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AN ACT
RELATING TO CONTROLLED SUBSTANCES; ALLOWING THE MEDICAL USE
OF CANNABIS; ENACTING THE LYNN AND ERIN COMPASSIONATE USE
ACT; AMENDING PROVISIONS OF THE CONTROLLED SUBSTANCES ACT;
PROVIDING PENALTIES.

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

Section 1. SHORT TITLE.--Sections 1 through 7 of this
act may be cited as the "Lynn and Erin Compassionate Use Act"
in honor of Lynn Pierson and Erin Armstrong.

Section 2. PURPOSE OF ACT.--The purpose of the Lynn and
Erin Compassionate Use Act is to allow the beneficial use of
medical cannabis in a regulated system for alleviating
symptoms caused by debilitating medical conditions and their
medical treatments.

Section 3. DEFINITIONS.--As used in the Lynn and Erin
Compassionate Use Act:

A. "adequate supply" means an amount of cannabis,
in any form approved by the department, possessed by a
qualified patient or collectively possessed by a qualified
patient and the qualified patient's primary caregiver that is
determined by rule of the department to be no more than
reasonably necessary to ensure the uninterrupted availability
of cannabis for a period of three months and that is derived
solely from an intrastate source;

1 B. "debilitating medical condition" means:

2 (1) cancer;

3 (2) glaucoma;

4 (3) multiple sclerosis;

5 (4) damage to the nervous tissue of the

6 spinal cord, with objective neurological indication of

7 intractable spasticity;

8 (5) epilepsy;

9 (6) positive status for human

10 immunodeficiency virus or acquired immune deficiency

11 syndrome;

12 (7) admitted into hospice care in accordance

13 with rules promulgated by the department; or

14 (8) any other medical condition, medical

15 treatment or disease as approved by the department;

16 C. "department" means the department of health;

17 D. "licensed producer" means any person or

18 association of persons within New Mexico that the department

19 determines to be qualified to produce, possess, distribute

20 and dispense cannabis pursuant to the Lynn and Erin

21 Compassionate Use Act and that is licensed by the department;

22 E. "practitioner" means a person licensed in New

23 Mexico to prescribe and administer drugs that are subject to

24 the Controlled Substances Act;

25 F. "primary caregiver" means a resident of New

1 Mexico who is at least eighteen years of age and who has been
2 designated by the patient's practitioner as being necessary
3 to take responsibility for managing the well-being of a
4 qualified patient with respect to the medical use of
5 cannabis pursuant to the provisions of the Lynn and Erin
6 Compassionate Use Act;

7 G. "qualified patient" means a resident of New
8 Mexico who has been diagnosed by a practitioner as having a
9 debilitating medical condition and has received written
10 certification and a registry identification card issued
11 pursuant to the Lynn and Erin Compassionate Use Act; and

12 H. "written certification" means a statement in a
13 patient's medical records or a statement signed by a
14 patient's practitioner that, in the practitioner's
15 professional opinion, the patient has a debilitating medical
16 condition and the practitioner believes that the potential
17 health benefits of the medical use of cannabis would likely
18 outweigh the health risks for the patient. A written
19 certification is not valid for more than one year from the
20 date of issuance.

21 Section 4. EXEMPTION FROM CRIMINAL AND CIVIL PENALTIES
22 FOR THE MEDICAL USE OF CANNABIS.--

23 A. A qualified patient shall not be subject to
24 arrest, prosecution or penalty in any manner for the
25 possession of or the medical use of cannabis if the quantity

1 of cannabis does not exceed an adequate supply.

2 B. A qualified patient's primary caregiver shall
3 not be subject to arrest, prosecution or penalty in any
4 manner for the possession of cannabis for medical use by the
5 qualified patient if the quantity of cannabis does not exceed
6 an adequate supply.

7 C. Subsection A of this section shall not apply to
8 a qualified patient under the age of eighteen years, unless:

9 (1) the qualified patient's practitioner has
10 explained the potential risks and benefits of the medical use
11 of cannabis to the qualified patient and to a parent,
12 guardian or person having legal custody of the qualified
13 patient; and

14 (2) a parent, guardian or person having
15 legal custody consents in writing to:

16 (a) allow the qualified patient's
17 medical use of cannabis;

18 (b) serve as the qualified patient's
19 primary caregiver; and

20 (c) control the dosage and the
21 frequency of the medical use of cannabis by the qualified
22 patient.

23 D. A qualified patient or a primary caregiver
24 shall be granted the full legal protections provided in this
25 section if the patient or caregiver is in possession of a

1 registry identification card. If the qualified patient or
2 primary caregiver is not in possession of a registry
3 identification card, the patient or caregiver shall be given
4 an opportunity to produce the registry identification card
5 before any arrest or criminal charges or other penalties are
6 initiated.

7 E. A practitioner shall not be subject to arrest
8 or prosecution, penalized in any manner or denied any right
9 or privilege for recommending the medical use of cannabis or
10 providing written certification for the medical use of
11 cannabis pursuant to the Lynn and Erin Compassionate Use Act.

12 F. A licensed producer shall not be subject to
13 arrest, prosecution or penalty, in any manner, for the
14 production, possession, distribution or dispensing of
15 cannabis pursuant to the Lynn and Erin Compassionate Use Act.

16 G. Any property interest that is possessed, owned
17 or used in connection with the medical use of cannabis, or
18 acts incidental to such use, shall not be harmed, neglected,
19 injured or destroyed while in the possession of state or
20 local law enforcement officials. Any such property interest
21 shall not be forfeited under any state or local law providing
22 for the forfeiture of property except as provided in the
23 Forfeiture Act. Cannabis, paraphernalia or other property
24 seized from a qualified patient or primary caregiver in
25 connection with the claimed medical use of cannabis shall be

1 returned immediately upon the determination by a court or
2 prosecutor that the qualified patient or primary caregiver is
3 entitled to the protections of the provisions of the Lynn and
4 Erin Compassionate Use Act, as may be evidenced by a failure
5 to actively investigate the case, a decision not to
6 prosecute, the dismissal of charges or acquittal.

7 H. A person shall not be subject to arrest or
8 prosecution for a cannabis-related offense for simply being
9 in the presence of the medical use of cannabis as permitted
10 under the provisions of the Lynn and Erin Compassionate Use
11 Act.

12 Section 5. PROHIBITIONS, RESTRICTIONS AND LIMITATIONS
13 ON THE MEDICAL USE OF CANNABIS--CRIMINAL PENALTIES.--

14 A. Participation in a medical use of cannabis
15 program by a qualified patient or primary caregiver does not
16 relieve the qualified patient or primary caregiver from:

17 (1) criminal prosecution or civil penalties
18 for activities not authorized in the Lynn and Erin
19 Compassionate Use Act;

20 (2) liability for damages or criminal
21 prosecution arising out of the operation of a vehicle while
22 under the influence of cannabis; or

23 (3) criminal prosecution or civil penalty
24 for possession or use of cannabis:

25 (a) in a school bus or public vehicle;

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- (b) on school grounds or property;
- (c) in the workplace of the qualified patient's or primary caregiver's employment; or
- (d) at a public park, recreation center, youth center or other public place.

B. A person who makes a fraudulent representation to a law enforcement officer about the person's participation in a medical use of cannabis program to avoid arrest or prosecution for a cannabis-related offense is guilty of a petty misdemeanor and shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

C. If a licensed producer sells, distributes, dispenses or transfers cannabis to a person not approved by the department pursuant to the Lynn and Erin Compassionate Use Act or obtains or transports cannabis outside New Mexico in violation of federal law, the licensed producer shall be subject to arrest, prosecution and civil or criminal penalties pursuant to state law.

Section 6. ADVISORY BOARD CREATED--DUTIES.--The secretary of health shall establish an advisory board consisting of eight practitioners representing the fields of neurology, pain management, medical oncology, psychiatry, infectious disease, family medicine and gynecology. The practitioners shall be nationally board-certified in their area of specialty and knowledgeable about the medical use of

1 cannabis. The members shall be chosen for appointment by the
2 secretary from a list proposed by the New Mexico medical
3 society. A quorum of the advisory board shall consist of
4 three members. The advisory board shall:

5 A. review and recommend to the department for
6 approval additional debilitating medical conditions that
7 would benefit from the medical use of cannabis;

8 B. accept and review petitions to add medical
9 conditions, medical treatments or diseases to the list of
10 debilitating medical conditions that qualify for the medical
11 use of cannabis;

12 C. convene at least twice per year to conduct
13 public hearings and to evaluate petitions, which shall be
14 maintained as confidential personal health information, to
15 add medical conditions, medical treatments or diseases to the
16 list of debilitating medical conditions that qualify for the
17 medical use of cannabis;

18 D. issue recommendations concerning rules to be
19 promulgated for the issuance of the registry identification
20 cards; and

21 E. recommend quantities of cannabis that are
22 necessary to constitute an adequate supply for qualified
23 patients and primary caregivers.

24 Section 7. REGISTRY IDENTIFICATION CARDS--DEPARTMENT
25 RULES--DUTIES.--

1 A. No later than October 1, 2007, and after
2 consultation with the advisory board, the department shall
3 promulgate rules in accordance with the State Rules Act to
4 implement the purpose of the Lynn and Erin Compassionate Use
5 Act. The rules shall:

6 (1) govern the manner in which the
7 department will consider applications for registry
8 identification cards and for the renewal of identification
9 cards for qualified patients and primary caregivers;

10 (2) define the amount of cannabis that is
11 necessary to constitute an adequate supply, including amounts
12 for topical treatments;

13 (3) identify criteria and set forth
14 procedures for including additional medical conditions,
15 medical treatments or diseases to the list of debilitating
16 medical conditions that qualify for the medical use of
17 cannabis. Procedures shall include a petition process and
18 shall allow for public comment and public hearings before the
19 advisory board;

20 (4) set forth additional medical conditions,
21 medical treatments or diseases to the list of debilitating
22 medical conditions that qualify for the medical use of
23 cannabis as recommended by the advisory board;

24 (5) identify requirements for the licensure
25 of producers and cannabis production facilities and set forth

1 procedures to obtain licenses;

2 (6) develop a distribution system for
3 medical cannabis that provides for:

4 (a) cannabis production facilities
5 within New Mexico housed on secured grounds and operated by
6 licensed producers; and

7 (b) distribution of medical cannabis to
8 qualified patients or their primary caregivers to take place
9 at locations that are designated by the department and that
10 are not within three hundred feet of any school, church or
11 daycare center;

12 (7) determine additional duties and
13 responsibilities of the advisory board; and

14 (8) be revised and updated as necessary.

15 B. The department shall issue registry
16 identification cards to a patient and to the primary
17 caregiver for that patient, if any, who submit the following,
18 in accordance with the department's rules:

19 (1) a written certification;

20 (2) the name, address and date of birth of
21 the patient;

22 (3) the name, address and telephone number
23 of the patient's practitioner; and

24 (4) the name, address and date of birth of
25 the patient's primary caregiver, if any.

1 C. The department shall verify the information
2 contained in an application submitted pursuant to Subsection
3 B of this section and shall approve or deny an application
4 within thirty days of receipt. The department may deny an
5 application only if the applicant did not provide the
6 information required pursuant to Subsection B of this section
7 or if the department determines that the information provided
8 is false. A person whose application has been denied shall
9 not reapply for six months from the date of the denial unless
10 otherwise authorized by the department.

11 D. The department shall issue a registry
12 identification card within five days of approving an
13 application, and a card shall expire one year after the date
14 of issuance. A registry identification card shall contain:

15 (1) the name, address and date of birth of
16 the qualified patient and primary caregiver, if any;

17 (2) the date of issuance and expiration date
18 of the registry identification card; and

19 (3) other information that the department
20 may require by rule.

21 E. A person who possesses a registry
22 identification card shall notify the department of any change
23 in the person's name, address, qualified patient's
24 practitioner, qualified patient's primary caregiver or
25 change in status of the qualified patient's debilitating

1 medical condition within ten days of the change.

2 F. Possession of or application for a registry
3 identification card shall not constitute probable cause or
4 give rise to reasonable suspicion for a governmental agency
5 to search the person or property of the person possessing or
6 applying for the card.

7 G. The department shall maintain a confidential
8 file containing the names and addresses of the persons who
9 have either applied for or received a registry identification
10 card. Individual names on the list shall be confidential and
11 not subject to disclosure, except:

12 (1) to authorized employees or agents of the
13 department as necessary to perform the duties of the
14 department pursuant to the provisions of the Lynn and Erin
15 Compassionate Use Act;

16 (2) to authorized employees of state or
17 local law enforcement agencies, but only for the purpose of
18 verifying that a person is lawfully in possession of a
19 registry identification card; or

20 (3) as provided in the federal Health
21 Insurance Portability and Accountability Act of 1996.

22 Section 8. Section 30-31-6 NMSA 1978 (being Laws 1972,
23 Chapter 84, Section 6, as amended) is amended to read:

24 "30-31-6. SCHEDULE I.--The following controlled
25 substances are included in Schedule I:

1 A. any of the following opiates, including their
2 isomers, esters, ethers, salts, and salts of isomers, esters
3 and ethers, unless specifically exempted, whenever the
4 existence of these isomers, esters, ethers and salts is
5 possible within the specific chemical designation:

- 6 (1) acetylmethadol;
- 7 (2) allylprodine;
- 8 (3) alphacetylmethadol;
- 9 (4) alphameprodine;
- 10 (5) alphasmethadol;
- 11 (6) benzethidine;
- 12 (7) betacetylmethadol;
- 13 (8) betameprodine;
- 14 (9) betamethadol;
- 15 (10) betaprodine;
- 16 (11) clonitazene;
- 17 (12) dextromoramide;
- 18 (13) dextrorphan;
- 19 (14) diampromide;
- 20 (15) diethylthiambutene;
- 21 (16) dimenoxadol;
- 22 (17) dimepheptanol;
- 23 (18) dimethylthiambutene;
- 24 (19) dioxaphetyl butyrate;
- 25 (20) dipipanone;

- 1 (21) ethylmethylthiambutene;
- 2 (22) etonitazene;
- 3 (23) etoxeridine;
- 4 (24) furethidine;
- 5 (25) hydroxypethidine;
- 6 (26) ketobemidone;
- 7 (27) levomoramide;
- 8 (28) levophenacymorphan;
- 9 (29) morpheridine;
- 10 (30) noracymethadol;
- 11 (31) norlevorphanol;
- 12 (32) normethadone;
- 13 (33) norpipanone;
- 14 (34) phenadoxone;
- 15 (35) phenampromide;
- 16 (36) phenomorphan;
- 17 (37) phenoperidine;
- 18 (38) piritramide;
- 19 (39) proheptazine;
- 20 (40) properidine;
- 21 (41) racemoramide; and
- 22 (42) trimeperidine;

23 B. any of the following opium derivatives, their
24 salts, isomers and salts of isomers, unless specifically
25 exempted, whenever the existence of these salts, isomers and

1 salts of isomers is possible within the specific chemical
2 designation:

- 3 (1) acetorphine;
- 4 (2) acetyldihydrocodeine;
- 5 (3) benzylmorphine;
- 6 (4) codeine methylbromide;
- 7 (5) codeine-N-oxide;
- 8 (6) cyprenorphine;
- 9 (7) desomorphine;
- 10 (8) dihydromorphine;
- 11 (9) etorphine;
- 12 (10) heroin;
- 13 (11) hydromorphanol;
- 14 (12) methyldesorphine;
- 15 (13) methyldihydromorphine;
- 16 (14) morphine methylbromide;
- 17 (15) morphine methylsulfonate;
- 18 (16) morphine-N-oxide;
- 19 (17) myrophine;
- 20 (18) nicocodeine;
- 21 (19) nicomorphine;
- 22 (20) normorphine;
- 23 (21) pholcodine; and
- 24 (22) thebacon;

25 C. any material, compound, mixture or preparation

1 that contains any quantity of the following hallucinogenic
2 substances, their salts, isomers and salts of isomers, unless
3 specifically exempted, whenever the existence of these salts,
4 isomers and salts of isomers is possible within the specific
5 chemical designation:

- 6 (1) 3,4-methylenedioxy amphetamine;
- 7 (2) 5-methoxy-3,4-methylenedioxy
8 amphetamine;
- 9 (3) 3,4,5-trimethoxy amphetamine;
- 10 (4) bufotenine;
- 11 (5) diethyltryptamine;
- 12 (6) dimethyltryptamine;
- 13 (7) 4-methyl-2,5-dimethoxy amphetamine;
- 14 (8) ibogaine;
- 15 (9) lysergic acid diethylamide;
- 16 (10) marijuana;
- 17 (11) mescaline;
- 18 (12) peyote, except as otherwise provided in
19 the Controlled Substances Act;
- 20 (13) N-ethyl-3-piperidyl benzilate;
- 21 (14) N-methyl-3-piperidyl benzilate;
- 22 (15) psilocybin;
- 23 (16) psilocyn;
- 24 (17) tetrahydrocannabinols; and
- 25 (18) hashish;

1 D. the enumeration of peyote as a controlled
2 substance does not apply to the use of peyote in bona fide
3 religious ceremonies by a bona fide religious organization,
4 and members of the organization so using peyote are exempt
5 from registration. Any person who manufactures peyote for or
6 distributes peyote to the organization or its members shall
7 comply with the federal Comprehensive Drug Abuse Prevention
8 and Control Act of 1970 and all other requirements of law;

9 E. the enumeration of marijuana,
10 tetrahydrocannabinols or chemical derivatives of
11 tetrahydrocannabinol as Schedule I controlled substances does
12 not apply to the use of marijuana, tetrahydrocannabinols or
13 chemical derivatives of tetrahydrocannabinol by certified
14 patients pursuant to the Controlled Substances Therapeutic
15 Research Act or by qualified patients pursuant to the
16 provisions of the Lynn and Erin Compassionate Use Act; and

17 F. controlled substances added to Schedule I by
18 rule adopted by the board pursuant to Section 30-31-3 NMSA
19 1978."

20 Section 9. Section 30-31-7 NMSA 1978 (being Laws 1972,
21 Chapter 84, Section 7, as amended) is amended to read:

22 "30-31-7. SCHEDULE II.--

23 A. The following controlled substances are
24 included in Schedule II:

25 (1) any of the following substances, except

1 those narcotic drugs listed in other schedules, whether
2 produced directly or indirectly by extraction from substances
3 of vegetable origin, or independently by means of chemical
4 synthesis, or by combination of extraction and chemical
5 synthesis:

6 (a) opium and opiate, and any salt,
7 compound, derivative or preparation of opium or opiate;

8 (b) any salt, compound, isomer,
9 derivative or preparation thereof that is chemically
10 equivalent or identical with any of the substances referred
11 to in Subparagraph (a) of this paragraph, but not including
12 the isoquinoline alkaloids of opium;

13 (c) opium poppy and poppy straw;

14 (d) coca leaves and any salt, compound,
15 derivative or preparation of coca leaves, and any salt,
16 compound, derivative or preparation thereof that is
17 chemically equivalent or identical with any of these
18 substances, but not including decocainized coca leaves or
19 extractions that do not contain cocaine or ecgonine;

20 (e) marijuana, but only for the use by
21 certified patients pursuant to the Controlled Substances
22 Therapeutic Research Act or by qualified patients pursuant to
23 the provisions of the Lynn and Erin Compassionate Use Act;
24 and

25 (f) tetrahydrocannabinols or chemical

1 derivatives of tetrahydrocannabinol, but only for the use by
2 certified patients pursuant to the Controlled Substances
3 Therapeutic Research Act or by qualified patients pursuant to
4 the provisions of the Lynn and Erin Compassionate Use Act.

5 Marijuana, tetrahydrocannabinols or chemical derivatives
6 of tetrahydrocannabinol shall be considered Schedule II
7 controlled substances only for the purposes enumerated in the
8 Controlled Substances Therapeutic Research Act or the Lynn
9 and Erin Compassionate Use Act;

10 (2) any of the following opiates, including
11 their isomers, esters, ethers, salts and salts of isomers,
12 whenever the existence of these isomers, esters, ethers and
13 salts is possible within the specific chemical designation:

- 14 (a) alphaprodine;
- 15 (b) anileridine;
- 16 (c) bezitramide;
- 17 (d) dihydrocodeine;
- 18 (e) diphenoxylate;
- 19 (f) fentanyl;
- 20 (g) hydromorphone;
- 21 (h) isomethadone;
- 22 (i) levomethorphan;
- 23 (j) levorphanol;
- 24 (k) meperidine;
- 25 (l) metazocine;

- 1 (m) methadone;
- 2 (n) methadone--intermediate,
3 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
- 4 (o) moramide--intermediate,
5 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid;
- 6 (p) oxycodone;
- 7 (q) pethidine;
- 8 (r) pethidine--intermediate--A,
9 4-cyano-1-methyl-4-phenylpiperidine;
- 10 (s) pethidine--intermediate--B,
11 ethyl-4-phenyl-piperidine-4-carboxylate;
- 12 (t) pethidine--intermediate--C,
13 1-methyl-4-phenylpiperidine-4-carboxylic acid;
- 14 (u) phenazocine;
- 15 (v) piminodine;
- 16 (w) racemethorphan; and
- 17 (x) racemorphan;

18 (3) unless listed in another schedule, any
19 material, compound, mixture or preparation that contains any
20 quantity of the following substances having a potential for
21 abuse associated with a stimulant effect on the central
22 nervous system:

- 23 (a) amphetamine, its salts, optical
24 isomers and salts of its optical isomers;
- 25 (b) phenmetrazine and its salts;

1 (c) methamphetamine, its salts, isomers
2 and salts of isomers; and

3 (d) methylphenidate; and

4 (4) controlled substances added to Schedule
5 II by rule adopted by the board pursuant to Section 30-31-3
6 NMSA 1978.

7 B. Where methadone is prescribed, administered or
8 dispensed by a practitioner of a drug abuse rehabilitation
9 program while acting in the course of the practitioner's
10 professional practice, or otherwise lawfully obtained or
11 possessed by a person, such person shall not possess such
12 methadone beyond the date stamped or typed on the label of
13 the container of the methadone, nor shall any person possess
14 methadone except in the container in which it was originally
15 administered or dispensed to such person, and such container
16 shall include a label showing the name of the prescribing
17 physician or practitioner, the identity of methadone, the
18 name of the ultimate user, the date when the methadone is to
19 be administered to or used or consumed by the named ultimate
20 user shown on the label and a warning on the label of the
21 methadone container that the ultimate user must use, consume
22 or administer to the ultimate user the methadone in such
23 container. Any person who violates this subsection is guilty
24 of a felony and shall be punished by imprisonment for not
25 less than one year nor more than five years, or by a fine of

1 up to five thousand dollars (\$5,000), or both."

2 Section 10. TEMPORARY PROVISION.--

3 A. During the period between July 1, 2007 and
4 thirty days after the effective date of rules promulgated by
5 the department of health pursuant to Subsection A of Section
6 7 of the Lynn and Erin Compassionate Use Act, a person who
7 would be eligible to participate in the medical use of
8 cannabis program as a qualified patient, but for the lack of
9 effective rules concerning registry identification cards,
10 licensed producers, cannabis production facilities,
11 distribution system and adequate supply, may obtain a written
12 certification from a practitioner and upon presentation of
13 that certification to the department of health, the
14 department shall issue a temporary certification for
15 participation in the program. The department of health shall
16 maintain a list of all temporary certificates issued pursuant
17 to this section.

18 B. A person possessing a temporary certificate and
19 the person's primary caregiver are not subject to arrest,
20 prosecution, civil or criminal penalty or denial of any right
21 or privilege for possessing cannabis if the amount of
22 cannabis possessed collectively is not more than the amount
23 that is specified on the temporary certificate issued by the
24 department of health.

25 C. A practitioner shall not be subject to arrest

1 or prosecution, penalized in any manner or denied any right
2 or privilege for recommending the medical use of cannabis or
3 providing written certification for the medical use of
4 cannabis pursuant to the Lynn and Erin Compassionate Use Act
5 on or after July 1, 2007.

6 Section 11. SEVERABILITY.--If any part or application
7 of the Lynn and Erin Compassionate Use Act is held invalid,
8 the remainder or its application to other situations or
9 persons shall not be affected. Failure to promulgate rules
10 or implement any provision of the Lynn and Erin Compassionate
11 Use Act shall not interfere with the remaining protections
12 provided by that act.

13 Section 12. EFFECTIVE DATE.--The effective date of the
14 provisions of this act is July 1, 2007. _____

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