal to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford the handicapped person equal opportunity to use and enjoy a dwelling; and

(c) In connection with the design and construction of covered multifamily dwellings for first occupancy after September 1, 1991, a failure to design and construct the dwellings in such a manner that:

(i) The public use and common use portions of the dwellings are readily accessible to and usable by handicapped persons;

(ii) All the doors designed to allow passage into and within all premises within the dwellings are sufficiently wide to allow passage by handicapped persons in wheelchairs; and

(iii) All premises within the dwellings contain the following features of adaptive design:

- (A) An accessible route into and through the dwelling;
  - (B) Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;
  - (C) Reinforcements in bathroom walls to allow later installation of grab bars; and
  - (D) Kitchens and bathrooms such that a handicapped person in a wheelchair can maneuver about the space.
- (3) Compliance with the appropriate requirements of the American National Standards Institute standard for buildings and facilities providing accessibility and usability for physically handicapped people, ANSI A117.1, shall satisfy the requirements of subdivision (2)(c)(iii) of this section.
- (4) (a) If a political subdivision has incorporated into its laws the design and construction requirements set forth in subdivision (2)(c) of this section, compliance with such laws shall be deemed to satisfy the requirements.
- (b) A political subdivision may review and approve newly constructed covered multifamily dwellings for the purpose of making determinations as to whether the design and construction requirements are met.
- (c) The commission shall encourage but may not require political subdivisions to include in their existing procedures for the review and approval of newly constructed covered multifamily dwellings determinations as to whether the design and construction of the dwellings are consistent with the design and construction requirements and shall provide technical assistance to political subdivisions and other persons to implement the requirements.
- (d) Nothing in this section shall be construed to require the commission to review or approve the plans, designs, or construction of all covered multifamily dwellings to determine whether the design and construction of the dwellings are consistent with the design and construction requirements.
- (5) (a) Nothing in subsection (4) of this section shall be construed to affect the authority and responsibility of the commission or a local agency certified pursuant to section 20-332 to receive and process complaints or otherwise engage in enforcement activities under the Nebraska Fair Housing Act.
- (b) Determinations by the commission or a political subdivision under subdivision (4)(a) or (b) of this section shall not be conclusive in enforcement proceedings under the act.
- (6) For purposes of this section, covered multifamily dwellings shall mean:
- (a) Buildings consisting of four or more units if such buildings have one or more elevators; and

(b) Ground floor units in other buildings consisting of four or more units.

(7) Nothing in this section shall be construed to invalidate or limit any law of a political subdivision or other jurisdiction in which this section is effective that requires dwellings to be designed and constructed in a manner that affords handicapped persons greater access than is required by this section.

(8) Nothing in this section shall require that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

## **Section 20-320. Transaction related to residential real estate; discriminatory practices prohibited.**

(1) It shall be unlawful for any person or other entity whose business includes engaging in transactions related to residential real estate to discriminate against any person in making available such a transaction or in the terms or conditions of such a transaction because of race, color, religion, sex, handicap, familial status, or national origin.

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

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

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

(ii) Secured by residential real estate; or

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

(3) Nothing in this section shall prohibit a person engaged in the business of furnishing appraisals of real property from taking into consideration factors other than race, color, religion, national origin, sex, handicap, or familial status.

## **Section 20-321. Multiple listing service; other service, organization, or facility; discriminatory practices prohibited.**

It shall be unlawful to deny any person access to or membership or participation in any multiple listing service, real estate brokers organization, or other service, organization, or facility relating to the business of selling or renting dwellings or to discriminate against any person in the terms or conditions or such access, membership, or participation on account of race, color, religion, national origin, handicap, familial status, or sex.

## **Section 20-322. Religious organization, private home, private club, or housing for older persons; restricting use not prohibited; local restrictions; how treated; controlled substances; illegal activities; effect.**

(1) Nothing in the Nebraska Fair Housing Act shall prohibit a religious organization, association, or society or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society from limiting the sale, rental, or occupancy of a dwelling which it owns or operates for other than commercial purposes to persons of the same religion or from giving preferences to such persons unless membership in such religion is restricted on account of race, color, national origin, handicap, familial status, or sex.

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

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

(4) (a) Nothing in the act shall limit the applicability of any reasonable local restrictions regarding the maximum number of occupants permitted to occupy a dwelling, and nothing in the act regarding familial status shall apply with respect to housing for older persons.

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

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

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

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

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

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

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

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

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

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

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

### **Section 20-323. Affirmative action required; cooperation with commission.**

All executive departments, state agencies, and independent instrumentalities exercising essential public functions, including any state agency having regulatory or supervisory authority over financial institutions, shall administer their programs and activities relating to housing and urban development in a manner affirmatively to further the purposes of the Nebraska Fair Housing Act and shall cooperate with the commission to further such purposes.

### **Section 20-324. Equal Opportunity Commission; educational and conciliatory activities; programs of compliance and enforcement.**

The commission shall conduct such educational and conciliatory activities as in the commission's judgment will further the purposes of the Nebraska Fair Housing Act. The commission shall call conferences of persons in the housing industry and other interested persons to acquaint them with the act and suggested means of implementing it and shall endeavor with their advice to work out programs of voluntary compliance and of enforcement. The commission shall consult with local officials and other interested parties to learn the extent, if any, to which housing discrimination exists in their locality and whether and how local enforcement programs might be utilized to combat such discrimination in connection with or in place of the commission's enforcement of the act. The commission shall issue reports on such conferences and consultations as it deems appropriate.

## **Section 20-325. Commission; duties.**

The commission shall:

- (1) Make studies with respect to the nature and extent of discriminatory housing practices in representative urban, suburban, and rural communities throughout the state;
- (2) Publish and disseminate reports, recommendations, and information derived from such studies, including an annual report to the Legislature:
  - (a) Specifying the nature and extent of progress made statewide in eliminating discriminatory housing practices and furthering the purposes of the Nebraska Fair Housing Act, obstacles remaining to achieving equal housing opportunity, and recommendations for further legislative or executive action; and
  - (b) Containing tabulations of the number of instances and the reasons therefore in the preceding year in which:
    - (i) Investigations have not been completed as required by subdivision (1)(b) of section 20-326;
    - (ii) Determinations have not been made within the time specified in section 20-333; and
    - (iii) Hearings have not been commenced or findings and conclusions have not been made as required by section 20-337;
- (3) Cooperate with and render technical assistance to state, local, and other public or private agencies, organizations, and institutions which are formulating or carrying on programs to prevent or eliminate discriminatory housing practices;
- (4) Annually report to the Legislature and make available to the public data on the age, race, color, religion, national origin, handicap, familial status, and sex of persons and households who are applicants for, participants in, or beneficiaries or potential beneficiaries of programs administered by the commission. In order to develop the data to be included and made available to the public under this subdivision, the commission shall, without regard to any other provision of law, collect such information relating to those characteristics as the commission determines to be necessary or appropriate.
- (5) Adopt and promulgate rules and regulations, subject to the approval of the members of the commission, regarding the investigative and conciliation process that provide for testing standards, fundamental due process, and notice to the parties of their rights and responsibilities; and
- (6) Have authority to enter into agreements with the United States Department of Housing and Urban Development in cooperative agreements under the Fair Housing Assistance Program. The commission shall further have the authority to enter into agreements with testing organizations to

assist in investigative activities. The commission shall not enter into any agreements under which compensation to the testing organization is partially or wholly based on the number of conciliations, settlements, and reasonable cause determinations.

## **Section 20-326. Discriminatory housing practice; complaint; procedure; investigation.**

(1)(a)(i) An aggrieved person may, not later than one year after an alleged discriminatory housing practice has occurred or terminated, file a complaint with the commission alleging such discriminatory housing practice. The commission, on its own initiative, may also file such a complaint.

(ii) The complaint shall be in writing and shall contain such information and be in such form as the commission requires.

(iii) The commission may also investigate housing practices to determine whether a complaint should be brought under this section.

(b) Upon the filing of a complaint:

(i) The commission shall serve notice upon the aggrieved person acknowledging such filing and advising the aggrieved person of the time limits and choice of forums provided under the Nebraska Fair Housing Act;

(ii) The commission shall, not later than ten days after such filing or the identification of an additional respondent under subsection (2) of this section, serve on the respondent a notice identifying the alleged discriminatory housing practice, and advising such respondent of the procedural rights and obligations of respondents under the act, together with a copy of the original complaint;

(iii) Each respondent may file, not later than ten days after receipt of notice from the commission, an answer to the complaint; and

(iv) Unless it is impracticable to do so, the commission shall investigate the alleged discriminatory housing practice and complete such investigation within one hundred days after the filing of the complaint or, when the commission takes further action under section 20-332 with respect to a complaint, within one hundred days after the commencement of such further action.

(c) If the commission is unable to complete the investigation within one hundred days after the filing of the complaint or after the commencement of such further action, the commission shall notify the complainant and respondent in writing of the reasons for not doing so.

(d) Complaints and answers shall be under oath and may be reasonably and fairly amended at any time.

(2)(a) A person who is not named as a respondent in a complaint but who is identified as a respondent in the course of investigation may be joined as an additional or substitute respondent upon written notice under subdivision (1)(b)(ii) of this section to such person from the commission.

(b) The notice shall explain the basis for the commission's belief that the person to whom the notice is addressed is properly joined as a respondent.

## **Section 20-327. Complaint; conciliation; conciliation agreement; contents, restrictions.**

(1) During the period beginning with the filing of the complaint and ending with the issuance of a charge or a dismissal by the commission, the commission shall, to the extent feasible, engage in conciliation with respect to the complaint.

(2) A conciliation agreement shall be an agreement between the complainant and the respondent and shall be subject to the approval of the members of the commission, which approval may not be delegated.

(3) A conciliation agreement arising out of such conciliation shall be an agreement between the respondent and the complainant and shall be subject to approval by the commission.

(4) A conciliation agreement may provide for binding arbitration of the dispute arising from the complaint. Any such arbitration that results from a conciliation agreement may award appropriate relief, including monetary relief.

(5) Each conciliation agreement shall be made public unless the complainant and respondent otherwise agree and the commission determines that disclosure is not required to further the purposes of the Nebraska Fair Housing Act.

(6) A conciliation agreement between a respondent and complainant which has been approved by the commission shall not be deemed an adjudication that the respondent has committed a discriminatory housing practice nor shall the conciliation agreement be the subject of an order for relief under section 20-337, unless the conciliation agreement is entered after an adjudication pursuant to an administrative proceeding or a civil action pursuant to state or federal law in which the respondent was found to have committed a discriminatory housing practice.

## **Section 20-328. Final investigative report; contents; amendment.**

(1) At the end of each investigation of a complaint, the commission shall prepare a final investigative report containing:

(a) The names and dates of contacts with witnesses;

- (b) A summary and the dates of correspondence and other contacts with the aggrieved person and the respondent;
  - (c) A summary description of other pertinent records;
  - (d) A summary of witness statements; and
  - (e) Answers to interrogatories.
- (2) A final investigative report may be amended if additional evidence is later discovered.

### **Section 20-329. Conciliation agreement; breach; civil action authorized.**

Whenever the commission has reasonable cause to believe that a respondent has breached a conciliation agreement, the commission shall refer the matter to the Attorney General for filing of a civil action under section 20-343 for the enforcement of such agreement.

### **Section 20-330. Conciliation proceedings; investigations; restrictions on use of information.**

(1) Except as provided in subsection (5) of section 20-327, nothing said or done in the course of conciliation may be made public or used as evidence in a subsequent proceeding under the Nebraska Fair Housing Act without the written consent of the persons concerned. All records compiled in the course of conciliation activities shall be exempt from public release. The commission may release any fully executive conciliation agreement.

(2) (a) Notwithstanding subsection (1) of this section, the commission shall make available to the aggrieved person and the respondent, upon request, following the completion of an investigation, information derived from an investigation and any final investigative report relating to that investigation.

(b) The commission's release of information pursuant to subdivision (2)(a) of this section is subject to the federal Privacy Act of 1974, Public Law 93-579, as such act existed on January 1, 2005, and any other state or federal laws limiting the release of confidential information obtained in the course of an investigation under the Nebraska Fair Housing Act.

(3) Notwithstanding subsections (1) and (2) of this section, materials in the investigative file shall be disclosed to the complainant and respondent to the extent reasonably necessary to further the investigation or conciliation discussions.

### **Section 20-331. Temporary or preliminary relief; other proceedings; actions authorized.**

(1) If the commission concludes at any time following the filing of a complaint that prompt judicial action is necessary to carry out the purposes of the Nebraska Fair Housing Act, the commission may authorize a civil action for appropriate temporary or preliminary relief pending final disposition of the complaint under this section. Upon receipt of such an authorization, the Attorney General shall promptly commence and maintain such an action. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with sections 25-1062 to 25-1080. The commencement of a civil action under this section shall not affect the initiation or continuation of administrative proceedings under this section and section 20-336.

(2) Whenever the commission has reason to believe that a basis may exist for the commencement of proceedings against any respondent under subsection (1) or (3) of section 20-343 or for proceedings by any governmental licensing or supervisory authorities, the commission shall transmit the information upon which such belief is based to the Attorney General or to such authorities, as the case may be.

### **Section 20-332. Complaint; referral to local agency; procedure; certification of local agency.**

(1) Whenever a complaint alleges a discriminatory housing practice (a) within the jurisdiction of a local agency in an incorporated city or a county and (b) as to which the agency has been certified by the commission under this section, the commission shall refer the complaint to that agency before taking any action with respect to the complaint.

(2) After a referral is made, the commission shall take no further action with respect to such complaint without the consent of the agency unless:

(a) The agency has failed to commence proceedings with respect to the complaint before the end of the thirtieth day after the date of such referral;

(b) The agency, having so commenced proceedings, fails to carry forward the proceedings with reasonable promptness; or

(c) The commission determines that the agency no longer qualifies for certification under this section with respect to the relevant jurisdiction.

(3) (a) The commission may certify a local agency under this section only if the commission determines that the following are substantially equivalent to those created by and under the Nebraska Fair Housing Act:

(i) The substantive rights protected by the agency in the jurisdiction with respect to which certification is to be made;

(ii) The procedures followed by the agency;

(iii) The remedies available to the agency; and

(iv) The availability of judicial review of the agency's action.

(b) Before making such certification, the commission shall take into account the current practices and past performance, if any, of the agency.

### **Section 20-333. Commission; discriminatory housing practice; determination; charge; contents; service; referral to Attorney General; dismissal of complaint.**

(1) (a) The commission shall, within one hundred days after the filing of the complaint or after the commencement of further action under section 20-332, determine based on the facts whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur unless it is impracticable to do so or unless the commission has approved a conciliation agreement with respect to the complaint. If the commission is unable to make the determination within one hundred days after the filing of the complaint or after the commencement of such further action, the commission shall notify the complainant and respondent in writing of the reasons for not doing so.

(b) (i) If the commission determines that reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the commission shall, except as provided in subdivision (iii) of this subdivision, immediately issue a charge on behalf of the aggrieved person, for further proceedings under sections 20-335 to 20-340.

(ii) Such charge shall consist of a short and plain statement of the facts upon which the commission has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur, shall be based on the final investigative report, and need not be limited to the facts or grounds alleged in the complaint filed under section 20-326.

(iii) If the commission determines that the matter involves the legality of any state or local zoning or other land-use law or ordinance, the commission shall immediately refer the matter to the Attorney General for appropriate action under section 20-343 instead of issuing such charge.

(c) If the commission determines that no reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the commission shall promptly dismiss the complaint. The commission shall make public disclosure of each such dismissal.

(d) The commission may not issue a charge under this section regarding an alleged discriminatory housing practice after the filing of a civil action commenced by the aggrieved party under state or federal law seeking relief with respect to that discriminatory housing practice.

(2) After the commission issues a charge under this section, the commission shall cause a copy of the charge, together with information as to how to make an election under section 20-335 and the effect of such an election, to be served:

(a) On each respondent named in the charge, together with a notice of opportunity for a hearing at a time and place specified in the notice, unless such an election is made; and

(b) On each aggrieved person on whose behalf the complaint was filed.

## **Section 20-334. Commission; investigations; hearings; powers and duties; violation; penalty.**

(1) The commission may issue subpoenas and order discovery in aid of investigations and hearings under the Nebraska Fair Housing Act. The subpoenas and discovery may be ordered to the same extent and subject to the same limitations as would apply if the subpoenas or discovery were ordered or served in aid of a civil action in the district court.

(2) Witnesses summoned by a subpoena shall be entitled to the same witness and mileage fees as witnesses in proceedings in district court. Fees payable to a witness summoned by subpoena issued at the request of a party shall be paid by that party or, when a party is unable to pay the fees, by the commission.

(3) (a) Any person who willfully fails or neglects to attend and testify or to answer any lawful inquiry or to produce records, documents, or other evidence, if it is in such person's power to do so, in obedience to the subpoena or other lawful order under subsection (1) of this section shall be guilty of a Class I misdemeanor.

(b) Any person shall be guilty of a Class I misdemeanor who, with intent to mislead another person in any proceeding under that act:

(i) Makes or causes to be made any false entry or statement of fact in any report, account, record, or other document produced pursuant to subpoena or other lawful order under subsection (1) of this section;

(ii) Willfully neglects or fails to make or to cause to be made full, true, and correct entries in such reports, accounts, records, or other documents; or

(iii) Willfully mutilates, alters, or by any other means falsifies any documentary evidence.

## **Section 20-335. Civil action in lieu of hearing; election authorized.**

When a charge is issued under section 20-333, a complainant, a respondent, or an aggrieved person on whose behalf the complaint was filed may elect to have the claims asserted in that

charge decided in a civil action under section 20-340 in lieu of a hearing under section 20-336. The election must be made not later than twenty days after service has been made under section 20-333. The person making the election shall give notice of doing so to the commission and to all other complainants and respondents to whom the charge relates.

### **Section 20-336. Commission; hearings; hearing officer; appearance; discovery; discontinuance of proceedings; when.**

(1) If an election is not made under section 20-335 with respect to a charge issued under section 20-333, the commission shall provide an opportunity for a hearing on the record with respect to the charge. The commission shall delegate the conduct of a hearing under this section to a hearing officer. The hearing officer shall meet the qualifications of a judge of the district court prescribed in section 24-301 or any successor statute. The hearing officer shall be appointed by the commission pursuant to rules and regulations promulgated by the commission. The hearing officer shall conduct the hearings at a place in the vicinity of the place where the discriminatory housing practice is alleged to have occurred or to be about to occur.

(2) At the hearing each party may appear in person, be represented by counsel, present evidence, cross-examine witnesses, and obtain the issuance of subpoenas under section 20-334. Any aggrieved person may intervene as a party in the proceeding. The rules of evidence shall apply to the presentation of evidence in such hearing as they would in a civil action in district court.

(3) (a) Discovery in administrative proceedings under this section shall be conducted as expeditiously and inexpensively as possible consistent with the need of all parties to obtain relevant evidence.

(b) A hearing under this section shall be conducted as expeditiously and inexpensively as possible consistent with the needs and rights of the parties to obtain a fair hearing and a complete record.

(4) Any resolution of a charge before issuance of a final order under section 20-337 shall require the consent of the aggrieved person on whose behalf the charge is issued.

(5) A hearing officer may not continue administrative proceedings under this section regarding any alleged discriminatory housing practice after the filing of a civil action by the aggrieved party under state or federal law seeking relief with respect to that discriminatory housing practice.

### **Section 20-337. Hearing officer; powers and duties; civil penalties; order; effect.**

(1) The hearing officer shall commence the hearing no later than one hundred twenty days following the issuance of the charge unless it is impracticable to do so. If the hearing officer is

unable to commence the hearing within one hundred twenty days, he or she shall notify the commission, the aggrieved person on whose behalf the charge was issued, and the respondent in writing of the reasons for not doing so.

(2) The hearing officer shall make findings of fact and conclusions of law within sixty days after the end of the hearing unless it is impracticable to do so. If the hearing officer is unable to make findings of fact and conclusions of law within such period or any succeeding sixty-day period thereafter, he or she shall notify the commission, the aggrieved person on whose behalf the charge was issued, and the respondent in writing of the reasons for not doing so.

(3) (a) If the hearing officer finds that a respondent has engaged or is about to engage in a discriminatory housing practice, he or she shall promptly issue an order for such relief as may be appropriate which may include actual damages suffered by the aggrieved person and injunctive or other equitable relief.

(b) Subject to subdivision (c) of this subsection, the order may, to vindicate the public interest, assess a civil penalty against the respondent:

(i) In an amount not exceeding ten thousand dollars if the respondent has not been adjudged to have committed any prior discriminatory housing practice or if subdivision (ii) or (iii) of this subdivision does not apply;

(ii) In an amount not exceeding twenty-five thousand dollars if the respondent has been adjudged to have committed one other discriminatory housing practice during the five-year period ending on the date of the issuance of the current charge; or

(iii) In an amount not exceeding fifty thousand dollars if the respondent has been adjudged to have committed two or more discriminatory housing practices during the seven-year period ending on the date of the issuance of the current charge.

(c) If the acts constituting the discriminatory housing practice that is the object of the charge are committed by the same individual who has been previously adjudged to have committed acts constituting a discriminatory housing practice, the civil penalties set forth in subdivisions (b)(ii) and (iii) of this subsection may be imposed without regard to the period of time within which any subsequent discriminatory housing practice occurred.

(4) No such order shall affect any contract, sale, encumbrance, or lease consummated before the issuance of such order and involving a bona fide purchaser, encumbrancer, or tenant without actual notice of the charge.

(5) In the case of an order with respect to a discriminatory housing practice that occurred in the course of a business subject to licensing or regulation by a government agency, the commission shall, not later than thirty days after the date of the issuance of the order or, if the order is judicially reviewed, thirty days after the order is in substance affirmed upon such review:

- (a) Send copies of the findings of fact, conclusions of law, and the order to that governmental agency; and
- (b) Recommend to that governmental agency appropriate disciplinary action, including, when appropriate, the suspension or revocation of the license of the respondent.
- (6) In the case of an order against a respondent against whom another order was issued under this section within the preceding five years, the commission shall send a copy of each such order to the Attorney General.
- (7) If the hearing officer finds that the respondent has not engaged or is not about to engage in a discriminatory housing practice, as the case may be, he or she shall enter an order dismissing the charge. The commission shall make public disclosure of each such dismissal.

### **Section 20-338. Finding, conclusion, or order; review; final order; service.**

- (1) The commission may review any finding, conclusion, or order issued under section 20-337. The review shall be completed not later than thirty days after the finding, conclusion, or order is so issued or the finding, conclusion, or order will become final.
- (2) The commission shall cause the findings of fact and conclusions of law made with respect to any final order for relief, together with a copy of such order, to be served on each aggrieved person and each respondent in the proceeding.

### **Section 20-339. Appeal; enforcement of hearing officer's order; procedure.**

- (1) Any party aggrieved by a final order granting or denying in whole or in part the relief sought may appeal the order. The appeal shall be in accordance with the Administrative Procedure Act, except that venue of the proceeding shall be in the county in which the discriminatory housing practice is alleged to have occurred.
- (2) (a) The commission may petition the district court for the county in which the discriminatory housing practice is alleged to have occurred or in which any respondent resides or transacts business for the enforcement of the order of the hearing officer and for appropriate temporary relief or restraining order.
- (b) The commission shall file in court with the petition the record in the proceeding. A copy of such petition shall be transmitted by the clerk of the court to the parties to the proceeding before the hearing officer.
- (3) (a) Upon the filing of a petition under subsection (1) and (2) of this section, the court may:

- (i) Grant to the petitioner or any other party such temporary relief, restraining order, or other order as the court deems just and proper;
  - (ii) Affirm, modify, or set aside the order, in whole or in part, or remand the order for further proceedings; and
  - (iii) Enforce the order to the extent that the order is affirmed or modified.
- (b) Any party to the proceeding before the hearing officer may intervene in the district court.
  - (c) An objection not made before the hearing officer shall not be considered by the court unless the failure or neglect to urge such objection is excused because of extraordinary circumstances.
- (4) If no appeal is filed before the expiration of forty-five days after the date the hearing officer's order is entered, the hearing officer's findings of fact and order shall be conclusive in connection with any petition for enforcement:
- (a) Which is filed by the commission under subsection (2) of this section after the end of such forty-fifth day; or
  - (b) Under subsection (5) of this section.
- (5) If before the expiration of sixty days after the date the hearing officer's order is entered no appeal has been filed and the commission has not sought enforcement of the order under subsection (2) of this section, any person entitled to relief under the order may petition for a decree enforcing the order in the district court for the county in which the discriminatory housing practice is alleged to have occurred.
- (6) The district court in which a petition for enforcement is filed under subsection (2) or (5) of this section shall enter a decree enforcing the order. The clerk of the court shall transmit a copy of such decree to the commission, the respondent named in the petition, and any other parties to the proceeding before the hearing officer.

## **Section 20-340. Civil action in lieu of hearing; relief authorized.**

- (1) If an election is made under section 20-335 to have the claims asserted in the charge decided in a civil action, the commission shall authorize, and not later than thirty days after the elections is made the Attorney General shall commence and maintain, a civil action on behalf of the aggrieved person in the appropriate district court seeking relief under this section.
- (2) Any aggrieved person with respect to the issues to be determined in a civil action under this section may intervene as of right.

(3) In a civil action under this section, if the court finds that a discriminatory housing practice has occurred or is about to occur, the court may grant any relief which a court could grant with respect to such discriminatory housing practice in a civil action under section 20-342. Any relief so granted that would accrue to an aggrieved person in such a civil action shall also accrue to that aggrieved person in a civil action under this section. If monetary relief is sought for the benefit of an aggrieved person who does not intervene in the civil action, the court shall not award such relief if that aggrieved person has not complied with discovery orders entered by the court.

### **Section 20-341. Attorney's fees and costs; when allowed.**

In any administrative proceeding brought under section 20-336, any court proceedings arising from such a proceeding, or any civil action under section 20-340, the hearing officer or the court, as the case may be, may allow the prevailing party, other than the state, reasonable attorney's fees and costs. The state shall be liable for such fees and costs to the same extent as private person.

### **Section 20-342. Statute of limitations; civil action; rights and duties of parties; remedies allowed; attorney's fees and costs.**

(1) (a) (i) An aggrieved person may commence a civil action in an appropriate district court not later than two years after the occurrence or the termination of an alleged discriminatory housing practice or the breach of a conciliation agreement entered into under section 20-327, whichever occurs last, to obtain appropriate relief with respect to such discriminatory housing practice or breach.

(ii) The computation of such two-year period shall not include any time during which an administrative proceeding under section 20-336 is pending with respect to a complaint or charge under the Nebraska Fair Housing Act based upon such discriminatory housing practice. This subdivision shall not apply to actions arising from a breach of a conciliation agreement.

(b) An aggrieved person may commence a civil action under this section whether or not a complaint has been filed under section 20-326 and without regard to the status of any such complaint, but if the commission or a local agency has obtained a conciliation agreement with the consent of an aggrieved person, no action may be filed under this section by such aggrieved person with respect to the alleged discriminatory housing practice which forms the basis for the complaint except for the purpose of enforcing the terms of the agreement.

(c) An aggrieved person may not commence a civil action under this section with respect to an alleged discriminatory housing practice which forms the basis of a charge issued by the commission if a hearing officer has commenced a hearing on the record under section 20-336 with respect to such charge.

(2) Upon application by a person alleging a discriminatory housing practice or a person against whom such a practice is alleged, the court may, if in the opinion of the court the person is financially unable to bear the costs of an action:

(a) Appoint an attorney for the person; or

(b) Authorize the commencement or continuation of a civil action under subsection (1) of this section without the payment of fees, costs, or security.

(3) (a) In a civil action under subsection (1) of this section, if the court finds that a discriminatory housing practice has occurred or is about to occur, the court may award to the plaintiff actual damages and, subject to subsection (4) of this section, may grant as relief, as the court deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order, including an order enjoining the defendant from engaging in such practice or ordering such affirmative action as may be appropriate.

(b) In a civil action under subsection (1) of this section, the court may allow the prevailing party, other than the state, reasonable attorney's fees and costs. The state shall be liable for such fees and costs to the same extent as a private person.

(4) Relief granted under this section shall not affect any contract, sale, encumbrance, or lease consummated before the granting of such relief and involving a bona fide purchaser, encumbrancer, or tenant without actual notice of the filing of a complaint with the commission or a civil action under the act.

(5) Upon timely application, the Attorney General may intervene in the civil action if the Attorney General certifies that the case is of general public importance. Upon intervention the Attorney General may obtain such relief as would be available under section 20-343.

## **Section 20-343. Attorney General; civil action; powers and duties; relief authorized; intervention; when permitted.**

(1) Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by the Nebraska Fair Housing Act or that any group of persons has been denied any of the rights granted by the act and such denial raises an issue of general public importance, the Attorney General may commence a civil action in any appropriate district court.

(2) (a) The Attorney General may commence a civil action in any appropriate district court for appropriate relief with respect to a discriminatory housing practice referred to the Attorney General by the commission under section 20-337. The action may be commenced not later than the expiration of eighteen months after the date of the occurrence or the termination of the alleged discriminatory housing practice.

(b) The Attorney General may commence a civil action in any appropriate district court for appropriate relief with respect to breach of a conciliation agreement referred to the Attorney General by the commission under section 20-329. The action may be commenced not later than the expiration of ninety days after the referral of the alleged breach under such section.

(3) The Attorney General, on behalf of the commission or other party at whose request a subpoena is issued under section 20-334, may enforce the subpoena in appropriate proceedings in the district court for the county in which the person to whom the subpoena was addressed resides, was served, or transacts business.

(4) (a) In a civil action under subsection (1) or (2) of this section, the court:

(i) May award such temporary relief, including a permanent or temporary injunction, a restraining order, or any other order against the person responsible for a violation of the act as is necessary to assure the full enjoyment of the rights granted by the act;

(ii) May award such other relief as the court deems appropriate, including monetary damages to persons aggrieved; and

(iii) May, to vindicate the public interest, assess a civil penalty against the respondent:

(A) In an amount not exceeding fifty thousand dollars for a first violation; and

(B) In an amount not exceeding one hundred thousand dollars for any subsequent violation.

(b) In a civil action under this section, the court may allow the prevailing party, other than the state, reasonable attorney's fees and costs. The state shall be liable for such fees and costs to the same extent as a private person.

(5) Upon timely application, any person may intervene in a civil action commenced by the Attorney General under subsection (1) or (2) of this section which involves an alleged discriminatory housing practice with respect to which such person is an aggrieved person or a conciliation agreement to which such person is a party. The court may grant such appropriate relief to any such intervening party as is authorized to be granted to a plaintiff in a civil action under section 20-342.

## **Section 20-344. Violations; penalty.**

It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise of enjoyment of or on account of the person having exercised or enjoyed or having aided and encouraged any other person in the exercise of benefits and rights guaranteed by the Nebraska Fair Housing Act. Any person who violates this section shall be guilty of a Class I misdemeanor.