SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 96

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

AN ACT

RELATING TO EMPLOYMENT OF EX-CONVICTS; PROHIBITING PRIVATE
EMPLOYERS FROM INQUIRING ABOUT AN APPLICANT'S HISTORY OF ARREST
OR CONVICTION ON AN INITIAL EMPLOYMENT APPLICATION; PROVIDING
AN ADDITIONAL UNLAWFUL DISCRIMINATORY PRACTICE IN THE HUMAN
RIGHTS ACT.

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

SECTION 1. 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, 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; or, if the employer has fifteen or more employees, to discriminate against an employee based upon the employee's sexual orientation or gender identity;

B. a labor organization to exclude 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 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 a person for
employment in a known available job, for which the 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
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 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
person or to refuse to negotiate for the sale, rental, lease,
assignment or sublease of any housing accommodation or real
property to any 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 a
person's ability to acquire or rent and maintain particular
real property or housing accommodation;

(2) discriminate against any 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 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; 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 55-9-102 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 a
person's physical or mental handicap or serious medical
condition, unless such accommodation is unreasonable or an
undue hardship; or

K. an employer to violate Section 3 of this 2019
act with respect to an applicant for employment."

SECTION 2. Section 28-2-1 NMSA 1978 (being Laws 1974,
Chapter 78, Section 1) is amended to read:

"28-2-1. SHORT TITLE.--[Sections 1 through 6 of this act]"

Chapter 28, Article 2 NMSA 1978 may be cited as the "Criminal
Offender Employment Act".

SECTION 3. A new section of the Criminal Offender
Employment Act is enacted to read:

"[NEW MATERIAL] EMPLOYMENT ELIGIBILITY DETERMINATION--
PRIVATE EMPLOYERS.--If a private employer uses a written or
electronic employment application, the employer shall not make
an inquiry regarding an applicant's history of arrest or
conviction on the employment application but may take into
consideration an applicant's conviction after review of the
applicant's application and upon discussion of employment with
the applicant. Nothing in this section shall prohibit an

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employer from notifying an applicant that the law or the employer's policy could disqualify an applicant who has a certain criminal history from employment in particular positions with that employer."