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HOUSE BILL 55

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

David M. Gallegos and Nora Espinoza
and James G. Townsend

AN ACT

RELATING TO RELIGIOUS FREEDOM; AMENDING THE HUMAN RIGHTS ACT TO PROHIBIT THE APPLICATION OF ANY LAW THAT BURDENS THE FREE EXERCISE OF RELIGION; AMENDING THE NEW MEXICO RELIGIOUS FREEDOM RESTORATION ACT TO PREVENT DISCRIMINATORY ACTION BY A PERSON OR A GOVERNMENT AGENCY IN RESPONSE TO A PERSON'S FREE EXERCISE OF RELIGION; PROVIDING FOR NOTICE.

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

SECTION 1. Section 28-1-2 NMSA 1978 (being Laws 1969, Chapter 196, Section 2, as amended) is amended to read:

"28-1-2. DEFINITIONS.--As used in the Human Rights Act:

A. "person" means one or more individuals, a limited liability company, partnership, association, organization, corporation, joint venture or any legal or commercial entity, legal representative, business trust,

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estate, trust, trustees, receivers or the state and all of its
political subdivisions;

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B. "employer" means any person employing [~~four or~~
~~more persons~~] a person and any person acting for an employer;

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C. "commission" means the human rights commission;

D. "director" or "bureau" means the human rights

bureau of the labor relations division of the workforce

solutions department;

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E. "employee" means any person in the employ of an
employer or an applicant for employment;

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F. "free exercise of religion" means an act or a
refusal to act that is substantially motivated by religious
belief;

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[~~F-~~] G. "labor organization" means any organization
that exists for the purpose in whole or in part of collective
bargaining or of dealing with employers concerning grievances,
terms or conditions of employment or of other mutual aid or
protection in connection with employment;

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[~~G-~~] H. "employment agency" means any person
regularly undertaking with or without compensation to procure
opportunities to work or to procure, recruit or refer
employees;

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[~~H-~~] I. "public accommodation" means any
establishment that provides or offers its services, facilities,
accommodations or goods to the public, but does not include a

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bona fide private club or other place or establishment that is
by its nature and use distinctly private;

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~~[I.]~~ J. "housing accommodation" means any building
or portion of a building that is constructed or to be
constructed, which is used or intended for use as the residence
or sleeping place of any individual;

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~~[J.]~~ K. "real property" means lands, leaseholds or
commercial or industrial buildings, whether constructed or to
be constructed, offered for sale or rent, and any land rented
or leased for the use, parking or storage of house trailers;

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~~[K.]~~ L. "secretary" means the secretary of
workforce solutions;

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~~[L.]~~ M. "unlawful discriminatory practices" means
those unlawful practices and acts specified in Section 28-1-7
NMSA 1978;

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~~[M.]~~ N. "physical or mental handicap" means a
physical or mental impairment that substantially limits one or
more of a person's major life activities. A person is also
considered to be physically or mentally handicapped if the
person has a record of a physical or mental handicap or is
regarded as having a physical or mental handicap;

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~~[N.]~~ O. "major life activities" means functions
such as caring for one's self, performing manual tasks,
walking, seeing, hearing, speaking, breathing, learning and
working;

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[~~Θ-~~] P. "applicant for employment" means a person
2 applying for a position as an employee;

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[~~P-~~] Q. "sexual orientation" means heterosexuality,
4 homosexuality or bisexuality, whether actual or perceived; and

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[~~Q-~~] R. "gender identity" means a person's self-
6 perception, or perception of that person by another, of the
7 person's identity as a male or female based upon the person's
8 appearance, behavior or physical characteristics that are in
9 accord with or opposed to the person's physical anatomy,
10 chromosomal sex or sex at birth."

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SECTION 2. Section 28-1-9 NMSA 1978 (being Laws 1969,
12 Chapter 196, Section 8, as amended) is amended to read:

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"28-1-9. EXEMPTIONS.--Nothing contained in the Human
14 Rights Act shall:

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A. apply to any single-family dwelling sold,
16 leased, subleased or rented by an owner without the making of
17 any notice, statement or advertisement with respect to the
18 sale, lease, sublease or rental of a dwelling unit that
19 indicates any preference, limitation or discrimination based on
20 race, color, religion, national origin, ancestry, sex, sexual
21 orientation or gender identity. This exemption is subject to
22 these further reservations:

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(1) to qualify for the exemption, the seller
24 must not be an owner of or own or have reserved any interest in
25 more than three single-family dwellings; and

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(2) if the seller does not currently live in the dwelling or [he] was not the most recent occupant, the exemption granted in this section shall only apply to one sale in twenty-four months;

B. bar any religious or denominational institution or organization that is operated, supervised or controlled by or that is operated in connection with a religious or denominational organization from limiting admission to or giving preference to persons of the same religion or denomination or from making selections of buyers, lessees or tenants as are calculated by the organization or denomination to promote the religious or denominational principles for which it is established or maintained, unless membership in the religious or denominational organization is restricted on account of race, color, national origin or ancestry;

C. bar any religious or denominational institution or organization that is operated, supervised or controlled by or that is operated in connection with a religious or denominational organization from imposing discriminatory employment or renting practices that are based upon sexual orientation or gender identity; ~~[provided that the provisions of the Human Rights Act with respect to sexual orientation and gender identity shall apply to any other:~~

~~(1) for-profit activities of a religious or denominational institution or religious organization subject to~~

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~~the provisions of Section 511(a) of the Internal Revenue Code
of 1986, as amended; or~~

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~~(2) nonprofit activities of a religious or
denominational institution or religious organization subject to
the provisions of Section 501(c)(3) of the Internal Revenue
Code of 1986, as amended;]~~

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D. burden a person's free exercise of religion by
requiring the person to provide a service or to conduct
business in a manner inconsistent with adherence to that
person's sincerely held religious belief unless that adherence
is based on race, age, religion, color, national origin,
ancestry, sex, physical or mental handicap or serious medical
condition;

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~~[D-]~~ E. apply to rooms or units in dwellings
containing living quarters occupied or intended to be occupied
by no more than four families living independently of each
other, if the owner actually maintains and occupies one of the
living quarters as ~~[his]~~ the owner's residence;

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~~[E-]~~ F. apply to public restrooms, public showers,
public dressing facilities or sleeping quarters in public
institutions, where the preference or limitation is based on
sex; and

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~~[F-]~~ G. prevent the mandatory retirement of an
employee upon reaching the age of sixty-five years or older, if
the employer is operating under a retirement plan that meets

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the requirements of Public Law 93-406, the Employee Retirement
Income Security Act of 1974."

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SECTION 3. Section 28-22-1 NMSA 1978 (being Laws 2000
(2nd S.S.), Chapter 17, Section 1) is amended to read:

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"28-22-1. SHORT TITLE.--~~[Sections 1 through 5 of this
act]~~ Chapter 28, Article 22 NMSA 1978 may be cited as the "New
Mexico Religious Freedom Restoration Act".

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SECTION 4. Section 28-22-2 NMSA 1978 (being Laws 2000
(2nd S.S.), Chapter 17, Section 2) is amended to read:

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"28-22-2. DEFINITIONS.--As used in the New Mexico
Religious Freedom Restoration Act:

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A. "discriminatory action" means an act by a person
or a government agency in response to a person's free exercise
of religion to:

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(1) alter the tax treatment of, or cause any
tax, penalty or payment to be assessed against, or to deny,
delay or revoke an exemption from taxation under New Mexico
laws of any person;

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(2) withhold, reduce, exclude, terminate or
otherwise deny any state grant, contract, subcontract,
cooperative agreement, loan, license, certification,
accreditation, employment or other status from or to a person;

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(3) require a person to perform an act or
provide or receive a product, good or service where that act

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conflicts with that person's sincerely held religious belief;

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~~[A.]~~ B. "free exercise of religion" means an act or
3 a refusal to act that is substantially motivated by religious
4 belief; ~~and~~

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~~B.]~~ C. "government agency" means the state or any
6 of its political subdivisions, institutions, departments,
7 agencies, commissions, committees, boards, councils, bureaus or
8 authorities; and

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D. "person" means one or more individuals, a
10 limited liability company, partnership, association,
11 organization, corporation, joint venture or any legal or
12 commercial entity, legal representative, business trust,
13 estate, trust, trustees, receivers or government agency."

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SECTION 5. Section 28-22-3 NMSA 1978 (being Laws 2000
15 (2nd S.S.), Chapter 17, Section 3) is amended to read:

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"28-22-3. RELIGIOUS FREEDOM PROTECTED--EXCEPTIONS.--A
17 ~~[government agency]~~ person shall not restrict a person's free
18 exercise of religion unless:

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A. the restriction is in the form of a rule of
20 general applicability and does not ~~[directly]~~ discriminate
21 against religion or among religions; and

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

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SECTION 6. Section 28-22-4 NMSA 1978 (being Laws 2000
(2nd S.S.), Chapter 17, Section 4) is amended to read:

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"28-22-4. PRIVATE REMEDIES.--

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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]~~ person, including:

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

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

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B. Immunity from liability of the ~~[government
agency and its]~~ person and the person's employees is waived for
an action brought pursuant to this section."

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SECTION 7. A new section of the New Mexico Religious
Freedom Restoration Act is enacted to read:

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"[NEW MATERIAL] NOTIFICATION OF RESTRICTION ON ACTIONS.--

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A person offering labor, services, merchandise or goods shall
take reasonable measures to ensure that persons, employees,
applicants for employment, customers and potential customers
are made aware of limitations on the person's ability to
perform tasks, activities, services or limitations on

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merchandise or goods on offer due to the person's sincerely held religious beliefs."

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SECTION 8. Section 28-22-5 NMSA 1978 (being Laws 2000 (2nd S.S.), Chapter 17, Section 5) is amended to read:

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"28-22-5. CONSTRUCTION OF ACT.--Nothing in the New Mexico Religious Freedom Restoration Act authorizes a [~~government agency~~] person to burden a person's free exercise of religion.

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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

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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."

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SECTION 9. SEVERABILITY.--If any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

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SECTION 10. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2016.

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