

1 SENATE BILL 152

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022**

3 INTRODUCED BY

4 Carrie Hamblen and Elizabeth "Liz" Stefanics and Leo Jaramillo
5 and Siah Correa Hemphill
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10 AN ACT

11 RELATING TO HUMAN RIGHTS; EXTENDING THE SCOPE OF THE HUMAN
12 RIGHTS ACT TO ACTIONS OF PUBLIC BODIES AND STATE AGENCIES.
13

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 by Laws 2021, Chapter 19,
17 Section 3 and by Laws 2021, Chapter 37, Section 3) is amended
18 to read:

19 "28-1-2. DEFINITIONS.--As used in the Human Rights Act:

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

25 B. "employer" means any person employing four or

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1 more persons and any person acting for an employer;

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

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

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

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

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

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

22 I. "public body" means the executive, legislative
23 and judicial branches of state and local governments and all
24 advisory boards, commissions, committees, agencies or entities
25 created by the constitution or any branch of government that

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1 receives any public funding, including political subdivisions,
2 special taxing districts, school districts and institutions of
3 higher education;

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

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

12 [K.] L. "secretary" means the secretary of
13 workforce solutions;

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

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

24 [N.] O. "major life activities" means functions
25 such as caring for one's self, performing manual tasks,

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1 walking, seeing, hearing, speaking, breathing, learning and
2 working;

3 [Θ-] P. "applicant for employment" means a person
4 applying for a position as an employee;

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

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

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

20 [S-] T. "undue hardship" means an accommodation
21 requiring significant difficulty or expense when considered in
22 light of the following factors:

- 23 (1) the nature and cost of the accommodation;
24 (2) the financial resources of the employer
25 involved in the provision of the reasonable accommodation;

1 (3) the number of persons the employer
2 employs;

3 (4) the effect of the accommodation on
4 expenses and resources;

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

7 (6) the overall financial resources of the
8 employer;

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

12 (8) the type of operation of the employer,
13 including the composition, structure and functions of the
14 workforce of the employer; or

15 (9) the geographic separateness or
16 administrative or fiscal relationship to the employer of the
17 employer's facilities;

18 [~~F.~~] U. "cultural or religious headdresses"
19 includes hijabs, head wraps or other headdresses used as part
20 of an individual's personal cultural or religious beliefs;

21 [~~U.~~] V. "protective hairstyles" includes such
22 hairstyles as braids, locs, twists, tight coils or curls,
23 cornrows, bantu knots, afros, weaves, wigs or head wraps; [~~and~~]

24 [~~V.~~] W. "race" includes traits historically
25 associated with race, including hair texture, length of hair,

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1 protective hairstyles or cultural or religious headdresses;

2 X. "state agency" means any department,
3 institution, board, bureau, commission, district or committee
4 of government of the state and means every office or officer of
5 any department, institution, board, bureau, commission,
6 district, committee of government of the state, grantee,
7 contractor or other person that receives state funding; and

8 Y. "services" means any function, program, activity
9 or benefit."

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

12 "28-1-7. UNLAWFUL DISCRIMINATORY PRACTICE.--It is an
13 unlawful discriminatory practice for:

14 A. an employer, a public body or a state agency,
15 unless based on a bona fide occupational qualification or other
16 statutory prohibition, to refuse to hire, to discharge, to
17 promote or demote or to discriminate in matters of
18 compensation, terms, conditions or privileges of employment
19 against any person otherwise qualified because of race, age,
20 religion, color, national origin, ancestry, sex, sexual
21 orientation, gender identity, pregnancy, childbirth or
22 condition related to pregnancy or childbirth, physical or
23 mental [~~handicap~~] disability or serious medical condition, or,
24 if the employer has fifty or more employees, spousal
25 affiliation; provided, however, that 29 U.S.C. Section

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

2 B. a labor organization to exclude a person or to
3 expel or otherwise discriminate against any of its members or
4 against any employer or employee because of race, religion,
5 color, national origin, ancestry, sex, sexual orientation,
6 gender identity, pregnancy, childbirth or condition related to
7 pregnancy or childbirth, spousal affiliation, physical or
8 mental ~~[handicap]~~ disability or serious medical condition;

9 C. any employer, labor organization or joint
10 apprenticeship committee to refuse to admit or employ any
11 person in any program established to provide an apprenticeship
12 or other training or retraining because of race, religion,
13 color, national origin, ancestry, sex, sexual orientation,
14 gender identity, pregnancy, childbirth or condition related to
15 pregnancy or childbirth, physical or mental ~~[handicap]~~
16 disability or serious medical condition, or, if the employer
17 has fifty or more employees, spousal affiliation;

18 D. any person, employer, employment agency or labor
19 organization to print or circulate or cause to be printed or
20 circulated any statement, advertisement or publication, to use
21 any form of application for employment or membership or to make
22 any inquiry regarding prospective membership or employment that
23 expresses, directly or indirectly, any limitation,
24 specification or discrimination as to race, color, religion,
25 national origin, ancestry, sex, sexual orientation, gender

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1 identity, pregnancy, childbirth or condition related to
2 pregnancy or childbirth, physical or mental [~~handicap~~
3 disability or serious medical condition, or, if the employer
4 has fifty or more employees, spousal affiliation, unless based
5 on a bona fide occupational qualification;

6 E. an employment agency to refuse to list and
7 properly classify for employment or refer a person for
8 employment in a known available job, for which the person is
9 otherwise qualified, because of race, religion, color, national
10 origin, ancestry, sex, sexual orientation, gender identity,
11 pregnancy, childbirth or condition related to pregnancy or
12 childbirth, spousal affiliation, physical or mental [~~handicap~~
13 disability or serious medical condition, unless based on a bona
14 fide occupational qualification, or to comply with a request
15 from an employer for referral of applicants for employment if
16 the request indicates, either directly or indirectly, that the
17 employer discriminates in employment on the basis of race,
18 religion, color, national origin, ancestry, sex, sexual
19 orientation, gender identity, pregnancy, childbirth or
20 condition related to pregnancy or childbirth, spousal
21 affiliation, physical or mental [~~handicap~~ disability or
22 serious medical condition, unless based on a bona fide
23 occupational qualification;

24 F. any person in any public accommodation to make a
25 distinction, directly or indirectly, in offering or refusing to

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1 offer its services, facilities, accommodations or goods to any
2 person because of race, religion, color, national origin,
3 ancestry, sex, sexual orientation, gender identity, pregnancy,
4 childbirth or condition related to pregnancy or childbirth,
5 spousal affiliation or physical or mental [~~handicap~~
6 disability; provided that the physical or mental [~~handicap~~
7 disability is unrelated to a person's ability to acquire or
8 rent and maintain particular real property or housing
9 accommodation;

10 G. any person to:

11 (1) refuse to sell, rent, assign, lease or
12 sublease or offer for sale, rental, lease, assignment or
13 sublease any housing accommodation or real property to any
14 person or to refuse to negotiate for the sale, rental, lease,
15 assignment or sublease of any housing accommodation or real
16 property to any person because of race, religion, color,
17 national origin, ancestry, sex, sexual orientation, gender
18 identity, pregnancy, childbirth or condition related to
19 pregnancy or childbirth, spousal affiliation or physical or
20 mental [~~handicap~~ disability; provided that the physical or
21 mental [~~handicap~~ disability is unrelated to a person's ability
22 to acquire or rent and maintain particular real property or
23 housing accommodation;

24 (2) discriminate against any person in the
25 terms, conditions or privileges of the sale, rental,

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1 assignment, lease or sublease of any housing accommodation or
2 real property or in the provision of facilities or services in
3 connection therewith because of race, religion, color, national
4 origin, ancestry, sex, sexual orientation, gender identity,
5 pregnancy, childbirth or condition related to pregnancy or
6 childbirth, spousal affiliation or physical or mental
7 [~~handicap~~] disability; provided that the physical or mental
8 [~~handicap~~] disability is unrelated to a person's ability to
9 acquire or rent and maintain particular real property or
10 housing accommodation; or

11 (3) print, circulate, display or mail or cause
12 to be printed, circulated, displayed or mailed any statement,
13 advertisement, publication or sign or use any form of
14 application for the purchase, rental, lease, assignment or
15 sublease of any housing accommodation or real property or to
16 make any record or inquiry regarding the prospective purchase,
17 rental, lease, assignment or sublease of any housing
18 accommodation or real property that expresses any preference,
19 limitation or discrimination as to race, religion, color,
20 national origin, ancestry, sex, sexual orientation, gender
21 identity, pregnancy, childbirth or condition related to
22 pregnancy or childbirth, spousal affiliation or physical or
23 mental [~~handicap~~] disability; provided that the physical or
24 mental [~~handicap~~] disability is unrelated to a person's ability
25 to acquire or rent and maintain particular real property or

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1 housing accommodation;

2 H. any person to whom application is made either
3 for financial assistance for the acquisition, construction,
4 rehabilitation, repair or maintenance of any housing
5 accommodation or real property or for any type of consumer
6 credit, including financial assistance for the acquisition of
7 any consumer good as defined by Section 55-9-102 NMSA 1978, to:

8 (1) consider the race, religion, color,
9 national origin, ancestry, sex, sexual orientation, gender
10 identity, pregnancy, childbirth or condition related to
11 pregnancy or childbirth, spousal affiliation or physical or
12 mental [~~handicap~~] disability of any individual in the granting,
13 withholding, extending, modifying or renewing or in the fixing
14 of the rates, terms, conditions or provisions of any financial
15 assistance or in the extension of services in connection with
16 the request for financial assistance; or

17 (2) use any form of application for financial
18 assistance or to make any record or inquiry in connection with
19 applications for financial assistance that expresses, directly
20 or indirectly, any limitation, specification or discrimination
21 as to race, religion, color, national origin, ancestry, sex,
22 sexual orientation, gender identity, pregnancy, childbirth or
23 condition related to pregnancy or childbirth, spousal
24 affiliation or physical or mental [~~handicap~~] disability;

25 I. any person or employer to:

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

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

8 (3) willfully obstruct or prevent any person
9 from complying with the provisions of the Human Rights Act or
10 to resist, prevent, impede or interfere with the commission or
11 any of its members, staff or representatives in the performance
12 of their duties under the Human Rights Act;

13 J. any employer to refuse or fail to accommodate a
14 person's physical or mental [~~handicap~~] disability or serious
15 medical condition, unless such accommodation is unreasonable or
16 an undue hardship;

17 K. any employer to refuse or fail to make
18 reasonable accommodation for an employee or job applicant with
19 a need arising from pregnancy, childbirth or condition related
20 to pregnancy or childbirth; [~~or~~]

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

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placed on leave pursuant to federal law; or
M. any public body or state agency to refuse or
otherwise limit or put conditions on services to a 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 disability, serious medical condition or
spousal affiliation; provided that nothing in this subsection
shall be construed to require public bodies or state agencies
to provide services or programs beyond services or programs to
the specific populations that they are tasked with serving."