

1 SENATE BILL 137

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO THE HUMAN RIGHTS COMMISSION; ALLOWING THE
12 APPOINTMENT OF TWO MEMBERS FROM A COUNTY TO THE HUMAN RIGHTS
13 COMMISSION; ALLOWING THE HUMAN RIGHTS COMMISSION TO HOLD A
14 GRIEVANCE HEARING BY VIDEO CONFERENCE.

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

17 SECTION 1. Section 28-1-3 NMSA 1978 (being Laws 1969,
18 Chapter 196, Section 3, as amended) is amended to read:

19 "28-1-3. HUMAN RIGHTS COMMISSION.--

20 A. There is created the "human rights commission"
21 consisting of eleven members appointed by the governor with the
22 advice and consent of the senate. Not more than six of the
23 members shall be of the same political party. Not more than
24 [~~one member~~] two members may be appointed from any one county.
25 The governor shall designate a member to serve as [~~chairman~~]

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1 chair. The commission shall designate one of its members as
2 vice [~~chairman~~] chair to preside in the absence or incapacity
3 of the [~~chairman~~] chair.

4 B. The term of office of each member of the
5 commission is for four years; however, of the commissioners
6 first appointed, one shall be appointed for a term ending
7 December 31, 1969, one for a term ending December 31, 1970, one
8 for a term ending December 31, 1971 and two for terms ending
9 December 31, 1972; provided that the two additional members
10 added pursuant to this 1975 amendment shall be initially
11 appointed for staggered terms of two and three years,
12 respectively, so that one term ends on December 31, 1977 and
13 one ends on December 31, 1978. The four additional
14 commissioners added pursuant to this 1991 amendment shall be
15 appointed for staggered terms; two shall be appointed for terms
16 ending December 31, 1992, and two shall be appointed for terms
17 ending December 31, 1993.

18 C. Any member chosen to fill a vacancy occurring
19 otherwise than by expiration of term shall be appointed for the
20 remainder of the unexpired term. Six members of the commission
21 constitute a quorum to conduct business. Vacancies on the
22 commission shall not impair the right of the remaining members
23 to exercise the powers of the commission.

24 D. Each member of the commission shall be
25 reimbursed, as provided in the Per Diem and Mileage Act, during

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1 the performance of official duties and shall receive no other
2 compensation, perquisite or allowance."

3 SECTION 2. Section 28-1-10 NMSA 1978 (being Laws 1969,
4 Chapter 196, Section 9, as amended) is amended to read:

5 "28-1-10. GRIEVANCE PROCEDURE.--

6 A. A person claiming to be aggrieved by an unlawful
7 discriminatory practice and a member of the commission who has
8 reason to believe that discrimination has occurred may file
9 with the [~~human rights division of the labor department~~] bureau
10 a written complaint that shall state the name and address of
11 the person alleged to have engaged in the discriminatory
12 practice, all information relating to the discriminatory
13 practice and any other information that may be required by the
14 commission. All complaints shall be filed with the [~~division~~]
15 bureau within three hundred days after the alleged act was
16 committed.

17 B. The [~~director~~] bureau shall advise the
18 respondent that a complaint has been filed against the
19 respondent and shall furnish the respondent with a copy of the
20 complaint. The [~~director~~] bureau shall promptly investigate
21 the alleged act. If the [~~director~~] bureau determines that the
22 complaint lacks probable cause, the [~~director~~] bureau shall
23 dismiss the complaint and notify the complainant and respondent
24 of the dismissal. The complaint shall be dismissed subject to
25 appeal as in the case of other orders of the commission.

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1 C. If the [~~director~~] bureau determines that
2 probable cause exists for the complaint, the [~~director~~] bureau
3 shall attempt to achieve a satisfactory adjustment of the
4 complaint through persuasion and conciliation. The [~~director~~]
5 bureau and its staff shall neither disclose what has transpired
6 during the attempted conciliation nor divulge information
7 obtained during any hearing before the commission or a
8 commissioner prior to final action relating to the complaint.
9 An officer or employee of the [~~labor~~] workforce solutions
10 department who makes public in any manner information in
11 violation of this subsection is guilty of a misdemeanor and
12 upon conviction shall be fined not more than one thousand
13 dollars (\$1,000) or imprisoned not more than one year.

14 D. A person who has filed a complaint with the
15 [~~human rights division~~] bureau may request and shall receive an
16 order of nondetermination from the [~~director~~] bureau without
17 delay after the [~~division's~~] bureau's receipt of the complaint
18 and in jointly filed cases', after the federal complaint has
19 been closed. The order of nondetermination may be appealed
20 pursuant to the provisions of Section 28-1-13 NMSA 1978.

21 E. In the case of a complaint filed by or on behalf
22 of a person who has an urgent medical condition and has
23 notified the [~~director~~] bureau in writing of the test results,
24 the [~~director~~] bureau shall make the determination whether
25 probable cause exists for the complaint and shall attempt any

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1 conciliation efforts within ninety days of the filing of the
2 written complaint or notification, whichever occurs last.

3 F. If conciliation fails or if, in the opinion of
4 the [~~director~~] bureau, informal conference cannot result in
5 conciliation and the complainant has not requested a waiver of
6 right to hearing pursuant to the provisions of Subsection [~~F~~] K
7 of this section, the commission shall issue a written complaint
8 in its own name against the respondent, except that in the case
9 of a complaint filed by or on behalf of a person who has an
10 urgent medical condition, who has notified the [~~director~~]
11 bureau in writing of the test results and who so elects, the
12 [~~director~~] bureau shall issue an order of nondetermination,
13 which may be appealed pursuant to the provisions of Section
14 28-1-13 NMSA 1978. The complaint shall set forth the alleged
15 discriminatory practice, the secretary's regulation or the
16 section of the Human Rights Act alleged to have been violated
17 and the relief requested. The complaint shall require the
18 respondent to answer the allegations of the complaint at a
19 hearing before the commission or hearing officer and shall
20 specify the date, time and place of the hearing. The hearing
21 date shall not be more than [~~fifteen~~] sixty or less than [~~ten~~]
22 thirty days after service of the complaint. The complaint
23 shall be served on the respondent personally or by registered
24 mail, return receipt requested.

25 G. The hearing shall be held in the county where

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1 the respondent is doing business or the alleged discriminatory
2 practice occurred or by video conference. If a party objects
3 to a determination of the commission that the hearing be held
4 by video conference, that party shall file a written objection
5 to the commission within ten days after service of the
6 complaint, and the hearing shall be held in person. The
7 commission shall determine whether the in-person hearing will
8 be held in the county where the respondent is doing business or
9 where the alleged discriminatory practice occurred and shall
10 issue the determination no less than ten days after service of
11 the objection.

12 ~~[G.]~~ H. Within one year of the filing of a
13 complaint by a person aggrieved, the commission or its director
14 shall:

15 (1) dismiss the complaint for lack of probable
16 cause;

17 (2) achieve satisfactory adjustment of the
18 complaint as evidenced by order of the commission; or

19 (3) file a formal complaint on behalf of the
20 commission.

21 ~~[H.]~~ I. Upon the commission's petition, the
22 district court of the county where the respondent is doing
23 business or the alleged discriminatory practice occurred may
24 grant injunctive relief pending hearing by the commission or
25 pending judicial review of an order of the commission so as to

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1 preserve the status quo or to ensure that the commission's
2 order as issued will be effective. The commission shall not be
3 required to post a bond.

4 [~~F.~~] J. For purposes of this section, "urgent
5 medical condition" means any medical condition as defined by an
6 appropriate medical authority through documentation or by
7 direct witness of a clearly visible disablement that poses a
8 serious threat to the life of the person with the medical
9 condition.

10 [~~J.~~] K. The complainant may seek a trial de novo in
11 the district court in lieu of a hearing before the commission,
12 provided the complainant requests from the [~~director~~] bureau,
13 in writing, a waiver of complainant's right to hearing within
14 sixty days of service of written notice of a probable cause
15 determination by the [~~director~~] bureau. The [~~director~~] bureau
16 shall approve the waiver request and shall serve notice of the
17 waiver upon the complainant and respondent. The complainant
18 may request a trial de novo pursuant to Section 28-1-13 NMSA
19 1978 within ninety days from the date of service of the waiver.
20 Issuance of the notice shall be deemed a final order of the
21 commission for the purpose of appeal pursuant to Section
22 28-1-13 NMSA 1978."

23 **SECTION 3.** Section 28-1-11 NMSA 1978 (being Laws 1969,
24 Chapter 196, Section 10, as amended) is amended to read:

25 "28-1-11. HEARING PROCEDURES.--

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1 A. The respondent to a complaint made pursuant to
2 Section 28-1-10 NMSA 1978 may file a written answer to the
3 complaint, appear at the hearing, give testimony and be
4 represented by counsel and may obtain from the commission
5 subpoenas for any person or for the production of any evidence
6 pertinent to the proceeding. The complainant shall be present
7 at the hearing, either in person or by video conference
8 pursuant to Subsection G of Section 28-1-10 NMSA 1978, and may
9 be represented by counsel. Each party shall have the right to
10 amend [~~his~~] the party's complaint or answer.

11 B. A panel of three members of the commission
12 designated by the [~~chairman~~] chair shall sit, and a decision
13 agreed upon by two members of the panel shall be the decision
14 of the commission. However, no commissioner who has filed a
15 complaint may sit on the panel hearing [~~his~~] the commissioner's
16 complaint. Hearings also may be conducted by a hearing officer
17 employed by the [~~human rights division of the labor department~~]
18 bureau or, if the hearing officer is unavailable, one member of
19 the commission may be designated by the [~~chairman~~] chair to act
20 as a hearing officer. A hearing officer shall have the same
21 powers and duties as a commissioner as set forth in Paragraph
22 (2) of Subsection A of Section 28-1-4 NMSA 1978.

23 C. The complainant or [~~his~~] the complainant's
24 representative shall present to the commission or the hearing
25 officer the case supporting the complaint. No evidence

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1 concerning prior attempts at conciliation shall be received.
2 The director shall not participate in the hearing, except as a
3 witness.

4 D. The commission and the hearing officer shall not
5 be bound by the formal rules of evidence governing courts of
6 law or equity but shall permit reasonable direct examination
7 and cross-examination and the submission of briefs. Testimony
8 at the hearing shall be taken under oath and recorded by tape
9 or otherwise. Upon the request of any party, testimony shall
10 be transcribed, provided that all costs of transcribing shall
11 be paid by the party so requesting. Each commissioner and
12 hearing officer may administer oaths.

13 E. Upon the conclusion of a hearing conducted by a
14 hearing officer, the hearing officer shall prepare a written
15 report setting forth proposed findings of fact and conclusions
16 of law and recommending the action to be taken by the
17 commission. The hearing officer shall submit the report to a
18 review panel consisting of no more than three members of the
19 commission designated by the [~~chairman~~] chair. No commissioner
20 may sit on the panel reviewing the hearing officer's report
21 issued in connection with a complaint filed by the
22 commissioner. A decision by a majority of the members of the
23 review panel shall be the decision of the commission. If the
24 commission finds from the evidence presented at any hearing
25 held pursuant to this section that the respondent has engaged

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1 in a discriminatory practice, it shall make written findings of
2 fact, conclusions of law and its decision based upon the
3 findings of fact and conclusions of law. The commission may
4 adopt, modify or reject the proposed findings of fact and
5 conclusions of law and the action recommended by the hearing
6 officer. Within five days after any order is rendered by the
7 commission following a hearing, the commission shall serve upon
8 each party of record and ~~[his]~~ the party's attorney, if any, a
9 written copy of the order by certified mail to the party's
10 address of record. All parties shall be deemed to have been
11 served on the tenth day following the mailing. As part of its
12 order, the commission may require the respondent to pay actual
13 damages to the complainant and to pay reasonable ~~[attorneys']~~
14 attorney fees, if the complainant was represented by private
15 counsel, and to take such affirmative action as the commission
16 considers necessary, including a requirement for reports of the
17 manner of compliance.

18 F. If the commission finds from the evidence that
19 the respondent has not engaged in a discriminatory practice, it
20 shall make written findings of fact and serve the complainant
21 and respondent with a copy of the findings of fact and with an
22 order dismissing the complaint."

23 SECTION 4. EFFECTIVE DATE.--The effective date of the
24 provisions of this act is July 1, 2014.