HOUSE BILL 55

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

INTRODUCED BY

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

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

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;

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

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

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;

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

I. "public accommodation" means any establishment that provides or offers its services, facilities, accommodations or goods to the public, but does not include a .202148.4
bona fide private club or other place or establishment that is by its nature and use distinctly private;

[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;

[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;

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

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

[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;

[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;
[O.] P. "applicant for employment" means a person applying for a position as an employee;

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

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

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

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

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

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

(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;]

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;

[E.] 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 the owner's residence;

[F.] 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

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

(2nd S.S.), Chapter 17, Section 1) is amended to read:

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

(2nd S.S.), Chapter 17, Section 2) is amended to read:

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

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

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;

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;
and

3. require a person to perform an act or
provide or receive a product, good or service where that act
conflicts with that person's sincerely held religious belief;

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

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

D. "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, estate, trust, trustees, receivers or government agency."

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

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

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

B. the application of the restriction to the person is essential to further a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest."
SECTION 6. Section 28-22-4 NMSA 1978 (being Laws 2000 (2nd S.S.), Chapter 17, Section 4) is amended to read:

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

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 person, including:

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

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

B. Immunity from liability of the person and the person's employees is waived for an action brought pursuant to this section."

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

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

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

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

"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.
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
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."

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.

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

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