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HOUSE BILL 419

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

INTRODUCED BY

W. Ken Martinez

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.

          B. Immunity from liability of the government

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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

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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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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."