HOUSE BILL 111

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY
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AN ACT

RELATING TO HOUSING; PROHIBITING CERTAIN DISCRIMINATORY
PRACTICES RELATING TO THE SALE, RENTAL, ASSIGNMENT, LEASE OR
SUBLEASE OF A PROPERTY; REQUIRING THE PROVISION OF RECEIPTS FOR
RECEIVED RENTAL PAYMENTS; ALTERING CERTAIN PAYMENTS AND FEES
ASSOCIATED WITH RENTAL AGREEMENTS; ALTERING THE REQUIREMENT FOR
A WRITTEN STATEMENT OF DEDUCTIONS IN CERTAIN CIRCUMSTANCES;
INCREASING CERTAIN CIVIL PENALTIES; INCREASING THE TIME
PERMITTED TO REMEDY A BREACH OF A RENTAL AGREEMENT; INCREASING
PERIODS OF TIME REQUIRED FOR CERTAIN NOTICES; REQUIRING THAT AN
ENFORCEABLE NOTICE OF TERMINATION AND DAMAGES COMPLY WITH THE
HUMAN RIGHTS ACT; CREATING A PRESUMPTION OF RETALIATION UNDER
CERTAIN CIRCUMSTANCES; REQUIRING THE ISSUANCE OF A JUDGMENT OF
RESTITUTION PRIOR TO A WRIT OF RESTITUTION; PROVIDING A
RESIDENT THE RIGHT TO CURE; STAYING THE ISSUANCE AND EXECUTION
OF A WRIT OF RESTITUTION DURING AN APPEAL; PROHIBITING AN OWNER

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FROM REFUSING TO RENEW OR SEEKING TO TERMINATE A RENTAL AGREEMENT DURING A DECLARED EMERGENCY OR DISASTER; ESTABLISHING THE STATE HOUSING COUNCIL; PROVIDING DUTIES.

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 bureau of the labor relations division of the workforce solutions 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 and use distinctly private;

I. "housing accommodation" means any building or
portion of a building 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 workforce
solutions;

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 a
person's major life activities. A person is also considered to
be physically or mentally handicapped if the person 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;

   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;

   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, chromosomal sex or sex at birth;

   R. "reasonable accommodation" means modification or adaptation of the work environment, work schedule, work rules or job responsibilities, and reached through good faith efforts to explore less restrictive or less expensive alternatives to enable an employee to perform the essential functions of the job and that does not impose an undue hardship on the employer;

   [and]

   S. "undue hardship" means an accommodation requiring significant difficulty or expense when considered in.

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light of the following factors:

(1) the nature and cost of the accommodation;
(2) the financial resources of the employer involved in the provision of the reasonable accommodation;
(3) the number of persons the employer employs;
(4) the effect of the accommodation on expenses and resources;
(5) the impact of the accommodation otherwise upon the employer's business;
(6) the overall financial resources of the employer;
(7) the overall size of the business of an employer with respect to the number, type and location of its facilities;
(8) the type of operation of the employer, including the composition, structure and functions of the workforce of the employer; or
(9) the geographic separateness or administrative or fiscal relationship to the employer of the employer's facilities;

T. "source of income" means any lawful source of money and program requirements of such funding paid directly or indirectly to or on behalf of a renter or buyer of housing, including:
(1) income from a lawful profession, occupation or job;

(2) income derived from social security or any form of federal, state or local public assistance or housing assistance, including a housing choice voucher issued pursuant to Section 8 of the United States Housing Act of 1937, or any other form of housing assistance payment or credit, whether or not such income or credit is paid or attributed directly to a landlord and even if such income includes additional federal, state or local requirements; or

(3) a gift, an inheritance, a pension, an annuity, alimony, child support, foster care subsidies or any other consideration or benefit; and

U. "minimum income requirement" means a requirement set by an owner relating to the amount of income a prospective tenant must receive in a prescribed period of time and used to determine the prospective tenant's ability to pay rent."

SECTION 2. 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, pregnancy, childbirth or condition related to pregnancy or childbirth, 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 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, pregnancy, childbirth or condition related to pregnancy or childbirth, 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, pregnancy, childbirth or condition related to pregnancy or childbirth, 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, pregnancy, childbirth or condition related to
pregnancy or childbirth, 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,
pregnancy, childbirth or condition related to pregnancy or
childbirth, 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, pregnancy, childbirth or condition related to pregnancy or childbirth, 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, pregnancy, childbirth or condition related to pregnancy or childbirth, 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, pregnancy, childbirth or condition related to pregnancy or childbirth, spousal affiliation, source of income.
or the requirements of any program providing the source of income 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, pregnancy, childbirth or condition related to pregnancy or childbirth, spousal affiliation, source of income 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;

(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, pregnancy, childbirth or condition related to pregnancy or childbirth, spousal affiliation, source of income 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;

(4) represent to any person, because of race, color, religion, sex, disability, marital status, familial status, sexual orientation, gender identity, national origin or source of income, or because of the requirements of any program providing the source of income, that any dwelling is not available for inspection, sale or rental when the dwelling is available;

(5) in determining whether the prospective tenant meets minimum income requirements, exclude from the calculation any lawful source of income received by the applicant; or

(6) impose additional requirements on a tenant or a prospective tenant whose rent is to be subsidized by a third party not imposed on other tenants, such as additional security deposits or requirements to maintain renter's insurance; provided that nothing in this section shall be construed as a prohibition against a property owner or manager.
conducting an income or credit inquiry on a prospective tenant;

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, pregnancy, childbirth or condition related to
pregnancy or childbirth, 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, pregnancy, childbirth or
condition related to pregnancy or childbirth, 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;

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;

K. any employer to refuse or fail to make reasonable accommodation for an employee or job applicant with a need arising from pregnancy, childbirth or condition related to pregnancy or childbirth; or

L. any employer to require an employee with a need arising from pregnancy, childbirth or condition related to pregnancy or childbirth to take paid or unpaid leave if another reasonable accommodation can be provided unless the employee voluntarily requests to be placed on leave or the employee is
placed on leave pursuant to federal law."

SECTION 3. Section 47-8-1 NMSA 1978 (being Laws 1975, Chapter 38, Section 1, as amended) is amended to read:

"47-8-1. SHORT TITLE.--[Sections 47-8-1 through 47-8-51] Chapter 47, Article 8 NMSA 1978 may be cited as the "Uniform Owner-Resident Relations Act"."

SECTION 4. Section 47-8-15 NMSA 1978 (being Laws 1975, Chapter 38, Section 15, as amended) is amended to read:

"47-8-15. PAYMENT OF RENT.--

A. The resident shall pay rent in accordance with the rental agreement. In the absence of an agreement, the resident shall pay as rent the fair rental value for the use of the premises and occupancy of the dwelling unit.

B. Rent is payable without demand or notice at the time and place agreed upon by the parties. Unless otherwise agreed, rent is payable at the dwelling unit. Unless otherwise agreed, periodic rent is payable at the beginning of any term of one month or less and otherwise in equal monthly installments at the beginning of each monthly period. The date of one month to the same date of the following month shall constitute a term of one month.

C. Unless the rental agreement fixes a definite term, the residency is week-to-week in the case of a person who pays weekly rent and in all other cases month-to-month.

D. If the rental agreement provides for the
charging of a late fee and if the resident does not pay rent in accordance with the rental agreement, the owner may charge the resident a late fee in an amount not to exceed ten percent of the resident's portion of the rent payment for each rental period that the resident is in default. To assess a late fee, the owner shall provide notice of the late fee charged no later than the last day of the next rental period immediately following the period in which the default occurred.

E. An owner may not assess a fee from the resident for occupancy of the dwelling unit by a reasonable number of guests for a reasonable length of time. This shall not preclude charges for use of premises or facilities other than the dwelling unit by guests.

F. An owner may increase the rent payable by the resident in a month-to-month residency by providing written notice to the resident of the proposed increase at least thirty days prior to the periodic rental date specified in the rental agreement or, in the case of a fixed term residency, at least thirty days prior to the end of the term. In the case of a periodic residency of less than one month, written notice shall be provided at least one rental period in advance of the first rental payment to be increased.

G. Unless agreed upon in writing by the owner and the resident, a resident's payment of rent may not be allocated
to any deposits or damages.

H. For each payment made by a resident or on a resident's behalf, an owner shall provide the resident a written receipt signed by the owner or the owner's representative with the amount of the payment, the date of payment and the resident's name."

SECTION 5. Section 47-8-18 NMSA 1978 (being Laws 1975, Chapter 38, Section 18, as amended) is amended to read:

"47-8-18. DEPOSITS.--

A. An owner is permitted to demand from the resident a reasonable deposit to be applied by the owner to recover damages, if any, caused to the premises by the resident during [his] the term of residency. [(1)] Under the terms of an annual rental agreement, if the owner demands or receives of the resident [such] a deposit in an amount greater than one month's rent, the owner shall be required to pay to the resident annually an interest equal to the passbook interest permitted to savings and loan associations in this state by the federal home loan bank board on such deposit. [(2)] Under the terms of a rental agreement of a duration less than one year, an owner shall not demand or receive from the resident [such] a deposit in an amount in excess of one month's rent.

B. It is not the intention of this section to include the last month's prepaid rent, which may be required by the rental agreement as a deposit as defined in Subsection [B]

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E of Section 47-8-3 NMSA 1978. Any deposit as defined in Paragraph (1) of Subsection A of this section shall not be construed as prepaid rent.

C. Upon termination of the residency, property or money held by the owner as deposits may be applied by the owner to the payment of rent and the amount of damages that the owner has suffered by reason of the resident's noncompliance with the rental agreement or Section 47-8-22 NMSA 1978. No deposit shall be retained to cover normal wear and tear. In the event actual cause exists for retaining any portion of the deposit for nonpayment of rent, late fees, utilities, repairs, cleaning or other legitimate damages or charges, the owner shall provide the resident with an itemized written list of the deductions from the deposit and the balance of the deposit, if any, within thirty days of the date of termination of the rental agreement or resident departure, whichever is later. The owner is deemed to have complied with this section by mailing the statement and any payment required to the last known address of the resident. Nothing in this section shall preclude the owner from retaining portions of the deposit for nonpayment of rent or utilities, repair work or other legitimate damages. If the statement and any payment are mailed but returned as undeliverable or if the last known address is the vacated dwelling unit, the owner shall serve at least one additional notice if an alternative address has been
provided to the owner by the resident or the resident's representative.

D. If the owner fails to provide the resident with a written statement of deductions from the deposit and the balance shown by the statement to be due, within thirty days of the termination of the tenancy, the owner:

(1) shall forfeit the right to withhold any portion of the deposit for any charge, including rent, late fees, utilities, repairs, cleaning or other damages or charges;

(2) shall forfeit the right to assert [any] a counterclaim in [any] an action brought to recover that deposit;

(3) shall be liable to the resident for court costs and reasonable [attorneys'] attorney fees; and

(4) shall forfeit the right to assert an independent action against the resident for [damages to the rental property] any charge, including rent, late fees and other penalties, utilities, repairs, cleaning or other damages or charges.

E. An owner who [in bad faith] retains a deposit, or any portion thereof, in violation of this section is liable to the resident for a civil penalty in the amount of [two hundred fifty dollars ($250) payable to the resident] twice the amount improperly withheld."

SECTION 6. Section 47-8-33 NMSA 1978 (being Laws 1975,
Chapter 38, Section 33, as amended) is amended to read:

"47-8-33. BREACH OF AGREEMENT BY RESIDENT AND RELIEF BY OWNER.--

A. Except as provided in the Uniform Owner-Resident Relations Act, if there is noncompliance with Section 47-8-22 NMSA 1978 materially affecting health and safety or upon the initial material noncompliance by the resident with the rental agreement or [any] a separate agreement, the owner shall deliver a written notice to the resident specifying the acts and omissions constituting the breach, including the dates and specific facts describing the nature of the alleged breach, and stating that, except as provided for in rental agreements in effect for a continuous twelve-month period or more, the rental agreement will terminate upon a date not less than seven days after receipt of the notice if the breach is not remedied in seven days. For any rental agreement in effect for a continuous twelve-month period or more, the notice period for termination under this subsection shall be not less than fourteen days.

B. Upon the second material noncompliance with the rental agreement or any separate agreement by the resident, within six months of the initial breach, the owner shall deliver a written notice to the resident specifying the acts and omissions constituting the breach, including the dates and specific facts describing the nature of the alleged breach, and
stating that the rental agreement shall terminate upon a date not less than seven days after receipt of the notice. If the subsequent breach occurs more than six months after the initial breach, it shall constitute an initial breach for purposes of applying the provisions of this section.

C. The initial notice provided in this section shall state that the rental agreement will terminate upon the second material noncompliance with the rental agreement or any separate agreement by the resident, within six months of the initial breach. To be effective, any notice pursuant to this subsection shall be given within thirty days of the breach or knowledge thereof.

D. If rent is unpaid when due and the resident fails to pay rent within [three] ten days after written notice from the owner of nonpayment, [and his] the owner may terminate the rental agreement pursuant to this subsection. Written notice of nonpayment may not be served until the resident is at least four days late on payment. The notice shall state the owner's intention to terminate the rental agreement. The owner may terminate the rental agreement and the resident [shall immediately deliver possession of the dwelling unit; provided that] shall deliver possession of the dwelling unit or seek redress in court in response to the owner's action for writ of restitution. The tender of the full amount due, in the manner stated in the notice, prior to the expiration of the [three-
day] ten-day notice shall bar any action for nonpayment of rent. If rent is unpaid when due, the rental agreement has been in effect for a continuous twelve-month period or more and the owner has not served prior notice of nonpayment during that period, the notice time period for termination pursuant to this subsection shall be not less than twenty-one days.

E. In any court action for possession for nonpayment of rent or other charges where the resident disputes the amount owed because:

   (1) the resident has abated rent pursuant to Section 47-8-27.2 or 47-8-4 NMSA 1978; or

   (2) the owner has allocated rent paid by the resident as payment for damages to the premises, then, if the owner is the prevailing party, the court shall enter a writ of restitution conditioned upon the right of the resident to remedy by depositing the judgment amount with the court within [three] twenty-one days of entry of judgment. If the resident has satisfied the judgment within [three] twenty-one days, the writ shall be dismissed. If the resident has not satisfied the judgment within [three] twenty-one days, the owner may execute upon the writ without further order of the court.

F. Except as provided in the Uniform Owner-Resident Relations Act, the owner may recover damages and obtain injunctive or other relief for [any] noncompliance by the resident with the rental agreement or this section or Section .218150.4
G. In a judicial action to enforce a remedy for which prior written notice is required, relief may be granted based only upon the grounds set forth in the written notice served; provided, however, that this shall not bar a defendant from raising any and all defenses or counterclaims for which written notice is not otherwise required by the Uniform Owner-Resident Relations Act.

H. When the last day for remedying any breach pursuant to written notice required under the Uniform Owner-Resident Relations Act occurs on a weekend or federal holiday, the period to remedy shall be extended until the next day that is not a weekend or federal holiday.

I. If the resident knowingly commits or consents to another person in the dwelling unit or on the premises knowingly committing a substantial violation, the owner shall deliver a written notice to the resident specifying the time, place and nature of the act constituting the substantial violation and that the rental agreement will terminate upon a date not less than three days after receipt of the notice.

J. In any action for possession pursuant to Subsection I of this section, it shall be a defense that the resident is a victim of domestic violence. If the resident has filed for or secured a temporary domestic violence restraining order as a result of the incident that is the basis for the
termination notice or as a result of a prior incident, the writ of restitution shall not issue. In all other cases [where] in which domestic violence is raised as a defense, the court shall have the discretion to evict the resident accused of the violation, while allowing the tenancy of the remainder of the residents to continue undisturbed.

K. In any action for possession [under] pursuant to Subsection I of this section, it shall be a defense that the resident did not know of, and could not have reasonably known of or prevented, the commission of a substantial violation by any other person in the dwelling unit or on the premises.

L. In any action for possession [under] pursuant to Subsection I of this section, it shall be a defense that the resident took reasonable and lawful actions in defense of [himself] the resident, others or [his] the resident's property.

M. In any action for possession [under] pursuant to Subsection I of this section, if the court finds that the action was frivolous or brought in bad faith, the petitioner shall be subject to a civil penalty equal to two times the amount of the monthly rent, plus damages and costs."

SECTION 7. Section 47-8-37 NMSA 1978 (being Laws 1975, Chapter 38, Section 37) is amended to read:

"47-8-37. NOTICE OF TERMINATION AND DAMAGES.--

A. The owner or the resident may terminate a week-
to-week residency by a written notice given to the other at
least seven days prior to the termination date specified in the
notice.

B. The owner or the resident may terminate a month-
to-month residency by a written notice given to the other at
least thirty days prior to the periodic rental date specified
in the notice.

C. A notice given by an owner under this section
shall be unenforceable if it violates the provisions of
Subsection G of Section 28-1-7 NMSA 1978.

D. If the resident remains in possession
without the owner's consent after expiration of the term of the
rental agreement or its termination, the owner may bring an
action for possession, and, if the resident's holdover is
willful and not in good faith, the owner, in addition, may
recover the damages sustained by [him] the owner and reasonable
[attorneys'] attorney fees. If the owner consents to the
resident's continued occupancy, Subsection C of Section [15 of
the Uniform Owner-Resident Relations Act] 47-8-15 NMSA 1978
applies."

SECTION 8. Section 47-8-39 NMSA 1978 (being Laws 1975,
Chapter 38, Section 39, as amended) is amended to read:

"47-8-39. OWNER RETALIATION PROHIBITED.--

A. An owner may not retaliate against a resident
who is in compliance with the rental agreement and not
otherwise in violation of any provision of the Uniform Owner-Resident Relations Act. [by increasing rent, decreasing services or by bringing or threatening to bring an action for possession because] There shall be a presumption of retaliation if:

(1) an owner brings or threatens to bring an action for possession, decreases services, increases rent, refuses to renew a rental agreement or serves a notice of termination under Section 47-8-37 NMSA 1978; and

(2) the resident has within the previous six months:

[(1)] (a) complained to a government agency charged with responsibility for enforcement of a minimum building or housing code of a violation applicable to the premises materially affecting health and safety;

[(2)] (b) organized or become a member of a residents' union, association or similar organization;

[(3)] (c) acted in good faith to exercise [his] the resident's rights provided [under] pursuant to the Uniform Owner-Resident Relations Act or any other law, order or regulation governing owner-resident relations, including when the resident makes a written or oral request or complaint to the owner to make repairs to comply with the owner's obligations [under] pursuant to Section 47-8-20 NMSA 1978 or any other law, order or regulation governing...
owner-resident relations;

[(4)] (d) made a fair housing complaint to a government agency charged with authority for enforcement of laws or [regulations] rules prohibiting discrimination in rental housing;

[(5)] (e) prevailed in a lawsuit as either plaintiff or defendant, including situations where the owner is denied restitution, or has a lawsuit pending against the owner relating to the residency;

[(6)] (f) testified on behalf of another resident; [∅]

[(7)] (g) abated rent in accordance with the provisions of Section 47-8-27.1 or 47-8-27.2 NMSA 1978;

(h) complained to a utility company about the functioning or safety of an appliance, mechanical device or utility service;

(i) requested a reasonable accommodation for disability under the federal Fair Housing Act, Section 504 of the federal Rehabilitation Act of 1973, the federal Americans with Disabilities Act of 1990, the Human Rights Act or any other applicable federal, state or local fair housing or human rights law; or

(j) received rental assistance from a governmental or nonprofit entity satisfying any outstanding rents, fees and costs owed by the resident.
B. If the owner acts in violation of Subsection A of this section, the resident [he/she] shall be entitled to the remedies provided in Section 47-8-48 NMSA 1978 and the violation shall be a defense in [any any] an action against [him] the resident for possession; provided that the resident shall not be required to prove that the owner acted in bad faith.

C. Notwithstanding the provisions of Subsection A of this section, the owner may increase the rent or change services upon appropriate notice at the end of the term of the rental agreement or as provided [under] pursuant to the terms of the rental agreement if the owner can establish that the increased rent or changes in services are consistent with those imposed on other residents of similar rental units and are not directed at the particular resident, but are uniform."

SECTION 9. Section 47-8-40 NMSA 1978 (being Laws 1975, Chapter 38, Section 40, as amended) is amended to read:

"47-8-40. ACTION FOR POSSESSION BY OWNER.--

A. Notwithstanding Subsections A and B of Section 47-8-39 NMSA 1978, an owner may bring an action for possession, and overcome the presumption of retaliation, if:

(1) the violation of the applicable minimum building or housing code was caused primarily by lack of reasonable care by the resident or other person in [his] the resident's household or upon the premises with the resident's consent;
(2) the resident is in default in rent;
(3) there is a material noncompliance with the rental agreement that would otherwise give rise to the owner's right to terminate the rental agreement;
(4) a resident knowingly commits or consents to any other person in the dwelling unit or on the premises knowingly committing a substantial violation; or
(5) compliance with the applicable building or housing code requires alteration, remodeling or demolition that would effectively deprive the resident of use of the dwelling unit for more than seven days, and the owner shows by a preponderance of the evidence that the owner intends to immediately perform the repairs.

B. The maintenance of an action under Subsection A of this section does not release the owner from liability under Section 47-8-20 NMSA 1978.

C. Any right of an owner to bring an action under this section shall be subject to the federal Fair Housing Act and other applicable fair housing and human rights laws."

SECTION 10. Section 47-8-43 NMSA 1978 (being Laws 1975, Chapter 38, Section 43, as amended) is amended to read:

"47-8-43. ISSUANCE OF SUMMONS AND TRIAL SETTING.--

A. The summons shall be issued and directed, with a copy of the petition attached to the summons, and shall state the cause of the complaint, the answer day for other causes of
action and notice that if the defendant fails to appear, judgment shall be entered against [him] the defendant. The summons may be served pursuant to the New Mexico rules of civil procedure and returned as in other cases. Trial of the action for possession shall be set as follows:

(1) for [any] a matter brought by the owner for possession, not less than [seven or more than ten] twenty days after the [service of summons] filing of the petition; or

(2) for [any] a matter brought by the resident for possession, not less than three or more than five days after the service of summons.

B. Upon finding of good cause, the court may continue the date of hearing on the action for possession [for up to seven days from the date of the initial hearing].

C. The court shall maintain a resource list of nonprofit legal service providers and state and local entities that provide rental assistance to qualifying applicants. A copy of the resource list shall be provided to the plaintiff at the time of filing of the petition and shall be served by the plaintiff along with the summons and copy of the complaint upon the defendant."

SECTION 11. Section 47-8-46 NMSA 1978 (being Laws 1975, Chapter 38, Section 46, as amended) is amended to read:

"47-8-46. WRIT OF RESTITUTION.--

A. Upon petition for restitution filed by the owner
if judgment is rendered against the defendant for restitution of the premises, the court shall declare the forfeiture of the rental agreement and shall, at the request of the plaintiff or [his] the plaintiff's attorney, issue a [writ] judgment of restitution ordering the resident to vacate the premises by a specified date; provided that the resident shall be allowed at least fifteen days to vacate the premises after entry of judgment and, upon good cause shown, may be allowed up to an additional ten days to vacate the premises. If the resident does not vacate the premises within the time ordered by the judgment, the court shall issue a writ of restitution directing the sheriff to restore possession of the premises to the plaintiff [on a specified date not less than three nor more than seven days after entry of judgment] no later than three days after the expiration of the time period to vacate.

B. Upon a petition for restitution filed by the resident, if judgment is rendered against the defendant for restitution of the premises, the court shall, at the request of the plaintiff or [his] the plaintiff's attorney, issue a writ of restitution directing the sheriff to restore possession of the premises to the plaintiff within twenty-four hours after entry of judgment.

C. In cases filed based on nonpayment of rent, if at any time prior to entry of judgment or prior to expiration of the fifteen-day period to vacate after entry of judgment, or
for any longer period as ordered by the court, a resident
tenders payment of all rent, costs, fees and interest accrued
as of that date or as ordered by the court, the petition for
writ of restitution shall be dismissed, any judgment shall be
vacated and the tenancy shall continue under the rental
agreement in place prior to the action by the owner. Tender of
amounts due may be made to the owner or to the court to be held
in escrow for distribution to the owner upon dismissal of the
petition."

SECTION 12. Section 47-8-47 NMSA 1978 (being Laws 1975,
Chapter 38, Section 47, as amended) is amended to read:

"47-8-47. APPEAL STAYS EXECUTION.--

A. If either party feels aggrieved by the judgment,
that party may appeal as in other civil actions. An appeal by
the defendant shall, automatically and without further order of
the court, stay the issuance and execution of any writ of
restitution. [provided that in] After a notice of appeal is
filed, no writ of restitution shall be executed except on order
of the court entered after the filing date of the appeal.

B. In cases in which the resident is the appellant,
the execution of the writ of restitution shall not be stayed
unless] the resident shall, within five days of the filing of
the notice of appeal, [pays] pay to the owner or into an escrow
account with a professional escrow agent an amount equal to the
rental amount that shall come due from the day following the
judgment through the end of that rental period. The resident shall continue to pay the monthly rent established by the rental agreement at the time the complaint was filed, on a monthly basis on the date rent would otherwise become due.

Payments pursuant to this subsection by a subsidized resident shall not exceed the actual amount of monthly rent paid by that resident. When the resident pays the owner directly, the owner shall immediately provide a written receipt to the resident upon demand. When the resident pays into an escrow account the resident shall cause such amounts to be paid over to the owner immediately upon receipt unless otherwise ordered by the court.

Upon the failure of the resident or the escrow agent to make [a] the first partial payment within five days of the filing of a notice of appeal or a monthly rent payment on the first day rent would otherwise be due, the owner may serve a [three-day] fourteen-day written notice on the resident pursuant to Subsection D of Section 47-8-33 NMSA 1978. If the resident or the resident's escrow agent fails to pay the rent within the [three] fourteen days, a hearing on the issue shall be scheduled within ten days from the date the court is notified of the failure to pay rent. In the case of an appeal de novo, the hearing shall be in the court in which the appeal will be heard. If, at the hearing, the court finds that rent has not been paid, the court shall immediately lift the stay and issue the writ of restitution unless the resident demonstrates a
legal justification for failing to comply with the rent payment requirement.

C. If an owner refuses or is unavailable to accept a rent payment made pursuant to Subsection B of this section, the court shall permit the resident to pay the necessary amount to be held by the court.

[B] D. In order to stay the execution of a money judgment, the trial court, within its discretion, may require an appellant to deposit with the clerk of the trial court the amount of judgment and costs or to give a supersedeas bond in the amount of judgment and costs with or without surety. Any bond or deposit shall not be refundable during the pendency of any appeal."

SECTION 13. A new section of the Uniform Owner-Resident Relations Act is enacted to read:

"[NEW MATERIAL] RENEWAL OF RENTAL AGREEMENT DURING A DECLARED EMERGENCY.--

A. An owner shall not refuse to renew or seek to terminate any rental agreement that expires during, or for thirty days after, a declaration of an emergency or disaster issued by the governor or a declaration of an emergency or disaster issued by joint resolution of the legislature.

B. A rental agreement that is renewed during the period of time provided in Subsection A of this section shall be for a month-to-month residency, unless the resident and
owner agree to a longer term.

C. Nothing in this section shall prohibit an owner from:

(1) refusing to renew a rental agreement if the owner, in good faith, seeks to take possessions of the property for personal use and occupancy as a primary residence, or for the personal use and occupancy as a primary residence of a member of the owner's immediate family; or

(2) commencing an action for possession pursuant to Subsection A, B or I of Section 47-8-33 NMSA 1978."

SECTION 14. [NEW MATERIAL] STATE HOUSING COUNCIL--

CREATION--MEMBERSHIP--DUTIES.--

A. The "state housing council" is created to serve as the state's interdisciplinary coordinating body to integrate, coordinate and align housing services and is administratively attached to the office of the governor. The administrative head of the state housing council is the "housing services officer", who shall be appointed by the governor with the advice and consent of the senate and shall serve at the pleasure of the governor. An appointed housing services officer shall serve and have all of the duties, responsibilities and authority of that office during the period of time prior to final action by the senate confirming or rejecting the officer's appointment.

B. The state housing council shall be composed of
an executive committee and supporting members. The executive
commitee shall consist of:

(1) the housing services officer; and
(2) two co-chairs, one of whom shall be the
executive director of the New Mexico mortgage finance authority
and the other of whom shall be appointed by the housing
services officer from among the supporting members; provided
that the housing services officer shall appoint a new co-chair
every two years.

C. Supporting members of the council shall include:

(1) no less than five statewide
representatives, appointed by the housing services officer, who
have direct decision-making authority within their
representative organizations and who represent those who:

   (a) are committed to ending
   homelessness;

   (b) advocate for tenants' rights;

   (c) are landlords and property owners;

   (d) finance or develop housing;

   (e) are tribal, public and regional
   housing authorities; or

   (f) are current tenants with experience
   receiving services in New Mexico's publicly funded homeless and
   housing service system;

(2) mayors of cities that host general
population emergency shelters with one hundred or more beds
that operate twenty-four hours a day, are available all year
and receive state funding;

(3) a member of the senate appointed by the
committees' committee of the senate, unless the senate
appointment is made in the interim, in which case the president
pro tempore of the senate shall make the appointment in
consultation with, and with the agreement of, a majority of the
members of the committees' committee;

(4) a member of the house of representatives
appointed by the speaker of the house of representatives; and

(5) representatives from all state departments
that have responsibilities for housing issues within their
purview.

D. The state housing council shall meet at the call
of the housing services officer. Meetings of the council shall
be subject to the Open Meetings Act. Members of the council
are entitled to receive per diem and mileage as provided in the
Per Diem and Mileage Act and shall receive no other
compensation, perquisite or allowance.

E. The state housing council shall utilize existing
agency resources to review all state housing policies and laws
to ensure alignment, clarity, efficiency and accuracy regarding
the provisions of housing services across the state and shall
coordinate strategies and policies across state and private
entities to ensure policy and legislative budgetary alignment
relating to housing services. The review and development of
policies that the council shall examine shall include
reviewing, developing and revising laws and policies, including
securing resources, relating to:

(1) the legal relationship between landlords
and tenants;
(2) real estate development and real estate
contracts;
(3) housing discrimination;
(4) property zoning;
(5) economic factors that lead to
gentrification;
(6) assessing housing conditions and enforcing
minimum standards for housing conditions;
(7) securing resources to remediate
substandard housing conditions;
(8) increasing public awareness of existing
housing programs and resources;
(9) identifying any opportunities to
consolidate state housing resources among state entities and
leveraging private and public funding to support statewide
housing services;
(10) identifying any other opportunities to
increase the availability of housing services; and
(11) any other housing provision identified by
the council.

F. The housing services officer may hire staff and
contract for services to carry out the purposes of this
section.

G. Annually, the council shall report to the
legislative finance committee and any other appropriate interim
committee no later than November 1 of each year.