HOUSE BILL 453

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

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AN ACT

RELATING TO HUMAN RIGHTS; PROVIDING FOR PROTECTION OF GENETIC PRIVACY AGAINST UNLAWFUL DISCRIMINATORY PRACTICES; AMENDING SECTIONS OF THE NMSA 1978.

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;

.142687.1

1   D.   "director" means the director of the human

2   rights division of the labor department;

3   E.   "employee" means any person in the employ of an

4   employer or an applicant for employment;

5   F.   "labor organization" means any organization

6   which exists for the purpose in whole or in part of collective

7   bargaining or of dealing with employers concerning grievances,

8   terms or conditions of employment or of other mutual aid or

9   protection in connection with employment;

10   G.   "employment agency" means any person regularly

11   undertaking with or without compensation to procure

12   opportunities to work or to procure, recruit or refer

13   employees;

14   H.   "public accommodation" means any establishment

15   that provides or offers its services, facilities,

16   accommodations or goods to the public, but does not include a

17   bona fide private club or other place or establishment which is

18   by its nature and use distinctly private;

19   I.   "housing accommodation" means any building or

20   portion of a building which is constructed or to be

21   constructed, which is used or intended for use as the residence

22   or sleeping place of any [individual] person;

23   J.   "real property" means lands, leaseholds or

24   commercial or industrial buildings, whether constructed or to

25   be constructed, offered for sale or rent, and any land rented

.142687.1

1   or leased for the use, parking or storage of house trailers;

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

3   L.   "unlawful discriminatory practices" means those

4   unlawful practices and acts specified in Section 28-1-7 NMSA

5   1978;

6   M.   "physical or mental handicap" means a physical

7   or mental impairment that substantially limits one or more of

8   [an individual's] a person's major life activities. [An

9   individual] A person is also considered to be physically or

10   mentally handicapped if he has a record of a physical or mental

11   handicap or is regarded as having a physical or mental

12   handicap;

13   N.   "major life activities" means functions such as

14   caring for one's self, performing manual tasks, walking,

15   seeing, hearing, speaking, breathing, learning and working;

16   [and]

17   O.   "applicant for employment" means a person

18   applying for a position as an employee;

19   P.   "DNA" means deoxyribonucleic acid, including

20   mitochondrial DNA, complementary DNA and DNA derived from

21   ribonucleic acid; and

22   Q.   "genetic information" means information about

23   the genetic makeup of a person or members of a person's family,

24   including information resulting from genetic analysis, DNA

25   composition, participation in genetic research or use of

.142687.1

- 3 -

1   genetic services."

2   Section 2.   Section 28-1-7 NMSA 1978 (being Laws 1969,

3   Chapter 196, Section 7, as amended) is amended to read:

4   "28-1-7.   UNLAWFUL DISCRIMINATORY PRACTICE.--It is an

5   unlawful discriminatory practice for:

6   A.   an employer, unless based on a bona fide

7   occupational qualification or other statutory prohibition, to

8   refuse to hire, to discharge, to promote or demote or to

9   discriminate in matters of compensation, terms, conditions or

10   privileges of employment against any person otherwise qualified

11   because of race, age, religion, color, national origin,

12   ancestry, sex, physical or mental handicap or serious medical

13   condition, or, if the employer has fifty or more employees,

14   spousal affiliation; provided, however, that 29 U.S.C. Section

15   631(c)(1) and (2) shall apply to discrimination based on age;

16   B.   a labor organization to exclude [an individual]

17   a person or to expel or otherwise discriminate against [any of]

18   its members or against [any] an employer or employee because of

19   race, religion, color, national origin, ancestry, sex, spousal

20   affiliation, physical or mental handicap or serious medical

21   condition;

22   C.   [any] an employer, labor organization or joint

23   apprenticeship committee to refuse to admit or employ [any

24   individual] a person in any program established to provide an

25   apprenticeship or other training or retraining because of race,

.142687.1

- 4 -

1   religion, color, national origin, ancestry, sex, physical or

2   mental handicap or serious medical condition, or, if the

3   employer has fifty or more employees, spousal affiliation;

4   D.   [any] a person, employer, employment agency or

5   labor organization to print or circulate or cause to be printed

6   or circulated [any] a statement, advertisement or publication,

7   to use [any] a form of application for employment or membership

8   or to make [any] an inquiry regarding prospective membership or

9   employment that expresses, directly or indirectly, any

10   limitation, specification or discrimination as to race, color,

11   religion, national origin, ancestry, sex, physical or mental

12   handicap or serious medical condition, or, if the employer has

13   fifty or more employees, spousal affiliation, unless based on a

14   bona fide occupational qualification;

15   E.   an employment agency to refuse to list and

16   properly classify for employment or refer [an individual] a

17   person for employment in a known available job, for which the

18   [individual] person is otherwise qualified, because of race,

19   religion, color, national origin, ancestry, sex, spousal

20   affiliation, physical or mental handicap or serious medical

21   condition, unless based on a bona fide occupational

22   qualification, or to comply with a request from an employer for

23   referral of applicants for employment if the request indicates

24   either directly or indirectly that the employer discriminates in

25   employment on the basis of race, religion, color, national

.142687.1

1   origin, ancestry, sex, spousal affiliation, physical or mental

2   handicap or serious medical condition, unless based on a bona

3   fide occupational qualification;

4   F.   [any] a person in any public accommodation to

5   make a distinction, directly or indirectly, in offering or

6   refusing to offer its services, facilities, accommodations or

7   goods to [any individual] a person because of race, religion,

8   color, national origin, ancestry, sex, spousal affiliation or

9   physical or mental handicap, provided that the physical or

10   mental handicap is unrelated to [an individual's] the person's

11   ability to acquire or rent and maintain particular real property

12   or housing accommodation;

13   G.   [any] a person to:

14   (1)   refuse to sell, rent, assign, lease or

15   sublease or offer for sale, rental, lease, assignment or

16   sublease any housing accommodation or real property to

17   [any individual] a person or to refuse to negotiate for the

18   sale, rental, lease, assignment or sublease of any housing

19   accommodation or real property to [any individual] a person

20   because of race, religion, color, national origin, ancestry,

21   sex, spousal affiliation or physical or mental handicap,

22   provided that the physical or mental handicap is unrelated to

23   [an individual's] the person's ability to acquire or rent and

24   maintain particular real property or housing accommodation;

25   (2)   discriminate against [any individual] a

.142687.1

- 6 -

1   person in the terms, conditions or privileges of the sale,

2   rental, assignment, lease or sublease of any housing

3   accommodation or real property or in the provision of facilities

4   or services in connection therewith because of [the] race,

5   religion, color, national origin, ancestry, sex, spousal

6   affiliation or physical or mental handicap, provided that the

7   physical or mental handicap is unrelated to [an individual's]

8   the person's ability to acquire or rent and maintain particular

9   real property or housing accommodation; or

10   (3)   print, circulate, display or mail or cause

11   to be printed, circulated, displayed or mailed any statement,

12   advertisement, publication or sign or use any form of

13   application for the purchase, rental, lease, assignment or

14   sublease of any housing accommodation or real property or to

15   make any record or inquiry regarding the prospective purchase,

16   rental, lease, assignment or sublease of any housing

17   accommodation or real property that expresses any preference,

18   limitation or discrimination as to race, religion, color,

19   national origin, ancestry, sex, spousal affiliation or physical

20   or mental handicap, provided that the physical or mental

21   handicap is unrelated to [an individual's] a person's ability to

22   acquire or rent and maintain particular real property or housing

23   accommodation;

24   H.   [any] a person to whom application is made either

25   for financial assistance for the acquisition, construction,

.142687.1

1   rehabilitation, repair or maintenance of any housing

2   accommodation or real property or for any type of consumer

3   credit, including financial assistance for the acquisition of

4   any consumer good as defined by Section 55-9-109 NMSA 1978, to:

5   (1)   consider the race, religion, color,

6   national origin, ancestry, sex, spousal affiliation or physical

7   or mental handicap of [any individual] a person in the granting,

8   withholding, extending, modifying or renewing or in the fixing

9   of the rates, terms, conditions or provisions of any financial

10   assistance or in the extension of services in connection with

11   the request for financial assistance; or

12   (2)   use [any] a form of application for

13   financial assistance or to make [any] a record or inquiry in

14   connection with applications for financial assistance that

15   expresses, directly or indirectly, any limitation, specification

16   or discrimination as to race, religion, color, national origin,

17   ancestry, sex, spousal affiliation or physical or mental

18   handicap;

19   I.   [any] a person or employer to:

20   (1)   aid, abet, incite, compel or coerce the

21   doing of [any] an unlawful discriminatory practice or to attempt

22   to do so;

23   (2)   engage in any form of threats, reprisal or

24   discrimination against [any] a person who has opposed any

25   unlawful discriminatory practice or has filed a complaint,

.142687.1

- 8 -

1   testified or participated in [any] a proceeding under the Human

2   Rights Act; or

3   (3)   willfully obstruct or prevent any other

4   person from complying with the provisions of the Human Rights

5   Act or to resist, prevent, impede or interfere with the

6   commission or any of its members, staff or representatives in

7   the performance of their duties under the Human Rights Act; [or]

8   J.   [any] an employer to refuse or fail to

9   accommodate [to an individual's] a person's physical or mental

10   handicap or serious medical condition, unless such accommodation

11   is unreasonable or an undue hardship; or

12   K.   an employer or employment agency to use genetic

13   information in any employment-related decisions, including

14   hiring, discharge, promotion, demotion, compensation and terms,

15   conditions and privileges of employment."

16   - 9 -

.142687.1