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HOUSE BILL 277

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Gail C. Beam

AN ACT

RELATING TO HUMAN RIGHTS; MAKING IT UNLAWFUL TO DISCRIMINATE  
BASED UPON SEXUAL ORIENTATION; AMENDING AND ENACTING SECTIONS  
OF THE NMSA 1978.

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

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

"28-1-1. SHORT TITLE. -- [~~This act~~] Chapter 28, Article 1  
NMSA 1978 may be cited as the "Human Rights Act". "

Section 2. 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

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1 state and all of its political subdivisions;

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

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

5 D. "director" means the director of the human  
6 rights division of the labor department;

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

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

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

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

23 I. "housing accommodation" means any building or  
24 portion of a building [~~which~~] that is constructed or to be  
25 constructed, which is used or intended for use as the

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1 residence or sleeping place of any individual;

2 J. "real property" means lands, leaseholds or  
3 commercial or industrial buildings, whether constructed or to  
4 be constructed, offered for sale or rent, and any land rented  
5 or leased for the use, parking or storage of house trailers;

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

7 L. "unlawful discriminatory practices" means those  
8 unlawful practices and acts specified in Section 28-1-7 NMSA  
9 1978;

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

16 N. "major life activities" means functions such as  
17 caring for one's self, performing manual tasks, walking,  
18 seeing, hearing, speaking, breathing, learning and working;

19 [~~and~~]

20 O. "applicant for employment" means a person  
21 applying for a position as an employee; and

22 P. "sexual orientation" means heterosexuality,  
23 homosexuality or bisexuality, whether actual or perceived."

24 Section 3. Section 28-1-7 NMSA 1978 (being Laws 1969,  
25 Chapter 196, Section 7, as amended) is amended to read:

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

3 A. an employer, unless based on a bona fide  
4 occupational qualification, to refuse to hire, to discharge,  
5 to 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, physical or mental handicap or serious medical  
10 condition; provided, however, that 29 U.S.C. Section 631(c)(1)  
11 and (2) shall apply to discrimination based on age;

12 B. a labor organization to exclude an individual  
13 or to expel or otherwise discriminate against any of its  
14 members or against any employer or employee because of race,  
15 religion, color, national origin, ancestry, sex, sexual  
16 orientation, physical or mental handicap or serious medical  
17 condition;

18 C. any employer, labor organization or joint  
19 apprenticeship committee to refuse to admit or employ any  
20 individual in any program established to provide an  
21 apprenticeship or other training or retraining because of  
22 race, religion, color, national origin, ancestry, sex, sexual  
23 orientation, physical or mental handicap or serious medical  
24 condition;

25 D. any person, employer, employment agency or

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1 labor organization to print or circulate or cause to be  
2 printed or circulated any statement, advertisement or  
3 publication, to use any form of application for employment or  
4 membership or to make any inquiry regarding prospective  
5 membership or employment [~~which~~] that expresses, directly or  
6 indirectly, any limitation, specification or discrimination as  
7 to race, color, religion, national origin, ancestry, sex,  
8 sexual orientation, physical or mental handicap or serious  
9 medical condition unless based on a bona fide occupational  
10 qualification;

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

25 F. any person in any public accommodation to make

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1 a distinction, directly or indirectly, in offering or refusing  
2 to offer its services, facilities, accommodations or goods to  
3 any individual because of race, religion, color, national  
4 origin, ancestry, sex, sexual orientation or physical or  
5 mental handicap, provided that the physical or mental handicap  
6 is unrelated to an individual's ability to acquire or rent and  
7 maintain particular real property or housing accommodation;

8 G. any person to:

9 (1) refuse to sell, rent, assign, lease or  
10 sublease or offer for sale, rental, lease, assignment or  
11 sublease any housing accommodation or real property to any  
12 individual or to refuse to negotiate for the sale, rental,  
13 lease, assignment or sublease of any housing accommodation or  
14 real property to any individual because of race, religion,  
15 color, national origin, ancestry, sex, sexual orientation or  
16 physical or mental handicap, provided that the physical or  
17 mental handicap is unrelated to an individual's ability to  
18 acquire or rent and maintain particular real property or  
19 housing accommodation;

20 (2) discriminate against any individual in  
21 the terms, conditions or privileges of the sale, rental,  
22 assignment, lease or sublease of any housing accommodation or  
23 real property or in the provision of facilities or services in  
24 connection therewith because of the race, religion, color,  
25 national origin, ancestry, sex, sexual orientation or physical

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1 or mental handicap, provided that the physical or mental  
2 handicap is unrelated to an individual's ability to acquire or  
3 rent and maintain particular real property or housing  
4 accommodation; or

5 (3) print, circulate, display or mail or  
6 cause to be printed, circulated, displayed or mailed any  
7 statement, advertisement, publication or sign or use any form  
8 of application for the purchase, rental, lease, assignment or  
9 sublease of any housing accommodation or real property or to  
10 make any record or inquiry regarding the prospective purchase,  
11 rental, lease, assignment or sublease of any housing  
12 accommodation or real property [~~which~~] that expresses any  
13 preference, limitation or discrimination as to race, religion,  
14 color, national origin, ancestry, sex, sexual orientation or  
15 physical or mental handicap, provided that the physical or  
16 mental handicap is unrelated to an individual's ability to  
17 acquire or rent and maintain particular real property or  
18 housing accommodation;

19 H. any person to whom application is made either  
20 for financial assistance for the acquisition, construction,  
21 rehabilitation, repair or maintenance of any housing  
22 accommodation or real property or for any type of consumer  
23 credit, including financial assistance for the acquisition of  
24 any consumer good as defined by Section 55-9-109 NMSA 1978,  
25 to:

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1 (1) consider the race, religion, color,  
2 national origin, ancestry, sex, sexual orientation or physical  
3 or mental handicap of any individual in the granting,  
4 withholding, extending, modifying or renewing or in the fixing  
5 of the rates, terms, conditions or provisions of any financial  
6 assistance or in the extension of services in connection with  
7 the request for financial assistance; or

8 (2) use any form of application for financial  
9 assistance or to make any record or inquiry in connection with  
10 applications for financial assistance [~~which~~] that expresses,  
11 directly or indirectly, any limitation, specification or  
12 discrimination as to race, religion, color, national origin,  
13 ancestry, sex, sexual orientation or physical or mental  
14 handicap;

15 I. any person or employer to:

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

19 (2) engage in any form of threats, reprisal  
20 or discrimination against any person who has opposed any  
21 unlawful discriminatory practice or has filed a complaint,  
22 testified or participated in any proceeding under the Human  
23 Rights Act; or

24 (3) willfully obstruct or prevent any person  
25 from complying with the provisions of the Human Rights Act or

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1 to resist, prevent, impede or interfere with the commission or  
2 any of its members, staff or representatives in the  
3 performance of their duties under the Human Rights Act; or

4 J. any employer to refuse or fail to accommodate  
5 to an individual's physical or mental handicap or serious  
6 medical condition, unless such accommodation is unreasonable  
7 or an undue hardship. "

8 Section 4. A new section of the Human Right Acts is  
9 enacted to read:

10 "[NEW MATERIAL] QUOTAS PROHIBITED. --A person, an  
11 employer, an employment agency or an organization shall not  
12 use the provisions of the Human Rights Act to adopt or  
13 implement a quota on the basis of sexual orientation. "

14 Section 5. Section 28-1-9 NMSA 1978 (being Laws 1969,  
15 Chapter 196, Section 8, as amended) is amended to read:

16 "28-1-9. EXEMPTIONS. --Nothing contained in the Human  
17 Rights Act shall:

18 A. apply to any single-family dwelling sold,  
19 leased, subleased or rented by an owner without the making of  
20 any notice, statement or advertisement with respect to the  
21 sale, lease, sublease or rental of a dwelling unit that  
22 indicates any preference, limitation or discrimination based  
23 on race, color, religion, national origin, ancestry, [ ~~or~~ ] sex  
24 or sexual orientation. This exemption is subject to these  
25 further reservations:

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

4 (2) if the seller [~~doesn't~~] does not  
5 presently live in the dwelling or he was not the most recent  
6 occupant, then the exemption granted in this section [ ~~will~~ ]  
7 shall only apply to one sale in twenty-four months;

8 B. bar any religious or denominational institution  
9 or organization [~~which~~] that is operated, [~~or~~] supervised or  
10 controlled by or that is operated in connection with a  
11 religious or denominational organization from limiting  
12 admission to or giving preference to persons of the same  
13 religion or denomination or from making selections of buyers,  
14 lessees or tenants as are calculated by the organization or  
15 denomination to promote the religious or denominational  
16 principles for which it is established or maintained, unless  
17 membership in the religious or denominational organization is  
18 restricted on account of race, color, national origin or  
19 ancestry;

20 C. bar any religious or denominational institution  
21 or organization that is operated, supervised or controlled by  
22 or that is operated in connection with a religious or  
23 denominational organization from imposing discriminatory  
24 employment or renting practices that are based upon sexual  
25 orientation; provided, that the provisions of the Human Rights

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1 Act with respect to sexual orientation shall apply to any  
2 other:

3 (1) for-profit activities of a religious or  
4 denominational institution or organization subject to the  
5 provisions of Section 511(a) of the Internal Revenue Code of  
6 1986, as amended; or

7 (2) nonprofit activities of a religious or  
8 denominational institution or organization subject to the  
9 provisions of Section 501(c)(3) of the Internal Revenue Code  
10 of 1986, as amended;

11 [~~C-~~] D. apply to rooms or units in dwellings  
12 containing living quarters occupied or intended to be occupied  
13 by no more than four families living independently of each  
14 other, if the owner actually maintains and occupies one of the  
15 living quarters as his residence;

16 [~~D-~~] E. apply to public rest rooms, public  
17 showers, public dressing facilities or sleeping quarters in  
18 public institutions, where the preference or limitation is  
19 based on sex; and

20 [~~E-~~] F. prevent the mandatory retirement of an  
21 employee upon reaching the age of sixty-five years or older,  
22 if the employer is operating under a retirement plan [ ~~which~~ ]  
23 that meets the requirements of Public Law 93-406, the Employee  
24 Retirement Income Security Act of 1974. "

25 Section 6. EFFECTIVE DATE. --The effective date of the

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provisions of this act is July 1, 1999.

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1 FORTY-FOURTH LEGISLATURE

2 FIRST SESSION, 1999

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6 February 27, 1999

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8 Mr. Speaker:

9  
10 Your JUDICIARY COMMITTEE, to whom has been referred

11  
12 HOUSE BILL 277

13  
14 has had it under consideration and reports same with  
15 recommendation that it DO PASS, amended as follows:

16 1. On page 10, line 25, after "orientation;" strike  
17 the remainder of the line and on page 11, strike lines 1  
18 through 10.

FORTY-FOURTH LEGISLATURE  
FIRST SESSION, 1999

HJC/HB 277

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Respectfully submitted,

\_\_\_\_\_  
R. David Pederson, Chairman

Adopted \_\_\_\_\_

Not Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 6 For 4 Against

Yes: 6

No: Godbey, Mallory, Thompson, Vaughn

Excused: Luna, Taylor, T.

Absent: None

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