

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

Section 2. 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

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

Section 3. RELIGIOUS FREEDOM PROTECTED--EXCEPTIONS.--A  
government agency shall not restrict a person's free  
exercise of religion unless:

A. the restriction is in the form of a rule of

general applicability and does not directly discriminate against religion or among religions; and

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

Section 4. PRIVATE REMEDIES.--

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

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

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

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

Section 5. CONSTRUCTION OF ACT.--Nothing in the New Mexico Religious Freedom Restoration Act authorizes a government agency to burden a person's

free exercise of religion. The protection of the free exercise of religion granted in that act is in addition to the protections granted by federal law and the state and federal constitutions. The New Mexico Religious Freedom Restoration Act does not affect the grant of benefits or tax exemptions to religious organizations nor does it impair any other exemptions granted by law.

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

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

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

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

defense, including costs and attorney fees, for any public employee when liability is sought for:

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

(2) any 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 when alleged to have been committed by the public employee while acting within the scope of his duty.

C. A governmental entity shall pay any award for punitive or exemplary damages awarded against a public employee under the substantive law of a jurisdiction other than New Mexico, including other states, territories and possessions and the United States of America, if the public employee was acting within the scope of his duty.

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

(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 was in the employ of the governmental entity.

H. The duty to pay any settlement or any final judgment entered against a public employee as provided in this section shall continue after employment with the governmental entity has terminated if the occurrence for 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.

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

J. For purposes of this section, a "jointly operated public school, community center or athletic facility" includes a school, school yard, school ground, school building, gymnasium, athletic field, building, community center or sports complex that is owned or leased by a governmental entity and operated or used jointly or in conjunction with another

governmental entity for operations, events or programs that include sports or athletic events or activities, child-care or youth programs, after-school or before-school activities or summer or vacation programs at the facility." \_\_\_\_\_

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