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FISCAL IMPACT REPORT

SPONSOR Swisstack DATE TYPED 3/2/05 HB 846

SHORT TITLE Prima Facie Torts as Cause of Action SB _____

ANALYST Medina

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	\$0.1 See Narrative				General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to Civil Law

SOURCES OF INFORMATION

LFC Files
 Administrative Office of the Courts (AOC)
 Attorney General (AG)

SUMMARY

Synopsis of Bill

House Bill 846 prohibits the recognition of a prima facie tort as a cause of action in a filing of a civil lawsuit or in arbitration unless it is the sole cause of action based on the facts, events or circumstances of the lawsuit. The bill would preclude a claim for prima facie tort to be joined with another tort claim in a civil action.

Significant Issues

A prima facie (at first glance) tort is defined as a claim by a plaintiff for damages on the basis that the defendant acted lawfully, but intended to cause the plaintiff harm and succeeded in doing so. The elements of a prima facie tort are that the defendant:

- intentionally acted or failed to act;
- intended that the act or failure to act would cause harm to the plaintiff or the defendant knew with certainty that the act or failure to act would cause harm to the plaintiff;

and

- the defendant's act or failure to act was the proximate cause of the plaintiff's harm; and
- the defendant's conduct was not justifiable under the circumstances.

According to the AOC, a review of New Mexico Court of Appeals and Supreme Court cases shows that this tort is typically one of several torts alleged in a lawsuit. AOC notes that this cause of action has been listed in approximately twenty-five appellate decisions since 2000.

ADMINISTRATIVE IMPLICATIONS

The Attorney General notes that the bill would potentially increase the volume of litigation, increasing the workload burden on the courts and Attorney General.

The AOC states that if this bill is enacted, the Uniform Jury Instructions would need to be amended to remove this cause of action.

OTHER SUBSTANTIVE ISSUES

The Attorney General states the following:

“New Mexico first recognized a cause of action for prima facie tort in 1990 in Schmitz v. Smentowski, 109 N.M. 386. The elements of this tort are set out in section 1.C. of the bill and are identical to the elements contained in the Uniform Jury Instruction on prima facie tort, 13-1631. This bill does not seek to abolish or limit the use by a plaintiff of a prima facie tort claim; it only provides that a complaint alleging a prima facie tort can not also allege an alternative claim based on the same facts. Under existing law, a plaintiff may plead alternative tort claims in the same proceeding but if at the close of the proof at trial the plaintiff's proof fits a traditional tort category, only that traditional claim may be submitted to the jury. A foreseeable result of this bill is to require multiple litigations. One claim would be based on the prima facie tort and the other would be based on traditional tort theories. We do not see this as a desirable result.

Prima facie tort evolved relatively recently to fill a void in the traditional tort common law. Its adoption as a valid cause of action in New Mexico is consistent with the willingness of our Supreme Court to adopt new tort areas as articulated in the Restatement of Torts. Our courts have developed a fact specific balancing test in determining whether an alleged intentionally caused harm is actionable. The activity complained of is balanced against its justification and the severity of the injury. Our courts have made clear that prima facie tort is not to become a catch all alternative, but that they are willing to recognize such a claim in an appropriate circumstance. That being the case, and given the requirement that both a prima facie and traditional tort can not go to the jury, we are unable to see any benefit to the judicial system from this bill and, indeed, are concerned that it will have an adverse impact as noted above.”

DXM/lg