

1 SENATE BILL 286

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO REAL PROPERTY; PROHIBITING THE SUBMISSION OF A DEED
12 OR OTHER INSTRUMENT OF WRITING TO THE OFFICE OF THE COUNTY
13 CLERK THAT HAS ATTACHED A DISCRIMINATORY RESTRICTIVE COVENANT
14 OR GENDER-SPECIFIC LANGUAGE; DECLARING VOID UNLAWFUL
15 DISCRIMINATORY RESTRICTIVE COVENANTS; REQUIRING THE REMOVAL OF
16 UNLAWFUL RESTRICTIVE COVENANTS, RESTRICTIONS AND CONDITIONS
17 FROM INSTRUMENTS AFFECTING THE TRANSFER OF REAL PROPERTY BEFORE
18 INSTRUMENTS CAN BE RECORDED; PROVIDING THAT A DEED OR OTHER
19 INSTRUMENT OF WRITING MAY INCLUDE A STATEMENT THAT A
20 DISCRIMINATORY RESTRICTIVE COVENANT IS VOID AS AGAINST PUBLIC
21 POLICY.
22

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

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

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

3 A. an employer, unless based on a bona fide
4 occupational qualification or other statutory prohibition, to
5 refuse to hire, to discharge, to promote or demote or to
6 discriminate in matters of compensation, terms, conditions or
7 privileges of employment against any person otherwise qualified
8 because of race, age, religion, color, national origin,
9 ancestry, sex, sexual orientation, gender identity, pregnancy,
10 childbirth or condition related to pregnancy or childbirth,
11 physical or mental handicap or serious medical condition, or,
12 if the employer has fifty or more employees, spousal
13 affiliation; provided, however, that 29 U.S.C. Section
14 631(c)(1) and (2) shall apply to discrimination based on age;

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

22 C. any employer, labor organization or joint
23 apprenticeship committee to refuse to admit or employ any
24 person in any program established to provide an apprenticeship
25 or other training or retraining because of race, religion,

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1 color, national origin, ancestry, sex, sexual orientation,
2 gender identity, pregnancy, childbirth or condition related to
3 pregnancy or childbirth, physical or mental handicap or serious
4 medical condition, or, if the employer has fifty or more
5 employees, spousal affiliation;

6 D. any person, employer, employment agency or labor
7 organization to print or circulate or cause to be printed or
8 circulated any statement, advertisement or publication, to use
9 any form of application for employment or membership or to make
10 any inquiry regarding prospective membership or employment that
11 expresses, directly or indirectly, any limitation,
12 specification or discrimination as to race, color, religion,
13 national origin, ancestry, sex, sexual orientation, gender
14 identity, pregnancy, childbirth or condition related to
15 pregnancy or childbirth, physical or mental handicap or serious
16 medical condition, or, if the employer has fifty or more
17 employees, spousal affiliation, unless based on a bona fide
18 occupational qualification;

19 E. an employment agency to refuse to list and
20 properly classify for employment or refer a person for
21 employment in a known available job, for which the person is
22 otherwise qualified, because of race, religion, color, national
23 origin, ancestry, sex, sexual orientation, gender identity,
24 pregnancy, childbirth or condition related to pregnancy or
25 childbirth, spousal affiliation, physical or mental handicap or

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

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

22 G. any person to:

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

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

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

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1 make any record or inquiry regarding the prospective purchase,
2 rental, lease, assignment or sublease of any housing
3 accommodation or real property that expresses any preference,
4 limitation or discrimination as to race, religion, color,
5 national origin, ancestry, sex, sexual orientation, gender
6 identity, pregnancy, childbirth or condition related to
7 pregnancy or childbirth, spousal affiliation or physical or
8 mental handicap; provided that the physical or mental handicap
9 is unrelated to a person's ability to acquire or rent and
10 maintain particular real property or housing accommodation; or
11 (4) submit a deed or other instrument of
12 writing to the office of the county clerk for recording with an
13 attached restrictive covenant, the intent or effect of which is
14 to restrict ownership, residency or use of real property
15 because of race, religion, color, national origin, ancestry,
16 sex, sexual orientation, gender identity, pregnancy, childbirth
17 or condition related to pregnancy or childbirth, spousal
18 affiliation or physical or mental handicap;

19 H. any person to whom application is made either
20 for financial assistance for the acquisition, construction,
21 rehabilitation, repair or maintenance of any housing
22 accommodation or real property or for any type of consumer
23 credit, including financial assistance for the acquisition of
24 any consumer good as defined by Section 55-9-102 NMSA 1978, to:

25 (1) consider the race, religion, color,

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1 national origin, ancestry, sex, sexual orientation, gender
2 identity, pregnancy, childbirth or condition related to
3 pregnancy or childbirth, spousal affiliation or physical or
4 mental handicap of any individual in the granting, withholding,
5 extending, modifying or renewing or in the fixing of the rates,
6 terms, conditions or provisions of any financial assistance or
7 in the extension of services in connection with the request for
8 financial assistance; or

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

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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;

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

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

19 SECTION 2. A new section of Chapter 47, Article 1 NMSA
20 1978 is enacted to read:

21 "[NEW MATERIAL] UNLAWFUL RESTRICTIVE COVENANTS--
22 RECORDING.--

23 A. Any covenant attached to real property that
24 contains language with the intent or effect to restrict
25 ownership, residency or use of real property because of a

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1 person's race, religion, national origin or any other class
2 that is protected by the Human Rights Act is void as against
3 public policy.

4 B. No deed or other instrument of writing relating
5 to real property shall use gender-specific language when
6 referring to grantors or grantees.

7 C. No deed or other instrument of writing shall be
8 submitted to be recorded in the property records of the county
9 clerk that contains a covenant or language that meets the
10 description in Subsection A or B of this section. A county
11 clerk may reject an instrument of writing submitted to be
12 recorded if it contains a covenant or language that meets the
13 description in Subsection A or B of this section.

14 D. When preparing a deed or other instrument of
15 writing to be recorded in the office of the county clerk, a
16 title company, an attorney or any other person shall remove a
17 covenant or language that meets the description in Subsection A
18 or B of this section from the description of real property. A
19 deed or other instrument of writing may contain the following
20 disclaimer to comply with this section:

21 "It is the policy of the state of New Mexico that there be
22 no discrimination in the ownership, residency or use of real
23 property. Any covenants that would restrict such ownership in
24 violation of state or federal law is hereby void as against
25 public policy."

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E. Any person with an ownership or financial interest in real property may, at any time, re-record the deed to such property so that the deed conforms with the requirements of this section."