

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILLS 419 & 458

**44TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION,
2000**

AN ACT

RELATING TO RELIGIOUS FREEDOM; ENACTING THE NEW MEXICO
RELIGIOUS FREEDOM RESTORATION ACT; PROHIBITING GOVERNMENT
AGENCIES FROM RESTRICTING A PERSON'S FREE EXERCISE OF
RELIGION IN CERTAIN INSTANCES; PROVIDING A PRIVATE RIGHT OF
ACTION FOR VIOLATIONS; PROVIDING A WAIVER OF IMMUNITY IN THE
TORT CLAIMS ACT.

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

Section 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
through 5 of this act may be cited as the "New Mexico
Religious Freedom Restoration Act".

Section 2. [NEW MATERIAL] DEFINITIONS.--As used in the
New Mexico Religious Freedom Restoration Act:

A. "free exercise of religion" means an act or a
refusal to act that is substantially motivated by religious
belief; and

1 B. "government agency" means the state or any of
2 its political subdivisions, institutions, departments,
3 agencies, commissions, committees, boards, councils, bureaus
4 or authorities.

5 Section 3. [NEW MATERIAL] RELIGIOUS FREEDOM PROTECTED--
6 EXCEPTIONS.--A government agency shall not restrict a
7 person's free exercise of religion unless:

8 A. the restriction is in the form of a rule of
9 general applicability and does not directly discriminate
10 against religion or among religions; and

11 B. the application of the restriction to the
12 person is essential to further a compelling governmental
13 interest and is the least restrictive means of furthering
14 that compelling governmental interest.

15 Section 4. [NEW MATERIAL] PRIVATE REMEDIES.--

16 A. A person whose free exercise of religion has
17 been restricted by a violation of the New Mexico Religious
18 Freedom Restoration Act may assert that violation as a claim
19 or defense in a judicial proceeding and obtain appropriate
20 relief against a government agency, including:

21 (1) injunctive or declaratory relief against
22 a government agency that violates or proposes to violate the
23 provisions of the New Mexico Religious Freedom Restoration
24 Act; and

25 (2) damages pursuant to the Tort Claims Act,
reasonable attorney fees and costs.

 B. Immunity from liability of the government

1 agency and its employees is waived for an action brought
2 pursuant to this section.

3 Section 5. [NEW MATERIAL] CONSTRUCTION OF ACT.--Nothing
4 in the New Mexico Religious Freedom Restoration Act
5 authorizes a government agency to burden a person's free
6 exercise of religion. The protection of the free exercise of
7 religion granted in that act is in addition to the
8 protections granted by federal law and the state and federal
9 constitutions. The New Mexico Religious Freedom Restoration
10 Act does not affect the grant of benefits or tax exemptions
11 to religious organizations nor does it impair any other
12 exemptions granted by law.

13 Section 6. Section 41-4-4 NMSA 1978 (being Laws 1976,
14 Chapter 58, Section 4, as amended) is amended to read:

15 "41-4-4. GRANTING IMMUNITY FROM TORT LIABILITY--
16 AUTHORIZING EXCEPTIONS.--

17 A. A governmental entity and any public employee
18 while acting within the scope of duty are granted immunity
19 from liability for any tort except as waived by the New
20 Mexico Religious Freedom Restoration Act and by Sections 41-
21 4-5 through 41-4-12 NMSA 1978. Waiver of this immunity shall
22 be limited to and governed by the provisions of Sections 41-
23 4-13 through 41-4-25 NMSA 1978, but the waiver of immunity
24 provided in those sections does not waive immunity granted
25 pursuant to the Governmental Immunity Act.

B. Unless an insurance carrier provides a defense,
a governmental entity shall provide a defense, including

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1 costs and ~~[attorneys+]~~ attorney fees, for any public employee
2 when liability is sought for:

3 (1) any tort alleged to have been committed
4 by the public employee while acting within the scope of his
5 duty; or

6 (2) any violation of property rights or any
7 rights, privileges or immunities secured by the constitution
8 and laws of the United States or the constitution and laws of
9 New Mexico when alleged to have been committed by the public
10 employee while acting within the scope of his duty.

11 C. A governmental entity shall pay any award for
12 punitive or exemplary damages awarded against a public
13 employee under the substantive law of a jurisdiction other
14 than New Mexico, including ~~[but not limited to]~~ other states,
15 territories and possessions and the United States of America,
16 if the public employee was acting within the scope of his
17 duty.

18 D. A governmental entity shall pay any settlement
19 or any final judgment entered against a public employee for:

20 (1) any tort that was committed by the
21 public employee while acting within the scope of his duty; or

22 (2) a violation of property rights or any
23 rights, privileges or immunities secured by the constitution
24 and laws of the United States or the constitution and laws of
25 New Mexico that occurred while the public employee was acting
within the scope of his duty.

E. A governmental entity shall have the right to

1 recover from a public employee the amount expended by the
2 public entity to provide a defense and pay a settlement
3 agreed to by the public employee or to pay a final judgment
4 if it is shown that, while acting within the scope of his
5 duty, the public employee acted fraudulently or with actual
6 intentional malice causing the bodily injury, wrongful death
7 or property damage resulting in the settlement or final
8 judgment.

9 F. Nothing in Subsections B, C and D of this
10 section shall be construed as a waiver of the immunity from
11 liability granted by Subsection A of this section or as a
12 waiver of the state's immunity from suit in federal court
13 under the eleventh amendment to the United States
14 constitution.

15 G. The duty to defend as provided in Subsection B
16 of this section shall continue after employment with the
17 governmental entity has been terminated if the occurrence for
18 which damages are sought happened while the public employee
19 was acting within the scope of duty while the public employee
20 was in the employ of the governmental entity.

21 H. The duty to pay any settlement or any final
22 judgment entered against a public employee as provided in
23 this section shall continue after employment with the
24 governmental entity has terminated if the occurrence for
25 which liability has been imposed happened while the public
employee was acting within the scope of his duty while in the
employ of the governmental entity.

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1 I. A jointly operated public school, community
2 center or athletic facility that is used or maintained
3 pursuant to a joint powers agreement shall be deemed to be
4 used or maintained by a single governmental entity for the
5 purposes of and subject to the maximum liability provisions
6 of Section 41-4-19 NMSA 1978.

7 J. For purposes of this section, a "jointly
8 operated public school, community center or athletic
9 facility" includes a school, school yard, school ground,
10 school building, gymnasium, athletic field, building,
11 community center or sports complex that is owned or leased by
12 a governmental entity and operated or used jointly or in
13 conjunction with another governmental entity for operations,
14 events or programs that include sports or athletic events or
15 activities, child-care or youth programs, after-school or
16 before-school activities or summer or vacation programs at
17 the facility."

underscored material = new
~~[bracketed material] = delete~~