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HOUSE BILL 55

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

INTRODUCED BY

David M. Gallegos and Nora Espinoza

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

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

5 C. "commission" means the human rights commission;

6 D. "director" or "bureau" means the human rights
7 bureau of the labor relations division of the workforce
8 solutions department;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 [~~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."

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

13 "28-1-9. EXEMPTIONS.--Nothing contained in the Human
14 Rights Act shall:

15 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:

23 (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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1 (2) if the seller does not currently live in
2 the dwelling or [he] was not the most recent occupant, the
3 exemption granted in this section shall only apply to one sale
4 in twenty-four months;

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

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

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

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

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

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

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

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

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

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

3 SECTION 3. Section 28-22-1 NMSA 1978 (being Laws 2000
4 (2nd S.S.), Chapter 17, Section 1) is amended to read:

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

8 SECTION 4. Section 28-22-2 NMSA 1978 (being Laws 2000
9 (2nd S.S.), Chapter 17, Section 2) is amended to read:

10 "28-22-2. DEFINITIONS.--As used in the New Mexico
11 Religious Freedom Restoration Act:

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

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

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

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

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1 conflicts with that person's sincerely held religious belief;

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

5 ~~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

9 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."

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

16 "28-22-3. RELIGIOUS FREEDOM PROTECTED--EXCEPTIONS.--A
17 [~~government agency~~] person shall not restrict a person's free
18 exercise of religion unless:

19 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

22 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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1 SECTION 6. Section 28-22-4 NMSA 1978 (being Laws 2000
2 (2nd S.S.), Chapter 17, Section 4) is amended to read:

3 "28-22-4. PRIVATE REMEDIES.--

4 A. A person whose free exercise of religion has
5 been restricted by a violation of the New Mexico Religious
6 Freedom Restoration Act may assert that violation as a claim or
7 defense in a judicial proceeding and obtain appropriate relief
8 against a [~~government agency~~] person, including:

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

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

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

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

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

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

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

3 SECTION 8. Section 28-22-5 NMSA 1978 (being Laws 2000
4 (2nd S.S.), Chapter 17, Section 5) is amended to read:

5 "28-22-5. CONSTRUCTION OF ACT.--Nothing in the New Mexico
6 Religious Freedom Restoration Act authorizes a [~~government~~
7 ~~agency~~] person to burden a person's free exercise of religion.
8 The protection of the free exercise of religion granted in that
9 act is in addition to the protections granted by federal law
10 and the state and federal constitutions. The New Mexico
11 Religious Freedom Restoration Act does not affect the grant of
12 benefits or tax exemptions to religious organizations nor does
13 it impair any other exemptions granted by law."

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

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