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AN ACT

RELATING TO HUMAN RIGHTS; MAKING IT UNLAWFUL TO DISCRIMINATE BASED  
ON SEXUAL ORIENTATION OR GENDER IDENTITY; PROHIBITING QUOTAS BASED  
ON SEXUAL ORIENTATION OR GENDER IDENTITY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 28-1-2 NMSA 1978 (being Laws 1969, Chapter 196,  
Section 2, as amended) is amended to read:

"28-1-2. DEFINITIONS.--As used in the Human Rights Act:

A. "person" means one or more individuals, a partnership, association,  
organization, corporation, joint venture, legal representative, trustees, receivers or the  
state and all of its political subdivisions;

B. "employer" means any person employing four or more persons and  
any person acting for an employer;

C. "commission" means the human rights commission;

D. "director" means the director of the human rights division of the  
labor department;

E. "employee" means any person in the employ of an employer or an  
applicant for employment;

F. "labor organization" means any organization that exists for the  
purpose in whole or in part of collective bargaining or of dealing with employers  
concerning grievances, terms or conditions of employment or of other mutual aid or  
protection in connection with employment;

G. "employment agency" means any person regularly undertaking with  
or without compensation to procure opportunities to work or to procure, recruit or refer  
employees;

H. "public accommodation" means any establishment that provides or  
offers its services, facilities, accommodations or goods to the public, but does not  
include a bona fide private club or other place or establishment that is by its nature

1 and use distinctly private;

2 I. "housing accommodation" means any building or portion of a  
3 building that is constructed or to be constructed, which is used or intended for use as  
4 the residence or sleeping place of any individual;

5 J. "real property" means lands, leaseholds or commercial or industrial  
6 buildings, whether constructed or to be constructed, offered for sale or rent, and any  
7 land rented or leased for the use, parking or storage of house trailers;

8 K. "secretary" means the secretary of labor;

9 L. "unlawful discriminatory practices" means those unlawful practices  
10 and acts specified in Section 28-1-7 NMSA 1978;

11 M. "physical or mental handicap" means a physical or mental  
12 impairment that substantially limits one or more of a person's major life activities. A  
13 person is also considered to be physically or mentally handicapped if he has a record  
14 of a physical or mental handicap or is regarded as having a physical or mental  
15 handicap;

16 N. "major life activities" means functions such as caring for one's self,  
17 performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and  
18 working;

19 O. "applicant for employment" means a person applying for a position  
20 as an employee;

21 P. "sexual orientation" means heterosexuality, homosexuality or  
22 bisexuality, whether actual or perceived; and

23 Q. "gender identity" means a person's  
24 self-perception, or perception of that person by another, of the person's identity as a  
25 male or female based upon the person's appearance, behavior or physical  
26 characteristics that are in accord with or opposed to the person's physical anatomy,  
27 chromosomal sex or sex at birth."

28 Section 2. Section 28-1-7 NMSA 1978 (being Laws 1969, Chapter 196,  
29 Section 7, as amended) is amended to read:

1 "28-1-7. UNLAWFUL DISCRIMINATORY PRACTICE.--It is an unlawful SB  
2 discriminatory practice for:  
3 A. an employer, unless based on a bona fide occupational qualification 2  
4 or other statutory prohibition, to refuse to hire, to discharge, to promote or demote or 8  
5 to discriminate in matters of compensation, terms, conditions or privileges of P  
6 employment against any person otherwise qualified because of race, age, religion, a  
7 color, national origin, ancestry, sex, sexual orientation, gender identity, physical or e  
8 mental handicap or serious medical condition, or, if the employer has fifty or more 3  
9 employees, spousal affiliation; provided, however, that 29 U.S.C. Section 631(c)(1)  
10 and (2) shall apply to discrimination based on age;  
11 B. a labor organization to exclude a person or to expel or otherwise  
12 discriminate against any of its members or against any employer or employee because  
13 of race, religion, color, national origin, ancestry, sex, sexual orientation, gender  
14 identity, spousal affiliation, physical or mental handicap or serious medical condition;  
15 C. any employer, labor organization or joint apprenticeship committee  
16 to refuse to admit or employ any person in any program established to provide an  
17 apprenticeship or other training or retraining because of race, religion, color, national  
18 origin, ancestry, sex, sexual orientation, gender identity, physical or mental handicap  
19 or serious medical condition, or, if the employer has fifty or more employees, spousal  
20 affiliation;  
21 D. any person, employer, employment agency or labor organization to  
22 print or circulate or cause to be printed or circulated any statement, advertisement or  
23 publication, to use any form of application for employment or membership or to make  
24 any inquiry regarding prospective membership or employment that expresses, directly  
25 or indirectly, any limitation, specification or discrimination as to race, color, religion,  
national origin, ancestry, sex, sexual orientation, gender identity, physical or mental  
handicap or serious medical condition, or, if the employer has fifty or more employees,  
spousal affiliation, unless based on a bona fide occupational qualification;  
E. an employment agency to refuse to list and properly classify for

1 employment or refer a person for employment in a known available job, for which the  
2 person is otherwise qualified, because of race, religion, color, national origin, ancestry,  
3 sex, sexual orientation, gender identity, spousal affiliation, physical or mental handicap  
4 or serious medical condition, unless based on a bona fide occupational qualification,  
5 or to comply with a request from an employer for referral of applicants for employment  
6 if the request indicates either directly or indirectly that the employer discriminates in  
7 employment on the basis of race, religion, color, national origin, ancestry, sex, sexual  
8 orientation, gender identity, spousal affiliation, physical or mental handicap or serious  
9 medical condition, unless based on a bona fide occupational qualification;

9 F. any person in any public accommodation to make a distinction,  
10 directly or indirectly, in offering or refusing to offer its services, facilities,  
11 accommodations or goods to any person because of race, religion, color, national  
12 origin, ancestry, sex, sexual orientation, gender identity, spousal affiliation or physical  
13 or mental handicap, provided that the physical or mental handicap is unrelated to a  
14 person's ability to acquire or rent and maintain particular real property or housing  
15 accommodation;

15 G. any person to:

16 (1) refuse to sell, rent, assign, lease or sublease or offer for  
17 sale, rental, lease, assignment or sublease any housing accommodation or real  
18 property to any person or to refuse to negotiate for the sale, rental, lease, assignment  
19 or sublease of any housing accommodation or real property to any person because of  
20 race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity,  
21 spousal affiliation or physical or mental handicap, provided that the physical or mental  
22 handicap is unrelated to a person's ability to acquire or rent and maintain particular  
23 real property or housing accommodation;

23 (2) discriminate against any person in the terms, conditions or  
24 privileges of the sale, rental, assignment, lease or sublease of any housing  
25 accommodation or real property or in the provision of facilities or services in  
connection therewith because of race, religion, color, national origin, ancestry, sex,

1 sexual orientation, gender identity, spousal affiliation or physical or mental handicap,  
2 provided that the physical or mental handicap is unrelated to a person's ability to  
3 acquire or rent and maintain particular real property or housing accommodation; or  
4 (3) print, circulate, display or mail or cause to be printed,  
5 circulated, displayed or mailed any statement, advertisement, publication or sign or  
6 use any form of application for the purchase, rental, lease, assignment or sublease of  
7 any housing accommodation or real property or to make any record or inquiry  
8 regarding the prospective purchase, rental, lease, assignment or sublease of any  
9 housing accommodation or real property that expresses any preference, limitation or  
10 discrimination as to race, religion, color, national origin, ancestry, sex, sexual  
11 orientation, gender identity, spousal affiliation or physical or mental handicap,  
12 provided that the physical or mental handicap is unrelated to a person's ability to  
13 acquire or rent and maintain particular real property or housing accommodation;

14 H. any person to whom application is made either for financial  
15 assistance for the acquisition, construction, rehabilitation, repair or maintenance of  
16 any housing accommodation or real property or for any type of consumer credit,  
17 including financial assistance for the acquisition of any consumer good as defined by  
18 Section 55-9-102 NMSA 1978, to:

19 (1) consider the race, religion, color, national origin, ancestry,  
20 sex, sexual orientation, gender identity, spousal affiliation or physical or mental  
21 handicap of any individual in the granting, withholding, extending, modifying or  
22 renewing or in the fixing of the rates, terms, conditions or provisions of any financial  
23 assistance or in the extension of services in connection with the request for financial  
24 assistance; or

25 (2) use any form of application for financial assistance or to  
make any record or inquiry in connection with applications for financial assistance that  
expresses, directly or indirectly, any limitation, specification or discrimination as to  
race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity,  
spousal affiliation or physical or mental handicap;

1 I. any person or employer to:  
2 (1) aid, abet, incite, compel or coerce the doing of any unlawful  
3 discriminatory practice or to attempt to do so;  
4 (2) engage in any form of threats, reprisal or discrimination  
5 against any person who has opposed any unlawful discriminatory practice or has filed  
6 a complaint, testified or participated in any proceeding under the Human Rights Act; or  
7 (3) willfully obstruct or prevent any person from complying with  
8 the provisions of the Human Rights Act or to resist, prevent, impede or interfere with  
9 the commission or any of its members, staff or representatives in the performance of  
10 their duties under the Human Rights Act; or

11 J. any employer to refuse or fail to accommodate a person's physical  
12 or mental handicap or serious medical condition, unless such accommodation is  
13 unreasonable or an undue hardship."

14 Section 3. A new section of the Human Rights Act is enacted to read:  
15 "QUOTAS PROHIBITED.--A person, employer, employment agency or  
16 organization shall not use the provisions of the Human Rights Act to adopt or  
17 implement a quota on the basis of sexual orientation or gender identity."

18 Section 4. Section 28-1-9 NMSA 1978 (being Laws 1969, Chapter 196,  
19 Section 8, as amended) is amended to read:

20 "28-1-9. EXEMPTIONS.--Nothing contained in the Human Rights Act shall:  
21 A. apply to any single-family dwelling sold, leased, subleased or rented  
22 by an owner without the making of any notice, statement or advertisement with respect  
23 to the sale, lease, sublease or rental of a dwelling unit that indicates any preference,  
24 limitation or discrimination based on race, color, religion, national origin, ancestry, sex,  
25 sexual orientation or gender identity. This exemption is subject to these further  
reservations:

(1) to qualify for the exemption, the seller must not be an  
owner of or own or have reserved any interest in more than three single-family  
dwellings; and

1 (2) if the seller does not currently live in the dwelling or he was  
2 not the most recent occupant, the exemption granted in this section shall only apply to  
3 one sale in twenty-four months;

4 B. bar any religious or denominational institution or organization that is  
5 operated, supervised or controlled by or that is operated in connection with a religious  
6 or denominational organization from limiting admission to or giving preference to  
7 persons of the same religion or denomination or from making selections of buyers,  
8 lessees or tenants as are calculated by the organization or denomination to promote  
9 the religious or denominational principles for which it is established or maintained,  
10 unless membership in the religious or denominational organization is restricted on  
11 account of race, color, national origin or ancestry;

12 C. bar any religious or denominational institution or organization that is  
13 operated, supervised or controlled by or that is operated in connection with a religious  
14 or denominational organization from imposing discriminatory employment or renting  
15 practices that are based upon sexual orientation or gender identity; provided, that the  
16 provisions of the Human Rights Act with respect to sexual orientation and gender  
17 identity shall apply to any other:

18 (1) for-profit activities of a religious or denominational  
19 institution or religious organization subject to the provisions of Section 511(a) of the  
20 Internal Revenue Code of 1986, as amended; or

21 (2) nonprofit activities of a religious or denominational  
22 institution or religious organization subject to the provisions of Section 501(c)(3) of the  
23 Internal Revenue Code of 1986, as amended;

24 D. apply to rooms or units in dwellings containing living quarters  
25 occupied or intended to be occupied by no more than four families living  
independently of each other, if the owner actually maintains and occupies one of the  
living quarters as his residence;

E. apply to public restrooms, public showers, public dressing facilities  
or sleeping quarters in public institutions, where the preference or limitation is based

1 on sex;

2 F. prevent the mandatory retirement of an employee upon reaching  
3 the age of sixty-five years or older, if the employer is operating under a retirement plan  
4 that meets the requirements of Public Law 93-406, the Employee Retirement Income  
5 Security Act of 1974; and

6 G. apply to a business that employs fourteen or fewer full time  
7 employees."

8 Section 5. EFFECTIVE DATE.--The effective date of the provisions of this act  
9 is July 1, 2003.

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