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AN ACT

RELATING TO HUMAN RIGHTS; EXTENDING THE SCOPE OF THE HUMAN RIGHTS ACT TO APPLY TO CERTAIN ACTIONS OF THE STATE AND ITS POLITICAL SUBDIVISIONS AND PUBLIC CONTRACTORS; EXPANDING THE LIST OF PROTECTED CLASSES TO INCLUDE GENDER; MAKING TECHNICAL CORRECTIONS.

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 by Laws 2021, Chapter 19, Section 3 and by Laws 2021, Chapter 37, Section 3) 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 bureau of the labor relations division of the workforce solutions department;

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

1 F. "labor organization" means any organization
2 that exists for the purpose in whole or in part of collective
3 bargaining or of dealing with employers concerning
4 grievances, terms or conditions of employment or of other
5 mutual aid or protection in connection with employment;

6 G. "employment agency" means any person regularly
7 undertaking with or without compensation to procure
8 opportunities to work or to procure, recruit or refer
9 employees;

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

16 I. "public contractor" means a person who receives
17 public funds as a result of contracting with a governmental
18 entity;

19 J. "political subdivision" means any:
20 (1) county;
21 (2) incorporated city, town or village;
22 (3) drainage, conservancy, irrigation, water
23 and sanitation or other district;

24 (4) mutual domestic association;

25 (5) public water cooperative association; or

1 (6) community ditch association;

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

6 L. "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 M. "secretary" means the secretary of workforce
11 solutions;

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

15 O. "physical or mental disability" means a
16 physical or mental impairment that substantially limits one
17 or more of a person's major life activities. A person is
18 also considered to have a mental or physical disability if
19 the person has a record of a physical or mental disability or
20 is regarded as having a physical or mental disability;

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

24 Q. "applicant for employment" means a person
25 applying for a position as an employee;

1 R. "sex" means a person's categorization as male,
2 female or intersex based on biology, physiology and physical
3 characteristics;

4 S. "sexual orientation" means a person's physical,
5 romantic or emotional attraction to persons of the same or a
6 different gender or the absence of any such attraction;

7 T. "gender identity" means a person's
8 self-perception, based on the person's appearance, behavior
9 or physical characteristics, that the person exhibits more
10 masculinity or femininity or the absence of masculinity or
11 femininity whether or not it matches the person's gender or
12 sex assigned at birth;

13 U. "gender" means an individual or societal
14 expectation or perception of a person as masculine or
15 feminine based on appearance, behavior or physical
16 characteristics;

17 V. "reasonable accommodation" means modification
18 or adaptation of the work environment, work schedule, work
19 rules or job responsibilities, and reached through good faith
20 efforts to explore less restrictive or less expensive
21 alternatives to enable an employee to perform the essential
22 functions of the job and that does not impose an undue
23 hardship on the employer;

24 W. "undue hardship" means an accommodation
25 requiring significant difficulty or expense when considered

1 in light of the following factors:

2 (1) the nature and cost of the
3 accommodation;

4 (2) the financial resources of the employer
5 involved in the provision of the reasonable accommodation;

6 (3) the number of persons the employer
7 employs;

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

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

12 (6) the overall financial resources of the
13 employer;

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

17 (8) the type of operation of the employer,
18 including the composition, structure and functions of the
19 workforce of the employer; or

20 (9) the geographic separateness or
21 administrative or fiscal relationship to the employer of the
22 employer's facilities;

23 X. "cultural or religious headdresses" includes
24 hijabs, head wraps or other headdresses used as part of an
25 individual's personal cultural or religious beliefs;

1 Y. "protective hairstyles" includes such
2 hairstyles as braids, locs, twists, tight coils or curls,
3 cornrows, bantu knots, afros, weaves, wigs or head wraps;

4 Z. "race" includes traits historically associated
5 with race, including hair texture, length of hair, protective
6 hairstyles or cultural or religious headdresses;

7 AA. "state" means the state of New Mexico or any
8 of its agencies, departments, boards, instrumentalities or
9 institutions;

10 BB. "governmental entity" means the state or any
11 public body;

12 CC. "public body" means a state or local
13 government, an advisory board, a commission, an agency or an
14 entity created by the constitution of New Mexico or any
15 branch of government that receives public funding, including
16 political subdivisions, special tax districts, school
17 districts and institutions of higher education; and

18 DD. "services" means any function, program,
19 activity or benefit."

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

22 "28-1-7. UNLAWFUL DISCRIMINATORY PRACTICE.--It is an
23 unlawful discriminatory practice for:

24 A. an employer, unless based on a bona fide
25 occupational qualification or other statutory prohibition, to

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

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

19 C. any employer, labor organization or joint
20 apprenticeship committee to refuse to admit or employ any
21 person in any program established to provide an
22 apprenticeship or other training or retraining because of
23 race, religion, color, national origin, ancestry, sex, sexual
24 orientation, gender, gender identity, pregnancy, childbirth
25 or condition related to pregnancy or childbirth, physical or

1 mental disability or serious medical condition, or, if the
2 employer has fifty or more employees, spousal affiliation;

3 D. any person, employer, employment agency or
4 labor organization to print or circulate or cause to be
5 printed or circulated any statement, advertisement or
6 publication, to use any form of application for employment or
7 membership or to make any inquiry regarding prospective
8 membership or employment that expresses, directly or
9 indirectly, any limitation, specification or discrimination
10 as to race, color, religion, national origin, ancestry, sex,
11 sexual orientation, gender, gender identity, pregnancy,
12 childbirth or condition related to pregnancy or childbirth,
13 physical or mental disability or serious medical condition,
14 or, 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 a person for
19 employment in a known available job, for which the person is
20 otherwise qualified, because of race, religion, color,
21 national origin, ancestry, sex, sexual orientation, gender,
22 gender identity, pregnancy, childbirth or condition related
23 to pregnancy or childbirth, spousal affiliation, physical or
24 mental disability or serious medical condition, unless based
25 on a bona fide occupational qualification, or to comply with

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

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

21 G. any person to:

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

1 assignment or sublease of any housing accommodation or real
2 property to any person because of race, religion, color,
3 national origin, ancestry, sex, sexual orientation, gender,
4 gender identity, pregnancy, childbirth or condition related
5 to pregnancy or childbirth, spousal affiliation or physical
6 or mental disability; provided that the physical or mental
7 disability is unrelated to a person's ability to acquire or
8 rent and maintain particular real property or housing
9 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
14 in connection therewith because of race, religion, color,
15 national origin, ancestry, sex, sexual orientation, gender,
16 gender identity, pregnancy, childbirth or condition related
17 to pregnancy or childbirth, spousal affiliation or physical
18 or mental disability; provided that the physical or mental
19 disability is unrelated to a person's ability to acquire or
20 rent and maintain particular real property or housing
21 accommodation; or

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

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

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

20 (1) consider the race, religion, color,
21 national origin, ancestry, sex, sexual orientation, gender,
22 gender identity, pregnancy, childbirth or condition related
23 to pregnancy or childbirth, spousal affiliation or physical
24 or mental disability of any individual in the granting,
25 withholding, extending, modifying or renewing or in the

1 fixing of the rates, terms, conditions or provisions of any
2 financial assistance or in the extension of services in
3 connection with the request for financial assistance; or

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

13 I. any person or employer to:

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

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

22 (3) willfully obstruct or prevent any person
23 from complying with the provisions of the Human Rights Act or
24 to resist, prevent, impede or interfere with the commission
25 or any of its members, staff or representatives in the

1 performance of their duties under the Human Rights Act;

2 J. any employer to refuse or fail to accommodate a
3 person's physical or mental disability or serious medical
4 condition, unless such accommodation is unreasonable or an
5 undue hardship;

6 K. any employer to refuse or fail to make
7 reasonable accommodation for an employee or job applicant
8 with a need arising from pregnancy, childbirth or condition
9 related to pregnancy or childbirth;

10 L. any employer to require an employee with a need
11 arising from pregnancy, childbirth or condition related to
12 pregnancy or childbirth to take paid or unpaid leave if
13 another reasonable accommodation can be provided unless the
14 employee voluntarily requests to be placed on leave or the
15 employee is placed on leave pursuant to federal law; or

16 M. a governmental entity or a public contractor to
17 refuse or otherwise limit or put conditions on services to a
18 person because of race, age, religion, color, national origin,
19 ancestry, sex, sexual orientation, gender, gender identity,
20 pregnancy, childbirth or condition related to pregnancy or
21 childbirth, physical or mental disability, serious medical
22 condition or spousal affiliation; provided that nothing in
23 this subsection shall be construed to require a governmental
24 entity or a public contractor to provide services or programs
25 beyond services or programs to the specific populations that

1 the governmental entity or public contractor is tasked with
2 serving." _____

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