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HOUSE BILL 111

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

Andrea Romero and Angelica Rubio

AN ACT

RELATING TO HOUSING; PROHIBITING CERTAIN DISCRIMINATORY
PRACTICES RELATING TO THE SALE, RENTAL, ASSIGNMENT, LEASE OR
SUBLEASE OF A PROPERTY; REQUIRING THE PROVISION OF RECEIPTS FOR
RECEIVED RENTAL PAYMENTS; ALTERING CERTAIN PAYMENTS AND FEES
ASSOCIATED WITH RENTAL AGREEMENTS; ALTERING THE REQUIREMENT FOR
A WRITTEN STATEMENT OF DEDUCTIONS IN CERTAIN CIRCUMSTANCES;
INCREASING CERTAIN CIVIL PENALTIES; INCREASING THE TIME
PERMITTED TO REMEDY A BREACH OF A RENTAL AGREEMENT; INCREASING
PERIODS OF TIME REQUIRED FOR CERTAIN NOTICES; REQUIRING THAT AN
ENFORCEABLE NOTICE OF TERMINATION AND DAMAGES COMPLY WITH THE
HUMAN RIGHTS ACT; CREATING A PRESUMPTION OF RETALIATION UNDER
CERTAIN CIRCUMSTANCES; REQUIRING THE ISSUANCE OF A JUDGMENT OF
RESTITUTION PRIOR TO A WRIT OF RESTITUTION; PROVIDING A
RESIDENT THE RIGHT TO CURE; STAYING THE ISSUANCE AND EXECUTION
OF A WRIT OF RESTITUTION DURING AN APPEAL; PROHIBITING AN OWNER

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1 FROM REFUSING TO RENEW OR SEEKING TO TERMINATE A RENTAL
2 AGREEMENT DURING A DECLARED EMERGENCY OR DISASTER; ESTABLISHING
3 THE STATE HOUSING COUNCIL; PROVIDING DUTIES.

4

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

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

8 "28-1-2. DEFINITIONS.--As used in the Human Rights Act:

9 A. "person" means one or more individuals, a
10 partnership, association, organization, corporation, joint
11 venture, legal representative, trustees, receivers or the state
12 and all of its political subdivisions;

13 B. "employer" means any person employing four or
14 more persons and any person acting for an employer;

15 C. "commission" means the human rights commission;

16 D. "director" or "bureau" means the human rights
17 bureau of the labor relations division of the workforce
18 solutions department;

19 E. "employee" means any person in the employ of an
20 employer or an applicant for employment;

21 F. "labor organization" means any organization that
22 exists for the purpose in whole or in part of collective
23 bargaining or of dealing with employers concerning grievances,
24 terms or conditions of employment or of other mutual aid or
25 protection in connection with employment;

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1 G. "employment agency" means any person regularly
2 undertaking with or without compensation to procure
3 opportunities to work or to procure, recruit or refer
4 employees;

5 H. "public accommodation" means any establishment
6 that provides or offers its services, facilities,
7 accommodations or goods to the public, but does not include a
8 bona fide private club or other place or establishment that is
9 by its nature and use distinctly private;

10 I. "housing accommodation" means any building or
11 portion of a building that is constructed or to be constructed,
12 which is used or intended for use as the residence or sleeping
13 place of any individual;

14 J. "real property" means lands, leaseholds or
15 commercial or industrial buildings, whether constructed or to
16 be constructed, offered for sale or rent, and any land rented
17 or leased for the use, parking or storage of house trailers;

18 K. "secretary" means the secretary of workforce
19 solutions;

20 L. "unlawful discriminatory practices" means those
21 unlawful practices and acts specified in Section 28-1-7 NMSA
22 1978;

23 M. "physical or mental handicap" means a physical
24 or mental impairment that substantially limits one or more of a
25 person's major life activities. A person is also considered to

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1 be physically or mentally handicapped if the person has a
2 record of a physical or mental handicap or is regarded as
3 having a physical or mental handicap;

4 N. "major life activities" means functions such as
5 caring for one's self, performing manual tasks, walking,
6 seeing, hearing, speaking, breathing, learning and working;

7 O. "applicant for employment" means a person
8 applying for a position as an employee;

9 P. "sexual orientation" means heterosexuality,
10 homosexuality or bisexuality, whether actual or perceived;

11 Q. "gender identity" means a person's self-
12 perception, or perception of that person by another, of the
13 person's identity as a male or female based upon the person's
14 appearance, behavior or physical characteristics that are in
15 accord with or opposed to the person's physical anatomy,
16 chromosomal sex or sex at birth;

17 R. "reasonable accommodation" means modification or
18 adaptation of the work environment, work schedule, work rules
19 or job responsibilities, and reached through good faith efforts
20 to explore less restrictive or less expensive alternatives to
21 enable an employee to perform the essential functions of the
22 job and that does not impose an undue hardship on the employer;
23 [~~and~~]

24 S. "undue hardship" means an accommodation
25 requiring significant difficulty or expense when considered in

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1 light of the following factors:

2 (1) the nature and cost of the accommodation;

3 (2) the financial resources of the employer
4 involved in the provision of the reasonable accommodation;

5 (3) the number of persons the employer
6 employs;

7 (4) the effect of the accommodation on
8 expenses and resources;

9 (5) the impact of the accommodation otherwise
10 upon the employer's business;

11 (6) the overall financial resources of the
12 employer;

13 (7) the overall size of the business of an
14 employer with respect to the number, type and location of its
15 facilities;

16 (8) the type of operation of the employer,
17 including the composition, structure and functions of the
18 workforce of the employer; or

19 (9) the geographic separateness or
20 administrative or fiscal relationship to the employer of the
21 employer's facilities;

22 T. "source of income" means any lawful source of
23 money and program requirements of such funding paid directly or
24 indirectly to or on behalf of a renter or buyer of housing,
25 including:

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1 (1) income from a lawful profession,
2 occupation or job;

3 (2) income derived from social security or any
4 form of federal, state or local public assistance or housing
5 assistance, including a housing choice voucher issued pursuant
6 to Section 8 of the United States Housing Act of 1937, or any
7 other form of housing assistance payment or credit, whether or
8 not such income or credit is paid or attributed directly to a
9 landlord and even if such income includes additional federal,
10 state or local requirements; or

11 (3) a gift, an inheritance, a pension, an
12 annuity, alimony, child support, foster care subsidies or any
13 other consideration or benefit; and

14 U. "minimum income requirement" means a requirement
15 set by an owner relating to the amount of income a prospective
16 tenant must receive in a prescribed period of time and used to
17 determine the prospective tenant's ability to pay rent."

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

20 "28-1-7. UNLAWFUL DISCRIMINATORY PRACTICE.--It is an
21 unlawful discriminatory practice for:

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

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

9 B. a labor organization to exclude a person or to
10 expel or otherwise discriminate against any of its members or
11 against any employer or employee because of race, religion,
12 color, national origin, ancestry, sex, sexual orientation,
13 gender identity, pregnancy, childbirth or condition related to
14 pregnancy or childbirth, spousal affiliation, physical or
15 mental 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, pregnancy, childbirth or condition related to
22 pregnancy or childbirth, physical or mental handicap or serious
23 medical condition, or, if the employer has fifty or more
24 employees, spousal affiliation;

25 D. any person, employer, employment agency or labor

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

13 E. an employment agency to refuse to list and
14 properly classify for employment or refer a person for
15 employment in a known available job, for which the person is
16 otherwise qualified, because of race, religion, color, national
17 origin, ancestry, sex, sexual orientation, gender identity,
18 pregnancy, childbirth or condition related to pregnancy or
19 childbirth, spousal affiliation, physical or mental handicap or
20 serious medical condition, unless based on a bona fide
21 occupational qualification, or to comply with a request from an
22 employer for referral of applicants for employment if the
23 request indicates, either directly or indirectly, that the
24 employer discriminates in employment on the basis of race,
25 religion, color, national origin, ancestry, sex, sexual

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1 orientation, gender identity, pregnancy, childbirth or
2 condition related to pregnancy or childbirth, spousal
3 affiliation, physical or mental handicap or serious medical
4 condition, unless based on a bona fide occupational
5 qualification;

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

16 G. any person to:

17 (1) refuse to sell, rent, assign, lease or
18 sublease or offer for sale, rental, lease, assignment or
19 sublease any housing accommodation or real property to any
20 person or to refuse to negotiate for the sale, rental, lease,
21 assignment or sublease of any housing accommodation or real
22 property to any person because of race, religion, color,
23 national origin, ancestry, sex, sexual orientation, gender
24 identity, pregnancy, childbirth or condition related to
25 pregnancy or childbirth, spousal affiliation, source of income

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1 or the requirements of any program providing the source of
2 income or physical or mental handicap; provided that the
3 physical or mental handicap is unrelated to a person's ability
4 to acquire or rent and maintain particular real property or
5 housing accommodation;

6 (2) discriminate against any person in the
7 terms, conditions or privileges of the sale, rental,
8 assignment, lease or sublease of any housing accommodation or
9 real property or in the provision of facilities or services in
10 connection therewith because of race, religion, color, national
11 origin, ancestry, sex, sexual orientation, gender identity,
12 pregnancy, childbirth or condition related to pregnancy or
13 childbirth, spousal affiliation, source of income or physical
14 or mental handicap; provided that the physical or mental
15 handicap is unrelated to a person's ability to acquire or rent
16 and maintain particular real property or housing accommodation;
17 [~~or~~]

18 (3) print, circulate, display or mail or cause
19 to be printed, circulated, displayed or mailed any statement,
20 advertisement, publication or sign or use any form of
21 application for the purchase, rental, lease, assignment or
22 sublease of any housing accommodation or real property or to
23 make any record or inquiry regarding the prospective purchase,
24 rental, lease, assignment or sublease of any housing
25 accommodation or real property that expresses any preference,

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1 limitation or discrimination as to race, religion, color,
2 national origin, ancestry, sex, sexual orientation, gender
3 identity, pregnancy, childbirth or condition related to
4 pregnancy or childbirth, spousal affiliation, source of income
5 or physical or mental handicap; provided that the physical or
6 mental handicap is unrelated to a person's ability to acquire
7 or rent and maintain particular real property or housing
8 accommodation;

9 (4) represent to any person, because of race,
10 color, religion, sex, disability, marital status, familial
11 status, sexual orientation, gender identity, national origin or
12 source of income, or because of the requirements of any program
13 providing the source of income, that any dwelling is not
14 available for inspection, sale or rental when the dwelling is
15 available;

16 (5) in determining whether the prospective
17 tenant meets minimum income requirements, exclude from the
18 calculation any lawful source of income received by the
19 applicant; or

20 (6) impose additional requirements on a tenant
21 or a prospective tenant whose rent is to be subsidized by a
22 third party not imposed on other tenants, such as additional
23 security deposits or requirements to maintain renter's
24 insurance; provided that nothing in this section shall be
25 construed as a prohibition against a property owner or manager

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1 conducting an income or credit inquiry on a prospective tenant;

2 H. any person to whom application is made either
3 for financial assistance for the acquisition, construction,
4 rehabilitation, repair or maintenance of any housing
5 accommodation or real property or for any type of consumer
6 credit, including financial assistance for the acquisition of
7 any consumer good as defined by Section 55-9-102 NMSA 1978, to:

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

17 (2) use any form of application for financial
18 assistance or to make any record or inquiry in connection with
19 applications for financial assistance that expresses, directly
20 or indirectly, any limitation, specification or discrimination
21 as to race, religion, color, national origin, ancestry, sex,
22 sexual orientation, gender identity, pregnancy, childbirth or
23 condition related to pregnancy or childbirth, spousal
24 affiliation or physical or mental handicap;

25 I. any person or employer to:

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

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

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

13 J. any employer to refuse or fail to accommodate a
14 person's physical or mental handicap or serious medical
15 condition, unless such accommodation is unreasonable or an
16 undue hardship;

17 K. any employer to refuse or fail to make
18 reasonable accommodation for an employee or job applicant with
19 a need arising from pregnancy, childbirth or condition related
20 to pregnancy or childbirth; or

21 L. any employer to require an employee with a need
22 arising from pregnancy, childbirth or condition related to
23 pregnancy or childbirth to take paid or unpaid leave if another
24 reasonable accommodation can be provided unless the employee
25 voluntarily requests to be placed on leave or the employee is

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1 placed on leave pursuant to federal law."

2 SECTION 3. Section 47-8-1 NMSA 1978 (being Laws 1975,
3 Chapter 38, Section 1, as amended) is amended to read:

4 "47-8-1. SHORT TITLE.--~~[Sections 47-8-1 through 47-8-51]~~
5 Chapter 47, Article 8 NMSA 1978 may be cited as the "Uniform
6 Owner-Resident Relations Act"."

7 SECTION 4. Section 47-8-15 NMSA 1978 (being Laws 1975,
8 Chapter 38, Section 15, as amended) is amended to read:

9 "47-8-15. PAYMENT OF RENT.--

10 A. The resident shall pay rent in accordance with
11 the rental agreement. In the absence of an agreement, the
12 resident shall pay as rent the fair rental value for the use of
13 the premises and occupancy of the dwelling unit.

14 B. Rent is payable without demand or notice at the
15 time and place agreed upon by the parties. Unless otherwise
16 agreed, rent is payable at the dwelling unit. Unless otherwise
17 agreed, periodic rent is payable at the beginning of any term
18 of one month or less and otherwise in equal monthly
19 installments at the beginning of each monthly period. The date
20 of one month to the same date of the following month shall
21 constitute a term of one month.

22 C. Unless the rental agreement fixes a definite
23 term, the residency is week-to-week in the case of a person who
24 pays weekly rent and in all other cases month-to-month.

25 D. If the rental agreement provides for the

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1 charging of a late fee and if the resident does not pay rent in
2 accordance with the rental agreement, the owner may charge the
3 resident a late fee in an amount not to exceed ten percent of
4 the ~~[total rent payment]~~ resident's portion of the rent payment
5 for each rental period that the resident is in default. To
6 assess a late fee, the owner shall provide notice of the late
7 fee charged no later than the last day of the next rental
8 period immediately following the period in which the default
9 occurred.

10 E. An owner may not assess a fee from the resident
11 for occupancy of the dwelling unit by a reasonable number of
12 guests for a reasonable length of time. This shall not
13 preclude charges for use of premises or facilities other than
14 the dwelling unit by guests.

15 F. An owner may increase the rent payable by the
16 resident in a month-to-month residency by providing written
17 notice to the resident of the proposed increase at least thirty
18 days prior to the periodic rental date specified in the rental
19 agreement or, in the case of a fixed term residency, at least
20 thirty days prior to the end of the term. In the case of a
21 periodic residency of less than one month, written notice shall
22 be provided at least one rental period in advance of the first
23 rental payment to be increased.

24 G. Unless agreed upon in writing by the owner and
25 the resident, a resident's payment of rent may not be allocated

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1 to any deposits or damages.

2 H. For each payment made by a resident or on a
3 resident's behalf, an owner shall provide the resident a
4 written receipt signed by the owner or the owner's
5 representative with the amount of the payment, the date of
6 payment and the resident's name."

7 SECTION 5. Section 47-8-18 NMSA 1978 (being Laws 1975,
8 Chapter 38, Section 18, as amended) is amended to read:

9 "47-8-18. DEPOSITS.--

10 A. An owner is permitted to demand from the
11 resident a reasonable deposit to be applied by the owner to
12 recover damages, if any, caused to the premises by the resident
13 during [~~his~~] the term of residency. [~~(1)~~] Under the terms of
14 an annual rental agreement, if the owner demands or receives of
15 the resident [~~such~~] a deposit in an amount greater than one
16 month's rent, the owner shall be required to pay to the
17 resident annually an interest equal to the passbook interest
18 permitted to savings and loan associations in this state by the
19 federal home loan bank board on such deposit. [~~(2)~~] Under the
20 terms of a rental agreement of a duration less than one year,
21 an owner shall not demand or receive from the resident [~~such~~] a
22 deposit in an amount in excess of one month's rent.

23 B. It is not the intention of this section to
24 include the last month's prepaid rent, which may be required by
25 the rental agreement as a deposit as defined in Subsection [D]

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1 E of Section 47-8-3 NMSA 1978. Any deposit as defined in
2 [~~Paragraph (1) of~~] Subsection A of this section shall not be
3 construed as prepaid rent.

4 C. Upon termination of the residency, property or
5 money held by the owner as deposits may be applied by the owner
6 to the payment of rent and the amount of damages [~~which~~] that
7 the owner has suffered by reason of the resident's
8 noncompliance with the rental agreement or Section 47-8-22 NMSA
9 1978. No deposit shall be retained to cover normal wear
10 and tear. In the event actual cause exists for retaining any
11 portion of the deposit for nonpayment of rent, late fees,
12 utilities, repairs, cleaning or other legitimate damages or
13 charges, the owner shall provide the resident with an itemized
14 written list of the deductions from the deposit and the balance
15 of the deposit, if any, within thirty days of the date of
16 termination of the rental agreement or resident departure,
17 whichever is later. The owner is deemed to have complied with
18 this section by mailing the statement and any payment required
19 to the last known address of the resident. [~~Nothing in this~~
20 ~~section shall preclude the owner from retaining portions of the~~
21 ~~deposit for nonpayment of rent or utilities, repair work or~~
22 ~~other legitimate damages~~] If the statement and any payment are
23 mailed but returned as undeliverable or if the last known
24 address is the vacated dwelling unit, the owner shall serve at
25 least one additional notice if an alternative address has been

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1 provided to the owner by the resident or the resident's
2 representative.

3 D. If the owner fails to provide the resident with
4 a written statement of deductions from the deposit and the
5 balance shown by the statement to be due, within thirty days of
6 the termination of the tenancy, the owner:

7 (1) shall forfeit the right to withhold any
8 portion of the deposit for any charge, including rent, late
9 fees, utilities, repairs, cleaning or other damages or charges;

10 (2) shall forfeit the right to assert [~~any~~] a
11 counterclaim in [~~any~~] an action brought to recover that
12 deposit;

13 (3) shall be liable to the resident for court
14 costs and reasonable [~~attorneys'~~] attorney fees; and

15 (4) shall forfeit the right to assert an
16 independent action against the resident for [~~damages to the~~
17 ~~rental property~~] any charge, including rent, late fees and
18 other penalties, utilities, repairs, cleaning or other damages
19 or charges.

20 E. An owner who [~~in bad faith~~] retains a deposit,
21 or any portion thereof, in violation of this section is liable
22 to the resident for a civil penalty in the amount of [~~two~~
23 ~~hundred fifty dollars (\$250) payable to the resident~~] twice the
24 amount improperly withheld."

25 SECTION 6. Section 47-8-33 NMSA 1978 (being Laws 1975,
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1 Chapter 38, Section 33, as amended) is amended to read:

2 "47-8-33. BREACH OF AGREEMENT BY RESIDENT AND RELIEF BY
3 OWNER.--

4 A. Except as provided in the Uniform Owner-Resident
5 Relations Act, if there is noncompliance with Section 47-8-22
6 NMSA 1978 materially affecting health and safety or upon the
7 initial material noncompliance by the resident with the rental
8 agreement or [~~any~~] a separate agreement, the owner shall
9 deliver a written notice to the resident specifying the acts
10 and omissions constituting the breach, including the dates and
11 specific facts describing the nature of the alleged breach, and
12 stating that, except as provided for in rental agreements in
13 effect for a continuous twelve-month period or more, the rental
14 agreement will terminate upon a date not less than seven days
15 after receipt of the notice if the breach is not remedied in
16 seven days. For any rental agreement in effect for a
17 continuous twelve-month period or more, the notice period for
18 termination under this subsection shall be not less than
19 fourteen days.

20 B. Upon the second material noncompliance with the
21 rental agreement or any separate agreement by the resident,
22 within six months of the initial breach, the owner shall
23 deliver a written notice to the resident specifying the acts
24 and omissions constituting the breach, including the dates and
25 specific facts describing the nature of the alleged breach, and

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1 stating that the rental agreement shall terminate upon a date
2 not less than seven days after receipt of the notice. If the
3 subsequent breach occurs more than six months after the initial
4 breach, it shall constitute an initial breach for purposes of
5 applying the provisions of this section.

6 C. The initial notice provided in this section
7 shall state that the rental agreement will terminate upon the
8 second material noncompliance with the rental agreement or any
9 separate agreement by the resident, within six months of the
10 initial breach. To be effective, ~~[any]~~ a notice pursuant to
11 this subsection shall be given within thirty days of the breach
12 or knowledge thereof.

13 D. If rent is unpaid when due and the resident
14 fails to pay rent within ~~[three]~~ ten days after written notice
15 from the owner of nonpayment, ~~[and his]~~ the owner may terminate
16 the rental agreement pursuant to this subsection. Written
17 notice of nonpayment may not be served until the resident is at
18 least four days late on payment. The notice shall state the
19 owner's intention to terminate the rental agreement. The owner
20 may terminate the rental agreement and the resident [shall
21 ~~immediately deliver possession of the dwelling unit; provided~~
22 ~~that]~~ shall deliver possession of the dwelling unit or seek
23 redress in court in response to the owner's action for writ of
24 restitution. The tender of the full amount due, in the manner
25 stated in the notice, prior to the expiration of the ~~[three-~~

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1 ~~day~~ ten-day notice shall bar any action for nonpayment of
2 rent. If rent is unpaid when due, the rental agreement has
3 been in effect for a continuous twelve-month period or more and
4 the owner has not served prior notice of nonpayment during that
5 period, the notice time period for termination pursuant to this
6 subsection shall be not less than twenty-one days.

7 E. In any court action for possession for
8 nonpayment of rent or other charges where the resident disputes
9 the amount owed because:

10 (1) the resident has abated rent pursuant to
11 Section 47-8-27.2 or 47-8-4 NMSA 1978; or

12 (2) the owner has allocated rent paid by the
13 resident as payment for damages to the premises, then, if the
14 owner is the prevailing party, the court shall enter a writ of
15 restitution conditioned upon the right of the resident to
16 remedy by depositing the judgment amount with the court within
17 [~~three~~] twenty-one days of entry of judgment. If the resident
18 has satisfied the judgment within [~~three~~] twenty-one days, the
19 writ shall be dismissed. If the resident has not satisfied the
20 judgment within [~~three~~] twenty-one days, the owner may execute
21 upon the writ without further order of the court.

22 F. Except as provided in the Uniform Owner-Resident
23 Relations Act, the owner may recover damages and obtain
24 injunctive or other relief for [~~any~~] noncompliance by the
25 resident with the rental agreement or this section or Section

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1 47-8-22 NMSA 1978.

2 G. In a judicial action to enforce a remedy for
3 which prior written notice is required, relief may be granted
4 based only upon the grounds set forth in the written notice
5 served; provided, however, that this shall not bar a defendant
6 from raising any and all defenses or counterclaims for which
7 written notice is not otherwise required by the Uniform Owner-
8 Resident Relations Act.

9 H. When the last day for remedying any breach
10 pursuant to written notice required under the Uniform Owner-
11 Resident Relations Act occurs on a weekend or federal holiday,
12 the period to remedy shall be extended until the next day that
13 is not a weekend or federal holiday.

14 I. If the resident knowingly commits or consents to
15 another person in the dwelling unit or on the premises
16 knowingly committing a substantial violation, the owner shall
17 deliver a written notice to the resident specifying the time,
18 place and nature of the act constituting the substantial
19 violation and that the rental agreement will terminate upon a
20 date not less than three days after receipt of the notice.

21 J. In any action for possession [~~under~~] pursuant to
22 Subsection I of this section, it shall be a defense that the
23 resident is a victim of domestic violence. If the resident has
24 filed for or secured a temporary domestic violence restraining
25 order as a result of the incident that is the basis for the

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1 termination notice or as a result of a prior incident, the writ
2 of restitution shall not issue. In all other cases [~~where~~] in
3 which domestic violence is raised as a defense, the court shall
4 have the discretion to evict the resident accused of the
5 violation, while allowing the tenancy of the remainder of the
6 residents to continue undisturbed.

7 K. In any action for possession [~~under~~] pursuant to
8 Subsection I of this section, it shall be a defense that the
9 resident did not know of, and could not have reasonably known
10 of or prevented, the commission of a substantial violation by
11 any other person in the dwelling unit or on the premises.

12 L. In [~~an~~] any action for possession [~~under~~]
13 pursuant to Subsection I of this section, it shall be a defense
14 that the resident took reasonable and lawful actions in defense
15 of [~~himself~~] the resident, others or [~~his~~] the resident's
16 property.

17 M. In any action for possession [~~under~~] pursuant to
18 Subsection I of this section, if the court finds that the
19 action was frivolous or brought in bad faith, the petitioner
20 shall be subject to a civil penalty equal to two times the
21 amount of the monthly rent, plus damages and costs."

22 SECTION 7. Section 47-8-37 NMSA 1978 (being Laws 1975,
23 Chapter 38, Section 37) is amended to read:

24 "47-8-37. NOTICE OF TERMINATION AND DAMAGES.--

25 A. The owner or the resident may terminate a week-

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1 to-week residency by a written notice given to the other at
2 least seven days prior to the termination date specified in the
3 notice.

4 B. The owner or the resident may terminate a month-
5 to-month residency by a written notice given to the other at
6 least thirty days prior to the periodic rental date specified
7 in the notice.

8 C. A notice given by an owner under this section
9 shall be unenforceable if it violates the provisions of
10 Subsection G of Section 28-1-7 NMSA 1978.

11 ~~[G.]~~ D. If the resident remains in possession
12 without the owner's consent after expiration of the term of the
13 rental agreement or its termination, the owner may bring an
14 action for possession, and, if the resident's holdover is
15 willful and not in good faith, the owner, in addition, may
16 recover the damages sustained by ~~[him]~~ the owner and reasonable
17 ~~[attorney's]~~ attorney fees. If the owner consents to the
18 resident's continued occupancy, Subsection C of Section ~~[15 of~~
19 ~~the Uniform Owner-Resident Relations Act]~~ 47-8-15 NMSA 1978
20 applies."

21 **SECTION 8.** Section 47-8-39 NMSA 1978 (being Laws 1975,
22 Chapter 38, Section 39, as amended) is amended to read:

23 "47-8-39. OWNER RETALIATION PROHIBITED.--

24 A. An owner may not retaliate against a resident
25 who is in compliance with the rental agreement and not

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1 otherwise in violation of any provision of the Uniform Owner-
2 Resident Relations Act. [~~by increasing rent, decreasing~~
3 ~~services or by bringing or threatening to bring an action for~~
4 ~~possession because~~] There shall be a presumption of retaliation
5 if:

6 (1) an owner brings or threatens to bring an
7 action for possession, decreases services, increases rent,
8 refuses to renew a rental agreement or serves a notice of
9 termination under Section 47-8-37 NMSA 1978; and

10 (2) the resident has within the previous six
11 months:

12 [~~1~~] (a) complained to a government
13 agency charged with responsibility for enforcement of a minimum
14 building or housing code of a violation applicable to the
15 premises materially affecting health and safety;

16 [~~2~~] (b) organized or become a member
17 of a residents' union, association or similar organization;

18 [~~3~~] (c) acted in good faith to
19 exercise [~~his~~] the resident's rights provided [~~under~~] pursuant
20 to the Uniform Owner-Resident Relations Act or any other law,
21 order or regulation governing owner-resident relations,
22 including when the resident makes a written or oral request or
23 complaint to the owner to make repairs to comply with the
24 owner's obligations [~~under~~] pursuant to Section 47-8-20 NMSA
25 1978 or any other law, order or regulation governing

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1 owner-resident relations;

2 [~~(4)~~] (d) made a fair housing complaint
3 to a government agency charged with authority for enforcement
4 of laws or [~~regulations~~] rules prohibiting discrimination in
5 rental housing;

6 [~~(5)~~] (e) prevailed in a lawsuit as
7 either plaintiff or defendant, including situations where the
8 owner is denied restitution, or has a lawsuit pending against
9 the owner relating to the residency;

10 [~~(6)~~] (f) testified on behalf of another
11 resident; [~~or~~

12 ~~(7)~~] (g) abated rent in accordance with
13 the provisions of Section 47-8-27.1 or 47-8-27.2 NMSA 1978;

14 (h) complained to a utility company
15 about the functioning or safety of an appliance, mechanical
16 device or utility service;

17 (i) requested a reasonable accommodation
18 for disability under the federal Fair Housing Act, Section 504
19 of the federal Rehabilitation Act of 1973, the federal
20 Americans with Disabilities Act of 1990, the Human Rights Act
21 or any other applicable federal, state or local fair housing or
22 human rights law; or

23 (j) received rental assistance from a
24 governmental or nonprofit entity satisfying any outstanding
25 rents, fees and costs owed by the resident.

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1 B. If the owner acts in violation of Subsection A
2 of this section, the resident [~~is~~] shall be entitled to the
3 remedies provided in Section 47-8-48 NMSA 1978 and the
4 violation shall be a defense in [~~any~~] an action against [~~him~~]
5 the resident for possession; provided that the resident shall
6 not be required to prove that the owner acted in bad faith.

7 C. Notwithstanding the provisions of Subsection A
8 of this section, the owner may increase the rent or change
9 services upon appropriate notice at the end of the term of the
10 rental agreement or as provided [~~under~~] pursuant to the terms
11 of the rental agreement if the owner can establish that the
12 increased rent or changes in services are consistent with those
13 imposed on other residents of similar rental units and are not
14 directed at the particular resident, but are uniform."

15 SECTION 9. Section 47-8-40 NMSA 1978 (being Laws 1975,
16 Chapter 38, Section 40, as amended) is amended to read:

17 "47-8-40. ACTION FOR POSSESSION BY OWNER.--

18 A. Notwithstanding Subsections A and B of Section
19 47-8-39 NMSA 1978, an owner may bring an action for possession,
20 and overcome the presumption of retaliation, if:

21 (1) the violation of the applicable minimum
22 building or housing code was caused primarily by lack of
23 reasonable care by the resident or other person in [~~his~~] the
24 resident's household or upon the premises with the resident's
25 consent;

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- 1 (2) the resident is in default in rent;
- 2 (3) there is a material noncompliance with the
3 rental agreement that would otherwise give rise to the owner's
4 right to terminate the rental agreement;
- 5 (4) a resident knowingly commits or consents
6 to any other person in the dwelling unit or on the premises
7 knowingly committing a substantial violation; or
- 8 (5) compliance with the applicable building or
9 housing code requires alteration, remodeling or demolition that
10 would effectively deprive the resident of use of the dwelling
11 unit for more than seven days, and the owner shows by a
12 preponderance of the evidence that the owner intends to
13 immediately perform the repairs.

14 B. The maintenance of an action under Subsection A
15 of this section does not release the owner from liability under
16 Section 47-8-20 NMSA 1978.

17 C. Any right of an owner to bring an action under
18 this section shall be subject to the federal Fair Housing Act
19 and other applicable fair housing and human rights laws."

20 SECTION 10. Section 47-8-43 NMSA 1978 (being Laws 1975,
21 Chapter 38, Section 43, as amended) is amended to read:

22 "47-8-43. ISSUANCE OF SUMMONS AND TRIAL SETTING---

23 A. The summons shall be issued and directed, with a
24 copy of the petition attached to the summons, and shall state
25 the cause of the complaint, the answer day for other causes of

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1 action and notice that if the defendant fails to appear,
2 judgment shall be entered against ~~[him]~~ the defendant. The
3 summons may be served pursuant to the New Mexico rules of civil
4 procedure and returned as in other cases. Trial of the action
5 for possession shall be set as follows:

6 (1) for ~~[any]~~ a matter brought by the owner
7 for possession, not less than ~~[seven or more than ten]~~ twenty
8 days after the ~~[service of summons]~~ filing of the petition; or

9 (2) for ~~[any]~~ a matter brought by the resident
10 for possession, not less than three or more than five days
11 after the service of summons.

12 B. Upon finding of good cause, the court may
13 continue the date of hearing on the action for possession ~~[for~~
14 ~~up to seven days from the date of the initial hearing]~~.

15 C. The court shall maintain a resource list of
16 nonprofit legal service providers and state and local entities
17 that provide rental assistance to qualifying applicants. A
18 copy of the resource list shall be provided to the plaintiff at
19 the time of filing of the petition and shall be served by the
20 plaintiff along with the summons and copy of the complaint upon
21 the defendant."

22 SECTION 11. Section 47-8-46 NMSA 1978 (being Laws 1975,
23 Chapter 38, Section 46, as amended) is amended to read:

24 "47-8-46. WRIT OF RESTITUTION.--

25 A. Upon petition for restitution filed by the owner

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1 if judgment is rendered against the defendant for restitution
2 of the premises, the court shall declare the forfeiture of the
3 rental agreement and shall, at the request of the plaintiff or
4 ~~[his]~~ the plaintiff's attorney, issue a ~~[writ]~~ judgment of
5 restitution ordering the resident to vacate the premises by a
6 specified date; provided that the resident shall be allowed at
7 least fifteen days to vacate the premises after entry of
8 judgment and, upon good cause shown, may be allowed up to an
9 additional ten days to vacate the premises. If the resident
10 does not vacate the premises within the time ordered by the
11 judgment, the court shall issue a writ of restitution directing
12 the sheriff to restore possession of the premises to the
13 plaintiff ~~[on a specified date not less than three nor more~~
14 ~~than seven days after entry of judgment]~~ no later than three
15 days after the expiration of the time period to vacate.

16 B. Upon a petition for restitution filed by the
17 resident, if judgment is rendered against the defendant for
18 restitution of the premises, the court shall, at the request of
19 the plaintiff or ~~[his]~~ the plaintiff's attorney, issue a writ
20 of restitution directing the sheriff to restore possession of
21 the premises to the plaintiff within twenty-four hours after
22 entry of judgment.

23 C. In cases filed based on nonpayment of rent, if
24 at any time prior to entry of judgment or prior to expiration
25 of the fifteen-day period to vacate after entry of judgment, or

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1 for any longer period as ordered by the court, a resident
2 tenders payment of all rent, costs, fees and interest accrued
3 as of that date or as ordered by the court, the petition for
4 writ of restitution shall be dismissed, any judgment shall be
5 vacated and the tenancy shall continue under the rental
6 agreement in place prior to the action by the owner. Tender of
7 amounts due may be made to the owner or to the court to be held
8 in escrow for distribution to the owner upon dismissal of the
9 petition."

10 SECTION 12. Section 47-8-47 NMSA 1978 (being Laws 1975,
11 Chapter 38, Section 47, as amended) is amended to read:

12 "47-8-47. APPEAL STAYS EXECUTION.--

13 A. If either party feels aggrieved by the judgment,
14 that party may appeal as in other civil actions. An appeal by
15 the defendant shall, automatically and without further order of
16 the court, stay the issuance and execution of any writ of
17 restitution. [provided that in] After a notice of appeal is
18 filed, no writ of restitution shall be executed except on order
19 of the court entered after the filing date of the appeal.

20 B. In cases in which the resident is the appellant,
21 [the execution of the writ of restitution shall not be stayed
22 unless] the resident shall, within five days of the filing of
23 the notice of appeal, [pays] pay to the owner or into an escrow
24 account with a professional escrow agent an amount equal to the
25 rental amount that shall come due from the day following the

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1 judgment through the end of that rental period. The resident
2 shall continue to pay the monthly rent established by the
3 rental agreement at the time the complaint was filed, on a
4 monthly basis on the date rent would otherwise become due.
5 Payments pursuant to this subsection by a subsidized resident
6 shall not exceed the actual amount of monthly rent paid by that
7 resident. When the resident pays the owner directly, the owner
8 shall immediately provide a written receipt to the resident
9 upon demand. When the resident pays into an escrow account the
10 resident shall cause such amounts to be paid over to the owner
11 immediately upon receipt unless otherwise ordered by the court.
12 Upon the failure of the resident or the escrow agent to make
13 ~~[a]~~ the first partial payment within five days of the filing of
14 a notice of appeal or a monthly rent payment on the first day
15 rent would otherwise be due, the owner may serve a ~~[three-day]~~
16 fourteen-day written notice on the resident pursuant to
17 Subsection D of Section 47-8-33 NMSA 1978. If the resident or
18 the resident's escrow agent fails to pay the rent within the
19 ~~[three]~~ fourteen days, a hearing on the issue shall be
20 scheduled within ten days from the date the court is notified
21 of the failure to pay rent. In the case of an appeal de novo,
22 the hearing shall be in the court in which the appeal will be
23 heard. If, at the hearing, the court finds that rent has not
24 been paid, the court shall immediately lift the stay and issue
25 the writ of restitution unless the resident demonstrates a

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1 legal justification for failing to comply with the rent payment
2 requirement.

3 C. If an owner refuses or is unavailable to accept
4 a rent payment made pursuant to Subsection B of this section,
5 the court shall permit the resident to pay the necessary amount
6 to be held by the court.

7 [~~B.~~] D. In order to stay the execution of a money
8 judgment, the trial court, within its discretion, may require
9 an appellant to deposit with the clerk of the trial court the
10 amount of judgment and costs or to give a supersedeas bond in
11 the amount of judgment and costs with or without surety. Any
12 bond or deposit shall not be refundable during the pendency of
13 any appeal."

14 **SECTION 13.** A new section of the Uniform Owner-Resident
15 Relations Act is enacted to read:

16 "[NEW MATERIAL] RENEWAL OF RENTAL AGREEMENT DURING A
17 DECLARED EMERGENCY.--

18 A. An owner shall not refuse to renew or seek to
19 terminate any rental agreement that expires during, or for
20 thirty days after, a declaration of an emergency or disaster
21 issued by the governor or a declaration of an emergency or
22 disaster issued by joint resolution of the legislature.

23 B. A rental agreement that is renewed during the
24 period of time provided in Subsection A of this section shall
25 be for a month-to-month residency, unless the resident and

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1 owner agree to a longer term.

2 C. Nothing in this section shall prohibit an owner
3 from:

4 (1) refusing to renew a rental agreement if
5 the owner, in good faith, seeks to take possessions of the
6 property for personal use and occupancy as a primary residence,
7 or for the personal use and occupancy as a primary residence of
8 a member of the owner's immediate family; or

9 (2) commencing an action for possession
10 pursuant to Subsection A, B or I of Section 47-8-33 NMSA 1978."

11 SECTION 14. [NEW MATERIAL] STATE HOUSING COUNCIL--
12 CREATION--MEMBERSHIP--DUTIES.--

13 A. The "state housing council" is created to serve
14 as the state's interdisciplinary coordinating body to
15 integrate, coordinate and align housing services and is
16 administratively attached to the office of the governor. The
17 administrative head of the state housing council is the
18 "housing services officer", who shall be appointed by the
19 governor with the advice and consent of the senate and shall
20 serve at the pleasure of the governor. An appointed housing
21 services officer shall serve and have all of the duties,
22 responsibilities and authority of that office during the period
23 of time prior to final action by the senate confirming or
24 rejecting the officer's appointment.

25 B. The state housing council shall be composed of

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1 an executive committee and supporting members. The executive
2 committee shall consist of:

- 3 (1) the housing services officer; and
4 (2) two co-chairs, one of whom shall be the
5 executive director of the New Mexico mortgage finance authority
6 and the other of whom shall be appointed by the housing
7 services officer from among the supporting members; provided
8 that the housing services officer shall appoint a new co-chair
9 every two years.

10 C. Supporting members of the council shall include:

11 (1) no less than five statewide
12 representatives, appointed by the housing services officer, who
13 have direct decision-making authority within their
14 representative organizations and who represent those who:

- 15 (a) are committed to ending
16 homelessness;
17 (b) advocate for tenants' rights;
18 (c) are landlords and property owners;
19 (d) finance or develop housing;
20 (e) are tribal, public and regional
21 housing authorities; or
22 (f) are current tenants with experience
23 receiving services in New Mexico's publicly funded homeless and
24 housing service system;

25 (2) mayors of cities that host general

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1 population emergency shelters with one hundred or more beds
2 that operate twenty-four hours a day, are available all year
3 and receive state funding;

4 (3) a member of the senate appointed by the
5 committees' committee of the senate, unless the senate
6 appointment is made in the interim, in which case the president
7 pro tempore of the senate shall make the appointment in
8 consultation with, and with the agreement of, a majority of the
9 members of the committees' committee;

10 (4) a member of the house of representatives
11 appointed by the speaker of the house of representatives; and

12 (5) representatives from all state departments
13 that have responsibilities for housing issues within their
14 purview.

15 D. The state housing council shall meet at the call
16 of the housing services officer. Meetings of the council shall
17 be subject to the Open Meetings Act. Members of the council
18 are entitled to receive per diem and mileage as provided in the
19 Per Diem and Mileage Act and shall receive no other
20 compensation, perquisite or allowance.

21 E. The state housing council shall utilize existing
22 agency resources to review all state housing policies and laws
23 to ensure alignment, clarity, efficiency and accuracy regarding
24 the provisions of housing services across the state and shall
25 coordinate strategies and policies across state and private

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1 entities to ensure policy and legislative budgetary alignment
2 relating to housing services. The review and development of
3 policies that the council shall examine shall include
4 reviewing, developing and revising laws and policies, including
5 securing resources, relating to:

6 (1) the legal relationship between landlords
7 and tenants;

8 (2) real estate development and real estate
9 contracts;

10 (3) housing discrimination;

11 (4) property zoning;

12 (5) economic factors that lead to
13 gentrification;

14 (6) assessing housing conditions and enforcing
15 minimum standards for housing conditions;

16 (7) securing resources to remediate
17 substandard housing conditions;

18 (8) increasing public awareness of existing
19 housing programs and resources;

20 (9) identifying any opportunities to
21 consolidate state housing resources among state entities and
22 leveraging private and public funding to support statewide
23 housing services;

24 (10) identifying any other opportunities to
25 increase the availability of housing services; and

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(11) any other housing provision identified by the council.

F. The housing services officer may hire staff and contract for services to carry out the purposes of this section.

G. Annually, the council shall report to the legislative finance committee and any other appropriate interim committee no later than November 1 of each year.