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SENATE BILL 563

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Joseph A. Fidel

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

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1 provided in those sections does not waive immunity granted
2 pursuant to the Governmental Immunity Act.

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

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

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

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

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

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

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

25 Section 2. [NEW MATERIAL] SHORT TITLE. -- Sections 2
. 126980. 1

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1 through 4 of this act may be cited as the "Governmental
2 Immunity Act".

3 Section 3. [NEW MATERIAL] DEFINITIONS. --As used in the
4 Governmental Immunity Act:

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

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

9 C. "immune contractor" means a person that:

10 (1) is an independent contractor; and

11 (2) contracts with a governmental entity to
12 provide:

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

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

21 (3) is a member of:

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

25 (b) a state or local selection panel

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1 established pursuant to the Adult Community Corrections Act;

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

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

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

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

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

14 (5) acts on behalf or in service of a
15 governmental entity in any official capacity, whether with or
16 without compensation;

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

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

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

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