

AN ACT

RELATING TO GOVERNMENTAL IMMUNITY; PROVIDING GOVERNMENTAL IMMUNITY FROM CIVIL LIABILITY FOR CLAIMS ARISING FROM FAILURE OF CERTAIN EQUIPMENT TO ACCURATELY PROCESS DATES OR TIMES.

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 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 attorneys' 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 but not limited to 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."

Section 2. SHORT TITLE.--Sections 2 through 4 of this act may be cited as the "Governmental Immunity Act".

Section 3. DEFINITIONS.--As used in the Governmental Immunity Act:

A. "employment" includes services provided by an immune contractor;

B. "governmental entity" means the state or a local public body;

C. "immune contractor" means a person that:

(1) is an independent contractor; and
(2) contracts with a governmental entity to provide:

(a) care for children in the custody of the human services department, corrections department or department of health, as a licensed foster parent, excluding foster parents certified by a licensed child placement agency; or

(b) services to the children, youth and families department or the corrections department as a licensed medical, psychological or dental arts practitioner;

(3) is a member of:

(a) a state or local selection panel established pursuant to the Juvenile Community Corrections Act;

(b) a state or local selection panel established pursuant to the Adult Community Corrections Act;

(c) the board of directors of the New Mexico comprehensive health insurance pool;

(d) a medical review board, a committee or panel established by the educational retirement board or the retirement board of the public employees retirement association;

(e) the board of directors of the New Mexico educational assistance foundation; or

(f) the board of directors of the New Mexico student loan corporation; or

(4) is a volunteer, employee or board member of a court-created special advocate program;

D. "local public body" means a political subdivision of the state and its agencies, instrumentalities and institutions and a water and natural gas association organized pursuant to Chapter 3, Article 28 NMSA 1978;

E. "public employee" means a natural person that is an officer or employee of a governmental entity; and

F. "state" means the state of New Mexico or any of its branches, agencies, departments, boards, instrumentalities or institutions.

Section 4. GOVERNMENTAL CIVIL IMMUNITY ESTABLISHED.--A governmental entity, a public employee and an immune contractor are not liable for damages arising out of a claim based upon tort, contract or other civil law claim and caused directly or indirectly by the failure or malfunction of computer hardware, computer software, microchip controlled firmware or other equipment affected by the failure to accurately or properly process dates or times if the failure or malfunction:

A. occurred before December 31, 2005;

B. occurred within the scope of employment of the public employee or within the scope of the contract or the

volunteer service program of the immune contractor; and

C. was unforeseeable or was foreseeable but the plan or design, or both, for identifying and preventing it was prepared and implemented in good faith and with the exercise of ordinary care. _____
