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SENATE BILL 183

**49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010**

INTRODUCED BY

Peter Wirth and Mimi Stewart

AN ACT

RELATING TO DOMESTIC AFFAIRS; CREATING A NEW CHAPTER 40A NMSA 1978 ESTABLISHING DOMESTIC PARTNERSHIPS; AMENDING SECTIONS OF THE NMSA 1978 TO PROVIDE FOR RIGHTS AND RESPONSIBILITIES OF DOMESTIC PARTNERS; PROVIDING A PENALTY; RECONCILING MULTIPLE AMENDMENTS TO SECTIONS OF LAW IN LAWS 2007, 2008 AND 2009.

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

Section 1. A new Section 40A-1-1 NMSA 1978 is enacted to read:

"40A-1-1. [NEW MATERIAL] DOMESTIC PARTNERSHIP--CIVIL CONTRACT.--Domestic partnership is a civil contract that is not marriage entered into by two adults, regardless of physical, behavioral or developmental disability or sex, who are capable in law of contracting. The consent of the contracting persons is essential to the creation of a domestic partnership."

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1           Section 2. A new Section 40A-1-2 NMSA 1978 is enacted to  
2 read:

3           "40A-1-2. [NEW MATERIAL] RELIGIOUS FREEDOM.--Nothing in  
4 Chapter 40A NMSA 1978 shall interfere with or regulate the  
5 religious practice of any religious body or Indian nation,  
6 tribe or pueblo. No religious body or federally recognized  
7 Indian nation, tribe or pueblo shall be required to solemnize  
8 or witness a domestic partnership."

9           Section 3. A new Section 40A-1-3 NMSA 1978 is enacted to  
10 read:

11           "40A-1-3. [NEW MATERIAL] COUNTY CLERK--DUTIES.--

12           A. A county clerk shall provide an affidavit of  
13 domestic partnership form to individuals prepared to establish  
14 a domestic partnership.

15           B. A county clerk shall accept an affidavit of  
16 domestic partnership when it is submitted and shall immediately  
17 issue a certificate of domestic partnership and record and  
18 index the certificate in the record of domestic partnerships in  
19 the county records. After recording, the county clerk shall  
20 provide a certificate of domestic partnership to the domestic  
21 partners.

22           C. A county clerk shall receive a fee of twenty-  
23 five dollars (\$25.00) for issuing and recording a certificate  
24 of domestic partnership.

25           D. Each county shall maintain a record of domestic

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1 partnerships for the purpose of recording and indexing  
2 affidavits and certificates of domestic partnerships as county  
3 records."

4 Section 4. A new Section 40A-1-4 NMSA 1978 is enacted to  
5 read:

6 "40A-1-4. [NEW MATERIAL] ESTABLISHING A DOMESTIC  
7 PARTNERSHIP.--

8 A. A domestic partnership is established when, upon  
9 receipt of an affidavit of domestic partnership, a county clerk  
10 issues and records a certificate of domestic partnership.

11 B. To obtain a certificate of domestic partnership,  
12 individuals shall:

13 (1) appear in person and submit an affidavit  
14 of domestic partnership to a county clerk on a form that  
15 conforms with the requirements of Section 40A-1-7 NMSA 1978  
16 stating that the two individuals intend to become domestic  
17 partners and that they:

18 (a) have reached the age of majority;

19 (b) are capable of consenting to the  
20 domestic partnership;

21 (c) are not married to someone else and  
22 are not part of a domestic partnership with someone else or a  
23 civil union with someone else; and

24 (d) are not related by blood to the  
25 degree of consanguinity considered incestuous by the laws of

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1 New Mexico;

2 (2) provide a mailing address;

3 (3) consent to the jurisdiction of the  
4 district courts of New Mexico for the purpose of a proceeding  
5 related to the domestic partnership;

6 (4) declare that representations made in the  
7 affidavit are true, correct and contain no material omission of  
8 fact to the best knowledge and belief of each individual;

9 (5) deliver the affidavit to a county clerk  
10 for recording and for issuance of a certificate of domestic  
11 partnership; and

12 (6) pay a registration fee of twenty-five  
13 dollars (\$25.00)."

14 Section 5. A new Section 40A-1-5 NMSA 1978 is enacted to  
15 read:

16 "40A-1-5. [NEW MATERIAL] JURISDICTION--DISTRICT COURT.--

17 A. The district court shall have jurisdiction over  
18 any proceeding relating to domestic partnership.

19 B. In accordance with the consent acknowledged by  
20 the domestic partners in the affidavit of domestic partnership,  
21 if no other forum is available with comparable remedies to  
22 address distribution of assets, debts and support, as well as  
23 any other issues related to a domestic partnership established  
24 in this state, the district court shall have jurisdiction even  
25 if neither party is a resident of, or maintains a domicile in,

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1 the state at the time the proceedings are filed.

2 C. A petition addressing domestic partnership  
3 issues may be filed in the district court of the county in  
4 which the petitioner or respondent resides or last resided or  
5 in the county in which the domestic partnership is recorded.

6 D. Nothing in this section shall be construed as  
7 granting jurisdiction in conflict with the Uniform Child-  
8 Custody Jurisdiction and Enforcement Act or the Uniform  
9 Interstate Family Support Act as adopted in New Mexico."

10 Section 6. A new Section 40A-1-6 NMSA 1978 is enacted to  
11 read:

12 "40A-1-6. [NEW MATERIAL] PROHIBITED DOMESTIC  
13 PARTNERSHIPS--ANNULMENT.--Domestic partnerships within a degree  
14 of consanguinity considered incestuous by the laws of New  
15 Mexico or between or with persons who have not reached the age  
16 of majority shall be declared void by a decree of the district  
17 court. A cause of action may be instituted by the minor, by  
18 next friend, by either parent or legal guardian of such minor  
19 or by the district attorney. In the case of minors, no party  
20 to the domestic partnership over the prohibited age shall be  
21 allowed to apply for or obtain a decree of the court declaring  
22 such domestic partnership void; but the minor may do so, and  
23 the court may in its discretion grant domestic partner support  
24 until the minor reaches the age of majority, marries or enters  
25 into another domestic partnership. In the case of minors, if

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1 the parties should live together until they arrive at the age  
2 of majority, then and in that case, the domestic partnership  
3 shall be deemed legal and binding."

4 Section 7. A new Section 40A-1-7 NMSA 1978 is enacted to  
5 read:

6 "40A-1-7. [NEW MATERIAL] AFFIDAVIT AND CERTIFICATE OF  
7 DOMESTIC PARTNERSHIP--FORMS.--

8 A. To ensure a uniform system of records for all  
9 domestic partnerships, an affidavit of domestic partnership and  
10 a certificate of domestic partnership shall be substantially as  
11 provided in this section, with each form to be numbered  
12 consecutively corresponding with the page number of the record  
13 of domestic partnerships in the county clerk's office. All  
14 such forms shall be provided free of cost by the county.

15 B. The affidavit of domestic partnership form shall  
16 be substantially as follows:

17 "AFFIDAVIT OF DOMESTIC PARTNERSHIP NO. \_\_\_\_  
18 STATEMENTS RECEIVED AND FILED IN THE COUNTY CLERK'S OFFICE  
19 AT \_\_\_\_ O'CLOCK \_\_\_\_ . M. ON \_\_\_\_\_, 20 \_\_\_\_ .  
20 COUNTY CLERK, \_\_\_\_\_ COUNTY  
21 By \_\_\_\_\_, Deputy  
22 To the county clerk:

23 We the undersigned hereby intend to be united in a  
24 domestic partnership and certify the following.

25 Each of us has reached the age of majority.

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1           Each of us is capable of consenting to this domestic  
2 partnership.

3           Neither of us is married to someone else or is part  
4 of a domestic partnership with someone else or a civil union  
5 with someone else that has not been terminated, dissolved or  
6 adjudged a nullity.

7           We are not related by blood to the degree of  
8 consanguinity considered incestuous by the laws of New Mexico.

9           Each of us consents to the jurisdiction of the  
10 district courts of New Mexico for the purpose of a proceeding  
11 related to this domestic partnership or to a domestic partner's  
12 rights and obligations, even if one or both of us do not reside  
13 in the state.

14           The representations here are true and correct and  
15 contain no material omission of fact to the best of our  
16 knowledge and belief.

Individual 1	Individual 2
Full name:	Full name:
_____	_____
Date of birth:	Date of birth:
_____	_____
Place of birth:	Place of birth:
_____	_____
Present address:	Present address:
_____	_____



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County of \_\_\_\_\_ .  
\_\_\_\_\_ of \_\_\_\_\_ and  
Partner 1 \_\_\_\_\_ Address  
\_\_\_\_\_ of \_\_\_\_\_  
Partner 2 \_\_\_\_\_ Address

are hereby recognized as domestic partners in accordance  
with the laws of the state of New Mexico.

Recorded this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
at \_\_\_\_\_ o'clock \_\_\_\_\_ .M.

Record of Domestic Partnership Book No. \_\_\_\_\_, Page No. \_\_\_\_\_.

\_\_\_\_\_  
County Clerk"."

Section 8. A new Section 40A-1-8 NMSA 1978 is enacted to  
read:

"40A-1-8. [NEW MATERIAL] MISREPRESENTATION OF DOMESTIC  
PARTNERSHIP ELIGIBILITY--PENALTY.--Filing an intentionally and  
materially false affidavit of domestic partnership is  
punishable as a misdemeanor in accordance with the provisions  
of Section 31-19-1 NMSA 1978."

Section 9. A new Section 40A-1-9 NMSA 1978 is enacted to  
read:

"40A-1-9. [NEW MATERIAL] RECIPROCITY.--A domestic  
partnership, civil union or a substantially similar legal  
relationship established in another jurisdiction shall be  
afforded the same rights as a domestic partnership established

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1 in New Mexico."

2 Section 10. A new Section 40A-2-1 NMSA 1978 is enacted to  
3 read:

4 "40A-2-1. [NEW MATERIAL] MUTUAL OBLIGATIONS OF DOMESTIC  
5 PARTNERS.--Domestic partners contract toward each other  
6 obligations of mutual respect, fidelity and support."

7 Section 11. A new Section 40A-2-2 NMSA 1978 is enacted to  
8 read:

9 "40A-2-2. [NEW MATERIAL] CONTRACT RIGHTS OF DOMESTIC  
10 PARTNERS.--Either domestic partner may enter into any  
11 engagement or transaction with the other, or with any other  
12 person respecting property, which either might, if unpartnered,  
13 subject, in transactions between themselves, to the general  
14 rules of common law that control the actions of persons  
15 occupying confidential relations with each other."

16 Section 12. A new Section 40A-2-3 NMSA 1978 is enacted to  
17 read:

18 "40A-2-3. [NEW MATERIAL] POWERS OF ATTORNEY--JOINDER OF  
19 PARTNER UNNECESSARY.--It shall not be necessary in any case for  
20 one domestic partner to join with the other partner when that  
21 partner executes a power of attorney for himself or herself."

22 Section 13. A new Section 40A-2-4 NMSA 1978 is enacted to  
23 read:

24 "40A-2-4. [NEW MATERIAL] EXECUTION OF DOMESTIC  
25 PARTNERSHIP SETTLEMENT OR SEPARATION CONTRACTS.--All contracts

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1 for domestic partnership settlements and contracts for  
2 separation must be in writing and executed and acknowledged or  
3 proved in like manner as a grant of land is required to be  
4 executed and acknowledged or proved."

5 Section 14. A new Section 40A-2-5 NMSA 1978 is enacted to  
6 read:

7 "40A-2-5. [NEW MATERIAL] RECORDING OF DOMESTIC  
8 PARTNERSHIP SETTLEMENT OR SEPARATION CONTRACTS--EFFECT OF  
9 RECORDING OR FAILURE TO RECORD.--When a domestic partnership  
10 settlement or separation contract is acknowledged or proved, it  
11 must be recorded in the office of the recorder of every county  
12 in which any real estate may be situated that is granted or  
13 affected by such contract. The recording or nonrecording of  
14 such contract has a like effect as the recording or  
15 nonrecording of a grant of real property."

16 Section 15. A new Section 40A-2-6 NMSA 1978 is enacted to  
17 read:

18 "40A-2-6. [NEW MATERIAL] PERSONS WHO MAY MAKE DOMESTIC  
19 PARTNERSHIP SETTLEMENTS.--Any person capable of entering into a  
20 domestic partnership may make a valid domestic partnership  
21 settlement."

22 Section 16. A new Section 40A-2-7 NMSA 1978 is enacted to  
23 read:

24 "40A-2-7. [NEW MATERIAL] MUTUAL ALTERATION OF LEGAL  
25 RELATIONS--CONSIDERATION.--Domestic partners cannot by any

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1 contract with each other alter their legal relations, except of  
2 their property, and except that they may agree in writing, to  
3 an immediate separation, and may make provisions for the  
4 support of either of them and of their children during their  
5 separation. The mutual consent of the parties is sufficient  
6 consideration for such an agreement."

7 Section 17. A new Section 40A-3-1 NMSA 1978 is enacted to  
8 read:

9 "40A-3-1. [NEW MATERIAL] LAW APPLICABLE TO PROPERTY  
10 RIGHTS.--The property rights of domestic partners are governed  
11 by this chapter unless there is a domestic partnership  
12 settlement containing stipulations contrary thereto."

13 Section 18. A new Section 40A-3-2 NMSA 1978 is enacted to  
14 read:

15 "40A-3-2. [NEW MATERIAL] METHODS FOR HOLDING PROPERTY.--  
16 Domestic partners may hold property as joint tenants, tenants  
17 in common or as community property."

18 Section 19. A new Section 40A-3-3 NMSA 1978 is enacted to  
19 read:

20 "40A-3-3. [NEW MATERIAL] SEPARATION OF PROPERTY--  
21 ADMISSION TO DWELLING.--Neither domestic partner has any  
22 interest in the property of the other domestic partner, but  
23 neither can be excluded from the other's dwelling."

24 Section 20. A new Section 40A-3-4 NMSA 1978 is enacted to  
25 read:

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1           "40A-3-4. [NEW MATERIAL] CONTRACTS OF INDEMNITY--NO  
2 OBLIGATION OF COMMUNITY PROPERTY UNLESS SIGNED BY BOTH DOMESTIC  
3 PARTNERS.--It is against the public policy of this state to  
4 allow one domestic partner to obligate community property by  
5 entering into a contract of indemnity whereby the domestic  
6 partner will indemnify a surety company in case of default of  
7 the principal upon a bond or undertaking issued in  
8 consideration of the contract of indemnity. No community  
9 property shall be liable for any indebtedness incurred as a  
10 result of any contract of indemnity made after the effective  
11 date of this section, unless both domestic partners sign the  
12 contract of indemnity."

13           Section 21. A new Section 40A-3-5 NMSA 1978 is enacted to  
14 read:

15           "40A-3-5. [NEW MATERIAL] DISPOSITION OF REAL PROPERTY  
16 WITHOUT JOINDER WHERE DOMESTIC PARTNER IS PRISONER OF WAR OR A  
17 PERSON MISSING IN ACTION.--

18           A. If a domestic partner is reported by the United  
19 States department of defense to be a prisoner of war or a  
20 person missing in action, the other domestic partner may, not  
21 less than six months after such a report, file a petition of  
22 the facts that make it desirable for the petitioning partner to  
23 engage in a transaction for which joinder of both domestic  
24 partners is required by Section 40A-3-14 NMSA 1978.

25           B. The petition shall be filed in a district court

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1 of any county in which real property described in the petition  
2 is located.

3 C. The district court shall appoint a guardian ad  
4 litem for the prisoner of war or person missing in action and  
5 shall allow such guardian a reasonable fee for the guardian's  
6 services.

7 D. A notice, stating that the petition has been  
8 filed and specifying the date of the hearing, accompanied by a  
9 copy of the petition, shall be issued and served on the  
10 guardian ad litem and shall be published once each week for  
11 four successive weeks in a newspaper of general circulation in  
12 the county in which the proceeding is pending. The last such  
13 publication shall be made at least twenty days before the  
14 hearing.

15 E. After the hearing, the district court may allow  
16 the petitioning domestic partner alone to engage in a  
17 transaction for which joinder of both partners is required by  
18 Section 40A-3-14 NMSA 1978 upon such terms and conditions as  
19 may be appropriate or necessary to protect the interests of the  
20 absent domestic partner.

21 F. Any sale, lease, conveyance or encumbrance  
22 authorized by the district court pursuant to Subsection E of  
23 this section shall be confirmed by order of the district court,  
24 and that order of confirmation may be recorded in the office of  
25 the county clerk of the county where any property affected

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1 thereby is situated."

2 Section 22. A new Section 40A-3-6 NMSA 1978 is enacted to  
3 read:

4 "40A-3-6. [NEW MATERIAL] SHORT TITLE.--Sections 40A-3-6  
5 through 40A-3-17 NMSA 1978 may be cited as the "Domestic  
6 Partnership Community Property Act"."

7 Section 23. A new Section 40A-3-7 NMSA 1978 is enacted to  
8 read:

9 "40A-3-7. [NEW MATERIAL] CLASSES OF PROPERTY.--

10 A. "Separate property" means:

11 (1) property acquired by either domestic  
12 partner before establishment of a domestic partnership or after  
13 entry of a decree of dissolution of domestic partnership;

14 (2) property acquired after entry of a decree  
15 entered pursuant to Section 40A-5-3 NMSA 1978, unless the  
16 decree provides otherwise;

17 (3) property designated as separate property  
18 by a judgment or decree of any court having jurisdiction;

19 (4) property acquired by either domestic  
20 partner by gift, bequest, devise or descent; and

21 (5) property designated as separate property  
22 by a written agreement between the domestic partners, including  
23 a deed or other written agreement concerning property held by  
24 the domestic partners as joint tenants or tenants in common in  
25 which the property is designated as separate property.

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1           B. Except as provided in Subsection C of this  
2 section, "community property" means property acquired by either  
3 or both domestic partners during their domestic partnership  
4 that is not separate property. Property acquired by the  
5 domestic partners by an instrument in writing whether as  
6 tenants in common or as joint tenants or otherwise shall be  
7 presumed to be held as community property unless such property  
8 is separate property within the meaning of Subsection A of this  
9 section.

10           C. "Quasi-community property" means all real or  
11 personal property, except separate property as defined in  
12 Subsection A of this section, wherever situated, heretofore or  
13 hereafter acquired in any of the following ways:

14                   (1) by either domestic partner while domiciled  
15 elsewhere that would have been community property if the  
16 domestic partner who acquired the property had been domiciled  
17 in this state at the time of its acquisition; or

18                   (2) in exchange for real or personal property,  
19 wherever situated, that would have been community property if  
20 the domestic partner who acquired the property so exchanged had  
21 been domiciled in this state at the time of its acquisition.

22           D. For purposes of division of property incident to  
23 a dissolution of domestic partnership or a legal separation  
24 under Section 40A-5-3 NMSA 1978, quasi-community property shall  
25 be treated as community property, if both parties are

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1 domiciliaries of New Mexico at the time of the dissolution or  
2 legal separation proceeding.

3 E. "Property" includes the rents, issues and  
4 profits thereof.

5 F. The right to hold property as joint tenants or  
6 as tenants in common and the legal incidents of so holding,  
7 including but not limited to the incident of the right of  
8 survivorship of joint tenancy, are not altered by the Domestic  
9 Partnership Community Property Act, except as provided in  
10 Sections 40A-3-10, 40A-3-12 and 40A-3-14 NMSA 1978.

11 G. The provisions of this section shall not affect  
12 the rights of any creditor, which rights accrued prior to the  
13 effective date of this section."

14 Section 24. A new Section 40A-3-8 NMSA 1978 is enacted to  
15 read:

16 "40A-3-8. [NEW MATERIAL] DEFINITION OF SEPARATE AND  
17 COMMUNITY DEBTS.--

18 A. "Separate debt" means:

19 (1) a debt contracted or incurred by a  
20 domestic partner before the establishment of the domestic  
21 partnership or after entry of a decree of dissolution of  
22 domestic partnership;

23 (2) a debt contracted or incurred by a  
24 domestic partner after entry of a decree entered pursuant to  
25 Section 40A-5-3 NMSA 1978, unless the decree provides

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1 otherwise;

2 (3) a debt designated as a separate debt of a  
3 domestic partner by a judgment or decree of any court having  
4 jurisdiction;

5 (4) a debt contracted by a domestic partner  
6 during the domestic partnership that is identified by the  
7 domestic partner to the creditor in writing at the time of its  
8 creation as the separate debt of the contracting domestic  
9 partner;

10 (5) a debt that arises from a tort committed  
11 by a domestic partner before the establishment of the domestic  
12 partnership or after entry of a decree of dissolution of  
13 domestic partnership or a separate tort committed during the  
14 domestic partnership; or

15 (6) a debt declared to be unreasonable  
16 pursuant to Section 40A-3-11 NMSA 1978.

17 B. "Community debt" means a debt contracted or  
18 incurred by either or both domestic partners during the  
19 domestic partnership that is not a separate debt."

20 Section 25. A new Section 40A-3-9 NMSA 1978 is enacted to  
21 read:

22 "40A-3-9. [NEW MATERIAL] GAMBLING DEBTS ARE SEPARATE  
23 DEBTS OF DOMESTIC PARTNER INCURRING DEBT.--A gambling debt  
24 incurred by a domestic partner as a result of legal gambling is  
25 a separate debt of the partner incurring the debt."

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1           Section 26. A new Section 40A-3-10 NMSA 1978 is enacted  
2 to read:

3           "40A-3-10. [NEW MATERIAL] PRIORITIES FOR SATISFACTION OF  
4 SEPARATE DEBTS.--

5           A. The separate debt of a domestic partner shall be  
6 satisfied first from the debtor domestic partner's separate  
7 property, excluding that partner's interest in property in  
8 which each of the domestic partners owns an undivided equal  
9 interest as a joint tenant or tenant in common. Should such  
10 property be insufficient, then the debt shall be satisfied from  
11 the debtor domestic partner's one-half interest in the  
12 community property or in property in which each domestic  
13 partner owns an undivided equal interest as a joint tenant or  
14 tenant in common, excluding the residence of the domestic  
15 partners. Should such property be insufficient, then the debt  
16 shall be satisfied from the debtor domestic partner's interest  
17 in the residence of the domestic partners, except as provided  
18 in Subsection B of this section or Section 42-10-9 NMSA 1978.  
19 Neither domestic partner's interest in community property or  
20 separate property shall be liable for the separate debt of the  
21 other domestic partner.

22           B. Unless both domestic partners join in writing in  
23 the creation of the underlying debt or obligation incurred  
24 after the establishment of the domestic partnership, a judgment  
25 or other process arising out of such post-partnership debt

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1 against one domestic partner alone or both domestic partners  
2 shall not create a lien or otherwise be subject to execution  
3 against the interest of the nonjoining domestic partner in the  
4 domestic partnership residence, whether held by the domestic  
5 partners as community property, joint tenants or tenants in  
6 common.

7 C. The priorities or exemptions established in this  
8 section for the satisfaction of a separate debt must be claimed  
9 by either domestic partner under the procedure set forth in  
10 Section 42-10-13 NMSA 1978 or the right to claim such  
11 priorities or exemptions is waived as between a domestic  
12 partner and the creditor.

13 D. This section shall apply only while both  
14 domestic partners are living and shall not apply to the  
15 satisfaction of debts after the death of one or both domestic  
16 partners."

17 Section 27. A new Section 40A-3-11 NMSA 1978 is enacted  
18 to read:

19 "40A-3-11. [NEW MATERIAL] UNREASONABLE DEBT.--The court,  
20 at the time of the final decree of dissolution of domestic  
21 partnership, may declare, as between the parties, a debt to be  
22 unreasonable if it was incurred by a domestic partner while the  
23 domestic partner was living apart and the debt did not  
24 contribute to the benefit of both domestic partners or their  
25 dependents."

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1           Section 28. A new Section 40A-3-12 NMSA 1978 is enacted  
2 to read:

3           "40A-3-12. [NEW MATERIAL] PRIORITIES FOR SATISFACTION OF  
4 COMMUNITY DEBTS.--

5           A. Community debts shall be satisfied first from  
6 all community property and all property in which each domestic  
7 partner owns an undivided equal interest as a joint tenant or  
8 tenant in common, excluding the residence of the domestic  
9 partners. Should such property be insufficient, community  
10 debts shall then be satisfied from the residence of the  
11 domestic partners, except as provided in Subsection B of this  
12 section or Section 42-10-9 NMSA 1978. Should such property be  
13 insufficient, only the separate property of the domestic  
14 partner who contracted or incurred the debt shall be liable for  
15 its satisfaction. If both domestic partners contracted or  
16 incurred the debt, the separate property of both domestic  
17 partners is jointly and severally liable for its satisfaction.

18           B. Unless both domestic partners join in writing in  
19 the creation of the underlying debt or obligation incurred  
20 after the establishment of the domestic partnership, a judgment  
21 or other process arising out of such post-partnership debt  
22 against one domestic partner alone or both domestic partners  
23 shall not create a lien or otherwise be subject to execution  
24 against the interest of the nonjoining domestic partner in the  
25 partnership residence, whether held by the partners as

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1 community property, joint tenants or tenants in common.

2 C. The priorities or exemptions established in this  
3 section for the satisfaction of community debts must be claimed  
4 by either domestic partner under the procedure set forth in  
5 Section 42-10-13 NMSA 1978 or the right to claim such  
6 priorities or exemptions is waived as between a domestic  
7 partner and the creditor.

8 D. This section shall apply only while both  
9 domestic partners are living and shall not apply to the  
10 satisfaction of debts after the death of one or both domestic  
11 partners."

12 Section 29. A new Section 40A-3-13 NMSA 1978 is enacted  
13 to read:

14 "40A-3-13. [NEW MATERIAL] PRESUMPTION OF COMMUNITY  
15 PROPERTY.--Property acquired during the domestic partnership by  
16 either domestic partner, or both, is presumed to be community  
17 property."

18 Section 30. A new Section 40A-3-14 NMSA 1978 is enacted  
19 to read:

20 "40A-3-14. [NEW MATERIAL] TRANSFERS, CONVEYANCES,  
21 MORTGAGES AND LEASES OF REAL PROPERTY--WHEN JOINDER REQUIRED.--

22 A. Except for purchase-money mortgages and except  
23 as otherwise provided in this section, the domestic partners  
24 must join in all transfers, conveyances or mortgages or  
25 contracts to transfer, convey or mortgage any interest in

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1 community real property and separate real property owned by the  
2 domestic partners as cotenants in joint tenancy or tenancy in  
3 common. The domestic partners must join in all leases of  
4 community real property or separate real property owned by the  
5 domestic partners as cotenants in joint tenancy or tenancy in  
6 common if the initial term of the lease, together with any  
7 option or extension contained in the lease or provided for  
8 contemporaneously, exceeds five years or if the lease is for an  
9 indefinite term.

10 B. Any transfer, conveyance, mortgage or lease or  
11 contract to transfer, convey, mortgage or lease any interest in  
12 the community real property or in separate real property owned  
13 by the domestic partners as cotenants in joint tenancy or  
14 tenancy in common attempted to be made by either domestic  
15 partner alone in violation of the provisions of this section  
16 shall be void and of no effect, except that either domestic  
17 partner may transfer, convey, mortgage or lease directly to the  
18 other without the other joining therein.

19 C. Except as provided in this section, either  
20 domestic partner may transfer, convey, mortgage or lease  
21 separate real property without the other's joinder.

22 D. Nothing in this section shall affect the right  
23 of one of the domestic partners to transfer, convey, mortgage  
24 or lease or contract to transfer, convey, mortgage or lease any  
25 community real property or separate real property owned by the

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1 domestic partners as cotenants in joint tenancy or tenancy in  
2 common without the joinder of the other domestic partner,  
3 pursuant to a validly executed and recorded power of attorney  
4 as provided in Section 47-1-7 NMSA 1978. Nothing in this  
5 section shall affect the right of a domestic partner not joined  
6 in a transfer, conveyance, mortgage, lease or contract to  
7 validate an instrument at any time by a ratification in  
8 writing."

9 Section 31. A new Section 40A-3-15 NMSA 1978 is enacted  
10 to read:

11 "40A-3-15. [NEW MATERIAL] MANAGEMENT AND CONTROL OF OTHER  
12 COMMUNITY PERSONAL PROPERTY.--

13 A. Except as provided in Subsections B and C of  
14 this section, either domestic partner alone has full power to  
15 manage, control, dispose of and encumber the entire community  
16 personal property.

17 B. Where only one domestic partner is named in a  
18 document evidencing ownership of community personal property or  
19 named or designated in a written agreement between that  
20 domestic partner and a third party as having sole authority to  
21 manage, control, dispose of or encumber the community personal  
22 property that is described in or that is the subject of the  
23 agreement, only the domestic partner so named may manage,  
24 control, dispose of or encumber the community personal property  
25 described in such a document evidencing ownership or in such a

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1 written agreement.

2 C. Where both domestic partners are named in a  
3 document evidencing ownership of community personal property or  
4 named or designated in a written agreement with a third party  
5 as having joint authority to dispose of or encumber the  
6 community personal property that is described in or that is the  
7 subject of the agreement, both domestic partners must join to  
8 dispose of or encumber such community personal property where  
9 the names of the domestic partners are joined by the word  
10 "and". Where the names of the domestic partners are joined by  
11 the word "or", or by the words "and/or", either domestic  
12 partner alone may dispose of or encumber such community  
13 personal property."

14 Section 32. A new Section 40A-3-16 NMSA 1978 is enacted  
15 to read:

16 "40A-3-16. [NEW MATERIAL] DISPOSITION AND MANAGEMENT OF  
17 REAL PROPERTY WITHOUT JOINDER--MANAGEMENT OF COMMUNITY PERSONAL  
18 PROPERTY SUBJECT TO MANAGEMENT OF ONE DOMESTIC PARTNER ALONE  
19 WHERE DOMESTIC PARTNER HAS DISAPPEARED.--

20 A. If a domestic partner disappears and the  
21 partner's location is unknown to the other domestic partner,  
22 the other domestic partner may, not less than thirty days after  
23 such disappearance, file a petition setting forth the facts  
24 that make it desirable for the petitioning domestic partner to  
25 engage in a transaction for which joinder of both domestic

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1 partners is required by Section 40A-3-14 NMSA 1978 or to  
2 manage, control, dispose of or encumber community personal  
3 property that the disappearing domestic partner alone has sole  
4 authority to manage, control, dispose of or encumber under  
5 Section 40A-3-15 NMSA 1978.

6 B. The petition shall be filed in a district court  
7 of any county in which real property described in the petition  
8 is located or, if only community personal property is involved,  
9 in the district court of the county where the disappearing  
10 domestic partner resided.

11 C. The district court shall appoint a guardian ad  
12 litem for the domestic partner who has disappeared and shall  
13 allow a reasonable fee for the guardian's services.

14 D. A notice, stating that the petition has been  
15 filed and specifying the date of the hearing, accompanied by a  
16 copy of the petition, shall be issued and served on the  
17 guardian ad litem and shall be published once each week for  
18 four successive weeks in a newspaper of general circulation in  
19 the county in which the proceeding is pending. The last such  
20 publication shall be made at least twenty days before the  
21 hearing.

22 E. After the hearing, and upon determination of the  
23 fact of disappearance by one domestic partner, the district  
24 court may allow the petitioning domestic partner alone to  
25 engage in the transaction for which joinder of both domestic

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1 partners is required by Section 40A-3-14 NMSA 1978 or to  
2 manage, control, dispose of or encumber community personal  
3 property that the disappearing domestic partner alone has  
4 authority to manage, control, dispose of or encumber under  
5 Section 40A-3-15 NMSA 1978.

6 F. Any transfer, conveyance, mortgage or lease  
7 authorized by the district court pursuant to Subsection E of  
8 this section shall be confirmed by order of the district court,  
9 and that order of confirmation may be recorded in the office of  
10 the county clerk of the county where any real property affected  
11 thereby is situated."

12 Section 33. A new Section 40A-3-17 NMSA 1978 is enacted  
13 to read:

14 "40A-3-17. [NEW MATERIAL] JUDGMENTS TO BE RECORDED.--All  
15 orders rendered pursuant to Chapter 45, Article 5 NMSA 1978  
16 authorizing the transfer, conveyance, mortgage or lease of  
17 community real property or other real property owned by the  
18 domestic partners as cotenants in joint tenancy or tenancy in  
19 common may be recorded in the office of the county clerk of the  
20 county where any real property affected thereby is situated."

21 Section 34. A new Section 40A-4-1 NMSA 1978 is enacted to  
22 read:

23 "40A-4-1. [NEW MATERIAL] SHORT TITLE.--Chapter 40A,  
24 Article 4 NMSA 1978 may be cited as the "Prepartnership  
25 Agreement Act"."

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1           Section 35. A new Section 40A-4-2 NMSA 1978 is enacted to  
2 read:

3           "40A-4-2. [NEW MATERIAL] DEFINITIONS.--As used in the  
4 Prepartnership Agreement Act:

5           A. "prepartnership agreement" means an agreement  
6 between prospective domestic partners made in contemplation of  
7 domestic partnership and to be effective upon entry into  
8 domestic partnership; and

9           B. "property" means an interest, present or future,  
10 legal or equitable, vested or contingent, in real or personal  
11 property, including income and earnings."

12           Section 36. A new Section 40A-4-3 NMSA 1978 is enacted to  
13 read:

14           "40A-4-3. [NEW MATERIAL] FORMALITIES.--A prepartnership  
15 agreement shall be in writing, signed by both parties and  
16 acknowledged. It is enforceable without consideration."

17           Section 37. A new Section 40A-4-4 NMSA 1978 is enacted to  
18 read:

19           "40A-4-4. [NEW MATERIAL] CONTENT.--

20           A. Parties to a prepartnership agreement may  
21 contract with respect to:

22                   (1) the rights and obligations of each of the  
23 parties in any of the property of either or both of them  
24 whenever and wherever acquired or located;

25                   (2) the right to buy, sell, use, transfer,

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1 exchange, abandon, lease, consume, expend, assign, create a  
2 security interest in, mortgage, encumber, dispose of or  
3 otherwise manage and control property;

4 (3) the disposition of property upon  
5 separation, domestic partnership dissolution, death or the  
6 occurrence or nonoccurrence of any other event;

7 (4) the making of a will, trust or other  
8 arrangement to carry out the provisions of the agreement;

9 (5) the ownership rights in and disposition of  
10 the death benefit from a life insurance policy;

11 (6) the choice of law governing the  
12 construction of the agreement; and

13 (7) any other matter not in violation of  
14 public policy.

15 B. A prepartnership agreement may not adversely  
16 affect the right of a child or domestic partner to support, a  
17 party's right to child custody or visitation, a party's choice  
18 of abode or a party's freedom to pursue career opportunities."

19 Section 38. A new Section 40A-4-5 NMSA 1978 is enacted to  
20 read:

21 "40A-4-5. [NEW MATERIAL] EFFECT OF DOMESTIC  
22 PARTNERSHIP.--A prepartnership agreement becomes effective upon  
23 the establishment of the domestic partnership."

24 Section 39. A new Section 40A-4-6 NMSA 1978 is enacted to  
25 read:

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1 "40A-4-6. [NEW MATERIAL] AMENDMENT--REVOCATION.--After  
2 establishment of a domestic partnership, a prepartnership  
3 agreement may be amended or revoked only by a written agreement  
4 signed and acknowledged by the parties or by a consistent and  
5 mutual course of conduct that evidences an amendment to or  
6 revocation of the prepartnership agreement. The amended  
7 agreement or the revocation is enforceable without  
8 consideration."

9 Section 40. A new Section 40A-4-7 NMSA 1978 is enacted to  
10 read:

11 "40A-4-7. [NEW MATERIAL] ENFORCEMENT.--

12 A. A prepartnership agreement is not enforceable if  
13 the party against whom enforcement is sought proves that:

14 (1) that party did not execute the agreement  
15 voluntarily; or

16 (2) the agreement was unconscionable when it  
17 was executed and, before execution of the agreement, that  
18 party:

19 (a) was not provided a fair and  
20 reasonable disclosure of the property or financial obligations  
21 of the other party;

22 (b) did not voluntarily and expressly  
23 waive, in writing, any right to disclosure of the property or  
24 financial obligations of the other party beyond the disclosure  
25 provided; and

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1 (c) did not have, or reasonably could  
2 not have had, an adequate knowledge of the property or  
3 financial obligations of the other party.

4 B. An issue of unconscionability or voluntariness  
5 of a prepartnership agreement shall be decided by the court as  
6 a matter of law."

7 Section 41. A new Section 40A-4-8 NMSA 1978 is enacted to  
8 read:

9 "40A-4-8. [NEW MATERIAL] ENFORCEMENT--VOID DOMESTIC  
10 PARTNERSHIP.--If a domestic partnership is determined to be  
11 void, an agreement that would otherwise have been a  
12 prepartnership agreement is enforceable only to the extent  
13 necessary to avoid an inequitable result."

14 Section 42. A new Section 40A-4-9 NMSA 1978 is enacted to  
15 read:

16 "40A-4-9. [NEW MATERIAL] LIMITATION OF ACTIONS.--Any  
17 statute of limitations applicable to an action asserting a  
18 claim for relief under a prepartnership agreement is tolled  
19 during the domestic partnership of the parties to the  
20 agreement. However, equitable defenses limiting the time for  
21 enforcement, including laches and estoppel, are available to  
22 either party."

23 Section 43. A new Section 40A-5-1 NMSA 1978 is enacted to  
24 read:

25 "40A-5-1. [NEW MATERIAL] DISSOLUTION OF DOMESTIC

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1 PARTNERSHIP.--On the petition of either party to a domestic  
2 partnership, a district court may decree a dissolution of  
3 domestic partnership on any of the following grounds:

- 4 A. incompatibility;
- 5 B. cruel and inhuman treatment;
- 6 C. sexual infidelity; or
- 7 D. abandonment."

8 Section 44. A new Section 40A-5-2 NMSA 1978 is enacted to  
9 read:

10 "40A-5-2. [NEW MATERIAL] INCOMPATIBILITY.--Incompatibility  
11 exists when, because of discord or conflict of personalities,  
12 the legitimate ends of the domestic partnership relationship are  
13 destroyed, preventing any reasonable expectation of  
14 reconciliation."

15 Section 45. A new Section 40A-5-3 NMSA 1978 is enacted to  
16 read:

17 "40A-5-3. [NEW MATERIAL] PROCEEDING FOR DIVISION OF  
18 PROPERTY, DISPOSITION OF CHILDREN OR DOMESTIC PARTNER SUPPORT  
19 WITHOUT DISSOLUTION OF THE DOMESTIC PARTNERSHIP.--Whenever the  
20 domestic partners have permanently separated and no longer live  
21 or cohabit together as domestic partners, either partner may  
22 institute proceedings in the district court for a division of  
23 property, disposition of children or domestic partner support  
24 without asking for or obtaining in the proceedings a  
25 dissolution of domestic partnership."

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1           Section 46. A new Section 40A-5-4 NMSA 1978 is enacted to  
2 read:

3           "40A-5-4. [NEW MATERIAL] VENUE--JURISDICTION OVER  
4 PROPERTY.--Any proceeding for the dissolution of domestic  
5 partnership, division of property, disposition of children or  
6 domestic partner support, as provided for in this chapter, may  
7 be instituted in the county where either of the parties  
8 resides. In such proceedings, the court shall have  
9 jurisdiction of all property of the parties, wherever located  
10 or situated in the state."

11           Section 47. A new Section 40A-5-5 NMSA 1978 is enacted to  
12 read:

13           "40A-5-5. [NEW MATERIAL] DISSOLUTION OF DOMESTIC  
14 PARTNERSHIP--JURISDICTION--DOMICILE.--

15           A. The district court has jurisdiction to decree a  
16 dissolution of domestic partnership when at the time of filing  
17 the petition either party has resided in this state for at  
18 least six months immediately preceding the date of the filing  
19 and has a domicile in New Mexico. As used in this subsection,  
20 "domicile" means that the person to whom it applies:

21                       (1) is physically present in this state and  
22 has a place of residence in this state; and

23                       (2) has a present intention in good faith to  
24 reside in this state permanently or indefinitely.

25           B. Persons serving in any military branch of the

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1 United States government who have been continuously stationed  
2 at any military base or installation in New Mexico for a period  
3 of six months shall, for the purposes of this section, be  
4 deemed to have a domicile of the state and county where the  
5 military base or installation is located.

6 C. Any person who had resided continuously in New  
7 Mexico for at least six months immediately prior to the  
8 person's or the person's domestic partner's entry into any  
9 military branch of the United States government and who is  
10 stationed or whose domestic partner is stationed at any  
11 military base or installation outside of New Mexico and who has  
12 a present intention in good faith to return and to reside in  
13 this state permanently or indefinitely shall, for the purposes  
14 of this section, be deemed to have a domicile of the state and  
15 county of the person's residence immediately prior to the  
16 person's or the person's domestic partner's entry into the  
17 military branch.

18 D. Notwithstanding the provisions of this section,  
19 the district court has jurisdiction over proceedings relating  
20 to a domestic partnership as provided in Section 40A-1-5 NMSA  
21 1978."

22 Section 48. A new Section 40A-5-6 NMSA 1978 is enacted to  
23 read:

24 "40A-5-6. [NEW MATERIAL] VERIFICATION OF PETITION.--The  
25 petition in all proceedings for the dissolution of domestic

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1 partnership, division of property, disposition of children or  
2 domestic partner support shall be verified by the affidavit of  
3 the petitioner."

4 Section 49. A new Section 40A-5-7 NMSA 1978 is enacted to  
5 read:

6 "40A-5-7. [NEW MATERIAL] PROCEEDINGS--DOMESTIC PARTNER  
7 SUPPORT--SUPPORT OF CHILDREN--DIVISION OF PROPERTY.--

8 A. In any proceeding for the dissolution of  
9 domestic partnership, division of property, disposition of  
10 children or domestic partner support, the court may make and  
11 enforce by attachment or otherwise an order to restrain the use  
12 or disposition of the property of either party or for the  
13 control of the children or to provide for the support of either  
14 party during the pendency of the proceeding, as in its  
15 discretion may seem just and proper. The court may make an  
16 order, relative to the expenses of the proceeding, as will  
17 ensure either party an efficient preparation and presentation  
18 of the party's case.

19 B. On final hearing, the court:

20 (1) may allow either party such a reasonable  
21 portion of the domestic partner's property or such a reasonable  
22 sum of money to be paid by either domestic partner either in a  
23 single sum or in installments, as domestic partner support as  
24 under the circumstances of the case may seem just and proper,  
25 including a court award of:

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1 (a) rehabilitative domestic partner  
2 support that provides the receiving domestic partner with  
3 education, training, work experience or other forms of  
4 rehabilitation that increases the receiving domestic partner's  
5 ability to earn income and become self-supporting. The court  
6 may include a specific rehabilitation plan with its award of  
7 rehabilitative domestic partner support and may condition  
8 continuation of the support upon compliance with that plan;

9 (b) transitional domestic partner  
10 support to supplement the income of the receiving domestic  
11 partner for a limited period of time; provided that the period  
12 shall be clearly stated in the court's final order;

13 (c) domestic partner support for an  
14 indefinite duration;

15 (d) a single sum to be paid in one or  
16 more installments that specifies definite amounts, subject only  
17 to the death of the receiving domestic partner; or

18 (e) a single sum to be paid in one or  
19 more installments that specifies definite amounts, not subject  
20 to any contingencies, including the death of the receiving  
21 domestic partner;

22 (2) may:

23 (a) modify and change any order with  
24 respect to domestic partner support awarded pursuant to the  
25 provisions of Subparagraph (a), (b) or (c) of Paragraph (1) of

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1 this subsection whenever the circumstances render such change  
2 proper; or

3 (b) designate domestic partner support  
4 awarded pursuant to the provisions of Subparagraph (a) or (b)  
5 of Paragraph (1) of this subsection as nonmodifiable with  
6 respect to the amount or duration of the support payments;

7 (3) may set apart out of the property or  
8 income of the respective parties such portion for the  
9 maintenance and education of:

10 (a) their unemancipated minor children  
11 as may seem just and proper; or

12 (b) their children until the children's  
13 graduation from high school if the children are emancipated  
14 only by age, are under nineteen and are attending high school;  
15 and

16 (4) may make such an order for the  
17 guardianship, care, custody, maintenance and education of the  
18 minor children, or with reference to the control of the  
19 property of the respective parties to the proceeding, or with  
20 reference to the control of the property decreed or fund  
21 created by the court for the maintenance and education of the  
22 minor children, as may seem just and proper.

23 C. The court may order and enforce the payment of  
24 support for the maintenance and education after high school of  
25 emancipated children of the domestic partnership pursuant to a

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1 written agreement between the parties.

2 D. An award of domestic partner support made  
3 pursuant to the provisions of Subparagraph (a), (b), (c) or (d)  
4 of Paragraph (1) of Subsection B of this section shall  
5 terminate upon the death of the receiving domestic partner,  
6 unless the court order of domestic partner support provides  
7 otherwise.

8 E. When making determinations concerning domestic  
9 partner support to be awarded pursuant to the provisions of  
10 Paragraph (1) or (2) of Subsection B of this section, the court  
11 shall consider:

12 (1) the age and health of and the means of  
13 support for the respective domestic partners;

14 (2) the current and future earnings and the  
15 earning capacity of the respective domestic partners;

16 (3) the good-faith efforts of the respective  
17 domestic partners to maintain employment or to become self-  
18 supporting;

19 (4) the reasonable needs of the respective  
20 domestic partners, including:

21 (a) the standard of living of the  
22 respective domestic partners during the term of the domestic  
23 partnership;

24 (b) the maintenance of medical insurance  
25 for the respective domestic partners; and

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1 (c) the appropriateness of life  
2 insurance, including its availability and cost, insuring the  
3 life of the person who is to pay support to secure the  
4 payments, with any life insurance proceeds paid on the death of  
5 the paying domestic partner to be in lieu of further support;

6 (5) the duration of the domestic partnership;

7 (6) the amount of the property awarded or  
8 confirmed to the respective domestic partners;

9 (7) the type and nature of the respective  
10 domestic partners' assets; provided that potential proceeds  
11 from the sale of property by either domestic partner shall not  
12 be considered by the court, unless required by exceptional  
13 circumstances and the need to be fair to the parties;

14 (8) the type and nature of the respective  
15 domestic partners' liabilities;

16 (9) income produced by property owned by the  
17 respective domestic partners; and

18 (10) agreements entered into by the domestic  
19 partners in contemplation of the dissolution of domestic  
20 partnership or legal separation.

21 F. The court shall retain jurisdiction over  
22 proceedings involving periodic domestic partner support  
23 payments when the parties have been in the domestic partnership  
24 for twenty years or more prior to the dissolution of the  
25 domestic partnership, unless the court order or decree

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1 specifically provides that no domestic partner support shall be  
2 awarded.

3 G. The court may modify and change any order or  
4 agreement merged into an order with respect to the  
5 guardianship, care, custody, maintenance or education of the  
6 children whenever circumstances render such change proper. The  
7 district court shall have exclusive jurisdiction of all matters  
8 pertaining to the guardianship, care, custody, maintenance and  
9 education of the children until the parents' obligation of  
10 support for their children terminates. The district court  
11 shall also have exclusive, continuing jurisdiction with  
12 reference to the property decreed or funds created for the  
13 children's maintenance and education."

14 Section 50. A new Section 40A-5-8 NMSA 1978 is enacted to  
15 read:

16 "40A-5-8. [NEW MATERIAL] USE OF LIFE INSURANCE POLICY AS  
17 SECURITY.--

18 A. In any proceeding brought pursuant to the  
19 provisions of Section 40A-5-7 NMSA 1978 or in any other  
20 proceeding for the division of property or domestic partner or  
21 child support brought pursuant to the provisions of Chapter 40A  
22 NMSA 1978, the court may require either party or both parties  
23 to the proceeding to maintain the minor children of the parties  
24 or a domestic partner or former domestic partner or spouse as  
25 beneficiaries on a life insurance policy as security for the

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1 payment of:

2 (1) support for the benefit of the minor  
3 children;

4 (2) domestic partner or spousal support; or

5 (3) the cost to equalize a property division  
6 in the event of the death of the insured on the life insurance  
7 policy.

8 B. The court may also allocate the cost of the  
9 premiums of the life insurance policy between the parties."

10 Section 51. A new Section 40A-5-9 NMSA 1978 is enacted to  
11 read:

12 "40A-5-9. [NEW MATERIAL] BINDING ARBITRATION OPTION--  
13 PROCEDURE.--

14 A. Parties to an action for dissolution,  
15 separation, custody or time-sharing, child support, domestic  
16 partner support, partnership property and debt division or  
17 attorney fees related to such matters, including any post-  
18 judgment proceeding, may stipulate to binding arbitration by a  
19 signed agreement that provides for an award with respect to one  
20 or more of the following issues:

21 (1) valuation and division of real and  
22 personal property;

23 (2) child support, custody, time-sharing or  
24 visitation;

25 (3) domestic partner support;

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- 1 (4) costs, expenses and attorney fees;  
2 (5) enforceability of prepartnership or other  
3 partnership agreements;  
4 (6) determination and allocation of  
5 responsibility for debt as between the parties;  
6 (7) any civil tort claims related to any of  
7 the foregoing; or  
8 (8) other contested domestic relations  
9 matters.

10 B. A court may not order a party to participate in  
11 arbitration except to the extent a party has agreed to  
12 participate pursuant to a written arbitration agreement. When  
13 the party involved is a minor, the party's parent must consent  
14 to arbitration. When the party involved is a minor with a  
15 guardian ad litem, the guardian ad litem must provide written  
16 consent. When the party involved is a minor without a guardian  
17 ad litem, in order for arbitration to proceed, the court must  
18 find that arbitration is in the best interest of the minor.

19 C. Arbitration pursuant to this section shall be  
20 heard by one or more arbitrators. The court shall appoint an  
21 arbitrator agreed to by the parties if the arbitrator consents  
22 to the appointment.

23 D. If the parties have not agreed to an arbitrator,  
24 the court shall appoint an arbitrator who:

- 25 (1) is an attorney in good standing with the

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1 state bar of New Mexico;

2 (2) has practiced as an attorney for not less  
3 than five years immediately preceding the appointment and  
4 actively practiced in the area of domestic relations during  
5 three of those five years. Any period of time during which a  
6 person serves as a judge, special master or child support  
7 hearing officer is considered as actively practicing in the  
8 area of domestic relations; or

9 (3) is another professional licensed and  
10 experienced in the subject matter that is the area of the  
11 dispute.

12 E. An arbitrator appointed pursuant to this section  
13 is immune from liability with regard to the arbitration  
14 proceeding to the same extent as the judge who has jurisdiction  
15 of the action submitted to arbitration.

16 F. Objections to the qualifications of an  
17 arbitrator must be raised in connection with the appointment by  
18 the court or they are waived. The court shall permit a party  
19 to raise objections based on qualifications within ten days of  
20 appointment of an arbitrator. Parties who agree on an  
21 arbitrator waive objections to the arbitrator's qualifications.

22 G. An arbitrator appointed pursuant to this  
23 section:

24 (1) shall hear and make an award on each issue  
25 submitted for arbitration pursuant to the arbitration agreement

.179346.5GR

1 subject to the provisions of the agreement; and

2 (2) has all of the following powers and  
3 duties:

4 (a) to administer an oath or issue a  
5 subpoena as provided by court rule;

6 (b) to issue orders regarding discovery  
7 proceedings relative to the issues being arbitrated, including  
8 appointment of experts; and

9 (c) to allocate arbitration fees and  
10 expenses between the parties, including imposing a fee or  
11 expense on a party or attorney as a sanction for failure to  
12 provide information, subject to provisions of the arbitration  
13 agreement.

14 H. An arbitrator, attorney or party in an  
15 arbitration proceeding shall disclose in writing any  
16 circumstances that may affect an arbitrator's impartiality,  
17 including bias, financial interests, personal interests or  
18 family relationships. Upon disclosure of such a circumstance,  
19 a party may request disqualification of the arbitrator. If the  
20 arbitrator does not withdraw within seven days after a request  
21 for disqualification, the party may file a motion for  
22 disqualification with the court.

23 I. If the court finds that the arbitrator is  
24 disqualified, the court may appoint another arbitrator, subject  
25 to the provisions of the arbitration agreement.

.179346.5GR

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1 J. As soon as practicable after the appointment of  
2 the arbitrator, the parties and attorneys shall confer with the  
3 arbitrator to consider all of the following:

- 4 (1) scope of the issues submitted;  
5 (2) date, time and place of the hearing;  
6 (3) witnesses, including experts, who may  
7 testify;  
8 (4) appointment of experts and a schedule for  
9 exchange of expert reports or summary of expert testimony; and  
10 (5) subject to the provisions of Subsection K  
11 of this section, exhibits, documents or other information each  
12 party considers material to the case and a schedule for  
13 production or exchange of the information. An objection not  
14 made before the hearing to production or lack of production of  
15 information is waived.

16 K. The arbitrator shall order reasonable access to  
17 information for each party that is material to the arbitration  
18 issues prior to the hearing, including the following:

- 19 (1) a current complete sworn financial  
20 disclosure statement, when financial matters are at issue;  
21 (2) if a court has issued an order concerning  
22 an issue subject to arbitration, a copy of the order;  
23 (3) any relevant documents related to the  
24 arbitration issues defined by the arbitrator;  
25 (4) proposed award by each party for each

.179346.5GR

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1 issue subject to arbitration; and

2 (5) opinions of experts to be used by either  
3 party or appointed by the arbitrator.

4 L. Except as provided by this section, court rule  
5 or the arbitration agreement, a record shall not be made of an  
6 arbitration hearing unless either party requests it. If a  
7 record is not required, an arbitrator may make a record to be  
8 used only by the arbitrator to aid in reaching the arbitrator's  
9 decision.

10 M. Unless waived by the parties, a record shall be  
11 made of that portion of the hearing that concerns child  
12 custody, visitation or time-sharing.

13 N. The arbitration agreement may set forth any  
14 standards on which an award should be based, including the law  
15 to be applied. An arbitration agreement shall provide that in  
16 deciding child support issues, the arbitrator shall apply  
17 Section 40-4-11.1 NMSA 1978 when setting or modifying a child  
18 support order.

19 O. Unless otherwise agreed to by the parties and  
20 arbitrator in writing or on the record, the arbitrator shall  
21 issue the written award on each issue within sixty days after  
22 the end of the hearing and after receipt of proposed findings  
23 of fact and conclusions of law if requested by the arbitrator.

24 P. If the parties reach an agreement regarding  
25 child custody, time-sharing or visitation, the agreement shall

.179346.5GR

1 be placed on the record by the parties under oath and shall be  
2 included in the arbitrator's written award.

3 Q. The arbitrator retains jurisdiction to correct  
4 errors or omissions in an award upon motion by a party to the  
5 arbitrator within twenty days after the award is issued or upon  
6 the arbitrator's own motion. Another party to the arbitration  
7 may respond to the motion within seven days after the motion is  
8 made. The arbitrator shall make a decision on the motion  
9 within seven days after the expiration of the response time  
10 period.

11 R. The court shall enforce an arbitrator's award or  
12 other order in the same manner as an order issued by the court.  
13 A party may make a motion to the court to enforce an  
14 arbitrator's award or order.

15 S. A party in an action that was submitted to  
16 arbitration shall file with the court a stipulated order or a  
17 motion to enforce the award within twenty-one days after the  
18 arbitrator's award is issued unless otherwise agreed to by the  
19 parties in writing or unless the arbitrator or court grants an  
20 extension.

21 T. If a party applies to the court for vacation of  
22 an arbitrator's award that concerns child custody, time-sharing  
23 or visitation, the court shall review the award based only upon  
24 the record of the arbitration hearing and factual matters that  
25 have arisen since the arbitration hearing that are relevant to

.179346.5GR

1 the claim. The court may vacate an award of custody, time-  
2 sharing or visitation made in binding arbitration if the court  
3 finds that circumstances have changed since issuance of the  
4 award that are adverse to the best interests of the child, upon  
5 a finding that the award will cause harm or be detrimental to a  
6 child or pursuant to Subsections U and V of this section. An  
7 arbitration agreement may provide a broader scope of review of  
8 custody, time-sharing or visitation issues by the court, and  
9 such review will apply if broader than this section.

10 U. If a party applies to the court for vacation or  
11 modification of an arbitrator's award, the court shall review  
12 the award only as provided in Subsections T and V of this  
13 section.

14 V. The court may vacate, modify or correct an award  
15 under any of the following circumstances:

- 16 (1) the award was procured by corruption,  
17 fraud or other undue means;
- 18 (2) there was evident partiality by an  
19 arbitrator or misconduct prejudicing a party's rights;
- 20 (3) the arbitrator exceeded the arbitrator's  
21 powers; or
- 22 (4) the arbitrator refused to postpone the  
23 hearing on a showing of sufficient cause or refused to hear  
24 evidence substantial and material to the controversy.

25 W. An application to vacate an award on grounds

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1 stated in Subsections T and V of this section shall be decided  
2 by the court. If an award is vacated on grounds stated in  
3 Paragraph (3) or (4) of Subsection V of this section, the court  
4 may order a rehearing before the arbitrator who made the award  
5 when both parties consent to the rehearing before the  
6 arbitrator who made the award.

7 X. An appeal from an arbitration award that the  
8 court confirms, vacates, modifies or corrects shall be taken in  
9 the same manner as from an order or judgment in other domestic  
10 relations actions.

11 Y. No arbitrator may decide issues of a criminal  
12 nature or make decisions on petitions pursuant to the Family  
13 Violence Protection Act."

14 Section 52. A new Section 40A-5-10 NMSA 1978 is enacted  
15 to read:

16 "40A-5-10. [NEW MATERIAL] ACCRUAL OF INTEREST--DELINQUENT  
17 CHILD AND DOMESTIC PARTNER SUPPORT.--

18 A. Interest shall accrue on delinquent child  
19 support at the rate of four percent and domestic partner  
20 support at the rate set forth in Section 56-8-4 NMSA 1978 in  
21 effect when the support payment becomes due and shall accrue  
22 from the date the support is delinquent until the date the  
23 support is paid.

24 B. Interest shall accrue on a consolidated judgment  
25 for delinquent child support at the rate of four percent when

.179346.5GR

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1 the consolidated judgment is entered until the judgment is  
2 satisfied.

3 C. Unless the order, judgment, decree or wage  
4 withholding order specifies a due date other than the first day  
5 of the month, support shall be due on the first day of each  
6 month and, if not paid by that date, shall be delinquent.

7 D. In calculation of support arrears, payments of  
8 support shall be first applied to the current support  
9 obligation, next to any delinquent support, next to any  
10 consolidated judgment of delinquent support, next to any  
11 accrued interest on delinquent support and next to any interest  
12 accrued on a consolidated judgment of delinquent support.

13 E. The human services department shall have the  
14 authority to forgive accrued interest on delinquent child  
15 support assigned to the state not otherwise specified in an  
16 order, judgment, decree or income withholding order if, in the  
17 judgment of the secretary of human services, forgiveness will  
18 likely result in the collection of more child support, domestic  
19 partner support or other support and will likely result in the  
20 satisfaction of the judgment, decree or wage withholding order.  
21 This authority shall include the ability to authorize the  
22 return of suspended licenses."

23 Section 53. A new Section 40A-5-11 NMSA 1978 is enacted  
24 to read:

25 "40A-5-11. [NEW MATERIAL] CHILD CUSTODY AND CHILD

.179346.5GR

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1 SUPPORT.--Proceedings relating to child custody and child  
2 support between domestic partners shall be determined as  
3 provided in this article, Sections 40-4-8 through 40-4-11.6  
4 NMSA 1978 and other applicable laws."

5 Section 54. A new Section 40A-5-12 NMSA 1978 is enacted  
6 to read:

7 "40A-5-12. [NEW MATERIAL] APPOINTMENT OF GUARDIAN AD  
8 LITEM.--After service of summons and copy of petition on an  
9 insane domestic partner and on the guardian of that partner's  
10 estate, the court shall appoint an attorney at law as guardian  
11 ad litem to appear for and represent the insane domestic  
12 partner."

13 Section 55. A new Section 40A-5-13 NMSA 1978 is enacted  
14 to read:

15 "40A-5-13. [NEW MATERIAL] ALLOWANCE FROM DOMESTIC  
16 PARTNER'S SEPARATE PROPERTY AS DOMESTIC PARTNER SUPPORT.--In  
17 proceedings for the dissolution of domestic partnership,  
18 separation or support between domestic partners, the court may  
19 make an allowance to a domestic partner of the other partner's  
20 separate property as domestic partner support, and the decree  
21 making the allowance shall have the force and effect of vesting  
22 the title of the property in the recipient."

23 Section 56. A new Section 40A-5-14 NMSA 1978 is enacted  
24 to read:

25 "40A-5-14. [NEW MATERIAL] DOMESTIC PARTNER SUPPORT TO  
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1       CONSTITUTE LIEN ON REAL ESTATE.--

2               A. The decree making the allowance for domestic  
3 partner support to either domestic partner shall be a lien on  
4 the real estate of the obligor domestic partner from the date  
5 of filing of a notice of order or decree in the office of the  
6 county clerk of each county where any of the property is  
7 situated.

8               B. The notice of order or decree shall contain:

9                       (1) the caption of the case from which the  
10 duty of domestic partner support arose, including the state,  
11 county and court in which the case was heard, the case number  
12 and the names of the parties when the case was heard;

13                      (2) the date of entry of the judgment, order  
14 or decree from which the duty of domestic partner support  
15 arose;

16                      (3) the current names, social security numbers  
17 and dates of birth of the parties; and

18                      (4) each party's last known address, unless  
19 ordered otherwise in the judgment, order or decree from which  
20 the duty of domestic partner support arose.

21               C. The notice shall be executed and acknowledged in  
22 the same manner as a grant of land is executed and  
23 acknowledged.

24               D. A copy of the recorded notice shall be sent to  
25 the obligor domestic partner at the obligor's last known

.179346.5GR

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1 address."

2 Section 57. A new Section 40A-5-15 NMSA 1978 is enacted  
3 to read:

4 "40A-5-15. [NEW MATERIAL] ALLOWANCE IN PROPERTY--  
5 APPOINTMENT AND REMOVAL OF GUARDIAN.--In proceedings for the  
6 dissolution of domestic partnership, separation or support  
7 between domestic partners, the court may make an allowance of  
8 certain property or properties of either party or of both  
9 parties for the maintenance, education and support of the minor  
10 children of the parties and may vest title to the part of the  
11 property so allowed in a conservator appointed by the court.  
12 The conservator must qualify and serve in such capacity as  
13 provided in Article 5 of the Uniform Probate Code."

14 Section 58. A new Section 40A-5-16 NMSA 1978 is enacted  
15 to read:

16 "40A-5-16. [NEW MATERIAL] CHILD SUPPORT TO CONSTITUTE  
17 LIEN ON REAL AND PERSONAL PROPERTY.--

18 A. In case a sum of money is allowed to the  
19 children by the decree for the support, education or  
20 maintenance of the children, the decree shall become a lien on  
21 the real and personal property of the obligor party from the  
22 date of filing of a notice of order or decree in the office of  
23 the county clerk of each county where any of the property may  
24 be situated.

25 B. The notice of order or decree shall contain:

.179346.5GR

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1 (1) the caption of the case from which the  
2 duty of child support arose, including the state, county and  
3 court in which the case was heard, the case number and the  
4 names of the parties when the case was heard;

5 (2) the date of entry of the judgment, order  
6 or decree from which the duty of child support arose;

7 (3) the current names, social security numbers  
8 and dates of birth of the parties; and

9 (4) each party's last known address, unless  
10 ordered otherwise in the judgment, order or decree from which  
11 the duty of child support arose.

12 C. The notice shall be executed and acknowledged in  
13 the same manner as a grant of land is executed and  
14 acknowledged.

15 D. A copy of the recorded notice shall be sent to  
16 the obligor domestic partner at the obligor's last known  
17 address."

18 Section 59. A new Section 40A-5-17 NMSA 1978 is enacted  
19 to read:

20 "40A-5-17. [NEW MATERIAL] SATISFACTION OF LIENS.--The  
21 liens created by Sections 40A-5-13 through 40A-5-19 NMSA 1978  
22 may be satisfied by execution or may be foreclosed under the  
23 same procedure as is now allowed for the foreclosure of  
24 judgment liens."

25 Section 60. A new Section 40A-5-18 NMSA 1978 is enacted  
.179346.5GR

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1 to read:

2 "40A-5-18. [NEW MATERIAL] MOTION TO REMOVE LIEN--BOND.--

3 The district court upon motion made in the cause wherein the  
4 decree was rendered may remove the liens created by Sections  
5 40A-5-13 through 40A-5-19 NMSA 1978 upon notice and upon good  
6 cause shown from any or all of the real estate subject to such  
7 lien. The judge, in the judge's discretion, upon the removal  
8 of such lien, may require bond for the faithful performance of  
9 the payment of domestic partner or child support money in  
10 accordance with the decree."

11 Section 61. A new Section 40A-5-19 NMSA 1978 is enacted  
12 to read:

13 "40A-5-19. [NEW MATERIAL] ENFORCEMENT OF DECREE BY  
14 ATTACHMENT, GARNISHMENT, EXECUTION OR CONTEMPT PROCEEDINGS.--  
15 Nothing in Sections 40A-5-13 through 40A-5-19 NMSA 1978 shall  
16 prevent a person entitled to benefits of any decree for  
17 domestic partner support or child support from enforcing the  
18 decree by attachment, garnishment, execution or contempt  
19 proceedings as provided by statute, except that the filing of  
20 an affidavit that the defendant has no property within the  
21 state subject to execution to satisfy the judgment shall not be  
22 a prerequisite to the issuance of a garnishment."

23 Section 62. A new Section 40A-5-20 NMSA 1978 is enacted  
24 to read:

25 "40A-5-20. [NEW MATERIAL] FAILURE TO DIVIDE OR DISTRIBUTE

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1 PROPERTY ON THE ENTRY OF A DECREE OF DISSOLUTION OR  
2 SEPARATION--DIVISION OF PROPERTY AND DISTRIBUTION OF SUPPORT  
3 WHEN DEATH OCCURS DURING PROCEEDINGS.--

4 A. The failure to divide or distribute property on  
5 the entry of a decree of dissolution of domestic partnership or  
6 of separation shall not affect the property rights of either  
7 domestic partner, and either may subsequently institute and  
8 prosecute a suit for division and distribution or with  
9 reference to any other matter pertaining thereto that could  
10 have been litigated in the original proceeding for dissolution  
11 or separation.

12 B. Upon the filing and service of a petition for  
13 dissolution of domestic partnership, separation, annulment,  
14 division of property or debts, domestic partner support, child  
15 support or determination of parentage pursuant to the  
16 provisions of Chapter 40, Article 11A or Chapter 40A, Article 5  
17 NMSA 1978, if a party to the action dies during the pendency of  
18 the action, but prior to the entry of a decree granting  
19 dissolution of domestic partnership, separation, annulment or  
20 determination of parentage, the proceedings for the  
21 determination, division and distribution of property rights and  
22 debts, distribution of domestic partner support or child  
23 support or determination of parentage shall not abate. The  
24 court shall conclude the proceedings as if both parties had  
25 survived. The court may allow the domestic partner or any

.179346.5GR

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1 children of the domestic partnership support as if the decedent  
2 had survived, pursuant to the provisions of Chapter 40, Article  
3 11A or Chapter 40A, Article 5 NMSA 1978. In determining the  
4 support, the court shall, in addition to the factors listed in  
5 Chapter 40A, Article 5 NMSA 1978, consider the amount and  
6 nature of the property passing from the decedent to the person  
7 for whom the support would be paid, whether by will or  
8 otherwise."

9 Section 63. Section 1-1-7 NMSA 1978 (being Laws 1969,  
10 Chapter 240, Section 6, as amended) is amended to read:

11 "1-1-7. RESIDENCE--RULES FOR DETERMINING.--For the  
12 purpose of determining residence for voting, the place of  
13 residence is governed by the following rules.

14 A. The residence of a person is that place in which  
15 ~~[his]~~ the person's habitation is fixed, and to which, whenever  
16 ~~[he]~~ the person is absent, ~~[he]~~ the person has the intention to  
17 return.

18 B. The place where a person's family resides is  
19 presumed to be ~~[his]~~ the person's place of residence, but a  
20 person who takes up or continues ~~[his abode]~~ residence with the  
21 intention of remaining at a place other than where ~~[his]~~ the  
22 person's family resides is a resident where ~~[he abides]~~ the  
23 person resides.

24 C. A change of residence is made only by the act of  
25 removal joined with the intent to remain in another place.

.179346.5GR

1 There can be only one residence.

2 D. A person does not gain or lose residence solely  
3 by reason of [~~his~~] the person's presence or absence while  
4 employed in the service of the United States or of this state,  
5 or while a student at an institution of learning, or while kept  
6 in an institution at public expense, or while confined in a  
7 public prison or while residing upon an Indian or military  
8 reservation.

9 E. No member of the armed forces of the United  
10 States, [~~his~~] the member's spouse or [~~his~~] domestic partner or  
11 the member's dependent is a resident of this state solely by  
12 reason of being stationed in this state.

13 F. A person does not lose [~~his~~] residence if [~~he~~]  
14 the person leaves [~~his~~] the person's home and goes to another  
15 country, state or place within this state for temporary  
16 purposes only and with the intention of returning.

17 G. A person does not gain a residence in a place to  
18 which [~~he~~] the person comes for temporary purposes only.

19 H. A person loses [~~his~~] residence in this state if  
20 [~~he~~] the person votes in another state in an election requiring  
21 residence in that state, and has not upon [~~his~~] return regained  
22 [~~his~~] the person's residence in this state under the provisions  
23 of the constitution of New Mexico.

24 I. "Residence" is computed by not including the day  
25 on which the person's residence commences and by including the

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1 day of the election.

2 J. A person does not acquire or lose residence by  
3 marriage or domestic partnership only."

4 Section 64. Section 1-2-7 NMSA 1978 (being Laws 1969,  
5 Chapter 240, Section 29, as amended) is amended to read:

6 "1-2-7. PRECINCT BOARD--QUALIFICATION OF MEMBERS--  
7 QUALIFICATION OF PRESIDING JUDGES.--

8 A. In order to qualify as a member of the precinct  
9 board, a person shall:

10 (1) be a resident of the representative  
11 district and county in which the precinct where ~~[he]~~ the person  
12 is a voter is located;

13 (2) be able to read and write;

14 (3) have the necessary capacity to carry out  
15 ~~[his]~~ the precinct board member's functions with acceptable  
16 skill and dispatch; and

17 (4) execute the precinct board member's oath  
18 of office.

19 B. Before serving as a presiding judge of a  
20 precinct board, a person shall receive training in the duties  
21 of that position and be certified for the position by the  
22 county clerk.

23 C. No person shall be qualified for appointment or  
24 service on a precinct board:

25 (1) who is a candidate for any federal, state,

.179346.5GR

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1 district or county office;

2 (2) who is a spouse, domestic partner, parent,  
3 child, brother or sister of any candidate to be voted for at  
4 the election; or

5 (3) who is a sheriff, deputy sheriff, marshal,  
6 deputy marshal or state or municipal [~~policeman~~] police  
7 officer."

8 Section 65. Section 1-2-22 NMSA 1978 (being Laws 1969,  
9 Chapter 240, Section 41, as amended) is amended to read:

10 "1-2-22. CHALLENGERS--QUALIFICATIONS--RESTRICTIONS.--  
11 Challengers and alternate challengers shall be voters of a  
12 precinct located in that county to which they are appointed.  
13 No sheriff, deputy sheriff, marshal, deputy marshal, municipal  
14 or state police officer, candidate or any person who is a  
15 spouse, domestic partner or child of a candidate being voted on  
16 at the election shall serve as a challenger or alternate  
17 challenger."

18 Section 66. Section 1-2-31 NMSA 1978 (being Laws 2005,  
19 Chapter 270, Section 15) is amended to read:

20 "1-2-31. COUNTY CANVASS OBSERVERS.--

21 A. A candidate for elected office and an  
22 election-related organization may each appoint one county  
23 canvass observer per county if the candidate or organization  
24 makes a written request to the secretary of state or county  
25 clerk at least ten days prior to the election date and

.179346.5GR

1 specifies the county canvass to be watched and the name of the  
2 qualified appointee. A county chair of a qualified political  
3 party may appoint as many observers as the chief election  
4 officer for that county determines is functional; provided that  
5 the state or county chair may appoint at least three observers  
6 and that the number of observers for each major political party  
7 is identical.

8 B. County canvass observers shall be voters of a  
9 precinct located in that county to which they are appointed.  
10 No sheriff, deputy sheriff, marshal, deputy marshal, municipal  
11 or state police officer, candidate or person who is a spouse,  
12 domestic partner, parent or child of a candidate being voted on  
13 at the election shall serve as a county canvass observer.

14 C. The county canvass observer, upon presentation  
15 of the observer's written appointment to the county clerk,  
16 shall be permitted to be present from the time the county  
17 canvassing begins until the completion of the canvass.

18 D. Only one county canvass observer for each  
19 candidate and each election-related organization in each county  
20 shall be permitted at one time in the room in which the canvass  
21 is being conducted. An observer is strictly limited to  
22 observing and documenting the canvassing process and may not  
23 interrupt the canvassing process.

24 E. County canvass observers shall not interfere  
25 with the orderly conduct of the canvass and may be removed by

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1 the chief election officer if the observer does not comply with  
2 the law.

3 F. As used in this section:

4 (1) "county canvass" means the process of  
5 qualifying and verifying paper ballots and counting and  
6 tallying votes for each precinct beginning upon the closing of  
7 the polls and ending with the certification and announcement of  
8 the results by the county canvassing board; and

9 (2) "election-related organization" means an  
10 organization involved in voter turnout activities."

11 Section 67. Section 1-4-25 NMSA 1978 (being Laws 1969,  
12 Chapter 240, Section 81, as amended) is amended to read:

13 "1-4-25. CANCELLATION OF REGISTRATION--DETERMINATION OF  
14 DEATH.--

15 A. For purposes of cancellation of registration,  
16 the death of a voter shall be ascertained by obituary notices  
17 or probate records or by comparison of registration records  
18 with monthly certified lists of deceased residents filed with  
19 the secretary of state.

20 B. The state registrar of vital statistics shall  
21 file monthly with the secretary of state certified lists of  
22 deceased residents over the age of eighteen years, sorted by  
23 county, regardless of the place of death.

24 C. The monthly certified list of deceased residents  
25 shall show the:

.179346.5GR

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- 1 (1) name;  
2 (2) age;  
3 (3) sex;  
4 (4) marital status;  
5 (5) domestic partnership status;  
6 [~~5~~] (6) birth place;  
7 [~~6~~] (7) birth date;  
8 [~~7~~] (8) social security number, if any;  
9 [~~8~~] (9) address; and  
10 [~~9~~] (10) place and date of death of the  
11 deceased resident.

12 D. The secretary of state shall, upon receipt of  
13 the monthly certified list of deceased residents, forward each  
14 county's list to the county clerk.

15 E. The county clerk shall, upon receipt of the  
16 monthly certified list of deceased residents, cancel any  
17 deceased resident's certificate of registration.

18 F. Upon receipt of a notarized document from the  
19 president or governor of an Indian nation, tribe or pueblo or  
20 from a tribal enrollment clerk indicating that a tribal member  
21 is deceased, the county clerk shall cancel the certification of  
22 registration of that deceased tribal member."

23 Section 68. Section 1-4-26 NMSA 1978 (being Laws 1969,  
24 Chapter 240, Section 82, as amended by Laws 1993, Chapter 314,  
25 Section 22 and also by Laws 1993, Chapter 316, Section 22) is

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1 amended to read:

2 "1-4-26. CANCELLATION OF REGISTRATION--DETERMINATION OF  
3 INSANITY.--

4 A. For purposes of cancellation of registration,  
5 the legal insanity of a voter shall be ascertained by  
6 comparison of registration records with the certification of  
7 legal insanity filed by the court with the county clerk.

8 B. When in proceedings held pursuant to law the  
9 district court determines that a mentally ill individual is  
10 insane as that term is used in the constitution of New Mexico,  
11 it shall file a certification of such fact with the county  
12 clerk of the county wherein the individual is registered.

13 C. The certification of legal insanity shall  
14 include the:

- 15 (1) name;
- 16 (2) age;
- 17 (3) sex;
- 18 (4) marital status;
- 19 (5) domestic partnership status;
- 20 [~~(5)~~] (6) birth place;
- 21 [~~(6)~~] (7) birth date;
- 22 [~~(7)~~] (8) social security number, if any; and
- 23 [~~(8)~~] (9) address."

24 Section 69. Section 1-6-2 NMSA 1978 (being Laws 1987,  
25 Chapter 327, Section 6, as amended) is amended to read:

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1 "1-6-2. DEFINITIONS.--As used in the Absent Voter Act:

2 A. "absent uniformed services voter" means:

3 (1) a member of a uniformed service on active  
4 duty who, by reason of such active duty, is absent from the  
5 place of residence where the member is otherwise qualified to  
6 vote;

7 (2) a member of the merchant marine who, by  
8 reason of service in the merchant marine, is absent from the  
9 place of residence where the member is otherwise qualified to  
10 vote; or

11 (3) a spouse, domestic partner or dependent of  
12 a member referred to in [~~Paragraphs (1) and~~] Paragraph (1) or  
13 (2) of this subsection who, by reason of the active duty or  
14 service of the member, is absent from the place of residence  
15 where the spouse, domestic partner or dependent is otherwise  
16 qualified to vote;

17 B. "election" means a statewide election, general  
18 election, primary election or special election to fill  
19 vacancies in the office of United States representative and  
20 regular or special school district elections;

21 C. "electronic ballot" means a paper ballot or  
22 ballot face designed to be used on an electronic voting machine  
23 to cast votes;

24 D. "electronic voting machine" means a computer-  
25 controlled machine designed to electronically record and

.179346.5GR

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1 tabulate votes cast;

2 E. "federal office" means the office of president  
3 or vice president or senator or representative in congress;

4 F. "federal qualified elector" means:

5 (1) an absent uniformed services voter; or

6 (2) an absent uniformed services voter who, by  
7 reason of active duty or service, is absent from the United  
8 States on the date of the election involved;

9 G. "member of the merchant marine" means an  
10 individual other than a member of a uniformed service or an  
11 individual employed, enrolled or maintained on the Great Lakes  
12 or the inland waterways who:

13 (1) is employed as an officer or crew member  
14 of a vessel documented under the laws of the United States, a  
15 vessel owned by the United States or a vessel of a foreign-flag  
16 registry under charter to or control of the United States; or

17 (2) is enrolled with the United States for  
18 employment or training for employment or maintained by the  
19 United States for emergency relief service as an officer or  
20 crew member of any such vessel;

21 H. "overseas voter" means:

22 (1) an absent uniformed services voter who, by  
23 reason of active duty or service, is absent from the United  
24 States on the date of the election involved;

25 (2) a person who resides outside the United

.179346.5GR

1 States and is qualified to vote in the last place in which the  
2 person was domiciled before leaving the United States; or

3 (3) a person who resides outside the United  
4 States and, but for such residence, would be qualified to vote  
5 in the last place in which the person was domiciled before  
6 leaving the United States; and

7 I. "uniformed services" means the army, navy, air  
8 force, marine corps and coast guard and the commissioned corps  
9 of the national oceanic and atmospheric administration."

10 Section 70. Section 1-19-26 NMSA 1978 (being Laws 1979,  
11 Chapter 360, Section 2, as amended by Laws 2009, Chapter 67,  
12 Section 1 and by Laws 2009, Chapter 68, Section 2) is amended  
13 to read:

14 "1-19-26. DEFINITIONS.--As used in the Campaign Reporting  
15 Act:

16 A. "advertising campaign" means an advertisement or  
17 series of advertisements used for a political purpose and  
18 disseminated to the public either in print, by radio or  
19 television broadcast or by any other electronic means,  
20 including telephonic communications, and may include direct or  
21 bulk mailings of printed materials;

22 B. "anonymous contribution" means a contribution  
23 the contributor of which is unknown to the candidate or the  
24 candidate's agent or the political committee or its agent who  
25 accepts the contribution;

.179346.5GR

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1 C. "bank account" means an account in a financial  
2 institution located in New Mexico;

3 D. "campaign committee" means two or more persons  
4 authorized by a candidate to raise, collect or expend  
5 contributions on the candidate's behalf for the purpose of  
6 electing the candidate to office;

7 E. "candidate" means an individual who seeks or  
8 considers an office in an election covered by the Campaign  
9 Reporting Act, including a public official, who either has  
10 filed a declaration of candidacy or nominating petition or:

11 (1) for a non-statewide office, has received  
12 contributions or made expenditures of one thousand dollars  
13 (\$1,000) or more or authorized another person or campaign  
14 committee to receive contributions or make expenditures of one  
15 thousand dollars (\$1,000) or more for the purpose of seeking  
16 election to the office; or

17 (2) for a statewide office, has received  
18 contributions or made expenditures of two thousand five hundred  
19 dollars (\$2,500) or more or authorized another person or  
20 campaign committee to receive contributions or make  
21 expenditures of two thousand five hundred dollars (\$2,500) or  
22 more for the purpose of seeking election to the office or for  
23 candidacy exploration purposes in the years prior to the year  
24 of the election;

25 F. "contribution" means a gift, subscription, loan,

.179346.5GR

1 advance or deposit of money or other thing of value, including  
2 the estimated value of an in-kind contribution, that is made or  
3 received for a political purpose, including payment of a debt  
4 incurred in an election campaign, but "contribution" does not  
5 include the value of services provided without compensation or  
6 unreimbursed travel or other personal expenses of individuals  
7 who volunteer a portion or all of their time on behalf of a  
8 candidate or political committee, nor does it include the  
9 administrative or solicitation expenses of a political  
10 committee that are paid by an organization that sponsors the  
11 committee;

12 G. "deliver" or "delivery" means to deliver by  
13 certified or registered mail, telecopier, electronic  
14 transmission or facsimile or by personal service;

15 H. "election" means any primary, general or  
16 statewide special election in New Mexico and includes county  
17 and judicial retention elections but excludes municipal, school  
18 board and special district elections;

19 I. "election year" means an even-numbered year in  
20 which an election covered by the Campaign Reporting Act is  
21 held;

22 J. "expenditure" means a payment, transfer or  
23 distribution or obligation or promise to pay, transfer or  
24 distribute any money or other thing of value for a political  
25 purpose, including payment of a debt incurred in an election

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1 campaign or pre-primary convention, but does not include the  
2 administrative or solicitation expenses of a political  
3 committee that are paid by an organization that sponsors the  
4 committee;

5 K. "person" means an individual or entity;

6 L. "political committee" means two or more persons,  
7 other than members of a candidate's immediate family or  
8 campaign committee or a husband and wife or partners in a  
9 domestic partnership who make a contribution out of a joint  
10 account, who are selected, appointed, chosen, associated,  
11 organized or operated primarily for a political purpose; and  
12 "political committee" includes:

13 (1) political parties, political action  
14 committees or similar organizations composed of employees or  
15 members of any corporation, labor organization, trade or  
16 professional association or any other similar group that  
17 raises, collects, expends or contributes money or any other  
18 thing of value for a political purpose;

19 (2) a single individual whose actions  
20 represent that the individual is a political committee; and

21 (3) a person or an organization of two or more  
22 persons that within one calendar year expends funds in excess  
23 of five hundred dollars (\$500) to conduct an advertising  
24 campaign for a political purpose;

25 M. "political purpose" means influencing or

.179346.5GR

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1 attempting to influence an election or pre-primary convention,  
2 including a constitutional amendment or other question  
3 submitted to the voters;

4 N. "prescribed form" means a form or electronic  
5 format prepared and prescribed by the secretary of state;

6 O. "proper filing officer" means either the  
7 secretary of state or the county clerk as provided in Section  
8 1-19-27 NMSA 1978;

9 P. "public official" means a person elected to an  
10 office in an election covered by the Campaign Reporting Act or  
11 a person appointed to an office that is subject to an election  
12 covered by that act; and

13 Q. "reporting individual" means every public  
14 official, candidate or treasurer of a campaign committee and  
15 every treasurer of a political committee."

16 Section 71. That version of Section 1-19-26 NMSA 1978  
17 (being Laws 1979, Chapter 360, Section 2, as amended by Laws  
18 2009, Chapter 67, Section 1 and by Laws 2009, Chapter 68,  
19 Section 2) that is to become effective November 3, 2010 is  
20 amended to read:

21 "1-19-26. DEFINITIONS.--As used in the Campaign Reporting  
22 Act:

23 A. "advertising campaign" means an advertisement or  
24 series of advertisements used for a political purpose and  
25 disseminated to the public either in print, by radio or

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1 television broadcast or by any other electronic means,  
2 including telephonic communications, and may include direct or  
3 bulk mailings of printed materials;

4 B. "anonymous contribution" means a contribution  
5 the contributor of which is unknown to the candidate or the  
6 candidate's agent or the political committee or its agent who  
7 accepts the contribution;

8 C. "bank account" means an account in a financial  
9 institution located in New Mexico;

10 D. "campaign committee" means two or more persons  
11 authorized by a candidate to raise, collect or expend  
12 contributions on the candidate's behalf for the purpose of  
13 electing the candidate to office;

14 E. "candidate" means an individual who seeks or  
15 considers an office in an election covered by the Campaign  
16 Reporting Act, including a public official, who either has  
17 filed a declaration of candidacy or nominating petition or:

18 (1) for a non-statewide office, has received  
19 contributions or made expenditures of one thousand dollars  
20 (\$1,000) or more or authorized another person or campaign  
21 committee to receive contributions or make expenditures of one  
22 thousand dollars (\$1,000) or more for the purpose of seeking  
23 election to the office; or

24 (2) for a statewide office, has received  
25 contributions or made expenditures of two thousand five hundred

.179346.5GR

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1 dollars (\$2,500) or more or authorized another person or  
2 campaign committee to receive contributions or make  
3 expenditures of two thousand five hundred dollars (\$2,500) or  
4 more for the purpose of seeking election to the office or for  
5 candidacy exploration purposes in the years prior to the year  
6 of the election;

7 F. "contribution" means a gift, subscription, loan,  
8 advance or deposit of money or other thing of value, including  
9 the estimated value of an in-kind contribution, that is made or  
10 received for a political purpose, including payment of a debt  
11 incurred in an election campaign, but "contribution" does not  
12 include the value of services provided without compensation or  
13 unreimbursed travel or other personal expenses of individuals  
14 who volunteer a portion or all of their time on behalf of a  
15 candidate or political committee, nor does it include the  
16 administrative or solicitation expenses of a political  
17 committee that are paid by an organization that sponsors the  
18 committee;

19 G. "deliver" or "delivery" means to deliver by  
20 certified or registered mail, telecopier, electronic  
21 transmission or facsimile or by personal service;

22 H. "election" means any primary, general or  
23 statewide special election in New Mexico and includes county  
24 and judicial retention elections but excludes municipal, school  
25 board and special district elections;

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1 I. "election year" means an even-numbered year in  
2 which an election covered by the Campaign Reporting Act is  
3 held;

4 J. "expenditure" means a payment, transfer or  
5 distribution or obligation or promise to pay, transfer or  
6 distribute any money or other thing of value for a political  
7 purpose, including payment of a debt incurred in an election  
8 campaign or pre-primary convention, but does not include the  
9 administrative or solicitation expenses of a political  
10 committee that are paid by an organization that sponsors the  
11 committee;

12 K. "person" means an individual or entity;

13 L. "political committee" means two or more persons,  
14 other than members of a candidate's immediate family or  
15 campaign committee or a husband and wife or partners in a  
16 domestic partnership who make a contribution out of a joint  
17 account, who are selected, appointed, chosen, associated,  
18 organized or operated primarily for a political purpose; and  
19 "political committee" includes:

20 (1) political parties, political action  
21 committees or similar organizations composed of employees or  
22 members of any corporation, labor organization, trade or  
23 professional association or any other similar group that  
24 raises, collects, expends or contributes money or any other  
25 thing of value for a political purpose;

.179346.5GR

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1 (2) a single individual whose actions  
2 represent that the individual is a political committee; and

3 (3) a person or an organization of two or more  
4 persons that within one calendar year expends funds in excess  
5 of five hundred dollars (\$500) to conduct an advertising  
6 campaign for a political purpose;

7 M. "political purpose" means influencing or  
8 attempting to influence an election or pre-primary convention,  
9 including a constitutional amendment or other question  
10 submitted to the voters;

11 N. "prescribed form" means a form or electronic  
12 format prepared and prescribed by the secretary of state;

13 O. "proper filing officer" means either the  
14 secretary of state or the county clerk as provided in Section  
15 1-19-27 NMSA 1978;

16 P. "public official" means a person elected to an  
17 office in an election covered by the Campaign Reporting Act or  
18 a person appointed to an office that is subject to an election  
19 covered by that act; and

20 Q. "reporting individual" means every public  
21 official, candidate or treasurer of a campaign committee and  
22 every treasurer of a political committee."

23 Section 72. Section 2-4-2 NMSA 1978 (being Laws 1917,  
24 Chapter 77, Section 2) is amended to read:

25 "2-4-2. DUTIES OF COMMISSIONERS.--It [~~shall be~~] is the  
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1 duty of [~~said~~] the commissioners for the promotion of  
2 uniformity of legislation in the United States to examine the  
3 subjects of marriage, domestic partnership, divorce,  
4 dissolution of domestic partnership and other subjects of  
5 legislation concerning which uniform legislation throughout the  
6 United States is desirable; to confer with like commissioners  
7 from other states concerning such matters; and to use their  
8 best efforts in bringing about such uniformity of legislation  
9 on all subjects [~~which~~] that they deem desirable."

10 Section 73. Section 3-8-19 NMSA 1978 (being Laws 1971,  
11 Chapter 306, Section 8, as amended) is amended to read:

12 "3-8-19. PRECINCT BOARDS--APPOINTMENTS--COMPENSATION.--

13 A. In order to qualify as a member of a precinct  
14 board, a person shall:

15 (1) be a [~~resident~~] qualified elector of the  
16 municipality and a resident of the precinct or consolidated  
17 precinct within the jurisdiction of the precinct board.

18 However, if there is a shortage or absence of precinct board  
19 members in certain precincts or consolidated precincts, a  
20 person who is a [~~resident~~] qualified elector of the  
21 municipality and a nonresident of the precinct or consolidated  
22 precinct may be appointed;

23 (2) be able to read and write;

24 (3) have the necessary capacity to carry out  
25 the functions of the office with acceptable skill and dispatch;

.179346.5GR

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1 and

2 (4) execute the precinct board member's oath  
3 of office.

4 B. No person shall be qualified for appointment or  
5 service on a precinct board if that person is a:

6 (1) candidate for any municipal office;

7 (2) spouse, domestic partner, parent, child,  
8 brother or sister of any candidate to be voted for at the  
9 election;

10 (3) sheriff, deputy sheriff, marshal, deputy  
11 marshal or state or municipal [~~police~~man] police officer;

12 (4) spouse, domestic partner, parent, child,  
13 brother or sister of the municipal clerk or any deputy or  
14 assistant municipal clerk; or

15 (5) municipal clerk or deputy or assistant  
16 municipal clerk.

17 C. Not less than thirty-five days before the day of  
18 the municipal election, the governing body shall appoint a  
19 precinct board for each polling place. The precinct board  
20 shall consist of no fewer than three members. Each board shall  
21 have no fewer than three election judges and no fewer than two  
22 election clerks. Election judges may also be appointed as  
23 election clerks. Not less than two alternates shall be  
24 appointed who shall become either election judges or election  
25 clerks or both as the need arises. On the thirty-fifth day

.179346.5GR

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1 before the day of the election, the municipal clerk shall post  
2 and maintain in the clerk's office until the day of the  
3 election the names of the election judges, election clerks and  
4 alternates for each polling place. The posting of the names of  
5 the election judges, election clerks and alternates for each  
6 polling place may be proved by an affidavit signed by the  
7 municipal clerk. The municipal clerk shall, by mail, notify  
8 each person appointed, request a written acceptance and keep a  
9 record of all notifications and acceptances. The notice shall  
10 state the date by which the person must accept the appointment.  
11 If any person appointed to a precinct board, or as an  
12 alternate, fails to accept an appointment within seven days  
13 after the notice is sent, the position shall be deemed vacant  
14 and the position shall be filled as provided in this section.

15 D. The county clerk shall furnish upon request of  
16 the municipal clerk the names and addresses of qualified  
17 precinct board members for general elections, and such precinct  
18 board members may be appointed as precinct board members for  
19 municipal elections.

20 E. The municipal clerk shall appoint a qualified  
21 elector as a precinct board member to fill any vacancy that may  
22 occur between the day when the list of precinct board members  
23 is posted and the day of the election. If a vacancy occurs on  
24 the day of the election, the precinct board members present at  
25 the polling place may appoint by a majority vote a qualified

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1 elector to fill the vacancy. If the vacancy was filled after  
2 the date of the election school, that person need not attend an  
3 election school in order to validly serve on the precinct  
4 board.

5 F. Members of a precinct board shall be compensated  
6 for their services at the rate provided in Section 1-2-16 NMSA  
7 1978 for the day of the election. The governing body may  
8 authorize payment to alternates who are required by the  
9 precinct board or municipal clerk to stand by on election day  
10 at the rate of not more than twenty dollars (\$20.00) for the  
11 day of the election.

12 G. Compensation shall be paid within thirty days  
13 following the date of election."

14 Section 74. Section 3-8-31 NMSA 1978 (being Laws 1971,  
15 Chapter 306, Section 10, as amended) is amended to read:

16 "3-8-31. REGULAR MUNICIPAL ELECTION--CHALLENGERS--  
17 WATCHERS--OBSERVERS.--

18 A. Upon petition filed with the municipal clerk by  
19 an unopposed candidate or by both candidates for a municipal  
20 office, if only two candidates are running for the office, or  
21 by a majority of the candidates for a municipal office, if more  
22 than two candidates are running for the office, those  
23 candidates may:

24 (1) appoint one person as a challenger and one  
25 alternate for each polling place in the municipal election; and

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1                   (2) appoint one person as a watcher and one  
2 alternate for each polling place in the municipal election.

3                   B. The petition appointing a challenger and watcher  
4 and alternates shall be filed not later than 5:00 p.m. on the  
5 fourth day preceding the election.

6                   C. Upon receipt of the petition, the municipal  
7 clerk shall verify whether the challengers, watchers and  
8 alternates are properly qualified pursuant to Subsection D of  
9 this section. Not later than 3:00 p.m. on the day prior to the  
10 election, the municipal clerk shall prepare official  
11 identification badges for those challengers, watchers and  
12 alternates who are properly qualified. Such identification  
13 badges shall be signed by the municipal clerk and contain the  
14 name of the challenger, watcher or alternate and state that  
15 person's title and the polling place where such person serves.  
16 Challengers, watchers and alternates shall be responsible to  
17 obtain their identification badges from the office of the  
18 municipal clerk prior to the opening of the polls on election  
19 day.

20                   D. A challenger, watcher or alternate shall  
21 function only at a polling place that serves the precinct  
22 within which such challenger, watcher or alternate resides. No  
23 sheriff, deputy sheriff, marshal, deputy marshal, municipal or  
24 state police officer, candidate or any person who is a spouse,  
25 domestic partner, parent, child, brother or sister of a

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1 candidate to be voted for at the election or any municipal  
2 clerk, deputy municipal clerk or assistant shall serve as a  
3 challenger, watcher or alternate. No person shall serve as a  
4 challenger or watcher unless that person is a qualified elector  
5 of the municipality.

6 E. Upon presentation of their official  
7 identification badges to the precinct board, challengers,  
8 watchers and alternates shall be permitted to be present at the  
9 polling place from the time the precinct board convenes at the  
10 polling place until the completion of the counting and tallying  
11 of the ballots after the polls close.

12 F. Challengers, watchers and alternates shall wear  
13 their official identification badges at all times while they  
14 are present in the polling place. They shall not wear any  
15 other form of identification or any pins or other  
16 identification associated with any candidate, group of  
17 candidates or any question presented at the election.

18 G. Challengers, watchers and alternates shall not:

19 (1) be permitted to perform any duty of a  
20 precinct board member;

21 (2) handle the ballots, signature rosters,  
22 absentee voter lists or voting machines;

23 (3) take any part in the tallying or counting  
24 of the ballots; or

25 (4) interfere with the orderly conduct of the

.179346.5GR

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1 election.

2 H. If a challenger, watcher or alternate is wearing  
3 [~~his~~] an official identification badge, it is a petty  
4 misdemeanor to:

5 (1) deny [~~him~~] that person the right to be  
6 present at the polling place;

7 (2) deny [~~him~~] that person the right to  
8 examine voting machines as authorized by law;

9 (3) deny a challenger or alternate challenger  
10 the right to challenge voters pursuant to Section 3-8-43 NMSA  
11 1978 and inspect the signature rosters; or

12 (4) deny [~~him~~] the challenger, watcher or  
13 alternate the right to witness the counting and tallying of  
14 ballots.

15 I. A challenger or alternate challenger, for the  
16 purposes of interposing challenges pursuant to Section 3-8-43  
17 NMSA 1978, shall be permitted to:

18 (1) inspect the voter registration list;

19 (2) inspect the signature rosters or absentee  
20 voter lists to determine whether entries are being made in  
21 accordance with law;

22 (3) examine each voting machine before the  
23 polls are opened to compare the number on the metal seal and  
24 the numbers on the counters with the numbers on the key  
25 envelope, to see that all ballot labels are in their proper

.179346.5GR

1 places and to see that the voting machine is ready for voting  
2 at the opening of the polls;

3 (4) make written memoranda of any action or  
4 omission on the part of any member of the precinct board and  
5 preserve such memoranda for future use; and

6 (5) witness the counting and tallying of the  
7 ballots.

8 J. A watcher or alternate watcher shall be  
9 permitted to:

10 (1) observe the election to assure that it is  
11 conducted in accordance with law;

12 (2) examine any voting machine used at the  
13 polling place in the same manner that challengers may examine  
14 voting machines;

15 (3) make written memoranda of any action or  
16 omission on the part of any member of the precinct board and  
17 preserve such memoranda for future use; and

18 (4) witness the counting and tallying of  
19 ballots.

20 K. The governing body of a municipality may, at its  
21 discretion, appoint one qualified elector for each polling  
22 place to serve as an observer of the election. The governing  
23 body shall make such appointment not later than 3:00 p.m. on  
24 the day before the election and shall notify the municipal  
25 clerk of such appointment. The municipal clerk shall issue

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1 identification badges to all observers. An observer shall have  
2 no powers other than to observe the conduct of the election and  
3 observe the counting and tallying and report to the governing  
4 body."

5 Section 75. Section 3-9-1 NMSA 1978 (being Laws 1973,  
6 Chapter 375, Section 2, as amended) is amended to read:

7 "3-9-1. DEFINITIONS.--As used in Chapter 3, Article 9  
8 NMSA 1978:

9 A. "absent uniformed services voter" means:

10 (1) a member of a uniformed service on active  
11 duty who, by reason of such active duty, is absent from the  
12 place of residence where the member is otherwise qualified to  
13 vote;

14 (2) a member of the merchant marine who, by  
15 reason of service in the merchant marine, is absent from the  
16 place of residence where the member is otherwise qualified to  
17 vote; or

18 (3) a spouse, domestic partner or dependent of  
19 a member described in Paragraph (1) or (2) of this subsection  
20 who, by reason of the active duty or service of the member, is  
21 absent from the place of residence where the spouse, domestic  
22 partner or dependent is otherwise qualified to vote;

23 B. "absentee voting" means the casting of a vote by  
24 a qualified elector for any candidate or question prior to  
25 election day;

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1 C. "early voter" means a voter who votes in person  
2 before election day, and not by mail;

3 D. "election" means a regular or special municipal  
4 election;

5 E. "federal qualified elector" means:

6 (1) an absent uniformed services voter; or

7 (2) an absent uniformed services voter who, by  
8 reason of active duty or service, is absent from the United  
9 States on the date of the election involved;

10 F. "immediate family" means a person's spouse or  
11 domestic partner, children, parents, brothers and sisters;

12 G. "member of the merchant marine" means an  
13 individual other than a member of a uniformed service or an  
14 individual employed, enrolled or maintained on the great lakes  
15 or the inland waterways who:

16 (1) is employed as an officer or crew member  
17 of a vessel documented under the laws of the United States, a  
18 vessel owned by the United States or a vessel of a foreign-flag  
19 registry under charter to or control of the United States; or

20 (2) is enrolled with the United States for  
21 employment or training for employment or is maintained by the  
22 United States for emergency relief service as an officer or  
23 crew member of a vessel described in Paragraph (1) of this  
24 subsection;

25 H. "overseas voter" means:

.179346.5GR

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1 (1) an absent uniformed services voter who, by  
2 reason of active duty or service, is absent from the United  
3 States on the date of the election involved;

4 (2) a person who resides outside the United  
5 States and is qualified to vote in the last place in which the  
6 person was domiciled before leaving the United States; or

7 (3) a person who resides outside the United  
8 States and, but for such residence, would be qualified to vote  
9 in the last place in which the person was domiciled before  
10 leaving the United States;

11 I. "uniformed services" means the army, navy, air  
12 force, marine corps and coast guard and the commissioned corps  
13 of the national oceanic and atmospheric administration; and

14 J. "voter" means a qualified elector of the  
15 municipality."

16 Section 76. Section 3-21-1 NMSA 1978 (being Laws 1965,  
17 Chapter 300, Section 14-20-1, as amended by Laws 2007, Chapter  
18 46, Section 3 and by Laws 2007, Chapter 270, Section 1) is  
19 amended to read:

20 "3-21-1. ZONING--AUTHORITY OF COUNTY OR MUNICIPALITY.--

21 A. For the purpose of promoting health, safety,  
22 morals or the general welfare, a county or municipality is a  
23 zoning authority and may regulate and restrict within its  
24 jurisdiction the:

25 (1) height, number of stories and size of

.179346.5GR

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1 buildings and other structures;

2 (2) percentage of a lot that may be occupied;

3 (3) size of yards, courts and other open  
4 space;

5 (4) density of population; and

6 (5) location and use of buildings, structures  
7 and land for trade, industry, residence or other purposes.

8 B. The county or municipal zoning authority may:

9 (1) divide the territory under its  
10 jurisdiction into districts of such number, shape, area and  
11 form as is necessary to carry out the purposes of Sections  
12 3-21-1 through 3-21-14 NMSA 1978; and

13 (2) regulate or restrict the erection,  
14 construction, reconstruction, alteration, repair or use of  
15 buildings, structures or land in each district. All such  
16 regulations shall be uniform for each class or kind of  
17 buildings within each district, but regulation in one district  
18 may differ from regulation in another district.

19 C. All state-licensed or state-operated community  
20 residences for persons with a mental or developmental  
21 disability [~~and serving~~] that serve ten or fewer persons may be  
22 considered a residential use of property for purposes of zoning  
23 and may be permitted use in all districts in which residential  
24 uses are permitted generally, including particularly  
25 residential zones for single-family dwellings.

.179346.5GR

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1           D. A board of county commissioners of the county in  
2 which the greatest amount of the territory of the petitioning  
3 village, community, neighborhood or district lies may declare  
4 by ordinance that a village, community, neighborhood or  
5 district is a "traditional historic community" upon petition by  
6 twenty-five percent or more of the registered qualified  
7 electors of the territory within the village, community,  
8 neighborhood or district requesting the designation. The  
9 number of registered qualified electors shall be based on  
10 county records as of the date of the last general election.

11           E. Any village, community, neighborhood or district  
12 that is declared a traditional historic community shall be  
13 excluded from the extraterritorial zone and extraterritorial  
14 zoning authority of any municipality whose extraterritorial  
15 zoning authority extends to include all or a portion of the  
16 traditional historic community and shall be subject to the  
17 zoning jurisdiction of the county in which the greatest portion  
18 of the traditional historic community lies.

19           F. Zoning authorities, including zoning authorities  
20 of home rule municipalities, shall accommodate  
21 multigenerational housing by creating a mechanism to allow up  
22 to two kitchens within a single-family zoning district, such as  
23 conditional use permits.

24           G. For the purpose of this section,  
25 "multigenerational" means any number of persons related by

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1 blood, common ancestry, marriage, domestic partnership,  
2 guardianship or adoption."

3 Section 77. Section 5-11-2 NMSA 1978 (being Laws 2001,  
4 Chapter 305, Section 2, as amended) is amended to read:

5 "5-11-2. DEFINITIONS.--As used in the Public Improvement  
6 District Act:

7 A. "clerk" means the clerk of the municipality or  
8 county, or any person appointed by the district board to be the  
9 district clerk pursuant to Section 5-11-6 NMSA 1978;

10 B. "county" means a county that forms a public  
11 improvement district pursuant to the Public Improvement  
12 District Act in an unincorporated area or in an incorporated  
13 area with the municipality's consent;

14 C. "debt service" means the principal of, interest  
15 on and premium, if any, on the bonds, when due, whether at  
16 maturity or prior redemption; the fees and costs of registrars,  
17 trustees, paying agents or other agents necessary to handle the  
18 bonds; and the costs of credit enhancement or liquidity  
19 support;

20 D. "development agreement" means an agreement  
21 between a property owner or developer and the county,  
22 municipality or district, concerning the improvement of  
23 specific property within the district, which agreement may be  
24 used to establish obligations of the owner or developer, the  
25 county or municipality or the district concerning the zoning,

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1 subdivision, improvement, impact fees, financial  
2 responsibilities and other matters relating to the development,  
3 improvement and use of real property within a district;

4 E. "district" means a public improvement district  
5 formed pursuant to the Public Improvement District Act by a  
6 municipality or by a county in an unincorporated area or in an  
7 incorporated area with the municipality's consent;

8 F. "district board" means the board of directors of  
9 the district, which shall be composed of members of the  
10 governing body, ex officio, or, at the option of the governing  
11 body, five directors appointed by the governing body of the  
12 municipality or county in which the district is located, until  
13 replaced by elected directors, which shall occur not later than  
14 six years after the date on which the resolution establishing  
15 the district is enacted, as provided in Section 5-11-9 NMSA  
16 1978;

17 G. "election" means an election held in compliance  
18 with the provisions of Sections 5-11-6 and 5-11-7 NMSA 1978;

19 H. "enhanced services" means public services  
20 provided by a municipality or county within the district at a  
21 higher level or to a greater degree than otherwise available to  
22 the land located in the district from the municipality or  
23 county, including such services as public safety, fire  
24 protection, street or sidewalk cleaning or landscape  
25 maintenance in public areas. "Enhanced services" does not

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1 include the basic operation and maintenance related to  
2 infrastructure improvements financed by the district pursuant  
3 to the Public Improvement District Act;

4 I. "general plan" means the general plan described  
5 in Section 5-11-3 NMSA 1978, as the plan may be amended from  
6 time to time;

7 J. "governing body" means the body or board that by  
8 law is constituted as the governing body of the municipality or  
9 county in which the public improvement district is located;

10 K. "municipality" means an incorporated city,  
11 village or town;

12 L. "owner" means:

13 (1) the person who is listed as the owner of  
14 real property in the district on the current property tax  
15 assessment roll in effect at the time that the action,  
16 proceeding, hearing or election has begun. For purposes of  
17 voting in elections held pursuant to the Public Improvement  
18 District Act, when the owner of record title is a married  
19 person, only one spouse in whose name title is held may vote at  
20 such election and when the owner of record title is in a  
21 domestic partnership, only one domestic partner in whose name  
22 title is held may vote at such election. Where record title is  
23 held in more than one name, each owner may vote the number of  
24 fractions of acres represented by the owner's legal interest or  
25 proportionate share of and in the lands within the district;

.179346.5GR

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1 (2) the administrator or executor of an estate  
2 holding record title to land within the district;

3 (3) the guardian of a minor or incompetent  
4 person holding record title to land within the district,  
5 appointed and qualified under the laws of the state;

6 (4) an officer of a corporation holding record  
7 title to land within the district, which officer has been  
8 authorized by resolution of the corporation's board of  
9 directors to act with respect to such land;

10 (5) the general partner of a partnership  
11 holding record title to land within the district;

12 (6) the trustee of a trust holding record  
13 title to land within the district; or

14 (7) the manager or member of a limited  
15 liability company holding record title to land within the  
16 district who has been authorized to represent the company;

17 M. "public infrastructure improvements" means all  
18 improvements listed in this subsection and includes both  
19 on-site improvements and off-site improvements that directly or  
20 indirectly benefit the district. Such improvements include  
21 necessary or incidental work, whether newly constructed,  
22 renovated or existing, and all necessary or desirable  
23 appurtenances. "Public infrastructure improvements" includes:

24 (1) sanitary sewage systems, including  
25 collection, transport, storage, treatment, dispersal, effluent

.179346.5GR

1 use and discharge;

2 (2) drainage and flood control systems,  
3 including collection, transport, diversion, storage, detention,  
4 retention, dispersal, use and discharge;

5 (3) water systems for domestic, commercial,  
6 office, hotel or motel, industrial, irrigation, municipal or  
7 fire protection purposes, including production, collection,  
8 storage, treatment, transport, delivery, connection and  
9 dispersal;

10 (4) highways, streets, roadways, bridges,  
11 crossing structures and parking facilities, including all areas  
12 for vehicular use for travel, ingress, egress and parking;

13 (5) trails and areas for pedestrian,  
14 equestrian, bicycle or other nonmotor vehicle use for travel,  
15 ingress, egress and parking;

16 (6) pedestrian malls, parks, recreational  
17 facilities and open space areas for the use of members of the  
18 public for entertainment, assembly and recreation;

19 (7) landscaping, including earthworks,  
20 structures, lakes and other water features, plants, trees and  
21 related water delivery systems;

22 (8) public buildings, public safety facilities  
23 and fire protection and police facilities;

24 (9) electrical generation, transmission and  
25 distribution facilities;

.179346.5GR

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1 (10) natural gas distribution facilities;  
2 (11) lighting systems;  
3 (12) cable or other telecommunications lines  
4 and related equipment;

5 (13) traffic control systems and devices,  
6 including signals, controls, markings and signage;

7 (14) school sites and facilities with the  
8 consent of the governing board of the public school district  
9 for which the site or facility is to be acquired, constructed  
10 or renovated;

11 (15) library and other public educational or  
12 cultural facilities;

13 (16) equipment, vehicles, furnishings and  
14 other personalty related to the items listed in this  
15 subsection; and

16 (17) inspection, construction management and  
17 program management costs;

18 N. "public infrastructure purpose" means:

19 (1) planning, design, engineering,  
20 construction, acquisition or installation of public  
21 infrastructure, including the costs of applications, impact  
22 fees and other fees, permits and approvals related to the  
23 construction, acquisition or installation of such  
24 infrastructure;

25 (2) acquiring, converting, renovating or

.179346.5GR

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1 improving existing facilities for public infrastructure,  
2 including facilities owned, leased or installed by an owner;

3 (3) acquiring interests in real property or  
4 water rights for public infrastructure, including interests of  
5 an owner;

6 (4) establishing, maintaining and replenishing  
7 reserves in order to secure payment of debt service on bonds;

8 (5) funding and paying from bond proceeds  
9 interest accruing on bonds for a period not to exceed three  
10 years from their date of issuance;

11 (6) funding and paying from bond proceeds  
12 fiscal, financial and legal consultant fees, trustee fees,  
13 discount fees, district formation and election costs and all  
14 costs of issuance of bonds issued pursuant to the Public  
15 Improvement District Act, including, but not limited to, fees  
16 and costs for bond counsel, financial advisors, consultants and  
17 underwriters, costs of obtaining credit ratings, bond insurance  
18 premiums, fees for letters of credit and other credit  
19 enhancement costs and printing costs;

20 (7) providing for the timely payment of debt  
21 service on bonds or other indebtedness of the district;

22 (8) refinancing any outstanding bonds with new  
23 bonds, including through the formation of a new public  
24 improvement district; and

25 (9) incurring expenses of the district

.179346.5GR

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1 incident to and reasonably necessary to carry out the purposes  
2 specified in this subsection;

3 O. "resident qualified elector" means a person who  
4 resides within the boundaries of a district or proposed  
5 district and who is qualified to vote in the general elections  
6 held in the state pursuant to Section 1-1-4 NMSA 1978;

7 P. "special levy" means a levy imposed against real  
8 property within a district that may be apportioned according to  
9 direct or indirect benefits conferred upon affected real  
10 property, as well as acreage, front footage, the cost of  
11 providing public infrastructure for affected real property, or  
12 other reasonable method, as determined by the governing body or  
13 district board, as applicable; and

14 Q. "treasurer" means the treasurer of the governing  
15 body or the person appointed by the district board as the  
16 district treasurer pursuant to Section 5-11-6 NMSA 1978."

17 Section 78. A new Section 7-2-2.1 NMSA 1978 is enacted to  
18 read:

19 "7-2-2.1. [NEW MATERIAL] DOMESTIC PARTNER--FILING STATUS--  
20 DISCLOSURE.--

21 A. In filing a state income tax return, a domestic  
22 partner shall use the same filing status as is used on a  
23 federal income tax return filed in the same tax year or would  
24 have been used if a federal income tax return had been filed in  
25 the same year. A domestic partner's income and earnings shall

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1 not be treated as community property for state income tax  
2 purposes.

3 B. The department shall require a domestic partner  
4 to provide, on a state income tax form, the name and social  
5 security number of the other domestic partner."

6 Section 79. Section 7-2-5.5 NMSA 1978 (being Laws 1995,  
7 Chapter 42, Section 1) is amended to read:

8 "7-2-5.5. EXEMPTION--EARNINGS BY INDIANS, THEIR INDIAN  
9 SPOUSES OR DOMESTIC PARTNERS AND INDIAN DEPENDENTS ON INDIAN  
10 LANDS.--Income earned by a member of a New Mexico federally  
11 recognized Indian nation, tribe, band or pueblo, [~~his~~] the  
12 member's spouse, domestic partner or dependent, who is a member  
13 of a New Mexico federally recognized Indian nation, tribe, band  
14 or pueblo, is exempt from state income tax if the income is  
15 earned from work performed within and the member, spouse,  
16 domestic partner or dependent lives within the boundaries of  
17 the Indian member's or the spouse's or domestic partner's  
18 reservation or pueblo grant or within the boundaries of lands  
19 held in trust by the United States for the benefit of the  
20 member or spouse or domestic partner or [~~his~~] the member's or  
21 spouse's or domestic partner's nation, tribe, band or pueblo,  
22 subject to restriction against alienation imposed by the United  
23 States."

24 Section 80. Section 7-2H-1 NMSA 1978 (being Laws 2008,  
25 Chapter 89, Section 1, as amended) is amended to read:

.179346.5GR

1 "7-2H-1. LEGISLATIVE FINDINGS.--

2 A. Native Americans have had a long history of  
3 serving their country through active duty in the armed forces  
4 of the United States during periods of both war and peace and  
5 have made great sacrifices in serving their country through  
6 active duty in the military during periods of war and peace.

7 B. Native American veterans domiciled within the  
8 boundaries of their tribal lands or their spouse's or domestic  
9 partner's tribal lands during their periods of active military  
10 service may have been exempt from paying state personal income  
11 taxes on their military income, but may have had state personal  
12 income taxes withheld from their military income.

13 C. Native American veterans now are barred by the  
14 state statute of limitations from claiming refunds of state  
15 personal income taxes that may have been withheld from their  
16 military income when they were domiciled within the boundaries  
17 of their tribal lands or their spouse's or domestic partner's  
18 tribal lands during the period of their active military duty,  
19 and even if not barred by the statute of limitations, the  
20 passage of time extending to decades will make it difficult for  
21 many Native American veterans to meet strict standards of proof  
22 that they are entitled to a refund of withheld state personal  
23 income taxes.

24 D. It is incumbent upon the state to ensure that it  
25 was not unjustly enriched by the withholding of state personal

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1 income taxes from Native American veterans who were domiciled  
2 within the boundaries of their tribal lands or their spouse's  
3 or domestic partner's tribal lands during the period of their  
4 active military duty, and the state should implement a feasible  
5 means of refunding to Native American veterans any state  
6 personal income taxes that were withheld from military income  
7 while they were domiciled within the boundaries of their tribal  
8 lands or their spouse's or domestic partner's tribal lands  
9 during the period of their active military duty."

10 Section 81. Section 7-2H-3 NMSA 1978 (being Laws 2008,  
11 Chapter 89, Section 3, as amended) is amended to read:

12 "7-2H-3. NATIVE AMERICAN VETERANS' INCOME TAX SETTLEMENT  
13 FUND--CREATED--PURPOSE--APPROPRIATIONS.--

14 A. The "Native American veterans' income tax  
15 settlement fund" is created as a nonreverting fund in the state  
16 treasury and shall be administered by the taxation and revenue  
17 department. The fund shall consist of money that is  
18 appropriated or donated or that otherwise accrues to the fund.

19 B. The taxation and revenue department shall  
20 establish procedures and adopt rules as required to administer  
21 the fund and to make settlement payments from the fund as  
22 approved by the secretary of taxation and revenue.

23 C. Money in the fund is appropriated to the  
24 taxation and revenue department to make settlement payments to  
25 Native American veterans who were domiciled within the

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1 boundaries of their tribal lands or their spouse's or domestic  
2 partner's tribal lands during the period of their active  
3 military duty and had state personal income taxes withheld from  
4 their military income, or to their heirs pursuant to applicable  
5 law. Settlement payments shall include the amount of state  
6 personal income taxes withheld from eligible Native American  
7 veterans that have not been previously refunded to the veterans  
8 and interest on the amount withheld from the date of  
9 withholding computed on a daily basis at the rate specified for  
10 individuals pursuant to Section 6621 of the Internal Revenue  
11 Code of 1986. No settlement payments shall be made for any  
12 taxable year for which a refund claim may be timely filed with  
13 the taxation and revenue department, or for which an  
14 application for settlement is received after December 31, 2012.  
15 Money shall be disbursed from the fund only on warrant of the  
16 secretary of finance and administration upon vouchers signed by  
17 the secretary of taxation and revenue or the secretary's  
18 authorized representative. Any unexpended or unencumbered  
19 balance remaining in the fund at the end of a fiscal year shall  
20 not revert to the general fund.

21 D. Beginning in fiscal year 2010 and in subsequent  
22 fiscal years, not more than five percent of the fund is  
23 appropriated from the fund to the taxation and revenue  
24 department for expenditure in the fiscal year in which it is  
25 appropriated to administer the fund. Any unexpended or

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1 unencumbered balance remaining at the end of any fiscal year  
2 shall revert to the fund.

3 E. Beginning in fiscal year 2010 and in subsequent  
4 fiscal years, not more than five percent of the fund is  
5 appropriated from the fund to the veterans' services department  
6 for expenditure in the fiscal year in which it is appropriated  
7 to assist in outreach and public relations and in determining  
8 eligibility for settlement payments. Any unexpended or  
9 unencumbered balance remaining at the end of any fiscal year  
10 shall revert to the fund."

11 Section 82. Section 7-2H-4 NMSA 1978 (being Laws 2008,  
12 Chapter 89, Section 4, as amended) is amended to read:

13 "7-2H-4. DUTIES OF THE SECRETARY.--

14 A. The secretary of veterans' services shall  
15 conduct a study in cooperation with the taxation and revenue  
16 department to determine whether Native American veterans who  
17 were domiciled within the boundaries of their tribal lands or  
18 their spouse's or domestic partner's tribal lands during the  
19 period of their active military duty had state personal income  
20 taxes withheld from their military income and if so, to  
21 determine the amount of such state personal income taxes  
22 withheld and the number and identity of Native American  
23 veterans or their survivors affected by the withholding of such  
24 state personal income taxes.

25 B. The secretary of taxation and revenue and the

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1 secretary of veterans' services shall promulgate rules for a  
2 state program to compensate Native American veterans or their  
3 survivors for state personal income taxes withheld from  
4 military income while on active military duty and domiciled  
5 within the boundaries of the veteran's or the veteran's  
6 spouse's or domestic partner's tribal lands.

7 C. The secretary of taxation and revenue shall  
8 report to the appropriate interim legislative committee no  
9 later than October 1 of each year regarding estimates of the  
10 amount of state personal income taxes withheld from the  
11 military income of Native American veterans domiciled on their  
12 respective tribal lands, the number of Native American veterans  
13 or their survivors affected by such withholding of state  
14 personal income taxes, total expenditures from the fund for the  
15 previous fiscal year and the anticipated appropriations to the  
16 fund needed to pay for settlements to be entered into for the  
17 next fiscal year."

18 Section 83. Section 7-3-3 NMSA 1978 (being Laws 1961,  
19 Chapter 243, Section 3, as amended) is amended to read:

20 "7-3-3. TAX WITHHELD AT SOURCE.--

21 A. Every employer who deducts and withholds a  
22 portion of an employee's wages for payment of income tax under  
23 the provisions of the Internal Revenue Code shall deduct and  
24 withhold an amount for each payroll period computed from a  
25 state withholding tax table furnished by the department;

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1 provided:

2 (1) if the employee instructs the employer to  
3 withhold a greater amount, the employer shall deduct and  
4 withhold the greater amount;

5 (2) if the employee is not a resident of New  
6 Mexico and is to perform services in New Mexico for fifteen or  
7 fewer days cumulatively during the calendar year, the employer  
8 is not required to deduct and withhold an amount from that  
9 employee's wages; and

10 (3) if the aggregate monthly amount withheld  
11 under this section would be less than one dollar (\$1.00) for an  
12 employee, the employer shall not be required to deduct and  
13 withhold wages in regard to that employee.

14 B. The department shall devise and furnish a state  
15 withholding tax table based on statutes made and provided to  
16 employers required to withhold amounts under this section.  
17 This table shall be devised to provide for a yearly aggregate  
18 withholding that will approximate the state income tax  
19 liability of average taxpayers in each exemption category.

20 C. If an individual requests in writing that the  
21 payor deduct and withhold an amount from the amount of the  
22 pension or annuity due the individual, the payor making payment  
23 of a pension or annuity to an individual domiciled in New  
24 Mexico shall deduct and withhold the amount requested to be  
25 deducted and withheld, provided that the payor is not required

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1 to deduct and withhold any amount less than ten dollars  
2 (\$10.00) per payment. The written request shall include the  
3 payee's name, current address, taxpayer identification number  
4 and, if applicable, the contract, policy or account number to  
5 which the request applies.

6 D. Every person in New Mexico who is required by  
7 the provisions of the Internal Revenue Code to deduct and  
8 withhold federal tax from payment of winnings that are subject  
9 to withholding shall deduct and withhold from such payment a  
10 tax in an amount equal to six percent of the winnings, except  
11 that an Indian nation, tribe or pueblo or an agency,  
12 department, subdivision or instrumentality thereof is not  
13 required to deduct or withhold from payments made to members or  
14 spouses or domestic partners of members of that Indian nation,  
15 tribe or pueblo."

16 Section 84. Section 7-8A-1 NMSA 1978 (being Laws 1997,  
17 Chapter 25, Section 1, as amended) is amended to read:

18 "7-8A-1. DEFINITIONS.--As used in the Uniform Unclaimed  
19 Property Act (1995):

20 [~~(1)~~] A. "administrator" means the taxation and  
21 revenue department, the secretary of taxation and revenue or  
22 any employee of the department who exercises authority lawfully  
23 delegated to [~~him~~] the employee by the secretary;

24 [~~(2)~~] B. "apparent owner" means a person whose name  
25 appears on the records of a holder as the person entitled to

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1 property held, issued or owing by the holder;

2 [~~(3)~~] C. "business association" means a  
3 corporation, joint stock company, investment company,  
4 partnership, unincorporated association, joint venture, limited  
5 liability company, business trust, trust company, land bank,  
6 safe deposit company, safekeeping depository, financial  
7 organization, insurance company, mutual fund, utility or other  
8 business entity consisting of one or more persons, whether or  
9 not for profit;

10 [~~(4)~~] D. "domicile" means the state of  
11 incorporation of a corporation and the state of the principal  
12 place of business of a holder other than a corporation;

13 [~~(5)~~] E. "financial organization" means a savings  
14 and loan association, building and loan association, savings  
15 bank, industrial bank, bank, banking organization or credit  
16 union;

17 [~~(6)~~] F. "holder" means a person obligated to hold  
18 for the account of, or deliver or pay to, the owner property  
19 that is subject to the Uniform Unclaimed Property Act (1995);

20 [~~(7)~~] G. "insurance company" means an association,  
21 corporation or fraternal or mutual benefit organization,  
22 whether or not for profit, engaged in the business of providing  
23 life endowments, annuities or insurance, including accident,  
24 burial, casualty, credit life, contract performance, dental,  
25 disability, fidelity, fire, health, hospitalization, illness,

.179346.5GR

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1 life, malpractice, marine, mortgage, surety, wage protection  
2 and workers' compensation insurance;

3 [~~(8)~~] H. "mineral" means gas; oil; coal; other  
4 gaseous, liquid and solid hydrocarbons; oil shale; cement  
5 material; sand and gravel; road material; building stone;  
6 chemical raw material; gemstone; fissionable and nonfissionable  
7 ores; colloidal and other clay; steam and other geothermal  
8 [~~resource~~] resources; or any other substance defined as a  
9 mineral by the law of New Mexico;

10 [~~(9)~~] I. "mineral proceeds" means amounts payable  
11 for the extraction, production or sale of minerals or, upon the  
12 abandonment of those payments, all payments that become payable  
13 thereafter. The term includes amounts payable:

14 [~~(i)~~] (1) for the acquisition and retention of  
15 a mineral lease, including bonuses, royalties, compensatory  
16 royalties, shut-in royalties, minimum royalties and delay  
17 rentals;

18 [~~(ii)~~] (2) for the extraction, production or  
19 sale of minerals, including net revenue interests, royalties,  
20 overriding royalties, extraction payments and production  
21 payments; and

22 [~~(iii)~~] (3) under an agreement or option,  
23 including a joint operating agreement, unit agreement, pooling  
24 agreement and farm-out agreement;

25 [~~(10)~~] J. "money order" includes an express money

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1 order and a personal money order, on which the remitter is the  
2 purchaser. [~~The term~~] "Money order" does not include a bank  
3 money order or any other instrument sold by a financial  
4 organization if the seller has obtained the name and address of  
5 the payee;

6 [~~(11)~~] K. "owner" means a person who has a legal or  
7 equitable interest in property subject to the Uniform Unclaimed  
8 Property Act (1995) or the person's legal representative. [~~The~~  
9 ~~term~~] "Owner" includes a depositor in the case of a deposit, a  
10 beneficiary in the case of a trust other than a deposit in  
11 trust and a creditor, claimant or payee in the case of other  
12 property;

13 [~~(12)~~] L. "person" means an individual; business  
14 association; financial organization; estate; trust; government;  
15 governmental subdivision, agency or instrumentality; or any  
16 other legal or commercial entity;

17 [~~(13)~~] M. "property" means tangible property  
18 described in Section 7-8A-3 NMSA 1978 or a fixed and certain  
19 interest in intangible property that is held, issued or owed in  
20 the course of a holder's business, or by a government,  
21 governmental subdivision, agency or instrumentality, and all  
22 income or increments therefrom, but excludes child, spousal,  
23 domestic partner or medical support received by the child  
24 support enforcement division of the human services department,  
25 the New Mexico IV-D agency. [~~The term~~] "Property" includes

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1 property that is referred to as or evidenced by:

2 [~~(i)~~] (1) money, a check, draft, deposit,  
3 interest or dividend;

4 [~~(ii)~~] (2) credit balance, customer's  
5 overpayment, gift certificate, security deposit, refund, credit  
6 memorandum, unpaid wage, unused ticket, mineral proceeds or  
7 unidentified remittance;

8 [~~(iii)~~] (3) stock or other evidence of  
9 ownership of an interest in a business association or financial  
10 organization;

11 [~~(iv)~~] (4) a bond, debenture, note or other  
12 evidence of indebtedness;

13 [~~(v)~~] (5) money deposited to redeem stocks,  
14 bonds, coupons or other securities or to make distributions;

15 [~~(vi)~~] (6) an amount due and payable under the  
16 terms of an annuity or insurance policy, including policies  
17 providing life insurance, property and casualty insurance,  
18 workers' compensation insurance or health and disability  
19 insurance; and

20 [~~(vii)~~] (7) an amount distributable from a  
21 trust or custodial fund established under a plan to provide  
22 health, welfare, pension, vacation, severance, retirement,  
23 death, stock purchase, profit sharing, employee savings,  
24 supplemental unemployment insurance or similar benefits;

25 [~~(14)~~] N. "record" means information that is

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1 inscribed on a tangible medium or that is stored in an  
2 electronic or other medium and is retrievable in perceivable  
3 form;

4 [~~(15)~~] O. "state" means a state of the United  
5 States, the District of Columbia, the commonwealth of Puerto  
6 Rico or any territory or insular possession subject to the  
7 jurisdiction of the United States; and

8 [~~(16)~~] P. "utility" means a person who owns or  
9 operates for public use any plant, equipment, real property,  
10 franchise or license for the transmission of communications or  
11 the production, storage, transmission, sale, delivery or  
12 furnishing of electricity, water, steam or gas."

13 Section 85. Section 7-36-21.2 NMSA 1978 (being Laws 2000,  
14 Chapter 10, Section 2, as amended) is amended to read:

15 "7-36-21.2. LIMITATION ON INCREASES IN VALUATION OF  
16 RESIDENTIAL PROPERTY.--

17 A. Residential property shall be valued at its  
18 current and correct value in accordance with the provisions of  
19 the Property Tax Code; provided that for the 2001 and  
20 subsequent tax years, the value of a property in any tax year  
21 shall not exceed the higher of one hundred three percent of the  
22 value in the tax year prior to the tax year in which the  
23 property is being valued or one hundred six and one-tenth  
24 percent of the value in the tax year two years prior to the tax  
25 year in which the property is being valued. This limitation on

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1 increases in value does not apply to:

2 (1) a residential property in the first tax  
3 year that it is valued for property taxation purposes;

4 (2) any physical improvements made to the  
5 property during the year immediately prior to the tax year or  
6 omitted in a prior tax year; or

7 (3) valuation of a residential property in any  
8 tax year in which:

9 (a) a change of ownership of the  
10 property occurred in the year immediately prior to the tax year  
11 for which the value of the property for property taxation  
12 purposes is being determined; or

13 (b) the use or zoning of the property  
14 has changed in the year prior to the tax year.

15 B. If a change of ownership of residential property  
16 occurred in the year immediately prior to the tax year for  
17 which the value of the property for property taxation purposes  
18 is being determined, the value of the property shall be its  
19 current and correct value as determined pursuant to the general  
20 valuation provisions of the Property Tax Code.

21 C. To assure that the values of residential  
22 property for property taxation purposes are at current and  
23 correct values in all counties prior to application of the  
24 limitation in Subsection A of this section, the department  
25 shall determine for the 2000 tax year the sales ratio pursuant

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1 to Section 7-36-18 NMSA 1978 or, if a sales ratio cannot be  
2 determined pursuant to that section, conduct a sales-ratio  
3 analysis using both independent appraisals by the department  
4 and sales. If the sales ratio for a county for the 2000 tax  
5 year is less than eighty-five, as measured by the median ratio  
6 of value for property taxation purposes to sales price or  
7 independent appraisal by the department, the county shall not  
8 be subject to the limitations of Subsection A of this section  
9 and shall conduct a reassessment of residential property in the  
10 county so that by the 2003 tax year, the sales ratio is at  
11 least eighty-five. After such reassessment, the limitation on  
12 increases in valuation in this section shall apply in those  
13 counties in the earlier of the 2004 tax year or the first tax  
14 year following the tax year that the county has a sales ratio  
15 of eighty-five or higher, as measured by the median ratio of  
16 value for property taxation purposes to sales value or  
17 independent appraisal by the department. Thereafter, the  
18 limitation on increases in valuation of residential property  
19 for property taxation purposes in this section shall apply to  
20 subsequent tax years in all counties.

21 D. The provisions of this section do not apply to  
22 residential property for any tax year in which the property is  
23 subject to the valuation limitation in Section 7-36-21.3 NMSA  
24 1978.

25 E. As used in this section, "change of ownership"

.179346.5GR

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1 means a transfer to a transferee by a transferor of all or any  
2 part of the transferor's legal or equitable ownership interest  
3 in residential property except for a transfer:

4 (1) to a trustee for the beneficial use of the  
5 spouse or domestic partner of the transferor or the surviving  
6 spouse or surviving domestic partner of a deceased transferor;

7 (2) to the spouse or domestic partner of the  
8 transferor that takes effect upon the death of the transferor;

9 (3) that creates, transfers or terminates,  
10 solely between spouses or domestic partners, any co-owner's  
11 interest;

12 (4) to a child of the transferor, who occupies  
13 the property as [~~his~~] that person's principal residence at the  
14 time of transfer; provided that the first subsequent tax year  
15 in which that person does not qualify for the head of household  
16 exemption on that property, a change of ownership shall be  
17 deemed to have occurred;

18 (5) that confirms or corrects a previous  
19 transfer made by a document that was recorded in the real  
20 estate records of the county in which the real property is  
21 located;

22 (6) for the purpose of quieting the title to  
23 real property or resolving a disputed location of a real  
24 property boundary;

25 (7) to a revocable trust by the transferor

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1 with the transferor, the transferor's spouse or domestic  
2 partner or a child of the transferor as beneficiary; or

3 (8) from a revocable trust described in  
4 Paragraph (7) of this subsection back to the settlor or trustor  
5 or to the beneficiaries of the trust."

6 Section 86. Section 7-37-4 NMSA 1978 (being Laws 1973,  
7 Chapter 258, Section 37, as amended) is amended to read:

8 "7-37-4. HEAD-OF-FAMILY EXEMPTION.--

9 A. Up to two thousand dollars (\$2,000) of the  
10 taxable value of residential property subject to the tax is  
11 exempt from the imposition of the tax if the property is owned  
12 by the head of a family who is a New Mexico resident or if the  
13 property is held in a grantor trust established under Sections  
14 671 through 677 of the Internal Revenue Code, as those sections  
15 may be amended or renumbered, by a head of a family who is a  
16 New Mexico resident. The exemption allowed shall be in the  
17 following amounts for the specified property tax years:

18 (1) for the property tax years 1989 and 1990,  
19 the exemption shall be eight hundred dollars (\$800);

20 (2) for the property tax years 1991 and 1992,  
21 the exemption shall be one thousand four hundred dollars  
22 (\$1,400); and

23 (3) for the 1993 and subsequent tax years, the  
24 exemption shall be two thousand dollars (\$2,000).

25 B. The exemption shall be deducted from taxable

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1 value of property to determine net taxable value of property.

2 C. The head-of-family exemption shall be applied  
3 only if claimed and allowed in accordance with Section 7-38-17  
4 NMSA 1978 and regulations of the department.

5 D. As used in this section, "head of a family"  
6 means an individual New Mexico resident who is either:

7 (1) a married person, but only one spouse in a  
8 household may qualify as a head of a family;

9 (2) a widow or a widower;

10 (3) a domestic partner, but only one domestic  
11 partner in a household may qualify as a head of a family;

12 (4) a domestic partner whose partner is  
13 deceased;

14 [~~(3)~~] (5) a head of household furnishing more  
15 than one-half the cost of support of any related person;

16 [~~(4)~~] (6) a single person, but only one person  
17 in a household may qualify as a head of a family; or

18 [~~(5)~~] (7) a member of a condominium  
19 association or like entity who pays property tax through the  
20 association.

21 E. A head of a family is entitled to the exemption  
22 allowed by this section only once in any tax year and may claim  
23 the exemption in only one county in any tax year even though  
24 the claimant may own property subject to valuation for property  
25 taxation purposes in more than one county."

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1 Section 87. Section 7-37-5 NMSA 1978 (being Laws 1973,  
2 Chapter 258, Section 38, as amended) is amended to read:

3 "7-37-5. VETERAN EXEMPTION.--

4 A. Up to four thousand dollars (\$4,000) of the  
5 taxable value of property, including the community or joint  
6 property of husband and wife or domestic partners, subject to  
7 the tax is exempt from the imposition of the tax if the  
8 property is owned by a veteran or the veteran's [~~unmarried~~  
9 surviving spouse or surviving domestic partner, who is not  
10 married and not in a domestic partnership, if the veteran or  
11 surviving spouse or surviving domestic partner is a New Mexico  
12 resident or if the property is held in a grantor trust  
13 established under Sections 671 through 677 of the Internal  
14 Revenue Code of 1986, as those sections may be amended or  
15 renumbered, by a veteran or the veteran's [~~unmarried~~ surviving  
16 spouse or surviving domestic partner, who is not married and  
17 not in a domestic partnership, if the veteran or surviving  
18 spouse or surviving domestic partner is a New Mexico resident.  
19 The exemption shall be deducted from the taxable value of the  
20 property to determine the net taxable value of the property.  
21 The exemption allowed shall be in the following amounts for the  
22 specified tax years:

23 (1) for tax year 2004, the exemption shall be  
24 three thousand dollars (\$3,000);

25 (2) for tax year 2005, the exemption shall be

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1 three thousand five hundred dollars (\$3,500); and

2 (3) for tax year 2006 and each subsequent tax  
3 year, the exemption shall be four thousand dollars (\$4,000).

4 B. The veteran exemption shall be applied only if  
5 claimed and allowed in accordance with Section 7-38-17 NMSA  
6 1978 and regulations of the department. For taxpayers who  
7 became eligible for a veteran exemption due to the approval of  
8 the amendment to Article 8, Section 5 of the constitution of  
9 New Mexico in November 2004, a county assessor shall, at the  
10 time of determining the net taxable value of the taxpayer's  
11 property for the 2005 property tax year, in addition to  
12 complying with the provisions of Section 7-38-17 NMSA 1978,  
13 determine the net taxable value of the taxpayer's property that  
14 would result from the application of the veteran exemption for  
15 the 2004 property tax year had the deadline for applying for  
16 the veteran exemption in 2004 occurred after the amendment was  
17 certified. The veteran exemption for 2004 shall not be  
18 credited against the 2005 property value of a taxpayer until  
19 the taxpayer has paid in full the taxpayer's property tax  
20 liability for the 2004 property tax year.

21 C. As used in this section, "veteran" means an  
22 individual who:

23 (1) has been honorably discharged from  
24 membership in the armed forces of the United States; and

25 (2) except as provided in this section, served

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1 in the armed forces of the United States on active duty  
2 continuously for ninety days.

3 D. For the purposes of Subsection C of this  
4 section, a person who would otherwise be entitled to status as  
5 a veteran except for failure to have served in the armed forces  
6 continuously for ninety days is considered to have met that  
7 qualification if the person served for less than ninety days  
8 and the reason for not having served for ninety days was a  
9 discharge brought about by service-connected disablement.

10 E. For the purposes of Subsection C of this  
11 section, a person has been "honorably discharged" unless the  
12 person received either a dishonorable discharge or a discharge  
13 for misconduct.

14 F. For the purposes of this section, a person whose  
15 civilian service has been recognized as service in the armed  
16 forces of the United States under federal law and who has been  
17 issued a discharge certificate by a branch of the armed forces  
18 of the United States shall be considered to have served in the  
19 armed forces of the United States."

20 Section 88. Section 7-37-5.1 NMSA 1978 (being Laws 2000,  
21 Chapter 92, Section 1 and Laws 2000, Chapter 94, Section 1, as  
22 amended) is amended to read:

23 "7-37-5.1. DISABLED VETERAN EXEMPTION.--

24 A. As used in this section:

25 (1) "disabled veteran" means an individual

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1 who:

2 (a) has been honorably discharged from  
3 membership in the armed forces of the United States or has  
4 received a discharge certificate from a branch of the armed  
5 forces of the United States for civilian service recognized  
6 pursuant to federal law as service in the armed forces of the  
7 United States; and

8 (b) has been determined pursuant to  
9 federal law to have a one hundred percent permanent and total  
10 service-connected disability; and

11 (2) "honorably discharged" means discharged  
12 from the armed forces pursuant to a discharge other than a  
13 dishonorable or bad conduct discharge.

14 B. The property of a disabled veteran, including  
15 joint or community property of the veteran and the veteran's  
16 spouse or domestic partner, is exempt from property taxation if  
17 it is occupied by the disabled veteran as [~~his~~] the veteran's  
18 principal place of residence. Property held in a grantor trust  
19 established under Sections 671 through 677 of the Internal  
20 Revenue Code of 1986, as those sections may be amended or  
21 renumbered, by a disabled veteran or the veteran's surviving  
22 spouse or surviving domestic partner is also exempt from  
23 property taxation if the property otherwise meets the  
24 requirements for exemption in this subsection or Subsection C  
25 of this section.

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1 C. The property of the surviving spouse or  
2 surviving domestic partner of a disabled veteran is exempt from  
3 property taxation if:

4 (1) the surviving spouse or surviving domestic  
5 partner and the disabled veteran were married or in a domestic  
6 partnership at the time of the disabled veteran's death; and

7 (2) the surviving spouse or surviving domestic  
8 partner continues to occupy the property continuously after the  
9 disabled veteran's death as the spouse's or domestic partner's  
10 principal place of residence.

11 D. The exemption provided by this section may be  
12 referred to as the "disabled veteran exemption".

13 E. The disabled veteran exemption shall be applied  
14 only if claimed and allowed in accordance with Section 7-38-17  
15 NMSA 1978 and the rules of the department.

16 F. The veterans' services department shall assist  
17 the department and the county assessors in determining which  
18 veterans qualify for the disabled veteran exemption."

19 Section 89. Section 7-38-12.1 NMSA 1978 (being Laws 2003,  
20 Chapter 118, Section 2, as amended) is amended to read:

21 "7-38-12.1. RESIDENTIAL PROPERTY TRANSFERS--AFFIDAVIT TO  
22 BE FILED WITH ASSESSOR.--

23 A. After January 1, 2004, a transferor or the  
24 transferor's authorized agent or a transferee or the  
25 transferee's authorized agent presenting for recording with a  
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1 county clerk a deed, real estate contract or memorandum of real  
2 estate contract transferring an interest in real property  
3 classified as residential property for property taxation  
4 purposes shall also file with the county assessor within thirty  
5 days of the date of filing with the county clerk an affidavit  
6 signed and completed in accordance with the provisions of  
7 Subsection B of this section.

8 B. The affidavit required for submission shall be  
9 in a form approved by the department and signed by the  
10 transferors or their authorized agents or the transferees or  
11 their authorized agents of any interest in residential real  
12 property transferred by deed or real estate contract. The  
13 affidavit shall contain only the following information to be  
14 used only for analytical and statistical purposes in the  
15 application of appraisal methods:

16 (1) the complete names of all transferors and  
17 transferees;

18 (2) the current mailing addresses of all  
19 transferors and transferees;

20 (3) the legal description of the real property  
21 interest transferred as it appears in the document of transfer;

22 (4) the full consideration, including money or  
23 any other thing of value, paid or exchanged for the transfer  
24 and the terms of the sale, including any amount of seller  
25 incentives; and

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1 (5) the value and a description of personal  
2 property that is included in the sale price.

3 C. Upon receipt of the affidavit required by  
4 Subsection A of this section, the county assessor shall place  
5 the date of receipt on the original affidavit and on a copy of  
6 the affidavit. The county assessor shall retain the original  
7 affidavit as a confidential record and as proof of compliance  
8 and shall return the copy marked with the date of receipt to  
9 the person presenting the affidavit. The assessor shall index  
10 the affidavits in a manner that permits cross-referencing to  
11 other records in the assessor's office pertaining to the  
12 specific property described in the affidavit. The affidavit  
13 and its contents are not part of the valuation record of the  
14 assessor.

15 D. The affidavit required by Subsection A of this  
16 section shall not be required for:

17 (1) a deed transferring nonresidential  
18 property;

19 (2) a deed that results from the payment in  
20 full or forfeiture by a transferee under a recorded real estate  
21 contract or recorded memorandum of real estate contract;

22 (3) a lease of or easement on real property,  
23 regardless of the length of term;

24 (4) a deed, patent or contract for sale or  
25 transfer of real property in which an agency or representative

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1 of the United States or New Mexico or any political subdivision  
2 of the state is the named grantor or grantee and authorized  
3 transferor or transferee;

4 (5) a quitclaim deed to quiet title or clear  
5 boundary disputes;

6 (6) a conveyance of real property executed  
7 pursuant to court order;

8 (7) a deed to an unpatented mining claim;

9 (8) an instrument solely to provide or release  
10 security for a debt or obligation;

11 (9) an instrument that confirms or corrects a  
12 deed previously recorded;

13 (10) an instrument between husband and wife,  
14 domestic partners or parent and child with only nominal actual  
15 consideration therefor;

16 (11) an instrument arising out of a sale for  
17 delinquent taxes or assessments;

18 (12) an instrument accomplishing a court-  
19 ordered partition;

20 (13) an instrument arising out of a merger or  
21 incorporation;

22 (14) an instrument by a subsidiary corporation  
23 to its parent corporation for no consideration, nominal  
24 consideration or in sole consideration of the cancellation or  
25 surrender of the subsidiary's stock;

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1 (15) an instrument from a person to a trustee  
2 or from a trustee to a trust beneficiary with only nominal  
3 actual consideration therefor;

4 (16) an instrument to or from an intermediary  
5 for the purpose of creating a joint tenancy estate or some  
6 other form of ownership; or

7 (17) an instrument delivered to establish a  
8 gift or a distribution from an estate of a decedent or trust.

9 E. The affidavit required by Subsection A of this  
10 section shall not be construed to be a valuation record  
11 pursuant to Section 7-38-19 NMSA 1978.

12 F. Prior to November 1, 2003, the department shall  
13 print and distribute to each county assessor affidavit forms  
14 for distribution to the public upon request."

15 Section 90. Section 7-38-17 NMSA 1978 (being Laws 1973,  
16 Chapter 258, Section 57, as amended) is amended to read:

17 "7-38-17. CLAIMING EXEMPTIONS--REQUIREMENTS--PENALTIES.--

18 A. Subject to the requirements of Subsection E of  
19 this section, head-of-family exemptions, veteran exemptions or  
20 disabled veteran exemptions claimed and allowed in a tax year  
21 need not be claimed for subsequent tax years if there is no  
22 change in eligibility for the exemption nor any change in  
23 ownership of the property against which the exemption was  
24 claimed. Head-of-family and veteran exemptions allowable under  
25 this subsection shall be applied automatically by county

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1 assessors in the subsequent tax years.

2 B. Other exemptions of real property specified  
3 under Section 7-36-7 NMSA 1978 for nongovernmental entities  
4 shall be claimed in order to be allowed. Once such exemptions  
5 are claimed and allowed for a tax year, they need not be  
6 claimed for subsequent tax years if there is no change in  
7 eligibility. Exemptions allowable under this subsection shall  
8 be applied automatically by county assessors in subsequent tax  
9 years.

10 C. Except as set forth in Subsection H of this  
11 section, an exemption required to be claimed under this section  
12 shall be applied for no later than thirty days after the  
13 mailing of the county assessor's notices of valuation pursuant  
14 to Section 7-38-20 NMSA 1978 in order for it to be allowed for  
15 that tax year.

16 D. A person who has had an exemption applied to a  
17 tax year and subsequently becomes ineligible for the exemption  
18 because of a change in the person's status or a change in the  
19 ownership of the property against which the exemption was  
20 applied shall notify the county assessor of the loss of  
21 eligibility for the exemption by the last day of February of  
22 the tax year immediately following the year in which loss of  
23 eligibility occurs.

24 E. Exemptions may be claimed by filing proof of  
25 eligibility for the exemption with the county assessor. The

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1 proof shall be in a form prescribed by regulation of the  
2 department. Procedures for determining eligibility of  
3 claimants for any exemption shall be prescribed by regulation  
4 of the department, and these regulations shall include  
5 provisions for requiring the veterans' services department to  
6 issue certificates of eligibility for veteran exemptions in a  
7 form and with the information required by the department. The  
8 regulations shall also include verification procedures to  
9 assure that veteran exemptions in excess of the amount  
10 authorized under Section 7-37-5 NMSA 1978 are not allowed as a  
11 result of multiple claiming in more than one county or claiming  
12 against more than one property in a single tax year.

13 F. The department shall consult and cooperate with  
14 the veterans' services department in the development, adoption  
15 and promulgation of regulations under Subsection E of this  
16 section. The veterans' services department shall comply with  
17 the promulgated regulations. The veterans' services department  
18 shall collect a fee of five dollars (\$5.00) for the issuance of  
19 a duplicate certificate of eligibility to a veteran.

20 G. A person who violates the provisions of this  
21 section by intentionally claiming and receiving the benefit of  
22 an exemption to which the person is not entitled or who fails  
23 to comply with the provisions of Subsection D of this section  
24 is guilty of a misdemeanor and shall be punished by a fine of  
25 not more than one thousand dollars (\$1,000). A county assessor

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1 or the assessor's employee who knowingly permits a claimant for  
2 an exemption to receive the benefit of an exemption to which  
3 the claimant is not entitled is guilty of a misdemeanor and  
4 shall be punished by a fine of not more than one thousand  
5 dollars (\$1,000) and shall also be automatically removed from  
6 office or dismissed from employment upon conviction under this  
7 subsection.

8 H. A veteran or the veteran's [~~unmarried~~] surviving  
9 spouse or surviving domestic partner, who is not married and  
10 not in a domestic partnership, who became eligible to receive a  
11 property tax exemption due to the expansion of the class of  
12 eligible veterans resulting from approval by the electorate in  
13 November 2004 of an amendment to Article 8, Section 5 of the  
14 constitution of New Mexico shall apply at the time the veteran  
15 or the veteran's [~~unmarried~~] surviving spouse or surviving  
16 domestic partner, who is not married and not in a domestic  
17 partnership, applies for the 2005 veteran exemption, to the  
18 county assessor of the county in which the property of the  
19 veteran or the veteran's [~~unmarried~~] surviving spouse or  
20 surviving domestic partner, who is not married and not in a  
21 domestic partnership, is located to have the veteran exemptions  
22 for the 2004 and 2005 property tax years applied to the 2005  
23 taxable value of the property. The same form of documentation  
24 required for a veteran's property exemption for property tax  
25 year 2005 is required to be presented to the county assessor

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1 for property tax year 2004."

2 Section 91. Section 9-22-7 NMSA 1978 (being Laws 2004,  
3 Chapter 19, Section 7) is amended to read:

4 "9-22-7. DEPARTMENT RESPONSIBILITIES.--The department is  
5 responsible for:

6 A. assisting veterans, their surviving spouses or  
7 surviving domestic partners and their children in the  
8 preparation, presentation and prosecution of claims against the  
9 United States arising by reason of military or naval service;

10 B. assisting veterans, their surviving spouses or  
11 surviving domestic partners and their children in establishing  
12 the rights and the procurement of benefits that have accrued or  
13 may accrue to them pursuant to state law;

14 C. disseminating information regarding laws  
15 beneficial to veterans, their surviving spouses or surviving  
16 domestic partners and their children; and

17 D. cooperating with agencies of the United States  
18 that are or may be established for the beneficial interest of  
19 veterans, to which end the department may enter into agreements  
20 or contracts with the United States for the purpose of  
21 protecting or procuring rights or benefits for veterans."

22 Section 92. Section 10-7A-12 NMSA 1978 (being Laws 1991,  
23 Chapter 22, Section 1) is amended to read:

24 "10-7A-12. DIVISION OF FUNDS AS COMMUNITY PROPERTY--  
25 NOTICE REQUIREMENT.--A court of competent jurisdiction, solely  
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1 for the purposes of effecting a division of community property,  
2 may provide by appropriate order for a determination and  
3 division of a community interest in the deferred compensation  
4 plan provided for in the Deferred Compensation Act. Pursuant  
5 to such a court order, a deferred compensation administrator  
6 shall provide notice, within ten days after a participating  
7 public employee files an application for a disbursement from  
8 the deferred compensation plan, to a former spouse or former  
9 domestic partner who has a court-determined interest in a  
10 participating public employee's deferred compensation plan.  
11 The notice shall be sent to the last name and address the  
12 former spouse or former domestic partner has filed with the  
13 administrator of the deferred compensation plan and shall  
14 include the schedule for and amounts of the disbursement and  
15 the address to which the participating public employee's  
16 disbursement will be sent."

17 Section 93. Section 10-7C-2 NMSA 1978 (being Laws 1990,  
18 Chapter 6, Section 2) is amended to read:

19 "10-7C-2. PURPOSE OF ACT.--The purpose of the Retiree  
20 Health Care Act is to provide comprehensive core group health  
21 insurance for persons who have retired from certain public  
22 service in New Mexico. The purpose is to provide eligible  
23 retirees, their spouses or domestic partners, and dependents  
24 and their surviving spouses or surviving domestic partners and  
25 dependents with health insurance consisting of a plan or

.179346.5GR

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1 optional plans of benefits that can be purchased by funds  
2 flowing into the retiree health care fund and by co-payments or  
3 out-of-pocket payments of insureds."

4 Section 94. Section 10-7C-4 NMSA 1978 (being Laws 1990,  
5 Chapter 6, Section 4, as amended) is amended to read:

6 "10-7C-4. DEFINITIONS.--As used in the Retiree Health  
7 Care Act:

8 A. "active employee" means an employee of a public  
9 institution or any other public employer participating in  
10 either the Educational Retirement Act, the Public Employees  
11 Retirement Act, the Judicial Retirement Act, the Magistrate  
12 Retirement Act or the Public Employees Retirement Reciprocity  
13 Act or an employee of an independent public employer;

14 B. "authority" means the retiree health care  
15 authority created pursuant to the Retiree Health Care Act;

16 C. "basic plan of benefits" means only those  
17 coverages generally associated with a medical plan of benefits;

18 D. "board" means the board of the retiree health  
19 care authority;

20 E. "current retiree" means an eligible retiree who  
21 is receiving a disability or normal retirement benefit under  
22 the Educational Retirement Act, the Public Employees Retirement  
23 Act, the Judicial Retirement Act, the Magistrate Retirement  
24 Act, the Public Employees Retirement Reciprocity Act or the  
25 retirement program of an independent public employer on or

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1 before July 1, 1990;

2 F. "eligible dependent" means a person obtaining  
3 retiree health care coverage based upon that person's  
4 relationship to an eligible retiree as follows:

5 (1) a spouse or domestic partner;

6 (2) an unmarried child under the age of  
7 nineteen who is:

8 (a) a natural child;

9 (b) a legally adopted child;

10 (c) a stepchild living in the same  
11 household who is primarily dependent on the eligible retiree  
12 for maintenance and support;

13 (d) a child for whom the eligible  
14 retiree is the legal guardian and who is primarily dependent on  
15 the eligible retiree for maintenance and support, as long as  
16 evidence of the guardianship is evidenced in a court order or  
17 decree; or

18 (e) a foster child living in the same  
19 household;

20 (3) a child described in Subparagraphs (a)  
21 through (e) of Paragraph (2) of this subsection who is between  
22 the ages of nineteen and twenty-five and is a full-time student  
23 at an accredited educational institution; provided that "full-  
24 time student" shall be a student enrolled in and taking twelve  
25 or more semester hours or its equivalent contact hours in

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1 primary, secondary, undergraduate or vocational school or a  
2 student enrolled in and taking nine or more semester hours or  
3 its equivalent contact hours in graduate school;

4 (4) a dependent child over nineteen who is  
5 wholly dependent on the eligible retiree for maintenance and  
6 support and who is incapable of self-sustaining employment by  
7 reason of mental retardation or physical handicap; provided  
8 that proof of incapacity and dependency shall be provided  
9 within thirty-one days after the child reaches the limiting age  
10 and at such times thereafter as may be required by the board;

11 (5) a surviving spouse or surviving domestic  
12 partner defined as follows:

13 (a) "surviving spouse" or "surviving  
14 domestic partner" means the spouse to whom a retiree was  
15 married or the domestic partner with whom a retiree had a  
16 domestic partnership at the time of the retiree's death; or

17 (b) "surviving spouse" or "surviving  
18 domestic partner" means the spouse to whom a deceased vested  
19 active employee was married or the domestic partner with whom  
20 the deceased vested active employee had a domestic partnership  
21 at the time of death; or

22 (6) a surviving dependent child who is the  
23 dependent child of a deceased eligible retiree and whose other  
24 parent is also deceased;

25 G. "eligible employer" means either:

.179346.5GR

1 (1) a "retirement system employer", which  
2 means an institution of higher education, a school district or  
3 other entity participating in the public school insurance  
4 authority, a state agency, state court, magistrate court,  
5 municipality, county or public entity, each of which is  
6 affiliated under or covered by the Educational Retirement Act,  
7 the Public Employees Retirement Act, the Judicial Retirement  
8 Act, the Magistrate Retirement Act or the Public Employees  
9 Retirement Reciprocity Act; or

10 (2) an "independent public employer", which  
11 means a municipality, county or public entity that is not a  
12 retirement system employer;

13 H. "eligible retiree" means:

14 (1) a "nonsalaried eligible participating  
15 entity governing authority member", which means a person who is  
16 not a retiree and who:

17 (a) has served without salary as a  
18 member of the governing authority of an employer eligible to  
19 participate in the benefits of the Retiree Health Care Act and  
20 is certified to be such by the executive director of the public  
21 school insurance authority;

22 (b) has maintained group health  
23 insurance coverage through that member's governing authority if  
24 such group health insurance coverage was available and offered  
25 to the member during the member's service as a member of the

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1 governing authority; and

2 (c) was participating in the group  
3 health insurance program under the Retiree Health Care Act  
4 prior to July 1, 1993; or

5 (d) notwithstanding the provisions of  
6 Subparagraphs (b) and (c) of this paragraph, is eligible under  
7 Subparagraph (a) of this paragraph and has applied before  
8 August 1, 1993 to the authority to participate in the program;

9 (2) a "salaried eligible participating entity  
10 governing authority member", which means a person who is not a  
11 retiree and who:

12 (a) has served with salary as a member  
13 of the governing authority of an employer eligible to  
14 participate in the benefits of the Retiree Health Care Act;

15 (b) has maintained group health  
16 insurance through that member's governing authority, if such  
17 group health insurance was available and offered to the member  
18 during the member's service as a member of the governing  
19 authority; and

20 (c) was participating in the group  
21 health insurance program under the Retiree Health Care Act  
22 prior to July 1, 1993; or

23 (d) notwithstanding the provisions of  
24 Subparagraphs (b) and (c) of this paragraph, is eligible under  
25 Subparagraph (a) of this paragraph and has applied before

.179346.5GR

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1 August 1, 1993 to the authority to participate in the program;

2 (3) an "eligible participating retiree", which  
3 means a person who:

4 (a) falls within the definition of a  
5 retiree, has made contributions to the fund for at least five  
6 years prior to retirement and whose eligible employer during  
7 that period of time made contributions as a participant in the  
8 Retiree Health Care Act on the person's behalf, unless that  
9 person retires on or before July 1, 1995, in which event the  
10 time period required for employee and employer contributions  
11 shall become the period of time between July 1, 1990 and the  
12 date of retirement, and who is certified to be a retiree by the  
13 educational retirement director, the executive secretary of the  
14 public employees retirement board or the governing authority of  
15 an independent public employer;

16 (b) falls within the definition of a  
17 retiree, retired prior to July 1, 1990 and is certified to be a  
18 retiree by the educational retirement director, the executive  
19 secretary of the public employees retirement association or the  
20 governing authority of an independent public employer; but this  
21 paragraph does not include a retiree who was an employee of an  
22 eligible employer who exercised the option not to be a  
23 participating employer pursuant to the Retiree Health Care Act  
24 and did not after January 1, 1993 elect to become a  
25 participating employer; unless the retiree: 1) retired on or

.179346.5GR

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1 before June 30, 1990; and 2) at the time of retirement, did not  
2 have a retirement health plan or retirement health insurance  
3 coverage available from the retiree's employer; or

4 (c) is a retiree who: 1) was at the  
5 time of retirement an employee of an eligible employer who  
6 exercised the option not to be a participating employer  
7 pursuant to the Retiree Health Care Act, but which eligible  
8 employer subsequently elected after January 1, 1993 to become a  
9 participating employer; 2) has made contributions to the fund  
10 for at least five years prior to retirement and whose eligible  
11 employer during that period of time made contributions as a  
12 participant in the Retiree Health Care Act on the person's  
13 behalf, unless that person retires prior to the eligible  
14 employer's election to become a participating employer or less  
15 than five years after the date participation begins when the  
16 participation date begins before July 1, 2009, in which event  
17 the time period required for employee and employer  
18 contributions shall become the period of time, if any, between  
19 the date participation begins and the date of retirement or  
20 when the participation date begins on or after July 1, 2009, in  
21 which event the person and employer shall contribute to the  
22 fund an amount equal to the full actuarial present value of the  
23 accrued benefits as determined by the authority; and 3) is  
24 certified to be a retiree by the educational retirement  
25 director, the executive director of the public employees

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1 retirement board or the governing authority of an independent  
2 public employer;

3 (4) a "legislative member", which means a  
4 person who is not a retiree and who served as a member of the  
5 New Mexico legislature for at least two years, but is no longer  
6 a member of the legislature and is certified to be such by the  
7 legislative council service; or

8 (5) a "former participating employer governing  
9 authority member", which means a person, other than a  
10 nonsalaried eligible participating entity governing authority  
11 member or a salaried eligible participating entity governing  
12 authority member, who is not a retiree and who served as a  
13 member of the governing authority of a participating employer  
14 for at least four years but is no longer a member of the  
15 governing authority and whose length of service is certified by  
16 the chief executive officer of the participating employer;

17 I. "fund" means the retiree health care fund;

18 J. "group health insurance" means coverage that  
19 includes but is not limited to life insurance, accidental death  
20 and dismemberment, hospital care and benefits, surgical care  
21 and treatment, medical care and treatment, dental care, eye  
22 care, obstetrical benefits, prescribed drugs, medicines and  
23 prosthetic devices, medicare supplement, medicare carveout,  
24 medicare coordination and other benefits, supplies and services  
25 through the vehicles of indemnity coverages, health maintenance

.179346.5GR

1 organizations, preferred provider organizations and other  
2 health care delivery systems as provided by the Retiree Health  
3 Care Act and other coverages considered by the board to be  
4 advisable;

5 K. "ineligible dependents" includes:

6 (1) those dependents created by common law  
7 relationships;

8 (2) dependents while in active military  
9 service;

10 (3) parents, aunts, uncles, brothers, sisters,  
11 grandchildren and other family members left in the care of an  
12 eligible retiree without evidence of legal guardianship; and

13 (4) anyone not specifically referred to as an  
14 eligible dependent pursuant to the rules adopted by the board;

15 L. "participating employee" means an employee of a  
16 participating employer, which employee has not been expelled  
17 from participation in the Retiree Health Care Act pursuant to  
18 Section 10-7C-10 NMSA 1978;

19 M. "participating employer" means an eligible  
20 employer who has satisfied the conditions for participating in  
21 the benefits of the Retiree Health Care Act, including the  
22 requirements of Subsection M of Section 10-7C-7 NMSA 1978 and  
23 Subsection D or E of Section 10-7C-9 NMSA 1978, as applicable;

24 N. "public entity" means a flood control authority,  
25 economic development district, council of governments, regional

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1 housing authority, conservancy district or other special  
2 district or special purpose government; and

3 0. "retiree" means a person who:

4 (1) is receiving:

5 (a) a disability or normal retirement  
6 benefit or survivor's benefit pursuant to the Educational  
7 Retirement Act;

8 (b) a disability or normal retirement  
9 benefit or survivor's benefit pursuant to the Public Employees  
10 Retirement Act, the Judicial Retirement Act, the Magistrate  
11 Retirement Act or the Public Employees Retirement Reciprocity  
12 Act; or

13 (c) a disability or normal retirement  
14 benefit or survivor's benefit pursuant to the retirement  
15 program of an independent public employer to which that  
16 employer has made periodic contributions; or

17 (2) is not receiving a survivor's benefit but  
18 is the eligible dependent of a person who received a disability  
19 or normal retirement benefit pursuant to the Educational  
20 Retirement Act, the Public Employees Retirement Act, the  
21 Judicial Retirement Act, the Magistrate Retirement Act or the  
22 Public Employees Retirement Reciprocity Act."

23 Section 95. Section 10-11-14.5 NMSA 1978 (being Laws  
24 1993, Chapter 160, Section 4, as amended) is amended to read:

25 "10-11-14.5. DEATH BEFORE RETIREMENT--SURVIVOR

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1 PENSIONS.--

2 A. A survivor pension may be paid to certain  
3 persons related to or designated by a member who dies before  
4 normal or disability retirement if a written application for  
5 the pension, in the form prescribed by the association, is  
6 filed with the association by the potential survivor  
7 beneficiary or beneficiaries within one year of the death of  
8 the member. Applications may be filed on behalf of the  
9 potential survivor beneficiary or beneficiaries or by a person  
10 legally authorized to represent them.

11 B. If there is no designated survivor beneficiary  
12 and the retirement board finds the death to have been the  
13 natural and proximate result of causes arising solely and  
14 exclusively out of and in the course of the member's  
15 performance of duty with an affiliated public employer, a  
16 survivor pension shall be payable to the eligible surviving  
17 spouse or surviving domestic partner. The amount of the  
18 survivor pension shall be the greater of:

19 (1) the amount as calculated under the  
20 coverage plan applicable to the deceased member at the time of  
21 death as though the deceased member had retired the day  
22 preceding death under form of payment B using the actual amount  
23 of service credit attributable to the deceased member at the  
24 time of death; or

25 (2) fifty percent of the deceased member's

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1 final average salary.

2 C. A survivor pension shall also be payable to  
3 eligible surviving children if there is no designated survivor  
4 beneficiary and the retirement board finds the death to have  
5 been the natural and proximate result of causes arising solely  
6 and exclusively out of and in the course of the member's  
7 performance of duty with an affiliated public employer. The  
8 total amount of survivor pension payable for all eligible  
9 surviving children shall be either:

10 (1) fifty percent of the deceased member's  
11 final average salary if an eligible surviving spouse or  
12 surviving domestic partner is not paid a pension; or

13 (2) twenty-five percent of the deceased  
14 member's final average salary if an eligible surviving spouse  
15 or surviving domestic partner is paid a pension.

16 The total amount of survivor pension shall be divided  
17 equally among all eligible surviving children. If there is  
18 only one eligible child, the amount of pension shall be twenty-  
19 five percent of the deceased member's final average salary.

20 D. If the member had five or more years of service  
21 credit, but the retirement board did not find the death to have  
22 been the natural and proximate result of causes arising solely  
23 and exclusively out of and in the course of the member's  
24 performance of duty with an affiliated public employer and  
25 there is no designated survivor beneficiary, a survivor pension

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1 shall be payable to the eligible surviving spouse or surviving  
2 domestic partner. The amount of the survivor pension shall be  
3 the greater of:

4 (1) the amount as calculated under the  
5 coverage plan applicable to the deceased member at the time of  
6 death as though the deceased member had retired the day  
7 preceding death under form of payment B using the total amount  
8 of actual service credit attributable to the deceased member at  
9 the time of death; or

10 (2) thirty percent of the deceased member's  
11 final average salary.

12 E. If the member had five or more years of service  
13 credit, but the retirement board did not find the death to have  
14 been the natural and proximate result of causes arising solely  
15 and exclusively out of and in the course of the member's  
16 performance of duty with an affiliated public employer and  
17 there is no designated survivor beneficiary, and if there is no  
18 eligible surviving spouse or surviving domestic partner at the  
19 time of death, a survivor pension shall be payable to and  
20 divided equally among all eligible surviving children, if any.  
21 The total amount of survivor pension payable for all eligible  
22 surviving children shall be the greater of:

23 (1) the amount as calculated under the  
24 coverage plan applicable to the deceased member at the time of  
25 death as though the deceased member had retired the day

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1 preceding death under form of payment B with the oldest  
2 eligible surviving child as the survivor beneficiary using the  
3 total amount of actual service credit attributable to the  
4 deceased member at the time of death; or

5 (2) thirty percent of the deceased member's  
6 final average salary.

7 F. An eligible surviving spouse or surviving  
8 domestic partner is the spouse [~~to~~] or domestic partner with  
9 whom the deceased member was [~~married~~] in a marriage or a  
10 domestic partnership at the time of death. An eligible  
11 surviving child is a child under the age of eighteen years, who  
12 is not married or in a domestic partnership and who is [~~an~~  
13 ~~unmarried~~] a natural or adopted child of the deceased member.

14 G. An eligible surviving spouse's or surviving  
15 domestic partner's pension shall terminate upon death. An  
16 eligible surviving child's pension shall terminate upon death,  
17 [~~or~~] entering into a marriage or a domestic partnership or  
18 reaching age eighteen years, whichever comes first.

19 H. If there is no designated survivor beneficiary  
20 and there is no eligible surviving child, the eligible  
21 surviving spouse or surviving domestic partner may elect to be  
22 refunded the deceased member's accumulated member contributions  
23 instead of receiving a survivor pension.

24 I. A member may designate a survivor beneficiary to  
25 receive a pre-retirement survivor pension, subject to the

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1 following conditions:

2 (1) a written designation, in the form  
3 prescribed by the association, is filed by the member with the  
4 association;

5 (2) if the member is married or in a domestic  
6 partnership at the time of designation, the designation shall  
7 only be made with the consent of the member's spouse or  
8 domestic partner, in the form prescribed by the association;

9 (3) if the member is married or in a domestic  
10 partnership subsequent to the time of designation, any prior  
11 designations shall automatically be revoked upon the date of  
12 the marriage or entry into a domestic partnership;

13 (4) if the member is divorced or the member's  
14 domestic partnership is dissolved subsequent to the time of  
15 designation, any prior designation of the former spouse or  
16 former domestic partner as survivor beneficiary shall  
17 automatically be revoked upon the date of divorce or  
18 dissolution; and

19 (5) a designation of survivor beneficiary may  
20 be changed, with the member's spouse's or domestic partner's  
21 consent if the member is married or in a domestic partnership,  
22 by the member at any time prior to the member's death.

23 J. If there is a designated survivor beneficiary  
24 and the retirement board finds the death to have been the  
25 natural and proximate result of causes arising solely and

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1 exclusively out of and in the course of the member's  
2 performance of duty with an affiliated public employer, a  
3 survivor pension shall be payable to the designated survivor  
4 beneficiary. The amount of the survivor pension shall be the  
5 greater of:

6 (1) the amount as calculated under the  
7 coverage plan applicable to the deceased member at the time of  
8 death as though the deceased member had retired the day  
9 preceding death under form of payment B using the actual amount  
10 of service credit attributable to the member at the time of  
11 death; or

12 (2) fifty percent of the deceased member's  
13 final average salary.

14 K. If there is a designated survivor beneficiary,  
15 if the member had five or more years of service credit and if  
16 the retirement board did not find the death to have been the  
17 natural and proximate result of causes arising solely and  
18 exclusively out of and in the course of the member's  
19 performance of duty with an affiliated public employer, a  
20 survivor pension shall be payable to the designated survivor  
21 beneficiary. The amount of the survivor pension shall be the  
22 greater of:

23 (1) the amount as calculated under the  
24 coverage plan applicable to the deceased member at the time of  
25 death as though the deceased member had retired the day

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1 preceding death under form of payment B using the actual amount  
2 of service credit attributable to the member at the time of  
3 death; or

4 (2) thirty percent of the deceased member's  
5 final average salary.

6 L. If all pension payments permanently terminate  
7 before there is paid an aggregate amount equal to the deceased  
8 member's accumulated member contributions at time of death, the  
9 difference between the amount of accumulated member  
10 contributions and the aggregate amount of pension paid shall be  
11 paid to the deceased member's refund beneficiary. If no refund  
12 beneficiary survives the survivor beneficiary, the difference  
13 shall be paid to the estate of the deceased member."

14 Section 96. Section 10-11-116 NMSA 1978 (being Laws 1987,  
15 Chapter 253, Section 116, as amended) is amended to read:

16 "10-11-116. ELECTION OF FORM OF PAYMENT OF A PENSION.--

17 A. Except as otherwise provided in Section  
18 10-11-136 NMSA 1978, a member may elect to have pension  
19 payments made under any one of the forms of payment provided in  
20 Section 10-11-117 NMSA 1978. The election of form of payment  
21 and naming of survivor pension beneficiary shall be made on a  
22 form furnished by and filed with the association prior to the  
23 date the first pension payment is made. An election of form of  
24 payment may not be changed after the date the first pension  
25 payment is made. If the member is married or in a domestic

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1 partnership, the association shall obtain the consent of the  
2 member's spouse or domestic partner to the election of the form  
3 of payment and any designation of survivor pension beneficiary  
4 before the election or designation is effective. Except as  
5 provided in Subsection C of this section, a named survivor  
6 pension beneficiary may not be changed after the date the first  
7 pension payment is made if form of payment B or C is elected.  
8 Except as otherwise provided in Section 10-11-136 NMSA 1978,  
9 payment shall be made:

10 (1) under form of payment A if the member is  
11 not married or in a domestic partnership at the time of  
12 retirement and if there is not a timely election of another  
13 form of payment; or

14 (2) under form of payment C with the member's  
15 spouse or domestic partner as survivor pension beneficiary if  
16 the member is married or in a domestic partnership at the time  
17 of retirement and there is not a timely election of another  
18 form of payment.

19 B. The amount of pension under forms of payment B,  
20 C and D shall have the same actuarial present value, computed  
21 as of the effective date of the pension, as the amount of  
22 pension under form of payment A.

23 C. A retired member who is being paid a pension  
24 under form of payment B or C with the member's spouse or  
25 domestic partner as the designated survivor pension beneficiary

.179346.5GR

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1 may, upon becoming divorced from the named spouse or upon  
2 dissolution of the domestic partnership and subject to an order  
3 of a court as provided for in Section 10-11-136 NMSA 1978,  
4 elect to have future payments made under form of payment A."

5 Section 97. Section 10-11-124 NMSA 1978 (being Laws 1987,  
6 Chapter 253, Section 124, as amended) is amended to read:

7 "10-11-124. MEMBER CONTRIBUTION FUND.--

8 A. The member contribution fund is the accounting  
9 fund in which shall be accumulated contributions of members and  
10 from which shall be made refunds and transfers of accumulated  
11 member contributions as provided in the Public Employees  
12 Retirement Act. Each affiliated public employer shall cause  
13 the member contributions specified by the coverage plan  
14 applicable to each of that affiliated public employer's members  
15 to be deducted from the salary of each member. Each affiliated  
16 public employer shall remit the deducted member contributions  
17 to the association in accordance with the procedures and  
18 schedules established by the association. The association may  
19 assess an interest charge and a penalty charge on any  
20 remittance not made by its due date. Each member shall be  
21 deemed to consent and agree to the deductions made and provided  
22 for in this section by continuing employment with the  
23 affiliated public employer. Contributions by members shall be  
24 credited to the members' individual accounts in the member  
25 contribution fund.

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1           B. A member's accumulated contributions shall be  
2 transferred to the retirement reserve fund if a pension becomes  
3 payable upon the retirement or death of the member. If a  
4 disability retirement pension is terminated for a reason other  
5 than the death of the disability retired member before an  
6 amount equal to the disability retired member's accumulated  
7 member contributions has been paid, the unexpended balance of  
8 the accumulated member contributions shall be transferred from  
9 the retirement reserve fund to the former disability retired  
10 member's individual account in the member contribution fund.

11           C. If a member terminates affiliated public  
12 employment or is on leave of absence from an affiliated public  
13 employer as a consequence of the entry into active duty with  
14 the armed forces of the United States, the member may, with the  
15 written consent of the member's spouse or domestic partner, if  
16 any, withdraw the member's accumulated member contributions,  
17 upon making written request in a form prescribed by the  
18 association. Upon written request of the member in the form  
19 prescribed by the association, a refund of member contributions  
20 may be made by a trustee-to-trustee transfer of the  
21 contributions from the member contribution fund directly to  
22 another qualified plan as allowed by the Internal Revenue Code.  
23 Withdrawal of member contributions shall result in forfeiture  
24 of the service credit accrued for the period during which the  
25 contributions were made.

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1           D. A member shall, upon commencement of membership,  
2 designate a refund beneficiary who shall receive the refund of  
3 the member contributions, plus interest if any, if the member  
4 dies and no survivor pension is payable. If the member is  
5 married or in a domestic partnership at the time of  
6 designation, written spousal or domestic partner consent shall  
7 be required if the designated refund beneficiary is other than  
8 the spouse or domestic partner. Marriage or entering into a  
9 domestic partnership subsequent to the designation shall  
10 automatically revoke a previous designation, and the spouse or  
11 domestic partner shall become the refund beneficiary unless or  
12 until another designation is filed with the association.  
13 Divorce or dissolution of domestic partnership subsequent to  
14 the designation shall automatically revoke designation of the  
15 former spouse or former domestic partner as refund beneficiary,  
16 or the right of the former spouse or former domestic partner to  
17 be refund beneficiary if no designation has been filed, and the  
18 refund shall be paid to the deceased member's estate unless the  
19 member filed a designation of refund beneficiary subsequent to  
20 the divorce or dissolution of domestic partnership. The refund  
21 shall be paid to the refund beneficiary named in the most  
22 recent designation of refund beneficiary on file with the  
23 association unless that beneficiary is deceased. If there is  
24 not a living refund beneficiary named in the most recent  
25 designation of refund beneficiary on file with the association,

.179346.5GR

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1 the deceased member's accumulated member contributions shall be  
2 paid to the estate of the deceased member."

3 Section 98. Section 10-11A-7 NMSA 1978 (being Laws 1983,  
4 Chapter 263, Section 7, as amended) is amended to read:

5 "10-11A-7. RETIREMENT ANNUITY--SURVIVING BENEFICIARY.--A  
6 member may designate a spouse, domestic partner or dependent  
7 child as a beneficiary. In the event a retirement annuitant  
8 dies, the surviving beneficiary shall receive an annuity equal  
9 to two-thirds of the retirement annuity being paid to the  
10 retirement annuitant at the time of death; provided that the  
11 annuity paid to a beneficiary spouse or domestic partner shall  
12 cease upon the surviving spouse's or surviving domestic  
13 partner's marriage, entry into a domestic partnership or death  
14 and the annuity paid to a beneficiary dependent child shall  
15 cease upon the child reaching eighteen years of age or upon the  
16 child's death, whichever comes first."

17 Section 99. Section 10-11B-2 NMSA 1978 (being Laws 2007,  
18 Chapter 149, Section 2) is amended to read:

19 "10-11B-2. FINDINGS--PURPOSE.--The legislature finds that  
20 firefighters throughout the state risk their lives daily to  
21 protect the residents of New Mexico. The legislature further  
22 finds that when firefighters are killed in the line of duty,  
23 their immediate families can suffer grievously, both  
24 emotionally and economically. To recognize the substantial  
25 public safety benefits conferred by firefighters, and in

.179346.5GR

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1 consideration of the sacrifices undertaken by these individuals  
2 and their families for the residents of New Mexico, it is the  
3 purpose of the Firefighters' Survivors Supplemental Benefits  
4 Act to ensure that certain supplemental death benefits accrue  
5 to the spouses or domestic partners and surviving children, or  
6 parents if there are no surviving children, [~~or~~] surviving  
7 spouse or surviving domestic partner, of firefighters killed in  
8 the line of duty."

9 Section 100. Section 10-11B-5 NMSA 1978 (being Laws 2007,  
10 Chapter 149, Section 5) is amended to read:

11 "10-11B-5. FIREFIGHTERS' SURVIVORS SUPPLEMENTAL  
12 BENEFITS--REVIEW COMMITTEE--DETERMINATION--PAYMENT.--

13 A. There is created the "firefighters' survivors  
14 supplemental death benefits review committee". The committee  
15 shall consist of the attorney general, the president of the New  
16 Mexico fire chiefs association, the state president of the New  
17 Mexico professional fire fighters association and the president  
18 of the New Mexico state fire fighters' association or their  
19 designees.

20 B. The firefighters' survivors supplemental death  
21 benefits review committee shall determine whether a firefighter  
22 has been killed in the line of duty and advise the state fire  
23 marshal of that determination. In addition to any other death  
24 benefits provided by law, the surviving spouse, surviving  
25 domestic partner or surviving children shall be paid fifty

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1 thousand dollars (\$50,000) as supplemental death benefits  
2 whenever a firefighter is killed in the line of duty. The  
3 benefits shall be paid from the fund.

4 C. The benefits shall be paid entirely to the  
5 surviving spouse or surviving domestic partner. If there is no  
6 surviving spouse or surviving domestic partner, the benefits  
7 shall be distributed in pro rata shares to all surviving  
8 children. If there are no surviving children, [~~or~~] surviving  
9 spouse or surviving domestic partner, benefits shall be  
10 distributed to the surviving parents of the firefighter."

11 Section 101. Section 10-12B-2 NMSA 1978 (being Laws 1992,  
12 Chapter 111, Section 2, as amended) is amended to read:

13 "10-12B-2. DEFINITIONS.--As used in the Judicial  
14 Retirement Act:

15 A. "association" means the public employees  
16 retirement association provided for in the Public Employees  
17 Retirement Act;

18 B. "board" means the retirement board provided for  
19 in the Public Employees Retirement Act;

20 C. "current judge or justice" means a judge or  
21 justice who occupied such an office on July 1, 1980 but who  
22 elected to be covered under the provisions of the retirement  
23 plan in effect at that time;

24 D. "dependent child" means a natural or adopted  
25 child who is physically or mentally incapable of financial

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1 self-support, regardless of age;

2 E. "educational retirement system" means the  
3 retirement system provided for in the Educational Retirement  
4 Act;

5 F. "effective date of retirement" means the first  
6 day of the month following the month in which the member met  
7 all requirements for retirement;

8 G. "former judge or justice" means a judge or  
9 justice who occupied such an office prior to July 1, 1980 but  
10 who had ceased to hold such an office prior to that date and  
11 who elected to be excluded from the provisions of the  
12 Judicial Retirement Act;

13 H. "former member" means a person no longer in  
14 office who was previously covered pursuant to the provisions  
15 of Sections 10-12-1 through 10-12-18 NMSA 1978, but who has  
16 not retired pursuant to the provisions of the Judicial  
17 Retirement Act and who has received a refund of member  
18 contributions pursuant to the provisions of Sections 10-12B-1  
19 through 10-12B-19 NMSA 1978;

20 I. "fund" means the judicial retirement fund;

21 J. "judge" means a judge of the metropolitan  
22 court, district court or court of appeals of New Mexico;

23 K. "justice" means a justice of the supreme court  
24 of New Mexico;

25 L. "member" means any judge or justice who is in

.179346.5GR

1 office and covered pursuant to the provisions of the Judicial  
2 Retirement Act, or any person no longer in office who was  
3 previously a judge or justice covered pursuant to the  
4 provisions of the Judicial Retirement Act, who has not  
5 retired and who has not received a refund of member  
6 contributions from the fund;

7 M. "member contributions" means the amounts  
8 deducted from the salary of a member and credited to the  
9 member's individual account, together with interest, if any,  
10 credited thereto;

11 N. "minor child" means a natural or adopted child  
12 who has not reached [~~his~~] the child's eighteenth birthday and  
13 who has not been emancipated by marriage, by entering into a  
14 domestic partnership or otherwise;

15 O. "new judge or justice" means:

16 (1) a judge or justice who first occupied  
17 such an office after July 1, 1980; or

18 (2) a judge or justice who occupied such an  
19 office on or before July 1, 1980 and who has elected to be  
20 covered under the provisions of the Judicial Retirement Act;

21 P. "pension" means a series of monthly payments  
22 to a retired member or survivor beneficiary pursuant to the  
23 provisions of the Judicial Retirement Act;

24 Q. "refund beneficiary" means a person designated  
25 by the member, in writing in the form prescribed by the

1 association, as the person who would be refunded the member's  
2 accumulated member contributions payable if the member dies  
3 and no survivor pension is payable, or who would receive the  
4 difference between pension paid and accumulated member  
5 contributions if the retired member dies before receiving in  
6 pension payments the amount of the accumulated member  
7 contributions;

8 R. "retire" means to:

9 (1) terminate employment with all employers  
10 covered by any state system or the educational retirement  
11 system; and

12 (2) receive a pension from one state system  
13 or the educational retirement system;

14 S. "retired member" means a person who has met  
15 all requirements for retirement and who is receiving a  
16 pension from the fund;

17 T. "salary" means the base salary or wages paid a  
18 member, including longevity pay, for personal services  
19 rendered; provided that salary does not include overtime pay;  
20 allowances for housing, clothing, equipment or travel;  
21 payments for unused sick leave, unless the unused sick leave  
22 payment is made through continuation of the member on the  
23 regular payroll for the period represented by that payment;  
24 and any other form of remuneration not specifically  
25 designated by law as included in salary pursuant to the

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1 provisions of the Judicial Retirement Act;

2 U. "state system" means the retirement programs  
3 provided pursuant to the provisions of the Public Employees  
4 Retirement Act, the Magistrate Retirement Act and the  
5 Judicial Retirement Act;

6 V. "surviving spouse" or "surviving domestic  
7 partner" means the spouse to whom the member was married or  
8 the domestic partner with whom the member had a domestic  
9 partnership at the time of the member's death;

10 W. "survivor beneficiary" means a person who  
11 receives a pension or who has been designated to be paid a  
12 pension as a result of the death of a member or retired  
13 member; and

14 X. "years of service" means a period of time  
15 beginning on the date a person commences to hold office as a  
16 judge or justice because of appointment or election and  
17 ending on the date a person ceases to hold office as a judge  
18 or justice because of expiration of the judge's or justice's  
19 term, voluntary resignation, death or disability and shall  
20 include any fractions of years of service."

21 Section 102. Section 10-12B-6 NMSA 1978 (being Laws  
22 1992, Chapter 111, Section 6, as amended) is amended to read:

23 "10-12B-6. REFUND OF CONTRIBUTIONS.--

24 A. If a member leaves office, the member may,  
25 with the written consent of the member's spouse or domestic

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1 partner, if any, withdraw the member's accumulated member  
2 contributions upon making written request in a form  
3 prescribed by the association. Upon written request of the  
4 member in the form prescribed by the association, a refund of  
5 member contributions may be made by a trustee-to-trustee  
6 transfer of the contributions from the member contribution  
7 fund directly to another qualified plan as allowed by the  
8 Internal Revenue Code of 1986. Withdrawal of member  
9 contributions shall result in forfeiture of the service  
10 credit accrued for the period during which the contributions  
11 were made.

12 B. A member shall, upon commencement of  
13 membership, designate a refund beneficiary who shall receive  
14 the refund of the member contributions, plus interest, if the  
15 member dies and no survivor pension is payable. If the  
16 member is married or in domestic partnership at the time of  
17 designation, written spousal or domestic partner consent  
18 shall be required if the designated refund beneficiary is a  
19 person other than the spouse or domestic partner. Marriage  
20 or entering into a domestic partnership subsequent to the  
21 designation shall automatically revoke a previous  
22 designation, and the spouse or domestic partner shall become  
23 the refund beneficiary unless or until another designation is  
24 filed with the association. Divorce or dissolution of  
25 domestic partnership subsequent to the designation shall

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1 automatically revoke designation of the former spouse or  
2 former domestic partner as refund beneficiary if no  
3 designation has been filed, and the refund shall be paid to  
4 the deceased member's estate unless the member filed a  
5 designation of refund beneficiary subsequent to the divorce  
6 or dissolution of domestic partnership. The refund shall be  
7 paid to the refund beneficiary named in the most recent  
8 designation of refund beneficiary on file with the  
9 association unless that beneficiary is deceased. If there is  
10 not a living refund beneficiary named in the most recent  
11 designation of refund beneficiary on file with the  
12 association, the deceased member's accumulated member  
13 contributions shall be paid to the estate of the deceased  
14 member."

15 Section 103. Section 10-12B-14 NMSA 1978 (being Laws  
16 1992, Chapter 111, Section 14) is amended to read:

17 "10-12B-14. SURVIVOR'S PENSION.--

18 A. Unless a member has designated a survivor  
19 beneficiary in accordance with Subsection B of this section,  
20 a survivor pension shall be paid for life to a member's or  
21 retired member's surviving spouse or surviving domestic  
22 partner.

23 B. A member may designate, in writing in a form  
24 prescribed by the association, a survivor beneficiary to  
25 receive the survivor's pension described in this section. If

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1 the member is married or in a domestic partnership, a  
2 designation of survivor beneficiary other than the member's  
3 spouse or domestic partner may only be made with the written  
4 consent of the member's spouse or domestic partner. Marriage  
5 or entering into a domestic partnership subsequent to a  
6 designation of survivor beneficiary shall automatically  
7 revoke the designation of survivor beneficiary. A  
8 designation of survivor beneficiary made pursuant to a court  
9 order issued under Section [~~7 of the Judicial Retirement Act~~]  
10 10-12B-7 NMSA 1978 shall not require the consent of the  
11 member's spouse or domestic partner, if any, and shall not be  
12 revoked by the subsequent remarriage of the member or a  
13 subsequent entry into a domestic partnership by the member.  
14 A designation of survivor beneficiary may be revoked by the  
15 member at any time prior to the member's retirement. If the  
16 member is married or in a domestic partnership, a revocation  
17 of designation of survivor beneficiary may only be made with  
18 the written consent of the member's spouse or domestic  
19 partner.

20 C. If there is no surviving spouse or surviving  
21 domestic partner and no designated survivor beneficiary or if  
22 the surviving spouse or surviving domestic partner dies while  
23 there are still minor and dependent children of the member,  
24 the survivor's pension shall be paid to all minor and  
25 dependent children, if any, of the member, in equal shares,

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1 so long as each child remains a minor or dependent child. As  
2 each child ceases to be a minor or dependent child, the  
3 number of shares shall be reduced and the amount payable to  
4 each remaining child increased proportionately so that the  
5 total survivor's pension remains unchanged as long as there  
6 is any such child.

7 D. The survivor's pension is equal to seventy-  
8 five percent of the member's pension.

9 E. Survivor beneficiaries shall be eligible for  
10 other benefits provided pursuant to the provisions of the  
11 Judicial Retirement Act, including cost-of-living adjustments  
12 and continuation of group insurance benefits.

13 F. If a member dies while receiving a disability  
14 retirement pension, the survivor beneficiary shall receive  
15 the survivor pension provided pursuant to the provisions of  
16 the Judicial Retirement Act."

17 Section 104. Section 10-12C-2 NMSA 1978 (being Laws  
18 1992, Chapter 118, Section 2, as amended) is amended to read:

19 "10-12C-2. DEFINITIONS.--As used in the Magistrate  
20 Retirement Act:

21 A. "association" means the public employees  
22 retirement association provided for in the Public Employees  
23 Retirement Act;

24 B. "board" means the retirement board provided  
25 for in the Public Employees Retirement Act;

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1           C. "dependent child" means a natural or adopted  
2 child who is physically or mentally incapable of financial  
3 self-support, regardless of age;

4           D. "educational retirement system" means the  
5 retirement system provided for in the Educational Retirement  
6 Act;

7           E. "effective date of retirement" means the first  
8 day of the month following the month in which the member met  
9 all requirements for retirement;

10          F. "former member" means a person no longer in  
11 office who was previously covered pursuant to the provisions  
12 of Sections 10-12A-1 through 10-12A-13 NMSA 1978, but who has  
13 not retired pursuant to the provisions of the Magistrate  
14 Retirement Act and who has received a refund of member  
15 contributions pursuant to the provisions of Sections 10-12C-1  
16 through 10-12C-18 NMSA 1978;

17          G. "fund" means the magistrate retirement fund;

18          H. "magistrate" means a magistrate judge;

19          I. "member" means any magistrate who is in office  
20 and covered pursuant to the provisions of the Magistrate  
21 Retirement Act, or any person no longer in office who was  
22 previously a magistrate covered pursuant to the provisions of  
23 the Magistrate Retirement Act, who has not retired and who  
24 has not received a refund of member contributions from the  
25 fund;

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1           J. "member contributions" means the amounts  
2 deducted from the salary of a member and credited to the  
3 member's individual account, together with interest, if any,  
4 credited thereto;

5           K. "minor child" means a natural or adopted child  
6 who has not reached [~~his~~] the natural or adopted child's  
7 eighteenth birthday and who has not been emancipated by  
8 marriage, by entering into a domestic partnership or  
9 otherwise;

10          L. "pension" means a series of monthly payments  
11 to a retired member or survivor beneficiary pursuant to the  
12 provisions of the Magistrate Retirement Act;

13          M. "refund beneficiary" means a person designated  
14 by the member, in writing in the form prescribed by the  
15 association, as the person who would be refunded the member's  
16 accumulated member contributions payable if the member dies  
17 and no survivor pension is payable, or as the person who  
18 would receive the difference between pension paid and  
19 accumulated member contributions if the retired member dies  
20 before receiving in pension payments the amount of the  
21 accumulated member contributions;

22          N. "retire" means to:

23                 (1) terminate employment with all employers  
24 covered by any state system or the educational retirement  
25 system; and

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1 (2) receive a pension from one state system  
2 or the educational retirement system;

3 O. "retired member" means a person who has met  
4 all requirements for retirement and who is receiving a  
5 pension from the fund;

6 P. "salary" means the base salary or wages paid a  
7 member, including longevity pay, for personal services  
8 rendered; provided that salary does not include overtime pay;  
9 allowances for housing, clothing, equipment or travel;  
10 payments for unused sick leave, unless the unused sick leave  
11 payment is made through continuation of the member on the  
12 regular payroll for the period represented by that payment;  
13 and any other form of remuneration not specifically  
14 designated by law as included in salary pursuant to the  
15 provisions of the Magistrate Retirement Act;

16 Q. "state system" means the retirement programs  
17 provided pursuant to the provisions of the Public Employees  
18 Retirement Act, the Magistrate Retirement Act and the  
19 Judicial Retirement Act;

20 R. "surviving spouse" or "surviving domestic  
21 partner" means the spouse to whom the member was married or  
22 the domestic partner with whom the member had a domestic  
23 partnership at the time of the member's death;

24 S. "survivor beneficiary" means a person who  
25 receives a pension or who has been designated to be paid a

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1 pension as a result of the death of a member or retired  
2 member; and

3 T. "years of service" means a period of time  
4 beginning on the date a person commences to hold office as a  
5 magistrate because of appointment or election and ending on  
6 the date a person ceases to hold office as a magistrate  
7 because of expiration of the magistrate's term, voluntary  
8 resignation, death or disability and shall include any  
9 fractions of years of service."

10 Section 105. Section 10-12C-6 NMSA 1978 (being Laws  
11 1992, Chapter 118, Section 6, as amended) is amended to read:

12 "10-12C-6. REFUND OF CONTRIBUTIONS.--

13 A. If a member leaves office, the member may,  
14 with the written consent of the member's spouse or domestic  
15 partner, if any, withdraw the member's accumulated member  
16 contributions, upon making written request in a form  
17 prescribed by the association. Upon written request of the  
18 member in the form prescribed by the association, a refund of  
19 member contributions may be made by a trustee-to-trustee  
20 transfer of the contributions from the member contribution  
21 fund directly to another qualified plan as allowed by the  
22 Internal Revenue Code of 1986. Withdrawal of member  
23 contributions shall result in forfeiture of the service  
24 credit accrued for the period during which the contributions  
25 were made.

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1           B. A member shall, upon commencement of  
2 membership, designate a refund beneficiary who shall receive  
3 the refund of the member contributions, plus interest if any,  
4 if the member dies and no survivor pension is payable. If  
5 the member is married or in a domestic partnership at the  
6 time of designation, written spousal or domestic partner  
7 consent shall be required if the designated refund  
8 beneficiary is a person other than the spouse or domestic  
9 partner. Marriage or entering into a domestic partnership  
10 subsequent to the designation shall automatically revoke a  
11 previous designation, and the spouse or domestic partner  
12 shall become the refund beneficiary unless or until another  
13 designation is filed with the association. Divorce or  
14 dissolution of domestic partnership subsequent to the  
15 designation shall automatically revoke designation of the  
16 former spouse or former domestic partner as refund  
17 beneficiary, or the right of the former spouse or former  
18 domestic partner to be refund beneficiary if no designation  
19 has been filed, and the refund shall be paid to the deceased  
20 member's estate unless the member filed a designation of  
21 refund beneficiary subsequent to the divorce or dissolution  
22 of domestic partnership. The refund shall be paid to the  
23 refund beneficiary named in the most recent designation of  
24 refund beneficiary on file with the association unless that  
25 beneficiary is deceased. If there is not a living refund

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1 beneficiary named in the most recent designation of refund  
2 beneficiary on file with the association, the deceased  
3 member's accumulated member contributions shall be paid to  
4 the estate of the deceased member."

5 Section 106. Section 10-12C-13 NMSA 1978 (being Laws  
6 1992, Chapter 118, Section 13) is amended to read:

7 "10-12C-13. SURVIVOR'S PENSION.--

8 A. Unless a member has designated a survivor  
9 beneficiary in accordance with Subsection B of this section,  
10 a survivor pension shall be paid for life to a member's or  
11 retired member's surviving spouse or surviving domestic  
12 partner.

13 B. A member may designate, in writing in a form  
14 prescribed by the association, a survivor beneficiary to  
15 receive the survivor's pension described in this section. If  
16 the member is married or in a domestic partnership, a  
17 designation of survivor beneficiary other than the member's  
18 spouse or domestic partner may only be made with the written  
19 consent of the member's spouse or domestic partner. Marriage  
20 or subsequent entry into a domestic partnership subsequent to  
21 a designation of survivor beneficiary shall automatically  
22 revoke the designation of survivor beneficiary. A  
23 designation of survivor beneficiary made pursuant to a court  
24 order issued under Section [~~7 of the Magistrate Retirement~~  
25 ~~Act~~] 10-12C-7 NMSA 1978 shall not require the consent of the

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1 member's spouse or domestic partner, if any, and shall not be  
2 revoked by the subsequent remarriage of or subsequent entry  
3 into a domestic partnership by the member. A designation of  
4 survivor beneficiary may be revoked by the member at any time  
5 prior to the member's retirement. If the member is married  
6 or in a domestic partnership, a revocation of designation of  
7 survivor beneficiary may only be made with the written  
8 consent of the member's spouse or domestic partner.

9 C. If there is no surviving spouse or surviving  
10 domestic partner and no designated survivor beneficiary or if  
11 the surviving spouse or surviving domestic partner dies while  
12 there are still minor and dependent children of the member,  
13 the survivor's pension shall be paid to all minor and  
14 dependent children, if any, of the member, in equal shares,  
15 so long as each child remains a minor or dependent child. As  
16 each child ceases to be a minor or dependent child, the  
17 number of shares shall be reduced and the amount payable to  
18 each remaining child increased proportionately so that the  
19 total survivor's pension remains unchanged as long as there  
20 is any such child.

21 D. The survivor's pension is equal to seventy-  
22 five percent of the member's pension.

23 E. Survivor beneficiaries shall be eligible for  
24 other benefits pursuant to the provisions of the  
25 Magistrate Retirement Act, including cost-of-living

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1 adjustments and continuation of group insurance benefits.

2 F. If a member dies while receiving a disability  
3 retirement pension, the survivor beneficiary shall receive  
4 the survivor pension provided pursuant to the provisions of  
5 the Magistrate Retirement Act."

6 Section 107. Section 10-16-2 NMSA 1978 (being Laws  
7 1967, Chapter 306, Section 2, as amended) is amended to read:

8 "10-16-2. DEFINITIONS.--As used in the Governmental  
9 Conduct Act:

10 A. "business" means a corporation, partnership,  
11 sole proprietorship, firm, organization or individual  
12 carrying on a business;

13 B. "confidential information" means information  
14 that by law or practice is not available to the public;

15 C. "employment" means rendering of services for  
16 compensation in the form of salary as an employee;

17 D. "family" means an individual's spouse or  
18 domestic partner, parents, children or siblings, by  
19 consanguinity or affinity;

20 E. "financial interest" means an interest held by  
21 an individual or the individual's family that is:

22 (1) an ownership interest in business; or

23 (2) any employment or prospective employment  
24 for which negotiations have already begun;

25 F. "official act" means an official decision,

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1 recommendation, approval, disapproval or other action that  
2 involves the use of discretionary authority;

3 G. "public officer or employee" means any person  
4 who has been elected to, appointed to or hired for any state  
5 office and who receives compensation in the form of salary or  
6 is eligible for per diem or mileage but excludes legislators;

7 H. "standards" means the conduct required by the  
8 Governmental Conduct Act;

9 I. "state agency" means any branch, agency,  
10 instrumentality or institution of the state; and

11 J. "substantial interest" means an ownership  
12 interest that is greater than twenty percent."

13 Section 108. Section 10-16A-2 NMSA 1978 (being Laws  
14 1993, Chapter 46, Section 40, as amended) is amended to read:

15 "10-16A-2. DEFINITIONS.--As used in the Financial  
16 Disclosure Act:

17 A. "business" means a corporation, partnership,  
18 sole proprietorship, firm, organization or individual  
19 carrying on a business;

20 B. "employment" means rendering of services for  
21 compensation in the form of salary as an employee;

22 C. "financial interest" means an interest held by  
23 an individual or ~~his~~ the individual's spouse or domestic  
24 partner that is:

25 (1) an ownership interest in business; or

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1 (2) any employment or prospective employment  
2 for which negotiations have already begun;

3 D. "official act" means an official decision,  
4 recommendation, approval, disapproval or other action that  
5 involves the use of discretionary authority;

6 E. "person" means an individual or entity; and

7 F. "public officer or employee" means any person  
8 who has been elected to, appointed to or hired for any state  
9 office and who receives compensation in the form of salary or  
10 is eligible for per diem or mileage, but excludes legislators  
11 and judges."

12 Section 109. Section 10-16A-3 NMSA 1978 (being Laws  
13 1993, Chapter 46, Section 41, as amended) is amended to read:

14 "10-16A-3. REQUIRED DISCLOSURES FOR CERTAIN CANDIDATES  
15 AND PUBLIC OFFICERS AND EMPLOYEES--CONDITION FOR PLACEMENT ON  
16 BALLOT OR APPOINTMENT.--

17 A. At the time of filing a declaration of  
18 candidacy or nominating petition, a candidate for legislative  
19 or statewide office shall file with the proper filing  
20 officer, as defined in Section 1-8-25 NMSA 1978, a financial  
21 disclosure statement on a prescribed form. In addition, each  
22 year thereafter during the month of January, a legislator and  
23 a person holding a statewide office shall file with the  
24 proper filing officer a financial disclosure statement. If  
25 the proper filing officer is not the secretary of state, the

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1 proper filing officer shall forward a copy of the financial  
2 disclosure statement to the secretary of state within  
3 seventy-two hours.

4 B. A state agency head or official whose  
5 appointment to a board or commission is subject to  
6 confirmation by the senate shall file with the secretary of  
7 state a financial disclosure statement within thirty days of  
8 appointment and during the month of January every year  
9 thereafter that ~~[he]~~ the state agency head or official holds  
10 public office.

11 C. The financial disclosure statement shall  
12 include for any person identified in Subsection A or B of  
13 this section and the person's spouse or domestic partner the  
14 following information for the prior calendar year:

15 (1) the full name, mailing address and  
16 residence address of each person covered in the disclosure  
17 statement, except the address of the spouse or domestic  
18 partner need not be disclosed; the name and address of the  
19 person's and spouse's or domestic partner's employer and the  
20 title or position held; and a brief description of the nature  
21 of the business or occupation;

22 (2) all sources of gross income of more than  
23 five thousand dollars (\$5,000) to each person covered in the  
24 disclosure statement, identified by general category  
25 descriptions that disclose the nature of the income source,

.179346.5GR

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1 in the following broad categories: law practice or  
2 consulting operation or similar business, finance and  
3 banking, farming and ranching, medicine and health care,  
4 insurance (as a business and not as payment on an insurance  
5 claim), oil and gas, transportation, utilities, general stock  
6 market holdings, bonds, government, education, manufacturing,  
7 real estate, consumer goods sales with a general description  
8 of the consumer goods and the category "other", with  
9 direction that the income source be similarly described. In  
10 describing a law practice, consulting operation or similar  
11 business of the person or spouse or domestic partner, the  
12 major areas of specialization or income sources shall be  
13 described, and if the spouse or domestic partner or a person  
14 in the reporting person's or spouse's or domestic partner's  
15 law firm, consulting operation or similar business is or was  
16 during the reporting calendar year or the prior calendar year  
17 a registered lobbyist under the Lobbyist Regulation Act, the  
18 names and addresses of all clients represented for lobbying  
19 purposes during those two years shall be disclosed;

20 (3) a general description of the type of  
21 real estate owned in New Mexico, other than a personal  
22 residence, and the county where it is located;

23 (4) all other New Mexico business interests  
24 not otherwise listed of ten thousand dollars (\$10,000) or  
25 more in a New Mexico business or entity, including any

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1 position held and a general statement of purpose of the  
2 business or entity;

3 (5) all memberships held by the reporting  
4 individual and ~~his~~ the reporting individual's spouse or  
5 domestic partner on boards of for-profit businesses in New  
6 Mexico;

7 (6) all New Mexico professional licenses  
8 held;

9 (7) each state agency that was sold goods or  
10 services in excess of five thousand dollars (\$5,000) during  
11 the prior calendar year by a person covered in the disclosure  
12 statement;

13 (8) each state agency, other than a court,  
14 before which a person covered in the disclosure statement  
15 represented or assisted clients in the course of ~~his~~ the  
16 person's employment during the prior calendar year; and

17 (9) a general category that allows the  
18 person filing the disclosure statement to provide whatever  
19 other financial interest or additional information the person  
20 believes should be noted to describe potential areas of  
21 interest that should be disclosed.

22 D. A complete financial disclosure statement  
23 shall be filed every year. The secretary of state shall mail  
24 each elected official required to file a financial disclosure  
25 statement a copy of any statement the person filed the

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1 previous year.

2 E. The financial disclosure statements filed  
3 pursuant to this section are public records open to public  
4 inspection during regular office hours and shall be retained  
5 by the state for five years from the date of filing.

6 F. A person who files a financial disclosure  
7 statement may file an amended statement at any time to  
8 reflect significant changed circumstances that occurred since  
9 the last statement was filed.

10 G. ~~[Any]~~ A candidate for a legislative or  
11 statewide office who fails or refuses to file a financial  
12 disclosure statement required by this section before the  
13 final date for the withdrawal of candidates provided for in  
14 the Election Code shall not have ~~[his]~~ the candidate's name  
15 printed on the election ballot.

16 H. For a state agency head or an official whose  
17 appointment to a board or commission is subject to  
18 confirmation by the senate, the filing of the financial  
19 disclosure statement required by this section is a condition  
20 of entering upon and continuing in state employment or  
21 holding an appointed position."

22 Section 110. Section 10-16B-2 NMSA 1978 (being Laws  
23 2007, Chapter 226, Section 2) is amended to read:

24 "10-16B-2. DEFINITIONS.--As used in the Gift Act:

25 A. "family" means a spouse or domestic partner

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1 and dependent children;

2 B. "gift" means any donation or transfer without  
3 commensurate consideration of money, property, service, loan,  
4 promise or any other thing of value, including food, lodging,  
5 transportation and tickets for entertainment or sporting  
6 events, but does not include:

7 (1) any activity, including but not limited  
8 to the acceptance of a donation, transfer or contribution, or  
9 the making of an expenditure or reimbursement, that is  
10 authorized by the Campaign Reporting Act or the Federal  
11 Election Campaign Act of 1971, as amended;

12 (2) a gift given under circumstances that  
13 make it clear that the gift is motivated by a family  
14 relationship or close personal relationship rather than the  
15 recipient's position as a state officer or employee or  
16 candidate for state office;

17 (3) compensation for services rendered or  
18 capital invested that is:

19 (a) normal and reasonable in amount;

20 (b) commensurate with the value of the  
21 service rendered or the magnitude of the risk taken on the  
22 investment;

23 (c) in no way increased or enhanced by  
24 reason of the recipient's position as a state officer or  
25 employee or candidate for state office; and

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1 (d) not otherwise prohibited by law;

2 (4) payment for a sale or lease of tangible  
3 or intangible property that is commensurate with the value of  
4 the services rendered and is in no way increased or enhanced  
5 by reason of the recipient's position as a state officer or  
6 employee or candidate for state office;

7 (5) a commercially reasonable loan made in  
8 the ordinary course of the lender's business on terms that  
9 are available to all similarly qualified borrowers;

10 (6) reimbursement for out-of-pocket expenses  
11 actually incurred in the course of performing a service for  
12 the person making the reimbursement;

13 (7) any gift accepted on behalf of and to be  
14 used by the state or a political subdivision of the state,  
15 including travel, subsistence and related expenses accepted  
16 by a state agency in connection with a state officer's or  
17 employee's official duties that take place away from the  
18 state official's or employee's station of duty;

19 (8) anything for which fair market value is  
20 paid or reimbursed by the state officer or employee or  
21 candidate for state office;

22 (9) reasonable expenses for a bona fide  
23 educational program that is directly related to the state  
24 officer's or employee's official duties; or

25 (10) a retirement gift;

.179346.5GR

1 C. "market value" means the retail cost a person  
2 would incur to purchase a gift;

3 D. "restricted donor" means a person who:

4 (1) is or is seeking to be a party to any  
5 one or any combination of sales, purchases, leases or  
6 contracts to, from or with the agency in which the donee  
7 holds office or is employed;

8 (2) will personally be, or is the agent of a  
9 person who will be, directly and substantially affected  
10 financially by the performance or nonperformance of the  
11 donee's official duty in a way that is greater than the  
12 effect on the public generally or on a substantial class of  
13 persons to which the person belongs as a member of a  
14 profession, occupation, industry or region;

15 (3) is personally, or is the agent of a  
16 person who is, the subject of or party to a matter that is  
17 pending before a regulatory agency and over which the donee  
18 has discretionary authority as part of the donee's official  
19 duties or employment within the regulatory agency; or

20 (4) is a lobbyist or a client of a lobbyist  
21 with respect to matters within the donee's jurisdiction; and

22 E. "state officer or employee" means any person  
23 who has been elected to, appointed to or hired for any state  
24 office and who receives compensation in the form of salary or  
25 is eligible for per diem or mileage."

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1           Section 111. Section 11-7-5 NMSA 1978 (being Laws  
2 1969, Chapter 118, Section 5) is amended to read:

3           "11-7-5. NOTICE OF TRANSFER.--Whenever the compact  
4 administrator for the Interstate Compact on Mental Health  
5 receives a request for the transfer of a patient from an  
6 institution in this state to an institution in another party  
7 state and [~~he~~] the compact administrator determines that the  
8 transfer is in the best interest of the patient, [~~he~~] the  
9 compact administrator shall give notice of the proposed  
10 transfer to the patient, the spouse or domestic partner of  
11 the patient, the parents of the patient and the adult  
12 children of the patient. This notice shall also notify these  
13 people of the right, if requested, to a court hearing on the  
14 proposed transfer and shall contain a request for written  
15 consent from these people for the transfer. The notice shall  
16 be in writing, and the respondents shall be given fourteen  
17 days from the date of mailing of the notice to consent or  
18 object to the transfer or to request a court hearing. No  
19 transfer shall be made if there is any written objection or  
20 request made to the compact administrator except upon order  
21 of the court after hearing. However, no transfer shall be  
22 made if the compact administrator receives written objections  
23 from all these people. No transfer shall be made of a  
24 patient ordered hospitalized by any court unless written  
25 notice of the proposed transfer has been given to that

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1 court."

2 Section 112. Section 12-2A-3 NMSA 1978 (being Laws  
3 1997, Chapter 173, Section 3) is amended to read:

4 "12-2A-3. GENERAL DEFINITIONS.--In the statutes and  
5 rules of New Mexico:

6 A. "annually" means per year;

7 B. "age of majority" begins on the first instant  
8 of an individual's eighteenth birthday;

9 C. "child" includes a child by adoption;

10 D. "family" includes a domestic partner and a  
11 domestic partnership family;

12 E. "includes" and "including" are terms of  
13 expansion, not of limitation or exclusion, and are equivalent  
14 to "includes but is not limited to" and "including but not  
15 limited to";

16 [~~D.~~] F. "oath" includes an affirmation;

17 [~~E.~~] G. "person" means an individual,  
18 corporation, business trust, estate, trust, partnership,  
19 limited liability company, association, joint venture or any  
20 other legal or commercial entity;

21 [~~F.~~] H. "personal property" means property other  
22 than real property;

23 [~~G.~~] I. "personal representative" of a decedent's  
24 estate includes an administrator and executor;

25 [~~H.~~] J. "population" means the number of

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1 individuals enumerated in the most recent federal decennial  
2 census;

3 ~~[I.]~~ K. "property" means real and personal  
4 property;

5 ~~[J.]~~ L. "real property" means an estate or  
6 interest in, over or under land and other things or  
7 interests, including minerals, water, structures and  
8 fixtures, that by custom, usage or law pass with a transfer  
9 of land even if the estate or interest is not described or  
10 mentioned in the contract of sale or instrument of conveyance  
11 and, if appropriate to the context, the land in which the  
12 estate or interest is claimed;

13 ~~[K.]~~ M. "rule" means a rule, regulation, order,  
14 standard or statement of policy, including amendments thereto  
15 or repeals thereof, adopted and promulgated by an  
16 administrative agency, that purports to affect one or more  
17 administrative agencies other than the promulgating agency or  
18 that purports to affect persons who are not members or  
19 employees of the promulgating agency;

20 ~~[L.]~~ N. "sign" or "subscribe" includes the  
21 execution or adoption of any symbol by a person with the  
22 present intention to authenticate a writing;

23 ~~[M.]~~ O. "state" means a state of the United  
24 States, the District of Columbia, the Commonwealth of Puerto  
25 Rico or any territory or insular possession subject to the

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1 jurisdiction of the United States;

2 [N-] P. "swear" includes affirm;

3 [O-] Q. "will" includes a codicil; and

4 [P-] R. "written" and "in writing" includes  
5 printing, engraving or any other mode of representing words  
6 and letters."

7 Section 113. Section 13-1-62 NMSA 1978 (being Laws  
8 1984, Chapter 65, Section 35) is amended to read:

9 "13-1-62. DEFINITION--IMMEDIATE FAMILY.--"Immediate  
10 family" means a spouse or domestic partner; children;  
11 parents; brothers; and sisters."

12 Section 114. Section 13-1-191.1 NMSA 1978 (being Laws  
13 2006, Chapter 81, Section 1, as amended) is amended to read:

14 "13-1-191.1. CAMPAIGN CONTRIBUTION DISCLOSURE AND  
15 PROHIBITION.--

16 A. This section applies to prospective  
17 contractors with the state or a local public body.

18 B. A prospective contractor subject to this  
19 section shall disclose all campaign contributions given by  
20 the prospective contractor or a family member or  
21 representative of the prospective contractor to an applicable  
22 public official of the state or a local public body during  
23 the two years prior to the date on which a proposal is  
24 submitted or, in the case of a sole source or small purchase  
25 contract, the two years prior to the date on which the

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1 contractor signs the contract, if the aggregate total of  
2 contributions given by the prospective contractor or a family  
3 member or representative of the prospective contractor to the  
4 public official exceeds two hundred fifty dollars (\$250) over  
5 the two-year period.

6 C. The disclosure shall indicate the date, the  
7 amount, the nature and the purpose of the contribution. The  
8 disclosure statement shall be on a form developed and made  
9 available electronically by the department of finance and  
10 administration to all state agencies and local public bodies.  
11 The state agency or local public body that procures the  
12 services or items of tangible personal property shall  
13 indicate on the form the name or names of every applicable  
14 public official, if any, for which disclosure is required by  
15 a prospective contractor for each competitive sealed  
16 proposal, sole source or small purchase contract. The form  
17 shall be filed with the state agency or local public body as  
18 part of the competitive sealed proposal or, in the case of a  
19 sole source or small purchase contract, on the date on which  
20 the contractor signs the contract.

21 D. A prospective contractor submitting a  
22 disclosure statement pursuant to this section who has not  
23 contributed to an applicable public official, whose family  
24 members have not contributed to an applicable public official  
25 or whose representatives have not contributed to an

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1 applicable public official shall make a statement that no  
2 contribution was made.

3 E. A prospective contractor or a family member or  
4 representative of the prospective contractor shall not give a  
5 campaign contribution or other thing of value to an  
6 applicable public official or the applicable public  
7 official's employees during the pendency of the procurement  
8 process or during the pendency of negotiations for a sole  
9 source or small purchase contract.

10 F. A solicitation or proposed award for a  
11 proposed contract may be canceled pursuant to Section  
12 13-1-181 NMSA 1978 or a contract that is executed may be  
13 ratified or terminated pursuant to Section 13-1-182 NMSA 1978  
14 if:

15 (1) a prospective contractor fails to submit  
16 a fully completed disclosure statement pursuant to this  
17 section; or

18 (2) a prospective contractor or family  
19 member or representative of the prospective contractor gives  
20 a campaign contribution or other thing of value to an  
21 applicable public official or the applicable public  
22 official's employees during the pendency of the procurement  
23 process.

24 G. As used in this section:

25 (1) "applicable public official" means a  
.179346.5GR

1 person elected to an office or a person appointed to complete  
2 a term of an elected office, who has the authority to award  
3 or influence the award of the contract for which the  
4 prospective contractor is submitting a competitive sealed  
5 proposal or who has the authority to negotiate a sole source  
6 or small purchase contract that may be awarded without  
7 submission of a sealed competitive proposal;

8 (2) "family member" means a spouse, domestic  
9 partner, father, mother, child, father-in-law, mother-in-law,  
10 daughter-in-law or son-in-law of:

11 (a) a prospective contractor, if the  
12 prospective contractor is a natural person; or

13 (b) an owner of a prospective  
14 contractor;

15 (3) "pendency of the procurement process"  
16 means the time period commencing with the public notice of  
17 the request for proposals and ending with the award of the  
18 contract or the cancellation of the request for proposals;

19 (4) "prospective contractor" means a person  
20 or business that is subject to the competitive sealed  
21 proposal process set forth in the Procurement Code or is not  
22 required to submit a competitive sealed proposal because that  
23 person or business qualifies for a sole source or small  
24 purchase contract; and

25 (5) "representative of the prospective

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1 contractor" means an officer or director of a corporation, a  
2 member or manager of a limited liability corporation, a  
3 partner of a partnership or a trustee of a trust of the  
4 prospective contractor."

5 Section 115. Section 17-3-4 NMSA 1978 (being Laws 1964  
6 (1st S.S.), Chapter 17, Section 4, as amended) is amended to  
7 read:

8 "17-3-4. RESIDENCE.--As used in Chapter 17 NMSA 1978:

9 A. a "resident" entitled to purchase resident  
10 hunting and fishing licenses is any person:

11 (1) who is a United States citizen and who,  
12 for a period of not less than ninety days immediately  
13 preceding the date of application for the license, has been  
14 domiciled in New Mexico and has not claimed residency  
15 elsewhere for any purpose;

16 (2) who is not a citizen of the United  
17 States but who is legally within the United States and has  
18 actually lived in this state for ninety days immediately  
19 preceding ~~[his]~~ the license application;

20 (3) not otherwise entitled to claim  
21 residence, who is a student attending any educational  
22 institution in this state, has so attended and actually lived  
23 in this state for at least one full term immediately  
24 preceding ~~[his]~~ the license application and presents with  
25 ~~[his]~~ the application a certificate of such attendance from

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1 proper authorities of the educational institution;

2 (4) not otherwise entitled to claim  
3 residence, who is a member of the armed forces of the United  
4 States and permanently assigned to a military installation  
5 located within this state and presents with [~~his~~] the  
6 person's license application a certificate of such assignment  
7 from [~~his~~] the person's commanding officer or designated  
8 representative, or the spouse or domestic partner or  
9 dependent of such person, not otherwise entitled to claim  
10 residence, living within the same household and similarly  
11 certified by the person's commanding officer; or

12 (5) not otherwise entitled to claim  
13 residence, who is a member of the armed forces of the United  
14 States and officially stationed at a military reservation  
15 located partially in this state and partially in an adjacent  
16 state, but only for a special license valid only for hunting  
17 and fishing in this state on those reservations; and

18 B. a "nonresident" who must purchase nonresident  
19 hunting and fishing licenses is any person not a resident,  
20 including any temporary resident who maintains [~~his~~] the  
21 person's home outside of the state."

22 Section 116. Section 19-3-3 NMSA 1978 (being Laws  
23 1851-1852, Page 274, as amended) is amended to read:

24 "19-3-3. TRANSFER OF RIGHTS--CONSENT OF SPOUSE OR  
25 DOMESTIC PARTNER--EXEMPTION.--[~~Sec. 7.~~] The owner of what is

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1 known as a valid claim or improvement under the laws of this  
2 state on public lands of the United States shall be deemed in  
3 possession of a transferable interest therein, and any sale  
4 of such improvement shall be considered a sufficient  
5 consideration to support a promise; provided that no such  
6 sale shall be valid to convey such improvement when made by  
7 the head of family unless the [~~wife~~] spouse or domestic  
8 partner of the vendor, if any there be, shall give [~~her~~]  
9 consent thereto; and provided also that such land and the  
10 claim thereto shall be exempt from forced sale under  
11 execution."

12 Section 117. Section 20-4-11 NMSA 1978 (being Laws  
13 1987, Chapter 318, Section 28) is amended to read:

14 "20-4-11. SURVIVORS' BENEFIT--TUITION PAYMENT.--The  
15 surviving spouse or surviving domestic partner and all  
16 surviving minor children of a member of the national guard  
17 who dies in line of duty while serving on state military  
18 status shall be provided free tuition up to one baccalaureate  
19 degree or similar vocational certification at any state-  
20 sponsored university, college or institute of learning."

21 Section 118. Section 20-4-12 NMSA 1978 (being Laws  
22 1987, Chapter 318, Section 29) is amended to read:

23 "20-4-12. MILITARY LAST WILL AND TESTAMENT FOR  
24 NATIONAL GUARD AND RESERVES.--

25 A. Notwithstanding any other provision of law to

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1 the contrary, any member of the national guard or reserves  
2 may execute a military last will and testament (military  
3 will) according to the provisions of this section. Such will  
4 may be executed within or without the state and shall be  
5 given the same force and effect as any will properly executed  
6 pursuant to Chapter 45 NMSA 1978, the provisions of which  
7 shall govern the rules of construction of a military will and  
8 the administration of the testator's estate.

9 B. Mindful of the mobilization readiness required  
10 of members of the national guard and reserves, the adjutant  
11 general may prescribe regulations and forms for a military  
12 will. These regulations and forms shall be designed to  
13 achieve basic [~~testamentary~~] testamentary disposition of the  
14 member's property in contemplation of rapid troop  
15 mobilization and of the hazards of armed conflict. They  
16 shall be designed for preparation by unit administrative  
17 personnel according to the desires of the testator. No  
18 liability or cause of action shall attach to the erroneous  
19 act or omission of any person assisting a testator in the  
20 preparation or execution of a military will.

21 C. The scope of a military will shall be limited  
22 to the following dispositions and provisions:

23 (1) disposition of the testator's entire  
24 estate to the testator's spouse or domestic partner or in the  
25 event the testator is predeceased by the spouse or domestic

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1 partner then to the testator's children in equal shares and  
2 to their descendants by right of representation;

3 (2) if the testator is not survived by a  
4 spouse or domestic partner, children or lineal descendants,  
5 then disposition of the testator's entire estate shall be  
6 according to the laws of intestate succession;

7 (3) a guardian for minor children may be  
8 nominated by the testator in the event that any minor child's  
9 other natural parent is or shall become unwilling or unable  
10 to serve as the child's guardian;

11 (4) a personal representative may be  
12 nominated by the testator in the event that the testator's  
13 surviving spouse or surviving domestic partner is or shall  
14 become unwilling or unable to so serve; and

15 (5) trust provisions are prohibited as  
16 beyond the scope of a military will.

17 D. A military will shall be executed, witnessed  
18 and attested to before two persons, one of whom ~~[must]~~ shall  
19 be a commissioned, warrant or noncommissioned officer of the  
20 national guard or state defense force. A military will so  
21 executed, witnessed and attested shall be deemed a self-  
22 proving will.

23 E. A military will may be executed only by a  
24 member of the national guard or reserves and not by a  
25 member's civilian dependents.

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1           F. A military will shall, during the testator's  
2 membership in the national guard or reserves, be maintained  
3 as a permanent record in the member's military personnel  
4 records jacket. In the event of the member's death, the will  
5 shall promptly be delivered by military authorities to the  
6 appropriate court of competent jurisdiction.

7           G. Upon discharge, separation or retirement of  
8 the member from the national guard or reserves, a military  
9 will shall become null and void."

10           Section 119. Section 20-4-14 NMSA 1978 (being Laws  
11 1987, Chapter 318, Section 31, as amended) is amended to  
12 read:

13           "20-4-14. RESIDENT TUITION.--An active member of the  
14 national guard and the member's spouse or domestic partner  
15 and children shall be deemed in-state residents for purposes  
16 of determining tuition and fees at all state institutions of  
17 higher learning."

18           Section 120. Section 21-1-3 NMSA 1978 (being Laws  
19 1970, Chapter 47, Section 1, as amended) is amended to read:

20           "21-1-3. STATE EDUCATIONAL INSTITUTIONS--RESIDENT  
21 STUDENTS.--

22           A. For the purpose of tuition payment at the  
23 resident student rates at state educational institutions  
24 enumerated in Article 12, Section 11 of the constitution of  
25 New Mexico, "resident student" includes:

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1 (1) any person not otherwise entitled to  
2 claim residence who is a member of the armed forces of the  
3 United States or armed forces of a foreign country assigned  
4 to active duty within the exterior boundaries of this state;  
5 and

6 (2) the spouse, domestic partner or  
7 dependent child of any person who qualifies under Paragraph  
8 (1) of this subsection.

9 B. Assignment to active duty within the exterior  
10 boundaries of this state may be established by a certificate  
11 of assignment from the commanding officer of the person so  
12 assigned.

13 C. For the purpose of tuition payment at resident  
14 student rates at New Mexico highlands university, "resident  
15 student" may include any person who is a Native American and  
16 a citizen of the United States.

17 D. For the purposes of tuition payment and budget  
18 and revenue calculations, the board of regents of any post-  
19 secondary, state educational institution enumerated in  
20 Article 12, Section 11 of the constitution of New Mexico may  
21 determine that "resident student" includes any Texas resident  
22 who resides within a one hundred thirty-five mile radius of  
23 that institution.

24 E. For the purpose of tuition payment and budget  
25 and revenue calculations, "resident student" includes any

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1 student receiving an athletic scholarship from a post-  
2 secondary educational institution set forth in Article 12,  
3 Section 11 of the constitution of New Mexico.

4 F. For the purpose of tuition payment and budget  
5 and revenue calculations, "resident student" includes a  
6 member of an Indian nation, tribe or pueblo located wholly or  
7 partially in New Mexico, regardless of the residence of the  
8 member prior to acceptance at a post-secondary educational  
9 institution enumerated in Article 12, Section 11 of the  
10 constitution of New Mexico for either undergraduate or  
11 post-graduate enrollment."

12 Section 121. Section 21-1-4.5 NMSA 1978 (being Laws  
13 2005, Chapter 168, Section 1, as amended) is amended to read:

14 "21-1-4.5. RESIDENT TUITION FOR VETERANS OF THE ARMED  
15 FORCES OF THE UNITED STATES AND FAMILIES OF MEMBERS OF THE  
16 ARMED FORCES.--

17 A. A veteran of the armed forces of the United  
18 States shall be deemed an in-state resident for purposes of  
19 determining tuition and fees at all state institutions of  
20 higher learning, provided that the veteran is eligible for  
21 veterans' education benefits under federal law. In order for  
22 a veteran who is not a resident of New Mexico to receive  
23 in-state tuition rates, the veteran shall use the veteran's  
24 federal educational benefits at a state public post-secondary  
25 institution.

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1           B. A spouse, domestic partner or child of an  
2 active member of the armed forces who is assigned to duty in  
3 New Mexico shall be deemed an in-state resident for purposes  
4 of determining tuition and fees at all state institutions of  
5 higher learning.

6           C. A spouse, domestic partner or child of an  
7 active member of the armed forces who is assigned to duty  
8 elsewhere immediately following assignment to duty in New  
9 Mexico shall be deemed an in-state resident for purposes of  
10 determining tuition and fees at all state institutions of  
11 higher learning as long as the spouse, domestic partner or  
12 child resides continuously in New Mexico.

13           D. A spouse, domestic partner or child of an  
14 active member of the armed forces who dies or is killed shall  
15 be deemed an in-state resident for purposes of determining  
16 tuition and fees at all state institutions of higher learning  
17 if the spouse, domestic partner or child becomes a resident  
18 of New Mexico within sixty days of the date of death.

19           E. A veteran of the armed forces who pays tuition  
20 and fees at the rate provided for New Mexico residents under  
21 this section is entitled to pay tuition and fees at the rate  
22 provided for New Mexico residents in any subsequent term or  
23 semester while the veteran is enrolled in a degree or  
24 certificate program.

25           F. If an active member of the armed forces is

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1 stationed outside New Mexico and the member's spouse,  
2 domestic partner or child establishes residence in New Mexico  
3 and files with a state institution of higher learning at  
4 which the spouse, domestic partner or child plans to register  
5 a letter of intent to establish and continue residing in New  
6 Mexico, the spouse, domestic partner or child shall be deemed  
7 an in-state resident for purposes of determining tuition and  
8 fees at that state institution of higher learning without  
9 regard to length of time that the spouse, domestic partner or  
10 child has resided in the state.

11 G. A spouse, domestic partner or child of an  
12 active member of the armed forces who pays tuition and fees  
13 at the rate provided for New Mexico residents under this  
14 section is entitled to pay tuition and fees at the rate  
15 provided for New Mexico residents in any subsequent term or  
16 semester while the person is continuously enrolled in the  
17 same degree or certificate program. For purposes of this  
18 subsection, a person is not required to enroll in a summer  
19 term to remain continuously enrolled in a degree or  
20 certificate program. A person's eligibility to pay tuition  
21 and fees at the rate provided for New Mexico residents under  
22 this subsection does not terminate because the person is no  
23 longer a child, domestic partner or spouse of a member of the  
24 armed forces.

25 H. As used in this section, "armed forces" means

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1 the United States army, navy, air force, marine corps or  
2 coast guard.

3 I. As used in this section, [a] "veteran" means a  
4 person who has been discharged under conditions other than  
5 dishonorable from service in the army, navy, marine corps,  
6 air force or coast guard of the United States."

7 Section 122. Section 21-21F-3 NMSA 1978 (being Laws  
8 1986, Chapter 50, Section 3) is amended to read:

9 "21-21F-3. DEFINITIONS.--As used in the Fire Fighter  
10 and Peace Officer Survivors Scholarship Act:

11 A. "board", "commission" or "department" means  
12 the [~~board of educational finance~~] the higher education  
13 department;

14 B. "eligible institution" means any state  
15 institution of higher education in New Mexico;

16 C. "fire fighter" means any member of a fire  
17 department that is part of or administered by the state or  
18 any political subdivision of the state;

19 D. "peace officer" means any member of a police  
20 or sheriff's department that is part of or administered by  
21 the state or any political subdivision of the state and  
22 officers in the corrections department [~~of corrections~~]; and

23 E. "survivor" means the spouse or domestic  
24 partner of the fire fighter or peace officer killed in the  
25 line of duty and any adopted or natural children twenty-one

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1 years of age or under at the time of [~~his~~] the fire fighter's  
2 or peace officer's death."

3 Section 123. Section 22-5-6 NMSA 1978 (being Laws 1971,  
4 Chapter 199, Section 1, as amended) is amended to read:

5 "22-5-6. NEPOTISM PROHIBITED.--

6 A. A local superintendent shall not initially  
7 employ or approve the initial employment in any capacity of a  
8 person who is the spouse, domestic partner, father, father-  
9 in-law, mother, mother-in-law, son, son-in-law, daughter,  
10 daughter-in-law, brother, brother-in-law, sister or sister-  
11 in-law of a member of the local school board or the local  
12 superintendent. The local school board may waive the  
13 nepotism rule for family members of a local superintendent.

14 B. Nothing in this section shall prohibit the  
15 continued employment of a person employed on or before July  
16 1, 2008."

17 Section 124. Section 22-8B-10 NMSA 1978 (being Laws  
18 1999, Chapter 281, Section 10, as amended) is amended to  
19 read:

20 "22-8B-10. CHARTER SCHOOLS--EMPLOYEES.--

21 A. A charter school shall hire its own employees.  
22 The provisions of the School Personnel Act shall apply to  
23 such employees. The head administrator of the charter school  
24 shall employ, fix the salaries of, assign, terminate and  
25 discharge all employees of the charter school.

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1           B. The head administrator of a charter school  
2 shall not initially employ or approve the initial employment  
3 in any capacity of a person who is the spouse, domestic  
4 partner, father, father-in-law, mother, mother-in-law, son,  
5 son-in-law, daughter, daughter-in-law, brother, brother-in-  
6 law, sister or sister-in-law of a member of the governing  
7 body or the head administrator. The governing body may waive  
8 the nepotism rule for family members of a head administrator.

9           C. Nothing in this section shall prohibit the  
10 continued employment of a person employed on or before July  
11 1, 2008."

12           Section 125. Section 23-4-3 NMSA 1978 (being Laws 1974  
13 (S.S.), Chapter 2, Section 4, as amended) is amended to read:

14           "23-4-3. ELIGIBILITY FOR CARE--STANDARDS.--

15           A. Occupancy in the New Mexico state veterans'  
16 home and the Fort Bayard medical center veterans' unit shall  
17 be for veterans of service in the armed forces of the United  
18 States who have served on active duty pursuant to rules  
19 adopted by the secretary of health consistent with federal  
20 guidelines. To be eligible for admission and continued  
21 occupancy, a veteran must be:

22                   (1) a citizen of the United States who  
23 enlisted or was drafted, inducted or commissioned in the  
24 armed forces of the United States, who was accepted for and  
25 assigned to active duty in the armed forces and was not

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1 separated from the armed forces under circumstances amounting  
2 to a dishonorable discharge from the armed forces; and

3 (2) a resident of New Mexico at the time of  
4 entering or discharge from the armed forces or, in the  
5 alternative, a resident of New Mexico at the date of  
6 admission.

7 B. Additionally, no more than twenty-five percent  
8 of the occupancy in the New Mexico state veterans' home shall  
9 consist of nonveterans from the following categories:

10 (1) spouses or domestic partners;

11 (2) surviving spouses or surviving domestic  
12 partners; and

13 (3) gold star parents.

14 C. Whenever a law, rule or regulation of the  
15 veterans' administration of the federal government or any  
16 other law permits the state to receive federal funds for the  
17 use and benefit of the New Mexico state veterans' home, upon  
18 acceptance of a veteran of the armed forces of the United  
19 States not meeting the requirements of Subsection A of this  
20 section, the board of trustees may adopt rules to authorize  
21 such veteran's acceptance."

22 Section 126. Section 24-6B-2 NMSA 1978 (being Laws  
23 2007, Chapter 323, Section 2) is amended to read:

24 "24-6B-2. DEFINITIONS.--As used in the Jonathan  
25 Spradling Revised Uniform Anatomical Gift Act:

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1           A. "adult" means an individual who is at least  
2 sixteen years of age;

3           B. "agent" means an individual:

4                 (1) authorized to make health care decisions  
5 on the principal's behalf by a power of attorney for health  
6 care; or

7                 (2) expressly authorized to make an  
8 anatomical gift on the principal's behalf by any other record  
9 signed by the principal;

10           C. "anatomical gift" means a donation of all or  
11 part of a human body to take effect after the donor's death  
12 for the purpose of transplantation, therapy, research or  
13 education;

14           D. "decedent" means a deceased individual whose  
15 body or part is or may be the source of an anatomical gift.  
16 "Decedent" includes a stillborn infant and, subject to  
17 restrictions imposed by law other than the Jonathan Spradling  
18 Revised Uniform Anatomical Gift Act, a fetus but not  
19 including a fetus that is the subject of an induced abortion;

20           E. "disinterested witness" means a witness other  
21 than the spouse, domestic partner, child, parent, sibling,  
22 grandchild, grandparent or guardian of the individual who  
23 makes, amends, revokes or refuses to make an anatomical gift,  
24 or another adult who exhibited special care and concern for  
25 the individual. "Disinterested witness" does not include a

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1 person to which an anatomical gift could pass pursuant to  
2 Section [~~11 of the Jonathan Spradling Revised Uniform~~  
3 ~~Anatomical Gift Act~~] 24-6B-11 NMSA 1978;

4 F. "document of gift" means a donor card or other  
5 record used to make an anatomical gift. "Document of gift"  
6 includes a statement or symbol on a driver's license,  
7 identification card or donor registry;

8 G. "donor" means an individual whose body or part  
9 is the subject of an anatomical gift;

10 H. "donor registry" means a database that  
11 contains records of anatomical gifts and amendments to or  
12 revocations of anatomical gifts;

13 I. "driver's license" means a license or permit  
14 issued by the motor vehicle division of the taxation and  
15 revenue department to operate a vehicle, whether or not  
16 conditions are attached to the license or permit;

17 J. "eye bank" means a person that is licensed,  
18 accredited or regulated pursuant to federal or state law to  
19 engage in the recovery, screening, testing, processing,  
20 storage or distribution of human eyes or portions of human  
21 eyes;

22 K. "guardian" means a person appointed by a court  
23 to make decisions regarding the support, care, education,  
24 health or welfare of an individual. "Guardian" does not  
25 include a guardian ad litem;

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1           L. "hospital" means a facility licensed as a  
2 hospital pursuant to the law of any state or a facility  
3 operated as a hospital by the United States, a state or a  
4 subdivision of a state;

5           M. "identification card" means an identification  
6 card issued by the motor vehicle division of the taxation and  
7 revenue department;

8           N. "know" means to have actual knowledge;

9           O. "minor" means an individual who is under  
10 eighteen years of age;

11           P. "organ procurement organization" means a  
12 person designated by the secretary of the federal department  
13 of health and human services as an organ procurement  
14 organization;

15           Q. "parent" means a parent whose parental rights  
16 have not been terminated;

17           R. "part" means an organ, an eye or tissue of a  
18 human being. "Part" does not include the whole body;

19           S. "person" means an individual, corporation,  
20 business trust, estate, trust, partnership, limited liability  
21 company, association, joint venture, public corporation,  
22 government or governmental subdivision, agency or  
23 instrumentality, or any other legal or commercial entity;

24           T. "physician" means an individual authorized to  
25 practice medicine or osteopathy pursuant to the law of any

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1 state;

2 U. "power of attorney for health care" includes  
3 an advance health-care directive as defined in the Uniform  
4 Health-Care Decisions Act;

5 V. "procurement organization" means an eye bank,  
6 organ procurement organization or tissue bank;

7 W. "prospective donor" means an individual who is  
8 dead or near death and has been determined by a procurement  
9 organization to have a part that could be medically suitable  
10 for transplantation, therapy, research or education.

11 "Prospective donor" does not include an individual who has  
12 made a refusal;

13 X. "reasonably available" means able to be  
14 contacted by a procurement organization without undue effort  
15 and willing and able to act in a timely manner consistent  
16 with existing medical criteria necessary for the making of an  
17 anatomical gift;

18 Y. "recipient" means an individual into whose  
19 body a decedent's part has been or is intended to be  
20 transplanted;

21 Z. "record" means information that is inscribed  
22 on a tangible medium or that is stored in an electronic or  
23 other medium and is retrievable in perceivable form;

24 AA. "refusal" means a record created pursuant to  
25 Section ~~[7 of the Jonathan Spradling Revised Uniform~~

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1 ~~Anatomical Gift Act]~~ 24-6B-7 NMSA 1978 that expressly states  
2 an intent to bar other persons from making an anatomical gift  
3 of an individual's body or part;

4 BB. "sign" means, with the present intent to  
5 authenticate or adopt a record:

6 (1) to execute or adopt a tangible symbol;  
7 or

8 (2) to attach to or logically associate with  
9 the record an electronic symbol, sound or process;

10 CC. "state" means a state of the United States,  
11 the District of Columbia, Puerto Rico, the United States  
12 Virgin Islands or any territory or insular possession subject  
13 to the jurisdiction of the United States;

14 DD. "technician" means an individual determined  
15 to be qualified to remove or process parts by an appropriate  
16 organization that is licensed, accredited or regulated  
17 pursuant to federal or state law. "Technician" includes an  
18 enucleator;

19 EE. "tissue" means a portion of the human body  
20 other than an organ or an eye. "Tissue" does not include  
21 blood unless the blood is donated for the purpose of research  
22 or education;

23 FF. "tissue bank" means a person that is  
24 licensed, accredited or regulated pursuant to federal or  
25 state law to engage in the recovery, screening, testing,

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1 processing, storage or distribution of tissue; and

2 GG. "transplant hospital" means a hospital that  
3 furnishes organ transplants and other medical and surgical  
4 specialty services required for the care of transplant  
5 patients."

6 Section 127. Section 24-6B-9 NMSA 1978 (being Laws  
7 2007, Chapter 323, Section 9) is amended to read:

8 "24-6B-9. WHO MAY MAKE ANATOMICAL GIFT OF DECEDENT'S  
9 BODY OR PART.--

10 A. Subject to the provisions of Subsections B and  
11 C of this section and unless barred by Section [~~7 or 8 of the~~  
12 ~~Jonathan Spradling Revised Uniform Anatomical Gift Act]~~  
13 24-6B-7 or 24-6B-8 NMSA 1978, an anatomical gift of a  
14 decedent's body or part for purpose of transplantation,  
15 therapy, research or education may be made by any member of  
16 the following classes of persons who is reasonably available,  
17 in the order of priority listed:

18 (1) an agent of the decedent at the time of  
19 death who could have made an anatomical gift pursuant to  
20 Subsection B of Section [~~4 of the Jonathan Spradling Revised~~  
21 ~~Uniform Anatomical Gift Act]~~ 24-6B-4 NMSA 1978 immediately  
22 before the decedent's death;

23 (2) the spouse or domestic partner of the  
24 decedent unless legally separated or unless there is a  
25 pending action for annulment, divorce, dissolution of

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1 marriage or domestic partnership or separation;

2 (3) adult children of the decedent;

3 (4) parents of the decedent;

4 (5) adult siblings of the decedent;

5 (6) adult grandchildren of the decedent;

6 (7) grandparents of the decedent;

7 (8) an adult who exhibited special care and  
8 concern for the decedent;

9 (9) the persons who were acting as the  
10 guardians of the person of the decedent at the time of death;  
11 and

12 (10) any other person having the authority  
13 to dispose of the decedent's body.

14 B. If there is more than one member of a class  
15 listed in Paragraphs (1), (3), (4), (5), (6), (7) and (9) of  
16 Subsection A of this section entitled to make an anatomical  
17 gift, an anatomical gift may be made by a member of the class  
18 unless that member or a person to which the gift may pass  
19 pursuant to Section [~~11 of the Jonathan Spradling Revised~~  
20 ~~Uniform Anatomical Gift Act~~] 24-6B-11 NMSA 1978 knows of an  
21 objection by another member of the class. If an objection is  
22 known, the gift may be made only by a majority of the members  
23 of the class who are reasonably available.

24 C. A person may not make an anatomical gift if,  
25 at the time of the decedent's death, a person in a prior

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1 class pursuant to Subsection A of this section is reasonably  
2 available to make or to object to the making of an anatomical  
3 gift."

4 Section 128. Section 24-7A-2 NMSA 1978 (being Laws  
5 1995, Chapter 182, Section 2) is amended to read:

6 "24-7A-2. ADVANCE HEALTH-CARE DIRECTIVES.--

7 A. An adult or emancipated minor, while having  
8 capacity, has the right to make his or her own health-care  
9 decisions and may give an individual instruction. The  
10 individual instruction may be oral or written; if oral, it  
11 [~~must~~] shall be made by personally informing a health-care  
12 provider. The individual instruction may be limited to take  
13 effect only if a specified condition arises.

14 B. An adult or emancipated minor, while having  
15 capacity, may execute a power of attorney for health care,  
16 which may authorize the agent to make any health-care  
17 decision the principal could have made while having capacity.  
18 The power [~~must~~] shall be in writing and signed by the  
19 principal. The power remains in effect notwithstanding the  
20 principal's later incapacity under the Uniform Health-Care  
21 Decisions Act or Article 5 of the Uniform Probate Code. The  
22 power may include individual instructions. Unless related to  
23 the principal by blood, marriage, domestic partnership or  
24 adoption, an agent may not be an owner, operator or employee  
25 of a health-care institution at which the principal is

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1 receiving care.

2 C. Unless otherwise specified in a power of  
3 attorney for health care, the authority of an agent becomes  
4 effective only upon a determination that the principal lacks  
5 capacity and ceases to be effective upon a determination that  
6 the principal has recovered capacity.

7 D. Unless otherwise specified in a written  
8 advance health-care directive, a determination that an  
9 individual lacks or has recovered capacity or that another  
10 condition exists that affects an individual instruction or  
11 the authority of an agent shall be made according to the  
12 provisions of Section [~~11 of the Uniform Health-Care~~  
13 ~~Decisions Act~~] 24-7A-11 NMSA 1978.

14 E. An agent shall make a health-care decision in  
15 accordance with the principal's individual instructions, if  
16 any, and other wishes to the extent known to the agent.  
17 Otherwise, the agent shall make the decision in accordance  
18 with the agent's determination of the principal's best  
19 interest. In determining the principal's best interest, the  
20 agent shall consider the principal's personal values to the  
21 extent known to the agent.

22 F. A health-care decision made by an agent for a  
23 principal is effective without judicial approval.

24 G. A written advance health-care directive may  
25 include the individual's nomination of a guardian of the

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1 person."

2 Section 129. Section 24-7A-3 NMSA 1978 (being Laws  
3 1995, Chapter 182, Section 3, as amended) is amended to read:

4 "24-7A-3. REVOCATION OF ADVANCE HEALTH-CARE  
5 DIRECTIVE.--

6 A. An individual, while having capacity, may  
7 revoke the designation of an agent either by a signed writing  
8 or by personally informing the supervising health-care  
9 provider. If the individual cannot sign, a written  
10 revocation [~~must~~] shall be signed for the individual and be  
11 witnessed by two witnesses, each of whom has signed at the  
12 direction and in the presence of the individual and of each  
13 other.

14 B. An individual, while having capacity, may  
15 revoke all or part of an advance health-care directive, other  
16 than the designation of an agent, at any time and in any  
17 manner that communicates an intent to revoke.

18 C. A health-care provider, agent, guardian or  
19 surrogate who is informed of a revocation shall promptly  
20 communicate the fact of the revocation to the supervising  
21 health-care provider and to any health-care institution at  
22 which the patient is receiving care.

23 D. The filing of a petition for or a decree of  
24 annulment, [~~divorce~~] dissolution of marriage or domestic  
25 partnership or legal separation revokes a previous

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1 designation of a spouse or domestic partner as agent unless  
2 otherwise specified in the decree or in a power of attorney  
3 for health care. A designation revoked solely by this  
4 subsection is revived by the individual's [~~remarriage~~  
5 marriage to or entry into a domestic partnership with the  
6 former spouse or the former domestic partner, by a  
7 nullification of the [~~divorce~~] dissolution of marriage or  
8 domestic partnership, annulment or legal separation or by the  
9 dismissal or withdrawal, with the individual's consent, of a  
10 petition seeking annulment, [~~divorce~~] dissolution of marriage  
11 or domestic partnership or legal separation.

12 E. An advance health-care directive that  
13 conflicts with an earlier advance health-care directive  
14 revokes the earlier directive to the extent of the conflict."

15 Section 130. Section 24-7A-5 NMSA 1978 (being Laws  
16 1995, Chapter 182, Section 5, as amended) is amended to read:

17 "24-7A-5. DECISIONS BY SURROGATE.--

18 A. A surrogate may make a health-care decision  
19 for a patient who is an adult or emancipated minor if the  
20 patient has been determined according to the provisions of  
21 Section 24-7A-11 NMSA 1978 to lack capacity and no agent or  
22 guardian has been appointed or the agent or guardian is not  
23 reasonably available.

24 B. An adult or emancipated minor, while having  
25 capacity, may designate any individual to act as surrogate by

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1 personally informing the supervising health-care provider.  
2 In the absence of a designation or if the designee is not  
3 reasonably available, any member of the following classes of  
4 the patient's family who is reasonably available, in  
5 descending order of priority, may act as surrogate:

6 (1) the spouse or domestic partner, unless  
7 legally separated or unless there is a pending petition for  
8 annulment, [~~divorce~~] dissolution of marriage or domestic  
9 partnership or legal separation;

10 (2) an individual in a long-term  
11 relationship of indefinite duration with the patient in which  
12 the individual has demonstrated an actual commitment to the  
13 patient similar to the commitment of a spouse or domestic  
14 partner and in which the individual and the patient consider  
15 themselves to be responsible for each other's well-being;

16 (3) an adult child;

17 (4) a parent;

18 (5) an adult brother or sister; or

19 (6) a grandparent.

20 C. If none of the individuals eligible to act as  
21 surrogate under Subsection B of this section is reasonably  
22 available, an adult who has exhibited special care and  
23 concern for the patient, who is familiar with the patient's  
24 personal values and who is reasonably available may act as  
25 surrogate.

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1           D. A surrogate shall communicate [~~his~~] the  
2 surrogate's assumption of authority as promptly as  
3 practicable to the patient, to members of the patient's  
4 family specified in Subsection B of this section who can be  
5 readily contacted and to the supervising health-care  
6 provider.

7           E. If more than one member of a class assumes  
8 authority to act as surrogate and they do not agree on a  
9 health-care decision and the supervising health-care provider  
10 is so informed, the supervising health-care provider shall  
11 comply with the decision of a majority of the members of that  
12 class who have communicated their views to the provider. If  
13 the class is evenly divided concerning the health-care  
14 decision and the supervising health-care provider is so  
15 informed, that class and all individuals having lower  
16 priority are disqualified from making the decision.

17           F. A surrogate shall make a health-care decision  
18 in accordance with the patient's individual instructions, if  
19 any, and other wishes to the extent known to the surrogate.  
20 Otherwise, the surrogate shall make the decision in  
21 accordance with the surrogate's determination of the  
22 patient's best interest. In determining the patient's best  
23 interest, the surrogate shall consider the patient's personal  
24 values to the extent known to the surrogate.

25           G. A health-care decision made by a surrogate for

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1 a patient shall not be made solely on the basis of the  
2 patient's preexisting physical or medical condition or  
3 preexisting or projected disability.

4 H. A health-care decision made by a surrogate for  
5 a patient is effective without judicial approval.

6 I. A patient, at any time, may disqualify any  
7 person, including a member of the patient's family, from  
8 acting as the patient's surrogate by a signed writing or by  
9 personally informing a health-care provider of the  
10 disqualification. A health-care provider who is informed by  
11 the patient of a disqualification shall promptly communicate  
12 the fact of disqualification to the supervising health-care  
13 provider and to any health-care institution at which the  
14 patient is receiving care.

15 J. Unless related to the patient by blood,  
16 marriage, domestic partnership or adoption, a surrogate may  
17 not be an owner, operator or employee of a health-care  
18 institution at which the patient is receiving care.

19 K. A supervising health-care provider may require  
20 an individual claiming the right to act as surrogate for a  
21 patient to provide a written declaration under penalty of  
22 perjury stating facts and circumstances reasonably sufficient  
23 to establish the claimed authority."

24 Section 131. Section 24-7B-4 NMSA 1978 (being Laws  
25 2006, Chapter 7, Section 4) is amended to read:

.179346.5GR

1 "24-7B-4. ADVANCE DIRECTIVE FOR MENTAL HEALTH

2 TREATMENT.--

3 A. An adult or emancipated minor, while having  
4 capacity, has the right to make the [~~adult~~] adult's or  
5 emancipated minor's own mental health treatment decisions and  
6 may give an individual instruction. The individual  
7 instruction may be oral or written; if oral, it shall be made  
8 by personally informing a health care provider. The  
9 individual instruction may be limited to take effect only if  
10 a specified condition arises.

11 B. An adult or emancipated minor, while having  
12 capacity, may execute a power of attorney for mental health  
13 treatment that may authorize the agent to make any mental  
14 health treatment decision the principal could have made while  
15 having capacity. The power of attorney for mental health  
16 treatment shall be in writing signed by the principal and  
17 witnessed pursuant to Subsections I and J of this section.  
18 The power of attorney for mental health treatment shall  
19 remain in effect notwithstanding the principal's later  
20 incapacity under the Mental Health Care Treatment Decisions  
21 Act or Article 5 of the Uniform Probate Code. The power of  
22 attorney for mental health treatment may include individual  
23 instructions. Unless related to the principal by blood,  
24 marriage, domestic partnership or adoption, an agent may not  
25 be an attending qualified health care professional or an

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1 employee of the qualified health care professional or an  
2 owner, operator or employee of a mental health treatment  
3 facility at which the principal is receiving care.

4 C. Unless otherwise specified in a power of  
5 attorney for mental health treatment, the authority of an  
6 agent becomes effective only upon certification that the  
7 principal lacks capacity and ceases to be effective upon a  
8 determination that the principal has recovered capacity.

9 D. Unless otherwise specified in a written  
10 advance directive for mental health treatment, written  
11 certification that an individual lacks or has recovered  
12 capacity or that another condition exists that affects an  
13 individual instruction or the authority of an agent shall be  
14 made according to the provisions of the Mental Health Care  
15 Treatment Decisions Act.

16 E. An agent shall make a mental health treatment  
17 decision in accordance with the principal's individual  
18 instructions, if any, and other wishes to the extent known to  
19 the agent. Otherwise, the agent shall make the decision in  
20 accordance with the agent's determination of the principal's  
21 best interest. In determining the principal's best interest,  
22 the agent shall consider the principal's personal values to  
23 the extent known to the agent.

24 F. A mental health treatment decision made by an  
25 agent for a principal is effective without judicial approval.

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1           G. A written advance directive for mental health  
2 treatment may include the individual's nomination of a choice  
3 of guardian of the individual.

4           H. The fact that an individual has executed an  
5 advance directive for mental health treatment shall not  
6 constitute an indication of mental illness.

7           I. A written advance directive for mental health  
8 treatment is valid only if it is signed by the principal and  
9 a witness who is at least eighteen years of age and who  
10 attests that the principal:

11                   (1) is known to the witness;

12                   (2) signed the advance directive for mental  
13 health treatment in the witness' presence;

14                   (3) appears to have capacity; and

15                   (4) is not acting under duress, fraud or  
16 undue influence.

17           J. For purposes of the advance directive for  
18 mental health treatment, the witness shall not be:

19                   (1) an agent of the principal;

20                   (2) related to the principal by blood, [~~or~~]  
21 marriage or domestic partnership;

22                   (3) entitled to any part of the principal's  
23 estate or have a claim against the principal's estate;

24                   (4) the attending qualified health care  
25 professional; or

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1 (5) an owner, operator or employee of a  
2 mental health treatment facility at which the principal is  
3 receiving care or of any parent organization of the mental  
4 health treatment facility."

5 Section 132. Section 24-7B-6 NMSA 1978 (being Laws  
6 2006, Chapter 7, Section 6) is amended to read:

7 "24-7B-6. REVOCATION OF ADVANCE DIRECTIVE FOR MENTAL  
8 HEALTH TREATMENT.--

9 A. An individual, while having capacity, may  
10 revoke the designation of an agent either by a signed writing  
11 or by personally informing the supervising health care  
12 provider. If the individual cannot sign, a written  
13 revocation shall be signed for the individual and be  
14 witnessed by two witnesses pursuant to Subsections I and J of  
15 Section [~~4 of the Mental Health Care Treatment Decisions Act~~]  
16 24-7B-4 NMSA 1978, each of whom has signed at the direction  
17 of the individual and in the presence of the individual and  
18 each other.

19 B. An individual, while having capacity, may  
20 revoke all or part of an advance directive for mental health  
21 treatment, other than the designation of an agent, at any  
22 time and in any manner that communicates an intent to revoke.

23 C. A mental health treatment provider, agent or  
24 guardian who is informed of a revocation shall promptly  
25 communicate the fact of the revocation to the supervising

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1 health care provider and to any mental health treatment  
2 facility at which the patient is receiving care.

3 D. The filing of a petition for or a decree of  
4 annulment, [~~divorce~~] dissolution of marriage or domestic  
5 partnership or legal separation revokes a previous  
6 designation of a spouse or domestic partner as agent, unless  
7 otherwise specified in the decree or in a power of attorney  
8 for mental health treatment. A designation revoked solely by  
9 this subsection is revived by the individual's [~~remarriage~~]  
10 marriage to or entry into a domestic partnership with the  
11 former spouse or the former domestic partner, by a  
12 nullification of the [~~divorce~~] dissolution of marriage or  
13 domestic partnership, annulment or legal separation or by the  
14 dismissal or withdrawal, with the individual's consent, of a  
15 petition seeking annulment, [~~divorce~~] dissolution of marriage  
16 or domestic partnership or legal separation.

17 E. An advance directive for mental health  
18 treatment that conflicts with an earlier advance directive  
19 for mental health treatment revokes the earlier directive to  
20 the extent of the conflict.

21 F. Unless otherwise specified in the power of  
22 attorney for mental health treatment, an advance health-care  
23 directive pursuant to the Uniform Health-Care Decisions Act  
24 and an advance directive for mental health treatment shall be  
25 treated separately. A revocation of a power of attorney for

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1 mental health treatment shall not affect the validity of a  
2 power of attorney."

3 Section 133. Section 24-9-1 NMSA 1978 (being Laws 1971,  
4 Chapter 14, Section 3, as amended) is amended to read:

5 "24-9-1. STERILIZATION--CONSENT OF ABANDONING SPOUSE OR  
6 DOMESTIC PARTNER UNNECESSARY.--~~[Any]~~ A person who is  
7 otherwise capable of consenting to medical treatment need not  
8 obtain the consent of ~~[his]~~ the person's spouse or domestic  
9 partner for ~~[his]~~ the person's voluntary medical  
10 sterilization if ~~[such]~~ the person has been abandoned by  
11 ~~[his]~~ that spouse or domestic partner."

12 Section 134. Section 24-11-6.1 NMSA 1978 (being Laws  
13 2003, Chapter 191, Section 2, as amended) is amended to read:

14 "24-11-6.1. DECEASED MEMBERS OF INDIAN NATIONS, TRIBES  
15 OR PUEBLOS--CONSULTATION AND CERTIFICATION REQUIRED.--

16 A. The state medical investigator shall make  
17 reasonable efforts to determine if a deceased person is a  
18 member of a federally recognized Indian nation, tribe or  
19 pueblo. If a deceased person has been determined to be a  
20 member of a federally recognized Indian nation, tribe or  
21 pueblo, the state medical investigator shall use all due  
22 diligence to avoid an autopsy except when legally required  
23 due to possible criminal acts or omissions, an obscure cause  
24 of death or other reasons or pursuant to consent given  
25 according to the provisions of Section 24-12-4 NMSA 1978.

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1 The state medical investigator shall use the least invasive  
2 means possible to satisfy the investigator's legal duties in  
3 conducting an autopsy.

4 B. If the state medical investigator determines  
5 that an autopsy cannot be avoided, the investigator shall  
6 attempt to provide advance notice of the autopsy to the  
7 surviving spouse or surviving domestic partner or next of  
8 kin, or to the Indian nation, tribe or pueblo of the  
9 deceased. The state medical investigator shall provide  
10 documentation concerning the autopsy upon request of the  
11 surviving spouse or surviving domestic partner or next of  
12 kin, or if none is identified, to the Indian nation, tribe or  
13 pueblo of which the deceased was a member.

14 C. If requested by the surviving spouse or  
15 surviving domestic partner or the next of kin, or if none is  
16 identified, by the Indian nation, tribe or pueblo through an  
17 official representative designated pursuant to Subsection E  
18 of this section, the state medical investigator shall permit  
19 a law enforcement officer of the Indian nation, tribe or  
20 pueblo of the deceased to be present during the autopsy. The  
21 law enforcement officer attending the autopsy may not  
22 interfere with the autopsy procedure and shall follow the  
23 health regulations governing autopsy procedures.

24 D. After any legally required autopsy or  
25 postmortem examination has been conducted, the state medical

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1 investigator shall use all due diligence to consult with the  
2 surviving spouse or surviving domestic partner or next of kin  
3 of the deceased regarding the disposition of all of the  
4 deceased's remains. Unless other treatment of the remains is  
5 required by law, the state medical investigator shall replace  
6 all body parts and, if requested, shall provide written  
7 certification to the surviving spouse or surviving domestic  
8 partner or next of kin of the deceased that the investigator  
9 has replaced all body parts.

10 E. The state medical investigator shall request  
11 that each Indian nation, tribe and pueblo located in New  
12 Mexico designate, and keep current the designation of, an  
13 official representative that the state medical investigator  
14 shall contact when it is necessary to contact a tribal  
15 representative regarding an autopsy or the disposition of the  
16 remains of a deceased member of the Indian nation, tribe or  
17 pueblo."

18 Section 135. Section 24-12-4 NMSA 1978 (being Laws  
19 1965, Chapter 86, Section 1, as amended) is amended to read:

20 "24-12-4. POST-MORTEM EXAMINATIONS AND AUTOPSIES--  
21 CONSENT REQUIRED.--

22 A. An autopsy or post-mortem examination may be  
23 performed on the body of a deceased person by a physician or  
24 surgeon whenever consent to the procedure has been given by:

25 (1) written authorization signed by the

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1 deceased during [~~his~~] the person's lifetime;

2 (2) authorization of any person or on behalf  
3 of any entity whom the deceased designated in writing during  
4 [~~his~~] the person's lifetime to take charge of [~~his~~] the  
5 deceased's body for burial or other purposes;

6 (3) authorization of the deceased's  
7 surviving spouse or surviving domestic partner;

8 (4) authorization of an adult child, parent  
9 or adult brother or sister of the deceased if there is no  
10 surviving spouse or surviving domestic partner or if the  
11 surviving spouse or surviving domestic partner is  
12 unavailable, incompetent or has not claimed the body for  
13 burial after notification of the death of the decedent;

14 (5) authorization of any other relative of  
15 the deceased if none of the persons enumerated in Paragraphs  
16 (2) through (4) of this subsection is available or competent  
17 to give authorization; or

18 (6) authorization of the public official,  
19 agency or person having custody of the body for burial if  
20 none of the persons enumerated in Paragraphs (2) through (5)  
21 of this subsection is available or competent to give  
22 authorization.

23 B. An autopsy or post-mortem examination shall  
24 not be performed under authorization given under the  
25 provisions of Paragraph (4) of Subsection A of this section

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1 by any one of the persons enumerated if, before the procedure  
2 is performed, any one of the other persons enumerated objects  
3 in writing to the physician or surgeon by whom the procedure  
4 is to be performed.

5 C. An autopsy or post-mortem examination may be  
6 performed by a pathologist at the written direction of the  
7 district attorney or [~~his~~] the district attorney's authorized  
8 representative in any case in which the district attorney is  
9 conducting a criminal investigation.

10 D. An autopsy or post-mortem examination may be  
11 performed by a pathologist at the direction of the state,  
12 district or deputy medical investigator when [~~he~~] the state,  
13 district or deputy medical investigator suspects the death  
14 was caused by a criminal act or omission or if the cause of  
15 death is obscure.

16 E. For purposes of this section, "autopsy" means  
17 a post-mortem dissection of a dead human body in order to  
18 determine the cause, seat or nature of disease or injury and  
19 includes the retention of tissues customarily removed during  
20 the course of autopsy for evidentiary, identification,  
21 diagnosis, scientific or therapeutic purposes."

22 Section 136. Section 24-12A-2 NMSA 1978 (being Laws  
23 1993, Chapter 200, Section 2, as amended) is amended to read:

24 "24-12A-2. NO WRITTEN INSTRUCTIONS--PRIORITY OF OTHERS  
25 TO DECIDE DISPOSITION.--If a decedent has left no written

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1 instructions regarding the disposition of [~~his~~] the  
2 decedent's remains, the following persons in the order listed  
3 shall determine the means of disposition, not to be limited  
4 to cremation, of the remains of the decedent:

5 A. the surviving spouse or surviving domestic  
6 partner;

7 B. a majority of the surviving adult children of  
8 the decedent;

9 C. the surviving parents of the decedent;

10 D. a majority of the surviving siblings of the  
11 decedent;

12 E. an adult who has exhibited special care and  
13 concern for the decedent, who is aware of the decedent's  
14 views and desires regarding the disposition of [~~his~~] the  
15 decedent's body and who is willing and able to make a  
16 decision about the disposition of the decedent's body; or

17 F. the adult person of the next degree of kinship  
18 in the order named by New Mexico law to inherit the estate of  
19 the decedent."

20 Section 137. Section 24-14-13 NMSA 1978 (being Laws  
21 1961, Chapter 44, Section 13, as amended) is amended to read:

22 "24-14-13. BIRTH REGISTRATION.--

23 A. A certificate of birth for each live birth  
24 that occurs in this state shall be filed with the bureau or  
25 as otherwise directed by the state registrar within ten days

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1 after the birth and shall be registered if it has been  
2 completed and filed in accordance with this section. When a  
3 birth, however, occurs on a moving conveyance, a birth  
4 certificate shall be registered in this state and the place  
5 where the child is first removed shall be considered the  
6 place of birth.

7 B. When a birth occurs in an institution, the  
8 person in charge of the institution or the person's  
9 designated representative shall obtain the personal data,  
10 prepare the certificate of birth, secure the signatures  
11 required and file it as directed in this section. The  
12 physician or other person in attendance shall certify the  
13 medical information required by the certificate of birth  
14 within ten working days after the birth in accordance with  
15 policies established by the institution where the birth  
16 occurred. The person in charge of the institution or the  
17 person's designee shall complete and sign the certificate of  
18 birth.

19 C. When a birth occurs outside an institution,  
20 the certificate of birth shall be prepared and filed by one  
21 of the following in the indicated order of priority:

22 (1) the physician in attendance at or  
23 immediately after the birth;

24 (2) any other person in attendance at or  
25 immediately after the birth; or

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1 (3) the father, the mother or, in the  
2 absence of the father and the inability of the mother, the  
3 person in charge of the premises where the birth occurred.

4 D. If the mother was married or in a domestic  
5 partnership at the time of either conception or birth, the  
6 name of the husband or domestic partner shall be entered on  
7 the certificate of birth as the father of the child, unless  
8 paternity has been determined pursuant to Subsection F or G  
9 of this section or by a court, in which case the name of the  
10 father as determined pursuant to Subsection F or G of this  
11 section or by the court shall be entered.

12 E. If the mother was not married or in a domestic  
13 partnership at the time of either conception or birth, but  
14 the mother and father have signed under penalty of perjury an  
15 acknowledgment of paternity on a form provided by the bureau  
16 pursuant to the New Mexico Uniform Parentage Act, the  
17 father's name, date of birth and social security number shall  
18 be entered on the acknowledgment of paternity. The name of  
19 the father shall not be entered on the certificate of birth  
20 without such a written acknowledgment of paternity signed  
21 under penalty of perjury by the mother and the person to be  
22 named as the father, unless a determination of paternity has  
23 been made by a court, in which case the name of the father as  
24 determined by the court shall be entered.

25 F. At or before the birth of a child to [an

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1 ~~unmarried~~] a woman who is neither married nor in a domestic  
2 partnership, the person in charge of the institution, a  
3 designated representative, the attending physician or midwife  
4 shall:

5 (1) provide an opportunity for the child's  
6 mother and father to sign under penalty of perjury an  
7 acknowledgment of paternity on a form provided by the bureau  
8 pursuant to the New Mexico Uniform Parentage Act. The  
9 completed acknowledgment of paternity shall be filed with the  
10 bureau. The acknowledgment shall contain or have attached to  
11 it:

12 (a) a statement by the mother  
13 consenting to the assertion of paternity;

14 (b) a statement by the father that he  
15 is the father of the child;

16 (c) written information, furnished by  
17 the human services department, explaining the implications of  
18 signing, including legal parental rights and  
19 responsibilities; and

20 (d) the social security numbers of  
21 both parents; and

22 (2) provide written information, furnished  
23 by the human services department, to the mother and father,  
24 regarding the benefits of having the child's paternity  
25 established and of the availability of paternity

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1 establishment services and child support enforcement  
2 services.

3 G. If a [~~married~~] mother who is married or in a  
4 domestic partnership claims that her husband or domestic  
5 partner is not the father of the child, the husband or  
6 domestic partner signs under penalty of perjury a denial of  
7 paternity on a form provided by the bureau pursuant to the  
8 New Mexico Uniform Parentage Act and [~~the non-husband~~] a  
9 person who is not the husband or domestic partner of the  
10 mother agrees that he is the father, an acknowledgment of  
11 paternity may be signed under penalty of perjury by the  
12 mother and the [~~non-husband~~] person who is not the husband or  
13 domestic partner of the mother. Upon filing the  
14 acknowledgment of paternity and the denial of paternity with  
15 the bureau, the name of the [~~non-husband~~] person who is not  
16 the husband or domestic partner of the mother shall be  
17 entered on the certificate of birth as the father.

18 H. Pursuant to an interagency agreement for  
19 proper reimbursement, the bureau shall make available to the  
20 human services department the birth certificate, the mother's  
21 and father's social security numbers and paternity  
22 acknowledgments or denials. The human services department  
23 shall use these records only in conjunction with its duties  
24 as the state IV-D agency responsible for the child support  
25 program under Title IV-D of the federal Social Security Act.

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1 I. Each party shall be provided with copies of  
2 any acknowledgment of paternity and any related denial of  
3 paternity.

4 J. The forms of acknowledgment of paternity and  
5 denial of paternity furnished by the bureau shall comply with  
6 the requirements of the New Mexico Uniform Parentage Act and  
7 shall be provided in English and in Spanish."

8 Section 138. Section 24-14-25 NMSA 1978 (being Laws  
9 1961, Chapter 44, Section 23, as amended) is amended to read:

10 "24-14-25. CORRECTION AND AMENDMENT OF VITAL RECORDS.--

11 A. A certificate or report registered under the  
12 Vital Statistics Act may be amended only in accordance with  
13 that act and regulations adopted by the department pursuant  
14 to that act to protect the integrity and accuracy of vital  
15 records and health statistics.

16 B. Upon receipt of a certified copy of a court  
17 order changing the name of a person born in this state and  
18 upon request of the person or the person's parent, guardian  
19 or legal representative, the state registrar shall amend the  
20 original certificate of birth to reflect the new name.

21 C. Upon request and receipt of an  
22 [~~acknowledgement~~] acknowledgment of paternity signed under  
23 penalty of perjury by both parents of a child born to [~~an~~  
24 ~~unmarried~~] a mother who is not married or in a domestic  
25 partnership or, in the case of a married mother or a mother

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1 in a domestic partnership, upon receipt of an acknowledgment  
2 of paternity signed under penalty of perjury by the mother  
3 and the ~~[non-husband]~~ person who is not her husband or  
4 domestic partner and of a denial of paternity signed under  
5 penalty of perjury by the husband or domestic partner, the  
6 state registrar shall amend a certificate of birth to show  
7 the paternity if paternity is not shown on the birth  
8 certificate. The certificate of birth shall not be marked  
9 "amended".

10 D. Upon receipt of a statement signed under  
11 penalty of perjury by the person in charge of an institution  
12 or from the attending physician indicating that the sex of an  
13 individual born in this state has been changed by surgical  
14 procedure, together with a certified copy of an order  
15 changing the name of the person, the certificate of birth of  
16 the individual shall be amended as prescribed by regulation.

17 E. When an applicant does not submit the minimum  
18 documentation required in the regulations for amending a  
19 vital record or when the state registrar has reasonable cause  
20 to question the validity or adequacy of the applicant's  
21 statements or statements made under penalty of perjury or the  
22 documentary evidence and if the deficiencies are not  
23 corrected, the state registrar shall not amend the vital  
24 records and shall advise the applicant of the reason for this  
25 action.

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1           F. A certificate or report that is amended under  
2 this section shall be marked "amended", except as otherwise  
3 provided in Subsection C of this section. The date of the  
4 amendment and a summary description of the evidence submitted  
5 in support of the amendment shall be endorsed on or made a  
6 part of the record. The department shall prescribe by  
7 regulation the conditions under which additions or minor  
8 corrections may be made to certificates or records within one  
9 year after the date of the event without the certificate or  
10 record being marked "amended".

11           Section 139. Section 24-17-5 NMSA 1978 (being Laws  
12 1985, Chapter 102, Section 5, as amended) is amended to read:

13           "24-17-5. CONTRACT INFORMATION.--

14           A. A continuing care contract shall be written in  
15 clear and understandable language.

16           B. A continuing care contract shall, at a  
17 minimum:

18                   (1) describe the community's admission  
19 policies, including age, health status and minimum financial  
20 requirements, if any;

21                   (2) describe the health and financial  
22 conditions required for a person to continue to be a  
23 resident;

24                   (3) describe the circumstances under which  
25 the resident will be permitted to remain in the community in

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1 the event of possible financial difficulties of the resident;

2 (4) list the total consideration paid,  
3 including donations, entrance fees, subscription fees,  
4 periodic fees and other fees paid or payable; provided,  
5 however, that a provider cannot require a resident to  
6 transfer all the resident's assets to the provider or  
7 community as a condition for providing continuing care and  
8 the provider shall reserve the right to charge periodic fees;

9 (5) describe in detail all items of service  
10 to be received by the resident such as food, shelter, medical  
11 care, nursing care and other health services and whether  
12 services will be provided for a designated time period or for  
13 life;

14 (6) provide as an addendum to the contract a  
15 description of items of service, if any, that are available  
16 to the resident but are not covered in the entrance or  
17 monthly fee;

18 (7) specify taxes and utilities, if any,  
19 that the resident must pay;

20 (8) specify that deposits or entrance fees  
21 paid by or for a resident shall be held in trust for the  
22 benefit of the resident in a federally insured New Mexico  
23 bank until the resident has occupied ~~his~~ the resident's  
24 unit or the resident's contract cancellation period has  
25 ended;

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1 (9) state the terms under which a continuing  
2 care contract may be canceled by the resident or the  
3 community and the basis for establishing the amount of refund  
4 of the entrance fee;

5 (10) state the terms under which a  
6 continuing care contract is canceled by the death of the  
7 resident and the basis for establishing the amount of refund,  
8 if any, of the entrance fee;

9 (11) state when fees will be subject to  
10 periodic increases and what the policy for increases will be;  
11 provided, however, that the provider shall give advance  
12 notice of not less than thirty days to the residents before  
13 the change becomes effective and increases shall be based  
14 upon economic necessity, the reasonable cost of operating the  
15 community, the cost of care and a reasonable return on  
16 investment as defined by rules promulgated by the aging and  
17 long-term services department no later than January 31, 2006;

18 (12) state the entrance fee and periodic  
19 fees that will be charged if the resident marries or enters  
20 into a domestic partnership while living in the community,  
21 the terms concerning the entry of a spouse or domestic  
22 partner to the community and the consequences if the spouse  
23 or domestic partner does not meet the requirements for entry;

24 (13) indicate funeral and burial services  
25 that are not furnished by the provider;

.179346.5GR

1 (14) state the rules and regulations of the  
2 provider then in effect and state the circumstances under  
3 which the provider claims to be entitled to have access to  
4 the resident's unit;

5 (15) list the resident's and provider's  
6 respective rights and obligations as to any real or personal  
7 property of the resident transferred to or placed in the  
8 custody of the provider;

9 (16) describe the rights of the residents to  
10 form a residents' association and the participation, if any,  
11 of the association in the community's decision-making  
12 process;

13 (17) describe the living quarters purchased  
14 by or assigned to the resident;

15 (18) provide under what conditions, if any,  
16 the resident may assign the use of a unit to another;

17 (19) include the policy and procedure with  
18 regard to changes in accommodations due to an increase or  
19 decrease in the number of persons occupying an individual  
20 unit;

21 (20) state the conditions upon which the  
22 community may sublet or relet a resident's unit;

23 (21) state, in the event of voluntary  
24 absence from the community for an extended period of time by  
25 the resident, what fee adjustments, if any, will be made;

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1 (22) include the procedures to be followed  
2 when the provider temporarily or permanently changes the  
3 resident's accommodations, either within the community or by  
4 transfer to a health facility; provided that the contract  
5 shall state that such changes in accommodations shall only be  
6 made to protect the health or safety of the resident or the  
7 general and economic welfare of all other residents of the  
8 community;

9 (23) if the community includes a nursing  
10 facility, describe the admissions policies and what will  
11 occur if a nursing facility bed is not available at the time  
12 it is needed;

13 (24) describe, if the resident is offered a  
14 priority for nursing facility admission at a facility that is  
15 not owned by the community, with which nursing facility the  
16 formal arrangement is made and what will occur if a nursing  
17 facility bed is not available at the time it is needed;

18 (25) include the policy and procedures for  
19 determining under what circumstances a resident will be  
20 considered incapable of independent living and will require a  
21 permanent move to a nursing facility. The contract shall  
22 also state who will participate in the decision for permanent  
23 residency in the nursing facility and shall provide that the  
24 resident shall have an advocate involved in that decision;  
25 provided that if the resident has no family member, attorney,

.179346.5GR

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1 guardian or other responsible person to act as the resident's  
2 advocate, the provider shall request the local office of the  
3 human services department to serve as advocate;

4 (26) specify the types of insurance, if any,  
5 the resident must maintain, including medicare, other health  
6 insurance and property insurance;

7 (27) specify the circumstances, if any,  
8 under which the resident will be required to apply for  
9 medicaid, public assistance or any other public benefit  
10 programs;

11 (28) state, in bold type of not less than  
12 twelve-point type on the front of the contract, that a  
13 contract for continuing care may present a significant  
14 financial risk and that a person considering a continuing  
15 care contract should consult with an attorney and with a  
16 financial advisor concerning the advisability of pursuing  
17 continuing care; provided, however, failure to consult with  
18 an attorney or financial advisor shall not be raised as a  
19 defense to bar recovery for a resident in any claims arising  
20 under the provisions of the Continuing Care Act;

21 (29) state, in bold type of not less than  
22 twelve-point type on the front of the contract, that nothing  
23 in the contract or the Continuing Care Act should be  
24 construed to constitute approval, recommendation or  
25 endorsement of any continuing care community by the state of

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1 New Mexico;

2 (30) state in immediate proximity to the  
3 space reserved in the contract for the signature of the  
4 resident in bold type of not less than twelve-point type the  
5 following:

6 "You, the buyer, may cancel this transaction at any time  
7 prior to midnight of the seventh day after the date of this  
8 transaction. See the attached notice of cancellation form  
9 for an explanation of this right."; and

10 (31) contain a completed form in duplicate,  
11 captioned "Notice of Cancellation", which shall be attached  
12 to the contract and easily detachable, and which shall  
13 contain in twelve-point boldface type the following  
14 information and statements in the same language as that used  
15 in the contract.

16 "NOTICE OF CANCELLATION

17 Date: \_\_\_\_\_

18 (enter date of transaction)

19 You may cancel this transaction without any penalty or  
20 obligation within seven days from the above date. If you  
21 cancel, any payments made by you under the contract or sale  
22 and any negotiable instrument executed by you will be  
23 returned within ten business days following receipt by the  
24 provider of your cancellation notice, and any security  
25 interest or lien arising out of the transaction will be

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1 canceled.

2 To cancel this transaction, deliver a signed and dated  
3 copy of this cancellation notice or any other written notice,  
4 or send a telegram, to: \_\_\_\_\_

5 (Name of Provider)

6 at \_\_\_\_\_

7 (Address of Provider's Place of Business)

8 not later than midnight of \_\_\_\_\_

9 (Date)

10 I hereby cancel this transaction.

11 \_\_\_\_\_

12 (Buyer's Signature)

13 \_\_\_\_\_

14 (Date)\"."

15 Section 140. Section 27-1-11 NMSA 1978 (being Laws  
16 1997, Chapter 237, Section 16) is amended to read:

17 "27-1-11. EXPEDITED PROCEDURE.--The state Title IV-D  
18 agency shall have the authority to take the following actions  
19 relating to establishment of paternity or to establishment,  
20 modification or enforcement of support orders, without the  
21 necessity of obtaining an order from any other judicial or  
22 administrative tribunal, and to recognize and enforce the  
23 authority of state Title IV-D agencies of other states to  
24 take the following actions:

25 A. to order genetic testing for the purpose of

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1 paternity establishments;

2 B. to subpoena any financial or other information  
3 needed to establish, modify or enforce a support order and to  
4 impose penalties for failure to respond to such a subpoena.

5 A subpoena issued by the state Title IV-D agency under this  
6 section shall be served upon the person to be subpoenaed or,  
7 at the option of the secretary of human services or the  
8 secretary's authorized representative, by certified mail  
9 addressed to the person at [~~his~~] the person's last known  
10 address. The service of the subpoena shall be at least ten  
11 days prior to the required production of the information. If  
12 the subpoena is served by certified mail, proof of service is  
13 the affidavit of mailing. After service of a subpoena upon a  
14 person, if the person neglects or refuses to comply with the  
15 subpoena, the state Title IV-D agency may apply to the  
16 district court of the county where the subpoena was served or  
17 the county where the subpoena was responded to for an order  
18 compelling compliance. Failure of the person to comply with  
19 the district court's order shall be punishable as contempt;

20 C. to require all entities in the state,  
21 including for-profit, nonprofit and governmental employers,  
22 to provide promptly, in response to a request by the state  
23 Title IV-D agency of that or any other state administering a  
24 program under this part, information on the employment  
25 compensation and benefits of any person employed by such

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1 entity as an employee or contractor and to sanction failure  
2 to respond to any such request;

3 D. to obtain access, subject to safeguards on  
4 privacy and information security and subject to the  
5 nonliability of entities that afford such access, to  
6 information contained in the following records, including  
7 automated access in the case of records maintained in  
8 automated databases:

9 (1) records of other states and local  
10 government agencies, including:

11 (a) vital statistics, including  
12 records of marriage or domestic partnership, birth and  
13 [~~divorce~~] dissolution of marriage or domestic partnership;

14 (b) state and local tax and revenue  
15 records, including information on residence address,  
16 employer, income and assets;

17 (c) records concerning real and titled  
18 personal property;

19 (d) records of occupational and  
20 professional licenses and records concerning the ownership  
21 and control of corporations, partnerships and other business  
22 entities;

23 (e) employment security records;

24 (f) records of agencies administering  
25 public assistance programs;

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1 (g) records of the motor vehicle  
2 division of the taxation and revenue department; and

3 (h) corrections records; and

4 (2) certain records held by private entities  
5 with respect to persons who owe or are owed support, or  
6 against or with respect to whom a support obligation is  
7 sought, consisting of:

8 (a) the names and addresses of such  
9 persons and the names and addresses of the employers of such  
10 persons, as appearing in customer records of public utilities  
11 and cable television companies, pursuant to an administrative  
12 subpoena; and

13 (b) information, including information  
14 on assets and liabilities, on such individuals held by  
15 financial institutions;

16 E. in cases in which support is subject to an  
17 assignment in order to comply with a requirement imposed  
18 pursuant to temporary assistance for needy families or  
19 medicaid, or to a requirement to pay through the state  
20 disbursement unit established pursuant to Section 454B of the  
21 Social Security Act, upon providing notice to obligor and  
22 obligee to direct the obligor or other payor to change the  
23 payee to the appropriate government entity;

24 F. to order income withholding;

25 G. in cases in which there is a support

.179346.5GR

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1 arrearage, to secure assets to satisfy the arrearage by:

2 (1) intercepting or seizing periodic or  
3 lump-sum payments from:

4 (a) a state or local agency, including  
5 unemployment compensation, workers' compensation and other  
6 benefits; and

7 (b) judgments, settlements and  
8 lotteries;

9 (2) attaching and seizing assets of the  
10 obligor held in financial institutions;

11 (3) attaching public and private retirement  
12 funds; and

13 (4) imposing liens and, in appropriate  
14 cases, to force sale of property and distribution of  
15 proceeds;

16 H. for the purpose of securing overdue support,  
17 to increase the amounts for arrearages, subject to such  
18 conditions or limitations as the state Title IV-D agency may  
19 provide;

20 I. ~~[the expedited]~~ to expedite procedures  
21 ~~[required shall include]~~, including the following rules and  
22 authority, applicable with respect to all proceedings to  
23 establish paternity or to establish, modify or enforce  
24 support orders:

25 (1) each party to any paternity or child

.179346.5GR

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1 support proceeding is required, subject to privacy  
2 safeguards, to file with the tribunal and the state case  
3 registry upon entry of an order, and to update, as  
4 appropriate, information on location and identity of the  
5 party, including social security number, residential and  
6 mailing addresses, telephone number and driver's license  
7 number, and name, address and telephone number of employer;  
8 and

9 (2) in any subsequent child support  
10 enforcement action between the parties, upon sufficient  
11 showing that diligent effort has been made to ascertain the  
12 location of such a party, the tribunal may deem state due  
13 process requirements for notice and service of process to be  
14 met with respect to the party upon delivery of written notice  
15 to the most recent residential or employer address filed with  
16 the tribunal;

17 J. to adopt procedures under which:

18 (1) the state agency and administrative or  
19 judicial tribunal with authority to hear child support and  
20 paternity cases [~~exerts~~] may exert statewide jurisdiction  
21 over the parties; and

22 (2) in a state in which orders are issued by  
23 courts or administrative tribunals, a case may be transferred  
24 between local jurisdictions in the state without need for any  
25 additional filing by the petitioner, or service of process

.179346.5GR

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1 upon the respondent, to retain jurisdiction over the parties;  
2 and

3 K. to recognize that the authority of the Title  
4 IV-D agency with regard to Subsections A through J of this  
5 section shall be subject to due process safeguards,  
6 including, as appropriate, requirements for notice,  
7 opportunity to contest the action and opportunity for an  
8 appeal on the record to an independent administrative or  
9 judicial tribunal. Such due process safeguards shall be  
10 developed and implemented by the Title IV-D agency in  
11 accordance with the administrative office of the courts and  
12 other affected agencies and individuals consistent with  
13 current policies and procedures for implementation of the  
14 human services department's regulations."

15 Section 141. Section 27-2-12.7 NMSA 1978 (being Laws  
16 1980, Chapter 86, Section 1) is amended to read:

17 "27-2-12.7. MEDICAID--HUMAN SERVICES DEPARTMENT  
18 EMPLOYEES--STANDARDS OF CONDUCT--ENFORCEMENT.--

19 A. As used in this section:

20 (1) "business" means a corporation,  
21 partnership, sole proprietorship, firm, organization or  
22 individual carrying on a business;

23 (2) "department" means the human services  
24 department;

25 (3) "employee" means [~~any~~] a person who has

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1 been appointed to or hired for [~~any~~] a department office  
2 connected with the administration of medicaid funds and who  
3 receives compensation in the form of salary;

4 (4) "employee with responsibility" means an  
5 employee who is directly involved in or has a significant  
6 part in the medicaid decision-making, regulatory, procurement  
7 or contracting process; and

8 (5) "financial interest" means an interest  
9 held by an individual, [~~his~~] the individual's spouse or  
10 domestic partner or minor child [~~which~~] that is:

11 (a) an ownership interest in business;  
12 or

13 (b) [~~any~~] an employment or prospective  
14 employment for which negotiations have already begun.

15 B. No employee with responsibility shall, for  
16 twenty-four months following the date on which [~~he~~] the  
17 employee ceases to be an employee, act as agent or attorney  
18 for [~~any other~~] another person or business in connection with  
19 a judicial or administrative proceeding, application, ruling,  
20 contract, claim or other matter relating to the medicaid  
21 program with respect to which the employee made an  
22 investigation, rendered [~~any~~] a ruling or was otherwise  
23 substantially and directly involved during the last year [~~he~~]  
24 the employee was an employee and [~~which~~] that was actually  
25 pending under [~~his~~] the employee's responsibility within that

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1 period.

2 C. No department secretary, income support  
3 division director or medical assistance [~~bureau chief~~]  
4 division director or their deputies shall, for twelve months  
5 following the date on which [~~he~~] that person ceases to be an  
6 employee, participate [~~in any manner~~] with respect to a  
7 judicial or administrative proceeding, application, ruling,  
8 contract, claim or other matter relating to the medicaid  
9 program and pending before the department.

10 D. No employee with responsibility shall  
11 participate [~~in any manner~~] with respect to a judicial or  
12 administrative proceeding, application, ruling, contract,  
13 claim or other matter relating to the medicaid program and  
14 involving [~~his~~] the employee's spouse or domestic partner,  
15 minor child or [~~any~~] a business in which [~~he~~] the employee  
16 has a financial interest unless prior to [~~such~~] the  
17 participation:

18 (1) full disclosure of [~~his~~] the employee's  
19 relationship or financial interest is made in writing to the  
20 secretary of the department; and

21 (2) a written determination is made by the  
22 secretary that the disclosed relationship or financial  
23 interest is too remote or inconsequential to affect the  
24 integrity of the services of the employee.

25 E. Violation of any of the provisions of this

.179346.5GR

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1 section by an employee is grounds for dismissal, demotion or  
2 suspension. A former employee who violates [~~any of the~~  
3 ~~provisions~~] a provision of this section [~~shall be~~] is subject  
4 to assessment by the department of a civil money penalty of  
5 two hundred fifty dollars (\$250) for each violation. The  
6 department shall promulgate regulations to provide for an  
7 administrative appeal of any assessment imposed."

8 Section 142. Section 27-2-23 NMSA 1978 (being Laws  
9 1969, Chapter 232, Section 1, as amended) is amended to read:

10 "27-2-23. THIRD PARTY LIABILITY.--

11 A. The income support division of the department  
12 shall make reasonable efforts to ascertain any legal  
13 liability of third parties who are or may be liable to pay  
14 all or part of the medical cost of injury, disease or  
15 disability of an applicant for or recipient of medical  
16 assistance pursuant to the provisions of Chapter 27 NMSA  
17 1978.

18 B. When the department makes medical assistance  
19 payments on behalf of a recipient, the department is  
20 subrogated to any right of the recipient against a third  
21 party for recovery of medical expenses to the extent that the  
22 department has made payment.

23 C. Health insurers, including self-insured plans,  
24 group health plans, service benefit plans, managed care  
25 organizations, pharmacy benefit managers or other parties,

.179346.5GR

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1 that are, by statute, contract or agreement, legally  
2 responsible for payment of a claim for a health care item or  
3 service, as a condition of doing business with New Mexico,  
4 shall:

5 (1) provide, with respect to individuals who  
6 are eligible for or are provided medical assistance under the  
7 medicaid program, upon the request of the state, information  
8 to determine during what period the individual, the  
9 individual's spouse or domestic partner or the individual's  
10 dependents may be, or may have been, covered by a health  
11 insurer and the nature of the coverage provided by the health  
12 insurer, including the name, address and identifying number  
13 of the plan;

14 (2) accept New Mexico's right of recovery  
15 and the assignment to New Mexico of any right of an  
16 individual or other entity to payment from the party for an  
17 item or service for which payment has been made under the  
18 medicaid program;

19 (3) respond to any inquiry by New Mexico  
20 regarding a claim for payment for any health care item or  
21 service that is submitted no later than three years after the  
22 date of the provision of such health care item or service;  
23 and

24 (4) agree not to deny a claim submitted by  
25 New Mexico solely on the basis of the date of submission of

.179346.5GR

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1 the claim by the provider, the type of the claim form or a  
2 failure to present proper documentation at the point-of-sale  
3 that is the basis of the claim, if:

4 (a) the claim is submitted by New  
5 Mexico within the three-year period beginning on the date on  
6 which the item or service was furnished; and

7 (b) any action by New Mexico to  
8 enforce its rights with respect to such claim is commenced  
9 within six years of New Mexico's submission of such claim.

10 D. Nothing in this section shall be construed to  
11 preclude the application of common law principles in  
12 determining equitable reimbursement from any third-party  
13 source for New Mexico or a health insurer, including  
14 self-insured plans, group health plans, service benefit  
15 plans, managed care organizations, pharmacy benefit managers  
16 or other parties."

17 Section 143. Section 27-2-27 NMSA 1978 (being Laws  
18 1981, Chapter 90, Section 1, as amended) is amended to read:

19 "27-2-27. SINGLE STATE AGENCY--POWERS AND DUTIES.--

20 A. The department is designated as the single  
21 state agency for the enforcement of child and spousal support  
22 obligations pursuant to Title IV-D of the federal act and for  
23 the enforcement of domestic partner support with the  
24 following duties and powers to:

25 (1) establish the paternity of a child in

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1 the case of the child born out of wedlock or out of a  
2 domestic partnership with respect to whom an assignment of  
3 support rights has been executed in favor of the department;

4 (2) establish an order of support for  
5 children receiving aid to families with dependent children  
6 and, at the option of the department, for the spouse or  
7 domestic partner or former spouse or former domestic partner  
8 with whom such children are living, but only if a support  
9 obligation has been established with respect to such spouse  
10 or domestic partner or former spouse or former domestic  
11 partner, for whom no order of support currently exists and  
12 seek modification, based upon the noncustodial parent's  
13 ability to pay, of existing orders in which the support order  
14 is inadequate to properly care for the child and the spouse  
15 or domestic partner or former spouse or former domestic  
16 partner with whom the child is living;

17 (3) enforce as the real party in interest  
18 any existing order for the support of children who are  
19 receiving aid to families with dependent children or of the  
20 spouse or domestic partner or former spouse or former  
21 domestic partner with whom such children are living;

22 (4) provide services to non-aid families  
23 with dependent children in the establishment and enforcement  
24 of paternity and child support obligations, including  
25 locating the absent parent. For these services, the

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1 department is authorized to establish and collect fees, costs  
2 and charges permitted or required by federal law or by  
3 regulations adopted pursuant to that federal law; and

4 (5) adopt regulations for the disposition of  
5 unclaimed child, spousal, domestic partner or medical support  
6 payments.

7 B. In all cases handled by the department  
8 pursuant to the provisions of this section, the child support  
9 enforcement division or an attorney employed by the division  
10 represent the department, to the exclusion of any other  
11 party, in establishing, modifying and enforcing support  
12 obligations.

13 C. An attorney employed to provide the Title IV-D  
14 services represents only the department's interests, and no  
15 attorney-client relationship shall exist between the attorney  
16 and another party.

17 D. The department shall, at the time an  
18 application for child support services is made, inform the  
19 applicant that neither the Title IV-D agency nor the attorney  
20 who provides services under this section is the applicant's  
21 attorney and that the attorney who provides services under  
22 this section shall not provide legal representation to the  
23 applicant.

24 E. The department may initiate an action or may  
25 intervene in an action involving child support.

.179346.5GR

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1           F. The attorney employed by the department  
2 pursuant to this section shall not act as a guardian ad litem  
3 for the applicant.

4           G. A court shall not disqualify the department in  
5 a legal action filed pursuant to the Support Enforcement Act  
6 of the federal Social Security Act because the department has  
7 previously provided services to a party whose interests are  
8 now adverse to the relief requested."

9           Section 144. Section 27-2-28 NMSA 1978 (being Laws  
10 1981, Chapter 90, Section 2, as amended) is amended to read:

11           "27-2-28. LIABILITY FOR REPAYMENT OF PUBLIC  
12 ASSISTANCE.--

13           A. In cases where the department has provided  
14 cash assistance to children in a household, the court shall  
15 award judgment in favor of the department and against the  
16 noncustodial parents of the children for child support,  
17 calculated pursuant to Section 40-4-11.1 NMSA 1978, for all  
18 months in which the children received cash assistance  
19 benefits.

20           B. Equitable defenses available to the  
21 noncustodial parent in claims by the custodian for  
22 retroactive support or past due support shall not operate to  
23 deprive the department of its right to request retroactive  
24 support or past due support for months during which the  
25 noncustodial parent's children received cash assistance

.179346.5GR

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1 benefits.

2 C. Amounts of support collected that are in  
3 excess of the amounts specified in Subsections A and B of  
4 this section shall be paid by the department to the custodian  
5 of the child.

6 D. No agreement between any custodian of a child  
7 and a parent of that child, either relieving the parent of  
8 any duty of child or spousal or domestic partner support or  
9 responsibility or purporting to settle past, present or  
10 future support obligations, either as a settlement or  
11 prepayment, shall act to reduce or terminate any rights of  
12 the department to recover from that parent for support  
13 provided, unless the department has consented to the  
14 agreement in writing.

15 E. The noncustodial parent shall be given credit  
16 for any support actually provided, including housing,  
17 clothing, food or funds paid prior to the entry of any order  
18 for support. The noncustodial parent has the burden to prove  
19 that the noncustodial parent has provided any support.

20 F. An application for public assistance by any  
21 person constitutes an assignment by operation of law of any  
22 support rights the person is entitled to during the time the  
23 person's household receives public assistance, whether the  
24 support rights are owed to the applicant or to any family  
25 member for whom the applicant is applying for or receiving

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1 assistance. The assignment includes all support rights that  
2 accrue as long as the applicant receives public assistance.

3 G. By operation of law, an assignment to the  
4 department of any and all rights of an applicant for or  
5 recipient of medical assistance under the medicaid program in  
6 New Mexico or supplemental security income through the social  
7 security administration:

8 (1) is deemed to be made of:

9 (a) any payment for medical care from  
10 any person, firm or corporation, including an insurance  
11 carrier; and

12 (b) any recovery for personal injury,  
13 whether by judgment or contract for compromise or settlement;

14 (2) shall be effective to the extent of the  
15 amount of medical assistance actually paid by the department  
16 under the medicaid program; and

17 (3) shall be effective as to the rights of  
18 any other individuals who are eligible for medical assistance  
19 and whose rights can legally be assigned by the applicant or  
20 recipient.

21 An applicant or recipient is required to cooperate fully  
22 with the department in its efforts to secure the assignment  
23 and to execute and deliver any instruments and papers deemed  
24 necessary to complete the assignment by the department."

25 Section 145. Section 27-2A-7 NMSA 1978 (being Laws

.179346.5GR

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1 1994, Chapter 87, Section 7) is amended to read:

2 "27-2A-7. RESTRICTIONS ON RECOVERY FROM ESTATES.--Any  
3 recovery from an estate may be made only after the death of  
4 the decedent's surviving spouse or surviving domestic  
5 partner, if any, and only at a time when the decedent has no  
6 surviving child who is less than twenty-one years of age or  
7 is blind or disabled as defined in 42 U.S.C. 1383C."

8 Section 146. Section 27-2B-5 NMSA 1978 (being Laws  
9 1998, Chapter 8, Section 5 and Laws 1998, Chapter 9, Section  
10 5, as amended by Laws 2007, Chapter 46, Section 18 and by  
11 Laws 2007, Chapter 350, Section 3) is amended to read:

12 "27-2B-5. WORK REQUIREMENTS--WORK PARTICIPATION  
13 RATES.--

14 A. The following qualify as work activities:

15 (1) unsubsidized employment, including self-  
16 employment;

17 (2) subsidized private sector employment,  
18 including self-employment;

19 (3) subsidized public sector employment;

20 (4) work experience;

21 (5) on-the-job training;

22 (6) job search and job readiness;

23 (7) community service programs;

24 (8) vocational education;

25 (9) job skills training activities directly

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1 related to employment;

2 (10) education directly related to  
3 employment;

4 (11) satisfactory attendance at a secondary  
5 school or course of study leading to a certificate of general  
6 equivalency in the case of a participant who has not  
7 completed secondary school or received such a certificate;  
8 and

9 (12) the provision of child care services to  
10 a participant who is participating in a community service  
11 program.

12 B. The department shall recognize community  
13 service programs and job training programs that are operated  
14 by an Indian nation, tribe or pueblo.

15 C. The department may not require a participant  
16 to work more than four hours per week over the work  
17 requirement rate set pursuant to the federal act.

18 D. The department shall require a parent,  
19 caretaker or other adult who is a member of a benefit group  
20 to engage in a work activity.

21 E. Where best suited for the participant to  
22 address barriers, the department may require the following  
23 work activities:

24 (1) participating in parenting classes,  
25 money management classes or life skills training;

.179346.5GR

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1 (2) participating in a certified alcohol or  
2 drug addiction program;

3 (3) in the case of a homeless benefit group,  
4 finding a home;

5 (4) in the case of a participant who is a  
6 victim of domestic violence residing in a domestic violence  
7 shelter or receiving counseling or treatment or participating  
8 in criminal justice activities directed at prosecuting the  
9 domestic violence perpetrator for no longer than twenty-four  
10 weeks; and

11 (5) in the case of a participant who does  
12 not speak English, participating in a course in English as a  
13 second language.

14 F. Subject to the availability of funds, the  
15 department in cooperation with the [~~labor~~] workforce  
16 solutions department, Indian affairs department and other  
17 appropriate state agencies may develop projects to provide  
18 for the placement of participants in work activities,  
19 including the following:

20 (1) participating in unpaid internships with  
21 private and government entities;

22 (2) refurbishing publicly assisted housing;

23 (3) volunteering at a head start program or  
24 a school;

25 (4) weatherizing low-income housing; and

.179346.5GR

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1 (5) restoring public sites and buildings,  
2 including monuments, parks, fire stations, police buildings,  
3 jails, libraries, museums, auditoriums, convention halls,  
4 hospitals, buildings for administrative offices and city  
5 halls.

6 G. If a participant is engaged in full-time  
7 vocational education studies or an activity set out in  
8 Paragraphs (9) through (11) of Subsection A of this section,  
9 the participant shall engage in another work activity at the  
10 same time. Additionally, for two-parent families that  
11 receive federally funded child-care assistance, the  
12 participant's spouse or domestic partner shall engage in a  
13 work activity set out in Paragraphs (1) through (5) or (7) of  
14 Subsection A of this section unless the participant suffers  
15 from a temporary or complete disability that bars the  
16 participant from engaging in a work activity or the  
17 participant is barred from engaging in a work activity  
18 because the participant provides sole care for a ~~[disabled]~~  
19 person with a disability.

20 H. A participant engaged in vocational education  
21 studies shall make reasonable efforts to obtain a loan,  
22 scholarship, grant or other assistance to pay for costs and  
23 tuition, and the department shall disregard those amounts in  
24 the eligibility determination.

25 I. For as long as the described conditions exist,

.179346.5GR

1 the following are exempt from the work requirement:

2 (1) a participant barred from engaging in a  
3 work activity because the participant has a temporary or  
4 permanent disability;

5 (2) a participant over age sixty;

6 (3) a participant barred from engaging in a  
7 work activity because the participant provides the sole care  
8 for a person with a disability;

9 (4) a single custodial parent caring for a  
10 child less than twelve months old for a lifetime total of  
11 twelve months;

12 (5) a single custodial parent caring for a  
13 child under six years of age if the parent is unable to  
14 obtain child care for one or more of the following reasons:

15 (a) unavailability of appropriate  
16 child care within a reasonable distance from the parent's  
17 home or work as defined by the children, youth and families  
18 department;

19 (b) unavailability or unsuitability of  
20 informal child care by a relative under other arrangements as  
21 defined by the children, youth and families department; or

22 (c) unavailability of appropriate and  
23 affordable formal child-care arrangements as defined by the  
24 children, youth and families department;

25 (6) a pregnant woman during her last

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1 trimester of pregnancy;

2 (7) a participant prevented from working by  
3 a temporary emergency or a situation that precludes work  
4 participation for thirty days or less;

5 (8) a participant who demonstrates by  
6 reliable medical, psychological or mental reports, court  
7 orders or police reports that family violence or threat of  
8 family violence effectively bars the participant from  
9 employment; and

10 (9) a participant who demonstrates good  
11 cause of the need for the exemption.

12 J. As a condition of the exemptions identified in  
13 Subsection I of this section, the department may establish  
14 participation requirements specific to the participant's  
15 condition or circumstances, such as substance abuse services,  
16 mental health services, domestic violence services, pursuit  
17 of disability benefits, job readiness or education directly  
18 related to employment. The activities are established to  
19 improve the participant's capacity to improve income and  
20 strengthen family support."

21 Section 147. Section 27-4-2 NMSA 1978 (being Laws 1973,  
22 Chapter 311, Section 2, as amended) is amended to read:

23 "27-4-2. DEFINITIONS.--As used in the Special Medical  
24 Needs Act:

25 A. "department" or "division" means the income

.179346.5GR

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1 support division of the human services department;

2 B. "board" means the division;

3 C. "aged person" means a person who has attained  
4 the age of sixty-five years and does not have a spouse or  
5 domestic partner financially able, according to regulations  
6 of the division, to furnish support;

7 D. "person with a disability" means a person who  
8 has attained the age of eighteen years and is determined to  
9 have a permanent and total disability, according to  
10 regulations of the division; and

11 E. "blind person" means a person who is  
12 determined to be blind according to regulations of the  
13 division."

14 Section 148. Section 27-5-4 NMSA 1978 (being Laws 1965,  
15 Chapter 234, Section 4, as amended) is amended to read:

16 "27-5-4. DEFINITIONS.--As used in the Indigent Hospital  
17 and County Health Care Act:

18 A. "ambulance provider" or "ambulance service"  
19 means a specialized carrier based within the state authorized  
20 under provisions and subject to limitations as provided in  
21 individual carrier certificates issued by the public  
22 regulation commission to transport persons alive, dead or  
23 dying en route by means of ambulance service. The rates and  
24 charges established by public regulation commission tariff  
25 shall govern as to allowable cost. Also included are air

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1 ambulance services approved by the board. The air ambulance  
2 service charges shall be filed and approved pursuant to  
3 Subsection D of Section 27-5-6 NMSA 1978 and Section 27-5-11  
4 NMSA 1978;

5 B. "board" means a county indigent hospital and  
6 county health care board;

7 C. "indigent patient" means a person to whom an  
8 ambulance service, a hospital or a health care provider has  
9 provided medical care, ambulance transportation or health  
10 care services and who can normally support ~~[himself]~~ the  
11 person's self and ~~[his]~~ the person's dependents on present  
12 income and liquid assets available to ~~[him]~~ the person but,  
13 taking into consideration this income and those assets and  
14 ~~[his]~~ the person's requirement for other necessities of life  
15 for ~~[himself]~~ the person and ~~[his]~~ the person's dependents,  
16 is unable to pay the cost of the ambulance transportation or  
17 medical care administered or both. If provided by resolution  
18 of a board, it shall not include any person whose annual  
19 income together with ~~[his]~~ the person's spouse's or domestic  
20 partner's annual income totals an amount that is fifty  
21 percent greater than the per capita personal income for New  
22 Mexico as shown for the most recent year available in the  
23 survey of current business published by the United States  
24 department of commerce. Every board that has a balance  
25 remaining in the fund at the end of a given fiscal year shall

.179346.5GR

1 consider and may adopt at the first meeting of the succeeding  
2 fiscal year a resolution increasing the standard for  
3 indigency. The term "indigent patient" includes a minor who  
4 has received ambulance transportation or medical care or both  
5 and whose parent or the person having custody of that minor  
6 would qualify as an indigent patient if transported by  
7 ambulance, admitted to a hospital for care or treated by a  
8 health care provider;

9 D. "hospital" means a general or limited hospital  
10 licensed by the department of health, whether nonprofit or  
11 owned by a political subdivision, and may include by  
12 resolution of a board the following health facilities if  
13 licensed or, in the case of out-of-state hospitals, approved  
14 by the department of health:

- 15 (1) for-profit hospitals;  
16 (2) state-owned hospitals; or  
17 (3) licensed out-of-state hospitals where  
18 treatment provided is necessary for the proper care of an  
19 indigent patient when that care is not available in an  
20 in-state hospital;

21 E. "cost" means all allowable costs of providing  
22 health care services, to the extent determined by resolution  
23 of a board, for an indigent patient. Allowable costs shall  
24 be based on medicaid fee-for-service reimbursement rates for  
25 hospitals, licensed medical doctors and osteopathic

1 physicians;

2 F. "fund" means a county indigent hospital claims  
3 fund;

4 G. "medicaid eligible" means a person who is  
5 eligible for medical assistance from the department;

6 H. "county" means a county except a class A  
7 county with a county hospital operated and maintained  
8 pursuant to a lease with a state educational institution  
9 named in Article 12, Section 11 of the constitution of New  
10 Mexico;

11 I. "department" means the human services  
12 department;

13 J. "sole community provider hospital" means:

14 (1) a hospital that is a sole community  
15 provider hospital under the provisions of the federal  
16 medicare guidelines; or

17 (2) an acute care general hospital licensed  
18 by the department of health that is qualified, pursuant to  
19 rules adopted by the state agency primarily responsible for  
20 the medicaid program, to receive distributions from the sole  
21 community provider fund;

22 K. "drug rehabilitation center" means an agency  
23 of local government, a state agency, a private nonprofit  
24 entity or combination thereof that operates drug abuse  
25 rehabilitation programs that meet the standards and

.179346.5GR

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1 requirements set by the department of health;

2 L. "alcohol rehabilitation center" means an  
3 agency of local government, a state agency, a private  
4 nonprofit entity or combination thereof that operates alcohol  
5 abuse rehabilitation programs that meet the standards set by  
6 the department of health;

7 M. "mental health center" means a not-for-profit  
8 center that provides outpatient mental health services that  
9 meet the standards set by the department of health;

10 N. "health care provider" means:

11 (1) a nursing home;

12 (2) an in-state home health agency;

13 (3) an in-state licensed hospice;

14 (4) a community-based health program

15 operated by a political subdivision of the state or other  
16 nonprofit health organization that provides prenatal care  
17 delivered by New Mexico licensed, certified or registered  
18 health care practitioners;

19 (5) a community-based health program

20 operated by a political subdivision of the state or other  
21 nonprofit health care organization that provides primary care  
22 delivered by New Mexico licensed, certified or registered  
23 health care practitioners;

24 (6) a drug rehabilitation center;

25 (7) an alcohol rehabilitation center;

.179346.5GR

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1 (8) a mental health center;

2 (9) a licensed medical doctor, osteopathic  
3 physician, dentist, optometrist or expanded practice nurse  
4 when providing emergency services, as determined by the  
5 board, in a hospital to an indigent patient; or

6 (10) a licensed medical doctor or  
7 osteopathic physician, dentist, optometrist or expanded  
8 practice nurse when providing services in an outpatient  
9 setting, as determined by the board, to an indigent patient  
10 with a life-threatening illness or disability;

11 O. "health care services" means treatment and  
12 services designed to promote improved health in the county  
13 indigent population, including primary care, prenatal care,  
14 dental care, provision of prescription drugs, preventive care  
15 or health outreach services, to the extent determined by  
16 resolution of the board;

17 P. "planning" means the development of a  
18 countywide or multicounty health plan to improve and fund  
19 health services in the county based on the county's needs  
20 assessment and inventory of existing services and resources  
21 and that demonstrates coordination between the county and  
22 state and local health planning efforts; and

23 Q. "commission" means the New Mexico health  
24 policy commission."

25 Section 149. Section 27-7-25 NMSA 1978 (being Laws  
.179346.5GR

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1 1990, Chapter 79, Section 6, as amended) is amended to read:

2 "27-7-25. EX-PARTE ORDERS FOR EMERGENCY PROTECTIVE  
3 SERVICES OR EMERGENCY PROTECTIVE PLACEMENT--NOTICE--  
4 PETITION.--

5 A. Upon petition by the department, the court may  
6 issue an order authorizing the provision of involuntary  
7 protective services or protective placement on an emergency  
8 basis to an adult under the criteria set forth in Subsection  
9 B of this section.

10 B. At the time a petition is filed or any time  
11 thereafter, the court may issue an ex-parte order authorizing  
12 the provision of involuntary protective services or  
13 involuntary protective placement upon a sworn written  
14 statement of facts showing probable cause exists to believe  
15 that:

- 16 (1) the adult is incapacitated;  
17 (2) an emergency exists;  
18 (3) the adult lacks the ability to consent  
19 to receive protective services or protective placement; and  
20 (4) no person authorized by law or court  
21 order to give consent for the adult is available or willing  
22 to consent to the provision of protective services or  
23 protective placement on an emergency basis.

24 C. The petition for an emergency ex-parte order  
25 shall set forth:

.179346.5GR

- 1 (1) the name, address and interest of the  
2 petitioner;
- 3 (2) the name, age and address of the adult  
4 in need of protective services;
- 5 (3) the facts describing the nature of the  
6 emergency;
- 7 (4) the facts describing the nature of the  
8 adult's incapacity;
- 9 (5) the proposed protective services or  
10 protective placement;
- 11 (6) the petitioner's reasonable belief,  
12 together with supporting facts, about the need for emergency  
13 intervention; and
- 14 (7) the facts showing the petitioner's  
15 attempts to obtain the adult's consent to the proposed  
16 protective services or protective placement and the outcome  
17 of those attempts.

18 D. An affidavit for an ex-parte order for  
19 emergency protective services or emergency protective  
20 placement may be signed by any person who has knowledge of  
21 the facts alleged or is informed of them and believes that  
22 they are true.

23 E. The Rules of Evidence do not apply to the  
24 issuance of an emergency ex-parte protective services or  
25 protective placement order.

.179346.5GR

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1 F. In issuing an emergency ex-parte order, the  
2 court shall adhere to the following limitations:

3 (1) only the protective services or  
4 protective placement necessary to remove the conditions  
5 creating the emergency shall be ordered, and the order shall  
6 specifically designate the proposed protective services or  
7 protective placement;

8 (2) protective services or protective  
9 placement authorized by an emergency ex-parte order shall not  
10 include hospitalization or a change of residence, unless the  
11 order gives specific approval for the action;

12 (3) protective services or protective  
13 placement may be provided by emergency ex-parte order only  
14 for ten days; provided that the original order may be renewed  
15 once for a period of twenty additional days upon application  
16 to the court showing that continuation of the original order  
17 is necessary to remove the conditions creating the emergency.  
18 An application for renewal of the original order shall be  
19 supported by a written report of the results of the  
20 evaluation required by Subsection C of Section 27-7-27 NMSA  
21 1978 and copies of the actual evaluations;

22 (4) the issuance of an emergency ex-parte  
23 order shall not deprive the adult of any rights except those  
24 provided for in the order;

25 (5) to implement an emergency ex-parte

.179346.5GR

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1 order, the court may authorize forcible entry of premises for  
2 the purposes of rendering protective services or protective  
3 placement or transporting the adult to another location for  
4 the provision of services or placement only if facts  
5 contained in the affidavit supporting the petition for ex-  
6 parte order show that attempts to gain voluntary access to  
7 the premises have failed and forcible entry is necessary;  
8 provided that persons making an authorized forcible entry  
9 shall be accompanied by a law enforcement officer; and

10 (6) service of an ex-parte order authorizing  
11 forcible entry shall be according to the following procedure.  
12 The order shall be served on the alleged incapacitated adult  
13 by a person authorized to serve arrest warrants and shall  
14 direct the officer to advise the adult of the nature of the  
15 protective services or protective placement that have been  
16 ordered by the court. If the order authorizes emergency  
17 protective placement, the order shall direct the officer to  
18 assist in transfer of the adult to a place designated by the  
19 court.

20 G. Notice of the filing of the petition and the  
21 issuance of the emergency ex-parte order, including a copy of  
22 the petition, the ex-parte order and the affidavit for  
23 ex-parte order, shall be given to the adult and the adult's  
24 spouse or domestic partner or, if none, the adult children or  
25 next of kin, surrogate or guardian, if any. The notice shall

.179346.5GR

1 be given, in language reasonably understandable by its  
2 intended recipients, within twenty-four hours, excluding  
3 Saturdays, Sundays and legal holidays, from the time that the  
4 ex-parte order authorizing protective services or protective  
5 placement is issued by the court or, if the ex-parte order  
6 authorizes forcible entry, from the time the ex-parte order  
7 is served upon the incapacitated adult. The notice shall  
8 inform the recipients that a hearing will be held no later  
9 than ten days after the date the petition is filed to  
10 determine whether the conditions creating the emergency have  
11 been removed and whether the adult should be released from  
12 the court's order for protective services or protective  
13 placement.

14 H. Within ten days from the filing of a petition  
15 for an emergency order for protective services or protective  
16 placement, the court shall hold a hearing upon any  
17 application for renewal of the emergency order. The hearing  
18 upon an application for renewal shall be held pursuant to the  
19 provisions of Section 27-7-27 NMSA 1978.

20 I. The protected adult or any interested person  
21 may petition the court to have the emergency order set aside  
22 or modified at any time, notwithstanding any prior findings  
23 by the court that the adult is incapacitated.

24 J. If the adult continues to need protective  
25 services or protective placement after the renewal order

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1 provided in Paragraph (3) of Subsection F of this section has  
2 expired, the department or original petitioner shall  
3 immediately petition the court to appoint a conservator or  
4 guardian or to order nonemergency protective services or  
5 protective placement pursuant to Section 27-7-26 NMSA 1978.

6 K. The petitioner shall not be liable for filing  
7 the petition if the petitioner acted in good faith."

8 Section 150. Section 27-7-26 NMSA 1978 (being Laws  
9 1989, Chapter 389, Section 13, as amended) is amended to  
10 read:

11 "27-7-26. NONEMERGENCY PROTECTIVE SERVICES OR  
12 PROTECTIVE PLACEMENT--FINDINGS--PETITION--ORDER.--

13 A. Involuntary nonemergency protective services  
14 or protective placement shall not take place unless ordered  
15 by a court after a finding on the record based on clear and  
16 convincing evidence that:

17 (1) the adult is incapacitated and lacks the  
18 ability to consent;

19 (2) the adult is incapable of providing for  
20 the adult's own care or custody and the adult is at  
21 significant risk of abuse, neglect or exploitation that  
22 creates a substantial risk of serious physical harm to the  
23 adult or others;

24 (3) the adult needs care or treatment;

25 (4) the proposed order is substantially

.179346.5GR

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1 supported by the evaluation provided for in Subsection E of  
2 this section or, if not so supported, there are compelling  
3 reasons for ordering those protective services or that  
4 protective placement; and

5 (5) no less restrictive alternative course  
6 of care or treatment is available that is consistent with the  
7 incapacitated adult's welfare and safety.

8 B. The petition for nonemergency protective  
9 services or protective placement shall state with  
10 particularity the factual basis for the allegations specified  
11 in Subsection A of this section and shall be based on the  
12 most reliable information available to the petitioner.

13 C. Written notice of a petition for nonemergency  
14 protective services or protective placement shall be served  
15 upon the adult by personal service at least fourteen days  
16 prior to the time set for a hearing. Notice shall also be  
17 given to the adult's legal counsel, caretaker, guardian,  
18 conservator, surrogate, spouse or domestic partner and adult  
19 children or next of kin, whose names and addresses are known  
20 to the petitioner or can with reasonable diligence be  
21 ascertained. The person serving the notice shall certify to  
22 the court that the petition has been delivered and how the  
23 required notice was given. The notice shall be in language  
24 reasonably understandable by the adult who is the subject of  
25 the petition and also shall be given orally if necessary.

.179346.5GR

1 The notice shall include:

2 (1) the names of all petitioners;

3 (2) the factual basis of the belief that  
4 protective services or protective placement is needed;

5 (3) the rights of the adult in the court  
6 proceedings; and

7 (4) the name and address of the proposed  
8 protective services or protective placement.

9 D. Upon the filing of a petition for nonemergency  
10 protective services or protective placement, the court shall  
11 hold a hearing pursuant to the provisions of Section 27-7-27  
12 NMSA 1978.

13 E. In order to make the findings required in  
14 Paragraphs (2) through (5) of Subsection A of this section,  
15 the court shall direct that a comprehensive evaluation of the  
16 adult alleged to be in need of protective services or  
17 protective placement be conducted as provided in Subsection C  
18 of Section 27-7-27 NMSA 1978.

19 F. In ordering nonemergency protective placement,  
20 the court shall give consideration to the choice of residence  
21 of the adult. The court may order protective placement in a  
22 facility or with a provider.

23 G. The court may authorize nonemergency  
24 protective services or protective placement for an adult for  
25 a period not to exceed six months.

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1           H. At the time of expiration of an order for  
2 nonemergency protective services or protective placement, the  
3 original petitioner may petition the court to extend its  
4 order for protective services or protective placement for an  
5 additional period not to exceed six months. The contents of  
6 the petition shall conform to the provisions of Subsections A  
7 and B of this section. Notice of the petition for the  
8 extension of protective services or protective placement  
9 shall be made in conformity with Subsection C of this  
10 section. The court shall hold a hearing to determine whether  
11 to renew the order. Any person entitled to a notice under  
12 Subsection C of this section may appear at the hearing and  
13 challenge the petition. The court shall conduct the hearing  
14 pursuant to the provisions of Section 27-7-27 NMSA 1978.

15           I. The services provided to or the residence of  
16 an adult that had been established pursuant to an order for  
17 nonemergency protective services or protective placement  
18 shall not be changed unless the court authorizes the change  
19 of services or transfer of residence. The adult or the  
20 adult's legal representative may petition the court to order  
21 such a change of services or transfer of residence.

22           J. Prior to the expiration of the nonemergency  
23 protective services or protective placement, the department  
24 shall review the need for continued services or placement,  
25 including the necessity for appointment of a conservator or

.179346.5GR

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1 guardian, and shall make such recommendation to the court."

2 Section 151. Section 28-1-7 NMSA 1978 (being Laws 1969,  
3 Chapter 196, Section 7, as amended) is amended to read:

4 "28-1-7. UNLAWFUL DISCRIMINATORY PRACTICE.--It is an  
5 unlawful discriminatory practice for:

6 A. an employer, unless based on a bona fide  
7 occupational qualification or other statutory prohibition, to  
8 refuse to hire, to discharge, to promote or demote or to  
9 discriminate in matters of compensation, terms, conditions or  
10 privileges of employment against any person otherwise  
11 qualified because of race, age, religion, color, national  
12 origin, ancestry, sex, physical or mental handicap or serious  
13 medical condition, or, if the employer has fifty or more  
14 employees, spousal or domestic partner affiliation; provided,  
15 however, that 29 U.S.C. Section 631(c)(1) and (2) shall apply  
16 to discrimination based on age; or, if the employer has  
17 fifteen or more employees, to discriminate against an  
18 employee based upon the employee's sexual orientation or  
19 gender identity;

20 B. a labor organization to exclude a person or to  
21 expel or otherwise discriminate against any of its members or  
22 against any employer or employee because of race, religion,  
23 color, national origin, ancestry, sex, sexual orientation,  
24 gender identity, spousal or domestic partner affiliation,  
25 physical or mental handicap or serious medical condition;

.179346.5GR

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1           C. any employer, labor organization or joint  
2 apprenticeship committee to refuse to admit or employ any  
3 person in any program established to provide an  
4 apprenticeship or other training or retraining because of  
5 race, religion, color, national origin, ancestry, sex, sexual  
6 orientation, gender identity, physical or mental handicap or  
7 serious medical condition, or, if the employer has fifty or  
8 more employees, spousal or domestic partner affiliation;

9           D. any person, employer, employment agency or  
10 labor organization to print or circulate or cause to be  
11 printed or circulated any statement, advertisement or  
12 publication, to use any form of application for employment or  
13 membership or to make any inquiry regarding prospective  
14 membership or employment that expresses, directly or  
15 indirectly, any limitation, specification or discrimination  
16 as to race, color, religion, national origin, ancestry, sex,  
17 sexual orientation, gender identity, physical or mental  
18 handicap or serious medical condition, or, if the employer  
19 has fifty or more employees, spousal or domestic partner  
20 affiliation, unless based on a bona fide occupational  
21 qualification;

22           E. an employment agency to refuse to list and  
23 properly classify for employment or refer a person for  
24 employment in a known available job, for which the person is  
25 otherwise qualified, because of race, religion, color,

.179346.5GR

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1 national origin, ancestry, sex, sexual orientation, gender  
2 identity, spousal or domestic partner affiliation, physical  
3 or mental handicap or serious medical condition, unless based  
4 on a bona fide occupational qualification, or to comply with  
5 a request from an employer for referral of applicants for  
6 employment if the request indicates either directly or  
7 indirectly that the employer discriminates in employment on  
8 the basis of race, religion, color, national origin,  
9 ancestry, sex, sexual orientation, gender identity, spousal  
10 or domestic partner affiliation, physical or mental handicap  
11 or serious medical condition, unless based on a bona fide  
12 occupational qualification;

13 F. any person in any public accommodation to make  
14 a distinction, directly or indirectly, in offering or  
15 refusing to offer its services, facilities, accommodations or  
16 goods to any person because of race, religion, color,  
17 national origin, ancestry, sex, sexual orientation, gender  
18 identity, spousal or domestic partner affiliation or physical  
19 or mental handicap, provided that the physical or mental  
20 handicap is unrelated to a person's ability to acquire or  
21 rent and maintain particular real property or housing  
22 accommodation;

23 G. any person to:

24 (1) refuse to sell, rent, assign, lease or  
25 sublease or offer for sale, rental, lease, assignment or

.179346.5GR

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1 sublease any housing accommodation or real property to any  
2 person or to refuse to negotiate for the sale, rental, lease,  
3 assignment or sublease of any housing accommodation or real  
4 property to any person because of race, religion, color,  
5 national origin, ancestry, sex, sexual orientation, gender  
6 identity, spousal or domestic partner affiliation or physical  
7 or mental handicap, provided that the physical or mental  
8 handicap is unrelated to a person's ability to acquire or  
9 rent and maintain particular real property or housing  
10 accommodation;

11 (2) discriminate against any person in the  
12 terms, conditions or privileges of the sale, rental,  
13 assignment, lease or sublease of any housing accommodation or  
14 real property or in the provision of facilities or services  
15 in connection therewith because of race, religion, color,  
16 national origin, ancestry, sex, sexual orientation, gender  
17 identity, spousal or domestic partner affiliation or physical  
18 or mental handicap, provided that the physical or mental  
19 handicap is unrelated to a person's ability to acquire or  
20 rent and maintain particular real property or housing  
21 accommodation; or

22 (3) print, circulate, display or mail or  
23 cause to be printed, circulated, displayed or mailed any  
24 statement, advertisement, publication or sign or use any form  
25 of application for the purchase, rental, lease, assignment or

.179346.5GR

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1 sublease of any housing accommodation or real property or to  
2 make any record or inquiry regarding the prospective  
3 purchase, rental, lease, assignment or sublease of any  
4 housing accommodation or real property that expresses any  
5 preference, limitation or discrimination as to race,  
6 religion, color, national origin, ancestry, sex, sexual  
7 orientation, gender identity, spousal or domestic partner  
8 affiliation or physical or mental handicap, provided that the  
9 physical or mental handicap is unrelated to a person's  
10 ability to acquire or rent and maintain particular real  
11 property or housing accommodation;

12 H. any person to whom application is made either  
13 for financial assistance for the acquisition, construction,  
14 rehabilitation, repair or maintenance of any housing  
15 accommodation or real property or for any type of consumer  
16 credit, including financial assistance for the acquisition of  
17 any consumer good as defined by Section 55-9-102 NMSA 1978,  
18 to:

19 (1) consider the race, religion, color,  
20 national origin, ancestry, sex, sexual orientation, gender  
21 identity, spousal or domestic partner affiliation or physical  
22 or mental handicap of any individual in the granting,  
23 withholding, extending, modifying or renewing or in the  
24 fixing of the rates, terms, conditions or provisions of any  
25 financial assistance or in the extension of services in

.179346.5GR

1 connection with the request for financial assistance; or

2 (2) use any form of application for  
3 financial assistance or to make any record or inquiry in  
4 connection with applications for financial assistance that  
5 expresses, directly or indirectly, any limitation,  
6 specification or discrimination as to race, religion, color,  
7 national origin, ancestry, sex, sexual orientation, gender  
8 identity, spousal or domestic partner affiliation or physical  
9 or mental handicap;

10 I. any person or employer to:

11 (1) aid, abet, incite, compel or coerce the  
12 doing of any unlawful discriminatory practice or to attempt  
13 to do so;

14 (2) engage in any form of threats, reprisal  
15 or discrimination against any person who has opposed any  
16 unlawful discriminatory practice or has filed a complaint,  
17 testified or participated in any proceeding under the Human  
18 Rights Act; or

19 (3) willfully obstruct or prevent any person  
20 from complying with the provisions of the Human Rights Act or  
21 to resist, prevent, impede or interfere with the commission  
22 or any of its members, staff or representatives in the  
23 performance of their duties under the Human Rights Act; or

24 J. any employer to refuse or fail to accommodate  
25 a person's physical or mental handicap or serious medical

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1 condition, unless such accommodation is unreasonable or an  
2 undue hardship."

3 Section 152. Section 28-3-8 NMSA 1978 (being Laws 1977,  
4 Chapter 292, Section 2) is amended to read:

5 "28-3-8. FINDINGS AND PURPOSE OF ACT.--The legislature  
6 finds that there is an increasing number of persons in New  
7 Mexico who, in their middle years and having fulfilled the  
8 role of homemaker, find themselves displaced because of  
9 dissolution of marriage or domestic partnership, death of a  
10 spouse or domestic partner or other loss of family income.

11 As a consequence of this displacement, such persons suffer a  
12 greatly reduced income, high rate of unemployment because of  
13 age, lack of work experience, discrimination and limited or  
14 no opportunity to collect funds of assistance such as social  
15 security, unemployment compensation, medicaid and other  
16 health insurance benefits or pension plans of the spouse or  
17 domestic partner. It is the purpose of [~~this legislation~~]  
18 the Displaced Homemakers Act to provide research and planning  
19 for programs to serve such displaced homemakers."

20 Section 153. Section 28-3-9 NMSA 1978 (being Laws 1977,  
21 Chapter 292, Section 3) is amended to read:

22 "28-3-9. DEFINITIONS.--As used in the Displaced  
23 Homemakers Act:

24 A. "displaced homemaker" means any individual who  
25 has worked in the home for a substantial number of years

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1 providing unpaid household services for family members and  
2 who:

3 (1) has difficulty obtaining adequate  
4 employment; or

5 (2) has been dependent on the income of  
6 another family member but is no longer supported by such  
7 income, has been dependent on federal assistance but is no  
8 longer eligible for such assistance or is supported as the  
9 parent of minor children by federal assistance or spousal or  
10 domestic partner support; and

11 B. "income of another family member" means any  
12 income in support of an entire family unit used for the  
13 purpose of providing that family with economic security, but  
14 does not include the payment of alimony or child support."

15 Section 154. Section 28-13A-1 NMSA 1978 (being Laws  
16 1991, Chapter 93, Section 1, as amended) is amended to read:

17 "28-13A-1. SPECIAL RECREATION AND MUSEUM PRIVILEGES.--

18 A. On the federally designated legal holiday  
19 known as "Veterans' Day", any New Mexico resident, who  
20 provides satisfactory proof that the resident is currently  
21 serving or has served in the armed forces of the United  
22 States, and the resident's spouse or domestic partner and  
23 dependent children, shall be entitled to:

24 (1) free use of any state park or recreation  
25 area operated by the state parks division of the energy,

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1 minerals and natural resources department, including the  
2 waiving of all admittance, camping, permit or other user fees  
3 or charges; and

4 (2) free general admission to any state  
5 museum or monument.

6 B. The governing boards of state museums and  
7 monuments shall waive general museum and monument admission  
8 fees for fifty percent or more disabled veterans residing in  
9 the state. Proof of disability satisfactory to the governing  
10 boards of the state museums and monuments is required to  
11 obtain the privileges pursuant to this subsection."

12 Section 155. Section 29-2-6 NMSA 1978 (being Laws 1941,  
13 Chapter 147, Section 6, as amended) is amended to read:

14 "29-2-6. QUALIFICATIONS OF MEMBERS.--

15 A. Members of the New Mexico state police, except  
16 the chief, shall:

17 (1) at the time of their appointment, be  
18 citizens of the United States;

19 (2) at the time of their appointment, have  
20 reached twenty-one years of age;

21 (3) except as otherwise provided in  
22 Subsection B of this section, at the time of their  
23 appointment, have completed at least sixty hours of college  
24 credit;

25 (4) be of good moral character and not have

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1 been convicted of a felony or infamous crime in the courts of  
2 this state or other state or any country or in the federal  
3 courts; and

4 (5) pass a physical examination the New  
5 Mexico state police may require.

6 B. Notwithstanding the requirement of Paragraph  
7 (3) of Subsection A of this section, the chief may appoint a  
8 member of the New Mexico state police who has at least thirty  
9 hours of college credit, and the chief shall determine an  
10 appropriate time period after appointment for the member to  
11 complete the additional thirty hours of college credit  
12 required.

13 C. A person shall not be commissioned a member  
14 of the New Mexico state police who is related by blood, [~~or~~]  
15 marriage or domestic partnership within the fourth degree to  
16 a member of the public safety advisory commission."

17 Section 156. Section 29-4A-2 NMSA 1978 (being Laws  
18 1995, Chapter 59, Section 2, as amended) is amended to read:

19 "29-4A-2. FINDINGS--PURPOSE.--The legislature finds  
20 that peace officers throughout the state risk their lives  
21 daily to protect the citizens of New Mexico. The legislature  
22 further finds that when peace officers are killed in the line  
23 of duty, their immediate families can suffer grievously, both  
24 emotionally and economically. To recognize the substantial  
25 public safety benefits conferred by peace officers and in

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1 consideration of the sacrifices undertaken by these officers  
2 and their families for the citizens of New Mexico, it is the  
3 purpose of the Peace Officers' Survivors Supplemental  
4 Benefits Act to ensure that certain supplemental death  
5 benefits accrue to the spouse or domestic partner and  
6 surviving children or to the parents, if there are no  
7 surviving children or spouse or domestic partner, of a peace  
8 officer killed in the line of duty."

9 Section 157. Section 29-4A-5 NMSA 1978 (being Laws  
10 1995, Chapter 59, Section 5, as amended) is amended to read:

11 "29-4A-5. PEACE OFFICERS' SURVIVORS SUPPLEMENTAL DEATH  
12 BENEFITS--REVIEW COMMITTEE--DETERMINATION--PAYMENT.--

13 A. There is created the "peace officers'  
14 survivors supplemental death benefits review committee". The  
15 committee shall consist of the attorney general, the chief of  
16 the New Mexico state police and the state president of the  
17 fraternal order of police or their designees.

18 B. The peace officers' survivors supplemental  
19 death benefits review committee shall determine whether a  
20 peace officer has been killed in the line of duty and advise  
21 the secretary of that determination. In addition to any  
22 other death benefits provided by law, the surviving spouse or  
23 surviving domestic partner, children or parents shall be paid  
24 two hundred fifty thousand dollars (\$250,000) as supplemental  
25 death benefits whenever a peace officer is killed in the line

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1 of duty. The benefits shall be paid from the fund.

2 C. The benefits shall be paid first to the  
3 surviving spouse or surviving domestic partner. If there is  
4 no surviving spouse or surviving domestic partner, the  
5 benefits shall be distributed in pro rata shares to all  
6 surviving children. If there are no surviving children or  
7 spouse or domestic partner, benefits shall be distributed to  
8 the surviving parents of the peace officer."

9 Section 158. Section 29-15-2 NMSA 1978 (being Laws  
10 1995, Chapter 146, Section 2, as amended) is amended to read:

11 "29-15-2. DEFINITIONS.--As used in the Missing Persons  
12 Information Act:

13 A. "child" means an individual under the age of  
14 eighteen years who is not emancipated;

15 B. "clearinghouse" means the missing persons  
16 information clearinghouse;

17 C. "custodian" means a parent, guardian or other  
18 person who exercises legal physical control, care or custody  
19 of a child;

20 D. "endangered person" means a missing person  
21 who:

22 (1) is in imminent danger of causing harm to  
23 the person's self;

24 (2) is in imminent danger of causing harm to  
25 another;

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1 (3) is in imminent danger of being harmed by  
2 another or who has been harmed by another; or

3 (4) has Alzheimer's disease;

4 E. "immediate family member" means the spouse or  
5 domestic partner or nearest relative of a person;

6 F. "lead station" means an AM radio station that  
7 has been designated as the "state primary station" by the  
8 federal communications commission for the emergency alert  
9 system;

10 G. "missing person" means a person whose  
11 whereabouts are unknown to the person's custodian or  
12 immediate family member and the circumstances of whose  
13 absence indicate that:

14 (1) the person did not leave the care and  
15 control of the custodian or immediate family member  
16 voluntarily and the taking of the person was not authorized  
17 by law; or

18 (2) the person voluntarily left the care and  
19 control of the custodian without the custodian's consent and  
20 without intent to return;

21 H. "missing person report" means information that  
22 is:

23 (1) given to a law enforcement agency on a  
24 form used for sending information to the national crime  
25 information center; and

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1 (2) about a person whose whereabouts are  
2 unknown to the reporter and who is alleged in the form  
3 submitted by the reporter to be missing;

4 I. "person" means an individual, regardless of  
5 age;

6 J. "possible match" means the similarities  
7 between an unidentified body of a person and a missing person  
8 that would lead one to believe they are the same person;

9 K. "reporter" means the person who reports a  
10 missing person; and

11 L. "state agency" means an agency of the state,  
12 political subdivision of the state or public post-secondary  
13 educational institution."

14 Section 159. Section 30-3-11 NMSA 1978 (being Laws  
15 1995, Chapter 221, Section 2, as amended) is amended to read:

16 "30-3-11. DEFINITIONS.--As used in the Crimes Against  
17 Household Members Act:

18 A. "household member" means a spouse or domestic  
19 partner, former spouse or former domestic partner or a family  
20 member, including a relative, parent, present or former  
21 step-parent, present or former in-law, a co-parent of a child  
22 or a person with whom a person has had a continuing personal  
23 relationship. Cohabitation is not necessary to be deemed a  
24 household member for the purposes of the Crimes Against  
25 Household Members Act; and

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1           B. "continuing personal relationship" means a  
2 dating or intimate relationship."

3           Section 160. Section 31-1-7 NMSA 1978 (being Laws 1979,  
4 Chapter 178, Section 1, as amended) is amended to read:

5           "31-1-7. ARREST WITHOUT WARRANT--LIABILITY.--

6           A. Notwithstanding the provisions of any other  
7 law to the contrary, a peace officer may arrest a person and  
8 take that person into custody without a warrant when the  
9 officer is at the scene of a domestic disturbance and has  
10 probable cause to believe that the person has committed an  
11 assault or a battery upon a household member. As used in  
12 this section: "household member" means a spouse; domestic  
13 partner; former spouse; former domestic partner; family  
14 member, including a relative, parent, present or former  
15 stepparent, present or former in-law, child or co-parent of a  
16 child; or a person with whom the victim has had a continuing  
17 personal relationship. Cohabitation is not necessary to be  
18 deemed a household member for purposes of this section.

19           B. No peace officer shall be held criminally or  
20 civilly liable for making an arrest pursuant to this section,  
21 provided [~~he~~] the officer acts in good faith and without  
22 malice.

23           C. Whether or not an arrest is made pursuant to  
24 this section, a peace officer may remain with the victim and  
25 assist the victim in getting to a shelter or receiving proper

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1 medical attention."

2 Section 161. Section 31-21-25 NMSA 1978 (being Laws  
3 1975, Chapter 194, Section 4, as amended) is amended to read:

4 "31-21-25. POWERS AND DUTIES OF THE BOARD.--

5 A. The parole board shall have the powers and  
6 duties of the former state board of probation and parole  
7 pursuant to Sections 31-21-6 and 31-21-10 through 31-21-17  
8 NMSA 1978 and such additional powers and duties relating to  
9 the parole of adults as are enumerated in this section.

10 B. The parole board shall have the following  
11 powers and duties to:

12 (1) grant, deny or revoke parole;

13 (2) conduct or cause to be conducted such  
14 investigations, examinations, interviews, hearings and other  
15 proceedings as may be necessary for the effectual discharge  
16 of the duties of the board;

17 (3) summon witnesses, books, papers,  
18 reports, documents or tangible things and administer oaths as  
19 may be necessary for the effectual discharge of the duties of  
20 the board;

21 (4) maintain records of its acts, decisions  
22 and orders and notify each corrections facility of its  
23 decisions relating to persons who are or have been confined  
24 therein;

25 (5) adopt an official seal of which the

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1 courts shall take judicial notice;

2 (6) employ such officers, agents, assistants  
3 and other employees as may be necessary for the effectual  
4 discharge of the duties of the board;

5 (7) contract for services, supplies,  
6 equipment, office space and such other provisions as may be  
7 necessary for the effectual discharge of the duties of the  
8 board; and

9 (8) adopt such rules and regulations as may  
10 be necessary for the effectual discharge of the duties of the  
11 board.

12 C. The parole board shall provide a prisoner or  
13 parolee with a written statement of the reason or reasons for  
14 denying or revoking parole.

15 D. The parole board shall adopt a written policy  
16 specifying the criteria to be considered by the board in  
17 determining whether to grant, deny or revoke parole or to  
18 discharge a parolee.

19 E. When the parole board conducts a parole  
20 hearing for an offender, and upon request of the victim or  
21 family member the board shall allow the victim of the  
22 offender's crime or a family member of the victim to be  
23 present during the parole hearing. If the victim or a family  
24 member of the victim requests an opportunity to speak to the  
25 board during the hearing in public or private, the board

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1 shall grant that request. As used in this subsection,  
2 "family member of the victim" means a mother, father, sister,  
3 brother, child, ~~[or]~~ spouse or domestic partner of the victim  
4 or a person who has custody of the victim."

5 Section 162. Section 31-22-3 NMSA 1978 (being Laws  
6 1981, Chapter 325, Section 3, as amended) is amended to read:

7 "31-22-3. DEFINITIONS.--As used in the Crime Victims  
8 Reparation Act:

9 A. "child" means an unmarried person who is under  
10 the age of majority and includes a stepchild and an adopted  
11 child;

12 B. "collateral source" includes benefits for  
13 economic loss otherwise reparable under the Crime Victims  
14 Reparation Act ~~[which]~~ that the victim or claimant has  
15 received or ~~[which]~~ that are readily available to ~~[him]~~ the  
16 victim or claimant from:

- 17 (1) the offender;
- 18 (2) social security, medicare and medicaid;
- 19 (3) workers' compensation;
- 20 (4) proceeds of a contract of insurance  
21 payable to the victim;
- 22 (5) a contract providing prepaid hospital  
23 and other health care services or benefits for disability,  
24 except for the benefits of any life insurance policy;
- 25 (6) applicable indigent funds; or

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(7) cash donations;

C. "commission" means the crime victims  
reparation commission;

D. "dependents" means those relatives of the  
deceased or disabled victim who are more than fifty percent  
dependent upon the victim's income at the time of ~~[his]~~ the  
victim's death or disability and includes the child of a  
victim born after ~~[his]~~ the victim's death or disability;

E. "family relationship group" means any person  
related to another person within the fourth degree of  
consanguinity or affinity;

F. "injury" means actual bodily harm or  
disfigurement and includes pregnancy and extreme mental  
distress. For the purposes of this subsection, "extreme  
mental distress" means a substantial personal disorder of  
emotional processes, thought or cognition that impairs  
judgment, behavior or ability to cope with the ordinary  
demands of life;

G. "permanent total disability" means loss of  
both legs or arms, loss of one leg and one arm, total loss of  
eyesight, paralysis or other physical condition permanently  
incapacitating the worker from performing any work at any  
gainful occupation;

H. "relative" means a person's spouse, domestic  
partner, parent, grandparent, stepfather, stepmother, child,

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1 grandchild, brother, sister, half-brother, half-sister, [✕]  
2 spouse's parents or domestic partner's parents; and

3 I. "victim" means:

4 (1) a person in New Mexico who is injured or  
5 killed by any act or omission of any other person that is a  
6 crime enumerated in Section 31-22-8 NMSA 1978;

7 (2) a resident of New Mexico who is injured  
8 or killed by such a crime occurring in a state other than New  
9 Mexico if that state does not have an eligible crime victims  
10 compensation program; or

11 (3) a resident of New Mexico who is injured  
12 or killed by an act of international terrorism, as provided  
13 in 18 U.S.C. Section 2331."

14 Section 163. Section 32A-1-11 NMSA 1978 (being Laws  
15 1993, Chapter 77, Section 20, as amended) is amended to read:

16 "32A-1-11. PETITION--FORM AND CONTENT.--A petition  
17 initiating proceedings pursuant to the provisions of  
18 Chapter 32A, Article 2, 3B, 4 or 6 NMSA 1978 shall be  
19 entitled, "In the Matter of ....., a child", and shall  
20 set forth with specificity:

21 A. the facts necessary to invoke the jurisdiction  
22 of the court;

23 B. if violation of a criminal statute or other  
24 law or ordinance is alleged, the citation to the appropriate  
25 law;

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1 C. the name, birth date and residence address of  
2 the child;

3 D. the name and residence address of the parents,  
4 guardian, custodian, [~~or~~] spouse or domestic partner, if any,  
5 of the child; and if no parent, guardian, custodian, [~~or~~]  
6 spouse or domestic partner, if any, resides or can be found  
7 within the state or if a residence address is unknown, the  
8 name of any known adult relative residing within the state  
9 or, if there be none, the known adult relative residing  
10 nearest to the court;

11 E. whether the child is in custody or detention  
12 pursuant to the Delinquency Act and, if so, the place of  
13 custody or detention and the time the child was taken into  
14 custody;

15 F. whether the child is an Indian child; and

16 G. if any of the matters required to be set forth  
17 by this section are not known, a statement of those matters  
18 and the fact that they are not known."

19 Section 164. Section 32A-2-3 NMSA 1978 (being Laws  
20 1993, Chapter 77, Section 32, as amended) is amended to read:

21 "32A-2-3. DEFINITIONS.--As used in the Delinquency Act:

22 A. "delinquent act" means an act committed by a  
23 child that would be designated as a crime under the law if  
24 committed by an adult, including the following offenses:

25 (1) any of the following offenses pursuant

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1 to municipal traffic codes or the Motor Vehicle Code:

2 (a) driving while under the influence  
3 of intoxicating liquor or drugs;

4 (b) failure to stop in the event of an  
5 accident causing death, personal injury or damage to  
6 property;

7 (c) unlawful taking of a vehicle or  
8 motor vehicle;

9 (d) receiving or transferring of a  
10 stolen vehicle or motor vehicle;

11 (e) homicide by vehicle;

12 (f) injuring or tampering with a  
13 vehicle;

14 (g) altering or changing of an engine  
15 number or other vehicle identification numbers;

16 (h) altering or forging of a driver's  
17 license or permit or any making of a fictitious license or  
18 permit;

19 (i) reckless driving;

20 (j) driving with a suspended or  
21 revoked license; or

22 (k) an offense punishable as a felony;

23 (2) buying, attempting to buy, receiving,  
24 possessing or being served any alcoholic liquor or being  
25 present in a licensed liquor establishment, other than a

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1 restaurant or a licensed retail liquor establishment, except  
2 in the presence of the child's parent, guardian, custodian or  
3 adult spouse or domestic partner. As used in this paragraph,  
4 "restaurant" means an establishment where meals are prepared  
5 and served primarily for on-premises consumption and that has  
6 a dining room, a kitchen and the employees necessary for  
7 preparing, cooking and serving meals. "Restaurant" does not  
8 include an establishment, as defined in regulations  
9 promulgated by the director of the special investigations  
10 division of the department of public safety, that serves only  
11 hamburgers, sandwiches, salads and other fast foods;

12 (3) a violation of Section 30-29-2 NMSA  
13 1978, regarding the illegal use of a glue, aerosol spray  
14 product or other chemical substance;

15 (4) a violation of the Controlled Substances  
16 Act;

17 (5) escape from the custody of a law  
18 enforcement officer or a juvenile probation or parole officer  
19 or from any placement made by the department by a child who  
20 has been adjudicated a delinquent child;

21 (6) a violation of Section 30-15-1.1 NMSA  
22 1978 regarding unauthorized graffiti on personal or real  
23 property; or

24 (7) a violation of an order of protection  
25 issued pursuant to the provisions of the Family Violence

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1 Protection Act;

2 B. "delinquent child" means a child who has  
3 committed a delinquent act;

4 C. "delinquent offender" means a delinquent child  
5 who is subject to juvenile sanctions only and who is not a  
6 youthful offender or a serious youthful offender;

7 D. "detention facility" means a place where a  
8 child may be detained under the Children's Code pending court  
9 hearing and does not include a facility for the care and  
10 rehabilitation of an adjudicated delinquent child;

11 E. "felony" means an act that would be a felony  
12 if committed by an adult;

13 F. "misdemeanor" means an act that would be a  
14 misdemeanor or petty misdemeanor if committed by an adult;

15 G. "restitution" means financial reimbursement by  
16 the child to the victim or community service imposed by the  
17 court and is limited to easily ascertainable damages for  
18 injury to or loss of property, actual expenses incurred for  
19 medical, psychiatric and psychological treatment for injury  
20 to a person and lost wages resulting from physical injury,  
21 which are a direct and proximate result of a delinquent act.  
22 "Restitution" does not include reimbursement for damages for  
23 mental anguish, pain and suffering or other intangible  
24 losses. As used in this subsection, "victim" means a person  
25 who is injured or suffers damage of any kind by an act that

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1 is the subject of a complaint or referral to law enforcement  
2 officers or juvenile probation authorities. Nothing  
3 contained in this definition limits or replaces the  
4 provisions of Subsections A and B of Section 32A-2-27 NMSA  
5 1978;

6 H. "serious youthful offender" means an  
7 individual fifteen to eighteen years of age who is charged  
8 with and indicted or bound over for trial for first degree  
9 murder. A "serious youthful offender" is not a delinquent  
10 child as defined pursuant to the provisions of this section;

11 I. "supervised release" means the release of a  
12 juvenile, whose term of commitment has not expired, from a  
13 facility for the care and rehabilitation of adjudicated  
14 delinquent children, with specified conditions to protect  
15 public safety and promote successful transition and  
16 reintegration into the community. A juvenile on supervised  
17 release is subject to monitoring by the department until the  
18 term of commitment has expired and may be returned to custody  
19 for violating conditions of release; and

20 J. "youthful offender" means a delinquent child  
21 subject to adult or juvenile sanctions who is:

22 (1) fourteen to eighteen years of age at the  
23 time of the offense and who is adjudicated for at least one  
24 of the following offenses:

25 (a) second degree murder, as provided

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1 in Section 30-2-1 NMSA 1978;

2 (b) assault with intent to commit a  
3 violent felony, as provided in Section 30-3-3 NMSA 1978;

4 (c) kidnapping, as provided in  
5 Section 30-4-1 NMSA 1978;

6 (d) aggravated battery, as provided in  
7 Subsection C of Section 30-3-5 NMSA 1978;

8 (e) aggravated battery against a  
9 household member, as provided in Subsection C of Section  
10 30-3-16 NMSA 1978;

11 (f) aggravated battery upon a peace  
12 officer, as provided in Subsection C of Section 30-22-25 NMSA  
13 1978;

14 (g) shooting at a dwelling or occupied  
15 building or shooting at or from a motor vehicle, as provided  
16 in Section 30-3-8 NMSA 1978;

17 (h) dangerous use of explosives, as  
18 provided in Section 30-7-5 NMSA 1978;

19 (i) criminal sexual penetration, as  
20 provided in Section 30-9-11 NMSA 1978;

21 (j) robbery, as provided in Section  
22 30-16-2 NMSA 1978;

23 (k) aggravated burglary, as provided  
24 in Section 30-16-4 NMSA 1978;

25 (l) aggravated arson, as provided in

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1 Section 30-17-6 NMSA 1978; or

2 (m) abuse of a child that results in  
3 great bodily harm or death to the child, as provided in  
4 Section 30-6-1 NMSA 1978;

5 (2) fourteen to eighteen years of age at the  
6 time of the offense, who is adjudicated for any felony  
7 offense and who has had three prior, separate felony  
8 adjudications within a three-year time period immediately  
9 preceding the instant offense. The felony adjudications  
10 relied upon as prior adjudications shall not have arisen out  
11 of the same transaction or occurrence or series of events  
12 related in time and location. Successful completion of  
13 consent decrees are not considered a prior adjudication for  
14 the purposes of this paragraph; or

15 (3) fourteen years of age and who is  
16 adjudicated for first degree murder, as provided in Section  
17 30-2-1 NMSA 1978."

18 Section 165. Section 32A-5-3 NMSA 1978 (being Laws  
19 1993, Chapter 77, Section 130, as amended) is amended to  
20 read:

21 "32A-5-3. DEFINITIONS.--As used in the Adoption Act:

22 A. "accrediting entity" means an entity that has  
23 entered into an agreement with the United States secretary of  
24 state pursuant to the federal Intercountry Adoption Act of  
25 2000 and regulations adopted by the United States secretary

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1 of state pursuant to that act, to accredit agencies and  
2 approve persons who provide adoption services related to  
3 convention adoptions;

4 B. "adoptee" means a person who is the subject of  
5 an adoption petition;

6 C. "adoption service" means:

7 (1) identifying a child for adoption and  
8 arranging the adoption of the child;

9 (2) securing termination of parental rights  
10 to a child or consent to adoption of the child;

11 (3) performing a background study on a child  
12 and reporting on the study;

13 (4) performing a home study on a prospective  
14 adoptive parent and reporting on the study;

15 (5) making determinations regarding the best  
16 interests of a child and the appropriateness of an adoptive  
17 placement for the child;

18 (6) performing post-placement monitoring of  
19 a child until an adoption is final; and

20 (7) when there is a disruption before an  
21 adoption of a child is final, assuming custody of the child  
22 and providing or facilitating the provision of child care or  
23 other social services for the child pending an alternative  
24 placement of the child;

25 D. "agency" means a person certified, licensed or

.179346.5GR

1 otherwise specially empowered by law to place a child in a  
2 home in this or any other state for the purpose of adoption;

3 E. "agency adoption" means an adoption when the  
4 adoptee is in the custody of an agency prior to placement;

5 F. "acknowledged father" means a father who:

6 (1) acknowledges paternity of the adoptee  
7 pursuant to the putative father registry, as provided for in  
8 Section 32A-5-20 NMSA 1978;

9 (2) is named, with his consent, as the  
10 adoptee's father on the adoptee's birth certificate;

11 (3) is obligated to support the adoptee  
12 under a written voluntary promise or pursuant to a court  
13 order; or

14 (4) has openly held out the adoptee as his  
15 own child by establishing a custodial, personal or financial  
16 relationship with the adoptee as follows:

17 (a) for an adoptee under six months  
18 old at the time of placement: 1) has initiated an action to  
19 establish paternity; 2) is living with the adoptee at the  
20 time the adoption petition is filed; 3) has lived with the  
21 mother a minimum of ninety days during the two-hundred-  
22 eighty-day-period prior to the birth or placement of the  
23 adoptee; 4) has lived with the adoptee within the ninety days  
24 immediately preceding the adoptive placement; 5) has provided  
25 reasonable and fair financial support to the mother during

.179346.5GR

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1 the pregnancy and in connection with the adoptee's birth in  
2 accordance with [~~his~~] the parent's means and when not  
3 prevented from doing so by the person or authorized agency  
4 having lawful custody of the adoptee or the adoptee's mother;  
5 6) has continuously paid child support to the mother since  
6 the adoptee's birth in an amount at least equal to the amount  
7 provided in Section 40-4-11.1 NMSA 1978, or has brought  
8 current any delinquent child support payments; or 7) any  
9 other factor the court deems necessary to establish a  
10 custodial, personal or financial relationship with the  
11 adoptee; or

12 (b) for an adoptee over six months old  
13 at the time of placement: 1) has initiated an action to  
14 establish paternity; 2) has lived with the adoptee within the  
15 ninety days immediately preceding the adoptive placement; 3)  
16 has continuously paid child support to the mother since the  
17 adoptee's birth in an amount at least equal to the amount  
18 provided in Section 40-4-11.1 NMSA 1978, or is making  
19 reasonable efforts to bring delinquent child support payments  
20 current; 4) has contact with the adoptee on a monthly basis  
21 when physically and financially able and when not prevented  
22 by the person or authorized agency having lawful custody of  
23 the adoptee; or 5) has regular communication with the  
24 adoptee, or with the person or agency having the care or  
25 custody of the adoptee, when physically and financially

.179346.5GR

1 unable to visit the adoptee and when not prevented from doing  
2 so by the person or authorized agency having lawful custody  
3 of the adoptee;

4 G. "alleged father" means an individual whom the  
5 biological mother has identified as the biological father,  
6 but the individual has not acknowledged paternity or  
7 registered with the putative father registry as provided for  
8 in Section 32A-5-20 NMSA 1978;

9 H. "consent" means a document:

10 (1) signed by a biological parent whereby  
11 the parent grants consent to the adoption of the parent's  
12 child by another;

13 (2) whereby the department or an agency  
14 grants its consent to the adoption of a child in its custody;  
15 or

16 (3) signed by the adoptee if the child is  
17 fourteen years of age or older;

18 I. "convention adoption" means:

19 (1) an adoption by a United States resident  
20 of a child who is a resident of a foreign country that is a  
21 party to the Hague Convention on Protection of Children and  
22 Co-operation in Respect of Intercountry Adoption; or

23 (2) an adoption by a resident of a foreign  
24 country that is a party to the Hague Convention on Protection  
25 of Children and Co-operation in Respect of Intercountry

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1 Adoption of a child who is a resident of the United States;

2 J. "counselor" means a person certified by the  
3 department to conduct adoption counseling in independent  
4 adoptions;

5 K. "department adoption" means an adoption when  
6 the child is in the custody of the department;

7 L. "foreign born child" means any child not born  
8 in the United States who is not a citizen of the United  
9 States;

10 M. "former parent" means a parent whose parental  
11 rights have been terminated or relinquished;

12 N. "full disclosure" means mandatory and  
13 continuous disclosure by the investigator, agency, department  
14 or petitioner throughout the adoption proceeding and after  
15 finalization of the adoption of all known, nonidentifying  
16 information regarding the adoptee, including:

- 17 (1) health history;  
18 (2) psychological history;  
19 (3) mental history;  
20 (4) hospital history;  
21 (5) medication history;  
22 (6) genetic history;  
23 (7) physical descriptions;  
24 (8) social history;  
25 (9) placement history; and

.179346.5GR

1 (10) education;

2 O. "independent adoption" means an adoption when  
3 the child is not in the custody of the department or an  
4 agency;

5 P. "investigator" means an individual certified  
6 by the department to conduct pre-placement studies and post-  
7 placement reports;

8 Q. "office" means a place for the regular  
9 transaction of business or performance of particular  
10 services;

11 R. "parental rights" means all rights of a parent  
12 with reference to a child, including parental right to  
13 control, to withhold consent to an adoption or to receive  
14 notice of a hearing on a petition for adoption;

15 S. "placement" means the selection of a family  
16 for an adoptee or matching of a family with an adoptee and  
17 physical transfer of the adoptee to the family in all  
18 adoption proceedings, except in adoptions filed pursuant to  
19 Paragraphs (1) and (2) of Subsection C of Section 32A-5-12  
20 NMSA 1978, in which case placement occurs when the parents  
21 consent to the adoption, parental rights are terminated or  
22 parental consent is implied;

23 T. "post-placement report" means a written  
24 evaluation of the adoptive family and the adoptee after the  
25 adoptee is placed for adoption;

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1 U. "pre-placement study" means a written  
2 evaluation of the adoptive family, the adoptee's biological  
3 family and the adoptee;

4 V. "presumed father" means:

5 (1) the husband or domestic partner of the  
6 biological mother at the time the adoptee was born;

7 (2) an individual who was married to or in a  
8 domestic partnership with the mother and either the adoptee  
9 was born during the term of the marriage or domestic  
10 partnership or the adoptee was born within three hundred days  
11 after the marriage or domestic partnership was terminated by  
12 death, annulment, declaration of invalidity or [~~divorce~~]  
13 dissolution; or

14 (3) before the adoptee's birth, an  
15 individual who attempted to marry the adoptee's biological  
16 mother by a marriage solemnized in apparent compliance with  
17 law or attempted to enter into a domestic partnership in  
18 apparent compliance with law, although the attempted marriage  
19 or attempted domestic partnership is or could be declared  
20 invalid and if the attempted marriage or attempted domestic  
21 partnership:

22 (a) could be declared invalid only by  
23 a court, the adoptee was born during the attempted marriage  
24 or attempted domestic partnership or within three hundred  
25 days after its termination by death, annulment, declaration

.179346.5GR

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1 of invalidity or [~~divorce~~] dissolution; or

2 (b) is invalid without a court order,  
3 the adoptee was born within three hundred days after the  
4 termination of cohabitation;

5 W. "record" means any petition, affidavit,  
6 consent or relinquishment form, transcript or notes of  
7 testimony, deposition, power of attorney, report, decree,  
8 order, judgment, correspondence, document, photograph,  
9 invoice, receipt, certificate or other printed, written,  
10 videotaped or tape-recorded material pertaining to an  
11 adoption proceeding;

12 X. "relinquishment" means the document by which a  
13 parent relinquishes parental rights to the department or an  
14 agency to enable placement of the parent's child for  
15 adoption;

16 Y. "resident" means a person who, prior to filing  
17 an adoption petition, has lived in the state for at least six  
18 months immediately preceding filing of the petition for  
19 adoption or a person who has become domiciled in the state by  
20 establishing legal residence with the intention of  
21 maintaining the residency indefinitely; and

22 Z. "stepparent adoption" means an adoption of the  
23 adoptee by the adoptee's stepparent when the adoptee has  
24 lived with the stepparent for at least one year following the  
25 marriage or entry into a domestic partnership of the

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1 stepparent [~~to~~] and the custodial parent."

2 Section 166. Section 32A-5-11 NMSA 1978 (being Laws  
3 1993, Chapter 77, Section 138) is amended to read:

4 "32A-5-11. WHO MAY BE ADOPTED--WHO MAY ADOPT.--

5 A. Any child may be adopted.

6 B. Residents who are one of the following may  
7 adopt:

8 (1) any individual who has been approved by  
9 the court as a suitable adoptive parent pursuant to the  
10 provisions of the Adoption Act; and

11 (2) a married individual or domestic partner  
12 without the individual's spouse or domestic partner joining  
13 in the adoption if:

14 (a) the nonjoining spouse or domestic  
15 partner is a parent of the adoptee;

16 (b) the individual and the nonjoining  
17 spouse or domestic partner are legally separated; or

18 (c) the failure of the nonjoining  
19 spouse or domestic partner to join in the adoption is excused  
20 for reasonable circumstances as determined by the court.

21 C. Nonresidents who meet the criteria of  
22 Subsection B of this section may adopt in New Mexico if the  
23 adoptee is a resident of New Mexico or was born in New Mexico  
24 but is less than six months of age and was placed by the  
25 department or an agency licensed by the state of New Mexico."

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1           Section 167. Section 32A-5-12 NMSA 1978 (being Laws  
2 1993, Chapter 77, Section 139, as amended) is amended to  
3 read:

4           "32A-5-12. PLACEMENT FOR ADOPTION--RESTRICTIONS--FULL  
5 DISCLOSURE.--

6           A. No petition for adoption shall be granted by  
7 the court unless the adoptee was placed in the home of the  
8 petitioner for the purpose of adoption:

9                       (1) by the department;

10                      (2) by an appropriate public authority of  
11 another state;

12                      (3) by an agency; or

13                      (4) pursuant to a court order, as provided  
14 in Section 32A-5-13 NMSA 1978.

15           B. The provisions of Subsection A of this section  
16 do not apply to a child in the department's custody who is  
17 being adopted pursuant to the provisions of the Abuse and  
18 Neglect Act.

19           C. When an adoptee is not in the custody of the  
20 department or an agency, the adoption is an independent  
21 adoption and the provisions of this section and Section  
22 32A-5-13 NMSA 1978 shall apply, except when the following  
23 circumstances exist:

24                      (1) a stepparent of the adoptee seeks to  
25 adopt the adoptee and, prior to the filing of the adoption

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1 petition, the adoptee has lived with the stepparent for at  
2 least one year since the marriage or entry into the domestic  
3 partnership of the stepparent [tø] and the custodial parent  
4 and the family has received counseling, as provided for in  
5 Section 32A-5-22 NMSA 1978;

6 (2) a relative within the fifth degree of  
7 consanguinity to the adoptee or that relative's spouse or  
8 domestic partner seeks to adopt the adoptee and, prior to the  
9 filing of the adoption petition, the adoptee has lived with  
10 the relative or the relative's spouse or domestic partner for  
11 at least one year; or

12 (3) a person designated to care for the  
13 adoptee in the will of the adoptee's deceased parent seeks to  
14 adopt the adoptee and, prior to the filing of the adoption  
15 petition, the adoptee has lived with that person for at least  
16 one year.

17 D. All placements shall be made by the  
18 department, an agency or the parent of the adoptee pursuant  
19 to Section 32A-5-13 NMSA 1978.

20 E. In all adoptions, prior to any placement being  
21 made, the person making the placement shall provide full  
22 disclosure."

23 Section 168. Section 32A-5-13 NMSA 1978 (being Laws  
24 1993, Chapter 77, Section 140, as amended) is amended to  
25 read:

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1 "32A-5-13. INDEPENDENT ADOPTIONS--REQUEST FOR  
2 PLACEMENT--PLACEMENT ORDER--CERTIFICATION.--

3 A. When a placement order is required, the  
4 petitioner shall file a request with the court to allow the  
5 placement. An order permitting the placement shall be  
6 obtained prior to actual placement.

7 B. Only a pre-placement study that has been  
8 prepared or updated within one year immediately prior to the  
9 date of placement, approving the petitioner as an appropriate  
10 adoptive parent, shall be filed with the court prior to  
11 issuance of a placement order, except as provided in  
12 Subsection C of Section 32A-5-12 NMSA 1978.

13 C. In order for a person to be certified to  
14 conduct pre-placement studies, the person shall meet the  
15 standards promulgated by the department. If the child is an  
16 Indian child, the person shall meet the standards set forth  
17 in the federal Indian Child Welfare Act of 1978.

18 D. The pre-placement study shall be conducted by  
19 an agency or a person certified by the department to conduct  
20 the study. A person or agency that wants to be certified to  
21 perform pre-placement studies shall file documents verifying  
22 their qualifications with the department. The department  
23 shall publish a list of persons or agencies certified to  
24 conduct a pre-placement study. If necessary to defray  
25 additional costs associated with compiling the list, the

.179346.5GR

1 department may assess and charge a reasonable administrative  
2 fee to the person or agency listed.

3 E. When a person or agency that wants to be  
4 certified to perform pre-placement studies files false  
5 documentation with the department, the person or agency shall  
6 be subject to the provisions of Section 32A-5-42 NMSA 1978.

7 F. A request for placement shall be filed and  
8 verified by the petitioner and shall allege:

9 (1) the full name, age and place and  
10 duration of residence of the petitioner and, if married or in  
11 a domestic partnership, the place and date of marriage or  
12 entry into the domestic partnership;

13 (2) the date and place of birth of the  
14 adoptee, if known, or the anticipated date and place of birth  
15 of the adoptee;

16 (3) a detailed statement of the  
17 circumstances and persons involved in the proposed placement;

18 (4) if the adoptee has been born, the  
19 address where the adoptee is residing at the time of the  
20 request for placement;

21 (5) if the adoptee has been born, the places  
22 where the adoptee has lived within the past three years and  
23 the names and addresses of the persons with whom the adoptee  
24 has lived. If the adoptee is in the custody of an agency or  
25 the department, the address shall be the address of the

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1 agency or the county office of the department from which the  
2 child was placed;

3 (6) the existence of any court orders that  
4 are known to the petitioner and that regulate custody,  
5 visitation or access to the adoptee, copies of which shall be  
6 attached to the request for placement as exhibits; if copies  
7 of any such court orders are unavailable at the time of  
8 filing the request for placement, the copies shall be filed  
9 prior to the issuance of the order of placement;

10 (7) that the petitioner desires to establish  
11 a parent and child relationship between the petitioner and  
12 the adoptee and that the petitioner is a fit and proper  
13 person able to care and provide for the adoptee's welfare;

14 (8) the relationship, if any, of the  
15 petitioner to the adoptee;

16 (9) whether the adoptee is subject to the  
17 federal Indian Child Welfare Act of 1978, and, if so, the  
18 petition shall allege the actions taken to comply with the  
19 federal Indian Child Welfare Act of 1978 and all other  
20 allegations required pursuant to that act;

21 (10) whether the adoption is subject to the  
22 Interstate Compact on the Placement of Children and what  
23 specific actions have been taken to comply with the  
24 Interstate Compact on the Placement of Children; and

25 (11) the name, address and telephone number

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1 of the agency or investigator who has agreed to do the pre-  
2 placement study.

3 G. The request for placement shall be served on  
4 all parties entitled to receive notice of the filing of a  
5 petition for adoption, as provided in Section 32A-5-27 NMSA  
6 1978. An order allowing placement may be entered prior to  
7 service of the request for placement.

8 H. A hearing and the court decision on the  
9 request for placement shall occur within thirty days of the  
10 filing of the request.

11 I. As part of any court order authorizing  
12 placement under this section, the court shall find whether  
13 the pre-placement study complies with Section 32A-5-14 NMSA  
14 1978 and that the time requirements concerning placement set  
15 forth in this section have been met."

16 Section 169. Section 32A-5-20 NMSA 1978 (being Laws  
17 1993, Chapter 77, Section 147, as amended) is amended to  
18 read:

19 "32A-5-20. PUTATIVE FATHER REGISTRY--NOTICE--PENALTY.--

20 A. The purpose of the putative father registry is  
21 to protect the parental rights of fathers who affirmatively  
22 assume responsibility for children they may have fathered and  
23 to expedite adoptions of children whose biological fathers  
24 are unwilling to assume responsibility for their children by  
25 registering with the putative father registry or otherwise

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1 acknowledging their children. The registry does not relieve  
2 the obligation of mothers to identify known fathers.

3 B. A putative father registry shall be  
4 established by the department of health to record the names  
5 and addresses of:

6 (1) any person adjudicated by a court of  
7 this state to be the father of a child;

8 (2) any person who has filed with the  
9 registry, before or after birth of a child out of wedlock or  
10 outside of a domestic partnership, a notice of intent to  
11 claim paternity of the child;

12 (3) any person who has filed with the  
13 registry an instrument acknowledging paternity; or

14 (4) any person adjudicated by a court of  
15 another state or territory of the United States to be the  
16 father of an out-of-wedlock a child born out of wedlock or  
17 outside of a domestic partnership, when a certified copy of  
18 the court order has been filed with the registry.

19 C. A person filing a notice of intent to claim  
20 paternity of a child or an acknowledgment of paternity shall  
21 include in the notice the following:

22 (1) his name;

23 (2) his current address;

24 (3) the mother's name and any other  
25 identifying information requested by the department of

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1 health; and

2 (4) the child's name, if known, and any  
3 other identifying information requested by the department of  
4 health.

5 D. If the person filing the notice of intent to  
6 claim paternity of a child or acknowledgment changes his  
7 address, the person shall notify the department of health of  
8 his new address in the manner prescribed by the department of  
9 health.

10 E. A person who has filed a notice of intent to  
11 claim paternity may at any time revoke a notice of intent to  
12 claim paternity previously filed. Upon receipt by the  
13 registry of the notice of revocation, the revoked notice of  
14 intent to claim paternity shall be deemed a nullity nunc pro  
15 tunc.

16 F. No registration fee shall be charged for  
17 registering the intent to claim paternity of a child or  
18 acknowledgment of paternity. The department of health may  
19 charge a reasonable fee as prescribed by regulation for  
20 processing searches of the putative father registry.

21 G. An unrevoked notice of intent to claim  
22 paternity of a child may be introduced in evidence by any  
23 party in any proceeding in which that fact may be relevant.

24 H. If a father-child relationship has not been  
25 established pursuant to the New Mexico Uniform Parentage Act,

.179346.5GR

1 a petitioner for adoption of or termination of parental  
2 rights regarding a child shall obtain a certificate of search  
3 of the putative father registry.

4 I. If a petitioner for adoption of or termination  
5 of parental rights regarding a child has reason to believe  
6 that the conception or birth of the child may have occurred  
7 in another state, the petitioner shall also obtain a  
8 certificate of search from the putative father registry, if  
9 any, in that state.

10 J. The department of health shall furnish to the  
11 requester a certificate of search of the registry on request  
12 of any court, a state agency, the department, the  
13 petitioner's attorney or the mother of the child. The  
14 information shall not be disclosed to any other person,  
15 except upon order of the court for good cause shown. The  
16 requester shall furnish the department with a stamped, self-  
17 addressed reply envelope.

18 K. A certificate provided by the department of  
19 health shall be signed on behalf of the department of health  
20 and state that:

21 (1) a search has been made of the registry;  
22 and

23 (2) a registration containing the  
24 information required to identify the registrant:

25 (a) has been found and is attached to

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1 the certificate of search; or

2 (b) has not been found.

3 L. A petitioner shall file the certificate of  
4 search with the district court before a proceeding for  
5 adoption of or termination of parental rights regarding a  
6 child may be concluded.

7 M. Subject to any rules established by the New  
8 Mexico supreme court, a certificate of search of the registry  
9 of paternity in this or another state is admissible in a  
10 proceeding for adoption of or termination of parental rights  
11 regarding a child and, if relevant, in other legal  
12 proceedings.

13 N. The department of health may promulgate any  
14 regulations or forms necessary to implement the provisions of  
15 this section.

16 O. Any person who intentionally and unlawfully  
17 releases information from the putative father registry to the  
18 public or makes any other unlawful use of the information in  
19 violation of the provisions of this section is guilty of a  
20 petty misdemeanor and shall be sentenced pursuant to the  
21 provisions of Section 31-19-1 NMSA 1978."

22 Section 170. Section 32A-5-26 NMSA 1978 (being Laws  
23 1993, Chapter 77, Section 153, as amended by Laws 2003,  
24 Chapter 294, Section 4 and by Laws 2003, Chapter 321, Section  
25 4) is amended to read:

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1 "32A-5-26. PETITION--CONTENT.--A petition for adoption  
2 shall be filed and verified by the petitioner and shall  
3 allege:

4 A. the full name, age and place and duration of  
5 residence of the petitioner and, if married or in a domestic  
6 partnership, the place and date of marriage or entry into the  
7 domestic partnership; the date and place of any prior  
8 marriage, prior domestic partnership, separation, or  
9 [~~divorce~~] dissolution; and the name of any present or prior  
10 spouse or present or prior domestic partner;

11 B. the date and place of birth of the adoptee, if  
12 known;

13 C. the places where the adoptee has lived within  
14 the past three years and the names and addresses of the  
15 persons with whom the adoptee has lived, unless the adoptee  
16 is in the custody of an agency or the department, in which  
17 case the petitioner shall state the name and address of the  
18 agency or the department's county office from which the child  
19 was placed;

20 D. the birth name of the adoptee, any other names  
21 by which the adoptee has been known and the adoptee's  
22 proposed new name; provided that in the case of an agency  
23 adoption, if the petitioner and the biological parents have  
24 not agreed to the release of the adoptee's identity to the  
25 other person, the birth name and any other names by which the

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1 adoptee has been known shall be filed with the court as  
2 separate documents at the time the petition is filed;

3 E. where the adoptee is residing at the time of  
4 the filing of the petition and, if the adoptee is not living  
5 with the petitioner, when the adoptee will commence living  
6 with the petitioner;

7 F. that the petitioner desires to establish a  
8 parent and child relationship with the adoptee and that the  
9 petitioner is a fit and proper person able to care and  
10 provide for the adoptee's welfare;

11 G. the existence of any court orders, including  
12 placement orders, that are known to the petitioner and that  
13 regulate custody, visitation or access to the adoptee, copies  
14 of which shall accompany and be attached to the petition as  
15 exhibits;

16 H. the relationship, if any, of the petitioner to  
17 the adoptee;

18 I. the name and address of the placing agency, if  
19 any;

20 J. the names and addresses of all persons from  
21 whom consents or relinquishments are required, attaching  
22 copies of those obtained and alleging the facts that excuse  
23 or imply the consents or relinquishments of the others;  
24 provided that if the petitioner has not agreed to the release  
25 of [his] the petitioner's identity to the parent or if the

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1 parent has not agreed to the release of [~~his~~] the parent's  
2 identity to the petitioner, the names and addresses of all  
3 persons from whom consents or relinquishments are required  
4 shall be filed with the court as separate documents at the  
5 time the petition for adoption is filed;

6 K. whether the adoption will be an open adoption,  
7 pursuant to the provisions of Section 32A-5-35 NMSA 1978;

8 L. when consent of the child's father is alleged  
9 to be unnecessary, the results of a search of the putative  
10 father registry;

11 M. whether the adoptee is an Indian child and, if  
12 so, the petition shall allege:

13 (1) the tribal affiliation of the adoptee's  
14 parents;

15 (2) what specific actions have been taken  
16 and by whom to notify the parents' tribe and the results of  
17 the contact, including the names, addresses, titles and  
18 telephone numbers of the persons contacted. Copies of any  
19 correspondence with the Indian tribe shall be attached as  
20 exhibits to the petition; and

21 (3) what specific efforts were made to  
22 comply with the placement preferences set forth in the  
23 federal Indian Child Welfare Act of 1978 or the placement  
24 preferences of the appropriate Indian tribe;

25 N. whether the adoption is subject to the

.179346.5GR

1 Interstate Compact on the Placement of Children and, if so, a  
2 copy of the interstate compact form indicating approval shall  
3 be attached as an exhibit to the petition;

4 O. whether the adoptee is foreign-born and, if  
5 so, copies of the child's passport and United States visa and  
6 of all documents demonstrating that the adoptee is legally  
7 free for adoption, including a certificate from the United  
8 States secretary of state that certifies that the adoption is  
9 a convention adoption;

10 P. whether the adoption is a convention adoption  
11 and, if so, the petition shall allege:

12 (1) that the country in which the child has  
13 been residing is a party to the Hague Convention on  
14 Protection of Children and Co-operation in Respect of  
15 Intercountry Adoption;

16 (2) that the agency or person who is  
17 providing the adoption service has been approved as an  
18 accrediting entity; and

19 (3) that the certificate issued by the  
20 United States secretary of state that certifies the adoption  
21 as a convention adoption has been filed with the court; and

22 Q. the name, address and telephone number of the  
23 agency or individual who has agreed to conduct the post-  
24 placement report in accordance with Section 32A-5-31 NMSA  
25 1978, if different than the agency or individual who prepared

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1 the pre-placement study in accordance with Section 32A-5-13  
2 NMSA 1978."

3 Section 171. Section 32A-5-27 NMSA 1978 (being Laws  
4 1993, Chapter 77, Section 154, as amended) is amended to  
5 read:

6 "32A-5-27. NOTICE OF PETITION--FORM OF SERVICE--  
7 WAIVER.--

8 A. The petition for adoption shall be served by  
9 the petitioner on the following, unless it has been  
10 previously waived in writing:

11 (1) the department, by providing a copy to  
12 the court clerk for service pursuant to Section 32A-5-7 NMSA  
13 1978;

14 (2) any person, agency or institution whose  
15 consent or relinquishment is required by Section 32A-5-17  
16 NMSA 1978, unless the notice has been previously waived;

17 (3) any acknowledged father of the adoptee;

18 (4) the legally appointed custodian or  
19 guardian of the adoptee;

20 (5) the spouse or domestic partner of any  
21 petitioner who has not joined in the petition;

22 (6) the spouse or domestic partner of the  
23 adoptee;

24 (7) the surviving parent of a deceased  
25 parent of the adoptee;

.179346.5GR

1 (8) any person known to the petitioner  
2 having custody of or visitation with the adoptee under a  
3 court order;

4 (9) any person in whose home the child has  
5 resided for at least two months within the preceding six  
6 months;

7 (10) the agency or individual authorized to  
8 investigate the adoption under Section 32A-5-13 NMSA 1978;  
9 and

10 (11) any other person designated by the  
11 court.

12 B. Notice shall not be served on the following:

13 (1) an alleged father; and

14 (2) a person whose parental rights have been  
15 relinquished or terminated.

16 C. The petitioner shall provide the clerk of the  
17 court with a copy of the petition for adoption, to be mailed  
18 to the department pursuant to the provisions of Section  
19 32A-5-7 NMSA 1978.

20 D. In an adoption in which the adoptee is an  
21 Indian child, in addition to the notice required pursuant to  
22 Subsection A of this section, notice of pendency of the  
23 adoption proceeding shall be served by the petitioner on the  
24 appropriate Indian tribe and on an "Indian custodian"  
25 pursuant to the provisions of the federal Indian Child

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1 Welfare Act of 1978.

2 E. The notice shall state that the person served  
3 shall respond to the petition within twenty days if the  
4 person intends to contest the adoption and shall state that  
5 the failure to so respond shall be treated as a default and  
6 the person's consent to the adoption shall not be required.  
7 Provided, however, that this provision shall not apply to an  
8 agency, the department or an investigator preparing the  
9 post-placement report pursuant to Section 32A-5-31 NMSA 1978.  
10 If an agency, the department or an investigator preparing the  
11 post-placement report wants to contest the adoption, it shall  
12 notify the court within twenty days after completion of the  
13 post-placement report.

14 F. Service shall be made pursuant to the Rules of  
15 Civil Procedure for the District Courts. If the whereabouts  
16 of a parent whose consent is required is unknown, the  
17 investigator, department or agency charged with investigating  
18 the adoption under Section 32A-5-13 NMSA 1978 shall  
19 investigate the whereabouts of the parent and shall file by  
20 affidavit the results of the investigation with the court.  
21 Upon a finding by the court that information as to the  
22 whereabouts of a parent has been sufficiently investigated  
23 and is still insufficient to effect service in accordance  
24 with the Rules of Civil Procedure for the District Courts,  
25 the court shall issue an order providing for service by

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1 publication.

2 G. As to any other person for whom notice is  
3 required under Subsection A of this section, service by  
4 certified mail, return receipt requested, shall be  
5 sufficient. If the service cannot be completed after two  
6 attempts, the court shall issue an order providing for  
7 service by publication.

8 H. The notice required by this section may be  
9 waived in writing by the person entitled to notice.

10 I. Proof of service of the notice on all persons  
11 for whom notice is required by this section shall be filed  
12 with the court before any hearing adjudicating the rights of  
13 the persons."

14 Section 172. Section 32A-5-32 NMSA 1978 (being Laws  
15 1993, Chapter 77, Section 159, as amended) is amended to  
16 read:

17 "32A-5-32. STEPPARENT ADOPTIONS.--

18 A. Any person may adopt [~~his~~] that person's  
19 spouse's child or that person's domestic partner's child in  
20 accordance with the provisions of the Adoption Act.

21 B. When the adoptee has lived with [~~his~~] a  
22 stepparent for at least one year following the stepparent's  
23 marriage to or entry into a domestic partnership with the  
24 custodial parent:

25 (1) placement shall not be required pursuant

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1 to Section 32A-5-12 NMSA 1978;

2 (2) a pre-placement study or post-placement  
3 report shall not be required unless ordered by the court;

4 (3) and when the stepparent and the  
5 custodial parent have been married or in a domestic  
6 partnership for less than two years, counseling shall be  
7 required for the stepparent and the custodial parent;

8 (4) the noncustodial parent shall receive  
9 counseling unless counseling is waived;

10 (5) the adoptee, if ten years of age or  
11 older, shall receive counseling;

12 (6) a criminal records check shall be  
13 conducted on a stepparent pursuant to the provisions of  
14 Section 32A-5-14 NMSA 1978;

15 (7) a report of fees and charges shall not  
16 be prepared, unless ordered by the court pursuant to Section  
17 32A-5-34 NMSA 1978;

18 (8) the court may waive the ninety-day  
19 period between the filing of the petition for adoption and  
20 issuance of the decree of adoption; and

21 (9) [~~when adopted~~] the adoptee, when  
22 adopted, shall take the name designated in the adoption  
23 petition, so long as the petitioner's spouse or domestic  
24 partner and the adoptee, if ten years of age or older,  
25 consent to the name.

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1           C. When an adoptee has not lived with the  
2 stepparent for more than one year following the stepparent's  
3 marriage to or entry into a domestic partnership with the  
4 custodial parent, the adoption shall proceed as an  
5 independent adoption."

6           Section 173. Section 32A-5-37 NMSA 1978 (being Laws  
7 1993, Chapter 77, Section 164, as amended) is amended to  
8 read:

9           "32A-5-37. STATUS OF ADOPTEE AND PETITIONER UPON ENTRY  
10 OF DECREE OF ADOPTION.--

11           A. Once adopted, an adoptee shall take a name  
12 designated by the petitioner, except in stepparent adoptions.  
13 In stepparent adoptions, the adoptee shall take the new name  
14 designated by the petitioner in the petition so long as the  
15 petitioner's spouse or domestic partner and the child, if  
16 over the age of fourteen years, consent to the new name. The  
17 name change need not be requested in the petition.

18           B. After adoption, the adoptee and the petitioner  
19 shall sustain the legal relation of parent and child as if  
20 the adoptee were the biological child of the petitioner and  
21 the petitioner were the biological parent of the child. The  
22 adoptee shall have all rights and be subject to all of the  
23 duties of that relation, including the right of inheritance  
24 from and through the petitioner, and the petitioner shall  
25 have all rights and be subject to all duties of that

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1 relation, including right of inheritance from and through the  
2 adoptee."

3 Section 174. Section 32A-6A-18 NMSA 1978 (being Laws  
4 2007, Chapter 162, Section 18) is amended to read:

5 "32A-6A-18. INDIVIDUAL INSTRUCTIONS.--

6 A. A child fourteen years of age or older who has  
7 capacity also has the right to direct the child's own  
8 treatment in the event of later incapacity. To do so, the  
9 child may give an individual instruction regarding the  
10 child's own treatment or habilitation. The individual  
11 instruction may be limited to take effect only if a specified  
12 condition arises.

13 B. An individual instruction shall be effective  
14 without judicial approval and shall be written and signed by  
15 the child and the child's legal custodian and signed by a  
16 witness who is at least eighteen years of age and who attests  
17 that the child and the child's legal custodian are known to  
18 the witness, that they signed the individual instruction for  
19 mental health treatment in the witness' presence and that  
20 they appear to have capacity and are not acting under duress,  
21 fraud or undue influence.

22 C. A witness to an individual instruction shall  
23 not be related to the child or the child's legal custodian by  
24 blood, ~~[or]~~ marriage or domestic partnership the child's  
25 attending qualified health care professional or an owner,

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1 operator or employee of a mental health facility at which the  
2 child is receiving care or of any parent organization,  
3 subsidiary or contractor of the mental health facility.

4 D. If the child's legal custodian refuses to  
5 consent to the individual instruction, the child may petition  
6 the court for determination of whether the individual  
7 instruction is in the child's best interest.

8 E. A child's legal custodian or treatment  
9 guardian shall make treatment decisions in accordance with  
10 the child's individual instruction unless the treatment  
11 requested is infeasible or unavailable or would not offer the  
12 child any significant benefit as determined by the child's  
13 clinician.

14 F. The individual instruction shall be  
15 implemented by the child's legal custodian under this section  
16 only upon certification that the child lacks capacity. The  
17 instruction shall cease to be effective upon a determination  
18 that the child has recovered capacity.

19 G. Written certification that a child lacks or  
20 has recovered capacity or that another condition exists that  
21 affects an individual instruction shall be made according to  
22 the provisions of the Children's Mental Health and  
23 Developmental Disabilities Act. A child while having  
24 capacity may revoke all or part of an individual instruction  
25 for mental health treatment at any time and in any manner

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1 that communicates an intent to revoke.

2 H. The fact that a child has executed a written  
3 individual instruction for treatment shall not constitute an  
4 indication of mental illness.

5 I. A clinician who knows the existence of an  
6 individual instruction for mental health treatment, a  
7 revocation or a challenge to a determination or certification  
8 of lack of capacity shall obtain a copy and shall place it in  
9 the child's health care record.

10 J. A clinician shall disclose an individual  
11 instruction for mental health treatment to other clinicians  
12 only when it is determined that the disclosure is necessary  
13 to provide treatment in accordance with an individual  
14 instruction."

15 Section 175. Section 32A-21-5 NMSA 1978 (being Laws  
16 1995, Chapter 206, Section 51) is amended to read:

17 "32A-21-5. OVER THE AGE OF MAJORITY--PURPOSES.--An  
18 emancipated minor shall be considered as being over the age  
19 of majority for one or more of the following purposes:

20 A. consenting to medical, dental or psychiatric  
21 care without parental consent, knowledge or liability;

22 B. [his] capacity to enter into a binding  
23 contract;

24 C. [his] capacity to sue and be sued in [his] the  
25 minor's own name;

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- 1           D. [~~his~~] right to support by [~~his~~] the minor's  
2 parents;
- 3           E. the rights of [~~his~~] the minor's parents to  
4 [~~his~~] the minor's earnings and to control [~~him~~] the minor;
- 5           F. establishing [~~his~~] the minor's own residence;
- 6           G. buying or selling real property;
- 7           H. ending all vicarious liability of the minor's  
8 parents, guardian or custodian for the minor's torts;  
9 provided that nothing in this section shall affect any  
10 liability of a parent, guardian, custodian, spouse, domestic  
11 partner or employer of a minor imposed by the Motor Vehicle  
12 Code or any vicarious liability that arises from an agency  
13 relationship; or
- 14           I. enrolling in any school or college."

15           Section 176. Section 33-2-12.1 NMSA 1978 (being Laws  
16 1983, Chapter 97, Section 1) is amended to read:

17           "33-2-12.1. CORRECTIONS--FAMILY VISITS.--The secretary  
18 of corrections may promulgate rules and regulations providing  
19 for family visits between minimum or medium security inmates  
20 confined at state correctional facilities and their families.  
21 As used in this section:

22           A. "family" means the inmate's legal spouse or  
23 domestic partner, natural parents, adoptive parents, if the  
24 adoption occurred and a family relationship existed prior to  
25 the inmate's incarceration, stepparents or foster parents,

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1 grandparents, brothers and sisters, natural and adoptive  
2 children, stepchildren and grandchildren. The term does not  
3 include the inmate's aunts, uncles and cousins unless a bona  
4 fide foster relationship exists, nor does it include persons  
5 with only a common law relationship to the inmate; and

6 B. "family visit" means extended and overnight  
7 visitation between eligible inmates and their families with  
8 all necessary accommodations provided by the corrections  
9 department for this purpose at a reasonable charge to the  
10 inmate or [~~his~~] the inmate's family to defray the costs of  
11 the accommodations. Families shall be required to provide  
12 food for the visit or, if security requires, to purchase all  
13 food for the visit from the department."

14 Section 177. Section 34-7-20 NMSA 1978 (being Laws  
15 1889, Chapter 90, Section 42, as amended) is amended to read:

16 "34-7-20. RECORD OF DECEDENTS' ESTATES.--The county  
17 clerk shall keep a record or docket additional to the other  
18 records required by law, showing as follows:

19 A. the name of every decedent whose estate is  
20 administered and the date of [~~his~~] the decedent's death;

21 B. the names of all of the heirs and devisees and  
22 the surviving spouse or surviving domestic partner of the  
23 decedent and their ages and places of residence, so far as  
24 [~~the same~~] can be ascertained; and

25 C. a note of every sale of real estate made under

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1 the order of the court, with a reference to the volume and  
2 page of the court record where a complete record [~~thereof~~] of  
3 the sale may be found."

4 Section 178. Section 35-12-7 NMSA 1978 (being Laws  
5 1969, Chapter 139, Section 6, as amended) is amended to read:

6 "35-12-7. GARNISHMENT--EXEMPTIONS.--

7 A. Exempt from garnishment with respect to the  
8 enforcement of an order or decree for child support is fifty  
9 percent of the defendant's disposable earnings for any pay  
10 period. Exempt from garnishment in all other situations is  
11 the greater of the following portions of the defendant's  
12 disposable earnings:

13 (1) seventy-five percent of the defendant's  
14 disposable earnings for any pay period; or

15 (2) an amount each week equal to forty times  
16 the federal minimum hourly wage rate. The director of the  
17 financial institutions division of the regulation and  
18 licensing department shall provide a table giving equivalent  
19 exemptions for pay periods of other than one week.

20 B. As used in this section:

21 (1) "disposable earnings" means that part of  
22 a defendant's wage or salary remaining after deducting the  
23 amounts [~~which~~] that are required by law to be withheld; and

24 (2) "federal minimum hourly wage rate" means  
25 the highest federal minimum hourly wage rate for an eight-

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1 hour day and a forty-hour week. However, it is immaterial  
2 whether the garnishee is exempt under federal law from paying  
3 the federal minimum hourly wage rate.

4 C. The maximum amount [~~which~~] that may be taken  
5 from a spouse's or a domestic partner's disposable earnings  
6 under both the garnishment procedure and the wage deduction  
7 procedure for the enforcement of child support is fifty  
8 percent of the spouse's or domestic partner's disposable  
9 earnings."

10 Section 179. Section 37-2-3 NMSA 1978 (being Laws 1897,  
11 Chapter 73, Section 130, as amended) is amended to read:

12 "37-2-3. NO ABATEMENT--MARRIAGE--DOMESTIC PARTNERSHIP--  
13 CONVICTION--IMPRISONMENT.--[~~SEC. 197.~~] No action shall abate  
14 by the marriage or entry into domestic partnership or  
15 conviction of crime of a party if the cause of action  
16 [~~survive or continue~~] survives or continues, but the court  
17 may order the [~~same~~] action to proceed, and an action may be  
18 brought or prosecuted to final judgment against any person in  
19 prison for crime regardless of [~~such~~] the imprisonment."

20 Section 180. Section 38-1-16 NMSA 1978 (being Laws  
21 1959, Chapter 153, Section 1, as amended) is amended to read:

22 "38-1-16. PERSONAL SERVICE OF PROCESS OUTSIDE STATE.--

23 A. Any person, whether or not a citizen or  
24 resident of this state, who in person or through an agent  
25 does any of the acts enumerated in this subsection [~~thereby~~],

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1 submits [~~himself~~] or [~~his~~] the person's personal  
2 representative submits to the jurisdiction of the courts of  
3 this state as to any cause of action arising from:

4 (1) the transaction of any business within  
5 this state;

6 (2) the operation of a motor vehicle upon  
7 the highways of this state;

8 (3) the commission of a tortious act within  
9 this state;

10 (4) the contracting to insure any person,  
11 property or risk located within this state at the time of  
12 contracting; or

13 (5) with respect to actions for [~~divorce~~]  
14 dissolution of marriage or domestic partnership, separate  
15 maintenance or annulment, the circumstance of living in the  
16 marital or domestic partnership relationship within the  
17 state, notwithstanding subsequent departure from the state,  
18 as to all obligations arising from [~~alimony~~] spousal or  
19 domestic partner support, child support or real or personal  
20 property settlements under Chapter [22] 40, Article [~~7-NMSA~~  
21 ~~1953~~] 4 or Chapter 40A, Article 5 NMSA 1978 if one party to  
22 the marital or domestic partnership relationship continues to  
23 reside in the state.

24 B. Service of process may be made upon any person  
25 subject to the jurisdiction of the courts of this state under

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1 this section by personally serving the summons upon the  
2 defendant outside this state and such service has the same  
3 [~~force and~~] effect as though service had been personally made  
4 within this state.

5 C. Only causes of action arising from acts  
6 enumerated in this section may be asserted against a  
7 defendant in an action in which jurisdiction is based upon  
8 this section.

9 D. Nothing contained in this section limits or  
10 affects the right to serve any process in any other manner  
11 [~~now or hereafter~~] provided by law."

12 Section 181. Section 38-6-6 NMSA 1978 (being Laws 1880,  
13 Chapter 12, Section 7, as amended) is amended to read:

14 "38-6-6. PRIVILEGED COMMUNICATIONS.--

15 A. No husband shall be compelled to disclose any  
16 communication made by his wife during the marriage, and no  
17 wife shall be compelled to disclose any communication made  
18 [~~to her~~] by her husband during the marriage.

19 B. No domestic partner shall be compelled to  
20 disclose any communication made by the other domestic partner  
21 during their domestic partnership.

22 [~~B.~~] C. An attorney cannot, without the consent  
23 of [~~his~~] the attorney's client, be examined as to any  
24 communication made by the client to [~~him or his~~] the attorney  
25 or advice given [~~thereon~~] by the attorney in the course of

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1 professional employment; nor can an attorney's secretary,  
2 stenographer or clerk be examined, without the consent of  
3 ~~[his employer]~~ the attorney, concerning any fact the  
4 knowledge of which has been acquired in such capacity.

5 ~~[G.]~~ D. In the courts of the state, no certified  
6 public accountant or public accountant shall be permitted to  
7 disclose information obtained in the conduct of any  
8 examination, audit or other investigation made in a  
9 professional capacity or ~~[which]~~ that may have been disclosed  
10 to ~~[said]~~ the accountant by a client, without the consent in  
11 writing of ~~[such]~~ the client or ~~[his, her or its]~~ the  
12 client's successors or legal representatives.

13 ~~[D.]~~ E. If a person offers ~~[himself as]~~ to be a  
14 witness and voluntarily testifies with reference to the  
15 communications specified in this section, that is a consent  
16 to the examination of the person to whom the communications  
17 were made as ~~[above]~~ provided in this section."

18 Section 182. Section 40-4A-2 NMSA 1978 (being Laws  
19 1985, Chapter 105, Section 2, as amended) is amended to read:

20 "40-4A-2. DEFINITIONS.--As used in the Support  
21 Enforcement Act:

22 A. "authorized quasi-judicial officer" means a  
23 person appointed by the court pursuant to Rule 53(a) of the  
24 Rules of Civil Procedure for the District Courts;

25 B. "consumer reporting agency" means any person

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1 who, for monetary fees, dues or on a cooperative nonprofit  
2 basis, regularly engages in whole or in part in the practice  
3 of assembling or evaluating consumer credit information or  
4 other information on consumers for the purpose of furnishing  
5 consumer reports to third parties and who uses any means or  
6 facility of interstate commerce for the purpose of preparing  
7 or furnishing consumer reports;

8 C. "delinquency" means any payment under an order  
9 for support [~~which~~] that has become due and is unpaid;

10 D. "department" means the human services  
11 department;

12 E. "income" means any form of periodic payment to  
13 an obligor, regardless of source, including [~~but not limited~~  
14 ~~to~~] wages, salary, commission, compensation as an independent  
15 contractor, workers' compensation benefits, disability  
16 benefits, annuity and retirement benefits or other benefits,  
17 bonuses, interest or any other payments made by any person,  
18 but does not include:

19 (1) any amounts required by law to be  
20 withheld, other than creditor claims, including [~~but not~~  
21 ~~limited to~~] federal, state and local taxes, social security  
22 and other retirement and disability contributions;

23 (2) union dues;

24 (3) any amounts exempted by federal law; or

25 (4) public assistance payments;

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1 F. "notice of delinquency" means the notice of  
2 delinquency as provided for in Section 40-4A-4 NMSA 1978;

3 G. "notice to withhold income" means a notice  
4 that requires the payor to withhold from the obligor money  
5 necessary to meet the obligor's duty under an order for  
6 support and, in the event of a delinquency, requires the  
7 payor to withhold an additional amount to be applied  
8 [~~towards~~] toward the reduction of the delinquency;

9 H. "obligor" means the person who owes a duty to  
10 make payments under an order for support;

11 I. "obligee" means any person who is entitled to  
12 receive support under an order for support or that person's  
13 legal representative;

14 J. "order for support" means any order [~~which~~]  
15 that has been issued by any judicial, quasi-judicial or  
16 administrative entity of competent jurisdiction of any state  
17 and which order provides for:

18 (1) periodic payment of funds for the  
19 support of a child, a domestic partner or a spouse;

20 (2) modification or resumption of payment of  
21 support;

22 (3) payment of delinquency; or

23 (4) reimbursement of support;

24 K. "payor" means any person or entity who  
25 provides income to an obligor;

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1 L. "person" means an individual, corporation,  
2 partnership, governmental agency, public office or other  
3 entity; and

4 M. "public office" means the state disbursement  
5 unit of the department as defined in Section 454B of the  
6 Social Security Act."

7 Section 183. Section 40-9-2 NMSA 1978 (being Laws 1993,  
8 Chapter 93, Section 3, as amended) is amended to read:

9 "40-9-2. CHILDREN--VISITATION BY GRANDPARENT--  
10 PETITION--MEDIATION.--

11 A. In rendering a judgment of dissolution of  
12 marriage or domestic partnership, legal separation or the  
13 existence of the parent and child relationship pursuant to  
14 the provisions of the New Mexico Uniform Parentage Act, or at  
15 any time after the entry of the judgment, the district court  
16 may grant reasonable visitation privileges to a grandparent  
17 of a minor child, not in conflict with the child's education  
18 or prior established visitation or time-sharing privileges.

19 B. If one or both parents of a minor child are  
20 deceased, any grandparent of the minor child may petition the  
21 district court for visitation privileges with respect to the  
22 minor. The district court may order temporary visitation  
23 privileges until a final order regarding visitation  
24 privileges is issued by the court.

25 C. If a minor child resided with a grandparent

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1 for a period of at least three months and the child was less  
2 than six years of age at the beginning of the three-month  
3 period and the child was subsequently removed from the  
4 grandparent's home by the child's parent or any other person,  
5 the grandparent may petition the district court for  
6 visitation privileges with respect to the child, if the  
7 child's home state is New Mexico, as provided in the [~~Child~~  
8 ~~Custody Jurisdiction~~] Uniform Child-Custody Jurisdiction and  
9 Enforcement Act.

10 D. If a minor child resided with a grandparent  
11 for a period of at least six months and the child was six  
12 years of age or older at the beginning of the six-month  
13 period and the child was subsequently removed from the  
14 grandparent's home by the child's parent or any other person,  
15 the grandparent may petition the district court for  
16 visitation privileges with respect to the child, if the  
17 child's home state is New Mexico, as provided in the [~~Child~~  
18 ~~Custody Jurisdiction~~] Uniform Child-Custody Jurisdiction and  
19 Enforcement Act.

20 E. A biological grandparent may petition the  
21 district court for visitation privileges with respect to a  
22 grandchild when the grandchild has been adopted or adoption  
23 is sought, pursuant to the provisions of the Adoption Act,  
24 by:

- 25 (1) a stepparent;

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- 1 (2) a relative of the grandchild;
- 2 (3) a person designated to care for the
- 3 grandchild in the provisions of a deceased parent's will; or
- 4 (4) a person who sponsored the grandchild at
- 5 a baptism or confirmation conducted by a recognized religious
- 6 organization.

7 F. When a minor child is adopted by a stepparent  
8 and the parental rights of the natural parent terminate or  
9 are relinquished, the biological grandparents are not  
10 precluded from attempting to establish visitation privileges.  
11 When a petition filed pursuant to the provisions of the  
12 Grandparent's Visitation Privileges Act is filed during the  
13 pendency of an adoption proceeding, the petition shall be  
14 filed as part of the adoption proceedings. The provisions of  
15 the Grandparent's Visitation Privileges Act shall have no  
16 application in the event of a relinquishment or termination  
17 of parental rights in cases of other statutory adoption  
18 proceedings.

19 G. When considering a grandparent's petition for  
20 visitation privileges with a child, the district court shall  
21 assess:

- 22 (1) any factors relevant to the best
- 23 interests of the child;
- 24 (2) the prior interaction between the
- 25 grandparent and the child;

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1 (3) the prior interaction between the  
2 grandparent and each parent of the child;

3 (4) the present relationship between the  
4 grandparent and each parent of the child;

5 (5) time-sharing or visitation arrangements  
6 that were in place prior to filing of the petition;

7 (6) the effect the visitation with the  
8 grandparent will have on the child;

9 (7) if the grandparent has any prior  
10 convictions for physical, emotional or sexual abuse or  
11 neglect; and

12 (8) if the grandparent has previously been a  
13 full-time caretaker for the child for a significant period.

14 H. The district court may order mediation and  
15 evaluation in any matter when a grandparent's visitation  
16 privileges with respect to a minor child are at issue. When  
17 a judicial district has established a domestic relations  
18 mediation program pursuant to the provisions of the Domestic  
19 Relations Mediation Act, the mediation shall conform with the  
20 provisions of that act. Upon motion and hearing, the  
21 district court shall act promptly on the recommendations set  
22 forth in a mediation report and consider assessment of  
23 mediation and evaluation to the parties. The district court  
24 may order temporary visitation privileges until a final order  
25 regarding visitation privileges is issued by the court.

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1 I. When the district court decides that  
2 visitation is not in the best interest of the child, the  
3 court may issue an order requiring other reasonable contact  
4 between the grandparent and the child, including regular  
5 communication by telephone, mail or any other reasonable  
6 means.

7 J. The provisions of the [~~Child-Custody~~  
8 ~~Jurisdiction~~] Uniform Child-Custody Jurisdiction and  
9 Enforcement Act and Section 30-4-4 NMSA 1978, regarding  
10 custodial interference, are applicable to the provisions of  
11 the Grandparent's Visitation Privileges Act."

12 Section 184. Section 40-11A-102 NMSA 1978 (being Laws  
13 2009, Chapter 215, Section 1-102) is amended to read:

14 "40-11A-102. DEFINITIONS.--As used in the New Mexico  
15 Uniform Parentage Act:

16 A. "acknowledged father" means a man who has  
17 established a father-child relationship pursuant to [~~Article~~]  
18 Part 3 of the New Mexico Uniform Parentage Act;

19 B. "adjudicated father" means a man who has been  
20 adjudicated by a court of competent jurisdiction to be the  
21 father of a child;

22 C. "alleged father" means a man who alleges  
23 himself to be, or is alleged to be, the genetic father or a  
24 possible genetic father of a child, but whose paternity has  
25 not been determined. "Alleged father" does not include:

.179346.5GR

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- 1 (1) a presumed father;
- 2 (2) a man whose parental rights have been
- 3 terminated or declared not to exist; or
- 4 (3) a male donor;

5 D. "assisted reproduction" means a method of  
6 causing pregnancy other than sexual intercourse. "Assisted  
7 reproduction" includes:

- 8 (1) intrauterine insemination;
- 9 (2) donation of eggs;
- 10 (3) donation of embryos;
- 11 (4) in-vitro fertilization and transfer of
- 12 embryos; and
- 13 (5) intracytoplasmic sperm injection;

14 E. "bureau" means the vital records and health  
15 statistics bureau of the department of health;

16 F. "child" means a person of any age whose  
17 parentage may be determined pursuant to the New Mexico  
18 Uniform Parentage Act;

19 G. "commence" means to file the initial pleading  
20 seeking an adjudication of parentage in district court;

21 H. "determination of parentage" means the  
22 establishment of the parent-child relationship by the signing  
23 of a valid acknowledgment of paternity pursuant to Article  
24 Part 3 of the New Mexico Uniform Parentage Act or  
25 adjudication by the court;

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1 I. "donor" means a person who produces eggs or  
2 sperm used for assisted reproduction, whether or not for  
3 consideration. "Donor" does not include:

4 (1) a husband who provides sperm, or a wife  
5 who provides eggs, to be used for assisted reproduction by  
6 the wife;

7 (2) a domestic partner who provides sperm or  
8 eggs to be used for assisted reproduction by a domestic  
9 partner who is a woman;

10 [~~(2)~~] (3) a woman who gives birth to a child  
11 by means of assisted reproduction; or

12 [~~(3)~~] (4) a parent pursuant to [~~Article~~]  
13 Part 7 of the New Mexico Uniform Parentage Act;

14 J. "ethnic or racial group" means, for purposes  
15 of genetic testing, a recognized group that a person  
16 identifies as all or part of the person's ancestry or that is  
17 so identified by other information;

18 K. "genetic testing" means an analysis of genetic  
19 markers to exclude or identify a man as the father or a woman  
20 as the mother of a child. "Genetic testing" includes an  
21 analysis of one or a combination of the following:

22 (1) deoxyribonucleic acid; and

23 (2) blood-group antigens, red-cell antigens,  
24 human-leukocyte antigens, serum enzymes, serum proteins or  
25 red-cell enzymes;

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1 L. "man" means a male person of any age;

2 M. "parent" means a person who has established a  
3 parent-child relationship pursuant to Section [~~2-201 of the~~  
4 ~~New Mexico Uniform Parentage Act~~] 40-11A-201 NMSA 1978;

5 N. "parent-child relationship" means the legal  
6 relationship between a child and a parent of the child,  
7 including the mother-child relationship and the father-child  
8 relationship;

9 O. "paternity index" means the likelihood of  
10 paternity calculated by computing the ratio between:

11 (1) the likelihood that the tested man is  
12 the father, based on the genetic markers of the tested man,  
13 mother and child, conditioned on the hypothesis that the  
14 tested man is the father of the child; and

15 (2) the likelihood that the tested man is  
16 not the father, based on the genetic markers of the tested  
17 man, mother and child, conditioned on the hypothesis that the  
18 tested man is not the father of the child and that the father  
19 is of the same ethnic or racial group as the tested man;

20 P. "presumed father" means a man who, by  
21 operation of law pursuant to Section [~~2-204 of the New Mexico~~  
22 ~~Uniform Parentage Act~~] 40-11A-204 NMSA 1978, is recognized as  
23 the father of a child until that status is rebutted or  
24 confirmed in a judicial proceeding;

25 Q. "probability of paternity" means the measure,  
.179346.5GR

1 for the ethnic or racial group to which the alleged father  
2 belongs, of the probability that the man in question is the  
3 father of the child, compared with a random, unrelated man of  
4 the same ethnic or racial group, expressed as a percentage  
5 incorporating the paternity index and a prior probability;

6 R. "record" means information that is inscribed  
7 on a tangible medium or that is stored in an electronic or  
8 other medium and is retrievable in perceivable form;

9 S. "signatory" means a person who signs or  
10 otherwise authenticates a record and is bound by its terms;

11 T. "state" means a state of the United States,  
12 the District of Columbia, Puerto Rico, the United States  
13 Virgin Islands or any territory or insular possession subject  
14 to the jurisdiction of the United States; and

15 U. "support-enforcement agency" means the human  
16 services department designated pursuant to Section 27-2-27  
17 NMSA 1978 as the single state agency for the enforcement of  
18 child and spousal support obligations pursuant to Title IV D  
19 of the federal Social Security Act and any other public  
20 official or agency authorized to seek:

21 (1) enforcement of support orders or laws  
22 relating to the duty of support;

23 (2) establishment or modification of child  
24 support;

25 (3) determination of parentage; or

.179346.5GR

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1 (4) location of child-support obligors and  
2 their income and assets."

3 Section 185. Section 40-11A-201 NMSA 1978 (being Laws  
4 2009, Chapter 215, Section 2-201) is amended to read:

5 "40-11A-201. ESTABLISHMENT OF PARENT-CHILD  
6 RELATIONSHIP.--

7 A. The mother-child relationship is established  
8 between a woman and a child by:

9 (1) the woman's having given birth to the  
10 child;

11 (2) an adjudication of the woman's  
12 maternity; or

13 (3) adoption of the child by the woman;

14 B. The father-child relationship is established  
15 between a man and a child by:

16 (1) an un rebutted presumption of the man's  
17 paternity of the child pursuant to Section [~~2-204 of the New~~  
18 ~~Mexico Uniform Parentage Act~~] 40-11A-204 NMSA 1978;

19 (2) an effective acknowledgment of paternity  
20 by the man pursuant to [~~Article~~] Part 3 of the New Mexico  
21 Uniform Parentage Act, unless the acknowledgment has been  
22 rescinded or successfully challenged;

23 (3) an adjudication of the man's paternity;

24 or

25 (4) adoption of the child by the man [~~or~~].

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1                    [~~5~~] C. A parent-child relationship is  
2 established between a person and a child by the [man's]  
3 person's having consented to assisted reproduction by a woman  
4 pursuant to [~~Article~~] Part 7 of the New Mexico Uniform  
5 Parentage Act that resulted in the birth of the child."

6                    Section 186. Section 40-11A-204 NMSA 1978 (being Laws  
7 2009, Chapter 215, Section 2-204) is amended to read:

8                    "40-11A-204. PRESUMPTION OF PATERNITY.--

9                    A. A man is presumed to be the father of a child  
10 if:

11                    (1) he and the mother of the child are  
12 married to or in a domestic partnership with each other and  
13 the child is born during the marriage or domestic  
14 partnership;

15                    (2) he and the mother of the child were  
16 married to or in a domestic partnership with each other and  
17 the child is born within three hundred days after the  
18 marriage or domestic partnership is terminated by death,  
19 annulment, declaration of invalidity or [~~divorce~~] dissolution  
20 or after a decree of separation;

21                    (3) before the birth of the child, he and  
22 the mother of the child married each other or entered into a  
23 domestic partnership with each other in apparent compliance  
24 with law, even if the attempted marriage or domestic  
25 partnership is or could be declared invalid, and the child is

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1 born during the invalid marriage or domestic partnership or  
2 within three hundred days after its termination by death,  
3 annulment, declaration of invalidity or [~~divorce~~] dissolution  
4 or after a decree of separation;

5 (4) after the birth of the child, he and the  
6 mother of the child married each other or entered into a  
7 domestic partnership with each other in apparent compliance  
8 with law, whether or not the marriage or domestic partnership  
9 is or could be declared invalid, and he voluntarily asserted  
10 his paternity of the child, and:

11 (a) the assertion is in an  
12 acknowledgement of paternity on a form provided by the bureau  
13 that is filed with the bureau;

14 (b) he agreed to be and is named as  
15 the child's father on the child's birth certificate; or

16 (c) he promised in a record to support  
17 the child as his own; or

18 (5) for the first two years of the child's  
19 life, he resided in the same household with the child and  
20 openly held out the child as his own.

21 B. A presumption of paternity established  
22 pursuant to this section may be rebutted only by an  
23 adjudication pursuant to [~~Article~~] Part 6 of the New Mexico  
24 Uniform Parentage Act. Rebuttal of a presumption of  
25 paternity pursuant to the New Mexico Uniform Parentage Act

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1 does not apply to a presumption of paternity established  
2 pursuant to the Adoption Act."

3 Section 187. Section 40-11A-637 NMSA 1978 (being Laws  
4 2009, Chapter 215, Section 6-637) is amended to read:

5 "40-11A-637. BINDING EFFECT OF DETERMINATION OF  
6 PARENTAGE.--

7 A. Except as otherwise provided in Subsection B  
8 of this section, a determination of parentage is binding on:

9 (1) all signatories to an acknowledgment or  
10 denial of paternity as provided in ~~Article~~ Part 3 of the  
11 New Mexico Uniform Parentage Act; and

12 (2) all parties to an adjudication by a  
13 district court acting under circumstances that satisfy the  
14 jurisdictional requirements of Section 40-6A-201 NMSA 1978.

15 B. A child is not bound by a determination of  
16 parentage pursuant to the New Mexico Uniform Parentage Act  
17 unless:

18 (1) the determination was based on an  
19 unrescinded acknowledgment of paternity and the  
20 acknowledgment is consistent with the results of genetic  
21 testing;

22 (2) the adjudication of parentage was based  
23 on a finding consistent with the results of genetic testing  
24 and the consistency is declared in the determination or is  
25 otherwise shown;

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1 (3) the child was a party or was represented  
2 in the proceeding determining parentage by a guardian ad  
3 litem; or

4 (4) there was a final order in the  
5 proceeding that satisfies the requirements of Paragraph (1),  
6 (2) or (3) of Subsection C of this section.

7 C. In a proceeding to dissolve a marriage or a  
8 domestic partnership, the district court is deemed to have  
9 made an adjudication of the parentage of a child if the  
10 district court acts under circumstances that satisfy the  
11 jurisdictional requirements of Section 40-6A-201 NMSA 1978,  
12 and the final order:

13 (1) expressly identifies a child as a "child  
14 of the marriage", "child of the domestic partnership", "issue  
15 of the marriage", "issue of the domestic partnership", "child  
16 of the parties" or similar words indicating that the husband  
17 or domestic partner is the [~~father~~] parent of the child;

18 (2) provides for support of the child by the  
19 husband or domestic partner unless paternity is specifically  
20 disclaimed in the order; or

21 (3) contains a stipulation or admission that  
22 the parties are the parents of the child.

23 D. Except as otherwise provided in Subsection B  
24 of this section, a determination of parentage may be a  
25 defense in a subsequent proceeding seeking to adjudicate

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1 parentage by a person who was not a party to the earlier  
2 proceeding.

3 E. A party to an adjudication of paternity may  
4 challenge the adjudication only pursuant to the laws of New  
5 Mexico relating to appeal, vacation of judgments or other  
6 judicial review."

7 Section 188. Section 40-11A-705 NMSA 1978 (being Laws  
8 2009, Chapter 215, Section 7-705) is amended to read:

9 "40-11A-705. LIMITATION ON HUSBAND'S OR DOMESTIC  
10 PARTNER'S DISPUTE OF [PATERNITY] PARENTAGE.--

11 A. Except as otherwise provided in Subsection B  
12 of this section, the husband or domestic partner of a [~~wife~~]  
13 woman who gives birth to a child by means of assisted  
14 reproduction shall not challenge [~~his paternity~~] the  
15 husband's or domestic partner's parentage of the child  
16 unless:

17 (1) within two years after learning of the  
18 birth of the child, [~~he~~] the husband or domestic partner  
19 commences a proceeding to adjudicate [~~his paternity~~] the  
20 husband's or domestic partner's parentage; and

21 (2) the district court finds that [~~he~~] the  
22 husband or domestic partner did not consent to the assisted  
23 reproduction, before or after birth of the child.

24 B. A proceeding to adjudicate [~~paternity~~]  
25 parentage may be maintained at any time if the district court

.179346.5GR

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1 determines that:

2 (1) the husband or domestic partner did not  
3 provide sperm for or, before or after the birth of the child,  
4 consent to assisted reproduction by [~~his~~] the wife or  
5 domestic partner;

6 (2) the husband or domestic partner and the  
7 mother of the child have not cohabited since the probable  
8 time of assisted reproduction; and

9 (3) the husband or domestic partner never  
10 openly held out the child as [~~his~~] the husband's or domestic  
11 partner's own.

12 C. The limitation provided in this section  
13 applies to a marriage or domestic partnership dissolved or  
14 declared invalid after assisted reproduction."

15 Section 189. Section 40-11A-706 NMSA 1978 (being Laws  
16 2009, Chapter 215, Section 7-706) is amended to read:

17 "40-11A-706. EFFECT OF DISSOLUTION OF MARRIAGE OR  
18 DOMESTIC PARTNERSHIP OR WITHDRAWAL OF CONSENT.--

19 A. If a marriage or domestic partnership is  
20 dissolved before placement of eggs, sperm or embryos, the  
21 former spouse or former domestic partner is not a parent of  
22 the resulting child unless the former spouse or former  
23 domestic partner consented in a signed record that if  
24 assisted reproduction were to occur after a [~~divorce~~]  
25 dissolution of the marriage or domestic partnership the

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1 former spouse or former domestic partner would be a parent of  
2 the child.

3 B. Unless otherwise agreed in a signed record,  
4 the consent of a woman or a man to assisted reproduction may  
5 be withdrawn by that person in a signed record delivered to  
6 the other person at any time before placement of eggs, sperm  
7 or embryos if the placement has not occurred within one year  
8 after the consent. A person who withdraws consent pursuant  
9 to this section is not a parent of the resulting child."

10 Section 190. Section 40-11A-707 NMSA 1978 (being Laws  
11 2009, Chapter 215, Section 7-707) is amended to read:

12 "40-11A-707. PARENTAL STATUS OF DECEASED PERSON.--If a  
13 person who consented in a record to be a parent by assisted  
14 reproduction dies before placement of eggs, sperm or embryos,  
15 the deceased person is not a parent of the resulting child  
16 unless the deceased spouse or deceased domestic partner  
17 consented in a signed record that if assisted reproduction  
18 were to occur after death, the deceased person would be a  
19 parent of the child."

20 Section 191. Section 40-13-2 NMSA 1978 (being Laws  
21 1987, Chapter 286, Section 2, as amended) is amended to read:

22 "40-13-2. DEFINITIONS.--As used in the Family Violence  
23 Protection Act:

24 A. "co-parents" means persons who have a child in  
25 common, regardless of whether they have been married or in a

.179346.5GR

1 domestic partnership or have lived together at any time;

2 B. "court" means the district court of the  
3 judicial district where an alleged victim of domestic abuse  
4 resides or is found;

5 C. "domestic abuse":

6 (1) means an incident of stalking or sexual  
7 assault whether committed by a household member or not;

8 (2) means an incident by a household member  
9 against another household member consisting of or resulting  
10 in:

- 11 (a) physical harm;
- 12 (b) severe emotional distress;
- 13 (c) bodily injury or assault;
- 14 (d) a threat causing imminent fear of  
15 bodily injury by any household member;
- 16 (e) criminal trespass;
- 17 (f) criminal damage to property;
- 18 (g) repeatedly driving by a residence  
19 or work place;
- 20 (h) telephone harassment;
- 21 (i) harassment; or
- 22 (j) harm or threatened harm to  
23 children as set forth in this paragraph; and

24 (3) does not mean the use of force in self-  
25 defense or the defense of another;

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1           D. "household member" means a spouse or domestic  
2 partner; former spouse or former domestic partner; family  
3 member, including a relative, parent, present or former  
4 stepparent, present or former in-law, child or co-parent of a  
5 child; or a person with whom the petitioner has had a  
6 continuing personal relationship. Cohabitation is not  
7 necessary to be deemed a household member for purposes of  
8 this section;

9           E. "mutual order of protection" means an order of  
10 protection that includes provisions that protect both  
11 parties;

12           F. "order of protection" means an injunction or a  
13 restraining or other court order granted for the protection  
14 of a victim of domestic abuse;

15           G. "protected party" means a person protected by  
16 an order of protection; and

17           H. "restrained party" means a person who is  
18 restrained by an order of protection."

19           Section 192. Section 40-14-5 NMSA 1978 (being Laws  
20 1993, Chapter 296, Section 5) is amended to read:

21           "40-14-5. WHO MAY BE ADOPTED--WHO MAY ADOPT.--

22           A. Any adult may be adopted.

23           B. Residents who are one of the following may  
24 adopt:

25           (1) any adult who has been approved by the

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1 court as a suitable adoptive parent pursuant to the  
2 provisions of the Adult Adoption Act; ~~[or]~~

3 (2) a married adult, without the spouse of  
4 the married adult joining in the adoption if:

5 (a) the non-joining spouse is a parent  
6 of the adoptee;

7 (b) the adult who is adopting and the  
8 non-joining spouse are legally separated; or

9 (c) the failure of the non-joining  
10 spouse to join in the adoption is excused for reasonable  
11 circumstances as determined by the court; or

12 (3) an adult in a domestic partnership,  
13 without the other domestic partner joining in the adoption  
14 if:

15 (a) the non-joining domestic partner  
16 is a parent of the adoptee;

17 (b) the adult who is adopting and the  
18 non-joining domestic partner are legally separated; or

19 (c) the failure of the non-joining  
20 domestic partner to join in the adoption is excused for  
21 reasonable circumstances as determined by the court."

22 Section 193. Section 41-2-3 NMSA 1978 (being Laws 1882,  
23 Chapter 61, Section 3, as amended) is amended to read:

24 "41-2-3. PERSONAL REPRESENTATIVE TO BRING ACTION--  
25 DAMAGES--DISTRIBUTION OF PROCEEDS.--Every action mentioned in  
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1 Section 41-2-1 NMSA 1978 shall be brought by and in the name  
2 of the personal representative of the deceased person, and  
3 the jury in every such action may give such damages,  
4 compensatory and exemplary, as they deem fair and just,  
5 taking into consideration the pecuniary injury resulting from  
6 the death to the surviving party entitled to the judgment, or  
7 any interest in the judgment, recovered in such action and  
8 also having regard to the mitigating or aggravating  
9 circumstances attending the wrongful act, neglect or default.  
10 The proceeds of any judgment obtained in any such action  
11 shall not be liable for any debt of the deceased; provided  
12 the decedent has left a spouse, domestic partner, child,  
13 father, mother, brother, sister or child or children of the  
14 deceased child, as defined in the [~~New Mexico~~] Uniform  
15 Probate Code, but shall be distributed as follows:

16 A. if there is a surviving spouse or surviving  
17 domestic partner and no child, then to the spouse or domestic  
18 partner;

19 B. if there is a surviving spouse or surviving  
20 domestic partner and a child or grandchild, then one-half to  
21 the surviving spouse or surviving domestic partner and the  
22 remaining one-half to the children and grandchildren,  
23 the grandchildren taking by right of representation;

24 C. if there is no husband or wife or domestic  
25 partner, but a child or grandchild, then to such child and

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1 grandchild by right of representation;

2 D. if the deceased is a minor, childless and  
3 [~~unmarried~~] not married or in a domestic partnership, then to  
4 the father and mother who shall have an equal interest in the  
5 judgment, or if either of them is dead, then to the survivor;

6 E. if there is no father, mother, husband, wife,  
7 domestic partner, child or grandchild, then to a surviving  
8 brother or sister if there are any; and

9 F. if there is no kindred as named in Subsections  
10 A through E of this section, then the proceeds of the  
11 judgment shall be disposed of in the manner authorized by law  
12 for the disposition of the personal property of deceased  
13 persons."

14 Section 194. Section 41-2-4 NMSA 1978 (being Laws 1882,  
15 Chapter 61, Section 1, as amended) is amended to read:

16 "41-2-4. DEATH CAUSED BY RAILROAD, STAGECOACH OR PUBLIC  
17 CONVEYANCE--ACTION FOR DAMAGES--DEFENSE.--Whenever any person  
18 [~~shall die~~] dies from any injury resulting from or occasioned  
19 by the negligence, unskillfulness or criminal intent of any  
20 officer, agent, servant or employee, [~~whilst~~] while running,  
21 conducting or managing any locomotive, car or train of cars,  
22 or of any driver of any stagecoach or other public  
23 conveyance, while in charge of the same as driver, and when  
24 any passenger [~~shall die~~] dies from injury resulting from or  
25 occasioned by any defect or insufficiency in any railroad or

.179346.5GR

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1 any part thereof, or in any locomotive or car, or in any  
2 stagecoach or other public conveyance, the corporation or  
3 individual [~~or individuals~~] in whose employ any such officer,  
4 agent, servant, employee, engineer or driver [~~shall be~~] is at  
5 the time [~~such~~] the injury was committed, or who owns any  
6 such railroad, locomotive, car, stagecoach or other public  
7 conveyance, at the time any injury is received resulting from  
8 or occasioned by any defect, insufficiency, negligence,  
9 [~~unskillfulness~~] unskillfulness or criminal intent [~~above~~  
10 ~~declared~~], shall be liable in damages. Damages may be  
11 compensatory and exemplary, for such sum as a jury may deem  
12 fair and just, taking into consideration the pecuniary injury  
13 [~~or injuries~~] resulting from [~~such~~] the death to the  
14 surviving party [~~or parties~~] entitled to the judgment or any  
15 interest therein recovered in such action and also having  
16 regard to the mitigating or aggravating circumstances  
17 attending such defect or insufficiency, which may be sued and  
18 recovered; first by the [~~husband or wife~~] spouse or domestic  
19 partner of the deceased; or second, if there [~~be~~] is no  
20 [~~husband or wife~~] spouse or domestic partner or if [~~he or~~  
21 ~~she~~] the spouse or domestic partner fails to sue within six  
22 months after [~~such~~] the death, then by the minor child or  
23 children of the deceased; or third, if [~~such~~] the deceased  
24 [~~be~~] is a minor and [~~unmarried~~] not married or in a domestic  
25 partnership, then by the father and mother; or fourth, if the

.179346.5GR

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1 deceased has reached the age of majority and is [~~unmarried~~  
2 not married or in a domestic partnership, by a dependent  
3 father or mother or dependent brother or sister, who may join  
4 in the suit; and each shall have an equal interest in the  
5 judgment; or if either of them [~~be~~] is dead, then by the  
6 survivor. In the event there are no such persons entitled to  
7 sue or in the event suit is not brought by any such persons  
8 within nine months after [~~such~~] the death, suit may be  
9 brought by the personal representative [~~or representatives~~]  
10 of [~~such~~] the deceased person."

11 Section 195. Section 42-10-13 NMSA 1978 (being Laws  
12 1975, Chapter 246, Section 1) is amended to read:

13 "42-10-13. CLAIM OF EXEMPTION OR PRIORITY.--Any person  
14 desiring to claim that property is exempt from execution or  
15 is subject to execution only after other property is used to  
16 satisfy a debt under the provisions of Sections [~~57-4A-4 and~~  
17 ~~57-4A-5 NMSA 1953~~] 40-3-10 and 40-3-11 or 40A-3-10 and  
18 40A-3-12 NMSA 1978 shall file [~~his~~] a claim or exemption or  
19 priority in the appropriate court, or the right to claim such  
20 exemption is waived as between a spouse or domestic partner  
21 and the creditor."

22 Section 196. Section 43-1-12 NMSA 1978 (being Laws  
23 1977, Chapter 279, Section 11, as amended) is amended to  
24 read:

25 "43-1-12. EXTENDED COMMITMENT OF ADULTS.--

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1           A. A physician or evaluation facility may file a  
2 petition for extended commitment within twenty-one days after  
3 the beginning of the thirty-day commitment. The petition  
4 shall explain the necessity for extended commitment, specify  
5 the treatment that has been provided during the evaluation  
6 and include an individual treatment plan for the proposed  
7 commitment period. The petition shall list the prospective  
8 witnesses for commitment and a summary of the matters to  
9 which they will testify. Copies of the petition shall be  
10 served on the client, the client's guardian, and treatment  
11 guardian if one has been appointed, and the client's  
12 attorney.

13           B. A hearing shall be held upon the petition  
14 prior to the expiration of the thirty-day commitment period,  
15 at which the client shall have all rights granted to the  
16 client under Section 43-1-11 NMSA 1978 and in addition shall  
17 have a right to a trial by a six-person jury, if requested,  
18 and to an expeditious appeal, unless waived.

19           C. A court-appointed guardian for an adult  
20 involved in an involuntary commitment proceeding shall have  
21 automatic standing to appear at all stages of the proceeding  
22 and shall be allowed to testify by telephone or through  
23 affidavit if circumstances make live testimony too  
24 burdensome.

25           D. The court shall include in its findings the

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1 guardian's opinion regarding the need for involuntary  
2 treatment or a statement detailing the efforts made to  
3 ascertain the guardian's opinion.

4 E. If, at the conclusion of the hearing, the  
5 fact-finder determines by clear and convincing evidence that  
6 the client presents a likelihood of harm to the client's self  
7 or to others, that extended treatment is likely to improve  
8 the client's condition and that the proposed extended  
9 commitment is consistent with the least drastic means  
10 principle, the court shall order commitment of the client for  
11 a period not to exceed six months, except that when the  
12 client has been committed for two consecutive periods of  
13 commitment, any commitment commencing thereafter shall not  
14 exceed one year. At the expiration of the commitment order,  
15 the client may be detained only after a new commitment  
16 hearing, unless waived after consultation with the client's  
17 attorney, and entry of a new order for commitment not to  
18 exceed six months.

19 F. A client involuntarily referred for treatment  
20 pursuant to this section shall be entitled to a reexamination  
21 of the order for the client's involuntary referral for  
22 treatment on the client's own petition, or that of the  
23 client's legal guardian, parent, spouse, domestic partner,  
24 relative or friend, to the district court of the county in  
25 which the client resides or is detained. Upon receipt of the

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1 petition, the court shall conduct a proceeding in accordance  
2 with this section, except that a proceeding shall not be  
3 required to be conducted if the petition is filed sooner than  
4 sixty days after the issuance of the order for involuntary  
5 referral for treatment or sooner than sixty days after the  
6 filing of a previous petition under this subsection.

7 G. Nothing in this section shall limit the right of  
8 a client to petition the court for a writ of habeas corpus.

9 H. Nothing in this code shall prohibit a client  
10 from seeking voluntary admission under Section 43-1-14 NMSA  
11 1978.

12 I. No mental health treatment facility is required  
13 to detain, treat or provide services to a client when the  
14 client does not require such detention, treatment or  
15 services."

16 Section 197. Section 43-1-13 NMSA 1978 (being Laws  
17 1977, Chapter 279, Section 12, as amended) is amended to  
18 read:

19 "43-1-13. INVOLUNTARY COMMITMENT OF DEVELOPMENTALLY  
20 DISABLED ADULTS TO RESIDENTIAL CARE.--

21 A. A guardian appointed pursuant to the Uniform  
22 Probate Code may file an application with an evaluation  
23 facility seeking residential habilitation services for the  
24 protected person. The application shall set forth the basis  
25 for the guardian's belief that residential habilitation is

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1 necessary and shall include a copy of pertinent medical and  
2 psychological evaluations that have been completed.

3 B. Upon receipt of an application filed according  
4 to Subsection A of this section, an evaluation facility may  
5 accept the proposed client for a period of evaluation and  
6 treatment not to exceed fourteen days. An evaluation  
7 facility shall prepare an individualized habilitation plan  
8 that shall be consistent with the least drastic means  
9 principle.

10 C. If the habilitation plan recommends residential  
11 services, the evaluation facility shall file with the court a  
12 petition for extended residential placement. Upon receipt of  
13 the petition, the court shall appoint an attorney to  
14 represent the proposed client. Notice of the hearing  
15 scheduled on the petition and a copy of the habilitation plan  
16 shall be given to the proposed client, the client's attorney  
17 and the client's guardian. The petition shall contain a list  
18 of the names and addresses of proposed witnesses.

19 D. At the hearing on the petition, the proposed  
20 client shall be represented by counsel and shall have the  
21 right to present evidence on the proposed client's behalf,  
22 including testimony of a developmental disability  
23 professional of the proposed client's choosing; to cross-  
24 examine witnesses; to be present at the hearing; and to trial  
25 by a six-person jury, if requested. A complete record of the

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1 hearing shall be made. There shall be a right to an  
2 expeditious appeal.

3 E. The guardian of an adult involved in a  
4 commitment proceeding for extended residential habilitation  
5 services shall have automatic standing to appear at all  
6 stages of the proceeding and shall be allowed to testify by  
7 telephone or through affidavit if circumstances make live  
8 testimony too burdensome.

9 F. The court shall include in its findings the  
10 guardian's opinion regarding the need for residential  
11 habilitation services or a statement detailing the efforts  
12 made to ascertain the guardian's opinion.

13 G. The court shall order residential placement of  
14 the proposed client if it is established by clear and  
15 convincing evidence that the proposed client has a  
16 developmental disability that creates an imminent likelihood  
17 of serious harm to the proposed client's self or to others,  
18 or the person is so greatly disabled that residential  
19 services would be in the person's best interest and that such  
20 residential placement is, in the person's case, the least  
21 drastic means. The court's order of residential placement  
22 shall be for a period not to exceed six months. At the  
23 expiration of the commitment order, the client may be  
24 detained only after a new commitment hearing, unless waived  
25 after consultation with the client's attorney, and entry of a

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1 new order for commitment not to exceed six months.

2 H. The court shall order placement that is least  
3 restrictive to the client and may order attendance and  
4 participation as a nonresident in habilitation programs  
5 conducted at residential or nonresidential facilities.

6 I. Any client involuntarily referred for  
7 habilitation treatment shall be entitled to a reexamination  
8 of the order for the client's involuntary referral for  
9 habilitation and treatment on the client's own petition, or  
10 that of the client's legal guardian, parent, spouse, domestic  
11 partner, relative or friend, to the district court of the  
12 county in which the client resides or is detained. Upon  
13 receipt of the petition, the court shall conduct or cause to  
14 be conducted by a special commissioner a proceeding in  
15 accordance with this section, except that a proceeding shall  
16 not be required to be conducted if the petition is filed  
17 sooner than sixty days after the issuance of the order for  
18 involuntary referral for habilitation and treatment or sooner  
19 than sixty days after the filing of a previous petition under  
20 this subsection.

21 J. Nothing in this section shall limit the right of  
22 a client to petition the court for a writ of habeas corpus.

23 K. No developmental disabilities treatment or  
24 habilitation facility is required to detain, treat or provide  
25 services to a client when the client does not appear to

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1 require detention, treatment or habilitation."

2 Section 198. Section 44-5-3 NMSA 1978 (being Laws 1856-  
3 1857, Page 36, as amended) is amended to read:

4 "44-5-3. ACTION MAINTAINABLE BY SPOUSE OR DOMESTIC  
5 PARTNER, CHILDREN, HEIRS, EXECUTORS, ADMINISTRATORS AND  
6 CREDITORS [OR] OF LOSER.--The spouse or domestic partner,  
7 children, heirs, executors, administrators and creditors of  
8 the person losing may have the same remedy against the winner  
9 as provided in Sections [~~22-10-1 and 22-10-2 NMSA 1953~~]  
10 44-5-1 and 44-5-2 NMSA 1978."

11 Section 199. Section 44-5-14 NMSA 1978 (being Laws  
12 1856-1857, Page 38, as amended) is amended to read:

13 "44-5-14. ACTION FOR RECOVERY--IMMUNITY.--~~[All persons]~~  
14 A person who [~~shall claim~~] claims money or property lost at  
15 gaming, or, when [~~said~~] the money or property may be claimed  
16 by [~~his~~] the person's spouse, domestic partner, child,  
17 relation or friend, [~~said~~] that person, although [~~he~~] that  
18 person may have gambled, is [~~hereby~~] exempted from the  
19 punishment imposed by the laws prohibiting and restraining  
20 gaming."

21 Section 200. Section 45-1-201 NMSA 1978 (being Laws  
22 1993, Chapter 174, Section 4, as amended) is amended to read:

23 "45-1-201. DEFINITIONS.--

24 A. As used in the Uniform Probate Code, unless the  
25 context otherwise requires:

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1           (1) "agent" includes an attorney-in-fact under  
2 a durable or nondurable power of attorney, an individual  
3 authorized to make decisions concerning another's health care  
4 and an individual authorized to make decisions for another  
5 under a natural death act;

6           (2) "application" means a written request to  
7 the probate court for an order of informal probate or  
8 appointment pursuant to Sections 45-3-301 through 45-3-311  
9 NMSA 1978;

10           (3) "beneficiary", as it relates to a trust  
11 beneficiary, includes a person who has any present or future  
12 interest, vested or contingent, and also includes the owner  
13 of an interest by assignment or other transfer; as it relates  
14 to a charitable trust, includes any person entitled to  
15 enforce the trust; as it relates to a "beneficiary of a  
16 beneficiary designation", refers to a beneficiary of an  
17 insurance or annuity policy, of an account with POD  
18 designation, of a security registered in beneficiary form  
19 (TOD) or of a pension, profit-sharing, retirement or similar  
20 benefit plan or other nonprobate transfer at death; and, as  
21 it relates to a "beneficiary designated in a governing  
22 instrument", includes a grantee of a deed, a devisee, a trust  
23 beneficiary, a beneficiary of a beneficiary designation, a  
24 donee, appointee or taker in default of a power of  
25 appointment or a person in whose favor a power of attorney or

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1 a power held in any individual, fiduciary or representative  
2 capacity is exercised;

3 (4) "beneficiary designation" refers to a  
4 governing instrument naming a beneficiary of an insurance or  
5 annuity policy, of an account with POD designation, of a  
6 security registered in beneficiary form (TOD) or of a  
7 pension, profit-sharing, retirement or similar benefit plan  
8 or other nonprobate transfer at death;

9 (5) "child" includes an individual entitled to  
10 take as a child pursuant to the Uniform Probate Code by  
11 intestate succession from the parent whose relationship is  
12 involved and excludes a person who is only a stepchild, a  
13 foster child, a grandchild or any more remote descendant;

14 (6) "claims", in respect to estates of  
15 decedents and protected persons, includes liabilities of the  
16 decedent or protected person, whether arising in contract, in  
17 tort or otherwise and liabilities of the estate that arise at  
18 or after the death of the decedent or after the appointment  
19 of a conservator, including funeral expenses and expenses of  
20 administration. "Claims" does not include estate or  
21 inheritance taxes or demands or disputes regarding title of a  
22 decedent, an incapacitated person or a minor protected person  
23 to specific assets alleged to be included in the estate;

24 (7) "conservator" means a person who is  
25 appointed by a court to manage the property or financial

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1 affairs or both of an incapacitated person or a minor  
2 protected person;

3 (8) "descendant" of an individual means all of  
4 the individual's descendants of all generations, with the  
5 relationship of parent and child at each generation being  
6 determined by the definition of child and parent contained in  
7 the Uniform Probate Code;

8 (9) "devise", when used as a noun, means a  
9 testamentary disposition of real or personal property and,  
10 when used as a verb, means to dispose of real or personal  
11 property by will;

12 (10) "devisee" means a person designated in a  
13 will to receive a devise. For the purposes of Chapter 45,  
14 Article 3 NMSA 1978, in the case of a devise to an existing  
15 trust or trustee or to a trustee or trust described by will,  
16 the trust or trustee is the devisee and the beneficiaries are  
17 not devisees;

18 (11) "distributee" means a person who has  
19 received property of a decedent from the decedent's personal  
20 representative other than as a creditor or purchaser. A  
21 testamentary trustee is a distributee only to the extent of  
22 distributed assets or increment thereto remaining in the  
23 testamentary trustee's hands. A beneficiary of a  
24 testamentary trust to whom the trustee has distributed  
25 property received from a personal representative is a

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1 distributee of the personal representative. For the purposes  
2 of this paragraph, "testamentary trustee" includes a trustee  
3 to whom assets are transferred by will, to the extent of the  
4 devised assets;

5 (12) "estate" includes the property of the  
6 decedent, trust or other person whose affairs are subject to  
7 the Uniform Probate Code as originally constituted and as it  
8 exists from time to time during administration;

9 (13) "exempt property" means that property of  
10 a decedent's estate that is described in Section 45-2-403  
11 NMSA 1978;

12 (14) "fiduciary" includes a personal  
13 representative, guardian, guardian ad litem, conservator and  
14 trustee;

15 (15) "foreign personal representative" means a  
16 personal representative appointed by another jurisdiction;

17 (16) "formal proceedings" means proceedings  
18 conducted before a judge with notice to interested persons;

19 (17) "governing instrument" means a deed,  
20 will, trust, insurance or annuity policy, account with POD  
21 designation, security registered in beneficiary form (TOD),  
22 pension, profit-sharing, retirement or similar benefit plan,  
23 instrument creating or exercising a power of appointment or a  
24 power of attorney or a dispositive, appointive or nominative  
25 instrument of a similar type;

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1 (18) "guardian" means a person who has  
2 qualified to provide for the care, custody or control of the  
3 person of a minor or incapacitated person pursuant to  
4 testamentary or court appointment, but excludes one who is  
5 merely a guardian ad litem;

6 (19) "guardian ad litem" means a person  
7 appointed by the district court to represent and protect the  
8 interests of a minor or an incapacitated person in connection  
9 with litigation or any other court proceeding;

10 (20) "heirs", except as controlled by Section  
11 45-2-711 NMSA 1978, means persons, including the surviving  
12 spouse or surviving domestic partner and the state, who are  
13 entitled under the statutes of intestate succession to the  
14 property of a decedent;

15 (21) "incapacitated person" means an  
16 individual described in Section 45-5-101 NMSA 1978;

17 (22) "informal proceedings" means those  
18 proceedings conducted without notice to interested persons  
19 before the probate court for probate of a will or appointment  
20 of a personal representative, except as provided for in  
21 Section 45-3-306 NMSA 1978;

22 (23) "interested person" includes heirs,  
23 devisees, children, spouses or domestic partners, creditors,  
24 beneficiaries and any others having a property right in or  
25 claim against a trust estate or the estate of a decedent, a

.179346.5GR

1 minor protected person or an incapacitated person.  
2 "Interested person" also includes persons having priority for  
3 appointment as personal representatives and other fiduciaries  
4 representing interested persons. The meaning as it relates  
5 to particular persons may vary from time to time and must be  
6 determined according to the particular purposes of, and  
7 matter involved in, a proceeding. "Interested person" does  
8 not apply to the provisions of Chapter 45, Article 5 NMSA  
9 1978;

10 (24) "issue" of a person means all of the  
11 person's descendants of all generations, with the  
12 relationship of parent and child at each generation being  
13 determined by the definition of child and parent contained in  
14 the Uniform Probate Code;

15 (25) "lease" includes an oil, gas or other  
16 mineral lease;

17 (26) "letters" includes letters testamentary,  
18 letters of guardianship, letters of administration and  
19 letters of conservatorship;

20 (27) "minor" means a person who has not  
21 reached eighteen years of age;

22 (28) "mortgage" means any conveyance,  
23 agreement or arrangement in which property is encumbered or  
24 used as security;

25 (29) "nonresident decedent" means a decedent

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1 who was domiciled in another jurisdiction at the time of  
2 death;

3 (30) "organization" means a corporation,  
4 business trust, estate, trust, partnership, joint venture,  
5 association, government or governmental subdivision or agency  
6 or any other legal or commercial entity;

7 (31) "parent" includes any person entitled to  
8 take, or who would be entitled to take if the child died  
9 without a will, as a parent pursuant to the Uniform Probate  
10 Code by intestate succession from the child whose  
11 relationship is in question and excludes any person who is  
12 only a stepparent, foster parent or grandparent;

13 (32) "payor" means a trustee, insurer,  
14 business entity, employer, government, governmental agency or  
15 subdivision or any other person authorized or obligated by  
16 law or a governing instrument to make payments;

17 (33) "person" means an individual or an  
18 organization;

19 (34) "personal representative" includes  
20 executor, administrator, successor personal representative,  
21 special administrator and persons who perform substantially  
22 the same function under the law governing their status.

23 "General personal representative" excludes special  
24 administrator;

25 (35) "petition" means a written request to the

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1 probate court for an order after notice;

2 (36) "proceeding" includes action at law and  
3 suit in equity;

4 (37) "property" includes both real and  
5 personal property or any interest therein and means anything  
6 that may be the subject of ownership;

7 (38) "protected person" is as defined in  
8 Section 45-5-101 NMSA 1978;

9 (39) "protective proceeding" means a  
10 proceeding described in Section 45-5-101 NMSA 1978;

11 (40) "security" includes any note, stock,  
12 treasury stock, bond, debenture, evidence of indebtedness,  
13 certificate of interest or participation in an oil, gas or  
14 mining title or lease or in payments out of production under  
15 such a title or lease, collateral trust certificate,  
16 transferable share, voting trust certificate or, in general,  
17 any interest or instrument commonly known as a security or  
18 any certificate of interest or participation, any temporary  
19 or interim certificate, receipt or certificate of deposit for  
20 or any warrant or right to subscribe to or purchase any of  
21 the foregoing;

22 (41) "settlement", in reference to a  
23 decedent's estate, includes the full process of  
24 administration, distribution and closing;

25 (42) "special administrator" means a personal

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1 representative as described by Sections 45-3-614 through  
2 45-3-618 NMSA 1978;

3 (43) "state" means a state of the United  
4 States, the District of Columbia, the commonwealth of Puerto  
5 Rico or any territory or insular possession subject to the  
6 jurisdiction of the United States;

7 (44) "successor personal representative" means  
8 a personal representative, other than a special  
9 administrator, who is appointed to succeed a previously  
10 appointed personal representative;

11 (45) "successors" means persons, other than  
12 creditors, who are entitled to property of a decedent under  
13 the decedent's will or the Uniform Probate Code;

14 (46) "supervised administration" refers to the  
15 proceedings described in Article III, Part 5 of the Uniform  
16 Probate Code;

17 (47) "survive" means that an individual has  
18 neither predeceased an event, including the death of another  
19 individual, nor is deemed to have predeceased an event  
20 pursuant to Section 45-2-104 or 45-2-702 NMSA 1978.

21 "Survive" includes its derivatives, such as "survives",  
22 "survived", "survivor" and "surviving";

23 (48) "testacy proceeding" means a proceeding  
24 to establish a will or determine intestacy;

25 (49) "testator" includes an individual of

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1 either sex;

2 (50) "trust" includes an express trust,  
3 private or charitable, with additions thereto, wherever and  
4 however created. "Trust" also includes a trust created or  
5 determined by judgment or decree under which the trust is to  
6 be administered in the manner of an express trust. "Trust"  
7 excludes other constructive trusts and excludes resulting  
8 trusts, conservatorships, personal representatives, trust  
9 accounts as defined in Article VI of the Uniform Probate  
10 Code, custodial arrangements, including those created under  
11 the Uniform Transfer to Minors Act, business trusts providing  
12 for certificates to be issued to beneficiaries, common trust  
13 funds, voting trusts, security arrangements, liquidation  
14 trusts, trusts for the primary purpose of paying debts,  
15 dividends, interest, salaries, wages, profits, pensions or  
16 employee benefits of any kind and any arrangement under which  
17 a person is nominee or escrowee for another;

18 (51) "trustee" includes an original,  
19 additional or successor trustee, whether or not appointed or  
20 confirmed by court; and

21 (52) "will" includes codicil and any  
22 testamentary instrument that merely appoints a personal  
23 representative, revokes or revises another will, nominates a  
24 guardian or expressly excludes or limits the right of an  
25 individual or class to succeed to property of the decedent

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1 passing by intestate succession. "Will" does not include a  
2 holographic will.

3 B. The definitions in Subsection A of this section  
4 are made subject to additional definitions contained in  
5 subsequent articles that are applicable to specific  
6 articles."

7 Section 201. Section 45-2-102 NMSA 1978 (being Laws  
8 1975, Chapter 257, Section 2-102) is amended to read:

9 "45-2-102. SHARE OF THE SPOUSE OR DOMESTIC PARTNER.--  
10 The intestate share of the surviving spouse or surviving  
11 domestic partner is determined as follows:

12 A. as to separate property:

13 (1) if there is no surviving issue of the  
14 decedent, the entire intestate estate; or

15 (2) if there is surviving issue of the  
16 decedent, one-fourth of the intestate estate; and

17 B. as to community property, the one-half of the  
18 community property as to which the decedent could have  
19 exercised the power of testamentary disposition passes to the  
20 surviving spouse or surviving domestic partner."

21 Section 202. Section 45-2-103 NMSA 1978 (being Laws  
22 1993, Chapter 174, Section 6) is amended to read:

23 "45-2-103. SHARE OF HEIRS OTHER THAN SURVIVING SPOUSE  
24 OR SURVIVING DOMESTIC PARTNER.--Any part of the intestate  
25 estate not passing to the decedent's surviving spouse or

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1 surviving domestic partner pursuant to Section 45-2-102 NMSA  
2 1978, or the entire intestate estate if there is no surviving  
3 spouse or surviving domestic partner, passes in the following  
4 order to the individuals designated below who survive the  
5 decedent:

6 A. to the decedent's descendants by representation;

7 B. if there is no surviving descendant, to the  
8 decedent's parents equally if both survive, or to the  
9 surviving parent;

10 C. if there is no surviving descendant or parent,  
11 to the descendants of the decedent's parents or either of  
12 them by representation; and

13 D. if there is no surviving descendant, parent or  
14 descendant of a parent, but the decedent is survived by one  
15 or more grandparents or descendants of grandparents, half of  
16 the estate passes to the decedent's paternal grandparents  
17 equally if both survive, or to the surviving paternal  
18 grandparent, or to the descendants of the decedent's paternal  
19 grandparents or either of them if both are deceased, the  
20 descendants taking by representation, and the other half  
21 passes to the decedent's maternal relatives in the same  
22 manner; but if there is no surviving grandparent or  
23 descendant of a grandparent on either the paternal or the  
24 maternal side, the entire estate passes to the decedent's  
25 relatives on the other side in the same manner as the half."

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1           Section 203. Section 45-2-114 NMSA 1978 (being Laws  
2 1993, Chapter 174, Section 16, as amended) is amended to  
3 read:

4           "45-2-114. PARENT AND CHILD RELATIONSHIP.--

5           A. Except as provided in Subsections B and C of  
6 this section, for purposes of intestate succession by,  
7 through or from a person, an individual is the child of [~~his~~]  
8 the individual's natural parents, regardless of their marital  
9 or domestic partnership status. The parent and child  
10 relationship may be established under the New Mexico Uniform  
11 Parentage Act.

12           B. An adopted individual is the child of [~~his~~] the  
13 individual's adopting parent or parents and not of [~~his~~] the  
14 individual's natural parents, but adoption of a child by the  
15 spouse or domestic partner of either natural parent has no  
16 effect on:

17                   (1) the relationship between the child and  
18 that natural parent; or

19                   (2) the right of the child or a descendant of  
20 the child to inherit from or through that nonsevered natural  
21 parent.

22           C. Inheritance from or through a child by either  
23 natural parent or [~~his~~] the child's kindred is precluded  
24 unless that natural parent has openly treated the child as  
25 [~~his~~] the natural parent's and has not refused to support the

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1 child."

2 Section 204. Section 45-2-301 NMSA 1978 (being Laws  
3 1993, Chapter 174, Section 17, as amended) is amended to  
4 read:

5 "45-2-301. ENTITLEMENT OF SPOUSE OR DOMESTIC  
6 PARTNER--PREMARITAL WILL OR PRE-DOMESTIC PARTNERSHIP WILL.--

7 A. If a testator's surviving spouse or surviving  
8 domestic partner married or entered into a domestic  
9 partnership with the testator after the testator executed  
10 [his] the testator's will, the surviving spouse or surviving  
11 domestic partner is entitled to receive, as an intestate  
12 share, no less than the value of the share of the estate [he]  
13 that the surviving spouse or surviving domestic partner would  
14 have received if the testator had died intestate as to that  
15 portion of the testator's estate, if any, that neither is  
16 devised to a child of the testator who was born before the  
17 testator married the surviving spouse or entered into a  
18 domestic partnership with the surviving domestic partner and  
19 who is not a child of the surviving spouse or surviving  
20 domestic partner nor is devised to a descendant of such a  
21 child or passes pursuant to Section 45-2-603 or 45-2-604 NMSA  
22 1978 to such a child or to a descendant of such a child,  
23 unless:

24 (1) it appears from the will or other evidence  
25 that the will was made in contemplation of the testator's

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1 marriage to the surviving spouse or domestic partnership with  
2 the surviving domestic partner;

3 (2) the will expresses the intention that it  
4 is to be effective notwithstanding any subsequent marriage or  
5 domestic partnership; or

6 (3) the testator provided for the spouse or  
7 domestic partner by transfer outside the will and the intent  
8 that the transfer be in lieu of a testamentary provision is  
9 shown by the testator's statements or is reasonably inferred  
10 from the amount of the transfer or other evidence.

11 B. In satisfying the share provided by this  
12 section, devises made by the will to the testator's surviving  
13 spouse or surviving domestic partner, if any, are applied  
14 first, and other devises, other than a devise to a child of  
15 the testator who was born before the testator married the  
16 surviving spouse or entered into a domestic partnership with  
17 the surviving domestic partner and who is not a child of the  
18 surviving spouse or surviving domestic partner or a devise or  
19 substitute gift pursuant to Section 45-2-603 or 45-2-604 NMSA  
20 1978 to a descendant of such a child, abate as provided in  
21 Section 45-3-902 NMSA 1978."

22 Section 205. Section 45-2-402 NMSA 1978 (being Laws  
23 1993, Chapter 174, Section 20, as amended) is amended to  
24 read:

25 "45-2-402. FAMILY ALLOWANCE.--A decedent's surviving  
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1 spouse or surviving domestic partner is entitled to a family  
2 allowance of thirty thousand dollars (\$30,000). If there is  
3 no surviving spouse or surviving domestic partner, each minor  
4 child and each dependent child of the decedent is entitled to  
5 a family allowance amounting to thirty thousand dollars  
6 (\$30,000) divided by the number of minor and dependent  
7 children of the decedent. The family allowance is exempt  
8 from and has priority over all claims against the estate.  
9 Family allowance is in addition to any share passing to the  
10 surviving spouse or surviving domestic partner or minor or  
11 dependent children by intestate succession or by the  
12 decedent's will, unless otherwise provided by the decedent in  
13 the will or other governing instrument."

14 Section 206. Section 45-2-403 NMSA 1978 (being Laws  
15 1993, Chapter 174, Section 21, as amended) is amended to  
16 read:

17 "45-2-403. PERSONAL PROPERTY ALLOWANCE.--In addition to  
18 the family allowance, the decedent's surviving spouse or  
19 surviving domestic partner is entitled from the estate to a  
20 value, not exceeding fifteen thousand dollars (\$15,000) in  
21 excess of any security interests therein, in household  
22 furniture, automobiles, furnishings, appliances and personal  
23 effects. If there is no surviving spouse or surviving  
24 domestic partner, the decedent's children who are devisees  
25 under the will, who are entitled to a share of the estate

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1 pursuant to Section 45-2-302 NMSA 1978 or, if there is no  
2 will, who are intestate heirs are entitled jointly to the  
3 same value. If encumbered chattels are selected and the  
4 value in excess of security interests plus that of other  
5 exempt property is less than fifteen thousand dollars  
6 (\$15,000) or if there is not fifteen thousand dollars  
7 (\$15,000) worth of exempt property in the estate, the spouse,  
8 domestic partner or children are entitled to other assets of  
9 the estate, if any, to the extent necessary to make up the  
10 fifteen thousand dollar (\$15,000) value. Rights to specific  
11 property for the family allowance and assets needed to make  
12 up a deficiency in the property have priority over all claims  
13 against the estate, but the right to any assets to make up a  
14 deficiency of exempt property abates as necessary to permit  
15 earlier payment of the family allowance. These rights are in  
16 addition to any benefit or share passing to the surviving  
17 spouse, surviving domestic partner or surviving children by  
18 intestate succession or by the decedent's will, unless  
19 otherwise provided by the decedent in the will or other  
20 governing instrument."

21 Section 207. Section 45-2-405 NMSA 1978 (being Laws  
22 1993, Chapter 174, Section 23) is amended to read:

23 "45-2-405. SOURCE, DETERMINATION AND DOCUMENTATION.--If  
24 the estate is otherwise sufficient, property specifically  
25 devised may not be used to satisfy rights to family allowance

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1 or personal property allowance. Subject to this restriction,  
2 the surviving spouse or surviving domestic partner, guardians  
3 of minor children or children who are adults may select  
4 property of the estate as family allowance and personal  
5 property allowance. The personal representative may make  
6 those selections if the surviving spouse or surviving  
7 domestic partner, the children or the guardians of the minor  
8 children are unable or fail to do so within a reasonable time  
9 or there is no guardian of a minor child. The personal  
10 representative may execute an instrument or deed of  
11 distribution to establish the ownership of property taken as  
12 family allowance or personal property allowance. The  
13 personal representative or an interested person aggrieved by  
14 any selection, determination, payment, proposed payment or  
15 failure to act under this section may petition the court for  
16 appropriate relief, which may include a family allowance or  
17 personal property allowance other than that which the  
18 personal representative determined or could have determined."

19 Section 208. Section 45-2-407 NMSA 1978 (being Laws  
20 1995, Chapter 210, Section 10) is amended to read:

21 "45-2-407. WAIVER OF RIGHTS.--

22 A. The rights of the surviving spouse or surviving  
23 domestic partner to family allowance and personal property  
24 allowance, or either of them, may be waived, wholly or  
25 partially, before or after the marriage or the domestic

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1 partnership, by a written contract, agreement or waiver  
2 signed by the surviving spouse or surviving domestic partner.

3 B. A [~~surviving spouse's~~] waiver by a surviving  
4 spouse or surviving domestic partner is not enforceable if  
5 the surviving spouse or surviving domestic partner proves  
6 that:

7 (1) the surviving spouse or surviving domestic  
8 partner did not execute the waiver voluntarily; or

9 (2) the waiver was unconscionable when it was  
10 executed and, before execution of the waiver, the surviving  
11 spouse or surviving domestic partner:

12 (a) was not provided a fair and reasonable  
13 disclosure of the property or financial obligations of the  
14 decedent;

15 (b) did not voluntarily and expressly  
16 waive, in writing, any right to disclosure of the property or  
17 financial obligations of the decedent beyond the disclosure  
18 provided; and

19 (c) did not have, or reasonably could not  
20 have had, an adequate knowledge of the property or financial  
21 obligations of the decedent.

22 C. An issue of unconscionability or voluntariness  
23 of a waiver is for decision by the court as a matter of law.

24 D. Unless it provides to the contrary, a waiver of  
25 "all rights", or equivalent language, in the property or

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1 estate of a present or prospective spouse or a present or  
2 prospective domestic partner or a complete property  
3 settlement entered into after or in anticipation of  
4 separation or [~~divorce~~] dissolution of marriage or domestic  
5 partnership is a waiver of all rights of family allowance and  
6 personal property allowance by each spouse or domestic  
7 partner in the property of the other and a renunciation by  
8 each of all benefits that would otherwise pass to each from  
9 the other by intestate succession or by virtue of any will  
10 executed before the waiver or property settlement."

11 Section 209. Section 45-2-603 NMSA 1978 (being Laws  
12 1993, Chapter 174, Section 42, as amended) is amended to  
13 read:

14 "45-2-603. ANTILAPSE--DECEASED DEVISEE--CLASS GIFTS.--

15 A. As used in this section:

16 (1) "alternative devise" means a devise that  
17 is expressly created by the will and, under the terms of the  
18 will, can take effect instead of another devise on the  
19 happening of one or more events, including survival of the  
20 testator or failure to survive the testator, whether an event  
21 is expressed in condition-precedent, condition-subsequent or  
22 any other form. A residuary clause constitutes an  
23 alternative devise with respect to a nonresiduary devise only  
24 if the will specifically provides that, upon lapse or  
25 failure, the nonresiduary devise, or nonresiduary devises in

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1 general, pass under the residuary clause;

2 (2) "class member" includes an individual who  
3 fails to survive the testator but who would have taken under  
4 a devise in the form of a class gift had [~~he~~] the class  
5 member survived the testator;

6 (3) "devise" includes an alternative devise, a  
7 devise in the form of a class gift and an exercise of a power  
8 of appointment;

9 (4) "devisee" includes:

10 (a) a class member if the devise is in the  
11 form of a class gift;

12 (b) an individual or class member who was  
13 deceased at the time the testator executed [~~his~~] the  
14 testator's will as well as an individual or class member who  
15 was then living but who failed to survive the testator; and

16 (c) an appointee under a power of  
17 appointment exercised by the testator's will;

18 (5) "stepchild" means a child of the  
19 surviving, deceased or former spouse or the surviving,  
20 deceased or former domestic partner of the testator or of the  
21 donor of a power of appointment and not of the testator or  
22 donor;

23 (6) "surviving devisee" or "surviving  
24 descendant" means a devisee or a descendant who neither  
25 predeceased the testator nor is deemed to have predeceased

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1 the testator pursuant to the provisions of Section 45-2-702  
2 NMSA 1978; and

3 (7) "testator" includes the donee of a power  
4 of appointment if the power is exercised in the testator's  
5 will.

6 B. If a devisee fails to survive the testator and  
7 is a grandparent, a descendant of a grandparent or a  
8 stepchild of either the testator or the donor of a power of  
9 appointment exercised by the testator's will, the following  
10 apply:

11 (1) except as provided in Paragraph (4) of  
12 this subsection, if the devise is not in the form of a class  
13 gift and the deceased devisee leaves surviving descendants, a  
14 substitute gift is created in the devisee's surviving  
15 descendants. They take by representation the property to  
16 which the devisee would have been entitled had the devisee  
17 survived the testator;

18 (2) except as provided in Paragraph (4) of  
19 this subsection, if the devise is in the form of a class  
20 gift, other than a devise to "issue", "descendants", "heirs  
21 of the body", "heirs", "next of kin", "relatives" or "family"  
22 or a class described by language of similar import, a  
23 substitute gift is created in the surviving descendants of  
24 any deceased devisee. The property to which the devisees  
25 would have been entitled had all of them survived the

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1 testator passes to the surviving devisees and the surviving  
2 descendants of the deceased devisees. Each surviving devisee  
3 takes the share to which [~~he~~] the surviving devisee would  
4 have been entitled had the deceased devisees survived the  
5 testator. Each deceased devisee's surviving descendants who  
6 are substituted for the deceased devisee take by  
7 representation the share to which the deceased devisee would  
8 have been entitled had the deceased devisee survived the  
9 testator. For the purposes of this paragraph, "deceased  
10 devisee" means a class member who failed to survive the  
11 testator and left one or more surviving descendants;

12 (3) for the purposes of Section 45-2-601 NMSA  
13 1978, words of survivorship, such as in a devise to an  
14 individual "if [~~he~~] the individual survives me" or in a  
15 devise to "my surviving children" are not, in the absence of  
16 additional evidence, a sufficient indication of an intent  
17 contrary to the application of this section;

18 (4) if the will creates an alternative devise  
19 with respect to a devise for which a substitute gift is  
20 created by Paragraph (1) or (2) of this subsection, the  
21 substitute gift is superseded by the alternative devise only  
22 if an expressly designated devisee of the alternative devise  
23 is entitled to take under the will; and

24 (5) unless the language creating a power of  
25 appointment expressly excludes the substitution of the

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1 descendants of an appointee for the appointee, a surviving  
2 descendant of a deceased appointee of a power of appointment  
3 can be substituted for the appointee pursuant to the  
4 provisions of this section whether or not the descendant is  
5 an object of the power.

6 C. If, pursuant to the provisions of Subsection B  
7 of this section, substitute gifts are created and not  
8 superseded with respect to more than one devise and the  
9 devises are alternative devises, one to the other, the  
10 determination of which of the substitute gifts takes effect  
11 is resolved as follows:

12 (1) except as provided in Paragraph (2) of  
13 this subsection, the devised property passes under the  
14 primary substitute gift; and

15 (2) if there is a younger-generation devise,  
16 the devised property passes under the younger-generation  
17 substitute gift and not under the primary substitute gift.

18 D. As used in [~~Subsections C and D of~~] this  
19 section:

20 (1) "primary devise" means the devise that  
21 would have taken effect had all the deceased devisees of the  
22 alternative devises who left surviving descendants survived  
23 the testator;

24 (2) "primary substitute gift" means the  
25 substitute gift created with respect to the primary devise;

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1                   (3) "younger-generation devise" means a devise  
2 that:

3                   (a) is to a descendant of a devisee of the  
4 primary devise;

5                   (b) is an alternative devise with respect  
6 to the primary devise;

7                   (c) is a devise for which a substitute  
8 gift is created; and

9                   (d) would have taken effect had all the  
10 deceased devisees who left surviving descendants survived the  
11 testator except the deceased devisee or devisees of the  
12 primary devise; and

13                   (4) "younger-generation substitute gift" means  
14 the substitute gift created with respect to the younger-  
15 generation devise."

16                   Section 210. Section 45-2-705 NMSA 1978 (being Laws  
17 1993, Chapter 174, Section 53) is amended to read:

18                   "45-2-705. CLASS GIFTS CONSTRUED TO ACCORD WITH  
19 INTESTATE SUCCESSION.--

20                   A. Adopted individuals and individuals born out of  
21 wedlock or outside of a domestic partnership and their  
22 respective descendants if appropriate to the class are  
23 included in class gifts and other terms of relationship in  
24 accordance with the rules for intestate succession. Terms of  
25 relationship that do not differentiate relationships by blood

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1 from those by affinity, such as "uncles", "aunts", "nieces"  
2 or "nephews", are construed to exclude relatives by affinity.  
3 Terms of relationship that do not differentiate relationships  
4 by the half blood from those by the whole blood, such as  
5 "brothers", "sisters", "nieces" or "nephews", are construed  
6 to include both types of relationships.

7 B. In addition to the requirements of Subsection A  
8 of this section, in construing a dispositive provision of a  
9 transferor who is not the natural parent, an individual born  
10 to the natural parent is not considered the child of that  
11 parent unless the individual lived while a minor as a regular  
12 member of the household of that natural parent or of that  
13 parent's parent, brother, sister, spouse, domestic partner or  
14 surviving spouse or surviving domestic partner.

15 C. In addition to the requirements of Subsection A  
16 of this section, in construing a dispositive provision of a  
17 transferor who is not the adopting parent, an adopted  
18 individual is not considered the child of the adopting parent  
19 unless the adopted individual lived while a minor, either  
20 before or after the adoption, as a regular member of the  
21 household of the adopting parent."

22 Section 211. Section 45-2-706 NMSA 1978 (being Laws  
23 1993, Chapter 174, Section 54, as amended) is amended to  
24 read:

25 "45-2-706. LIFE INSURANCE--RETIREMENT PLAN--ACCOUNT  
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1 WITH POD DESIGNATION--TRANSFER-ON-DEATH REGISTRATION--  
2 DECEASED BENEFICIARY.--

3 A. As used in this section:

4 (1) "alternative beneficiary designation"  
5 means a beneficiary designation that is expressly created by  
6 the governing instrument and, under the terms of the  
7 governing instrument, can take effect instead of another  
8 beneficiary designation on the happening of one or more  
9 events, including survival of the decedent or failure to  
10 survive the decedent, whether an event is expressed in  
11 condition-precedent, condition-subsequent or any other form;

12 (2) "beneficiary" means the beneficiary of a  
13 beneficiary designation under which the beneficiary must  
14 survive the decedent and includes:

15 (a) a class member if the beneficiary  
16 designation is in the form of a class gift; and

17 (b) an individual or class member who was  
18 deceased at the time the beneficiary designation was executed  
19 as well as an individual or class member who was then living  
20 but who failed to survive the decedent, but excludes a joint  
21 tenant of a joint tenancy with the right of survivorship and  
22 a party to a joint and survivorship account;

23 (3) "beneficiary designation" includes an  
24 alternative beneficiary designation and a beneficiary  
25 designation in the form of a class gift;

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1                   (4) "class member" includes an individual who  
2 fails to survive the decedent but who would have taken under  
3 a beneficiary designation in the form of a class gift had  
4 ~~[he]~~ the individual survived the decedent;

5                   (5) "stepchild" means a child of the  
6 decedent's surviving, deceased or former spouse or surviving,  
7 deceased or former domestic partner and not of the decedent;  
8 and

9                   (6) "surviving beneficiary" or "surviving  
10 descendant" means a beneficiary or a descendant who neither  
11 predeceased the decedent nor is deemed to have predeceased  
12 the decedent pursuant to the provisions of Section 45-2-702  
13 NMSA 1978.

14                   B. If a beneficiary fails to survive the decedent  
15 and is a grandparent, a descendant of a grandparent or a  
16 stepchild of the decedent, the following apply:

17                   (1) except as provided in Paragraph (4) of  
18 this subsection, if the beneficiary designation is not in the  
19 form of a class gift and the deceased beneficiary leaves  
20 surviving descendants, a substitute gift is created in the  
21 beneficiary's surviving descendants. They take by  
22 representation the property to which the beneficiary would  
23 have been entitled had the beneficiary survived the decedent;

24                   (2) except as provided in Paragraph (4) of  
25 this subsection, if the beneficiary designation is in the

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1 form of a class gift, other than a beneficiary designation to  
2 "issue", "descendants", "heirs of the body", "heirs", "next  
3 of kin", "relatives" or "family" or a class described by  
4 language of similar import, a substitute gift is created in  
5 the surviving descendants of any deceased beneficiary. The  
6 property to which the beneficiaries would have been entitled  
7 had all of them survived the decedent passes to the surviving  
8 beneficiaries and the surviving descendants of the deceased  
9 beneficiaries. Each surviving beneficiary takes the share to  
10 which ~~he~~ the surviving beneficiary would have been entitled  
11 had the deceased beneficiaries survived the decedent. Each  
12 deceased beneficiary's surviving descendants who are  
13 substituted for the deceased beneficiary take by  
14 representation the share to which the deceased beneficiary  
15 would have been entitled had the deceased beneficiary  
16 survived the decedent. For the purposes of this paragraph,  
17 "deceased beneficiary" means a class member who failed to  
18 survive the decedent and left one or more surviving  
19 descendants;

20 (3) for the purposes of Section 45-2-701 NMSA  
21 1978, words of survivorship, such as in a beneficiary  
22 designation to an individual "if ~~he~~ the individual survives  
23 me" or in a beneficiary designation to "my surviving  
24 children", are not, in the absence of additional evidence, a  
25 sufficient indication of an intent contrary to the

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1 application of this section; and

2 (4) if a governing instrument creates an  
3 alternative beneficiary designation with respect to a  
4 beneficiary designation for which a substitute gift is  
5 created by Paragraph (1) or (2) of this subsection, the  
6 substitute gift is superseded by the alternative beneficiary  
7 designation only if an expressly designated beneficiary of  
8 the alternative beneficiary designation is entitled to take.

9 C. If, pursuant to the provisions of Subsection B  
10 of this section, substitute gifts are created and not  
11 superseded with respect to more than one beneficiary  
12 designation and the beneficiary designations are alternative  
13 beneficiary designations, one to the other, the determination  
14 of which of the substitute gifts takes effect is resolved as  
15 follows:

16 (1) except as provided in Paragraph (2) of  
17 this subsection, the property passes under the primary  
18 substitute gift; and

19 (2) if there is a younger-generation  
20 beneficiary designation, the property passes under the  
21 younger-generation substitute gift and not under the primary  
22 substitute gift.

23 D. As used in Subsections C and D of this section:

24 (1) "primary beneficiary designation" means  
25 the beneficiary designation that would have taken effect had

.179346.5GR

1 all the deceased beneficiaries of the alternative beneficiary  
2 designations who left surviving descendants survived the  
3 decedent;

4 (2) "primary substitute gift" means the  
5 substitute gift created with respect to the primary  
6 beneficiary designation;

7 (3) "younger-generation beneficiary  
8 designation" means as a beneficiary designation that:

9 (a) is to a descendant of a beneficiary of  
10 the primary beneficiary designation;

11 (b) is an alternative beneficiary  
12 designation with respect to the primary beneficiary  
13 designation;

14 (c) is a beneficiary designation for which  
15 a substitute gift is created; and

16 (d) would have taken effect had all the  
17 deceased beneficiaries who left surviving descendants  
18 survived the decedent except the deceased beneficiary or  
19 beneficiaries of the primary beneficiary designation; and

20 (4) "younger-generation substitute gift" means  
21 the substitute gift created with respect to the younger-  
22 generation beneficiary designation.

23 E. A payor is protected from liability in making  
24 payments under the terms of the beneficiary designation until  
25 the payor has received written notice of a claim to a

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1 substitute gift under this section. Payment made before the  
2 receipt of written notice of a claim to a substitute gift  
3 under this section discharges the payor, but not the  
4 recipient, from all claims for the amounts paid. A payor is  
5 liable for a payment made after the payor has received  
6 written notice of the claim. A recipient is liable for a  
7 payment received whether or not written notice of the claim  
8 is given.

9 The written notice of the claim must be mailed to the  
10 payor's main office or home by registered or certified mail,  
11 return receipt requested, or served upon the payor in the  
12 same manner as a summons in a civil action. Upon receipt of  
13 written notice of the claim, a payor may pay any amount owed  
14 by it to the court having jurisdiction of the probate  
15 proceedings relating to the decedent's estate or, if no  
16 proceedings have been commenced, to the court having  
17 jurisdiction of probate proceedings relating to decedents'  
18 estates located in the county of the decedent's residence.  
19 The court shall hold the funds and, upon its determination  
20 under this section, shall order disbursement in accordance  
21 with the determination. Payment made to the court discharges  
22 the payor from all claims for the amounts paid.

23 F. A person who purchases property for value and  
24 without notice or who receives a payment or other item of  
25 property in partial or full satisfaction of a legally

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1 enforceable obligation is neither obligated pursuant to the  
2 provisions of this section to return the payment, item of  
3 property or benefit nor is liable pursuant to the provisions  
4 of this section for the amount of the payment or the value of  
5 the item of property or benefit. But a person who, not for  
6 value, receives a payment, item of property or any other  
7 benefit to which the person is not entitled pursuant to the  
8 provisions of this section is obligated to return the  
9 payment, item of property or benefit or is personally liable  
10 for the amount of the payment or the value of the item of  
11 property or benefit to the person who is entitled to it  
12 pursuant to the provisions of this section.

13 G. If this section or any part of this section is  
14 preempted by federal law with respect to a payment, an item  
15 of property or any other benefit covered by this section, a  
16 person who, not for value, receives the payment, item of  
17 property or any other benefit to which the person is not  
18 entitled pursuant to the provisions of this section is  
19 obligated to return the payment, item of property or benefit  
20 or is personally liable for the amount of the payment or the  
21 value of the item of property or benefit to the person who  
22 would have been entitled to it were this section or part of  
23 this section not preempted."

24 Section 212. Section 45-2-711 NMSA 1978 (being Laws  
25 1993, Chapter 174, Section 59, as amended) is amended to  
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1 read:

2 "45-2-711. FUTURE INTERESTS IN HEIRS AND LIKE.--If an  
3 applicable statute or a governing instrument calls for a  
4 present or future distribution to or creates a present or  
5 future interest in a designated individual's "heirs", "heirs  
6 at law", "next of kin", "relatives" or "family" or language  
7 of similar import, the property passes to those persons,  
8 including the state, and in such shares as would succeed to  
9 the designated individual's intestate estate under the  
10 intestate succession law of the designated individual's  
11 domicile if the designated individual died when the  
12 disposition is to take effect in possession or enjoyment. If  
13 the designated individual's surviving spouse or surviving  
14 domestic partner is living but is remarried or in a  
15 subsequent domestic partnership at the time the disposition  
16 is to take effect in possession or enjoyment, the surviving  
17 spouse or surviving domestic partner is not an heir of the  
18 designated individual."

19 Section 213. Section 45-2-802 NMSA 1978 (being Laws  
20 1993, Chapter 174, Section 61, as amended) is amended to  
21 read:

22 "45-2-802. EFFECT OF DIVORCE, ANNULMENT, DISSOLUTION  
23 AND DECREE OF SEPARATION.--

24 A. An individual who is divorced from the decedent,  
25 whose domestic partnership with the decedent has been

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1 dissolved or whose marriage to or domestic partnership with  
2 the decedent has been annulled is not a surviving spouse or a  
3 surviving domestic partner unless, by virtue of a subsequent  
4 marriage [~~he~~] or domestic partnership, the individual is  
5 married to or in a domestic partnership with the decedent at  
6 the time of death. A decree of separation that does not  
7 terminate the status of husband and wife or domestic partners  
8 is not a divorce or dissolution of domestic partnership for  
9 purposes of this section.

10 B. For purposes of Chapter 45, Article 2, Parts 1  
11 through 4 and Section 45-3-203 NMSA 1978, a surviving spouse  
12 or a surviving domestic partner does not include:

13 (1) an individual who obtains or consents to a  
14 final decree or judgment of divorce from the decedent, a  
15 final decree of dissolution of domestic partnership with the  
16 decedent or an annulment of their marriage or domestic  
17 partnership, which decree, [~~or~~] judgment or dissolution is  
18 not recognized as valid in this state, unless subsequently  
19 they participate in a marriage ceremony purporting to marry  
20 each to the other, [~~or~~] live together as husband and wife or  
21 enter into a domestic partnership together;

22 (2) an individual who, following an invalid  
23 decree or judgment of divorce, [~~or~~] annulment or dissolution  
24 of domestic partnership obtained by the decedent,  
25 participates in a marriage ceremony or enters into a domestic

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1 partnership with a third individual; or

2 (3) an individual who was a party to a valid  
3 proceeding concluded by an order purporting to terminate all  
4 marital or domestic partnership property rights, including a  
5 property division judgment entered pursuant to the provisions  
6 of Section 40-4-20 NMSA 1978."

7 Section 214. Section 45-2-803 NMSA 1978 (being Laws  
8 1993, Chapter 174, Section 62, as amended) is amended to  
9 read:

10 "45-2-803. EFFECT OF HOMICIDE ON INTESTATE SUCCESSION,  
11 WILLS, TRUSTS, JOINT ASSETS, LIFE INSURANCE AND BENEFICIARY  
12 DESIGNATIONS.--

13 A. As used in this section:

14 (1) "disposition or appointment of property"  
15 includes a transfer of an item of property or any other  
16 benefit to a beneficiary designated in a governing  
17 instrument; and

18 (2) "revocable", with respect to a  
19 disposition, appointment, provision or nomination, means one  
20 under which the decedent, at the time of or immediately  
21 before death, was alone empowered, by law or under the  
22 governing instrument, to cancel the designation, in favor of  
23 the killer, whether or not the decedent was then empowered to  
24 designate [~~himself~~] the decedent's own self in place of [~~his~~]  
25 the decedent's killer and the decedent then had capacity to

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1 exercise the power.

2 B. An individual who feloniously and intentionally  
3 kills the decedent forfeits all benefits pursuant to the  
4 provisions of Chapter 45, Article 2 NMSA 1978 with respect to  
5 the decedent's estate, including an intestate share, an  
6 omitted spouse's, domestic partner's or child's share, a  
7 family allowance and a personal property allowance. If the  
8 decedent died intestate, the decedent's intestate estate  
9 passes as if the killer disclaimed [~~his~~] the killer's  
10 intestate share.

11 C. The felonious and intentional killing of the  
12 decedent:

13 (1) revokes any revocable:

14 (a) disposition or appointment of property  
15 made by the decedent to the killer in a governing instrument;

16 (b) provision in a governing instrument  
17 executed by the decedent conferring a general or nongeneral  
18 power of appointment on the killer; and

19 (c) nomination of the killer in a  
20 governing instrument executed by the decedent, nominating or  
21 appointing the killer to serve in any fiduciary or  
22 representative capacity, including a personal representative,  
23 executor, trustee or agent; and

24 (2) severs the interests of the decedent and  
25 killer in property held by them at the time of the killing as

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1 joint tenants with the right of survivorship, transforming  
2 the interests of the decedent and killer into tenancies in  
3 common.

4 D. A severance pursuant to the provisions of  
5 Paragraph (2) of Subsection C of this section does not affect  
6 any third-party interest in property acquired for value and  
7 in good faith reliance on an apparent title by survivorship  
8 in the killer unless a writing declaring the severance has  
9 been noted, registered, filed or recorded in records  
10 appropriate to the kind and location of the property that are  
11 relied upon in the ordinary course of transactions involving  
12 such property as evidence of ownership.

13 E. Provisions of a governing instrument executed by  
14 the decedent are given effect as if the killer disclaimed all  
15 provisions revoked by this section or, in the case of a  
16 revoked nomination in a fiduciary or representative capacity,  
17 as if the killer predeceased the decedent.

18 F. An acquisition of property or interest by a  
19 killer not covered by this section must be treated in  
20 accordance with the principle that a killer cannot profit  
21 from [~~his~~] the killer's wrong.

22 G. After all right to appeal has been exhausted, a  
23 judgment of conviction establishing criminal accountability  
24 for the felonious and intentional killing of the decedent  
25 conclusively establishes the convicted individual as the

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1 decedent's killer for purposes of this section. In the  
2 absence of a conviction, the court upon the petition of an  
3 interested person must determine whether under the  
4 preponderance of evidence standard the individual would be  
5 found criminally accountable for the felonious and  
6 intentional killing of the decedent. If the court determines  
7 that under that standard the individual would be found  
8 criminally accountable for the felonious and intentional  
9 killing of the decedent, the determination conclusively  
10 establishes that individual as the decedent's killer for  
11 purposes of this section.

12 H. A payor or other third-party is not liable for  
13 having made a payment or transferred an item of property or  
14 any other benefit to a beneficiary designated in a governing  
15 instrument executed by the decedent affected by an  
16 intentional and felonious killing or for having taken any  
17 other action in good faith reliance on the validity of the  
18 governing instrument executed by the decedent upon request  
19 and satisfactory proof of the decedent's death before the  
20 payor or other third-party received written notice of a  
21 claimed forfeiture or revocation under this section. A payor  
22 or other third-party is liable for a payment made or other  
23 action taken after the payor or other third-party received  
24 written notice of a claimed forfeiture or revocation under  
25 this section.

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1           Written notice of a claimed forfeiture or revocation  
2 pursuant to the provisions of this section must be mailed to  
3 the payor's or other third-party's main office or home by  
4 registered or certified mail, return receipt requested, or  
5 served upon the payor or other third-party in the same manner  
6 as a summons in a civil action. Upon receipt of written  
7 notice of a claimed forfeiture or revocation pursuant to the  
8 provisions of this section, a payor or other third-party may  
9 pay any amount owed or transfer or deposit any item of  
10 property held by it to or with the court having jurisdiction  
11 of the probate proceedings relating to the decedent's estate  
12 or if no proceedings have been commenced, to or with the  
13 court having jurisdiction of probate proceedings relating to  
14 decedents' estates located in the county of the decedent's  
15 residence. The court shall hold the funds or item of  
16 property and, upon its determination pursuant to the  
17 provisions of this section, shall order disbursement in  
18 accordance with the determination. Payments, transfers or  
19 deposits made to or with the court discharge the payor or  
20 other third-party from all claims for the value of amounts  
21 paid to or items of property transferred to or deposited with  
22 the court.

23           I. A person who purchases property for value and  
24 without notice or who receives a payment or other item of  
25 property in partial or full satisfaction of a legally

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1 enforceable obligation is neither obligated pursuant to the  
2 provisions of this section to return the payment, item of  
3 property or benefit nor is liable pursuant to the provisions  
4 of this section for the amount of the payment or the value of  
5 the item of property or benefit. But a person who, not for  
6 value, receives a payment, item of property or any other  
7 benefit to which the person is not entitled pursuant to the  
8 provisions of this section is obligated to return the  
9 payment, item of property or benefit or is personally liable  
10 for the amount of the payment or the value of the item of  
11 property or benefit to the person who is entitled to it  
12 pursuant to the provisions of this section.

13 J. If this section or any part of this section is  
14 preempted by federal law with respect to a payment, an item  
15 of property or any other benefit covered by this section, a  
16 person who, not for value, receives the payment, item of  
17 property or any other benefit to which the person is not  
18 entitled pursuant to the provisions of this section is  
19 obligated to return the payment, item of property or benefit  
20 or is personally liable for the amount of the payment or the  
21 value of the item of property or benefit to the person who  
22 would have been entitled to it were this section or part of  
23 this section not preempted."

24 Section 215. Section 45-2-804 NMSA 1978 (being Laws  
25 1993, Chapter 174, Section 63, as amended) is amended to  
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1 read:

2 "45-2-804. REVOCATION OF PROBATE AND NONPROBATE  
3 TRANSFERS BY DIVORCE OR DISSOLUTION--NO REVOCATION BY OTHER  
4 CHANGES OF CIRCUMSTANCES.--

5 A. As used in this section:

6 (1) "disposition or appointment of property"  
7 includes a transfer of an item of property or any other  
8 benefit to a beneficiary designated in a governing  
9 instrument;

10 (2) "divorce or annulment" means any divorce  
11 or annulment or any dissolution or declaration of invalidity  
12 of a marriage or domestic partnership that would exclude the  
13 spouse or domestic partner as a surviving spouse or surviving  
14 domestic partner within the meaning of Section 45-2-802 NMSA  
15 1978. A decree of separation that does not terminate the  
16 status of husband and wife or domestic partners is not a  
17 divorce or a dissolution for purposes of this section;

18 (3) "divorced individual" includes an  
19 individual whose marriage or domestic partnership has been  
20 annulled and an individual whose marriage or domestic  
21 partnership has been dissolved;

22 (4) "governing instrument" means a governing  
23 instrument executed by the divorced individual before the  
24 divorce or annulment of [~~his~~] the divorced individual's  
25 marriage to [~~his~~] or domestic partnership with the former

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1 spouse or former domestic partner;

2 (5) "relative of the divorced individual's  
3 former spouse or former domestic partner" means an individual  
4 who is related to the divorced individual's former spouse or  
5 former domestic partner by blood, adoption or affinity and  
6 who, after the divorce or annulment, is not related to the  
7 divorced individual by blood, adoption or affinity; and

8 (6) "revocable", with respect to a  
9 disposition, appointment, provision or nomination, means one  
10 under which the divorced individual, at the time of the  
11 divorce or annulment, was alone empowered by law or under the  
12 governing instrument to cancel the designation in favor of  
13 [~~his~~] the former spouse or former domestic partner or [~~former~~  
14 ~~spouse's~~] the relative of the former spouse or former  
15 domestic partner whether or not the divorced individual was  
16 then empowered to designate [~~himself~~] the divorced  
17 individual's own self in place of [~~his~~] the divorced  
18 individual's former spouse or former domestic partner or in  
19 place of [~~his former spouse's~~] the relative of the former  
20 spouse or former domestic partner and whether or not the  
21 divorced individual then had the capacity to exercise the  
22 power.

23 B. Except as provided by the express terms of a  
24 governing instrument, a court order or a contract relating to  
25 the division of the marital estate or the division of the

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1 estate created by entering into a domestic partnership made  
2 between the divorced individuals before or after the  
3 marriage, domestic partnership, divorce or annulment, the  
4 divorce or annulment of a marriage or domestic partnership:

5 (1) revokes any revocable:

6 (a) disposition or appointment of property  
7 made by a divorced individual to [~~his~~] the divorced  
8 individual's former spouse or former domestic partner in a  
9 governing instrument and any disposition or appointment  
10 created by law or in a governing instrument to a relative of  
11 the divorced individual's former spouse or former domestic  
12 partner;

13 (b) provision in a governing instrument  
14 conferring a general or nongeneral power of appointment on  
15 the divorced individual's former spouse or former domestic  
16 partner or on a relative of the divorced individual's former  
17 spouse or former domestic partner; and

18 (c) nomination in a governing instrument,  
19 nominating a divorced individual's former spouse or former  
20 domestic partner or a relative of the divorced individual's  
21 former spouse or former domestic partner to serve in any  
22 fiduciary or representative capacity, including a personal  
23 representative, executor, trustee, conservator, agent or  
24 guardian; and

25 (2) severs the interests of the former spouses

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1 or former domestic partners in property held by them at the  
2 time of the divorce or annulment as joint tenants with the  
3 right of survivorship, transforming the interests of the  
4 former spouses or former domestic partners into tenancies in  
5 common.

6 C. A severance pursuant to the provisions of  
7 Paragraph (2) of Subsection B of this section does not affect  
8 any third-party interest in property acquired for value and  
9 in good faith reliance on an apparent title by survivorship  
10 in the survivor of the former spouses or former domestic  
11 partners unless a writing declaring the severance has been  
12 noted, registered, filed or recorded in records appropriate  
13 to the kind and location of the property that are relied upon  
14 in the ordinary course of transactions involving such  
15 property as evidence of ownership.

16 D. Provisions of a governing instrument are given  
17 effect as if the former spouse or former domestic partner and  
18 relatives of the former spouse or former domestic partner  
19 disclaimed all provisions revoked by this section or, in the  
20 case of a revoked nomination in a fiduciary or representative  
21 capacity, as if the former spouse or former domestic partner  
22 and relatives of the former spouse or former domestic partner  
23 died immediately before the divorce or annulment.

24 E. Provisions revoked solely by this section are  
25 revived by the divorced individual's remarriage to or entry

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1 into a new domestic partnership with the former spouse or  
2 former domestic partner or by a nullification of the divorce  
3 or annulment.

4 F. No change of circumstances other than as  
5 described in this section and in Section 45-2-803 NMSA 1978  
6 effects a revocation.

7 G. A payor or other third-party is not liable for  
8 having made a payment or transferred an item of property or  
9 any other benefit to a beneficiary designated in a governing  
10 instrument affected by a divorce, dissolution, annulment,  
11 [~~or~~] remarriage or entry into a subsequent domestic  
12 partnership or for having taken any other action in good  
13 faith reliance on the validity of the governing instrument  
14 before the payor or other third-party received written notice  
15 of the divorce, dissolution, annulment, [~~or~~] remarriage or  
16 entry into a subsequent domestic partnership. A payor or  
17 other third-party is liable for a payment made or other  
18 action taken after the payor or other third-party received  
19 written notice of a claimed forfeiture or revocation pursuant  
20 to the provisions of this section.

21 Written notice of the divorce, dissolution, annulment,  
22 [~~or~~] remarriage or subsequent domestic partnership pursuant  
23 to the provisions of this section must be mailed to the  
24 payor's or other third-party's main office or home by  
25 registered or certified mail, return receipt requested, or

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1 served upon the payor or other third-party in the same manner  
2 as a summons in a civil action. Upon receipt of the written  
3 notice of the divorce, dissolution, annulment, [~~or~~]  
4 remarriage or subsequent domestic partnership, a payor or  
5 other third-party may pay any amount owed or transfer or  
6 deposit any item of property held by it to or with the court  
7 having jurisdiction of the probate proceedings relating to  
8 the decedent's estate or, if no proceedings have been  
9 commenced, to or with the court having jurisdiction of  
10 probate proceedings relating to decedents' estates located in  
11 the county of the decedent's residence. The court shall hold  
12 the funds or item of property and, upon its determination  
13 pursuant to the provisions of this section, shall order  
14 disbursement or transfer in accordance with the  
15 determination. Payments, transfers or deposits made to or  
16 with the court discharge the payor or other third-party from  
17 all claims for the value of amounts paid to or items of  
18 property transferred to or deposited with the court.

19 H. A person who purchases property from a former  
20 spouse or former domestic partner, relative of a former  
21 spouse or former domestic partner or any other person for  
22 value and without notice or who receives from a former spouse  
23 or former domestic partner, relative of a former spouse or  
24 former domestic partner or any other person a payment or  
25 other item of property in partial or full satisfaction of a

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1 legally enforceable obligation is neither obligated pursuant  
2 to the provisions of this section to return the payment, item  
3 of property or benefit nor is liable pursuant to the  
4 provisions of this section for the amount of the payment or  
5 the value of the item of property or benefit. But a former  
6 spouse or former domestic partner, relative of a former  
7 spouse or former domestic partner or other person who, not  
8 for value, received a payment, item of property or any other  
9 benefit to which that person is not entitled pursuant to the  
10 provisions of this section is obligated to return the  
11 payment, item of property or benefit or is personally liable  
12 for the amount of the payment or the value of the item of  
13 property or benefit to the person who is entitled to it  
14 pursuant to the provisions of this section.

15 I. If this section or any part of this section is  
16 preempted by federal law with respect to a payment, an item  
17 of property or any other benefit covered by this section, a  
18 former spouse or former domestic partner, relative of the  
19 former spouse or former domestic partner or any other person  
20 who, not for value, received a payment, item of property or  
21 any other benefit to which that person is not entitled  
22 pursuant to the provisions of this section is obligated to  
23 return that payment, item of property or benefit or is  
24 personally liable for the amount of the payment or the value  
25 of the item of property or benefit to the person who would

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1 have been entitled to it were this section or part of this  
2 section not preempted."

3 Section 216. Section 45-2-805 NMSA 1978 (being Laws  
4 1975, Chapter 257, Section 2-804, as amended) is amended to  
5 read:

6 "45-2-805. DEATH OF SPOUSE OR DOMESTIC PARTNER--  
7 COMMUNITY PROPERTY.--

8 A. Upon the death of [~~either~~] a spouse or domestic  
9 partner, one-half of the community property belongs to the  
10 surviving spouse or surviving domestic partner, and the other  
11 half is subject to the testamentary disposition of the  
12 decedent, except that community property that is joint  
13 tenancy property under Subsection B of Section 40-3-8 NMSA  
14 1978 shall not be subject to the testamentary disposition of  
15 the decedent.

16 B. Upon the death of [~~either~~] a spouse or domestic  
17 partner, the entire community property is subject to the  
18 payment of community debts. The [~~deceased spouse's~~] separate  
19 debts and funeral expenses of the deceased spouse or deceased  
20 domestic partner and the charge and expenses of  
21 administration are to be satisfied first from [~~his~~] the  
22 separate property of the deceased spouse or deceased domestic  
23 partner, excluding property held in joint tenancy. Should  
24 such property be insufficient, then the [~~deceased spouse's~~]  
25 undivided one-half interest of the deceased spouse or

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1 deceased domestic partner in the community property shall be  
2 liable.

3 C. The provisions of the 1984 amendments to this  
4 section shall not affect the right of any creditor, which  
5 right accrued prior to the effective date of those  
6 amendments."

7 Section 217. Section 45-2-904 NMSA 1978 (being Laws  
8 1992, Chapter 66, Section 4, as amended) is amended to read:

9 "45-2-904. EXCLUSIONS.--Section 45-2-901 NMSA 1978 does  
10 not apply to:

11 A. a nonvested property interest or a power of  
12 appointment arising out of a nondonative transfer, except a  
13 nonvested property interest or a power of appointment arising  
14 out of:

15 (1) a premarital or postmarital agreement or a  
16 pre-domestic partnership or post-domestic partnership  
17 agreement;

18 (2) a separation or [~~divorce~~] dissolution  
19 settlement;

20 (3) a spouse's or domestic partner's election;

21 (4) a similar arrangement arising out of a  
22 prospective, existing or previous marital or domestic  
23 partnership relationship between the parties;

24 (5) a contract to make or not to revoke a will  
25 or trust;

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1                   (6) a contract to exercise or not to exercise  
2 a power of appointment;

3                   (7) a transfer in satisfaction of a duty of  
4 support; or

5                   (8) a reciprocal transfer;

6                   B. a fiduciary's power relating to the  
7 administration or management of assets, including the power  
8 of a fiduciary to sell, lease or mortgage property and the  
9 power of a fiduciary to determine principal and income;

10                  C. a power to appoint a fiduciary;

11                  D. a discretionary power of a trustee to distribute  
12 principal before termination of a trust to a beneficiary  
13 having an indefeasibly vested interest in the income and  
14 principal;

15                  E. a nonvested property interest held by a charity,  
16 government or governmental agency or subdivision if the  
17 nonvested property interest is preceded by an interest held  
18 by another charity, government or governmental agency or  
19 subdivision;

20                  F. a nonvested property interest in or a power of  
21 appointment with respect to a trust or other property  
22 arrangement forming part of a pension, profit-sharing, stock  
23 bonus, health, disability, death benefit, income deferral or  
24 other current or deferred benefit plan for one or more  
25 employees, independent contractors or their beneficiaries,

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1     ~~[or]~~ spouses or domestic partners, to which contributions are  
2     made for the purpose of distributing to or for the benefit of  
3     the participants or their beneficiaries, ~~[or]~~ spouses or  
4     domestic partners the property, income or principal in the  
5     trust or other property arrangement, except a nonvested  
6     property interest or a power of appointment that is created  
7     by an election of a participant or a beneficiary, ~~[or]~~ spouse  
8     or domestic partner;

9             G. a property interest, power of appointment or  
10     arrangement that was not subject to the common-law rule  
11     against perpetuities or that is excluded by another statute  
12     of New Mexico; or

13             H. a property interest or arrangement subject to a  
14     time limit under the provisions of Section 45-2-907 NMSA  
15     1978."

16             Section 218. Section 45-2A-2 NMSA 1978 (being Laws  
17     1991, Chapter 173, Section 2) is amended to read:

18             "45-2A-2. DEFINITIONS.--As used in the Uniform  
19     Statutory Will Act:

20             A. "child" means, except as modified by this  
21     subsection, a child of a natural parent whose relationship is  
22     involved; an adopted individual is the child of the adopting  
23     parents and not of the natural parents, but an individual  
24     adopted by the spouse or domestic partner of a natural parent  
25     is also the child of either natural parent; an individual

.179346.5GR

1 born out of wedlock or outside of a domestic partnership is  
2 not the child of the father unless the individual is openly  
3 and notoriously so treated by the father; the term does not  
4 include an individual who is a stepchild, a foster child, a  
5 grandchild or a more remote descendant;

6 B. "issue" of an individual means all lineal  
7 descendants of all generations, with the status of a child at  
8 each generation being determined by the definition of child  
9 in Subsection A of this section;

10 C. "personal representative" includes executor,  
11 administrator, successor personal representative, special  
12 administrator and a person who performs substantially the  
13 same functions relating to the estate of a decedent under the  
14 law governing their status;

15 D. "property" means an interest, present or future,  
16 legal or equitable, vested or contingent, in real or personal  
17 property;

18 E. "representation" means the estate is divided  
19 into as many equal shares as there are surviving issue in the  
20 nearest degree of kinship and deceased individuals in the  
21 same degree who left issue surviving the decedent, each  
22 surviving issue in the nearest degree receiving one share and  
23 the share of each deceased individual in the same degree  
24 being divided among issue of that individual in the same  
25 manner;

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1 F. "statutory-will estate" means the entire  
2 testamentary estate, except as otherwise provided in the  
3 will;

4 G. "surviving spouse" or "surviving domestic  
5 partner" means the individual [~~to~~] with whom the testator  
6 [~~was married~~] had entered into a marriage or domestic  
7 partnership at the time of death except a spouse or domestic  
8 partner from whom the testator was then separated under a  
9 decree of separation, whether or not final, or written  
10 separation agreement signed by both parties; an individual  
11 separated from the testator whose marriage to or domestic  
12 partnership with the testator continues in effect under the  
13 law of this state solely because a judgment of [~~divorce~~]  
14 dissolution or annulment of the marriage or domestic  
15 partnership is not recognized as valid in this state is not  
16 the testator's surviving spouse or surviving domestic  
17 partner; an individual whose marriage to or domestic  
18 partnership with the testator at the time of death is not  
19 recognized in this state solely because a judgment of  
20 [~~divorce~~] dissolution or annulment of a previous marriage or  
21 previous domestic partnership of either or both of them is  
22 not recognized as valid in this state is the testator's  
23 surviving spouse or surviving domestic partner;

24 H. "testamentary estate" includes every interest in  
25 property subject to disposition or appointed by a will of the

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1 decedent;

2 I. "testator's residence" means one or more  
3 properties normally used at the time of the testator's death  
4 by the testator or the surviving spouse or surviving domestic  
5 partner as a residence for any part of the year; if the  
6 property used as a residence is a unit in a cooperative or  
7 other entity, it includes all rights and interests relating  
8 to that unit; if the property is used in part for a  
9 commercial, agricultural or other business purpose, the  
10 testator's residence is an area not exceeding three acres,  
11 which includes the structure used in whole or in part as a  
12 residence and structures normally used by the testator in  
13 connection with the dwelling and excludes structures and  
14 areas outside the dwelling used primarily for a commercial,  
15 agricultural or other business purpose; and

16 J. "trustee" includes an original, additional or  
17 successor trustee, whether or not appointed or confirmed by  
18 the court."

19 Section 219. Section 45-2A-6 NMSA 1978 (being Laws  
20 1991, Chapter 173, Section 6) is amended to read:

21 "45-2A-6. SHARE OF SPOUSE OR DOMESTIC PARTNER.--

22 A. The share of the surviving spouse or surviving  
23 domestic partner is:

24 (1) if there is no surviving issue, the entire  
25 statutory-will estate; or

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1 (2) if there is a surviving issue:

2 (a) subject to any lien or encumbrance,  
3 the testator's residence and tangible personal property,  
4 except personal property held primarily for investment or for  
5 a commercial, agricultural or other business purpose;

6 (b) the greater of one hundred fifty  
7 thousand dollars (\$150,000) or one-half of the balance of the  
8 statutory-will estate; and

9 (c) subject to Subsection B of this  
10 section, an interest in the remaining portion of the  
11 statutory-will estate, including any property that would pass  
12 under Subparagraph (a) of this paragraph but disclaimed by  
13 the surviving spouse or surviving domestic partner, in a  
14 trust upon the terms set forth in Section [~~7 of the Uniform~~  
15 ~~Statutory Will Act~~] 45-2A-7 NMSA 1978.

16 B. If the personal representative, other than the  
17 surviving spouse or surviving domestic partner, determines  
18 that the trust under Section [~~7 of the Uniform Statutory Will~~  
19 ~~Act~~] 45-2A-7 NMSA 1978 would be uneconomical, the entire  
20 statutory-will estate passes to the surviving spouse or  
21 surviving domestic partner."

22 Section 220. Section 45-2A-7 NMSA 1978 (being Laws  
23 1991, Chapter 173, Section 7) is amended to read:

24 "45-2A-7. TRUST FOR SPOUSE AND ISSUE.--

25 A. Property held in trust under Subparagraph (c) of  
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1 Paragraph (2) of Subsection A of Section [6] 45-2A-6 NMSA  
2 1978 is held upon the terms of Subsections B through D of  
3 this section.

4 B. During the life of the surviving spouse or  
5 surviving domestic partner, the entire net income must be  
6 paid to or for the benefit of the surviving spouse or  
7 surviving domestic partner in quarterly or more frequent  
8 installments; net income accrued or undistributed on the  
9 death of the surviving spouse or surviving domestic partner  
10 must be paid to the estate of the spouse or domestic partner;  
11 if unproductive property is held in the trust, the surviving  
12 spouse or surviving domestic partner at any time by written  
13 instrument delivered to the trustee may compel conversion of  
14 the unproductive property to productive property.

15 C. During the life of the surviving spouse or  
16 surviving domestic partner, the trustee at any time may pay  
17 to or for the benefit of the surviving spouse or surviving  
18 domestic partner and issue of the testator amounts of the  
19 principal the trustee deems advisable, giving reasonable  
20 consideration to other resources available to the  
21 distributee, for the individual's needs for health,  
22 education, support or maintenance; for the purpose of making  
23 those discretionary payments, the principal must be  
24 administered as two separate shares, which at the inception  
25 of the trust must be equal; one share is the surviving

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1 spouse's or surviving domestic partner's share of the  
2 principal; during the life of the surviving spouse or  
3 surviving domestic partner, payments may not be made from the  
4 surviving spouse's or surviving domestic partner's share to  
5 anyone other than the surviving spouse or surviving domestic  
6 partner; primary consideration must be given to the needs of  
7 the surviving spouse or surviving domestic partner and the  
8 children of the testator who are under the age of twenty-  
9 three years or under disability. The trustee may rely in  
10 good faith on a written statement furnished by a beneficiary.  
11 The discretion to pay principal to or for the benefit of any  
12 individual includes the discretion after that individual's  
13 death to pay expenses incurred before the individual's death  
14 and to pay funeral and burial expenses. If the trustee,  
15 other than the surviving spouse or surviving domestic  
16 partner, determines that continuation of the trust is  
17 uneconomical, the trustee may terminate the trust by  
18 distribution of principal to the surviving spouse or  
19 surviving domestic partner. Principal that in the exercise  
20 of the trustee's discretion is paid to or for the benefit of  
21 any issue may be charged against any share of income or  
22 principal thereafter existing for that issue or for any  
23 ancestor or descendant of that issue if the trustee upon  
24 equitable considerations so determines. If the surviving  
25 spouse or surviving domestic partner or any issue is serving

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1 as trustee, the trustee's discretion pursuant to this  
2 subsection is not exercisable in favor of that trustee except  
3 as necessary for the trustee's needs for health, education,  
4 support or maintenance, nor is the trustee's discretion  
5 exercisable in favor of the trustee's estate, the trustee's  
6 creditors or creditors of the trustee's estate.

7 D. On the death of the surviving spouse or  
8 surviving domestic partner, the principal, unless retained in  
9 trust under Section [~~9 or 10 of the Uniform Statutory Will~~  
10 ~~Act~~] 45-2A-9 or 45-2A-10 NMSA 1978, must be paid, subject to  
11 any charges made by the trustee under Subsection C of this  
12 section, to the children of the testator in equal shares if  
13 all of the children are then living, otherwise to the then  
14 living issue of the testator by representation or, if no  
15 issue of the testator is then living, to the individuals who  
16 would be entitled to receive the estate as if the property  
17 were located in this state and the testator had then died  
18 intestate domiciled in this state in proportions determined  
19 under the law then existing."

20 Section 221. Section 45-2A-8 NMSA 1978 (being Laws  
21 1991, Chapter 173, Section 8) is amended to read:

22 "45-2A-8. SHARES OF HEIRS WHEN NO SURVIVING SPOUSE OR  
23 SURVIVING DOMESTIC PARTNER.--

24 A. If there is no surviving spouse or surviving  
25 domestic partner, the statutory-will estate passes, subject

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1 to Sections [~~9 and 10~~] 45-2A-9 and 45-2A-10 NMSA 1978, as  
2 follows:

3 (1) if there is surviving issue, in equal  
4 shares to the children of the testator if all of them  
5 survive, otherwise to the surviving issue of the testator by  
6 representation; or

7 (2) if there is no surviving issue, to the  
8 individuals entitled to receive the estate as if the property  
9 were located in this state and the testator had died  
10 intestate domiciled in this state in the proportions so  
11 determined.

12 B. Unless the personal representative determines  
13 that a trust would be uneconomical, property to which Section  
14 [~~9 or 10~~] 45-2A-9 or 45-2A-10 NMSA 1978 applies must be  
15 distributed to the trustee. If the personal representative  
16 determines that a trust would be uneconomical, the property  
17 passes under Subsection A of this section free of trust. The  
18 discretion provided in this subsection to the personal  
19 representative is not exercisable by any of the testator's  
20 issue serving as personal representative."

21 Section 222. Section 45-2A-9 NMSA 1978 (being Laws  
22 1991, Chapter 173, Section 9) is amended to read:

23 "45-2A-9. TRUST IF CHILD UNDER SPECIFIED AGE.--

24 A. If property is distributable under Section [~~7~~]  
25 45-2A-8 NMSA 1978 or Subsection D of Section [~~7 of the~~

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1 ~~Uniform Statutory Will Act]~~ 45-2A-7 NMSA 1978 to a child of  
2 the testator who is under the age specified in the will or,  
3 if the will does not specify an age, under the age of twenty-  
4 three years, all shares distributable to issue of the  
5 testator must be held in a trust under this section. In  
6 exercising powers under Subsections B and C of this section,  
7 primary consideration must be given to the needs of children  
8 of the testator who are under the age of twenty-three years  
9 or under disability.

10 B. Until no living child of the testator is under  
11 the age determined under Subsection A of this section, the  
12 trustee shall pay the income and principal of the trust to or  
13 for the benefit or account of one or more of the issue of the  
14 testator in amounts the trustee deems advisable for their  
15 needs for health, education, support or maintenance. Income  
16 not so paid may be added to principal.

17 C. The trustee at any time in its discretion may  
18 distribute to a beneficiary the share, in whole or in part,  
19 of the trust to which the distributee would be entitled if  
20 the trust then terminated. If the whole of a share has been  
21 distributed under this subsection, the trustee thereafter  
22 must not make any further distribution of income or principal  
23 to that distributee or issue of that distributee.

24 D. The trust terminates when no living child of the  
25 testator is under the age determined under Subsection A of

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1 this section or the trustee determines that continuation of  
2 the trust is uneconomical.

3 E. Subject to Section [~~10 of the Uniform Statutory~~  
4 ~~Will Act~~] 45-2A-10 NMSA 1978 and Subsection C of this  
5 section, the property in the trust must be distributed upon  
6 termination to the issue of the testator in proportion to the  
7 shares determined at the death of the surviving spouse or  
8 surviving domestic partner under Subsection D of Section [~~7~~  
9 ~~of the Uniform Statutory Will Act~~] 45-2A-7 NMSA 1978, or at  
10 the death of the testator under Section [~~8 of that act~~]  
11 45-2A-8 NMSA 1978 if there is no surviving spouse or  
12 surviving domestic partner. In determining the amount to be  
13 distributed to any distributee, the trustee shall charge the  
14 share of that distributee with any partial distribution made  
15 under Subsection C of this section and may charge, in its  
16 discretion, the share of that distributee with distributions  
17 under Subsection B of this section to or for the benefit or  
18 account of the distributee, or issue or ancestor of the  
19 distributee. If any issue whose share is held in trust under  
20 this section dies before the complete distribution of the  
21 share, the property to which the issue would have been  
22 entitled if living must be distributed to the assignees or,  
23 if none, to the estate of the deceased issue.

24 F. If an issue is serving as trustee, the  
25 discretion of the trustee under this section is not

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1 exercisable, except as necessary for that individual's needs  
2 for health, education, support or maintenance, in favor of  
3 that individual, that individual's estate, that individual's  
4 creditors or the creditors of that individual's estate."

5 Section 223. Section 45-2A-10 NMSA 1978 (being Laws  
6 1991, Chapter 173, Section 10) is amended to read:

7 "45-2A-10. EFFECT OF DISABILITY AT DISTRIBUTION.--

8 A. If property becomes distributable by a personal  
9 representative or trustee to an individual under the age  
10 specified in the will or, if the will does not specify an  
11 age, under the age of twenty-three years, or to an individual  
12 who the personal representative or trustee determines cannot  
13 effectively manage or apply the property by reason of mental  
14 illness, mental deficiency, physical illness or disability,  
15 chronic use of drugs, chronic intoxication or other cause:

16 (1) the personal representative or trustee, as  
17 to principal or income, may distribute part or all of the  
18 property to the distributee directly, by deposit or  
19 investment in the distributee's name or for the distributee's  
20 account, or to a guardian or conservator for the distributee;

21 (2) the personal representative may distribute  
22 to the trustee in trust under Paragraph (3) of this  
23 subsection; or

24 (3) the trustee may retain all or any of the  
25 property in trust for the distributee and thereafter at any

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1 time the trustee may distribute or apply part or all of the  
2 principal or income to or for the benefit or account of the  
3 distributee.

4 B. Unless terminated earlier, a trust under  
5 Paragraph (3) of Subsection A of this section terminates upon  
6 the attainment of the required age, removal of the disability  
7 or death of the distributee. Upon termination, the trustee  
8 shall distribute the remaining trust property to the  
9 distributee or personal representative of the distributee's  
10 estate.

11 C. This section does not apply to distributions to  
12 a surviving spouse or surviving domestic partner of the  
13 testator."

14 Section 224. Section 45-2A-13 NMSA 1978 (being Laws  
15 1991, Chapter 173, Section 13) is amended to read:

16 "45-2A-13. APPOINTMENT OF PERSONAL REPRESENTATIVE AND  
17 TRUSTEE.--

18 A. The person named in the will as personal  
19 representative or trustee is entitled to serve, if qualified,  
20 as personal representative or trustee.

21 B. If a qualified person is not named in the will  
22 as personal representative, or the named person is  
23 incapacitated, unwilling to serve or dead, and a qualified  
24 alternate is not named in the will, priority for appointment  
25 as personal representative is determined by the law of the

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1 state of the decedent's domicile at death.

2 C. If a qualified person is not named in the will  
3 as trustee, or the named person is incapacitated, unwilling  
4 to serve or dead, and a qualified alternate is not named in  
5 the will, the personal representative may appoint, without  
6 court approval, a qualified person, including a person  
7 serving as personal representative, to serve as trustee.

8 D. If a personal representative or trustee resigns,  
9 is removed, becomes incapacitated or dies, the surviving  
10 spouse or surviving domestic partner, or if there is no  
11 surviving spouse or surviving domestic partner or the  
12 surviving spouse or surviving domestic partner is unable or  
13 unwilling to act, a majority of the adult children of the  
14 testator may appoint a qualified successor personal  
15 representative or trustee.

16 E. In all other cases, personal representatives and  
17 trustees must be appointed by the court."

18 Section 225. Section 45-3-101 NMSA 1978 (being Laws  
19 1975, Chapter 257, Section 3-101) is amended to read:

20 "45-3-101. DEVOLUTION OF ESTATE AT DEATH--  
21 ADMINISTRATION ON DEATHS OF HUSBAND AND WIFE OR DOMESTIC  
22 PARTNERS.--

23 A. The power of a person to leave property by will  
24 and the rights of creditors, devisees and heirs to [~~his~~] the  
25 person's property are subject to the restrictions and

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1 limitations contained in Sections [~~3-101 through 3-1204~~]  
2 45-3-101 through 45-3-1204 NMSA 1978 to facilitate the prompt  
3 settlement of estates.

4 B. Upon the death of a person, [~~his~~] the person's  
5 separate property and [~~his~~] the person's share of community  
6 property devolves:

7 (1) to the persons to whom the property is  
8 devised by [~~his~~] the person's last will;

9 (2) to those indicated as substitutes for them  
10 in cases involving lapse, renunciation or other circumstances  
11 pursuant to Sections [~~2-508 and 2-601 through 2-803~~] 45-2-508  
12 and 45-2-601 through 45-2-803 NMSA 1978 affecting the  
13 devolution of testate estates; or

14 (3) in the absence of testamentary  
15 disposition, to [~~his~~] the person's heirs or to those  
16 indicated as substitutes for them in cases involving  
17 renunciation or other circumstances pursuant to Sections [~~2-~~  
18 ~~301 through 2-405~~] 45-2-301 through 45-2-405 NMSA 1978  
19 affecting the devolution of intestate estates.

20 C. The devolution of separate property and the  
21 decedent's share of community property is subject to rights  
22 to the family allowance and personal property allowance, to  
23 rights of creditors and to administration as provided in  
24 Sections [~~3-101 through 3-1204~~] 45-3-101 through 45-3-1204  
25 NMSA 1978. The surviving spouse's or surviving domestic

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1 partner's share of the community property is subject to  
2 administration until the time for presentation of claims has  
3 expired, and thereafter only to the extent necessary to pay  
4 community claims."

5 Section 226. Section 45-3-203 NMSA 1978 (being Laws  
6 1975, Chapter 257, Section 3-203, as amended) is amended to  
7 read:

8 "45-3-203. PRIORITY AMONG PERSONS SEEKING APPOINTMENT  
9 AS PERSONAL REPRESENTATIVE.--

10 A. Whether the proceedings are formal or informal,  
11 persons who are not disqualified have priority for  
12 appointment in the following order:

13 (1) the person with priority as determined by  
14 a probated will, including a person nominated by a power  
15 conferred in a will;

16 (2) the surviving spouse or surviving domestic  
17 partner of the decedent who is a devisee of the decedent;

18 (3) other devisees of the decedent;

19 (4) the surviving spouse or surviving domestic  
20 partner of the decedent;

21 (5) other heirs of the decedent; and

22 (6) on application or petition of an  
23 interested person other than a spouse, domestic partner,  
24 devisee or heir, any qualified person.

25 B. An objection to an appointment may be made only

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1 in formal proceedings. In case of objection, the priorities  
2 stated in Subsection A of this section apply except that:

3 (1) if the estate appears to be more than  
4 adequate to meet exemptions and costs of administration but  
5 inadequate to discharge anticipated unsecured claims, the  
6 court, on petition of creditors, may appoint any qualified  
7 person; and

8 (2) in case of objection to appointment of a  
9 person other than one whose priority is determined by will by  
10 an heir or devisee appearing to have a substantial interest  
11 in the estate, the court may appoint a person who is  
12 acceptable to heirs and devisees whose interests in the  
13 estate appear to be worth in total more than half of the  
14 probable distributable value of the estate or, in default of  
15 this accord, any suitable person.

16 C. A person entitled to letters under Paragraphs  
17 (2) through (5) of Subsection A of this section or a person  
18 who has not reached the age of majority and who might be  
19 entitled to letters but for the person's age may nominate a  
20 qualified person to act as personal representative and  
21 thereby confer the person's relative priority for appointment  
22 on the person's nominee. Any person who has reached the age  
23 of majority may renounce the right to nominate or to an  
24 appointment by appropriate writing filed with the court.

25 When two or more persons share a priority, those of them who

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1 do not renounce shall concur in nominating another to act for  
2 them or in applying for appointment.

3 D. Conservators of the estates of protected persons  
4 or, if there is no conservator, any guardian except a  
5 guardian ad litem of a minor or incapacitated person may  
6 exercise the same right to nominate, to object to another's  
7 appointment or to participate in determining the preference  
8 of a majority in interest of the heirs and devisees that the  
9 protected person would have if qualified for appointment.

10 E. Appointment of one who does not have highest  
11 priority, including highest priority resulting from  
12 renunciation or nomination determined pursuant to this  
13 section, may be made only in formal proceedings. Before  
14 appointing one without highest priority, the court shall  
15 determine that those having highest priority, although given  
16 notice of the proceedings, have failed to request appointment  
17 or to nominate another for appointment and that  
18 administration is necessary.

19 F. No person is qualified to serve as a personal  
20 representative who is:

- 21 (1) under the age of majority;  
22 (2) a person whom the court finds unsuitable  
23 in formal proceedings; or  
24 (3) a creditor of the decedent unless the  
25 appointment is to be made after forty-five days have elapsed

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1 from the death of the decedent.

2 G. A personal representative appointed by a court  
3 of the decedent's domicile has priority over all other  
4 persons except where the decedent's will nominates different  
5 persons to be personal representatives in New Mexico and in  
6 the state of domicile. The domiciliary personal  
7 representative may nominate another, who shall have the same  
8 priority as the domiciliary personal representative.

9 H. This section governs priority for appointment of  
10 a successor personal representative but does not apply to the  
11 selection of a special administrator."

12 Section 227. Section 45-3-301 NMSA 1978 (being Laws  
13 1975, Chapter 257, Section 3-301, as amended) is amended to  
14 read:

15 "45-3-301. INFORMAL PROBATE OR APPOINTMENT PROCEEDINGS--  
16 APPLICATION--CONTENTS.--Applications for informal probate or  
17 informal appointment [~~must~~] shall be directed to the probate  
18 or district court and verified by the applicant to be accurate  
19 and complete to the best of [~~his~~] the applicant's knowledge  
20 and belief as to the information found in Subsections A  
21 through F of this section.

22 A. Every application for informal probate of a will  
23 or for informal appointment of a personal representative,  
24 other than a special or successor representative, shall  
25 contain the following:

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1 (1) a statement of the interest of the  
2 applicant;

3 (2) the name and date of death of the  
4 decedent; [~~his~~] the decedent's age and the county and state  
5 of [~~his~~] the decedent's domicile at the time of death; and  
6 the names and addresses of the spouse or domestic partner,  
7 children, heirs and devisees and the ages of any who are  
8 minors so far as known or ascertainable with reasonable  
9 diligence by the applicant;

10 (3) if the decedent was not domiciled in New  
11 Mexico at the time of [~~his~~] death, a statement showing venue;

12 (4) a statement identifying and indicating the  
13 address of any personal representative of the decedent  
14 appointed in New Mexico or elsewhere whose appointment has  
15 not been terminated;

16 (5) a statement indicating whether the  
17 applicant has received a demand for notice or is aware of any  
18 demand for notice of any probate or appointment proceeding  
19 concerning the decedent that may have been filed in New  
20 Mexico or elsewhere; and

21 (6) a statement that the time limit for  
22 informal probate or appointment as provided in Sections  
23 [~~32A-3-101 through 32A-3-1204 NMSA 1953~~] 45-3-101 through  
24 45-3-1204 NMSA 1978 has not expired either because three  
25 years or less have passed since the decedent's death or, if

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1 more than three years from death have passed, that  
2 circumstances as described by Section [~~32A-3-108 NMSA 1953~~  
3 45-3-108 NMSA 1978 authorizing tardy probate or appointment  
4 have occurred.

5 B. An application for informal probate of a will  
6 shall state the following in addition to the statements  
7 required by Subsection A of this section:

8 (1) that the original of the decedent's last  
9 will is in the possession of the court or accompanies the  
10 application or that an authenticated copy of [~~his~~] the  
11 decedent's will probated in another jurisdiction accompanies  
12 the application;

13 (2) that the applicant, to the best of [~~his~~]  
14 the applicant's knowledge, believes the will to have been  
15 validly executed; and

16 (3) that after the exercise of reasonable  
17 diligence, the applicant is unaware of any instrument  
18 revoking the will and that the applicant believes that the  
19 instrument [~~which~~] that is the subject of the application is  
20 the decedent's last will.

21 C. An application for informal appointment of a  
22 personal representative to administer an estate under a will  
23 shall describe the will by date of execution and state the  
24 time and place of probate or the pending application or  
25 petition for probate. The application for appointment shall

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1 adopt the statements in the application or petition for  
2 probate and state the name, address and priority for  
3 appointment of the person whose appointment is sought.

4 D. An application for informal appointment of a  
5 personal representative in intestacy shall state in addition  
6 to the statements required by Subsection A of this section:

7 (1) that after the exercise of a reasonable  
8 diligence, the applicant is unaware of any unrevoked  
9 testamentary instrument relating to property having a situs  
10 in New Mexico under Section [~~32A-1-301 NMSA 1953~~] 45-1-301  
11 NMSA 1978; and

12 (2) the priority of the person whose  
13 appointment is sought and the names of any other person  
14 having a prior or equal right to the appointment under  
15 Section [~~32A-3-203 NMSA 1953~~] 45-3-203 NMSA 1978.

16 E. An application for appointment of a personal  
17 representative to succeed a personal representative appointed  
18 under a different testacy status shall refer to the order in  
19 the most recent testacy proceeding, state the name and  
20 address of the person whose appointment is sought and of the  
21 person whose appointment will be terminated if the  
22 application is granted and describe the priority of the  
23 applicant.

24 F. An application for appointment of a personal  
25 representative to succeed a personal representative who has

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1 tendered a resignation as provided in Subsection C of Section  
2 [~~32A-3-610 NMSA 1953~~] 45-3-610 NMSA 1978 or whose appointment  
3 has been terminated by death or removal shall:

4 (1) adopt the statements in the application or  
5 petition [~~which~~] that led to the appointment of the person  
6 being succeeded except as specifically changed or corrected;

7 (2) state the name and address of the person  
8 who seeks appointment as successor; and

9 (3) describe the priority of the applicant.

10 G. By verifying an application for informal probate  
11 or informal appointment, the applicant submits personally to  
12 the jurisdiction of the court in any proceeding for relief  
13 from fraud relating to the application or for perjury that  
14 may be instituted against [~~him~~] the applicant."

15 Section 228. Section 45-3-403 NMSA 1978 (being Laws  
16 1975, Chapter 257, Section 3-403) is amended to read:

17 "45-3-403. FORMAL TESTACY PROCEEDING--NOTICE OF HEARING  
18 ON PETITION.--

19 A. Upon commencement of a formal testacy  
20 proceeding, the district court shall fix a time and place of  
21 hearing. Notice shall be given in the manner prescribed by  
22 Section [~~1-401~~] 45-1-401 NMSA 1978 by the petitioner to the  
23 persons enumerated in this section and to any additional  
24 person who has filed a demand for notice under Section [~~3-204~~  
25 ~~of the Probate Code~~] 45-3-204 NMSA 1978.

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1           B. Notice shall be given to the following persons:  
2     the surviving spouse or surviving domestic partner, children  
3     and other heirs of the decedent who would have taken had the  
4     decedent died intestate; the devisees and personal  
5     representatives named in any will that is being or has been  
6     probated or offered for informal or formal probate in the  
7     county or that is known by the petitioner to have been  
8     probated or offered for informal or formal probate elsewhere;  
9     and any personal representative of the decedent whose  
10    appointment has not been terminated. Notice may be given to  
11    other persons. In addition, the petitioner shall give notice  
12    by publication to all unknown persons and to all known  
13    persons whose addresses are unknown who have any interest in  
14    the matters being litigated.

15           C. If it appears by the petition or otherwise that  
16    the fact of the death of the alleged decedent may be in  
17    doubt, or on the written demand of any interested person, a  
18    copy of the notice of the hearing on the petition shall be  
19    sent by registered or certified mail to the alleged decedent  
20    at [~~his~~] the alleged decedent's last known address. The  
21    district court shall direct the petitioner to report the  
22    results of or make and report back concerning a reasonably  
23    diligent search for the alleged decedent in any manner that  
24    may seem advisable, including any or all of the following  
25    methods:

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1 (1) by inserting in one or more suitable  
2 periodicals a notice requesting information from any person  
3 having knowledge of the whereabouts of the alleged decedent;

4 (2) by notifying law enforcement officials and  
5 public welfare agencies in appropriate locations of the  
6 disappearance of the alleged decedent; and

7 (3) by engaging the services of an  
8 investigator.

9 The costs of any search so directed shall be paid by  
10 the petitioner if there is no administration or by the estate  
11 of the decedent in case there is administration."

12 Section 229. Section 45-3-703 NMSA 1978 (being Laws  
13 1975, Chapter 257, Section 3-703) is amended to read:

14 "45-3-703. GENERAL DUTIES--RELATION AND LIABILITY TO  
15 PERSONS INTERESTED IN ESTATE--STANDING TO SUE.--

16 A. A personal representative is under a duty to  
17 settle and distribute the estate of a decedent in accordance  
18 with the terms of any probated and effective will and the  
19 Uniform Probate Code and as expeditiously and efficiently as  
20 is consistent with the best interests of the estate. [He]  
21 The personal representative shall use the authority conferred  
22 upon [him] the personal representative by the Uniform Probate  
23 Code, the terms of the will, if any, and any order in  
24 proceedings to which [he] the personal representative is  
25 party for the best interests of successors to the estate.

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1           B. A personal representative shall not be  
2 surcharged for acts of administration or distribution if the  
3 conduct in question was authorized at the time. Subject to  
4 other obligations of administration, an informally probated  
5 will is authority to administer and distribute the estate  
6 according to its terms.

7           C. An order of appointment of a personal  
8 representative, whether issued in informal or formal  
9 proceedings, is authority to distribute apparently intestate  
10 assets to the heirs of the decedent if, at the time of  
11 distribution, the personal representative is not aware of:

12                   (1) a pending testacy proceeding;

13                   (2) a proceeding to vacate an order entered in  
14 an earlier testacy proceeding;

15                   (3) a formal proceeding questioning ~~[his]~~ the  
16 personal representative's appointment or fitness to continue;  
17 or

18                   (4) a supervised administration proceeding.

19           D. Nothing in this section affects the duty of the  
20 personal representative to administer and distribute the  
21 estate in accordance with the rights of claimants, the  
22 surviving spouse or surviving domestic partner, any minor and  
23 dependent children and any pretermitted child of the  
24 decedent.

25           E. Except as to proceedings ~~[which]~~ that do not

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1 survive the death of the decedent, a personal representative  
2 of a decedent domiciled in New Mexico at [~~his~~] the decedent's  
3 death has the same standing to sue and be sued in the courts  
4 of New Mexico and the courts of any other jurisdiction as  
5 [~~his~~] the decedent had immediately prior to death."

6 Section 230. Section 45-3-713 NMSA 1978 (being Laws  
7 1975, Chapter 257, Section 3-713) is amended to read:

8 "45-3-713. SALE, ENCUMBRANCE OR TRANSACTION INVOLVING  
9 CONFLICT OF INTEREST--VOIDABLE--EXCEPTIONS.--

10 A. Any sale or encumbrance to the personal  
11 representative, [~~his~~] the personal representative's spouse,  
12 domestic partner, agent or attorney or any corporation or  
13 trust in which [~~he~~] the personal representative has a  
14 substantial beneficial interest or any transaction [~~which~~]  
15 that is affected by a substantial conflict of interest on the  
16 part of the personal representative is voidable by any  
17 interested person except one who has consented after fair  
18 disclosure, unless:

19 (1) the will or a contract entered into by the  
20 decedent expressly authorized the transaction; or

21 (2) the transaction is approved by the  
22 district court after notice to interested persons.

23 B. An interested person must petition the district  
24 court to void the sale, encumbrance or transaction within the  
25 time limits set out by Section [~~3-1005~~] 45-3-1005 NMSA 1978."

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1           Section 231. Section 45-3-901 NMSA 1978 (being Laws  
2 1975, Chapter 232, Section 3-901) is amended to read:

3           "45-3-901. SUCCESSORS' RIGHTS IF NO ADMINISTRATION.--In  
4 the absence of administration, the heirs and devisees are  
5 entitled to the estate in accordance with the terms of a  
6 probated will or the laws of intestate succession. Devisees  
7 may establish title by the probated will to devised property.  
8 Persons entitled to property by the family allowance,  
9 personal property allowance or intestacy may establish title  
10 thereto by proof of the decedent's ownership, [~~his~~] the  
11 decedent's death and their relationship to the decedent.  
12 Successors take subject to all charges incident to  
13 administration, including the claims of creditors and  
14 allowances of surviving spouse or surviving domestic partner  
15 and dependent children, and subject to the rights of others  
16 resulting from abatement, retainer, advancement and  
17 ademption."

18           Section 232. Section 45-3-906 NMSA 1978 (being Laws  
19 1975, Chapter 257, Section 3-906, as amended) is amended to  
20 read:

21           "45-3-906. DISTRIBUTION IN KIND--VALUATION--METHOD.--

22           A. Unless a contrary intention is indicated by the  
23 will, the distributable assets of a decedent's estate shall  
24 be distributed in kind to the extent possible through  
25 application of the following provisions:

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1 (1) a specific devisee is entitled to  
2 distribution of the thing devised to ~~him~~ the devisee, and a  
3 spouse, domestic partner or child who has selected particular  
4 assets of an estate as provided in Section 45-2-402 NMSA 1978  
5 shall receive the items selected;

6 (2) any family allowance, personal property  
7 allowance or devise of a stated sum of money may be satisfied  
8 in kind, provided:

9 (a) the person entitled to the payment has  
10 not demanded payment in cash;

11 (b) the property distributed in kind is  
12 valued at fair market value as of the date of its  
13 distribution; and

14 (c) no residuary devisee has requested  
15 that the asset in question remain a part of the residue of  
16 the estate; and

17 (3) the residuary estate shall be distributed  
18 in any equitable manner.

19 B. For the purpose of valuation pursuant to  
20 Paragraph (2) of Subsection A of this section, securities  
21 regularly traded on recognized exchanges, if distributed in  
22 kind, are valued at the price for the last sale of like  
23 securities traded on the business day prior to distribution  
24 or, if there was no sale on that day, at the median between  
25 amounts bid and offered at the close of that day. Assets

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1 consisting of sums owed the decedent or the estate by solvent  
2 debtors as to which there is no known dispute or defense are  
3 valued at the sum due with accrued interest or discounted to  
4 the date of distribution. For assets that do not have  
5 readily ascertainable values, a valuation as of a date not  
6 more than thirty days prior to the date of distribution, if  
7 otherwise reasonable, controls. For purposes of facilitating  
8 distribution, the personal representative may ascertain the  
9 value of the assets as of the time of the proposed  
10 distribution in any reasonable way, including the employment  
11 of qualified appraisers, even if the assets may have been  
12 previously appraised.

13 C. After the probable charges against the estate  
14 are known, the personal representative may mail or deliver a  
15 proposal for distribution to all persons who have a right to  
16 object to the proposed distribution. The right of any  
17 distributee to object to the proposed distribution on the  
18 basis of the kind or value of asset [~~he~~] the distributee is  
19 to receive, if not waived earlier in writing, terminates if  
20 [~~he~~] the distributee fails to object in writing received by  
21 the personal representative within thirty days after mailing  
22 or delivery of the proposal."

23 Section 233. Section 45-3-915 NMSA 1978 (being Laws  
24 1975, Chapter 257, Section 3-915, as amended) is amended to  
25 read:

.179346.5GR

1 "45-3-915. DISTRIBUTION TO PERSON UNDER DISABILITY.--

2 A. A personal representative may discharge [~~his~~]  
3 the personal representative's obligation to distribute to any  
4 minor or person under disability by distributing in a manner  
5 expressly provided in the will.

6 B. Unless contrary to an express provision in the  
7 will, the personal representative may discharge [~~his~~] the  
8 personal representative's obligation to distribute to a minor  
9 or person under other disability as authorized by Section  
10 45-5-101 NMSA 1978 or any other statute. If the personal  
11 representative knows that a conservator has been appointed or  
12 that a proceeding for appointment of a conservator is  
13 pending, the personal representative is authorized to  
14 distribute only to the conservator.

15 C. If the heir or devisee is under disability other  
16 than minority, the personal representative is authorized to  
17 distribute to:

18 (1) an attorney in fact who has authority  
19 under a power of attorney to receive property for that  
20 person; or

21 (2) the spouse, domestic partner, parent or  
22 other close relative with whom the person under disability  
23 resides if the distribution is of amounts not exceeding ten  
24 thousand dollars (\$10,000) a year or property not exceeding  
25 ten thousand dollars (\$10,000) in value unless the court

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1 authorizes a larger amount or greater value.

2 Persons receiving money or property for the disabled  
3 person are obligated to apply the money or property to the  
4 support of the disabled person. Persons may not pay  
5 themselves except by way of reimbursement for out-of-pocket  
6 expenses for goods and services necessary for the support of  
7 the disabled person. Excess sums must be preserved for  
8 future support of the disabled person. The personal  
9 representative is not responsible for the proper application  
10 of money or property distributed pursuant to this  
11 subsection."

12 Section 234. Section 45-3-1205 NMSA 1978 (being Laws  
13 1985, Chapter 12, Section 1) is amended to read:

14 "45-3-1205. SMALL ESTATES--TRANSFER OF TITLE TO  
15 HOMESTEAD TO SURVIVING SPOUSE OR SURVIVING DOMESTIC PARTNER  
16 BY AFFIDAVIT.--

17 A. Where a husband and wife or partners in a domestic  
18 partnership own a homestead as community property and when either  
19 the husband or wife or one of the domestic partners dies  
20 intestate or dies testate and by [~~their~~] the husband's, wife's or  
21 domestic partner's will [~~devise their~~] devises the husband's,  
22 wife's or domestic partner's interest in the homestead to the  
23 surviving spouse or surviving domestic partner, the homestead  
24 passes to the survivor and no probate or administration is  
25 necessary.

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1           B. Six months after the death of a decedent, the  
2 surviving spouse or surviving domestic partner may record  
3 with the county clerk in the county in which the homestead is  
4 located an affidavit describing the real property and stating  
5 that:

6           (1) six months have elapsed since the death of  
7 the decedent as shown in a certified copy of the death  
8 certificate attached to the affidavit;

9           (2) the affiant and the decedent were at the  
10 time of the death of the decedent married or in a domestic  
11 partnership and owned the homestead as community property;

12           (3) a copy of the deed with a legal  
13 description of the homestead is attached to the affidavit;

14           (4) but for the homestead, the decedent's  
15 estate need not be subject to any judicial probate proceeding  
16 either in district court or probate court;

17           (5) no application or petition for appointment  
18 of a personal representative or for admittance of a will to  
19 probate is pending or has been granted in any jurisdiction;

20           (6) funeral expenses, expenses of last illness  
21 and all unsecured debts of the decedent have been paid;

22           (7) the affiant is the surviving spouse or  
23 surviving domestic partner of the decedent and is entitled to  
24 title to the homestead by intestate succession as provided in  
25 Section 45-2-102 NMSA 1978 or by devise under a valid last

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1 will of the decedent, the original of which is attached to  
2 the affidavit;

3 (8) no other person has a right to the  
4 interest of the decedent in the described property;

5 (9) no federal or state tax is due on the  
6 decedent's estate; and

7 (10) the affiant affirms that all statements  
8 in the affidavit are true and correct and further  
9 acknowledges that any false statement may subject the person  
10 to penalties relating to perjury and subornation of perjury.

11 C. As used in this section, "homestead" means the  
12 principal place of residence of the decedent or surviving  
13 spouse or surviving domestic partner or the last principal  
14 place of residence if neither the decedent nor the surviving  
15 spouse or surviving domestic partner is residing in that  
16 residence because of illness or incapacitation and [~~which~~]  
17 that consists of one or more dwellings together with  
18 appurtenant structures, the land underlying both the  
19 dwellings and the appurtenant structures and a quantity of  
20 land reasonably necessary for parking and other uses that  
21 facilitates the use of the dwellings and appurtenant  
22 structures, and provided that the value of this property for  
23 property taxation purposes does not exceed one hundred  
24 thousand dollars (\$100,000)."

25 Section 235. Section 45-3-1206 NMSA 1978 (being Laws  
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1 1985, Chapter 12, Section 2 and Laws 1985, Chapter 132,  
2 Section 2) is amended to read:

3 "45-3-1206. EFFECT OF AFFIDAVIT.--A purchaser of real  
4 property from or lender to the surviving spouse or surviving  
5 domestic partner designated as such in the affidavit recorded  
6 under Section 45-3-1205 NMSA 1978 is entitled to the same  
7 protection as a person purchasing from or lending to a  
8 distributee who has received a deed of distribution from a  
9 personal representative as provided in Section 45-3-910 NMSA  
10 1978."

11 Section 236. Section 45-3-1301 NMSA 1978 (being Laws  
12 1978, Chapter 159, Section 12, as amended) is amended to  
13 read:

14 "45-3-1301. COLLECTION OF EMPLOYEE'S FINAL PAYMENT  
15 WITHOUT ADMINISTRATION.--The surviving spouse or surviving  
16 domestic partner of a deceased person may, without procuring  
17 letters, collect any sum representing the final payment owed  
18 the decedent at the time of [~~his~~] the decedent's death for  
19 wages, earnings, salary, commissions, travel or other  
20 reimbursement from the state or any of its political  
21 subdivisions or from any corporation, copartnership,  
22 association, individual, bank or trust company."

23 Section 237. Section 45-3-1302 NMSA 1978 (being Laws  
24 1978, Chapter 159, Section 13) is amended to read:

25 "45-3-1302. AFFIDAVIT SHOWING DEATH OF EMPLOYEE--  
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1 PAYMENT.--Upon receiving an affidavit stating that a person  
2 previously in its employ is dead and that the affiant is the  
3 surviving spouse or surviving domestic partner, the state or  
4 any of its political subdivisions or any corporation, co-  
5 partnership, association, individual, bank or trust company  
6 may pay to the affiant the amount of the wages, earnings,  
7 commissions, salary, travel or other reimbursement earned by  
8 the deceased, and the affiant's receipt shall release the  
9 payor from all liability therefor."

10 Section 238. Section 45-5-301 NMSA 1978 (being Laws  
11 1975, Chapter 257, Section 5-301, as amended) is amended to  
12 read:

13 "45-5-301. APPOINTMENT OF GUARDIAN FOR INCAPACITATED  
14 PERSON--NOTICE.--

15 A. The parent of an [~~unmarried~~] incapacitated  
16 person who is not married or in a domestic partnership may  
17 appoint by will, or other writing signed by the parent and  
18 attested by at least two witnesses, a guardian of the  
19 incapacitated person. If both parents are dead or  
20 incapacitated or the surviving parent has no parental rights  
21 or has been adjudged incapacitated, appointment becomes  
22 effective when, after having given seven days' prior written  
23 notice of intention to do so to the incapacitated person and  
24 to the person having care of the incapacitated person or to  
25 the nearest adult relative, the guardian files acceptance of

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1 appointment in the court in which the will is probated, or in  
2 the case of a nontestamentary instrument, in the court at the  
3 place where the incapacitated person resides or is present.  
4 The notice shall state that the appointment may be terminated  
5 by filing a written objection in the court, as provided in  
6 Subsection D of this section. If both parents are dead, an  
7 effective appointment by the parent who died later has  
8 priority.

9 B. The spouse or domestic partner of [~~a married~~] an  
10 incapacitated person may appoint by will, or other writing  
11 signed by the spouse or domestic partner and attested by at  
12 least two witnesses, a guardian of the incapacitated person.  
13 The appointment becomes effective when, after having given  
14 seven days' prior written notice of intention to do so to the  
15 incapacitated person and to the person having [~~his~~] the  
16 incapacitated person's care or to [~~his~~] the incapacitated  
17 person's nearest adult relative, the guardian files  
18 acceptance of appointment in the court in which the will is  
19 probated or, in the case of a nontestamentary nominating  
20 instrument, in the court at the place where the incapacitated  
21 person resides or is present. The notice shall state that  
22 the appointment may be terminated by filing a written  
23 objection in the court, as provided in Subsection D of this  
24 section. An effective appointment by a spouse or domestic  
25 partner has priority over an appointment by a parent.

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1 C. An appointment effected by filing the guardian's  
2 acceptance under a will probated in the state of testator's  
3 domicile is effective in New Mexico.

4 D. On the filing in the court in which the will was  
5 probated or, in the case of a nontestamentary nominating  
6 instrument, in the court at the place where the incapacitated  
7 person resides or is present, of written objection to the  
8 appointment by the incapacitated person for whom [~~a parental~~  
9 ~~or spousal~~] an appointment of a guardian by a parent, spouse  
10 or domestic partner has been made, the appointment is  
11 terminated. An objection does not prevent appointment by the  
12 court in a proper proceeding of the [~~parental or spousal~~  
13 ~~nominee~~] person nominated by the parent, spouse or domestic  
14 partner or any other suitable person upon an adjudication of  
15 incapacity in proceedings under Sections 45-5-301.1 through  
16 45-5-315 NMSA 1978."

17 Section 239. Section 45-5-309 NMSA 1978 (being Laws  
18 1975, Chapter 257, Section 5-309, as amended) is amended to  
19 read:

20 "45-5-309. NOTICES IN GUARDIANSHIP PROCEEDINGS.--

21 A. In a proceeding for the appointment or removal  
22 of a guardian of an incapacitated person, other than the  
23 appointment of a temporary guardian or temporary suspension  
24 of a guardian, notice of hearing and a copy of the petition  
25 and any interim orders that may have been entered shall be

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1 given to each of the following:

- 2 (1) the person alleged to be incapacitated;
- 3 (2) the person's spouse or domestic partner,
- 4 parents and adult children, or if there are no adult
- 5 children, at least one of the person's closest adult
- 6 relatives if any can be found;
- 7 (3) the proposed guardian; and
- 8 (4) a person, as far as known or as can
- 9 reasonably be ascertained, previously nominated or designated
- 10 in a writing signed by the incapacitated person prior to
- 11 incapacity that has not been revoked by the incapacitated
- 12 person or terminated by a court. This includes but is not
- 13 limited to writings executed under the Uniform Health-Care
- 14 Decisions Act, the Mental Health Care Treatment Decisions
- 15 Act, the Uniform Power of Attorney Act, the Uniform Probate
- 16 Code and the Uniform Trust Code.

17 Notice of hearing shall be given to a person who is

18 serving as the guardian or conservator of the person to be

19 protected or who has primary responsibility for the person's

20 care.

21 B. Notice shall be served personally on the alleged

22 incapacitated person and the person's spouse or domestic

23 partner if they can be found within New Mexico. Notice to an

24 out-of-state spouse or out-of-state domestic partner, the

25 parents and to all other persons, except the alleged

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1 incapacitated person, shall be given as provided in Section  
2 45-1-401 NMSA 1978.

3 C. At least fourteen days' notice shall be given  
4 before the hearing takes place. The notice shall be in plain  
5 language and large type and shall include the following  
6 information and shall be substantially in the following form:

7 "NOTICE

8 TO: (name and address of person receiving notice)

9 On (date of hearing) at (time of hearing) in (place of  
10 hearing) at (city), New Mexico, the (name and address of  
11 court) will hold a hearing to determine whether a guardian  
12 should be appointed for (name of alleged incapacitated  
13 person). The purpose of this proceeding is to protect (name  
14 of alleged incapacitated person). A copy of the petition  
15 requesting appointment of a guardian is attached to this  
16 notice.

17 At the hearing, the court will determine whether (name  
18 of alleged incapacitated person) is an incapacitated person  
19 under New Mexico law.

20 If the court finds that (name of alleged incapacitated  
21 person) is incapacitated, the court at the hearing shall also  
22 consider whether (name of proposed guardian, if any) should  
23 be appointed as guardian of (name of alleged incapacitated  
24 person). The court may, in its discretion, appoint some  
25 other qualified person as guardian. The court may also, in

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1 its discretion, limit the powers and duties of the guardian  
2 to allow (name of alleged incapacitated person) to retain  
3 control over certain activities.

4 (Name of alleged incapacitated person) shall attend the  
5 hearing and be represented by an attorney. The petition may  
6 be heard and determined in the absence of (name of alleged  
7 incapacitated person) if the court determines that the  
8 presence of (name of alleged incapacitated person) is not  
9 possible. If (name of alleged incapacitated person) attends  
10 the hearing and is not represented by an attorney, the court  
11 must appoint an attorney to represent the alleged  
12 incapacitated person.

13 The court may, on its own motion or on request of any  
14 interested person, postpone the hearing to another date and  
15 time.

16 \_\_\_\_\_  
17 (signature of petitioner)".

18 Section 240. Section 45-5-311 NMSA 1978 (being Laws  
19 1975, Chapter 257, Section 5-311, as amended) is amended to  
20 read:

21 "45-5-311. WHO MAY BE APPOINTED GUARDIAN--PRIORITIES.--

22 A. Any person deemed to be qualified by the court  
23 may be appointed guardian of an incapacitated person, except  
24 that no individual who operates or is an employee of a  
25 boarding home, residential care home, nursing home, group

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1 home or other similar facility in which the incapacitated  
2 person resides may serve as guardian for the incapacitated  
3 person, except an employee may serve in such capacity when  
4 related by affinity or consanguinity.

5 B. Persons who are not disqualified have priority  
6 for appointment as guardian in the following order:

7 (1) a guardian or other like fiduciary  
8 appointed by the appropriate court of any other jurisdiction;

9 (2) a person, as far as known or as can be  
10 reasonably ascertained, previously nominated or designated in  
11 a writing as defined in Paragraph (4) of Subsection A of  
12 Section 45-5-309 NMSA 1978 to serve as guardian or agent in a  
13 writing signed by the incapacitated person prior to the  
14 incapacitated person's incapacity that has not been revoked  
15 by the incapacitated person or terminated by a court;

16 (3) the spouse or domestic partner of the  
17 incapacitated person;

18 (4) an adult child of the incapacitated  
19 person;

20 (5) a parent of the incapacitated person,  
21 including a person nominated by will or other writing signed  
22 by a deceased parent;

23 (6) any relative of the incapacitated person  
24 with whom the incapacitated person has resided for more than  
25 six months prior to the filing of the petition;

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1                   (7) a person nominated by the person who is  
2 caring for the incapacitated person or paying benefits to the  
3 incapacitated person; and

4                   (8) any other person.

5                   C. With respect to persons having equal priority,  
6 the court shall select the person it considers best qualified  
7 to serve as guardian. The court, acting in the best interest  
8 of the incapacitated person and for good cause shown, may  
9 pass over a person having priority and appoint a person  
10 having a lower priority under this section and shall take  
11 into consideration:

12                   (1) the preference of the incapacitated  
13 person, giving weight to preferences expressed in writing by  
14 the person while having capacity;

15                   (2) the geographic location of the proposed  
16 guardian;

17                   (3) the relationship of the proposed guardian  
18 to the incapacitated person;

19                   (4) the ability of the proposed guardian to  
20 carry out the powers and duties of the guardianship; and

21                   (5) potential financial conflicts of interest  
22 between the incapacitated person and proposed guardian."

23                   Section 241. Section 45-5-402.1 NMSA 1978 (being Laws  
24 1993, Chapter 301, Section 25) is amended to read:

25                   "45-5-402.1. PERMISSIBLE COURT ORDERS.--

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1           A. The court shall exercise the authority conferred  
2 in Chapter 45, Article 5 NMSA 1978 to encourage the  
3 development of maximum self-reliance and independence of a  
4 protected person and make protective orders only to the  
5 extent necessitated by the protected person's mental and  
6 adaptive limitations and other conditions warranting the  
7 procedure.

8           B. The court has the following powers that may be  
9 exercised directly or through a conservator in respect to the  
10 estate and financial affairs of a protected person:

11                   (1) while a petition for appointment of a  
12 conservator or other protective order is pending and after  
13 notice and a preliminary hearing, the court may preserve and  
14 apply the property of the person to be protected as may be  
15 required for the support of the person or ~~[his]~~ the person's  
16 dependents;

17                   (2) after notice and hearing and upon  
18 determining that a basis for an appointment or other  
19 protective order exists with respect to a minor without other  
20 disability, the court has all those powers over the estate  
21 and financial affairs of the minor ~~[which]~~ that are or may be  
22 necessary for the best interest of the minor and members of  
23 the minor's immediate family;

24                   (3) after notice and hearing and upon  
25 determining that a basis for an appointment or other

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1 protective order exists with respect to a person for reasons  
2 other than minority, the court, for the benefit of the person  
3 and members of the person's immediate family, has all the  
4 powers over the estate and financial affairs [~~which~~] that the  
5 person could exercise if present and not under disability,  
6 except the power to make a will. These powers include, but  
7 are not limited to, the power to:

8 (a) make gifts;

9 (b) convey or release contingent and  
10 expectant interests in property, including marital or  
11 domestic partnership property rights and any right of  
12 survivorship incident to joint tenancy;

13 (c) exercise or release powers held by the  
14 protected person as trustee, personal representative,  
15 custodian for minors, conservator or donee of a power of  
16 appointment;

17 (d) enter into contracts;

18 (e) create revocable or irrevocable trusts  
19 of property of the estate [~~which~~] that may extend beyond the  
20 disability or life of the person;

21 (f) exercise rights to elect options and  
22 change beneficiaries under insurance and annuity policies and  
23 to surrender the policies for their cash value;

24 (g) exercise options of the person to  
25 purchase securities or other property;

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1 (h) exercise any right to an elective  
2 share in the estate of the person's deceased spouse or  
3 deceased domestic partner; and

4 (i) renounce or disclaim any interest by  
5 testate or intestate succession or by inter vivos transfer.

6 C. The court may exercise or direct the exercise of  
7 the following powers only if satisfied, after notice and  
8 hearing, that it is in the best interest of the protected  
9 person and that the person either is incapable of consenting  
10 or has consented to the proposed exercise of power:

11 (1) to exercise or release powers of  
12 appointment of which the protected person is donee;

13 (2) to renounce or disclaim interests;

14 (3) to make gifts in trust or otherwise  
15 exceeding twenty percent of any year's income of the estate;  
16 and

17 (4) to change beneficiaries under insurance  
18 and annuity policies.

19 D. A determination that a basis for appointment of  
20 a conservator or other protective order exists has no effect  
21 on the capacity of the protected person."

22 Section 242. Section 45-5-404 NMSA 1978 (being Laws  
23 1975, Chapter 257, Section 5-404, as amended) is amended to  
24 read:

25 "45-5-404. ORIGINAL PETITION FOR APPOINTMENT OF

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1 CONSERVATOR.--

2 A. Any of the following persons may petition for  
3 the appointment of a conservator:

4 (1) the person for whom a conservator is  
5 sought;

6 (2) ~~any~~ a person who is interested in the  
7 estate, affairs or welfare of the person to be protected,  
8 including ~~his~~ the person's spouse, domestic partner,  
9 parent, guardian or custodian; or

10 (3) ~~any~~ a person who would be adversely  
11 affected by lack of effective management of the property and  
12 affairs of the person to be protected.

13 B. The petition shall state the following:

14 (1) the interest of the petitioner;

15 (2) the name, age, residence and address of  
16 the person for whom a conservator is sought;

17 (3) the name and address of the guardian, if  
18 any, of the person for whom a conservator is sought;

19 (4) the names and addresses, as far as known  
20 or as can be reasonably ascertained, of the persons most  
21 closely related by blood, ~~or~~ marriage or domestic  
22 partnership to the person for whom a conservator is sought;

23 (5) the approximate value and description of  
24 the property of the person for whom a conservator is sought,  
25 including any compensation, insurance, pension or allowance

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1 to which the person may be or is entitled;

2 (6) the reasons why appointment of a  
3 conservator is necessary, including but not limited to  
4 evidence of the person's recent behavior that demonstrates  
5 gross mismanagement of [~~his~~] the person's income and  
6 resources to the extent that it has led or is likely to lead  
7 in the near future to waste and dissipation of the income and  
8 resources;

9 (7) the name and address of the person or  
10 institution, if any, having the care and custody of the  
11 person for whom a conservator is sought;

12 (8) the steps taken to find less restrictive  
13 alternatives to the proposed conservatorship;

14 (9) the name and address of the person whose  
15 appointment is sought;

16 (10) the basis of [~~his~~] the person's priority  
17 for appointment;

18 (11) the names and addresses of any other  
19 persons for whom the proposed conservator is a conservator if  
20 the proposed conservator is an individual; and

21 (12) the qualifications of the proposed  
22 conservator."

23 Section 243. Section 45-5-405 NMSA 1978 (being Laws  
24 1975, Chapter 257, Section 5-405, as amended) is amended to  
25 read:

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1 "45-5-405. NOTICE IN CONSERVATORSHIP PROCEEDINGS.--

2 A. In a proceeding for the appointment or removal  
3 of a conservator of an incapacitated person or a person to be  
4 protected, other than the appointment of a temporary  
5 conservator or the temporary suspension of a conservator,  
6 notice of hearing and a copy of the petition and any interim  
7 orders that may have been entered shall be given to each of  
8 the following:

9 (1) the person to be protected; and

10 (2) ~~his~~ the person's spouse or domestic  
11 partner, parents and adult children, or if there are no adult  
12 children, at least one of ~~his~~ the person's closest adult  
13 relatives if any can be found.

14 Notice of hearing shall be given to any person who is  
15 serving as the guardian or conservator of the person to be  
16 protected or who has primary responsibility for ~~his~~ the  
17 person's care.

18 B. Notice shall be served personally on the person  
19 to be protected and ~~his~~ the person's spouse or domestic  
20 partner if the spouse or domestic partner can be found within  
21 New Mexico. Notice to an out-of-state spouse or out-of-state  
22 domestic partner, parent and all other persons, except the  
23 person to be protected, shall be given as provided in Section  
24 45-1-401 NMSA 1978.

25 C. At least fourteen days' notice shall be given

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1 before the hearing takes place. The notice should be in  
2 plain language and large type and shall include the following  
3 information and shall be substantially in the following form:

4 "NOTICE

5 TO: (name and address of person receiving notice)

6 On (date of hearing) at (time of hearing) in (place of  
7 hearing) at (city), New Mexico, the (name and address of  
8 court) will hold a hearing to determine whether a conservator  
9 should be appointed for (name of the person to be protected).  
10 The purpose of this proceeding is to appoint a conservator.  
11 A copy of the petition requesting appointment of a  
12 conservator is attached to this notice.

13 At the hearing, the court will determine whether (name  
14 of person to be protected) needs to be protected by a  
15 conservator under New Mexico law.

16 If the court finds that (name of the person to be  
17 protected) is in need of a conservator, the court at the  
18 hearing shall also consider whether (name of proposed  
19 conservator, if any) should be appointed as conservator of  
20 (name of person to be protected). The court may, in its  
21 discretion, appoint some other qualified person as  
22 conservator. The court may also, in its discretion, limit  
23 the powers and duties of the conservator to allow (name of  
24 person to be protected) to retain control over certain  
25 activities.

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1 (Name of person to be protected) shall attend the  
2 hearing and be represented by an attorney. The petition may  
3 be heard and determined in the absence of (name of person to  
4 be protected) if the court determines that the presence of  
5 (name of person to be protected) is not required. If (name  
6 of person to be protected) attends the hearing and is not  
7 represented by an attorney, the court shall appoint an  
8 attorney to represent the person to be protected.

9 \_\_\_\_\_  
10 (signature of petitioner)".

11 D. Notice of a petition for appointment of a  
12 conservator and of any subsequent hearing shall be given to  
13 any interested person who has filed a request for notice  
14 under Section 45-5-406 NMSA 1978 and to such other persons as  
15 the court may direct. Except as otherwise provided in  
16 Subsection A of this section, notice shall be given in  
17 accordance with Section 45-1-401 NMSA 1978."

18 Section 244. Section 45-5-410 NMSA 1978 (being Laws  
19 1975, Chapter 257, Section 5-410, as amended) is amended to  
20 read:

21 "45-5-410. WHO MAY BE APPOINTED CONSERVATOR--  
22 PRIORITIES.--

23 A. The court may appoint an individual, or a  
24 corporation with general power to serve as trustee, as  
25 conservator of the incapacitated person. The following are

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1 entitled to consideration for appointment in the order  
2 listed:

3 (1) a conservator, guardian of property or  
4 other like fiduciary appointed or recognized by the  
5 appropriate court of any other jurisdiction in which the  
6 incapacitated person resides;

7 (2) any person previously nominated to serve  
8 as conservator in a writing signed by the incapacitated  
9 person prior to ~~[his]~~ the person's incapacity;

10 (3) an individual or corporation nominated by  
11 the incapacitated person if ~~[he]~~ the incapacitated person is  
12 fourteen or more years of age and has, in the opinion of the  
13 court, sufficient mental capacity to make an intelligent  
14 choice;

15 (4) the spouse or domestic partner of the  
16 incapacitated person;

17 (5) an adult child of the incapacitated  
18 person;

19 (6) a parent of the incapacitated person or a  
20 person nominated by the will of a deceased parent;

21 (7) any relative of the incapacitated person  
22 with whom ~~[he]~~ the incapacitated person has resided for more  
23 than six months prior to the filing of the petition;

24 (8) a person nominated by the person who is  
25 caring for the incapacitated person or paying benefits to

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1     ~~[him]~~ the incapacitated person; and

2                     (9) any other person.

3             B. A person under the priorities of Paragraph (1),  
4     (2), (4), (5), (6) or (7) of Subsection A of this section may  
5     nominate in writing a person to serve in ~~[his]~~ the person's  
6     stead. With respect to persons having equal priority, the  
7     court shall select the one who is best qualified of those  
8     willing to serve.

9             C. The court, for good cause, may pass over a  
10    person having priority and appoint a person having lesser  
11    priority under this section and shall take into  
12    consideration:

13                     (1) the preference of the incapacitated  
14    person;

15                     (2) the geographic location of the proposed  
16    conservator;

17                     (3) the relationship of the proposed  
18    conservator to the incapacitated person;

19                     (4) the ability of the proposed conservator to  
20    carry out the powers and duties of the conservatorship; and

21                     (5) potential financial conflicts of interest  
22    between the incapacitated person and the proposed  
23    conservator."

24             Section 245. Section 45-5-422 NMSA 1978 (being Laws  
25    1975, Chapter 257, Section 5-422) is amended to read:

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1           "45-5-422. SALE, ENCUMBRANCE OR TRANSACTION INVOLVING  
2 CONFLICT OF INTEREST--VOIDABLE--EXCEPTIONS.--Any sale or  
3 encumbrance to a conservator [~~his~~] or the conservator's  
4 spouse, domestic partner, agent or attorney or to any  
5 corporation or trust in which [~~he~~] the conservator has a  
6 substantial beneficial interest or any transaction [~~which~~]  
7 that is affected by a substantial conflict of interest is  
8 voidable unless the transaction is approved by the court  
9 after notice to interested persons and others as directed by  
10 the court."

11           Section 246. Section 45-6-102 NMSA 1978 (being Laws  
12 2005, Chapter 143, Section 3) is amended to read:

13           "45-6-102. LIABILITY OF NONPROBATE TRANSFEREES FOR  
14 CREDITOR CLAIMS AND STATUTORY ALLOWANCES.--

15           A. In this section, "nonprobate transfer" means a  
16 valid transfer effective at death, other than a transfer of a  
17 survivorship interest in a joint tenancy of real estate, by a  
18 transferor whose last domicile was in this state to the  
19 extent that the transferor immediately before death had  
20 power, acting alone, to prevent the transfer by revocation or  
21 withdrawal and instead to use the property for the benefit of  
22 the transferor or apply it to discharge claims against the  
23 transferor's probate estate.

24           B. Except as otherwise provided by statute, a  
25 transferee of a nonprobate transfer is subject to liability

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1 to any probate estate of the decedent for allowed claims  
2 against the decedent's probate estate and statutory  
3 allowances to the decedent's spouse or domestic partner and  
4 children to the extent the estate is insufficient to satisfy  
5 those claims and allowances. The liability of a nonprobate  
6 transferee may not exceed the value of nonprobate transfers  
7 received or controlled by that transferee.

8 C. Nonprobate transferees are liable for the  
9 insufficiency described in Subsection B of this section in  
10 the following order of priority:

11 (1) a transferee designated in the decedent's  
12 will or any other governing instrument, as provided in the  
13 instrument;

14 (2) the trustee of a trust serving as the  
15 principal nonprobate instrument in the decedent's estate plan  
16 as shown by its designation as devisee of the decedent's  
17 residuary estate or by other facts or circumstances, to the  
18 extent of the value of the nonprobate transfer received or  
19 controlled; and

20 (3) other nonprobate transferees, in  
21 proportion to the values received.

22 D. Unless otherwise provided by the trust  
23 instrument, interests of beneficiaries in all trusts  
24 incurring liabilities under this section abate as necessary  
25 to satisfy the liability, as if all of the trust instruments

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1 were a single will and the interests were devised under it.

2 E. A provision made in one instrument may direct  
3 the apportionment of the liability among the nonprobate  
4 transferees taking under that or any other governing  
5 instrument. If a provision in one instrument conflicts with  
6 a provision in another, the later one prevails.

7 F. Upon due notice to a nonprobate transferee, the  
8 liability imposed by this section is enforceable in  
9 proceedings in this state, whether or not the transferee is  
10 located in this state.

11 G. A proceeding under this section may not be  
12 commenced unless the personal representative of the  
13 decedent's estate has received a written demand for the  
14 proceeding from the surviving spouse or surviving domestic  
15 partner or a child, to the extent that statutory allowances  
16 are affected, or a creditor. If the personal representative  
17 declines or fails to commence a proceeding after demand, a  
18 person making demand may commence the proceeding in the name  
19 of the decedent's estate, at the expense of the person making  
20 the demand and not of the estate. A personal representative  
21 who declines in good faith to commence a requested proceeding  
22 incurs no personal liability for declining.

23 H. A proceeding under this section must be  
24 commenced within one year after the decedent's death, but a  
25 proceeding on behalf of a creditor whose claim was allowed

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1 after proceedings challenging disallowance of the claim may  
2 be commenced within sixty days after final allowance of the  
3 claim.

4 I. Unless a written notice asserting that a  
5 decedent's probate estate is nonexistent or insufficient to  
6 pay allowed claims and statutory allowances has been received  
7 from the decedent's personal representative, the following  
8 rules apply:

9 (1) payment or delivery of assets by a  
10 financial institution, registrar or other obligor to a  
11 nonprobate transferee in accordance with the terms of the  
12 governing instrument controlling the transfer releases the  
13 obligor from all claims for amounts paid or assets delivered;  
14 and

15 (2) a trustee receiving or controlling a  
16 nonprobate transfer is released from liability under this  
17 section with respect to any assets distributed to the trust's  
18 beneficiaries. Each beneficiary to the extent of the  
19 distribution received becomes liable for the amount of the  
20 trustee's liability attributable to assets received by the  
21 beneficiary."

22 Section 247. Section 45-6-211 NMSA 1978 (being Laws  
23 1992, Chapter 66, Section 24) is amended to read:

24 "45-6-211. OWNERSHIP DURING LIFETIME.--

25 A. As used in this section, "net contribution" of a  
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1 party means the sum of all deposits to an account made by or  
2 for the party, less all payments from the account made to or  
3 for the party [~~which~~] that have not been paid to or applied  
4 to the use of another party and a proportionate share of any  
5 charges deducted from the account, plus a proportionate share  
6 of any interest or dividends earned, whether or not included  
7 in the current balance. The term includes deposit life  
8 insurance proceeds added to the account by reason of death of  
9 the party whose net contribution is in question.

10 B. During the lifetime of all parties, an account  
11 belongs to the parties in proportion to the net contribution  
12 of each to the sums on deposit, unless there is clear and  
13 convincing evidence of a different intent. As between  
14 parties that are married to each other or in a domestic  
15 partnership, in the absence of proof otherwise, the net  
16 contribution of each is presumed to be an equal amount.

17 C. A beneficiary in an account having a POD  
18 designation has no right to sums on deposit during the  
19 lifetime of any party.

20 D. An agent in an account with an agency  
21 designation has no beneficial right to sums on deposit."

22 Section 248. Section 45-6-212 NMSA 1978 (being Laws  
23 1992, Chapter 66, Section 25) is amended to read:

24 "45-6-212. RIGHTS AT DEATH.--

25 A. Except as otherwise provided in this part, on  
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1 death of a party sums on deposit in a multiple-party account  
2 belong to the surviving party or parties. If two or more  
3 parties survive and one is the surviving spouse or surviving  
4 domestic partner of the decedent, the amount to which the  
5 decedent, immediately before death, was beneficially entitled  
6 under Section 45-6-211 NMSA 1978 belongs to the surviving  
7 spouse or surviving domestic partner. If two or more parties  
8 survive and none is the surviving spouse or surviving  
9 domestic partner of the decedent, the amount to which the  
10 decedent, immediately before death, was beneficially entitled  
11 under Section 45-6-211 NMSA 1978 belongs to the surviving  
12 parties in equal shares, and augments the proportion to which  
13 each survivor, immediately before the decedent's death, was  
14 beneficially entitled under Section 45-6-211 NMSA 1978, and  
15 the right of survivorship continues between the surviving  
16 parties.

17 B. In an account with a POD designation:

18 (1) on death of one of two or more parties,  
19 the rights in sums on deposit are governed by Subsection A of  
20 this section; and

21 (2) on death of the sole party or the last  
22 survivor of two or more parties, sums on deposit belong to  
23 the surviving beneficiary or beneficiaries; if two or more  
24 beneficiaries survive, sums on deposit belong to them in  
25 equal and undivided shares, and there is no right of

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1 survivorship in the event of death of a beneficiary  
2 thereafter; if no beneficiary survives, sums on deposit  
3 belong to the estate of the last surviving party.

4 C. Sums on deposit in a single-party account  
5 without a POD designation, or in a multiple-party account  
6 that, by the terms of the account, is without right of  
7 survivorship, are not affected by death of a party, but the  
8 amount to which the decedent, immediately before death, was  
9 beneficially entitled under Section 45-6-211 NMSA 1978 is  
10 transferred as part of the decedent's estate. A POD  
11 designation in a multiple-party account without right of  
12 survivorship is ineffective. For purposes of this section,  
13 designation of an account as a tenancy in common establishes  
14 that the account is without right of survivorship.

15 D. The ownership right of a surviving party or  
16 beneficiary, or of the decedent's estate, in sums on deposit  
17 is subject to requests for payment made by a party before the  
18 party's death, whether paid by the financial institution  
19 before or after death, or unpaid. The surviving party or  
20 beneficiary, or the decedent's estate, is liable to the payee  
21 of an unpaid request for payment. The liability is limited  
22 to a proportionate share of the amount transferred under this  
23 section, to the extent necessary to discharge the request for  
24 payment."

25 Section 249. Section 45-6-226 NMSA 1978 (being Laws

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1 1992, Chapter 66, Section 35, as amended) is amended to read:

2 "45-6-226. DISCHARGE.--

3 A. Payment made pursuant to Sections 45-6-201  
4 through 45-6-227 NMSA 1978 in accordance with the type of  
5 account discharges the financial institution from all claims  
6 for amounts so paid, whether or not the payment is consistent  
7 with the beneficial ownership of the account as between  
8 parties, beneficiaries or their successors. Payment may be  
9 made whether or not a party, beneficiary or agent is  
10 disabled, incapacitated or deceased when payment is  
11 requested, received or made.

12 B. Protection under this section does not extend to  
13 payments made after a financial institution has received  
14 written notice from a party, or from the personal  
15 representative, surviving spouse or surviving domestic  
16 partner or heir or devisee of a deceased party, to the effect  
17 that payments in accordance with the terms of the account,  
18 including one having an agency designation, should not be  
19 permitted, and the financial institution has had a reasonable  
20 opportunity to act on it when the payment is made. Unless  
21 the notice is withdrawn by the person giving it, the  
22 successor of any deceased party must concur in a request for  
23 payment if the financial institution is to be protected under  
24 this section. Unless a financial institution has been served  
25 with process in an action or proceeding, no other notice or

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1 other information shown to have been available to the  
2 financial institution affects its right to protection under  
3 this section.

4 C. A financial institution that receives written  
5 notice pursuant to this section or otherwise has reason to  
6 believe that a dispute exists as to the rights of the parties  
7 may refuse, without liability, to make payments in accordance  
8 with the terms of the account.

9 D. Protection of a financial institution under this  
10 section does not affect the rights of parties in disputes  
11 between themselves or their successors concerning the  
12 beneficial ownership of sums on deposit in accounts or  
13 payments made from accounts."

14 Section 250. Section 45-6-401 NMSA 1978 (being Laws  
15 2001, Chapter 236, Section 1) is amended to read:

16 "45-6-401. REAL PROPERTY--TRANSFER ON DEATH DEED.--

17 A. An interest in real property may be titled in  
18 transfer on death form by recording a deed signed and  
19 acknowledged by the record owner of the interest and  
20 designating a grantee beneficiary or beneficiaries of the  
21 interest. The deed transfers ownership of that interest upon  
22 the death of the owner. A transfer on death deed need not be  
23 supported by consideration.

24 B. The signature, consent or agreement of or notice  
25 to a grantee beneficiary of a transfer on death deed is not

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1 required for any purpose during the lifetime of the record  
2 owner.

3 C. An interest in real property is titled in  
4 transfer on death form by executing, acknowledging and  
5 recording in the office of the county clerk in the county  
6 where the real property is located, prior to the death of the  
7 owner, a deed in substantially the following form:

8 "TRANSFER ON DEATH DEED

9 .....(Name of owner).... as owner transfers on death to  
10 ....(name of beneficiary)..., as grantee beneficiary, the  
11 following described interest in real property. THIS TRANSFER  
12 ON DEATH DEED IS REVOCABLE. IT DOES NOT TRANSFER ANY  
13 OWNERSHIP UNTIL THE DEATH OF THE OWNER. IT REVOKES ALL PRIOR  
14 BENEFICIARY DESIGNATIONS BY THIS OWNER FOR THIS INTEREST IN  
15 REAL PROPERTY.

16 (description)

17 Witness.....hand.....and  
18 seal.....this.....day of 20.....  
19 .....(Seal)

20 (Here add acknowledgment(s))".

21 D. A designation of the grantee beneficiary may be  
22 revoked by the record owner at any time prior to the death of  
23 the record owner, by the record owner executing,  
24 acknowledging and recording in the office of the county clerk  
25 in the county where the real property is located an

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1 instrument describing the interest and revoking the  
2 designation. The signature, consent or agreement of or  
3 notice to the grantee beneficiary or beneficiaries is not  
4 required.

5 E. A designation of the grantee beneficiary may be  
6 changed by the record owner at any time prior to the death of  
7 the record owner, by the record owner executing,  
8 acknowledging and recording a subsequent transfer on death  
9 deed. The signature, consent or agreement of or notice to  
10 the grantee beneficiary or beneficiaries is not required. A  
11 subsequent transfer on death beneficiary designation revokes  
12 a prior designation to the extent there is a conflict between  
13 the two designations.

14 F. A transfer on death deed executed, acknowledged  
15 and recorded in accordance with this section is not revoked  
16 by the provisions of a will.

17 G. A joint tenancy in real property is not  
18 [~~effected~~] affected by a transfer on death deed, and the  
19 rights of a surviving joint tenant shall prevail over a  
20 grantee beneficiary named in a transfer on death deed. If a  
21 joint tenant has executed a transfer on death deed, and if  
22 that joint tenant is the last surviving joint tenant, then  
23 the transfer on death deed is effective on that joint  
24 tenant's death.

25 H. Title to the interest in real estate recorded in

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1 transfer on death form shall vest in the designated grantee  
2 beneficiary or beneficiaries on the death of the record  
3 owner.

4 I. Grantee beneficiaries of a transfer on death  
5 deed take the record owner's interest in the real estate at  
6 death subject to all conveyances, assignments, contracts,  
7 mortgages, liens and security pledges made by the record  
8 owner or to which the record owner was subject during the  
9 record owner's lifetime and to any interest conveyed by the  
10 record owner that is less than all of the record owner's  
11 interest in the property.

12 J. If the assets of the estate are insufficient, a  
13 transfer resulting from a transfer on death deed is not  
14 effective against the estate of a deceased party to the  
15 extent needed to pay any claims against the estate and the  
16 statutory allowances to the surviving spouse or surviving  
17 domestic partner and children.

18 K. If a grantee beneficiary dies prior to the death  
19 of the record owner and an alternative grantee beneficiary  
20 has not been designated on the deed, the transfer shall  
21 lapse."

22 Section 251. Section 45-7-502 NMSA 1978 (being Laws  
23 1992, Chapter 66, Section 49) is amended to read:

24 "45-7-502. DEFINITIONS.--As used in the Uniform  
25 Custodial Trust Act:

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1           A. "adult" means an individual who is at least  
2 eighteen years of age;

3           B. "beneficiary" means an individual for whom  
4 property has been transferred to or held under a declaration  
5 of trust by a custodial trustee for the individual's use and  
6 benefit under the Uniform Custodial Trust Act;

7           C. "conservator" means a person appointed or  
8 qualified by a court to manage the estate of an individual or  
9 a person legally authorized to perform substantially the same  
10 functions;

11           D. "court" means the district court of this state;

12           E. "custodial trust property" means an interest in  
13 property transferred to or held under a declaration of trust  
14 by a custodial trustee under the Uniform Custodial Trust Act  
15 and the income from and proceeds of that interest;

16           F. "custodial trustee" means a person designated as  
17 trustee of a custodial trust under the Uniform Custodial  
18 Trust Act or a substitute or successor to the person  
19 designated;

20           G. "guardian" means a person appointed or qualified  
21 by a court as a guardian of an individual, including a  
22 limited guardian, but not a person who is only a guardian ad  
23 litem;

24           H. "incapacitated" means lacking the ability to  
25 manage property and business affairs effectively by reason of

.179346.5GR

1 mental illness, mental deficiency, physical illness or  
2 disability, chronic use of drugs, chronic intoxication,  
3 confinement, detention by a foreign power, disappearance,  
4 minority or other disabling cause;

5 I. "legal representative" means a personal  
6 representative or conservator;

7 J. "member of the beneficiary's family" means a  
8 beneficiary's spouse, domestic partner, descendant,  
9 stepchild, parent, stepparent, grandparent, brother, sister,  
10 uncle or aunt, whether of the whole or half blood or by  
11 adoption;

12 K. "person" means an individual, corporation,  
13 business trust, estate, trust, partnership, joint venture,  
14 association or any other legal or commercial entity;

15 L. "personal representative" means an executor,  
16 administrator or special administrator of a decedent's  
17 estate, a person legally authorized to perform substantially  
18 the same functions or a successor to any of them;

19 M. "state" means a state, territory or possession  
20 of the United States, the District of Columbia or the  
21 commonwealth of Puerto Rico;

22 N. "transferor" means a person who creates a  
23 custodial trust by transfer or declaration; and

24 O. "trust company" means a financial institution,  
25 corporation or other legal entity authorized to exercise

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1 general trust powers."

2 Section 252. Section 45-7-507 NMSA 1978 (being Laws  
3 1992, Chapter 66, Section 54) is amended to read:

4 "45-7-507. MULTIPLE BENEFICIARIES--SEPARATE CUSTODIAL  
5 TRUSTS--SURVIVORSHIP.--

6 A. Beneficial interests in a custodial trust  
7 created for multiple beneficiaries are deemed to be separate  
8 custodial trusts of equal undivided interests for each  
9 beneficiary. Except in a transfer or declaration for use and  
10 benefit of husband and wife or domestic partners for whom  
11 survivorship is presumed, a right of survivorship does not  
12 exist unless the instrument creating the custodial trust  
13 specifically provides for survivorship.

14 B. Custodial trust property held under the Uniform  
15 Custodial Trust Act by the same custodial trustee for the use  
16 and benefit of the same beneficiary may be administered as a  
17 single custodial trust.

18 C. A custodial trustee of custodial trust property  
19 held for more than one beneficiary shall separately account  
20 to each beneficiary pursuant to Sections 45-7-508 and  
21 45-7-516 NMSA 1978 for the administration of the custodial  
22 trust."

23 Section 253. Section 46-3A-104 NMSA 1978 (being Laws  
24 2001, Chapter 113, Section 104, as amended) is amended to  
25 read:

.179346.5GR

1 "46-3A-104. TRUSTEE'S POWER TO ADJUST.--

2 [~~(a)~~] A. A trustee may adjust between principal and  
3 income to the extent the trustee considers necessary if the  
4 trustee invests and manages trust assets as a prudent  
5 investor, the terms of the trust describe the amount that may  
6 or must be distributed to a beneficiary by referring to the  
7 trust's income, and the trustee determines, after applying  
8 the rules in Subsection [~~(a)~~] A of Section 46-3A-103 NMSA  
9 1978, that the trustee is unable to comply with Subsection  
10 [~~(b)~~] B of Section 46-3A-103 NMSA 1978.

11 [~~(b)~~] B. In deciding whether and to what extent to  
12 exercise the power conferred by Subsection [~~(a)~~] A of this  
13 section, a trustee shall consider all factors relevant to the  
14 trust and its beneficiaries, including the following factors  
15 to the extent they are relevant:

- 16 (1) the nature, purpose and expected duration  
17 of the trust;
- 18 (2) the intent of the settlor;
- 19 (3) the identity and circumstances of the  
20 beneficiaries;
- 21 (4) the needs for liquidity, regularity of  
22 income, and preservation and appreciation of capital;
- 23 (5) the assets held in the trust; the extent  
24 to which they consist of financial assets, interests in  
25 closely held enterprises, tangible and intangible personal

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1 property or real property; the extent to which an asset is  
2 used by a beneficiary; and whether an asset was purchased by  
3 the trustee or received from the settlor;

4 (6) the net amount allocated to income under  
5 the other sections of the Uniform Principal and Income Act  
6 and the increase or decrease in the value of the principal  
7 assets, which the trustee may estimate as to assets for which  
8 market values are not readily available;

9 (7) whether and to what extent the terms of  
10 the trust give the trustee the power to invade principal or  
11 accumulate income or prohibit the trustee from invading  
12 principal or accumulating income, and the extent to which the  
13 trustee has exercised a power from time to time to invade  
14 principal or accumulate income;

15 (8) the actual and anticipated effect of  
16 economic conditions on principal and income and effects of  
17 inflation and deflation; and

18 (9) the anticipated tax consequences of an  
19 adjustment.

20 [~~e~~] C. A trustee may not make an adjustment:

21 (1) that diminishes the income interest in a  
22 trust that requires all of the income to be paid at least  
23 annually to a surviving spouse or surviving domestic partner  
24 and for which an estate tax or gift tax marital deduction  
25 would be allowed, in whole or in part, if the trustee did not

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1 have the power to make the adjustment;

2 (2) that reduces the actuarial value of the  
3 income interest in a trust to which a person transfers  
4 property with the intent to qualify for a gift tax exclusion;

5 (3) that changes the amount payable to a  
6 beneficiary as a fixed annuity or a fixed fraction of the  
7 value of the trust assets;

8 (4) from any amount that is permanently set  
9 aside for charitable purposes under a will or the terms of a  
10 trust unless both income and principal are so set aside;

11 (5) if possessing or exercising the power to  
12 make an adjustment causes an individual to be treated as the  
13 owner of all or part of the trust for income tax purposes,  
14 and the individual would not be treated as the owner if the  
15 trustee did not possess the power to make an adjustment;

16 (6) if possessing or exercising the power to  
17 make an adjustment causes all or part of the trust assets to  
18 be included for estate tax purposes in the estate of an  
19 individual who has the power to remove a trustee or appoint a  
20 trustee, or both, and the assets would not be included in the  
21 estate of the individual if the trustee did not possess the  
22 power to make an adjustment;

23 (7) if the trustee is a beneficiary of the  
24 trust;

25 (8) if the trustee is not a beneficiary, but

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1 the adjustment would benefit the trustee directly or  
2 indirectly; or

3 (9) if the trust is a total return trust.

4 ~~[(d)]~~ D. If Paragraph (5), (6), (7) or (8) of  
5 Subsection ~~[(e)]~~ C of this section applies to a trustee and  
6 there is more than one trustee, a co-trustee to whom the  
7 provision does not apply may make the adjustment unless the  
8 exercise of the power by the remaining trustee or trustees is  
9 not permitted by the terms of the trust.

10 ~~[(e)]~~ E. A trustee may release the entire power  
11 conferred by Subsection ~~[(a)]~~ A of this section or may  
12 release only the power to adjust from income to principal or  
13 the power to adjust from principal to income if the trustee  
14 is uncertain about whether possessing or exercising the power  
15 will cause a result described in Paragraphs (1) through (6)  
16 or Paragraph (8) of Subsection ~~[(e)]~~ C of this section or if  
17 the trustee determines that possessing or exercising the  
18 power will or may deprive the trust of a tax benefit or  
19 impose a tax burden not described in Subsection ~~[(e)]~~ C of  
20 this section. The release may be permanent or for a  
21 specified period, including a period measured by the life of  
22 an individual.

23 ~~[(f)]~~ F. Terms of a trust that limit the power of a  
24 trustee to make an adjustment between principal and income do  
25 not affect the application of this section unless it is clear

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1 from the terms of the trust that the terms are intended to  
2 deny the trustee the power of adjustment conferred by  
3 Subsection [~~(a)~~] A of this section."

4 Section 254. Section 46-3A-413 NMSA 1978 (being Laws  
5 2001, Chapter 113, Section 413) is amended to read:

6 "46-3A-413. PROPERTY NOT PRODUCTIVE OF INCOME.--

7 [~~(a)~~] A. If a marital or domestic partnership  
8 deduction is allowed for all or part of a trust whose assets  
9 consist substantially of property that does not provide the  
10 spouse or domestic partner with sufficient income from or use  
11 of the trust assets, and if the amounts that the trustee  
12 transfers from principal to income under Section [~~104~~]  
13 46-3A-104 NMSA 1978 and distributes to the spouse or domestic  
14 partner from principal pursuant to the terms of the trust are  
15 insufficient to provide the spouse or domestic partner with  
16 the beneficial enjoyment required to obtain the marital or  
17 domestic partnership deduction, the spouse or domestic  
18 partner may require the trustee to make property productive  
19 of income, convert property within a reasonable time or  
20 exercise the power conferred by Subsection A of Section  
21 [~~104(a)~~] 46-3A-104 NMSA 1978. The trustee may decide which  
22 action or combination of actions to take.

23 [~~(b)~~] B. In cases not governed by Subsection [~~(a)~~]  
24 A of this section, proceeds from the sale or other  
25 disposition of an asset are principal without regard to the

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1 amount of income the asset produces during any accounting  
2 period."

3 Section 255. Section 46-7-12 NMSA 1978 (being Laws  
4 1989, Chapter 357, Section 2) is amended to read:

5 "46-7-12. DEFINITIONS.--As used in the Uniform  
6 Transfers to Minors Act:

7 A. "adult" means an individual who has attained the  
8 age of twenty-one years;

9 B. "benefit plan" means an employer's plan for the  
10 benefit of an employee or partner;

11 C. "broker" means a person lawfully engaged in the  
12 business of effecting transactions in securities or  
13 commodities for the person's own account or for the account  
14 of others;

15 D. "conservator" means a person appointed or  
16 qualified by a court to act as general, limited or temporary  
17 guardian of a minor's property or a person legally authorized  
18 to perform substantially the same functions;

19 E. "court" means the district court;

20 F. "custodial property" means:

21 (1) any interest in property transferred to a  
22 custodian under the Uniform Transfers to Minors Act; and

23 (2) the income from and proceeds of that  
24 interest in property;

25 G. "custodian" means a person so designated under

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1 Section [~~10 of the Uniform Transfers to Minors Act~~] 46-7-20  
2 NMSA 1978 or a successor or substitute custodian designated  
3 under Section [~~19 of that act~~] 46-7-29 NMSA 1978;

4 H. "financial institution" means a bank, trust  
5 company, savings institution or credit union chartered and  
6 supervised under state or federal law;

7 I. "legal representative" means an individual's  
8 personal representative or conservator;

9 J. "member of the minor's family" means the minor's  
10 parent, stepparent, spouse, domestic partner, grandparent,  
11 brother, sister, uncle or aunt, whether of the whole or half  
12 blood or by adoption;

13 K. "minor" means an individual who has not attained  
14 the age of twenty-one years;

15 L. "person" means an individual, corporation,  
16 organization or other legal entity;

17 M. "personal representative" means an executor,  
18 administrator, successor, personal representative or special  
19 administrator of a decedent's estate or a person legally  
20 authorized to perform [~~substantially~~] substantially the same  
21 functions;

22 N. "state" includes any state of the United States,  
23 the District of Columbia, the commonwealth of Puerto Rico and  
24 any territory or possession subject to the legislative  
25 authority of the United States;

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1           O. "transfer" means a transaction that creates  
2 custodial property under Section [~~10 of the Uniform Transfers~~  
3 ~~to Minors Act~~] 46-7-20 NMSA 1978;

4           P. "transferor" means a person who makes a transfer  
5 under [~~that~~] the Uniform Transfers to Minors Act; and

6           Q. "trust company" means a financial institution,  
7 corporation or other legal entity authorized to exercise  
8 general trust powers."

9           Section 256. Section 46A-5-503 NMSA 1978 (being Laws  
10 2003, Chapter 122, Section 5-503, as amended) is amended to  
11 read:

12           "46A-5-503. EXCEPTIONS TO SPENDTHRIFT PROVISION.--

13           A. As used in this section, "child" includes any  
14 person for whom an order or judgment for child support has  
15 been entered in this or another state.

16           B. A spendthrift provision is unenforceable  
17 against:

18                   (1) a beneficiary's child, spouse or domestic  
19 partner or former spouse or former domestic partner who has a  
20 judgment or court order against the beneficiary for support  
21 or maintenance;

22                   (2) a judgment creditor who has provided  
23 services for the protection of a beneficiary's interest in  
24 the trust; and

25                   (3) a claim of this state or the United States

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1 to the extent a statute of this state or federal law so  
2 provides.

3 C. A claimant against whom a spendthrift provision  
4 cannot be enforced may obtain from a court an order attaching  
5 present or future distributions to or for the benefit of the  
6 beneficiary. The court may limit the award to such relief as  
7 is appropriate under the circumstances. The order attaching  
8 present or future distributions to or for the benefit of the  
9 beneficiary shall be the exclusive remedy available to a  
10 claimant against whom a spendthrift provision cannot be  
11 enforced."

12 Section 257. Section 46A-5-504 NMSA 1978 (being Laws  
13 2003, Chapter 122, Section 5-504, as amended) is amended to  
14 read:

15 "46A-5-504. DISCRETIONARY TRUSTS--EFFECT OF  
16 STANDARD.--

17 A. As used in this section, "child" includes any  
18 person for whom an order or judgment for child support has  
19 been entered in this or another state.

20 B. Except as otherwise provided in Subsection C of  
21 this section, whether or not a trust contains a spendthrift  
22 provision, a creditor of a beneficiary may not compel a  
23 distribution that is subject to the trustee's discretion,  
24 even if:

25 (1) the discretion is expressed in the form of

.179346.5GR

1 a standard of distribution; or

2 (2) the trustee has abused the discretion.

3 C. To the extent a trustee has not complied with a  
4 standard of distribution or has abused a discretion:

5 (1) a distribution may be ordered by the court  
6 to satisfy a judgment or court order against the beneficiary  
7 for support or maintenance of the beneficiary's child, spouse  
8 or domestic partner or former spouse or former domestic  
9 partner; and

10 (2) the court shall direct the trustee to pay  
11 to the child, spouse or domestic partner or former spouse or  
12 former domestic partner such amount as is equitable under the  
13 circumstances but not more than the amount the trustee would  
14 have been required to distribute to or for the benefit of the  
15 beneficiary had the trustee complied with the standard or not  
16 abused the discretion.

17 D. This section does not limit the right of a  
18 beneficiary to maintain a judicial proceeding against a  
19 trustee for an abuse of discretion or failure to comply with  
20 a standard for distribution.

21 E. If the trustee's or co-trustee's discretion to  
22 make distributions for the trustee's or co-trustee's own  
23 benefit is limited by an ascertainable standard, a creditor  
24 shall not reach or compel distribution of the beneficial  
25 interest except to the extent the interest would be subject

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1 to the creditor's claim were the beneficiary not acting as  
2 trustee or co-trustee."

3 Section 258. Section 46A-5-505 NMSA 1978 (being Laws  
4 2003, Chapter 122, Section 5-505) is amended to read:

5 "46A-5-505. CREDITOR'S CLAIM AGAINST SETTLOR.--

6 A. Whether or not the terms of a trust contain a  
7 spendthrift provision, the following rules apply:

8 (1) during the lifetime of the settlor, the  
9 property of a revocable trust is subject to claims of the  
10 settlor's creditors;

11 (2) with respect to an irrevocable trust, a  
12 creditor or assignee of the settlor may reach the maximum  
13 amount that can be distributed to or for the settlor's  
14 benefit. If a trust has more than one settlor, the amount  
15 the creditor or assignee of a particular settlor may reach  
16 may not exceed the settlor's interest in the portion of the  
17 trust attributable to that settlor's contribution; and

18 (3) after the death of a settlor, and subject  
19 to the settlor's right to direct the source from which  
20 liabilities will be paid, the property of a trust that was  
21 revocable at the settlor's death is subject to claims of the  
22 settlor's creditors, costs of administration of the settlor's  
23 estate, the expenses of the settlor's funeral and disposal of  
24 remains and statutory allowances to a surviving spouse or  
25 surviving domestic partner and children to the extent the

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1 settlor's probate estate is inadequate to satisfy those  
2 claims, costs, expenses and allowances.

3 B. For purposes of this section:

4 (1) during the period the power may be  
5 exercised, the holder of a power of withdrawal is treated in  
6 the same manner as the settlor of a revocable trust to the  
7 extent of the property subject to the power; and

8 (2) upon the lapse, release or waiver of the  
9 power, the holder is treated as the settlor of the trust only  
10 to the extent the value of the property affected by the  
11 lapse, release or waiver exceeds the greater of the amount  
12 specified in Section 2041(b)(2), 2514(e) or 2503(b) of the  
13 Internal Revenue Code of 1986, as amended."

14 Section 259. Section 46A-6-602 NMSA 1978 (being Laws  
15 2003, Chapter 122, Section 6-602, as amended) is amended to  
16 read:

17 "46A-6-602. REVOCATION OR AMENDMENT OF REVOCABLE  
18 TRUST.--

19 A. Unless the terms of a trust expressly provide  
20 that the trust is irrevocable, the settlor may revoke or  
21 amend the trust. This subsection does not apply to a trust  
22 created under an instrument executed before July 1, 2003.

23 B. If a revocable trust is created or funded by  
24 more than one settlor:

25 (1) to the extent the trust consists of

.179346.5GR

1 community property, the trust may be revoked by either spouse  
2 or domestic partner acting alone but may be amended only by  
3 joint action of both spouses or domestic partners;

4 (2) to the extent the trust consists of  
5 property other than community property, each settlor may  
6 revoke or amend the trust with regard to the portion of the  
7 trust property attributable to that settlor's contribution;  
8 and

9 (3) upon the revocation or amendment of the  
10 trust by fewer than all of the settlors, the trustee shall  
11 promptly notify the other settlors of the revocation or  
12 amendment.

13 C. The settlor may revoke or amend a revocable  
14 trust:

15 (1) by substantial compliance with a method  
16 provided in the terms of the trust; or

17 (2) if the terms of the trust do not provide a  
18 method or the method provided in the terms is not expressly  
19 made exclusive, by:

20 (a) a later will or codicil that expressly  
21 refers to the trust or specifically devises property that  
22 would otherwise have passed according to the terms of the  
23 trust; or

24 (b) any other method manifesting clear and  
25 convincing evidence of the settlor's intent.

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1           D. Upon revocation of a revocable trust, the  
2 trustee shall deliver the trust property as the settlor  
3 directs.

4           E. A settlor's powers with respect to revocation,  
5 amendment or distribution of trust property may be exercised  
6 by an agent under a power of attorney only to the extent  
7 expressly authorized by the terms of the trust or the power.

8           F. A conservator of the settlor or, if no  
9 conservator has been appointed, a guardian of the settlor may  
10 exercise a settlor's powers with respect to revocation,  
11 amendment or distribution of trust property only with the  
12 approval of the court supervising the conservatorship or  
13 guardianship.

14           G. A trustee who does not know that a trust has  
15 been revoked or amended is not liable to the settlor or  
16 settlor's successors in interest for distributions made and  
17 other actions taken on the assumption that the trust had not  
18 been amended or revoked."

19           Section 260. Section 46A-8-802 NMSA 1978 (being Laws  
20 2003, Chapter 122, Section 8-802, as amended) is amended to  
21 read:

22           "46A-8-802. DUTY OF LOYALTY.--

23           A. A trustee shall administer the trust solely in  
24 the interests of the beneficiaries.

25           B. Subject to the rights of persons dealing with or  
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1 assisting the trustee as provided in Section 46A-10-1012 NMSA  
2 1978, a sale, encumbrance or other transaction involving the  
3 investment or management of trust property entered into by  
4 the trustee for the trustee's own personal account or that is  
5 otherwise affected by a conflict between the trustee's  
6 fiduciary and personal interests is voidable by a beneficiary  
7 affected by the transaction unless:

8 (1) the transaction was authorized by the  
9 terms of the trust;

10 (2) the transaction was approved by the court;

11 (3) the beneficiary did not commence a  
12 judicial proceeding within the time allowed by Section  
13 46A-10-1005 NMSA 1978;

14 (4) the beneficiary consented to the trustee's  
15 conduct, ratified the transaction or released the trustee in  
16 compliance with Section 46A-10-1009 NMSA 1978; or

17 (5) the transaction involved a contract  
18 entered into or claim acquired by the trustee before the  
19 person became or contemplated becoming trustee.

20 C. A sale, encumbrance or other transaction  
21 involving the investment or management of trust property is  
22 presumed to be affected by a conflict between personal and  
23 fiduciary interests if it is entered into by the trustee  
24 with:

25 (1) the trustee's spouse or domestic partner;

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1 (2) the trustee's descendants, siblings,  
2 parents or the spouse or domestic partner of any of them;

3 (3) an agent or attorney of the trustee; or

4 (4) a corporation or other person or  
5 enterprise in which the trustee, or a person that owns a  
6 significant interest in the trustee, has an interest that  
7 might affect the trustee's best judgment.

8 D. A transaction between a trustee and a  
9 beneficiary that does not concern trust property but that  
10 occurs during the existence of the trust or while the trustee  
11 retains significant influence over the beneficiary and from  
12 which the trustee obtains an advantage is voidable by the  
13 beneficiary unless the trustee establishes that the  
14 transaction was fair to the beneficiary.

15 E. A transaction not concerning trust property in  
16 which the trustee engages in the trustee's individual  
17 capacity involves a conflict between personal and fiduciary  
18 interests if the transaction concerns an opportunity properly  
19 belonging to the trust.

20 F. An investment by a trustee in securities of an  
21 investment company or investment trust to which the trustee,  
22 or its affiliate, provides services in a capacity other than  
23 as trustee is not presumed to be affected by a conflict  
24 between personal and fiduciary interests if the investment  
25 otherwise complies with the Uniform Prudent Investor Act. In

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1 addition to its compensation for acting as trustee, the  
2 trustee may be compensated by the investment company or  
3 investment trust for providing those services out of fees  
4 charged to the trust. If the trustee receives compensation  
5 from the investment company or investment trust for providing  
6 investment advisory or investment services, the trustee at  
7 least annually shall notify the persons entitled under  
8 Section 46A-8-813 NMSA 1978 to receive a copy of the  
9 trustee's annual report of the rate and method by which the  
10 compensation was determined.

11 G. In voting shares of stock or in exercising  
12 powers of control over similar interests in other forms of  
13 enterprise, the trustee shall act in the best interests of  
14 the beneficiaries. If the trust is the sole owner of a  
15 corporation or other form of enterprise, the trustee shall  
16 elect or appoint directors or other managers who will manage  
17 the corporation or enterprise in the best interests of the  
18 beneficiaries.

19 H. This section does not preclude the following  
20 transactions, if fair to the beneficiaries:

21 (1) an agreement between a trustee and a  
22 beneficiary relating to the appointment or compensation of  
23 the trustee;

24 (2) payment of reasonable compensation to the  
25 trustee;

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1                   (3) a transaction between a trust and another  
2 trust, decedent's estate or conservatorship of which the  
3 trustee is a fiduciary or in which a beneficiary has an  
4 interest;

5                   (4) a deposit of trust money in a regulated  
6 financial-service institution operated by the trustee; or

7                   (5) an advance by the trustee of money for the  
8 protection of the trust.

9                   I. The court may appoint a special fiduciary to  
10 make a decision with respect to any proposed transaction that  
11 might violate this section if entered into by the trustee."

12                   Section 261. Section 46A-10-1007 NMSA 1978 (being Laws  
13 2003, Chapter 122, Section 10-1006) is amended to read:

14                   "46A-10-1007. EVENT AFFECTING ADMINISTRATION OR  
15 DISTRIBUTION.--If the happening of an event, including  
16 marriage, entry into a domestic partnership, divorce,  
17 dissolution of domestic partnership, performance of  
18 educational requirements or death, affects the administration  
19 or distribution of a trust, a trustee who has exercised  
20 reasonable care to ascertain the happening of the event is  
21 not liable for a loss resulting from the trustee's lack of  
22 knowledge."

23                   Section 262. Section 46A-10-1011 NMSA 1978 (being Laws  
24 2007, Chapter 128, Section 28) is amended to read:

25                   "46A-10-1011. INTEREST AS GENERAL PARTNER.--

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1           A. Except as otherwise provided in Subsection C of  
2 this section or unless personal liability is imposed in the  
3 contract, a trustee who holds an interest as a general  
4 partner in a general or limited partnership is not personally  
5 liable on a contract entered into by the partnership after  
6 the trust's acquisition of the interest if the fiduciary  
7 capacity was disclosed in the contract or in a statement  
8 previously filed or recorded pursuant to the provisions of  
9 any version of the Uniform Partnership Act (1994) or the  
10 Uniform Limited Partnership Act.

11           B. Except as otherwise provided in Subsection C of  
12 this section, a trustee who holds an interest as a general  
13 partner is not personally liable for torts committed by the  
14 partnership or for obligations arising from ownership or  
15 control of the interest unless the trustee is personally at  
16 fault.

17           C. The immunity provided by this section does not  
18 apply if an interest in the partnership is held by the  
19 trustee in a capacity other than that of trustee or is held  
20 by the trustee's spouse or domestic partner or one or more of  
21 the trustee's descendants, siblings or parents, or the spouse  
22 or domestic partner of any of them.

23           D. If the trustee of a revocable trust holds an  
24 interest as a general partner, the settlor is personally  
25 liable for contracts and other obligations of the partnership

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1 as if the settlor were a general partner."

2 Section 263. Section 46B-1-116 NMSA 1978 (being Laws  
3 2007, Chapter 135, Section 116) is amended to read:

4 "46B-1-116. JUDICIAL RELIEF.--

5 A. The following persons may petition a court to  
6 construe a power of attorney or review the agent's conduct  
7 and grant appropriate relief:

8 (1) the principal or the agent;

9 (2) a guardian, conservator or other fiduciary  
10 acting for the principal;

11 (3) a person authorized to make health care  
12 decisions for the principal;

13 (4) the principal's spouse, domestic partner,  
14 parent or descendant;

15 (5) an individual who would qualify as a  
16 presumptive heir of the principal;

17 (6) a person named as a beneficiary to receive  
18 any property, benefit or contractual right on the principal's  
19 death or as a beneficiary of a trust created by or for the  
20 principal that has a financial interest in the principal's  
21 estate;

22 (7) a governmental agency having regulatory  
23 authority to protect the welfare of the principal;

24 (8) the principal's caregiver or another  
25 person that demonstrates sufficient interest in the

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1 principal's welfare; and

2 (9) a person asked to accept the power of  
3 attorney.

4 B. Upon motion by the principal, the court shall  
5 dismiss a petition filed under this section, unless the court  
6 finds that the principal lacks capacity to revoke the agent's  
7 authority or the power of attorney."

8 Section 264. Section 46B-1-201 NMSA 1978 (being Laws  
9 2007, Chapter 135, Section 201) is amended to read:

10 "46B-1-201. AUTHORITY THAT REQUIRES SPECIFIC GRANT--  
11 GRANT OF GENERAL AUTHORITY.--

12 A. An agent under a power of attorney may do the  
13 following on behalf of the principal or with the principal's  
14 property only if the power of attorney expressly grants the  
15 agent the authority and exercise of the authority is not  
16 otherwise prohibited by another agreement or instrument to  
17 which the authority or property is subject:

18 (1) create, amend, revoke or terminate an  
19 inter vivos trust;

20 (2) make a gift;

21 (3) create or change rights of survivorship;

22 (4) create or change a beneficiary  
23 designation;

24 (5) delegate authority granted under the power  
25 of attorney;

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1 (6) waive the principal's right to be a  
2 beneficiary of a joint and survivor annuity, including a  
3 survivor benefit under a retirement plan;

4 (7) exercise fiduciary powers that the  
5 principal has authority to delegate; or

6 (8) disclaim property, including a power of  
7 appointment.

8 B. Notwithstanding a grant of authority to do an  
9 act described in Subsection A of this section, unless the  
10 power of attorney otherwise provides, an agent that is not an  
11 ancestor, spouse, domestic partner or descendant of the  
12 principal shall not exercise authority under a power of  
13 attorney to create in the agent, or in an individual to whom  
14 the agent owes a legal obligation of support, an interest in  
15 the principal's property, whether by gift, right of  
16 survivorship, beneficiary designation, disclaimer or  
17 otherwise.

18 C. Subject to Subsections A, B, D and E of this  
19 section, if a power of attorney grants to an agent authority  
20 to do all acts that a principal could do, the agent has the  
21 general authority described in Sections [~~204 through 216 of~~  
22 ~~the Uniform Power of Attorney Act~~] 46B-1-204 through  
23 46B-1-216 NMSA 1978.

24 D. Unless the power of attorney otherwise provides,  
25 a grant of authority to make a gift is subject to the

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1 provisions of Section [~~217 of the Uniform Power of Attorney~~  
2 ~~Act~~] 46B-1-217 NMSA 1978.

3 E. Subject to Subsections A, B and D of this  
4 section, if the subjects over which authority is granted in a  
5 power of attorney are similar or overlap, the broadest  
6 authority controls.

7 F. Authority granted in a power of attorney is  
8 exercisable with respect to property that the principal has  
9 when the power of attorney is executed or acquires later,  
10 whether or not the property is located in this state and  
11 whether or not the authority is exercised or the power of  
12 attorney is executed in this state.

13 G. An act performed by an agent pursuant to a power  
14 of attorney has the same effect and inures to the benefit of  
15 and binds the principal and the principal's successors in  
16 interest as if the principal had performed the act."

17 Section 265. Section 46B-1-210 NMSA 1978 (being Laws  
18 2007, Chapter 135, Section 210) is amended to read:

19 "46B-1-210. INSURANCE AND ANNUITIES.--Unless the power  
20 of attorney otherwise provides, language in a power of  
21 attorney granting general authority with respect to insurance  
22 and annuities authorizes the agent to:

23 A. continue, pay the premium or make a contribution  
24 on, modify, exchange, rescind, release or terminate a  
25 contract procured by or on behalf of the principal that

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1 insures or provides an annuity to either the principal or  
2 another person, whether or not the principal is a beneficiary  
3 under the contract;

4 B. procure new, different and additional contracts  
5 of insurance and annuities for the principal and the  
6 principal's spouse or domestic partner, children and other  
7 dependents and select the amount, type of insurance or  
8 annuity and mode of payment;

9 C. pay the premium or make a contribution on,  
10 modify, exchange, rescind, release or terminate a contract of  
11 insurance or annuity procured by the agent;

12 D. apply for and receive a loan secured by a  
13 contract of insurance or annuity;

14 E. surrender and receive the cash surrender value  
15 on a contract of insurance or annuity;

16 F. exercise an election;

17 G. exercise investment powers available under a  
18 contract of insurance or annuity;

19 H. change the manner of paying premiums on a  
20 contract of insurance or annuity;

21 I. change or convert the type of insurance or  
22 annuity with respect to which the principal has or claims to  
23 have authority described in this section;

24 J. apply for and procure a benefit or assistance  
25 under a statute or regulation to guarantee or pay premiums of

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1 a contract of insurance on the life of the principal;

2 K. collect, sell, assign, hypothecate, borrow  
3 against or pledge the interest of the principal in a contract  
4 of insurance or annuity;

5 L. select the form and timing of the payment of  
6 proceeds from a contract of insurance or annuity; and

7 M. pay, from proceeds or otherwise, compromise or  
8 contest and apply for refunds in connection with a tax or  
9 assessment levied by a taxing authority with respect to a  
10 contract of insurance or annuity or its proceeds or liability  
11 accruing by reason of the tax or assessment."

12 Section 266. Section 46B-1-213 NMSA 1978 (being Laws  
13 2007, Chapter 135, Section 213) is amended to read:

14 "46B-1-213. PERSONAL AND FAMILY MAINTENANCE.--

15 A. Unless the power of attorney otherwise provides,  
16 language in a power of attorney granting general authority  
17 with respect to personal and family maintenance authorizes  
18 the agent to:

19 (1) perform the acts necessary to maintain the  
20 customary standard of living of the principal, the  
21 principal's spouse or domestic partner and the following  
22 individuals, whether living when the power of attorney is  
23 executed or later born:

24 (a) the principal's children;

25 (b) other individuals legally entitled to

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1 be supported by the principal; and

2 (c) the individuals whom the principal has  
3 customarily supported or indicated the intent to support;

4 (2) make periodic payments of child support  
5 and other family maintenance required by a court or  
6 governmental agency or an agreement to which the principal is  
7 a party;

8 (3) provide living quarters for the  
9 individuals described in Paragraph (1) of this subsection by:

10 (a) purchase, lease or other contract; or

11 (b) paying the operating costs, including  
12 interest, amortization payments, repairs, improvements and  
13 taxes, for premises owned by the principal or occupied by  
14 those individuals;

15 (4) provide normal domestic help, usual  
16 vacations and travel expenses and funds for shelter,  
17 clothing, food, appropriate education, including post-  
18 secondary and vocational education, and other current living  
19 costs for the individuals described in Paragraph (1) of this  
20 subsection;

21 (5) pay expenses for necessary health care and  
22 custodial care on behalf of the individuals described in  
23 Paragraph (1) of this subsection;

24 (6) act as the principal's personal  
25 representative pursuant to the federal Health Insurance

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1 Portability and Accountability Act of 1996, Sections 1171  
2 through 1179 of the federal Social Security Act, 42 U.S.C.  
3 Section 1320d, as amended, and applicable regulations, in  
4 making decisions related to the past, present or future  
5 payment for the provision of health care consented to by the  
6 principal or anyone authorized under the law of this state to  
7 consent to health care on behalf of the principal;

8 (7) continue any provision made by the  
9 principal for automobiles or other means of transportation,  
10 including registering, licensing, insuring and replacing  
11 them, for the individuals described in Paragraph (1) of this  
12 subsection;

13 (8) maintain credit and debit accounts for the  
14 convenience of the individuals described in Paragraph (1) of  
15 this subsection and open new accounts; and

16 (9) continue payments incidental to the  
17 membership or affiliation of the principal in a religious  
18 institution, club, society, order or other organization or  
19 continue contributions to those organizations.

20 B. Authority with respect to personal and family  
21 maintenance is neither dependent upon, nor limited by,  
22 authority that an agent may or may not have with respect to  
23 gifts under the Uniform Power of Attorney Act."

24 Section 267. Section 46B-1-301 NMSA 1978 (being Laws  
25 2007, Chapter 135, Section 301) is amended to read:

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1 the Special Instructions. Co-agents are not required to act  
2 together unless you include that requirement in the Special  
3 Instructions.

4 If your agent is unable or unwilling to act for you,  
5 your power of attorney will end unless you have named a  
6 successor agent. You may also name a second successor agent.

7 This power of attorney becomes effective immediately  
8 unless you state otherwise in the Special Instructions.

9 If you have questions about the power of attorney or the  
10 authority you are granting to your agent, you should seek  
11 legal advice before signing this form.

12 DESIGNATION OF AGENT

13 I, \_\_\_\_\_,

14 (Your Name)

15 name the following person as my agent:

16 Name of Agent: \_\_\_\_\_

17 Agent's Address: \_\_\_\_\_

18 Agent's Telephone Number: \_\_\_\_\_

19 DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)

20 If my agent is unable or unwilling to act for me, I name  
21 as my successor agent:

22 Name of Successor Agent:  
23 \_\_\_\_\_

24 Successor Agent's Address:  
25 \_\_\_\_\_

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1 Successor Agent's Telephone Number:

2 \_\_\_\_\_

3 If my successor agent is unable or unwilling to act for  
4 me, I name as my second successor agent:

5 Name of Second Successor Agent:

6 \_\_\_\_\_

7 Second Successor Agent's Address:

8 \_\_\_\_\_

9 Second Successor Agent's Telephone Number:

10 \_\_\_\_\_

11 GRANT OF GENERAL AUTHORITY

12 I grant my agent and any successor agent general  
13 authority to act for me with respect to the following  
14 subjects as defined in the Uniform Power of Attorney Act:  
15 (INITIAL each subject you want to include in the agent's  
16 general authority. If you wish to grant general authority  
17 over all of the subjects, you may initial "All Preceding  
18 Subjects" instead of initialing each subject.)

- 19 ( ) Real Property
- 20 ( ) Tangible Personal Property
- 21 ( ) Stocks and Bonds
- 22 ( ) Commodities and Options
- 23 ( ) Banks and Other Financial Institutions
- 24 ( ) Operation of Entity or Business
- 25 ( ) Insurance and Annuities

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- 1      Estates, Trusts and Other Beneficial Interests
- 2      Claims and Litigation
- 3      Personal and Family Maintenance
- 4      Benefits from Governmental Programs or Civil or
- 5         Military Service
- 6      Retirement Plans
- 7      Taxes
- 8      All Preceding Subjects

9                   GRANT OF SPECIFIC AUTHORITY (OPTIONAL)

10           My agent MAY NOT do any of the following specific acts  
11   for me UNLESS I have INITIALED the specific authority listed  
12   below:

13   (CAUTION: Granting any of the following will give your agent  
14   the authority to take actions that could significantly reduce  
15   your property or change how your property is distributed at  
16   your death. INITIAL ONLY the specific authority you WANT to  
17   give your agent.)

- 18    Create, amend, revoke or terminate an inter vivos
- 19         trust
- 20    Make a gift, subject to the limitations of Section
- 21         ~~[217 of the Uniform Power of Attorney Act]~~ 46B-1-217
- 22         NMSA 1978 and any special instructions in this power
- 23         of attorney
- 24    Create or change rights of survivorship
- 25    Create or change a beneficiary designation

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- 1     ( ) Authorize another person to exercise the authority
- 2             granted under this power of attorney
- 3     ( ) Waive the principal's right to be a beneficiary of a
- 4             joint and survivor annuity, including a survivor
- 5             benefit under a retirement plan
- 6     ( ) Exercise fiduciary powers that the principal has
- 7             authority to delegate
- 8     ( ) Disclaim or refuse an interest in property, including
- 9             a power of appointment

LIMITATION ON AGENT'S AUTHORITY

An agent that is not my ancestor, spouse, domestic partner or descendant MAY NOT use my property to benefit the agent or a person to whom the agent owes an obligation of support unless I have included that authority in the Special Instructions.

SPECIAL INSTRUCTIONS (OPTIONAL)

You may give special instructions on the following lines:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

EFFECTIVE DATE

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1           This power of attorney is effective immediately unless  
2 I have stated otherwise in the Special Instructions.

3           NOMINATION OF CONSERVATOR OR GUARDIAN (OPTIONAL)

4           If it becomes necessary for a court to appoint a  
5 conservator or guardian of my estate or guardian of my  
6 person, I nominate the following person(s) for appointment:

7           Name of Nominee for conservator of my estate:  
8 \_\_\_\_\_

9           Nominee's Address:  
10 \_\_\_\_\_

11          Nominee's Telephone Number:  
12 \_\_\_\_\_

13          Name of Nominee for guardian of my person:  
14 \_\_\_\_\_

15          Nominee's Address:  
16 \_\_\_\_\_

17          Nominee's Telephone Number:  
18 \_\_\_\_\_

19                           RELIANCE ON THIS POWER OF ATTORNEY

20           Any person, including my agent, may rely upon the  
21 validity of this power of attorney or a copy of it unless  
22 that person knows it has terminated or is invalid.

23                           SIGNATURE AND ACKNOWLEDGMENT

24          Your Signature: \_\_\_\_\_

25          Date: \_\_\_\_\_

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1 Your Name Printed: \_\_\_\_\_

2 Your Address: \_\_\_\_\_

3 Your Telephone Number: \_\_\_\_\_

4 State of \_\_\_\_\_

5 (County) of \_\_\_\_\_

6 This instrument was acknowledged before me on

7 \_\_\_\_\_, \_\_\_\_\_ (Date)

8 by \_\_\_\_\_ (Name of Principal).

9 (Seal, if any)

10 Signature of notarial officer:

11 \_\_\_\_\_

12 My commission expires: \_\_\_\_\_

13 IMPORTANT INFORMATION FOR AGENT

14 Agent's Duties

15 When you accept the authority granted under this power  
16 of attorney, a special legal relationship is created between  
17 you and the principal. This relationship imposes upon you  
18 legal duties that continue until you resign or the power of  
19 attorney is terminated or revoked. You must:

- 20 1. do what you know the principal reasonably expects
- 21 you to do with the principal's property or, if you
- 22 do not know the principal's expectations, act in
- 23 the principal's best interest;
- 24 2. act in good faith;
- 25 3. do nothing beyond the authority granted in this

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1 power of attorney; and  
2 4. disclose your identity as an agent whenever you act  
3 for the principal by writing or printing the name  
4 of the principal and signing your own name as  
5 "agent" in the following manner:

6 \_\_\_\_\_ by \_\_\_\_\_ as Agent  
7 (Principal's Name) (Your Signature)

8 Unless the Special Instructions in this power of  
9 attorney state otherwise, you must also:

- 10 1. act loyally for the principal's benefit;
- 11 2. avoid conflicts that would impair your ability to  
12 act in the principal's best interest;
- 13 3. act with care, competence and diligence;
- 14 4. keep a record of all receipts, disbursements and  
15 transactions made on behalf of the principal;
- 16 5. cooperate with any person that has authority to make  
17 health care decisions for the principal to do what  
18 you know the principal reasonably expects or, if  
19 you do not know the principal's expectations, to  
20 act in the principal's best interest; and
- 21 6. attempt to preserve the principal's estate plan if  
22 you know the plan and preserving the plan is  
23 consistent with the principal's best interest.

24 Termination of Agent's Authority

25 You must stop acting on behalf of the principal if you

1 learn of any event that terminates this power of attorney or  
2 your authority under this power of attorney. Events that  
3 terminate a power of attorney or your authority to act under  
4 a power of attorney include:

- 5 1. death of the principal;
- 6 2. the principal's revocation of the power of attorney  
7 or your authority;
- 8 3. the occurrence of a termination event stated in the  
9 power of attorney;
- 10 4. the purpose of the power of attorney is fully  
11 accomplished; or
- 12 5. if you are married to or in a domestic partnership  
13 with the principal, a legal action is filed with a  
14 court to end your marriage or domestic partnership  
15 or for your legal separation, unless the Special  
16 Instructions in this power of attorney state that  
17 such an action will not terminate your authority.

#### 18 Liability of Agent

19 The meaning of the authority granted to you is defined  
20 in the Uniform Power of Attorney Act. If you violate the  
21 Uniform Power of Attorney Act or act outside the authority  
22 granted, you may be liable for any damages caused by your  
23 violation.

24 If there is anything about this document or your duties  
25 that you do not understand, you should seek legal advice."."

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1           Section 268. Section 47-1-36 NMSA 1978 (being Laws  
2 1971, Chapter 220, Section 1) is amended to read:

3           "47-1-36. JOINT TENANCIES DEFINED--CREATION.--A joint  
4 tenancy in real property is one owned by two or more persons,  
5 each owning the whole and an equal undivided share, by a  
6 title created by a single devise or conveyance, when  
7 expressly declared in the will or conveyance to be a joint  
8 tenancy, or by conveyance from a sole owner to [~~himself~~] the  
9 sole owner and others, or from tenants in common to  
10 themselves, or to themselves and others, or from husband and  
11 wife or domestic partners when holding as community property  
12 or otherwise to themselves or to themselves and others, when  
13 expressly declared in the conveyance to be a joint tenancy,  
14 or when granted or devised to executors or trustees."

15           Section 269. Section 47-6-2 NMSA 1978 (being Laws 1973,  
16 Chapter 348, Section 2, as amended) is amended to read:

17           "47-6-2. DEFINITIONS.--As used in the New Mexico  
18 Subdivision Act:

19           A. "board of county commissioners" means the  
20 governing board of a county;

21           B. "common promotional plan" means a plan or  
22 scheme of operation, undertaken by a single subdivider or a  
23 group of subdividers acting in concert, to offer for sale or  
24 lease parcels of land where the land is either contiguous or  
25 part of the same area of land or is known, designated or

.179346.5GR

1 advertised as a common unit or by a common name;

2 C. "final plat" means a map, chart, survey, plan  
3 or replat certified by a licensed, registered land surveyor  
4 containing a description of the subdivided land with ties to  
5 permanent monuments prepared in a form suitable for filing of  
6 record;

7 D. "immediate family member" means a husband,  
8 wife, domestic partner, father, stepfather, mother,  
9 stepmother, brother, stepbrother, sister, stepsister, son,  
10 stepson, daughter, stepdaughter, grandson, stepgrandson,  
11 granddaughter, stepgranddaughter, nephew and niece, whether  
12 related by natural birth or adoption;

13 E. "Indian nation, tribe or pueblo" means any  
14 federally recognized Indian nation, tribe or pueblo located  
15 wholly or partially in New Mexico;

16 F. "lease" means to lease or offer to lease land;

17 G. "parcel" means land capable of being described  
18 by location and boundaries and not dedicated for public or  
19 common use;

20 H. "person" means any individual, estate, trust,  
21 receiver, cooperative association, club, corporation,  
22 company, firm, partnership, joint venture, syndicate or other  
23 entity;

24 I. "preliminary plat" means a map of a proposed  
25 subdivision showing the character and proposed layout of the

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1 subdivision and the existing conditions in and around it and  
2 need not be based upon an accurate and detailed survey of the  
3 land;

4 J. "sell" means to sell or offer to sell land;

5 K. "subdivide" means to divide a surface area of  
6 land into a subdivision;

7 L. "subdivider" means any person who creates or  
8 who has created a subdivision individually or as part of a  
9 common promotional plan or any person engaged in the sale,  
10 lease or other conveyance of subdivided land; however,  
11 "subdivider" does not include any duly licensed real estate  
12 broker or salesperson acting on another's account;

13 M. "subdivision" means the division of a surface  
14 area of land, including land within a previously approved  
15 subdivision, into two or more parcels for the purpose of  
16 sale, lease or other conveyance or for building development,  
17 whether immediate or future; but "subdivision" does not  
18 include:

19 (1) the sale, lease or other conveyance of  
20 any parcel that is thirty-five acres or larger in size within  
21 any twelve-month period, provided that the land has been used  
22 primarily and continuously for agricultural purposes, in  
23 accordance with Section 7-36-20 NMSA 1978, for the preceding  
24 three years;

25 (2) the sale or lease of apartments,

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1 offices, stores or similar space within a building;

2 (3) the division of land within the  
3 boundaries of a municipality;

4 (4) the division of land in which only gas,  
5 oil, mineral or water rights are severed from the surface  
6 ownership of the land;

7 (5) the division of land created by court  
8 order where the order creates no more than one parcel per  
9 party;

10 (6) the division of land for grazing or  
11 farming activities; provided the land continues to be used  
12 for grazing or farming activities;

13 (7) the division of land resulting only in  
14 the alteration of parcel boundaries where parcels are altered  
15 for the purpose of increasing or reducing the size of  
16 contiguous parcels and where the number of parcels is not  
17 increased;

18 (8) the division of land to create burial  
19 plots in a cemetery;

20 (9) the division of land to create a parcel  
21 that is sold or donated as a gift to an immediate family  
22 member; however, this exception shall be limited to allow the  
23 seller or donor to sell or give no more than one parcel per  
24 tract of land per immediate family member;

25 (10) the division of land created to provide

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1 security for mortgages, liens or deeds of trust; provided  
2 that the division of land is not the result of a seller-  
3 financed transaction;

4 (11) the sale, lease or other conveyance of  
5 land that creates no parcel smaller than one hundred forty  
6 acres;

7 (12) the division of land to create a parcel  
8 that is donated to any trust or nonprofit corporation granted  
9 an exemption from federal income tax, as described in Section  
10 501(c)(3) of the United States Internal Revenue Code of 1986,  
11 as amended; school, college or other institution with a  
12 defined curriculum and a student body and faculty that  
13 conducts classes on a regular basis; or church or group  
14 organized for the purpose of divine worship, religious  
15 teaching or other specifically religious activity; or

16 (13) the sale, lease or other conveyance of  
17 a single parcel from a tract of land, except from a tract  
18 within a previously approved subdivision, within any five-  
19 year period; provided that a second or subsequent sale, lease  
20 or other conveyance from the same tract of land within five  
21 years of the first sale, lease or other conveyance shall be  
22 subject to the provisions of the New Mexico Subdivision Act;  
23 provided further that a survey shall be filed with the county  
24 clerk indicating the five-year holding period for both the  
25 original tract and the newly created tract;

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1           N. "terrain management" means the control of  
2 floods, drainage and erosion and measures required for  
3 adapting proposed development to existing soil  
4 characteristics and topography;

5           O. "time of purchase, lease or other conveyance"  
6 means the time of signing any document obligating the person  
7 signing the document to purchase, lease or otherwise acquire  
8 a legal interest in land;

9           P. "type-one subdivision" means any subdivision  
10 containing five hundred or more parcels, any one of which is  
11 less than ten acres in size;

12           Q. "type-two subdivision" means any subdivision  
13 containing not fewer than twenty-five but not more than four  
14 hundred ninety-nine parcels, any one of which is less than  
15 ten acres in size;

16           R. "type-three subdivision" means any subdivision  
17 containing not more than twenty-four parcels, any one of  
18 which is less than ten acres in size;

19           S. "type-four subdivision" means any subdivision  
20 containing twenty-five or more parcels, each of which is ten  
21 acres or more in size; and

22           T. "type-five subdivision" means any subdivision  
23 containing not more than twenty-four parcels, each of which  
24 is ten acres or more in size."

25           Section 270. Section 48-7-20 NMSA 1978 (being Laws  
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1 1983, Chapter 314, Section 6) is amended to read:

2 "48-7-20. LIMITATION OF EXERCISE OF ALL DUE-ON-SALE  
3 OPTIONS.--A lender may not exercise its option pursuant to a  
4 due-on-sale clause upon:

5 A. the creation of a lien or other encumbrance  
6 subordinate to the lender's security instrument [~~which~~] that  
7 does not relate to a transfer of rights of occupancy in the  
8 property;

9 B. the creation of a purchase money security  
10 interest for household appliances;

11 C. a transfer by devise, descent or operation of  
12 law on the death of a joint tenant or tenant by the entirety;

13 D. the granting of a leasehold interest of three  
14 years or less not containing an option to purchase;

15 E. a transfer to a relative resulting from the  
16 death of a borrower;

17 F. a transfer where the spouse, domestic partner  
18 or children of the borrower become an owner of the property;

19 G. a transfer resulting from a decree of a  
20 dissolution of marriage or domestic partnership, legal  
21 separation agreement or from an incidental property  
22 settlement agreement, by which the spouse or domestic partner  
23 of the borrower becomes an owner of the property; or

24 H. a transfer into an inter vivos trust in which  
25 the borrower is and remains a beneficiary and which does not

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1 relate to a transfer of rights of occupancy in the property."

2 Section 271. Section 50-4-21 NMSA 1978 (being Laws  
3 1955, Chapter 200, Section 2, as amended) is amended to read:

4 "50-4-21. DEFINITIONS.--As used in the Minimum Wage  
5 Act:

6 A. "employ" includes suffer or permit to work;

7 B. "employer" includes any individual,  
8 partnership, association, corporation, business trust, legal  
9 representative or any organized group of persons employing  
10 one or more employees at any one time, acting directly or  
11 indirectly in the interest of an employer in relation to an  
12 employee, but shall not include the United States, the state  
13 or any political subdivision of the state; provided, however,  
14 that for the purposes of Subsection A of Section 50-4-22 NMSA  
15 1978, "employer" includes the state or any political  
16 subdivision of the state; and

17 C. "employee" includes an individual employed by  
18 an employer, but shall not include:

19 (1) an individual employed in domestic  
20 service in or about a private home;

21 (2) an individual employed in a bona fide  
22 executive, administrative or professional capacity and  
23 forepersons, superintendents and supervisors;

24 (3) an individual employed by the United  
25 States, the state or any political subdivision of the state;

.179346.5GR

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1 provided, however, that for the purposes of Subsection A of  
2 Section 50-4-22 NMSA 1978, "employee" includes an individual  
3 employed by the state or any political subdivision of the  
4 state;

5 (4) an individual engaged in the activities  
6 of an educational, charitable, religious or nonprofit  
7 organization where the employer-employee relationship does  
8 not, in fact, exist or where the services rendered to such  
9 organizations are on a voluntary basis. The employer-  
10 employee relationship shall not be deemed to exist with  
11 respect to an individual being served for purposes of  
12 rehabilitation by a charitable or nonprofit organization,  
13 notwithstanding the payment to the individual of a stipend  
14 based upon the value of the work performed by the individual;

15 (5) salespersons or employees compensated  
16 upon piecework, flat rate schedules or commission basis;

17 (6) students regularly enrolled in primary  
18 or secondary schools working after school hours or on  
19 vacation;

20 (7) registered apprentices and learners  
21 otherwise provided by law;

22 (8) persons eighteen years of age or under  
23 who are not students in a primary, secondary, vocational or  
24 training school;

25 (9) persons eighteen years of age or under

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1 who are not graduates of a secondary school;

2 (10) G.I. bill trainees while under  
3 training;

4 (11) seasonal employees of an employer  
5 obtaining and holding a valid certificate issued annually by  
6 the director of the labor relations division of the workforce  
7 solutions department. The certificate shall state the job  
8 designations and total number of employees to be exempted.  
9 In approving or disapproving an application for a certificate  
10 of exemption, the director shall consider the following:

11 (a) whether such employment shall be  
12 at an educational, charitable or religious youth camp or  
13 retreat;

14 (b) that such employment will be of a  
15 temporary nature;

16 (c) that the individual will be  
17 furnished room and board in connection with such employment,  
18 or if the camp or retreat is a day camp or retreat, the  
19 individual will be furnished board in connection with such  
20 employment;

21 (d) the purposes for which the camp or  
22 retreat is operated;

23 (e) the job classifications for the  
24 positions to be exempted; and

25 (f) any other factors that the

.179346.5GR

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1 director deems necessary to consider;

2 (12) any employee employed in agriculture:

3 (a) if the employee is employed by an  
4 employer who did not, during any calendar quarter during the  
5 preceding calendar year, use more than five hundred man-days  
6 of agricultural labor;

7 (b) if the employee is the parent,  
8 spouse, domestic partner, child or other member of the  
9 employer's immediate family; for the purpose of this  
10 subsection, the employer shall include the principal  
11 stockholder of a family corporation;

12 (c) if the employee: 1) is employed  
13 as a hand-harvest laborer and is paid on a piece-rate basis  
14 in an operation that has been, and is customarily and  
15 generally recognized as having been, paid on a piece-rate  
16 basis in the region of employment; 2) commutes daily from the  
17 employee's permanent residence to the farm on which the  
18 employee is so employed; and 3) has been employed in  
19 agriculture less than thirteen weeks during the preceding  
20 calendar year;

21 (d) if the employee, other than an  
22 employee described in Subparagraph (c) of this paragraph:  
23 1) is sixteen years of age or under and is employed as a  
24 hand-harvest laborer, is paid on a piece-rate basis in an  
25 operation that has been, and is generally recognized as

.179346.5GR

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1 having been, paid on a piece-rate basis in the region of  
2 employment; 2) is employed on the same farm as the employee's  
3 parent or person standing in the place of the parent; and 3)  
4 is paid at the same piece-rate as employees over age sixteen  
5 are paid on the same farm; or

6 (e) if the employee is principally  
7 engaged in the range production of livestock or in milk  
8 production;

9 (13) an employee engaged in the handling,  
10 drying, packing, packaging, processing, freezing or canning  
11 of any agricultural or horticultural commodity in its  
12 unmanufactured state; or

13 (14) employees of charitable, religious or  
14 nonprofit organizations who reside on the premises of group  
15 homes operated by such charitable, religious or nonprofit  
16 organizations for persons who have a mental, emotional or  
17 developmental disability."

18 Section 272. Section 51-1-4 NMSA 1978 (being Laws 2003,  
19 Chapter 47, Section 8, as amended) is amended to read:

20 "51-1-4. MONETARY COMPUTATION OF BENEFITS--PAYMENT  
21 GENERALLY.--

22 A. All benefits provided herein are payable from  
23 the unemployment compensation fund. All benefits shall be  
24 paid in accordance with rules prescribed by the secretary  
25 through employment offices or other agencies as the secretary

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1 approves by general rule.

2 B. Weekly benefits shall be as follows:

3 (1) except as provided in Paragraph (2) of  
4 this subsection, an individual's "weekly benefit amount" is  
5 an amount equal to fifty-three and one-half percent of the  
6 average weekly wage for insured work paid to the individual  
7 in that quarter of the individual's base period in which  
8 total wages were highest. No benefit as so computed may be  
9 less than ten percent or more than fifty-three and one-half  
10 percent of the state's average weekly wage for all insured  
11 work. The state's average weekly wage shall be computed from  
12 all wages reported to the department from employing units in  
13 accordance with rules of the secretary for the period ending  
14 June 30 of each calendar year divided by the total number of  
15 covered employees divided by fifty-two, effective for the  
16 benefit years commencing on or after the first Sunday of the  
17 following calendar year. An individual is not eligible to  
18 receive benefits unless the individual has wages in at least  
19 two quarters of that individual's base period. For the  
20 purposes of this subsection, "total wages" means all  
21 remuneration for insured work, including commissions and  
22 bonuses and the cash value of all remuneration in a medium  
23 other than cash;

24 (2) from July 1, 2009 through June 30, 2011,  
25 an individual's "weekly benefit amount" shall be an amount  
.179346.5GR

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1 equal to sixty percent of the average weekly wage for insured  
2 work paid to the individual in that quarter of the  
3 individual's base period in which total wages were highest,  
4 and no benefit as so computed may be less than ten percent or  
5 more than sixty percent of the state's average weekly wage  
6 for all insured work;

7 (3) an eligible individual who is unemployed  
8 in any week during which the individual is in a continued  
9 claims status shall be paid, with respect to the week, a  
10 benefit in an amount equal to the individual's weekly benefit  
11 amount, less that part of the wages, if any, or earnings from  
12 self-employment, payable to the individual with respect to  
13 such week that is in excess of one-fifth of the individual's  
14 weekly benefit amount. For purposes of this subsection only,  
15 "wages" includes all remuneration for services actually  
16 performed in a week for which benefits are claimed, vacation  
17 pay for a period for which the individual has a definite  
18 return-to-work date, wages in lieu of notice and back pay for  
19 loss of employment but does not include payments through a  
20 court for time spent in jury service;

21 (4) notwithstanding any other provision of  
22 this section, an eligible individual who, pursuant to a plan  
23 financed in whole or in part by a base-period employer of the  
24 individual, is receiving a governmental or other pension,  
25 retirement pay, annuity or any other similar periodic payment

.179346.5GR

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1 that is based on the previous work of the individual and who  
2 is unemployed with respect to any week ending subsequent to  
3 April 9, 1981 shall be paid with respect to the week, in  
4 accordance with rules prescribed by the secretary,  
5 compensation equal to the individual's weekly benefit amount  
6 reduced, but not below zero, by the prorated amount of the  
7 pension, retirement pay, annuity or other similar periodic  
8 payment that exceeds the percentage contributed to the plan  
9 by the eligible individual. The maximum benefit amount  
10 payable to the eligible individual shall be an amount not  
11 more than twenty-six times the individual's reduced weekly  
12 benefit amount. If payments referred to in this section are  
13 being received by an individual under the federal Social  
14 Security Act, the division shall take into account the  
15 individual's contribution and make no reduction in the weekly  
16 benefit amount;

17 (5) in the case of a lump-sum payment of a  
18 pension, retirement or retired pay, annuity or other similar  
19 payment by a base-period employer that is based on the  
20 previous work of the individual, the payment shall be  
21 allocated, in accordance with rules prescribed by the  
22 secretary, and shall reduce the amount of unemployment  
23 compensation paid, but not below zero, in accordance with  
24 Paragraph (4) of this subsection; and

25 (6) the retroactive payment of a pension,

.179346.5GR

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1 retirement or retired pay, annuity or any other similar  
2 periodic payment as provided in Paragraphs (4) and (5) of  
3 this subsection attributable to weeks during which an  
4 individual has claimed or has been paid unemployment  
5 compensation shall be allocated to those weeks and shall  
6 reduce the amount of unemployment compensation for those  
7 weeks, but not below zero, by an amount equal to the prorated  
8 amount of the pension. Any overpayment of unemployment  
9 compensation benefits resulting from the application of the  
10 provisions of this paragraph shall be recovered from the  
11 claimant in accordance with the provisions of Section 51-1-38  
12 NMSA 1978.

13 C. An individual otherwise eligible for benefits  
14 shall be paid for each week of unemployment, in addition to  
15 the amount payable under Subsection B of this section, the  
16 sum of twenty-five dollars (\$25.00) for each unemancipated  
17 child under the age of eighteen, up to a maximum of four and  
18 subject to the maximum stated in Subsection D of this  
19 section, of the individual who is in fact dependent upon and  
20 wholly or mainly supported by the individual, including:

21 (1) a child in the individual's custody  
22 pending the adjudication of a petition filed by the  
23 individual for the adoption of the child in a court of  
24 competent jurisdiction; or

25 (2) a child for whom the individual, under a

.179346.5GR

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1 decree or order from a court of competent jurisdiction, is  
2 required to contribute to the child's support and for whom no  
3 other person is receiving allowances under the Unemployment  
4 Compensation Law if the child is domiciled within the United  
5 States or its territories or possessions, the payment to be  
6 withheld and paid pursuant to Section 51-1-37.1 NMSA 1978.

7 D. Dependency benefits shall not exceed fifty  
8 percent of the individual's weekly benefit rate. The amount  
9 of dependency benefits determined as of the beginning of an  
10 individual's benefit year shall not be reduced for the  
11 duration of the benefit year, but this provision does not  
12 prevent the transfer of dependents' benefits from one spouse  
13 or domestic partner to another in accordance with this  
14 subsection. If both the husband and wife or both domestic  
15 partners receive benefits with respect to a week of  
16 unemployment, only one of them is entitled to a dependency  
17 allowance with respect to a child. The division shall  
18 prescribe standards as to who may receive a dependency  
19 allowance when both the husband and wife or both domestic  
20 partners are eligible to receive unemployment compensation  
21 benefits. Dependency benefits shall not be paid unless the  
22 individual submits documentation satisfactory to the division  
23 establishing the existence of the claimed dependent. If the  
24 provisions of this subsection are satisfied, an otherwise  
25 eligible individual who has been appointed guardian of a

.179346.5GR

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1 dependent child by a court of competent jurisdiction shall be  
2 paid dependency benefits.

3 E. An otherwise eligible individual is entitled  
4 during any benefit year to a total amount of benefits equal  
5 to whichever is the lesser of twenty-six times the  
6 individual's weekly benefit amount, plus any dependency  
7 benefit amount pursuant to Subsections C and D of this  
8 section, or sixty percent of the individual's wages for  
9 insured work paid during the individual's base period.

10 F. A benefit as determined in Subsection B or C  
11 of this section, if not a multiple of one dollar (\$1.00),  
12 shall be rounded to the next lower multiple of one dollar  
13 (\$1.00).

14 G. The secretary may prescribe rules to provide  
15 for the payment of benefits that are due and payable to the  
16 legal representative, dependents, relatives or next of kin of  
17 claimants since deceased. These rules need not conform with  
18 the laws governing successions, and the payment shall be  
19 deemed a valid payment to the same extent as if made under a  
20 formal administration of the succession of the claimant.

21 H. The division, on its own initiative, may  
22 reconsider a monetary determination whenever it is determined  
23 that an error in computation or identity has occurred or that  
24 wages of the claimant pertinent to such determination but not  
25 considered have been newly discovered or that the benefits

.179346.5GR

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1 have been allowed or denied on the basis of misrepresentation  
2 of fact, but no redetermination shall be made after one year  
3 from the date of the original monetary determination. Notice  
4 of a redetermination shall be given to all interested parties  
5 and shall be subject to an appeal in the same manner as the  
6 original determination. In the event that an appeal  
7 involving an original monetary determination is pending at  
8 the time a redetermination is issued, the appeal, unless  
9 withdrawn, shall be treated as an appeal from  
10 redetermination."

11 Section 273. Section 51-1-7 NMSA 1978 (being Laws 2003,  
12 Chapter 47, Section 10, as amended by Laws 2005, Chapter 3,  
13 Section 3 and further amended by Laws 2005, Chapter 255,  
14 Section 1) is amended to read:

15 "51-1-7. DISQUALIFICATION FOR BENEFITS.--

16 A. An individual shall be disqualified for and  
17 shall not be eligible to receive benefits:

18 (1) if it is determined by the division that  
19 the individual left employment voluntarily without good cause  
20 in connection with the employment. No individual shall  
21 receive benefits until the division has contacted the former  
22 employer and determined whether the individual left the  
23 employment voluntarily; provided, however, that a person  
24 shall not be denied benefits under this paragraph:

25 (a) solely on the basis of pregnancy

.179346.5GR

1 or the termination of pregnancy;

2 (b) because of domestic abuse  
3 evidenced by medical documentation, legal documentation or a  
4 sworn statement from the claimant; or

5 (c) if the person voluntarily left  
6 work to relocate because of a spouse or domestic partner, who  
7 is in the military service of the United States or the New  
8 Mexico national guard, receiving permanent change of station  
9 orders, activation orders or unit deployment orders;

10 (2) if it is determined by the division that  
11 the individual has been discharged for misconduct connected  
12 with the individual's employment; or

13 (3) if it is determined by the division that  
14 the individual has failed without good cause either to apply  
15 for available, suitable work when so directed or referred by  
16 the division or to accept suitable work when offered.

17 B. In determining whether or not any work is  
18 suitable for an individual pursuant to Paragraph (3) of  
19 Subsection A of this section, the division shall consider the  
20 degree of risk involved to the individual's health, safety  
21 and morals, the individual's physical fitness, prior  
22 training, approved training or full-time school attendance,  
23 experience, prior earnings, length of unemployment and  
24 prospects for securing local work in the individual's  
25 customary occupation and the distance of available work from

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1 the individual's residence. Notwithstanding any other  
2 provisions of the Unemployment Compensation Law, no work  
3 shall be deemed suitable and benefits shall not be denied  
4 under the Unemployment Compensation Law to any otherwise  
5 eligible individual for refusing to accept new work under any  
6 of the following conditions:

7 (1) if the position offered is vacant due  
8 directly to a strike, lockout or other labor dispute;

9 (2) if the wages, hours or other conditions  
10 of the work offered are substantially less favorable to the  
11 individual than those prevailing for similar work in the  
12 locality; or

13 (3) if, as a condition of being employed,  
14 the individual would be required to join a company union or  
15 to resign from or refrain from joining any bona fide labor  
16 organizations.

17 C. An individual shall be disqualified for, and  
18 shall not be eligible to receive, benefits for any week with  
19 respect to which the division finds that the individual's  
20 unemployment is due to a labor dispute at the factory,  
21 establishment or other premises at which the individual is or  
22 was last employed; provided that this subsection shall not  
23 apply if it is shown to the satisfaction of the division  
24 that:

25 (1) the individual is not participating in

.179346.5GR

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1 or directly interested in the labor dispute; and

2 (2) the individual does not belong to a  
3 grade or class of workers of which, immediately before the  
4 commencement of the labor dispute, there were members  
5 employed at the premises at which the labor dispute occurs,  
6 any of whom are participating in or directly interested in  
7 the dispute; provided that if in any case separate branches  
8 of work that are commonly conducted in separate businesses in  
9 separate premises are conducted in separate departments of  
10 the same premises, each such department shall, for the  
11 purposes of this subsection, be deemed to be a separate  
12 factory, establishment or other premises.

13 D. An individual shall be disqualified for, and  
14 shall not be eligible to receive, benefits for any week with  
15 respect to which, or a part of which, the individual has  
16 received or is seeking, through any agency other than the  
17 division, unemployment benefits under an unemployment  
18 compensation law of another state or of the United States;  
19 provided that if the appropriate agency of such other state or  
20 of the United States finally determines that the individual is  
21 not entitled to such unemployment benefits, this  
22 disqualification shall not apply.

23 E. A disqualification pursuant to Paragraph (1) or  
24 (2) of Subsection A of this section shall continue for the  
25 duration of the individual's unemployment and until the

.179346.5GR

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1 individual has earned wages in bona fide employment other than  
2 self-employment, as provided by rule of the secretary, in an  
3 amount equivalent to five times the individual's weekly  
4 benefit otherwise payable. A disqualification pursuant to  
5 Paragraph (3) of Subsection A of this section shall include  
6 the week the failure occurred and shall continue for the  
7 duration of the individual's unemployment and until the  
8 individual has earned wages in bona fide employment other than  
9 self-employment, as provided by rule of the secretary, in an  
10 amount equivalent to five times the individual's weekly  
11 benefit amount otherwise payable; provided that no more than  
12 one such disqualification shall be imposed upon an individual  
13 for failure to apply for or accept the same position, or a  
14 similar position, with the same employer, except upon a  
15 determination by the division of disqualification pursuant to  
16 Subsection C of this section.

17 F. As used in this section:

18 (1) "domestic abuse" means that term as  
19 defined in Section 40-13-2 NMSA 1978; and

20 (2) "employment" means employment by the  
21 individual's last employer as defined by rules of the  
22 secretary."

23 Section 274. Section 51-1-11 NMSA 1978 (being Laws  
24 2003, Chapter 47, Section 11, as amended) is amended to read:

25 "51-1-11. FUTURE RATES BASED ON BENEFIT EXPERIENCE.--

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1           A. The division shall maintain a separate account  
2 for each contributing employer and shall credit the  
3 contributing employer's account with all contributions paid by  
4 that employer under the Unemployment Compensation Law.  
5 Nothing in the Unemployment Compensation Law shall be  
6 construed to grant an employer or individuals in the  
7 employer's service prior claims or rights to the amounts paid  
8 by the employer into the fund.

9           B. Benefits paid to an individual shall be charged  
10 against the accounts of the individual's base-period employers  
11 on a pro rata basis according to the proportion of the  
12 individual's total base-period wages received from each  
13 employer, except that no benefits paid to a claimant as  
14 extended benefits under the provisions of Section 51-1-48 NMSA  
15 1978 shall be charged to the account of any base-period  
16 employer who is not on a reimbursable basis and who is not a  
17 governmental entity and, except as the secretary shall by rule  
18 prescribe otherwise, in the case of benefits paid to an  
19 individual who:

20                   (1) left the employ of a base-period  
21 employer who is not on a reimbursable basis voluntarily  
22 without good cause in connection with the individual's  
23 employment;

24                   (2) was discharged from the employment of a  
25 base-period employer who is not on a reimbursable basis for

.179346.5GR

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1 misconduct connected with the individual's employment;

2 (3) is employed part time by a base-period  
3 employer who is not on a reimbursable basis and who continues  
4 to furnish the individual the same part-time work while the  
5 individual is separated from full-time work for a  
6 nondisqualifying reason; or

7 (4) received benefits based upon wages  
8 earned from a base-period employer who is not on a  
9 reimbursable basis while attending approved training or school  
10 on a full-time basis under the provisions of Subsection E of  
11 Section 51-1-5 NMSA 1978.

12 C. The division shall not charge a contributing or  
13 reimbursing base-period employer's account with any portion of  
14 benefit amounts that the division can bill to or recover from  
15 the federal government as either regular or extended benefits.

16 D. The division shall not charge a contributing  
17 base-period employer's account with any portion of benefits  
18 paid to an individual for dependent allowance or because the  
19 individual to whom benefits are paid:

20 (1) separated from employment due to  
21 domestic abuse, as "domestic abuse" is defined in Section  
22 40-13-2 NMSA 1978;

23 (2) is enrolled in approved training or is  
24 attending school on a full-time basis; or

25 (3) voluntarily left work to relocate

.179346.5GR

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1 because of a spouse or domestic partner, who is in the  
2 military service of the United States or the New Mexico  
3 national guard, receiving permanent change of station orders,  
4 activation orders or unit deployment orders.

5 E. All contributions to the fund shall be pooled  
6 and available to pay benefits to any individual entitled  
7 thereto, irrespective of the source of the contributions.

8 F. For each calendar year, if, as of the  
9 computation date for that year, an employer's account has been  
10 chargeable with benefits throughout the preceding thirty-six  
11 months, the secretary shall classify the employer in  
12 accordance with its actual experience of benefits charged  
13 against its accounts. For such an employer, the contribution  
14 rate shall be determined pursuant to Subsection I of this  
15 section on the basis of the employer's record and the  
16 condition of the fund as of the computation date for the  
17 calendar year. If, as of the computation date for a calendar  
18 year, an employer's account has not been chargeable with  
19 benefits throughout the preceding thirty-six months, the  
20 contribution rate for that employer for the calendar year  
21 shall be two percent, except that:

22 (1) an individual, type of organization or  
23 employing unit that acquires all or part of the trade or  
24 business of another employing unit, pursuant to Paragraphs (2)  
25 and (3) of Subsection E of Section 51-1-42 NMSA 1978, that has

.179346.5GR

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1 a rate of contribution less than two percent shall be entitled  
2 to the transfer of the reduced rate to the extent permitted  
3 under Subsection H of this section;

4 (2) an employer that, at the time of  
5 establishing an account, is in business in another state or  
6 states and that is not currently doing business in New Mexico  
7 may elect, pursuant to Paragraph (3) of this subsection, to  
8 receive a beginning contribution rate of two percent or a  
9 contribution rate based on the current contribution rate  
10 schedule in Paragraph (4) of Subsection I of this section,  
11 whichever is lower, if:

12 (a) the employer has been in operation  
13 in the other state or states for at least three years  
14 immediately preceding the date of becoming a liable employer  
15 in New Mexico, throughout which an individual in the  
16 employer's employ could have received benefits if eligible;  
17 and

18 (b) the employer provides the  
19 authenticated account history as defined by rule of the  
20 secretary from information accumulated from operations in the  
21 other state or all the other states to compute a current New  
22 Mexico rate; and

23 (3) the election authorized in Paragraph (2)  
24 of this subsection shall be made in writing within thirty days  
25 after receiving notice of New Mexico liability and, if not

.179346.5GR

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1 made timely, a two percent rate will be assigned; if the  
2 election is made timely, the employer's account will receive  
3 the lesser of the computed rate determined by the condition of  
4 the account for the computation date immediately preceding the  
5 New Mexico liable date, or two percent; rates for subsequent  
6 years will be determined by the condition of the account for  
7 the computation date.

8 G. An employer may make voluntary payments in  
9 addition to the contributions required under the Unemployment  
10 Compensation Law, which shall be credited to the employer's  
11 account in accordance with department rule. The voluntary  
12 payments shall be included in the employer's account as of the  
13 employer's most recent computation date if they are made on or  
14 before the following March 1. Voluntary payments when  
15 accepted from an employer shall not be refunded in whole or in  
16 part.

17 H. In the case of a transfer of an employing  
18 enterprise, notwithstanding any other provision of law, the  
19 experience history of the transferred enterprise shall be  
20 transferred from the predecessor employer to the successor  
21 under the following conditions and in accordance with the  
22 applicable rules of the secretary:

23 (1) as used in this subsection:

24 (a) "employing enterprise" means a  
25 business activity engaged in by a contributing employing unit

.179346.5GR

1 in which one or more persons have been employed within the  
2 current or the three preceding calendar quarters. An  
3 "employing enterprise" includes the employer's workforce;

4 (b) "predecessor" means the owner and  
5 operator of an employing enterprise immediately prior to the  
6 transfer of such enterprise;

7 (c) "successor" means any person that  
8 acquires an employing enterprise and continues to operate such  
9 business entity;

10 (d) "experience history" means the  
11 experience rating record and reserve account, including the  
12 actual contributions, benefit charges and payroll experience  
13 of the employing enterprise;

14 (e) "common ownership" means that two  
15 or more businesses are substantially owned, managed or  
16 controlled by the same person or persons;

17 (f) "knowingly" means having actual  
18 knowledge of or acting with deliberate ignorance of or  
19 reckless disregard for the prohibition involved; and

20 (g) "violates or attempts to violate"  
21 includes an intent to evade, a misrepresentation or a willful  
22 nondisclosure;

23 (2) except as otherwise provided in this  
24 subsection, for the purpose of this subsection, two or more  
25 employers who are parties to or the subject of any transaction

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1 involving the transfer of an employing enterprise shall be  
2 deemed to be a single employer and the experience history of  
3 the employing enterprise shall be transferred to the successor  
4 employer if the successor employer has acquired by the  
5 transaction all of the business enterprises of the  
6 predecessor; provided that:

7 (a) all contributions, interest and  
8 penalties due from the predecessor employer have been paid;

9 (b) notice of the transfer has been  
10 given in accordance with the rules of the secretary during the  
11 calendar year of the transaction transferring the employing  
12 enterprise or the date of the actual transfer of control and  
13 operation of the employing enterprise;

14 (c) the successor shall notify the  
15 division of the acquisition on or before the due date of the  
16 successor's first wage and contribution report. If the  
17 successor employer fails to notify the division of the  
18 acquisition within this time limit, the division, when it  
19 receives actual notice, shall effect the transfer of the  
20 experience history and applicable rate of contribution  
21 retroactively to the date of the acquisition, and the  
22 successor shall pay a penalty of fifty dollars (\$50.00); and

23 (d) where the transaction involves only  
24 a merger, consolidation or other form of reorganization  
25 without a substantial change in the ownership and controlling

.179346.5GR

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1 interest of the business entity, as determined by the  
2 secretary, the limitations on transfers stated in  
3 Subparagraphs (a), (b) and (c) of this paragraph shall not  
4 apply. A party to a merger, consolidation or other form of  
5 reorganization described in this subparagraph shall not be  
6 relieved of liability for any contributions, interest or  
7 penalties due and owing from the employing enterprise at the  
8 time of the merger, consolidation or other form of  
9 reorganization;

10 (3) the applicable experience history may be  
11 transferred to the successor in the case of a partial transfer  
12 of an employing enterprise if the successor has acquired one  
13 or more of the several employing enterprises of a predecessor  
14 but not all of the employing enterprises of the predecessor  
15 and each employing enterprise so acquired was operated by the  
16 predecessor as a separate store, factory, shop or other  
17 separate employing enterprise and the predecessor, throughout  
18 the entire period of the contribution with liability  
19 applicable to each enterprise transferred, has maintained and  
20 preserved payroll records that, together with records of  
21 contribution liability and benefit chargeability, can be  
22 separated by the parties from the enterprises retained by the  
23 predecessor to the satisfaction of the secretary or the  
24 secretary's delegate. A partial experience history transfer  
25 will be made only if the successor:

.179346.5GR

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1 (a) notifies the division of the  
2 acquisition, in writing, not later than the due date of the  
3 successor's first quarterly wage and contribution report after  
4 the effective date of the acquisition;

5 (b) files an application provided by  
6 the division that contains the endorsement of the predecessor  
7 within thirty days from the delivery or mailing of such  
8 application by the division to the successor's last known  
9 address; and

10 (c) files with the application a Form  
11 ES-903A or its equivalent with a schedule of the name and  
12 social security number of and the wages paid to and the  
13 contributions paid for each employee for the three and one-  
14 half year period preceding the computation date as defined in  
15 Subparagraph (d) of Paragraph (3) of Subsection I of this  
16 section through the date of transfer or such lesser period as  
17 the enterprises transferred may have been in operation. The  
18 application and Form ES-903A shall be supported by the  
19 predecessor's permanent employment records, which shall be  
20 available for audit by the division. The application and Form  
21 ES-903A shall be reviewed by the division and, upon approval,  
22 the percentage of the predecessor's experience history  
23 attributable to the enterprises transferred shall be  
24 transferred to the successor. The percentage shall be  
25 obtained by dividing the taxable payrolls of the transferred

.179346.5GR

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1 enterprises for such three and one-half year period preceding  
2 the date of computation or such lesser period as the  
3 enterprises transferred may have been in operation by the  
4 predecessor's entire payroll;

5 (4) if, at the time of a transfer of an  
6 employing enterprise in whole or in part, both the predecessor  
7 and the successor are under common ownership, then the  
8 experience history attributable to the transferred business  
9 shall also be transferred to and combined with the experience  
10 history attributable to the successor employer. The rates of  
11 both employers shall be recalculated and made effective  
12 immediately upon the date of the transfer;

13 (5) whenever a person, who is not currently  
14 an employer, acquires the trade or business of an employing  
15 enterprise, the experience history of the acquired business  
16 shall not be transferred to the successor if the secretary or  
17 the secretary's designee finds that the successor acquired the  
18 business solely or primarily for the purpose of obtaining a  
19 lower rate of contributions. Instead, the successor shall be  
20 assigned the applicable new employer rate pursuant to this  
21 section. In determining whether the business was acquired  
22 solely or primarily for the purpose of obtaining a lower rate  
23 of contribution, the secretary or the secretary's designee  
24 shall consider:

25 (a) the cost of acquiring the business;

.179346.5GR

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1 (b) whether the person continued the  
2 business enterprise of the acquired business;

3 (c) how long such business enterprise  
4 was continued; and

5 (d) whether a substantial number of new  
6 employees were hired for performance of duties unrelated to  
7 those that the business activity conducted prior to  
8 acquisition;

9 (6) if, following a transfer of experience  
10 history pursuant to this subsection, the department determines  
11 that a substantial purpose of the transfer of the employing  
12 enterprise was to obtain a reduced liability for  
13 contributions, then the experience rating accounts of the  
14 employers involved shall be combined into a single account and  
15 a single rate assigned to the combined account;

16 (7) the secretary shall adopt such rules as  
17 are necessary to interpret and carry out the provisions of  
18 this subsection, including rules that:

19 (a) describe how experience history is  
20 to be transferred; and

21 (b) establish procedures to identify  
22 the type of transfer or acquisition of an employing  
23 enterprise; and

24 (8) a person who knowingly violates or  
25 attempts to violate a rule adopted pursuant to Paragraph (7)

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1 of this subsection, who transfers or acquires, or attempts to  
2 transfer or acquire, an employing enterprise for the sole or  
3 primary purpose of obtaining a reduced liability for  
4 contributions or who knowingly advises another person to  
5 violate a rule adopted pursuant to Paragraph (7) of this  
6 subsection or to transfer or acquire an employing enterprise  
7 for the sole or primary purpose of obtaining a reduced  
8 liability for contributions is guilty of a misdemeanor and  
9 shall be punished by a fine of not less than one thousand five  
10 hundred dollars (\$1,500) or more than three thousand dollars  
11 (\$3,000) or, if an individual, by imprisonment for a definite  
12 term not to exceed ninety days or both. In addition, such a  
13 person shall be subject to the following civil penalty imposed  
14 by the secretary:

15 (a) if the person is an employer, the  
16 person shall be assigned the highest contribution rate  
17 established by the provisions of this section for the calendar  
18 year in which the violation occurs and the three subsequent  
19 calendar years; provided that, if the difference between the  
20 increased penalty rate and the rate otherwise applicable would  
21 be less than two percent of the employer's payroll, the  
22 contribution rate shall be increased by two percent of the  
23 employer's payroll for the calendar year in which the  
24 violation occurs and the three subsequent calendar years; or

25 (b) if the person is not an employer,

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1 the secretary may impose a civil penalty not to exceed three  
2 thousand dollars (\$3,000).

3 I. For each calendar year, if, as of the  
4 computation date for that year, an employer's account has been  
5 chargeable with benefits throughout the preceding thirty-six  
6 months, the contribution rate for that employer shall be  
7 determined as follows:

8 (1) the total assets in the fund and the  
9 total of the last annual payrolls of all employers subject to  
10 contributions as of the computation date for each year shall  
11 be determined. These annual totals are here called "the fund"  
12 and "total payrolls". For each year, the "reserve" of each  
13 employer shall be fixed by the excess of the employer's total  
14 contributions over total benefit charges computed as a  
15 percentage of the employer's average payroll reported for  
16 contributions. The determination of each employer's annual  
17 rate, computed as of the computation date for each calendar  
18 year, shall be made by matching the employer's reserve as  
19 shown in the reserve column with the corresponding rate in the  
20 rate column of the applicable rate schedule of the table  
21 provided in Paragraph (4) or (5) of this subsection;

22 (2) for each calendar year after 2010,  
23 except as otherwise provided, each employer's rate shall be  
24 the corresponding rate in:

25 (a) Contribution Schedule 0 of the

.179346.5GR

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1 table provided in Paragraph (4) of this subsection if the fund  
2 equals at least two and three-tenths percent of the total  
3 payrolls;

4 (b) Contribution Schedule 1 of the  
5 table provided in Paragraph (4) of this subsection if the fund  
6 equals less than two and three-tenths percent but not less  
7 than one and seven-tenths percent of the total payrolls;

8 (c) Contribution Schedule 2 of the  
9 table provided in Paragraph (4) of this subsection if the fund  
10 equals less than one and seven-tenths percent but not less  
11 than one and three-tenths percent of the total payrolls;

12 (d) Contribution Schedule 3 of the  
13 table provided in Paragraph (4) of this subsection if the fund  
14 equals less than one and three-tenths percent but not less  
15 than one percent of the total payrolls;

16 (e) Contribution Schedule 4 of the  
17 table provided in Paragraph (4) of this subsection if the fund  
18 equals less than one percent but not less than seven-tenths  
19 percent of the total payrolls;

20 (f) Contribution Schedule 5 of the  
21 table provided in Paragraph (4) of this subsection if the fund  
22 equals less than seven-tenths percent but not less than three-  
23 tenths percent of the total payrolls; or

24 (g) Contribution Schedule 6 of the  
25 table provided in Paragraph (4) of this subsection if the fund

.179346.5GR

1 equals less than three-tenths percent of the total payrolls;

2 (3) as used in this section:

3 (a) "annual payroll" means the total  
4 amount of remuneration from an employer for employment during  
5 a twelve-month period ending on a computation date, and  
6 "average payroll" means the average of the last three annual  
7 payrolls;

8 (b) "base-period wages" means the wages  
9 of an individual for insured work during the individual's base  
10 period on the basis of which the individual's benefit rights  
11 were determined;

12 (c) "base-period employers" means the  
13 employers of an individual during the individual's base  
14 period; and

15 (d) "computation date" for each  
16 calendar year means the close of business on June 30 of the  
17 preceding calendar year;

18 (4) table of employer reserves and  
19 contribution rate schedules:

20 Employer	Contribution	Contribution	Contribution	Contribution
21 Reserve	Schedule 0	Schedule 1	Schedule 2	Schedule 3
22 10.0% and over	0.03%	0.05%	0.1%	0.6%
23 9.0%-9.9%	0.06%	0.1%	0.2%	0.9%
24 8.0%-8.9%	0.09%	0.2%	0.4%	1.2%
25 7.0%-7.9%	0.10%	0.4%	0.6%	1.5%

.179346.5GR

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1	6.0%-6.9%	0.30%	0.6%	0.8%	1.8%
2	5.0%-5.9%	0.50%	0.8%	1.1%	2.1%
3	4.0%-4.9%	0.80%	1.1%	1.4%	2.4%
4	3.0%-3.9%	1.20%	1.4%	1.7%	2.7%
5	2.0%-2.9%	1.50%	1.7%	2.0%	3.0%
6	1.0%-1.9%	1.80%	2.0%	2.4%	3.3%
7	0.9%-0.0%	2.40%	2.4%	3.3%	3.6%
8	(-0.1%)-(-0.5%)	3.30%	3.3%	3.6%	3.9%
9	(-0.5%)-(-1.0%)	4.20%	4.2%	4.2%	4.2%
10	(-1.0%)-(-2.0%)	5.00%	5.0%	5.0%	5.0%
11	Under (-2.0%)	5.40%	5.4%	5.4%	5.4%
12	Employer	Contribution	Contribution	Contribution	
13	Reserve	Schedule 4	Schedule 5	Schedule 6	
14	10.0% and over	0.9%	1.2%	2.7%	
15	9.0%-9.9%	1.2%	1.5%	2.7%	
16	8.0%-8.9%	1.5%	1.8%	2.7%	
17	7.0%-7.9%	1.8%	2.1%	2.7%	
18	6.0%-6.9%	2.1%	2.4%	2.7%	
19	5.0%-5.9%	2.4%	2.7%	3.0%	
20	4.0%-4.9%	2.7%	3.0%	3.3%	
21	3.0%-3.9%	3.0%	3.3%	3.6%	
22	2.0%-2.9%	3.3%	3.6%	3.9%	
23	1.0%-1.9%	3.6%	3.9%	4.2%	
24	0.9%-0.0%	3.9%	4.2%	4.5%	
25	(-0.1%)-(-0.5%)	4.2%	4.5%	4.8%	

.179346.5GR

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1 (-0.5%)-(-1.0%) 4.5% 4.8% 5.1%  
2 (-1.0%)-(-2.0%) 5.0% 5.1% 5.3%  
3 Under (-2.0%) 5.4% 5.4% 5.4%; and

4 (5) from July 1, 2007 through December 31,  
5 2010, each employer making contributions pursuant to this  
6 subsection shall make a contribution at the rate specified in  
7 Contribution Schedule A and a contribution at the rate  
8 specified in Contribution Schedule B for the employer's  
9 reserve for each of the following periods. Contributions made  
10 pursuant to Contribution Schedule A shall be deposited in the  
11 unemployment compensation fund and contributions made pursuant  
12 to Contribution Schedule B shall be deposited in the state  
13 unemployment trust fund:

14 (a) for the period July 1, 2007 through  
15 December 31, 2008:

16 Employer	Contribution	Contribution
17 Reserve	Schedule A	Schedule B
18 10.0% and over	0.015%	0.015%
19 9.0%-9.9%	0.03%	0.03%
20 8.0%-8.9%	0.045%	0.045%
21 7.0%-7.9%	0.05%	0.05%
22 6.0%-6.9%	0.15%	0.15%
23 5.0%-5.9%	0.25%	0.25%
24 4.0%-4.9%	0.4%	0.4%
25 3.0%-3.9%	0.6%	0.6%

.179346.5GR

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1	2.0%-2.9%	0.75%	0.75%
2	1.0%-1.9%	0.9%	0.9%
3	0.9%-0.0%	1.2%	1.2%
4	(-0.1%)-(-0.5%)	1.65%	1.65%
5	(-0.5%)-(-1.0%)	2.1%	2.1%
6	(-1.0%)-(-2.0%)	2.5%	2.5%
7	Under (-2.0%)	5.4%	0.0%
8		(b) for the period January 1, 2009	
9		through December 31, 2009:	
10	Employer	Contribution	Contribution
11	Reserve	Schedule A	Schedule B
12	10.0% and over	0.018%	0.012%
13	9.0%-9.9%	0.036%	0.024%
14	8.0%-8.9%	0.054%	0.036%
15	7.0%-7.9%	0.06%	0.04%
16	6.0%-6.9%	0.18%	0.12%
17	5.0%-5.9%	0.3%	0.2%
18	4.0%-4.9%	0.48%	0.32%
19	3.0%-3.9%	0.72%	0.48%
20	2.0%-2.9%	0.9%	0.6%
21	1.0%-1.9%	1.08%	0.72%
22	0.9%-0.0%	1.44%	0.96%
23	(-0.1%)-(-0.5%)	1.98%	1.32%
24	(-0.5%)-(-1.0%)	2.52%	1.68%
25	(-1.0%)-(-2.0%)	3.0%	2.0%

.179346.5GR

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1	Under (-2.0%)	5.4%	0.0%
2		(c) for the period January 1, 2010	
3	through December 31, 2010:		
4	Employer	Contribution	Contribution
5	Reserve	Schedule A	Schedule B
6	10.0% and over	0.0195%	0.0105%
7	9.0%-9.9%	0.039%	0.021%
8	8.0%-8.9%	0.0585%	0.0315%
9	7.0%-7.9%	0.065%	0.035%
10	6.0%-6.9%	0.195%	0.105%
11	5.0%-5.9%	0.325%	0.175%
12	4.0%-4.9%	0.52%	0.28%
13	3.0%-3.9%	0.78%	0.42%
14	2.0%-2.9%	0.975%	0.525%
15	1.0%-1.9%	1.17%	0.63%
16	0.9%-0.0%	1.56%	0.84%
17	(-0.1%)-(-0.5%)	2.145%	1.155%
18	(-0.5%)-(-1.0%)	2.73%	1.47%
19	(-1.0%)-(-2.0%)	3.25%	1.75%
20	Under (-2.0%)	5.4%	0.0%.

21 J. The division shall promptly notify each  
22 employer of the employer's rate of contributions as determined  
23 for any calendar year pursuant to this section. Such  
24 notification shall include the amount determined as the  
25 employer's average payroll, the total of all of the employer's

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1 contributions paid on the employer's behalf and credited to  
2 the employer's account for all past years and total benefits  
3 charged to the employer's account for all such years. Such  
4 determination shall become conclusive and binding upon the  
5 employer unless, within thirty days after the mailing of  
6 notice thereof to the employer's last known address or in the  
7 absence of mailing, within thirty days after the delivery of  
8 such notice, the employer files an application for review and  
9 redetermination, setting forth the employer's reason therefor.  
10 The employer shall be granted an opportunity for a fair  
11 hearing in accordance with rules prescribed by the secretary,  
12 but an employer shall not have standing, in any proceeding  
13 involving the employer's rate of contributions or contribution  
14 liability, to contest the chargeability to the employer's  
15 account of any benefits paid in accordance with a  
16 determination, redetermination or decision pursuant to Section  
17 51-1-8 NMSA 1978, except upon the ground that the services on  
18 the basis of which such benefits were found to be chargeable  
19 did not constitute services performed in employment for the  
20 employer and only in the event that the employer was not a  
21 party to such determination, redetermination or decision, or  
22 to any other proceedings under the Unemployment Compensation  
23 Law in which the character of such services was determined.  
24 The employer shall be promptly notified of the decision on the  
25 employer's application for redetermination, which shall become

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1 final unless, within fifteen days after the mailing of notice  
2 thereof to the employer's last known address or in the absence  
3 of mailing, within fifteen days after the delivery of such  
4 notice, further appeal is initiated pursuant to Subsection D  
5 of Section 51-1-8 NMSA 1978.

6 K. The division shall provide each contributing  
7 employer, within ninety days of the end of each calendar  
8 quarter, a written determination of benefits chargeable to the  
9 employer's account. Such determination shall become  
10 conclusive and binding upon the employer for all purposes  
11 unless, within thirty days after the mailing of the  
12 determination to the employer's last known address or in the  
13 absence of mailing, within thirty days after the delivery of  
14 such determination, the employer files an application for  
15 review and redetermination, setting forth the employer's  
16 reason therefor. The employer shall be granted an opportunity  
17 for a fair hearing in accordance with rules prescribed by the  
18 secretary, but an employer shall not have standing in any  
19 proceeding involving the employer's contribution liability to  
20 contest the chargeability to the employer's account of any  
21 benefits paid in accordance with a determination,  
22 redetermination or decision pursuant to Section 51-1-8 NMSA  
23 1978, except upon the ground that the services on the basis of  
24 which such benefits were found to be chargeable did not  
25 constitute services performed in employment for the employer

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1 and only in the event that the employer was not a party to  
2 such determination, redetermination or decision, or to any  
3 other proceedings under the Unemployment Compensation Law in  
4 which the character of such services was determined. The  
5 employer shall be promptly notified of the decision on the  
6 employer's application for redetermination, which shall become  
7 final unless, within fifteen days after the mailing of notice  
8 thereof to the employer's last known address or in the absence  
9 of mailing, within fifteen days after the delivery of such  
10 notice, further appeal is initiated pursuant to Subsection D  
11 of Section 51-1-8 NMSA 1978.

12 L. The contributions, together with interest and  
13 penalties thereon imposed by the Unemployment Compensation  
14 Law, shall not be assessed nor shall action to collect the  
15 same be commenced more than four years after a report showing  
16 the amount of the contributions was due. In the case of a  
17 false or fraudulent contribution report with intent to evade  
18 contributions or a willful failure to file a report of all  
19 contributions due, the contributions, together with interest  
20 and penalties thereon, may be assessed or an action to collect  
21 such contributions may be begun at any time. Before the  
22 expiration of such period of limitation, the employer and the  
23 secretary may agree in writing to an extension thereof and the  
24 period so agreed on may be extended by subsequent agreements  
25 in writing. In any case where the assessment has been made

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1 and action to collect has been commenced within four years of  
2 the due date of any contribution, interest or penalty,  
3 including the filing of a warrant of lien by the secretary  
4 pursuant to Section 51-1-36 NMSA 1978, such action shall not  
5 be subject to any period of limitation.

6 M. The secretary shall correct any error in the  
7 determination of an employer's rate of contribution during the  
8 calendar year to which the erroneous rate applies,  
9 notwithstanding that notification of the employer's rate of  
10 contribution may have been issued and contributions paid  
11 pursuant to the notification. Upon issuance by the division  
12 of a corrected rate of contribution, the employer shall have  
13 the same rights to review and redetermination as provided in  
14 Subsection J of this section.

15 N. Any interest required to be paid on advances to  
16 this state's unemployment compensation fund under Title 12 of  
17 the Social Security Act shall be paid in a timely manner as  
18 required under Section 1202 of Title 12 of the Social Security  
19 Act and shall not be paid, directly or indirectly, by the  
20 state from amounts in the state's unemployment compensation  
21 fund."

22 Section 275. Section 51-1-37 NMSA 1978 (being Laws 1936  
23 (S.S.), Chapter 1, Section 15, as amended) is amended to read:

24 "51-1-37. PROTECTION OF RIGHTS AND BENEFITS.--

25 A. Except as provided by Section 51-1-37.1 NMSA

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1 1978, any agreement by an individual to waive, release or  
2 commute [~~his~~] the individual's rights to benefits or any other  
3 rights under the Unemployment Compensation Law shall be void.  
4 No agreement by any individual in the employ of any person or  
5 concern to pay all or any portion of an employer's  
6 contributions or payments in lieu of contributions, required  
7 under the Unemployment Compensation Law from such employer,  
8 shall be valid. No employer shall directly or indirectly make  
9 or require or accept any deduction from the remuneration of  
10 individuals in [~~his~~] the employer's employ to finance the  
11 employer's contributions or payments in lieu of contributions  
12 required from [~~him~~] the employer or require or accept any  
13 waiver of any right hereunder by an individual in [~~his~~] the  
14 employer's employ. Any employer or officer or agent of an  
15 employer who violates any provisions of this subsection shall,  
16 for each offense, be fined not less than one hundred dollars  
17 (\$100) nor more than one thousand dollars (\$1,000) or be  
18 imprisoned for not more than six months, or both.

19 B. No individual claiming benefits shall be  
20 charged fees of any kind in any proceeding under the  
21 Unemployment Compensation Law by the department or its  
22 representatives or by any court or any officer thereof. Any  
23 individual claiming benefits and any employer in any  
24 proceeding before the secretary, [~~his~~] the secretary's  
25 authorized representative or the board of review may be

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1 represented by counsel or any other duly authorized agent, but  
2 no such counsel or agent shall either charge or receive for  
3 such services more than an amount approved by the secretary.  
4 Any person who violates any provision of this subsection  
5 shall, for each such offense, be fined not less than fifty  
6 dollars (\$50.00) nor more than five hundred dollars (\$500) or  
7 imprisoned for not more than six months, or both.

8 C. Except as provided in Subsection D of this  
9 section, any assignment, pledge or encumbrance of any right to  
10 benefits [~~which~~] that are or may become due or payable under  
11 the Unemployment Compensation Law shall be void, and such  
12 rights to benefits shall be exempt from levy, execution,  
13 attachment, garnishment or any other remedy provided for the  
14 collection of debt. Benefits received by any individual, so  
15 long as they are not mingled with other funds of the  
16 recipient, shall be exempt from a remedy for the collection of  
17 debts except debts incurred for necessities furnished to an  
18 individual or [~~his~~] the individual's spouse, domestic partner  
19 or dependents during the time when [~~he~~] the individual was  
20 unemployed. Any waiver of any exemption provided for in this  
21 subsection is void.

22 D. The following actions for collection of the  
23 indicated obligations may be taken:

24 (1) deduction and withholding of amounts of  
25 unpaid child support pursuant to Section 51-1-37.1 NMSA 1978;

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1 (2) levy by the federal internal revenue  
2 service pursuant to Section 6331(h)(2)(C) of the Internal  
3 Revenue Code of 1986; provided that arrangements have been  
4 made by the internal revenue service for reimbursement of the  
5 division for administrative costs incurred by the division  
6 that are attributable to the repayment of uncollected federal  
7 internal revenue taxes. Levy of federal income taxes will be  
8 made in accordance with such regulations as the secretary may  
9 prescribe; and

10 (3) deduction and withholding of amounts for  
11 food stamp overissuances pursuant to Section 51-1-37.2 NMSA  
12 1978."

13 Section 276. Section 51-1-42 NMSA 1978 (being Laws 2003,  
14 Chapter 47, Section 12, as amended) is amended to read:

15 "51-1-42. DEFINITIONS.--As used in the Unemployment  
16 Compensation Law:

17 A. "base period" means the first four of the last  
18 five completed calendar quarters immediately preceding the  
19 first day of an individual's benefit year, except that "base  
20 period" means for benefit years beginning on or after January  
21 1, 2005 for an individual who does not have sufficient wages  
22 in the base period as defined to qualify for benefits pursuant  
23 to Section 51-1-5 NMSA 1978, the individual's base period  
24 shall be the last four completed calendar quarters immediately  
25 preceding the first day of the individual's benefit year if

.179346.5GR

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1 that period qualifies the individual for benefits pursuant to  
2 Section 51-1-5 NMSA 1978; provided that:

3 (1) wages that fall within the base period of  
4 claims established pursuant to this subsection are not  
5 available for reuse in qualifying for a subsequent benefit  
6 year; and

7 (2) in the case of a combined-wage claim  
8 pursuant to the arrangement approved by the federal secretary  
9 of labor, the base period is that base period applicable under  
10 the unemployment compensation law of the paying state;

11 B. "benefits" means the cash unemployment  
12 compensation payments payable to an eligible individual  
13 pursuant to Section 51-1-4 NMSA 1978 with respect to the  
14 individual's weeks of unemployment;

15 C. "contributions" means the money payments  
16 required by Section 51-1-9 NMSA 1978 to be made into the fund  
17 by an employer on account of having individuals performing  
18 services for the employer;

19 D. "employing unit" means any individual or type  
20 of organization, including any partnership, association,  
21 cooperative, trust, estate, joint-stock company, agricultural  
22 enterprise, insurance company or corporation, whether domestic  
23 or foreign, or the receiver, trustee in bankruptcy, trustee or  
24 successor thereof, household, fraternity or club, the legal  
25 representative of a deceased person or any state or local

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1 government entity to the extent required by law to be covered  
2 as an employer, ~~[which]~~ that has in its employ one or more  
3 individuals performing services for it within this state. An  
4 individual performing services for an employing unit that  
5 maintains two or more separate establishments within this  
6 state shall be deemed to be employed by a single employing  
7 unit for all the purposes of the Unemployment Compensation  
8 Law. An individual performing services for a contractor,  
9 subcontractor or agent that is performing work or services for  
10 an employing unit, as described in this subsection, ~~[which is]~~  
11 that are within the scope of the employing unit's usual trade,  
12 occupation, profession or business, shall be deemed to be in  
13 the employ of the employing unit for all purposes of the  
14 Unemployment Compensation Law unless the contractor,  
15 subcontractor or agent is itself an employer within the  
16 provisions of Subsection E of this section;

17 E. "employer" includes:

18 (1) an employing unit that:

19 (a) unless otherwise provided in this  
20 section, paid for service in employment as defined in  
21 Subsection F of this section wages of four hundred fifty  
22 dollars (\$450) or more in any calendar quarter in either the  
23 current or preceding calendar year or had in employment, as  
24 defined in Subsection F of this section, for some portion of a  
25 day in each of twenty different calendar weeks during either

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1 the current or the preceding calendar year, and irrespective  
2 of whether the same individual was in employment in each such  
3 day, at least one individual;

4 (b) for the purposes of Subparagraph  
5 (a) of this paragraph, if any week includes both December 31  
6 and January 1, the days of that week up to January 1 shall be  
7 deemed one calendar week and the days beginning January 1,  
8 another such week; and

9 (c) for purposes of defining an  
10 "employer" under Subparagraph (a) of this paragraph, the wages  
11 or remuneration paid to individuals performing services in  
12 employment in agricultural labor or domestic services as  
13 provided in Paragraphs (6) and (7) of Subsection F of this  
14 section shall not be taken into account; except that any  
15 employing unit determined to be an employer of agricultural  
16 labor under Paragraph (6) of Subsection F of this section  
17 shall be an employer under Subparagraph (a) of this paragraph  
18 so long as the employing unit is paying wages or remuneration  
19 for services other than agricultural services;

20 (2) any individual or type of organization  
21 that acquired the trade or business or substantially all of  
22 the assets thereof, of an employing unit that at the time of  
23 the acquisition was an employer subject to the Unemployment  
24 Compensation Law; provided that where such an acquisition  
25 takes place, the secretary may postpone activating the

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1 separate account pursuant to Subsection A of Section 51-1-11  
2 NMSA 1978 until such time as the successor employer has  
3 employment as defined in Subsection F of this section;

4 (3) an employing unit that acquired all or  
5 part of the organization, trade, business or assets of another  
6 employing unit and that, if treated as a single unit with the  
7 other employing unit or part thereof, would be an employer  
8 under Paragraph (1) of this subsection;

9 (4) an employing unit not an employer by  
10 reason of any other paragraph of this subsection:

11 (a) for which, within either the  
12 current or preceding calendar year, service is or was  
13 performed with respect to which such employing unit is liable  
14 for any federal tax against which credit may be taken for  
15 contributions required to be paid into a state unemployment  
16 fund; or

17 (b) that, as a condition for approval  
18 of the Unemployment Compensation Law for full tax credit  
19 against the tax imposed by the Federal Unemployment Tax Act,  
20 is required, pursuant to that act, to be an "employer" under  
21 the Unemployment Compensation Law;

22 (5) an employing unit that, having become an  
23 employer under Paragraph (1), (2), (3) or (4) of this  
24 subsection, has not, under Section 51-1-18 NMSA 1978, ceased  
25 to be an employer subject to the Unemployment Compensation

.179346.5GR

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1 Law;

2 (6) for the effective period of its election  
3 pursuant to Section 51-1-18 NMSA 1978, any other employing  
4 unit that has elected to become fully subject to the  
5 Unemployment Compensation Law;

6 (7) an employing unit for which any services  
7 performed in its employ are deemed to be performed in this  
8 state pursuant to an election under an arrangement entered  
9 into in accordance with Subsection A of Section 51-1-50 NMSA  
10 1978; and

11 (8) an Indian tribe as defined in 26 USCA  
12 Section 3306(u) for which service in employment is performed;

13 F. "employment":

14 (1) means any service, including service in  
15 interstate commerce, performed for wages or under any contract  
16 of hire, written or oral, express or implied;

17 (2) means an individual's entire service,  
18 performed within or both within and without this state if:

19 (a) the service is primarily localized  
20 in this state with services performed outside the state being  
21 only incidental thereto; or

22 (b) the service is not localized in any  
23 state but some of the service is performed in this state and:

24 1) the base of operations or, if there is no base of  
25 operations, the place from which such service is directed or

.179346.5GR

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1 controlled, is in this state; or 2) the base of operations or  
2 place from which such service is directed or controlled is not  
3 in any state in which some part of the service is performed  
4 but the individual's residence is in this state;

5 (3) means services performed within this  
6 state but not covered under Paragraph (2) of this subsection  
7 if contributions or payments in lieu of contributions are not  
8 required and paid with respect to such services under an  
9 unemployment compensation law of any other state, the federal  
10 government or Canada;

11 (4) means services covered by an election  
12 pursuant to Section 51-1-18 NMSA 1978 and services covered by  
13 an election duly approved by the secretary in accordance with  
14 an arrangement pursuant to Paragraph (1) of Subsection A of  
15 Section 51-1-50 NMSA 1978 shall be deemed to be employment  
16 during the effective period of the election;

17 (5) means services performed by an individual  
18 for an employer for wages or other remuneration unless and  
19 until it is established by a preponderance of evidence that:

20 (a) the individual has been and will  
21 continue to be free from control or direction over the  
22 performance of the services both under the individual's  
23 contract of service and in fact;

24 (b) the service is either outside the  
25 usual course of business for which the service is performed or

.179346.5GR

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1 that such service is performed outside of all the places of  
2 business of the enterprise for which such service is  
3 performed; and

4 (c) the individual is customarily  
5 engaged in an independently established trade, occupation,  
6 profession or business of the same nature as that involved in  
7 the contract of service;

8 (6) means service performed after December  
9 31, 1977 by an individual in agricultural labor as defined in  
10 Subsection Q of this section if:

11 (a) the service is performed for an  
12 employing unit that: 1) paid remuneration in cash of twenty  
13 thousand dollars (\$20,000) or more to individuals in that  
14 employment during any calendar quarter in either the current  
15 or the preceding calendar year; or 2) employed in agricultural  
16 labor ten or more individuals for some portion of a day in  
17 each of twenty different calendar weeks in either the current  
18 or preceding calendar year, whether or not the weeks were  
19 consecutive, and regardless of whether the individuals were  
20 employed at the same time;

21 (b) the service is not performed before  
22 January 1, 1980 by an individual who is an alien admitted to  
23 the United States to perform service in agricultural labor  
24 pursuant to Sections 214(c) and 101(15)(H) of the federal  
25 Immigration and Nationality Act; and

.179346.5GR

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1 (c) for purposes of this paragraph, an  
2 individual who is a member of a crew furnished by a crew  
3 leader to perform service in agricultural labor for a farm  
4 operator or other person shall be treated as an employee of  
5 the crew leader: 1) if the crew leader meets the requirements  
6 of a crew leader as defined in Subsection L of this section;  
7 or 2) substantially all the members of the crew operate or  
8 maintain mechanized agricultural equipment that is provided by  
9 the crew leader; and 3) the individuals performing the  
10 services are not, by written agreement or in fact, within the  
11 meaning of Paragraph (5) of this subsection, performing  
12 services in employment for the farm operator or other person;

13 (7) means service performed after December  
14 31, 1977 by an individual in domestic service in a private  
15 home, local college club or local chapter of a college  
16 fraternity or sorority for a person or organization that paid  
17 cash remuneration of one thousand dollars (\$1,000) in any  
18 calendar quarter in the current or preceding calendar year to  
19 individuals performing such services;

20 (8) means service performed after December  
21 31, 1971 by an individual in the employ of a religious,  
22 charitable, educational or other organization but only if the  
23 following conditions are met:

24 (a) the service is excluded from  
25 "employment" as defined in the Federal Unemployment Tax Act

.179346.5GR

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1 solely by reason of Section 3306(c)(8) of that act; and

2 (b) the organization meets the  
3 requirements of "employer" as provided in Subparagraph (a) of  
4 Paragraph (1) of Subsection E of this section;

5 (9) means service of an individual who is a  
6 citizen of the United States, performed outside the United  
7 States, except in Canada, after December 31, 1971 in the  
8 employ of an American employer, other than service that is  
9 deemed "employment" under the provisions of Paragraph (2) of  
10 this subsection or the parallel provisions of another state's  
11 law, if:

12 (a) the employer's principal place of  
13 business in the United States is located in this state;

14 (b) the employer has no place of  
15 business in the United States, but: 1) the employer is an  
16 individual who is a resident of this state; 2) the employer is  
17 a corporation organized under the laws of this state; or 3)  
18 the employer is a partnership or a trust and the number of the  
19 partners or trustees who are residents of this state is  
20 greater than the number who are residents of any one other  
21 state; or

22 (c) none of the criteria of  
23 Subparagraphs (a) and (b) of this paragraph are met, but the  
24 employer has elected coverage in this state or, the employer  
25 having failed to elect coverage in any state, the individual

.179346.5GR

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1 has filed a claim for benefits, based on such service, under  
2 the law of this state.

3 "American employer" for the purposes of this paragraph  
4 means a person who is: 1) an individual who is a resident of  
5 the United States; 2) a partnership if two-thirds or more of  
6 the partners are residents of the United States; 3) a trust if  
7 all of the trustees are residents of the United States; or 4)  
8 a corporation organized under the laws of the United States or  
9 of any state. For the purposes of this paragraph, "United  
10 States" includes the United States, the District of Columbia,  
11 the commonwealth of Puerto Rico and the Virgin Islands;

12 (10) means, notwithstanding any other  
13 provisions of this subsection, service with respect to which a  
14 tax is required to be paid under any federal law imposing a  
15 tax against which credit may be taken for contributions  
16 required to be paid into a state unemployment fund or which as  
17 a condition for full tax credit against the tax imposed by the  
18 Federal Unemployment Tax Act is required to be covered under  
19 the Unemployment Compensation Law;

20 (11) means service performed in the employ of  
21 an Indian tribe if:

22 (a) the service is excluded from  
23 "employment" as defined in 26 USCA Section 3306(c) solely by  
24 reason of 26 USCA Section 3306(c)(7); and

25 (b) the service is not otherwise

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1 excluded from employment pursuant to the Unemployment  
2 Compensation Law;

3 (12) does not include:

4 (a) service performed in the employ of:

5 1) a church or convention or association of churches; or 2) an  
6 organization that is operated primarily for religious purposes  
7 and that is operated, supervised, controlled or principally  
8 supported by a church or convention or association of  
9 churches;

10 (b) service performed by a duly  
11 ordained, commissioned or licensed minister of a church in the  
12 exercise of such ministry or by a member of a religious order  
13 in the exercise of duties required by such order;

14 (c) service performed by an individual  
15 in the employ of the individual's son, daughter, ~~[or]~~ spouse  
16 or domestic partner, and service performed by a child under  
17 the age of majority in the employ of the child's father or  
18 mother;

19 (d) service performed in the employ of  
20 the United States government or an instrumentality of the  
21 United States immune under the constitution of the United  
22 States from the contributions imposed by the Unemployment  
23 Compensation Law except that to the extent that the congress  
24 of the United States shall permit states to require any  
25 instrumentalities of the United States to make payments into

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1 an unemployment fund under a state unemployment compensation  
2 act, all of the provisions of the Unemployment Compensation  
3 Law shall be applicable to such instrumentalities, and to  
4 service performed for such instrumentalities in the same  
5 manner, to the same extent and on the same terms as to all  
6 other employers, employing units, individuals and services;  
7 provided that if this state shall not be certified for any  
8 year by the secretary of labor of the United States under  
9 Section 3304 of the federal Internal Revenue Code of 1986,  
10 26 U.S.C. Section 3304, the payments required of such  
11 instrumentalities with respect to such year shall be refunded  
12 by the department from the fund in the same manner and within  
13 the same period as is provided in Subsection D of Section  
14 51-1-36 NMSA 1978 with respect to contributions erroneously  
15 collected;

16 (e) service performed in a facility  
17 conducted for the purpose of carrying out a program of  
18 rehabilitation for individuals whose earning capacity is  
19 impaired by age or physical or mental deficiency or injury or  
20 providing remunerative work for individuals who because of  
21 their impaired physical or mental capacity cannot be readily  
22 absorbed in the competitive labor market, by an individual  
23 receiving that rehabilitation or remunerative work;

24 (f) service with respect to which  
25 unemployment compensation is payable under an unemployment

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1 compensation system established by an act of congress;

2 (g) service performed in the employ of  
3 a foreign government, including service as a consular or other  
4 officer or employee or a nondiplomatic representative;

5 (h) service performed by an individual  
6 for a person as an insurance agent or as an insurance  
7 solicitor, if all such service performed by the individual for  
8 the person is performed for remuneration solely by way of  
9 commission;

10 (i) service performed by an individual  
11 under the age of eighteen in the delivery or distribution of  
12 newspapers or shopping news, not including delivery or  
13 distribution to any point for subsequent delivery or  
14 distribution;

15 (j) service covered by an election duly  
16 approved by the agency charged with the administration of any  
17 other state or federal unemployment compensation law, in  
18 accordance with an arrangement pursuant to Paragraph (1) of  
19 Subsection A of Section 51-1-50 NMSA 1978 during the effective  
20 period of the election;

21 (k) service performed, as part of an  
22 unemployment work-relief or work-training program assisted or  
23 financed in whole or part by any federal agency or an agency  
24 of a state or political subdivision thereof, by an individual  
25 receiving the work relief or work training;

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1 (l) service performed by an individual  
2 who is enrolled at a nonprofit or public educational  
3 institution that normally maintains a regular faculty and  
4 curriculum and normally has a regularly organized body of  
5 students in attendance at the place where its educational  
6 activities are carried on as a student in a full-time program,  
7 taken for credit at the institution that combines academic  
8 instruction with work experience, if the service is an  
9 integral part of such program and the institution has so  
10 certified to the employer, except that this subparagraph shall  
11 not apply to service performed in a program established for or  
12 on behalf of an employer or group of employers;

13 (m) service performed in the employ of  
14 a hospital, if the service is performed by a patient of the  
15 hospital, or services performed by an inmate of a custodial or  
16 penal institution for any employer;

17 (n) service performed by real estate  
18 salespersons for others when the services are performed for  
19 remuneration solely by way of commission;

20 (o) service performed in the employ of  
21 a school, college or university if the service is performed by  
22 a student who is enrolled and is regularly attending classes  
23 at the school, college or university;

24 (p) service performed by an individual  
25 for a fixed or contract fee officiating at a sporting event

.179346.5GR

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1 that is conducted by or under the auspices of a nonprofit or  
2 governmental entity if that person is not otherwise an  
3 employee of the entity conducting the sporting event;

4 (q) service performed for a private,  
5 for-profit person or entity by an individual as a product  
6 demonstrator or product merchandiser if the service is  
7 performed pursuant to a written contract between that  
8 individual and a person or entity whose principal business is  
9 obtaining the services of product demonstrators and product  
10 merchandisers for third parties, for demonstration and  
11 merchandising purposes and the individual: 1) is compensated  
12 for each job or the compensation is based on factors related  
13 to the work performed; 2) provides the equipment used to  
14 perform the service, unless special equipment is required and  
15 provided by the manufacturer through an agency; 3) is  
16 responsible for completion of a specific job and for any  
17 failure to complete the job; 4) pays all expenses, and the  
18 opportunity for profit or loss rests solely with the  
19 individual; and 5) is responsible for operating costs, fuel,  
20 repairs and motor vehicle insurance. For the purpose of this  
21 subparagraph, "product demonstrator" means an individual who,  
22 on a temporary, part-time basis, demonstrates or gives away  
23 samples of a food or other product as part of an advertising  
24 or sales promotion for the product and who is not otherwise  
25 employed directly by the manufacturer, distributor or

.179346.5GR

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1 retailer, and "product merchandiser" means an individual who,  
2 on a temporary, part-time basis builds or resets a product  
3 display and who is not otherwise directly employed by the  
4 manufacturer, distributor or retailer; or

5 (r) service performed for a private,  
6 for-profit person or entity by an individual as a landman if  
7 substantially all remuneration paid in cash or otherwise for  
8 the performance of the services is directly related to the  
9 completion by the individual of the specific tasks contracted  
10 for rather than to the number of hours worked by the  
11 individual. For the purposes of this subparagraph, "landman"  
12 means a land professional who has been engaged primarily in:  
13 1) negotiating for the acquisition or divestiture of mineral  
14 rights; 2) negotiating business agreements that provide for  
15 the exploration for or development of minerals; 3) determining  
16 ownership of minerals through the research of public and  
17 private records; and 4) reviewing the status of title, curing  
18 title defects and otherwise reducing title risk associated  
19 with ownership of minerals; managing rights or obligations  
20 derived from ownership of interests and minerals; or utilizing  
21 or pooling of interest in minerals; and

22 (13) for the purposes of this subsection, if  
23 the services performed during one-half or more of any pay  
24 period by an individual for the person employing the  
25 individual constitute employment, all the services of the

.179346.5GR

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1 individual for the period shall be deemed to be employment,  
2 but, if the services performed during more than one-half of  
3 any such pay period by an individual for the person employing  
4 the individual do not constitute employment, then none of the  
5 services of the individual for the period shall be deemed to  
6 be employment. As used in this paragraph, the term "pay  
7 period" means a period, of not more than thirty-one  
8 consecutive days, for which a payment of remuneration is  
9 ordinarily made to the individual by the person employing the  
10 individual. This paragraph shall not be applicable with  
11 respect to services performed in a pay period by an individual  
12 for the person employing the individual where any of such  
13 service is excepted by Subparagraph (f) of Paragraph (12) of  
14 this subsection;

15 G. "employment office" means a free public  
16 employment office, or branch thereof, operated by this state  
17 or maintained as a part of a state-controlled system of public  
18 employment offices;

19 H. "fund" means the unemployment compensation fund  
20 established by the Unemployment Compensation Law to which all  
21 contributions and payments in lieu of contributions required  
22 under the Unemployment Compensation Law and from which all  
23 benefits provided under the Unemployment Compensation Law  
24 shall be paid; provided that, for the purposes of paying  
25 contributions, "fund" may also include the state unemployment

.179346.5GR

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1 trust fund and contributions paid to that fund pursuant to  
2 Contribution Schedule B in Paragraph (5) of Subsection I of  
3 Section 51-1-11 NMSA 1978 and Section 51-1-19.1 NMSA 1978;

4 I. "unemployment" means, with respect to an  
5 individual, any week during which the individual performs no  
6 services and with respect to which no wages are payable to the  
7 individual and during which the individual is not engaged in  
8 self-employment or receives an award of back pay for loss of  
9 employment. The secretary shall prescribe by rule what  
10 constitutes part-time and intermittent employment, partial  
11 employment and the conditions under which individuals engaged  
12 in such employment are eligible for partial unemployment  
13 benefits, but no individual who is otherwise eligible shall be  
14 deemed ineligible for benefits solely for the reason that the  
15 individual seeks, applies for or accepts only part-time work,  
16 instead of full-time work, if the part-time work is for at  
17 least twenty hours per week;

18 J. "state", when used in reference to any state  
19 other than New Mexico, includes, in addition to the states of  
20 the United States, the District of Columbia, the commonwealth  
21 of Puerto Rico and the Virgin Islands;

22 K. "unemployment compensation administration fund"  
23 means the fund established by Subsection A of Section 51-1-34  
24 NMSA 1978 from which administrative expenses under the  
25 Unemployment Compensation Law shall be paid. "Employment

.179346.5GR

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1 security department fund" means the fund established by  
2 Subsection B of Section 51-1-34 NMSA 1978 from which certain  
3 administrative expenses under the Unemployment Compensation  
4 Law shall be paid;

5 L. "crew leader" means a person who:

6 (1) holds a valid certificate of registration  
7 as a crew leader or farm labor contractor under the federal  
8 Migrant and Seasonal Agricultural Worker Protection Act;

9 (2) furnishes individuals to perform services  
10 in agricultural labor for any other person;

11 (3) pays, either on the crew leader's own  
12 behalf or on behalf of such other person, the individuals so  
13 furnished by the crew leader for service in agricultural  
14 labor; and

15 (4) has not entered into a written agreement  
16 with the other person for whom the crew leader furnishes  
17 individuals in agricultural labor that the individuals will be  
18 the employees of the other person;

19 M. "week" means such period of seven consecutive  
20 days, as the secretary may by rule prescribe. The secretary  
21 may by rule prescribe that a week shall be deemed to be "in",  
22 "within" or "during" the benefit year that includes the  
23 greater part of such week;

24 N. "calendar quarter" means the period of three  
25 consecutive calendar months ending on March 31, June 30,

.179346.5GR

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1 September 30 or December 31;

2 O. "insured work" means services performed for  
3 employers who are covered under the Unemployment Compensation  
4 Law;

5 P. "benefit year" with respect to an individual  
6 means the one-year period beginning with the first day of the  
7 first week of unemployment with respect to which the  
8 individual first files a claim for benefits in accordance with  
9 Subsection A of Section 51-1-8 NMSA 1978 and thereafter the  
10 one-year period beginning with the first day of the first week  
11 of unemployment with respect to which the individual next  
12 files such a claim for benefits after the termination of the  
13 individual's last preceding benefit year; provided that at the  
14 time of filing such a claim the individual has been paid the  
15 wage required under Paragraph (5) of Subsection A of Section  
16 51-1-5 NMSA 1978;

17 Q. "agricultural labor" includes all services  
18 performed:

19 (1) on a farm, in the employ of a person, in  
20 connection with cultivating the soil or in connection with  
21 raising or harvesting an agricultural or horticultural  
22 commodity, including the raising, shearing, feeding, caring  
23 for, training and management of livestock, bees, poultry and  
24 fur-bearing animals and wildlife;

25 (2) in the employ of the owner or tenant or

.179346.5GR

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1 other operator of a farm, in connection with the operation,  
2 management, conservation or maintenance of the farm and its  
3 tools and equipment, if the major part of the service is  
4 performed on a farm;

5 (3) in connection with the operation or  
6 maintenance of ditches, canals, reservoirs or waterways used  
7 exclusively for supplying and storing water for farming  
8 purposes when such ditches, canals, reservoirs or waterways  
9 are owned and operated by the farmers using the water stored  
10 or carried therein; and

11 (4) in handling, planting, drying, packing,  
12 packaging, processing, freezing, grading, storing or delivery  
13 to storage or to market or to a carrier for transportation to  
14 market any agricultural or horticultural commodity but only if  
15 the service is performed as an incident to ordinary farming  
16 operations. The provisions of this paragraph shall not be  
17 deemed to be applicable with respect to service performed in  
18 connection with commercial canning or commercial freezing or  
19 in connection with any agricultural or horticultural commodity  
20 after its delivery to a terminal market for distribution for  
21 consumption.

22 As used in this subsection, the term "farm" includes  
23 stock, dairy, poultry, fruit, fur-bearing animal and truck  
24 farms, plantations, ranches, nurseries, greenhouses, ranges  
25 and orchards;

.179346.5GR

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1           R. "payments in lieu of contributions" means the  
2 money payments made into the fund by an employer pursuant to  
3 the provisions of Subsection B of Section 51-1-13 NMSA 1978 or  
4 Subsection E of Section 51-1-59 NMSA 1978;

5           S. "department" means the [~~labor~~] workforce  
6 solutions department; and

7           T. "wages" means all remuneration for services,  
8 including commissions and bonuses and the cash value of all  
9 remuneration in any medium other than cash. The reasonable  
10 cash value of remuneration in any medium other than cash shall  
11 be established and determined in accordance with rules  
12 prescribed by the secretary; provided that the term "wages"  
13 shall not include:

14                   (1) subsequent to December 31, 1977, that  
15 part of the remuneration in excess of the base wage as  
16 determined by the secretary for each calendar year. The base  
17 wage upon which contribution shall be paid during any calendar  
18 year shall be sixty percent of the state's average annual  
19 earnings computed by the division by dividing total wages  
20 reported to the division by contributing employers for the  
21 second preceding calendar year before the calendar year the  
22 computed base wage becomes effective by the average annual  
23 employment reported by contributing employers for the same  
24 period rounded to the next higher multiple of one hundred  
25 dollars (\$100); provided that the base wage so computed for

.179346.5GR

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1 any calendar year shall not be less than seven thousand  
2 dollars (\$7,000). Wages paid by an employer to an individual  
3 in the employer's employ during any calendar year in excess of  
4 the base wage in effect for that calendar year shall be  
5 reported to the department but shall be exempt from the  
6 payment of contributions unless such wages paid in excess of  
7 the base wage become subject to tax under a federal law  
8 imposing a tax against which credit may be taken for  
9 contributions required to be paid into a state unemployment  
10 fund;

11 (2) the amount of any payment with respect to  
12 services performed after June 30, 1941 to or on behalf of an  
13 individual in the employ of an employing unit under a plan or  
14 system established by the employing unit that makes provision  
15 for individuals in its employ generally or for a class or  
16 classes of individuals, including any amount paid by an  
17 employing unit for insurance or annuities, or into a fund, to  
18 provide for any payment, on account of:

19 (a) retirement if the payments are made  
20 by an employer to or on behalf of an employee under a  
21 simplified employee pension plan that provides for payments by  
22 an employer in addition to the salary or other remuneration  
23 normally payable to the employee or class of employees and  
24 does not include any payments that represent deferred  
25 compensation or other reduction of an employee's normal

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1 taxable wages or remuneration or any payments made to a third  
2 party on behalf of an employee as part of an agreement of  
3 deferred remuneration;

4 (b) sickness or accident disability if  
5 the payments are received under a workers' compensation or  
6 occupational disease disablement law;

7 (c) medical and hospitalization  
8 expenses in connection with sickness or accident disability;  
9 or

10 (d) death; provided the individual in  
11 its employ has not the option to receive, instead of provision  
12 for the death benefit, any part of such payment, or, if such  
13 death benefit is insured, any part of the premiums or  
14 contributions to premiums paid by the individual's employing  
15 unit and has not the right under the provisions of the plan or  
16 system or policy of insurance providing for the death benefit  
17 to assign the benefit, or to receive a cash consideration in  
18 lieu of the benefit either upon the individual's withdrawal  
19 from the plan or system providing for the benefit or upon  
20 termination of the plan or system or policy of insurance or of  
21 the individual's service with the employing unit;

22 (3) remuneration for agricultural labor paid  
23 in any medium other than cash;

24 (4) a payment made to, or on behalf of, an  
25 employee or an employee's beneficiary under a cafeteria plan

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1 within the meaning of Section 125 of the federal Internal  
2 Revenue Code of 1986;

3 (5) a payment made, or benefit furnished to  
4 or for the benefit of an employee if at the time of the  
5 payment or such furnishing it is reasonable to believe that  
6 the employee will be able to exclude the payment or benefit  
7 from income under Section 129 of the federal Internal Revenue  
8 Code of 1986;

9 (6) a payment made by an employer to a  
10 survivor or the estate of a former employee after the calendar  
11 year in which the employee died;

12 (7) a payment made to, or on behalf of, an  
13 employee or the employee's beneficiary under an arrangement to  
14 which Section 408(p) of the federal Internal Revenue Code of  
15 1986 applies, other than any elective contributions under  
16 Paragraph (2)(A)(i) of that section;

17 (8) a payment made to or for the benefit of  
18 an employee if at the time of the payment it is reasonable to  
19 believe that the employee will be able to exclude the payment  
20 from income under Section 106 of the federal Internal Revenue  
21 Code of 1986; or

22 (9) the value of any meals or lodging  
23 furnished by or on behalf of the employer if at the time the  
24 benefit is provided it is reasonable to believe that the  
25 employee will be able to exclude such items from income under

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1 Section 119 of the federal Internal Revenue Code of 1986."

2 Section 277. Section 52-1-6 NMSA 1978 (being Laws 1990  
3 (2nd S.S.), Chapter 2, Section 4) is amended to read:

4 "52-1-6. APPLICATION OF PROVISIONS OF ACT.--

5 A. The provisions of the Workers' Compensation Act  
6 shall apply to employers of three or more workers; provided  
7 that act shall apply to all employers engaged in activities  
8 required to be licensed under the provisions of the  
9 Construction Industries Licensing Act regardless of the number  
10 of employees. The provisions of the Workers' Compensation Act  
11 shall not apply to employers of private domestic servants and  
12 farm and ranch laborers.

13 B. An election to be subject to the Workers'  
14 Compensation Act by employers of private domestic servants or  
15 farm and ranch laborers, by persons for whom the services of  
16 qualified real estate salespersons are performed or by a  
17 partner or self-employed person may be made by filing, in the  
18 office of the director, either a sworn statement to the effect  
19 that the employer accepts the provisions of the Workers'  
20 Compensation Act or an insurance or security undertaking as  
21 required by Section 52-1-4 NMSA 1978.

22 C. Every worker shall be conclusively presumed to  
23 have accepted the provisions of the Workers' Compensation Act  
24 if [his] the worker's employer is subject to the provisions of  
25 that act and has complied with its requirements, including

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1 insurance.

2 D. [~~Such~~] Compliance with the provisions of the  
3 Workers' Compensation Act, including the provisions for  
4 insurance, shall be [~~and construed to be~~] a surrender by the  
5 employer and the worker of their rights to any other method,  
6 form or amount of compensation or determination thereof or to  
7 any cause of action at law, suit in equity or statutory or  
8 common-law right to remedy or proceeding whatever for or on  
9 account of personal injuries or death of the worker than as  
10 provided in the Workers' Compensation Act and shall be an  
11 acceptance of all of the provisions of the Workers'  
12 Compensation Act and shall bind the worker [~~himself~~] and, for  
13 compensation for [~~his~~] the worker's death, shall bind [~~his~~]  
14 the worker's personal representative, [~~his~~] the worker's  
15 surviving spouse or surviving domestic partner and next of  
16 kin, as well as the employer and those conducting [~~his~~] the  
17 employer's business during bankruptcy or insolvency.

18 E. The Workers' Compensation Act provides exclusive  
19 remedies. No cause of action outside the Workers'  
20 Compensation Act shall be brought by an employee or dependent  
21 against the employer or [~~his~~] the employer's representative,  
22 including the insurer, guarantor or surety of any employer,  
23 for any matter relating to the occurrence of or payment for  
24 any injury or death covered by the Workers' Compensation Act.  
25 Nothing in the Workers' Compensation Act, however, shall

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1 affect [~~or be construed to affect~~] in any way, the existence  
2 of or the mode of trial of any claim or cause of action that  
3 the worker has against any person other than [~~his~~] the  
4 worker's employer or another employee of [~~his~~] the worker's  
5 employer, including a management or supervisory employee, or  
6 the insurer, guarantor or surety of [~~his~~] the worker's  
7 employer."

8 Section 278. Section 52-1-17 NMSA 1978 (being Laws 1965,  
9 Chapter 295, Section 10, as amended) is amended to read:

10 "52-1-17. DEPENDENTS.--

11 A. As used in the Workers' Compensation Act, unless  
12 the context otherwise requires, the following persons, and  
13 they only, shall be deemed dependents and entitled to  
14 compensation under the provisions of the Workers' Compensation  
15 Act:

16 [~~A.~~] (1) a child who is under eighteen years of  
17 age or incapable of self-support and who is unmarried and not  
18 in a domestic partnership or who is under twenty-three years  
19 of age if enrolled as a full-time student in any accredited  
20 educational institution;

21 [~~B.~~] (2) the widow, [~~or~~] widower or surviving  
22 domestic partner of the deceased, only if living with the  
23 deceased at the time of [~~his~~] the deceased's death or legally  
24 entitled to be supported by [~~him~~] the deceased, including a  
25 divorced spouse entitled to alimony or a former domestic

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1 partner entitled to domestic partner support;

2 [G.] (3) a parent or grandparent, only if  
3 actually dependent, wholly or partially, upon the deceased;  
4 and

5 [D.] (4) a grandchild, brother or sister, only  
6 if under eighteen years of age or incapable of self-support  
7 and wholly dependent upon the deceased.

8 B. The relation of dependency must exist at the time  
9 of the injury.

10 [E.] C. Questions as to ~~who~~ which persons  
11 constitute dependents and the extent of their dependency shall  
12 be determined as of the date of the injury, and ~~their~~ the  
13 right to any death benefit shall cease upon the happening of  
14 any one of the following ~~contingencies~~ contingencies:

15 (1) upon the marriage or entry into a domestic  
16 partnership of the widow, ~~or~~ widower or domestic partner of  
17 the deceased;

18 (2) upon a child, grandchild, brother or sister  
19 reaching the age of eighteen years, unless the child,  
20 grandchild, brother or sister at such time is physically or  
21 mentally incapacitated from earnings, or upon a dependent  
22 child, grandchild, brother or sister becoming self-supporting  
23 prior to attaining that age or if a child, grandchild, brother  
24 or sister over eighteen years of age who is enrolled as a  
25 full-time student in any accredited educational institution

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1 ceases to be so enrolled or reaches the age of twenty-three.  
2 A child, grandchild, brother or sister who originally  
3 qualified as a dependent by virtue of being less than eighteen  
4 years of age may, upon reaching age eighteen, continue to  
5 qualify if physically or mentally incapable of self-support,  
6 actually dependent or enrolled in an educational institution;  
7 or

8 (3) upon the death of any dependent."

9 Section 279. Section 52-3-5 NMSA 1978 (being Laws 1945,  
10 Chapter 135, Section 5, as amended) is amended to read:

11 "52-3-5. ACCEPTANCE.--

12 A. All employers of employees, subject to the  
13 provisions of the New Mexico Occupational Disease Disablement  
14 Law, shall be conclusively presumed to have accepted the  
15 provisions of the New Mexico Occupational Disease Disablement  
16 Law.

17 B. Election on the part of the employer or of an  
18 employer of private domestic servants or of an employer of  
19 ranching or agricultural laborers or of a person for whom the  
20 services of a qualified real estate salesperson are performed  
21 exempt from the New Mexico Occupational Disease Disablement  
22 Law under the provisions of Section 52-3-2 NMSA 1978 and  
23 partners or self-employed persons to be subject to the New  
24 Mexico Occupational Disease Disablement Law may be made by  
25 filing in the office of the superintendent of insurance a

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1 written statement to the effect that [~~he~~] the person accepts  
2 the provisions of the New Mexico Occupational Disease  
3 Disablement Law or an insurance or security undertaking as  
4 required by Section 52-3-9 NMSA 1978.

5 C. Every employee shall be conclusively presumed to  
6 have accepted the provisions of the New Mexico Occupational  
7 Disease Disablement Law if [~~his~~] the employee's employer is  
8 subject to its provisions and has complied with its  
9 requirements, including insurance.

10 D. [~~Such~~] Compliance with the provisions of the New  
11 Mexico Occupational Disease Disablement Law, including the  
12 provisions for insurance, shall be construed to be a surrender  
13 by the employer and the employee of their rights to any other  
14 method, form or amount of compensation or determination  
15 thereof or to any cause of action, action at law, suit in  
16 equity or statutory or common-law right or remedy or  
17 proceeding whatever for or on account of [~~such~~] disablement,  
18 or death of [~~such~~] the employee resulting therefrom, than as  
19 provided in the New Mexico Occupational Disease Disablement  
20 Law and shall bind the employee [~~himself~~] and, for  
21 compensation for [~~his~~] the employee's death, shall bind [~~his~~]  
22 the employee's personal representative, [~~his~~] surviving spouse  
23 or surviving domestic partner and next of kin, as well as the  
24 employer and those conducting [~~his~~] the employer's business  
25 during bankruptcy or insolvency."

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1           Section 280. Section 52-3-13 NMSA 1978 (being Laws 1945,  
2 Chapter 135, Section 13, as amended) is amended to read:

3           "52-3-13. DEPENDENTS DEFINED--DETERMINATION OF.--

4           A. The following persons, and they only, shall be  
5 deemed dependents and entitled to compensation under the  
6 provisions of the New Mexico Occupational Disease Disablement  
7 Law:

8                   (1) a child who is under eighteen years of age  
9 or incapable of self-support and who is unmarried and not in a  
10 domestic partnership or who is under twenty-three years of age  
11 if enrolled as a full-time student in any accredited  
12 educational institution;

13                   (2) the widow, [~~or~~] widower or domestic partner  
14 of the deceased, only if living with the deceased at the time  
15 of [~~his~~] the deceased's death or legally entitled to be  
16 supported by [~~him~~] the deceased, including a divorced spouse  
17 entitled to alimony or a former domestic partner entitled to  
18 domestic partner support;

19                   (3) a parent or grandparent only if actually  
20 dependent, wholly or partially, upon the deceased; and

21                   (4) a grandchild, brother or sister only if  
22 under eighteen years of age or incapable of self-support and  
23 wholly dependent upon the deceased.

24           B. The relation of dependency must exist at the time  
25 of the disablement.

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1           ~~(5)~~ C. Questions as to who constitute dependents  
2 and the extent of their dependency shall be determined as of  
3 the date of the disablement, and their right to any death  
4 benefits shall cease upon the happening of any one of the  
5 following contingencies:

6                   ~~(a)~~ (1) upon the marriage or entry into a  
7 domestic partnership of the widow, ~~or~~ widower or domestic  
8 partner of the deceased;

9                   ~~(b)~~ (2) upon a child, grandchild, brother or  
10 sister reaching the age of eighteen years, unless at such time  
11 ~~said~~ the child, grandchild, brother or sister is physically  
12 or mentally incapacitated from earnings, or upon a dependent  
13 child, grandchild, brother or sister becoming self-supporting  
14 prior to attaining said age, or, if a child, grandchild,  
15 brother or sister over eighteen who is enrolled as a full-time  
16 student in any accredited educational institution ceases to be  
17 so enrolled or reaches the age of twenty-three. A child,  
18 grandchild, brother or sister who originally qualified as a  
19 dependent by virtue of being less than eighteen years of age  
20 may, upon reaching age eighteen, continue to qualify if  
21 physically or mentally incapable of self-support and actually  
22 dependent or enrolled in an educational institution; or

23                   ~~(c)~~ (3) upon the death of any dependent.

24                   ~~B.~~ D. As used in this section, the term "child"  
25 includes step-children, adopted children, posthumous children,

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1 wholly dependent grandchildren and acknowledged illegitimate  
2 children but does not include married children or children in  
3 domestic partnerships unless dependent. The words "adopted"  
4 and "adoption" as used in the New Mexico Occupational Disease  
5 Disablement Law shall include cases where persons are treated  
6 as adopted as well as those of legal adoption."

7 Section 281. Section 55-9-102 NMSA 1978 (being Laws 2001,  
8 Chapter 139, Section 2, as amended) is amended to read:

9 "55-9-102. DEFINITIONS AND INDEX OF DEFINITIONS.--

10 (a) In Chapter 55, Article 9 NMSA 1978:

11 (1) "accession" means goods that are physically  
12 united with other goods in such a manner that the identity of  
13 the original goods is not lost;

14 (2) "account", except as used in "account for":

15 (A) means a right to payment of a monetary  
16 obligation, whether or not earned by performance:

17 (i) for property that has been or is to  
18 be sold, leased, licensed, assigned or otherwise disposed of;

19 (ii) for services rendered or to be  
20 rendered;

21 (iii) for a policy of insurance issued  
22 or to be issued;

23 (iv) for a secondary obligation  
24 incurred or to be incurred;

25 (v) for energy provided or to be

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1 provided;

2 (vi) for the use or hire of a vessel  
3 under a charter or other contract;

4 (vii) arising out of the use of a  
5 credit or charge card or information contained on or for use  
6 with the card; or

7 (viii) as winnings in a lottery or  
8 other game of chance operated or sponsored by a state,  
9 governmental unit of a state or person licensed or authorized  
10 to operate the game by a state or governmental unit of a  
11 state; and

12 (B) includes health-care-insurance  
13 receivables; but

14 (C) does not include:

15 (i) rights to payment evidenced by  
16 chattel paper or an instrument;

17 (ii) commercial tort claims;

18 (iii) deposit accounts;

19 (iv) investment property;

20 (v) letter-of-credit rights or letters  
21 of credit; or

22 (vi) rights to payment for money or  
23 funds advanced or sold, other than rights arising out of the  
24 use of a credit or charge card or information contained on or  
25 for use with the card;

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1                   (3) "account debtor" means a person obligated on  
2 an account, chattel paper or general intangible. The term  
3 does not include persons obligated to pay a negotiable  
4 instrument, even if the instrument constitutes part of chattel  
5 paper;

6                   (4) "accounting", except as used in "accounting  
7 for", means a record:

8                               (A) authenticated by a secured party;

9                               (B) indicating the aggregate unpaid secured  
10 obligations as of a date not more than thirty-five days  
11 earlier or thirty-five days later than the date of the record;  
12 and

13                               (C) identifying the components of the  
14 obligations in reasonable detail;

15                   (5) "agricultural lien" means an interest in  
16 farm products:

17                               (A) that secures payment or performance of  
18 an obligation for:

19                                       (i) goods or services furnished in  
20 connection with a debtor's farming operation; or

21                                       (ii) rent on real property leased by a  
22 debtor in connection with its farming operation;

23                               (B) that is created by statute in favor of  
24 a person that:

25                                       (i) in the ordinary course of its

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1 business furnished goods or services to a debtor in connection  
2 with a debtor's farming operation; or

3 (ii) leased real property to a debtor  
4 in connection with the debtor's farming operation; and

5 (C) whose effectiveness does not depend on  
6 the person's possession of the personal property;

7 (6) "as-extracted collateral" means:

8 (A) oil, gas or other minerals that are  
9 subject to a security interest that:

10 (i) is created by a debtor having an  
11 interest in the minerals before extraction; and

12 (ii) attaches to the minerals as  
13 extracted; or

14 (B) accounts arising out of the sale at the  
15 wellhead or minehead of oil, gas or other minerals in which  
16 the debtor had an interest before extraction;

17 (7) "authenticate" means to:

18 (A) sign; or

19 (B) execute or otherwise adopt a symbol, or  
20 encrypt or similarly process a record in whole or in part,  
21 with the present intent of the authenticating person to  
22 identify the person and adopt or accept a record;

23 (8) "bank" means an organization that is engaged  
24 in the business of banking and includes savings banks, savings  
25 and loan associations, credit unions and trust companies;

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1                   (9) "cash proceeds" means proceeds that are  
2 money, checks, deposit accounts or the like;

3                   (10) "certificate of title" means a certificate  
4 of title with respect to which a statute provides for the  
5 security interest in question to be indicated on the  
6 certificate as a condition or result of the security  
7 interest's obtaining priority over the rights of a lien  
8 creditor with respect to the collateral;

9                   (11) "chattel paper" means a record or records  
10 that evidence both a monetary obligation and a security  
11 interest in specific goods, a security interest in specific  
12 goods and software used in the goods, a security interest in  
13 specific goods and license of software used in the goods, a  
14 lease of specific goods or a lease of specific goods and  
15 license of software used in the goods. In this paragraph,  
16 "monetary obligation" means a monetary obligation secured by  
17 the goods or owed under a lease of the goods and includes a  
18 monetary obligation with respect to software used in the  
19 goods. The term does not include:

20                               (A) charters or other contracts involving  
21 the use or hire of a vessel; or

22                               (B) records that evidence a right to  
23 payment arising out of the use of a credit or charge card or  
24 information contained on or for use with the card. If a  
25 transaction is evidenced by records that include an instrument

.179346.5GR

1 or series of instruments, the group of records taken together  
2 constitutes chattel paper;

3 (12) "collateral" means the property subject to  
4 a security interest or agricultural lien and includes:

5 (A) proceeds to which a security interest  
6 attaches;

7 (B) accounts, chattel paper, payment  
8 intangibles and promissory notes that have been sold; and

9 (C) goods that are the subject of a  
10 consignment;

11 (13) "commercial tort claim" means a claim  
12 arising in tort with respect to which:

13 (A) the claimant is an organization; or

14 (B) the claimant is an individual and the  
15 claim:

16 (i) arose in the course of the  
17 claimant's business or profession; and

18 (ii) does not include damages arising  
19 out of personal injury to or the death of an individual;

20 (14) "commodity account" means an account  
21 maintained by a commodity intermediary in which a commodity  
22 contract is carried for a commodity customer;

23 (15) "commodity contract" means a commodity  
24 futures contract, an option on a commodity futures contract, a  
25 commodity option or another contract if the contract or option

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1 is:

2 (A) traded on or subject to the rules of a  
3 board of trade that has been designated as a contract market  
4 for such a contract pursuant to federal commodities laws; or

5 (B) traded on a foreign commodity board of  
6 trade, exchange or market, and is carried on the books of a  
7 commodity intermediary for a commodity customer;

8 (16) "commodity customer" means a person for  
9 which a commodity intermediary carries a commodity contract on  
10 its books;

11 (17) "commodity intermediary" means a person  
12 that:

13 (A) is registered as a futures commission  
14 merchant under federal commodities law; or

15 (B) in the ordinary course of its business  
16 provides clearance or settlement services for a board of trade  
17 that has been designated as a contract market pursuant to  
18 federal commodities law;

19 (18) "communicate" means:

20 (A) to send a written or other tangible  
21 record;

22 (B) to transmit a record by any means  
23 agreed upon by the persons sending and receiving the record;  
24 or

25 (C) in the case of transmission of a record

.179346.5GR

1 to or by a filing office, to transmit a record by any means  
2 prescribed by filing-office rule;

3 (19) "consignee" means a merchant to which goods  
4 are delivered in a consignment;

5 (20) "consignment" means a transaction,  
6 regardless of its form, in which a person delivers goods to a  
7 merchant for the purpose of sale and:

8 (A) the merchant:

9 (i) deals in goods of that kind under a  
10 name other than the name of the person making delivery;

11 (ii) is not an auctioneer; and

12 (iii) is not generally known by its  
13 creditors to be substantially engaged in selling the goods of  
14 others;

15 (B) with respect to each delivery, the  
16 aggregate value of the goods is one thousand dollars (\$1,000)  
17 or more at the time of delivery;

18 (C) the goods are not consumer goods  
19 immediately before delivery; and

20 (D) the transaction does not create a  
21 security interest that secures an obligation;

22 (21) "consignor" means a person that delivers  
23 goods to a consignee in a consignment;

24 (22) "consumer debtor" means a debtor in a  
25 consumer transaction;

1                   (23) "consumer goods" means goods that are used  
2 or bought for use primarily for personal, family or household  
3 purposes;

4                   (24) "consumer-goods transaction" means a  
5 consumer transaction in which:

6                               (A) an individual incurs an obligation  
7 primarily for personal, family or household purposes; and

8                               (B) a security interest in consumer goods  
9 secures the obligation;

10                   (25) "consumer obligor" means an obligor who is  
11 an individual and who incurred the obligation as part of a  
12 transaction entered into primarily for personal, family or  
13 household purposes;

14                   (26) "consumer transaction" means a transaction  
15 in which:

16                               (A) an individual incurs an obligation  
17 primarily for personal, family or household purposes;

18                               (B) a security interest secures the  
19 obligation; and

20                               (C) the collateral is held or acquired  
21 primarily for personal, family or household purposes. The  
22 term includes consumer-goods transactions;

23                   (27) "continuation statement" means an amendment  
24 of a financing statement that:

25                               (A) identifies, by its file number, the  
  
.179346.5GR

1 initial financing statement to which it relates; and

2 (B) indicates that it is a continuation  
3 statement for, or that it is filed to continue the  
4 effectiveness of, the identified financing statement;

5 (28) "debtor" means:

6 (A) a person having an interest, other than  
7 a security interest or other lien, in the collateral, whether  
8 or not the person is an obligor;

9 (B) a seller of accounts, chattel paper,  
10 payment intangibles or promissory notes; or

11 (C) a consignee;

12 (29) "deposit account" means a demand, time,  
13 savings, passbook or similar account maintained with a bank.  
14 The term does not include investment property or accounts  
15 evidenced by an instrument;

16 (30) "document" means a document of title or a  
17 receipt of the type described in Subsection (b) of Section  
18 55-7-201 NMSA 1978;

19 (31) "electronic chattel paper" means chattel  
20 paper evidenced by a record or records consisting of  
21 information stored in an electronic medium;

22 (32) "encumbrance" means a right, other than an  
23 ownership interest, in real property. The term includes  
24 mortgages and other liens on real property;

25 (33) "equipment" means goods other than

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1 inventory, farm products or consumer goods;

2 (34) "farm products" means goods, other than  
3 standing timber, with respect to which the debtor is engaged  
4 in a farming operation and that are:

5 (A) crops grown, growing or to be grown,  
6 including:

7 (i) crops produced on trees, vines and  
8 bushes; and

9 (ii) aquatic goods produced in  
10 aquacultural operations;

11 (B) livestock, born or unborn, including  
12 aquatic goods produced in aquacultural operations;

13 (C) supplies used or produced in a farming  
14 operation; or

15 (D) products of crops or livestock in their  
16 unmanufactured states;

17 (35) "farming operation" means raising,  
18 cultivating, propagating, fattening, grazing or any other  
19 farming, livestock or aquacultural operation;

20 (36) "file number" means the number assigned to  
21 an initial financing statement pursuant to Subsection (a) of  
22 Section 55-9-519 NMSA 1978;

23 (37) "filing office" means an office designated  
24 in Section 55-9-501 NMSA 1978 as the place to file a financing  
25 statement;

.179346.5GR

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1                   (38) "filing-office rule" means a rule adopted  
2 pursuant to Section 55-9-526 NMSA 1978;

3                   (39) "financing statement" means a record or  
4 records composed of an initial financing statement and any  
5 filed record relating to the initial financing statement;

6                   (40) "fixture filing" means the filing of a  
7 financing statement covering goods that are or are to become  
8 fixtures and satisfying Subsections (a) and (b) of Section  
9 55-9-502 NMSA 1978. The term includes the filing of a  
10 financing statement covering goods of a transmitting utility  
11 that are or are to become fixtures;

12                   (41) "fixtures" means goods that have become so  
13 related to particular real property that an interest in them  
14 arises under real property law;

15                   (42) "general intangible" means any personal  
16 property, including things in action, other than accounts,  
17 chattel paper, commercial tort claims, deposit accounts,  
18 documents, goods, instruments, investment property, letter-of-  
19 credit rights, letters of credit, money and oil, gas or other  
20 minerals before extraction. The term includes payment  
21 intangibles and software;

22                   (43) [Reserved];

23                   (44) "goods" means all things that are movable  
24 when a security interest attaches and:

25                   (A) includes:

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- 1 (i) fixtures;
- 2 (ii) standing timber that is to be cut  
3 and removed under a conveyance or contract for sale;
- 4 (iii) the unborn young of animals;
- 5 (iv) crops grown, growing or to be  
6 grown, even if the crops are produced on trees, vines or  
7 bushes;
- 8 (v) manufactured homes; and
- 9 (vi) a computer program embedded in  
10 goods and any supporting information provided in connection  
11 with a transaction relating to the program if the program is  
12 associated with the goods in such a manner that it customarily  
13 is considered part of the goods, or by becoming the owner of  
14 the goods, a person acquires a right to use the program in  
15 connection with the goods; but
- 16 (B) does not include:
- 17 (i) a computer program embedded in  
18 goods that consist solely of the medium in which the program  
19 is embedded; or
- 20 (ii) accounts, chattel paper,  
21 commercial tort claims, deposit accounts, documents, general  
22 intangibles, instruments, investment property, letter-of-  
23 credit rights, letters of credit, money or oil, gas or other  
24 minerals before extraction;
- 25 (45) "governmental unit" means a subdivision,

.179346.5GR

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1 agency, department, county, parish, municipality or other unit  
2 of the government of the United States, a state or a foreign  
3 country. The term includes an organization having a separate  
4 corporate existence if the organization is eligible to issue  
5 debt on which interest is exempt from income taxation under  
6 the laws of the United States;

7 (46) "health-care-insurance receivable" means an  
8 interest in or claim under a policy of insurance that is a  
9 right to payment of a monetary obligation for health care  
10 goods or services provided or to be provided;

11 (47) "instrument" means a negotiable instrument  
12 or any other writing that evidences a right to the payment of  
13 a monetary obligation, is not itself a security agreement or  
14 lease and is of a type that in ordinary course of business is  
15 transferred by delivery with any necessary indorsement or  
16 assignment. The term does not include:

17 (A) investment property;

18 (B) letters of credit; or

19 (C) writings that evidence a right to  
20 payment arising out of the use of a credit or charge card or  
21 information contained on or for use with the card;

22 (48) "inventory" means goods, other than farm  
23 products, that:

24 (A) are leased by a person as lessor;

25 (B) are held by a person for sale or lease

.179346.5GR

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1 or to be furnished under a contract of service;

2 (C) are furnished by a person under a  
3 contract of service; or

4 (D) consist of raw materials, work in  
5 process or materials used or consumed in a business;

6 (49) "investment property" means a security,  
7 whether certificated or uncertificated, security entitlement,  
8 securities account, commodity contract or commodity account;

9 (50) "jurisdiction of organization", with  
10 respect to a registered organization, means the jurisdiction  
11 under whose law the organization is organized;

12 (51) "letter-of-credit right" means a right to  
13 payment or performance under a letter of credit, whether or  
14 not the beneficiary has demanded or is at the time entitled to  
15 demand payment or performance. The term does not include the  
16 right of a beneficiary to demand payment or performance under  
17 a letter of credit;

18 (52) "lien creditor" means:

19 (A) a creditor that has acquired a lien on  
20 the property involved by attachment, levy or the like;

21 (B) an assignee for benefit of creditors  
22 from the time of assignment;

23 (C) a trustee in bankruptcy from the date  
24 of the filing of the petition; or

25 (D) a receiver in equity from the time of

.179346.5GR

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1 appointment;

2 (53) "manufactured home" means a structure,  
3 transportable in one or more sections, which, in the traveling  
4 mode, is eight body feet or more in width or forty body feet  
5 or more in length, or, when erected on site, is three hundred  
6 twenty or more square feet, and which is built on a permanent  
7 chassis and designed to be used as a dwelling with or without  
8 a permanent foundation when connected to the required  
9 utilities, and includes the plumbing, heating, air-  
10 conditioning and electrical systems contained therein. The  
11 term includes any structure that meets all of the requirements  
12 of this paragraph except the size requirements and with  
13 respect to which the manufacturer voluntarily files a  
14 certification required by the United States secretary of  
15 housing and urban development and complies with the standards  
16 established under 42 USCA;

17 (54) "manufactured-home transaction" means a  
18 secured transaction:

19 (A) that creates a purchase-money security  
20 interest in a manufactured home, other than a manufactured  
21 home held as inventory; or

22 (B) in which a manufactured home, other  
23 than a manufactured home held as inventory, is the primary  
24 collateral;

25 (55) "mortgage" means a consensual interest in

.179346.5GR

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1 real property, including fixtures, that secures payment or  
2 performance of an obligation;

3 (56) "new debtor" means a person that becomes  
4 bound as debtor under Subsection (d) of Section 55-9-203 NMSA  
5 1978 by a security agreement previously entered into by  
6 another person;

7 (57) "new value" means:

8 (A) money;

9 (B) money's worth in property, services or  
10 new credit; or

11 (C) release by a transferee of an interest  
12 in property previously transferred to the transferee. The  
13 term does not include an obligation substituted for another  
14 obligation;

15 (58) "noncash proceeds" means proceeds other  
16 than cash proceeds;

17 (59) "obligor" means a person that, with respect  
18 to an obligation secured by a security interest in or an  
19 agricultural lien on the collateral:

20 (A) owes payment or other performance of  
21 the obligation;

22 (B) has provided property other than the  
23 collateral to secure payment or other performance of the  
24 obligation; or

25 (C) is otherwise accountable in whole or in

.179346.5GR

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1 part for payment or other performance of the obligation. The  
2 term does not include issuers or nominated persons under a  
3 letter of credit;

4 (60) "original debtor", except as used in  
5 Subsection (c) of Section 55-9-310 NMSA 1978, means a person  
6 that, as debtor, entered into a security agreement to which a  
7 new debtor has become bound under Subsection (d) of Section  
8 55-9-203 NMSA 1978;

9 (61) "payment intangible" means a general  
10 intangible under which the account debtor's principal  
11 obligation is a monetary obligation;

12 (62) "person related to", with respect to an  
13 individual, means:

14 (A) the spouse or domestic partner of the  
15 individual;

16 (B) a brother, brother-in-law, sister or  
17 sister-in-law of the individual;

18 (C) an ancestor or lineal descendant of the  
19 individual or the individual's spouse or domestic partner; or

20 (D) any other relative, by blood, [~~or~~]  
21 marriage or domestic partnership, of the individual or the  
22 individual's spouse or domestic partner who shares the same  
23 home with the individual;

24 (63) "person related to", with respect to an  
25 organization, means:

.179346.5GR

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1 (A) a person directly or indirectly  
2 controlling, controlled by or under common control with the  
3 organization;

4 (B) an officer or director of, or a person  
5 performing similar functions with respect to, the  
6 organization;

7 (C) an officer or director of, or a person  
8 performing similar functions with respect to, a person  
9 described in Subparagraph (A) of this paragraph;

10 (D) the spouse or domestic partner of an  
11 individual described in Subparagraph (A), (B) or (C) of this  
12 paragraph; or

13 (E) an individual who is related by blood,  
14 [~~or~~] marriage or domestic partnership to an individual  
15 described in Subparagraph (A), (B), (C) or (D) of this  
16 paragraph and shares the same home with the individual;

17 (64) "proceeds", except as used in Subsection  
18 (b) of Section 55-9-609 NMSA 1978, means:

19 (A) whatever is acquired upon the sale,  
20 lease, license, exchange or other disposition of collateral;

21 (B) whatever is collected on, or  
22 distributed on account of, collateral;

23 (C) rights arising out of collateral;

24 (D) to the extent of the value of  
25 collateral, claims arising out of the loss, nonconformity or

.179346.5GR

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1 interference with the use of, defects or infringement of  
2 rights in, or damage to, the collateral; or

3 (E) to the extent of the value of  
4 collateral and to the extent payable to the debtor or the  
5 secured party, insurance payable by reason of the loss or  
6 nonconformity of, defects or infringement of rights in, or  
7 damage to, the collateral;

8 (65) "promissory note" means an instrument that  
9 evidences a promise to pay a monetary obligation, does not  
10 evidence an order to pay and does not contain an  
11 acknowledgment by a bank that the bank has received for  
12 deposit a sum of money or funds;

13 (66) "proposal" means a record authenticated by  
14 a secured party, which record includes the terms on which the  
15 secured party is willing to accept collateral in full or  
16 partial satisfaction of the obligation it secures pursuant to  
17 Sections 55-9-620 through 55-9-622 NMSA 1978;

18 (67) "pursuant to commitment", with respect to  
19 an advance made or other value given by a secured party, means  
20 pursuant to the secured party's obligation, whether or not a  
21 subsequent event of default or other event not within the  
22 secured party's control has relieved or may relieve the  
23 secured party from its obligation;

24 (68) "record", except as used in "for record",  
25 "of record", "record or legal title" and "record owner", means

.179346.5GR

1 information that is inscribed on a tangible medium or that is  
2 stored in an electronic or other medium and is retrievable in  
3 perceivable form;

4 (69) "registered organization" means an  
5 organization organized solely under the law of a single state  
6 or the United States and as to which the state or the United  
7 States must maintain a public record showing the organization  
8 to have been organized;

9 (70) "secondary obligor" means an obligor to the  
10 extent that:

11 (A) the obligor's obligation is secondary;  
12 or

13 (B) the obligor has a right of recourse  
14 with respect to an obligation secured by collateral against  
15 the debtor, another obligor or property of either;

16 (71) "secured party" means:

17 (A) a person in whose favor a security  
18 interest is created or provided for under a security  
19 agreement, whether or not any obligation to be secured is  
20 outstanding;

21 (B) a person that holds an agricultural  
22 lien;

23 (C) a consignor;

24 (D) a person to which accounts, chattel  
25 paper, payment intangibles or promissory notes have been sold;

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1 (E) a trustee, indenture trustee, agent,  
2 collateral agent or other representative in whose favor a  
3 security interest or agricultural lien is created or provided  
4 for; or

5 (F) a person that holds a security interest  
6 arising under Section 55-2-401, Section 55-2-505, Subsection  
7 (3) of Section 55-2-711, Subsection (5) of Section 55-2A-508,  
8 Section 55-4-210 or Section 55-5-118 NMSA 1978;

9 (72) "security agreement" means an agreement  
10 that creates or provides for a security interest;

11 (73) "send", in connection with a record or  
12 notification, means:

13 (A) to deposit in the mail, deliver for  
14 transmission or transmit by any other usual means of  
15 communication, with postage or cost of transmission provided  
16 for, addressed to any address reasonable under the  
17 circumstances; or

18 (B) to cause the record or notification to  
19 be received within the time that it would have been received  
20 if properly sent under Subparagraph (A) of this paragraph;

21 (74) "software" means a computer program and any  
22 supporting information provided in connection with a  
23 transaction relating to the program. The term does not  
24 include a computer program that is included in the definition  
25 of goods;

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1                   (75) "state" means a state of the United States,  
2 the District of Columbia, Puerto Rico, the United States  
3 Virgin Islands or any territory or insular possession subject  
4 to the jurisdiction of the United States;

5                   (76) "supporting obligation" means a letter-of-  
6 credit right or secondary obligation that supports the payment  
7 or performance of an account, chattel paper, a document, a  
8 general intangible, an instrument or investment property;

9                   (77) "tangible chattel paper" means chattel  
10 paper evidenced by a record or records consisting of  
11 information that is inscribed on a tangible medium;

12                   (78) "termination statement" means an amendment  
13 of a financing statement that:

14                               (A) identifies, by its file number, the  
15 initial financing statement to which it relates; and

16                               (B) indicates either that it is a  
17 termination statement or that the identified financing  
18 statement is no longer effective; and

19                   (79) "transmitting utility" means a person  
20 primarily engaged in the business of:

21                               (A) operating a railroad, subway, street  
22 railway or trolley bus;

23                               (B) transmitting communications  
24 electrically, electromagnetically or by light;

25                               (C) transmitting goods by pipeline or

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1 sewer; or

2 (D) transmitting or producing and  
3 transmitting electricity, steam, gas or water.

4 (b) "Control", as provided in Section 55-7-106 NMSA  
5 1978, and the following definitions in other articles apply to  
6 this article:

7 "applicant" . . . . . Section  
8 55-5-102 NMSA 1978;

9 "beneficiary" . . . . . Section  
10 55-5-102 NMSA 1978;

11 "broker" . . . . . Section  
12 55-8-102 NMSA 1978;

13 "certificated security" . . . . . Section  
14 55-8-102 NMSA 1978;

15 "check" . . . . . Section  
16 55-3-104 NMSA 1978;

17 "clearing corporation" . . . . . Section  
18 55-8-102 NMSA 1978;

19 "contract for sale" . . . . . Section  
20 55-2-106 NMSA 1978;

21 "customer" . . . . . Section  
22 55-4-104 NMSA 1978;

23 "entitlement holder" . . . . . Section  
24 55-8-102 NMSA 1978;

25 "financial asset" . . . . . Section

.179346.5GR

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1 55-8-102 NMSA 1978;  
2 "holder in due course" . . . . . Section  
3 55-3-302 NMSA 1978;  
4 "issuer" (with respect to a letter of credit or  
5 letter-of-credit right) . . . . . Section  
6 55-5-102 NMSA 1978;  
7 "issuer" (with respect to a security) . . . Section  
8 55-8-201 NMSA 1978;  
9 "issuer" (with respect to documents  
10 of title) . . . . . Section  
11 55-7-102 NMSA 1978;  
12 "lease" . . . . . Section  
13 55-2A-103 NMSA 1978;  
14 "lease agreement" . . . . . Section  
15 55-2A-103 NMSA 1978;  
16 "lease contract" . . . . . Section  
17 55-2A-103 NMSA 1978;  
18 "leasehold interest" . . . . . Section  
19 55-2A-103 NMSA 1978;  
20 "lessee" . . . . . Section  
21 55-2A-103 NMSA 1978;  
22 "lessee in ordinary course of business" . . Section  
23 55-2A-103 NMSA 1978;  
24 "lessor" . . . . . Section  
25 55-2A-103 NMSA 1978;

.179346.5GR

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1	"lessor's residual interest" . . . . .	Section
2	55-2A-103 NMSA 1978;	
3	"letter of credit" . . . . .	Section
4	55-5-102 NMSA 1978;	
5	"merchant" . . . . .	Section
6	55-2-104 NMSA 1978;	
7	"negotiable instrument" . . . . .	Section
8	55-3-104 NMSA 1978;	
9	"nominated person" . . . . .	Section
10	55-5-102 NMSA 1978;	
11	"note" . . . . .	Section
12	55-3-104 NMSA 1978;	
13	"proceeds of a letter of credit" . . . . .	Section
14	55-5-114 NMSA 1978;	
15	"prove" . . . . .	Section
16	55-3-103 NMSA 1978;	
17	"sale" . . . . .	Section
18	55-2-106 NMSA 1978;	
19	"securities account" . . . . .	Section
20	55-8-501 NMSA 1978;	
21	"securities intermediary" . . . . .	Section
22	55-8-102 NMSA 1978;	
23	"security" . . . . .	Section
24	55-8-102 NMSA 1978;	
25	"security certificate" . . . . .	Section

.179346.5GR

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1 55-8-102 NMSA 1978;  
2 "security entitlement" . . . . . Section  
3 55-8-102 NMSA 1978; and  
4 "uncertificated security" . . . . . Section  
5 55-8-102 NMSA 1978.

6 (c) Chapter 12, Article 2A and Chapter 55, Article 1  
7 NMSA 1978 contain general definitions and principles of  
8 construction and interpretation applicable throughout Chapter  
9 55, Article 9 NMSA 1978."

10 Section 282. Section 56-10-15 NMSA 1978 (being Laws 1989,  
11 Chapter 382, Section 2) is amended to read:

12 "56-10-15. DEFINITIONS.--As used in the "Uniform  
13 Fraudulent Transfer Act":

14 A. "affiliate" means:

15 (1) a person who directly or indirectly owns,  
16 controls or holds, with power to vote, twenty percent or more  
17 of the outstanding voting securities of the debtor, other than  
18 a person who holds the securities:

19 (a) as a fiduciary or agent without sole  
20 discretionary power to vote the securities; or

21 (b) solely to secure a debt, if the person  
22 has not exercised the power to vote;

23 (2) a corporation, twenty percent or more of  
24 whose outstanding voting securities are directly or indirectly  
25 owned, controlled or held with power to vote, by the debtor or

.179346.5GR

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1 a person who directly or indirectly owns, controls or holds,  
2 with power to vote, twenty percent or more of the outstanding  
3 voting securities of the debtor, other than a person who holds  
4 the securities:

5 (a) as a fiduciary or agent without sole  
6 power to vote the securities; or

7 (b) solely to secure a debt, if the person  
8 has not in fact exercised the power to vote;

9 (3) a person whose business is operated by the  
10 debtor under a lease or other agreement, or a person  
11 substantially all of whose assets are controlled by the  
12 debtor; or

13 (4) a person who operates the debtor's  
14 business under a lease or other agreement or controls  
15 substantially all of the debtor's assets;

16 B. "asset" means property of a debtor, but the term  
17 does not include:

18 (1) property to the extent it is encumbered by a  
19 valid lien;

20 (2) property to the extent it is generally  
21 exempt under nonbankruptcy law; or

22 (3) an interest in property held in tenancy by  
23 the [~~entireties~~] entirety to the extent it is not subject to  
24 process by a creditor holding a claim against only one tenant;

25 C. "claim" means a right to payment, whether or not

1 the right is reduced to judgment, liquidated, unliquidated,  
2 fixed, contingent, matured, unmatured, disputed, undisputed,  
3 legal, equitable, secured or unsecured;

4 D. "creditor" means a person who has a claim;

5 E. "debt" means liability on a claim;

6 F. "debtor" means a person who is liable on a claim;

7 G. "insider" includes:

8 (1) if the debtor is an individual:

9 (a) a relative of the debtor or of a  
10 general partner of the debtor;

11 (b) a partnership in which the debtor is a  
12 general partner;

13 (c) a general partner in a partnership  
14 described in Subparagraph (b) of this paragraph; or

15 (d) a corporation of which the debtor is a  
16 director, officer or person in control;

17 (2) if the debtor is a corporation:

18 (a) a director of the debtor;

19 (b) an officer of the debtor;

20 (c) a person in control of the debtor;

21 (d) a partnership in which the debtor is a  
22 general partner;

23 (e) a general partner in a partnership  
24 described in Subparagraph (d) of this paragraph; or

25 (f) a relative of a general partner,

1 director, officer or person in control of the debtor;

2 (3) if the debtor is a partnership:

3 (a) a general partner in the debtor;

4 (b) a relative of a general partner in, a  
5 general partner of, or a person in control of the debtor;

6 (c) another partnership in which the debtor  
7 is a general partner;

8 (d) a general partner in a partnership  
9 described in Subparagraph (c) of this paragraph; or

10 (e) a person in control of the debtor;

11 (4) an affiliate or an insider of an affiliate  
12 as if the affiliate were the debtor; and

13 (5) a managing agent of the debtor;

14 H. "lien" means a charge against or an interest in  
15 property to secure payment of a debt or performance of an  
16 obligation and includes a security interest created by  
17 agreement, a judicial lien obtained by legal or equitable  
18 process or proceedings, a common-law lien or a statutory lien;

19 I. "person" means an individual, partnership,  
20 corporation, association, organization, government or  
21 governmental subdivision or agency, business trust, estate,  
22 trust or any other legal or commercial entity;

23 J. "property" means anything that may be the subject  
24 of ownership;

25 K. "relative" means an individual related by

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1 consanguinity within the third degree as determined by the  
2 common law, a spouse, domestic partner or an individual  
3 related to a spouse or domestic partner within the third  
4 degree as so determined, and includes an individual in an  
5 adoptive relationship within the third degree;

6 L. "transfer" means every mode, direct or indirect,  
7 absolute or conditional, voluntary or involuntary, of  
8 disposing of or parting with an asset or an interest in an  
9 asset and includes payment of money, release, lease and  
10 creation of a lien or other encumbrance; and

11 M. "valid lien" means a lien that is effective  
12 against the holder of a judicial lien subsequently obtained by  
13 legal or equitable process or proceedings."

14 Section 283. Section 57-16-3 NMSA 1978 (being Laws 1973,  
15 Chapter 6, Section 3, as amended) is amended to read:

16 "57-16-3. DEFINITIONS.--As used in Chapter 57, Article 16  
17 NMSA 1978:

18 A. "motor vehicle" means every self-propelled  
19 vehicle, having two or more wheels, by which a person or  
20 property may be transported on a public highway and includes  
21 recreational vehicles;

22 B. "motor vehicle dealer" or "dealer" means any  
23 person who sells or solicits or advertises the sale of new or  
24 used motor vehicles. "Motor vehicle dealer" or "dealer" shall  
25 not include:

.179346.5GR

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1           (1) receivers, trustees, administrators,  
2 executors, guardians or other persons appointed by or acting  
3 under judgment, decree or order of any court;

4           (2) public officers while performing their  
5 duties as such officers;

6           (3) persons making casual sales of their own  
7 vehicles duly registered and licensed to them by the state; or

8           (4) finance companies, banks and other lending  
9 institutions covering sales of repossessed vehicles;

10           C. "person" means every natural person, partnership,  
11 corporation, association, trust, estate or any other legal  
12 entity;

13           D. "prospective purchaser" means a person who has a  
14 bona fide written agreement to purchase a franchise;

15           E. "manufacturer" means any person who manufactures  
16 or assembles new motor vehicles either within or outside of  
17 this state;

18           F. "distributor" means any person who distributes or  
19 sells new or used motor vehicles to dealers and who is not a  
20 manufacturer;

21           G. "representative" means any person who is or acts  
22 as an agent, employee or representative of a manufacturer or  
23 distributor and who performs any duties in this state relating  
24 to promoting the distribution or sale of new or used motor  
25 vehicles or contacts dealers in this state on behalf of a

.179346.5GR

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1 manufacturer or distributor;

2 H. "franchise" means an oral or written arrangement  
3 for a definite or indefinite period in which a manufacturer,  
4 distributor or representative grants to a motor vehicle dealer  
5 a license to use a trade name, service mark or related  
6 characteristic and in which there is a community of interest  
7 in the marketing of motor vehicles or services related to  
8 marketing, service or repair of motor vehicles at wholesale,  
9 retail, leasing or otherwise;

10 I. "fraud" includes, in addition to its normal legal  
11 connotation, the following:

12 (1) a misrepresentation in any manner, whether  
13 intentionally false or due to gross negligence, of a material  
14 fact;

15 (2) a promise or representation not made  
16 honestly and in good faith; and

17 (3) an intentional failure to disclose a  
18 material fact;

19 J. "sale" includes:

20 (1) the issuance, transfer, agreement for  
21 transfer, exchange, pledge, hypothecation or mortgage in any  
22 form, whether by transfer in trust or otherwise, of any motor  
23 vehicle or interest therein or of any franchise related  
24 thereto; and

25 (2) any option, subscription or other contract

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1 or solicitation looking to a sale or offer or attempt to sell  
2 in any form, whether spoken or written. A gift or delivery of  
3 any motor vehicle or franchise with respect thereto with, or  
4 as, a bonus on account of the sale of anything shall be deemed  
5 a sale of such motor vehicle or franchise;

6 K. "motorcycle" means any motor vehicle used on or  
7 off a public highway that has an unladen weight of less than  
8 one thousand five hundred pounds;

9 L. "recreational vehicle" means any motor vehicle  
10 with a camping body that either has its own motive power or is  
11 drawn by another vehicle;

12 M. "designated family member" means a spouse,  
13 domestic partner, child, grandchild, parent, brother or sister  
14 of a deceased or incapacitated dealer who is entitled to  
15 inherit the dealer's ownership interest in the dealership  
16 under the terms of a will or the laws of intestate succession  
17 in this state. In the case of an incapacitated dealer, the  
18 term means the person appointed by a court as the legal  
19 representative of the dealer's property. The term also  
20 includes the appointed and qualified personal representative  
21 and the testamentary trustee of a deceased dealer. However,  
22 the term shall be limited to mean only that individual  
23 designated by the motorcycle dealer in a written document  
24 filed with the manufacturer, distributor or representative in  
25 the event that such a document has been filed;

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1           N. "current price" means an amount equal to the  
2 price listed in the manufacturer's or distributor's printed  
3 price list in effect when the franchise is terminated, less  
4 applicable trade and cash discounts;

5           O. "dealer cost" means an amount equal to the sum of  
6 the original invoice price that the dealer paid for inventory  
7 and the cost of the delivery of the inventory from the  
8 manufacturer or distributor to the dealer, less applicable  
9 discounts;

10          P. "inventory" means new or unused motorcycles,  
11 motorcycle attachments and repair parts that are provided by a  
12 manufacturer or distributor to a dealer under a franchise  
13 agreement and that are purchased within thirty-six months of  
14 the termination of the franchise or are listed in the  
15 manufacturer's or distributor's current sales manual or price  
16 list at the time that the franchise is terminated; and

17          Q. "relevant market area" means an area of a size  
18 specified in this subsection around an existing motor vehicle  
19 dealer's place of business. The size of the area shall be the  
20 greater of the area of responsibility specified in the  
21 dealer's franchise or a circle with a center at the dealer's  
22 place of business and a radius of:

23                 (1) seven miles, if the population of the county  
24 in which the dealership is located is two hundred fifty  
25 thousand or more;

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1                   (2) fifteen miles, if the population of the  
2 county in which the dealership is located is less than two  
3 hundred fifty thousand but is thirty-five thousand or more; or

4                   (3) twenty miles in all other cases.

5           If the existing and proposed dealerships are in different  
6 counties, the lesser of the applicable mileage limitations  
7 shall be used. For purposes of this subsection, the  
8 population of any area shall be determined in accordance with  
9 the most recent decennial census or the most recent population  
10 update from the national planning data corporation or other  
11 similar recognized source, whichever is later."

12           Section 284. Section 57-16-9.1 NMSA 1978 (being Laws  
13 1985, Chapter 213, Section 4) is amended to read:

14           "57-16-9.1. SUCCESSION TO MOTORCYCLE DEALERSHIP.--

15           A. A manufacturer, distributor or representative  
16 shall not prevent or refuse to give effect to the succession  
17 to ownership or management control of a motorcycle dealership  
18 upon the death or incapacity of the dealer by the surviving  
19 spouse or surviving domestic partner, heir, legatee or devisee  
20 nor shall the manufacturer, distributor or representative  
21 interfere, prevent or hinder, either directly or indirectly,  
22 the continuance of the business by reason of such succession,  
23 except as otherwise provided in this ~~[act]~~ section.

24           B. Any designated family member of a deceased or  
25 incapacitated dealer may succeed the motorcycle dealer in

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1 ownership or management control under the existing agreement;  
2 provided that the designated family member provides notice to  
3 the manufacturer, distributor or representative, in writing by  
4 registered mail, of the intention to succeed to the dealership  
5 within one hundred [~~and~~] twenty days after the dealer's death  
6 or incapacity and the successor agrees to be bound by all the  
7 terms of the original agreement. The successor [~~must~~] shall  
8 meet the reasonable criteria applied by the manufacturer,  
9 distributor or representative to new dealers.

10 C. The rejection of succession, without good cause,  
11 shall constitute an unfair termination or cancellation,  
12 regardless of the terms or provisions of the franchise or  
13 selling agreement. If the manufacturer, distributor or  
14 representative believes that good cause exists for rejection,  
15 [~~such~~] the manufacturer, distributor or representative shall  
16 provide notice to the successor, in writing by registered  
17 mail, within sixty days of the receipt of the notice of  
18 intention to succeed. In no event shall the contractual term  
19 of any franchise or selling agreement expire, without the  
20 written consent of the successor, prior to the expiration of  
21 at least ninety days following such written notice. During  
22 the ninety-day period, the designated family member or  
23 successor may petition a court to modify [~~such~~] the ninety-day  
24 stay or to extend it pending a final determination of [~~such~~]  
25 the proceedings on the merits. The court shall have authority

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1 to grant preliminary and final injunctive relief.

2 D. A motorcycle dealer may designate any person as  
3 the successor by written instrument filed with the  
4 manufacturer, distributor or representative and [~~such~~] the  
5 written instrument shall be controlling."

6 Section 285. Section 58-1-8 NMSA 1978 (being Laws 1963,  
7 Chapter 305, Section 8, as amended) is amended to read:

8 "58-1-8. PAYMENT FROM ACCOUNT WHEN NO EXECUTOR OR  
9 ADMINISTRATOR HAS QUALIFIED.--

10 A. Where no executor or administrator of a deceased  
11 depositor has qualified and given notice of [~~his~~] the  
12 executor's or administrator's qualifications to the bank, it  
13 may in its discretion and at any time after the death of the  
14 depositor pay out of all accounts maintained with it by [~~him~~]  
15 the executor or administrator in [~~his~~] the executor's or  
16 administrator's individual capacity all sums [~~which~~] that do  
17 not exceed two thousand dollars (\$2,000) in the aggregate:

18 (1) to the surviving spouse or surviving  
19 domestic partner; or

20 (2) if there is no surviving spouse [~~then~~] or  
21 surviving domestic partner, to the surviving next of kin of  
22 the closest degree of lineal consanguinity.

23 B. A bank may, in its discretion and at any time  
24 after sixty days from the death of a depositor whose residence  
25 address according to the books of the bank is outside this

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1 state, pay the balance of [~~his~~] the depositor's accounts, not  
2 exceeding two thousand dollars (\$2,000) in the aggregate, to  
3 an executor or administrator who has qualified in another  
4 state unless the bank has received written notice of the  
5 appointment of an executor or administrator in this state.

6 C. No bank shall be liable for damage, penalty, tax  
7 or claims of creditors of the estate by reason of any payment  
8 or refusal to pay made pursuant to this section."

9 Section 286. Section 58-1-14 NMSA 1978 (being Laws 1963,  
10 Chapter 305, Section 14) is amended to read:

11 "58-1-14. SEARCH PROCEDURE ON DEATH.--

12 A. A lessor shall permit the person named in a court  
13 order for the purpose, or if no order has been served upon the  
14 lessor, the spouse or domestic partner, a parent, an adult  
15 descendant or a person named as an executor in a copy of a  
16 purported will produced by [~~him~~] the person, to open and  
17 examine the contents of a safe deposit box leased by a  
18 decedent, or any documents delivered by a decedent for  
19 safekeeping, in the presence of an officer of the lessor; and  
20 the lessor, if so requested by such person, may deliver upon  
21 execution of receipt therefor:

22 (1) any writing purporting to be a will of the  
23 decedent;

24 (2) any writing purporting to be a deed to a  
25 burial plot or to give burial instructions to the person

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1 making the request for a search; and

2 (3) any document purporting to be an insurance  
3 policy on the life of the decedent to the beneficiary named  
4 therein.

5 B. No other contents shall be removed pursuant to  
6 this section except at the lessor's liability until a special  
7 administrator, an administrator or an executor qualifies and  
8 makes claim to the contents."

9 Section 287. Section 58-5-1 NMSA 1978 (being Laws 1975,  
10 Chapter 330, Section 1, as amended) is amended to read:

11 "58-5-1. BOARD OF DIRECTORS--OATHS.--

12 A. A board member, when initially elected, shall  
13 take an oath that the board member:

14 (1) [~~he~~] will, so far as the duty devolves upon  
15 [~~him~~] the board member, diligently and honestly administer the  
16 affairs of the bank and will not knowingly violate or  
17 willingly permit to be violated any of the provisions of the  
18 Banking Act; and

19 (2) [~~he~~] is the owner, in good faith and in  
20 [~~his~~] the board member's own right or jointly with [~~his~~] the  
21 board member's spouse or domestic partner, of the number of  
22 shares of stock required by law standing in [~~his~~] the board  
23 member's name on the books of the corporation and that the  
24 stock is not hypothecated or in any way pledged as security  
25 for any loan or debt.

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1           B. The oath, subscribed by the board member making  
2 it and certified by the notary public before whom it was  
3 taken, shall be immediately transmitted to the director [~~of~~  
4 ~~the division~~] and shall be filed and preserved in [~~his~~] the  
5 director's office."

6           Section 288. Section 58-10-103 NMSA 1978 (being Laws  
7 1967, Chapter 83, Section 1) is amended to read:

8           "58-10-103. PAYMENT FROM SAVINGS ACCOUNT OF DECEDENT.--

9           A. Where no executor or administrator of a deceased  
10 savings account depositor has qualified and given notice of  
11 [~~his~~] qualification to a savings and loan association, it may  
12 pay out of all savings accounts maintained with it by the  
13 deceased in [~~his~~] an individual capacity all sums [~~which~~] that  
14 do not exceed two thousand dollars (\$2,000) in the aggregate:

15                   (1) to the surviving spouse or surviving  
16 domestic partner; or

17                   (2) to the next of kin;  
18 in the above order of priority in case of conflicting claims.

19           B. A savings and loan association may, at any time  
20 after sixty days from the death of a depositor whose residence  
21 address, according to the books of the association, is outside  
22 this state, pay the balance of [~~his~~] the depositor's accounts  
23 not exceeding two thousand dollars (\$2,000) in the aggregate  
24 to an executor or administrator who has qualified in another  
25 state unless the association has received written notice of

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1 the appointment of an executor or administrator in this state.

2 C. No savings and loan association shall be liable  
3 for damage, penalty, tax or claims of creditors of the estate  
4 by reason of any payment or refusal to pay made pursuant to  
5 this section.

6 D. Payment under this section releases a savings and  
7 loan association from all liability for the amount paid."

8 Section 289. Section 58-10-108 NMSA 1978 (being Laws  
9 1971, Chapter 242, Section 8) is amended to read:

10 "58-10-108. SEARCH PROCEDURE ON DEATH.--

11 A. A lessor shall permit the person named in a court  
12 order for the purpose or, if no order has been served upon the  
13 lessor, the spouse or domestic partner, a parent, an adult  
14 descendant or a person named as an executor in a copy of a  
15 purported will produced by [~~him~~] the person to open and  
16 examine the contents of a safe deposit box leased by a  
17 decedent or any documents delivered by a decedent for  
18 safekeeping, in the presence of an officer of the lessor. The  
19 lessor, if so requested by such person and upon execution of a  
20 receipt, may deliver:

21 (1) to the person making the request, any  
22 writing purporting to be a will of the decedent;

23 (2) to the person making the request, any  
24 writing purporting to be a deed to a burial plot or to give  
25 burial instructions; and

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1 (3) to the beneficiary named in the policy, any  
2 document purporting to be an insurance policy on the  
3 decedent's life.

4 B. No other contents shall be removed pursuant to  
5 this section except at the lessor's liability until a special  
6 administrator, an administrator or an executor qualifies and  
7 makes claim to the contents."

8 Section 290. Section 58-11-2 NMSA 1978 (being Laws 1987,  
9 Chapter 311, Section 2, as amended) is amended to read:

10 "58-11-2. DEFINITIONS.--As used in the Credit Union Act:

11 A. "board member" means a member of the board of  
12 directors of a credit union;

13 B. "capital" means share accounts, membership  
14 shares, reserves and undivided earnings;

15 C. "credit union" means a cooperative, nonprofit,  
16 financial institution organized under or subject to the Credit  
17 Union Act for the purposes of encouraging thrift among its  
18 members, creating a source of credit at fair and reasonable  
19 rates of interest and providing an opportunity for its members  
20 to use and control their own money on a democratic basis in  
21 order to improve their economic and social condition;

22 D. "deposit account" means a balance held by a  
23 credit union and established by a person in accordance with  
24 standards specified by the credit union, including balances  
25 designated as deposits, deposit certificates, checking

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1 accounts or other names. Ownership of a deposit account does  
2 not confer membership or voting rights and does not represent  
3 an interest in the capital of the credit union upon  
4 dissolution or conversion to another type of institution;

5 E. "director" means the director of the financial  
6 institutions division of the regulation and licensing  
7 department;

8 F. "division" means the financial institutions  
9 division of the regulation and licensing department;

10 G. "executive officer" means any person who is  
11 responsible for the management of the credit union as provided  
12 in the bylaws of the credit union and includes the chief  
13 executive officer, the president, a vice president, the credit  
14 union manager, an assistant manager or a person who is  
15 assigned and performs the management duties appropriate to  
16 those offices;

17 H. "governmental unit" means any board, agency,  
18 department, authority, instrumentality or other unit or  
19 organization of the United States, this state or any political  
20 subdivision thereof;

21 I. "immediate family" means those persons related by  
22 blood, [or] marriage or domestic partnership as well as  
23 stepchildren, foster children and adopted children or persons  
24 who live in the same residence and maintain a single economic  
25 unit;

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1           J. "insolvent" means the condition that results when  
2 the cash value of assets is less than the liabilities and  
3 members' share and deposit accounts;

4           K. "insuring organization" means the national credit  
5 union administration or any other insurer that has been  
6 approved by the director to provide aid and financial  
7 assistance to credit unions that are in the process of  
8 liquidation or are incurring financial difficulty, in order  
9 that the share and deposit accounts in credit unions shall be  
10 protected or guaranteed against loss without limit or up to a  
11 specified level for each account;

12           L. "membership share" means a balance held by a  
13 credit union and established by a member in accordance with  
14 standards specified by the credit union. Ownership of a  
15 membership share represents an interest in the capital of the  
16 credit union upon dissolution or conversion to another type of  
17 institution;

18           M. "organization" means any corporation,  
19 association, partnership, society, firm, syndicate, trust or  
20 other legal entity;

21           N. "person" means any individual, organization or  
22 governmental unit;

23           O. "primary share account" means a share account  
24 that a credit union's bylaws designate as conferring voting  
25 rights;

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1 P. "risk assets" means all assets of the credit  
2 union except those exempted by the director by regulation;

3 Q. "service facility" means any building, machine or  
4 device, whether mechanical, electronic or otherwise, that is  
5 operated or maintained, in whole or in part, to provide  
6 services to members; and

7 R. "share account" means a balance held by a credit  
8 union and established by a member in accordance with standards  
9 specified by the credit union, including balances designated  
10 as shares, share certificates, share draft accounts or other  
11 similar names. Ownership of a share account confers  
12 membership and represents an interest in the capital of the  
13 credit union upon dissolution or conversion to another type of  
14 institution."

15 Section 291. Section 58-11-31 NMSA 1978 (being Laws 1987,  
16 Chapter 311, Section 31, as amended) is amended to read:

17 "58-11-31. CONFLICTS OF INTEREST.--No board member,  
18 committee member, executive officer, agent or employee of a  
19 credit union shall in any manner, directly or indirectly,  
20 participate in the deliberation upon or the determination of  
21 any question affecting [~~his~~] that person's pecuniary interest,  
22 the pecuniary interest of [~~his~~] that person's parents,  
23 children or siblings or spouses or domestic partners of any of  
24 those individuals or the pecuniary interest of any  
25 organization, other than the credit union, in which [~~he~~] that

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1 person is directly or indirectly interested."

2 Section 292. Section 58-11A-4 NMSA 1978 (being Laws 1991,  
3 Chapter 51, Section 24) is amended to read:

4 "58-11A-4. SEARCH PROCEDURE UPON DEATH OF LESSEE.--

5 A. A lessor shall permit the person named in a court  
6 order, or if no order has been served upon the lessor, the  
7 spouse or domestic partner, parent, an adult descendant or a  
8 person named as a personal representative in a copy of a  
9 purported will produced by [~~him~~] the personal representative,  
10 to open and examine the contents of a safe deposit box leased  
11 by a decedent or any documents delivered by a decedent for  
12 safekeeping, in the presence of an officer of the lessor. The  
13 lessor, if so requested by that person, may deliver upon  
14 execution of a receipt:

15 (1) any writing purported to be a will of the  
16 decedent;

17 (2) any writing purported to be a deed to a  
18 burial plot or burial instructions to the person making the  
19 request for a search; or

20 (3) any document purported to be an insurance  
21 policy on the life of the decedent to the person named as a  
22 beneficiary in the policy.

23 B. No other contents of a safe deposit box shall be  
24 removed pursuant to this section, except as provided in the  
25 Probate Code."

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1 Section 293. Section 58-15-22 NMSA 1978 (being Laws 1955,  
2 Chapter 128, Section 20) is amended to read:

3 "58-15-22. ASSIGNMENTS--VALIDITY--AMOUNT COLLECTIBLE.--

4 [~~(a) VALIDITY AND PAYMENT OF ASSIGNMENT No~~] A. An  
5 assignment of or order for payment of any salary, wages,  
6 commissions or other compensation for services earned or to be  
7 earned that is given to secure any loan made by any licensee  
8 [~~shall be~~] is not valid unless the amount of [~~such~~] the loan  
9 is paid to the borrower simultaneously with its execution [~~nor~~  
10 ~~shall any such~~]. An assignment or order, or [~~any~~] chattel  
11 mortgage or other lien on household furniture then in the  
12 possession and use of the borrower, [~~be~~] is not valid unless  
13 it is in writing, signed in person by the borrower, or if the  
14 borrower is married or in a domestic partnership, unless it is  
15 signed in person by both husband and wife or both domestic  
16 partners, provided that written assent of a spouse [~~shall~~] or  
17 domestic partner is not [~~be~~] required when the husband and  
18 wife or the domestic partners have been living separate and  
19 apart for a period of at least two months prior to the making  
20 of [~~such~~] the assignment, order, mortgage or lien.

21 [~~(b) AMOUNT COLLECTIBLE UNDER ASSIGNMENT~~] B. A  
22 valid assignment or order for the payment of future salary,  
23 wages, commissions or other compensation for services may be  
24 given as security for a loan made by any licensee [~~or~~  
25 ~~licensees and~~]. Under such an assignment or order, a sum not

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1 to exceed ten [~~(10%)~~] percent of the borrower's salary, wages,  
2 commissions or other compensation for services shall be  
3 collectible from the employer of the borrower by the licensee  
4 at the time of each payment to the borrower of [~~such~~] the  
5 salary, wages, commissions or other compensation for services,  
6 from the time that a copy of [~~such~~] the assignment, verified  
7 by the oath of the licensee or [~~his~~] the licensee's agent,  
8 together with a similarly verified statement of the amount  
9 unpaid upon [~~such~~] the loan and a printed copy of this  
10 section, is served upon the employer. Not more than one such  
11 assignment of wages [~~shall be~~] is valid [~~hereunder~~] or  
12 acceptable by an employer."

13 Section 294. Section 58-18A-3 NMSA 1978 (being Laws 1979,  
14 Chapter 381, Section 3, as amended) is amended to read:

15 "58-18A-3. DEFINITIONS.--As used in the Municipal  
16 Mortgage Finance Act:

17 A. "agreement" means a written agreement between two  
18 or more municipalities designating one of [~~such~~] the  
19 municipalities as the "issuer" on behalf of the other  
20 participating municipality or municipalities, establishing the  
21 issuer's area of operations for purposes of the program and  
22 containing such other terms and conditions as the parties deem  
23 appropriate;

24 B. "area of operation" means, with respect to a  
25 municipality, the area within the boundaries of the planning

.179346.5GR

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1 and platting jurisdiction of the municipality established in  
2 accordance with Section 3-19-5 NMSA 1978. Upon approval by  
3 the governing bodies of two or more municipalities, the area  
4 of operation of a municipality acting as an issuer pursuant to  
5 an agreement may be enlarged to include all or any part of the  
6 areas of operation of the other participating municipalities,  
7 and [~~such~~] the area of operation, as enlarged, shall be deemed  
8 the jurisdiction of the issuer for all purposes relating to  
9 the issuance of bonds under the law of this state;

10 C. "available net proceeds" means that portion of  
11 the proceeds of bonds issued pursuant to the provisions of the  
12 Municipal Mortgage Finance Act available to purchase mortgage  
13 loans after deducting any costs related to issuance of bonds  
14 and amounts apportioned to capitalized interest, reserves or  
15 sinking funds;

16 D. "bonds" means the single family mortgage revenue  
17 bonds and notes authorized under the Municipal Mortgage  
18 Finance Act and includes any other evidence of indebtedness  
19 issued [~~hereunder~~] under that act;

20 E. "municipality" means any incorporated city, town  
21 or village or incorporated county, whether incorporated under  
22 a general act, a special act or a special charter;

23 F. "existing mortgage loan" means a loan to finance  
24 the purchase of a single family residence in the issuer's area  
25 of operation occupied or intended to be occupied by the

.179346.5GR

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1 mortgagor as the mortgagor's primary place of residence and  
2 secured by a mortgage made by a mortgage lender prior to the  
3 date the mortgage lender submitted an application to  
4 participate in the issuer's program;

5 G. "family" means a person or a group of persons  
6 consisting of but not limited to the head of a household, the  
7 spouse or domestic partner, if any, and children or other  
8 dependents, if any, who are allowable as personal exemptions  
9 for federal income tax purposes;

10 H. "FHA" means the federal housing administration;

11 I. "FHLMC" means the federal home loan mortgage  
12 corporation;

13 J. "FNMA" means the federal national mortgage  
14 association;

15 K. "forward commitment mortgage loan" means a loan:

16 (1) secured by a mortgage;

17 (2) made to a person of low or moderate income  
18 to finance the acquisition or rehabilitation of a single  
19 family residence in the issuer's area of operation occupied or  
20 intended to be occupied by the mortgagor as the mortgagor's  
21 primary place of residence;

22 (3) the commitment for which was made by the  
23 mortgage lender after the date the mortgage lender submitted  
24 an application to participate in the issuer's program; and

25 (4) [~~which~~] that shall not include a loan

.179346.5GR

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1 the proceeds of which are used, directly or indirectly, to  
2 refinance an existing permanent mortgage loan [~~or loans~~] for  
3 the present mortgagor, unless the primary purpose of [~~such~~]  
4 the forward commitment mortgage loan is to finance the  
5 rehabilitation of [~~such~~] a single family residence;

6 L. "governing body" means the city council, the city  
7 commission, the board of trustees, the county council or the  
8 town council of an issuer;

9 M. "issuer" means a municipality [~~which~~] that has  
10 undertaken to issue bonds pursuant to the provisions of the  
11 Municipal Mortgage Finance Act;

12 N. "mortgage" means a deed of trust, mortgage deed,  
13 mortgage or other instrument creating a first lien subject to  
14 such title exceptions as may be acceptable to the issuer, on  
15 either:

16 (1) a fee interest in real property located  
17 within the issuer's area of operation; or

18 (2) a leasehold on such a fee interest [~~which~~]  
19 that has a remaining term at the time of computation that  
20 exceeds the maturity of the loan secured thereby;

21 O. "mortgage lender" means any bank, bank or trust  
22 company, trust company, mortgage company, mortgage banker,  
23 national banking association, savings bank, savings and loan  
24 association, building and loan association and any other  
25 financial institution, provided [~~such~~] that the mortgage

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1 lender:

2 (1) is qualified to do business in New Mexico;

3 (2) operates a business location within the  
4 issuer's area of operations [~~which~~] that services loans made  
5 within the area; and

6 (3) is approved as an FNMA or FHLMC seller and  
7 servicer;

8 P. "mortgage loan" means:

9 (1) an existing mortgage loan; or

10 (2) a forward commitment mortgage loan;

11 Q. "mortgage purchase agreement" means a written  
12 agreement between a mortgage lender and an issuer providing  
13 for the purchase by the issuer of mortgage loans originated by  
14 the mortgage lender, provided that a mortgage purchase  
15 agreement shall:

16 (1) not permit one person or family to obtain or  
17 assume more than one forward commitment mortgage loan or  
18 reinvestment mortgage made pursuant to any one issue of bonds;  
19 and

20 (2) prohibit the assumption of any forward  
21 commitment mortgage loan or reinvestment mortgage loan by any  
22 person other than a person of low or moderate income as  
23 determined by the issuer for a period of two years from the  
24 date of [~~such~~] the mortgage;

25 R. "person of low or moderate income" means a person

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1 or family [~~which~~] that lacks the amount of income, as  
2 determined by the issuer undertaking the program, necessary to  
3 [~~the~~] purchase, without financial assistance, [~~of~~] decent,  
4 safe and sanitary housing. [~~Provided that~~] The amount of the  
5 combined annualized income of the mortgagor and the  
6 mortgagor's spouse or domestic partner shall be an amount not  
7 to exceed thirty-four thousand dollars (\$34,000), as  
8 conclusively determined by the mortgage lender in the normal  
9 course of its lending activities, upon mortgagor  
10 certification, provided that such determination is made in  
11 accordance with FNMA or FHLMC credit underwriting standards.  
12 Each issuer shall establish uniform criteria and rules and  
13 regulations to identify the persons of low or moderate income  
14 within its area of operation, and the determination of the  
15 issuer is conclusive;

16 S. "program" means a mortgage purchase program of an  
17 issuer undertaken pursuant to the provisions of the Municipal  
18 Mortgage Finance Act;

19 T. "rehabilitation" or "rehabilitate" means  
20 substantial renovation or reconstruction, including an  
21 increase in living area, of an existing single family  
22 residence necessary to put [~~such~~] the single family residence  
23 in decent, safe and sanitary condition or to cause [~~such~~] the  
24 single family residence to comply with applicable building  
25 codes and [~~shall~~] does not include routine or ordinary

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1 repairs, improvements or maintenance such as interior  
2 decorating, remodeling or exterior painting, except in  
3 conjunction with other substantial renovation or  
4 reconstruction;

5 U. "reinvestment mortgage loan" means a loan:

6 (1) secured by a mortgage;

7 (2) made to a person of low or moderate income  
8 to finance the acquisition or rehabilitation of a single  
9 family residence in the issuer's area of operation occupied or  
10 intended to be occupied by the mortgagor as the mortgagor's  
11 primary place of residence;

12 (3) the commitment for which is made by the  
13 mortgage lender after the date the mortgage lender submits an  
14 application to sell existing mortgage loans to the issuer;

15 (4) made in satisfaction of the obligation of  
16 the mortgage lender under a mortgage purchase agreement; and

17 (5) ~~[which]~~ that shall not include:

18 (a) a forward commitment mortgage loan; or

19 (b) a loan the proceeds of which are used,  
20 directly or indirectly, to refinance an existing permanent  
21 mortgage loan ~~[or loans]~~ for the present mortgagor, unless the  
22 primary purpose of ~~[such]~~ the reinvestment mortgage loan is to  
23 finance the rehabilitation of ~~[such]~~ a single family  
24 residence;

25 V. "servicer" means the mortgage lender or its

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1 designee servicer [~~which~~] that has executed a servicing  
2 agreement with an issuer;

3 W. "servicing agreement" means a written agreement  
4 between an issuer and a servicer providing for the servicing  
5 of mortgage loans secured by the issuer;

6 X. "single family residence" means real estate or an  
7 interest [~~therein~~] in real estate upon which is located or is  
8 to be located or constructed a structure or structures,  
9 including condominiums, to be used as a residence for one to  
10 four families, provided that the owner or owners of [~~such~~] the  
11 structure or structures [~~occupy such~~] occupies the residence,  
12 or at least one unit of a structure containing two to four  
13 family units, as [~~their~~] the owner's principal residence;

14 Y. "state" means the state of New Mexico; and

15 Z. "VA" means the veterans administration."

16 Section 295. Section 58-18B-3 NMSA 1978 (being Laws 1994,  
17 Chapter 146, Section 3, as amended) is amended to read:

18 "58-18B-3. DEFINITIONS.--As used in the Low-Income  
19 Housing Trust Act:

20 A. "appropriate financial institution service  
21 charges and fees" means those service charges and fees that a  
22 financial institution charges its customers on demand deposit  
23 accounts;

24 B. "division" means the financial institutions  
25 division of the regulation and licensing department;

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1           C. "escrow closing agent" means an escrow agent  
2 other than a title company that acts in the normal course of  
3 business as the agent of the seller and buyer of real estate  
4 for the purpose of consummating a sale, including the  
5 performance of the following functions:

6                   (1) preparation of deeds, mortgages, promissory  
7 notes, deeds of trust, real estate contracts, assignments or  
8 other documents incidental to the sale as permitted by law;

9                   (2) calculations and disbursements of prorated  
10 taxes, insurance premiums, utility bills and other charges  
11 incidental to the sale;

12                   (3) preparation of sellers' and buyers' closing  
13 statements;

14                   (4) supervision of signing of documents;

15                   (5) collection and disbursement of down  
16 payments, realtors' commissions, fees and other charges  
17 pursuant to a sales agreement; and

18                   (6) recordation of documents;

19           D. "escrow servicing agent" means a person who in  
20 the normal course of business collects and disburses funds  
21 received from real estate-related financing instruments on  
22 behalf of a lender or borrower;

23           E. "first-time home buyer" means:

24                   (1) an individual or the individual's spouse or  
25 domestic partner who has not owned a home other than a

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1 manufactured home during the three-year period prior to the  
2 purchase of a home; or

3 (2) an individual who is a displaced homemaker  
4 or a single parent;

5 F. "fund" means the land title trust fund created  
6 pursuant to the provisions of the Land Title Trust Fund Act;

7 G. "low-income persons" means a household consisting  
8 of a single individual or a family or unrelated individuals  
9 living together when the household's total annual income does  
10 not exceed eighty percent of the median income for the area,  
11 as determined by the United States department of housing and  
12 urban development and as adjusted for family size, or other  
13 income ceiling determined for the area on the basis of that  
14 department's findings that such variations are necessary  
15 because of prevailing levels of construction costs or fair  
16 market rents or unusually high or low family incomes;

17 H. "person" means an individual or any other legal  
18 entity;

19 I. "property manager" means a person who acts in the  
20 normal course of business as the agent for the owner of real  
21 property for the purpose of property rental, leasing and  
22 management; and

23 J. "trustee" means the New Mexico mortgage finance  
24 authority."

25 Section 296. Section 58-30-7 NMSA 1978 (being Laws 2003,

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1 Chapter 362, Section 7, as amended) is amended to read:

2 "58-30-7. ADMINISTRATION OF INDIVIDUAL DEVELOPMENT  
3 ACCOUNT PROGRAMS.--

4 A. An individual development account may be  
5 established for an eligible individual; provided that the  
6 money deposited in the account is expended for allowable uses  
7 for the account owner or the account owner's spouse, domestic  
8 partner or dependents unless otherwise approved by the program  
9 administrator.

10 B. An individual development account program shall  
11 be approved and monitored by the [~~director~~] secretary of  
12 workforce solutions for compliance with applicable law, the  
13 Individual Development Account Act and rules adopted pursuant  
14 to that act.

15 C. The program administrator shall establish a  
16 reserve account sufficient to meet the matching fund  
17 commitments made to all account owners participating in the  
18 individual development account program and shall report at  
19 least quarterly to each account owner the amount of money  
20 available in the reserve account for use by the program  
21 administrator to match withdrawals for allowable uses.  
22 Notwithstanding any matching commitment otherwise required,  
23 the amount of state funds deposited in a reserve account  
24 during a calendar year to match deposits from any single  
25 account owner shall not exceed the higher of:

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- 1 (1) two thousand dollars (\$2,000); or
- 2 (2) an amount determined by rule of the office.

3 D. The program administrator shall provide financial  
4 education and other necessary training pertinent to allowable  
5 uses by account owners, develop partnerships with financial  
6 institutions, develop matching funds and manage the operations  
7 of an individual development account that is established  
8 within the program.

9 E. An eligible individual may open an individual  
10 development account upon verification by the program  
11 administrator that the individual maintains no other  
12 individual development account.

13 F. More than one eligible individual per household  
14 may hold an individual development account.

15 G. An account owner shall complete a financial  
16 education program prior to the withdrawal of money from the  
17 account owner's individual development account unless written  
18 approval is obtained from the program administrator."

19 Section 297. Section 58-30-8 NMSA 1978 (being Laws 2003,  
20 Chapter 362, Section 8, as amended) is amended to read:

21 "58-30-8. ALLOWABLE USES--WITHDRAWALS FROM INDIVIDUAL  
22 DEVELOPMENT ACCOUNTS--FORFEITURE OF MATCHING FUNDS FROM  
23 RESERVE ACCOUNT--LOSS OF ELIGIBLE INDIVIDUAL STATUS.--

24 A. Allowable uses of the money withdrawn from an  
25 individual development account are limited to the following:

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1 (1) expenses to attend an approved post-  
2 secondary or vocational educational institution, including  
3 payment for tuition, books, supplies and equipment required  
4 for courses;

5 (2) costs to acquire or construct a principal  
6 residence as defined in rules adopted pursuant to the  
7 Individual Development Account Act that is the first principal  
8 residence acquired or constructed by the account owner;

9 (3) costs of major home improvements or repairs  
10 on the home of the account owner;

11 (4) capitalization or costs to start or expand a  
12 business, including capital, plant, equipment, operational and  
13 inventory expenses, attorney and accountant fees and other  
14 costs normally associated with starting or expanding a  
15 business;

16 (5) acquisition of a vehicle necessary to obtain  
17 or maintain employment by an account owner or the spouse or  
18 domestic partner of an account owner; and

19 (6) in the case of a deceased account owner,  
20 amounts deposited by the account owner and held in an  
21 individual development account shall be distributed directly  
22 to the account owner's spouse or domestic partner, or if the  
23 spouse or domestic partner is deceased or there is no spouse  
24 or domestic partner, to a dependent or other named beneficiary  
25 of the deceased, or if the recipient is eligible to maintain

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1 the account, the account and matching funds designated for  
2 that account from a reserve account may be transferred and  
3 maintained in the name of the surviving spouse or surviving  
4 domestic partner, dependent or beneficiary.

5 B. Unless otherwise approved by the program  
6 administrator pursuant to the provisions of Subsection D of  
7 this section, account owners qualifying as eligible  
8 individuals pursuant to the provisions of Subsection B or C of  
9 Section 58-30-4 NMSA 1978 shall not be permitted to withdraw  
10 money from an individual development account until such time  
11 as the account owners have completed a high school curriculum  
12 at a public or accredited private New Mexico high school or  
13 received a general educational development certificate.

14 C. Except as provided in Subsection D of this  
15 section, if an account owner withdraws money from an  
16 individual development account for a use other than an  
17 allowable use, the account owner forfeits a proportionate  
18 amount of matching funds from the reserve account, as set  
19 forth in the agreement between the program administrator and  
20 the account owner.

21 D. The program administrator may approve a  
22 withdrawal by an account owner from an individual development  
23 account to be used for a purpose other than an allowable use  
24 only for serious emergencies as specified in the rules adopted  
25 by the office. For such an approved withdrawal, the

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1 proportionate matching funds in the reserve account shall  
2 remain in the reserve account for twelve months following the  
3 withdrawal and, if an amount equal to the withdrawn money is  
4 redeposited in the individual development account within the  
5 twelve months, the matching funds shall again be available to  
6 match withdrawals for allowable uses.

7 E. At the request of the account owner and with the  
8 written approval of the program administrator, amounts may be  
9 withdrawn from the account owner's individual development  
10 account and deposited in another individual development  
11 account established for an eligible individual who is the  
12 account owner's spouse, domestic partner or dependent."

13 Section 298. Section 59A-9-26 NMSA 1978 (being Laws 1984,  
14 Chapter 127, Section 159) is amended to read:

15 "59A-9-26. PROHIBITED INVESTMENTS AND INVESTMENT  
16 UNDERWRITING.--

17 A. In addition to investments excluded pursuant to  
18 other provisions of the Insurance Code, an insurer shall not  
19 acquire, invest in or lend upon the security of:

20 (1) issued shares of its own capital stock,  
21 except as provided in Section [~~568 of the Insurance Code~~  
22 ~~(purchase of own shares by stock insurer)~~] 59A-34-22 NMSA  
23 1978. No such shares shall be deemed an asset of the insurer  
24 in any determination of its financial condition;

25 (2) securities issued by a corporation or

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1 enterprise the controlling interest of which is, or, ~~[will]~~  
2 after such acquisition by the insurer will be, held directly  
3 or indirectly by the insurer or any combination of the insurer  
4 and the insurer's directors, officers, subsidiaries or  
5 controlling stockholders (other than the parent corporation),  
6 and the spouses or domestic partners and children of any of  
7 the foregoing individuals. Investments in controlled  
8 insurance corporations or subsidiaries under Sections ~~[144 and~~  
9 ~~145 of this article]~~ 59A-9-11 and 59A-9-12 NMSA 1978 are not  
10 subject to this section;

11 (3) any note or other evidence of indebtedness  
12 of any director, officer, employee or controlling stockholder  
13 of the insurer, or of the spouse, domestic partner or child of  
14 any of the foregoing individuals, except as to policy loans  
15 authorized under Section ~~[148 of this article]~~ 59A-9-15 NMSA  
16 1978; or

17 (4) any real estate in which any officer or  
18 director or controlling stockholder (other than the parent  
19 corporation) of the insurer has a financial interest.

20 B. No insurer shall underwrite or participate in  
21 underwriting of an offering of securities or property of any  
22 other person. This provision shall not prohibit the insurer  
23 from having a subsidiary ~~[which]~~ that is a principal  
24 underwriter of a registered investment company (mutual fund).

25 C. No insurer shall enter into an agreement to

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1 withhold from sale any of its securities or property, and  
2 disposition of its assets shall at all times be within control  
3 of the insurer."

4 Section 299. Section 59A-12-19 NMSA 1978 (being Laws  
5 1984, Chapter 127, Section 220) is amended to read:

6 "59A-12-19. TEMPORARY LICENSES.--

7 A. The superintendent may issue a temporary agent or  
8 solicitor license to an individual otherwise qualified  
9 therefor except as to taking an examination, in the following  
10 cases:

11 (1) to the surviving spouse, surviving domestic  
12 partner or next of kin of a licensed agent or solicitor  
13 becoming deceased;

14 (2) to the spouse, domestic partner, next of  
15 kin, employee or legal guardian of such an agent or solicitor  
16 disabled by sickness, injury or insanity;

17 (3) to a surviving employee of a firm or  
18 corporation licensed as agent, upon death or disability of an  
19 individual duly designated to exercise the license powers;

20 (4) to an individual designated by a licensed  
21 agent conducting an established insurance agency in this  
22 state, to replace an agent no longer associated with the  
23 agency;

24 (5) to a salaried employee of an authorized  
25 insurer sent to this state by the insurer to take the place of

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1 a licensed agent or solicitor;

2 (6) to the designee of a licensed agent entering  
3 upon active service in the armed forces of the United States;  
4 or

5 (7) to an applicant for license as a life  
6 insurance agent or life insurance solicitor, only for writing  
7 debit or industrial insurance as defined in Chapter 59A,  
8 Article 20 [~~of the Insurance Code~~] NMSA 1978, if the applicant  
9 is in good faith taking a course of study and instruction  
10 under the insurer's supervision, or is currently enrolled with  
11 an accredited educational institution of higher learning in  
12 this state and studying insurance business fundamentals. A  
13 course of study so conducted by the insurer must be one  
14 approved by the superintendent. The insurer and applicant may  
15 assume that the license will be issued in due course,  
16 effective as of the date that the application was filed with  
17 the superintendent, unless the superintendent notifies the  
18 insurer to the contrary within fifteen [~~15~~] days after the  
19 date of application.

20 B. Any such temporary license shall be for a period  
21 of three [~~3~~] months, subject to extension by the  
22 superintendent for an additional three [~~3~~] months upon  
23 application and good cause shown; except, that a temporary  
24 license issued under Paragraph (7) [~~above~~] of Subsection A of  
25 this section shall not be extended. A second temporary

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1 license shall not be issued to the same licensee within six  
2 [~~6~~] months after expiration of the initial temporary  
3 license."

4 Section 300. Section 59A-17A-5 NMSA 1978 (being Laws  
5 2005, Chapter 275, Section 5) is amended to read:

6 "59A-17A-5. EXCEPTION PROCEDURES.--

7 A. As used in this section, "extraordinary life  
8 circumstance" means:

- 9 (1) an acute or chronic medical condition,  
10 illness, injury or disease;  
11 (2) divorce;  
12 (3) death of a spouse, domestic partner, child  
13 or parent;  
14 (4) involuntary loss of employment for more than  
15 three consecutive months;  
16 (5) identity theft;  
17 (6) total or other loss that makes a home  
18 uninhabitable; or  
19 (7) other circumstances prescribed by the  
20 superintendent in a rule.

21 B. Insurers that use credit information to calculate  
22 an insurance score or to underwrite, rate or renew personal  
23 insurance coverage shall, upon written request from a  
24 consumer, provide a reasonable exception to the insurer's  
25 rates, rating classifications, company placement, tier

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1 placement or underwriting policies, procedures or guidelines  
2 when that consumer's credit information has been adversely  
3 impacted by an extraordinary life circumstance that has  
4 occurred within three years of the date of application for or  
5 renewal of personal insurance coverage.

6 C. Insurers shall file their extraordinary life  
7 circumstances exception policies and procedures and amendments  
8 to the policies and procedures with the superintendent.

9 Filings shall include the following:

10 (1) a list of extraordinary life circumstances;

11 (2) procedures describing how a consumer may  
12 apply for the extraordinary life circumstances exception;

13 (3) a description of the required substantiating  
14 information;

15 (4) general guidelines for when an extraordinary  
16 life circumstances exception will be granted;

17 (5) a description of how a consumer's treatment  
18 in underwriting or rating would be modified by the granting of  
19 an extraordinary life circumstances exception;

20 (6) time frames for considering the  
21 extraordinary life circumstances exception request; and

22 (7) any other information prescribed by the  
23 superintendent in a rule.

24 D. An insurer's extraordinary life circumstances  
25 exception policies and procedures shall be effective for use

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1 upon filing with the superintendent.

2 E. The superintendent may disapprove an insurer's  
3 extraordinary life circumstances exception policies or  
4 procedures at any time upon providing the insurer with a  
5 sixty-day written notice setting forth the reasons for the  
6 disapproval. Disapproval shall be based upon a determination  
7 that the extraordinary life circumstances exception policies  
8 and procedures as contained in the filing are inadequate  
9 pursuant to this section, and the notice of disapproval shall  
10 specify the respects in which they are inadequate. An insurer  
11 affected by a disapproval may request a hearing before the  
12 superintendent pursuant to Section 59A-4-15 NMSA 1978, and the  
13 request for a hearing stays the effectiveness of the  
14 disapproval. No disapproval shall affect an action or  
15 determination made by an insurer concerning an application or  
16 policy of insurance made prior to the date of a notice of  
17 final determination of the disapproval.

18 F. An insurer may require the consumer to provide  
19 reasonable, independently verifiable written documentation of  
20 the event and the direct effect of the event on the consumer's  
21 credit before granting an exception.

22 G. An insurer that grants an extraordinary life  
23 circumstances exception shall maintain that exception for an  
24 amount of time that is reasonable for the particular  
25 circumstance. Once that reasonable amount of time is

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1 exhausted, the insurer is not required to grant another  
2 exception for the same specific extraordinary life  
3 circumstance.

4 H. An insurer is not out of compliance with a law or  
5 rule relating to underwriting, rating or rate filing as a  
6 result of granting an exception under this section."

7 Section 301. Section 59A-18-8 NMSA 1978 (being Laws 1984,  
8 Chapter 127, Section 338) is amended to read:

9 "59A-18-8. CONSENT OF INSURED--LIFE, HEALTH INSURANCE.--  
10 No life or health insurance contract upon an individual,  
11 except a contract of group life insurance or of group or  
12 blanket health insurance, shall be made or effectuated unless  
13 at the time of the making of the contract, such individual  
14 applies therefor or has consented thereto in writing, except  
15 in the following cases:

16 A. a spouse or domestic partner may effectuate such  
17 insurance upon the other spouse or domestic partner;

18 B. any person having an insurable interest in the  
19 life of a minor, or any person upon whom a minor is dependent  
20 for support and maintenance, may effectuate insurance upon the  
21 life of or pertaining to such minor; and

22 C. family policies may be issued insuring any two  
23 [~~2~~] or more members of a family on an application signed by  
24 either parent, a stepparent, a guardian or by a husband or  
25 wife or a domestic partner."

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1 Section 302. Section 59A-18-16 NMSA 1978 (being Laws  
2 1984, Chapter 127, Section 345.1, as amended) is amended to  
3 read:

4 "59A-18-16. CONTINUATION OF COVERAGE AND CONVERSION  
5 RIGHTS--ACCIDENT AND HEALTH INSURANCE POLICIES--NOTICE.--  
6 Subject to the provisions of the Health Insurance Portability  
7 Act:

8 A. every accident and health insurance policy that  
9 provides hospital, surgical and medical expense benefits and  
10 that is delivered, issued for delivery or renewed in this  
11 state on or after January 1, 1985 shall provide:

12 (1) if an individual policy, covered family  
13 members the right to continue such policy as the named insured  
14 or through a conversion policy upon the death of the named  
15 insured or upon the divorce, annulment or dissolution of  
16 marriage or domestic partnership or legal separation of the  
17 spouse or domestic partner from the named insured; or

18 (2) if a group policy:

19 (a) each member or employee of the group  
20 insured the right to continue such coverage for a period of  
21 six months and thereafter through a conversion policy upon  
22 termination of membership or employment with the group  
23 insured; and

24 (b) covered family members of an employee  
25 or member of the group insured the right to continue such

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1 coverage through a converted or separate policy upon the death  
2 of the member or employee of the group insured or upon the  
3 divorce, annulment or dissolution of marriage or domestic  
4 partnership or legal separation of the spouse or domestic  
5 partner from the member or employee of the group insured.

6 Where a continuation of coverage or conversion is made in  
7 the name of the spouse or domestic partner of the named  
8 insured or the spouse or domestic partner of the employee or  
9 member of the group insured, such coverage may, at the option  
10 of the spouse or domestic partner, include coverage for  
11 dependent children for whom the spouse or domestic partner has  
12 responsibility for care and support;

13 B. the right to a continuation of coverage or  
14 conversion pursuant to this section shall not exist with  
15 respect to any member or employee of the group insured or any  
16 covered family member in the event the coverage terminates for  
17 nonpayment of premium, nonrenewal of the policy or the  
18 expiration of the term for which the policy is issued. With  
19 respect to any member or employee of the group insured or any  
20 covered family member who is eligible for medicare or any  
21 other similar federal or state health insurance program, the  
22 right to a continuation of coverage or conversion shall be  
23 limited to coverage under a medicare supplement insurance  
24 policy as defined by the rules and regulations adopted by the  
25 superintendent;

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1 C. coverage continued through the issuance of a  
2 converted or separate policy shall be provided at a  
3 reasonable, nondiscriminatory rate to the insured and shall  
4 consist of a form of coverage then being offered by the  
5 insurer as a conversion policy in the jurisdiction where the  
6 person exercising the conversion right resides that most  
7 nearly approximates the coverage of the policy from which  
8 conversion is exercised. Continued and converted coverages  
9 shall contain renewal provisions that are not less favorable  
10 to the insured than those contained in the policy from which  
11 the conversion is made, except that the person who exercises  
12 the right of conversion is entitled only to have included a  
13 right to coverage under a medicare supplement insurance  
14 policy, as defined by the rules and regulations adopted by the  
15 superintendent, after the attainment of the age of eligibility  
16 for medicare or any other similar federal or state health  
17 insurance program;

18 D. at the time of inception of coverage, the insurer  
19 shall furnish to each covered family member who is eighteen  
20 years of age or over and to each employee or member of the  
21 group insured a statement setting forth in summary form the  
22 continuation of coverage and conversion provisions of the  
23 policy;

24 E. the insurer shall notify in writing each employee  
25 or member, upon that employee's or member's termination of

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1 employment or membership with the group insured, of the  
2 continuation and conversion provisions of the policy. The  
3 employer may give the written notice specified herein. The  
4 employer should notify the insurer of the employee's or  
5 member's change of status and last known address. Under no  
6 circumstances shall the employer have any civil liability  
7 under the conversion provisions of the Insurance Code;

8 F. the eligible employee or member of the group  
9 insured or covered family member exercising the continuation  
10 or conversion right shall notify the employer or insurer and  
11 make payment of the applicable premium within thirty days  
12 following the date of the notification given by the insurer  
13 pursuant to Subsection E of this section. There shall be no  
14 lapse of coverage during the period in which conversion is  
15 available;

16 G. coverage shall be provided through continuation  
17 or conversion without additional evidence of insurability and  
18 shall not impose any preexisting condition, limitations or  
19 other contractual time limitations other than those remaining  
20 unexpired under the policy or contract from which continuation  
21 or conversion is exercised;

22 H. benefits otherwise payable under a converted or  
23 separate policy may be reduced so they are not, during the  
24 first policy year of the converted or separate policy, in  
25 excess of those that would have been payable under the policy

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1 from which conversion is exercised. Benefits, if any,  
2 otherwise payable under a converted or separate policy are not  
3 payable for a loss claimed under the policy from which  
4 conversion is exercised; and

5 I. any probationary or waiting period set forth in  
6 the converted or separate policy is deemed to commence on the  
7 effective date of the applicant's coverage under the original  
8 policy."

9 Section 303. Section 59A-20-15 NMSA 1978 (being Laws  
10 1984, Chapter 127, Section 380) is amended to read:

11 "59A-20-15. BENEFICIARY, INDUSTRIAL POLICIES.--An  
12 industrial life insurance policy shall have the name of the  
13 beneficiary designated thereon with a reservation of the right  
14 to change the beneficiary after the issuance of the policy.  
15 The policy may also provide that no designation or change of  
16 beneficiary shall be binding on the insurer until endorsed on  
17 the policy by the insurer, and that the insurer may refuse to  
18 endorse the name of any proposed beneficiary who does not  
19 appear to the insurer to have an insurable interest in the  
20 life of the insured. The policy may also provide that if the  
21 beneficiary designated in the policy does not make a claim  
22 under the policy or does not surrender the policy with due  
23 proof of death within the period stated in the policy, which  
24 shall not be less than thirty [~~30~~] days after the death of  
25 the insured, or if the beneficiary is the estate of the

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1 insured, or is a minor, or dies before the insured, or is not  
2 legally competent to give a valid release, then the insurer  
3 may make any payment thereunder to the executor or  
4 administrator of the insured, or to any relative of the  
5 insured by blood or legal adoption or connection by marriage  
6 or domestic partnership, or to any person appearing to the  
7 insurer to be equitably entitled thereto by reason of having  
8 been named beneficiary or by reason of having incurred expense  
9 for the maintenance, medical attention or burial of the  
10 insured. The policy may also include a similar provision  
11 applicable to any other payment due under the policy."

12 Section 304. Section 59A-20-31 NMSA 1978 (being Laws  
13 1984, Chapter 127, Section 396) is amended to read:

14 "59A-20-31. STANDARD NONFORFEITURE LAW--LIFE INSURANCE.--

15 A. In the case of policies issued on and after the  
16 operative date of this section, as defined in Subsection K of  
17 this section, no policy of life insurance, except as stated in  
18 Subsection J of this section, shall be delivered or issued for  
19 delivery in this state unless it shall contain in substance  
20 the following provisions, or corresponding provisions [~~which~~]  
21 that in the opinion of the superintendent are at least as  
22 favorable to the defaulting or surrendering policyholder as  
23 are the minimum requirements hereinafter specified and are  
24 essentially in compliance with Subsection I of this section:

25 (1) that, in the event of default in any premium

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1 payment the insurer will grant, upon proper request not later  
2 than sixty days after the due date of the premium in default,  
3 a paid-up nonforfeiture benefit on a plan stipulated in the  
4 policy, effective as of such due date, of such amount as may  
5 be hereinafter specified. In lieu of such stipulated paid-up  
6 nonforfeiture benefit, the insurer may substitute, upon proper  
7 request not later than sixty days after the due date of the  
8 premium in default, an actuarially equivalent alternative  
9 paid-up nonforfeiture benefit [~~which~~] that provides a greater  
10 amount or longer period of death benefits or, if applicable, a  
11 greater amount or earlier payment of endowment benefits;

12 (2) that, upon surrender of the policy within  
13 sixty days after the due date of any premium payment in  
14 default after premiums have been paid for at least three full  
15 years in the case of ordinary insurance or five full years in  
16 the case of industrial insurance, the insurer will pay, in  
17 lieu of any paid-up nonforfeiture benefit, a cash surrender  
18 value of such amount as may be hereinafter specified;

19 (3) that a specified paid-up nonforfeiture  
20 benefit shall become effective as specified in the policy  
21 unless the person entitled to make such election elects  
22 another available option not later than sixty days after the  
23 due date of the premium in default;

24 (4) that, if the policy shall have become paid-  
25 up by completion of all premium payments or if it is continued

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1 under any paid-up nonforfeiture benefit [~~which~~] that became  
2 effective on or after the third policy anniversary in the case  
3 of ordinary insurance or the fifth policy anniversary in the  
4 case of industrial insurance, the insurer will pay, upon  
5 surrender of the policy within thirty days after any policy  
6 anniversary, a cash surrender value of such amount as may be  
7 hereinafter specified;

8 (5) in the case of policies [~~which~~] that cause  
9 on a basis guaranteed in the policy unscheduled changes in  
10 benefits or premiums, or [~~which~~] that provide an option for  
11 changes in benefits or premiums other than a change to a new  
12 policy, a statement of the mortality table, interest rate and  
13 method used in calculating cash surrender values and the paid-  
14 up nonforfeiture benefits available under the policy. In the  
15 case of all other policies, a statement of the mortality table  
16 and interest rate used in calculating the cash surrender  
17 values and the paid-up nonforfeiture benefits available under  
18 the policy, together with a table showing the cash surrender  
19 value, if any, and paid-up nonforfeiture benefit, if any,  
20 available under the policy on each policy anniversary either  
21 during the first twenty policy years or during the term of the  
22 policy, whichever is shorter, such values and benefits to be  
23 calculated upon the assumption that there are no dividends or  
24 paid-up additions credited to the policy and that there is no  
25 indebtedness to the insurer on the policy; and

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1                   (6) a statement that the cash surrender values  
2 and the paid-up nonforfeiture benefits available under the  
3 policy are not less than the minimum values and benefits  
4 required by or pursuant to the insurance law of the state in  
5 which the policy is delivered; an explanation of the manner in  
6 which the cash surrender values and the paid-up nonforfeiture  
7 benefits are altered by the existence of any paid-up additions  
8 credited to the policy or any indebtedness to the insurer on  
9 the policy; if a detailed statement of the method of  
10 computation of the values and benefits shown in the policy is  
11 not stated therein, a statement that such method of  
12 computation has been filed with the insurance supervisory  
13 official of the state in which the policy is delivered; and a  
14 statement of the method to be used in calculating the cash  
15 surrender value and paid-up nonforfeiture benefit available  
16 under the policy on any policy anniversary beyond the last  
17 anniversary for which such values and benefits are  
18 consecutively shown in the policy.

19                   Any of the provisions in this subsection or portions  
20 thereof not applicable by reason of the plan of insurance may,  
21 to the extent inapplicable, be omitted from the policy.

22                   The insurer shall reserve the right to defer the payment  
23 of any cash surrender value for a period of six months after  
24 demand therefor with surrender of the policy.

25                   B. Any cash surrender value available under the

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1 policy in the event of default in a premium payment due on any  
2 policy anniversary, whether or not required by Subsection A of  
3 this section, shall be an amount not less than the excess, if  
4 any, of the present value, on such anniversary, of the future  
5 guaranteed benefits ~~[which]~~ that would have been provided for  
6 by the policy, including any existing paid-up additions, if  
7 there had been no default, over the sum of: (1) the then  
8 present value of the adjusted premiums as defined in  
9 Subsections D, E and F of this section, corresponding to  
10 premiums ~~[which]~~ that would have fallen due on or after such  
11 anniversary; and (2) the amount of any indebtedness to the  
12 insurer on the policy.

13        Provided, however, that for any policy issued on or after  
14 the operative date of Subsection F of this section, as defined  
15 therein, ~~[which]~~ that provides supplemental life insurance or  
16 annuity benefits at the option of the insured and for an  
17 identifiable additional premium by rider or supplemental  
18 policy provision, the cash surrender value referred to in the  
19 first paragraph of this subsection shall be an amount not less  
20 than the sum of the cash surrender value as defined in such  
21 paragraph for an otherwise similar policy issued at the same  
22 age without such rider or supplemental policy provision and  
23 the cash surrender value as defined in such paragraph for a  
24 policy ~~[which]~~ that provides only the benefits otherwise  
25 provided by such rider or supplemental policy provision.

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1            Provided, further, that for any family policy issued on or  
2 after the operative date of Subsection F of this section as  
3 defined therein, ~~[which]~~ that defines a primary insured and  
4 provides term insurance on the life of the spouse or domestic  
5 partner of the primary insured expiring before the spouse's or  
6 domestic partner's age seventy-one, the cash surrender value  
7 referred to in the first paragraph of this subsection shall be  
8 an amount not less than the sum of the cash surrender value as  
9 defined in such paragraph for an otherwise similar policy  
10 issued at the same age without such term insurance on the life  
11 of the spouse or domestic partner and the cash surrender value  
12 as defined in such paragraph for a policy ~~[which]~~ that  
13 provides only the benefits otherwise provided by such term  
14 insurance on the life of the spouse or domestic partner. Any  
15 cash surrender value available within thirty days after any  
16 policy anniversary under any policy paid up by completion of  
17 all premium payments or any policy continued under any paid-up  
18 nonforfeiture benefit, whether or not required by Subsection A  
19 of this section, shall be an amount not less than the present  
20 value, on such anniversary, of the future guaranteed benefits  
21 provided for by the policy, including any existing paid-up  
22 additions, decreased by any indebtedness to the insurer on the  
23 policy.

24            C. Any paid-up nonforfeiture benefit available under  
25 the policy in the event of default in a premium payment due on

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1 any policy anniversary shall be such that its present value as  
2 of such anniversary shall be at least equal to the cash  
3 surrender value then provided for by the policy or, if none is  
4 provided for, that cash surrender value ~~[which]~~ that would  
5 have been required by this section in the absence of the  
6 condition that premiums shall have been paid for at least a  
7 specified period.

8 D. This subsection shall not apply to policies  
9 issued on or after the operative date of Subsection F of this  
10 section. Except as provided in Paragraph (2) of this  
11 subsection, the adjusted premiums for any policy shall be  
12 calculated on an annual basis and shall be such uniform  
13 percentage of the respective premiums specified in the policy  
14 for each policy year, excluding any extra premiums charged  
15 because of impairments or special hazards, that the present  
16 value, at the date of issue of the policy, of all such  
17 adjusted premiums shall be equal to the sum of (a) the then  
18 present value of the future guaranteed benefits provided for  
19 by the policy; (b) two percent of the amount of insurance, if  
20 the insurance be uniform in amount, or of the equivalent  
21 uniform amount, as hereinafter defined, if the amount of  
22 insurance varies with duration of the policy; (c) forty  
23 percent of the adjusted premium for the first policy year; (d)  
24 twenty-five percent of either the adjusted premium for the  
25 first policy year or the adjusted premium for a whole life

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1 policy of the same uniform or equivalent uniform amount with  
2 uniform premiums for the whole of life issued at the same age  
3 for the same amount of insurance, whichever is less.

4 Provided, however, that in applying the percentages specified  
5 in (c) and (d) [~~above~~], no adjusted premium shall be deemed to  
6 exceed four percent of the amount of insurance or uniform  
7 amount equivalent thereto. The date of issue of a policy for  
8 the purpose of this subsection shall be the date as of which  
9 the rated age of the insured is determined.

10 (1) In the case of a policy providing an amount  
11 of insurance varying with duration of the policy, the  
12 equivalent uniform amount thereof for the purpose of this  
13 subsection shall be deemed to be the uniform amount of  
14 insurance provided by an otherwise similar policy, containing  
15 the same endowment benefit or benefits, if any, issued at the  
16 same age and for the same term, the amount of which does not  
17 vary with duration and the benefits under which have the same  
18 present value at the date of issue as the benefits under the  
19 policy; provided, however, that in the case of a policy  
20 providing a varying amount of insurance issued on the life of  
21 a child under age ten, the equivalent uniform amount may be  
22 computed as though the amount of insurance provided by the  
23 policy prior to the attainment of age ten were the amount  
24 provided by such policy at age ten.

25 (2) The adjusted premiums for any policy

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1 providing term insurance benefits by rider or supplemental  
2 policy provision shall be equal to (1) the adjusted premiums  
3 for an otherwise similar policy issued at the same age without  
4 such term insurance benefits, increased, during the period for  
5 which premiums for such term insurance benefits are payable by  
6 (2) the adjusted premiums for such term insurance, the  
7 foregoing items (1) and (2) being calculated separately and as  
8 specified in the first two paragraphs (the first paragraphs  
9 and Paragraph (1)) of this subsection except that, for the  
10 purposes of (b), (c) and (d) of the first such paragraph, the  
11 amount of insurance or equivalent uniform amount of insurance  
12 used in the calculation of the adjusted premiums referred to  
13 in (2) shall be equal to the excess of the corresponding  
14 amount determined for the entire policy over the amount used  
15 in the calculation of the adjusted premiums in (1).

16 (3) Except as otherwise provided in Paragraph  
17 (4) of this subsection and Subsection E of this section, all  
18 adjusted premiums and present values referred to in this  
19 section shall for all policies of ordinary insurance be  
20 calculated on the basis of the national association of  
21 insurance commissioners 1941 standard ordinary mortality  
22 table, provided that for any category of ordinary insurance  
23 issued on female risks, adjusted premiums and present values  
24 may be calculated according to an age not more than three  
25 years younger than the actual age of the insured, and such

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1 calculations for all policies of industrial insurance shall be  
2 made on the basis of the 1941 standard industrial mortality  
3 table. All calculations shall be made on the basis of the  
4 rate of interest, not exceeding three and one-half percent per  
5 annum, specified in the policy for calculating cash surrender  
6 values and paid-up nonforfeiture benefits. Provided, however,  
7 that in calculating the present value of any paid-up term  
8 insurance with accompanying pure endowment, if any, offered as  
9 a nonforfeiture benefit, the rates of mortality assumed may be  
10 not more than one hundred thirty percent of the rates of  
11 mortality according to such applicable table. Provided,  
12 further, that for insurance issued on a substandard basis, the  
13 calculation of any such adjusted premiums and present values  
14 may be based on such other table of mortality as may be  
15 specified by the insurer and approved by the superintendent.

16 (4) This paragraph shall not apply to ordinary  
17 policies issued on or after the operative date of Subsection F  
18 of this section. In the case of ordinary policies issued on  
19 or after the operative date of this paragraph as defined  
20 herein, all adjusted premiums and present values referred to  
21 in this section shall be calculated on the basis of the  
22 commissioners 1958 standard ordinary mortality table and the  
23 rate of interest specified in the policy for calculating cash  
24 surrender values and paid-up nonforfeiture benefits; provided  
25 that such rate of interest shall not exceed three and one-half

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1 percent a year, except that a rate of interest not exceeding  
2 four percent a year may be used for policies issued on or  
3 after July 1, 1973, and prior to July 1, 1977 and a rate of  
4 interest not exceeding five and one-half percent per annum may  
5 be used for policies issued on or after July 1, 1977, except  
6 that for any single premium whole life or endowment insurance  
7 policy a rate of interest not exceeding six and one-half  
8 percent per annum may be used, and provided that for any  
9 category of ordinary insurance issued on female risks,  
10 adjusted premiums and present values may be calculated  
11 according to an age not more than six years younger than the  
12 actual age of the insured. Provided, however, that in  
13 calculating the present value of any paid-up term insurance  
14 with accompanying pure endowment, if any, offered as a  
15 nonforfeiture benefit, the rates of mortality assumed may be  
16 not more than those shown in the commissioners 1958 extended  
17 term insurance table. Provided, further, that for insurance  
18 issued on a substandard basis, the calculation of any such  
19 adjusted premiums and present values may be based on such  
20 other table of mortality as may be specified by the insurer  
21 and approved by the superintendent.

22 After June 9, 1961, any insurer may file with the  
23 superintendent a written notice of its election to comply with  
24 the provisions of Paragraph (4) of this subsection after a  
25 specified date before January 1, 1966. After the filing of

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1 such notice, then upon such specified date (which shall be the  
2 operative date of this subsection for such insurer), this  
3 subsection shall become operative with respect to the ordinary  
4 policies thereafter issued by such insurer. If an insurer  
5 makes no such election, the operative date of this subsection  
6 for such insurer shall be January 1, 1966.

7 E. This subsection shall not apply to industrial  
8 policies issued on or after the operative date of Subsection F  
9 of this section.

10 In the case of industrial policies issued on or after the  
11 operative date of this subsection as defined herein, all  
12 adjusted premiums and present values referred to in this  
13 section shall be calculated on the bases of the commissioners  
14 1961 standard industrial mortality table and the rate of  
15 interest specified in the policy for calculating cash  
16 surrender values and paid-up nonforfeiture benefits; provided  
17 that such rate of interest shall not exceed three and one-half  
18 percent a year except that a rate of interest not exceeding  
19 four percent a year may be used for policies issued on or  
20 after July 1, 1973 and prior to July 1, 1977 and a rate of  
21 interest not exceeding five and one-half percent per annum may  
22 be used for policies issued on or after July 1, 1977, except  
23 that, for any single premium whole life or endowment insurance  
24 policy, a rate of interest not exceeding six and one-half  
25 percent per annum may be used. Provided, however, that in

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1 calculating the present value of any paid-up term insurance  
2 with accompanying pure endowment, if any, offered as a  
3 nonforfeiture benefit, the rates of mortality assumed may be  
4 not more than those shown in the commissioners 1961 industrial  
5 extended term insurance table. Provided, further, that for  
6 insurance issued on a substandard basis, the calculation of  
7 any such adjusted premiums and present values may be based on  
8 such other table of mortality as may be specified by the  
9 insurer and approved by the superintendent.

10 After June 7, 1963, any insurer may file with the  
11 superintendent a written notice of its election to comply with  
12 the provisions of this subsection after a specified date  
13 before January 1, 1968. After the filing of such notice, then  
14 upon such specified date (which shall be the operative date of  
15 this subsection for such insurer), this subsection shall  
16 become operative with respect to the industrial policies  
17 thereafter issued by such insurer. If an insurer makes no  
18 such election, the operative date of this subsection for such  
19 insurer shall be January 1, 1968.

20 F. This subsection shall apply to all policies  
21 issued on or after the operative date of this subsection.  
22 Except as provided in Paragraph (6) of this subsection, the  
23 adjusted premiums for any policy shall be calculated on an  
24 annual basis and shall be such uniform percentage of the  
25 respective premiums specified in the policy for each policy

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1 year, excluding amounts payable as extra premiums to cover  
2 impairment or special hazards and also excluding any uniform  
3 annual contract charge or policy fee specified in the policy  
4 in a statement of the method to be used in calculating the  
5 cash surrender values and paid-up nonforfeiture benefits, that  
6 the present value, at the date of issue of the policy, of all  
7 adjusted premiums shall be equal to the sum of the then  
8 present value of the future guaranteed benefits provided for  
9 by the policy; one percent of either the amount of insurance,  
10 if the insurance be uniform in amount, or the average amount  
11 of insurance at the beginning of each of the first ten policy  
12 years; and one hundred [~~and~~] twenty-five percent of the  
13 nonforfeiture net level premium as hereinafter defined.

14 Provided, however, that, in applying the last percentage  
15 specified above, no nonforfeiture net level premium shall be  
16 deemed to exceed four percent of either the amount of  
17 insurance, if the insurance be uniform in amount, or the  
18 average amount of insurance at the beginning of each of the  
19 first ten policy years. The date of issue of a policy for the  
20 purpose of this subsection shall be the date as of which the  
21 rated age of the insured is determined; and

22 (1) the nonforfeiture net level premium shall be  
23 equal to the present value, at the date of issue of the  
24 policy, of the guaranteed benefits provided for by the policy  
25 divided by the present value, at the date of issue of the

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1 policy, of an annuity of one per annum payable on the date of  
2 issue of the policy and on each anniversary of such policy on  
3 which a premium falls due;

4 (2) in the case of policies [~~which~~] that cause  
5 on a basis guaranteed in the policy unscheduled changes in  
6 benefits or premiums, or [~~which~~] that provide an option for  
7 changes in benefits or premiums other than a change to a new  
8 policy, the adjusted premiums and present values shall  
9 initially be calculated on the assumption that future benefits  
10 and premiums do not change from those stipulated at the date  
11 of issue of the policy. At the time of any such change in the  
12 benefits or premiums, the future adjusted premiums,  
13 nonforfeiture net level premiums and present values shall be  
14 recalculated on the assumption that future benefits and  
15 premiums do not change from those stipulated by the policy  
16 immediately after the change;

17 (3) except as otherwise provided in Paragraph  
18 (6) of this subsection, the recalculated future adjusted  
19 premiums for any such policy shall be such uniform percentage  
20 of the respective future premiums specified in the policy for  
21 each policy year, excluding amounts payable as extra premiums  
22 to cover impairments and special hazards, and also excluding  
23 any uniform annual contract charge or policy fee specified in  
24 the policy in a statement of the method to be used in  
25 calculating the cash surrender values and paid-up

.179346.5GR

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1 nonforfeiture benefits, that the present value, at the time of  
2 change to the newly defined benefits or premiums, of all such  
3 future adjusted premiums shall be equal to the excess of the  
4 sum of the then present value of the then future guaranteed  
5 benefits provided for by the policy and the additional expense  
6 allowance, if any, over the then cash surrender value, if any,  
7 or present value of any paid-up nonforfeiture benefit under  
8 the policy;

9 (4) the additional expense allowance, at the  
10 time of the change to the newly defined benefits or premiums,  
11 shall be the sum of one percent of the excess, if positive, of  
12 the average amount of insurance at the beginning of each of  
13 the first ten policy years subsequent to the change over the  
14 average amount of insurance prior to the change at the  
15 beginning of each of the first ten policy years subsequent to  
16 the time of the most recent previous change, or, if there has  
17 been no previous change, the date of issue of the policy; and  
18 one hundred twenty-five percent of the increase, if positive,  
19 in the nonforfeiture net level premium;

20 (5) the recalculated nonforfeiture net level  
21 premium shall be equal to the result obtained by dividing (a)  
22 by (b) where:

23 (a) equals the sum of: (1) the  
24 nonforfeiture net level premium applicable prior to the change  
25 times the present value of an annuity of one per annum payable  
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1 on each anniversary of the policy on or subsequent to the date  
2 of the change on which a premium would have fallen due had the  
3 change not occurred; and (2) the present value of the increase  
4 in future guaranteed benefits provided for by the policy; and

5 (b) equals the present value of an annuity  
6 of one per annum payable on each anniversary of the policy on  
7 or subsequent to the date of change on which a premium falls  
8 due;

9 (6) notwithstanding any other provisions of this  
10 subsection to the contrary, in the case of a policy issued on  
11 a substandard basis [~~which~~] that provides reduced graded  
12 amounts of insurance so that, in each policy year, such policy  
13 has the same tabular mortality cost as an otherwise similar  
14 policy issued on the standard basis [~~which~~] that provides  
15 higher uniform amounts of insurance, adjusted premiums and  
16 present values for such substandard policy may be calculated  
17 as if it were issued to provide such higher uniform amounts of  
18 insurance on the standard basis;

19 (7) all adjusted premiums and present values  
20 referred to in this section shall for all policies of ordinary  
21 insurance be calculated on the basis of the commissioners 1980  
22 standard ordinary mortality table or, at the election of the  
23 insurer for any one or more specified plans of life insurance,  
24 the commissioners 1980 standard ordinary mortality table with  
25 ten-year select mortality factors; shall for all policies of

.179346.5GR

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1 industrial insurance be calculated on the basis of the  
2 commissioners 1961 standard industrial mortality table; and  
3 shall for all policies issued in a particular calendar year be  
4 calculated on the basis of a rate of interest not exceeding  
5 the nonforfeiture interest rate as defined in this subsection,  
6 for policies issued in that calendar year. Provided, however,  
7 that:

8 (a) at the option of the insurer,  
9 calculations for all policies issued in a particular calendar  
10 year may be made on the basis of a rate of interest not  
11 exceeding the nonforfeiture interest rate, as defined in this  
12 subsection, for policies issued in the immediately preceding  
13 calendar year;

14 (b) under any paid-up nonforfeiture  
15 benefit, including any paid-up dividend additions, any cash  
16 surrender value available, whether or not required by  
17 Subsection A of this section, shall be calculated on the basis  
18 of the mortality table and rate of interest used in  
19 determining the amount of such paid-up nonforfeiture benefit  
20 and paid-up dividend additions, if any;

21 (c) an insurer may calculate the amount of  
22 any guaranteed paid-up nonforfeiture benefit, including any  
23 paid-up additions under the policy, on the basis of an  
24 interest rate no lower than that specified in the policy for  
25 calculating cash surrender values;

.179346.5GR

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1 (d) in calculating the present value of any  
2 paid-up term insurance with accompanying pure endowment, if  
3 any, offered as a nonforfeiture benefit, the rates of  
4 mortality assumed may be not more than those shown in the  
5 commissioners 1980 extended term insurance table for policies  
6 of ordinary insurance and not more than the commissioners 1961  
7 industrial extended term insurance table for policies of  
8 industrial insurance;

9 (e) for insurance issued on a substandard  
10 basis, the calculation of any such adjusted premiums and  
11 present values may be based on appropriate modifications of  
12 the aforementioned tables;

13 (f) any ordinary mortality tables, adopted  
14 after 1980 by the national association of insurance  
15 commissioners, that are approved by regulation promulgated by  
16 the superintendent for use in determining the minimum  
17 nonforfeiture standard may be substituted for the  
18 commissioners 1980 standard ordinary mortality table with or  
19 without ten-year select mortality factors or for the  
20 commissioners 1980 extended term insurance table; and

21 (g) any industrial mortality tables,  
22 adopted after 1980 by the national association of insurance  
23 commissioners, that are approved by regulation promulgated by  
24 the superintendent for use in determining the minimum  
25 nonforfeiture standard may be substituted for the

.179346.5GR

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1 commissioners 1961 standard industrial mortality table or the  
2 commissioners 1961 industrial extended term insurance table;

3 (8) the nonforfeiture interest rate per annum  
4 for any policy issued in a particular calendar year shall be  
5 equal to one hundred twenty-five percent of the calendar year  
6 statutory valuation interest rate for such policy as defined  
7 in the Standard Valuation Law (Section [~~122 of the Insurance~~  
8 ~~Code~~] 59A-8-5 NMSA 1978), rounded to the nearest one-quarter  
9 of one percent;

10 (9) notwithstanding any other provision in the  
11 laws relating to insurance to the contrary, any refiling of  
12 nonforfeiture values or their methods of computation for any  
13 previously approved policy form [~~which~~] that involves only a  
14 change in the interest rate or mortality table used to compute  
15 nonforfeiture values shall not require refiling of any other  
16 provisions of that policy form; and

17 (10) after the effective date of this  
18 subsection, any insurer may file with the superintendent a  
19 written notice of its election to comply with the [~~provision~~]  
20 provisions of this subsection after a specified date before  
21 January 1, 1989, which shall be the operative date of this  
22 subsection for such insurer. If an insurer makes no such  
23 election, the operative date of this subsection for such  
24 insurer shall be January 1, 1989.

25 G. In the case of any plan of life insurance [~~which~~]

.179346.5GR

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1 that provides for future premium determination, the amounts of  
2 which are to be determined by the insurer based on the then  
3 estimates of future experience, or in the case of any plan of  
4 life insurance [~~which~~] that is of such a nature that minimum  
5 values cannot be determined by the methods described in  
6 Subsection A, B, C, D, E or F of this section, then:

7 (1) the superintendent must be satisfied that  
8 the benefits provided under the plan are substantially as  
9 favorable to policyholders and insureds as the minimum  
10 benefits otherwise required by Subsection A, B, C, D, E or F  
11 of this section;

12 (2) the superintendent must be satisfied that  
13 the benefits and the pattern of premiums of that plan are not  
14 such as to mislead prospective policyholders or insureds; and

15 (3) the cash surrender values and paid-up  
16 nonforfeiture benefits provided by such plan must not be less  
17 than the minimum values and benefits required for the plan  
18 computed by a method consistent with the principles of this  
19 section, as determined by regulations promulgated by the  
20 superintendent.

21 H. Any cash surrender value and any paid-up  
22 nonforfeiture benefit, available under the policy in the event  
23 of default in a premium payment due at any time other than on  
24 the policy anniversary, shall be calculated with allowance for  
25 the lapse of time and the payment of fractional premiums

.179346.5GR

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1 beyond the last preceding policy anniversary. All values  
2 referred to in Subsections B, C, D, E and F of this section  
3 may be calculated upon the assumption that any death benefit  
4 is payable at the end of the policy year of death. The net  
5 value of any paid-up additions, other than paid-up term  
6 additions, shall be not less than the amounts used to provide  
7 such additions. Notwithstanding the provisions of Subsection  
8 B of this section, additional benefits payable (a) in the  
9 event of death or dismemberment by accident or accidental  
10 means; (b) in the event of total and permanent disability; (c)  
11 as reversionary annuity or deferred reversionary annuity  
12 benefits; (d) as term insurance benefits provided by a rider  
13 or supplemental policy provision to which, if issued as a  
14 separate policy, this section would not apply; (e) as term  
15 insurance on the life of a child or on the lives of children  
16 provided in a policy on the life of a parent of the child, if  
17 such term insurance expires before the child's age is twenty-  
18 six, is uniform in amount after the child's age is one and has  
19 not become paid up by reason of the death of a parent of the  
20 child; and (f) as other policy benefits additional to life  
21 insurance and endowment benefits, and premiums for all such  
22 additional benefits, shall be disregarded in ascertaining cash  
23 surrender values and nonforfeiture benefits required by this  
24 section, and no such additional benefits shall be required to  
25 be included in any paid-up nonforfeiture benefits.

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1 I. This subsection, in addition to all other  
2 applicable sections of this law, shall apply to all policies  
3 issued on or after January 1, 1985. Any cash surrender value  
4 available under the policy in the event of default in a  
5 premium payment due on any policy anniversary shall be in an  
6 amount [~~which~~] that does not differ by more than two-tenths of  
7 one percent of either the amount of insurance, if the  
8 insurance be uniform in amount, or the average amount of  
9 insurance at the beginning of each of the first ten policy  
10 years, from the sum of (a) the greater of zero and the basic  
11 cash value hereinafter specified; and (b) the present value of  
12 any existing paid-up additions less the amount of any  
13 indebtedness to the insurer under the policy.

14 The basic cash value shall be equal to the present value,  
15 on such anniversary, of the future guaranteed benefits [~~which~~]  
16 that would have been provided for by the policy, excluding any  
17 existing paid-up additions and before deduction of any  
18 indebtedness to the insurer, if there had been no default,  
19 less the then present value of the nonforfeiture factors, as  
20 hereinafter defined, corresponding to premiums [~~which~~] that  
21 would have fallen due on and after such anniversary.

22 Provided, however, that the effects on the basic cash value of  
23 supplemental life insurance or annuity benefits or of family  
24 coverage, as described in Subsection B or D of this section,  
25 whichever is applicable, shall be the same as are the effects

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1 specified therein.

2 The nonforfeiture factor for each policy year shall be an  
3 amount equal to a percentage of the adjusted premium for the  
4 policy year, as defined in Subsection D or F of this section,  
5 whichever is applicable. Except as is required by the next  
6 succeeding sentence of this paragraph, such percentage:

7 (1) must be the same percentage for each policy  
8 year between the second policy anniversary and the later of  
9 the fifth policy anniversary and the first policy anniversary  
10 at which there is available under the policy a cash surrender  
11 value in an amount, before including any paid-up additions and  
12 before deducting any indebtedness, of at least two-tenths of  
13 one percent of either the amount of insurance, if the  
14 insurance be uniform in amount, or the average amount of  
15 insurance at the beginning of each of the first ten policy  
16 years; and

17 (2) must be such that no percentage after the  
18 later of the two policy anniversaries specified in Paragraph  
19 (1) of this subsection may apply to fewer than five  
20 consecutive policy years.

21 Provided, that no basic cash value may be less than the  
22 value ~~[which]~~ that would be obtained if the adjusted premiums  
23 for the policy, as defined in Subsection D or F of this  
24 section, whichever is applicable, were substituted for the  
25 nonforfeiture factors in the calculation of the basic cash

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1 value.

2 All adjusted premiums and present values referred to in  
3 this subsection shall for a particular policy be calculated on  
4 the same mortality and interest bases as are used in  
5 demonstrating the policy's compliance with the other  
6 subsections of this section. The cash surrender values  
7 referred to in this subsection shall include any endowment  
8 benefits provided for by the policy.

9 Any cash surrender value available other than in the  
10 event of default in a premium payment due on a policy  
11 anniversary, and the amount of any paid-up nonforfeiture  
12 benefit available under the policy in the event of default in  
13 a premium payment shall be determined in manners consistent  
14 with the manners specified for determining the analogous  
15 minimum amounts in Subsections A, B, C, F and H of this  
16 section. The amounts of any cash surrender values and of any  
17 paid-up nonforfeiture benefits granted in connection with  
18 additional benefits such as those listed as items (a) through  
19 (d) in Subsection H of this section shall conform with the  
20 principles of this subsection.

21 J. This section shall not apply to any reinsurance,  
22 group insurance, pure endowment, annuity or reversionary  
23 annuity contract, nor to any term policy of uniform amount  
24 ~~[which]~~ that provides no guaranteed nonforfeiture or endowment  
25 benefits, or renewal thereof, of twenty years or less expiring

.179346.5GR

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1 before age seventy-one for which uniform premiums are payable  
2 during the entire term of the policy, nor to any term policy  
3 of decreasing amount, ~~[which]~~ that provides no guaranteed  
4 nonforfeiture or endowment benefits, on which each adjusted  
5 premium, calculated as specified in Subsections D, E and F of  
6 this section, is less than the adjusted premium so calculated,  
7 on a term policy of uniform amount, or renewal thereof,  
8 ~~[which]~~ that provides no guaranteed nonforfeiture or endowment  
9 benefits, issued at the same age and for the same initial  
10 amount of insurance and for a term of twenty years or less  
11 expiring before age seventy-one, for which uniform premiums  
12 are payable during the entire term of the policy, nor to any  
13 policy, ~~[which]~~ that provides no guaranteed nonforfeiture or  
14 endowment benefits, for which no cash surrender value, if any,  
15 or present value of any paid-up nonforfeiture benefit, at the  
16 beginning of any policy year, calculated as specified in  
17 Subsections B, C, D, E and F of this section, exceeds two and  
18 one-half percent of the amount of insurance at the beginning  
19 of the same policy year; nor to any policy ~~[which]~~ that shall  
20 be delivered outside this state through an agent or other  
21 representative of the insurer issuing the policy.

22 For purposes of determining the applicability of this  
23 section, the age at expiry for a joint term life insurance  
24 policy shall be the age of expiry of the oldest life.

25 K. After the effective date of this act, any

.179346.5GR

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1 insurer may file with the superintendent a written notice of  
2 its election to comply with the provisions of this section  
3 after a specified date before January 1, 1952. After the  
4 filing of such notice, then upon such specified date (which  
5 shall be the operative date for such insurer), this section  
6 shall become operative with respect to policies thereafter  
7 issued by such insurer. If an insurer makes no such election,  
8 the operative date of this section for such insurer shall be  
9 January 1, 1952."

10 Section 305. Section 59A-21-2 NMSA 1978 (being Laws  
11 1984, Chapter 127, Section 400) is amended to read:

12 "59A-21-2. GROUP CONTRACTS MUST MEET REQUIREMENTS.--

13 A. No life insurance policy shall be delivered or  
14 issued for delivery in this state insuring the lives of more  
15 than one individual unless to a group defined in [~~this~~  
16 ~~article~~] Chapter 59A, Article 21 NMSA 1978 and otherwise in  
17 compliance with [~~this~~] that article.

18 B. Subsection A [~~hereof~~] of this section does not  
19 apply to life insurance policies insuring only individuals:

20 (1) related by blood, marriage, domestic  
21 partnership or legal adoption; [~~or~~]

22 (2) having a common interest through ownership  
23 of a business enterprise, or a substantial legal interest or  
24 equity therein, and who are actively engaged in management  
25 thereof; or

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1 (3) otherwise having an insurable interest in  
2 each other's lives."

3 Section 306. Section 59A-21-10 NMSA 1978 (being Laws  
4 1984, Chapter 127, Section 407, as amended) is amended to  
5 read:

6 "59A-21-10. DEPENDENTS' COVERAGE.--Insurance under any  
7 group life insurance policy issued pursuant to Sections  
8 59A-21-4 and 59A-21-6 through 59A-21-8 NMSA 1978 may be  
9 extended to insure the dependents, or any class or classes  
10 thereof, of each employee or member who so elects. The term  
11 "dependent" means the spouse or domestic partner of the  
12 employee or member and an employee's or member's minor child,  
13 including a child beyond the age of majority up to a maximum  
14 of twenty-five years of age while attending an educational  
15 institution, and such other children of the employee or member  
16 as provided within the group life insurance policy. The  
17 premiums for the insurance on such dependents may be paid by  
18 the group policyholder or by the employee or member or by the  
19 group policyholder and the employee or member jointly."

20 Section 307. Section 59A-22-2 NMSA 1978 (being Laws  
21 1984, Chapter 127, Section 423) is amended to read:

22 "59A-22-2. FORM AND CONTENT OF POLICY.--No policy of  
23 individual health insurance shall be delivered or issued for  
24 delivery in this state unless:

25 A. the entire money and other considerations

.179346.5GR

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1 therefor are expressed therein; [~~and~~]

2 B. the time at which insurance takes effect and  
3 terminates is expressed therein; [~~and~~]

4 C. it purports to insure only one person, except as  
5 provided in Chapter 59A, Article 23 [~~of the Insurance Code~~]  
6 NMSA 1978, and except that a policy or contract may be issued  
7 upon application of the head of a family, who shall be deemed  
8 the policyholder, covering members of any one family,  
9 including husband, wife, domestic partner, dependent children  
10 or any children under the age of nineteen [~~(19)~~] and other  
11 dependents living with the family; [~~and~~]

12 D. every printed portion of the text matter and of  
13 any endorsements or attached papers shall be printed in  
14 uniform type of which the face shall be not less than ten  
15 [~~(10)~~] point (the "text" shall include all printed matter  
16 except the name and address of the insurer, name and title of  
17 the policy, captions, subcaptions and form numbers), but  
18 notwithstanding any provision of this law, the superintendent  
19 shall not disapprove any such policy on the ground that every  
20 printed portion of its text matter or of any endorsement or  
21 attached paper is not printed in uniform type if it shall be  
22 shown that the type used is required to conform to the laws of  
23 another state in which the insurer is authorized; [~~and~~]

24 E. the exceptions and reductions of indemnity are  
25 adequately captioned and clearly set forth in the policy or

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1 contract; ~~and~~

2 F. each such form, including riders and  
3 endorsements, shall be identified by a form number in the  
4 lower left-hand corner of the first page thereof; and

5 G. if any policy is issued by an insurer domiciled  
6 in this state for delivery to a person residing in another  
7 state, and if the official having responsibility for the  
8 administration of insurance laws of such other state shall  
9 have advised the superintendent that any such policy is not  
10 subject to approval or disapproval by such official, the  
11 superintendent may by ruling require that such policy meet the  
12 standards set forth in Sections ~~[424 through 446 of this~~  
13 ~~article]~~ 59A-22-3 through 59A-22-25 NMSA 1978."

14 Section 308. Section 59A-22-12 NMSA 1978 (being Laws  
15 1984, Chapter 127, Section 433) is amended to read:

16 "59A-22-12. PAYMENT OF CLAIMS.--

17 A. There shall be a provision as follows:

18 "Indemnity for loss of life will be payable in accordance  
19 with the beneficiary designation and the provisions respecting  
20 such payment, which may be prescribed herein and effective at  
21 the time of payment. If no such designation or provision is  
22 then effective, such indemnity shall be payable to the estate  
23 of the insured. Any other accrued indemnities unpaid at the  
24 insured's death may, at the option of the insurer, be paid  
25 either to such beneficiary or to such estate. All other

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1 indemnities will be payable to the insured."

2 B. The following provisions, or either of them, may  
3 be included with the foregoing provision at the option of the  
4 insurance company:

5 "If any indemnity of this policy shall be payable to the  
6 estate of the insured, or to an insured or beneficiary who is  
7 a minor or otherwise not competent to give valid release, the  
8 insurance company may pay such indemnity, up to an amount not  
9 exceeding \$..... (insert an amount which shall not exceed one  
10 thousand dollars (\$1,000)), to any relative by blood or  
11 connection by marriage or domestic partnership of the insured  
12 or beneficiary who is deemed by the insurance company to be  
13 equitably entitled thereto. Any payment made by the insurance  
14 company in good faith pursuant to this provision shall fully  
15 discharge the insurance company to the extent of such  
16 payment."

17 "Subject to any written direction of the insured in the  
18 application or otherwise all or a portion of any indemnities  
19 provided by this policy on account of hospital, nursing,  
20 medical or surgical services may, at the insurance company's  
21 option and unless the insured requests otherwise in writing  
22 not later than the time of filing proofs of such loss, be paid  
23 directly to the hospital or person rendering such services;  
24 but it is not required that the service be rendered by a  
25 particular hospital or person."

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1 Section 309. Section 59A-22-31 NMSA 1978 (being Laws  
2 1984, Chapter 127, Section 452) is amended to read:

3 "59A-22-31. INDUSTRIAL HEALTH INSURANCE.--

4 A. The term "industrial health insurance" as used  
5 herein means sickness and accident insurance under individual  
6 policies for which the premium is payable weekly, and includes  
7 any such policy [~~which~~] that covers sickness only or accident  
8 only.

9 B. Any insurer authorized to write health insurance  
10 in this state shall have the power to issue industrial health  
11 policies.

12 C. No policy of industrial health insurance may be  
13 delivered or issued for delivery in the state unless it has  
14 printed thereon the words "industrial policy".

15 D. Each such policy shall be subject to the  
16 provisions of [~~this article~~] Chapter 59A, Article 22 NMSA  
17 1978, except that no such policy shall be required to contain  
18 any of the policy provisions set forth in Sections [~~424~~  
19 ~~through 446, inclusive, of this article~~] 59A-22-3 through  
20 59A-22-25 NMSA 1978, other than the provisions relating to the  
21 presence of a preexisting disease or physical condition;  
22 provided, however, that no such policy shall contain any  
23 provision relative to notice or proof of loss, or the time for  
24 paying benefits, or the time within which suit may be brought  
25 upon the policy, [~~which~~] that in the opinion of the

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1 superintendent is less favorable to the insured than would be  
2 permitted by such policy provisions; and provided further,  
3 that such policy may contain a provision that upon proper  
4 written request, a named beneficiary shall be designated in or  
5 by endorsement on the policy to receive the proceeds thereof  
6 on the death of the insured, and there shall be reserved to  
7 the insured the power to change the beneficiary at any time by  
8 written notice to the insurer at its home office, accompanied  
9 by the policy for endorsement of the change thereon by the  
10 insurer; the insurer shall have the right to refuse to  
11 designate a beneficiary if evidence satisfactory to the  
12 insurer of such beneficiary's insurable interest in the life  
13 of the insured is not furnished on request. Any such policy  
14 may provide in substance that any payment thereunder may be  
15 made to the insured or the insured's estate or to any relative  
16 by blood or connection by marriage or domestic partnership of  
17 the insured, or, to the extent of such portion of any payment  
18 under the policy as may reasonably appear to the insurer to be  
19 due to such person, to any other person equitably entitled  
20 thereto by reason of having incurred expense occasioned by the  
21 maintenance or illness or burial of the insured; provided  
22 that, if the policy shall be in force at the death of the  
23 insured, the proceeds thereof shall be payable to the named  
24 beneficiary if living, but upon the expiration of fifteen  
25 [~~15~~] days after the death of the insured, unless proof of

.179346.5GR

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1 the claim in the manner and form required by the policy,  
2 accompanied by the policy for surrender, has theretofore been  
3 made by such beneficiary, the insurer may pay to any other  
4 person permitted by the policy."

5 Section 310. Section 59A-23B-3 NMSA 1978 (being Laws  
6 1991, Chapter 111, Section 3, as amended) is amended to read:

7 "59A-23B-3. POLICY OR PLAN--DEFINITION--CRITERIA.--

8 A. For purposes of the Minimum Healthcare  
9 Protection Act, "policy or plan" means a healthcare benefit  
10 policy or healthcare benefit plan that the insurer, fraternal  
11 benefit society, health maintenance organization or nonprofit  
12 healthcare plan chooses to offer to individuals, families or  
13 groups of fewer than twenty members formed for purposes other  
14 than obtaining insurance coverage and that meets the  
15 requirements of Subsection B of this section. For purposes of  
16 the Minimum Healthcare Protection Act, "policy or plan" shall  
17 not mean a healthcare policy or healthcare benefit plan that  
18 an insurer, health maintenance organization, fraternal benefit  
19 society or nonprofit healthcare plan chooses to offer outside  
20 the authority of the Minimum Healthcare Protection Act.

21 B. A policy or plan shall meet the following  
22 criteria:

23 (1) the individual, family or group obtaining  
24 coverage under the policy or plan has been without healthcare  
25 insurance, a health services plan or employer-sponsored

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1 healthcare coverage for the six-month period immediately  
2 preceding the effective date of its coverage under a policy or  
3 plan, provided that the six-month period shall not apply to:

4 (a) a group that has been in existence for  
5 less than six months and has been without healthcare coverage  
6 since the formation of the group;

7 (b) an employee whose healthcare coverage  
8 has been terminated by an employer;

9 (c) a dependent who no longer qualifies as  
10 a dependent under the terms of the contract; or

11 (d) an individual and an individual's  
12 dependents who no longer have healthcare coverage as a result  
13 of termination or change in employment of the individual or by  
14 reason of death of a spouse or domestic partner or dissolution  
15 of a marriage or domestic partnership, notwithstanding rights  
16 the individual or individual's dependents may have to continue  
17 healthcare coverage on a self-pay basis pursuant to the  
18 provisions of the federal Consolidated Omnibus Budget  
19 Reconciliation Act of 1985;

20 (2) the policy or plan includes the following  
21 managed care provisions to control costs:

22 (a) an exclusion for services that are not  
23 medically necessary or are not covered by preventive health  
24 services; and

25 (b) a procedure for preauthorization of

.179346.5GR

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1 elective hospital admissions by the insurer, fraternal benefit  
2 society, health maintenance organization or nonprofit  
3 healthcare plan; and

4 (3) subject to a maximum limit on the cost of  
5 healthcare services covered in any calendar year of not less  
6 than fifty thousand dollars (\$50,000) and, effective for  
7 policies written or renewed on or after January 1, 2009, of  
8 not less than one hundred thousand dollars (\$100,000),  
9 adjusted for changes not to exceed the medical price index  
10 component of the federal department of labor's consumer price  
11 index at intervals and in a manner established by rule  
12 pursuant to the Minimum Healthcare Protection Act, the policy  
13 or plan provides the following minimum healthcare services to  
14 covered individuals:

15 (a) inpatient hospitalization coverage or  
16 home care coverage in lieu of hospitalization or a combination  
17 of both, not to exceed twenty-five days of coverage inclusive  
18 of any deductibles, co-payments or co-insurance; provided that  
19 a period of inpatient hospitalization coverage shall precede  
20 any home care coverage;

21 (b) prenatal care, including a minimum of  
22 one prenatal office visit per month during the first two  
23 trimesters of pregnancy, two office visits per month during  
24 the seventh and eighth months of pregnancy and one office  
25 visit per week during the ninth month and until term; provided

.179346.5GR

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1 that coverage for each office visit shall also include  
2 prenatal counseling and education and necessary and  
3 appropriate screening, including history, physical examination  
4 and the laboratory and diagnostic procedures deemed  
5 appropriate by the physician based upon recognized medical  
6 criteria for the risk group of which the patient is a member;

7 (c) obstetrical care, including  
8 physicians' and certified nurse midwives' services, delivery  
9 room and other medically necessary services directly  
10 associated with delivery;

11 (d) well-baby and well-child care,  
12 including periodic evaluation of a child's physical and  
13 emotional status, a history, a complete physical examination,  
14 a developmental assessment, anticipatory guidance, appropriate  
15 immunizations and laboratory tests in keeping with prevailing  
16 medical standards; provided that such evaluation and care  
17 shall be covered when performed at approximately the age  
18 intervals of birth, two weeks, two months, four months, six  
19 months, nine months, twelve months, fifteen months, eighteen  
20 months, two years, three years, four years, five years and six  
21 years;

22 (e) coverage for low-dose screening  
23 mammograms for determining the presence of breast cancer;  
24 provided that the mammogram coverage shall include one  
25 baseline mammogram for persons age thirty-five through thirty-

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1 nine years, one biennial mammogram for persons age forty  
2 through forty-nine years and one annual mammogram for persons  
3 age fifty years and over; and further provided that the  
4 mammogram coverage shall only be subject to deductibles and  
5 co-insurance requirements consistent with those imposed on  
6 other benefits under the same policy or plan;

7 (f) coverage for cytologic screening, to  
8 include a Papanicolaou test and pelvic exam for asymptomatic  
9 as well as symptomatic women;

10 (g) a basic level of primary and  
11 preventive care, including no less than seven physician, nurse  
12 practitioner, nurse midwife or physician assistant office  
13 visits per calendar year, including any ancillary diagnostic  
14 or laboratory tests related to the office visit;

15 (h) coverage for childhood immunizations,  
16 in accordance with the current schedule of immunizations  
17 recommended by the American academy of pediatrics, including  
18 coverage for all medically necessary booster doses of all  
19 immunizing agents used in childhood immunizations; provided  
20 that coverage for childhood immunizations and necessary  
21 booster doses may be subject to deductibles and co-insurance  
22 consistent with those imposed on other benefits under the same  
23 policy or plan; and

24 (i) coverage for smoking cessation  
25 treatment.

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1 C. A policy or plan may include the following  
2 managed care and cost control features to control costs:

3 (1) a panel of providers who have entered into  
4 written agreements with the insurer, fraternal benefit  
5 society, health maintenance organization or nonprofit  
6 healthcare plan to provide covered healthcare services at  
7 specified levels of reimbursement; provided that such written  
8 agreement shall contain a provision relieving the individual,  
9 family or group covered by the policy or plan from an  
10 obligation to pay for a healthcare service performed by the  
11 provider that is determined by the insurer, fraternal benefit  
12 society, health maintenance organization or nonprofit  
13 healthcare plan not to be medically necessary;

14 (2) a requirement for obtaining a second  
15 opinion before elective surgery is performed;

16 (3) a procedure for utilization review by the  
17 insurer, fraternal benefit society, health maintenance  
18 organization or nonprofit healthcare plan; and

19 (4) a maximum limit on the cost of healthcare  
20 services covered in a calendar year of not less than fifty  
21 thousand dollars (\$50,000) and, effective for policies written  
22 or renewed on or after January 1, 2009, of not less than one  
23 hundred thousand dollars (\$100,000), adjusted for changes not  
24 to exceed the medical price index component of the federal  
25 department of labor's consumer price index at intervals and in

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1 a manner established by rule pursuant to the Minimum  
2 Healthcare Protection Act.

3 D. Nothing contained in Subsection C of this  
4 section shall prohibit an insurer, fraternal benefit society,  
5 health maintenance organization or nonprofit healthcare plan  
6 from including in the policy or plan additional managed care  
7 and cost control provisions that the superintendent determines  
8 to have the potential for controlling costs in a manner that  
9 does not cause discriminatory treatment of individuals,  
10 families or groups covered by the policy or plan.

11 E. Notwithstanding any other provisions of law, a  
12 policy or plan shall not exclude coverage for losses incurred  
13 for a preexisting condition more than six months from the  
14 effective date of coverage. The policy or plan shall not  
15 define a preexisting condition more restrictively than a  
16 condition for which medical advice was given or treatment  
17 recommended by or received from a physician within six months  
18 before the effective date of coverage.

19 F. A medical group, independent practice  
20 association or health professional employed by or contracting  
21 with an insurer, fraternal benefit society, health maintenance  
22 organization or nonprofit healthcare plan shall not maintain  
23 an action against an insured person, family or group member  
24 for sums owed by an insurer, fraternal benefit society, health  
25 maintenance organization or nonprofit healthcare plan that are

.179346.5GR

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1 higher than those agreed to pursuant to a policy or plan."

2 Section 311. Section 59A-23C-3 NMSA 1978 (being Laws  
3 1991, Chapter 153, Section 3, as amended) is amended to read:

4 "59A-23C-3. DEFINITIONS.--As used in the Small Group  
5 Rate and Renewability Act:

6 A. "actuarial certification" means a written  
7 statement by a member of the American academy of actuaries or  
8 another individual acceptable to the superintendent that a  
9 small employer carrier is in compliance with the provisions of  
10 Section 59A-23C-5 NMSA 1978, based upon the person's  
11 examination, including a review of the appropriate records and  
12 of the actuarial assumptions and methods used by the carrier  
13 in establishing premium rates for applicable health benefit  
14 plans;

15 B. "base premium rate" means, for each class of  
16 business as to a rating period, the lowest premium rate  
17 charged under a rating system for that class of business by  
18 the small employer carrier to small employers with similar  
19 case characteristics for health benefit plans with the same or  
20 similar coverage;

21 C. "carrier" means any person who provides health  
22 insurance in this state. For the purposes of the Small Group  
23 Rate and Renewability Act, "carrier" or "insurer" includes a  
24 licensed insurance company, a licensed fraternal benefit  
25 society, a prepaid hospital or medical service plan, a health

.179346.5GR

1 maintenance organization, a nonprofit health care  
2 organization, a multiple employer welfare arrangement or any  
3 other person providing a plan of health insurance subject to  
4 state insurance regulation;

5 D. "case characteristics" means demographic or  
6 other relevant characteristics of a small employer, as  
7 determined by a small employer carrier, that are considered by  
8 the carrier in the determination of premium rates for the  
9 small employer, but "case characteristics" does not include  
10 claim experience, health status and duration of coverage since  
11 issue;

12 E. "class of business" means all small employers as  
13 shown on the records of the small employer carrier. A  
14 separate class of business may be established by the small  
15 employer carrier on the basis that the applicable health  
16 benefit plans have been acquired from another small employer  
17 carrier as a distinct grouping of plans;

18 F. "creditable coverage" means, with respect to an  
19 individual, coverage of the individual pursuant to:

- 20 (1) a group health plan;  
21 (2) health insurance coverage;  
22 (3) Part A or Part B of Title 18 of the Social  
23 Security Act;  
24 (4) Title 19 of the Social Security Act except  
25 coverage consisting solely of benefits pursuant to Section

1 1928 of that title;

2 (5) 10 USCA Chapter 55;

3 (6) a medical care program of the Indian health  
4 service or of an Indian nation, tribe or pueblo;

5 (7) the Comprehensive Health Insurance Pool  
6 Act;

7 (8) a health plan offered pursuant to 5 USCA  
8 Chapter 89;

9 (9) a public health plan as defined in federal  
10 regulations; or

11 (10) a health benefit plan offered pursuant to  
12 Section 5(e) of the federal Peace Corps Act;

13 G. "department" means the department of insurance;

14 H. "group health plan" means an employee welfare  
15 benefit plan as defined Section 3(1) of the federal Employee  
16 Retirement Income Security Act of 1974 to the extent that the  
17 plan provides medical care and including items and services  
18 paid for as medical care to employees or their dependents as  
19 defined under the terms of the plan directly or through  
20 insurance, reimbursement or otherwise;

21 I. "health benefit plan" or "plan" means any  
22 hospital or medical expense-incurred policy or certificate,  
23 hospital or medical service plan contract or health  
24 maintenance organization subscriber contract. "Health benefit  
25 plan" does not include accident-only, credit, dental or

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1 disability income insurance, medicare supplement coverage,  
2 coverage issued as a supplement to liability insurance,  
3 workers' compensation or similar insurance or automobile  
4 medical-payment insurance;

5 J. "index rate" means, for each class of business  
6 for small employers with similar case characteristics, the  
7 arithmetic average of the applicable base premium rate and the  
8 corresponding highest premium rate;

9 K. "late enrollee" means, with respect to coverage  
10 under a group health plan, a participant or beneficiary who  
11 enrolls under the plan other than during:

12 (1) the first period in which the individual is  
13 eligible to enroll under the plan; or

14 (2) a special enrollment period pursuant to  
15 Sections ~~[8 and 9 of the Health Insurance Portability Act]~~  
16 59A-23E-8 and 59A-23E-9 NMSA 1978;

17 L. "new business premium rate" means, for each  
18 class of business as to a rating period, the premium rate  
19 charged or offered by the small employer carrier to small  
20 employers with similar case characteristics for newly issued  
21 health benefit plans with the same or similar coverage;

22 M. "rating period" means the calendar period for  
23 which premium rates established by a small employer carrier  
24 are assumed to be in effect, as determined by the small  
25 employer carrier;

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1           N. "small employer" means any person, firm,  
2 corporation, partnership or association actively engaged in  
3 business who, on at least fifty percent of its working days  
4 during either of the two preceding years, employed no [~~less~~  
5 fewer than two and no more than fifty eligible employees;  
6 provided that:

7                   (1) in determining the number of eligible  
8 employees, the spouse, domestic partner or dependent of an  
9 employee may, at the employer's discretion, be counted as a  
10 separate employee;

11                   (2) companies that are affiliated companies or  
12 that are eligible to file a combined tax return for purposes  
13 of state income taxation shall be considered one employer; and

14                   (3) in the case of an employer that was not in  
15 existence throughout a preceding calendar year, the  
16 determination of whether the employer is a small or large  
17 employer shall be based on the average number of employees  
18 that it is reasonably expected to employ on working days in  
19 the current calendar year;

20           O. "small employer carrier" means any insurer that  
21 offers health benefit plans covering the employees of a small  
22 employer; and

23           P. "superintendent" means the superintendent of  
24 insurance."

25           Section 312. Section 59A-23D-2 NMSA 1978 (being Laws  
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1 1995, Chapter 93, Section 2, as amended) is amended to read:

2 "59A-23D-2. DEFINITIONS.--As used in the Medical Care  
3 Savings Account Act:

4 A. "account administrator" means any of the  
5 following that administers medical care savings accounts:

6 (1) a national or state chartered bank, savings  
7 and loan association, savings bank or credit union;

8 (2) a trust company authorized to act as a  
9 fiduciary in this state;

10 (3) an insurance company or health maintenance  
11 organization authorized to do business in this state pursuant  
12 to the New Mexico Insurance Code; or

13 (4) a person approved by the federal secretary  
14 of health and human services;

15 B. "deductible" means the total covered medical  
16 expense an employee or [~~his~~] the employee's dependents must  
17 pay prior to any payment by a qualified higher deductible  
18 health plan for a calendar year;

19 C. "department" means the insurance division of the  
20 public regulation commission;

21 D. "dependent" means:

22 (1) a spouse;

23 (2) a domestic partner;

24 [~~(2)~~] (3) an unmarried or unemancipated child  
25 of the employee who is not in a domestic partnership, who is a

.179346.5GR

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1 minor and who is:

2 (a) a natural child;

3 (b) a legally adopted child;

4 (c) a stepchild living in the same  
5 household who is primarily dependent on the employee for  
6 maintenance and support;

7 (d) a child for whom the employee is the  
8 legal guardian and who is primarily dependent on the employee  
9 for maintenance and support, as long as evidence of the  
10 guardianship is evidenced in a court order or decree; or

11 (e) a foster child living in the same  
12 household, if the child is not otherwise provided with health  
13 care or health insurance coverage;

14 [~~(3)~~] (4) an unmarried child described in  
15 Subparagraphs (a) through (e) of Paragraph [~~(2)~~] (3) of this  
16 subsection who is not in a domestic partnership and who is  
17 between the ages of eighteen and twenty-five; or

18 [~~(4)~~] (5) a child over the age of eighteen who  
19 is incapable of self-sustaining employment by reason of mental  
20 retardation or physical handicap and who is chiefly dependent  
21 on the employee for support and maintenance;

22 E. "eligible individual" means an individual who  
23 with respect to any month:

24 (1) is covered under a qualified higher  
25 deductible health plan as of the first day of that month;

.179346.5GR

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[bracketed material] = delete

1 (2) is not, while covered under a qualified  
2 higher deductible health plan, covered under ~~[any]~~ a health  
3 plan that:

4 (a) is not a qualified higher deductible  
5 health plan; and

6 (b) provides coverage for ~~[any]~~ a benefit  
7 that is covered under the qualified higher deductible health  
8 plan; and

9 (3) is covered by a qualified higher deductible  
10 health plan that is established and maintained by the employer  
11 of the individual or of the spouse or domestic partner of the  
12 individual;

13 F. "eligible medical expense" means an expense paid  
14 by the employee for medical care described in Section 213(d)  
15 of the Internal Revenue Code of 1986 that is deductible for  
16 federal income tax purposes to the extent that those amounts  
17 are not compensated for by insurance or otherwise;

18 G. "employee" includes a self-employed individual;

19 H. "employer" includes a self-employed individual;

20 I. "medical care savings account" or "savings  
21 account" means an account established by an employer in the  
22 United States exclusively for the purpose of paying the  
23 eligible medical expenses of the employee or dependent, but  
24 only if the written governing instrument creating the trust  
25 meets the following requirements:

.179346.5GR

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1 (1) except in the case of a rollover  
2 contribution, no contribution will be accepted:

3 (a) unless it is in cash; or

4 (b) to the extent the contribution, when  
5 added to previous contributions to the trust for the calendar  
6 year, exceeds seventy-five percent of the highest annual limit  
7 deductible permitted pursuant to the Medical Care Savings  
8 Account Act;

9 (2) no part of the trust assets will be  
10 invested in life insurance contracts;

11 (3) the assets of the trust will not be  
12 commingled with other property except in a common trust fund  
13 or common investment fund; and

14 (4) the interest of an individual in the  
15 balance in [~~his~~] the individual's account is nonforfeitable;

16 J. "program" means the medical care savings account  
17 program established by an employer for [~~his~~] employees; and

18 K. "qualified higher deductible health plan" means  
19 a health coverage policy, certificate or contract that  
20 provides for payments for covered health care benefits that  
21 exceed the policy, certificate or contract deductible, that is  
22 purchased by an employer for the benefit of an employee and  
23 that has the following deductible provisions:

24 (1) self-only coverage with an annual  
25 deductible of not less than one thousand five hundred dollars

.179346.5GR

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1 (\$1,500) or more than two thousand two hundred fifty dollars  
2 (\$2,250) and a maximum annual out-of-pocket expense  
3 requirement of three thousand dollars (\$3,000), not including  
4 premiums;

5 (2) family coverage with an annual deductible  
6 of not less than three thousand dollars (\$3,000) or more than  
7 four thousand five hundred dollars (\$4,500) and a maximum  
8 annual out-of-pocket expense requirement of five thousand five  
9 hundred dollars (\$5,500), not including premiums; and

10 (3) preventive care coverage may be provided  
11 within the policies without the preventive care being  
12 subjected to the qualified higher deductibles."

13 Section 313. Section 59A-23E-9 NMSA 1978 (being Laws  
14 1997, Chapter 243, Section 9, as amended) is amended to read:

15 "59A-23E-9. GROUP HEALTH PLAN--SPECIAL ENROLLMENT  
16 PERIODS FOR DEPENDENT BENEFICIARIES.--

17 A. A group health plan shall provide for a  
18 dependent special enrollment period described in Subsection B  
19 of this section during which a person may be enrolled under  
20 the plan as a dependent of the individual, and in the case of  
21 the birth or adoption of a child, the spouse or domestic  
22 partner of the individual may be enrolled as a dependent of  
23 the individual if the spouse or domestic partner is otherwise  
24 eligible for coverage, if:

25 (1) the plan makes coverage available to a

.179346.5GR

1 dependent of an individual;

2 (2) the individual is a participant under the  
3 plan or has met any waiting period applicable to becoming a  
4 participant and is eligible to be enrolled under the plan but  
5 for a failure to enroll during a previous enrollment period;  
6 and

7 (3) the person has become the dependent of the  
8 individual through marriage, domestic partnership, birth,  
9 adoption or placement for adoption.

10 B. A dependent special enrollment period pursuant  
11 to this subsection shall be for a period of not less than  
12 thirty days and shall begin on the later of:

13 (1) the date dependent coverage is made  
14 available; or

15 (2) the date of the marriage, entry into  
16 domestic partnership, birth, adoption or placement for  
17 adoption described in Subsection A of this section.

18 C. If an individual seeks to enroll a person as a  
19 dependent during the first thirty days of a dependent special  
20 enrollment period, the coverage of the dependent becomes  
21 effective:

22 (1) in the case of marriage or domestic  
23 partnership, not later than the first day of the first month  
24 beginning after the date the completed request for enrollment  
25 is received;

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1 (2) in the case of birth, as of the date of the  
2 birth; or

3 (3) in the case of adoption or placement for  
4 adoption, the date of the adoption or placement."

5 Section 314. Section 59A-46-32 NMSA 1978 (being Laws  
6 1984, Chapter 127, Section 876.1) is amended to read:

7 "59A-46-32. CONTINUATION OF COVERAGE AND CONVERSION  
8 RIGHT--HEALTH CARE PLANS.--

9 A. Every individual or group contract entered into  
10 by a health maintenance organization and that is delivered,  
11 issued for delivery or renewed in this state on or after  
12 January 1, 1985 shall provide covered family members of  
13 subscribers the right to continue such coverage through a  
14 converted or separate contract upon the death of the  
15 subscriber or upon the divorce, annulment or dissolution of  
16 marriage or domestic partnership or legal separation of the  
17 spouse or domestic partner from the subscriber. Where a  
18 continuation of coverage or conversion is made in the name of  
19 the spouse or domestic partner of the subscriber, such  
20 coverage may, at the option of the spouse or domestic partner,  
21 include coverage to dependent children for whom the spouse or  
22 domestic partner has responsibility for care and support.

23 B. The right to a continuation of coverage or  
24 conversion pursuant to this section shall not exist with  
25 respect to any covered family member of a subscriber in the

.179346.5GR

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1 event the coverage terminates for nonpayment of premium,  
2 nonrenewal of the contract or the expiration of the term for  
3 which the contract is issued. With respect to any covered  
4 family member who is eligible for medicare or any other  
5 similar federal or state health insurance program, the right  
6 to a continuation of coverage or conversion shall be limited  
7 to coverage under a medicare supplement insurance contract as  
8 defined by the rules and regulations adopted by the  
9 superintendent of insurance.

10 C. Coverage continued through the issuance of a  
11 converted or separate contract shall be provided at a  
12 reasonable, nondiscriminatory rate to the insured and shall  
13 consist of a form of coverage then being offered by the health  
14 maintenance organization as a conversion contract. Continued  
15 and converted coverages shall contain renewal provisions that  
16 are not less favorable to the subscriber than those contained  
17 in the contract from which the conversion is made, except that  
18 the person who exercises the right of conversion is entitled  
19 only to have included a right to coverage under a medicare  
20 supplement insurance contract, as defined by the rules and  
21 regulations adopted by the superintendent of insurance, after  
22 the attainment of the age of eligibility for medicare or any  
23 other similar federal or state health insurance program.

24 D. At the time of inception of coverage, the health  
25 maintenance organization shall provide each covered family

.179346.5GR

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1 member eighteen years of age or older a statement setting  
2 forth in summary form the continuation of coverage and  
3 conversion provisions of the subscriber's contract.

4 E. The eligible covered family member exercising  
5 the continuation or conversion right [~~and~~] must notify the  
6 health maintenance organization and make payment of the  
7 applicable premium within thirty days following the date such  
8 coverage otherwise terminates as specified in the contract  
9 from which continuation or conversion is being exercised.

10 F. Coverage shall be provided through continuation  
11 or conversion without additional evidence of insurability and  
12 shall not impose any preexisting condition, limitations or  
13 other contractual time limitations other than those remaining  
14 unexpired under the contract from which continuation or  
15 conversion is exercised.

16 G. Any probationary or waiting period set forth in  
17 the converted or separate contract is deemed to commence on  
18 the effective date of the applicant's coverage under the  
19 original contract."

20 Section 315. Section 59A-46-38 NMSA 1978 (being Laws  
21 1984, Chapter 127, Section 874, as amended) is amended to  
22 read:

23 "59A-46-38. NEWLY BORN CHILDREN COVERAGE.--

24 A. All individual and group health maintenance  
25 organization contracts delivered or issued for delivery in

.179346.5GR

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[bracketed material] = delete

1 this state shall also provide that the health benefits  
2 applicable for children shall be payable with respect to a  
3 newly born child of the subscriber or the subscriber's spouse  
4 or domestic partner from the moment of birth.

5 B. All individual and group health maintenance  
6 organization contracts delivered or issued for delivery in  
7 this state that do not provide health benefits applicable for  
8 children shall provide for an option to add to the coverage  
9 any newly born child of the insured, provided that the  
10 requirements of Subsection D of this section have been met.

11 C. The coverage for newly born children shall  
12 consist of coverage of injury or sickness, including the  
13 necessary care and treatment of medically diagnosed congenital  
14 defects and birth abnormalities and, where necessary to  
15 protect the life of the infant, transportation, including air  
16 transport, to the nearest available tertiary care facility for  
17 newly born infants.

18 D. If a specific payment is required to provide  
19 coverage for a child, the contract may require that a  
20 notification of birth of a newly born child and payment [~~must~~]  
21 be furnished to the health maintenance organization within  
22 thirty-one days after the date of birth in order to have the  
23 coverage from birth.

24 E. As used in this section and in Section  
25 [~~59A-46-28~~] 59A-46-39 NMSA 1978, "tertiary care facility"

.179346.5GR

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1 means a hospital unit [~~which~~] that provides complete perinatal  
2 care and intensive care of intrapartum and perinatal high-risk  
3 patients with responsibilities for coordination of transport,  
4 communication, education and data analysis systems for the  
5 geographic area served."

6 Section 316. Section 59A-47-34 NMSA 1978 (being Laws  
7 1984, Chapter 127, Section 879.33) is amended to read:

8 "59A-47-34. CONTINUATION OF COVERAGE AND CONVERSION  
9 RIGHTS--HEALTH CARE PLANS.--

10 A. Every individual or group contract entered into  
11 by a health care plan that provides for health care expense  
12 payments on a service benefit basis or an indemnity benefit  
13 basis or both and that is delivered, issued for delivery or  
14 renewed in this state on or after July 1, 1984 shall provide  
15 covered family members of subscribers the right to continue  
16 such coverage through a converted or separate contract upon  
17 the death of the subscriber or upon the divorce, annulment or  
18 dissolution of marriage or domestic partnership or legal  
19 separation of the spouse or domestic partner from the  
20 subscriber. Where a continuation of coverage or conversion is  
21 made in the name of the spouse or domestic partner of the  
22 subscriber, such coverage may, at the option of the spouse or  
23 domestic partner, include coverage to dependent children for  
24 whom the spouse or domestic partner has responsibility for  
25 care and support.

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1           B. The right to a continuation of coverage or  
2 conversion pursuant to this section shall not exist with  
3 respect to any covered family member of a subscriber in the  
4 event the coverage terminates for nonpayment of premium,  
5 nonrenewal of the contract or the expiration of the term for  
6 which the contract is issued. With respect to any covered  
7 family member who is eligible for medicare or any other  
8 similar federal or state health insurance program, the right  
9 to a continuation of coverage or conversion shall be limited  
10 to coverage under a medicare supplement insurance contract as  
11 defined by the rules and regulations adopted by the  
12 superintendent of insurance.

13           C. Coverage continued through the issuance of a  
14 converted or separate contract shall be provided at a  
15 reasonable, nondiscriminatory rate to the insured and shall  
16 consist of a form of coverage then being offered by the health  
17 care plan as a conversion contract in the jurisdiction where  
18 the person exercising the conversion right resides that most  
19 nearly approximates the coverage of the contract from which  
20 conversion is exercised. Continued and converted coverages  
21 shall contain renewal provisions that are not less favorable  
22 to the subscriber than those contained in the policy from  
23 which the conversion is made, except that the person who  
24 exercises the right of conversion is entitled only to have  
25 included a right to coverage under a medicare supplement

.179346.5GR

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1 insurance contract, as defined by the rules and regulations  
2 adopted by the superintendent of insurance, after the  
3 attainment of the age of eligibility for medicare or any other  
4 similar federal or state health insurance program.

5 D. At the time of inception of coverage, the health  
6 care plan shall provide each covered family member eighteen  
7 years of age or older a statement setting forth in summary  
8 form the continuation of coverage and conversion provisions of  
9 the subscriber's contract.

10 E. The eligible covered family member exercising  
11 the continuation or conversion right must notify the health  
12 care plan and make payment of the applicable premium within  
13 thirty days following the date such coverage otherwise  
14 terminates as specified in the contract from which  
15 continuation or conversion is being exercised.

16 F. Coverage shall be provided through continuation  
17 or conversion without additional evidence of insurability and  
18 shall not impose any preexisting condition, limitations or  
19 other contractual time limitations other than those remaining  
20 unexpired under the contract from which continuation or  
21 conversion is exercised.

22 G. Any probationary or waiting period set forth in  
23 the converted or separate contract is deemed to commence on  
24 the effective date of the applicant's coverage under the  
25 original contract."

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1 Section 317. Section 59A-54-3 NMSA 1978 (being Laws  
2 1987, Chapter 154, Section 3, as amended) is amended to read:

3 "59A-54-3. DEFINITIONS.--As used in the Medical  
4 Insurance Pool Act:

5 A. "board" means the board of directors of the  
6 pool;

7 B. "creditable coverage" means, with respect to  
8 an individual, coverage of the individual pursuant to:

9 (1) a group health plan;

10 (2) health insurance coverage;

11 (3) Part A or Part B of Title 18 of the Social  
12 Security Act;

13 (4) Title 19 of the Social Security Act except  
14 coverage consisting solely of benefits pursuant to Section  
15 1928 of that title;

16 (5) 10 USCA Chapter 55;

17 (6) the Medical Insurance Pool Act;

18 (7) a health plan offered pursuant to  
19 5 USCA Chapter 89;

20 (8) a public health plan as defined in federal  
21 regulations; or

22 (9) a health benefit plan offered pursuant to  
23 Section 5(e) of the federal Peace Corps Act;

24 C. "federally defined eligible individual" means an  
25 individual:

.179346.5GR

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1 (1) for whom, as of the date on which the  
2 individual seeks coverage under the Medical Insurance Pool  
3 Act, the aggregate of the periods of creditable coverage is  
4 eighteen or more months;

5 (2) whose most recent prior creditable coverage  
6 was under a group health plan, governmental plan, church plan  
7 or health insurance coverage, as those plans or coverage are  
8 defined in Section 59A-23E-2 NMSA 1978, offered in connection  
9 with that plan;

10 (3) who is not eligible for coverage under  
11 a group health plan, Part A or Part B of Title 18 of the  
12 Social Security Act or a state plan under Title 19 or Title 21  
13 of the Social Security Act or a successor program and who does  
14 not have other health insurance coverage;

15 (4) with respect to whom the most recent  
16 coverage within the period of aggregate creditable coverage  
17 was not terminated based on a factor relating to nonpayment of  
18 premiums or fraud;

19 (5) who, if offered the option of continuation  
20 of coverage under a continuation provision pursuant to the  
21 Consolidated Omnibus Budget Reconciliation Act of 1985 or a  
22 similar state program, elected this coverage; and

23 (6) who has exhausted continuation coverage  
24 under this provision or program, if the individual elected the  
25 continuation coverage described in Paragraph (5) of this

.179346.5GR

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1 subsection;

2 D. "health care facility" means an entity providing  
3 health care services that is licensed by the department of  
4 health;

5 E. "health care services" means services or  
6 products included in the furnishing to an individual of  
7 medical care or hospitalization, or incidental to the  
8 furnishing of that care or hospitalization, as well as the  
9 furnishing to a person of other services or products for the  
10 purpose of preventing, alleviating, curing or healing human  
11 illness or injury;

12 F. "health insurance" means a hospital and medical  
13 expense-incurred policy; nonprofit health care service plan  
14 contract; health maintenance organization subscriber contract;  
15 short-term, accident, fixed indemnity or specified disease  
16 policy; disability income contracts; limited benefit  
17 insurance; credit insurance; or as the term is defined by  
18 Section 59A-7-3 NMSA 1978. "Health insurance" does not  
19 include insurance arising out of the Workers' Compensation Act  
20 or similar law, automobile medical payment insurance or  
21 insurance under which benefits are payable with or without  
22 regard to fault and that is required by law to be contained in  
23 a liability insurance policy;

24 G. "health maintenance organization" means a person  
25 who provides, at a minimum, either directly or through

.179346.5GR

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[bracketed material] = delete

1 contractual or other arrangements with others, basic health  
2 care services to enrollees on a fixed prepayment basis and who  
3 is responsible for the availability, accessibility and quality  
4 of the health care services provided or arranged, or as the  
5 term is defined by Subsection M of Section 59A-46-2 NMSA 1978;

6 H. "health plan" means an arrangement by which  
7 persons, including dependents, [~~or~~] spouses or domestic  
8 partners, covered or making application to be covered under  
9 the pool have access to hospital and medical benefits or  
10 reimbursement, including group or individual insurance or  
11 subscriber contract; coverage through health maintenance  
12 organizations, preferred provider organizations or other  
13 alternate delivery systems; coverage under prepayment, group  
14 practice or individual practice plans; coverage under  
15 uninsured arrangements of group or group-type contracts,  
16 including employer self-insured, cost-plus or other benefits  
17 methodologies not involving insurance or not subject to New  
18 Mexico premium taxes; coverage under group-type contracts that  
19 are not available to the general public and can be obtained  
20 only because of connection with a particular organization or  
21 group; and coverage by medicare or other governmental  
22 benefits. "Health plan" includes coverage through health  
23 insurance;

24 I. "insured" means an individual resident of this  
25 state who is eligible to receive benefits from an insurer or

.179346.5GR

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1 other health plan;

2 J. "insurer" means an insurance company  
3 authorized to transact health insurance business in this  
4 state, a nonprofit health care plan, a health maintenance  
5 organization and self-insurers not subject to federal  
6 preemption. "Insurer" does not include an insurance company  
7 that is licensed under the Prepaid Dental Plan Law or a  
8 company that is solely engaged in the sale of dental insurance  
9 and is licensed not under that act, but under another  
10 provision of the Insurance Code;

11 K. "medicare" means coverage under Part A or  
12 Part B of Title 18 of the Social Security Act, as amended;

13 L. "pool" means the New Mexico medical insurance  
14 pool;

15 M. "preexisting condition" means a physical or  
16 mental condition for which medical advice, medication,  
17 diagnosis, care or treatment was recommended for or received  
18 by an applicant within six months before the effective date of  
19 coverage, except that pregnancy is not considered a  
20 preexisting condition for a federally defined eligible  
21 individual; and

22 N. "therapist" means a licensed physical,  
23 occupational, speech or respiratory therapist."

24 Section 318. Section 59A-54-4 NMSA 1978 (being Laws  
25 1987, Chapter 154, Section 4, as amended) is amended to read:

.179346.5GR

1 "59A-54-4. POOL CREATED--BOARD.--

2 A. There is created a nonprofit entity to be  
3 known as the "New Mexico medical insurance pool". All  
4 insurers shall organize and remain members of the pool as a  
5 condition of their authority to transact insurance business in  
6 this state. The board is a governmental entity for purposes  
7 of the Tort Claims Act.

8 B. The superintendent shall, within sixty days  
9 after the effective date of the Medical Insurance Pool Act,  
10 give notice to all insurers of the time and place for the  
11 initial organizational meetings of the pool. Each member of  
12 the pool shall be entitled to one vote in person or by proxy  
13 at the organizational meetings.

14 C. The pool shall operate subject to the  
15 supervision and approval of the board. The board shall  
16 consist of the superintendent or [~~his~~] the superintendent's  
17 designee, who shall serve as the [~~chairman~~] chair of the  
18 board, four members appointed by the members of the pool and  
19 six members appointed by the superintendent. The members  
20 appointed by the superintendent shall consist of four citizens  
21 who are not professionally affiliated with an insurer, at  
22 least two of whom shall be individuals who are insured by the  
23 pool, who would qualify for pool coverage if they were not  
24 eligible for particular group coverage or who are a parent,  
25 guardian, relative, [~~or~~] spouse or domestic partner of such an

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1 individual. The superintendent's fifth appointment shall be a  
2 representative of a statewide health planning agency or  
3 organization. The superintendent's sixth appointment shall be  
4 a representative of the medical community.

5 D. The members of the board appointed by the  
6 members of the pool shall be appointed for initial terms of  
7 four years or less, staggered so that the term of one member  
8 shall expire on June 30 of each year. The members of the  
9 board appointed by the superintendent shall be appointed for  
10 initial terms of five years or less, staggered so that the  
11 term of one member expires on June 30 of each year. Following  
12 the initial terms, members of the board shall be appointed for  
13 terms of three years. If the members of the pool fail to make  
14 the initial appointments required by this subsection within  
15 sixty days following the first organizational meeting, the  
16 superintendent shall make those appointments. Whenever a  
17 vacancy on the board occurs, the superintendent shall fill the  
18 vacancy by appointing a person to serve the balance of the  
19 unexpired term. The person appointed shall meet the  
20 requirements for initial appointment to that position.  
21 Members of the board may be reimbursed from the pool subject  
22 to the limitations provided by the Per Diem and Mileage Act  
23 and shall receive no other compensation, perquisite or  
24 allowance.

25 E. The board shall submit a plan of operation to

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1 the superintendent and any amendments to it necessary or  
2 suitable to assure the fair, reasonable and equitable  
3 administration of the pool.

4 F. The superintendent shall, after notice and  
5 hearing, approve the plan of operation, provided that it is  
6 determined to assure the fair, reasonable and equitable  
7 administration of the pool and that it provides for the  
8 sharing of pool losses on an equitable, proportionate basis  
9 among the members of the pool. The plan of operation shall  
10 become effective upon approval in writing by the  
11 superintendent consistent with the date on which coverage  
12 under the Medical Insurance Pool Act is made available. If  
13 the board fails to submit a plan of operation within one  
14 hundred eighty days after the appointment of the board, or any  
15 time thereafter fails to submit necessary amendments to the  
16 plan of operation, the superintendent shall, after notice and  
17 hearing, adopt and promulgate such rules as are necessary or  
18 advisable to effectuate the provisions of the Medical  
19 Insurance Pool Act. Rules promulgated by the superintendent  
20 shall continue in force until modified by [~~him~~] the  
21 superintendent or superseded by a subsequent plan of operation  
22 submitted by the board and approved by the superintendent.

23 G. Any reference in law, rule, division bulletin,  
24 contract or other legal document to the New Mexico  
25 comprehensive health insurance pool shall be deemed to refer

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1 to the New Mexico medical insurance pool."

2 Section 319. Section 59A-54-16 NMSA 1978 (being Laws  
3 1987, Chapter 154, Section 16, as amended) is amended to read:

4 "59A-54-16. POOL POLICY.--

5 A. A pool policy offered under the Medical  
6 Insurance Pool Act shall contain provisions under which the  
7 pool is obligated to renew the contract until the day on which  
8 the individual in whose name the contract is issued first  
9 becomes eligible for medicare coverage, except that in a  
10 family policy covering both husband and wife or both domestic  
11 partners, the age of the younger spouse or domestic partner  
12 shall be used as the basis for meeting the durational  
13 requirement of this subsection.

14 B. The pool shall not change the rates for pool  
15 policies except on a class basis with a clear disclosure in  
16 the policy of the right of the pool to do so.

17 C. In the case of a small group policy, a pool  
18 policy offered under the Medical Insurance Pool Act shall  
19 provide covered family members the right to continue the  
20 policy as the named insured or through a conversion policy  
21 upon the death of the named insured or upon the divorce,  
22 annulment or dissolution of marriage or domestic partnership  
23 or legal separation of the spouse or domestic partner from the  
24 named insured by election to do so within a period of time  
25 specified in the contract subject to the requirements of this

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1 section."

2 Section 320. Section 59A-56-3 NMSA 1978 (being Laws  
3 1994, Chapter 75, Section 3, as amended) is amended to read:

4 "59A-56-3. DEFINITIONS.--As used in the Health Insurance  
5 Alliance Act:

6 A. "alliance" means the New Mexico health insurance  
7 alliance;

8 B. "approved health plan" means any arrangement for  
9 the provisions of health insurance offered through and  
10 approved by the alliance;

11 C. "board" means the board of directors of the  
12 alliance;

13 D. "child" means a dependent unmarried individual  
14 who is not in a domestic partnership and who is less than  
15 twenty-five years of age;

16 E. "creditable coverage" means, with respect to an  
17 individual, coverage of the individual pursuant to:

18 (1) a group health plan;

19 (2) health insurance coverage;

20 (3) Part A or Part B of Title 18 of the federal  
21 Social Security Act;

22 (4) Title 19 of the federal Social Security Act  
23 except coverage consisting solely of benefits pursuant to  
24 Section 1928 of that title;

25 (5) 10 USCA Chapter 55;

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1 (6) a medical care program of the Indian health  
2 service or of an Indian nation, tribe or pueblo;

3 (7) the Medical Insurance Pool Act;

4 (8) a health plan offered pursuant to 5 USCA  
5 Chapter 89;

6 (9) a public health plan as defined in federal  
7 regulations; or

8 (10) a health benefit plan offered pursuant to  
9 Section 5(e) of the federal Peace Corps Act;

10 F. "department" means the insurance division of the  
11 commission;

12 G. "director" means an individual who serves on the  
13 board;

14 H. "earned premiums" means premiums paid or due  
15 during a calendar year for coverage under an approved health  
16 plan less any unearned premiums at the end of that calendar  
17 year plus any unearned premiums from the end of the  
18 immediately preceding calendar year;

19 I. "eligible expenses" means the allowable charges  
20 for a health care service covered under an approved health  
21 plan;

22 J. "eligible individual":

23 (1) means an individual who:

24 (a) as of the date of the individual's  
25 application for coverage under an approved health plan, has an

.179346.5GR

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1 aggregate of eighteen or more months of creditable coverage,  
2 the most recent of which was under a group health plan,  
3 governmental plan or church plan as those plans are defined in  
4 Subsections P, N and D of Section 59A-23E-2 NMSA 1978,  
5 respectively, or health insurance offered in connection with  
6 any of those plans, but for the purposes of aggregating  
7 creditable coverage, a period of creditable coverage shall not  
8 be counted with respect to enrollment of an individual for  
9 coverage under an approved health plan if, after that period  
10 and before the enrollment date, there was a sixty-three-day or  
11 longer period during all of which the individual was not  
12 covered under any creditable coverage; or

13 (b) is entitled to continuation coverage  
14 pursuant to Section 59A-56-20 or 59A-23E-19 NMSA 1978; and

15 (2) does not include an individual who:

16 (a) has or is eligible for coverage under  
17 a group health plan;

18 (b) is eligible for coverage under  
19 medicare or a state plan under Title 19 of the federal Social  
20 Security Act or any successor program;

21 (c) has health insurance coverage as  
22 defined in Subsection R of Section 59A-23E-2 NMSA 1978;

23 (d) during the most recent coverage within  
24 the coverage period described in Subparagraph (a) of Paragraph  
25 (1) of this subsection was terminated from coverage as a

.179346.5GR

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1 result of nonpayment of premium or fraud; or

2 (e) has been offered the option of  
3 coverage under a COBRA continuation provision as that term is  
4 defined in Subsection F of Section 59A-23E-2 NMSA 1978, or  
5 under a similar state program, except for continuation  
6 coverage under Section 59A-56-20 NMSA 1978, and did not  
7 exhaust the coverage available under the offered program;

8 K. "enrollment date" means, with respect to an  
9 individual covered under a group health plan or health  
10 insurance coverage, the date of enrollment of the individual  
11 in the plan or coverage or, if earlier, the first day of the  
12 waiting period for that enrollment;

13 L. "gross earned premiums" means premiums paid or  
14 due during a calendar year for all health insurance written in  
15 the state less any unearned premiums at the end of that  
16 calendar year plus any unearned premiums from the end of the  
17 immediately preceding calendar year;

18 M. "group health plan" means an employee welfare  
19 benefit plan to the extent the plan provides hospital,  
20 surgical or medical expenses benefits to employees or their  
21 dependents, as defined by the terms of the plan, directly  
22 through insurance, reimbursement or otherwise;

23 N. "health care service" means a service or product  
24 furnished an individual for the purpose of preventing,  
25 alleviating, curing or healing human illness or injury and

.179346.5GR

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1 includes services and products incidental to furnishing the  
2 described services or products;

3 O. "health insurance" means "health" insurance as  
4 defined in Section 59A-7-3 NMSA 1978; any hospital and medical  
5 expense-incurred policy; nonprofit health care plan service  
6 contract; health maintenance organization subscriber contract;  
7 short-term, accident, fixed indemnity, specified disease  
8 policy or disability income insurance contracts and limited  
9 health benefit or credit health insurance; coverage for health  
10 care services under uninsured arrangements of group or group-  
11 type contracts, including employer self-insured, cost-plus or  
12 other benefits methodologies not involving insurance or not  
13 subject to New Mexico premium taxes; coverage for health care  
14 services under group-type contracts that are not available to  
15 the general public and can be obtained only because of  
16 connection with a particular organization or group; coverage  
17 by medicare or other governmental programs providing health  
18 care services; but "health insurance" does not include  
19 insurance issued pursuant to provisions of the Workers'  
20 Compensation Act or similar law, automobile medical payment  
21 insurance or provisions by which benefits are payable with or  
22 without regard to fault and are required by law to be  
23 contained in any liability insurance policy;

24 P. "health maintenance organization" means a health  
25 maintenance organization as defined by Subsection M of Section  
.179346.5GR

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1 59A-46-2 NMSA 1978;

2 Q. "incurred claims" means claims paid during a  
3 calendar year plus claims incurred in the calendar year and  
4 paid prior to April 1 of the succeeding year, less claims  
5 incurred previous to the current calendar year and paid prior  
6 to April 1 of the current year;

7 R. "insured" means a small employer or its employee  
8 and an individual covered by an approved health plan, a former  
9 employee of a small employer who is covered by an approved  
10 health plan through conversion or an individual covered by an  
11 approved health plan that allows individual enrollment;

12 S. "medicare" means coverage under both Parts A and  
13 B of Title 18 of the federal Social Security Act;

14 T. "member" means a member of the alliance;

15 U. "nonprofit health care plan" means a health care  
16 plan as defined in Subsection K of Section 59A-47-3 NMSA 1978;

17 V. "premiums" means the premiums received for  
18 coverage under an approved health plan during a calendar year;

19 W. "small employer" means a person that is a  
20 resident of this state, has employees at least fifty percent  
21 of whom are residents of this state, is actively engaged in  
22 business and that on at least fifty percent of its working  
23 days during either of the two preceding calendar years,  
24 employed no fewer than two and no more than fifty eligible  
25 employees; provided that:

.179346.5GR

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1 (1) in determining the number of eligible  
2 employees, the spouse, domestic partner or dependent of an  
3 employee may, at the employer's discretion, be counted as a  
4 separate employee;

5 (2) companies that are affiliated companies or  
6 that are eligible to file a combined tax return for purposes  
7 of state income taxation shall be considered one employer; and

8 (3) in the case of an employer that was not in  
9 existence throughout a preceding calendar year, the  
10 determination of whether the employer is a small or large  
11 employer shall be based on the average number of employees  
12 that it is reasonably expected to employ on working days in  
13 the current calendar year;

14 X. "superintendent" means the superintendent of  
15 insurance;

16 Y. "total premiums" means the total premiums for  
17 business written in the state received during a calendar year;  
18 and

19 Z. "unearned premiums" means the portion of a  
20 premium previously paid for which the coverage period is in  
21 the future."

22 Section 321. Section 59A-56-20 NMSA 1978 (being Laws  
23 1994, Chapter 75, Section 20, as amended) is amended to read:

24 "59A-56-20. RENEWABILITY.--

25 A. An approved health plan shall contain provisions  
.179346.5GR

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1 under which the member offering the plan is obligated to renew  
2 the health insurance if premiums are paid until the day the  
3 plan is replaced by another plan or the small employer  
4 terminates coverage.

5 B. An approved health plan issued to an eligible  
6 individual shall contain provisions under which the member  
7 offering the plan is obligated to renew the health insurance  
8 except for:

- 9 (1) nonpayment of premium;  
10 (2) fraud; or  
11 (3) termination of the approved health plan,  
12 except that the individual has the right to transfer to  
13 another approved health plan.

14 C. If an approved health plan ceases to exist, the  
15 alliance shall provide an alternate approved health plan.

16 D. An approved health plan shall provide covered  
17 individuals the right to continue health insurance coverage  
18 through an approved health plan as individual health insurance  
19 provided by the same member upon the death of the employee or  
20 upon the divorce, annulment or dissolution of marriage or  
21 domestic partnership or legal separation of the spouse or  
22 domestic partner from the employee or by termination of  
23 employment by electing to do so within a period of time  
24 specified in the health insurance if the employee was covered  
25 under an approved health plan while employed for at least six

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1 consecutive months. The individual may be charged an  
2 additional administrative charge for the individual health  
3 insurance.

4 E. The right to continue health insurance coverage  
5 provided in this section terminates if the covered individual  
6 resides outside the United States for more than six  
7 consecutive months."

8 Section 322. Section 60-1A-8 NMSA 1978 (being Laws 2007,  
9 Chapter 39, Section 8) is amended to read:

10 "60-1A-8. RACETRACK LICENSES--APPLICATIONS--SPECIFIC  
11 REQUIREMENTS.--

12 A. It is a violation of the Horse Racing Act for a  
13 person to hold a public horse race or a race meet for profit  
14 or gain in any manner unless the person has been issued a  
15 racetrack license by the commission and has been authorized by  
16 the commission to hold the horse race or race meet on specific  
17 dates.

18 B. An application for a racetrack license shall be  
19 submitted in writing on forms designated by the commission.  
20 An applicant shall affirm that information contained in the  
21 application is true and accurate. The application shall be  
22 signed by the applicant or the applicant's agent, and the  
23 signature shall be notarized.

24 C. A racetrack license shall be valid for a period  
25 not to exceed one year. The commission may renew a racetrack

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1 license upon expiration of the term of the license.

2 D. Renewal applications for racetrack licenses  
3 shall be filed no later than June 1 of each year. The race  
4 dates for the upcoming year shall be set by the commission  
5 after the commission receives all renewal applications.

6 E. An application shall specify the dates and days  
7 of the week of the race meet that the applicant is requesting  
8 the commission to approve.

9 F. An application shall be filed not less than  
10 sixty days prior to the first day the proposed horse race or  
11 race meet is to be held.

12 G. The fee for a new racetrack license issued  
13 pursuant to this section shall not exceed five thousand  
14 dollars (\$5,000).

15 H. The commission may schedule a date for a hearing  
16 on the application for a new racetrack license to determine  
17 the eligibility of the applicant pursuant to the Horse Racing  
18 Act or as needed for determining the eligibility for the  
19 renewal of a racetrack license. The applicant shall be  
20 notified of the hearing at least five days prior to the date  
21 of the hearing. The applicant has the right to present  
22 testimony in support of the application. Notice shall be  
23 mailed to the address of the applicant appearing upon the  
24 application for the racetrack license. Notice of the hearing  
25 date, time and location shall be postmarked by United States

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1 mail five days prior to the date of the hearing. Deposit of  
2 the hearing notice in United States mail constitutes notice.

3 I. If, after a hearing on the application, the  
4 commission finds the applicant ineligible pursuant to the  
5 provisions of the Horse Racing Act or rules adopted by the  
6 board, the racetrack license shall be denied.

7 J. If there is more than one application for a  
8 racetrack license pending at the same time, the commission  
9 shall determine the racing days that will be allotted to each  
10 successful applicant. Upon renewal, the commission shall  
11 determine the racing days that will be allotted to each  
12 applicant upon terms and conditions established by the  
13 commission.

14 K. A person shall not have a direct, indirect or  
15 beneficial interest of any nature, whether or not financial,  
16 administrative, policymaking or supervisory, in more than two  
17 horse racetracks in New Mexico. For purposes of this  
18 subsection, a person shall not be considered to have a direct,  
19 indirect or beneficial interest in a horse racetrack if the  
20 person owns or holds less than ten percent of the total  
21 authorized, issued and outstanding shares of a corporation  
22 that is licensed to conduct a race meet in New Mexico, unless  
23 the person has some other direct, indirect or beneficial  
24 interest of any nature, whether or not financial,  
25 administrative, policymaking or supervisory, in more than two

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1 licensed horse racetracks.

2 L. To determine interest held in a racetrack, to  
3 the extent that the interest is based on stock ownership:

4 (1) stock owned, directly or indirectly, by or  
5 for a corporation, partnership, estate or trust shall be  
6 considered as being owned proportionately by its shareholders,  
7 partners or beneficiaries;

8 (2) an individual shall be considered as owning  
9 the stock, directly or indirectly, if it is held by an  
10 immediate family member. For purposes of this paragraph, an  
11 "immediate family member" includes only the individual's  
12 siblings, spouse, domestic partner or children; and

13 (3) stock constructively owned by a person by  
14 reason of the application of Paragraph (1) of this subsection  
15 shall be considered to be actually owned by the person; and  
16 stock shall be constructively owned by an individual by reason  
17 of the application of Paragraph (2) of this subsection if the  
18 purpose of the constructive ownership is to make a person  
19 other than the individual applicant appear as the owner of the  
20 stock.

21 M. A corporation holding a racetrack license shall  
22 not issue to a person shares of its stock amounting to ten  
23 percent or more of the total authorized, issued and  
24 outstanding shares, and a corporation holding a racetrack  
25 license shall not issue shares of its stock that would, when

.179346.5GR

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1 combined with that stock transferee's existing shares owned,  
2 total more than ten percent of the total authorized, issued  
3 and outstanding shares of the corporation, unless:

4 (1) the corporation gives written notice to the  
5 commission at least sixty days before the contemplated stock  
6 transfer that the person to whom the stock is being  
7 transferred will become an owner of ten percent or more of the  
8 total authorized, issued and outstanding shares of the  
9 corporation; and

10 (2) the corporation receives written approval  
11 from the commission of the proposed transfer.

12 N. A determination made by the commission of a  
13 matter pursuant to this section shall be final and not subject  
14 to appeal."

15 Section 323. Section 60-6B-1 NMSA 1978 (being Laws 1981,  
16 Chapter 39, Section 37, as amended) is amended to read:

17 "60-6B-1. PERSONS PROHIBITED FROM RECEIVING OR HOLDING  
18 LICENSES.--The following classes of persons shall be  
19 prohibited from receiving or holding licenses under the  
20 provisions of the Liquor Control Act:

21 A. a person who has been convicted of two separate  
22 misdemeanor or petty misdemeanor violations of the Liquor  
23 Control Act in any calendar year or of any felony, unless the  
24 person is restored to the privilege of receiving and holding  
25 licenses by the governor or unless the director determines

.179346.5GR

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1 that the person merits the public trust, in which case the  
2 person shall receive licenses under reasonable terms and  
3 conditions fixed by the director, which shall include that the  
4 person pay an administrative penalty of two thousand five  
5 hundred dollars (\$2,500) for each license held by that person;

6 B. a person whose spouse or domestic partner had  
7 been convicted of a felony unless the person demonstrates that  
8 the convicted spouse or convicted domestic partner will have  
9 no involvement in the operation of the license;

10 C. a minor; or

11 D. a corporation that is not duly qualified to do  
12 business in New Mexico, unless the licensee holds a public  
13 service license or a nonresident license issued [~~under~~] as  
14 provided in Section 60-6A-7 NMSA 1978; provided, however, that  
15 a corporation that owns stock in a corporation that owns a New  
16 Mexico liquor license does not need to be qualified to do  
17 business in New Mexico regardless of the size of the ownership  
18 interest."

19 Section 324. Section 60-7A-13 NMSA 1978 (being Laws  
20 1981, Chapter 39, Section 79, as amended) is amended to read:

21 "60-7A-13. SALES BY CLUBS.--

22 A. Any club licensed pursuant to the provisions of  
23 the Liquor Control Act shall only have the right to sell  
24 alcoholic beverages by the drink and wine by the bottle for  
25 consumption on the premises.

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1           B. Except as otherwise provided in this section, it  
2 is unlawful and grounds for suspension or revocation of its  
3 license for a club to:

4           (1) solicit by advertising or any other means  
5 public patronage of its alcoholic beverage facilities. In the  
6 event the club solicits public patronage of its other  
7 facilities, alcoholic beverages shall not be sold, served or  
8 consumed on the premises while the other facilities are being  
9 used by or operated for the benefit of the general public,  
10 unless the alcoholic beverage facilities are separate from the  
11 other facilities and the general public is not permitted to  
12 enter any part of the facilities where alcoholic beverages are  
13 being sold, served or consumed; or

14           (2) serve, sell or permit the consumption of  
15 alcoholic beverages to persons other than members and their  
16 bona fide guests.

17           C. A club licensed pursuant to the provisions of  
18 the Liquor Control Act may allow its facilities, including its  
19 licensed premises, to be used, for activities other than its  
20 own, no more than two times in a calendar year for fundraising  
21 events held by other nonprofit organizations.

22           D. For the purposes of this section:

23           (1) "bona fide guest" means a person whose  
24 presence in the club is in response to a specific invitation  
25 by a member and for whom the member assumes responsibility;

.179346.5GR

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1 and

2 (2) "member" includes the adult spouse or adult  
3 domestic partner and the children of a member who pays  
4 membership dues or of a deceased member who paid membership  
5 dues or a member of an official auxiliary or subsidiary group  
6 of the club who has been issued a personal identification card  
7 in accordance with the rules and regulations of the club."

8 Section 325. Section 60-7B-1 NMSA 1978 (being Laws 1993,  
9 Chapter 68, Section 22, as amended) is amended to read:

10 "60-7B-1. SELLING OR GIVING ALCOHOLIC BEVERAGES TO  
11 MINORS--POSSESSION OF ALCOHOLIC BEVERAGES BY MINORS.--

12 A. It is a violation of the Liquor Control Act for  
13 a person, including a person licensed pursuant to the  
14 provisions of the Liquor Control Act, or an employee, agent or  
15 lessee of that person, if [~~he~~] the person knows or has reason  
16 to know that [~~he~~] the person is violating the provisions of  
17 this section, to:

18 (1) sell, serve or give alcoholic beverages to  
19 a minor or permit a minor to consume alcoholic beverages on  
20 the licensed premises;

21 (2) buy alcoholic beverages for or procure the  
22 sale or service of alcoholic beverages to a minor;

23 (3) deliver alcoholic beverages to a minor; or

24 (4) aid or assist a minor to buy, procure or be  
25 served with alcoholic beverages.

.179346.5GR

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1           B. It is not a violation of the Liquor Control Act,  
2 as provided in Subsection A or C of this section, when:

3                   (1) a parent, legal guardian, [~~or~~] adult spouse  
4 or adult domestic partner of a minor serves alcoholic  
5 beverages to that minor on real property, other than licensed  
6 premises, under the control of the parent, legal guardian,  
7 [~~or~~] adult spouse or adult domestic partner; or

8                   (2) alcoholic beverages are used in the  
9 practice of religious beliefs.

10           C. It is a violation of the Liquor Control Act for  
11 a minor to buy, attempt to buy, receive, possess or permit  
12 [~~himself to be~~] being served [~~with~~] alcoholic beverages.

13           D. When a person other than a minor procures  
14 another person to sell, serve or deliver alcoholic beverages  
15 to a minor by actual or constructive misrepresentation of  
16 facts or concealment of facts calculated to cause the person  
17 selling, serving or delivering the alcoholic beverages to the  
18 minor to believe that the minor is legally entitled to be  
19 sold, served or delivered alcoholic beverages, and actually  
20 deceives that person by that misrepresentation or concealment,  
21 then the procurer and not the person deceived shall have  
22 violated the provisions of the Liquor Control Act.

23           E. As used in the Liquor Control Act, "minor" means  
24 a person under twenty-one years of age.

25           F. In addition to the penalties provided in Section  
.179346.5GR

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1 60-6C-1 NMSA 1978, a violation of the provisions of Subsection  
2 A of this section is a fourth degree felony and the offender  
3 shall be sentenced pursuant to the provisions of Section  
4 31-18-15 NMSA 1978.

5 G. A violation of the provisions of Subsection C of  
6 this section is a misdemeanor and the offender shall be  
7 punished as follows:

8 (1) for a first violation, the offender shall  
9 be:

10 (a) fined an amount not more than one  
11 thousand dollars (\$1,000); and

12 (b) ordered by the sentencing court to  
13 perform thirty hours of community service related to reducing  
14 the incidence of driving while under the influence of  
15 intoxicating liquor;

16 (2) for a second violation, the offender shall:

17 (a) be fined an amount not more than one  
18 thousand dollars (\$1,000);

19 (b) be ordered by the sentencing court to  
20 perform forty hours of community service related to reducing  
21 the incidence of driving while under the influence of  
22 intoxicating liquor; and

23 (c) have ~~[his]~~ the offender's driver's  
24 license suspended for a period of ninety days. If the minor  
25 is too young to possess a driver's license at the time of the

.179346.5GR

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1 violation, then ninety days shall be added to the date [~~he~~]  
2 the offender would otherwise become eligible to obtain a  
3 driver's license; and

4 (3) for a third or subsequent violation, the  
5 offender shall:

6 (a) be fined an amount not more than one  
7 thousand dollars (\$1,000);

8 (b) be ordered by the sentencing court to  
9 perform sixty hours of community service related to reducing  
10 the incidence of driving while under the influence of  
11 intoxicating liquor; and

12 (c) have [~~his~~] the offender's driver's  
13 license suspended for a period of two years or until the  
14 offender reaches twenty-one years of age, whichever period of  
15 time is greater.

16 H. A violation of the provisions of Subsection D of  
17 this section is a fourth degree felony and the offender shall  
18 be sentenced pursuant to the provisions of Section 31-18-15  
19 NMSA 1978."

20 Section 326. Section 60-7B-10 NMSA 1978 (being Laws  
21 1981, Chapter 39, Section 90, as amended) is amended to read:

22 "60-7B-10. MINORS IN LICENSED PREMISES--REGULATIONS.--

23 A. Any person licensed pursuant to the provisions  
24 of the Liquor Control Act or any employee, agent or lessee of  
25 that person who permits a minor to enter and remain in any

.179346.5GR

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1 area of a licensed premises that is prohibited to the use of  
2 minors is guilty of a violation of the Liquor Control Act.

3 B. A minor shall not enter or attempt to enter any  
4 area of a licensed premises that is posted or otherwise  
5 identified as being prohibited to the use of minors, except as  
6 authorized by regulation or as necessitated by an emergency.

7 A person who violates the provisions of this subsection is  
8 guilty of a petty misdemeanor and shall be punished pursuant  
9 to the provisions of Section 31-19-1 NMSA 1978.

10 C. The director of the alcohol and gaming division  
11 of the regulation and licensing department shall adopt  
12 regulations classifying the types of licensed premises or  
13 areas of licensed premises where minors may be present. The  
14 director shall require that signs issued by the division be  
15 posted by licensees to inform the public, including minors, of  
16 the areas in licensed premises that are open to minors. The  
17 regulations may allow minors in those areas of licensed  
18 premises where:

19 (1) the consumption of alcoholic beverages is  
20 the primary activity, when a minor is accompanied by a parent,  
21 adult spouse, adult domestic partner or legal guardian; or

22 (2) there is no consumption of alcoholic  
23 beverages."

24 Section 327. Section 61-4-10 NMSA 1978 (being Laws 1968,  
25 Chapter 3, Section 10, as amended) is amended to read:

.179346.5GR

1 "61-4-10. REFUSAL, SUSPENSION OR REVOCATION OF LICENSE.--

2 A. The board may refuse to issue or may suspend or  
3 revoke any license or may censure, reprimand, fine or place on  
4 probation and stipulation any licensee in accordance with the  
5 procedures as contained in the Uniform Licensing Act upon the  
6 grounds that the licensee or applicant:

7 (1) is convicted of a felony. A copy of the  
8 record of conviction, certified to by the clerk of the court  
9 entering the conviction, shall be conclusive evidence of such  
10 conviction;

11 (2) is guilty of fraud or deceit in procuring  
12 or attempting to procure a license in the chiropractic  
13 profession or in connection with applying for or procuring  
14 license renewal;

15 (3) is guilty of incompetence;

16 (4) is habitually intemperate or is addicted to  
17 the use of habit-forming drugs or is addicted to any vice to  
18 such a degree as to render the licensee or applicant unfit to  
19 practice chiropractic;

20 (5) is guilty of practicing or attempting to  
21 practice under an assumed name or fails to use the title  
22 "doctor of chiropractic", chiropractic physician or the  
23 initials "D.C." in connection with the licensee's or  
24 applicant's practice or advertisements;

25 (6) is guilty of failing to comply with any of

.179346.5GR

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1 the provisions of the Chiropractic Physician Practice Act or  
2 rules and regulations promulgated by the board and filed in  
3 accordance with the State Rules Act;

4 (7) is guilty of willfully or negligently  
5 practicing beyond the scope of chiropractic practice as  
6 defined in the Chiropractic Physician Practice Act;

7 (8) is guilty of advertising by means of  
8 knowingly false statements;

9 (9) has been declared mentally incompetent by  
10 regularly constituted authorities or is manifestly  
11 incapacitated to practice chiropractic;

12 (10) advertises or attempts to attract  
13 patronage in any unethical manner prohibited by the rules and  
14 regulations of the board;

15 (11) is guilty of obtaining any fee by fraud or  
16 misrepresentation;

17 (12) is guilty of making false or misleading  
18 statements regarding the licensee's or applicant's skill or  
19 the efficacy or value of treatment or remedy prescribed or  
20 administered by the licensee or applicant or at the licensee's  
21 or applicant's direction;

22 (13) is guilty of aiding or abetting the  
23 practice of chiropractic by a person not licensed by the  
24 board;

25 (14) has incurred a prior suspension or

.179346.5GR

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1 revocation in another state where the suspension or revocation  
2 of a license to practice chiropractic was based upon acts by  
3 the licensee similar to acts described in this section and by  
4 board rules promulgated pursuant to Paragraph (6) of this  
5 subsection. A certified copy of the record of suspension or  
6 revocation of the state making such suspension or revocation  
7 is conclusive evidence thereof;

8 (15) is guilty of making a false, misleading or  
9 fraudulent claim; or

10 (16) is guilty of unprofessional conduct that  
11 includes but is not limited to the following:

12 (a) procuring, aiding or abetting a  
13 criminal abortion;

14 (b) representing to a patient that a  
15 manifestly incurable condition of sickness, disease or injury  
16 can be cured;

17 (c) willfully or negligently divulging a  
18 professional confidence;

19 (d) conviction of any offense punishable  
20 by incarceration in a state penitentiary or federal prison. A  
21 copy of the record of conviction, certified by the clerk of  
22 the court entering the conviction, is conclusive evidence;

23 (e) impersonating another person licensed  
24 in the practice of chiropractic or permitting or allowing any  
25 person to use the licensee's or applicant's license;

.179346.5GR

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- 1 (f) gross negligence in the practice of  
2 chiropractic;
- 3 (g) fee splitting;
- 4 (h) conduct likely to deceive, defraud or  
5 harm the public;
- 6 (i) repeated similar negligent acts;
- 7 (j) employing abusive billing practices;
- 8 (k) failure to report to the board any  
9 adverse action taken against the licensee or applicant by: 1)  
10 another licensing jurisdiction; 2) any peer review body; 3)  
11 any health care entity; 4) any governmental agency; or 5) any  
12 court for acts or conduct similar to acts or conduct that  
13 would constitute grounds for action as provided in this  
14 section;
- 15 (l) failure to report to the board  
16 surrender of a license or other authorization to practice  
17 chiropractic in another state or jurisdiction or surrender of  
18 membership on any chiropractic staff or in any chiropractic or  
19 professional association or society following, in lieu of, and  
20 while under disciplinary investigation by any of those  
21 authorities or bodies for acts or conduct similar to acts or  
22 conduct that would constitute grounds for action as provided  
23 in this section;
- 24 (m) failure to furnish the board, its  
25 investigators or representatives with information requested by

.179346.5GR

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1 the board;

2 (n) abandonment of patients;

3 (o) failure to adequately supervise, as  
4 provided by board regulation, a chiropractic assistant or  
5 technician or professional licensee who renders care;

6 (p) intentionally engaging in sexual  
7 contact with a patient other than the licensee's or  
8 applicant's spouse or domestic partner during the doctor-  
9 patient relationship; and

10 (q) conduct unbecoming a person licensed  
11 to practice chiropractic or detrimental to the best interests  
12 of the public.

13 B. The board may at its discretion hire  
14 investigators or issue investigative subpoenas for the purpose  
15 of investigating complaints made to the board regarding  
16 chiropractic physicians.

17 C. All written and oral communication made by any  
18 person to the board or an agent of the board relating to  
19 actual or potential disciplinary action, including complaints  
20 made to the board, are confidential communications and are not  
21 public records for the purposes of the Inspection of Public  
22 Records Act; provided that all information contained in a  
23 complaint file is public information and subject to disclosure  
24 when the board acts on a complaint.

25 D. Licensees shall bear all costs of disciplinary

.179346.5GR

1 proceedings unless exonerated."

2 Section 328. Section 61-5A-5 NMSA 1978 (being Laws 1994,  
3 Chapter 55, Section 5, as amended) is amended to read:

4 "61-5A-5. LICENSE REQUIRED--EXEMPTIONS.--

5 A. Unless licensed to practice as a dentist under  
6 the Dental Health Care Act, no person shall:

7 (1) practice dentistry;

8 (2) use the title "dentist", "dental surgeon",  
9 "oral surgeon" or any other title, abbreviation, letters,  
10 figures, signs or devices that indicate the person is a  
11 licensed dentist; or

12 (3) perform any of the acts enumerated under  
13 the definition of the practice of dentistry as defined in the  
14 Dental Health Care Act.

15 B. The following, under the stipulations described,  
16 may practice dentistry or an area of dentistry without a New  
17 Mexico dental license:

18 (1) regularly licensed physicians or surgeons  
19 are not prohibited from extracting teeth or treating any  
20 disease coming within the province of the practice of  
21 medicine;

22 (2) New Mexico licensed dental hygienists may  
23 provide those services within their scope of practice that are  
24 also within the scope of the practice of dentistry;

25 (3) any dental student duly enrolled in an

.179346.5GR

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1 accredited school of dentistry recognized by the board, while  
2 engaged in educational programs offered by the school in  
3 private offices, public clinics or educational institutions  
4 within the state of New Mexico under the indirect supervision  
5 of a licensed dentist;

6 (4) any dental hygiene or dental assisting  
7 student duly enrolled in an accredited school of dental  
8 hygiene or dental assisting engaged in procedures within or  
9 outside the scope of dental hygiene that are part of the  
10 curriculum of that program in the school setting and under the  
11 indirect supervision of a faculty member of the accredited  
12 program who is a licensed dentist, dental hygienist or dental  
13 assistant certified in the procedures being taught;

14 (5) unlicensed persons performing for a  
15 licensed dentist merely mechanical work upon inert matter in  
16 the construction, making, alteration or repairing of any  
17 artificial dental substitute, dental restorative or corrective  
18 appliance, when the casts or impressions for the work have  
19 been furnished by a licensed dentist and where the work is  
20 prescribed by a dentist pursuant to a written authorization by  
21 that dentist;

22 (6) commissioned dental officers of the  
23 uniformed forces of the United States and dentists providing  
24 services to the United States public health service, the  
25 veterans' administration of the United States or within

.179346.5GR

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1 federally controlled facilities in the discharge of their  
2 official duties provided that such persons who hold dental  
3 licenses in New Mexico shall be subject to the provisions of  
4 the Dental Health Care Act; and

5 (7) dental assistants performing adjunctive  
6 services to the provision of dental care, under the indirect  
7 supervision of a dentist, as determined by rule of the board  
8 if such services are not within the practice of dental hygiene  
9 as specifically listed in Subsection B of Section 61-5A-4 NMSA  
10 1978, unless allowed in Subsection E of this section.

11 C. Unless licensed to practice as a dental  
12 hygienist under the Dental Health Care Act, no person shall:

13 (1) practice as a dental hygienist;

14 (2) use the title "dental hygienist" or  
15 abbreviation "R.D.H." or any other title, abbreviation,  
16 letters, figures, signs or devices that indicate the person is  
17 a licensed dental hygienist; or

18 (3) perform any of the acts defined as the  
19 practice of dental hygiene in the Dental Health Care Act.

20 D. The following, under the stipulations described,  
21 may practice dental hygiene or the area of dental hygiene  
22 outlined without a New Mexico dental hygiene license:

23 (1) students enrolled in an accredited dental  
24 hygiene program engaged in procedures that are part of the  
25 curriculum of that program and under the indirect supervision

.179346.5GR

1 of a licensed faculty member of the accredited program;

2 (2) dental assistants working under general  
3 supervision who:

4 (a) expose dental radiographs after being  
5 certified in expanded functions by the board;

6 (b) perform rubber cup coronal polishing,  
7 which is not represented as a prophylaxis, having satisfied  
8 the educational requirements as established by rules of the  
9 board;

10 (c) apply fluorides as established by  
11 rules of the board; and

12 (d) perform those other dental hygienist  
13 functions as recommended to the board by the committee and set  
14 forth by rule of the board; and

15 (3) dental assistants certified in expanded  
16 functions, working under the indirect supervision of a dental  
17 hygienist certified for collaborative practice and under the  
18 protocols established in a collaborative practice agreement  
19 with a consulting dentist.

20 E. Dental assistants working under the indirect  
21 supervision of a dentist and in accordance with the rules and  
22 regulations established by the board may:

23 (1) expose dental radiographs;

24 (2) perform rubber cup coronal polishing that  
25 is not represented as a prophylaxis;

.179346.5GR

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1 (3) apply fluoride and pit and fissure sealants  
2 without mechanical alteration of the tooth;

3 (4) perform those other dental hygienist  
4 functions as recommended to the board by the committee and set  
5 forth by rule of the board; and

6 (5) perform such other related functions that  
7 are not expressly prohibited by statute or rules of the board.

8 F. Unless licensed as a dentist or non-dentist  
9 owner, or as otherwise exempt from the licensing requirements  
10 of the Dental Health Care Act, no individual or corporate  
11 entity shall:

12 (1) employ or contract with a dentist or dental  
13 hygienist for the purpose of providing dental or dental  
14 hygiene services as defined by their respective scopes of  
15 practice; or

16 (2) enter into a managed care or other  
17 agreement to provide dental or dental hygiene services in New  
18 Mexico.

19 G. The following, under stipulations described, may  
20 function as a non-dentist owner without a New Mexico license:

21 (1) government agencies providing dental  
22 services within affiliated facilities;

23 (2) government agencies engaged in providing  
24 public health measures to prevent dental disease;

25 (3) spouses or domestic partners of deceased

.179346.5GR

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1 licensed dentists or dental hygienists for a period of one  
2 year following the death of the licensee;

3 (4) accredited schools of dentistry, dental  
4 hygiene and dental assisting providing dental services solely  
5 in an educational setting;

6 (5) dental hygienists licensed in New Mexico or  
7 corporate entities with a majority interest owned by a dental  
8 hygienist licensed in New Mexico;

9 (6) federally qualified health centers, as  
10 designated by the United States department of health and human  
11 services, providing dental services;

12 (7) nonprofit community-based entities and  
13 organizations that use public funds to provide dental and  
14 dental hygiene services for indigent persons; and

15 (8) hospitals licensed by the department of  
16 health."

17 Section 329. Section 61-6-15 NMSA 1978 (being Laws 1969,  
18 Chapter 46, Section 6, as amended by Laws 2008, Chapter 53,  
19 Section 12 and by Laws 2008, Chapter 54, Section 13) is  
20 amended to read:

21 "61-6-15. LICENSE MAY BE REFUSED, REVOKED OR SUSPENDED--  
22 LICENSEE MAY BE FINED, CENSURED OR REPRIMANDED--PROCEDURE--  
23 PRACTICE AFTER SUSPENSION OR REVOCATION--PENALTY--  
24 UNPROFESSIONAL AND DISHONORABLE CONDUCT DEFINED--FEES AND  
25 EXPENSES.--

.179346.5GR

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1           A. The board may refuse to license and may revoke  
2 or suspend a license that has been issued by the board or a  
3 previous board and may fine, censure or reprimand a licensee  
4 upon satisfactory proof being made to the board that the  
5 applicant for or holder of the license has been guilty of  
6 unprofessional or dishonorable conduct. The board may also  
7 refuse to license an applicant who is unable to practice  
8 medicine, practice as a physician assistant or an  
9 anesthesiologist assistant, ~~[or]~~ practice genetic counseling  
10 or engage in the practice of polysomnography, pursuant to  
11 Section 61-7-3 NMSA 1978. All proceedings shall be as  
12 required by the Uniform Licensing Act or the Impaired Health  
13 Care Provider Act.

14           B. The board may, in its discretion and for good  
15 cause shown, place the licensee on probation on the terms and  
16 conditions it deems proper for protection of the public, for  
17 the purpose of rehabilitation of the probationer or both.  
18 Upon expiration of the term of probation, if a term is set,  
19 further proceedings may be abated by the board if the holder  
20 of the license furnishes the board with evidence that the  
21 licensee is competent to practice, is of good moral character  
22 and has complied with the terms of probation.

23           C. If evidence fails to establish to the  
24 satisfaction of the board that the licensee is competent and  
25 is of good moral character or if evidence shows that the

.179346.5GR

1 licensee has not complied with the terms of probation, the  
2 board may revoke or suspend the license. If a license to  
3 practice in this state is suspended, the holder of the license  
4 may not practice during the term of suspension. A person  
5 whose license has been revoked or suspended by the board and  
6 who thereafter practices or attempts or offers to practice in  
7 New Mexico, unless the period of suspension has expired or  
8 been modified by the board or the license reinstated, is  
9 guilty of a felony and shall be punished as provided in  
10 Section 61-6-20 NMSA 1978.

11 D. "Unprofessional or dishonorable conduct", as  
12 used in this section, means, but is not limited to because of  
13 enumeration, conduct of a licensee that includes the  
14 following:

15 (1) procuring, aiding or abetting a criminal  
16 abortion;

17 (2) employing a person to solicit patients for  
18 the licensee;

19 (3) representing to a patient that a manifestly  
20 incurable condition of sickness, disease or injury can be  
21 cured;

22 (4) obtaining a fee by fraud or  
23 misrepresentation;

24 (5) willfully or negligently divulging a  
25 professional confidence;

.179346.5GR

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1                   (6) conviction of an offense punishable by  
2 incarceration in a state penitentiary or federal prison or  
3 conviction of a misdemeanor associated with the practice of  
4 the licensee. A copy of the record of conviction, certified  
5 by the clerk of the court entering the conviction, is  
6 conclusive evidence;

7                   (7) habitual or excessive use of intoxicants or  
8 drugs;

9                   (8) fraud or misrepresentation in applying for  
10 or procuring a license to practice in this state or in  
11 connection with applying for or procuring renewal, including  
12 cheating on or attempting to subvert the licensing  
13 examinations;

14                   (9) making false or misleading statements  
15 regarding the skill of the licensee or the efficacy or value  
16 of the medicine, treatment or remedy prescribed or  
17 administered by the licensee or at the direction of the  
18 licensee in the treatment of a disease or other condition of  
19 the human body or mind;

20                   (10) impersonating another licensee, permitting  
21 or allowing a person to use the license of the licensee or  
22 practicing as a licensee under a false or assumed name;

23                   (11) aiding or abetting the practice of a  
24 person not licensed by the board;

25                   (12) gross negligence in the practice of a

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1 licensee;

2 (13) manifest incapacity or incompetence to  
3 practice as a licensee;

4 (14) discipline imposed on a licensee by  
5 another state, including denial, probation, suspension or  
6 revocation, based upon acts by the licensee similar to acts  
7 described in this section. A certified copy of the record of  
8 suspension or revocation of the state making the suspension or  
9 revocation is conclusive evidence;

10 (15) the use of a false, fraudulent or  
11 deceptive statement in a document connected with the practice  
12 of a licensee;

13 (16) fee splitting;

14 (17) the prescribing, administering or  
15 dispensing of narcotic, stimulant or hypnotic drugs for other  
16 than accepted therapeutic purposes;

17 (18) conduct likely to deceive, defraud or harm  
18 the public;

19 (19) repeated similar negligent acts;

20 (20) employing abusive billing practices;

21 (21) failure to report to the board any adverse  
22 action taken against the licensee by:

23 (a) another licensing jurisdiction;

24 (b) a peer review body;

25 (c) a health care entity;

.179346.5GR

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1 (d) a professional or medical society or  
2 association;

3 (e) a governmental agency;

4 (f) a law enforcement agency; or

5 (g) a court for acts or conduct similar to  
6 acts or conduct that would constitute grounds for action as  
7 defined in this section;

8 (22) failure to report to the board surrender  
9 of a license or other authorization to practice in another  
10 state or jurisdiction or surrender of membership on any  
11 medical staff or in any medical or professional association or  
12 society following, in lieu of and while under disciplinary  
13 investigation by any of those authorities or bodies for acts  
14 or conduct similar to acts or conduct that would constitute  
15 grounds for action as defined in this section;

16 (23) failure to furnish the board, its  
17 investigators or representatives with information requested by  
18 the board;

19 (24) abandonment of patients;

20 (25) being found mentally incompetent or insane  
21 by a court of competent jurisdiction;

22 (26) injudicious prescribing, administering or  
23 dispensing of a drug or medicine;

24 (27) failure to adequately supervise, as  
25 provided by board rule, a medical or surgical assistant or

.179346.5GR

1 technician or professional licensee who renders health care;

2 (28) sexual contact with a patient or person  
3 who has authority to make medical decisions for a patient,  
4 other than the spouse or domestic partner of the licensee;

5 (29) conduct unbecoming in a person licensed to  
6 practice or detrimental to the best interests of the public;

7 (30) the surrender of a license or withdrawal  
8 of an application for a license before another state licensing  
9 board while an investigation or disciplinary action is pending  
10 before that board for acts or conduct similar to acts or  
11 conduct that would constitute grounds for action pursuant to  
12 this section;

13 (31) sexual contact with a former mental health  
14 patient of the licensee, other than the spouse or domestic  
15 partner of the licensee, within one year from the end of  
16 treatment;

17 (32) sexual contact with a patient when the  
18 licensee uses or exploits treatment, knowledge, emotions or  
19 influence derived from the previous professional relationship;

20 (33) improper management of medical records,  
21 including failure to maintain timely, accurate, legible and  
22 complete medical records;

23 (34) failure to provide pertinent and necessary  
24 medical records to a physician or patient of the physician in  
25 a timely manner when legally requested to do so by the patient

.179346.5GR

1 or by a legally designated representative of the patient;

2 (35) undertreatment of pain as provided by  
3 board rule;

4 (36) interaction with physicians, hospital  
5 personnel, patients, family members or others that interferes  
6 with patient care or could reasonably be expected to adversely  
7 impact the quality of care rendered to a patient;

8 (37) soliciting or receiving compensation by a  
9 physician assistant or anesthesiologist assistant from a  
10 person who is not an employer of the assistant; or

11 (38) willfully or negligently divulging  
12 privileged information or a professional secret.

13 E. As used in this section, "fee splitting"  
14 includes offering, delivering, receiving or accepting any  
15 unearned rebate, refunds, commission preference, patronage  
16 dividend, discount or other unearned consideration, whether in  
17 the form of money or otherwise, as compensation or inducement  
18 for referring patients, clients or customers to a person,  
19 irrespective of any membership, proprietary interest or co-  
20 ownership in or with a person to whom the patients, clients or  
21 customers are referred.

22 F. Licensees whose licenses are in a probationary  
23 status shall pay reasonable expenses for maintaining  
24 probationary status, including laboratory costs when  
25 laboratory testing of biological fluids are included as a

.179346.5GR

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1 condition of probation."

2 Section 330. Section 61-17A-6 NMSA 1978 (being Laws  
3 2003, Chapter 171, Section 6, as amended) is amended to read:

4 "61-17A-6. BOARD CREATED--MEMBERSHIP.--

5 A. The "board of barbers and cosmetologists" is  
6 created. The board shall be administratively attached to the  
7 regulation and licensing department. The board shall consist  
8 of nine members appointed by the governor. Members shall  
9 serve three-year terms; provided that at the time of initial  
10 appointment, the governor shall appoint members to abbreviated  
11 terms to allow staggering of subsequent appointments.  
12 Vacancies shall be filled in the manner of the original  
13 appointment.

14 B. Of the nine members of the board, five shall be  
15 licensed pursuant to the Barbers and Cosmetologists Act and  
16 shall have at least five years' practical experience in their  
17 respective occupations. Of those five, two members shall be  
18 licensed barbers, two members shall be licensed cosmetologists  
19 and one member shall represent school owners. Two members  
20 shall be licensed body artists pursuant to the Body Art Safe  
21 Practices Act and shall have at least five years in practice  
22 in their occupation. The remaining two members shall be  
23 public members. Neither the public members nor their spouses  
24 or domestic partners shall have ever been licensed pursuant to  
25 the provisions of the Barbers and Cosmetologists Act, the Body

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1 Art Safe Practices Act or similar prior legislation or have a  
2 financial interest in a school or establishment.

3 C. Members of the board shall be reimbursed  
4 pursuant to the Per Diem and Mileage Act and shall receive no  
5 other compensation, perquisite or allowance.

6 D. The board shall elect from among its members a  
7 chair and such other officers as it deems necessary. The  
8 board shall meet at the call of the chair, not less than four  
9 times each year. A majority of members currently serving  
10 shall constitute a quorum for the conduct of business.

11 E. No board member shall serve more than two full  
12 consecutive terms and any member who fails to attend, after  
13 proper notice, three meetings shall automatically be  
14 recommended for removal unless excused for reasons set forth  
15 by board regulation."

16 Section 331. Section 61-27B-6 NMSA 1978 (being Laws  
17 2007, Chapter 115, Section 6) is amended to read:

18 "61-27B-6. PRIVATE INVESTIGATIONS ADVISORY BOARD--  
19 CREATED--MEMBERS.--

20 A. The "private investigations advisory board" is  
21 created.

22 B. The superintendent of regulation and licensing  
23 shall appoint members to the advisory board to assist in the  
24 conduct of the examination process for licensees and  
25 registrants and to assist the department in other manners as

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1 requested by the superintendent or provided for in rules of  
2 the department.

3 C. The advisory board members shall consist of at  
4 least the following:

- 5 (1) two private investigators;
- 6 (2) one private patrol operator;
- 7 (3) one polygraph examiner; and
- 8 (4) one member of the public.

9 D. Members of the advisory board shall be  
10 reimbursed pursuant to the Per Diem and Mileage Act and shall  
11 receive no other compensation, perquisite or allowance for  
12 each day spent in the discharge of their duties.

13 E. The public member of the advisory board or the  
14 public member's spouse or domestic partner shall not:

15 (1) have been licensed pursuant to the Private  
16 Investigations Act, the Private Investigators and Polygraphers  
17 Act or any prior similar statutory provisions; or

18 (2) have a direct or indirect financial  
19 interest in a private investigation company, private patrol  
20 company, polygraph business or a related business."

21 Section 332. Section 61-29-11 NMSA 1978 (being Laws  
22 1959, Chapter 226, Section 10, as amended) is amended to read:

23 "61-29-11. ISSUANCE, RENEWAL AND SURRENDER OF  
24 LICENSES.--

25 A. The commission shall issue to each qualified

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1 applicant a license in the form and size prescribed by the  
2 commission.

3 B. The license shall show the name and address of  
4 the licensee. An associate broker's license shall show the  
5 name of the qualifying broker by whom the associate broker is  
6 engaged. The commission shall deliver or mail the license of  
7 the associate broker to the qualifying broker by whom the  
8 associate broker is engaged, and the qualifying broker shall  
9 display the license at the brokerage from which the associate  
10 broker will be conducting real estate business on behalf of  
11 the brokerage. The license of the associate broker shall  
12 remain in the custody and control of the qualifying broker as  
13 long as the associate broker is engaged by that qualifying  
14 broker.

15 C. Every license shall be renewed every three years  
16 on or before the last day of the month following the  
17 licensee's month of birth. Upon written request for renewal  
18 by the licensee, the commission shall certify renewal of a  
19 license if there is no reason or condition that might warrant  
20 the refusal of the renewal of a license. The licensee shall  
21 provide proof of compliance with continuing education  
22 requirements and pay the renewal fee. If a licensee has not  
23 made application for renewal of license, furnished proof of  
24 compliance with continuing education requirements and paid the  
25 renewal fee by the license renewal date, the license shall

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1 expire. The commission may require a person whose license has  
2 expired to apply for a license as if the person had not been  
3 previously licensed under Chapter 61, Article 29 NMSA 1978 and  
4 further require that the person be reexamined. The commission  
5 shall require a person whose license has expired to pay when  
6 the person applies for a license, in addition to any other  
7 fee, a late fee. If during a period of one year from the date  
8 the license expires the person or the person's spouse or  
9 domestic partner is either absent from this state on active  
10 duty military service or the person is suffering from an  
11 illness or injury of such severity that the person is  
12 physically or mentally incapable of making application for a  
13 license, payment of the late fee and reexamination shall not  
14 be required by the commission if, within three months of the  
15 person's permanent return to this state or sufficient recovery  
16 from illness or injury to allow the person to make an  
17 application, the person makes application to the commission  
18 for a license. A copy of that person's or that person's  
19 spouse's or domestic partner's military orders or a  
20 certificate from the applicant's physician shall accompany the  
21 application. A person excused by reason of active duty  
22 military service, illness or injury as provided for in this  
23 subsection may make application for a license without  
24 imposition of the late fee. All fees collected pursuant to  
25 this subsection shall be disposed of in accordance with the

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1 provisions of Section 61-29-8 NMSA 1978. The revocation of a  
2 qualifying broker's license automatically suspends every  
3 associate broker's license granted to any person by virtue of  
4 association with the qualifying broker whose license has been  
5 revoked, pending a change of qualifying broker. Upon the  
6 naming of a new qualifying broker, the suspended license shall  
7 be reactivated without charge if granted during the three-year  
8 renewal cycle.

9 D. A qualifying broker shall conduct brokerage  
10 business under the trade name and from the brokerage address  
11 registered with the commission. Every brokerage shall have a  
12 qualifying broker in charge. The license of the qualifying  
13 broker and each associate broker associated with that  
14 qualifying broker shall be prominently displayed in each  
15 brokerage office. The address of the office shall be  
16 designated in the qualifying broker's license, and a license  
17 issued shall not authorize the licensee to transact real  
18 estate business at any other address. In case of removal from  
19 the designated address, the licensee shall make application to  
20 the commission before the removal or within ten days  
21 thereafter, designating the new location of the licensee's  
22 office and paying the required fee, whereupon the commission  
23 shall issue a license for the new location if the new location  
24 complies with the terms of Chapter 61, Article 29 NMSA 1978.  
25 A qualifying broker shall maintain a sign at the brokerage

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1 office of such size and content as the commission prescribes.

2 E. When an associate broker is discharged or  
3 terminates association or employment with the qualifying  
4 broker with whom the associate broker is associated, the  
5 qualifying broker shall deliver or mail the associate broker's  
6 license to the commission within forty-eight hours. The  
7 commission shall hold the license on inactive status. It is  
8 unlawful for an associate broker to perform any of the acts  
9 authorized by Chapter 61, Article 29 NMSA 1978 either directly  
10 or indirectly under authority of an inactive license after the  
11 associate broker's association with a qualifying broker has  
12 been terminated and the associate broker's license has been  
13 returned to the commission until the appropriate fee has been  
14 paid and the license has been reissued and reactivated by the  
15 commission."

16 Section 333. Section 61-29-23 NMSA 1978 (being Laws  
17 1980, Chapter 82, Section 4, as amended) is amended to read:

18 "61-29-23. JUDGMENT AGAINST QUALIFYING OR ASSOCIATE  
19 BROKER--PETITION--REQUIREMENTS--RECOVERY LIMITATIONS.--

20 A. When any aggrieved person claims a pecuniary  
21 loss caused by a state-licensed qualifying broker or associate  
22 broker based upon fraud, knowing or willful misrepresentation  
23 or wrongful conversion of funds entrusted to the qualifying  
24 broker or associate broker, which loss arose out of any  
25 transaction for which a qualifying broker's or an associate

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1 broker's license is required and arose out of or during the  
2 course of a transaction involving the sale, lease, exchange or  
3 other disposition of real estate, where the cause of action  
4 arose on or after July 1, 1980, that person may, within one  
5 year after obtaining a final judgment based upon fraud,  
6 knowing or willful misrepresentation or wrongful conversion of  
7 funds entrusted to the qualifying broker or associate broker  
8 and the termination of all proceedings, including appeals in  
9 connection with the judgment, file a verified petition with  
10 the commission for payment from the real estate recovery fund  
11 for the actual damages included in the judgment and unpaid,  
12 but not more than ten thousand dollars (\$10,000) per judgment  
13 regardless of the number of persons aggrieved or parcels of  
14 real estate involved in the transaction. The aggregate amount  
15 recoverable by all claimants for losses caused by any one  
16 licensee shall not exceed thirty thousand dollars (\$30,000).

17 B. A copy of the petition shall be served upon the  
18 commission in the manner provided by law for service of a  
19 civil summons.

20 C. The commission shall conduct a hearing on the  
21 petition after service of the petition upon the commission.  
22 At the hearing, the petitioner shall be required to show that  
23 the petitioner:

24 (1) is not the spouse or domestic partner of  
25 the judgment debtor, the personal representative of the spouse

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1 or domestic partner or related to the third degree of  
2 consanguinity or affinity to the licensee whose conduct is  
3 alleged to have caused the loss;

4 (2) has complied with all the requirements of  
5 the Real Estate Recovery Fund Act;

6 (3) has obtained a judgment of the kind  
7 described in Subsection A of this section, the amount awarded  
8 and the amount owing at the date of the petition;

9 (4) has had execution issued upon the judgment  
10 and that the officer executing the writ has made a return  
11 showing that the judgment debtor has no property within the  
12 state subject to execution. If execution is levied against  
13 the property of the judgment debtor, the petitioner shall show  
14 that the amount realized on the sale was insufficient to  
15 satisfy the judgment and shall set forth the amount realized  
16 from the sale and the balance remaining due on the judgment  
17 after application of the amount realized;

18 (5) has made reasonable searches and inquiries  
19 to ascertain whether the judgment debtor is possessed of real  
20 or personal property or other assets liable to be sold or  
21 applied in satisfaction of the judgment, including partnership  
22 assets, licensee's estate or any bond or insurance, and that  
23 the petitioner has exercised reasonable diligence to secure  
24 payment of the judgment from the assets of the judgment  
25 debtor; and

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1 (6) has a judgment that is not:

2 (a) covered by any bond, insurance, surety  
3 agreement or indemnity agreement;

4 (b) a loss incurred by a partner, joint  
5 venturer, employer, employee or associate of the licensee  
6 whose conduct is alleged to have caused the loss; or a  
7 corporate officer or director of a corporation in which the  
8 judgment debtor is also an officer, director or employee; or

9 (c) a loss incurred by any business or  
10 other entity in which the licensee whose conduct is alleged to  
11 have caused the loss has any interest at the time of the  
12 conduct alleged to have caused the loss."

13 Section 334. Section 61-32-19 NMSA 1978 (being Laws  
14 1993, Chapter 204, Section 19, as amended) is amended to read:

15 "61-32-19. CREMATION--REQUIREMENTS--RIGHT TO AUTHORIZE  
16 CREMATION--DISPOSITION OF CREMAINS.--

17 A. No cremation shall be performed until all  
18 necessary documentation is obtained authorizing the cremation.

19 B. [~~Any~~] An adult person may authorize [~~his~~] the  
20 person's own cremation and the lawful disposition of [~~his~~  
21 ~~cremated remains~~] the person's cremains by:

22 (1) stating [~~his~~] the person's desire to be  
23 cremated in a written statement that is signed by the  
24 [~~individual~~] person and notarized or witnessed by two other  
25 persons; or

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1                   (2) including an express statement in [~~his~~] the  
2 person's will indicating that the testator desired that [~~his~~]  
3 the testator's remains be cremated upon [~~his~~] the testator's  
4 death.

5                   C. A personal representative acting pursuant to the  
6 Uniform Probate Code or an establishment or crematory shall  
7 comply with a statement made in accordance with the provisions  
8 of this section. A statement that conforms to the provisions  
9 of this section authorizes a personal representative,  
10 establishment or crematory to cremate a decedent's remains and  
11 the permission of next of kin or any other person shall not be  
12 required for such authorization. Statements dated prior to  
13 June 18, 1993 shall be given effect if they meet this  
14 section's requirements.

15                   D. A personal representative, establishment or  
16 crematory acting in reliance upon a document executed pursuant  
17 to the provisions of this section, who has no actual notice of  
18 revocation or contrary indication, is presumed to be acting in  
19 good faith.

20                   E. No establishment, crematory or employee of an  
21 establishment or crematory or other person that relies in good  
22 faith on a statement written pursuant to this section shall be  
23 subject to liability for cremating the remains in accordance  
24 with the provisions of this section. The written  
25 authorization is a complete defense to a cause of action by

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1 [any] a person against any other person acting in accordance  
2 with that authorization.

3 F. If a decedent has left no written instructions  
4 regarding the disposition of [~~his~~] the decedent's remains, the  
5 following persons in the order listed shall determine the  
6 means of disposition, not to be limited to cremation, of the  
7 remains of the decedent:

8 (1) the surviving spouse or surviving domestic  
9 partner;

10 (2) a majority of the surviving adult children  
11 of the decedent;

12 (3) the surviving parents of the decedent;

13 (4) a majority of the surviving siblings of the  
14 decedent;

15 (5) an adult person who has exhibited special  
16 care and concern for the decedent, who is aware of the  
17 decedent's views and desires regarding the disposition of  
18 [~~his~~] the decedent's body and who is willing and able to make  
19 a decision about the disposition of the decedent's body; or

20 (6) the adult person of the next degree of  
21 kinship in the order named by New Mexico law to inherit the  
22 estate of the decedent.

23 G. A licensed establishment or crematory shall keep  
24 an accurate record of all cremations performed and the place  
25 of disposition of the cremains for a period of not less than

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1 seven years.

2 H. Cremains may be disposed of by any licensed  
3 establishment, crematory authority, cemetery or person having  
4 the right to control the disposition of the cremains, or that  
5 person's agent, in a lawful manner.

6 I. Legal forms for cremation authorization shall  
7 provide that persons giving the authorization will hold  
8 harmless an establishment from any liability for disposing of  
9 unclaimed cremains in a lawful manner after a period of one  
10 year following the return of the cremains to the  
11 establishment."

12 Section 335. Section 61-32-20 NMSA 1978 (being Laws  
13 1993, Chapter 204, Section 20, as amended) is amended to read:

14 "61-32-20. EMBALMING.--

15 A. All dead human bodies not disposed of within  
16 twenty-four hours after death or release or receipt by the  
17 establishment or crematory shall be embalmed in accordance  
18 with the Thanatopractice Act or stored under refrigeration as  
19 determined by board rule, unless otherwise required by  
20 regulation of the office of the state medical investigator or  
21 the secretary of health or by orders of an authorized official  
22 of the office of the state medical investigator, a court of  
23 competent jurisdiction or other authorized official.

24 B. A dead human body shall not be embalmed except  
25 by a funeral service practitioner, an associate funeral

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1 service practitioner or a funeral service intern under the  
2 supervision of a funeral service practitioner.

3 C. When embalming is not required under the  
4 provisions of this section, a dead human body shall not be  
5 embalmed without express authorization by the:

6 (1) surviving spouse, surviving domestic  
7 partner or next of kin;

8 (2) legal agent or personal representative of  
9 the deceased; or

10 (3) person assuming responsibility for final  
11 disposition.

12 D. When embalming is not required and prior to  
13 obtaining authorization for the embalming, a dead human body  
14 may be washed and other health procedures, including closing  
15 of the orifices, may be performed without authorization.

16 E. When a dead human body is embalmed, the funeral  
17 service practitioner or associate funeral service practitioner  
18 who embalms the body or the funeral service intern who embalms  
19 the body and the funeral service practitioner who supervises  
20 the embalming shall, within twenty-four hours after the  
21 embalming procedure, complete and sign an embalming case  
22 report describing the elapsed time since death, the condition  
23 of the remains before and after embalming and the embalming  
24 procedures used. The embalming case report shall be kept on  
25 file at the establishment for a period of not less than seven

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1 years following the embalming.

2 F. Except as provided in Subsection A of this  
3 section, embalming is not required."

4 Section 336. Section 62-15-3.1 NMSA 1978 (being Laws  
5 2003, Chapter 416, Section 1) is amended to read:

6 "62-15-3.1. SUBSIDIARY BUSINESS ACTIVITIES.--

7 A. Cooperatives may form, organize, acquire,  
8 hold, dispose of and operate any interest up to and including  
9 full controlling interest in separate business entities that  
10 provide energy services and products and telecommunications  
11 and communications services and products, including cable and  
12 satellite television and water and wastewater collection and  
13 treatment, without prior approval from the public regulation  
14 commission so long as those other business entities meet all  
15 of the following conditions:

16 (1) the subsidiary is not financed with loans  
17 from the federal rural utilities service of the United States  
18 department of agriculture or the United States department of  
19 agriculture or with similar financing from any successor  
20 agency. This limitation shall not apply to rural utilities  
21 service loans or United States department of agriculture  
22 loans, or loans from successor agencies, to the extent the  
23 loan is to be used for a purpose authorized by the lending  
24 agency;

25 (2) the subsidiary fully compensates the

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1 cooperative for the use of personnel, services, equipment,  
2 tangible property and the cooperative's fully distributed  
3 costs, including all direct and indirect costs and the cost of  
4 capital incurred in providing the personnel, services,  
5 equipment or tangible property in question;

6 (3) the total investments, loans, guarantees  
7 and pledges of assets of a cooperative in all of its  
8 subsidiaries shall not exceed twenty percent of the  
9 cooperative's assets; and

10 (4) the subsidiary agrees to not offer any  
11 service or product to the public until it has obtained federal  
12 and state regulatory approvals, if any, required to provide  
13 the service or product to the public.

14 B. A director, or spouse or domestic partner of a  
15 director, of a cooperative may not be employed or have any  
16 financial interest in a separate business entity formed,  
17 organized, acquired, held or operated by that cooperative  
18 pursuant to the provisions of this section.

19 C. Should the public regulation commission, upon  
20 complaint showing reasonable grounds for investigation, find  
21 after investigation and public hearing that the charges for  
22 the transactions between the cooperative and other business  
23 entity do not conform with the provisions of this section, the  
24 public regulation commission is authorized to direct the  
25 cooperative to adjust those charges to comply with the

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1 provisions of this section. If the cooperative does not  
2 comply with the public regulation commission's directive, the  
3 public regulation commission is authorized to direct the  
4 cooperative to divest its interest in the other business  
5 entity. For purposes of enforcing this section, members of  
6 the public regulation commission, and the public regulation  
7 commission staff, are authorized to inspect the books and  
8 records of such other business entities and the cooperatives,  
9 provided that proprietary or confidential data or information  
10 of the separate business entities shall not be disclosed to a  
11 third party. The public regulation commission shall adopt  
12 rules and reporting requirements to enforce the provisions of  
13 this section.

14 D. Nothing in this section grants the public  
15 regulation commission the power to regulate a generation and  
16 transmission cooperative referred to in Section 62-6-4 NMSA  
17 1978."

18 Section 337. Section 62-15-9 NMSA 1978 (being Laws 1939,  
19 Chapter 47, Section 9, as amended) is amended to read:

20 "62-15-9. BOARD OF TRUSTEES--SUITS.--

21 A. The business and affairs of a cooperative shall  
22 be managed by a board of not less than five trustees, each of  
23 whom shall be a member of the cooperative or of another  
24 cooperative, which shall be a member thereof. The bylaws  
25 shall prescribe the number of trustees, the terms of the

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1 trustees and the manner of their election by the members,  
2 their qualifications, other than those provided for in the  
3 Rural Electric Cooperative Act, the manner of holding meetings  
4 of the board of trustees and of the election of successors to  
5 trustees who resign, die or otherwise are incapable of acting.  
6 The bylaws may provide for the removal of trustees from office  
7 and for the election of their successors and for the  
8 classification of trustees by terms of office. Without  
9 approval of the members, trustees shall not receive any  
10 salaries for their services as trustees and, except in  
11 emergencies, shall not be employed by the cooperative in any  
12 capacity involving compensation. The bylaws may, however,  
13 provide that a fixed per diem fee and advancement,  
14 reimbursement or a per diem amount in lieu of reasonably  
15 incurred expenses may be allowed to each trustee for  
16 attendance at each meeting of the board of trustees and of a  
17 committee thereof and for the performance of other cooperative  
18 business when such has had prior approval of the board of  
19 trustees.

20 B. The trustees of a cooperative named in any  
21 articles of incorporation, consolidation, merger or conversion  
22 shall hold office until the next following annual meeting of  
23 the members or until their successors have been elected and  
24 qualified.

25 C. A majority of the board of trustees constitutes

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1 a quorum.

2 D. If a husband and wife or domestic partners hold  
3 joint membership in a cooperative, either one, but not both,  
4 may be elected a trustee.

5 E. If the bylaws so provide, the board of trustees,  
6 by resolution adopted by a majority of the full board of  
7 trustees, may designate from among its members an executive  
8 committee and one or more other committees, except no such  
9 committee shall have authority to take any action on behalf of  
10 the board of trustees to distribute patronage refunds or in  
11 any matter [~~which~~] that, under the articles of incorporation,  
12 bylaws or the Rural Electric Cooperative Act, requires the  
13 approval of the cooperative's members. Neither the  
14 designation of any such committee, the delegation thereto of  
15 authority nor action by such committee pursuant to such  
16 authority shall alone constitute compliance by any trustee not  
17 a member of the committee in question with the trustee's  
18 responsibility to act in accordance with the standard of  
19 conduct prescribed by [~~Subsection E of~~] this section.

20 F. Unless otherwise provided in the bylaws, any  
21 action required by the Rural Electric Cooperative Act to be  
22 taken at a meeting of the board of trustees, or any action  
23 [~~which~~] that may be taken at a meeting of the board of  
24 trustees or of a committee, may be taken without a meeting if  
25 a consent in writing, setting forth the action so taken,

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1     ~~[shall be]~~ is signed by all of the trustees or all of the  
2     committee members, as the case may be. The consent shall have  
3     the same effect as a unanimous vote.

4             G. The board of trustees may exercise all of the  
5     powers of a cooperative except such as are conferred upon the  
6     members by the Rural Electric Cooperative Act or its articles  
7     of incorporation or bylaws.

8             H. No action shall be brought against a trustee as  
9     such or against the cooperative in its right unless the  
10    plaintiff was a member of record at the time of the  
11    transaction complained of and the complaint is verified and  
12    alleges with particularity the efforts, if any, made by the  
13    plaintiff to obtain the action the plaintiff desires from the  
14    board of trustees and the reasons for the plaintiff's failure  
15    to obtain the action or for not making the effort. If the  
16    cooperative undertakes an investigation upon receipt of a  
17    demand by plaintiff for action, or following commencement of  
18    suit, the court may stay an action commenced as the  
19    circumstances reasonably require. If the court finds the  
20    action was brought without reasonable cause, it may require  
21    the plaintiff to pay defendants the reasonable expenses,  
22    including counsel fees, incurred by them in the defense of  
23    such action or to reimburse the cooperative for any  
24    indemnification provided a defendant pursuant to the Rural  
25    Electric Cooperative Act or the cooperative's bylaws."

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1 Section 338. Section 62-15-31 NMSA 1978 (being Laws  
2 1939, Chapter 47, Section 31, as amended) is amended to read:

3 "62-15-31. RURAL AREA, PERSON AND MEMBER DEFINED.--As  
4 used in the Rural Electric Cooperative Act:

5 A. "rural area" means any area not included within  
6 the boundaries of any municipality having a population in  
7 excess of five thousand persons; provided that a municipality  
8 having a population of more than five thousand persons shall  
9 not cease to be included within the term rural area if at the  
10 time of the commencement of the cooperative's or its  
11 predecessor's operation therein the population of the  
12 municipality was less than five thousand persons and the  
13 municipality has been and continues to be served by a  
14 cooperative; provided, however, that the population of any  
15 municipality shall not be included in any rural area if [~~said~~]  
16 the municipality has a municipally owned plant or other  
17 operating noncooperative utility; and provided further that  
18 any cooperative shall not be permitted to operate in any  
19 municipality without first having obtained a franchise from  
20 the governing authorities;

21 B. "person" includes any natural person, firm,  
22 association, corporation, business trust, partnership, federal  
23 agency, state or political subdivision or agency thereof or  
24 any body politic; and

25 C. "member" means each incorporator of a

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1 cooperative and each person admitted to and retaining  
2 membership [~~therein~~] in the cooperative and [~~shall include~~]  
3 includes a husband and wife or domestic partners admitted to a  
4 joint membership."

5 Section 339. Section 66-3-411 NMSA 1978 (being Laws  
6 1978, Chapter 99, Section 2, as amended) is amended to read:

7 "66-3-411. SPECIAL REGISTRATION PLATES--PRISONERS OF WAR  
8 AND SURVIVING SPOUSES OR SURVIVING DOMESTIC PARTNERS--  
9 SUBMISSION OF PROOF--PENALTY.--

10 A. The division shall issue distinctive  
11 registration plates to any person, or to the surviving spouse  
12 or surviving domestic partner of any deceased person, who was  
13 held as a prisoner of war by an enemy of the United States  
14 during any armed conflict, upon the submission by the person  
15 or surviving spouse or surviving domestic partner of proof  
16 satisfactory to the division that [~~he~~] the person was held as  
17 a prisoner of war by an enemy of the United States during a  
18 period of armed conflict or that [~~he~~] the person is the  
19 surviving spouse or surviving domestic partner of such a  
20 person. No fee, including the regular registration fee  
21 applicable to the passenger motor vehicle, if any, shall be  
22 collected for issuance of a special registration plate  
23 pursuant to this section.

24 B. No person shall [~~falsely represent himself to~~  
25 ~~have~~] make any false representation as to having been held as

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1 a prisoner of war or as to [~~be~~] being the surviving spouse or  
2 surviving domestic partner of a prisoner of war so as to be  
3 eligible to be issued special registration plates pursuant to  
4 this section when [~~he~~] the person in fact was not held as a  
5 prisoner of war or when [~~he~~] the person in fact is not the  
6 surviving spouse or surviving domestic partner of a prisoner  
7 of war.

8 C. Any person who violates the provisions of  
9 Subsection B of this section is guilty of a misdemeanor."

10 Section 340. Section 66-5-21.1 NMSA 1978 (being Laws  
11 2005, Chapter 124, Section 1) is amended to read:

12 "66-5-21.1. EFFECT OF MILITARY SERVICE ON DRIVER'S  
13 LICENSE.--

14 A. Unless the license is suspended, canceled or  
15 revoked as provided by law, a driver's license issued by this  
16 state that is held by a person who is on active duty in the  
17 armed forces of the United States and is absent from this  
18 state, or is in this state only on leave status, remains valid  
19 beyond the expiration date of the license.

20 B. If the person benefiting from this section is  
21 reassigned to this state or is discharged from military  
22 service, the driver's license remains valid until the thirty-  
23 first day after the person's return to this state or  
24 discharge.

25 C. A person benefiting from this section shall also

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1 show valid military identification or discharge documents when  
2 asked to show a driver's license.

3 D. The provisions of this section also apply to a  
4 spouse or domestic partner accompanying a person benefiting  
5 from this section."

6 Section 341. Section 66-12-17 NMSA 1978 (being Laws  
7 1959, Chapter 338, Section 16) is amended to read:

8 "66-12-17. OWNER'S CIVIL LIABILITY.--The owner of a  
9 vessel shall be liable for any injury or damage occasioned by  
10 the negligent operation of the vessel, whether the negligence  
11 consists of a violation of the provisions of the statutes of  
12 this state or neglecting to observe the ordinary care and  
13 operation that the rules of the common law require. The owner  
14 shall not be liable unless the vessel is being used with [~~his~~]  
15 the owner's express or implied consent. It shall be presumed  
16 that the vessel is being operated with the knowledge and  
17 consent of the owner if at any time of the injury or damage it  
18 is under the control of the spouse, domestic partner, father,  
19 mother, brother, sister, son, daughter or other immediate  
20 member of the owner's family. Nothing contained [~~herein~~] in  
21 this section shall be construed to relieve any other person  
22 from any liability [~~which he~~] that the person would otherwise  
23 have, but nothing contained [~~herein~~] in this section shall be  
24 construed to authorize or permit any recovery in excess of  
25 injury or damage actually incurred."

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1           Section 342. Section 73-2-42 NMSA 1978 (being Laws 1912,  
2 Chapter 36, Section 1, as amended) is amended to read:

3           "73-2-42. BLIND PERSONS--FREE IRRIGATION.--The  
4 commissioners of any community ditch in New Mexico shall have  
5 power according to their discretion, if they deem it proper,  
6 to allow a blind person or [~~his~~] the blind person's surviving  
7 spouse or surviving domestic partner to irrigate free of  
8 charge any portion of land not to exceed three acres; provided  
9 that the parties to whom the privilege may be granted [~~as~~  
10 ~~herein stated shall~~] have an interest and water right in the  
11 ditch and shall be subject to the use of the water as per the  
12 orders of the mayordomo or superintendent of the ditch."

13           Section 343. Section 73-18-32 NMSA 1978 (being Laws  
14 1955, Chapter 281, Section 8, as amended) is amended to read:

15           "73-18-32. VOTING RIGHTS.--

16           A. In district precinct elections, landowners  
17 owning one acre of irrigable land shall be entitled to one  
18 vote for each acre of irrigable land or major fraction  
19 [~~thereof~~] of an acre owned by the landowner up to one hundred  
20 sixty acres. Landowners owning less than one acre of  
21 irrigable land have no vote. A landowner may vote in all  
22 voting precincts in which [~~he~~] the landowner has irrigable  
23 land, entitling [~~him~~] the landowner to vote as provided in  
24 Sections 73-18-30 and 73-18-31 NMSA 1978.

25           B. For director-at-large, all persons who are over

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1 the age of eighteen and who have been the owners of real  
2 estate within the district for more than one month preceding  
3 the election shall be entitled to one vote.

4 C. All persons who are over the age of eighteen and  
5 who have been the owners of real estate within any  
6 municipality within the district for more than one month  
7 preceding the election shall be entitled to one vote for  
8 director representing the municipal election precinct.

9 D. To qualify voters to vote for directors-at-large  
10 and for director representing the municipal voting precinct,  
11 the ownership of real estate by the spouse or domestic partner  
12 shall be considered also ownership by the other spouse or  
13 other domestic partner."

14 Section 344. SAVING CLAUSE.--This act shall not  
15 adversely affect any other manner in which relationships  
16 between adults may be recognized or given effect in New Mexico  
17 or the legal consequences of those relationships.

18 Section 345. SEVERABILITY.--If any part or application  
19 of this act is held invalid, the remainder or its application  
20 to other situations or persons shall not be affected.