

HOUSE GOVERNMENT AND URBAN AFFAIRS COMMITTEE SUBSTITUTE FOR
HOUSE BILL 340

45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002

AN ACT

RELATING TO HUMAN RIGHTS; PROVIDING FOR PROTECTION OF GENETIC
PRIVACY AGAINST UNLAWFUL DISCRIMINATORY PRACTICES; AMENDING
SECTIONS OF THE NMSA 1978.

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;

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1 D. "director" means the director of the human
2 rights division of the labor 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
6 which 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 which
18 is by its nature and use distinctly private;

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

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

2 K. "secretary" means the secretary of labor;

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

6 M. "physical or mental handicap" means a physical
 7 or mental impairment that substantially limits one or more of
 8 an individual's major life activities. An individual is also
 9 considered to be physically or mentally handicapped if he has
 10 a record of a physical or mental handicap or is regarded as
 11 having a physical or mental handicap;

12 N. "major life activities" means functions such as
 13 caring for one's self, performing manual tasks, walking,
 14 seeing, hearing, speaking, breathing, learning and working;
 15 [~~and~~]

16 O. "applicant for employment" means a person
 17 applying for a position as an employee;

18 P. "DNA" means deoxyribonucleic acid, including
 19 mitochondrial DNA, complementary DNA and DNA derived from
 20 ribonucleic acid; and

21 Q. "genetic information" means information about
 22 the genetic makeup of a person or members of a person's
 23 family, including information resulting from genetic analysis,
 24 DNA composition, participation in genetic research or use of
 25 genetic services."

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

3 "28-1-7. UNLAWFUL DISCRIMINATORY PRACTICE.--It is an
4 unlawful discriminatory practice for:

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

16 B. a labor organization to exclude an individual
17 or to expel or otherwise discriminate against any of its
18 members or against any employer or employee because of race,
19 religion, color, national origin, ancestry, sex, spousal
20 affiliation, physical or mental handicap or serious medical
21 condition;

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

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1 race, religion, color, national origin, ancestry, sex,
2 physical or mental handicap or serious medical condition, or,
3 if the employer has fifty or more employees, spousal
4 affiliation;

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

17 E. an employment agency to refuse to list and
18 properly classify for employment or refer an individual for
19 employment in a known available job, for which the individual
20 is otherwise qualified, because of race, religion, color,
21 national origin, ancestry, sex, spousal affiliation, physical
22 or mental handicap or serious medical condition, unless based
23 on a bona fide occupational qualification, or to comply with a
24 request from an employer for referral of applicants for
25 employment if the request indicates either directly or

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1 indirectly that the employer discriminates in employment on
2 the basis of race, religion, color, national origin, ancestry,
3 sex, spousal affiliation, physical or mental handicap or
4 serious medical condition, unless based on a bona fide
5 occupational qualification;

6 F. any person in any public accommodation to make
7 a distinction, directly or indirectly, in offering or refusing
8 to offer its services, facilities, accommodations or goods to
9 any individual because of race, religion, color, national
10 origin, ancestry, sex, spousal affiliation or physical or
11 mental handicap, provided that the physical or mental handicap
12 is unrelated to an individual's ability to acquire or rent and
13 maintain particular real property or housing accommodation;

14 G. any person to:

15 (1) refuse to sell, rent, assign, lease or
16 sublease or offer for sale, rental, lease, assignment or
17 sublease any housing accommodation or real property to any
18 individual or to refuse to negotiate for the sale, rental,
19 lease, assignment or sublease of any housing accommodation or
20 real property to any individual because of race, religion,
21 color, national origin, ancestry, sex, spousal affiliation or
22 physical or mental handicap, provided that the physical or
23 mental handicap is unrelated to an individual's ability to
24 acquire or rent and maintain particular real property or
25 housing accommodation;

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1 (2) discriminate against any individual in
 2 the terms, conditions or privileges of the sale, rental,
 3 assignment, lease or sublease of any housing accommodation or
 4 real property or in the provision of facilities or services in
 5 connection therewith because of the race, religion, color,
 6 national origin, ancestry, sex, spousal affiliation or
 7 physical or mental handicap, provided that the physical or
 8 mental handicap is unrelated to an individual'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
 12 cause to be printed, circulated, displayed or mailed any
 13 statement, advertisement, publication or sign or use any form
 14 of 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, spousal affiliation or
 21 physical or mental handicap, provided that the physical or
 22 mental handicap is unrelated to an individual's ability to
 23 acquire or rent and maintain particular real property or
 24 housing accommodation;

25 H. any person to whom application is made either

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1 for financial assistance for the acquisition, construction,
2 rehabilitation, repair or maintenance of any housing
3 accommodation or real property or for any type of consumer
4 credit, including financial assistance for the acquisition of
5 any consumer good as defined by Section 55-9-109 NMSA 1978,
6 to:

7 (1) consider the race, religion, color,
8 national origin, ancestry, sex, spousal affiliation or
9 physical or mental handicap of any individual in the granting,
10 withholding, extending, modifying or renewing or in the fixing
11 of the rates, terms, conditions or provisions of any financial
12 assistance or in the extension of services in connection with
13 the request for financial assistance; or

14 (2) use any form of application for financial
15 assistance or to make any record or inquiry in connection with
16 applications for financial assistance that expresses, directly
17 or indirectly, any limitation, specification or discrimination
18 as to race, religion, color, national origin, ancestry, sex,
19 spousal affiliation or physical or mental handicap;

20 I. any person or employer to:

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

24 (2) engage in any form of threats, reprisal
25 or discrimination against any person who has opposed any

1 unlawful discriminatory practice or has filed a complaint,
2 testified or participated in any proceeding under the Human
3 Rights Act; or

4 (3) willfully obstruct or prevent any person
5 from complying with the provisions of the Human Rights Act or
6 to resist, prevent, impede or interfere with the commission or
7 any of its members, staff or representatives in the
8 performance of their duties under the Human Rights Act; ~~or~~

9 J. any employer to refuse or fail to accommodate
10 to an individual's physical or mental handicap or serious
11 medical condition, unless such accommodation is unreasonable
12 or an undue hardship; or

13 K. any employer or employment agency to use
14 genetic information in any employment-related decisions,
15 including hiring, discharge, promotion, demotion, compensation
16 and terms, conditions and privileges of employment."