

**LFC Requester:****Scott Sanchez****AGENCY BILL ANALYSIS  
2024 REGULAR SESSION****SECTION I: GENERAL INFORMATION***{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}**Check all that apply:*

**Original**      X      **Amendment**    \_\_\_\_\_  
**Correction**    \_\_\_\_\_    **Substitute**    \_\_\_\_\_

**Date Prepared:** February 1, 2024**Bill No:** HB 309

**Sponsor:** Reps. J. Townsend, C.  
Brown, R. Montoya, A.  
Martinez, M. Duncan

**Agency Name and Code Number:** 305 – New Mexico  
Department of Justice

**Short Title:** Emergency Order  
Exemptions

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**SECTION II: FISCAL IMPACT****APPROPRIATION (dollars in thousands)**

| Appropriation |      | Recurring<br>or Nonrecurring | Fund<br>Affected |
|---------------|------|------------------------------|------------------|
| FY24          | FY25 |                              |                  |
|               |      |                              |                  |
|               |      |                              |                  |

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

| Estimated Revenue |      |      | Recurring<br>or<br>Nonrecurring | Fund<br>Affected |
|-------------------|------|------|---------------------------------|------------------|
| FY24              | FY25 | FY26 |                                 |                  |
|                   |      |      |                                 |                  |
|                   |      |      |                                 |                  |

(Parenthesis ( ) Indicate Expenditure Decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

|              | <b>FY24</b> | <b>FY25</b> | <b>FY26</b> | <b>3 Year<br/>Total Cost</b> | <b>Recurring<br/>or<br/>Nonrecurring</b> | <b>Fund<br/>Affected</b> |
|--------------|-------------|-------------|-------------|------------------------------|--|--------------------------|
| <b>Total</b> |             |             |             |                              |  |                          |

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
 Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE**

*This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.*

**BILL SUMMARY**

Synopsis:

This bill amends the All Hazards Emergency Act, NMSA 1978, §§ 12-10-1 to -10.1; the Public Health Emergency Response Act, NMSA 1978, §§ 12-10A-1 to -19; the Riot Control Act, NMSA 1978, §§ 12-10-16 to -21; and the Energy Emergency Powers Act, NMSA 1978, §§ 12-12-1 to -30. Each of these acts provide authority to the governor or other governmental entities to issue rules, orders, or other directives in response to certain public emergencies.

This bill adds a provision to each of the four acts that applies where a governmental entity issues an “order, rule[,] or other directive” that “close[s] or limit[s] business or facilities” open to the public or for patronage that “includes exemptions in whole or in part for some businesses or facilities.” In those circumstances, the order, rule, or directive must include an exemption for religious organizations as defined by the federal Internal Revenue Code “to the same extent as the most permissive exemption” otherwise provided by the order, rule, or directive.

This bill also allows any person or entity harmed by a violation of this bill to seek declaratory or injunctive relief or money damages. It also allows a court to award punitive damages against a “violator” upon a showing of malicious application or reckless enforcement.

**FISCAL IMPLICATIONS**

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

**SIGNIFICANT ISSUES**

Application of this bill could prove difficult in practice. This bill requires religious organizations to receive exemptions “to the same extent” as “the most permissive exemption” contained in any order, rule, or directive. In some circumstances, application of this bill is straightforward. For example, if a theoretical public health order closes all businesses but allows grocery stores to operate at 50% capacity, a religious organization would be required to receive an exemption to operate at 50% capacity.

In other circumstances, however, it will likely prove to be difficult to determine how to apply - “to the same extent” - the most permissive exemption in an order, rule or directive to a religious organization. For example, COVID-era public health orders required businesses such as indoor shopping malls, theatres, etc. to close for the duration of the order. *See* Public Health Emergency Order Limiting Mass Gatherings and Implementing Other Instructions Due to COVID-19, 3/19/20. That provision contained an exemption for restaurants situated in shopping malls with exterior entrances, allowing those qualifying restaurants to provide take out or delivery services. *See id.* If this provision was deemed the most permissive exemption contained in a future public health order, this bill would require religious organizations to similarly receive an exemption, but only to the “same extent.” This phrase could be interpreted to mean that the public health order must also specifically allow religious organizations to provide their services but only through the direct equivalent method of “take out or delivery,” which would likely have little meaning and/or is impractical for a religious organization. Another interpretation could be that the governmental entity issuing the order could include a different but equivalent exemption for religious organizations. But this would require the governmental entity to find an equivalent to take out or delivery services that could be applied to religious organizations, a comparison of apples to oranges.

#### **PERFORMANCE IMPLICATIONS**

N/A

#### **ADMINISTRATIVE IMPLICATIONS**

N/A

#### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

This bill is related to HJR 8 and SB 194, which address the termination of public emergencies declared by the governor.

#### **TECHNICAL ISSUES**

N/A

#### **OTHER SUBSTANTIVE ISSUES**

N/A

#### **ALTERNATIVES**

N/A

#### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status quo

#### **AMENDMENTS**

N/A