AN ACT

RELATING TO ANIMALS; AUTHORIZING EUTHANASIA TECHNICIANS TO PURCHASE, POSSESS AND ADMINISTER CONTROLLED SUBSTANCES FOR THE EUTHANASIA AND PRE-EUTHANASIA OF ANIMALS; CHANGING THE NAME OF THE ANIMAL SHELTERING SERVICES ACT AND THE ANIMAL SHELTERING SERVICES BOARD; CHANGING CERTAIN REQUIREMENTS AFFECTING THE BOARD AND EUTHANASIA AGENCIES; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2008.

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

Section 1. Section 26-1-2 NMSA 1978 (being Laws 1967, Chapter 23, Section 2, as amended by Laws 2008, Chapter 9, Section 3 and by Laws 2008, Chapter 44, Section 4) is amended to read:

"26-1-2. DEFINITIONS.--As used in the New Mexico Drug, Device and Cosmetic Act:

A. "board" means the board of pharmacy or its duly authorized agent;

B. "person" includes an individual, partnership, corporation, association, institution or establishment;

C. "biological product" means a virus, therapeutic serum, toxin, antitoxin or analogous product applicable to the prevention, treatment or cure of diseases or injuries of humans and domestic animals and, as used within the meaning of this definition:

(1) a "virus" is interpreted to be a product containing the minute living cause of an infectious disease and includes filterable viruses, bacteria, rickettsia, fungi and protozoa;

(2) a "therapeutic serum" is a product obtained from blood by removing the clot or clot components and the blood cells;

(3) a "toxin" is a product containing a soluble substance poisonous to laboratory animals or humans in doses of one milliliter or less of the product and having the property, following the injection of nonfatal doses into an animal, or causing to be produced therein another soluble substance that specifically neutralizes the poisonous substance and that is demonstrable in the serum of the animal thus immunized; and

(4) an "antitoxin" is a product containing the soluble substance in serum or other body fluid of an immunized animal that specifically neutralizes the toxin against which the animal is immune;

D. "controlled substance" means a drug, substance or immediate precursor enumerated in Schedules I through V of the Controlled Substances Act;

E. "drug" means articles:

(1) recognized in an official compendium;

(2) intended for use in the diagnosis, cure,

mitigation, treatment or prevention of disease in humans or other animals and includes the domestic animal biological products regulated under the federal Virus-Serum-Toxin Act, 37 Stat 832-833, 21 U.S.C. 151-158, and the biological products applicable to humans regulated under Federal 58 Stat 690, as amended, 42 U.S.C. 216, Section 351, 58 Stat 702, as amended, and 42 U.S.C. 262;

(3) other than food, that affect the structure or any function of the human body or the bodies of other animals; and

(4) intended for use as a component of Paragraph (1), (2) or (3) of this subsection, but does not include devices or their component parts or accessories;

F. "dangerous drug" means a drug, other than a controlled substance enumerated in Schedule I of the Controlled Substances Act, that because of a potentiality for harmful effect or the method of its use or the collateral measures necessary to its use is not safe except under the supervision of a practitioner licensed by law to direct the use of such drug and hence for which adequate directions for use cannot be prepared. "Adequate directions for use" means directions under which the layperson can use a drug or device safely and for the purposes for which it is intended. A drug shall be dispensed only upon the prescription of a practitioner licensed by law to administer or prescribe the

drug if it:

(1) is a habit-forming drug and contains any quantity of a narcotic or hypnotic substance or a chemical derivative of such substance that has been found under the federal act and the board to be habit forming;

(2) because of its toxicity or other potential for harmful effect or the method of its use or the collateral measures necessary to its use is not safe for use except under the supervision of a practitioner licensed by law to administer or prescribe the drug;

(3) is limited by an approved application by Section 505 of the federal act to the use under the professional supervision of a practitioner licensed by law to administer or prescribe the drug;

(4) bears the legend: "Caution: federal law prohibits dispensing without prescription.";

(5) bears the legend: "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian."; or

(6) bears the legend "RX only";

G. "counterfeit drug" means a drug that is deliberately and fraudulently mislabeled with respect to its identity, ingredients or sources. Types of such pharmaceutical counterfeits may include:

(1) "identical copies", which are

counterfeits made with the same ingredients, formulas and packaging as the originals but not made by the original manufacturer;

(2) "look-alikes", which are products that feature high-quality packaging and convincing appearances but contain little or no active ingredients and may contain harmful substances;

(3) "rejects", which are drugs that have been rejected by the manufacturer for not meeting quality standards; and

(4) "relabels", which are drugs that have passed their expiration dates or have been distributed by unauthorized foreign sources and may include placebos created for late-phase clinical trials;

H. "device", except when used in Subsection P of this section and in Subsection G of Section 26-1-3, Subsection L and Paragraph (4) of Subsection A of Section 26-1-11 and Subsection C of Section 26-1-24 NMSA 1978, means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent or other similar or related article, including any component, part or accessory, that is:

(1) recognized in an official compendium;

(2) intended for use in the diagnosis of disease or other conditions or in the cure, mitigation, treatment or prevention of disease in humans or other animals;

or

(3) intended to affect the structure or a function of the human body or the bodies of other animals and that does not achieve any of its principal intended purposes through chemical action within or on the human body or the bodies of other animals and that is not dependent on being metabolized for achievement of any of its principal intended purposes;

I. "prescription" means an order given individually for the person for whom prescribed, either directly from a licensed practitioner or the practitioner's agent to the pharmacist, including by means of electronic transmission, or indirectly by means of a written order signed by the prescriber, and bearing the name and address of the prescriber, the prescriber's license classification, the name and address of the patient, the name and quantity of the drug prescribed, directions for use and the date of issue;

J. "practitioner" means a certified advanced practice chiropractic physician, physician, doctor of oriental medicine, dentist, veterinarian, euthanasia technician, certified nurse practitioner, clinical nurse specialist, pharmacist, pharmacist clinician, certified nurse-midwife, physician assistant, prescribing psychologist or other person licensed or certified to prescribe and administer drugs that are subject to the New Mexico Drug, Device and Cosmetic Act;

K. "cosmetic" means:

(1) articles intended to be rubbed, poured, sprinkled or sprayed on, introduced into or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness or altering the appearance; and

(2) articles intended for use as a component of any articles enumerated in Paragraph (1) of this subsection, except that the term shall not include soap;

L. "official compendium" means the official United States pharmacopoeia national formulary or the official homeopathic pharmacopoeia of the United States or any supplement to either of them;

M. "label" means a display of written, printed or graphic matter upon the immediate container of an article. A requirement made by or under the authority of the New Mexico Drug, Device and Cosmetic Act that any word, statement or other information appear on the label shall not be considered to be complied with unless the word, statement or other information also appears on the outside container or wrapper, if any, of the retail package of the article or is easily legible through the outside container or wrapper;

N. "immediate container" does not include package liners;

O. "labeling" means all labels and other written,

printed or graphic matter:

(1) on an article or its containers or wrappers; or

(2) accompanying an article;

P. "misbranded" means a label to an article that is misleading. In determining whether the label is misleading, there shall be taken into account, among other things, not only representations made or suggested by statement, word, design, device or any combination of the foregoing, but also the extent to which the label fails to reveal facts material in the light of such representations or material with respect to consequences that may result from the use of the article to which the label relates under the conditions of use prescribed in the label or under such conditions of use as are customary or usual;

Q. "advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or that are likely to induce, directly or indirectly, the purchase of drugs, devices or cosmetics;

R. "antiseptic", when used in the labeling or advertisement of an antiseptic, shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be or represented as an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder or

such other use as involves prolonged contact with the body;

S. "new drug" means a drug:

(1) the composition of which is such that the drug is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and efficacy of drugs, as safe and effective for use under the conditions prescribed, recommended or suggested in the labeling thereof; or

(2) the composition of which is such that the drug, as a result of investigation to determine its safety and efficacy for use under such conditions, has become so recognized, but that has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions;

T. "contaminated with filth" applies to a drug, device or cosmetic not securely protected from dirt, dust and, as far as may be necessary by all reasonable means, from all foreign or injurious contaminations, or a drug, device or cosmetic found to contain dirt, dust, foreign or injurious contamination or infestation;

U. "selling of drugs, devices or cosmetics" shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession and holding of any such article for sale and the sale and the supplying or applying of any such article in the conduct of a drug or

cosmetic establishment;

V. "color additive" means a material that:

(1) is a dye, pigment or other substance made by a process of synthesis or similar artifice or extracted, isolated or otherwise derived, with or without intermediate or final change of identity, from a vegetable, mineral, animal or other source; or

(2) when added or applied to a drug or cosmetic or to the human body or a part thereof, is capable, alone or through reaction with other substances, of imparting color thereto; except that such term does not include any material that has been or hereafter is exempted under the federal act;

W. "federal act" means the Federal Food, Drug and Cosmetic Act;

X. "restricted device" means a device for which the sale, distribution or use is lawful only upon the written or oral authorization of a practitioner licensed by law to administer, prescribe or use the device and for which the federal food and drug administration requires special training or skills of the practitioner to use or prescribe. This definition does not include custom devices defined in the federal act and exempt from performance standards or premarket approval requirements under Section 520(b) of the federal act;

Y. "prescription device" means a device that,

because of its potential for harm, the method of its use or the collateral measures necessary to its use, is not safe except under the supervision of a practitioner licensed in this state to direct the use of such device and for which "adequate directions for use" cannot be prepared, but that bears the label: "Caution: federal law restricts this device to sale by or on the order of a _____", the blank to be filled with the word "physician", "physician assistant", "certified advanced practice chiropractic physician", "doctor of oriental medicine", "dentist", "veterinarian", "euthanasia technician", "certified nurse practitioner", "clinical nurse specialist", "pharmacist", "pharmacist clinician" or "certified nurse-midwife" or with the descriptive designation of any other practitioner licensed in this state to use or order the use of the device;

Z. "valid practitioner-patient relationship" means a professional relationship, as defined by the practitioner's licensing board, between the practitioner and the patient; and

AA. "pedigree" means the recorded history of a drug."

Section 2. Section 30-31-2 NMSA 1978 (being Laws 1972, Chapter 84, Section 2, as amended) is amended to read:

"30-31-2. DEFINITIONS.--As used in the Controlled Substances Act:

A. "administer" means the direct application of a

controlled substance by any means to the body of a patient or research subject by a practitioner or the practitioner's agent;

B. "agent" includes an authorized person who acts on behalf of a manufacturer, distributor or dispenser. It does not include a common or contract carrier, public warehouseperson or employee of the carrier or warehouseperson;

C. "board" means the board of pharmacy;

D. "bureau" means the narcotic and dangerous drug section of the criminal division of the United States department of justice, or its successor agency;

E. "controlled substance" means a drug or substance listed in Schedules I through V of the Controlled Substances Act or rules adopted thereto;

F. "counterfeit substance" means a controlled substance that bears the unauthorized trademark, trade name, imprint, number, device or other identifying mark or likeness of a manufacturer, distributor or dispenser other than the person who in fact manufactured, distributed or dispensed the controlled substance;

G. "deliver" means the actual, constructive or attempted transfer from one person to another of a controlled substance or controlled substance analog, whether or not there is an agency relationship;

H. "dispense" means to deliver a controlled

substance to an ultimate user or research subject pursuant to the lawful order of a practitioner, including the administering, prescribing, packaging, labeling or compounding necessary to prepare the controlled substance for that delivery;

I. "dispenser" means a practitioner who dispenses and includes hospitals, pharmacies and clinics where controlled substances are dispensed;

J. "distribute" means to deliver other than by administering or dispensing a controlled substance or controlled substance analog;

K. "drug" or "substance" means substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States or official national formulary or any respective supplement to those publications. It does not include devices or their components, parts or accessories;

L. "hashish" means the resin extracted from any part of marijuana, whether growing or not, and every compound, manufacture, salt, derivative, mixture or preparation of such resins;

M. "manufacture" means the production, preparation, compounding, conversion or processing of a controlled substance or controlled substance analog by extraction from substances of natural origin or independently

by means of chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled substance:

(1) by a practitioner as an incident to administering or dispensing a controlled substance in the course of the practitioner's professional practice; or

(2) by a practitioner, or by the practitioner's agent under the practitioner's supervision, for the purpose of or as an incident to research, teaching or chemical analysis and not for sale;

N. "marijuana" means all parts of the plant cannabis, including any and all varieties, species and subspecies of the genus Cannabis, whether growing or not, the seeds thereof and every compound, manufacture, salt, derivative, mixture or preparation of the plant or its seeds. It does not include the mature stalks of the plant, hashish, tetrahydrocannabinols extracted or isolated from marijuana, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil or cake, or the sterilized seed of the plant that is incapable of germination;

O. "narcotic drug" means any of the following,

whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis:

(1) opium and opiate and any salt, compound, derivative or preparation of opium or opiate;

(2) any salt, compound, isomer, derivative or preparation that is a chemical equivalent of any of the substances referred to in Paragraph (1) of this subsection, except the isoquinoline alkaloids of opium;

(3) opium poppy and poppy straw, including all parts of the plant of the species Papaver somniferum L. except its seeds; or

(4) coca leaves and any salt, compound, derivative or preparation of coca leaves, any salt, compound, isomer, derivative or preparation that is a chemical equivalent of any of these substances except decocainized coca leaves or extractions of coca leaves that do not contain cocaine or ecgonine;

P. "opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. "Opiate" does not include, unless specifically designated as controlled under Section 30-31-5 NMSA 1978, the dextrorotatory isomer of

3-methoxy-n-methylmorphinan and its salts, dextromethorphan. "Opiate" does include its racemic and levorotatory forms;

Q. "person" means an individual, partnership, corporation, association, institution, political subdivision, government agency or other legal entity;

R. "practitioner" means a physician, certified advanced practice chiropractic physician, doctor of oriental medicine, dentist, physician assistant, certified nurse practitioner, clinical nurse specialist, certified nurse-midwife, prescribing psychologist, veterinarian, euthanasia technician, pharmacist, pharmacist clinician or other person licensed or certified to prescribe and administer drugs that are subject to the Controlled Substances Act;

S. "prescription" means an order given individually for the person for whom is prescribed a controlled substance, either directly from a licensed practitioner or the practitioner's agent to the pharmacist, including by means of electronic transmission, or indirectly by means of a written order signed by the prescriber, bearing the name and address of the prescriber, the prescriber's license classification, the name and address of the patient, the name and quantity of the drug prescribed, directions for use and the date of issue and in accordance with the Controlled Substances Act or rules adopted thereto;

T. "scientific investigator" means a person

registered to conduct research with controlled substances in the course of the person's professional practice or research and includes analytical laboratories;

U. "ultimate user" means a person who lawfully possesses a controlled substance for the person's own use or for the use of a member of the person's household or for administering to an animal under the care, custody and control of the person or by a member of the person's household;

V. "drug paraphernalia" means all equipment, products and materials of any kind that are used, intended for use or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance or controlled substance analog in violation of the Controlled Substances Act. It includes:

(1) kits used, intended for use or designed for use in planting, propagating, cultivating, growing or harvesting any species of plant that is a controlled substance or controlled substance analog or from which a controlled substance can be derived;

(2) kits used, intended for use or designed for use in manufacturing, compounding, converting, producing,

processing or preparing controlled substances or controlled substance analogs;

(3) isomerization devices used, intended for use or designed for use in increasing the potency of any species of plant that is a controlled substance;

(4) testing equipment used, intended for use or designed for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances or controlled substance analogs;

(5) scales or balances used, intended for use or designed for use in weighing or measuring controlled substances or controlled substance analogs;

(6) diluents and adulterants, such as quinine hydrochloride, mannitol, mannite dextrose and lactose, used, intended for use or designed for use in cutting controlled substances or controlled substance analogs;

(7) separation gins and sifters used, intended for use or designed for use in removing twigs and seeds from, or in otherwise cleaning and refining, marijuana;

(8) blenders, bowls, containers, spoons and mixing devices used, intended for use or designed for use in compounding controlled substances or controlled substance analogs;

(9) capsules, balloons, envelopes and other containers used, intended for use or designed for use in

packaging small quantities of controlled substances or controlled substance analogs;

(10) containers and other objects used, intended for use or designed for use in storing or concealing controlled substances or controlled substance analogs;

(11) hypodermic syringes, needles and other objects used, intended for use or designed for use in parenterally injecting controlled substances or controlled substance analogs into the human body;

(12) objects used, intended for use or designed for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish or hashish oil into the human body, such as:

(a) metal, wooden, acrylic, glass, stone, plastic or ceramic pipes, with or without screens, permanent screens, hashish heads or punctured metal bowls;

(b) water pipes;

(c) carburetion tubes and devices;

(d) smoking and carburetion masks;

(e) roach clips, meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small to hold in the hand;

(f) miniature cocaine spoons and cocaine vials;

(g) chamber pipes;

(h) carburetor pipes;

(i) electric pipes;

(j) air-driven pipes;

(k) chilams;

(l) bongs; or

(m) ice pipes or chillers; and

(13) in determining whether an object is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:

(a) statements by the owner or by anyone in control of the object concerning its use;

(b) the proximity of the object, in time and space, to a direct violation of the Controlled Substances Act or any other law relating to controlled substances or controlled substance analogs;

(c) the proximity of the object to controlled substances or controlled substance analogs;

(d) the existence of any residue of a controlled substance or controlled substance analog on the object;

(e) instructions, written or oral, provided with the object concerning its use;

(f) descriptive materials accompanying the object that explain or depict its use;

(g) the manner in which the object is displayed for sale; and

(h) expert testimony concerning its use;

W. "controlled substance analog" means a substance other than a controlled substance that has a chemical structure substantially similar to that of a controlled substance in Schedule I, II, III, IV or V or that was specifically designed to produce effects substantially similar to that of controlled substances in Schedule I, II, III, IV or V. Examples of chemical classes in which controlled substance analogs are found include the following:

(1) phenethylamines;

(2) N-substituted piperidines;

(3) morphinans;

(4) ecgonines;

(5) quinazolinones;

(6) substituted indoles; and

(7) arylcycloalkylamines.

Specifically excluded from the definition of "controlled substance analog" are those substances that are generally recognized as safe and effective within the meaning of the Federal Food, Drug and Cosmetic Act or have been manufactured, distributed or possessed in conformance with the provisions of an approved new drug application or an exemption for

investigational use within the meaning of Section 505 of the Federal Food, Drug and Cosmetic Act;

X. "human consumption" includes application, injection, inhalation, ingestion or any other manner of introduction;

Y. "drug-free school zone" means a public school, parochial school or private school or property that is used for a public, parochial or private school purpose and the area within one thousand feet of the school property line, but it does not mean any post-secondary school; and

Z. "valid practitioner-patient relationship" means a professional relationship, as defined by the practitioner's licensing board, between the practitioner and the patient."

Section 3. Section 77-1B-1 NMSA 1978 (being Laws 2007, Chapter 60, Section 1) is amended to read:

"77-1B-1. SHORT TITLE.--Chapter 77, Article 1B NMSA 1978 may be cited as the "Animal Sheltering Act"."

Section 4. Section 77-1B-2 NMSA 1978 (being Laws 2007, Chapter 60, Section 2) is amended to read:

"77-1B-2. DEFINITIONS.--As used in the Animal Sheltering Act:

A. "animal" means any animal, except humans, not defined as "livestock" in Subsection L of this section;

B. "animal shelter":

(1) means:

(a) a county or municipal facility that provides shelter to animals on a regular basis, including a dog pound; and

(b) a private humane society or a private animal shelter that temporarily houses stray, unwanted or injured animals through administrative or contractual arrangements with a local government agency; and

(2) does not include a municipal zoological park;

C. "board" means the animal sheltering board;

D. "department" means the regulation and licensing department;

E. "disposition" means adoption of an animal; return of an animal to the owner; release of an animal to a rescue organization; release of an animal to another animal shelter or to a rehabilitator licensed by the department of game and fish or the United States fish and wildlife service; or euthanasia of an animal;

F. "emergency field euthanasia" means the process defined by rule of the board to cause the death of an animal in an emergency situation when safe and humane transport of the animal is not possible;

G. "euthanasia" means to produce a humane death of an animal by standards deemed acceptable by the board as set forth in its rules;

H. "euthanasia agency" means a facility that provides shelter to animals on a regular basis, including a dog pound, a humane society or a public or private shelter facility that temporarily houses stray, unwanted or injured animals, and that performs euthanasia;

I. "euthanasia drugs" means non-narcotic schedule II or schedule III substances and chemicals as set forth in the Controlled Substances Act that are used for the purposes of euthanasia and pre-euthanasia of animals;

J. "euthanasia instructor" means a veterinarian or a euthanasia technician certified by the board to instruct other individuals in euthanasia techniques;

K. "euthanasia technician" means a person licensed by the board to euthanize animals for a euthanasia agency;

L. "livestock" means all domestic or domesticated animals that are used or raised on a farm or ranch and exotic animals in captivity and includes horses, asses, mules, cattle, sheep, goats, swine, bison, poultry, ostriches, emus, rheas, camelids and farmed cervidae but does not include canine or feline animals;

M. "rescue organization" means an organization that rescues animals and is not involved in the breeding of animals;

N. "supervising veterinarian" means a person who is a veterinarian, who holds both a valid New Mexico

controlled substance license and a valid federal drug enforcement agency license and who approves the drug protocols and the procurement and administration of all pharmaceuticals; and

O. "veterinarian" means a person who is licensed as a doctor of veterinary medicine by the board of veterinary medicine pursuant to the Veterinary Practice Act."

Section 5. Section 77-1B-3 NMSA 1978 (being Laws 2007, Chapter 60, Section 3) is amended to read:

"77-1B-3. ANIMAL SHELTERING BOARD CREATED--MEMBERS--QUALIFICATIONS--TERMS--VACANCIES--REMOVAL.--

A. The "animal sheltering board" is created. The board shall consist of nine members as follows:

(1) one euthanasia agency employee with training and education in euthanasia;

(2) one veterinarian who has provided paid or unpaid services to an animal shelter;

(3) one representative from a nonprofit animal advocacy group;

(4) one member of the public;

(5) a manager or director of a New Mexico facility that provides shelter to animals on a regular basis, provided that the manager or director selected is trained in animal shelter standards;

(6) one representative of the New Mexico

association of counties;

(7) one representative of the New Mexico municipal league;

(8) one member of a rescue organization; and

(9) one member of the domestic pet breeder community.

B. No more than two board members shall be appointed from any one county within the state. Appointments shall be made in such manner that the terms of no more than three board members expire on July 1 of each year.

C. The board is administratively attached to the department.

D. The board and its operations are governed by the Uniform Licensing Act. If the provisions of the Uniform Licensing Act conflict with the provisions of the Animal Sheltering Act, the provisions of the Animal Sheltering Act shall prevail.

E. The governor shall appoint board members for terms of four years, except in the first year of the enactment of the Animal Sheltering Act, when board members shall be appointed for staggered terms. Of the first appointments, three board members shall be appointed for four-year terms, two board members shall be appointed for three-year terms, two board members shall be appointed for two-year terms and two board members shall be appointed for one-year terms.

Subsequent appointments shall be made to fill vacancies created in unexpired terms, but only until the term ends or for a full four-year term when the term of a board member expires. Board members shall hold office until their successors are duly qualified and appointed. Vacancies shall be filled by appointment by the governor for the unexpired term within sixty days of the vacancy to maintain the required composition of the board.

F. Members of the board shall be reimbursed for per diem and mileage as provided in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance, but shall be permitted to attend at least one conference or seminar per year relevant to their board positions as the board's budget will allow.

G. A simple majority of the appointed board members constitutes a quorum.

H. The board shall hold at least one regular meeting each year and may meet at such other times as it deems necessary.

I. A board member shall not serve more than two full or partial terms, consecutive or otherwise.

J. A board member failing to attend three duly noticed meetings, regular or special, within a twelve-month period, without an excuse acceptable to the board, may be removed as a board member.

K. The board shall elect a chair and other officers as it deems necessary to administer its duties.

L. The department shall hire employees to execute the daily operations of the board."

Section 6. Section 77-1B-4 NMSA 1978 (being Laws 2007, Chapter 60, Section 4) is amended to read:

"77-1B-4. ANIMAL CARE AND FACILITY FUND CREATED--ADMINISTRATION.--

A. The "animal care and facility fund" is created in the state treasury. All fees collected pursuant to the Animal Sheltering Act shall be deposited in the fund.

B. The animal care and facility fund shall consist of money collected by the board pursuant to the Animal Sheltering Act; income from investment of the fund; and money appropriated to the fund or accruing to it through fees or administrative penalties, cooperative research agreements, income, gifts, grants, donations, bequests, sales of promotional items, handbooks or educational materials or any other source. Money in the fund shall not be transferred to another fund or encumbered or expended except for expenditures authorized pursuant to the Animal Sheltering Act.

C. Money in the fund is subject to appropriation by the legislature to the department to be used to help animal shelters and communities defray the cost of implementing the board's initiatives conducted pursuant to the Animal

Sheltering Act. The fund shall be administered by the department to carry out the purposes of the Animal Sheltering Act.

D. A disbursement from the fund shall be made only upon a warrant drawn by the secretary of finance and administration pursuant to a voucher signed by the superintendent of regulation and licensing or the superintendent's designee.

E. Unexpended and unencumbered balances in the fund at the end of a fiscal year shall not revert to the general fund."

Section 7. Section 77-1B-5 NMSA 1978 (being Laws 2007, Chapter 60, Section 5) is amended to read:

"77-1B-5. BOARD POWERS AND DUTIES.--The board shall:

A. provide board-recommended standards regarding the infrastructure for all animal shelters;

B. provide board-recommended operating standards for all animal shelters;

C. adopt methods and procedures acceptable for conducting emergency field euthanasia;

D. adopt, promulgate and revise rules necessary to carry out the provisions of the Animal Sheltering Act;

E. have authority to issue licenses and certificates pursuant to the Animal Sheltering Act;

F. establish the types of licenses and

certificates that may be issued pursuant to the Animal Sheltering Act and establish criteria for issuing the licenses and certificates;

G. prescribe standards and approve curricula for educational programs that will be used to train and prepare persons for licensure or certification pursuant to the Animal Sheltering Act;

H. implement continuing education requirements for licensees and certificate holders pursuant to the Animal Sheltering Act;

I. conduct administrative hearings upon charges relating to violations of provisions of the Animal Sheltering Act or rules adopted pursuant to that act in accordance with the Uniform Licensing Act;

J. provide for all examinations and for issuance and renewal of licenses and certificates;

K. establish fees not to exceed one hundred fifty dollars ($150) for licenses and certificates pursuant to the Animal Sheltering Act;

L. establish committees as the board deems necessary to effect the provisions of the Animal Sheltering Act;

M. apply for injunctive relief to enforce the provisions of the Animal Sheltering Act;

N. conduct national criminal background checks on

applicants seeking licensure or certification under the Animal Sheltering Act;

O. keep a record of all proceedings;

P. make an annual report to the legislature and to the governor;

Q. provide for the inspection of animal shelters and euthanasia agencies;

R. develop mechanisms to address complaints of misconduct at animal shelters and euthanasia agencies and noncompliance with the provisions of the Animal Sheltering Act or rules adopted pursuant to that act;

S. develop mechanisms to address complaints of licensee and certificate holder misconduct and noncompliance;

T. develop and recommend dog and cat spay and neuter plans and community outreach plans in support of and in conjunction with animal shelters and euthanasia agencies;

U. disburse money from the animal care and facility fund;

V. provide board-recommended standards for maintaining records concerning health care and disposition of animals; and

W. refer to national animal control association standards in determining its regulations."

Section 8. Section 77-1B-6 NMSA 1978 (being Laws 2007, Chapter 60, Section 6) is amended to read:

"77-1B-6. EUTHANASIA TECHNICIAN--LICENSE.--

A. The board shall have authority to license euthanasia technicians.

B. A person, other than a veterinarian licensed to practice in New Mexico, who engages in euthanasia for a euthanasia agency in this state shall be licensed by the board.

C. Applicants for licensure by examination as a euthanasia technician shall be required to pass a euthanasia technician examination approved by the board and shall be required to complete a training course approved by the board in euthanasia practices.

D. A person licensed to practice as a euthanasia technician shall:

(1) have passed the examination to qualify as a euthanasia technician;

(2) hold a certificate of completion in a training course in euthanasia issued within three years of the date that the euthanasia technician examination is successfully completed;

(3) have attained an age of at least eighteen years;

(4) not be guilty of fraud or deceit in procuring or attempting to procure a license;

(5) pay the required fee to be determined by

the board, but not to exceed fifty dollars ($50.00); and

(6) comply with all other requirements established by the board.

E. The board may issue a license to practice as a euthanasia technician without examination to an applicant who meets the qualifications required for euthanasia technicians in this state as set forth in Paragraphs (3) through (6) of Subsection D of this section. The application for a license as a euthanasia technician shall be accompanied by proof of completion of training in euthanasia practices, as approved by the board.

F. A person whose euthanasia technician license expires while the person is on active duty with a branch of the armed forces of the United States, called into service or training with the state militia or in training or education under the supervision of the United States government prior to induction into military service may have the license restored without paying renewal fees, if within two years after the termination of that service, training or education, except under conditions other than honorable, the board is furnished with satisfactory evidence that the person had been engaged in the service, training or education."

Section 9. A new section of the Animal Sheltering Act is enacted to read:

"EUTHANASIA TECHNICIAN AUTHORITY DEFINED.--A euthanasia

technician may purchase, possess and administer euthanasia drugs for the purpose of performing euthanasia and pre-euthanasia on animals for a euthanasia agency. A formulary shall be developed by the board and be approved by the board of pharmacy."

Section 10. Section 77-1B-7 NMSA 1978 (being Laws 2007, Chapter 60, Section 7) is amended to read:

"77-1B-7. EUTHANASIA INSTRUCTORS--CERTIFICATION.--

A. The board shall have authority over the certification of euthanasia instructors.

B. A person certified to practice as a euthanasia instructor shall:

(1) have passed the examination approved by the board to qualify as a euthanasia instructor;

(2) have completed training in euthanasia practices, as defined by the board, within one year preceding the date the application for certification is submitted;

(3) have participated in the euthanasia of animals for a minimum of three years preceding the date of application;

(4) not have been found guilty of fraud or deceit in procuring or attempting to procure any type of certification; and

(5) pay the required fee.

C. The board may certify an applicant as a

euthanasia instructor without an examination if the applicant has been certified or licensed under the laws of another state and the applicant meets the qualifications set forth in Paragraphs (3) through (5) of Subsection B of this section.

D. A person whose euthanasia instructor certification expires while on active duty with the armed forces of the United States, called into service or training with the state militia or in training or education under the supervision of the United States government prior to induction into military service may have the certification restored without paying renewal fees, if within two years after the termination of that service, training or education, except under conditions other than honorable, the board is furnished with satisfactory evidence that the person has been engaged in such service, training or education."

Section 11. Section 77-1B-8 NMSA 1978 (being Laws 2007, Chapter 60, Section 8) is amended to read:

"77-1B-8. EUTHANASIA AGENCIES--INSPECTIONS--EXEMPTIONS.--

A. The board shall have authority over the licensing of euthanasia agencies. All euthanasia agencies shall be licensed by the board prior to euthanasia being performed by that agency.

B. The board shall adopt rules governing the procedures for administering euthanasia.

C. The board shall establish rules for inspecting a facility holding or claiming to hold a license as a euthanasia agency in this state.

D. The board shall establish policies and procedures for record keeping and for securing, using and disposing of euthanasia drugs in accordance with requirements of the Controlled Substances Act, the United States drug enforcement administration's Controlled Substances Act and the rules of the board of pharmacy.

E. Euthanasia agencies using controlled substances shall have on staff or under contract a consulting pharmacist as that position is defined in the Pharmacy Act.

F. A supervising veterinarian is not required to be on the premises of a euthanasia agency when euthanasia is performed.

G. Nothing in the Animal Sheltering Act shall be construed as allowing a euthanasia technician or a euthanasia instructor to engage in the practice of veterinary medicine when performing the duties set forth in that act.

H. Nothing in the Animal Sheltering Act shall be construed as preventing a euthanasia instructor from euthanizing animals during a board-approved course on euthanasia instruction.

I. Nothing in the Animal Sheltering Act affects wildlife rehabilitators working under the auspices of the

department of game and fish.

J. A veterinary clinic serving as a euthanasia agency pursuant to a contract with a local government is exempt from the provisions of the Animal Sheltering Act; provided that the veterinary clinic is subject to licensure and rules adopted pursuant to the Veterinary Practice Act.

K. A municipal facility that is a zoological park is exempt from the provisions of the Animal Sheltering Act."

Section 12. Section 77-1B-9 NMSA 1978 (being Laws 2007, Chapter 60, Section 9) is amended to read:

"77-1B-9. VIOLATIONS.--

A. Unless otherwise provided in the Animal Sheltering Act, it is a violation of that act for a person to:

(1) perform euthanasia for a euthanasia agency or an animal shelter in this state without possessing a valid license pursuant to the Animal Sheltering Act;

(2) solicit, advertise or offer to perform an act for which licensure or certification is required pursuant to the Animal Sheltering Act, unless the person holds a license or certification;

(3) refuse to comply with a cease and desist order issued by the board;

(4) refuse or fail to comply with the provisions of the Animal Sheltering Act;

(5) make a material misstatement in an

application for licensure or certification;

(6) intentionally make a material misstatement to the department during an official investigation;

(7) impersonate an official or inspector;

(8) refuse or fail to comply with rules adopted by the board or with a lawful order issued by the board;

(9) aid or abet another in violating provisions of the Animal Sheltering Act, or a rule adopted by the board;

(10) alter or falsify a certificate of inspection, license or certification issued by the board;

(11) fail to carry out the duties of a euthanasia technician in a professional manner;

(12) abuse the use of a chemical substance or be guilty of habitual or excessive use of intoxicants or drugs;

(13) sell or give chemical substances used in euthanasia procedures to an unlicensed person; and

(14) assist an unlicensed or unauthorized person in euthanizing animals, except during a board-approved course in euthanasia.

B. It is a violation of the Animal Sheltering Act for a euthanasia agency or an animal shelter to:

(1) refuse to permit entry or inspection of its facilities by the board or its designees;

(2) sell, offer for sale, barter, exchange or otherwise transfer animals that are prohibited by the department of game and fish, the United States department of agriculture or any other regulatory agency to be kept unless the sale, offer for sale, bartering, exchanging or transferring of the animal is to a facility employing permitted rehabilitators or an individual that is a permitted rehabilitator pursuant to the rules adopted by the department of game and fish or another agency that has authority over people who are permitted to receive and provide care for such animals;

(3) allow a license or certificate issued pursuant to the Animal Sheltering Act to be used by an unlicensed or uncertified person; or

(4) make a misrepresentation or false promise through advertisements, employees, agents or other mechanisms in connection with the euthanasia of an animal.

C. It is a violation of the Animal Sheltering Act for an employee or official of the board or a person in the department to disclose or use for that person's own advantage information derived from reports or records submitted to the department or the board pursuant to that act."

Section 13. Section 77-1B-10 NMSA 1978 (being Laws

2007, Chapter 60, Section 10) is amended to read:

"77-1B-10. ENFORCEMENT AND INJUNCTIONS.--

A. The board or the board's designees shall enforce the provisions of the Animal Sheltering Act.

B. Whenever the board has reasonable cause to believe a violation of a provision of the Animal Sheltering Act or a rule adopted pursuant to that act has occurred that creates a health risk for the animals or the community and immediate enforcement is deemed necessary, the board may issue a cease and desist order to require a person to cease violations. At any time after service of the order to cease and desist, the person may request a prompt hearing to determine whether a violation occurred. If a person fails to comply with a cease and desist order within twenty-four hours, the board may bring a suit for a temporary restraining order and for injunctive relief to prevent further violations.

C. Whenever the board possesses evidence that indicates a person has engaged in or intends to engage in an act or practice constituting a violation of the Animal Sheltering Act or a rule adopted pursuant to that act, the board may seek temporarily or permanently to restrain or enjoin the act or practice. The board shall not be required to post a bond when seeking a temporary or permanent injunction."

Section 14. Section 77-1B-11 NMSA 1978 (being Laws

2007, Chapter 60, Section 11) is amended to read:

"77-1B-11. DISCIPLINARY ACTIONS--EUTHANASIA TECHNICIANS, EUTHANASIA AGENCIES AND EUTHANASIA INSTRUCTORS--HEARINGS--PENALTIES.--

A. The provisions of the Uniform Licensing Act apply to all disciplinary procedures and hearings of the board.

B. The board may:

(1) deny, suspend, revoke, reprimand, place on probation or take other action against a license or certificate held or applied for pursuant to the Animal Sheltering Act, including imposing an administrative penalty, upon a finding by the board that the licensee, certificate holder or applicant has performed acts in violation of the Animal Sheltering Act or a rule adopted pursuant to that act; and

(2) impose an administrative penalty on a person who makes a false representation as being a licensed euthanasia technician, a certified euthanasia instructor or a licensed euthanasia agency.

C. The board may issue letters of admonition or deny, suspend, refuse to renew, restrict or revoke a license or certification authorized pursuant to the Animal Sheltering Act if the applicant or licensee:

(1) has refused or failed to comply with a

provision of the Animal Sheltering Act, a rule adopted pursuant to that act or an order of the board;

(2) is guilty of cruelty to animals pursuant to a statute of this state or another state;

(3) has had an equivalent license or certificate denied, revoked or suspended by an authority;

(4) has refused to provide the board with reasonable, complete and accurate information regarding the care or euthanasia of animals when requested by the board; or

(5) has falsified information requested by the board or the board's designee.

D. In a proceeding held pursuant to this section, the board may accept as prima facie evidence of grounds for disciplinary action any disciplinary action taken against a licensee from another jurisdiction, if the violation that prompted the disciplinary action in that jurisdiction would be grounds for disciplinary action pursuant to this section.

E. Disciplinary proceedings may be instituted by the board or by a complaint to the board.

F. The board shall not initiate a disciplinary action more than two years after the date that it receives a complaint or that it begins an investigation without a filed complaint.

G. The board may administer oaths, take statements and compel disclosure by the witnesses of all facts known to

them relative to matters under investigation.

H. The board may impose an administrative penalty in an amount not to exceed five hundred dollars ($500) on a holder of a license or certificate for violations of the Animal Sheltering Act.

I. A person or euthanasia agency whose license or certificate is suspended or revoked by the board pursuant to the provisions of this section may, at the discretion of the board, obtain a license or certificate at any time without examination upon written application to the board showing cause to justify reinstatement or renewal of the license or certificate.

J. The board shall adopt other rules pertaining to hearings, appeals and rehearings as it deems necessary.

K. The board shall not be required to certify a record to the court of appeals of a decision of the board until the proper fee has been paid to the board for a copy and certification of the record.

L. A person engaging in acts without a license or certificate issued by the board is guilty of a misdemeanor.

M. A person who practices, offers to practice, attempts to practice or makes any representation as being a euthanasia technician, a euthanasia instructor or a licensed euthanasia agency without holding a license or certificate issued by the board shall, in addition to any other penalty

provided in this section or any other law, pay an administrative penalty to the board in an amount not to exceed five hundred dollars ($500) for each offense."

Section 15. Section 77-1B-12 NMSA 1978 (being Laws 2007, Chapter 60, Section 12) is amended to read:

"77-1B-12. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The animal sheltering board is terminated on July 1, 2011 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of the Animal Sheltering Act until July 1, 2012. Effective July 1, 2012, the Animal Sheltering Act is repealed."