

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 96

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

AN ACT

RELATING TO EMPLOYMENT OF EX-CONVICTS; PROHIBITING PRIVATE
EMPLOYERS FROM INQUIRING ABOUT AN APPLICANT'S HISTORY OF ARREST
OR CONVICTION ON AN INITIAL EMPLOYMENT APPLICATION; PROVIDING
AN ADDITIONAL UNLAWFUL DISCRIMINATORY PRACTICE IN THE HUMAN
RIGHTS ACT.

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

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

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

A. an employer, unless based on a bona fide
occupational qualification or other statutory prohibition, to
refuse to hire, to discharge, to promote or demote or to
discriminate in matters of compensation, terms, conditions or

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underscoring material = new
[bracketed material] = delete

1 privileges of employment against any person otherwise qualified
2 because of race, age, religion, color, national origin,
3 ancestry, sex, physical or mental handicap or serious medical
4 condition, or, if the employer has fifty or more employees,
5 spousal affiliation; provided, however, that 29 U.S.C. Section
6 631(c)(1) and (2) shall apply to discrimination based on age;
7 or, if the employer has fifteen or more employees, to
8 discriminate against an employee based upon the employee's
9 sexual orientation or gender identity;

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

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

24 D. any person, employer, employment agency or labor
25 organization to print or circulate or cause to be printed or

1 circulated any statement, advertisement or publication, to use
2 any form of application for employment or membership or to make
3 any inquiry regarding prospective membership or employment that
4 expresses, directly or indirectly, any limitation,
5 specification or discrimination as to race, color, religion,
6 national origin, ancestry, sex, sexual orientation, gender
7 identity, physical or mental handicap or serious medical
8 condition, or, if the employer has fifty or more employees,
9 spousal affiliation, 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 a person for
13 employment in a known available job, for which the person is
14 otherwise qualified, because of race, religion, color, national
15 origin, ancestry, sex, sexual orientation, gender identity,
16 spousal affiliation, physical or mental handicap or serious
17 medical condition, unless based on a bona fide occupational
18 qualification, or to comply with a request from an employer for
19 referral of applicants for employment if the request indicates,
20 either directly or indirectly, that the employer discriminates
21 in employment on the basis of race, religion, color, national
22 origin, ancestry, sex, sexual orientation, gender identity,
23 spousal affiliation, physical or mental handicap or serious
24 medical condition, unless based on a bona fide occupational
25 qualification;

.213879.1

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

10 G. any person to:

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

22 (2) discriminate against any person in the
23 terms, conditions or privileges of the sale, rental,
24 assignment, lease or sublease of any housing accommodation or
25 real property or in the provision of facilities or services in

1 connection therewith because of race, religion, color, national
2 origin, ancestry, sex, sexual orientation, gender identity,
3 spousal affiliation or physical or mental handicap; provided
4 that the physical or mental handicap is unrelated to a person's
5 ability to acquire or rent and maintain particular real
6 property or housing accommodation; or

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

21 H. any person to whom application is made either
22 for financial assistance for the acquisition, construction,
23 rehabilitation, repair or maintenance of any housing
24 accommodation or real property or for any type of consumer
25 credit, including financial assistance for the acquisition of

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1 any consumer good as defined by Section 55-9-102 NMSA 1978, to:

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

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

17 I. any person or employer to:

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

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

25 (3) willfully obstruct or prevent any person

.213879.1

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

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

9 K. an employer to violate Section 3 of this 2019
 10 act with respect to an applicant for employment."

11 SECTION 2. Section 28-2-1 NMSA 1978 (being Laws 1974,
 12 Chapter 78, Section 1) is amended to read:

13 "28-2-1. SHORT TITLE.--~~[Sections 1 through 6 of this act]~~
 14 Chapter 28, Article 2 NMSA 1978 may be cited as the "Criminal
 15 Offender Employment Act"."

16 SECTION 3. A new section of the Criminal Offender
 17 Employment Act is enacted to read:

18 "[NEW MATERIAL] EMPLOYMENT ELIGIBILITY DETERMINATION--
 19 PRIVATE EMPLOYERS.--If a private employer uses a written or
 20 electronic employment application, the employer shall not make
 21 an inquiry regarding an applicant's history of arrest or
 22 conviction on the employment application but may take into
 23 consideration an applicant's conviction after review of the
 24 applicant's application and upon discussion of employment with
 25 the applicant. Nothing in this section shall prohibit an

.213879.1

1 employer from notifying an applicant that the law or the
2 employer's policy could disqualify an applicant who has a
3 certain criminal history from employment in particular
4 positions with that employer."