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HOUSE BILL 113

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

INTRODUCED BY

Harry Garcia and Christine Chandler

AN ACT

RELATING TO HUMAN RIGHTS; PROHIBITING DISCRIMINATION BASED ON
MILITARY OR VETERAN STATUS.

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

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1 bureau of the labor relations division of the workforce
2 solutions 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 that
6 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 that is
18 by its nature and use distinctly private;

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

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

2 K. "secretary" means the secretary of workforce
3 solutions;

4 L. "unlawful discriminatory practices" means those
5 unlawful practices and acts specified in Section 28-1-7 NMSA
6 1978;

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

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

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

18 P. "sexual orientation" means heterosexuality,
19 homosexuality or bisexuality, whether actual or perceived;

20 Q. "gender identity" means a person's self-
21 perception, or perception of that person by another, of the
22 person's identity as a male or female based upon the person's
23 appearance, behavior or physical characteristics that are in
24 accord with or opposed to the person's physical anatomy,
25 chromosomal sex or sex at birth;

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

8 S. "undue hardship" means an accommodation
9 requiring significant difficulty or expense when considered in
10 light of the following factors:

11 (1) the nature and cost of the accommodation;

12 (2) the financial resources of the employer
13 involved in the provision of the reasonable accommodation;

14 (3) the number of persons the employer
15 employs;

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

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

20 (6) the overall financial resources of the
21 employer;

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

25 (8) the type of operation of the employer,

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1 including the composition, structure and functions of the
2 workforce of the employer; or

3 (9) the geographic separateness or
4 administrative or fiscal relationship to the employer of the
5 employer's facilities; and

6 T. "military or veteran status" means a person's
7 status as a member, veteran or applicant of the:

8 (1) armed forces of the United States or
9 reserve component of the armed forces of the United States;

10 (2) New Mexico national guard; or

11 (3) New Mexico air national guard."

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

14 "28-1-7. UNLAWFUL DISCRIMINATORY PRACTICE.--It is an
15 unlawful discriminatory practice for:

16 A. an employer, unless based on a bona fide
17 occupational qualification or other statutory prohibition, to
18 refuse to hire, to discharge, to promote or demote or to
19 discriminate in matters of compensation, terms, conditions or
20 privileges of employment against any person otherwise qualified
21 because of race, age, religion, color, national origin,
22 ancestry, sex, sexual orientation, gender identity, military or
23 veteran status, pregnancy, childbirth or condition related to
24 pregnancy or childbirth, physical or mental handicap or serious
25 medical condition, or, if the employer has fifty or more

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1 employees, spousal affiliation; provided, however, that 29
2 U.S.C. Section 631(c)(1) and (2) shall apply to discrimination
3 based on age;

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

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

22 D. any person, employer, employment agency or labor
23 organization to print or circulate or cause to be printed or
24 circulated any statement, advertisement or publication, to use
25 any form of application for employment or membership or to make

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1 any inquiry regarding prospective membership or employment that
2 expresses, directly or indirectly, any limitation,
3 specification or discrimination as to race, color, religion,
4 national origin, ancestry, sex, sexual orientation, gender
5 identity, military or veteran status, pregnancy, childbirth or
6 condition related to pregnancy or childbirth, physical or
7 mental handicap or serious medical condition, or, if the
8 employer has fifty or more employees, spousal affiliation,
9 unless based on a bona fide occupational qualification;

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

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1 physical or mental handicap or serious medical condition,
2 unless based on a bona fide occupational qualification;

3 F. any person in any public accommodation to make a
4 distinction, directly or indirectly, in offering or refusing to
5 offer its services, facilities, accommodations or goods to any
6 person because of race, religion, color, national origin,
7 ancestry, sex, sexual orientation, gender identity, pregnancy,
8 childbirth or condition related to pregnancy or childbirth,
9 spousal affiliation, military or veteran status or physical or
10 mental handicap; provided that the physical or mental handicap
11 is unrelated to a person's ability to acquire or rent and
12 maintain particular real property or housing accommodation;

13 G. any person to:

14 (1) refuse to sell, rent, assign, lease or
15 sublease or offer for sale, rental, lease, assignment or
16 sublease any housing accommodation or real property to any
17 person or to refuse to negotiate for the sale, rental, lease,
18 assignment or sublease of any housing accommodation or real
19 property to any person because of 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, military or
23 veteran status or physical or mental handicap; provided that
24 the physical or mental handicap is unrelated to a person's
25 ability to acquire or rent and maintain particular real

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1 property or housing accommodation;

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

14 (3) print, circulate, display or mail or cause
15 to be printed, circulated, displayed or mailed any statement,
16 advertisement, publication or sign or use any form of
17 application for the purchase, rental, lease, assignment or
18 sublease of any housing accommodation or real property or to
19 make any record or inquiry regarding the prospective purchase,
20 rental, lease, assignment or sublease of any housing
21 accommodation or real property that expresses any preference,
22 limitation or discrimination as to race, religion, color,
23 national origin, ancestry, sex, sexual orientation, gender
24 identity, pregnancy, childbirth or condition related to
25 pregnancy or childbirth, spousal affiliation, military or

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1 veteran status or physical or mental handicap; provided that
2 the physical or mental handicap is unrelated to a person's
3 ability to acquire or rent and maintain particular real
4 property or housing accommodation;

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

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

20 (2) use any form of application for financial
21 assistance or to make any record or inquiry in connection with
22 applications for financial assistance that expresses, directly
23 or indirectly, any limitation, specification or discrimination
24 as to race, religion, color, national origin, ancestry, sex,
25 sexual orientation, gender identity, pregnancy, childbirth or

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1 condition related to pregnancy or childbirth, spousal
2 affiliation, military or veteran status or physical or mental
3 handicap;

4 I. any person or employer to:

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

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

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

17 J. any employer to refuse or fail to accommodate a
18 person's physical or mental handicap or serious medical
19 condition, unless such accommodation is unreasonable or an
20 undue hardship;

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

25 L. any employer to require an employee with a need

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1 arising from pregnancy, childbirth or condition related to
2 pregnancy or childbirth to take paid or unpaid leave if another
3 reasonable accommodation can be provided unless the employee
4 voluntarily requests to be placed on leave or the employee is
5 placed on leave pursuant to federal law."

6 SECTION 3. Section 28-1-9 NMSA 1978 (being Laws 1969,
7 Chapter 196, Section 8, as amended) is amended to read:

8 "28-1-9. EXEMPTIONS.--Nothing contained in the Human
9 Rights Act shall:

10 A. apply to any single-family dwelling sold,
11 leased, subleased or rented by an owner without the making of
12 any notice, statement or advertisement with respect to the
13 sale, lease, sublease or rental of a dwelling unit that
14 indicates any preference, limitation or discrimination based on
15 race, color, religion, national origin, ancestry, military or
16 veteran status, sex, sexual orientation or gender identity.

17 This exemption is subject to these further reservations:

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

21 (2) if the seller does not currently live in
22 the dwelling or [he] was not the most recent occupant, the
23 exemption granted in this section shall only apply to one sale
24 in twenty-four months;

25 B. bar any religious or denominational institution

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1 or organization that is operated, supervised or controlled by
2 or that is operated in connection with a religious or
3 denominational organization from limiting admission to or
4 giving preference to persons of the same religion or
5 denomination or from making selections of buyers, lessees or
6 tenants as are calculated by the organization or denomination
7 to promote the religious or denominational principles for which
8 it is established or maintained, unless membership in the
9 religious or denominational organization is restricted on
10 account of race, color, national origin or ancestry;

11 C. bar any religious or denominational institution
12 or organization that is operated, supervised or controlled by
13 or that is operated in connection with a religious or
14 denominational organization from imposing discriminatory
15 employment or renting practices that are based upon sexual
16 orientation or gender identity; provided that the provisions of
17 the Human Rights Act with respect to sexual orientation and
18 gender identity shall apply to any other:

19 (1) for-profit activities of a religious or
20 denominational institution or religious organization subject to
21 the provisions of Section 511(a) of the Internal Revenue Code
22 of 1986, as amended; or

23 (2) nonprofit activities of a religious or
24 denominational institution or religious organization subject to
25 the provisions of Section 501(c)(3) of the Internal Revenue

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1 Code of 1986, as amended;

2 D. apply to rooms or units in dwellings containing
3 living quarters occupied or intended to be occupied by no more
4 than four families living independently of each other, if the
5 owner actually maintains and occupies one of the living
6 quarters as ~~[his]~~ the owner's residence;

7 E. apply to public restrooms, public showers,
8 public dressing facilities or sleeping quarters in public
9 institutions, where the preference or limitation is based on
10 sex; and

11 F. prevent the mandatory retirement of an employee
12 upon reaching the age of sixty-five years or older, if the
13 employer is operating under a retirement plan that meets the
14 requirements of Public Law 93-406, the Employee Retirement
15 Income Security Act of 1974."

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