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 [which] 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 [which] that is by its nature and use distinctly private;

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

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

K. "secretary" means the secretary of labor;

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

M. "physical or mental handicap" means a physical or mental impairment that substantially limits one or more of [an individual’s] a person’s major life activities. [An individual] A person is also considered to be physically or mentally handicapped if he has a record of a physical or mental handicap or is regarded as having a physical or mental handicap;

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

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

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

Q. "gender identity" means a person's self-perception, or perception of that person by another, of the person's identity as a male or female based upon the person's appearance, behavior or physical characteristics that are in accord with or opposed to the person's physical anatomy,
Section 28-1-7 NMSA 1978 (being Laws 1969, Chapter 196, Section 7, as amended) is amended to read:

"28-1-7. UNLAWFUL DISCRIMINATORY PRACTICE.--It is an unlawful discriminatory practice for:

A. an employer, unless based on a bona fide occupational qualification or other statutory prohibition, to refuse to hire, to discharge, to promote or demote or to discriminate in matters of compensation, terms, conditions or privileges of employment against any person otherwise qualified because of race, age, religion, color, 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; provided, however, that 29 U.S.C. Section 631(c)(1) and (2) shall apply to discrimination based on age;

B. a labor organization to exclude [an individual] a person or to expel or otherwise discriminate against any of its members or against any employer or employee because of race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, spousal affiliation, physical or mental handicap or serious medical condition;

C. any employer, labor organization or joint apprenticeship committee to refuse to admit or employ any [individual] person in any program established to provide an
apprenticeship or other training or retraining because of race, religion, color, 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;

D. any person, employer, employment agency or labor organization to print or circulate or cause to be printed or circulated any statement, advertisement or publication, to use any form of application for employment or membership or to make any inquiry regarding prospective membership or employment that expresses, directly 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 employment or refer [an individual] a person for employment in a known available job, for which the [individual] person is otherwise qualified, because of race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, spousal affiliation, physical or mental handicap or serious medical condition, unless based on a bona fide occupational qualification, or to comply with a request from an employer for referral of applicants for
employment if the request indicates either directly or
indirectly that the employer discriminates in employment on the
basis of race, religion, color, national origin, ancestry, sex,
sexual orientation, gender identity, spousal affiliation,
physical or mental handicap or serious medical condition, unless
based on a bona fide occupational qualification;

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

G. any person to:

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

(2) discriminate against any individual person in the terms, conditions or privileges of the sale, rental, assignment, lease or sublease of any housing accommodation or real property or in the provision of facilities or services in connection therewith because of the race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, spousal affiliation or physical or mental handicap, provided that the physical or mental handicap is unrelated to an individual's a person's ability to acquire or rent and maintain particular real property or housing accommodation; or

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

H. any person to whom application is made either for financial assistance for the acquisition, construction, rehabilitation, repair or maintenance of any housing accommodation or real property or for any type of consumer credit, including financial assistance for the acquisition of any consumer good as defined by Section [55-9-109] 55-9-102 NMSA 1978, to:

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

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

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

Section 3. A new section of the Human Rights Act is enacted to read:

"[NEW MATERIAL] QUOTAS PROHIBITED.--A person, employer, employment agency or organization shall not use the provisions of the Human Rights Act to adopt or implement a quota on the basis of sexual orientation or gender identity."

Section 4. Section 28-1-9 NMSA 1978 (being Laws 1969, Chapter 196, Section 8, as amended) is amended to read:
"28-1-9. EXEMPTIONS.--Nothing contained in the Human Rights Act shall:

A. apply to any single-family dwelling sold, leased, subleased or rented by an owner without the making of any notice, statement or advertisement with respect to the sale, lease, sublease or rental of a dwelling unit that indicates any preference, limitation or discrimination based on race, color, religion, national origin, ancestry, [or sex, 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
   (2) if the seller [doesn't presently] does not currently live in the dwelling or he was not the most recent occupant, [then] the exemption granted in this section [will] shall only apply to one sale in twenty-four months;

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

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

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

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

[D-] D. apply to rooms or units in dwellings
containing living quarters 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-] E. apply to public restrooms, public showers,
public dressing facilities or sleeping quarters in public
institutions, where the preference or limitation is based on
sex; and

[E-] F. prevent the mandatory retirement of an
employee upon reaching the age of sixty-five years or older, if
the employer is operating under a retirement plan [which] that
meets the requirements of Public Law 93-406, the Employee

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

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