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HOUSE BILL 92

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

INTRODUCED BY

Candy Spence Ezzell and Bob Wooley

AN ACT

RELATING TO EXECUTIVE REORGANIZATION; ENACTING THE VOCATIONAL REHABILITATION ACT; MOVING THE VOCATIONAL REHABILITATION DIVISION FROM THE PUBLIC EDUCATION DEPARTMENT TO THE WORKFORCE SOLUTIONS DEPARTMENT; MOVING CERTAIN PROVISIONS PERTAINING TO THE BLIND TO CHAPTER 28 NMSA 1978; PROVIDING FOR THE TRANSFER OF MONEY, APPROPRIATIONS, PERSONNEL AND PROPERTY; AMENDING, REPEALING, ENACTING AND RECOMPILING SECTIONS OF THE NMSA 1978.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 13 of this act may be cited as the "Vocational Rehabilitation Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Vocational Rehabilitation Act:

A. "department" means the workforce solutions

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1 department;

2 B. "director" means the director of vocational
3 rehabilitation;

4 C. "division" means the vocational rehabilitation
5 division of the department;

6 D. "federal aid funds" means funds, gifts or grants
7 received by the state under any federal aid for vocational
8 rehabilitation;

9 E. "person with a disability" means an individual
10 who has a physical or mental impairment, whose impairment
11 constitutes or results in a substantial impediment to
12 employment and who can benefit in terms of an employment
13 outcome from the provision of vocational rehabilitation; and

14 F. "vocational rehabilitation" means rehabilitation
15 services described in an individualized plan for employment
16 necessary to assist a person with a disability in preparing
17 for, securing, retaining or regaining an employment outcome
18 that is consistent with the strengths, resources, priorities,
19 concerns, abilities, capabilities, interests and informed
20 choice of that person; provided that "vocational
21 rehabilitation" does not include services for the blind.

22 SECTION 3. [NEW MATERIAL] VOCATIONAL REHABILITATION
23 DIVISION CREATED--DIRECTOR.--

24 A. The "vocational rehabilitation division" is
25 created in the department.

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1 B. The secretary of workforce solutions shall
2 appoint a director of the division to be known as the "director
3 of vocational rehabilitation".

4 SECTION 4. [NEW MATERIAL] VOCATIONAL REHABILITATION

5 DIVISION--POWERS--DUTIES.--The division shall:

6 A. provide vocational rehabilitation to qualified
7 persons with disabilities;

8 B. administer any state plan or federal aid funds
9 relating to vocational rehabilitation;

10 C. cooperate and make agreements with public or
11 private agencies to establish or to maintain a vocational
12 rehabilitation program;

13 D. enter into reciprocal agreements with other
14 states to provide vocational rehabilitation;

15 E. accept gifts or grants to be used for vocational
16 rehabilitation;

17 F. enforce rules for the administration of laws
18 relating to vocational rehabilitation;

19 G. conduct research and compile statistics relating
20 to vocational rehabilitation;

21 H. ensure that behavioral health services,
22 including mental health and substance abuse services, provided,
23 contracted for or approved are in compliance with the
24 requirements of Section 9-7-6.4 NMSA 1978; and

25 I. collaborate with the New Mexico statewide

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1 independent living council and through the state plan for
2 independent living identify the designated state agency to
3 administer the independent living services program and to work
4 to execute the transition for fiscal year 2019.

5 SECTION 5. [NEW MATERIAL] VOCATIONAL REHABILITATION--
6 STATE GOVERNING AUTHORITY.--

7 A. The division is the governing authority and
8 shall establish policies for the conduct of all programs of the
9 state and state plans established relating to vocational
10 rehabilitation, unless otherwise provided by law.

11 B. The division is the sole agency of the state for
12 the administration or for the supervision of the administration
13 of any state plan relating to vocational rehabilitation, or for
14 any federal aid funds, except as may otherwise be provided by
15 law.

16 SECTION 6. [NEW MATERIAL] STATE AGENCY FOR VOCATIONAL
17 REHABILITATION--AUTHORITY.--The division is the sole agency of
18 the state for the administration or the supervision of the
19 administration of any federal aid funds pertaining to
20 vocational rehabilitation. The division may:

21 A. enter into an agreement with the appropriate
22 federal agency to procure for the state the benefits of the
23 federal statute;

24 B. establish a state plan, if required by the
25 federal statute, that meets the requirements of the federal

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1 statute to qualify the state for the benefits of the federal
2 statute;

3 C. provide for reports to be made to the federal
4 agency as may be required;

5 D. provide for reports to be made to the division
6 from agencies receiving federal aid funds;

7 E. make surveys and studies in cooperation with
8 other agencies to determine the needs of the state in the areas
9 where the federal aid funds are to be applied;

10 F. establish standards to which agencies must
11 conform in receiving federal aid funds; and

12 G. give technical advice and assistance to any
13 agency in connection with that agency obtaining federal aid
14 funds.

15 SECTION 7. [NEW MATERIAL] CUSTODY OF FUNDS--BUDGETS--
16 DISBURSEMENTS.--

17 A. The state treasurer shall be the custodian of
18 all federal aid funds for vocational rehabilitation. The state
19 treasurer shall hold these funds in separate accounts according
20 to the purposes of the funds.

21 B. All state funds, federal aid funds or grants to
22 the state relating to vocational rehabilitation shall be
23 budgeted and accounted for as provided by law and by the rules
24 of the department of finance and administration. These funds
25 or grants shall be disbursed by warrants of the department of

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1 finance and administration on vouchers issued by the director
2 or the director's authorized representative.

3 C. All federal aid funds received by the state to
4 be used for vocational rehabilitation programs may be expended
5 in any succeeding year from the year received.

6 SECTION 8. [NEW MATERIAL] VOCATIONAL REHABILITATION--
7 ELIGIBILITY.--Vocational rehabilitation shall be provided to
8 any person with a disability who is a resident of the state at
9 the time of filing an application for vocational rehabilitation
10 and who qualifies for eligibility under:

11 A. a vocational rehabilitation program established
12 by the state; or

13 B. the terms of an agreement that the state has
14 with the federal government or with another state.

15 SECTION 9. [NEW MATERIAL] THIRD-PARTY LIABILITY.--

16 A. The division shall make reasonable efforts to
17 ascertain any legal liability of third parties who are or may
18 be liable to pay all or part of the cost of rehabilitation
19 services of an applicant or client of vocational
20 rehabilitation.

21 B. When the division provides vocational
22 rehabilitation services to a qualified person with a
23 disability, the division is subrogated to any right of that
24 person against a third party for recovery of costs incurred.

25 SECTION 10. [NEW MATERIAL] HEARINGS.--

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1 A. An opportunity for a fair hearing shall be
2 provided for any person with a disability applying for or
3 receiving vocational rehabilitation who is aggrieved by any
4 action or inaction of the division or the director.

5 B. The division shall adopt rules for the conduct
6 of hearings pursuant to this section.

7 **SECTION 11. [NEW MATERIAL] NONTRANSFERABLE OR**
8 **NONASSIGNABLE RIGHTS.--**The rights of a person with a disability
9 under the provisions of any state law relating to vocational
10 rehabilitation are not transferable or assignable in law or in
11 equity.

12 **SECTION 12. [NEW MATERIAL] LIMITATIONS ON POLITICAL**
13 **ACTIVITIES.--**

14 A. A person engaged in administering any vocational
15 rehabilitation program pursuant to the Vocational
16 Rehabilitation Act shall not:

17 (1) use the person's official authority or
18 influence to permit the use of the vocational rehabilitation
19 program to interfere with any public election or partisan
20 political campaign;

21 (2) take any active part in the management of
22 a political campaign or participate in any political activity
23 beyond the person's constitutional rights of voting and of free
24 speech; or

25 (3) be required to contribute or render

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1 service, assistance, subscription, assessment or contribution
2 for any political purpose.

3 B. Any person violating the provisions of this
4 section shall be subject to discharge or suspension.

5 SECTION 13. [NEW MATERIAL] ADMISSION TO STATE EDUCATIONAL
6 INSTITUTIONS--EXEMPTION FROM CERTAIN FEES.--Upon written
7 request of the division, all state educational institutions
8 shall accept for admission, without any charge for any fees
9 except tuition charges, any person with a disability who meets
10 the standards of the institution.

11 SECTION 14. Section 9-7-6.4 NMSA 1978 (being Laws 2004,
12 Chapter 46, Section 8, as amended) is amended to read:

13 "9-7-6.4. INTERAGENCY BEHAVIORAL HEALTH PURCHASING
14 COLLABORATIVE.--

15 A. There is created the "interagency behavioral
16 health purchasing collaborative", consisting of the secretaries
17 of aging and long-term services; Indian affairs; human
18 services; health; corrections; children, youth and families;
19 finance and administration; workforce solutions; public
20 education; and transportation; the governor's health policy
21 coordinator; and the directors of the administrative office of
22 the courts, the New Mexico mortgage finance authority, the
23 governor's commission on disability, the developmental
24 disabilities planning council, the [~~instructional support and~~]
25 vocational rehabilitation division of the [~~public education~~]

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1 workforce solutions department and the New Mexico health policy
2 commission [~~and the governor's health policy coordinator~~], or
3 their designees. The collaborative shall be chaired by the
4 secretary of human services with the respective secretaries of
5 health and children, youth and families alternating annually as
6 co-chairs.

7 B. The collaborative shall meet regularly and at
8 the call of either co-chair and shall:

9 (1) identify behavioral health needs
10 statewide, with an emphasis on that hiatus between needs and
11 services set forth in the department of health's gap analysis
12 and in ongoing needs assessments and develop a master plan for
13 statewide delivery of services;

14 (2) give special attention to regional
15 differences, including cultural, rural, frontier, urban and
16 border issues;

17 (3) inventory all expenditures for behavioral
18 health, including mental health and substance abuse;

19 (4) plan, design and direct a statewide
20 behavioral health system, ensuring both availability of
21 services and efficient use of all behavioral health funding,
22 taking into consideration funding appropriated to specific
23 affected departments; and

24 (5) contract for operation of one or more
25 behavioral health entities to ensure availability of services

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1 throughout the state.

2 C. The plan for delivery of behavioral health
3 services shall include specific service plans to address the
4 needs of infants, children, adolescents, adults and seniors, as
5 well as to address workforce development and retention and
6 quality improvement issues. The plan shall be revised every
7 two years and shall be adopted by the department of health as
8 part of the statewide health plan.

9 D. The plan shall take the following principles
10 into consideration, to the extent practicable and within
11 available resources:

12 (1) services should be individually centered
13 and family-focused based on principles of individual capacity
14 for recovery and resiliency;

15 (2) services should be delivered in a
16 culturally responsive manner in a home- or community-based
17 setting, where possible;

18 (3) services should be delivered in the least
19 restrictive and most appropriate manner;

20 (4) individualized service planning and case
21 management should take into consideration individual and family
22 circumstances, abilities and strengths and be accomplished in
23 consultation with appropriate family members, caregivers and
24 other persons critical to the individual's life and well-being;

25 (5) services should be coordinated,

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1 accessible, accountable and of high quality;

2 (6) services should be directed by the
3 individual or family served to the extent possible;

4 (7) services may be consumer- or family-
5 provided, as defined by the collaborative;

6 (8) services should include behavioral health
7 promotion, prevention, early intervention, treatment and
8 community support; and

9 (9) services should consider regional
10 differences, including cultural, rural, frontier, urban and
11 border issues.

12 E. The collaborative shall seek and consider
13 suggestions of Native American representatives from Indian
14 nations, tribes and pueblos and the urban Indian population,
15 located wholly or partially within New Mexico, in the
16 development of the plan for delivery of behavioral health
17 services.

18 F. Pursuant to the State Rules Act, the
19 collaborative shall adopt rules through the human services
20 department for:

21 (1) standards of delivery for behavioral
22 health services provided through contracted behavioral health
23 entities, including:

24 (a) quality management and improvement;

25 (b) performance measures;

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1 (c) accessibility and availability of
2 services;

3 (d) utilization management;

4 (e) credentialing of providers;

5 (f) rights and responsibilities of
6 consumers and providers;

7 (g) clinical evaluation and treatment
8 and supporting documentation; and

9 (h) confidentiality of consumer records;
10 and

11 (2) approval of contracts and contract
12 amendments by the collaborative, including public notice of the
13 proposed final contract.

14 G. The collaborative shall, through the human
15 services department, submit a separately identifiable
16 consolidated behavioral health budget request. The
17 consolidated behavioral health budget request shall account for
18 requested funding for the behavioral health services program at
19 the human services department and any other requested funding
20 for behavioral health services from agencies identified in
21 Subsection A of this section that will be used pursuant to
22 Paragraph (5) of Subsection B of this section. Any contract
23 proposed, negotiated or entered into by the collaborative is
24 subject to the provisions of the Procurement Code.

25 H. The collaborative shall, with the consent of the
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1 governor, appoint a "director of the collaborative". The
2 director is responsible for the coordination of day-to-day
3 activities of the collaborative, including the coordination of
4 staff from the collaborative member agencies.

5 I. The collaborative shall provide a quarterly
6 report to the legislative finance committee on performance
7 outcome measures. The collaborative shall submit an annual
8 report to the legislative finance committee and the [~~interim~~]
9 legislative health and human services committee that provides
10 information on:

11 (1) the collaborative's progress toward
12 achieving its strategic plans and goals;

13 (2) the collaborative's performance
14 information, including contractors and providers; and

15 (3) the number of people receiving services,
16 the most frequently treated diagnoses, expenditures by type of
17 service and other aggregate claims data relating to services
18 rendered and program operations."

19 SECTION 15. Section 9-24-4 NMSA 1978 (being Laws 2004,
20 Chapter 27, Section 4, as amended) is amended to read:

21 "9-24-4. DEPARTMENT CREATED.--

22 A. The "public education department" is created in
23 the executive branch. The department is a cabinet department
24 and includes the following divisions:

25 (1) the administrative services division;

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- 1 (2) the assessment and accountability
2 division;
- 3 (3) the charter schools division;
- 4 (4) the educator quality division;
- 5 (5) the Indian education division;
- 6 (6) the information technology division;
- 7 (7) the instructional support and vocational
8 education division;
- 9 (8) the program support and student
10 transportation division;
- 11 (9) the quality assurance and systems
12 integration division; and
- 13 (10) the rural education division [~~and~~
14 ~~(11) the vocational rehabilitation division~~].

15 B. The secretary may organize the department and
16 divisions of the department and may transfer or merge functions
17 between divisions and bureaus in the interest of efficiency and
18 economy."

19 SECTION 16. Section 9-26-4 NMSA 1978 (being Laws 2007,
20 Chapter 200, Section 4) is amended to read:

21 "9-26-4. WORKFORCE SOLUTIONS DEPARTMENT CREATED.--The
22 "workforce solutions department" is created in the executive
23 branch pursuant to the Executive Reorganization Act. The
24 department is a cabinet department that includes:

- 25 A. the office of the secretary;

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- 1 B. the administrative services division;
2 C. the business services division;
3 D. the labor relations division;
4 E. the workforce technology division; ~~and~~
5 F. the workforce transition services division; and
6 G. the vocational rehabilitation division."

7 SECTION 17. Section 22-14-1 NMSA 1978 (being Laws 1967,
8 Chapter 16, Section 191, as amended) is amended to read:

9 "22-14-1. DEFINITIONS.--As used in [~~Sections 22-14-2~~
10 ~~through 22-14-16~~] Chapter 22, Article 14 NMSA 1978:

11 A. "vocational education" means vocational or
12 technical training or retraining conducted as part of a program
13 designed to enable [~~an individual~~] a person to engage in a
14 remunerative occupation. Vocational education may provide but
15 is not limited to guidance and counseling, vocational
16 instruction, training for vocational education instructors,
17 transportation and training material and equipment; and

18 ~~[B. "person with a disability" means a person with~~
19 ~~a physical or mental disability that constitutes a substantial~~
20 ~~handicap to employment but that is of such a nature that~~
21 ~~vocational rehabilitation may be reasonably expected to enable~~
22 ~~the person to engage in a remunerative occupation;~~

23 ~~C. "vocational rehabilitation" means services or~~
24 ~~training necessary to enable a person with a disability to~~
25 ~~engage in a remunerative occupation. Vocational rehabilitation~~

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1 ~~may provide but is not limited to medical or vocational~~
2 ~~diagnosis, vocational guidance, counseling and placement,~~
3 ~~rehabilitation training, physical restoration, transportation,~~
4 ~~occupational licenses, customary occupational tools or~~
5 ~~equipment, maintenance and training material and equipment; and~~

6 D.] B. "federal aid funds" means funds, gifts or
7 grants received by the state under any federal aid for
8 vocational education [~~or vocational rehabilitation~~]."

9 SECTION 18. Section 28-11A-3 NMSA 1978 (being Laws 1981,
10 Chapter 260, Section 3) is amended to read:

11 "28-11A-3. VOCATIONAL REHABILITATION DIVISION--PURCHASE
12 OF TELECOMMUNICATION DEVICES FOR THE DEAF.--A telecommunication
13 device for the deaf shall be purchased by the vocational
14 rehabilitation division of the workforce solutions department
15 [~~of education~~] and installed in the office of the municipal
16 police department of any municipality with a population in
17 excess of ten thousand inhabitants, if the division determines
18 and verifies that at least five telecommunication devices for
19 the deaf are in use by deaf persons in the municipality, and in
20 the office of the county sheriff in counties not having a
21 municipality with a population in excess of ten thousand
22 inhabitants, if the division determines and verifies that at
23 least five such devices are in use by deaf persons in that
24 county."

25 SECTION 19. Section 28-16A-4 NMSA 1978 (being Laws 1993,

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1 Chapter 50, Section 4) is amended to read:

2 "28-16A-4. DEVELOPMENTAL DISABILITIES PLANNING COUNCIL--
3 CREATION--MEMBERSHIP--TERMS.--

4 A. The "developmental disabilities planning
5 council" is created in accordance with the federal
6 Developmental Disabilities Assistance and Bill of Rights Act.
7 The developmental disabilities planning council shall be an
8 adjunct agency as provided in the Executive Reorganization Act.

9 B. The developmental disabilities planning council
10 shall consist of no fewer than eighteen members, at least half
11 of whom shall be persons with developmental disabilities or
12 parents, immediate relatives or legal guardians of persons with
13 developmental disabilities. The developmental disabilities
14 planning council shall include:

15 (1) the secretary of health or [~~his~~] the
16 secretary's designee;

17 (2) the secretary of human services or [~~his~~]
18 the secretary's designee;

19 (3) the secretary of children, youth and
20 families or [~~his~~] the secretary's designee;

21 (4) the [~~director~~] secretary of [~~the state~~
22 ~~agency on~~] aging and long-term services or [~~his~~] the
23 secretary's designee;

24 (5) [~~two directors~~] one director from the
25 [~~state department of~~] public education [~~including the~~

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1 ~~vocational rehabilitation division~~] department;

2 (6) the director of the vocational
3 rehabilitation division of the workforce solutions department;

4 [~~6~~] (7) the director of the state protection
5 and advocacy system established pursuant to the federal
6 Developmental Disabilities Assistance and Bill of Rights Act;

7 [~~7~~] (8) representatives of institutions of
8 post-secondary education;

9 [~~8~~] (9) representatives of each program
10 established within institutions of post-secondary education
11 pursuant to the federal Developmental Disabilities Assistance
12 and Bill of Rights Act; and

13 [~~9~~] (10) representatives of local government
14 agencies, nongovernment agencies or nonprofit groups concerned
15 with services to persons with developmental disabilities,
16 including a service provider.

17 C. Members, except for ex-officio members, shall be
18 appointed by the governor for terms of three years."

19 **SECTION 20.** Section 28-16A-9 NMSA 1978 (being Laws 1993,
20 Chapter 50, Section 9) is amended to read:

21 "28-16A-9. INFORMATION AND REFERRAL SYSTEM--COORDINATION
22 AND CONTINUATION.--In order to coordinate information and
23 referral services and eliminate the duplication of effort, the
24 developmental disabilities planning council shall provide
25 information and referral services for persons with

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1 disabilities, their families, providers of support and services
2 and local and state agencies, including:

3 A. the human services department;

4 B. the department of health;

5 C. the [~~state department of~~] public education [~~and~~
6 ~~its vocational rehabilitation division~~] department;

7 D. the vocational rehabilitation division of the
8 workforce solutions department;

9 [~~D.~~] E. the New Mexico school for the deaf;

10 [~~E.~~] F. the New Mexico school for the blind and
11 visually [~~handicapped~~] impaired;

12 [~~F.~~] G. the Carrie Tingley crippled children's
13 hospital; and

14 [~~G.~~] H. the children, youth and families
15 department."

16 SECTION 21. Section 38-9-6 NMSA 1978 (being Laws 1979,
17 Chapter 263, Section 6, as amended) is amended to read:

18 "38-9-6. NOTICE--PROOF OF DISABILITY.--Every deaf person
19 whose appearance at a proceeding entitles the person to an
20 interpreter shall notify the appointing authority of the
21 person's disability at least two weeks prior to any appearance
22 and shall request the services of an interpreter. An
23 appointing authority may require a person requesting the
24 appointment of an interpreter to furnish reasonable proof of
25 the person's disability when the appointing authority has

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1 reason to believe that the person is not so disabled.
2 Reasonable proof shall include but not be limited to a
3 statement from a doctor, an audiologist, the vocational
4 rehabilitation division of the ~~[public education]~~ workforce
5 solutions department, the commission for deaf and hard-of-
6 hearing persons or a school nurse that identifies the person as
7 deaf or as having hearing so seriously impaired as to prohibit
8 the person from understanding voice communications."

9 SECTION 22. TEMPORARY PROVISION--TRANSFER OF FUNCTIONS,
10 PERSONNEL, MONEY, APPROPRIATIONS, PROPERTY, CONTRACTUAL
11 OBLIGATIONS AND STATUTORY REFERENCES.--

12 A. On the effective date of this act, all
13 functions, personnel, money, appropriations, records,
14 furniture, equipment, supplies and other property of the
15 vocational rehabilitation division of the public education
16 department are transferred to the vocational rehabilitation
17 division of the workforce solutions department.

18 B. On the effective date of this act, all
19 contractual obligations of the vocational rehabilitation
20 division of the public education department are binding on the
21 vocational rehabilitation division of the workforce solutions
22 department.

23 C. On the effective date of this act, all
24 references in law to the vocational rehabilitation division of
25 the public education department shall be deemed to be

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1 references to the vocational rehabilitation division of the
2 workforce solutions department.

3 SECTION 23. TEMPORARY PROVISION--RECOMPILATION.--Sections
4 22-14-21 through 22-14-29 NMSA 1978 (being Laws 1953, Chapter
5 163, Sections 1 through 3 and Laws 1957, Chapter 180, Sections
6 1 through 5, as amended) are recompiled in Chapter 28, Article
7 7 NMSA 1978.

8 SECTION 24. REPEAL.--Sections 22-14-2.1, 22-14-3.1,
9 22-14-7 through 22-14-9, 22-14-11 through 22-14-14, 22-14-16,
10 22-14-20 and 22-14-30 NMSA 1978 (being Laws 2005, Chapter 328,
11 Sections 2 and 4, Laws 1967, Chapter 16, Sections 196 through
12 199, Laws 1983, Chapter 60, Section 1, Laws 1967, Chapter 16,
13 Sections 200 through 202 and 204 and Laws 1971, Chapter 324,
14 Sections 5 and 4, as amended) are repealed.

15 SECTION 25. EFFECTIVE DATE.--The effective date of the
16 provisions of this act is July 1, 2018.