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SENATE BILL 212

**48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

INTRODUCED BY

Mary Kay Papen

AN ACT

RELATING TO THE EXECUTIVE DEPARTMENT; TRANSFERRING THE  
BEHAVIORAL HEALTH SERVICES DIVISION FROM THE DEPARTMENT OF  
HEALTH TO THE HUMAN SERVICES DEPARTMENT; PROVIDING FOR THE  
TRANSFER OF PERSONNEL, PROPERTY, CONTRACTS AND REFERENCES IN  
LAW; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA  
1978.

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

Section 1. Section 9-7-4 NMSA 1978 (being Laws 1991,  
Chapter 25, Section 16, as amended) is amended to read:

"9-7-4. DEPARTMENT ESTABLISHED.--

A. There is created in the executive branch the  
"department of health". The department shall be a cabinet  
department and shall include, but not be limited to, the  
programs and functions of the public health division [the

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1 ~~behavioral health services division]~~ and the scientific  
2 laboratory.

3 B. All references in the law to the public health  
4 division of the health and environment department, [~~the~~  
5 ~~behavioral health services division of the health and~~  
6 ~~environment department]~~ the state department of public health,  
7 the public health department, the health services division or  
8 the state board of health shall be construed as referring to  
9 the department.

10 C. The administrative services division of the  
11 department shall provide clerical, recordkeeping and  
12 administrative support to the department, including, but not  
13 limited to, the areas of personnel, budget, procurement and  
14 contracting.

15 D. The information technology division shall have  
16 all those powers and duties conferred upon it by the secretary  
17 with the consent of the governor."

18 Section 2. Section 9-8-1 NMSA 1978 (being Laws 1977,  
19 Chapter 252, Section 1) is amended to read:

20 "9-8-1. SHORT TITLE.-- [~~Sections 1 through 14 of this act]~~  
21 Chapter 9, Article 8 NMSA 1978 may be cited as the "Human  
22 Services Department Act"."

23 Section 3. Section 9-8-4 NMSA 1978 (being Laws 1977,  
24 Chapter 252, Section 4, as amended) is amended to read:

25 "9-8-4. DEPARTMENT ESTABLISHED.--

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1           A. There is created in the executive branch the  
2 "human services department". The department shall be a cabinet  
3 department and shall consist of, but not be limited to, [~~three~~]  
4 six divisions as follows:

5                   [~~A.~~] (1) the income support division;

6                   [~~B.~~] (2) the [~~social~~] administrative services  
7 division; [~~and~~]

8                   (3) the medical assistance division;

9                   (4) the child support enforcement division;

10                  (5) the behavioral health services division;

11 and

12                  [~~C.~~] (6) the information technology division.

13           B. All references in the law to the behavioral  
14 health services division of the department of health shall be  
15 construed as referring to the human services department."

16           Section 4. A new section of the Human Services Department  
17 Act is enacted to read:

18           "[NEW MATERIAL] BEHAVIORAL HEALTH SERVICES DIVISION--  
19 POWERS AND DUTIES OF THE HUMAN SERVICES DEPARTMENT.--Subject to  
20 appropriation, the department shall:

21                   A. contract for behavioral health treatment and  
22 support services, including mental health, alcoholism and other  
23 substance abuse services;

24                   B. establish standards for the delivery of  
25 behavioral health services, including quality management and

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1 improvement, performance measures, accessibility and  
2 availability of services, utilization management, credentialing  
3 and recredentialing, rights and responsibilities of providers,  
4 preventive behavioral health services, clinical treatment and  
5 evaluation and the documentation and confidentiality of client  
6 records;

7 C. ensure that all behavioral health services,  
8 including mental health and substance abuse services, that are  
9 provided, contracted for or approved are in compliance with the  
10 requirements of Section 9-7-6.4 NMSA 1978;

11 D. assume responsibility for and implement adult  
12 mental health and substance abuse services in the state in  
13 coordination with the children, youth and families department;

14 E. establish criteria for determining individual  
15 eligibility for behavioral health services; and

16 F. maintain a management information system in  
17 accordance with standards for reporting clinical and fiscal  
18 information."

19 Section 5. Section 11-7-2 NMSA 1978 (being Laws 1969,  
20 Chapter 118, Section 2, as amended) is amended to read:

21 "11-7-2. COMPACT COORDINATOR--POWERS AND DUTIES.--  
22 Pursuant to the Interstate Compact on Mental Health, the  
23 director of the behavioral health services division of the  
24 [~~health and environment~~] human services department is  
25 designated as the compact administrator and, acting jointly

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1 with like officers of other party states, shall promulgate  
2 rules and regulations to carry out more effectively the terms  
3 of the compact. The compact administrator is authorized,  
4 empowered and directed to cooperate with all departments,  
5 agencies and officers of and in the government of this state  
6 and its subdivisions in facilitating the proper administration  
7 of the compact or of any supplementary agreement entered into  
8 by this state under the compact."

9 Section 6. Section 24-1-2 NMSA 1978 (being Laws 1973,  
10 Chapter 359, Section 2, as amended) is amended to read:

11 "24-1-2. DEFINITIONS.--As used in the Public Health Act:

12 A. "department" or "division" means the children,  
13 youth and families department as to child care centers,  
14 residential treatment centers that serve persons up to twenty-  
15 one years of age, community mental health centers that serve  
16 only persons up to twenty-one years of age and day treatment  
17 centers that serve persons up to twenty-one years of age, and  
18 the department of health as to all other health facilities,  
19 unless otherwise designated;

20 B. "director" means the secretary;

21 C. "person", when used without further  
22 qualification, means an individual or any other form of entity  
23 recognized by law;

24 D. "health facility" means a public hospital,  
25 profit or nonprofit private hospital, general or special

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1 hospital, outpatient facility, maternity home or shelter, adult  
2 daycare facility, nursing home, intermediate care facility,  
3 boarding home not under the control of an institution of higher  
4 learning, child care center, shelter care home, diagnostic and  
5 treatment center, rehabilitation center, infirmary, community  
6 mental health center that serves both children and adults or  
7 adults only, residential treatment center that serves persons  
8 up to twenty-one years of age, community mental health center  
9 that serves only persons up to twenty-one years of age and day  
10 treatment center that serves persons up to twenty-one years of  
11 age or a health service organization operating as a free-  
12 standing hospice or a home health agency. The designation of  
13 these entities as health facilities is only for the purposes of  
14 definition in the Public Health Act and does not imply that a  
15 free-standing hospice or a home health agency is considered a  
16 health facility for the purposes of other provisions of state  
17 or federal laws. "Health facility" also includes those  
18 facilities that, by federal regulation, must be licensed by the  
19 state to obtain or maintain full or partial, permanent or  
20 temporary federal funding. It does not include the offices and  
21 treatment rooms of licensed private practitioners; and

22 E. "secretary" means the secretary of children,  
23 youth and families as to child care centers and facilities and  
24 the secretary of health as to all other health facilities."

25 Section 7. Section 24-1-5.7 NMSA 1978 (being Laws 2003,

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1 Chapter 190, Section 1) is amended to read:

2 "24-1-5.7. METHADONE CLINICS--REGULATION BY THE HUMAN  
3 SERVICES DEPARTMENT [~~OF HEALTH~~].--

4 A. The federal government requires the state to  
5 approve the establishment of all new methadone clinics. In an  
6 effort to maintain compliance with the federal requirement, the  
7 human services department [~~of health~~] shall regulate the  
8 establishment and continuance of methadone clinics in New  
9 Mexico in accordance with its powers and duties [~~as the state's~~  
10 ~~public health agency and drug abuse agency~~].

11 B. In regulating methadone clinics, the human  
12 services department [~~of health~~] shall perform an assessment of  
13 the need for clinics and develop clinical and administrative  
14 standards as required by federal law. The human services  
15 department may consider other factors it deems necessary to  
16 ensure the provision of drug abuse treatment services and the  
17 protection of the health and safety of New Mexico [~~citizens~~]  
18 residents.

19 C. For the purposes of this section, "methadone  
20 clinic" means a public or private facility that dispenses  
21 methadone for the detoxification treatment or maintenance  
22 treatment of narcotic addicts."

23 Section 8. Section 28-10-1 NMSA 1978 (being Laws 1973,  
24 Chapter 349, Section 1, as amended) is amended to read:

25 "28-10-1. GOVERNOR'S COMMISSION ON DISABILITY.--

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1           A. There is created the "governor's commission on  
2 disability" consisting of fifteen members, nine of whom shall  
3 be appointed by the governor. The six remaining members shall  
4 be the director of the vocational rehabilitation division of  
5 the public education department, the secretary of labor or  
6 ~~[his]~~ the secretary's designee, the director of the behavioral  
7 health services division of the human services department ~~[of~~  
8 ~~health]~~, the secretary of children, youth and families or ~~[his]~~  
9 the secretary's designee, the ~~[director]~~ secretary of ~~[the~~  
10 ~~state agency on]~~ aging and long-term services or ~~[his]~~ the  
11 secretary's designee and the secretary of human services or  
12 ~~[his]~~ the secretary's designee. Initially, three members shall  
13 be appointed for terms ending December 31, 1978, three members  
14 for terms ending December 31, 1980 and three members for terms  
15 ending December 31, 1982. Thereafter, appointments shall be  
16 for six years expiring on December 31 of even-numbered years.  
17 Appointed members shall be appointed from different geographic  
18 areas of the state and from the major disability services in  
19 the state. Appointed members shall include individuals with  
20 disabilities, representatives of government and private  
21 enterprise, parents or guardians of individuals with  
22 disabilities and professionals in, or those who are interested  
23 in, service for individuals with disabilities. Not more than  
24 five of the members appointed by the governor shall be of the  
25 same political party.

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1           B. A majority of the members of the commission  
2 constitutes a quorum for the transaction of business. The  
3 commission shall meet at least twice a year and shall annually  
4 elect a [~~chairman~~] chair and a vice [~~chairman~~] chair.

5           C. The commission shall be primarily concerned with  
6 those individuals with disabilities who have a condition  
7 [~~which~~] that, regardless of its physical or mental origin,  
8 constitutes a substantial occupational disadvantage."

9           Section 9. Section 43-1-3 NMSA 1978 (being Laws 1977,  
10 Chapter 279, Section 2, as amended) is amended to read:

11           "43-1-3. DEFINITIONS.--As used in the Mental Health and  
12 Developmental Disabilities Code:

13           A. "aversive stimuli" means anything [~~which~~] that,  
14 because it is believed to be unreasonably unpleasant,  
15 uncomfortable or distasteful to the client, is administered or  
16 done to the client for the purpose of reducing the frequency of  
17 a behavior, but does not include verbal therapies, physical  
18 restrictions to prevent imminent harm to self or others or  
19 psychotropic medications [~~which~~] that are not used for purposes  
20 of punishment;

21           B. "client" means any patient who is requesting or  
22 receiving mental health services or any person requesting or  
23 receiving developmental disabilities services or who is present  
24 in a mental health or developmental disabilities facility for  
25 the purpose of receiving such services or who has been placed

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1 in a mental health or developmental disabilities facility by  
2 [~~his~~] the person's parent or guardian or by any court order;

3 C. "code" means the Mental Health and Developmental  
4 Disabilities Code;

5 D. "consistent with the least drastic means  
6 principle" means that the habilitation or treatment and the  
7 conditions of habilitation or treatment for the client,  
8 separately and in combination:

9 (1) are no more harsh, hazardous or intrusive  
10 than necessary to achieve acceptable treatment objectives for  
11 the client;

12 (2) involve no restrictions on physical  
13 movement and no requirement for residential care except as  
14 reasonably necessary for the administration of treatment or for  
15 the protection of the client or others from physical injury;  
16 and

17 (3) are conducted at the suitable available  
18 facility closest to the client's place of residence;

19 E. "convulsive treatment" means any form of mental  
20 health treatment [~~which~~] that depends upon creation of a  
21 convulsion by any means, including but not limited to  
22 electroconvulsive treatment and insulin coma treatment;

23 F. "court" means a district court of New Mexico;

24 G. "department" or "division" means the behavioral  
25 health services division of the human services department [~~of~~

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1 health];

2 H. "developmental disability" means a disability of  
3 a person ~~[which]~~ that is attributable to mental retardation,  
4 cerebral palsy, autism or neurological dysfunction ~~[which]~~ that  
5 requires treatment or habilitation similar to that provided to  
6 persons with mental retardation;

7 I. "evaluation facility" means a community mental  
8 health or developmental disability program or a medical  
9 facility ~~[having]~~ that has psychiatric or developmental  
10 disability services available, including the New Mexico  
11 behavioral health institute at Las Vegas, the Los Lunas medical  
12 center or, if none of the foregoing is reasonably available or  
13 appropriate, the office of a licensed physician or a certified  
14 psychologist, ~~[any of which shall be]~~ and that is capable of  
15 performing a mental status examination adequate to determine  
16 the need for involuntary treatment;

17 J. "experimental treatment" means any mental health  
18 or developmental disabilities treatment ~~[which]~~ that presents  
19 significant risk of physical harm, but does not include  
20 accepted treatment used in competent practice of medicine and  
21 psychology and supported by scientifically acceptable studies;

22 K. "grave passive neglect" means failure to provide  
23 for basic personal or medical needs or for one's own safety to  
24 such an extent that it is more likely than not that serious  
25 bodily harm will result in the near future;

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1           L. "habilitation" means the process by which  
2 professional persons and their staff assist the developmentally  
3 disabled client in acquiring and maintaining those skills and  
4 behaviors ~~[which]~~ that enable ~~[him]~~ the person to cope more  
5 effectively with the demands of ~~[his own person and of his]~~ the  
6 person's self and environment and to raise the level of ~~[his]~~  
7 the person's physical, mental and social efficiency.

8 "Habilitation" includes but is not limited to programs of  
9 formal, structured education and treatment;

10           M. "likelihood of serious harm to oneself" means  
11 that it is more likely than not that in the near future the  
12 person will attempt to commit suicide or will cause serious  
13 bodily harm to ~~[himself]~~ the person's self by violent or other  
14 self-destructive means, including but not limited to grave  
15 passive neglect;

16           N. "likelihood of serious harm to others" means  
17 that it is more likely than not that in the near future ~~[the]~~ a  
18 person will inflict serious, unjustified bodily harm on another  
19 person or commit a criminal sexual offense, as evidenced by  
20 behavior causing, attempting or threatening such harm, which  
21 behavior gives rise to a reasonable fear of such harm from the  
22 person;

23           O. "mental disorder" means ~~[the]~~ substantial  
24 disorder of ~~[the]~~ a person's emotional processes, thought or  
25 cognition ~~[which]~~ that grossly impairs judgment, behavior or

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1 capacity to recognize reality, but does not mean developmental  
2 disability;

3 P. "mental health or developmental disabilities  
4 professional" means a physician or other professional who by  
5 training or experience is qualified to work with individuals  
6 with mental disorders or developmental disabilities;

7 Q. "physician" or "certified psychologist", when  
8 used for the purpose of hospital admittance or discharge, means  
9 a physician or certified psychologist who has been granted  
10 admitting privileges at a hospital licensed by the department  
11 of health, if such privileges are required;

12 R. "psychosurgery":

13 (1) means those operations currently referred  
14 to as lobotomy, psychiatric surgery and behavioral surgery and  
15 all other forms of brain surgery if the surgery is performed  
16 for the purpose of the following:

17 [~~1~~] (a) modification or control of  
18 thoughts, feelings, actions or behavior rather than the  
19 treatment of a known and diagnosed physical disease of the  
20 brain;

21 [~~2~~] (b) treatment of abnormal brain  
22 function or normal brain tissue in order to control thoughts,  
23 feelings, actions or behavior; or

24 [~~3~~] (c) treatment of abnormal brain  
25 function or abnormal brain tissue in order to modify thoughts,

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1 feelings, actions or behavior when the abnormality is not an  
2 established cause for those thoughts, feelings, actions or  
3 behavior; and

4 (2) does not include prefrontal sonic  
5 treatment in which there is no destruction of brain tissue;

6 S. "residential treatment or habilitation program"  
7 means diagnosis, evaluation, care, treatment or habilitation  
8 rendered inside or on the premises of a mental health or  
9 developmental disabilities facility, hospital, clinic,  
10 institution or supervisory residence or nursing home when the  
11 [~~individual~~] client resides on the premises; and

12 T. "treatment" means any effort to accomplish a  
13 significant change in the mental or emotional condition or  
14 behavior of the client."

15 Section 10. Section 52-4-1 NMSA 1978 (being Laws 1983,  
16 Chapter 116, Section 1, as amended) is amended to read:

17 "52-4-1. DEFINITION--HEALTH CARE PROVIDER.--As used in  
18 Chapter 52 NMSA 1978, "health care provider" means:

19 A. a hospital maintained by the state or a  
20 political subdivision of the state or any place currently  
21 licensed as a hospital by the department of health that has:

- 22 (1) accommodations for resident bed patients;  
23 (2) a licensed professional registered nurse  
24 always on duty or call;  
25 (3) a laboratory; and

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- 1 (4) an operating room where surgical  
2 operations are performed;
- 3 B. an optometrist licensed pursuant to the  
4 provisions of Chapter 61, Article 2 NMSA 1978;
- 5 C. a [~~chiropractor~~] chiropractic physician licensed  
6 pursuant to the provisions of Chapter 61, Article 4 NMSA 1978;
- 7 D. a dentist licensed pursuant to the provisions of  
8 Chapter 61, Article 5 NMSA 1978;
- 9 E. a physician licensed pursuant to the provisions  
10 of Chapter 61, Article 6 NMSA 1978;
- 11 F. a podiatrist licensed pursuant to the provisions  
12 of Chapter 61, Article 8 NMSA 1978;
- 13 G. an osteopathic physician licensed pursuant to  
14 the provisions of Chapter 61, Article 10 NMSA 1978;
- 15 H. a physician assistant registered pursuant to the  
16 provisions of Section 61-6-7 NMSA 1978;
- 17 I. a certified nurse practitioner licensed pursuant  
18 to Section 61-3-23.2 NMSA 1978;
- 19 J. a physical therapist licensed pursuant to the  
20 provisions of Chapter 61, Article 12 NMSA 1978;
- 21 K. an occupational therapist licensed pursuant to  
22 the provisions of Chapter 61, Article 12A NMSA 1978;
- 23 L. a doctor of oriental medicine licensed pursuant  
24 to the provisions of Chapter 61, Article 14A NMSA 1978;
- 25 M. a psychologist who is duly licensed or certified

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1 in the state where the service is rendered, holding a doctorate  
2 degree in psychology and having at least two years clinical  
3 experience in a recognized health setting, or who has met the  
4 standards of the national register of health services providers  
5 in psychology;

6 N. a certified nurse-midwife licensed by the board  
7 of nursing as a registered nurse and registered with the  
8 behavioral health services division of the human services  
9 department [~~of health~~] as a certified nurse-midwife; or

10 O. any person or facility that provides health-  
11 related services in the health care industry, as approved by  
12 the director."

13 Section 11. Section 59A-23-6 NMSA 1978 (being Laws 1983,  
14 Chapter 64, Section 1) is amended to read:

15 "59A-23-6. ALCOHOL DEPENDENCY COVERAGE.--

16 A. Each insurer that delivers or issues for  
17 delivery in this state a group health insurance policy shall  
18 offer and make available benefits for the necessary care and  
19 treatment of alcohol dependency. Such benefits shall:

20 (1) be subject to annual deductibles and  
21 coinsurance consistent with those imposed on other benefits  
22 within the same policy;

23 (2) provide no less than thirty days necessary  
24 care and treatment in an alcohol dependency treatment center  
25 and thirty outpatient visits for alcohol dependency treatment;

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1 and

2 (3) be offered for benefit periods of no more  
3 than one year and may be limited to a lifetime maximum of no  
4 less than two benefit periods. Such offer of benefits shall be  
5 subject to the rights of the group health insurance holder to  
6 reject the coverage or to select any alternative level of  
7 benefits if that right is offered by or negotiated with that  
8 insurer.

9 B. For purposes of this section, "alcohol  
10 dependency treatment center" means a facility that provides a  
11 program for the treatment of alcohol dependency pursuant to a  
12 written treatment plan approved and monitored by a physician or  
13 meeting the quality standards of [~~the substance abuse bureau~~  
14 ~~of~~] the behavioral health services division of the [~~health and~~  
15 ~~environment~~] human services department and which facility also:

16 (1) is affiliated with a hospital under a  
17 contractual agreement with an established system for patient  
18 referral;

19 (2) is accredited as such a facility by the  
20 joint commission on accreditation of hospitals; or

21 (3) meets at least the minimum standards  
22 adopted by the [~~substance abuse bureau pursuant to Section~~  
23 ~~43-3-4 NMSA 1978~~] behavioral health services division for  
24 treatment of alcoholism in regional treatment centers [~~as~~  
25 ~~defined in Section 43-3-3 NMSA 1978~~].

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1           C. This section applies to policies delivered or  
2 issued for delivery or renewed, extended or amended in this  
3 state on or after July 1, 1983 or upon expiration of a  
4 collective bargaining agreement applicable to a particular  
5 policyholder, whichever is later; provided that this section  
6 does not apply to blanket, short-term travel, accident-only,  
7 limited or specified disease, individual conversion policies or  
8 policies designed for issuance to persons eligible for coverage  
9 under Title ~~[XVIII]~~ 18 of the Social Security Act, known as  
10 medicare, or any other similar coverage under state or federal  
11 governmental plans. With respect to any policy forms approved  
12 by the ~~[department of]~~ insurance division of the public  
13 regulation commission prior to the effective date of this  
14 section, an insurer is authorized to comply with this section  
15 by the use of endorsements or riders, provided such  
16 endorsements or riders are approved by the ~~[department of]~~  
17 insurance division as being in compliance with this section and  
18 applicable provisions of ~~[Chapter 59 NMSA 1978]~~ the Insurance  
19 Code.

20           D. If an organization offering group health  
21 benefits to its members makes more than one health insurance  
22 policy or nonprofit health care plan available to its members  
23 on a member option basis, the organization shall not require  
24 alcohol dependency coverage from one health insurer or health  
25 care plan without requiring the same level of alcohol

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1 dependency coverage for all other health insurance policies or  
2 health care plans that the organization makes available to its  
3 members."

4 Section 12. TEMPORARY PROVISION--TRANSFER OF PERSONNEL,  
5 PROPERTY, CONTRACTS AND REFERENCES IN LAW.--On July 1, 2007:

6 A. all personnel, appropriations, money, records,  
7 equipment, supplies and other property of the behavioral health  
8 services division of the department of health shall be  
9 transferred to the human services department; and

10 B. all contracts of the behavioral health services  
11 division of the department of health shall be binding and  
12 effective on the human services department.

13 Section 13. REPEAL.--Sections 9-7-6.1 and 9-7-6.2 NMSA  
14 1978 (being Laws 1999, Chapter 270, Sections 1 and 2, as  
15 amended) are repealed.