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HOUSE BILL 434

42ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1996

INTRODUCED BY

THOMAS G. DOLLIVER

AN ACT

RELATING TO HEALTH FACILITIES; PROVIDING FOR HEALTH FACILITY RECEIVERSHIPS.

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

Section 1. Section 24-1-2 NMSA 1978 (being Laws 1973, Chapter 359, Section 2, as amended) is amended to read:

"24-1-2. DEFINITIONS. -- As used in the Public Health Act:

A. "department" or "division" means the ~~[health services division of the health and environment department]~~ children, youth and families department as to child-care centers and facilities and the department of health as to all other health facilities;

B. "director" means the ~~[director of the division]~~ secretary;

C. "person", when used without further

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1 qualification, means any individual or any other form of entity  
2 recognized by law; ~~and~~

3 D. "health facility" means any public hospital,  
4 profit or nonprofit private hospital, general or special  
5 hospital, outpatient facility, ~~sanitarium~~ maternity home or  
6 shelter, adult day-care facility, ~~asylum~~ nursing home,  
7 intermediate care facility, boarding home not under the control  
8 of an institution of higher learning, child-care center, shelter  
9 care home, diagnostic and treatment center, rehabilitation  
10 center, infirmary or a health service organization operating as  
11 a free standing hospice or a home health agency. The  
12 designation of these ~~[services as a health facility]~~ entities as  
13 health facilities is only for the purposes of definition in the  
14 Public Health Act and does not imply that a free-standing  
15 hospice or a home health agency is considered a health facility  
16 for the purposes of other provisions of state or federal laws.  
17 "Health facility" also includes those facilities which, by  
18 federal regulation, must be licensed by the state to obtain or  
19 maintain full or partial, permanent or temporary federal  
20 funding. It does not include the offices and treatment rooms of  
21 licensed private practitioners; and

22 E. "secretary" means the secretary of children,  
23 youth and families as to child-care centers and facilities and  
24 the secretary of health as to all other health facilities."

25 Section 2. Section 24-1-5 NMSA 1978 (being Laws 1973,

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1 Chapter 359, Section 5, as amended) is amended to read:

2 "24-1-5. LICENSURE OF HEALTH FACILITIES. --

3 A. No health facility shall be operated without a  
4 license issued by the department. If a health facility is found  
5 to be operating without a license, in order to protect human  
6 health or safety the ~~[director]~~ secretary may issue a  
7 cease-and-desist order. The health facility may request a  
8 hearing, which shall be held in the manner provided in this  
9 section. The department may also proceed pursuant to the Health  
10 Facility Receivership Act.

11 B. The department is authorized to make ~~[such]~~  
12 inspections and investigations and to prescribe ~~[such]~~  
13 regulations ~~[as]~~ it deems necessary or desirable to promote the  
14 health, safety and welfare of persons utilizing health  
15 facilities.

16 C. Except as provided in Subsection F of this  
17 section, upon receipt of an application for a license to operate  
18 a health facility, the department shall promptly inspect the  
19 health facility to determine if it is in compliance with all  
20 regulations of the department. Applications for hospital  
21 licenses shall include evidence that the bylaws or regulations  
22 of the hospital apply equally to osteopathic and medical  
23 physicians.

24 D. Upon inspection of any health facility, if the  
25 department finds any violation of its regulations, it may deny

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1 the application for a license, whether initial or renewal, or it  
2 may issue a temporary license. A temporary license shall not be  
3 issued for a period exceeding one hundred twenty days, nor shall  
4 more than two consecutive temporary  
5 licenses be issued.

6 E. A one-year nontransferable license shall be  
7 issued to any health facility complying with all regulations of  
8 the department. The license shall be renewable for successive  
9 one-year periods, upon filing of a renewal application, if the  
10 department is satisfied that the health facility is in  
11 compliance with all regulations of the department or, if not in  
12 compliance with any regulation, has been granted a waiver or  
13 variance of that regulation by the department pursuant to  
14 procedures, conditions and guidelines adopted by regulation of  
15 the department. Licenses shall be posted in a conspicuous place  
16 on the licensed premises, except that child-care centers that  
17 receive no state or federal funds may apply for and receive from  
18 the department a waiver from the requirement that a license be  
19 posted or kept on the licensed premises.

20 F. Any health facility that has been inspected and  
21 licensed by the department and that has received certification  
22 for participation in federal reimbursement programs and that has  
23 been fully accredited by the joint commission on accreditation  
24 of health care organizations or the American osteopathic  
25 association shall be granted a license renewal based on [such]

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1 that accreditation. Health facilities receiving less than full  
2 accreditation by the joint commission on the accreditation of  
3 health care organizations or by the American osteopathic  
4 association may be granted a license renewal based on such  
5 accreditation. License renewals shall be issued upon  
6 application submitted by the facility upon forms prescribed by  
7 the department. This subsection does not limit in any way the  
8 department's various duties and responsibilities under other  
9 provisions of the Public Health Act or under any other  
10 subsection of this section, including any of the department's  
11 responsibilities for the health and safety of the public.

12 G. The department may charge a reasonable fee not to  
13 exceed three dollars (\$3.00) per bed for an in-patient health  
14 facility or one hundred dollars (\$100) for any other health  
15 facility for each license application, whether initial or  
16 renewal, of an annual license or ~~[renewal]~~ the second  
17 consecutive issuance of a temporary license. Fees collected  
18 shall not be refundable. All fees collected pursuant to  
19 licensure applications shall be deposited with the state  
20 treasurer for credit to the general fund.

21 H. The department may revoke or suspend the license  
22 of any health facility or may impose on any health facility  
23 ~~[after January 1, 1991]~~ any intermediate sanction ~~[or]~~ and civil  
24 monetary penalty provided in Section 24-1-5.2 NMSA 1978 after  
25 notice and an opportunity for a hearing before a hearing officer

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1 designated by the department to hear the matter, and except for  
2 child-care centers and facilities, may proceed pursuant to the  
3 Health Facility Receivership Act, upon a determination that the  
4 health facility is not in compliance with any regulation of the  
5 department. If immediate action is required to protect human  
6 health and safety, the director may suspend [a] any license or  
7 impose any intermediate sanction pending a hearing, provided  
8 [such] the hearing is held within five working days of the  
9 suspension or imposition of the sanction, unless waived by the  
10 licensee, and, except for child-care centers and facilities, may  
11 proceed ex parte pursuant to the Health Facility Receivership  
12 Act.

13 I. The department shall schedule a hearing pursuant  
14 to Subsection H of this section if the department receives a  
15 request for a hearing from a licensee:

16 (1) within ten working days after receipt by  
17 the licensee of notice of suspension, revocation, imposition of  
18 an intermediate sanction or civil monetary penalty or denial of  
19 an initial or renewal application;

20 (2) within four working days after receipt by  
21 the licensee of an emergency suspension order or emergency  
22 intermediate sanction imposition and notice of hearing, if the  
23 licensee wishes to waive the early hearing scheduled and request  
24 a hearing at a later date; or

25 (3) within five working days after receipt of a

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1 cease-and-desist order.

2 The department shall also provide timely notice to the  
3 licensee of the date, time and place for the hearing, identity  
4 of the hearing officer, subject matter of the hearing and  
5 alleged violations.

6 J. Any hearing under this section shall be conducted  
7 in accordance with adjudicatory hearing rules and procedures  
8 adopted by regulation of the department. The licensee has the  
9 right to be represented by counsel, to present all relevant  
10 evidence by means of witnesses and books, papers, documents,  
11 records, files and other evidence and to examine all opposing  
12 witnesses who appear on any matter relevant to the issues. The  
13 hearing officer has the power to administer oaths on request of  
14 any party and issue subpoenas and subpoenas duces tecum prior to  
15 or after the commencement of the hearing to compel discovery and  
16 the attendance of witnesses and the production of relevant  
17 books, papers, documents, records, files and other evidence.  
18 Documents or records pertaining to abuse, neglect or  
19 exploitation of a resident, client or patient of a health  
20 facility or other documents, records or files in the custody of  
21 the human services department or the office of the state long-  
22 term care ombudsman at the state agency on aging that are  
23 relevant to the alleged violations are discoverable and  
24 admissible as evidence in any hearing.

25 K. Any party may appeal to the court of appeals on

1 the record within thirty days after the final decision of the  
2 department. The court shall set aside the final decision only  
3 if it is found to be arbitrary, capricious or an abuse of  
4 discretion; not supported by substantial evidence in the record;  
5 outside the authority of the department; or otherwise not in  
6 accordance with law.

7 L. Every complaint about a health facility received  
8 by the department pursuant to this section shall be promptly  
9 investigated to substantiate the allegation and to take  
10 appropriate action if substantiated. The department shall  
11 coordinate with the human services department, the office of the  
12 state long-term care ombudsman at the state agency on aging and  
13 any other appropriate agency to develop a joint protocol  
14 establishing responsibilities and procedures to assure prompt  
15 investigation of complaints, including prompt and appropriate  
16 referrals and necessary action regarding allegations of abuse,  
17 neglect or exploitation of residents, clients or patients in a  
18 health facility.

19 M. Complaints received by the department pursuant to  
20 this section shall not be disclosed publicly in such manner as  
21 to identify any individuals or health facilities if upon  
22 investigation the complaint is unsubstantiated.

23 N. Notwithstanding any other provision of this  
24 section, where there are reasonable grounds to believe that any  
25 child is in imminent danger of abuse or neglect while in the



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1 care of a child-care facility, whether or not licensed, or upon  
2 the receipt of a report pursuant to Section ~~[32-1-15]~~ 32A-4-3  
3 NMSA 1978, the department shall consult with the owner or  
4 operator of the child-care facility. Upon a finding of probable  
5 cause, the department shall give the owner or operator notice of  
6 its intent to suspend operation of the ~~[health]~~ facility and  
7 provide an opportunity for a hearing to be held within three  
8 working days, unless waived by the owner or operator. Within  
9 seven working days from the day of notice, the director shall  
10 make his decision, and, if it is determined that any child is in  
11 imminent danger of abuse or neglect in the ~~[health]~~ child-care  
12 facility, the director may suspend operation of the ~~[health]~~  
13 facility for a period not in excess of fifteen days. Prior to  
14 the date of the hearing, the department shall make a reasonable  
15 effort to notify the parents of children in the ~~[health]~~ child-  
16 care facility of the notice and opportunity for hearing given to  
17 the owner or operator.

18 0. Nothing contained in this section or in the  
19 Public Health Act shall authorize either the secretary ~~[of~~  
20 ~~health and environment]~~ or the department to make any inspection  
21 or investigation or to prescribe any regulations concerning  
22 group homes as defined in Section 9-8-13 NMSA 1978 except ~~[such]~~  
23 as are reasonably necessary or desirable to promote the health  
24 and safety of persons utilizing ~~[such]~~ group homes. "

25 Section 3. Section 24-1-5.2 NMSA 1978 (being Laws 1990,

. 109448. 1GJ

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1 Chapter 105, Section 2) is amended to read:

2 "24-1-5.2. HEALTH FACILITIES--INTERMEDIATE SANCTIONS--  
3 CIVIL PENALTY.--

4 A. Upon a determination that [~~after January 1, 1991~~]  
5 a health facility is not in compliance with any licensing  
6 requirement of the department, the department, subject to the  
7 provisions of this section and Section 24-1-5 NMSA 1978, may  
8 [~~impose on the facility~~]:

9 (1) impose any intermediate sanction  
10 established by regulation, including but not limited to:

- 11 (a) a directed plan of correction;
- 12 (b) facility monitors;
- 13 (c) denial of payment for new medicaid  
14 admissions to the facility;
- 15 (d) temporary management; and
- 16 (e) restricted admissions; [~~and~~]

17 (2) assess a civil monetary penalty, with  
18 interest, for each day the facility is or was out of compliance.  
19 Civil monetary penalties shall not exceed a total of five  
20 thousand dollars (\$5,000) per day. Penalties and interest  
21 amounts assessed under this paragraph and recovered on behalf of  
22 the state shall be remitted to the state treasurer for deposit  
23 in the general fund, except as otherwise provided by federal law  
24 for medicaid-certified nursing facilities. The civil monetary  
25 penalties contained in this paragraph are cumulative and may be

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1 imposed in addition to any other fines or penalties provided by  
2 law; and

3 (3) with respect to health facilities other  
4 than child-care centers or facilities, proceed pursuant to the  
5 Health Facility Receivership Act.

6 B. The secretary [~~of health and environment~~] shall  
7 adopt and promulgate regulations specifying the criteria for  
8 imposition of any intermediate sanction [~~including the amount~~  
9 ~~of~~] and civil monetary [~~penalties and the type and extent of~~  
10 ~~intermediate sanctions~~] penalty. The criteria shall provide for  
11 more severe sanctions for a violation that results in any abuse,  
12 neglect or exploitation of residents, clients or patients as  
13 defined in the regulations or that places one or more residents,  
14 clients or patients of a health facility at substantial risk of  
15 serious physical or mental harm.

16 C. The provisions of this [~~act~~] section for  
17 intermediate sanctions and civil monetary penalties shall not  
18 apply to certified nursing facilities except upon a  
19 determination by the federal health care financing  
20 administration that these provisions comply with the provisions  
21 for nursing facility remedies and civil monetary penalties  
22 pursuant to 42 U.S.C. 1395 and 1396, as amended, and upon a  
23 determination by the department that no other state or federal  
24 agency is authorized to impose the same remedies, sanctions or  
25 penalties.

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1           D. A health facility is liable [~~to the department~~]  
2 for the reasonable costs of a directed plan of correction,  
3 facility monitors, [ø] temporary management or receivership  
4 imposed pursuant to this section and Section 24-1-5 NMSA 1978.  
5 The department may take all necessary and appropriate legal  
6 action to recover these costs from a health facility. All money  
7 recovered from a health facility pursuant to this subsection  
8 shall be paid into the general fund."

9           Section 4. A new Section 24-1E-1 NMSA 1978 is enacted  
10 read:

11           "24-1E-1. [NEW MATERIAL] SHORT TITLE. -- Sections 24-1E-1  
12 through 24-1E-6 may be cited as the "Health Facility  
13 Receivership Act". "

14           Section 5. A new Section 24-1E-2 is enacted to read:

15           "24-1E-2. [NEW MATERIAL] DEFINITIONS. -- As used in the  
16 Health Facility Receivership Act:

- 17           A. "department" means the department of health;
- 18           C. "health facility" means any health facility as  
19 defined in Subsection D of Section 24-1-2 NMSA 1978 other than a  
20 child-care center or facility, whether or not licensed by the  
21 department;
- 22           D. "person" includes a natural person and any other  
23 form of entity recognized by law;
- 24           E. "receiver" means the secretary, upon appointment  
25 pursuant to the Health Facility Receivership Act; and

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1 F. "secretary" means the secretary of health."

2 Section 6. A new Section 24-1E-3 NMSA 1978 is enacted to  
3 read:

4 "24-1E-3. [NEW MATERIAL] HEALTH FACILITY RECEIVERSHIPS  
5 AUTHORIZED--VENUE.--

6 A. The secretary may file a verified petition in the  
7 district court seeking appointment as receiver of a health  
8 facility if the facility:

9 (1) is being operated without a valid license  
10 from the division;

11 (2) will be closed within sixty days and  
12 adequate arrangements to relocate its residents have not been  
13 submitted to and approved by the secretary;

14 (3) has been abandoned, its residents have been  
15 abandoned or such abandonment is imminent; or

16 (4) presents a situation, physical condition,  
17 practice or method of operation that the secretary finds  
18 presents an imminent danger of death or significant mental or  
19 physical harm to its residents or other persons.

20 B. The proceedings shall be governed by, and the  
21 receiver's powers and duties shall be as specified in, the  
22 Receivership Act, supplemented as provided in the Health  
23 Facility Receivership Act.

24 C. Venue shall be laid in the district court for  
25 Santa Fe county or any other county in which the health facility

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1 or any of its satellite facilities is located.

2 D. Service of process shall be made in any manner  
3 provided by the Rules of Civil Procedure for the District  
4 Courts. If personal service cannot practicably or promptly be  
5 made as so provided, service may be made by delivery of the  
6 summons with the petition attached to any person in charge of  
7 the health facility at the time service is made.

8 E. The health facility shall file a responsive  
9 pleading within ten days after the date service is made or  
10 within such time as directed by the district court. "

11 Section 7. A new Section 21-1E-4 NMSA 1978 is enacted to  
12 read:

13 "24-1E-4. [NEW MATERIAL] HEARING ON PETITION. --

14 A. Except in the case of an ex parte hearing under  
15 the Receivership Act, the district court shall hold a hearing on  
16 the petition within ten days after the petition is filed or as  
17 soon thereafter as practicable. The health facility shall be  
18 given notice of the hearing at least five days before the  
19 hearing date.

20 B. In the case of an ex parte hearing under the  
21 Receivership Act, the district court may enter an order  
22 appointing the secretary as temporary receiver, with all the  
23 rights and responsibilities of a receiver, for ten days or until  
24 a hearing can be held on the petition.

25 C. Following hearing, the district court shall

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1 appoint the secretary as receiver if it finds that any of the  
2 conditions of Subsection A of Section 24-1E-3 NMSA 1978 exists.

3 D. Following any regular or ex parte hearing, the  
4 district court may appoint a qualified person, experienced in  
5 health facility management, to act as deputy receiver.

6 E. The receiver's bond shall be deemed satisfied by  
7 his bond under the Surety Bond Act. If any deputy receiver is  
8 not a public employee covered under the Surety Bond Act, he  
9 shall obtain a fidelity and performance bond in an amount  
10 determined by the court. The cost of the bond shall be paid  
11 from the receivership estate."

12 Section 8. A new Section 24-1E-5 NMSA 1978 is enacted to  
13 read:

14 "24-1E-5. [NEW MATERIAL] RECEIVER'S POWERS AND DUTIES. --

15 A. In addition to the receiver's powers and duties  
16 under the Receivership Act, the secretary as receiver and any  
17 deputy receiver under the Health Facility Receivership Act  
18 shall, except as the district court may otherwise order:

19 (1) perform all acts that are necessary to:

20 (a) correct or remedy each condition on  
21 which the receiver's appointment was based;

22 (b) ensure adequate care for each  
23 resident or other person in the health facility;

24 (c) bring the facility into compliance  
25 with all applicable state and federal laws, rules and

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1 regulations; and

2 (e) manage and operate the health  
3 facility, including closing down, expanding or initiating new  
4 operations, hiring and firing officers and employees,  
5 contracting for necessary services, personnel, supplies,  
6 equipment, facilities and all other appropriate things,  
7 purchasing, selling, marshaling, and otherwise managing its  
8 property and assets, paying the facility's obligations,  
9 borrowing money and property and giving security for these and  
10 expending funds of the facility;

11 (2) give notice of establishment of the  
12 receivership to interested persons, and publish notice in a  
13 newspaper of general circulation in each county in which the  
14 health care facility and any of its satellite facilities is  
15 located;

16 (3) if residents are to be discharged or  
17 transferred, discuss the options for alternative placement with  
18 any resident or the guardian of that resident, as applicable,  
19 and arrange to transfer the resident's records and personal  
20 property to the alternative placement facility; and

21 (4) with the court's approval, void any lease,  
22 mortgage, secured transaction, contract or transfer of money or  
23 property made within one year prior to the filing of the  
24 petition if made without fair consideration, including excessive  
25 interest rate, or made with actual intent to hinder, delay or

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1 defraud either future or existing creditors.

2 B. A deputy receiver shall have the same powers and  
3 duties as the receiver, unless the court orders otherwise. "

4 Section 9. A new Section 24-1E-6 NMSA 1978 is enacted to  
5 read:

6 "24-1E-6. [NEW MATERIAL] TERMINATION OF RECEIVERSHIP. --  
7 The receivership shall terminate when the conditions that led to  
8 its establishment, and any other conditions that constitute  
9 grounds for establishment of a receivership, have ceased to  
10 exist. If the health facility is insolvent or otherwise  
11 financially distressed, the receivership shall terminate upon  
12 filing of federal bankruptcy proceedings, unless the district  
13 court orders otherwise. "

14 Section 10. Section 44-8-5 NMSA 1978 (being Laws 1995,  
15 Chapter 81, Section 5) is amended to read:

16 "44-8-5. APPLICATION FOR APPOINTMENT OF A RECEIVER. --

17 A. An applicant may apply to the district court for  
18 the appointment of a receiver by motion in an action already  
19 pending or by a separate petition or complaint.

20 B. An application for the appointment of a receiver  
21 shall be verified and shall contain:

22 (1) a description of the receivership estate,  
23 including the estimated gross monthly income if known, for which  
24 the applicant seeks a receiver;

25 (2) the location of the receivership estate;

1 (3) a description of the applicant's interest  
2 in the receivership estate;

3 (4) a statement showing that venue in the  
4 district court is proper;

5 (5) a statement of the grounds for the  
6 appointment of a receiver; and

7 (6) a nomination of the proposed receiver.

8 C. An ex parte hearing to appoint a receiver may be  
9 held without written or oral notice to the adverse party or his  
10 attorney only if:

11 (1) it clearly appears from specific facts  
12 shown by affidavit or by the verified application that immediate  
13 and irreparable injury, loss or damage will result to the  
14 applicant or others before the adverse party or his attorney can  
15 be heard in opposition; and

16 (2) the applicant's attorney certifies to the  
17 court in writing the efforts, if any, that have been made to  
18 give the notice and the reasons supporting his claim that notice  
19 should not be required.

20 D. Every application, proceeding and order for  
21 appointment of a receiver granted without notice shall comply  
22 with the Rules of Civil Procedure for the District Courts of New  
23 Mexico pertaining to temporary restraining orders and  
24 appointment of receivers ex parte. "

**State of New Mexico**  
**House of Representatives**

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**FORTY- SECOND LEGISLATURE**  
**SECOND SESSION, 1996**

February 8, 1996

Mr. Speaker:

Your BUSINESS AND INDUSTRY COMMITTEE, to whom has  
been referred

HOUSE BILL 434

has had it under consideration and reports same with  
recommendation that it DO PASS, and thence referred to the  
JUDICIARY COMMITTEE.

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**FORTY-SECOND LEGISLATURE  
SECOND SESSION, 1996**

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Respectfully submitted,

\_\_\_\_\_  
Fred Luna, Chairman

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 10 For 0 Against

Yes: 10

Excused: Alwin, Varela

Absent: None

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# State of New Mexico House of Representatives

FORTY-SECOND LEGISLATURE  
SECOND SESSION, 1996

February 12, 1996

Mr. Speaker:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE BILL 434

has had it under consideration and reports same with  
recommendation that it DO PASS, amended as follows:

1. On page 9, line 10, after "make" strike "his" and insert in lieu thereof "a".
2. On page 12, line 9, after "is enacted" insert "to".
3. On page 16, line 2, strike "(e)" and insert in lieu thereof "(d)".
4. On page 18, line 14, after "adverse" strike "party or his" and insert in lieu thereof "party's".
5. On page 18, line 18, after "supporting" strike "his" and insert in lieu thereof "the attorney's".

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FORTY-SECOND LEGISLATURE  
SECOND SESSION, 1996

HJC/HB 434

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Respectfully submitted,

\_\_\_\_\_  
Cisco McSorley, Chairman

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 8 For 0 Against

Yes: 8

Excused: Sanchez, R. G.

Absent: King, McSorley, Pederson, Stewart

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FORTY-SECOND LEGISLATURE  
SECOND SESSION, 1996

1 HJC/HB 434

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FORTY-SECOND LEGISLATURE  
SECOND SESSION, 1996

February 14, 1996

Mr. President:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE BILL 434, as amended

has had it under consideration and reports same with  
recommendation that it DO PASS.

Respectfully submitted,

\_\_\_\_\_  
Janice D. Paster, Chairman

Adopted \_\_\_\_\_  
(Chief Clerk)

Not Adopted \_\_\_\_\_  
(Chief Clerk)

Underscored material = new  
[bracketed material] = delete

FORTY- SECOND LEGISLATURE  
SECOND SESSION, 1996

1 HJC/HB 434

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Date \_\_\_\_\_

The roll call vote was 5 For 1 Against  
Yes: 5  
No: Stefani cs  
Excused: None  
Absent: Carraro, Reagan, Vernon

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Underscored material = new  
[bracketed material] = delete