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SENATE BILL 732

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Timothy Z. Jennings

AN ACT

RELATING TO PUBLIC FACILITIES; AMENDING THE TORT CLAIMS ACT TO  
PROVIDE FOR LIMITATION OF LIABILITY UNDER JOINT POWERS  
AGREEMENTS.

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

Section 1. 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 of 1993 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

. 136680. 1

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1 41-4-13 through 41-4-25 NMSA 1978, but the waiver of immunity  
2 provided in those sections does not waive immunity granted  
3 pursuant to the Governmental Immunity Act.

4 B. Unless an insurance carrier provides a defense,  
5 a governmental entity shall provide a defense, including costs  
6 and attorney fees, for any public employee when liability is  
7 sought for:

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

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

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

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

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

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

6 E. A governmental entity shall have the right to  
7 recover from a public employee the amount expended by the  
8 public entity to provide a defense and pay a settlement agreed  
9 to by the public employee or to pay a final judgment if it is  
10 shown that, while acting within the scope of his duty, the  
11 public employee acted fraudulently or with actual intentional  
12 malice causing the bodily injury, wrongful death or property  
13 damage resulting in the settlement or final judgment.

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

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

