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HOUSE BILL 847

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

INTRODUCED BY

W. Ken Martinez

AN ACT

RELATING TO RELIGIOUS FREEDOM; ENACTING THE NEW MEXICO
RELIGIOUS FREEDOM RESTORATION ACT; PROHIBITING GOVERNMENT
AGENCIES FROM RESTRICTING A PERSON'S FREE EXERCISE OF RELIGION
IN CERTAIN INSTANCES; PROVIDING A PRIVATE RIGHT OF ACTION FOR
VIOLATIONS; PROVIDING A WAIVER OF IMMUNITY IN THE TORT CLAIMS
ACT.

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

Section 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1
through 5 of this act may be cited as the "New Mexico
Religious Freedom Restoration Act".

Section 2. [NEW MATERIAL] DEFINITIONS. -- As used in the
New Mexico Religious Freedom Restoration Act:

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

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1 belief whether or not the religious exercise is compulsory or
2 central to a larger system of religious belief; and

3 B. "government agency" means the state or any of
4 its political subdivisions, institutions, departments,
5 agencies, commissions, committees, boards, councils, bureaus
6 or authorities.

7 Section 3. [NEW MATERIAL] RELIGIOUS FREEDOM PROTECTED--
8 EXCEPTIONS.--A government agency shall not restrict a person's
9 free exercise of religion unless:

10 A. the restriction is in the form of a rule of
11 general applicability and does not directly discriminate
12 against religion or among religions; and

13 B. the application of the restriction to the
14 person is essential to further a compelling governmental
15 interest and is the least restrictive means of furthering that
16 compelling governmental interest.

17 Section 4. [NEW MATERIAL] PRIVATE REMEDIES.--

18 A. A person whose free exercise of religion has
19 been restricted by a violation of the New Mexico Religious
20 Freedom Restoration Act may assert that violation as a claim
21 or defense in a judicial proceeding and obtain appropriate
22 relief against a government agency, including:

23 (1) injunctive or declaratory relief against
24 a government agency that violates or proposes to violate the
25 provisions of the New Mexico Religious Freedom Restoration

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1 Act; and

2 (2) the actual damages, reasonable attorney
3 fees and costs.

4 B. Immunity from liability of the government
5 agency and its employees is waived for an action brought
6 pursuant to this section.

7 Section 5. [NEW MATERIAL] CONSTRUCTION OF ACT. -- Nothing
8 in the New Mexico Religious Freedom Restoration Act authorizes
9 a government agency to burden a person's free exercise of
10 religion. The protection of the free exercise religion
11 granted in that act is in addition to the protections granted
12 by federal law and the state and federal constitutions. The
13 New Mexico Religious Freedom Restoration Act does not affect
14 the grant of benefits or tax exemptions to religious
15 organizations.

16 Section 6. Section 41-4-4 NMSA 1978 (being Laws 1976,
17 Chapter 58, Section 4, as amended) is amended to read:

18 "41-4-4. GRANTING IMMUNITY FROM TORT LIABILITY--
19 AUTHORIZING EXCEPTIONS. --

20 A. A governmental entity and any public employee
21 while acting within the scope of duty are granted immunity
22 from liability for any tort except as waived by the New Mexico
23 Religious Freedom Restoration Act and by Sections 41-4-5
24 through 41-4-12 NMSA 1978. Waiver of this immunity shall be
25 limited to and governed by the provisions of Sections 41-4-13

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1 through 41-4-25 NMSA 1978.

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

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

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

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

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

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

25 (2) a violation of property rights or any

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

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

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

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

25 H. The duty to pay any settlement or any final

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

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

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

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2 FIRST SESSION, 1999
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6 March 12, 1999
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8 Mr. Speaker:
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10 Your JUDICIARY COMMITTEE, to whom has been referred
11

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14 has had it under consideration and reports same with
15 recommendation that it DO PASS, amended as follows:

16 1. On page 2, line 1, after "belief" insert a
17 semi colon

18 strike the remainder of line 1, and strike line 2 up to the
19 word "and".

20
21 2. On page 3, strike lines 2 and 3 in their entirety
22 and insert, in lieu thereof:

23 "(2) Damages, attorney fees, and costs,
24 pursuant to the Tort Claims Act, Section 41-4-1, et. seq.
25 NMSA 1978. ".

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3. On page 3, line 15, strike the period and insert
in
lieu thereof "nor does it impair any other exemptions
granted by law."

Respectfully submitted,

R. David Pederson, Chairman

Adopted _____

Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

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The roll call vote was 10 For 0 Against

Yes: 10

Excused: Luna, Sanchez

Absent: None

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