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HOUSE BILL 340

45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002

INTRODUCED BY

Dani ce R. Pi craux

FOR THE LEGISLATIVE HEALTH SUBCOMMITTEE

AN ACT

**RELATING TO HUMAN RIGHTS; PROVIDING FOR PROTECTION OF GENETIC
PRIVACY AGAINST UNLAWFUL DISCRIMINATORY PRACTICES; AMENDING
SECTIONS OF THE NMSA 1978.**

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 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 which
18 is by its nature and use distinctly private;

19 I. "housing accommodation" means any building or
20 portion of a building which 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;

18 P. "DNA" means deoxyribonucleic acid, including
19 mitochondrial DNA, complementary DNA and DNA derived from
20 ribonucleic acid;

21 Q. "gene products" means gene fragments,
22 ribonucleic acids or proteins derived from DNA that would be a
23 reflection of or indicate DNA sequence information;

24 R. "genetic analysis" means a test of a person's
25 DNA, gene products or chromosomes that indicates a propensity

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1 for or susceptibility to illness, disease, impairment or other
2 disorders, whether physical or mental; that demonstrates
3 genetic or chromosomal damage due to environmental factors; or
4 that indicates carrier status for disease or disorder;
5 excluded, however, are routine physical measurements,
6 chemical, blood and urine analysis, tests for drugs, tests for
7 the presence of human immunodeficiency virus and any other
8 tests or analyses commonly accepted in clinical practice at
9 the time ordered;

10 S. "genetic information" means information about
11 the genetic makeup of a person or members of a person's
12 family, including information resulting from genetic analysis,
13 DNA composition, participation in genetic research or use of
14 genetic services; and

15 T. "genetic propensity" means the presence in a
16 person or members of a person's family of real or perceived
17 variations in DNA or other genetic material from that of the
18 normal genome that do not represent the outward physical or
19 medical signs of a genetic disease at the time of
20 consideration. "

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

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

25 A. an employer, unless based on a bona fide

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1 occupational qualification or other statutory prohibition, to
2 refuse to hire, to discharge, to promote or demote or to
3 discriminate in matters of compensation, terms, conditions or
4 privileges of employment against any person otherwise
5 qualified because of race, age, religion, color, national
6 origin, ancestry, sex, physical or mental handicap, [or]
7 serious medical condition, genetic analysis, genetic
8 information, genetic propensity or family health history
9 or, if the employer has fifty or more employees, spousal
10 affiliation; provided, however, that 29 U.S.C. Section
11 631(c)(1) and (2) shall apply to discrimination based on age;

12 B. a labor organization to exclude an individual
13 or to expel or otherwise discriminate against any of its
14 members or against any employer or employee because of race,
15 religion, color, national origin, ancestry, sex, spousal
16 affiliation, physical or mental handicap or serious medical
17 condition;

18 C. any employer, labor organization or joint
19 apprenticeship committee to refuse to admit or employ any
20 individual in any program established to provide an
21 apprenticeship or other training or retraining because of
22 race, religion, color, national origin, ancestry, sex,
23 physical or mental handicap, [or] serious medical condition,
24 genetic analysis, genetic information, genetic propensity or
25 family health history or, if the employer has fifty or more

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1 employees, spousal affiliation;

2 D. any person, employer, employment agency or labor
3 organization to print or circulate or cause to be printed or
4 circulated any statement, advertisement or publication, to use
5 any form of application for employment or membership or to
6 make any inquiry regarding prospective membership or
7 employment that expresses, directly or indirectly, any
8 limitation, specification or discrimination as to race, color,
9 religion, national origin, ancestry, sex, physical or mental
10 handicap, [or] serious medical condition, genetic analysis,
11 genetic information, genetic propensity or family health
12 history or, if the employer has fifty or more employees,
13 spousal affiliation, unless based on a bona fide occupational
14 qualification;

15 E. an employment agency to refuse to list and
16 properly classify for employment or refer an individual for
17 employment in a known available job, for which the individual
18 is otherwise qualified, because of race, religion, color,
19 national origin, ancestry, sex, spousal affiliation, physical
20 or mental handicap, [or] serious medical condition, genetic
21 analysis, genetic information, genetic propensity or family
22 health history, unless based on a bona fide occupational
23 qualification, or to comply with a request from an employer
24 for referral of applicants for employment if the request
25 indicates either directly or indirectly that the employer

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1 discriminates in employment on the basis of race, religion,
2 color, national origin, ancestry, sex, spousal affiliation,
3 physical or mental handicap, ~~[or]~~ serious medical condition,
4 genetic analysis, genetic information, genetic propensity or
5 family health history unless based on a bona fide occupational
6 qualification;

7 F. any person in any public accommodation to make a
8 distinction, directly or indirectly, in offering or refusing
9 to offer its services, facilities, accommodations or goods to
10 any individual because of race, religion, color, national
11 origin, ancestry, sex, spousal affiliation or physical or
12 mental handicap, provided that the physical or mental handicap
13 is unrelated to an individual's ability to acquire or rent and
14 maintain particular real property or housing accommodation;

15 G. any person to:

16 (1) refuse to sell, rent, assign, lease or
17 sublease or offer for sale, rental, lease, assignment or
18 sublease any housing accommodation or real property to any
19 individual or to refuse to negotiate for the sale, rental,
20 lease, assignment or sublease of any housing accommodation or
21 real property to any individual because of race, religion,
22 color, national origin, ancestry, sex, spousal affiliation or
23 physical or mental handicap, provided that the physical or
24 mental handicap is unrelated to an individual's ability to
25 acquire or rent and maintain particular real property or

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1 housing accommodation;

2 (2) discriminate against any individual in
3 the 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 the race, religion, color,
7 national origin, ancestry, sex, spousal affiliation or
8 physical or mental handicap, provided that the physical or
9 mental handicap is unrelated to an individual's ability to
10 acquire or rent and maintain particular real property or
11 housing accommodation; or

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

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1 H. any person to whom application is made either
2 for financial assistance for the acquisition, construction,
3 rehabilitation, repair or maintenance of any housing
4 accommodation or real property or for any type of consumer
5 credit, including financial assistance for the acquisition of
6 any consumer good as defined by Section 55-9-109 NMSA 1978,
7 to:

8 (1) consider the race, religion, color,
9 national origin, ancestry, sex, spousal affiliation or
10 physical or mental handicap of any individual in the granting,
11 withholding, extending, modifying or renewing or in the fixing
12 of the rates, terms, conditions or provisions of any financial
13 assistance or in the extension of services in connection with
14 the request for financial assistance; or

15 (2) use any form of application for financial
16 assistance or to make any record or inquiry in connection with
17 applications for financial assistance that expresses, directly
18 or indirectly, any limitation, specification or discrimination
19 as to race, religion, color, national origin, ancestry, sex,
20 spousal affiliation or physical or mental handicap;

21 I. any person or employer to:

22 (1) aid, abet, incite, compel or coerce the
23 doing of any unlawful discriminatory practice or to attempt to
24 do so;

25 (2) engage in any form of threats, reprisal

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1 or discrimination against any person who has opposed any
2 unlawful discriminatory practice or has filed a complaint,
3 testified or participated in any proceeding under the Human
4 Rights Act; or

5 (3) willfully obstruct or prevent any person
6 from complying with the provisions of the Human Rights Act or
7 to resist, prevent, impede or interfere with the commission or
8 any of its members, staff or representatives in the
9 performance of their duties under the Human Rights Act; [or]

10 J. any employer to refuse or fail to accommodate to
11 an individual's physical or mental handicap or serious medical
12 condition, unless such accommodation is unreasonable or an
13 undue hardship; or

14 K. any employer or employment agency to use genetic
15 analysis, genetic information, genetic propensity or family
16 health history in any employment-related decisions, including
17 hiring, discharge, promotion, demotion, compensation and
18 terms, conditions and privileges of employment, unless the use
19 of genetic analysis, genetic information, genetic propensity
20 or family health history is to determine if a genetic
21 propensity exists for increased susceptibility to an
22 occupational toxic exposure. "