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SENATE BILL 239

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

INTRODUCED BY  
Cisco McSorley

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

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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; provided that damages

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1 awarded pursuant to this paragraph:

2 (a) to any person for any number of  
3 claims arising out of a single occurrence shall not exceed  
4 seventy-five thousand dollars (\$75,000); and

5 (b) to all persons for all claims  
6 arising out of single occurrence shall not exceed two hundred  
7 thousand dollars (\$200,000).

8 B. Immunity from liability of the government  
9 agency and its employees is waived for an action brought  
10 pursuant to this section.

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

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

23 "41-4-4. GRANTING IMMUNITY FROM TORT LIABILITY--  
24 AUTHORIZING EXCEPTIONS.--

25 A. A governmental entity and any public employee  
while acting within the scope of duty are granted immunity  
from liability for any tort except as waived by the New

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1 Mexico Religious Freedom Restoration Act and by Sections  
2 41-4-5 through 41-4-12 NMSA 1978. Waiver of this immunity  
3 shall be limited to and governed by the provisions of  
4 Sections 41-4-13 through 41-4-25 NMSA 1978, but the waiver of  
5 immunity provided in those sections does not waive immunity  
6 granted pursuant to the Governmental Immunity Act.

7 B. Unless an insurance carrier provides a defense,  
8 a governmental entity shall provide a defense, including  
9 costs and ~~[attorneys']~~ attorney fees, for any public employee  
10 when liability is sought for:

11 (1) any tort alleged to have been committed  
12 by the public employee while acting within the scope of his  
13 duty; or

14 (2) any violation of property rights or any  
15 rights, privileges or immunities secured by the constitution  
16 and laws of the United States or the constitution and laws of  
17 New Mexico when alleged to have been committed by the public  
18 employee while acting within the scope of his duty.

19 C. A governmental entity shall pay any award for  
20 punitive or exemplary damages awarded against a public  
21 employee under the substantive law of a jurisdiction other  
22 than New Mexico, including ~~[but not limited to]~~ other states,  
23 territories and possessions and the United States of America,  
24 if the public employee was acting within the scope of his  
25 duty.

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

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

(2) a violation of property rights or any rights, privileges or immunities secured by the constitution and laws of the United States or the constitution and laws of 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 recover from a public employee the amount expended by the public entity to provide a defense and pay a settlement agreed to by the public employee or to pay a final judgment if it is shown that, while acting within the scope of his duty, the public employee acted fraudulently or with actual intentional malice causing the bodily injury, wrongful death or property damage resulting in the settlement or final judgment.

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

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

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1 was in the employ of the governmental entity.

2 H. The duty to pay any settlement or any final  
3 judgment entered against a public employee as provided in  
4 this section shall continue after employment with the  
5 governmental entity has terminated if the occurrence for  
6 which liability has been imposed happened while the public  
7 employee was acting within the scope of his duty while in the  
8 employ of the governmental entity.

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

15 J. For purposes of this section, a "jointly  
16 operated public school, community center or athletic  
17 facility" includes a school, school yard, school ground,  
18 school building, gymnasium, athletic field, building,  
19 community center or sports complex that is owned or leased by  
20 a governmental entity and operated or used jointly or in  
21 conjunction with another governmental entity for operations,  
22 events or programs that include sports or athletic events or  
23 activities, child-care or youth programs, after-school or  
24 before-school activities or summer or vacation programs at  
25 the facility."