

HOUSE EDUCATION COMMITTEE SUBSTITUTE FOR
HOUSE BILL 437

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

AN ACT

RELATING TO COMPULSORY SCHOOL ATTENDANCE; PROVIDING FOR EARLIER AND MORE INTENSIVE INTERVENTION FOR STUDENTS WHO ARE ABSENT OR TRUANT; REDEFINING TERMS; REQUIRING PUBLIC SCHOOLS TO PARTNER WITH COMMUNITY RESOURCES TO ASSIST IN DROPPING TRUANCY RATES; PROVIDING A PROCESS THAT PROGRESSES FROM INFORMAL INTERVENTION THROUGH PARENTAL NOTIFICATION AND INTERVENTION TO REFERRAL TO THE CHILDREN, YOUTH AND FAMILIES DEPARTMENT; REQUIRING DATA COLLECTION AND USE; PUTTING A RECORD OF ABSENCES AND RESPONSES TO INTERVENTIONS INTO STUDENTS' CUMULATIVE RECORD SO THAT PUBLIC SCHOOLS CONTINUE TO PROVIDE ASSISTANCE TO STUDENTS WHO HAVE TROUBLE ATTENDING CLASS OR SCHOOL AND TO THEIR FAMILIES.

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

SECTION 1. Section 22-12-2 NMSA 1978 (being Laws 1967, Chapter 16, Section 170, as amended) is amended to read:

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underscoring material = new
~~[bracketed material]~~ = delete

1 "22-12-2. COMPULSORY SCHOOL ATTENDANCE--RESPONSIBILITY.--

2 A. Except as otherwise provided, a school-age
3 person shall attend public school, private school, home school
4 or a state institution until the school-age person is at least
5 eighteen years of age unless that person has graduated from
6 high school or received a high school equivalency credential.
7 A parent may give written, signed permission for the school-age
8 person over the age of sixteen to leave school in case of
9 hardship or after all interventions have been tried and the
10 request to leave school is approved by the local superintendent
11 or head administrator of a charter school or private school.

12 B. A school-age person subject to the provisions of
13 the Compulsory School Attendance Law shall attend school for at
14 least the length of time of the school year that is established
15 in the school district in which the person is a resident or the
16 [~~state-chartered~~] charter school or private school in which the
17 person is enrolled and the school district or [~~state-chartered~~]
18 charter school or private school shall not excuse a student
19 from attending school except as provided in that law or for
20 parent-authorized medical reasons.

21 C. Any parent of a school-age person subject to the
22 provisions of the Compulsory School Attendance Law is
23 responsible for the school attendance of [~~that~~] the school-age
24 person.

25 D. Each [~~local school board and each governing body~~

1 ~~of a charter school or~~ private school shall enforce ~~[the~~
 2 ~~provisions]~~ student attendance in accordance with its policies
 3 and procedures so long as students meet the attendance
 4 requirements of the Compulsory School Attendance Law ~~[for~~
 5 ~~students enrolled in their respective schools]."~~

6 SECTION 2. Section 22-12-2.1 NMSA 1978 (being Laws 1986,
 7 Chapter 33, Section 27, as amended by Laws 1997, Chapter 239,
 8 Section 1 and also by Laws 1997, Chapter 245, Section 1) is
 9 amended to read:

10 "22-12-2.1. INTERSCHOLASTIC EXTRACURRICULAR ACTIVITIES--
 11 STUDENT PARTICIPATION.--

12 A. A public school student ~~[shall]~~ must have at
 13 least a 2.0 grade point average on a 4.0 scale, or its
 14 equivalent, either cumulatively or for the grading period
 15 immediately preceding participation, in order to be eligible to
 16 participate in any interscholastic extracurricular activity.
 17 For purposes of this section, "grading period" is a period of
 18 time not less than six weeks. The provisions of this
 19 subsection shall not apply to students receiving moderate to
 20 maximum special education services.

21 B. No student shall be absent from school for
 22 school-sponsored interscholastic extracurricular activities in
 23 excess of fifteen days per semester, and no class may be missed
 24 in excess of fifteen times per semester.

25 C. The provisions of Subsections A and B of this

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1 section apply only to interscholastic extracurricular
2 activities.

3 D. The ~~[state superintendent]~~ secretary may issue a
4 waiver relating to the number of absences for participation in
5 any state or national competition. The ~~[state superintendent]~~
6 secretary shall develop a procedure for petitioning cumulative
7 provision eligibility cases, similar to other eligibility
8 situations.

9 E. Student standards for participation in
10 interscholastic extracurricular activities shall be applied
11 beginning with a student's academic record in grade nine."

12 SECTION 3. Section 22-12-3 NMSA 1978 (being Laws 1971,
13 Chapter 238, Section 1, as amended) is amended to read:

14 "22-12-3. RELIGIOUS INSTRUCTION ~~[EXCUSAL]~~ OR TRIBAL
15 OBLIGATIONS.--A public school student may, subject to the
16 approval of the school principal, be ~~[excused]~~ absent from
17 school to participate in religious instruction or tribal
18 obligations for not more than one class period each school day
19 with the written consent of the student's ~~[parents]~~ parent at a
20 time period that is not in conflict with the academic program
21 of the school ~~[The local school board or governing body of a~~
22 ~~charter school, and its school employees]~~ and the student's
23 academic class schedule. The school district or the public
24 school shall not assume responsibility for the religious
25 instruction of any student or permit ~~[it]~~ religious instruction

1 to be conducted on school property."

2 SECTION 4. Section 22-12-3.1 NMSA 1978 (being Laws 2013,
3 Chapter 198, Section 1) is amended to read:

4 "22-12-3.1. [~~EXCUSED~~] ABSENCES FOR PREGNANT AND PARENTING
5 STUDENTS CONSIDERED MEDICAL ABSENCE.--

6 A. Each school district and charter school shall
7 maintain an attendance policy that:

8 (1) provides at least ten days of [~~excused~~]
9 medical absences for a student who provides documentation of
10 the birth of the student's child and provides [~~excused~~] medical
11 absences for any additional days missed by a pregnant or
12 parenting student for which a longer period of absence is
13 deemed medically necessary by the student's physician; provided
14 that the student shall be allowed a time period to make up the
15 work that the student missed that equals the number of days the
16 student was medically absent for the birth of a child; and

17 (2) provides four days per semester of
18 [~~excused~~] medical absences, in addition to the number of
19 allowed absences for all students, for a student who provides
20 appropriate documentation of pregnancy or that the student is
21 the parent of a child under the age of thirteen needing care;
22 and allows the student a time period to make up the work that
23 the student missed that equals the number of days the student
24 was absent.

25 B. The pregnant or parenting student is responsible

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1 for communicating the student's pregnancy and parenting status
2 to the appropriate school personnel if the student chooses to
3 disclose the information.

4 C. The school district or charter school shall
5 provide a copy of the pregnant and parenting student absence
6 policies to all students in middle, junior high and high
7 schools."

8 SECTION 5. Section 22-12-4 NMSA 1978 (being Laws 1978,
9 Chapter 211, Section 10) is amended to read:

10 "22-12-4. RIGHT TO EDUCATION.--All school-age persons in
11 the state shall have a right to a free public education as
12 follows:

13 A. except for school-age persons who are detained
14 in a state or local detention center or enrolled or residing in
15 state institutions other than those school-age persons provided
16 for in Subsection C of this section, [~~any~~] a school-age person
17 [~~shall have~~] has a right to attend public school within the
18 school district in which [~~he~~] the person resides or is present;

19 B. except as provided in Subsection C of this
20 section, the state or local detention center or state
21 institution in which a school-age person is detained, [~~or~~]
22 enrolled or residing shall be responsible for providing
23 educational services for the school-age person; and

24 C. [~~any~~] a school-age person who is a client as
25 defined in Section [~~34-2A-2 NMSA 1953~~] 43-1-3 NMSA 1978 in a

1 state institution under the authority of the secretary of [~~the~~]
 2 health [~~and environment department~~] shall have a right to
 3 attend public school in the school district in which the
 4 institution in which [~~he~~] the person is a client is located if:

5 (1) the school-age person has been recommended
 6 for placement in a public school by the educational appraisal
 7 and review committee of the school district in which the
 8 institution is located; or

9 (2) the school-age person has been recommended
 10 for placement in a public school as a result of the appeal
 11 process as provided in the special education [~~regulations~~]
 12 rules of the [~~state board of education~~] department."

13 SECTION 6. Section 22-12-5 NMSA 1978 (being Laws 1967,
 14 Chapter 16, Section 172, as amended) is amended to read:

15 "22-12-5. PUBLIC SCHOOL ATTENDANCE.--

16 A. Local school boards may admit school-age persons
 17 who do not live within the school district to the public
 18 schools within the school district when there are sufficient
 19 school accommodations to provide for them.

20 B. Local school boards may permit school-age
 21 persons to transfer to a public school outside the [~~child's~~]
 22 school-age person's attendance zone but within the school
 23 district when there are sufficient school accommodations to
 24 provide for them.

25 C. Local school boards may charge a tuition fee for

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1 the right to attend public school within the school district
2 only to those school-age persons who do not live within the
3 state. The tuition fee shall not exceed the amount generated
4 by the public school fund for a [~~school-age person~~] student
5 similarly situated within the school district for the current
6 school year.

7 D. When the parent [~~or guardian~~] of a student not
8 living in the state pays an ad valorem property tax for school
9 purposes within the school district, the amount of the tuition
10 payable for the school year shall be reduced by the district
11 average ad valorem tax per pupil as determined by the ad
12 valorem tax credit [~~utilized~~] used in calculating state
13 equalization guarantee distribution."

14 SECTION 7. A new Section 22-12-5.1 NMSA 1978 is enacted
15 to read:

16 "22-12-5.1. [NEW MATERIAL] DEFINITIONS.--As used in the
17 Compulsory School Attendance Law:

18 A. "absent" means a student is not in attendance
19 for a class or a school day;

20 B. "habitual truant" means a student who continues
21 to be absent after the public school has offered interventions
22 or resources as provided in Section 22-12-5.3 NMSA 1978 or who
23 is absent for a total of ten classes or school days within a
24 nine-week period that are not related to the student's medical
25 absences, extracurricular activities, religious instruction or

1 tribal obligations, if any;

2 C. "medical absence" or "medically absent" means a
3 student is not in attendance for a class or a school day for a
4 parent- or doctor-authorized medical reason or the student is a
5 pregnant or parenting student;

6 D. "nine-week period" means a rolling calendar that
7 is not tied to a grading or other school-year period and that
8 does not allow for a certain period of time to begin or end
9 that would have the effect of restarting the counting of
10 absences;

11 E. "pattern of absences" means recurring behavior
12 that helps to identify a student's problem with class or school
13 attendance and that serves as an indicator of future behavior
14 and may require the public school's intervention;

15 F. "school day" includes a portion of the school
16 day that is more than two classes;

17 G. "school principal" includes a head administrator
18 of a charter school; and

19 H. "truant" means a student who is absent for more
20 than five classes or more than five school days in any nine-
21 week period, and the absences are not related to the student's
22 medical absences, extracurricular activities, religious
23 instruction or tribal obligations, if any."

24 SECTION 8. A new Section 22-12-5.2 NMSA 1978 is enacted
25 to read:

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1 "22-12-5.2. [NEW MATERIAL] PUBLIC SCHOOL ATTENDANCE
2 POLICIES--REPORTING.--

3 A. Each public school shall maintain an attendance
4 policy that:

5 (1) provides for early identification of
6 students with absences and students in need of intervention,
7 and early identification of patterns of absences, before
8 truancy or habitual truancy begins;

9 (2) provides intervention strategies that
10 focus on:

11 (a) keeping students in an educational
12 setting;

13 (b) prohibiting out-of-school suspension
14 and expulsion as the punishment for absences and truancy; and

15 (c) assisting a student's family to
16 remove barriers to the student's regular school attendance or
17 attendance in another educational setting;

18 (3) limits the use of withdrawal as provided
19 in Section 22-8-2 NMSA 1978 only after exhausting all
20 intervention efforts to keep students in educational settings;

21 (4) requires that accurate class attendance be
22 taken for every instructional class and day in every public
23 school or school program; and

24 (5) provides for public schools to document
25 the following for each absent, truant or habitual truant

1 student:

2 (a) differentiates medical absence,
3 interscholastic extracurricular activities, religious
4 instruction and tribal obligations for data purposes;

5 (b) attempts by the school to notify the
6 parent that the student was absent from class or the school
7 day;

8 (c) attempts to improve attendance
9 informally by talking to the student or parent and finding
10 solutions to barriers to school attendance or changes to the
11 student's attendance behavior;

12 (d) attempts of the school to meet
13 formally with the parent to discuss necessary interventions for
14 the student or the family; and

15 (e) intervention strategies implemented
16 to support keeping the student in an educational setting.

17 B. The school district shall review and approve
18 public school attendance policies.

19 C. School districts and charter schools shall
20 report absences and truancy data to the department at the end
21 of each grading period and shall document intervention efforts
22 made to keep students in an educational setting. The
23 department shall compile school district and charter school
24 reports on types of absences, rates of absences, truancy and
25 habitual truancy and require school districts and charter

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1 schools to certify that the information is being reported
2 consistently and correctly. The department shall share
3 information from state-chartered charter schools with the
4 commission."

5 SECTION 9. A new Section 22-12-5.3 NMSA 1978 is enacted
6 to read:

7 "22-12-5.3. [NEW MATERIAL] ENFORCEMENT OF ATTENDANCE
8 LAW--PROCEDURES.--

9 A. Each public school shall initiate the
10 enforcement of the provisions of the Compulsory School
11 Attendance Law for its enrolled students. The enforcement
12 policies of each public school shall focus on prevention and
13 intervention.

14 B. Every public school shall provide interventions
15 to students who are absent or truant, which may include:

16 (1) assessing student and family needs and
17 matching those needs with appropriate public or private
18 providers, including civic and corporate sponsors;

19 (2) making referrals to health care and social
20 service providers;

21 (3) collaborating and coordinating with health
22 and social service agencies and organizations through
23 school-based and off-site delivery systems;

24 (4) recruiting service providers and business,
25 community and civic organizations to provide needed services

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1 and goods that are not otherwise available to a student or the
2 student's family;

3 (5) establishing partnerships between the
4 school and community organizations such as civic, business and
5 professional groups and organizations; and recreational, social
6 and after-school programs such as boys' and girls' clubs and
7 boy and girl scouts;

8 (6) identifying and coordinating age-
9 appropriate resources for students in need of:

10 (a) counseling, training and placement
11 for employment;

12 (b) drug and alcohol abuse counseling;

13 (c) family crisis counseling; and

14 (d) mental health counseling;

15 (7) promoting family support and parent
16 education programs; and

17 (8) seeking out other services or goods a
18 student or the student's family needs to assist the student to
19 stay in school and succeed.

20 C. Beginning on the first day of school, every
21 classroom teacher or the teacher's educational assistant shall
22 be responsible for taking accurate attendance for every class
23 and report absences to the person assigned by the school
24 principal to collect such data. That person, in cooperation
25 with the student's classroom teacher, shall identify patterns

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1 of behavior related to absences and report that information to
2 the school principal.

3 D. If a student is absent from class or the school
4 day more than three times in a nine-week period, and those
5 absences were not medical absences or due to the student's
6 interscholastic extracurricular activities, religious
7 instruction or tribal obligations, the school principal or the
8 school principal's designee shall talk to the student and
9 notify the student's parent in person or by telephone to
10 determine reasons for the student's absences and whether the
11 public school's and community's resources may help to keep the
12 student in school and attending class.

13 E. If the student is absent from class or the
14 school day more than five times within any nine-week period,
15 and those absences were not medical absences or due to the
16 student's interscholastic extracurricular activities, religious
17 instruction or tribal obligations, the school principal shall
18 notify the parent in writing. The notification shall include
19 the date and time of a meeting between the school principal and
20 the parent to determine additional interventions needed to keep
21 the student in school, including in-school, after-school or
22 weekend interventions. For high school students, the school
23 principal may require an attendance contract signed by the
24 student, the parent and the school principal. The school
25 principal shall notify the parent that absences constitute

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1 truancy and further absences shall constitute habitual truancy
2 and the family shall be reported to the families in need of
3 services program of the children, youth and families
4 department.

5 F. The public school shall contact the parent of a
6 student who has five or more absences in any nine-week period
7 due to:

8 (1) medical absences and the medical condition
9 of the student is not known to the public school; or

10 (2) absences for the interscholastic
11 extracurricular activities, religious instruction or tribal
12 obligations and the student's academic performance is
13 suffering.

14 G. The school principal shall consult with the
15 student's teacher and initiate meetings with the teacher and
16 the student and parent if the alleged cause of absence from
17 class is teacher-student incompatibility.

18 H. If after the public school provides necessary
19 interventions or other resources or provides the parent links
20 to necessary interventions or other resources, or if the parent
21 or family does not avail itself of school or community
22 resources, or if the student continues to be absent for a total
23 of ten classes or school days, the student shall be considered
24 a habitual truant and the school principal shall refer the
25 student to the families in need of services program of the

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1 children, youth and families department within five days of the
2 tenth absence. The record of the public school's interventions
3 and the student's and parent's responses to the interventions
4 shall be provided to the children, youth and families
5 department and the public education department."

6 SECTION 10. A new Section 22-12-5.4 NMSA 1978 is enacted
7 to read:

8 "22-12-5.4. [NEW MATERIAL] FAMILIES IN NEED OF SERVICES
9 PROGRAM--ADDITIONAL INTERVENTIONS--DETERMINATION OF
10 IMPROVEMENT--FAILURE TO IMPROVE ATTENDANCE BEHAVIOR.--The
11 caseworker for the families in need of services program of the
12 children, youth and families department shall meet with the
13 family at the public school in which the student is enrolled to
14 determine if there are other intervention services that may be
15 provided. The meeting shall involve the school principal or
16 other school personnel and appropriate community partners
17 unless the parent objects. The children, youth and families
18 department shall determine if additional interventions,
19 including monitoring, will be worthwhile in changing the
20 student's behavior. No later than thirty days after the
21 meeting, the caseworker shall notify the public school and the
22 public education department of the student's progress."

23 SECTION 11. Section 22-12-7 NMSA 1978 (being Laws 1967,
24 Chapter 16, Section 175, as amended) is amended to read:

25 "22-12-7. ENFORCEMENT OF ATTENDANCE LAW--HABITUAL

1 TRUANTS--PENALTY.--

2 ~~[A. Each local school board and each governing body~~
3 ~~of a charter school or private school shall initiate the~~
4 ~~enforcement of the provisions of the Compulsory School~~
5 ~~Attendance Law for students enrolled in their respective~~
6 ~~schools.~~

7 ~~B. To initiate enforcement of the provisions of the~~
8 ~~Compulsory School Attendance Law against an habitual truant, a~~
9 ~~local school board or governing body of a charter school or~~
10 ~~private school or its authorized representatives shall give~~
11 ~~written notice of the habitual truancy by mail to or by~~
12 ~~personal service on the parent of the student subject to and in~~
13 ~~noncompliance with the provisions of the Compulsory School~~
14 ~~Attendance Law. The notice shall include a date, time and~~
15 ~~place for the parent to meet with the local school district,~~
16 ~~charter school or private school to develop intervention~~
17 ~~strategies that focus on keeping the student in an educational~~
18 ~~setting.~~

19 ~~C. If unexcused absences continue after written~~
20 ~~notice of habitual truancy as provided in Subsection B of this~~
21 ~~section has occurred, the student shall be reported to the~~
22 ~~probation services office of the judicial district where the~~
23 ~~student resides for an investigation as to whether the student~~
24 ~~shall be considered to be a neglected child or a child in a~~
25 ~~family in need of services because of habitual truancy and thus~~

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1 ~~subject to the provisions of the Children's Code. The~~
2 ~~probation services office may send a written notice to a parent~~
3 ~~of the student directing the parent and student to report to~~
4 ~~the probation services office to discuss services for the~~
5 ~~student or the family. In addition to any other disposition,~~
6 ~~the children's court may order the habitual truant's driving~~
7 ~~privileges to be suspended for a specified time not to exceed~~
8 ~~ninety days on the first finding of habitual truancy and not to~~
9 ~~exceed one year for a subsequent finding of habitual truancy.~~

10 ~~D.]~~ A. If, after review by the [~~juvenile probation~~
11 ~~office where the student resides]~~ families in need of services
12 program of the children, youth and families department, a
13 determination and finding is made that the habitual truancy by
14 the student may have been caused by the parent of the student,
15 then the matter will be referred [~~by the juvenile probation~~
16 ~~office]~~ to the district attorney's office or any law
17 enforcement agency having jurisdiction for appropriate
18 investigation and filing of charges allowed under the
19 Compulsory School Attendance Law. Charges against the parent
20 may be filed in metropolitan court, magistrate court or
21 district court.

22 ~~E.]~~ B. A parent of the student who, after
23 receiving written notice as provided in Subsection [B] E of
24 [~~this]~~ Section 22-12-5.3 NMSA 1978 and after the matter has
25 been reviewed in accordance with Subsection [D] A of this

1 section, or who has been informed pursuant to a private
 2 school's attendance policy, knowingly allows the student to
 3 continue to violate the Compulsory School Attendance Law shall
 4 be guilty of a petty misdemeanor. Upon the first conviction, a
 5 fine of not less than twenty-five dollars (\$25.00) or more than
 6 one hundred dollars (\$100) may be imposed, or the parent of the
 7 student may be ordered to perform community service. If
 8 violations of the Compulsory School Attendance Law continue,
 9 upon the second and subsequent convictions, the parent of the
 10 student who knowingly allows the student to continue to violate
 11 the Compulsory School Attendance Law shall be guilty of a petty
 12 misdemeanor and shall be subject to a fine of not more than
 13 five hundred dollars (\$500) or imprisonment for a definite term
 14 not to exceed six months or both.

15 ~~[F. The provisions of this section shall apply~~
 16 ~~beginning July 1, 2004.]"~~

17 SECTION 12. Section 32A-3A-2 NMSA 1978 (being Laws 1993,
 18 Chapter 77, Section 64, as amended) is amended to read:

19 "32A-3A-2. DEFINITIONS.--As used in the Family Services
 20 Act:

21 A. "child or family in need of family services"
 22 means:

23 (1) a family whose child's behavior endangers
 24 the child's health, safety, education or well-being;

25 (2) a family whose child is absent or truant

1 from public school;

2 [~~(2)~~] (3) a family whose child is absent from
3 the child's place of residence for twenty-four hours or more
4 without the consent of the parent, guardian or custodian;

5 [~~(3)~~] (4) a family in which the parent,
6 guardian or custodian of a child refuses to permit the child to
7 live with the parent, guardian or custodian; or

8 [~~(4)~~] (5) a family in which the child refuses
9 to live with [~~his~~] the child's parent, guardian or custodian;
10 and

11 B. "family services" means services that address
12 specific needs of the child or family."

13 SECTION 13. Section 32A-3A-3 NMSA 1978 (being Laws 1993,
14 Chapter 77, Section 65, as amended) is amended to read:

15 "32A-3A-3. REQUEST FOR FAMILY SERVICES--WITHDRAWAL OF
16 REQUEST--PRESUMPTION OF GOOD FAITH.--

17 A. Any child or family member who has a reasonable
18 belief that the child or family is in need of family services
19 may request family services from the department.

20 B. Any person, including a public or private school
21 principal, who has a reasonable belief that a child or family
22 is in need of family services may submit a referral to the
23 department.

24 C. A family that requests or accepts family
25 services may withdraw its request for or acceptance of family

1 services at any time.

2 D. A person who refers a child or family for family
3 services is presumed to be acting in good faith and shall be
4 immune from civil or criminal liability, unless the person
5 acted in bad faith or with malicious purpose."

6 SECTION 14. REPEAL.--Sections 22-12-8 and 22-12-9 NMSA
7 1978 (being Laws 1985, Chapter 104, Section 1 and Laws 2004,
8 Chapter 28, Section 1, as amended) are repealed.

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