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**HOUSE BILL 846**

**47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005**

**INTRODUCED BY**

**Thomas E. Swisstack**

**AN ACT**

**RELATING TO CIVIL LAW; PROVIDING THAT A PRIMA FACIE TORT SHALL NOT BE RECOGNIZED AS A CAUSE OF ACTION IN A CIVIL LAWSUIT OR IN ARBITRATION UNLESS NO OTHER CAUSE OF ACTION IS BROUGHT.**

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

**Section 1. PRIMA FACIE TORT--LIMITATION ON ACTION. --**

**A. A prima facie tort shall not be recognized as a cause of action in a civil lawsuit or in arbitration when New Mexico law applies unless it is the sole cause of action based on the facts, events or circumstances that comprise its elements.**

**B. The provisions of this section do not limit a plaintiff from pursuing another action in tort.**

**C. As used in this section, "prima facie tort" means a claim by a plaintiff for damages on the basis that the**

underscoring material = new  
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1 defendant acted lawfully, but intended to cause the plaintiff  
2 harm and succeeded in doing so. The elements of a prima facie  
3 tort are as follows:

4 (1) the defendant intentionally acted or  
5 failed to act;

6 (2) the defendant intended that the act or  
7 failure to act would cause harm to the plaintiff or the  
8 defendant knew with certainty that the act or failure to act  
9 would cause harm to the plaintiff;

10 (3) the defendant's act or failure to act was  
11 the proximate cause of the plaintiff's harm; and

12 (4) the defendant's conduct was not  
13 justifiable under the circumstances.

14 D. This section shall not apply to any cause of  
15 action occurring prior to July 1, 2005.

16 Section 2. EFFECTIVE DATE. --The effective date of the  
17 provisions of this act is July 1, 2005.