

HOUSE BILL 252

54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020

INTRODUCED BY

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AN ACT

RELATING TO HUMAN RIGHTS; PROHIBITING DISCRIMINATION BASED ON  
MILITARY OR VETERAN STATUS.

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" or "bureau" means the human rights

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1 bureau of the labor relations division of the workforce  
2 solutions 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 that  
6 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 that is  
18 by its nature and use distinctly private;

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

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

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

2 K. "secretary" means the secretary of workforce  
3 solutions;

4 L. "unlawful discriminatory practices" means those  
5 unlawful practices and acts specified in Section 28-1-7 NMSA  
6 1978;

7 M. "physical or mental handicap" means a physical  
8 or mental impairment that substantially limits one or more of a  
9 person's major life activities. A person is also considered to  
10 be physically or mentally handicapped if the person has a  
11 record of a physical or mental handicap or is regarded as  
12 having a physical or mental 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 O. "applicant for employment" means a person  
17 applying for a position as an employee;

18 P. "sexual orientation" means heterosexuality,  
19 homosexuality or bisexuality, whether actual or perceived;  
20 [~~and~~]

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

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1 chromosomal sex or sex at birth; and

2 R. "military or veteran status" means a person's  
3 status as a member, veteran or applicant of the:

4 (1) armed forces of the United States or  
5 reserve component of the armed forces of the United States;

6 (2) New Mexico national guard; or

7 (3) New Mexico air national guard."

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

10 "28-1-7. UNLAWFUL DISCRIMINATORY PRACTICE.--It is an  
11 unlawful discriminatory practice for:

12 A. an employer, unless based on a bona fide  
13 occupational qualification or other statutory prohibition, to  
14 refuse to hire, to discharge, to promote or demote or to  
15 discriminate in matters of compensation, terms, conditions or  
16 privileges of employment against any person otherwise qualified  
17 because of race, age, religion, color, national origin,  
18 ancestry, sex, sexual orientation, gender identity, military or  
19 veteran status, physical or mental handicap or serious medical  
20 condition, or, if the employer has fifty or more employees,  
21 spousal affiliation; provided, however, that 29 U.S.C. Section  
22 631(c)(1) and (2) shall apply to discrimination based on age;

23 B. a labor organization to exclude a person or to  
24 expel or otherwise discriminate against any of its members or  
25 against any employer or employee because of race, religion,

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1 color, national origin, ancestry, sex, sexual orientation,  
2 gender identity, spousal affiliation, military or veteran  
3 status, physical or mental handicap or serious medical  
4 condition;

5 C. any employer, labor organization or joint  
6 apprenticeship committee to refuse to admit or employ any  
7 person in any program established to provide an apprenticeship  
8 or other training or retraining because of race, religion,  
9 color, national origin, ancestry, sex, sexual orientation,  
10 gender identity, military or veteran status, physical or mental  
11 handicap or serious medical condition, or, if the employer has  
12 fifty or more employees, spousal affiliation;

13 D. any person, employer, employment agency or labor  
14 organization to print or circulate or cause to be printed or  
15 circulated any statement, advertisement or publication, to use  
16 any form of application for employment or membership or to make  
17 any inquiry regarding prospective membership or employment that  
18 expresses, directly or indirectly, any limitation,  
19 specification or discrimination as to race, color, religion,  
20 national origin, ancestry, sex, sexual orientation, gender  
21 identity, military or veteran status, physical or mental  
22 handicap or serious medical condition, or, if the employer has  
23 fifty or more employees, spousal affiliation, unless based on a  
24 bona fide occupational qualification;

25 E. an employment agency to refuse to list and

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

16 F. any person in any public accommodation to make a  
17 distinction, directly or indirectly, in offering or refusing to  
18 offer its services, facilities, accommodations or goods to any  
19 person because of race, religion, color, national origin,  
20 ancestry, sex, sexual orientation, gender identity, spousal  
21 affiliation, military or veteran status or physical or mental  
22 handicap; provided that the physical or mental handicap is  
23 unrelated to a person's ability to acquire or rent and maintain  
24 particular real property or housing accommodation;

25 G. any person to:

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1 (1) refuse to sell, rent, assign, lease or  
2 sublease or offer for sale, rental, lease, assignment or  
3 sublease any housing accommodation or real property to any  
4 person or to refuse to negotiate for the sale, rental, lease,  
5 assignment or sublease of any housing accommodation or real  
6 property to any person because of race, religion, color,  
7 national origin, ancestry, sex, sexual orientation, gender  
8 identity, spousal affiliation, military or veteran status or  
9 physical or mental handicap; provided that the physical or  
10 mental handicap is unrelated to a person's ability to acquire  
11 or rent and maintain particular real property or housing  
12 accommodation;

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

23 (3) print, circulate, display or mail or cause  
24 to be printed, circulated, displayed or mailed any statement,  
25 advertisement, publication or sign or use any form of

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1 application for the purchase, rental, lease, assignment or  
2 sublease of any housing accommodation or real property or to  
3 make any record or inquiry regarding the prospective purchase,  
4 rental, lease, assignment or sublease of any housing  
5 accommodation or real property that expresses any preference,  
6 limitation or discrimination as to race, religion, color,  
7 national origin, ancestry, sex, sexual orientation, gender  
8 identity, spousal affiliation, military or veteran status or  
9 physical or mental handicap; provided that the physical or  
10 mental handicap is unrelated to a person's ability to acquire  
11 or rent and maintain particular real property or housing  
12 accommodation;

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

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

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1 the request for financial assistance; or

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

9 I. any person or employer to:

10 (1) aid, abet, incite, compel or coerce the  
11 doing of any unlawful discriminatory practice or to attempt to  
12 do so;

13 (2) engage in any form of threats, reprisal or  
14 discrimination against any person who has opposed any unlawful  
15 discriminatory practice or has filed a complaint, testified or  
16 participated in any proceeding under the Human Rights Act; or

17 (3) willfully obstruct or prevent any person  
18 from complying with the provisions of the Human Rights Act or  
19 to resist, prevent, impede or interfere with the commission or  
20 any of its members, staff or representatives in the performance  
21 of their duties under the Human Rights Act; or

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

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1           SECTION 3. Section 28-1-9 NMSA 1978 (being Laws 1969,  
2 Chapter 196, Section 8, as amended) is amended to read:

3           "28-1-9. EXEMPTIONS.--Nothing contained in the Human  
4 Rights Act shall:

5           A. apply to any single-family dwelling sold,  
6 leased, subleased or rented by an owner without the making of  
7 any notice, statement or advertisement with respect to the  
8 sale, lease, sublease or rental of a dwelling unit that  
9 indicates any preference, limitation or discrimination based on  
10 race, color, religion, national origin, ancestry, military or  
11 veteran status, sex, sexual orientation or gender identity.

12 This exemption is subject to these further reservations:

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

16           (2) if the seller does not currently live in  
17 the dwelling or [~~he~~] was not the most recent occupant, the  
18 exemption granted in this section shall only apply to one sale  
19 in twenty-four months;

20           B. bar any religious or denominational institution  
21 or organization that is operated, supervised or controlled by  
22 or that is operated in connection with a religious or  
23 denominational organization from limiting admission to or  
24 giving preference to persons of the same religion or  
25 denomination or from making selections of buyers, lessees or

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1 tenants as are calculated by the organization or denomination  
2 to promote the religious or denominational principles for which  
3 it is established or maintained, unless membership in the  
4 religious or denominational organization is restricted on  
5 account of race, color, national origin or ancestry;

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

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

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

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

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1 quarters as ~~[his]~~ the owner's residence;

2 E. apply to public restrooms, public showers,  
3 public dressing facilities or sleeping quarters in public  
4 institutions, where the preference or limitation is based on  
5 sex; and

6 F. prevent the mandatory retirement of an employee  
7 upon reaching the age of sixty-five years or older, if the  
8 employer is operating under a retirement plan that meets the  
9 requirements of Public Law 93-406, the Employee Retirement  
10 Income Security Act of 1974."

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