UNANNOTATED

CHAPTER 41
Torts

ARTICLE 1
Settlements, Releases and Statements

41-1-1. Settlements, releases and statements of injured patients; acknowledgement required; notice.

A. No person whose interest is or may become adverse to a person injured who is either under the care of a person licensed to practice the healing arts, or confined to a hospital or sanitarium as a patient shall, within fifteen days from the date of the occurence [occurrence] causing the person's injury:

(1) negotiate or attempt to negotiate a settlement with the injured patient; or

(2) obtain or attempt to obtain a general release of liability from the injured patient; or

(3) obtain or attempt to obtain any statement, either written or oral[,] from the injured patient for use in negotiating a settlement or obtaining a release.

B. Any settlement agreement entered into, any general release of liability or any written statement made by any person who is under the care of a person licensed to practice the healing arts or is confined in a hospital or sanitarium after he incurs a personal injury, which is not obtained in accordance with the provisions of Section 2 [41-1-2 NMSA 1978] of this act, requiring notice and acknowledgement, may be disavowed by the injured person within fifteen days after his discharge from the care of the persons licensed to practice the healing arts or his release from the hospital or sanitarium, whichever occurs first, and such statement, release or settlement shall not be evidential in any court action relating to the injury.

C. Any settlement agreement, any release of liability or any written statement shall be void unless it is acknowledged by the injured party before a notary public who has no interest adverse to the injured person.

History: 1953 Comp., § 21-11-1, enacted by Laws 1971, ch. 70, § 1.

41-1-2. Settlements, releases and statements; applicability.

The provisions of this act [41-1-1, 41-1-2 NMSA 1978] relating to settlements, releases and statements obtained, by a person whose interest is or may become adverse, from a patient confined in a hospital or sanitarium or being treated by a person licensed to practice the healing arts, shall not apply, if at least five days prior to obtaining the settlement, release or statement, the injured party has signified in writing, by a statement acknowledged before a notary public, who has no interest adverse to the injured party, his willingness that a settlement, release or statement be given.

History: 1953 Comp., § 21-11-2, enacted by Laws 1971, ch. 70, § 2.

ARTICLE 1A
Forum Selection and Choice of Law (Repealed.)

41-1A-1. Repealed.

History: Laws 2016, ch. 34, § 1; repealed by Laws 2016, ch. 34, § 2.

ARTICLE 2
Wrongful Death; Actions for Damages

41-2-1. [Death by wrongful act or neglect; liability in damages.]

Whenever the death of a person shall be caused by the wrongful act, neglect or default of another, although such death shall have been caused under such circumstances as amount in law to a felony, and the act, or neglect, or default, is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, then, and in every such case, the person who, or the corporation which, would have been liable, if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured.

History: Laws 1882, ch. 61, § 2; C.L. 1884, § 2309; Laws 1891, ch. 49, § 1; C.L. 1897, § 3214; Code 1915, § 1821; C.S. 1929, § 36-102; 1941 Comp., § 24-101; 1953 Comp., § 22-20-1.

41-2-2. Limitation of actions.

Every action instituted by virtue of the provisions of this and the preceding section [41-2-1 NMSA 1978] must be brought within three years after the cause of action accrues. The cause of action accrues as of the date of death.

History: Laws 1882, ch. 61, § 9; C.L. 1884, § 2316; Code 1915, § 1822; C.S. 1929, § 36-103; 1941 Comp., § 24-102; Laws 1953, ch. 30, § 1; 1953 Comp., § 22-20-2; Laws 1961, ch. 202, § 1.

41-2-3. Personal representative to bring action; damages; distribution of proceeds.

Every action mentioned in Section 41-2-1 NMSA 1978 shall be brought by and in the name of the personal representative of the deceased person, and the jury in every such action may give such damages, compensatory and exemplary, as they deem fair and just, taking into consideration the pecuniary injury resulting from the death to the surviving party entitled to the judgment, or any interest in the judgment, recovered in such action and also having regard to the mitigating or aggravating circumstances attending the wrongful act, neglect or default. The proceeds of any judgment obtained in any such action shall not be liable for any debt of the deceased; provided the decedent has left a spouse, child, father, mother, brother, sister or child or children of the deceased child, as defined in the New Mexico Probate Code [Chapter 45 NMSA 1978], but shall be distributed as follows:

A. if there is a surviving spouse and no child, then to the spouse;

B. if there is a surviving spouse and a child or grandchild, then one-half to the surviving spouse and the remaining one-half to the children and grandchildren, the grandchildren taking by right of representation;

C. if there is no husband or wife, but a child or grandchild, then to such child and grandchild by right of representation;

D. if the deceased is a minor, childless and unmarried, then to the father and mother who shall have an equal interest in the judgment, or if either of them is dead, then to the survivor;

E. if there is no father, mother, husband, wife, child or grandchild, then to a surviving brother or sister if there are any; and

F. if there is no kindred as named in Subsections A through E of this section, then the proceeds of the judgment shall be disposed of in the manner authorized by law for the disposition of the personal property of deceased persons.

History: Laws 1882, ch. 61, § 3; C.L. 1884, § 2310; Laws 1891, ch. 49, § 2; C.L. 1897, § 3215; Code 1915, § 1823; C.S. 1929, § 36-104; Laws 1939, ch. 105, § 1; 1941 Comp., § 24-103; 1953 Comp., § 22-20-3; Laws 2001, ch. 130, § 1.

41-2-4. Death caused by railroad, stage coach or public conveyance; action for damages; defense.

Whenever any person shall die from any injury resulting from, or occasioned by[,] the negligence, unskillfulness or criminal intent of any officer, agent, servant or employee, whilst running, conducting or managing any locomotive, car or train of cars,

or of any driver of any stage coach or other public conveyance, while in charge of the same as driver; and when any passenger shall die from injury resulting from or occasioned by any defect or insufficiency in any railroad or any part thereof, or in any locomotive or car, or in any stage coach or other public conveyance, the corporation, individual or individuals, in whose employ any such officer, agent, servant, employee, engineer or driver, shall be at the time such injury was committed, or who owns any such railroad, locomotive, car, stage coach or other public conveyance, at the time any injury is received resulting from or occasioned by any defect, insufficiency, negligence, unskillfullness [unskillfulness] or criminal intent above declared, shall be liable in damages compensatory and exemplary, for such sum as a jury may deem fair and just, taking into consideration the pecuniary injury or injuries resulting from such death to the surviving party or parties entitled to the judgment or any interest therein, recovered in such action and also having regard to the mitigating or aggravating circumstances attending such defect or insufficiency, which may be sued and recovered; first by the husband or wife of the deceased; or second, if there be no husband or wife, or if he or she fails to sue within six months after such death then by the minor child or children of the deceased; or third, if such deceased be a minor and unmarried, then by the father and mother; or fourth, if the deceased has reached the age of majority and is unmarried, by a dependent father or mother or dependent brother or sister, who may join in the suit; and each shall have an equal interest in the judgment; or if either of them be dead, then by the survivor. In the event there are no such persons entitled to sue or in the event suit is not brought by any such persons within nine months after such death, suit may be brought by the personal representative or representatives of such deceased person.

History: Laws 1882, ch. 61, § 1; C.L. 1884, § 2308; C.L. 1897, § 3213; Code 1915, § 1820; C.S. 1929, § 36-101; Laws 1931, ch. 19, § 1; 1941 Comp., § 24-104; Laws 1947, ch. 125, § 1; 1953 Comp., § 22-20-4; Laws 1955, ch. 270, § 1; 1973, ch. 138, § 13.

ARTICLE 3
Contribution Among Tortfeasors

41-3-1. Joint tortfeasors defined.

For the purposes of this act [41-3-1 to 41-3-8 NMSA 1978] the term "joint tortfeasors" means two or more persons jointly or severally liable in tort for the same injury to person or property, whether or not judgment has been recovered against all or some of them.

History: 1941 Comp., § 21-118, enacted by Laws 1947, ch. 121, § 1; 1953 Comp., § 24-1-11.

41-3-2. Right of contribution; accrual; pro rata share.

A. The right of contribution exists among joint tortfeasors.

B. A joint tortfeasor is not entitled to a money judgment for contribution until he has by payment discharged the common liability or has paid more than his pro rata share thereof.

C. A joint tortfeasor who enters into a settlement with the injured person is not entitled to recover contribution from another joint tortfeasor whose liability to the injured person is not extinguished by the settlement.

D. A pro rata share shall be the portion of the total dollar amount awarded as damages to the plaintiff that is equal to the ratio of each joint tortfeasor's percentage of fault to the total percentage of fault attributed to all joint tortfeasors.

History: 1941 Comp., § 21-119, enacted by Laws 1947, ch. 121, § 2; 1953 Comp., § 24-1-12; 1987, ch. 141, § 3.

41-3-3. Judgment against one tortfeasor.

The recovery of a judgment by the injured person against one joint tortfeasor does not discharge the other joint tortfeasors.

History: 1941 Comp., § 21-120, enacted by Laws 1947, ch. 121, § 3; 1953 Comp., § 24-1-13.

41-3-4. Release; effect on injured person's claim.

A release by the injured person of one joint tortfeasor, whether before or after judgment, does not discharge the other tortfeasors unless the release so provides; but reduces the claim against the other tortfeasors in the amount of the consideration paid for the release, or in any amount or proportion by which the release provides that the total claim shall be reduced, if greater than the consideration paid.

History: 1941 Comp., § 21-121, enacted by Laws 1947, ch. 121, § 4; 1953 Comp., § 24-1-14.

41-3-5. Release; effect on right of contribution.

A release by the injured person of one joint tortfeasor does not relieve him from liability to make contribution to another joint tortfeasor unless the release is given before the right of the other tortfeasor to secure a money judgment for contribution has accrued, and provides for a reduction, to the extent of the pro rata share of the released tortfeasor, of the injured person's damages recoverable against all the other tortfeasors.

History: 1941 Comp., § 21-122, enacted by Laws 1947, ch. 121, § 5; 1953 Comp., § 24-1-15.

41-3-6. Indemnity.

This act [41-3-1 to 41-3-8 NMSA 1978] does not impair any right of indemnity under existing law.

History: 1941 Comp., § 21-123, enacted by Laws 1947, ch. 121, § 6; 1953 Comp., § 24-1-16.

41-3-7. Uniformity of interpretation.

This act [41-3-1 to 41-3-8 NMSA 1978] shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states that enact it.

History: 1941 Comp., § 21-124, enacted by Laws 1947, ch. 121, § 8; 1953 Comp., § 24-1-17.

41-3-8. Short title.

This act [41-3-1 to 41-3-8 NMSA 1978] may be cited as the Uniform Contribution Among Tortfeasors Act.

History: 1941 Comp., §21-125, enacted by Laws 1947, ch. 121, § 9; 1953 Comp., § 24-1-18.

ARTICLE 3A
Several Liability

41-3A-1. Several liability.

A. In any cause of action to which the doctrine of comparative fault applies, the doctrine imposing joint and several liability upon two or more wrongdoers whose conduct proximately caused an injury to any plaintiff is abolished except as otherwise provided hereafter. The liability of any such defendants shall be several.

B. In causes of action to which several liability applies, any defendant who establishes that the fault of another is a proximate cause of a plaintiff's injury shall be liable only for that portion of the total dollar amount awarded as damages to the plaintiff that is equal to the ratio of such defendant's fault to the total fault attributed to all persons, including plaintiffs, defendants and persons not party to the action.

C. The doctrine imposing joint and several liability shall apply:

(1) to any person or persons who acted with the intention of inflicting injury or damage;

(2) to any persons whose relationship to each other would make one person vicariously liable for the acts of the other, but only to that portion of the total liability attributed to those persons;

(3) to any persons strictly liable for the manufacture and sale of a defective product, but only to that portion of the total liability attributed to those persons; or

(4) to situations not covered by any of the foregoing and having a sound basis in public policy.

D. Where a plaintiff sustains damage as the result of fault of more than one person which can be causally apportioned on the basis that distinct harms were caused to the plaintiff, the fault of each of the persons proximately causing one harm shall not be compared to the fault of persons proximately causing other distinct harms. Each person is severally liable only for the distinct harm which that person proximately caused.

E. No defendant who is severally liable shall be entitled to contribution from any other person, nor shall such defendant be entitled to reduce the dollar damages determined by the factfinder to be owed by the defendant to the plaintiff in accordance with Subsection B of this section by any amount that the plaintiff has recovered from any other person whose fault may have also proximately caused injury to the plaintiff.

F. Nothing in this section shall be construed to affect or impair any right of indemnity or contribution arising out of any contract of agreement or any right of indemnity otherwise provided by law.

G. Nothing in this section creates or recognizes, either explicitly or impliedly, any new or different cause of action not otherwise recognized by law. Nothing in this section alters the doctrine of proximate cause.

History: Laws 1987, ch. 141, § 1.

41-3A-2. Definition.

As used in this act, "person" means any individual or entity of any kind whatsoever.

History: Laws 1987, ch. 141, § 2.

ARTICLE 4
Tort Claims

41-4-1. Short title.

Sections 41-4-1 through 41-4-27 NMSA 1978 may be cited as the "Tort Claims Act".

History: 1953 Comp., § 5-14-1, enacted by Laws 1976, ch. 58, § 1; 1977, ch. 386, § 1; 1981, ch. 118, § 1.

41-4-2. Legislative declaration.

A. The legislature recognizes the inherently unfair and inequitable results which occur in the strict application of the doctrine of sovereign immunity. On the other hand, the legislature recognizes that while a private party may readily be held liable for his torts within the chosen ambit of his activity, the area within which the government has the power to act for the public good is almost without limit, and therefore government should not have the duty to do everything that might be done. Consequently, it is declared to be the public policy of New Mexico that governmental entities and public employees shall only be liable within the limitations of the Tort Claims Act and in accordance with the principles established in that act.

B. The Tort Claims Act shall be read as abolishing all judicially-created categories such as "governmental" or "proprietary" functions and "discretionary" or "ministerial" acts previously used to determine immunity or liability. Liability for acts or omissions under the Tort Claims Act shall be based upon the traditional tort concepts of duty and the reasonably prudent person's standard of care in the performance of that duty. The Tort Claims Act in no way imposes a strict liability for injuries upon governmental entities or public employees. Determination of the standard of care required in any particular instance should be made with the knowledge that each governmental entity has financial limitations within which it must exercise authorized power and discretion in determining the extent and nature of its activities.

History: 1953 Comp., § 5-14-2, enacted by Laws 1976, ch. 58, § 2.

41-4-3. Definitions.

As used in the Tort Claims Act:

A. "board" means the risk management advisory board;

B. "governmental entity" means the state or any local public body as defined in Subsections C and H of this section;

C. "local public body" means all political subdivisions of the state and their agencies, instrumentalities and institutions and all water and natural gas associations organized pursuant to Chapter 3, Article 28 NMSA 1978;

D. "law enforcement officer" means a full-time salaried public employee of a governmental entity, or a certified part-time salaried police officer employed by a governmental entity, whose principal duties under law are to hold in custody any person accused of a criminal offense, to maintain public order or to make arrests for crimes, or members of the national guard when called to active duty by the governor;

E. "maintenance" does not include:

(1) conduct involved in the issuance of a permit, driver's license or other official authorization to use the roads or highways of the state in a particular manner; or

(2) an activity or event relating to a public building or public housing project that was not foreseeable;

F. "public employee" means an officer, employee or servant of a governmental entity, excluding independent contractors except for individuals defined in Paragraphs (7), (8), (10), (14) and (17) of this subsection, or of a corporation organized pursuant to the Educational Assistance Act [Chapter 21, Article 21A NMSA 1978], the Small Business Investment Act [Chapter 58, Article 29 NMSA 1978] or the Mortgage Finance Authority Act [Chapter 58, Article 18 NMSA 1978] or a licensed health care provider, who has no medical liability insurance, providing voluntary services as defined in Paragraph (16) of this subsection and including:

(1) elected or appointed officials;

(2) law enforcement officers;

(3) persons acting on behalf or in service of a governmental entity in any official capacity, whether with or without compensation;

(4) licensed foster parents providing care for children in the custody of the human services department [health care authority department], corrections department or department of health, but not including foster parents certified by a licensed child placement agency;

(5) members of state or local selection panels established pursuant to the Adult Community Corrections Act [Chapter 33, Article 9 NMSA 1978];

(6) members of state or local selection panels established pursuant to the Juvenile Community Corrections Act [Chapter 33, Article 9A NMSA 1978];

(7) licensed medical, psychological or dental arts practitioners providing services to the corrections department pursuant to contract;

(8) members of the board of directors of the New Mexico medical insurance pool;

(9) individuals who are members of medical review boards, committees or panels established by the educational retirement board or the retirement board of the public employees retirement association;

(10) licensed medical, psychological or dental arts practitioners providing services to the children, youth and families department pursuant to contract;

(11) members of the board of directors of the New Mexico educational assistance foundation;

(12) members of the board of directors of the New Mexico student loan guarantee corporation;

(13) members of the New Mexico mortgage finance authority;

(14) volunteers, employees and board members of court-appointed special advocate programs;

(15) members of the board of directors of the small business investment corporation;

(16) health care providers licensed in New Mexico who render voluntary health care services without compensation in accordance with rules promulgated by the secretary of health. The rules shall include requirements for the types of locations at which the services are rendered, the allowed scope of practice and measures to ensure quality of care;

(17) an individual while participating in the state's adaptive driving program and only while using a special-use state vehicle for evaluation and training purposes in that program;

(18) the staff and members of the board of directors of the New Mexico health insurance exchange established pursuant to the New Mexico Health Insurance Exchange Act [59A-23F-1 to 59A-23F-8 NMSA 1978]; and

(19) members of the insurance nominating committee;

G. "scope of duty" means performing any duties that a public employee is requested, required or authorized to perform by the governmental entity, regardless of the time and place of performance; and

H. "state" or "state agency" means the state of New Mexico or any of its branches, agencies, departments, boards, instrumentalities or institutions.

History: 1953 Comp., § 5-14-3, enacted by Laws 1976, ch. 58, § 3; 1977, ch. 386, § 2; 1983, ch. 123, § 2; 1983, ch. 242, § 1; 1985, ch. 76, § 1; 1988, ch. 31, § 1; 1991, ch. 29, § 1; 1991, ch. 205, § 1; 1993, ch. 195, § 1; 1993, ch. 203, § 1; 1994, ch. 123, § 1; 1995, ch. 173, § 2; 2003, ch. 399, § 3; 2007, ch. 104, § 1; 2009, ch. 8, § 2; 2009, ch. 129, § 2; 2009, ch. 249, § 2; 2013, ch. 54, § 11; 2015, ch. 11, § 2.

41-4-4. Granting immunity from tort liability; authorizing exceptions.

A. A governmental entity and any public employee while acting within the scope of duty are granted immunity from liability for any tort except as waived by the New Mexico Religious Freedom Restoration Act [28-22-1 to 28-22-5 NMSA 1978] and by Sections 41-4-5 through 41-4-12 NMSA 1978. Waiver of this immunity shall be limited to and governed by the provisions of Sections 41-4-13 through 41-4-25 NMSA 1978, but the waiver of immunity provided in those sections does not waive immunity granted pursuant to the Governmental Immunity Act [41-13-1 to 41-13-3 NMSA 1978].

B. Unless an insurance carrier provides a defense, a governmental entity shall provide a defense, including costs and attorney fees, for any public employee when liability is sought for:

(1) any tort alleged to have been committed by the public employee while acting within the scope of his duty; or

(2) any violation of property rights or any rights, privileges or immunities secured by the constitution and laws of the United States or the constitution and laws of New Mexico when alleged to have been committed by the public employee while acting within the scope of his duty.

C. A governmental entity shall pay any award for punitive or exemplary damages awarded against a public employee under the substantive law of a jurisdiction other than New Mexico, including other states, territories and possessions and the United States of America, if the public employee was acting within the scope of his duty.

D. A governmental entity shall pay any settlement or any final judgment entered against a public employee for:

(1) any tort that was committed by the public employee while acting within the scope of his duty; or

(2) a violation of property rights or any rights, privileges or immunities secured by the constitution and laws of the United States or the constitution and laws of New Mexico that occurred while the public employee was acting within the scope of his duty.

E. A governmental entity shall have the right to recover from a public employee the amount expended by the public entity to provide a defense and pay a settlement agreed to by the public employee or to pay a final judgment if it is shown that, while acting within the scope of his duty, the public employee acted fraudulently or with actual intentional malice causing the bodily injury, wrongful death or property damage resulting in the settlement or final judgment.

F. Nothing in Subsections B, C and D of this section shall be construed as a waiver of the immunity from liability granted by Subsection A of this section or as a waiver of the state's immunity from suit in federal court under the eleventh amendment to the United States constitution.

G. The duty to defend as provided in Subsection B of this section shall continue after employment with the governmental entity has been terminated if the occurrence for which damages are sought happened while the public employee was acting within the scope of duty while the public employee was in the employ of the governmental entity.

H. The duty to pay any settlement or any final judgment entered against a public employee as provided in this section shall continue after employment with the governmental entity has terminated if the occurrence for which liability has been imposed happened while the public employee was acting within the scope of his duty while in the employ of the governmental entity.

I. A jointly operated public school, community center or athletic facility that is used or maintained pursuant to a joint powers agreement shall be deemed to be used or maintained by a single governmental entity for the purposes of and subject to the maximum liability provisions of Section 41-4-19 NMSA 1978.

J. For purposes of this section, a "jointly operated public school, community center or athletic facility" includes a school, school yard, school ground, school building, gymnasium, athletic field, building, community center or sports complex that is owned or leased by a governmental entity and operated or used jointly or in conjunction with another governmental entity for operations, events or programs that include sports or athletic events or activities, child-care or youth programs, after-school or before-school activities or summer or vacation programs at the facility.

K. A fire station that is used for community activities pursuant to a joint powers agreement between the fire department or volunteer fire department and another governmental entity shall be deemed to be operated or maintained by a single governmental entity for the purposes of and subject to the maximum liability provisions of Section 41-4-19 NMSA 1978. As used in this subsection, "community activities" means operations, events or programs that include sports or athletic events or activities, child care or youth programs, after-school or before-school activities, summer or vacation programs, health or education programs and activities or community events.

History: 1953 Comp., § 5-14-4, enacted by Laws 1976, ch. 58, § 4; 1977, ch. 386, § 3; 1978, ch. 166, § 1; 1981, ch. 267, § 1; 1982, ch. 8, § 1; 1989, ch. 369, § 1; 1996, ch. 68, § 1; 1999, ch. 268, § 1; 2000 (2nd S.S.), ch. 17, § 6; 2001, ch. 211, § 1.

41-4-5. Liability; operation or maintenance of motor vehicles, aircraft and watercraft.

The immunity granted pursuant to Subsection A of Section 41-4-4 NMSA 1978 does not apply to liability for damages resulting from bodily injury, wrongful death or property damage caused by the negligence of public employees while acting within the scope of their duties in the operation or maintenance of any motor vehicle, aircraft or watercraft.

History: 1953 Comp., § 5-14-5, enacted by Laws 1976, ch. 58, § 5; 1977, ch. 386, § 4.

41-4-6. Liability; buildings, public parks, machinery, equipment and furnishings.

A. The immunity granted pursuant to Subsection A of Section 41-4-4 NMSA 1978 does not apply to liability for damages resulting from bodily injury, wrongful death or property damage caused by the negligence of public employees while acting within the scope of their duties in the operation or maintenance of any building, public park, machinery, equipment or furnishings.

B. Nothing in this section shall be construed as granting waiver of immunity for any damages arising out of the operation or maintenance of works used for diversion or storage of water.

C. All irrigation and conservancy districts and their public employees acting lawfully and within the scope of their duties that authorize any part of their property to be used as part of trails within a state park, the state trails system or a trail established and managed by a local public body are excluded from the waiver of immunity under Subsection A of this section for damages arising out of the operation or maintenance of such trails if the irrigation or conservancy district has entered into a written agreement with the state agency or local public body operating or maintaining the trail and that state agency or local public body has agreed to assume the operation and maintenance of that portion of the district's property used for the trail; the state agency or local public body operating or maintaining the trail shall be subject to liability as provided in the Tort Claims Act.

History: 1953 Comp., § 5-14-6, enacted by Laws 1976, ch. 58, § 6; 1977, ch. 386, § 5; 2007, ch. 207, § 1.

41-4-7. Liability; airports.

A. The immunity granted pursuant to Subsection A of Section 4 [41-4-4 NMSA 1978] of the Tort Claims Act does not apply to liability for damages resulting from bodily injury, wrongful death or property damage caused by the negligence of public employees while acting within the scope of their duties in the operation of airports.

B. The liability imposed pursuant to Subsection A of this section shall not include liability for damages due to the existence of any condition arising out of compliance with any federal or state law or regulation governing the use and operation of airports.

History: 1953 Comp., § 5-14-7, enacted by Laws 1976, ch. 58, § 7.

41-4-8. Liability; public utilities.

A. The immunity granted pursuant to Subsection A of Section 4 [41-4-4 NMSA 1978] of the Tort Claims Act does not apply to liability for damages resulting from bodily injury, wrongful death or property damage caused by the negligence of public employees while acting within the scope of their duties in the operation of the following public utilities and services: gas; electricity; water; solid or liquid waste collection or disposal; heating; and ground transportation.

B. The liability imposed pursuant to Subsection A of this section shall not include liability for damages resulting from bodily injury, wrongful death or property damage:

(1) caused by a failure to provide an adequate supply of gas, water, electricity or services as described in Subsection A of this section; or

(2) arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water.

History: 1953 Comp., § 5-14-8, enacted by Laws 1976, ch. 58, § 8.

41-4-9. Liability; medical facilities.

The immunity granted pursuant to Subsection A of Section 41-4-4 NMSA 1978 does not apply to liability for damages resulting from bodily injury, wrongful death or property damage caused by the negligence of public employees while acting within the scope of their duties in the operation of any hospital, infirmary, mental institution, clinic, dispensary, medical care home or like facilities.

History: 1953 Comp., § 5-14-9, enacted by Laws 1976, ch. 58, § 9; 1977, ch. 386, § 6.

41-4-10. Liability; health care providers.

The immunity granted pursuant to Subsection A of Section 41-4-4 NMSA 1978 does not apply to liability for damages resulting from bodily injury, wrongful death or property damage caused by the negligence of public employees licensed by the state or permitted by law to provide health care services while acting within the scope of their duties of providing health care services.

History: 1953 Comp., § 5-14-10, enacted by Laws 1976, ch. 58, § 10; 1977, ch. 386, § 7; 1978, ch. 166, § 2.

41-4-11. Liability; highways and streets.

A. The immunity granted pursuant to Subsection A of Section 41-4-4 NMSA 1978 does not apply to liability for damages resulting from bodily injury, wrongful death or property damage caused by the negligence of public employees while acting within the scope of their duties during the construction, and in subsequent maintenance, of any bridge, culvert, highway, roadway, street, alley, sidewalk or parking area.

B. The liability for which immunity has been waived pursuant to Subsection A of this section shall not include liability for damages caused by:

(1) a defect in plan or design of any bridge, culvert, highway, roadway, street, alley, sidewalk or parking area;

(2) the failure to construct or reconstruct any bridge, culvert, highway, roadway, street, alley, sidewalk or parking area; or

(3) a deviation from standard geometric design practices for any bridge, culvert, highway, roadway, street, alley, sidewalk or parking area allowed on a case-by-case basis for appropriate cultural, ecological, economic, environmental, right-of-way through Indian lands, historical or technical reasons; provided that the deviation:

(a) is required by extraordinary circumstances;

(b) has been approved by the governing authority; and

(c) is reasonable and necessary as determined by the application of sound engineering principles taking into consideration the appropriate cultural, ecological, economic, environmental, right-of-way through Indian lands, historical or technical circumstances.

C. All irrigation and conservancy districts that authorize a portion of their property to be used as a road available for use by the general public, and their employees acting lawfully and within the scope of their duties, are excluded from the waiver of immunity under Subsection A of this section in regard to that portion of property; provided that the:

(1) irrigation or conservancy district has entered into a written agreement with the state agency or governmental entity operating and maintaining that road; and

(2) state agency or governmental entity has agreed to assume the operation and maintenance of that portion of the district's property used for that road.

D. The state agency or governmental entity operating and maintaining the road available for use by the general public pursuant to Subsection C of this section shall be subject to liability as provided in the Tort Claims Act.

History: 1953 Comp., § 5-14-11, enacted by Laws 1976, ch. 58, § 11; 1977, ch. 386, § 8; 1991, ch. 205, § 2; 2019, ch. 104, § 1.

41-4-12. Liability; law enforcement officers.

The immunity granted pursuant to Subsection A of Section 41-4-4 NMSA 1978 does not apply to liability for personal injury, bodily injury, wrongful death or property damage resulting from assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, defamation of character, violation of property rights, the independent tort of negligent spoliation of evidence or the independent tort of intentional spoliation of evidence, failure to comply with duties established pursuant to statute or law or any other deprivation of any rights, privileges or immunities secured by the constitution and laws of the United States or New Mexico when caused by law enforcement officers while acting within the scope of their duties. For purposes of this section, "law enforcement officer" means a public officer or employee vested by law with the power to maintain order, to make arrests for crime or to detain persons suspected of or convicted of committing a crime, whether that duty extends to all crimes or is limited to specific crimes.

History: 1953 Comp., § 5-14-12, enacted by Laws 1976, ch. 58, § 12; 1977, ch. 386, § 9; 2020, ch. 5, § 14; 2020 (1st S.S.), ch. 7, § 3.

41-4-13. Exclusions from waiver of immunity; community ditches or acequias; Sanitary Projects Act associations.

All community ditches or acequias, and their public employees acting lawfully and within the scope of their duties, and all associations created pursuant to the Sanitary Projects Act [Chapter 3, Article 29 NMSA 1978] are excluded from the waiver of immunity of liability under Sections 41-4-6 through 41-4-12 NMSA 1978.

History: 1953 Comp., § 5-14-12.1, enacted by Laws 1977, ch. 386, § 10; 2006, ch. 54, § 1; 2006, ch. 55, § 1.

41-4-14. Defenses.

A governmental entity and its public employees may assert any defense available under the law of New Mexico.

History: 1953 Comp., § 5-14-13, enacted by Laws 1976, ch. 58, § 13.

41-4-15. Statute of limitations.

A. Actions against a governmental entity or a public employee for torts shall be forever barred, unless such action is commenced within two years after the date of occurrence resulting in loss, injury or death, except that a minor under the full age of

seven years shall have until his ninth birthday in which to file. This subsection applies to all persons regardless of minority or other legal disability.

B. The provisions of Subsection A of this section shall not apply to any occurrence giving rise to a claim which occurred before July 1, 1976.

History: 1953 Comp., § 5-14-14, enacted by Laws 1976, ch. 58, § 14; 1977, ch. 386, § 11.

41-4-16. Notice of claims.

A. Every person who claims damages from the state or any local public body under the Tort Claims Act shall cause to be presented to the risk management division for claims against the state, the mayor of the municipality for claims against the municipality, the superintendent of the school district for claims against the school district, the county clerk of a county for claims against the county, or to the administrative head of any other local public body for claims against such local public body, within ninety days after an occurrence giving rise to a claim for which immunity has been waived under the Tort Claims Act, a written notice stating the time, place and circumstances of the loss or injury.

B. No suit or action for which immunity has been waived under the Tort Claims Act shall be maintained and no court shall have jurisdiction to consider any suit or action against the state or any local public body unless notice has been given as required by this section, or unless the governmental entity had actual notice of the occurrence. The time for giving notice does not include the time, not exceeding ninety days, during which the injured person is incapacitated from giving the notice by reason of injury.

C. When a claim for which immunity has been waived under the Tort Claims Act is one for wrongful death, the required notice may be presented by, or on behalf of, the personal representative of the deceased person or any person claiming benefits of the proceeds of a wrongful death action, or the consular officer of a foreign country of which the deceased was a citizen, within six months after the date of the occurrence of the injury which resulted in the death; but if the person for whose death the claim is made has presented a notice that would have been sufficient had he lived, an action for wrongful death may be brought without any additional notice.

History: 1953 Comp., § 5-14-14.1, enacted by Laws 1977, ch. 386, § 12.

41-4-16.1. Civil action; damages incurred while imprisoned; notice to victim.

Upon the filing of a civil action by an individual or his personal representative against the state for damages incurred while imprisoned in a state corrections facility, the district court clerk shall issue notice of the filing of that action to the corrections and criminal rehabilitation department [corrections department] which shall forward a copy of the

notice to the victim of the crime for which that individual was imprisoned. If the civil action is filed in a federal forum, the individual or personal representative shall issue the required notice to the department.

History: Laws 1981, ch. 117, § 1.

41-4-17. Exclusiveness of remedy.

A. The Tort Claims Act shall be the exclusive remedy against a governmental entity or public employee for any tort for which immunity has been waived under the Tort Claims Act and no other claim, civil action or proceeding for damages, by reason of the same occurrence, may be brought against a governmental entity or against the public employee or his estate whose act or omission gave rise to the suit or claim. No rights of a governmental entity to contribution, indemnity or subrogation shall be impaired by this section, except a governmental entity or any insurer of a governmental entity shall have no right to contribution, indemnity or subrogation against a public employee unless the public employee has been found to have acted fraudulently or with actual intentional malice causing the bodily injury, wrongful death, property damage or violation of rights, privileges or immunities secured by the constitution and laws of the United States or laws of New Mexico resulting in the settlement or final judgment. Nothing in this section shall be construed to prohibit any proceedings for mandamus, prohibition, habeas corpus, certiorari, injunction or quo warranto.

B. The settlement or judgment in an action under the Tort Claims Act shall constitute a complete bar to any action by the claimant, by reason of the same occurrence against a governmental entity or the public employee whose negligence gave rise to the claim.

C. No action brought pursuant to the provisions of the Tort Claims Act shall name as a party any insurance company insuring any risk for which immunity has been waived by that act.

History: 1953 Comp., § 5-14-15, enacted by Laws 1976, ch. 58, § 15; 1977, ch. 386, § 13; 1982, ch. 8, § 2.

41-4-18. Jurisdiction; appeals; venue.

A. Exclusive original jurisdiction for any claim under the Tort Claims Act shall be in the district courts of New Mexico. Appeals may be taken as provided by law.

B. Venue for any claim against the state or its public employees, pursuant to the Tort Claims Act, shall be in the district court for the county in which a plaintiff resides, or in which the cause of action arose, or in Santa Fe county. Venue for all other claims pursuant to the Tort Claims Act, shall be in the county in which the principal offices of the governing body of the local public body are located.

History: 1953 Comp., § 5-14-16, enacted by Laws 1976, ch. 58, § 16.

41-4-19. Maximum liability.

A. Unless limited by Subsection B of this section, in any action for damages against a governmental entity or a public employee while acting within the scope of the employee's duties as provided in the Tort Claims Act, the liability shall not exceed:

(1) the sum of two hundred thousand dollars ($200,000) for each legally described real property for damage to or destruction of that legally described real property arising out of a single occurrence;

(2) the sum of three hundred thousand dollars ($300,000) for all past and future medical and medically related expenses arising out of a single occurrence; and

(3) the sum of four hundred thousand dollars ($400,000) to any person for any number of claims arising out of a single occurrence for all damages other than real property damage and medical and medically related expenses as permitted under the Tort Claims Act.

B. The total liability for all claims pursuant to Paragraphs (1) and (3) of Subsection A of this section that arise out of a single occurrence shall not exceed seven hundred fifty thousand dollars ($750,000).

C. Interest shall be allowed on judgments against a governmental entity or public employee for a tort for which immunity has been waived under the Tort Claims Act at a rate equal to two percentage points above the prime rate as published in the Wall Street Journal on the date of the entry of the judgment. Interest shall be computed daily from the date of the entry of the judgment until the date of payment.

D. No judgment against a governmental entity or public employee for any tort for which immunity has been waived under the Tort Claims Act shall include an award for exemplary or punitive damages or for interest prior to judgment.

History: 1953 Comp., § 5-14-3, enacted by Laws 1976, ch. 58, § 17; 1977, ch. 386, § 14; 1991, ch. 205, § 3; 2004, ch. 108, § 1; 2007, ch. 121, § 1.

41-4-20. Coverage of risks; insurance.

A. It shall be the duty of governmental entities to cover every risk for which immunity has been waived under the provisions of the Tort Claims Act or any liability imposed under Section 41-4-4 NMSA 1978 as follows:

(1) local public bodies shall cover every such risk or liability as follows:

(a) for a risk for which immunity has been waived pursuant to Sections 41-4-9, 41-4-10 and 41-4-12 NMSA 1978, the local public body shall cover the risk, and for any commercially uninsurable risk for which public liability fund coverage is made available, the local public body may insure the risk in accordance with the provisions of Section 41-4-25 NMSA 1978;

(b) for excess liability for damages arising under and subject to the substantive law of a jurisdiction other than New Mexico, including but not limited to other states, territories and possessions and the United States of America, the local public body shall provide coverage in accordance with the provisions of Subsection B of Section 41-4-27 [41-4-28] NMSA 1978, if coverage is available; and

(c) for a risk or liability not covered pursuant to Subparagraphs (a) and (b) of this paragraph, the local public body shall purchase insurance, establish reserves or provide a combination of insurance and reserves or provide insurance in any other manner authorized by law; and

(2) for state agencies, the risk management division shall insure or otherwise cover every such risk or liability in accordance with the provisions of Section 41-4-23 NMSA 1978. Coverage shall include but is not limited to coverage for all such liability arising under and subject to the substantive law of a jurisdiction other than New Mexico, including but not limited to other states, territories and possessions and the United States of America.

B. The department of finance and administration shall not approve the budget of any governmental entity that has not budgeted an adequate amount of money to insure or otherwise cover pursuant to this section or Section 3-62-2 NMSA 1978 every risk of the governmental entity for which immunity has been waived under the provisions of the Tort Claims Act or liability imposed under Section 41-4-4 NMSA 1978. The public school finance division of the department of finance and administration shall not approve the budget of any school district which has failed to budget sufficient revenues to insure or otherwise cover pursuant to this section every risk for which immunity has been waived pursuant to the provisions of the Tort Claims Act or liability imposed under Section 41-4-4 NMSA 1978.

C. No liability insurance may be purchased by any governmental entity other than as authorized by the Tort Claims Act.

History: Laws 1976, ch. 58, § 18; 1953 Comp., § 5-14-18; Laws 1977, ch. 247, § 52; 1977, ch. 386, § 15; 1978, ch. 166, § 3; 1979, ch. 287, § 4; 1979, ch. 392, § 2; 1981, ch. 268, § 1.

41-4-21. Application of act.

The provisions of the Tort Claims Act shall not affect the provisions of any personnel act, any rules or regulations issued thereunder or any other provision of law governing the employer-employee relationship.

History: 1953 Comp., § 5-14-19, enacted by Laws 1976, ch. 58, § 19; 1977, ch. 386, § 16.

41-4-22. Insurance fund.

There is created the "insurance fund" to purchase insurance for the state and its public employees. Any money in the fund not needed to meet expected expenditures for the ensuing month shall be invested by the director of the risk management division with the prior approval of the state board of finance.

History: 1953 Comp., § 5-14-20, enacted by Laws 1976, ch. 58, § 20; 1977, ch. 247, § 53.

41-4-23. Public liability fund created; purposes.

A. There is created the "public liability fund". The fund and any income from the fund shall be held in trust, deposited in a segregated account and invested by the general services department with the prior approval of the state board of finance.

B. Money deposited in the public liability fund may be expended by the risk management division of the general services department:

(1) to purchase tort liability insurance for state agencies and their employees and for any local public body participating in the public liability fund and its employees;

(2) to contract with one or more consulting or claims adjusting firms pursuant to the provisions of Section 41-4-24 NMSA 1978;

(3) to defend, save harmless and indemnify any state agency or employee of a state agency or a local public body or an employee of such local public body for any claim or liability covered by a valid and current certificate of coverage to the limits of such certificate of coverage;

(4) to pay claims and judgments covered by a certificate of coverage;

(5) to contract with one or more attorneys or law firms on a per-hour basis, or with the attorney general, to defend tort liability claims against governmental entities and public employees acting within the scope of their duties;

(6) to pay costs and expenses incurred in carrying out the provisions of this section;

(7) to create a retention fund for any risk covered by a certificate of coverage;

(8) to insure or provide certificates of coverage to school bus contractors and their employees, notwithstanding Subsection F of Section 41-4-3 NMSA 1978, for any comparable risk for which immunity has been waived for public employees pursuant to Section 41-4-5 NMSA 1978, if the coverage is commercially unavailable; except that coverage for exposure created by Sections 41-4-9, 41-4-10 and 41-4-12 NMSA 1978 shall be provided to its member public school districts and participating other educational entities of the public school insurance authority, by the authority, and except that coverage shall be provided to a contractor and his employees only through the public school insurance authority or its successor, unless the district to which the contractor provides services has been granted a waiver by the authority or the authority is not offering the coverage for the fiscal year for which the division offers its coverage. A local school district to which the division may provide coverage may provide for marketing and servicing to be done by licensed insurance agents who shall receive reasonable compensation for their services; and

(9) to insure or provide certificates of coverage for any ancillary coverage typically found in commercially available liability policies provided to governmental entities, if the coverage is commercially unavailable.

C. No settlement of any claim covered by the public liability fund in excess of twenty-five thousand dollars ($25,000) shall be made unless the settlement has first been approved in writing by the director of the risk management division of the general services department. This subsection shall not be construed to limit the authority of an insurance carrier, covering any liability under the Tort Claims Act, to compromise, adjust and settle claims against governmental entities or their public employees.

D. Claims against the public liability fund shall be made in accordance with rules or regulations of the director of the risk management division of the general services department. If the director of the risk management division has reason to believe that the fund would be exhausted by payment of all claims allowed during a particular state fiscal year, pursuant to regulations of the risk management division, the amounts paid to each claimant and other parties obtaining judgments shall be prorated, with each party receiving an amount equal to the percentage his own payment bears to the total of claims or judgments outstanding and payable from the fund. Any amounts due and unpaid as a result of such proration shall be paid in the following fiscal years.

History: 1953 Comp., § 5-14-20.1, enacted by Laws 1977, ch. 386, § 17; 1978, ch. 166, § 4; 1982, ch. 8, § 3; 1983, ch. 301, § 75; 1986, ch. 102, § 8; 1989, ch. 373, § 6; 1996 (1st S.S.), ch. 3, § 5; 2000, ch. 27, § 4; 2001, ch. 177, § 1.

41-4-24. Consulting and claims adjusting contracts.

A. Notwithstanding any other provision of law, the risk management division shall:

(1) contract, as may be necessary, with a recognized insurance consulting firm to assist in the implementation of the public liability fund; and

(2) contract with a recognized insurance claims adjusting firm for the handling of all claims made against the public liability fund.

B. No contract shall be entered into pursuant to this section, unless proposals have been sought from two or more qualified firms. Contracts shall be awarded on the basis of cost, financial resources of the firm, service facilities in New Mexico, service reputation and experience.

History: 1953 Comp., § 5-14-20.2, enacted by Laws 1977, ch. 386, § 18.

41-4-25. Public liability fund; municipal public liability fund; local public body participation; educational entity participation.

A. Except as provided in Subsections B and C of this section, local public bodies shall obtain coverage for all risks for which immunity has been waived under the Tort Claims Act pursuant to Sections 41-4-9, 41-4-10 and 41-4-12 NMSA 1978 through the public liability fund by paying into the fund an assessment, to be determined by the director of the risk management division, which shall be based on the risks to be insured. In addition, any local public body upon application to the risk management division may obtain coverage for any risk for which immunity has been waived under the Tort Claims Act through the public liability fund if the director of the risk management division determines that:

(1) the risk is, in fact, commercially uninsurable or insurable only at a cost or subject to conditions which the director deems unreasonable. To make this determination, the director may require the local public body to submit such information as he deems appropriate and may also seek information from any other source; and

(2) the local public body has paid all insurance premiums and public liability fund assessments in a timely manner or has had good cause for failing to do so. The local public body shall pay for coverage of uninsurable risks by paying into the fund an assessment, to be determined by the director, which shall be based on risks to be insured. However, payment of all or part of any such assessment may be deferred or postponed without penalty until future years if the local public body certifies to the director's satisfaction that it has insufficient funds available to pay all or a part of any assessment. A municipality or county shall be deemed to have insufficient funds only if it is, in the current fiscal year, levying the full property tax millage allotted it under law and, in addition, has levied during the current fiscal year a five-mill levy above the constitutional twenty-mill limit to pay tort judgments. Any deferred or postponed assessment is payable in any succeeding fiscal year, subject to the same limitations on duty to pay, until paid in full.

B. A municipality which has adopted a charter pursuant to Article 10, Section 6 of the constitution of New Mexico may, by ordinance of the governing body, elect to create a "municipal public liability fund" to insure or otherwise cover any risk for which immunity has been waived under the Tort Claims Act. A municipal public liability fund created pursuant to this subsection shall provide that:

(1) the fund and any income from the fund shall be held in trust, deposited in a segregated account and invested in accordance with law;

(2) any money deposited in the fund may only be expended to purchase liability insurance; to contract with one or more consulting or claims adjusting firms; to defend, save harmless and indemnify any employee of the municipality for any liability covered by the municipal public liability fund; to contract with one or more attorneys or law firms on a per-hour basis to defend tort liability claims against the municipality and its officers and employees acting within the scope of their duties; and to create a retention fund adequate to cover all uninsured risks of the municipality;

(3) if the municipal public liability fund will be exhausted by the payment of all judgments and claims allowed during a particular fiscal year, amounts paid to each claimant or person obtaining a judgment shall be prorated, with each person receiving an amount equal to the percentage his own payment bears to the total of claims and judgments outstanding and payable from the fund. Any amounts due and unpaid as a result of such proration shall be paid in the following fiscal year;

(4) no tort, civil rights or workers' compensation judgment shall be paid by a tax levy upon real or personal property unless the judgment exceeds one hundred thousand dollars ($100,000). The tax levy shall be made only on that portion of the judgment which is in excess of one hundred thousand dollars ($100,000). Judgments arising out of a single occurrence shall be paid by tax levies for the portions of the judgments in excess of one hundred thousand dollars ($100,000);

(5) the governing body shall review all judgments set forth in Paragraph (4) of this subsection prior to transmitting them to the county assessor for inclusion in the property tax assessment. The review by the governing body shall include a finding by the governing body that the judgment properly arose under the Workers' Compensation Act [Chapter 52, Article 1 NMSA 1978] or under the Tort Claims Act. After so finding, the governing body shall by resolution direct the county assessor to provide an assessment as required; and

(6) the ordinance shall not become effective until the department of finance and administration and the general services department have reviewed and approved the ordinance as complying with all of the provisions of this subsection.

C. A local public body, other than one that has adopted a charter pursuant to Article 10, Section 6 of the constitution of New Mexico, may elect to obtain coverage from the public liability fund in accordance with Subsection A of this section or may:

(1) purchase commercial insurance coverage for the risks for which immunity is waived under the Tort Claims Act; or

(2) obtain coverage for the risks for which immunity is waived under the Tort Claims Act in accordance with the provisions of Chapter 3, Article 62 NMSA 1978.

D. The risk management division may assess any local public body with a risk covered by the public liability fund:

(1) a penalty in a percentage or minimum amount to be fixed by the director of the risk management division, with the advice of the board, for the failure to make timely payment of any assessment of the division; or

(2) a surcharge not exceeding seventy-five percent of the rate established by the division for coverage under the public liability fund, if:

(a) the local public body fails to meet any of the underwriting standards or claims procedures prescribed by regulations of the division; or

(b) the local public body fails to carry out any safety program prescribed by regulations of the division.

E. Any school district as defined in Section 22-1-2 NMSA 1978 or educational institution established pursuant to Chapter 21, Article 13, 16 or 17 NMSA 1978 may, upon application to and acceptance by the risk management division, purchase, if the coverage is commercially unavailable, any coverage offered by the division, through the public liability fund, including school bus coverage for school bus contractors, notwithstanding the limitation in Subsection E of Section 41-4-3 NMSA 1978; except that coverage other than for risks for which immunity has been waived pursuant to Sections 41-4-9, 41-4-10, 41-4-12 and 41-4-28 NMSA 1978 shall be provided to a school district only through the public school group insurance authority or its successor, unless the district has been granted a waiver by the authority or the authority is not offering the coverage for the fiscal year for which the division offers its coverage. A local school district to which the division may provide coverage may provide for marketing and servicing to be done by licensed insurance agents who shall receive reasonable compensation for their services.

F. If any local public body fails to insure or otherwise cover any risk, the immunity for which has been waived under the provisions of the Tort Claims Act, any resident of the local public body shall have standing to bring suit to compel compliance with the provisions of the Tort Claims Act. Nothing in this section shall be construed to allow any recovery against any governmental entity for any damages resulting from the failure of the governmental entity to insure or otherwise cover any risk.

G. Nothing in this section shall be construed as requiring the risk management division to provide coverage to any local public body, except coverage for those risks for

which immunity has been waived under Sections 41-4-9, 41-4-10 and 41-4-12 NMSA 1978, or as requiring the division to provide coverage on terms deemed to be unreasonable by the director of the division.

History: 1953 Comp., § 5-14-20.3, enacted by Laws 1977, ch. 386, § 19; 1978, ch. 166, § 5; 1979, ch. 10, § 1; 1979, ch. 392, § 3; 1983, ch. 301, § 76; 1986, ch. 27, § 1; 1986, ch. 102, § 9; 1988, ch. 57, § 1; 1989, ch. 372, § 1.

41-4-26. Home rule municipality tort claims ordinances; severability; applicability.

A. Any provision of an ordinance adopted by a home rule municipality providing for the insurance or self-insurance of tort liability risks of the home rule municipality is declared to be severable if any part or application of such ordinance is held invalid.

B. Any home rule municipality which has adopted an ordinance providing for the insurance or self-insurance of any or all of the tort liability risks of the municipality, shall not be eligible to participate in the public liability fund created pursuant to Section 41-4-23 NMSA 1978.

C. A home rule municipality which has adopted an ordinance insuring or self-insuring its tort liability risks prior to July 1, 1978 or which has adopted an ordinance after July 1, 1978 insuring or self-insuring its tort liability risks pursuant to Subsection B of Section 41-4-25 NMSA 1978 may elect to be covered by the public liability fund created pursuant to Section 41-4-23 NMSA 1978 for the subsequent calendar years by:

(1) giving notice of the repeal of its ordinance to the risk management division prior to December 1 of any calendar year; and

(2) paying such assessments as may be determined by the risk management division. Occurrences giving rise to claims arising during any period of time [in] which a home rule municipality had a valid or invalid ordinance insuring or self-insuring its risks shall be governed by the ordinance in effect at the time the claims arose and not by the public liability fund created pursuant to Section 41-4-23 NMSA 1978.

History: 1978 Comp., § 41-4-26, enacted by Laws 1978, ch. 166, § 18; 1986, ch. 27, § 2.

41-4-27. Home rule municipality; joint powers agreements; coverage.

A. Any county covered through the public liability fund pursuant to Subsection A of Section 41-4-25 NMSA 1978 may enter into a joint powers agreement with a home rule municipality which has elected to be covered pursuant to Subsection B of Section 41-4-25 NMSA 1978, providing for exercise of certain of the county's powers or duties under

the agreement. Any such joint powers agreement may provide for public liability fund coverage of a stated percentage of risks arising from exercise of the county's powers or duties.

B. Public liability fund coverage which may be provided under any such joint powers agreement shall be:

(1) limited to public liability fund coverage available to the county pursuant to Subsection A of Section 41-4-25 NMSA 1978; and

(2) subject to the prior approval of the risk management advisory board.

C. All coverage pursuant to this section shall terminate upon the date the joint powers agreement terminates.

D. For covering a risk pursuant to this section, the risk management division shall assess the county the full amount to be assessed for covering the entire risk under current regular risk management division assessment rates and schedules, plus any applicable penalties and surcharges, without adjustment based upon the percentage of risk for which the county is liable.

History: 1978 Comp., § 41-4-27, enacted by Laws 1981, ch. 118, § 2.

41-4-28. Coverage for liability subject to foreign jurisdiction's law.

A. Coverage which may be provided for liability arising under and subject to the substantive law of a jurisdiction other than New Mexico, including but not limited to other states, territories and possessions and the United States, is not limited as provided in Section 41-4-19 NMSA 1978.

B. The risk management division shall purchase liability insurance coverage for all local public bodies otherwise participating in the public liability fund for liability arising under and subject to the substantive law of a jurisdiction other than New Mexico, including but not limited to other states, territories and possessions and the United States. The risk management division shall purchase such liability insurance only if the director of the risk management division determines that the coverage offered is satisfactory and available at reasonable cost. If satisfactory coverage is unavailable at reasonable cost, the risk management division may offer a certificate through the public liability fund in limits not to exceed one million dollars ($1,000,000) per occurrence. Any liability insurance shall provide coverage only for amounts in excess of the limits set forth in Section 41-4-19 NMSA 1978.

Local public bodies shall obtain excess coverage for such foreign jurisdiction liability by paying into the public liability fund an assessment, determined by the director of the risk management division, based on the cost of the insurance and the risks to be insured. If such insurance is unavailable on a satisfactory basis or at reasonable cost

and the risk management division does not provide a certificate or insurance with satisfactory limits, local public bodies shall cover such liability in accordance with Subparagraph (c) of Paragraph (1) of Subsection A of Section 41-4-20 NMSA 1978.

C. Nothing in this section shall be construed as a waiver of any sovereign or governmental immunity.

History: 1978 Comp., § 41-4-27, enacted by Laws 1981, ch. 268, § 2; 1986, ch. 102, § 10.

41-4-29. Governmental entities; health care students liability coverage; authority to purchase.

A. Governmental entities may purchase public liability fund coverage, if offered, for health care liability of health care students currently enrolled in health care instructional programs provided by or through the governmental entity.

B. The risk management division of the general services department may provide public liability fund coverage for health care liability of health care students currently enrolled in health care instructional programs provided by or through a governmental entity. Such coverage shall be limited to health care liability risks arising out of assigned health care instructional activities.

C. This section shall not be construed as waiving or otherwise affecting any governmetal [governmental] entity's sovereign immunity or any other limitations or protections under the Tort Claims Act or any other law. This section shall not be construed as creating any right of action against any governmental entity or any of its officers, employees or servants for any activities insured pursuant to this section.

History: Laws 1981, ch. 269, § 1; 1983, ch. 301, § 77.

41-4-30. Liability coverage; certain community land grants.

Notwithstanding the provisions of Paragraph (1) of Subsection A of Section 41-4-25 NMSA 1978 to the contrary, a community land grant governed as a political subdivision of the state upon application to the risk management division of the general services department shall be authorized to purchase coverage for any risk for which immunity has been waived under the Tort Claims Act through the public liability fund, exclusive of coverage of an activity conducted by the community land grant that is determined by the director of the risk management division pursuant to division rules to be a business enterprise.

History: Laws 2010, ch. 22, § 1.

ARTICLE 4A
New Mexico Civil Rights

41-4A-1. Short title.

This act [41-4A-1 to 41-4A-13 NMSA 1978] may be cited as the "New Mexico Civil Rights Act".

History: Laws 2021, ch. 119, § 1.

41-4A-2. Definition.

As used in the New Mexico Civil Rights Act, "public body" means a state or local government, an advisory board, a commission, an agency or an entity created by the constitution of New Mexico or any branch of government that receives public funding, including political subdivisions, special tax districts, school districts and institutions of higher education, but not including an acequia or community ditch, a soil and water conservation district, a land grant-merced, a mutual domestic water consumers association or other association organized pursuant to the Sanitary Projects Act [Chapter 3, Article 29 NMSA 1978] or a water users' association.

History: Laws 2021, ch. 119, § 2.

41-4A-3. Claim for violation of rights established pursuant to the bill of rights of the constitution of New Mexico.

A. A public body or person acting on behalf of, under color of or within the course and scope of the authority of a public body shall not subject or cause to be subjected any resident of New Mexico or person within the state to deprivation of any rights, privileges or immunities secured pursuant to the bill of rights of the constitution of New Mexico.

B. A person who claims to have suffered a deprivation of any rights, privileges or immunities pursuant to the bill of rights of the constitution of New Mexico due to acts or omissions of a public body or person acting on behalf of, under color of or within the course and scope of the authority of a public body may maintain an action to establish liability and recover actual damages and equitable or injunctive relief in any New Mexico district court.

C. Claims brought pursuant to the New Mexico Civil Rights Act shall be brought exclusively against a public body. Any public body named in an action filed pursuant to the New Mexico Civil Rights Act shall be held liable for conduct of individuals acting on behalf of, under color of or within the course and scope of the authority of the public body.

D. Individuals employed by a public body shall be prohibited from using the New Mexico Civil Rights Act to pursue a claim arising from the individual's employment by the public body.

E. The remedies provided for in the New Mexico Civil Rights Act are not exclusive and shall be in addition to any other remedies prescribed by law or available pursuant to common law.

History: Laws 2021, ch. 119, § 3.

41-4A-4. Prohibiting the use of the defense of qualified immunity.

In any claim for damages or relief under the New Mexico Civil Rights Act, no public body or person acting on behalf of, under color of or within the course and scope of the authority of a public body shall enjoy the defense of qualified immunity for causing the deprivation of any rights, privileges or immunities secured by the bill of rights of the constitution of New Mexico.

History: Laws 2021, ch. 119, § 4.

41-4A-5. Attorney fees.

In any action brought under the New Mexico Civil Rights Act, the court may, in its discretion, allow a prevailing plaintiff or plaintiffs reasonable attorney fees and costs to be paid by the defendant.

History: Laws 2021, ch. 119, § 5.

41-4A-6. Limitation on recovery.

A. In any action for damages against a public body pursuant to the New Mexico Civil Rights Act, the liability per occurrence shall not exceed the sum of two million dollars ($2,000,000) per claimant, inclusive of the claimant's costs of action and reasonable attorney fees. In jury cases, the jury shall not be given any instructions dealing with this limitation. Interest shall be allowed on judgments against a public body at a rate equal to two percentage points above the bank prime loan rate published by the board of governors of the federal reserve system on the last business day of the month preceding entry of the judgment. Interest shall be computed daily from the date of the entry of the judgment until the date of payment.

B. As of July 1, 2022 and on July 1 of each successive year, the maximum recovery limit shall be increased for the cost of living as provided in Subsection C of this section.

C. On July 1, 2022 and on July 1 of each successive year, the maximum recovery limit shall be increased by the increase in the cost of living. The increase in the cost of living shall be measured by the percentage increase as of August of the immediately

preceding year over the level as of August of the previous year of the consumer price index for all urban consumers, United States city average for all items, or its successor index, as published by the United States department of labor or its successor agency, with the amount of the increase rounded to the nearest multiple of ten thousand dollars ($10,000); however, the maximum recovery limit shall not be adjusted downward as a result of a decrease in the cost of living. The risk management division of the general services department shall publish by May 1 of each year the adjusted maximum recovery limit that shall take effect the following July 1.

History: Laws 2021, ch. 119, § 6.

41-4A-7. Statute of limitations and abatement.

A claim made pursuant to the New Mexico Civil Rights Act shall be commenced no later than three years from the date a claim can be brought for the deprivation of a right, privilege or immunity pursuant to the bill of rights of the constitution of New Mexico unless a longer statute of limitations is otherwise provided by state law.

History: Laws 2021, ch. 119, § 7.

41-4A-8. Indemnification by public body.

A judgment awarded pursuant to the New Mexico Civil Rights Act against a person acting on behalf of, under color of or within the course and scope of the authority of the public body shall be paid by the public body. The public body shall also pay for all litigation costs for the public body and for any person acting on behalf of, under color of or within the course and scope of the authority of the public body, including attorney fees.

History: Laws 2021, ch. 119, § 8.

41-4A-9. Waiver of sovereign immunity.

The state shall not have sovereign immunity for itself or any public body within the state for claims brought pursuant to the New Mexico Civil Rights Act, and the public body or person acting on behalf of, under color of or within the course and scope of the authority of the public body provided pursuant to the New Mexico Civil Rights Act shall not assert sovereign immunity as a defense or bar to an action.

History: Laws 2021, ch. 119, § 9.

41-4A-10. Common law judicial, legislative or other established immunity.

The prohibition on the use of the defense of qualified immunity pursuant to Section 4 [41-4A-NMSA 1978] of the New Mexico Civil Rights Act and the waiver of sovereign immunity pursuant to Section 9 [41-4A-9 NMSA 1978] of that act shall not abrogate judicial immunity, legislative immunity or any other constitutional, statutory or common law immunity.

History: Laws 2021, ch. 119, § 10.

41-4A-11. Records of claims.

Each public body shall maintain a record of all final judgments and settlements paid by the public body for claims made pursuant to the New Mexico Civil Rights Act and attach a copy of the complaint to each record. All judgments, settlements and complaints are subject to disclosure pursuant to the Inspection of Public Records Act [Chapter 14, Article 3 NMSA 1978].

History: Laws 2021, ch. 119, § 11.

41-4A-12. Prospective application.

Claims arising solely from acts or omissions that occurred prior to July 1, 2021 may not be brought pursuant to the New Mexico Civil Rights Act.

History: Laws 2021, ch. 119, § 12.

41-4A-13. Notice of claims.

A. Every person who claims damages from an act or omission of a certified law enforcement officer under the New Mexico Civil Rights Act shall cause to be presented to the certified law enforcement officer's agency or department, within one year after an occurrence giving rise to a claim under the New Mexico Civil Rights Act, a written notice stating the time, place and circumstances of the loss or injury.

B. No suit or action for which immunity has been waived under the New Mexico Civil Rights Act shall be maintained, and no court shall have jurisdiction to consider any suit or action against the state or any local public body, unless notice has been given as required by this section or unless the governmental entity had actual notice of the occurrence. The time for giving notice does not include the time, not exceeding one year, during which the injured person is incapacitated from giving the notice by reason of injury.

C. When a claim for which immunity has been waived under the New Mexico Civil Rights Act is one for wrongful death, the required notice may be presented by, or on behalf of, the personal representative of the deceased person or any person claiming benefits of the proceeds of a wrongful death action, or the consular officer of a foreign country of which the deceased was a citizen, within one year and six months after the

date of the occurrence of the injury that resulted in the death; but if the person for whose death the claim is made has presented a notice that would have been sufficient had the person lived, an action for wrongful death may be brought without any additional notice.

History: Laws 2021, ch. 119, § 13.

ARTICLE 5
Medical Malpractice Act

41-5-1. Short title.

Chapter 41, Article 5 NMSA 1978 may be cited as the "Medical Malpractice Act".

History: 1953 Comp., § 58-33-1, enacted by Laws 1976, ch. 2, § 1; 1992, ch. 33, § 1.

41-5-2. Repealed.

History: 1953 Comp., § 58-33-2, enacted by Laws 1976, ch. 2, § 2; 1978 Comp., § 41-5-2, repealed by Laws 2021, ch. 16, § 17.

41-5-3. Definitions.

As used in the Medical Malpractice Act:

A. "advisory board" means the patient's compensation fund advisory board;

B. "control" means equity ownership in a business entity that:

(1) represents more than fifty percent of the total voting power of the business entity; or

(2) has a value of more than fifty percent of that business entity;

C. "fund" means the patient's compensation fund;

D. "health care provider" means a person, corporation, organization, facility or institution licensed or certified by this state to provide health care or professional services as a doctor of medicine, hospital, outpatient health care facility, doctor of osteopathy, chiropractor, podiatrist, nurse anesthetist, physician's assistant, certified nurse practitioner, clinical nurse specialist or certified nurse-midwife or a business entity that is organized, incorporated or formed pursuant to the laws of New Mexico that provides health care services primarily through natural persons identified in this subsection. "Health care provider" does not mean a person or entity protected pursuant to the Tort Claims Act [41-4-1 to 41-4-27 NMSA 1978] or the Federal Tort Claims Act;

E. "hospital" means a facility licensed as a hospital in this state that offers in-patient services, nursing or overnight care on a twenty-four-hour basis for diagnosing, treating and providing medical, psychological or surgical care for three or more separate persons who have a physical or mental illness, disease, injury or rehabilitative condition or are pregnant and may offer emergency services. "Hospital" includes a hospital's parent corporation, subsidiary corporations or affiliates if incorporated or registered in New Mexico; employees and locum tenens providing services at the hospital; and agency nurses providing services at the hospital. "Hospital" does not mean a person or entity protected pursuant to the Tort Claims Act or the Federal Tort Claims Act;

F. "independent outpatient health care facility" means a health care facility that is an ambulatory surgical center, urgent care facility or free-standing emergency room that is not, directly or indirectly through one or more intermediaries, controlled or under common control with a hospital. "Independent outpatient health care facility" includes a facility's employees, locum tenens providers and agency nurses providing services at the facility. "Independent outpatient health care facility" does not mean a person or entity protected pursuant to the Tort Claims Act or the Federal Tort Claims Act;

G. "independent provider" means a doctor of medicine, doctor of osteopathy, chiropractor, podiatrist, nurse anesthetist, physician's assistant, certified nurse practitioner, clinical nurse specialist or certified nurse-midwife who is not an employee of a hospital or outpatient health care facility. "Independent provider" does not mean a person or entity protected pursuant to the Tort Claims Act or the Federal Tort Claims Act. "Independent provider" includes:

(1) a health care facility that is:

(a) licensed pursuant to the Public Health Act [Chapter 24, Article 1 NMSA 1978] as an outpatient facility;

(b) not an ambulatory surgical center, urgent care facility or free-standing emergency room; and

(c) not hospital-controlled; and

(2) a business entity that is not a hospital or outpatient health care facility that employs or consists of members who are licensed or certified as doctors of medicine, doctors of osteopathy, chiropractors, podiatrists, nurse anesthetists, physician's assistants, certified nurse practitioners, clinical nurse specialists or certified nurse-midwives and the business entity's employees;

H. "insurer" means an insurance company engaged in writing health care provider malpractice liability insurance in this state;

I. "malpractice claim" includes any cause of action arising in this state against a health care provider for medical treatment, lack of medical treatment or other claimed

departure from accepted standards of health care that proximately results in injury to the patient, whether the patient's claim or cause of action sounds in tort or contract, and includes but is not limited to actions based on battery or wrongful death; "malpractice claim" does not include a cause of action arising out of the driving, flying or nonmedical acts involved in the operation, use or maintenance of a vehicular or aircraft ambulance;

J. "medical care and related benefits" means all reasonable medical, surgical, physical rehabilitation and custodial services and includes drugs, prosthetic devices and other similar materials reasonably necessary in the provision of such services;

K. "occurrence" means all injuries to a patient caused by health care providers' successive acts or omissions that combined concurrently to create a malpractice claim;

L. "outpatient health care facility" means an entity that is hospital-controlled and is licensed pursuant to the Public Health Act as an outpatient facility, including ambulatory surgical centers, free-standing emergency rooms, urgent care clinics, acute care centers and intermediate care facilities and includes a facility's employees, locum tenens providers and agency nurses providing services at the facility. "Outpatient health care facility" does not include:

(1) independent providers;

(2) independent outpatient health care facilities; or

(3) individuals or entities protected pursuant to the Tort Claims Act or the Federal Tort Claims Act;

M. "patient" means a natural person who received or should have received health care from a health care provider, under a contract, express or implied; and

N. "superintendent" means the superintendent of insurance.

History: 1953 Comp., § 58-33-3, enacted by Laws 1976, ch. 2, § 3; 1977, ch. 284, § 1; 2021, ch. 16, § 1; 2021 (2nd S.S.), ch. 5, § 1; 2023, ch. 207, § 1.

41-5-4. Ad damnum clause.

A patient or his representative having a malpractice claim for bodily injury or death may file a complaint in any court of law having requisite jurisdiction and demand right of trial by jury. No dollar amount or figure shall be included in the demand in any complaint asserting a malpractice claim and filed after the effective date of this section, but the request shall be for such damages as are reasonable. This section shall not prevent a patient or his representative from alleging a requisite jurisdictional amount in a malpractice claim filed in a court requiring such an allegation.

History: 1953 Comp., § 58-33-4, enacted by Laws 1976, ch. 2, § 4; 1977, ch. 284, § 2.

41-5-5. Qualifications.

A. To be qualified under the provisions of the Medical Malpractice Act, a health care provider, except an independent outpatient health care facility, shall:

(1) establish its financial responsibility by filing proof with the superintendent that the health care provider is insured by a policy of malpractice liability insurance issued by an authorized insurer in the amount of at least two hundred fifty thousand dollars ($250,000) per occurrence or by having continuously on deposit the sum of seven hundred fifty thousand dollars ($750,000) in cash with the superintendent or such other like deposit as the superintendent may allow by rule; provided that hospitals and hospital-controlled outpatient health care facilities that establish financial responsibility through a policy of malpractice liability insurance may use any form of malpractice insurance; and provided further that for independent providers, in the absence of an additional deposit or policy as required by this subsection, the deposit or policy shall provide coverage for not more than three separate occurrences; and

(2) pay the surcharge assessed on health care providers by the superintendent pursuant to Section 41-5-25 NMSA 1978.

B. To be qualified under the provisions of the Medical Malpractice Act, an independent outpatient health care facility shall:

(1) establish its financial responsibility by filing proof with the superintendent that the health care provider is insured by a policy of malpractice liability insurance issued by an authorized insurer in the amount of at least five hundred thousand dollars ($500,000) per occurrence or by having continuously on deposit the sum of one million five hundred thousand dollars ($1,500,000) in cash with the superintendent or other like deposit as the superintendent may allow by rule; provided that for independent outpatient health care facilities, in the absence of an additional deposit or policy as required by this subsection, the deposit or policy shall provide coverage for not more than three separate occurrences; and

(2) pay the surcharge assessed on independent outpatient health care facilities by the superintendent pursuant to Section 41-5-25 NMSA 1978.

C. For hospitals or hospital-controlled outpatient health care facilities electing to be covered under the Medical Malpractice Act, the superintendent shall determine, based on a risk assessment of each hospital or hospital-controlled outpatient health care facility, each hospital's or hospital-controlled outpatient health care facility's base coverage or deposit and additional charges for the fund. The superintendent shall arrange for an actuarial study before determining base coverage or deposit and surcharges.

D. A health care provider not qualifying under this section shall not have the benefit of any of the provisions of the Medical Malpractice Act in the event of a malpractice

claim against it; provided that beginning July 1, 2021, hospitals and hospital-controlled outpatient health care facilities shall not participate in the medical review process, and beginning January 1, 2027, hospitals and hospital-controlled outpatient health care facilities shall have the benefits of the other provisions of the Medical Malpractice Act except participation in the fund.

History: 1978 Comp., § 41-5-5, enacted by Laws 1992, ch. 33, § 2; 2021, ch. 16, § 2; 2023, ch. 207, § 2.

41-5-6. Limitation of recovery.

A. Except for punitive damages and past and future medical care and related benefits, the aggregate dollar amount recoverable by all persons for or arising from any injury or death to a patient as a result of malpractice shall not exceed six hundred thousand dollars ($600,000) per occurrence for malpractice claims brought against health care providers if the injury or death occurred prior to January 1, 2022. In jury cases, the jury shall not be given any instructions dealing with this limitation.

B. Except for punitive damages and past and future medical care and related benefits, the aggregate dollar amount recoverable by all persons for or arising from any injury or death to a patient as a result of malpractice shall not exceed seven hundred fifty thousand dollars ($750,000) per occurrence for malpractice claims against independent providers; provided that, beginning January 1, 2023, the per occurrence limit on recovery shall be adjusted annually by the consumer price index for all urban consumers.

C. The aggregate dollar amount recoverable by all persons for or arising from any injury or death to a patient as a result of malpractice, except for punitive damages and past and future medical care and related benefits, shall not exceed seven hundred fifty thousand dollars ($750,000) for claims brought against an independent outpatient health care facility for an injury or death that occurred in calendar years 2022 and 2023.

D. In calendar year 2024 and subsequent years, the aggregate dollar amount recoverable by all persons for or arising from an injury or death to a patient as a result of malpractice, except for punitive damages and past and future medical care and related benefits, shall not exceed the following amounts for claims brought against an independent outpatient health care facility:

(1) for an injury or death that occurred in calendar year 2024, one million dollars ($1,000,000) per occurrence; and

(2) for an injury or death that occurred in calendar year 2025 and thereafter, the amount provided in Paragraph (1) of this subsection, adjusted annually by the prior three-year average consumer price index for all urban consumers, per occurrence.

E. In calendar year 2022 and subsequent calendar years, the aggregate dollar amount recoverable by all persons for or arising from any injury or death to a patient as a result of malpractice, except for punitive damages and past and future medical care and related benefits, shall not exceed the following amounts for claims brought against a hospital or a hospital-controlled outpatient health care facility:

(1) for an injury or death that occurred in calendar year 2022, four million dollars ($4,000,000) per occurrence;

(2) for an injury or death that occurred in calendar year 2023, four million five hundred thousand dollars ($4,500,000) per occurrence;

(3) for an injury or death that occurred in calendar year 2024, five million dollars ($5,000,000) per occurrence;

(4) for an injury or death that occurred in calendar year 2025, five million five hundred thousand dollars ($5,500,000) per occurrence;

(5) for an injury or death that occurred in calendar year 2026, six million dollars ($6,000,000) per occurrence; and

(6) for an injury or death that occurred in calendar year 2027 and each calendar year thereafter, the amount provided in Paragraph (5) of this subsection, adjusted annually by the consumer price index for all urban consumers, per occurrence.

F. The aggregate dollar amounts provided in Subsections B through E of this section include payment to any person for any number of loss of consortium claims or other claims per occurrence that arise solely because of the injuries or death of the patient.

G. In jury cases, the jury shall not be given any instructions dealing with the limitations provided in this section.

H. The value of accrued medical care and related benefits shall not be subject to any limitation.

I. Except for an independent outpatient health care facility, a health care provider's personal liability is limited to two hundred fifty thousand dollars ($250,000) for monetary damages and medical care and related benefits as provided in Section 41-5-7 NMSA 1978. Any amount due from a judgment or settlement in excess of two hundred fifty thousand dollars ($250,000) shall be paid from the fund, except as provided in Subsections J and K of this section.

J. An independent outpatient health care facility's personal liability is limited to five hundred thousand dollars ($500,000) for monetary damages and medical care and related benefits as provided in Section 41-5-7 NMSA 1978. Any amount due from a

judgment or settlement in excess of five hundred thousand dollars ($500,000) shall be paid from the fund.

K. Until January 1, 2027, amounts due from a judgment or settlement against a hospital or hospital-controlled outpatient health care facility in excess of seven hundred fifty thousand dollars ($750,000), excluding past and future medical expenses, shall be paid by the hospital or hospital-controlled outpatient health care facility and not by the fund. Beginning January 1, 2027, amounts due from a judgment or settlement against a hospital or hospital-controlled outpatient health care facility shall not be paid from the fund.

L. The term "occurrence" shall not be construed in such a way as to limit recovery to only one maximum statutory payment if separate acts or omissions cause additional or enhanced injury or harm as a result of the separate acts or omissions. A patient who suffers two or more distinct injuries as a result of two or more different acts or omissions that occur at different times by one or more health care providers is entitled to up to the maximum statutory recovery for each injury.

History: 1978 Comp., § 41-5-6, enacted by Laws 1992, ch. 33, § 4; 2021, ch. 16, § 3; 2021 (2nd S.S.), ch. 5, § 2; 2023, ch. 207, § 3.

41-5-6.1. Repealed.

41-5-7. Medical expenses and punitive damages.

A. Awards of past and future medical care and related benefits shall not be subject to the limitations of recovery imposed in Section 41-5-6 NMSA 1978.

B. The health care provider shall be liable for all medical care and related benefit payments until the total payments made by or on behalf of it for monetary damages and medical care and related benefits combined equals the health care provider's personal liability limit as provided in Subsection I of Section 41-5-6 NMSA 1978, after which the payments shall be made by the fund.

C. Beginning January 1, 2027, any amounts due from a judgment or settlement against a hospital or outpatient health care facility shall not be paid from the fund if the injury or death occurred after December 31, 2026.

D. This section shall not be construed to prevent a patient and a health care provider from entering into a settlement agreement whereby medical care and related benefits shall be provided for a limited period of time only or to a limited degree.

E. A judgment of punitive damages against a health care provider shall be the personal liability of the health care provider. Punitive damages shall not be paid from the fund or from the proceeds of the health care provider's insurance contract unless the contract expressly provides coverage. Nothing in Section 41-5-6 NMSA 1978 precludes

the award of punitive damages to a patient. Nothing in this subsection authorizes the imposition of liability for punitive damages where that imposition would not be otherwise authorized by law.

History: 1978 Comp., § 41-5-7, enacted by Laws 1992, ch. 33, § 5; 1992, ch. 33, § 6; 2021, ch. 16, § 4.

41-5-8. Medical benefits prior to judgment.

A health care provider named as a defendant in a malpractice claim, or named as a respondent in a proceeding before the medical review commission created in the Medical Malpractice Act, shall have the option of paying for the patient's medical care and related benefits at any time prior to the entry of a judgment. Except as provided in Section 11 [41-5-11 NMSA 1978] of the Medical Malpractice Act, evidence of a health care provider's payment for such benefits shall not be admissible in the trial of the malpractice claim brought against it.

History: 1953 Comp., § 58-33-8, enacted by Laws 1976, ch. 2, § 8.

41-5-9. District court; continuing jurisdiction.

The district court from which final judgment issued shall have continuing jurisdiction in cases where future medical care and related benefits were awarded pursuant to Section 41-5-7 NMSA 1978 for malpractice claims arising from occurrences prior to July 1, 2021.

History: 1953 Comp., § 58-33-9, enacted by Laws 1976, ch. 2, § 9; 2021, ch. 16, § 5.

41-5-10. Repealed.

History: 1953 Comp., § 58-33-10, enacted by Laws 1976, ch. 2, § 10; 1978 Comp., § 41-5-10, repealed by Laws 2021, ch. 16, § 17.

41-5-11. Set-off of advance payments.

A. Evidence of an advance payment is not admissible until there is a final judgment in favor of the patient, in which event the court shall reduce the judgment to the patient to the extent of the advance payment. In jury cases where there is a factual dispute concerning an alleged advance payment, all questions of fact relating to such an advance payment shall be resolved by the jury after it has reached its verdict. The advance payment shall inure to the exclusive benefit of the health care provider or a party making the payment in its behalf. In the event the advance payment exceeds the liability of the defendant or the insurer making it, the court shall order any adjustment necessary to equitably apportion the amount which each defendant is obligated to pay,

exclusive of costs. In no case shall an advance payment in excess of an award be repayable by the person receiving it.

B. If a health care provider should elect to pay for medical care and related benefits at any time prior to the entry of a judgment, as provided in Section 8 [41-5-8 NMSA 1978] of the Medical Malpractice Act, and subsequently is found not to be liable, its legal and equitable right of recovery for all such payments shall not be foreclosed or prejudiced in any way.

History: 1953 Comp., § 58-33-11, enacted by Laws 1976, ch. 2, § 11.

41-5-12. Claims for compensation not assignable.

A patient's claim for compensation under the Medical Malpractice Act is not assignable.

History: 1953 Comp., § 58-33-12, enacted by Laws 1976, ch. 2, § 12.

41-5-13. Limitations.

No claim for malpractice may be brought against a health care provider unless filed within three years after the date that the act of malpractice occurred, except that the times limited for the bringing of actions by minors and incapacitated persons shall be extended so that they shall have one year from and after the age of majority or termination of incapacity within which to commence the actions.

History: 1953 Comp., § 58-33-13, enacted by Laws 1976, ch. 2, § 13; 2021, ch. 16, § 6.

41-5-14. Medical review commission; independent providers.

A. The "New Mexico medical review commission" is created. The function of the New Mexico medical review commission is to provide panels to review all malpractice claims against independent providers who are natural persons covered by the Medical Malpractice Act.

B. Those eligible to sit on a panel shall consist of health care providers licensed pursuant to New Mexico law and residing in New Mexico and members of the state bar.

C. The only cases that a panel will consider are cases involving an alleged act of malpractice occurring in New Mexico by an independent provider qualified under the Medical Malpractice Act. Beginning July 1, 2021, cases involving an alleged act of malpractice by a hospital or outpatient health care facility shall not be considered and such claims shall not be filed with the New Mexico medical review commission.

D. An attorney shall submit a case for the consideration of a panel, prior to filing a complaint in any district court or other court sitting in New Mexico, by addressing an application, in writing, signed by the patient or the patient's attorney, to the director of the New Mexico medical review commission.

E. The director of the New Mexico medical review commission shall be an attorney appointed by and serving at the pleasure of the chief justice of the New Mexico supreme court.

F. The chief justice shall set the director's salary and report the salary to the superintendent in the superintendent's capacity as custodian of the fund.

History: 1953 Comp., § 58-33-14, enacted by Laws 1976, ch. 2, § 14; 2021, ch. 16, § 7.

41-5-15. Commission decision required; application.

A. No malpractice action may be filed in any court against a qualifying independent provider or the independent provider's employer, master or principal based on a theory of respondeat superior or any other derivative theory of recovery before application is made to the New Mexico medical review commission and its decision is rendered; provided, however, that an independent provider and the patient may stipulate to forego the panel process.

B. This application shall contain the following:

(1) the name of the health care provider against which the claims are asserted;

(2) a short and plain statement of the grounds as to why the New Mexico medical review commission has jurisdiction over the claims being asserted;

(3) the specific date or date range when the malpractice allegedly occurred;

(4) so far as known, a brief statement of the facts supporting the patient's malpractice claim; and

(5) a statement authorizing the panel to obtain access to all medical and hospital records and information pertaining to the matter giving rise to the application and, for the purposes of its consideration of the matter only, waiving any claim of privilege as to the contents of those records. Nothing in that statement shall in any way be construed as waiving that privilege for any other purpose or in any other context, in or out of court.

History: 1953 Comp., § 58-33-15, enacted by Laws 1976, ch. 2, § 15; 2021, ch. 16, § 8.

41-5-16. Application procedure.

A. Upon receipt of an application for review, the New Mexico medical review commission's director or the director's designee shall cause to be served a true copy of the application on the independent providers against which claims are asserted. Service shall be effected pursuant to New Mexico law. If the independent provider involved chooses to retain legal counsel, the independent provider's attorney shall informally enter an appearance with the director.

B. The independent provider shall answer the application for review and in addition shall submit a statement authorizing the panel to obtain access to all medical and hospital records and information pertaining to the matter giving rise to the application and, for the purposes of its consideration of the matter only, waiving any claim of privilege as to the contents of those records. Nothing in that statement shall in any way be construed as waiving that privilege for any other purpose or in any other context, in or out of court.

C. In instances where applications are received employing the theory of respondeat superior or some other derivative theory of recovery, the director shall forward such applications to the state professional societies, associations or licensing boards of both the individual independent provider whose alleged malpractice caused the application to be filed and the independent provider named a respondent as employer, master or principal.

History: 1953 Comp., § 58-33-16, enacted by Laws 1976, ch. 2, § 16; 2021, ch. 16, § 9.

41-5-17. Panel selection.

A. Applications for review shall be promptly transmitted by the director of the New Mexico medical review commission to the directors of the independent provider's state professional society or association and the state bar association, who shall each select three panelists within thirty days from the date of transmittal of the application.

B. If no state professional society or association exists or if the independent provider does not belong to a society or association, the director shall transmit the application to the independent provider's state licensing board, which shall in turn select three persons from the independent provider's profession and, where applicable, two persons specializing in the same field or discipline as the independent provider.

C. In cases where there are multiple defendants, a single combined panel shall review the claims against all party defendants. At the discretion of the panel chair, a hearing involving multiple defendants may include fewer than three panelists from the independent provider's profession and fewer than three lawyer panel members per defendant.

D. Except for cases involving multiple defendants, three panel members from the independent provider's profession and three panel members from the state bar association shall sit in review in each case.

E. The director of the medical review commission or the director's delegate, who shall be an attorney, shall sit on each panel and serve as chair.

F. A member shall disqualify the member's self from consideration of a case in which, by virtue of circumstances, the member feels the member's presence on the panel would be inappropriate, considering the purpose of the panel. The director may excuse a proposed panelist from serving.

G. Whenever a party makes and files an affidavit that a panel member selected pursuant to this section cannot, according to the belief of the party making the affidavit, sit in review of the application with impartiality, that panel member shall proceed no further. Another panel member shall be selected by the independent provider's professional association, state licensing board or the state bar association, as the case may be. A party may not disqualify more than three proposed panel members in this manner in any single malpractice claim.

History: 1953 Comp., § 58-33-17, enacted by Laws 1976, ch. 2, § 17; 2021, ch. 16, § 10.

41-5-18. Time and place of hearing.

A date, time and place for hearing shall be fixed by the director of the New Mexico medical review commission and prompt notice of the hearing shall be given to the parties involved, their attorneys and the members of the panel. In no instance shall the date set be more than sixty days after the transmittal by the director of the application for review, unless good cause exists for extending the period. Hearings may be held anywhere in the state, and the director shall give due regard to the convenience of the parties in determining the place of hearing. Upon the request of one party, within ten days of the answer filed by the respondent, the hearing shall be conducted via video conference, including attorneys, witnesses and panel members appearing remotely.

History: 1953 Comp., § 58-33-18, enacted by Laws 1976, ch. 2, § 18; 2021, ch. 16, § 11.

41-5-19. Hearing procedures.

A. At the time set for hearing, the attorney submitting the case for review shall be present and shall make a brief introduction of the case, including a resume of the facts constituting alleged professional malpractice. The independent provider against whom the claim is brought and the independent provider's attorney may be present and may make an introductory statement of the independent provider's case.

B. Both parties may call witnesses to testify before the panel, which witnesses shall be sworn. Medical texts, journals, studies and other documentary evidence relied upon by either party may be offered and admitted if relevant. Written statements of fact of treating independent providers may be reviewed. The monetary damages in any case shall not be a subject of inquiry or discussion.

C. The hearing shall be informal, and no official transcript shall be made. Nothing contained in this subsection shall preclude the recording or transcribing of the testimony by the parties at their own expense.

D. At the conclusion of the hearing, the panel shall deliberate and reach a decision.

History: 1953 Comp., § 58-33-19, enacted by Laws 1976, ch. 2, § 19; 2021, ch. 16, § 12.

41-5-20. Panel deliberations and decision.

A. The deliberations of the panel shall be and remain confidential. Upon consideration of all the relevant material, the panel shall decide only two questions:

(1) whether there is substantial evidence that the acts complained of occurred and that they constitute malpractice; and

(2) whether there is a reasonable medical probability that the patient was injured thereby.

B. All votes of the panel on the two questions for decision shall be by secret ballot. The decision shall be by a majority vote of those voting members of the panel who have sat on the entire case. The decision shall be communicated in writing to the parties and attorneys concerned and a copy thereof shall be retained in the permanent files of the commission.

C. The decision shall in every case be signed for the panel by the chairman, who shall vote only in the event the other members of the panel are evenly divided, and shall contain only the conclusions reached by a majority of its members and the number of members, if any, dissenting therefrom; provided, however, that if the vote is not unanimous, the majority may briefly explain the reasoning and basis for their conclusion, and the dissenters may likewise explain the reasons for disagreement.

D. The report of the medical review panel shall not be admissible as evidence in any action subsequently brought in a court of law. A copy of the report shall be sent to the health care provider's professional licensing board.

E. Panelists and witnesses shall have absolute immunity from civil liability for all communications, findings, opinions and conclusions made in the course and scope of duties prescribed by the Medical Malpractice Act.

F. The panel's decisions shall be without administrative or judicial authority and shall not be binding on any party. The panel shall make no effort to settle or compromise any claim nor express any opinion on the monetary value of any claim.

History: 1953 Comp., § 58-33-20, enacted by Laws 1976, ch. 2, § 20.

41-5-21. Director; rules of procedure.

The director is authorized to adopt and publish rules of procedure necessary to implement and carry out the duties of the medical review commission. No rule shall be adopted, however, which requires a party to make a monetary payment as a condition to bringing a malpractice claim before the medical review panel.

History: 1953 Comp., § 58-33-21, enacted by Laws 1976, ch. 2, § 21.

41-5-22. Tolling of statute of limitation.

The running of the applicable limitation period in a malpractice claim shall be tolled upon submission of the case for the consideration of the panel and shall not commence to run again until thirty days after the panel's final decision is entered in the permanent files of the commission and a copy is served upon the claimant and his attorney by certified mail.

History: 1953 Comp., § 58-33-22, enacted by Laws 1976, ch. 2, § 22.

41-5-23. Provision of expert witness.

In any malpractice claim where the panel has determined that the acts complained of were or reasonably might constitute malpractice and that the patient was or may have been injured by the act, the panel, its members, the director and the professional association concerned will cooperate fully with the patient in retaining a physician qualified in the field of medicine involved, who will consult with, assist in trial preparation and testify on behalf of the patient, upon his payment of a reasonable fee to the same effect as if the physician had been engaged originally by the patient.

History: 1953 Comp., § 58-33-23, enacted by Laws 1976, ch. 2, § 23.

41-5-24. Maintenance of records.

The director shall maintain records of all proceedings before the medical review commission which shall include the nature of the acts or omissions complained of, a brief summary of the evidence presented, the decision of the panel and any majority or dissenting opinions filed. Such records shall not be made public and shall not be subject to subpoena but shall be used solely for the purpose of compiling statistical data and facilitating on-going studies of medical malpractice in New Mexico.

History: 1953 Comp., § 58-33-24, enacted by Laws 1976, ch. 2, § 24.

41-5-25. Patient's compensation fund; third-party administrator; actuarial studies; surcharges; claims; proration; proofs of authenticity.

A. The "patient's compensation fund" is created as a nonreverting fund in the state treasury. The fund consists of money from surcharges, income from investment of the fund and any other money deposited to the credit of the fund. The fund shall be held in trust, deposited in a segregated account in the state treasury and invested by the state investment office and shall not become a part of or revert to the general fund or any other fund of the state. Money from the fund shall be expended only for the purposes of and to the extent provided in the Medical Malpractice Act. All approved expenses of collecting, protecting and administering the fund, including purchasing insurance for the fund, shall be paid from the fund.

B. The superintendent shall contract for the administration and operation of the fund with a qualified, licensed third-party administrator, selected in consultation with the advisory board, no later than January 1, 2022. The third-party administrator shall provide an annual audit of the fund to the superintendent.

C. The superintendent, as custodian of the fund, and the third-party administrator shall be notified by the health care provider or the health care provider's insurer within thirty days of service on the health care provider of a complaint asserting a malpractice claim brought in a court in this state against the health care provider.

D. The superintendent shall levy an annual surcharge on all New Mexico health care providers qualifying under Section 41-5-5 NMSA 1978. The surcharge shall be determined by the superintendent with the advice of the advisory board and based on the annual independent actuarial study of the fund. The surcharges for health care providers, including hospitals and outpatient health care facilities whose qualifications for the fund end on January 1, 2027, shall be based on sound actuarial principles, using data obtained from New Mexico claims and loss experience. A hospital or outpatient health care facility seeking participation in the fund during the remaining qualifying years shall provide, at a minimum, the hospital's or outpatient health care facility's direct and indirect cost information as reported to the federal centers for medicare and medicaid services for all self-insured malpractice claims, including claims and paid loss detail, and the claims and paid loss detail from any professional liability insurance carriers for each hospital or outpatient health care facility and each employed health care provider for the past eight years to the third-party actuary. The same information shall be available to the advisory board for review, including financial information and data, and excluding individually identifying case information, which information shall not be subject to the Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978]. The superintendent, the third-party actuary or the advisory board shall not use or disclose the information for any purpose other than to fulfill the duties pursuant to this subsection.

E. The surcharge shall be collected on the same basis as premiums by each insurer from the health care provider. The surcharge shall be due and payable within thirty days after the premiums for malpractice liability insurance have been received by the insurer from the health care provider in New Mexico. If the surcharge is collected but not paid timely, the superintendent may suspend the certificate of authority of the insurer until the annual premium surcharge is paid.

F. Surcharges shall be set by October 31 of each year for the next calendar year. Beginning in 2021, the surcharges shall be set with the intention of bringing the fund to solvency with no projected deficit by December 31, 2026. All qualified and participating hospitals and outpatient health care facilities shall cure any fund deficit attributable to hospitals and outpatient health care facilities by December 31, 2026.

G. If the fund would be exhausted by payment of all claims allowed during a particular calendar year, then the amounts paid to each patient and other parties obtaining judgments shall be prorated, with each such party receiving an amount equal to the percentage the party's own payment schedule bears to the total of payment schedules outstanding and payable by the fund. Any amounts due and unpaid as a result of such proration shall be paid in the following calendar years.

H. Upon receipt of one of the proofs of authenticity listed in this subsection, reflecting a judgment for damages rendered pursuant to the Medical Malpractice Act, the superintendent shall issue or have issued warrants in accordance with the payment schedule constructed by the court and made a part of its final judgment. The only claim against the fund shall be a voucher or other appropriate request by the superintendent after the superintendent receives:

(1) until January 1, 2022, a certified copy of a final judgment in excess of two hundred thousand dollars ($200,000) against a health care provider;

(2) until January 1, 2022, a certified copy of a court-approved settlement or certification of settlement made prior to initiating suit, signed by both parties, in excess of two hundred thousand dollars ($200,000) against a health care provider; or

(3) until January 1, 2022, a certified copy of a final judgment less than two hundred thousand dollars ($200,000) and an affidavit of a health care provider or its insurer attesting that payments made pursuant to Subsection B of Section 41-5-7 NMSA 1978, combined with the monetary recovery, exceed two hundred thousand dollars ($200,000).

I. On or after January 1, 2022, the amounts specified in Paragraphs (1) through (3) of Subsection H of this section shall be two hundred fifty thousand dollars ($250,000).

History: 1978 Comp., § 41-5-25, enacted by Laws 1992, ch. 33, § 9; 1997, ch. 109, § 1; 2021, ch. 16, § 13.

41-5-25.1. Patient's compensation fund advisory board; created; membership; powers and duties.

A. The "patient's compensation fund advisory board" is created to advise the superintendent and the third-party administrator. The office of superintendent of insurance shall provide staff services to the advisory board. The advisory board shall be established by July 2, 2021.

B. The nine-member advisory board shall consist of:

(1) two representatives from the New Mexico trial lawyers association;

(2) two representatives of a statewide association representing hospitals;

(3) two representatives of a statewide association representing physicians;

(4) two patient or patient advocate representatives; and

(5) one representative of a statewide association representing certified nurse practitioners.

C. Members of the advisory board shall be chosen annually by their organizations, as applicable, and the patient or patient advocate representatives shall be chosen by the chief justice of the supreme court from nominations made by the New Mexico trial lawyers association. Members of the advisory board are entitled to receive per diem and mileage pursuant to the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978], but shall receive no other compensation, perquisite or allowance.

D. The advisory board shall elect a chair and a vice chair. A majority of the members constitutes a quorum for the transaction of business. All decisions of the advisory board shall be by majority vote of the members present.

E. The advisory board shall convene at least twice a year or at the request of the superintendent to:

(1) review the process and data for the setting of the surcharges for all qualified health care providers pursuant to the Medical Malpractice Act;

(2) advise the superintendent concerning surcharge data accumulation and results;

(3) advise the superintendent on the surcharges to be set by the superintendent; and

(4) prepare an annual report to the legislature on the operations and financial condition of the fund no later than the first day of each year's legislative session.

History: 1978 Comp., § 41-5-25.1, enacted by Laws 2021, ch. 16, § 14.

41-5-26. Malpractice coverage.

A. The filing of proof of financial responsibility with the superintendent, as provided in Section 41-5-5 NMSA 1978, shall constitute a conclusive and unqualified acceptance of the provisions of the Medical Malpractice Act.

B. Any provision in a policy attempting to limit or modify the liability of the insurer contrary to the provisions of the Medical Malpractice Act is void.

C. Every policy issued under the Medical Malpractice Act is deemed to include the following provisions:

(1) the insurer assumes all obligations to pay an award imposed against its insured under the provisions of the Medical Malpractice Act; and

(2) any termination of a policy by an insurer shall not be effective unless written notice of such termination has been mailed by certified mail to both the insured and the superintendent at least ninety days prior to the date the cancellation is to become effective, except that an insurer may terminate a policy if a billed premium payment is thirty days past due upon ten days' prior written notice mailed by certified mail to the insured of the failure of the insured to pay premiums, and an insured may terminate his policy by written request to the insurer but the effective date of termination shall be not sooner than ten days after the receipt by the insurer of the written request to terminate. In all cases when a policy is terminated for failure of the insured to pay premiums or at the request of the insured, the insurer shall notify the superintendent in writing immediately of the effective date of termination of the policy. The insurer shall remain liable for all causes of action accruing prior to the effective date of the termination, unless otherwise barred by the provisions of the Medical Malpractice Act.

History: 1953 Comp., § 58-33-26, enacted by Laws 1976, ch. 2, § 26; 1977, ch. 284, § 4.

41-5-26.1. Birthing workforce retention fund created.

A. The "birthing workforce retention fund" is created in the state treasury. The purpose of the fund is to provide malpractice insurance premium assistance for certified nurse-midwives or physicians whose insurance premium costs jeopardize their ability to continue their obstetrics practices in New Mexico. The fund shall consist of appropriations, gifts, grants and donations to the fund. The fund shall be administered by the department of health, and money in the fund is appropriated to the department of health for the purpose of making awards pursuant to the provisions of this section.

B. The department of health shall develop procedures and rules for the application for and award of money from the birthing workforce retention fund, including criteria

upon which to evaluate the need of the applicant and the merits of the application. The rules shall require that the applicant be a certified nurse-midwife licensed in New Mexico or a physician licensed in New Mexico and that the applicant demonstrate need by showing that medicaid patients or indigent patients constitute at least one-half of the obstetric practice of the applicant. The certified nurse-midwife or physician shall have a malpractice liability insurance policy in force. Subject to availability of funds, an award shall not be less than five thousand dollars ($5,000) and not more than ten thousand dollars ($10,000). An award shall be disbursed based on the percentage of medicaid patients or indigent patients seen in the practice and on the certified nurse-midwife's or the physician's intent to continue obstetrics practice in New Mexico during the period covered by the award. An award shall not be granted to provide premium assistance for tail coverage purchased upon practice termination. Priority for the awarding of money from the birthing workforce retention fund shall be in the following order:

(1) to certified nurse-midwives; and

(2) to family practice physicians and obstetricians.

C. The department of health shall annually report to the legislative finance committee on the status of the birthing workforce retention fund.

D. Disbursements from the birthing workforce retention fund shall be made by warrant of the department of finance and administration pursuant to vouchers signed by the secretary of health or the secretary's authorized representative. Any unexpended or unencumbered balance remaining in the fund at the end of a fiscal year shall not revert but shall remain to the credit of the fund.

E. As used in this section, "tail coverage" means insurance coverage providing an extended reporting period for any claims related to conduct that occurred during the period covered by a claims-based medical malpractice policy after it has expired or been canceled.

History: Laws 2008, ch. 73, § 1; 2015, ch. 59, § 1.

41-5-27. Report by district court clerks.

Within thirty days of entry of judgment, the clerk of the district court from which judgment issues shall forward the name of every health care provider against whom a judgment is rendered under the Medical Malpractice Act to the appropriate board of professional registration and examination for review of the fitness of the health care provider to practice his profession. In cases where judgments are entered against hospitals or other institutional health care providers, on the basis of respondeat superior or some other derivative theory of recovery, the clerk of the district court shall forward the name of the individual health care provider whose negligence caused the injury to that health care provider's board of professional registration and examination for such

review. Review of the health care provider's fitness to practice shall be conducted in accordance with law.

History: 1953 Comp., § 58-33-27, enacted by Laws 1976, ch. 2, § 27.

41-5-28. Payment of medical review commission expenses.

Unless otherwise provided by law, expenses incurred in carrying out the powers, duties and functions of the New Mexico medical review commission, including the salary of the director of the commission, shall be paid by the fund. The superintendent, in the superintendent's capacity as custodian of the fund, shall disburse fund money to the director upon receipt of vouchers itemizing expenses incurred by the commission. The director shall supply the chief justice of the New Mexico supreme court with duplicates of all vouchers submitted to the superintendent. Expenses of the commission paid by the fund shall not exceed five hundred thousand dollars ($500,000) in any single calendar year; provided, however, that expenses incurred in defending the commission shall not be subject to that maximum amount.

History: 1953 Comp., § 58-33-28, enacted by Laws 1976, ch. 2, § 29; 1991, ch. 264, § 11; 1997, ch. 108, § 1; 2021, ch. 16, § 15.

41-5-29. Fund reports.

A. On January 31 of each year, the superintendent shall, upon request, provide a written report to all interested persons of the following information:

(1) the beginning and ending calendar year balances in the fund;

(2) an itemized accounting of the total amount of contributions to the fund;

(3) all information regarding closed claims files, including an itemized accounting of all payments paid out; and

(4) any other information regarding the fund that the superintendent or the legislature considers to be important.

B. The superintendent or the superintendent's designee shall track and make publicly available the following information regarding independent outpatient health care facilities:

(1) the total number of claims filed against independent outpatient health care facilities by year;

(2) the total number of settlements paid out on behalf of independent outpatient health care facilities by year; and

(3) the dollar amounts of settlements paid out by the fund on behalf of independent outpatient health care facilities by year.

History: 1978 Comp., § 41-5-29, enacted by Laws 1992, ch. 33, § 10; 2021, ch. 16, § 16; 2023, ch. 207, § 4.

ARTICLE 6
Professional Liability Fund Act (Repealed.)

41-6-1 to 41-6-14. Repealed.

ARTICLE 7
Libel and Slander

41-7-1. [Limitation of tort actions based on single publication or utterance; damages recoverable.]

No person shall have more than one cause of action for damages for libel or slander or invasion of privacy or any other tort founded upon any single publication or exhibition or utterance, such as any one edition of a newspaper or book or magazine or any one presentation to an audience or any one broadcast over radio or television or any one exhibition of a motion picture. Recovery in any action shall include all damages for any such tort suffered by the plaintiff in all jurisdictions.

History: 1953 Comp., § 40-27-30, enacted by Laws 1955, ch. 50, § 1; 1978 Comp., § 30-34-1, recompiled as 1978 Comp., § 41-7-1.

41-7-2. [Judgment as res judicata.]

A judgment in any jurisdiction for or against the plaintiff upon the substantive merits of any action for damages founded upon a single publication or exhibition or utterance as described in Section 1 [41-7-1 NMSA 1978] shall bar any other action for damages by the same plaintiff against the same defendant founded upon the same publication or exhibition or utterance.

History: 1953 Comp., § 40-27-31, enacted by Laws 1955, ch. 50, § 2; 1978 Comp., § 30-34-2, recompiled as 1978 Comp., § 41-7-2.

41-7-3. [Uniformity of interpretation.]

This act [41-7-1 to 41-7-5 NMSA 1978] shall be so interpreted as to effectuate its purpose to make uniform the law of those states or jurisdictions which enact it.

History: 1953 Comp., § 40-27-32, enacted by Laws 1955, ch. 50, § 3; 1978 Comp., § 30-34-3, recompiled as 1978 Comp., § 41-7-3.

41-7-4. [Short title.]

This act [41-7-1 to 41-7-5 NMSA 1978] may be cited as the Uniform Single Publication Act.

History: 1953 Comp., § 40-27-33, enacted by Laws 1955, ch. 50, § 4; 1978 Comp., § 30-34-4, recompiled as 1978 Comp., § 41-7-4.

41-7-5. [Retroactive effect.]

This act [41-7-1 to 41-7-5 NMSA 1978] shall not be retroactive as to causes of action existing on its effective date.

History: 1953 Comp., § 40-27-34, enacted by Laws 1955, ch. 50, § 5; 1978 Comp., § 30-34-5, recompiled as 1978 Comp., § 41-7-5.

41-7-6. [Defamation by radio and television; liability of owner, licensee or operator; compliance with federal law.]

The owner, licensee or operator of a visual or sound radio broadcasting station or network of stations, and the agents or employees of any such owner, licensee or operator, shall not be liable for any damages for any defamatory statement published or uttered in or as a part of a visual or sound radio broadcast, by one other than such owner, licensee or operator, or agent or employee thereof, unless it shall be alleged and proved by the complaining party, that such owner, licensee, operator or such agent or employee, has failed to exercise due care to prevent the publication or utterance of such statement in such broadcast. Provided, however, the exercise of due care shall be construed to include a bona fide compliance with any federal law, or the regulation of any federal regulatory agency, including those laws and regulations fixing the rates that may be charged for use of such facilities for visual or sound broadcasts.

History: 1953 Comp., § 40-27-35, enacted by Laws 1955, ch. 32, § 1; 1978 Comp., § 30-34-6, recompiled as 1978 Comp., § 41-7-6.

ARTICLE 8
Arson Reporting Immunity

41-8-1. Short title.

This act [41-8-1 to 41-8-6 NMSA 1978] may be cited as the "Arson Reporting Immunity Act".

History: Laws 1979, ch. 117, § 1.

41-8-2. Definitions.

As used in the Arson Reporting Immunity Act:

A. "authorized agencies" means the:

(1) state fire marshal or his designate when authorized or charged with the investigation of the fire or explosion at the place where the fire or explosion actually took place;

(2) district attorney responsible for prosecution in the county where the fire occurred;

(3) attorney general when involved in the investigation or responsible for the prosecution of an alleged arson or prosecution of an arson;

(4) county and municipal fire departments authorized or charged with the investigation of fires at the place where the fire actually occurred;

(5) governor's organized crime prevention commission;

(6) county sheriffs' departments and municipal police departments authorized or charged with the investigation of fires at the place where the fire actually occurred; and

(7) New Mexico state police;

B. "authorized agencies" for the purposes of Subsection A of Section 41-8-3 NMSA 1978 also means:

(1) the federal bureau of investigation;

(2) the United States attorney's office when authorized or charged with investigation or prosecution of the fire in question; and

(3) the United States treasury department bureau of alcohol, tobacco and firearms;

C. "relevant" means information having any tendency to make the existence of any fact that is of consequence to the investigation or determination of the issue more probable than it would be without the evidence;

D. "deemed important" means material deemed important if, within the sole discretion of the authorized agency, such material is requested by that authorized agency;

E. "action" as used in this statute, includes nonaction or the failure to take action;

F. "immune" means that neither a civil action nor a criminal prosecution may arise from any action taken pursuant to Section 41-8-3 or 41-8-4 NMSA 1978 where actual malice on the part of the insurance company or authorized agency against the insured is not present; and

G. "insurance company" includes the New Mexico FAIR plan [59A-29-2 to 59A-29-9 NMSA 1978].

History: Laws 1979, ch. 117, § 2; 1987, ch. 276, § 1.

41-8-3. Disclosure and information.

A. Any authorized agency may, in writing, require the insurance company at interest to release to the requesting agency any or all relevant information or evidence deemed important to the authorized agency which the company may have in its possession, relating to the fire loss in question. Relevant information includes but is not limited to:

(1) pertinent insurance policy information relevant to a fire loss under investigation and any application for such policy;

(2) policy premium payment records which are available;

(3) history of previous claims made by the insured; or

(4) material relating to the investigation of the loss, including statements of any person, proof of loss and any other evidence relevant to the investigation.

B. When an insurance company has reason to believe that a fire loss in which it has an interest may be of other than accidental cause, the company shall, in writing, notify an authorized agency and provide it with any or all material developed from the company's inquiry into the fire loss. When an insurance company provides any one of the authorized agencies with notice of a fire loss, it shall be sufficient notice for the purpose of the Arson Reporting Immunity Act. Nothing in this subsection shall abrogate or impair the rights or powers created under Subsection A of this section.

C. The authorized agency provided with information pursuant to Subsection A or B of this section and in furtherance of its own purposes, may release or provide such information to any of the other authorized agencies.

D. Any insurance company providing information to an authorized agency or agencies pursuant to Subsection A or B of this section shall have the right to request relevant information and receive, within a reasonable time, the information requested.

E. Any insurance company or person acting on its behalf or authorized agency who releases information, whether oral or written, pursuant to Subsection A, B or C of this section shall be immune from any liability arising out of a civil action or penalty resulting from a criminal prosecution.

History: Laws 1979, ch. 117, § 3.

41-8-4. Evidence.

Any authorized agency or insurance company described in Section 2 or 3 [41-8-2 or 41-8-3 NMSA 1978] of the Arson Reporting Immunity Act who receives any information furnished pursuant to that act, shall hold the information in confidence except as provided for in Subsection C of Section 3 [41-8-3 NMSA 1978] of that act or until such time as its release is required pursuant to a criminal or civil proceeding.

History: Laws 1979, ch. 117, § 4.

41-8-5. Enforcement.

Any person who fails to hold in confidence information required to be held in confidence by Subsection A of Section 4 [41-8-4 NMSA 1978] of the Arson Reporting Immunity Act, shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not to exceed one thousand dollars ($1,000).

History: Laws 1979, ch. 117, § 5.

41-8-6. Jurisdiction not affected.

The provisions of the Arson Reporting Immunity Act shall not be construed to extend or affect the jurisdiction of any authorized agency specified in that act.

History: Laws 1979, ch. 117, § 6.

ARTICLE 9
Review Organization Immunity

41-9-1. Short title.

This act [41-9-1 to 41-9-7 NMSA 1978] may be cited as the "Review Organization Immunity Act".

History: Laws 1979, ch. 169, § 1.

41-9-2. Definitions.

As used in the Review Organization Immunity Act:

A. "person" means any individual, corporation, partnership, firm or other entity;

B. "health care provider" means any person licensed by the state or permitted by law to provide health care services;

C. "health care services" means services rendered by a health care provider of the type the health care provider is licensed or permitted to provide;

D. "staff" means the members of the governing board, officers and employees of a health care provider which is not an individual; and

E. "review organization" means an organization whose membership is limited to health care providers and staff, except where otherwise provided for by state or federal law, and which is established by a health care provider which is a hospital, by one or more state or local associations of health care providers, by a nonprofit health care plan, by a health maintenance organization, by an emergency medical services system or provider as defined in the Emergency Medical Services Act [24-10B-1 to 24-10B-11 NMSA 1978], or by a professional standards review organization established pursuant to 42 U.S.C., Section 1320c-1 et seq. to gather and review information relating to the care and treatment of patients for the purposes of:

(1) evaluating and improving the quality of health care services rendered in the area or by a health care provider;

(2) reducing morbidity or mortality;

(3) obtaining and disseminating statistics and information relative to the treatment and prevention of diseases, illnesses and injuries;

(4) developing and publishing guidelines showing the norms of health care services in the area or by health care providers;

(5) developing and publishing guidelines designed to keep within reasonable bounds the cost of health care services;

(6) reviewing the nature, quality or cost of health care services provided to enrollees of health maintenance organizations and nonprofit health care plans;

(7) acting as a professional standards review organization pursuant to 42 U.S.C., Section 1320c-1, et seq.; or

(8) determining whether a health care provider shall be granted authority to provide health care services using the health care provider's facilities or whether a health care provider's privileges should be limited, suspended or revoked.

History: Laws 1979, ch. 169, § 2; 1993, ch. 161, § 12.

41-9-3. Limitation on liability for persons providing information to review organization.

No person providing information to a review organization shall be subject to any action for damages or other relief by reason of having furnished such information, unless such information is false and the person providing such information knew or had reason to believe such information was false.

History: Laws 1979, ch. 169, § 3.

41-9-4. Limitation on liability for members of review organizations.

No person who is a member or employee of, who acts in an advisory capacity to or who furnishes counsel or services to a review organization shall be liable for damages or other relief in any action brought by a person or persons whose activities have been or are being scrutinized or reviewed by a review organization by reason of the performance by the person of any duty, function or activity of such review organization, unless the performance of such duty, function or activity was done with malice toward the person affected thereby. No person shall be liable for damages or other relief in any action by reason of the performance of the person of any duty, function or activity as a member of a review organization or by reason of any recommendation or action of the review organization when the person acts in the reasonable belief that the person's action or recommendation is warranted by facts known to the person or the review organization after reasonable efforts to ascertain the facts upon which the review organization's action or recommendation is made.

History: Laws 1979, ch. 169, § 4.

41-9-5. Confidentiality of records of review organization.

A. Except as provided in Subsection B of this section, all data and information acquired by a review organization in the exercise of its duties and functions shall be held in confidence and shall not be disclosed to anyone except to the extent necessary to carry out one or more of the purposes of the review organization or in a judicial appeal from the action of the review organization. No person described in Section 41-9-4 NMSA 1978 shall disclose what transpired at a meeting of a review organization except to the extent necessary to carry out one or more of the purposes of the review organization, in a judicial appeal from the action of the review organization or when subpoenaed by the New Mexico medical board. Information, documents or records

otherwise available from original sources shall not be immune from discovery or use in any civil action merely because they were presented during proceedings of a review organization, nor shall any person who testified before a review organization or who is a member of a review organization be prevented from testifying as to matters within the person's knowledge, but a witness cannot be asked about opinions formed by the witness as a result of the review organization's hearings.

B. Information, documents or records that were not generated exclusively for, but were presented during, proceedings of a review organization shall be produced to the New Mexico medical board by the review organization or any other person possessing the information, documents or records in response to an investigative subpoena issued pursuant to Section 61-6-23 NMSA 1978 and shall be held in confidence by the New Mexico medical board pursuant to 61-6-34 NMSA 1978. Nothing in this section shall be construed to permit the New Mexico medical board to issue subpoenas requesting that any person appear to testify regarding what transpired at a meeting of a review organization or opinions formed as a result of review organization proceedings.

History: Laws 1979, ch. 169, § 5; 2011, ch. 121, § 1.

41-9-6. Penalty for violation.

Any disclosure other than that authorized by the Review Organization Immunity Act of data and information acquired by a review organization or of what transpired at a review organization meeting is guilty of a petty misdemeanor and shall be punished by imprisonment for not to exceed six months or by a fine of not more than one hundred dollars ($100), or both.

History: Laws 1979, ch. 169, § 6.

41-9-7. Protection of patient.

Nothing contained in the Review Organization Immunity Act shall be construed to relieve any person of any liability which the person has incurred or may incur to a patient as a result of furnishing health care services to such patient.

History: Laws 1979, ch. 169, § 7.

ARTICLE 10
Food Donors Liability

41-10-1. Short title.

This act [41-10-1 to 41-10-3 and 41-10-4 NMSA 1978] may be cited as the "Food Donors Liability Act".

History: Laws 1981, ch. 100, § 1.

41-10-2. Definitions.

As used in the Food Donors Liability Act:

A. "canned food" means any food commercially processed and prepared for human consumption;

B. "gleaner" means any person who harvests for free distribution any part or all of an agricultural crop that has been donated by the owner;

C. "nonprofit organization" means any organization which was organized and is operated for charitable purposes and meets the requirements set forth in Section 170 of the Internal Revenue Code;

D. "perishable food" means any food that may spoil or otherwise become unfit for human consumption because of its nature, type or physical condition. "Perishable food" includes but is not limited to fresh or processed meats, poultry, seafood, dairy products, bakery products, eggs in the shell, fresh fruits or vegetables and foods that have been packaged, refrigerated or frozen; and

E. "person who donates food" means any individual, partnership, corporation, association, governmental entity or public or private organization of any character which gives food to others, including restaurants, grocery stores, retail and wholesale businesses and community colleges which give or otherwise provide food, directly or indirectly, to the needy or indigent.

History: Laws 1981, ch. 100, § 2; 1989, ch. 168, § 1; 1993, ch. 133, § 2.

41-10-3. Food donors liability protection; purpose; donors or distributors of canned or perishable food; limit on liability for injury.

A. Notwithstanding any other provision of law, any person who donates food in good faith, including the good-faith donor of any perishable or canned food, apparently fit for human consumption, to a bona fide charitable or nonprofit organization or municipality for free distribution or a gleaner of any perishable food, apparently fit for human consumption, shall not be subject to any criminal penalty or be liable for any civil damages arising from the condition of the food unless an injury arising from the food is caused by the gross negligence, recklessness or intentional conduct of the person who donates the food.

B. Notwithstanding any other provision of law, a bona fide charitable or nonprofit organization or municipality which in good faith receives food, apparently fit for human

consumption, and distributes it at no charge shall not be subject to any criminal penalty or be liable for any civil damages resulting from the condition of the food unless an injury arising from the food is caused by the gross negligence, recklessness or intentional conduct of the organization.

C. This section does not restrict the authority of an appropriate governmental agency to regulate or ban the use of any food for human consumption.

History: Laws 1981, ch. 100, § 3; 1987, ch. 137, § 1; 1989, ch. 168, § 2.

41-10-4. Community college culinary programs as distributors of food.

Culinary programs at community colleges may prepare food to be delivered off campus for donation to social service agency clients or food provider programs to the needy, indigent or hungry.

History: Laws 1993, ch. 133, § 1.

41-10-5. Donated game meat products.

A. Wild game meat products may be donated by hunters, taken to a commercial meat processor for preparation and delivery to charitable, religious or other nonprofit organizations and served for human consumption at no charge if transported, stored and processed according to procedures established by the department of environment.

B. For purposes of this section, "wild game" means deer, elk, antelope, caribou, ibex, oryx and Barbary sheep.

History: Laws 1997, ch. 78, § 1.

ARTICLE 11
Alcoholic Licensees Liability

41-11-1. Tort liability for alcoholic liquor sales or service.

A. No civil liability shall be predicated upon the breach of Section 60-7A-16 NMSA 1978 by a licensee, except in the case of the licensee who:

(1) sold or served alcohol to a person who was intoxicated;

(2) it was reasonably apparent to the licensee that the person buying or apparently receiving service of alcoholic beverages was intoxicated; and

(3) the licensee knew from the circumstances that the person buying or receiving service of alcoholic beverages was intoxicated.

B. No person who was sold or served alcoholic beverages while intoxicated shall be entitled to collect any damages or obtain any other relief against the licensee who sold or served the alcoholic beverages unless the licensee is determined to have acted with gross negligence and reckless disregard for the safety of the person who purchased or was served the alcoholic beverages.

C. No licensee is chargeable with knowledge of previous acts by which a person becomes intoxicated at other locations unknown to the licensee.

D. As used in this section:

(1) "licensee" means a person licensed under the provisions of the Liquor Control Act [60-3A-1 NMSA 1978] and the agents or servants of the licensee; and

(2) "intoxicated" means the impairment of a person's mental and physical faculties as a result of alcoholic beverage use so as to substantially diminish that person's ability to think and act in a manner in which an ordinary [ordinarily] prudent person, in full possession of his faculties, would think and act under like circumstances.

E. No person who has gratuitously provided alcoholic beverages to a guest in a social setting may be held liable in damages to any person for bodily injury, death or property damage arising from the intoxication of the social guest unless the alcoholic beverages were provided recklessly in disregard of the rights of others, including the social guest.

F. A licensee may be civilly liable for the negligent violation of Sections 60-7B-1 and 60-7B-1.1 NMSA 1978. The fact-finder shall consider all the circumstances of the sale in determining whether there is negligence such as the representation used to obtain the alcoholic beverage. It shall not be negligence per se to violate Sections 60-7B-1 and 60-7B-1.1 NMSA 1978.

G. A licensee shall not be held civilly liable pursuant to the provisions of Subsection F of this section except when:

(1) it is demonstrated by the preponderance of the evidence that the licensee knew, or that a reasonable person in the same circumstances would have known, that the person who received the alcoholic beverages was a minor; and

(2) licensee's violation of Section 60-7B-1 or 60-7B-1.1 NMSA 1978 was a proximate cause of the plaintiff's injury, death or property damage.

H. No person may seek relief in a civil claim against a licensee or a social host for injury or death or damage to property which was proximately caused by the sale, service or provision of alcoholic beverages except as provided in this section.

I. Liability arising under this section shall not exceed fifty thousand dollars ($50,000) for bodily injury to or death of one person in each transaction or occurrence or, subject to that limitation for one person, one hundred thousand dollars ($100,000) for bodily injury to or death of two or more persons in each transaction or occurrence, and twenty thousand dollars ($20,000) for property damage in each transaction or occurrence.

History: Laws 1983, ch. 328, § 1; 1985, ch. 191, § 1; 1986, ch. 100, § 1.

ARTICLE 12
Athletic Organization Volunteers

41-12-1. Athletic organization volunteer civil liability; conviction of violation of law required.

Any person or entity who acts without compensation and renders volunteer services as a manager, coach, athletic instructor, umpire, referee or other league official in a formally organized nonprofit sports association for persons under the age of eighteen, to the extent not otherwise covered by insurance, is not liable to any person for any civil damages as a result of any negligent acts or omissions in rendering those services or in conducting or sponsoring that sports program unless:

A. the conduct of that person or entity falls substantially below the standards generally accepted and practiced in the sport in like circumstances by similar persons or similar nonprofit associations rendering those services or conducting that program;

B. it was reasonably foreseeable that the person's or entity's conduct would create a substantial risk of injury or death to the person or property of another; and

C. the harm complained of was not a part of the ordinary give and take common to the particular sport.

History: Laws 1989, ch. 345, § 1.

41-12-2. Interpretation.

Nothing contained in this act [41-12-1, 41-12-2 NMSA 1978] shall be construed so as to affect or limit the liability of any person or entity identified in Section 1 [41-12-1 NMSA 1978] of this act which:

A. relates to the transportation of participants in a sports program to or from a game, event or practice; or

B. is not a part of a formally organized nonprofit sports program.

History: Laws 1989, ch. 345, § 2.

ARTICLE 13
Governmental Immunity

41-13-1. Short title.

Sections 2 through 4 [41-13-1 to 41-13-3 NMSA 1978] of this act may be cited as the "Governmental Immunity Act".

History: Laws 1999, ch. 268, § 2.

41-13-2. Definitions.

As used in the Governmental Immunity Act:

A. "employment" includes services provided by an immune contractor;

B. "governmental entity" means the state or a local public body;

C. "immune contractor" means a person that:

(1) is an independent contractor; and

(2) contracts with a governmental entity to provide:

(a) care for children in the custody of the human services department [health care authority department], corrections department or department of health, as a licensed foster parent, excluding foster parents certified by a licensed child placement agency; or

(b) services to the children, youth and families department or the corrections department as a licensed medical, psychological or dental arts practitioner;

(3) is a member of:

(a) a state or local selection panel established pursuant to the Juvenile Community Corrections Act [Chapter 33, Article 9A NMSA 1978];

(b) a state or local selection panel established pursuant to the Adult Community Corrections Act [Chapter 33, Article 9 NMSA 1978];

(c) the board of directors of the New Mexico comprehensive health insurance pool;

(d) a medical review board, a committee or panel established by the educational retirement board or the retirement board of the public employees retirement association;

(e) the board of directors of the New Mexico educational assistance foundation; or

(f) the board of directors of the New Mexico student loan corporation; or

(4) is a volunteer, employee or board member of a court-created special advocate program;

D. "local public body" means a political subdivision of the state and its agencies, instrumentalities and institutions and a water and natural gas association organized pursuant to Chapter 3, Article 28 NMSA 1978;

E. "public employee" means a natural person that is an officer or employee of a governmental entity; and

F. "state" means the state of New Mexico or any of its branches, agencies, departments, boards, instrumentalities or institutions.

History: Laws 1999, ch. 268, § 3.

41-13-3. Governmental civil immunity established.

A governmental entity, a public employee and an immune contractor are not liable for damages arising out of a claim based upon tort, contract or other civil law claim and caused directly or indirectly by the failure or malfunction of computer hardware, computer software, microchip controlled firmware or other equipment affected by the failure to accurately or properly process dates or times if the failure or malfunction:

A. occurred before December 31, 2005;

B. occurred within the scope of employment of the public employee or within the scope of the contract or the volunteer service program of the immune contractor; and

C. was unforeseeable or was foreseeable but the plan or design, or both, for identifying and preventing it was prepared and implemented in good faith and with the exercise of ordinary care.

History: Laws 1999, ch. 268, § 4.

ARTICLE 14
Space Flight Informed Consent

41-14-1. Short title.

Chapter 41, Article 14 NMSA 1978 may be cited as the "Space Flight Informed Consent Act".

History: Laws 2010, ch. 8, § 1; 2013, ch. 131, § 1.

41-14-2. Definitions.

As used in the Space Flight Informed Consent Act:

A. "crew" means an employee of a space flight entity who performs activities in the course of that employment directly relating to the launch, reentry or other operation of or in a launch vehicle or reentry vehicle that carries human beings;

B. "launch" means placing or trying to place a launch vehicle or reentry vehicle and any payload, crew or participant in a suborbital trajectory, in earth orbit in outer space or otherwise in outer space. "Launch" includes activities involved in the preparation of a launch vehicle or payload for launch when those activities take place at a launch site in New Mexico;

C. "launch vehicle" means:

(1) a vehicle built to operate in, or place a payload or human beings in, outer space; or

(2) a vehicle built to operate in, or transport a payload or human being by, suborbital flight;

D. "participant" means an individual who is not crew and who is carried within a launch vehicle or reentry vehicle;

E. "participant injury" means an injury sustained by a participant, including bodily injury, emotional distress, death, property damage or any other loss arising from the participant's participation in space flight activities;

F. "payload" means an object that a person undertakes to place in outer space by means of a launch vehicle or reentry vehicle, including components of the vehicle specifically designed or adapted for that object;

G. "reenter" or "reentry" means to purposefully return or attempt to return a reentry vehicle and its payload, crew or participants from earth orbit or from outer space to earth;

H. "reentry vehicle" means a vehicle, including a reusable launch vehicle, designed to return from earth orbit or outer space to earth substantially intact;

I. "space flight activities" means:

(1) activities, including crew training, involved in the preparation of a launch vehicle, payload, crew or participant for launch;

(2) the conduct of a launch;

(3) activities, including crew training, involved in the preparation of a reentry vehicle and payload, crew or participant; and

(4) the conduct of a reentry; and

J. "space flight entity" means:

(1) a public or private entity holding a United States federal aviation administration launch, reentry, operator or launch site license, permit or other authorization for space flight activities; or

(2) a manufacturer or supplier of components, services or vehicles used by the entity that has been reviewed by the United States federal aviation administration as part of issuing such a license, permit or authorization.

History: Laws 2010, ch. 8, § 2; 2013, ch. 131, § 2; 2021, ch. 88, § 1.

41-14-3. Limited liability.

A. Except as provided in Subsection B of this section, a space flight entity is not liable for injury to or death of a participant resulting from the inherent risks of space flight activities so long as the warning contained in Section 41-14-4 NMSA 1978 is distributed and signed as required. Except as provided in Subsection B of this section, a participant or participant's representative may not maintain an action against or recover from a space flight entity for the loss, damage or death of the participant resulting exclusively from any of the inherent risks of space flight activities.

B. Subsection A of this section does not prevent or limit the liability of a space flight entity if the space flight entity:

(1) commits an act or omission that constitutes willful, wanton or reckless disregard for the safety of the participant and that act or omission proximately causes injury, damage or death to the participant;

(2) has actual knowledge or reasonably should have known of a dangerous condition on the land or in the facilities or equipment used in the space flight activities and the danger proximately causes injury, damage or death to the participant; or

(3) intentionally injures the participant.

C. A space flight entity shall present to and file with the spaceport authority a certificate of insurance coverage in the amount of at least one million dollars ($1,000,000) that covers liability by the space flight entity for all space flight activities. No space flight entity that fails to maintain the insurance requirements of this section shall receive any of the protections afforded by the Space Flight Informed Consent Act.

D. The limitation on legal liability provided to a space flight entity by the Space Flight Informed Consent Act is in addition to any other limitation of legal liability otherwise provided by law.

History: Laws 2010, ch. 8, § 3; 2013, ch. 131, § 3.

41-14-4. Warning and acknowledgment required.

A. A space flight entity providing space flight activities to a participant, whether the activities occur on or off the site of a facility capable of launching a suborbital flight, shall have each participant sign a warning statement. The warning statement shall contain, at a minimum, the following statement:

"WARNING AND ACKNOWLEDGMENT

I understand and acknowledge that under New Mexico law, there is no liability for injury to or death sustained by a participant in a space flight activity provided by a space flight entity if the injury or death results from the inherent risks of the space flight activity. Injuries caused by the inherent risks of space flight activities may include, among others, death, bodily injury, emotional injury or property damage. I assume all risk of participating in this space flight activity.".

B. Failure to provide the warning statement requirements in this section to a participant shall prevent a space flight entity from invoking the immunity provided by this section with regard to that participant.

History: Laws 2010, ch. 8, § 4.