

1 HOUSE BILL 192

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO HUMAN RIGHTS; EXTENDING THE SCOPE OF THE HUMAN
12 RIGHTS ACT TO ACTIONS BY PUBLIC BODIES AND STATE AGENCIES.

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

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

17 "28-1-2. DEFINITIONS.--As used in the Human Rights Act:

18 A. "person" means one or more individuals, a
19 partnership, association, organization, corporation, joint
20 venture, legal representative, trustees, receivers, a public
21 body or state agency or the state and all of its political
22 subdivisions;

23 B. "employer" means any person employing four or
24 more persons and any person acting for an employer;

25 C. "commission" means the human rights commission;

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1 D. "director" or "bureau" means the human rights
2 bureau of the labor relations division of the workforce
3 solutions department;

4 E. "employee" means any person in the employ of an
5 employer or an applicant for employment;

6 F. "labor organization" means any organization that
7 exists for the purpose in whole or in part of collective
8 bargaining or of dealing with employers concerning grievances,
9 terms or conditions of employment or of other mutual aid or
10 protection in connection with employment;

11 G. "employment agency" means any person regularly
12 undertaking with or without compensation to procure
13 opportunities to work or to procure, recruit or refer
14 employees;

15 H. "public accommodation" means any establishment
16 or entity that provides or offers its services, facilities,
17 accommodations or goods to the public, but does not include a
18 bona fide private club or other place or establishment that is
19 by its nature and use distinctly private;

20 I. "public body" means the executive, legislative
21 and judicial branches of state and local governments and all
22 advisory boards, commissions, committees, agencies or entities
23 created by the constitution or any branch of government that
24 receives any public funding, including political subdivisions,
25 special taxing districts, school districts and institutions of

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1 higher education;

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

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

10 [K.] L. "secretary" means the secretary of
11 workforce solutions;

12 [L.] M. "unlawful discriminatory practices" means
13 those unlawful practices and acts specified in Section 28-1-7
14 NMSA 1978;

15 [M.] N. "physical or mental handicap" means a
16 physical or mental impairment that substantially limits one or
17 more of a person's major life activities. A person is also
18 considered to be physically or mentally handicapped if the
19 person has a record of a physical or mental handicap or is
20 regarded as having a physical or mental handicap;

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

25 [O.] P. "applicant for employment" means a person

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1 applying for a position as an employee;

2 [P-] Q. "sexual orientation" means heterosexuality,
3 homosexuality or bisexuality, whether actual or perceived;

4 [Q-] R. "gender identity" means a person's self-
5 perception, or perception of that person by another, of the
6 person's identity as a male or female based upon the person's
7 appearance, behavior or physical characteristics that are in
8 accord with or opposed to the person's physical anatomy,
9 chromosomal sex or sex at birth, whether actual or perceived;

10 [R-] S. "reasonable accommodation" means
11 modification or adaptation of the work environment, work
12 schedule, work rules or job responsibilities, and reached
13 through good faith efforts to explore less restrictive or less
14 expensive alternatives to enable an employee to perform the
15 essential functions of the job and that does not impose an
16 undue hardship on the employer; [~~and~~

17 S-] T. "undue hardship" means an accommodation
18 requiring significant difficulty or expense when considered in
19 light of the following factors:

- 20 (1) the nature and cost of the accommodation;
21 (2) the financial resources of the employer
22 involved in the provision of the reasonable accommodation;
23 (3) the number of persons the employer
24 employs;
25 (4) the effect of the accommodation on

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1 expenses and resources;

2 (5) the impact of the accommodation otherwise
3 upon the employer's business;

4 (6) the overall financial resources of the
5 employer;

6 (7) the overall size of the business of an
7 employer with respect to the number, type and location of its
8 facilities;

9 (8) the type of operation of the employer,
10 including the composition, structure and functions of the
11 workforce of the employer; or

12 (9) the geographic separateness or
13 administrative or fiscal relationship to the employer of the
14 employer's facilities;

15 U. "state agency" means any department,
16 institution, board, bureau, commission, district or committee
17 of government of the state and means every office or officer of
18 any department, institution, board, bureau, commission,
19 district, committee of government of the state, grantee,
20 contractor or other person that receives state funding; and

21 V. "services" means any function, program, activity
22 or benefit."

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

25 "28-1-7. UNLAWFUL DISCRIMINATORY PRACTICE.--It is an
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1 unlawful discriminatory practice for:

2 A. an employer, a public body or a state agency,
3 unless based on a bona fide occupational qualification or other
4 statutory prohibition, to refuse to hire, to discharge, to
5 promote or demote or to discriminate in matters of
6 compensation, terms, conditions or privileges of employment
7 against any person otherwise qualified because of race, age,
8 religion, color, national origin, ancestry, sex, sexual
9 orientation, gender identity, pregnancy, childbirth or
10 condition related to pregnancy or childbirth, physical or
11 mental handicap or serious medical condition, or, if the
12 employer has fifty or more employees, spousal affiliation;
13 provided, however, that 29 U.S.C. Section 631(c)(1) and (2)
14 shall apply to discrimination based on age;

15 B. a labor organization to exclude a person or to
16 expel or otherwise discriminate against any of its members or
17 against any employer or employee because of race, religion,
18 color, national origin, ancestry, sex, sexual orientation,
19 gender identity, pregnancy, childbirth or condition related to
20 pregnancy or childbirth, spousal affiliation, physical or
21 mental handicap or serious medical condition;

22 C. any employer, labor organization or joint
23 apprenticeship committee to refuse to admit or employ any
24 person in any program established to provide an apprenticeship
25 or other training or retraining because of race, religion,

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1 color, national origin, ancestry, sex, sexual orientation,
2 gender identity, pregnancy, childbirth or condition related to
3 pregnancy or childbirth, physical or mental handicap or serious
4 medical condition, or, if the employer has fifty or more
5 employees, spousal affiliation;

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

19 E. an employment agency to refuse to list and
20 properly classify for employment or refer a person for
21 employment in a known available job, for which the person is
22 otherwise qualified, because of race, religion, color, national
23 origin, ancestry, sex, sexual orientation, gender identity,
24 pregnancy, childbirth or condition related to pregnancy or
25 childbirth, spousal affiliation, physical or mental handicap or

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1 serious medical condition, unless based on a bona fide
2 occupational qualification, or to comply with a request from an
3 employer for referral of applicants for employment if the
4 request indicates, either directly or indirectly, that the
5 employer discriminates in employment on the basis of race,
6 religion, color, national origin, ancestry, sex, sexual
7 orientation, gender identity, pregnancy, childbirth or
8 condition related to pregnancy or childbirth, spousal
9 affiliation, physical or mental handicap or serious medical
10 condition, unless based on a bona fide occupational
11 qualification;

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

22 G. any person to:

23 (1) refuse to sell, rent, assign, lease or
24 sublease or offer for sale, rental, lease, assignment or
25 sublease any housing accommodation or real property to any

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1 person or to refuse to negotiate for the sale, rental, lease,
2 assignment or sublease of any housing accommodation or real
3 property to any person because of race, religion, color,
4 national origin, ancestry, sex, sexual orientation, gender
5 identity, pregnancy, childbirth or condition related to
6 pregnancy or childbirth, spousal affiliation or physical or
7 mental handicap; provided that the physical or mental handicap
8 is unrelated to a person's ability to acquire or rent and
9 maintain particular real property or housing accommodation;

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

21 (3) print, circulate, display or mail or cause
22 to be printed, circulated, displayed or mailed any statement,
23 advertisement, publication or sign or use any form of
24 application for the purchase, rental, lease, assignment or
25 sublease of any housing accommodation or real property or to

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

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

17 (1) consider the race, religion, color,
18 national origin, ancestry, sex, sexual orientation, gender
19 identity, pregnancy, childbirth or condition related to
20 pregnancy or childbirth, spousal affiliation or physical or
21 mental handicap of any individual in the granting, withholding,
22 extending, modifying or renewing or in the fixing of the rates,
23 terms, conditions or provisions of any financial assistance or
24 in the extension of services in connection with the request for
25 financial assistance; or

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

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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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; or

M. any public body or state agency to refuse or otherwise limit or condition services to any person 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, serious medical condition or spousal affiliation."