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HOUSE BILL 360

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Gail C. Beam

AN ACT

**RELATING TO HUMAN RIGHTS; MAKING IT UNLAWFUL TO DISCRIMINATE
BASED UPON A PERSON'S SEXUAL ORIENTATION; AMENDING AND
ENACTING SECTIONS OF THE HUMAN RIGHTS ACT.**

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;

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1 D. "director" means the director of the human
2 rights division of the labor 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
6 [~~which~~] that exists for the purpose in whole or in part of
7 collective bargaining or of dealing with employers concerning
8 grievances, terms or conditions of employment or of other
9 mutual aid or 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 [~~which~~]
18 that is by its nature and use distinctly private;

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

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

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

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

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

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

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, to refuse to hire, to discharge,

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1 to promote or demote or to discriminate in matters of
2 compensation, terms, conditions or privileges of employment
3 against any person otherwise qualified because of race, age,
4 religion, color, national origin, ancestry, sex, sexual
5 orientation, physical or mental handicap or serious medical
6 condition; provided, however, that 29 U. S. C. Section 631(c)(1)
7 and (2) shall apply to discrimination based on age;

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

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

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

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1 membership or employment [~~which~~] that expresses, directly or
2 indirectly, any limitation, specification or discrimination as
3 to race, color, religion, national origin, ancestry, sex,
4 sexual orientation, physical or mental handicap or serious
5 medical condition unless based on a bona fide occupational
6 qualification;

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

21 F. any person in any public accommodation to make
22 a distinction, directly or indirectly, in offering or refusing
23 to offer its services, facilities, accommodations or goods to
24 any individual because of race, religion, color, national
25 origin, ancestry, sex, sexual orientation or physical or

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

4 G. any person to:

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

16 (2) discriminate against any individual in
17 the terms, conditions or privileges of the sale, rental,
18 assignment, lease or sublease of any housing accommodation or
19 real property or in the provision of facilities or services in
20 connection therewith because of the race, religion, color,
21 national origin, ancestry, sex, sexual orientation or physical
22 or mental handicap, provided that the physical or mental
23 handicap is unrelated to an individual's ability to acquire or
24 rent and maintain particular real property or housing
25 accommodation; or

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

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

22 (1) consider the race, religion, color,
23 national origin, ancestry, sex, sexual orientation or physical
24 or mental handicap of any individual in the granting,
25 withholding, extending, modifying or renewing or in the fixing

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

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

11 I. any person or employer to:

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

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

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

25 J. any employer to refuse or fail to accommodate

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1 to an individual's physical or mental handicap or serious
2 medical condition, unless such accommodation is unreasonable
3 or an undue hardship. "

4 Section 3. A new section of the Human Rights Act is
5 enacted to read:

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

10 Section 4. Section 28-1-9 NMSA 1978 (being Laws 1969,
11 Chapter 196, Section 8, as amended) is amended to read:

12 "28-1-9. EXEMPTIONS. -- Nothing contained in the Human
13 Rights Act shall:

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

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

25 (2) if the seller [~~doesn't~~] does not

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1 presently live in the dwelling or he was not the most recent
2 occupant, then the exemption granted in this section [~~will~~]
3 shall only apply to one sale in twenty-four months;

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

16 C. bar any religious or denominational institution
17 or organization that is operated, supervised or controlled by
18 or that is operated in connection with a religious or
19 denominational organization from imposing discriminatory
20 employment or renting practices that are based upon sexual
21 orientation;

22 [~~C.-~~] D. apply to rooms or units in dwellings
23 containing living quarters occupied or intended to be occupied
24 by no more than four families living independently of each
25 other, if the owner actually maintains and occupies one of the

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1 living quarters as his residence;

2 [D-] E. apply to public rest rooms, public
3 showers, public dressing facilities or sleeping quarters in
4 public institutions, where the preference or limitation is
5 based on sex; and

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

11 Section 5. EFFECTIVE DATE. -- The effective date of the
12 provisions of this act is July 1, 2001.