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HOUSE BILL 89

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

INTRODUCED BY

Bill McCamley and Javier Martínez

AN ACT

RELATING TO CANNABIS; ENACTING THE CANNABIS REVENUE AND FREEDOM
ACT; ENACTING THE CANNABIS TAX ACT; PROVIDING DUTIES AND POWERS
OF THE REGULATION AND LICENSING DEPARTMENT, THE TAXATION AND
REVENUE DEPARTMENT, THE NEW MEXICO DEPARTMENT OF AGRICULTURE
AND THE DEPARTMENT OF HEALTH; CREATING THE CANNABIS CONTROL
BOARD AND PROVIDING DUTIES AND POWERS; REVISING THE LYNN AND
ERIN COMPASSIONATE USE ACT; REVISING SECTIONS OF LAW RELATED TO
MARIJUANA; CREATING THE SUBSTANCE ABUSE PREVENTION AND
BEHAVIORAL HEALTH FUND, THE DISTRICT ATTORNEY PUBLIC SAFETY
FUND, THE PUBLIC DEFENDER PUBLIC SAFETY FUND AND THE CANNABIS
REVENUE ECONOMIC DEVELOPMENT FUND; PROVIDING AND REVISING
PENALTIES; MAKING APPROPRIATIONS.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1

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1 through 48 of this act may be cited as the "Cannabis Revenue
2 and Freedom Act".

3 SECTION 2. [NEW MATERIAL] PURPOSE.--The purpose of the
4 Cannabis Revenue and Freedom Act is:

5 A. to eliminate problems caused by the prohibition
6 and uncontrolled manufacture, possession and delivery of
7 marijuana within New Mexico;

8 B. to protect the peace, health, safety and welfare
9 of the people of this state by prioritizing the state's limited
10 law enforcement resources in the most effective way;

11 C. to establish a comprehensive regulatory
12 framework relating to marijuana;

13 D. to allow a person who is licensed by this state
14 to legally manufacture and sell marijuana to a person who is
15 twenty-one years of age or older, subject to the provisions of
16 that act;

17 E. to provide a licensing and permitting system for
18 industrial hemp and agricultural hemp seed production; and

19 F. together with existing provisions of law, to
20 prevent:

21 (1) the distribution of marijuana to a person
22 who is younger than twenty-one years of age;

23 (2) revenue from the sale of marijuana from
24 going to criminal enterprises, gangs and cartels;

25 (3) the diversion of marijuana from this state

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1 to other states;

2 (4) legal marijuana activity from being used
3 as a cover for the trafficking of illegal drugs or for other
4 illegal activity;

5 (5) violence and the use of firearms in the
6 cultivation and distribution of marijuana;

7 (6) impaired driving and the exacerbation of
8 other adverse public health consequences associated with the
9 use of marijuana;

10 (7) the growing of marijuana on public land
11 and the attendant public safety and environmental dangers posed
12 by marijuana production on public land; and

13 (8) the possession and use of marijuana on
14 federal property.

15 SECTION 3. [NEW MATERIAL] DEFINITIONS.--As used in the
16 Cannabis Revenue and Freedom Act:

17 A. "advisory board" means the advisory board
18 created pursuant to the Lynn and Erin Compassionate Use Act;

19 B. "agricultural hemp seed" means seed of the plant
20 of the genus Cannabis that is intended for sale or is sold to
21 or purchased by a licensed grower for planting;

22 C. "board" means the cannabis control board;

23 D. "consumer" means a person who purchases,
24 acquires, owns, holds or uses marijuana items for a purpose
25 other than resale;

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1 E. "crop" means a contiguous field of industrial
2 hemp grown pursuant to a single license;

3 F. "department" means the regulation and licensing
4 department;

5 G. "financial consideration":

6 (1) means the value that is given or received,
7 directly or indirectly, through sales, barter, trade, fees,
8 charges, dues, contributions or donations; and

9 (2) does not mean the value in homegrown
10 marijuana or homemade marijuana products that are grown or made
11 by another person;

12 H. "grower" means a person that produces industrial
13 hemp;

14 I. "handler" means a person that receives
15 industrial hemp for processing into commodities, products or
16 agricultural hemp seeds;

17 J. "homegrown" or "homemade" means grown or made by
18 a person who is twenty-one years old or older for noncommercial
19 purposes;

20 K. "household" means a housing unit and includes
21 any place in or around the housing unit at which an occupant of
22 the housing unit produces, processes, keeps or stores homegrown
23 marijuana or homemade marijuana products;

24 L. "housing unit" means a house, an apartment, a
25 mobile home, a group of rooms or a single room that is occupied

1 as separate living quarters in which an occupant lives and eats
2 separately from any other persons in the building who do not
3 occupy the same housing unit, and which unit includes direct
4 access from the outside of the building or through a common
5 hall;

6 M. "immature marijuana plant" means a marijuana
7 plant with no observable flowers or buds;

8 N. "industrial hemp":

9 (1) means:

10 (a) all non-seed parts and varieties of
11 the plant of the genus Cannabis, whether growing or not, that
12 contain a crop-wide average tetrahydrocannabinol concentration
13 that does not exceed three-tenths percent on a dry weight
14 basis; and

15 (b) any Cannabis sativa seed that is
16 part of a growing crop, is retained by a grower for future
17 planting or is for processing into or use as agricultural hemp
18 seed; and

19 (2) does not mean industrial hemp commodities
20 or products;

21 O. "license" means a license issued pursuant to the
22 Cannabis Revenue and Freedom Act;

23 P. "licensed premises" means a location that is
24 licensed pursuant to the Cannabis Revenue and Freedom Act and
25 includes:

1 (1) all enclosed public and private areas at
2 the location that are used in the business operated pursuant to
3 a license at the location, including offices, kitchens,
4 restrooms and storerooms;

5 (2) all areas outside of a building that the
6 department has specifically licensed for the production,
7 processing, wholesale sale or retail sale of marijuana items;
8 and

9 (3) with respect to a location that the
10 department has specifically licensed for the production of
11 marijuana outside of a building, the entire unit of land that
12 is created by subdivision or partition of land that the
13 licensee owns, leases or has a right to occupy;

14 Q. "licensee" means a person who holds a license;

15 R. "licensee representative" means an owner,
16 director, officer, manager, employee, agent or other
17 representative of a licensee, to the extent that the person
18 acts in a representative capacity;

19 S. "marijuana" means all parts of the plant
20 cannabis, including any and all varieties, species and
21 subspecies of the genus Cannabis, whether growing or not, but
22 does not mean marijuana extracts, industrial hemp or industrial
23 hemp commodities or products;

24 T. "marijuana consumption area" means an area
25 within a marijuana retailer's licensed premises where marijuana

1 items may be consumed;

2 U. "marijuana extract" means a product obtained by
3 separating resins from marijuana by solvent extraction, using
4 solvents other than vegetable glycerin, such as butane, hexane,
5 isopropyl alcohol, ethanol or carbon dioxide;

6 V. "marijuana flowers" means only the flowers of a
7 marijuana plant;

8 W. "marijuana items" means marijuana, marijuana
9 products and marijuana extracts;

10 X. "marijuana leaves" means only the leaves of a
11 marijuana plant;

12 Y. "marijuana processor" means a person who
13 processes marijuana items in this state;

14 Z. "marijuana producer" means a person who produces
15 marijuana in this state;

16 AA. "marijuana products" means products that
17 contain marijuana or marijuana extracts and that are intended
18 for human consumption, but does not mean marijuana by itself or
19 a marijuana extract by itself;

20 BB. "marijuana retailer" means a person who sells
21 marijuana items to a consumer in this state;

22 CC. "marijuana wholesaler" means a person who
23 purchases marijuana items in this state for resale in this
24 state to a person other than a consumer;

25 DD. "mature marijuana plant" means a marijuana

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1 plant that is not an immature marijuana plant;

2 EE. "medical cannabis program" means the regulated
3 system allowing for the beneficial use of medical cannabis
4 established in the Lynn and Erin Compassionate Use Act;

5 FF. "noncommercial" means not dependent or
6 conditioned upon the provision or receipt of financial
7 consideration;

8 GG. "person" means an individual, corporation,
9 business trust, estate, trust, partnership, limited liability
10 company, association, joint venture or any legal or commercial
11 entity;

12 HH. "personal production license" means "personal
13 production license" as that phrase is defined in the Lynn and
14 Erin Compassionate Use Act;

15 II. "processes":

16 (1) means:

17 (a) the processing, compounding or
18 conversion of marijuana into marijuana products or marijuana
19 extracts;

20 (b) the processing, compounding or
21 conversion of marijuana, either directly or indirectly, by
22 extraction from substances of natural origin or independently
23 by means of chemical synthesis or by a combination of
24 extraction and chemical synthesis;

25 (c) the packaging or repackaging of

1 marijuana items; and

2 (d) the labeling or relabeling of a
3 package or container of marijuana items; and

4 (2) does not mean:

5 (a) the drying of marijuana by a
6 marijuana producer, if the marijuana producer is not otherwise
7 processing marijuana; or

8 (b) the packaging and labeling of
9 marijuana by a marijuana producer in preparation for delivery
10 to a marijuana processor;

11 JJ. "produces" means the manufacture, planting,
12 cultivation, growing or harvesting of marijuana, but does not
13 include:

14 (1) the drying of marijuana by a marijuana
15 processor, if the marijuana processor is not otherwise
16 producing marijuana; or

17 (2) the cultivation and growing of an immature
18 marijuana plant by a marijuana processor, marijuana wholesaler
19 or marijuana retailer if the marijuana processor, marijuana
20 wholesaler or marijuana retailer purchased or otherwise
21 received the plant from a licensed marijuana producer;

22 KK. "public place" means a place to which the
23 general public has access and includes hallways, lobbies and
24 other parts of apartment houses and hotels that do not
25 constitute rooms or apartments designed for actual residence;

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1 highways; streets; schools; places of amusement; parks;
2 playgrounds; and places used in connection with public
3 passenger transportation;

4 LL. "qualified patient" means "qualified patient"
5 as that phrase is defined in the Lynn and Erin Compassionate
6 Use Act; and

7 MM. "usable marijuana" means dried marijuana
8 flowers and dried marijuana leaves and any mixture or
9 preparation of those flowers or leaves.

10 SECTION 4. [NEW MATERIAL] LIMITATIONS--EXEMPTIONS--
11 PERMISSIBLE CONDUCT.--The Cannabis Revenue and Freedom Act
12 shall not:

13 A. be construed to:

14 (1) amend or affect in any way a state or
15 federal law pertaining to employment matters;

16 (2) amend or affect in any way a state or
17 federal law pertaining to landlord-tenant matters;

18 (3) prevent a recipient of or an applicant for
19 a federal grant from prohibiting the manufacture, possession,
20 delivery or use of marijuana items to the extent necessary to
21 satisfy the federal grant's requirements;

22 (4) prevent a party or a person applying to be
23 a party to a federal contract from prohibiting the manufacture,
24 possession, delivery or use of marijuana items to the extent
25 necessary to comply with the contract terms and conditions or

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1 to satisfy the federal contract's requirements;

2 (5) require a person to violate a federal law;

3 (6) exempt a person from a federal law or
4 obstruct the enforcement of a federal law; or

5 (7) amend or affect in any way the Lynn and
6 Erin Compassionate Use Act; and

7 B. apply to:

8 (1) the possession of usable marijuana by a
9 person who is twenty-one years of age or older, if the total of
10 usable marijuana does not exceed:

11 (a) two ounces at the person's
12 household; or

13 (b) one ounce outside the person's
14 household;

15 (2) the possession of up to seven grams of
16 marijuana extract by a person who is twenty-one years of age or
17 older;

18 (3) the production, processing, keeping or
19 storing of homegrown marijuana at a household by one or more
20 persons who are twenty-one years of age or older, if the total
21 of homegrown marijuana at the household does not exceed at any
22 given time:

23 (a) six marijuana plants per person;
24 provided, however that no more than twelve marijuana plants may
25 be present in one household;

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- 1 (b) six immature marijuana plants; and
2 (c) eight ounces of usable marijuana;
3 (4) the making, processing, keeping or storing
4 of homemade marijuana products at a household by one or more
5 persons who are twenty-one years of age or older, if the total
6 of homemade marijuana products at the household does not exceed
7 at any given time:
8 (a) sixteen ounces in solid form; or
9 (b) seventy-two ounces in liquid form;
10 (5) the delivery for noncommercial purposes by
11 a person who is twenty-one years of age or older to another
12 person who is twenty-one years of age or older of not more than
13 one ounce of homegrown marijuana at any given time;
14 (6) the delivery for noncommercial purposes by
15 a person who is twenty-one years of age or older to another
16 person who is twenty-one years of age or older of:
17 (a) not more than sixteen ounces, at any
18 given time, of homemade marijuana products in solid form; or
19 (b) not more than seventy-two ounces, at
20 any given time, of homemade marijuana products in liquid form;
21 (7) the transport of homegrown marijuana,
22 immature marijuana plants or homemade marijuana products as
23 described in Paragraphs (2), (3) and (4) of this subsection by
24 a person who is twenty-one years of age or older when that
25 person is moving the person's residence to another location; or

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1 (8) a person who acts pursuant to and in
2 compliance with the Lynn and Erin Compassionate Use Act.

3 SECTION 5. [NEW MATERIAL] CANNABIS CONTROL BOARD--
4 CREATED.--

5 A. The "cannabis control board" is created and is
6 administratively attached to the department. The board shall
7 consist of eleven members appointed by the governor with the
8 advice and consent of the senate. All members of the board
9 shall be residents of New Mexico and citizens of the United
10 States and no more than six members shall be from the same
11 political party. The board shall include:

12 (1) two members who are licensed pursuant to
13 the Cannabis Revenue and Freedom Act;

14 (2) two members who are medical or public
15 health professionals;

16 (3) one member who is a qualified patient in
17 the medical cannabis program;

18 (4) one member who is an interested member of
19 the public;

20 (5) one member who is a banking or finance
21 professional;

22 (6) one member who is a representative of the
23 regulation and licensing department;

24 (7) one member who is a representative of the
25 New Mexico department of agriculture;

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1 (8) one member who is a representative of the
2 department of health; and

3 (9) one member who is a representative of the
4 department of environment.

5 B. Members shall be appointed to five-year terms,
6 except that initial appointments to the board shall be made by
7 October 1, 2017, as follows:

8 (1) the two members who are medical or public
9 health professionals and the member who is a banking or finance
10 professional shall be appointed to one-year terms;

11 (2) the two members who are licensed pursuant
12 to the Cannabis Revenue and Freedom Act shall be appointed to
13 two-year terms;

14 (3) the member who is a qualified patient in
15 the medical cannabis program and the member who is an
16 interested member of the public shall be appointed to three-
17 year terms;

18 (4) the members who represent the department
19 of health and the department of environment shall be appointed
20 to four-year terms; and

21 (5) the members who represent the regulation
22 and licensing department and the New Mexico department of
23 agriculture shall be appointed to five-year terms.

24 C. A vacancy on the board shall be filled by the
25 governor within thirty days for the unexpired portion of the

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1 term in which the vacancy occurs. A person appointed to fill a
2 vacancy shall meet all qualifications of the position vacated.

3 D. The board members shall elect a board chair by
4 majority vote. The board shall meet at the call of the chair
5 and at least once in each calendar quarter. Six members shall
6 constitute a quorum of the board.

7 E. Board members are entitled to reimbursement as
8 provided by the Per Diem and Mileage Act and shall receive no
9 other compensation, perquisite or allowance for their service
10 on the board.

11 SECTION 6. [NEW MATERIAL] CANNABIS CONTROL BOARD--
12 DUTIES.--The board shall:

13 A. regulate and provide oversight of the medical
14 cannabis program and the marijuana program established in the
15 Cannabis Revenue and Freedom Act;

16 B. by January 1, 2018, establish a medical cannabis
17 subsidy program through which the department of health shall
18 make distributions of a portion of cannabis tax revenue to
19 qualified patients in the medical cannabis program and
20 promulgate rules to govern the program;

21 C. by January 1, 2019, and in accordance with the
22 State Rules Act, promulgate rules related to the medical
23 cannabis program, including rules that:

24 (1) with consideration of the advisory board's
25 recommendations, establish the amount of cannabis that

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1 constitutes an adequate supply, including amounts used for
2 topical treatments;

3 (2) identify the forms of cannabis that are
4 approved for use in the medical cannabis program;

5 (3) address the admission of a person into
6 hospice care as a qualifying debilitating medical condition;

7 (4) identify criteria and procedures by which
8 a medical condition, medical treatment or disease may be
9 considered and approved for inclusion on the list of
10 debilitating medical conditions included in the medical
11 cannabis program. The procedures shall include a petition
12 process and shall allow for public comment and public hearings
13 before the advisory board;

14 (5) establish qualifications for a person to
15 be licensed to produce, possess, distribute or dispense
16 cannabis and establish procedures for the evaluation of license
17 applications;

18 (6) identify the process by which a person may
19 reapply for a license after the person's application was
20 denied;

21 (7) establish a procedure by which a qualified
22 patient may produce medical cannabis for the patient's personal
23 use;

24 (8) develop a distribution system for medical
25 cannabis that provides for:

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1 (a) cannabis production facilities
2 within New Mexico housed on secured grounds and operated by
3 licensed producers; and

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

9 (9) until June 30, 2019, restrict the number
10 of mature cannabis plants a licensed producer may possess at
11 any given time to:

12 (a) one thousand, between July 1, 2017
13 and June 30, 2018; and

14 (b) two thousand, between July 1, 2018
15 and June 30, 2019;

16 (10) provide that a qualified patient who
17 holds a personal production license may sell those mature
18 cannabis plants that the patient possesses in accordance with
19 the patient's personal production license to a licensed
20 producer participating in the medical cannabis program or to a
21 marijuana producer, and that the licensed producer or the
22 marijuana producer may sell those plants in accordance with
23 applicable law and rules; and

24 (11) establish any additional duties and
25 responsibilities of the advisory board;

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1 D. by January 1, 2019, and in accordance with the
2 State Rules Act, promulgate rules applicable to the medical
3 cannabis program and the marijuana program established in the
4 Cannabis Revenue and Freedom Act that:

5 (1) establish standards for the growing of
6 medical cannabis and marijuana that address, in addition to any
7 other relevant issues, the use of pesticides and other
8 substances in the cultivation of cannabis;

9 (2) establish a system for tracking medical
10 cannabis and marijuana plants; and

11 (3) identify the conditions under which
12 interstate sales of medical cannabis or marijuana are
13 permissible;

14 E. regulate the use of marijuana items for
15 scientific, pharmaceutical, manufacturing, mechanical,
16 industrial and other purposes;

17 F. prohibit all advertisement of marijuana items by
18 licensed marijuana producers, marijuana processors, marijuana
19 wholesalers or marijuana retailers;

20 G. until June 30, 2019, restrict the number of
21 marijuana plants that a marijuana producer may possess at any
22 given time to:

23 (1) one thousand, between July 1, 2017 and
24 June 30, 2018; and

25 (2) two thousand, between July 1, 2018 and

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1 June 30, 2019; and

2 H. require documentation of the source of
3 production and the tetrahydrocannabinol concentration for all
4 marijuana items and medical cannabis.

5 SECTION 7. [NEW MATERIAL] DEPARTMENT--DUTIES.--

6 A. The department shall:

7 (1) in cooperation with the board, regulate
8 the production, processing, sale, purchase, transportation and
9 delivery of marijuana items;

10 (2) as necessary, assist with the
11 investigation and prosecution of violations of state law
12 related to marijuana items;

13 (3) in consultation with the New Mexico
14 department of agriculture, the department of health and the
15 board, adopt rules and prescribe forms necessary to implement
16 the provisions of the Cannabis Revenue and Freedom Act; and

17 (4) on or before January 1, 2019:

18 (a) review available research and
19 conduct or commission any additional research necessary to
20 examine the influence of marijuana items on a person's ability
21 to drive a vehicle and on the concentration of delta-9
22 tetrahydrocannabinol in a person's blood, taking into account
23 all relevant factors; and

24 (b) present the results of the
25 department's review and examination to the appropriate

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1 legislative interim committees and make recommendations to the
2 legislature regarding any appropriate amendments to the Motor
3 Vehicle Code.

4 B. Except as provided in the Cannabis Revenue and
5 Freedom Act, the department shall not purchase, own, sell or
6 possess any marijuana items.

7 SECTION 8. [NEW MATERIAL] NEW MEXICO DEPARTMENT OF
8 AGRICULTURE--DUTIES--POWERS.--

9 A. The New Mexico department of agriculture shall:

10 (1) cooperate with the department and the
11 department of health to the extent necessary for each
12 department to carry out powers and duties pursuant to the
13 Cannabis Revenue and Freedom Act;

14 (2) regulate industrial hemp production and
15 possession and regulate commerce in industrial hemp commodities
16 and products in this state;

17 (3) make information that identifies sellers
18 of agricultural hemp seed available to growers; and

19 (4) promulgate rules necessary to carry out
20 duties pursuant to that act.

21 B. The New Mexico department of agriculture may:

22 (1) establish labeling, quality and other
23 necessary standards applicable to agricultural hemp seed;

24 (2) with at least three days' notice and
25 during normal business hours, inspect or audit records required

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1 to be kept by growers and handlers for the purpose of ensuring
2 compliance with:

3 (a) the Cannabis Revenue and Freedom Act
4 and rules promulgated pursuant to that act;

5 (b) industrial hemp license or
6 agricultural hemp seed production permit requirements; or

7 (c) orders by the New Mexico department
8 of agriculture regarding growers' or handlers' operations or
9 activities;

10 (3) inspect any crop during the crop growth
11 phase and take a representative composite sample for field
12 analysis;

13 (4) detain, seize or embargo a crop if the
14 crop contains an average tetrahydrocannabinol concentration
15 exceeding three-tenths percent on a dry weight basis;

16 (5) charge growers and handlers reasonable
17 fees;

18 (6) refuse, suspend or cancel an industrial
19 hemp license or an agricultural hemp seed production permit for
20 a violation of the Cannabis Revenue and Freedom Act;

21 (7) refuse, suspend or cancel an industrial
22 hemp license or an agricultural hemp seed production permit for
23 violation of any New Mexico department of agriculture rule
24 relating to agricultural operations or activities; and

25 (8) impose a civil penalty for a violation of:

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1 (a) a license or permit requirement,
2 term or condition;

3 (b) New Mexico department of agriculture
4 rules relating to growing or handling industrial hemp; or

5 (c) orders by the New Mexico department
6 of agriculture regarding growers' or handlers' operations or
7 activities.

8 C. The New Mexico department of agriculture shall
9 not impose a civil penalty pursuant to the Cannabis Revenue and
10 Freedom Act that exceeds two thousand five hundred dollars
11 (\$2,500). The provisions of the Administrative Procedures Act
12 shall apply when the New Mexico department of agriculture
13 imposes a penalty pursuant to the Cannabis Revenue and Freedom
14 Act or refuses, suspends or cancels an industrial hemp license
15 or an agricultural hemp seed production permit.

16 D. The New Mexico department of agriculture shall
17 not refuse, suspend or cancel an industrial hemp license or an
18 agricultural hemp seed production permit on the basis that
19 industrial hemp production or possession or commerce in
20 industrial hemp commodities or products is prohibited by
21 federal law.

22 E. Money collected by the New Mexico department of
23 agriculture for industrial hemp license fees and agricultural
24 hemp seed production permit fees is appropriated to the New
25 Mexico department of agriculture for administrative purposes.

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1 SECTION 9. [NEW MATERIAL] DEPARTMENT OF HEALTH--DUTIES.--

2 The department of health shall:

3 A. cooperate with the board, the department and the
4 New Mexico department of agriculture to the extent necessary
5 for each department to carry out powers and duties pursuant to
6 the Cannabis Revenue and Freedom Act; and

7 B. administer the medical cannabis subsidy program
8 established by the board.

9 SECTION 10. [NEW MATERIAL] NO LIABILITY FOR OFFICIAL
10 ACTS.--Except as otherwise provided by law, the board, the
11 department, the New Mexico department of agriculture and the
12 department of health shall not be sued for performing or
13 failing to perform duties pursuant to the Cannabis Revenue and
14 Freedom Act.

15 SECTION 11. [NEW MATERIAL] DUTIES OF DEPARTMENTS--FEDERAL
16 LAW--CONTRACT ENFORCEABILITY.--

17 A. The board, the department, the taxation and
18 revenue department, the New Mexico department of agriculture
19 and the department of health shall not refuse to perform any
20 duty provided in the Cannabis Revenue and Freedom Act on the
21 basis that manufacturing, distributing, dispensing, possessing
22 or using marijuana is prohibited by federal law.

23 B. The department and the New Mexico department of
24 agriculture shall not refuse, suspend or cancel a license or an
25 agricultural hemp seed production permit on the basis that

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1 manufacturing, distributing, dispensing, possessing or using
2 marijuana is prohibited by federal law.

3 C. A contract shall not be deemed unenforceable on
4 the basis that manufacturing, distributing, dispensing,
5 possessing or using marijuana is prohibited by federal law.

6 SECTION 12. [NEW MATERIAL] INDUSTRIAL HEMP LICENSE--
7 AGRICULTURAL HEMP SEED PRODUCTION PERMIT.--

8 A. Industrial hemp production and possession and
9 commerce in industrial hemp commodities and products are
10 authorized in New Mexico. Industrial hemp and agricultural
11 hemp seed are agricultural products that are subject to
12 regulation by the New Mexico department of agriculture.

13 B. All growers and handlers shall hold an
14 industrial hemp license. A grower or handler who is engaged in
15 the production of agricultural hemp seed shall also hold an
16 agricultural hemp seed production permit.

17 C. A person who seeks an industrial hemp license or
18 an agricultural hemp seed production permit shall submit an
19 application to the New Mexico department of agriculture that
20 includes:

- 21 (1) the applicant's name and address;
22 (2) the name and address of the applicant's
23 industrial hemp operation;
24 (3) the latitude and longitude and legal
25 description for the property to be used for industrial hemp

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1 production;

2 (4) if the application is submitted by a
3 grower, information sufficient to establish that the
4 applicant's crop will be at least two and one-half acres in
5 size; and

6 (5) any other information required by the New
7 Mexico department of agriculture.

8 D. An industrial hemp license or agricultural hemp
9 seed production permit is valid for three years and may be
10 renewed as provided by New Mexico department of agriculture
11 rules. The license or permit is a personal privilege that is
12 not transferable.

13 E. An agricultural hemp seed production permit
14 allows a grower or handler to produce and handle agricultural
15 hemp seed for sale to licensed industrial hemp growers and
16 handlers. An agricultural hemp seed seller shall ensure that
17 the seller's seed complies with any standards established by
18 the New Mexico department of agriculture.

19 F. Subject to New Mexico department of agriculture
20 rules, a grower may, without an agricultural hemp seed
21 production permit, retain seed from each crop to ensure a
22 sufficient seed supply for the grower's use in a subsequent
23 year. Seed retained by a grower shall not be sold or
24 transferred and shall not be required to meet agricultural hemp
25 seed standards.

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1 SECTION 13. ~~[NEW MATERIAL]~~ LICENSES REQUIRED.--

2 A. A marijuana producer shall hold a production
3 license issued by the department for the licensed premises at
4 which the marijuana is produced.

5 B. A marijuana processor shall possess a processor
6 license issued by the department for the licensed premises at
7 which marijuana items are processed.

8 C. A marijuana wholesaler shall possess a wholesale
9 license issued by the department for the licensed premises at
10 which marijuana items are received, kept, stored or delivered.

11 D. A marijuana retailer shall possess a retail
12 license issued by the department for the licensed premises on
13 which marijuana items are sold. A marijuana retailer that
14 sells and allows the consumption of marijuana items in a
15 marijuana consumption area on the retailer's licensed premises
16 shall possess an on-site consumption endorsement to the
17 retailer's retail license.

18 SECTION 14. ~~[NEW MATERIAL]~~ DEPARTMENT LICENSING DUTIES.--

19 A. The department shall:

20 (1) beginning July 1, 2017, accept
21 applications for licenses to produce, process and sell
22 marijuana items within the state from licensed producers
23 pursuant to the Lynn and Erin Compassionate Use Act; and

24 (2) beginning October 1, 2017, in accordance
25 with the provisions of the Cannabis Revenue and Freedom Act,

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1 issue licenses to qualified applicants who are already licensed
2 producers pursuant to the Lynn and Erin Compassionate Use Act.

3 B. Beginning July 1, 2019, the department shall:

4 (1) accept applications for licenses to
5 produce, process and sell marijuana items within the state; and

6 (2) issue licenses to qualified applicants in
7 accordance with the provisions of the Cannabis Revenue and
8 Freedom Act.

9 C. The department shall not:

10 (1) unreasonably delay the processing of
11 applications or the issuance of licenses; or

12 (2) approve a licensed premises that does not
13 have defined boundaries or a licensed premises that is mobile;
14 provided that the department may require that a licensed
15 premises be enclosed by a wall, fence or other structure as a
16 condition of issuing or renewing a license.

17 SECTION 15. [NEW MATERIAL] LICENSE TERMS--APPLICATION--
18 FEES.--

19 A. An application for a new or renewed license
20 shall be submitted to the department on a form prescribed by
21 the department. The application shall include:

22 (1) the applicant's name and address;

23 (2) the location of the place of business to
24 be operated pursuant to the license;

25 (3) if the application is for a production

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1 license, the applicant's certification that, in addition to any
2 other marijuana produced, the applicant will produce at least
3 five hundred thousand grams of marijuana for use by qualified
4 patients of the medical cannabis program; and

5 (4) any other information required by the
6 department.

7 B. A license shall not be issued or renewed unless
8 the applicant has complied with the provisions of the Cannabis
9 Revenue and Freedom Act and rules promulgated pursuant to that
10 act.

11 C. All licenses shall be issued or renewed for a
12 period of one year, except that a license issued to an
13 applicant for the first time may be issued for less than one
14 year. The fee for a license that is issued for less than one
15 year shall be the annual license fee provided in this section.

16 D. The department may deny an application that is
17 not submitted on the prescribed form. If an application is
18 denied pursuant to this subsection, the department shall
19 provide the applicant an opportunity to be heard at a hearing
20 held that is not subject to the Administrative Procedures Act.

21 E. Notwithstanding the provisions of Subsections B
22 and C of this section, the department's cancellation of or
23 denial of an application for a license is subject to the
24 Administrative Procedures Act.

25 F. The department shall assess a nonrefundable fee

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1 not greater than five hundred dollars (\$500) for processing a
2 new or renewal license application.

3 G. For a new or renewal processor license,
4 wholesale license or retail license, the department shall
5 charge an annual license fee of not more than two thousand
6 dollars (\$2,000).

7 H. For a new or renewal production license, the
8 department shall charge an annual license fee of:

9 (1) fifteen thousand dollars (\$15,000), if the
10 marijuana producer will possess up to one hundred fifty
11 marijuana plants; and

12 (2) an additional five thousand dollars
13 (\$5,000) for each additional fifty marijuana plants the
14 marijuana producer will possess; provided, however, that the
15 maximum fee charged for a new or renewal production license
16 shall not exceed forty-five thousand dollars (\$45,000).

17 I. The annual license fees provided in this section
18 are nonrefundable and shall be paid by an applicant upon the
19 issuance of a license.

20 J. Money collected by the department for license
21 fees is appropriated to the department for administrative
22 purposes.

23 SECTION 16. [NEW MATERIAL] GROUNDS FOR DENYING A LICENSE
24 APPLICATION.--

25 A. The department shall not issue a license to an

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1 applicant who is younger than twenty-one years of age.

2 B. The department may deny a license application if
3 the department reasonably believes:

4 (1) that there are sufficient licensed
5 premises in the locality set out in the application or that
6 issuing a license in the locality set out in the application is
7 not demanded by public interest or convenience. In determining
8 whether there is a sufficient number of licensed premises in a
9 locality, the department shall consider seasonal fluctuations
10 in the locality's population and the needs of the locality
11 during the peak seasons; or

12 (2) that the applicant:

13 (a) uses alcoholic beverages, habit-
14 forming drugs, marijuana items or controlled substances to
15 excess;

16 (b) has made false statements to the
17 department;

18 (c) is unable to carry on the management
19 of the business proposed to be licensed;

20 (d) notwithstanding the provisions of
21 Subsection C of this section, has been convicted of violating a
22 federal law or the law of any state or any local government if
23 the conviction is substantially related to the applicant's
24 fitness and ability to lawfully carry out activities pursuant
25 to the license;

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1 (e) has failed to maintain a sanitary
2 establishment;

3 (f) is not of good repute and moral
4 character;

5 (g) has a record of noncompliance with
6 the Cannabis Revenue and Freedom Act or rules promulgated
7 pursuant to that act;

8 (h) is not the owner of the business
9 proposed to be licensed or that additional ownership interests
10 in the business proposed to be licensed have not been
11 disclosed;

12 (i) has not demonstrated the financial
13 responsibility necessary for the business proposed to be
14 licensed; or

15 (j) is unable to understand provisions
16 of the Cannabis Revenue and Freedom Act or other laws or rules
17 relating to marijuana and marijuana items.

18 C. In determining whether the department may deny
19 an application for a license, the department shall:

20 (1) consider whether an applicant who was
21 previously convicted as described in Subparagraph (d) of
22 Paragraph (2) of Subsection B of this section has completed the
23 sentence, including any period of probation or parole, related
24 to the conviction and can demonstrate fitness and ability to
25 fulfill the responsibilities of a licensee; and

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1 (2) not consider the prior conviction of the
2 applicant or any owner, director, officer, manager, employee,
3 agent or other representative of the applicant for:

4 (a) the manufacture of marijuana, if:
5 1) the date of the conviction is more than five years before
6 the date of the application; and 2) the person has not been
7 convicted more than once for the manufacture or delivery of
8 marijuana;

9 (b) the delivery of marijuana to a
10 person who was twenty-one years of age or older at the time of
11 the delivery, if: 1) the date of the conviction is more than
12 five years before the date of the application; and 2) the
13 person has not been convicted more than once for the
14 manufacture or delivery of marijuana; or

15 (c) the possession of marijuana.

16 SECTION 17. [NEW MATERIAL] GROUNDS FOR SUSPENDING OR
17 CANCELING A LICENSE.--The department may suspend or cancel a
18 license if the department finds or reasonably believes:

19 A. that the licensee:

20 (1) has violated a provision of the Cannabis
21 Revenue and Freedom Act or a rule promulgated pursuant to that
22 act;

23 (2) has made a false representation or
24 statement to the department to induce or prevent action by the
25 department;

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1 (3) has maintained an unsanitary
2 establishment;

3 (4) is insolvent, or otherwise unable to
4 manage the licensee's establishment;

5 (5) uses alcoholic beverages, habit-forming
6 drugs, marijuana items or controlled substances to excess;

7 (6) has misrepresented a marijuana item sold
8 by the licensee to a customer or to the public; or

9 (7) after receiving a license, is convicted of
10 a felony or of violating any state law relating to marijuana or
11 marijuana items or is convicted of a misdemeanor or violation
12 of a municipal ordinance, if that violation is committed on the
13 licensed premises; or

14 B. that there is any other reason that, in the
15 department's opinion and based on public convenience or
16 necessity, warrants canceling or suspending a license.

17 SECTION 18. [NEW MATERIAL] LIMITATION ON CIVIL AND
18 CRIMINAL LIABILITY--LICENSEES AND REPRESENTATIVES.--A licensed
19 marijuana producer, marijuana processor, marijuana wholesaler
20 or marijuana retailer or a licensee representative of one of
21 those licensees may produce, possess and deliver marijuana
22 items subject to the provisions of the Cannabis Revenue and
23 Freedom Act, and such production, possession or delivery of
24 marijuana items shall not constitute a criminal or civil
25 offense pursuant to New Mexico law.

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1 SECTION 19. ~~[NEW MATERIAL]~~ CHARACTERISTICS OF A LICENSE--
2 MULTIPLE LICENSES.--

3 A. A license issued by the department shall:

4 (1) be a personal privilege;

5 (2) be valid only for the period stated on the
6 license;

7 (3) be transferred from the licensed premises
8 for which the license was issued to another location only as
9 provided for in the Cannabis Revenue and Freedom Act, rules
10 promulgated pursuant to that act and any relevant municipal
11 ordinance or local regulation;

12 (4) be void upon the licensee's death, except
13 as provided in Subsection B of this section;

14 (5) not constitute property;

15 (6) not be alienable;

16 (7) not be subject to attachment or execution;

17 and

18 (8) not descend by the laws of testate or
19 intestate devolution.

20 B. The department may provide for procedures and
21 conditions under which:

22 (1) marijuana items left by a deceased,
23 insolvent or bankrupt licensee, or marijuana items that are
24 subject to a security interest, may be foreclosed, sold under
25 execution or otherwise disposed of;

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1 (2) the business of a deceased, insolvent or
2 bankrupt licensee may be operated for a reasonable period
3 following the death, insolvency or bankruptcy; and

4 (3) a business licensed by the department that
5 is subject to a security interest may be continued in business
6 by a secured party for a reasonable period after a debtor's
7 default on the indebtedness.

8 C. A person may hold more than one production
9 license, processor license, wholesale license or retail
10 license.

11 SECTION 20. [NEW MATERIAL] AGE RESTRICTION FOR SALE OR
12 DELIVERY OF MARIJUANA ITEMS--PURCHASER IDENTIFICATION--
13 DEFENSE.--

14 A. A licensed marijuana producer, marijuana
15 processor, marijuana wholesaler or marijuana retailer or a
16 licensee representative of one of those licensees shall not
17 sell or deliver marijuana items to a person who is younger than
18 twenty-one years of age. A person who violates this subsection
19 is guilty of distribution to a minor as provided in Subsection
20 A of Section 30-31-21 NMSA 1978.

21 B. If there is a reasonable doubt that a person is
22 twenty-one years of age or older, before selling or delivering
23 marijuana items to the person, a licensee or licensee
24 representative shall require the person to produce one of the
25 following forms of identification to verify the person's age:

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- 1 (1) the person's passport;
- 2 (2) the person's motor vehicle operator's
- 3 license that includes a photograph of the person, whether
- 4 issued in this state or in another state;
- 5 (3) an identification card issued by the motor
- 6 vehicle division of the taxation and revenue department;
- 7 (4) a United States military identification
- 8 card; or
- 9 (5) any other identification card that was
- 10 issued by a state or an Indian nation, tribe or pueblo that
- 11 includes the person's:
- 12 (a) photograph;
- 13 (b) name;
- 14 (c) date of birth; and
- 15 (d) physical description.

16 C. A person shall not produce a form of

17 identification as provided in this section that falsely

18 indicates the person's age.

19 D. In an administrative or criminal prosecution of

20 a licensee or licensee representative for the sale or delivery

21 of marijuana items to a person younger than twenty-one years of

22 age as prohibited in this section, the licensee or licensee

23 representative shall not be found to have committed the

24 relevant violation or crime unless it is demonstrated in the

25 administrative or criminal proceeding that a reasonable person

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1 would have determined that the form of identification shown to
2 the licensee or licensee representative and that is offered as
3 evidence in the proceeding was altered or did not accurately
4 describe the person to whom the licensee or licensee
5 representative sold or delivered marijuana items.

6 SECTION 21. [NEW MATERIAL] DELIVERY OF MARIJUANA

7 ITEMS.--A marijuana producer, marijuana processor or marijuana
8 wholesaler may deliver marijuana items only to or on a licensed
9 premises. The sale of marijuana items pursuant to a retail
10 license shall be restricted to sales made on the licensed
11 premises described in the license; provided that deliveries may
12 be made by the marijuana retailer to consumers pursuant to bona
13 fide orders received on the licensed premises prior to
14 delivery.

15 SECTION 22. [NEW MATERIAL] INSPECTION OF LICENSEE BOOKS
16 AND LICENSED PREMISES.--

17 A. The department may:

18 (1) after seventy-two hours' notice to the
19 owner or the owner's agent, inspect a licensee's books; and

20 (2) at any time, inspect the licensed premises
21 of a licensee to determine whether the licensee is in
22 compliance with the provisions of the Cannabis Revenue and
23 Freedom Act and rules promulgated pursuant to that act.

24 B. The department shall not require a licensee's
25 books to be maintained on the licensed premises.

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1 SECTION 23. ~~[NEW MATERIAL]~~ IMPORTING AND EXPORTING
2 MARIJUANA ITEMS PROHIBITED--PENALTIES.--

3 A. Marijuana items shall not be imported into this
4 state or exported from this state by any licensee or licensee
5 representative.

6 B. A violation of Subsection A of this section is
7 a:

8 (1) misdemeanor if the importation or
9 exportation is for financial consideration; or

10 (2) petty misdemeanor if the importation or
11 exportation is not for financial consideration.

12 SECTION 24. ~~[NEW MATERIAL]~~ MARIJUANA ITEMS AS A PRIZE
13 PROHIBITED.--Marijuana items shall not be given as a prize,
14 premium or consideration for a lottery, contest, game of chance
15 or skill or competition of any kind.

16 SECTION 25. ~~[NEW MATERIAL]~~ PROVIDING MARIJUANA ITEMS TO
17 AN INTOXICATED PERSON PROHIBITED--ALLOWING CONSUMPTION OF
18 MARIJUANA ITEMS BY PERSONS WHO ARE YOUNGER THAN TWENTY-ONE
19 YEARS OF AGE PROHIBITED.--

20 A. A person shall not sell, give or otherwise make
21 available a marijuana item to a person who is visibly
22 intoxicated.

23 B. A person who exercises control over private real
24 property shall not:

25 (1) knowingly allow a person who is younger

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1 than twenty-one years of age to consume marijuana items on the
2 property; or

3 (2) allow a person who is younger than twenty-
4 one years of age and who consumes marijuana items on the
5 property to remain on that property.

6 C. Subsection B of this section:

7 (1) applies only to a person who is present
8 and in control of the location at the time the consumption
9 occurs; and

10 (2) does not apply to the owner of rental
11 property, or the agent of an owner of rental property, unless
12 the consumption occurs in the individual unit in which the
13 owner or agent resides.

14 SECTION 26. [NEW MATERIAL] LICENSEE MISREPRESENTATIONS--
15 MAINTENANCE OF DISORDERLY ESTABLISHMENT.--

16 A. A person shall not make false representations or
17 statements to the department to induce or prevent action by the
18 department.

19 B. A licensee shall not maintain a noisy, lewd,
20 disorderly or unsanitary establishment or supply impure or
21 otherwise deleterious marijuana items.

22 C. A licensee shall not misrepresent marijuana
23 items to any person.

24 SECTION 27. [NEW MATERIAL] UNDERAGE PERSONS--RESTRICTIONS
25 ON PURCHASE OF MARIJUANA ITEMS AND PRESENCE ON LICENSED

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1 PREMISES--PENALTIES.--

2 A. A person who is younger than twenty-one years of
3 age shall not purchase or attempt to purchase marijuana items.

4 B. Except as authorized by rule or as necessitated
5 in an emergency, a person who is younger than twenty-one years
6 of age shall not enter or attempt to enter any portion of a
7 licensed premises that is posted or otherwise identified as
8 being prohibited to the use of persons under the age of twenty-
9 one years of age.

10 C. A person who violates Subsection A or B of this
11 section is guilty of a misdemeanor.

12 D. In addition to any other penalty established by
13 law, the court, with respect to a person who violates
14 Subsection A of this section through the person's
15 misrepresentation of the person's age:

16 (1) may order the person to perform community
17 service; and

18 (2) shall order that the person's driving
19 privileges and right to apply for driving privileges be
20 suspended for a period not to exceed one year.

21 E. If a court issues an order suspending a person's
22 driving privileges pursuant to Subsection D of this section,
23 the court in its discretion and upon petition by the person may
24 withdraw its order at any time.

25 F. If a person cited for a violation of Subsection

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1 A or B of this section fails to appear in court and if the
2 person is at least thirteen years of age but younger than
3 twenty-one years of age at the time the person fails to appear,
4 in addition to any other penalty, the court shall issue an
5 order to suspend the person's driving privileges.

6 G. The prohibitions in this section do not apply to
7 a person who is younger than twenty-one years of age who is
8 acting under the direction of the department or state or local
9 law enforcement agencies for the purpose of investigating
10 possible violations of laws prohibiting the sale of marijuana
11 items to persons who are younger than twenty-one years of age.

12 SECTION 28. [NEW MATERIAL] COMPLIANCE WITH STANDARDS FOR
13 MARIJUANA ITEMS.--

14 A. Marijuana items shall not be sold or offered for
15 sale unless the marijuana items comply with the minimum
16 standards established in the Cannabis Revenue and Freedom Act,
17 rules promulgated pursuant to that act or other state law.

18 B. The department may require a marijuana producer,
19 marijuana processor or marijuana wholesaler to provide a
20 laboratory analysis that demonstrates to the department's
21 satisfaction that particular marijuana items comply with
22 minimum standards.

23 C. Marijuana items offered for sale shall not be
24 altered in any way by a person who is not licensed to alter the
25 items.

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1 D. The department may prohibit the sale of
2 marijuana items for a reasonable period of time while it
3 determines whether the marijuana items comply with established
4 minimum standards.

5 **SECTION 29. [NEW MATERIAL] MISLEADING MARKS OR LABELS--**
6 **INJURIOUS OR ADULTERATED INGREDIENTS.--**

7 A. A licensee shall not use or allow the use of a
8 mark or label on the container of a marijuana item that is kept
9 for sale if the container does not precisely and clearly
10 indicate the nature of its contents or if the mark or label
11 could deceive a person as to the nature, composition, quantity,
12 age or quality of the marijuana item.

13 B. The board may prohibit a licensee from selling
14 any brand of marijuana item that, in the board's judgment, is
15 deceptively labeled or branded as to the marijuana item's
16 content or contains injurious or adulterated ingredients.

17 **SECTION 30. [NEW MATERIAL] EMPLOYMENT--MINIMUM AGE**
18 **REQUIREMENT.--**

19 A. A licensee shall not employ a person who is
20 younger than twenty-one years of age in any part of a licensed
21 premises.

22 B. During an inspection of a licensed premises, the
23 department may require proof that a person who is performing
24 work at the licensed premises is at least twenty-one years of
25 age. If the person does not provide acceptable proof of age

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1 upon request, the department may require the person to
2 immediately leave the licensed premises until the department
3 receives acceptable proof of the person's age. This subsection
4 does not apply to a person who is temporarily at the licensed
5 premises to make a service, maintenance or repair call or for
6 other purposes independent of operations of the licensed
7 premises.

8 C. If a person performing work at a licensed
9 premises does not provide proof of the person's age as
10 requested by the department pursuant to Subsection B of this
11 section, the department may request that the licensee provide
12 proof that the person is twenty-one years of age or older. The
13 licensee's failure to provide acceptable proof of age as
14 requested shall be prima facie evidence that the licensee has
15 allowed the person to perform work at the licensed premises in
16 violation of the minimum age requirement.

17 SECTION 31. [NEW MATERIAL] MATURE MARIJUANA PLANTS.--Only
18 a licensed marijuana producer and the producer's licensee
19 representatives may possess or sell a mature marijuana plant.

20 SECTION 32. [NEW MATERIAL] EMPLOYMENT PROTECTIONS.--

21 A. Unless an employer establishes by a
22 preponderance of the evidence that an employee's use of
23 marijuana in compliance with the Cannabis Revenue and Freedom
24 Act has impaired the employee's ability to perform the
25 employee's job responsibilities, the employer shall not take

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1 any adverse employment action against the employee for:

2 (1) the employee's conduct that complies with
3 that act; or

4 (2) the employee's drug test results that show
5 the presence of marijuana components or metabolites.

6 B. For the purpose of this section, an employer may
7 consider an employee's ability to perform the employee's job
8 responsibilities to be impaired if, while working, the employee
9 manifests specific articulable symptoms that decrease the
10 employee's performance of the duties of the employee's job.

11 C. Nothing in this section shall:

12 (1) restrict an employer's ability to prohibit
13 or take adverse employment action for the possession or use of
14 intoxicating substances during work hours; or

15 (2) require an employer to commit any act that
16 would cause the employer to violate federal law, or that would
17 cause the loss of a federal contract or federal funding.

18 D. As used in this section, "adverse employment
19 action" means an employer refusing to hire or employ, barring
20 or discharging from employment, requiring an employee to retire
21 from employment or discriminating against an employee with
22 respect to compensation or the terms, conditions or privileges
23 of employment.

24 SECTION 33. [NEW MATERIAL] PROTECTIONS FROM
25 DISCRIMINATION.--

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1 A. A landlord shall not refuse to lease to or evict
2 a person from property solely based on the person's conduct
3 that complies with the Cannabis Revenue and Freedom Act, unless
4 failing to do so would cause the landlord to lose a monetary or
5 licensing-related benefit pursuant to federal law; provided,
6 however, that a landlord may prohibit a person from cultivating
7 or smoking marijuana on the landlord's property.

8 B. Unless a person's conduct that complies with the
9 Cannabis Revenue and Freedom Act creates an unreasonable danger
10 to the safety of the person's dependent child as established by
11 clear and convincing evidence, the person's conduct shall not
12 alone:

13 (1) be a reason to deny the person's custody
14 of or visitation or parenting time with the child; or

15 (2) create a presumption of the person's
16 neglect or endangerment of the child.

17 SECTION 34. [NEW MATERIAL] RESTRICTION ON THE USE OF
18 MARIJUANA ITEMS IN A PUBLIC PLACE--MARIJUANA RETAILER ON-SITE
19 CONSUMPTION LICENSE ENDORSEMENT.--

20 A. A person shall not use a marijuana item in a
21 public place except as provided in this section.

22 B. Pursuant to rules promulgated by the department,
23 a marijuana retailer may apply for an on-site consumption
24 endorsement to the retailer's marijuana retailer license to
25 allow the sale of marijuana items for on-site consumption and

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1 the consumption of the marijuana items in a marijuana
2 consumption area.

3 C. A person may purchase and consume marijuana
4 items in a marijuana consumption area on the licensed premises
5 of a marijuana retailer who has been issued an on-site
6 consumption endorsement.

7 D. A person who violates Subsection A of this
8 section is guilty of a misdemeanor.

9 SECTION 35. [NEW MATERIAL] MARIJUANA ITEMS IN A
10 CORRECTIONAL FACILITY PROHIBITED.--

11 A. A person shall not knowingly and voluntarily
12 carry, transport or deposit a marijuana item in an institution
13 for the confinement of adult prisoners or in a juvenile
14 detention facility.

15 B. A person who violates Subsection A of this
16 section with respect to a prison is guilty of bringing
17 contraband into a prison as provided in Subsection A of Section
18 30-22-14 NMSA 1978, and with respect to a jail, is guilty of
19 bringing contraband into a jail as provided in Subsection B of
20 Section 30-22-14 NMSA 1978.

21 SECTION 36. [NEW MATERIAL] HOMEGROWN MARIJUANA IN PUBLIC
22 VIEW PROHIBITED.--

23 A. A person shall not produce, process, keep or
24 store homegrown marijuana or homemade marijuana products if the
25 homegrown marijuana or homemade marijuana products can be

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1 readily seen by normal unaided vision from a public place.

2 B. A person who violates Subsection A of this
3 section is guilty of a misdemeanor.

4 SECTION 37. [NEW MATERIAL] CERTAIN HOMEMADE MARIJUANA
5 EXTRACTS PROHIBITED.--A person shall not produce, process, keep
6 or store a homemade marijuana extract if the extract is
7 produced or processed using a volatile solvent such as butane,
8 hexane, isopropyl alcohol, ethanol or carbon dioxide.

9 SECTION 38. [NEW MATERIAL] INCONSISTENT LOCAL LAWS AND
10 ORDINANCES SUPERSEDED AND REPEALED.--Notwithstanding the
11 provisions of Sections 39 and 40 of the Cannabis Revenue and
12 Freedom Act, the provisions of that act shall operate uniformly
13 throughout the state and shall be superior to and shall
14 supersede all local laws or ordinances, including a law or
15 ordinance of a home rule municipality, that are inconsistent or
16 in conflict with that act. Any conflicting local laws or
17 ordinances are repealed.

18 SECTION 39. [NEW MATERIAL] LOCAL GOVERNMENT AUTHORITY TO
19 REGULATE MARIJUANA RETAILERS AND MARIJUANA WHOLESALERS.--

20 A. Municipalities and counties may adopt reasonable
21 time, place and manner regulations related to nuisance aspects
22 of a licensed marijuana retailer's or a marijuana wholesaler's
23 business if the municipality or county makes specific findings
24 that the business would cause adverse effects to occur.

25 B. The authority granted to municipalities and

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1 counties by this section is in addition to the authority
2 granted to a municipality or county pursuant to its charter,
3 state laws and the constitution of New Mexico.

4 SECTION 40. [NEW MATERIAL] LOCAL OPTION ELECTION--SALES
5 NOT AFFECTED BY LOCAL OPTION.--

6 A. A municipality with a population greater than
7 five thousand according to the most recent federal decennial
8 census, whether or not the county in which that municipality is
9 situated has held an election provided for in this section, or
10 a county in the state may prohibit the operation of a licensed
11 marijuana processor, marijuana producer, marijuana wholesaler
12 or marijuana retailer upon the following terms and conditions:

13 (1) at any time after the effective date of
14 the Cannabis Revenue and Freedom Act, the registered qualified
15 electors of the municipality or county may petition the
16 governing body by filing one or more petitions in the
17 appropriate office to hold an election for the purpose of
18 determining whether to prohibit the operations of a licensed
19 marijuana processor, marijuana producer, marijuana wholesaler
20 or marijuana retailer in the municipality or county. If the
21 aggregate of the signatures of such electors on all the
22 petitions equals or exceeds five percent of the number of
23 registered voters of the municipality or county, the governing
24 body shall call an election within seventy-five days of the
25 verification of the petition. The date of the filing of the

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1 petition shall be the date of the filing of the last petition
2 that brings the number of signatures up to the required five
3 percent; provided, however, that the governing body shall
4 refuse to recognize the petition if more than three months have
5 elapsed between the date of the first signature and the filing
6 of the last petition necessary to bring the number of
7 signatures on the petition up to five percent;

8 (2) the election shall be called, conducted,
9 counted and canvassed substantially in the manner provided by
10 law for general elections within the county or special
11 municipal elections within the municipality, except as
12 otherwise provided in this section;

13 (3) the votes at the election shall be
14 counted, returned and canvassed as provided for in the case of
15 general elections within the county or special municipal
16 elections within the municipality;

17 (4) except as otherwise provided in this
18 section, contests, recounts and rechecks shall be permitted as
19 provided for in the case of candidates for county office in
20 general elections or as provided for in the case of special
21 municipal elections within the municipality. Applications for
22 contests, recounts or rechecks may be filed by any person who
23 voted in the election and service shall be made upon the county
24 clerk or municipal clerk as the case may be;

25 (5) if the majority of all of the votes cast

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1 at the election are cast in favor of the prohibition of the
2 operations of a licensed marijuana processor, marijuana
3 producer, marijuana retailer or marijuana wholesaler in the
4 county or municipality, the chair of the governing body shall
5 declare by order entered upon the records of the county or
6 municipality that the county or municipality has approved the
7 prohibition and shall notify the department of the election
8 results;

9 (6) no election held pursuant to this section
10 shall be held within forty-two days of any primary, general,
11 municipal or school district election. If, within sixty days
12 from the verification of any petition as provided in Paragraph
13 (1) of this subsection, a primary, general, municipal or school
14 election is held, the governing body may call an election for a
15 day not less than sixty days after the primary, general,
16 municipal or school election;

17 (7) if an election is held pursuant to this
18 section in a county that contains within its limits a
19 municipality of more than five thousand persons according to
20 the most recent federal decennial census, it is not necessary
21 for the registered qualified electors in the municipality to
22 file a separate petition asking for a separate or different
23 vote on the question of whether to prohibit the operations of a
24 licensed marijuana processor, marijuana producer, marijuana
25 retailer or marijuana wholesaler. The election in the county

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1 shall be conducted so as to separate the votes in the
2 municipality from those in the remaining parts of the county.
3 If the majority of the voters in the county, including the
4 voters in the municipality, vote to prohibit the operations of
5 a licensed marijuana processor, marijuana producer, marijuana
6 retailer or marijuana wholesaler, the county shall not allow
7 the prohibited operations; but if the majority of the votes in
8 the municipality are in favor of allowing the operations of a
9 licensed marijuana processor, marijuana producer, marijuana
10 retailer or marijuana wholesaler, the municipality shall have
11 allowed the approved operations in the municipality. Nothing
12 contained in this paragraph shall prevent any municipality from
13 having a separate election under the terms of this section; and

14 (8) any county or municipality that has voted
15 to prohibit the operations of a licensed marijuana processor,
16 marijuana producer, marijuana retailer or marijuana wholesaler
17 may vote to discontinue the prohibition and to allow the
18 previously prohibited operations in that county or
19 municipality; the discontinuance shall become effective on the
20 ninetieth day after the local option election is held as
21 provided for in this paragraph.

22 B. The provisions of Subsection A of this section
23 shall not prevent a person who resides in a municipality or
24 county that has elected to prohibit the operations of a
25 licensed marijuana processor, marijuana producer, marijuana

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1 retailer or marijuana wholesaler from possessing marijuana
2 items that were purchased from licensed marijuana retailers for
3 the person's personal use.

4 SECTION 41. [NEW MATERIAL] ENFORCEMENT--DUTY OF LAW
5 ENFORCEMENT OFFICERS.--The state and local law enforcement
6 officers in the state shall enforce the Cannabis Revenue and
7 Freedom Act and shall assist the department with identifying
8 violations of that act and with apprehending offenders. Any
9 state or local law enforcement officer that has notice or
10 knowledge of or reasonable belief regarding a violation of that
11 act shall immediately notify the district attorney and provide
12 the district attorney with the names and addresses of any
13 witnesses to the violation and other information related to the
14 violation.

15 SECTION 42. [NEW MATERIAL] CONVICTION OF LICENSEE--DUTY
16 TO NOTIFY THE DEPARTMENT.--All court officials, district
17 attorneys and municipal authorities in the state shall notify
18 the department as soon as possible following the conviction of
19 a person who is licensed pursuant to the Cannabis Revenue and
20 Freedom Act for a violation of any provision of that act or of
21 a state or local law that relates in any way to marijuana
22 items. The notification shall include information about any
23 acts, practices or other conduct of the licensee that may be
24 subversive of the general welfare or contrary to the spirit of
25 that act and shall make recommendations that the department

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1 could take to remedy the acts, practices or conduct of the
2 licensee.

3 SECTION 43. [NEW MATERIAL] PROPERTY AND PLACES AS COMMON
4 NUISANCES.--

5 A. For the purpose of the Cannabis Revenue and
6 Freedom Act, a common nuisance is:

7 (1) a room, house, building, boat, structure
8 or other place where marijuana items are sold, manufactured,
9 bartered or given away in violation of state law;

10 (2) a room, house, building, boat, structure
11 or other place where persons are permitted to resort for the
12 purpose of using marijuana items in violation of state law;

13 (3) a place where marijuana items are kept for
14 sale, barter or gift in violation of state law; or

15 (4) all marijuana items or property subject to
16 confiscation pursuant to the Cannabis Revenue and Freedom Act
17 that are kept and used in a place described in this section.

18 B. A person who maintains or assists in maintaining
19 a common nuisance or who knowingly allows a common nuisance to
20 exist in a place of which the person is the owner, manager or
21 lessor is guilty of a violation of the Cannabis Revenue and
22 Freedom Act.

23 SECTION 44. [NEW MATERIAL] LIEN ON PLACE USED TO
24 UNLAWFULLY HANDLE MARIJUANA ITEMS.--Upon a showing that the
25 owner of a building or premises has knowingly allowed the

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1 building or premises to be used or occupied for the
2 manufacture, sale or possession of marijuana items in violation
3 of the provisions of the Cannabis Revenue and Freedom Act, that
4 building or premises is subject to a lien for and may be sold
5 to pay all fines and costs assessed against the building's or
6 premises' occupants for violations of that act. The district
7 attorney of the county in which the building or premises is
8 located shall enforce the lien immediately by civil action.

9 SECTION 45. [NEW MATERIAL] GOVERNOR'S AUTHORITY TO
10 SUSPEND LICENSE.--In case of invasion, disaster, insurrection
11 or riot or imminent danger thereof, the governor may, without
12 notice, suspend a license that is in the affected area for the
13 duration of the invasion, disaster, insurrection or riot or
14 imminent danger thereof.

15 SECTION 46. [NEW MATERIAL] PENALTIES.--

16 A. Except as otherwise specifically provided in the
17 Cannabis Revenue and Freedom Act:

18 (1) a violation of a provision of that act
19 constitutes a misdemeanor; and

20 (2) a violation of a rule promulgated pursuant
21 to that act constitutes a petty misdemeanor.

22 B. It is a misdemeanor for a person who is twenty-
23 one years of age or older to possess, produce, process, keep,
24 store or deliver marijuana items, usable marijuana or marijuana
25 plants in excess of the quantities or amounts provided in

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1 Paragraphs (1) through (6) of Subsection B of Section 4 of the
2 Cannabis Revenue and Freedom Act.

3 SECTION 47. [NEW MATERIAL] USE OF MARIJUANA WHILE
4 DRIVING--PENALTY.--A person commits the offense of driving
5 under the influence of intoxicating liquor or drugs as provided
6 in Section 66-8-102 NMSA 1978 if the person uses any marijuana
7 item while driving a motor vehicle upon a highway.

8 SECTION 48. [NEW MATERIAL] SEVERABILITY.--If any part or
9 application of the Cannabis Revenue and Freedom Act is held
10 invalid, unconstitutional or illegal, the remainder or its
11 application to other situations or persons shall not be
12 affected.

13 SECTION 49. [NEW MATERIAL] SUBSTANCE ABUSE PREVENTION AND
14 BEHAVIORAL HEALTH FUND.--The "substance abuse prevention and
15 behavioral health fund" is created in the state treasury. The
16 fund consists of appropriations, other money deposited in the
17 fund and money otherwise accruing to the fund. The department
18 of health shall administer the fund, and money in the fund is
19 appropriated to the department of health to establish, operate
20 and maintain alcohol and substance abuse prevention, early
21 intervention and treatment and related behavioral health
22 services. Money in the fund shall be disbursed on warrants
23 signed by the secretary of finance and administration pursuant
24 to vouchers signed by the secretary of health or the
25 secretary's designee. Any balance remaining in the fund at the

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1 end of a fiscal year shall not revert to the general fund.

2 SECTION 50. [NEW MATERIAL] DISTRICT ATTORNEY PUBLIC
3 SAFETY FUND.--The "district attorney public safety fund" is
4 created in the state treasury. The fund consists of
5 appropriations, other money deposited in the fund and money
6 otherwise accruing to the fund. The administrative office of
7 the district attorneys shall administer the fund, and money in
8 the fund is appropriated to the administrative office of the
9 district attorneys to support evidence-based arrest and
10 incarceration diversion programs for low-level nonviolent drug
11 related offenses and to support development of intoxicated
12 driving detection programs. Money in the fund shall be
13 disbursed on warrants signed by the secretary of finance and
14 administration pursuant to vouchers signed by the director of
15 the administrative office of the district attorneys or the
16 director's designee. Any balance remaining in the fund at the
17 end of a fiscal year shall not revert to the general fund.

18 SECTION 51. [NEW MATERIAL] PUBLIC DEFENDER PUBLIC SAFETY
19 FUND.--The "public defender public safety fund" is created in
20 the state treasury. The fund consists of appropriations, other
21 money deposited in the fund and money otherwise accruing to the
22 fund. The public defender department shall administer the
23 fund, and money in the fund is appropriated to the public
24 defender for operations. Money in the fund shall be disbursed
25 on warrants signed by the secretary of finance and

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1 administration pursuant to vouchers signed by the chief public
2 defender or the chief's designee. Any balance remaining in the
3 fund at the end of a fiscal year shall not revert to the
4 general fund.

5 SECTION 52. [NEW MATERIAL] CANNABIS REVENUE ECONOMIC
6 DEVELOPMENT FUND.--The "cannabis revenue economic development
7 fund" is created in the state treasury. The fund consists of
8 appropriations, other money deposited in the fund and money
9 otherwise accruing to the fund. The economic development
10 department shall administer the fund. Money in the fund is
11 appropriated to the economic development department for:
12 training to support local entrepreneurs; local business
13 development through small business development centers and
14 community college and university programs; business growth and
15 marketing programs through regional economic development
16 organizations; and community reinvestment grant programs to
17 support job training for and placement of formerly incarcerated
18 persons. Money in the fund shall be disbursed on warrants
19 signed by the secretary of finance and administration pursuant
20 to vouchers signed by the secretary of economic development or
21 the secretary's designee. Any balance remaining in the fund at
22 the end of a fiscal year shall not revert to the general fund.

23 SECTION 53. [NEW MATERIAL] SHORT TITLE.--Sections 53
24 through 59 of this act may be cited as the "Cannabis Tax Act".

25 SECTION 54. [NEW MATERIAL] DEFINITIONS.--As used in the

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1 Cannabis Tax Act:

2 A. "county area" means that portion of a county
3 located outside the boundaries of any municipality, except that
4 for H class counties, "county area" means the entire county;

5 B. "department" means the taxation and revenue
6 department;

7 C. "governing body" means:

8 (1) in the case of a municipality, the city
9 council or city commission of a city, the board of trustees of
10 a town or village or the board of county commissioners of H
11 class counties; or

12 (2) in the case of a county, the county
13 commission of a county or the county council of an H class
14 county;

15 D. "marijuana items" means "marijuana items" as
16 that term is defined in the Cannabis Revenue and Freedom Act;
17 and

18 E. "marijuana retailer" means "marijuana retailer"
19 as that term is defined in the Cannabis Revenue and Freedom
20 Act.

21 SECTION 55. [NEW MATERIAL] IMPOSITION AND RATE OF
22 CANNABIS TAX.--

23 A. There is imposed an excise tax on a marijuana
24 retailer that sells marijuana items in this state on which the
25 tax imposed by this section has not been paid. If the price

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1 paid does not represent the value of the marijuana item, the
2 tax rate shall be applied to the reasonable value of the
3 marijuana item at the time the item was purchased. The excise
4 tax imposed by this section may be referred to as the "cannabis
5 tax".

6 B. The rate of the cannabis tax is fifteen percent
7 and is applied to the price paid for the marijuana item.

8 SECTION 56. [NEW MATERIAL] MUNICIPAL CANNABIS TAX.--

9 A. A majority of the members of the governing body
10 of a municipality may enact an ordinance imposing an excise tax
11 on a marijuana retailer that sells marijuana items in the
12 municipality on which the tax imposed by this section has not
13 been paid. The tax imposed pursuant to this section may be
14 referred to as the "municipal cannabis tax".

15 B. The rate of the municipal cannabis tax is five
16 percent and is applied to the price paid for the marijuana
17 item. If the price paid does not represent the value of the
18 marijuana item, the tax rate shall be applied to the reasonable
19 value of the marijuana item at the time that the item was
20 purchased.

21 C. The governing body of a municipality, at the
22 time of enacting any ordinance imposing a municipal cannabis
23 tax, may dedicate the revenue for municipal general purposes.

24 D. Any ordinance enacted under the provisions of
25 Subsection A of this section shall include an effective date of

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1 either July 1 or January 1.

2 E. An ordinance imposing the municipal cannabis tax
3 shall not go into effect until after an election is held and
4 the majority of the voters of the municipality voting in the
5 election vote in favor of imposing the tax. The governing body
6 shall adopt a resolution calling for an election within
7 seventy-five days of the date the ordinance is adopted on the
8 question of imposing the tax. The question shall be submitted
9 to the voters of the municipality as a separate question at a
10 regular municipal election or at a special election called for
11 that purpose by the governing body. A special municipal
12 election shall be called, conducted and canvassed as provided
13 in the Municipal Election Code. If the majority of the voters
14 voting on the question approves the ordinance imposing the
15 municipal cannabis tax, the ordinance shall become effective in
16 accordance with the provisions of the Cannabis Tax Act. If the
17 question of imposing the municipal cannabis tax fails, the
18 governing body shall not again propose the imposition of the
19 tax for a period of one year from the date of the election.

20 SECTION 57. [NEW MATERIAL] COUNTY CANNABIS TAX.--

21 A. The majority of the members of the governing
22 body of a county may enact an ordinance imposing an excise tax
23 on a marijuana retailer that sells marijuana items in the
24 county area on which the tax imposed by this section has not
25 been paid. The tax imposed pursuant to this section may be

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1 referred to as the "county cannabis tax".

2 B. The rate of the county cannabis tax is five
3 percent and is applied to the price paid for the marijuana
4 item. If the price paid does not represent the value of the
5 marijuana item, the tax rate shall be applied to the reasonable
6 value of the marijuana item at the time that the item was
7 purchased.

8 C. The governing body of a county, at the time of
9 enacting any ordinance imposing a county cannabis tax, may
10 dedicate the revenue for county general purposes.

11 D. Any ordinance enacted under the provisions of
12 Subsection A of this section shall include an effective date of
13 either July 1 or January 1.

14 E. An ordinance imposing the county cannabis tax
15 shall not go into effect until after an election is held and
16 the majority of the qualified electors of the county area
17 voting in the election vote in favor of imposing the tax. The
18 governing body shall adopt a resolution calling for an election
19 within seventy-five days of the date that the ordinance is
20 adopted on the question of imposing the tax. The question may
21 be submitted to the qualified electors and voted upon as a
22 separate question at any special election called for that
23 purpose by the governing body. The election on the question
24 shall be called, held, conducted and canvassed in substantially
25 the same manner as provided by law for general elections. If

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1 the question of imposing a county cannabis tax fails, the
2 governing body shall not again propose a county cannabis tax
3 for a period of one year after the election.

4 SECTION 58. [NEW MATERIAL] DATE PAYMENT DUE.--The taxes
5 imposed pursuant to the Cannabis Tax Act are to be paid on or
6 before the twenty-fifth day of the month following the month in
7 which the taxable event occurs.

8 SECTION 59. [NEW MATERIAL] ADMINISTRATIVE CHARGE.--The
9 department may deduct an amount not to exceed three percent of
10 the proceeds of the municipal cannabis tax and county cannabis
11 tax as a charge for the administrative costs of collection,
12 which amount shall be retained by the department for use in
13 administration of those taxes.

14 SECTION 60. A new section of the Tax Administration Act
15 is enacted to read:

16 "[NEW MATERIAL] DISTRIBUTION--PUBLIC SCHOOL FUND FOR STATE
17 EQUALIZATION GUARANTEE DISTRIBUTION--SUBSTANCE ABUSE PREVENTION
18 AND BEHAVIORAL HEALTH FUND--CANNABIS REVENUE ECONOMIC
19 DEVELOPMENT FUND--DISTRICT ATTORNEY PUBLIC SAFETY FUND--PUBLIC
20 DEFENDER PUBLIC SAFETY FUND--DEPARTMENT OF HEALTH--CANNABIS
21 TAX.--A distribution pursuant to Section 7-1-6.1 NMSA 1978
22 shall be made to:

23 A. the public school fund to augment the
24 appropriations for the state equalization guarantee
25 distribution in an amount equal to forty percent of the net

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1 receipts attributable to the cannabis tax;

2 B. the substance abuse prevention and behavioral
3 health fund in an amount equal to twenty-three percent of the
4 net receipts attributable to the cannabis tax;

5 C. the cannabis revenue economic development fund
6 in an amount equal to twenty percent of the net receipts
7 attributable to the cannabis tax;

8 D. the district attorney public safety fund in an
9 amount equal to seven and one-half percent of the net receipts
10 attributable to the cannabis tax;

11 E. the public defender public safety fund in an
12 amount equal to seven and one-half percent of the net receipts
13 attributable to the cannabis tax; and

14 F. the department of health in an amount equal to
15 two percent of the net receipts attributable to the cannabis
16 tax to support qualified patients pursuant to the medical
17 cannabis subsidy program."

18 SECTION 61. A new section of the Tax Administration Act
19 is enacted to read:

20 "[NEW MATERIAL] TRANSFER--REVENUES FROM MUNICIPAL CANNABIS
21 TAX AND COUNTY CANNABIS TAX.--

22 A. A transfer pursuant to Section 7-1-6.1 NMSA 1978
23 shall be made to each municipality for which the department is
24 collecting a municipal cannabis tax imposed by that
25 municipality in an amount, subject to any increase or decrease

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1 made pursuant to Section 7-1-6.15 NMSA 1978, equal to the net
2 receipts attributable to the municipal cannabis tax, less any
3 deduction for administrative costs determined and made by the
4 department pursuant to the Cannabis Tax Act.

5 B. A transfer pursuant to Section 7-1-6.1 NMSA 1978
6 shall be made to each county for which the department is
7 collecting a county cannabis tax imposed by that county in an
8 amount, subject to any increase or decrease made pursuant to
9 Section 7-1-6.15 NMSA 1978, equal to the net receipts
10 attributable to the county cannabis tax, less any deduction for
11 administrative costs determined and made by the department
12 pursuant to the Cannabis Tax Act."

13 SECTION 62. Section 7-1-2 NMSA 1978 (being Laws 1965,
14 Chapter 248, Section 2, as amended) is amended to read:

15 "7-1-2. APPLICABILITY.--The Tax Administration Act
16 applies to and governs:

17 A. the administration and enforcement of the
18 following taxes or tax acts as they now exist or may hereafter
19 be amended:

- 20 (1) Income Tax Act;
21 (2) Withholding Tax Act;
22 (3) Venture Capital Investment Act;
23 (4) Gross Receipts and Compensating Tax Act
24 and any state gross receipts tax;
25 (5) Liquor Excise Tax Act;

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- 1 (6) Local Liquor Excise Tax Act;
- 2 (7) any municipal local option gross receipts
- 3 tax;
- 4 (8) any county local option gross receipts
- 5 tax;
- 6 (9) Special Fuels Supplier Tax Act;
- 7 (10) Gasoline Tax Act;
- 8 (11) petroleum products loading fee, which fee
- 9 shall be considered a tax for the purpose of the Tax
- 10 Administration Act;
- 11 (12) Alternative Fuel Tax Act;
- 12 (13) Cigarette Tax Act;
- 13 (14) Estate Tax Act;
- 14 (15) Railroad Car Company Tax Act;
- 15 (16) Investment Credit Act, rural job tax
- 16 credit, Laboratory Partnership with Small Business Tax Credit
- 17 Act, Technology Jobs and Research and Development Tax Credit
- 18 Act, Film Production Tax Credit Act, Affordable Housing Tax
- 19 Credit Act and high-wage jobs tax credit;
- 20 (17) Corporate Income and Franchise Tax Act;
- 21 (18) Uniform Division of Income for Tax
- 22 Purposes Act;
- 23 (19) Multistate Tax Compact;
- 24 (20) Tobacco Products Tax Act; ~~and~~
- 25 (21) the telecommunications relay service

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1 surcharge imposed by Section 63-9F-11 NMSA 1978, which
2 surcharge shall be considered a tax for the purposes of the Tax
3 Administration Act; and

4 (22) the Cannabis Tax Act;

5 B. the administration and enforcement of the
6 following taxes, surtaxes, advanced payments or tax acts as
7 they now exist or may hereafter be amended:

8 (1) Resources Excise Tax Act;

9 (2) Severance Tax Act;

10 (3) any severance surtax;

11 (4) Oil and Gas Severance Tax Act;

12 (5) Oil and Gas Conservation Tax Act;

13 (6) Oil and Gas Emergency School Tax Act;

14 (7) Oil and Gas Ad Valorem Production Tax Act;

15 (8) Natural Gas Processors Tax Act;

16 (9) Oil and Gas Production Equipment Ad

17 Valorem Tax Act;

18 (10) Copper Production Ad Valorem Tax Act;

19 (11) any advance payment required to be made
20 by any act specified in this subsection, which advance payment
21 shall be considered a tax for the purposes of the Tax
22 Administration Act;

23 (12) Enhanced Oil Recovery Act;

24 (13) Natural Gas and Crude Oil Production
25 Incentive Act; and

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1 (14) intergovernmental production tax credit
2 and intergovernmental production equipment tax credit;

3 C. the administration and enforcement of the
4 following taxes, surcharges, fees or acts as they now exist or
5 may hereafter be amended:

6 (1) Weight Distance Tax Act;

7 (2) the workers' compensation fee authorized
8 by Section 52-5-19 NMSA 1978, which fee shall be considered a
9 tax for purposes of the Tax Administration Act;

10 (3) Uniform Unclaimed Property Act (1995);

11 (4) 911 emergency surcharge and the network
12 and database surcharge, which surcharges shall be considered
13 taxes for purposes of the Tax Administration Act;

14 (5) the solid waste assessment fee authorized
15 by the Solid Waste Act, which fee shall be considered a tax for
16 purposes of the Tax Administration Act;

17 (6) the water conservation fee imposed by
18 Section 74-1-13 NMSA 1978, which fee shall be considered a tax
19 for the purposes of the Tax Administration Act; and

20 (7) the gaming tax imposed pursuant to the
21 Gaming Control Act; and

22 D. the administration and enforcement of all other
23 laws, with respect to which the department is charged with
24 responsibilities pursuant to the Tax Administration Act, but
25 only to the extent that the other laws do not conflict with the

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1 Tax Administration Act."

2 SECTION 63. Section 7-1-6.15 NMSA 1978 (being Laws 1983,
3 Chapter 211, Section 20, as amended by Laws 2015, Chapter 89,
4 Section 1 and by Laws 2015, Chapter 100, Section 1) is amended
5 to read:

6 "7-1-6.15. ADJUSTMENTS OF DISTRIBUTIONS OR TRANSFERS TO
7 MUNICIPALITIES OR COUNTIES.--

8 A. The provisions of this section apply to:

9 (1) any distribution to a municipality
10 pursuant to Section 7-1-6.4, 7-1-6.36 or 7-1-6.46 NMSA 1978;

11 (2) any transfer to a municipality with
12 respect to any local option gross receipts tax or municipal
13 cannabis tax imposed by that municipality;

14 (3) any transfer to a county with respect to
15 any local option gross receipts tax or county cannabis tax
16 imposed by that county;

17 (4) any distribution to a county pursuant to
18 Section 7-1-6.16 or 7-1-6.47 NMSA 1978;

19 (5) any distribution to a municipality or a
20 county of gasoline taxes pursuant to Section 7-1-6.9 NMSA 1978;

21 (6) any transfer to a county with respect to
22 any tax imposed in accordance with the Local Liquor Excise Tax
23 Act;

24 (7) any distribution to a county from the
25 county government road fund pursuant to Section 7-1-6.26 NMSA

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1 1978;

2 (8) any distribution to a municipality of
3 gasoline taxes pursuant to Section 7-1-6.27 NMSA 1978; and

4 (9) any distribution to a municipality of
5 compensating taxes pursuant to Section 7-1-6.55 NMSA 1978.

6 B. Before making a distribution or transfer
7 specified in Subsection A of this section to a municipality or
8 county for the month, amounts comprising the net receipts shall
9 be segregated into two mutually exclusive categories. One
10 category shall be for amounts relating to the current month,
11 and the other category shall be for amounts relating to prior
12 periods. The total of each category for a municipality or
13 county shall be reported each month to that municipality or
14 county. If the total of the amounts relating to prior periods
15 is less than zero and its absolute value exceeds the greater of
16 one hundred dollars (\$100) or an amount equal to twenty percent
17 of the average distribution or transfer amount for that
18 municipality or county, then the following procedures shall be
19 carried out:

20 (1) all negative amounts relating to any
21 period prior to the three calendar years preceding the year of
22 the current month, net of any positive amounts in that same
23 time period for the same taxpayers to which the negative
24 amounts pertain, shall be excluded from the total relating to
25 prior periods. Except as provided in Paragraph (2) of this

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1 subsection, the net receipts to be distributed or transferred
2 to the municipality or county shall be adjusted to equal the
3 amount for the current month plus the revised total for prior
4 periods; and

5 (2) if the revised total for prior periods
6 determined pursuant to Paragraph (1) of this subsection is
7 negative and its absolute value exceeds the greater of one
8 hundred dollars (\$100) or an amount equal to twenty percent of
9 the average distribution or transfer amount for that
10 municipality or county, the revised total for prior periods
11 shall be excluded from the distribution or transfers and the
12 net receipts to be distributed or transferred to the
13 municipality or county shall be equal to the amount for the
14 current month.

15 C. The department shall recover from a municipality
16 or county the amount excluded by Paragraph (2) of Subsection B
17 of this section. This amount may be referred to as the
18 "recoverable amount".

19 D. Prior to or concurrently with the distribution
20 or transfer to the municipality or county of the adjusted net
21 receipts, the department shall notify the municipality or
22 county whose distribution or transfer has been adjusted
23 pursuant to Paragraph (2) of Subsection B of this section:

24 (1) that the department has made such an
25 adjustment, that the department has determined that a specified

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1 amount is recoverable from the municipality or county and that
2 the department intends to recover that amount from future
3 distributions or transfers to the municipality or county;

4 (2) that the municipality or county has ninety
5 days from the date notice is made to enter into a mutually
6 agreeable repayment agreement with the department;

7 (3) that if the municipality or county takes
8 no action within the ninety-day period, the department will
9 recover the amount from the next six distributions or transfers
10 following the expiration of the ninety days; and

11 (4) that the municipality or county may
12 inspect, pursuant to Section 7-1-8.9 NMSA 1978, an application
13 for a claim for refund that gave rise to the recoverable
14 amount, exclusive of any amended returns that may be attached
15 to the application.

16 E. No earlier than ninety days from the date notice
17 pursuant to Subsection D of this section is given, the
18 department shall begin recovering the recoverable amount from a
19 municipality or county as follows:

20 (1) the department may collect the recoverable
21 amount by:

22 (a) decreasing distributions or
23 transfers to the municipality or county in accordance with a
24 repayment agreement entered into with the municipality or
25 county; or

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1 (b) except as provided in Paragraphs (2)
2 and (3) of this subsection, if the municipality or county fails
3 to act within the ninety days, decreasing the amount of the
4 next six distributions or transfers to the municipality or
5 county following expiration of the ninety-day period in
6 increments as nearly equal as practicable and sufficient to
7 recover the amount;

8 (2) if, pursuant to Subsection B of this
9 section, the secretary determines that the recoverable amount
10 is more than fifty percent of the average distribution or
11 transfer of net receipts for that municipality or county, the
12 secretary:

13 (a) shall recover only up to fifty
14 percent of the average distribution or transfer of net receipts
15 for that municipality or county; and

16 (b) may, in the secretary's discretion,
17 waive recovery of any portion of the recoverable amount,
18 subject to approval by the state board of finance; and

19 (3) if, after application of a refund claim,
20 audit adjustment, correction of a mistake by the department or
21 other adjustment of a prior period, but prior to any recovery
22 of the department pursuant to this section, the total net
23 receipts of a municipality or county for the twelve-month
24 period beginning with the current month are reduced or are
25 projected to be reduced to less than fifty percent of the

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1 average distribution or transfer of net receipts, the secretary
2 may waive recovery of any portion of the recoverable amount,
3 subject to approval by the state board of finance.

4 F. No later than ninety days from the date notice
5 pursuant to Subsection D of this section is given, the
6 department shall provide the municipality or county adequate
7 opportunity to review an application for a claim for refund
8 that gave rise to the recoverable amount, exclusive of any
9 amended returns that may be attached to the application,
10 pursuant to Section 7-1-8.9 NMSA 1978.

11 G. On or before September 1 of each year beginning
12 in 2016, the secretary shall report to the state board of
13 finance and the legislative finance committee the total
14 recoverable amount waived pursuant to Subparagraph (b) of
15 Paragraph (2) and Paragraph (3) of Subsection E of this section
16 for each municipality and county in the prior fiscal year.

17 H. The secretary is authorized to decrease a
18 distribution or transfer to a municipality or county upon being
19 directed to do so by the secretary of finance and
20 administration pursuant to the State Aid Intercept Act or to
21 redirect a distribution or transfer to the New Mexico finance
22 authority pursuant to an ordinance or a resolution passed by
23 the county or municipality and a written agreement of the
24 municipality or county and the New Mexico finance authority.

25 Upon direction to decrease a distribution or transfer or notice

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1 to redirect a distribution or transfer to a municipality or
2 county, the secretary shall decrease or redirect the next
3 designated distribution or transfer, and succeeding
4 distributions or transfers as necessary, by the amount of the
5 state distributions intercept authorized by the secretary of
6 finance and administration pursuant to the State Aid Intercept
7 Act or by the amount of the state distribution intercept
8 authorized pursuant to an ordinance or a resolution passed by
9 the county or municipality and a written agreement with the New
10 Mexico finance authority. The secretary shall transfer the
11 state distributions intercept amount to the municipal or county
12 treasurer or other person designated by the secretary of
13 finance and administration or to the New Mexico finance
14 authority pursuant to written agreement to pay the debt service
15 to avoid default on qualified local revenue bonds or meet other
16 local revenue bond, loan or other debt obligations of the
17 municipality or county to the New Mexico finance authority. A
18 decrease to or redirection of a distribution or transfer
19 pursuant to this subsection that arose:

20 (1) prior to an adjustment of a distribution
21 or transfer of net receipts creating a recoverable amount owed
22 to the department takes precedence over any collection of any
23 recoverable amount pursuant to Paragraph (2) of Subsection B of
24 this section, which may be made only from the net amount of the
25 distribution or transfer remaining after application of the

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1 decrease or redirection pursuant to this subsection; and

2 (2) after an adjustment of a distribution or
3 transfer of net receipts creating a recoverable amount owed to
4 the department shall be subordinate to any collection of any
5 recoverable amount pursuant to Paragraph (2) of Subsection B of
6 this section.

7 I. Upon the direction of the secretary of finance
8 and administration pursuant to Section 9-6-5.2 NMSA 1978, the
9 secretary shall temporarily withhold the balance of a
10 distribution to a municipality or county, net of any decrease
11 or redirected amount pursuant to Subsection H of this section
12 and any recoverable amount pursuant to Paragraph (2) of
13 Subsection B of this section, that has failed to submit an
14 audit report required by the Audit Act or a financial report
15 required by Subsection F of Section 6-6-2 NMSA 1978. The
16 amount to be withheld, the source of the withheld distribution
17 and the number of months that the distribution is to be
18 withheld shall be as directed by the secretary of finance and
19 administration. A distribution withheld pursuant to this
20 subsection shall remain in the tax administration suspense fund
21 until distributed to the municipality or county and shall not
22 be distributed to the general fund. An amount withheld
23 pursuant to this subsection shall be distributed to the
24 municipality or county upon direction of the secretary of
25 finance and administration.

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1 J. As used in this section:

2 (1) "amounts relating to the current month"
3 means any amounts included in the net receipts of the current
4 month that represent payment of tax due for the current month,
5 correction of amounts processed in the current month that
6 relate to the current month or that otherwise relate to
7 obligations due for the current month;

8 (2) "amounts relating to prior periods" means
9 any amounts processed during the current month that adjust
10 amounts processed in a period or periods prior to the current
11 month regardless of whether the adjustment is a correction of a
12 department error or due to the filing of amended returns,
13 payment of department-issued assessments, filing or approval of
14 claims for refund, audit adjustments or other cause;

15 (3) "average distribution or transfer amount"
16 means the following amounts; provided that a distribution or
17 transfer that is negative shall not be used in calculating the
18 amounts:

19 (a) the annual average of the total
20 amount distributed or transferred to a municipality or county
21 in each of the three twelve-month periods preceding the current
22 month;

23 (b) if a distribution or transfer to a
24 municipality or county has been made for less than three years,
25 the total amount distributed or transferred in the year

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1 preceding the current month; or

2 (c) if a municipality or county has not
3 received distributions or transfers of net receipts for twelve
4 or more months, the monthly average of net receipts distributed
5 or transferred to the municipality or county preceding the
6 current month multiplied by twelve;

7 (4) "current month" means the month for which
8 the distribution or transfer is being prepared; and

9 (5) "repayment agreement" means an agreement
10 between the department and a municipality or county under which
11 the municipality or county agrees to allow the department to
12 recover an amount determined pursuant to Paragraph (2) of
13 Subsection B of this section by decreasing distributions or
14 transfers to the municipality or county for one or more months
15 beginning with the distribution or transfer to be made with
16 respect to a designated month. No interest shall be charged."

17 SECTION 64. Section 26-2B-1 NMSA 1978 (being Laws 2007,
18 Chapter 210, Section 1) is amended to read:

19 "26-2B-1. SHORT TITLE.--~~[Sections 1 through 7 of this~~
20 ~~act]~~ Chapter 26, Article 2B NMSA 1978 may be cited as the "Lynn
21 and Erin Compassionate Use Act" in honor of Lynn Pierson and
22 Erin Armstrong."

23 SECTION 65. Section 26-2B-3 NMSA 1978 (being Laws 2007,
24 Chapter 210, Section 3) is amended to read:

25 "26-2B-3. DEFINITIONS.--As used in the Lynn and Erin

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1 Compassionate Use Act:

2 A. "adequate supply" means an amount of cannabis,
3 in any form approved by the [~~department~~] cannabis control
4 board, possessed by a qualified patient or collectively
5 possessed by a qualified patient and the qualified patient's
6 primary caregiver that is determined by rule of the
7 [~~department~~] cannabis control board to be no more than
8 reasonably necessary to ensure the uninterrupted availability
9 of cannabis for a period of three months and that is derived
10 solely from an intrastate source;

11 B. "debilitating medical condition" means:

- 12 (1) cancer;
- 13 (2) glaucoma;
- 14 (3) multiple sclerosis;
- 15 (4) damage to the nervous tissue of the spinal
16 cord, with objective neurological indication of intractable
17 spasticity;
- 18 (5) epilepsy;
- 19 (6) positive status for human immunodeficiency
20 virus or acquired immune deficiency syndrome;
- 21 (7) admitted into hospice care in accordance
22 with rules promulgated by the [~~department~~] cannabis control
23 board; or
- 24 (8) any other medical condition, medical
25 treatment or disease as approved by the [~~department~~] cannabis

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1 control board;

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

3 D. "licensed producer" means any person or
4 association of persons within New Mexico that the [~~department~~]
5 cannabis control board determines to be qualified to produce,
6 possess, distribute and dispense cannabis pursuant to the Lynn
7 and Erin Compassionate Use Act and that is licensed by the
8 department;

9 E. "mature cannabis plant" means a harvestable
10 female cannabis plant that is flowering;

11 F. "personal production license" means a license
12 issued to a qualified patient that allows the qualified patient
13 to produce medical cannabis for that qualified patient's
14 personal use in accordance with cannabis control board rules;

15 [~~E-~~] G. "practitioner" means a person licensed in
16 New Mexico to prescribe and administer drugs that are subject
17 to the Controlled Substances Act;

18 [~~F-~~] H. "primary caregiver" means a resident of New
19 Mexico who is at least eighteen years of age and who has been
20 designated by the patient's practitioner as being necessary to
21 take responsibility for managing the well-being of a qualified
22 patient with respect to the medical use of cannabis pursuant to
23 the provisions of the Lynn and Erin Compassionate Use Act;

24 [~~G-~~] I. "qualified patient" means a resident of New
25 Mexico who has been diagnosed by a practitioner as having a

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1 debilitating medical condition and has received written
2 certification and a registry identification card issued
3 pursuant to the Lynn and Erin Compassionate Use Act; and

4 [H.] J. "written certification" means a statement
5 in a patient's medical records or a statement signed by a
6 patient's practitioner that, in the practitioner's professional
7 opinion, the patient has a debilitating medical condition and
8 the practitioner believes that the potential health benefits of
9 the medical use of cannabis would likely outweigh the health
10 risks for the patient. A written certification is not valid
11 for more than one year from the date of issuance."

12 SECTION 66. Section 26-2B-6 NMSA 1978 (being Laws 2007,
13 Chapter 210, Section 6) is amended to read:

14 "26-2B-6. ADVISORY BOARD CREATED--DUTIES.--The secretary
15 of health shall establish an advisory board consisting of eight
16 practitioners representing the fields of neurology, pain
17 management, medical oncology, psychiatry, infectious disease,
18 family medicine and gynecology. The practitioners shall be
19 nationally board-certified in their area of specialty and
20 knowledgeable about the medical use of cannabis. The members
21 shall be chosen for appointment by the secretary from a list
22 proposed by the New Mexico medical society. A quorum of the
23 advisory board shall consist of three members. The advisory
24 board shall:

25 A. review and recommend to the [department]

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1 cannabis control board for approval additional debilitating
2 medical conditions that would benefit from the medical use of
3 cannabis;

4 B. accept and review petitions to add medical
5 conditions, medical treatments or diseases to the list of
6 debilitating medical conditions that qualify for the medical
7 use of cannabis;

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

14 D. issue recommendations to the cannabis control
15 board concerning rules to be promulgated for the issuance of
16 the registry identification cards; and

17 E. recommend quantities of cannabis that are
18 necessary to constitute an adequate supply for qualified
19 patients and primary caregivers."

20 SECTION 67. Section 26-2B-7 NMSA 1978 (being Laws 2007,
21 Chapter 210, Section 7) is amended to read:

22 "26-2B-7. [~~REGISTRY IDENTIFICATION CARDS~~] DEPARTMENT
23 RULES--DUTIES--REGISTRY IDENTIFICATION CARDS.--

24 A. No later than [~~October 1, 2007~~] October 1, 2017,
25 and after consultation with the advisory board, the department

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1 shall promulgate rules in accordance with the State Rules Act
2 to: ~~[implement the purpose of the Lynn and Erin Compassionate~~
3 ~~Use Act. The rules shall:~~

4 ~~(1) govern the manner in which]~~

5 (1) address how the department will ~~[consider~~
6 ~~applications for]~~ issue and renew registry identification cards
7 ~~[and for the renewal of identification cards]~~ for qualified
8 patients and primary caregivers;

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

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

18 ~~(4) set forth additional]~~

19 (2) add medical conditions, medical treatments
20 or diseases to the list of debilitating medical conditions that
21 qualify for the medical use of cannabis as recommended by the
22 advisory board and approved by the cannabis control board;

23 ~~[(5) identify requirements for the licensure~~
24 ~~of producers and cannabis production facilities and set forth]~~

25 (3) establish procedures for producers and

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1 cannabis production facilities to obtain licenses;

2 [~~(6) develop a distribution system for medical~~
3 ~~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 at~~
9 ~~locations that are designated by the department and that are~~
10 ~~not within three hundred feet of any school, church or daycare~~
11 ~~center] and~~

12 (4) provide that, for a new or renewal
13 producer license, the department shall charge an annual license
14 fee of:

15 (a) fifteen thousand dollars (\$15,000),
16 if the producer will possess up to one hundred fifty mature
17 cannabis plants; and

18 (b) an additional five thousand dollars
19 (\$5,000) for each additional fifty mature cannabis plants the
20 producer will possess; provided, however, that the maximum fee
21 charged for a new or renewal producer license shall not exceed
22 forty-five thousand dollars (\$45,000).

23 [~~(7) determine additional duties and~~
24 ~~responsibilities of the advisory board; and~~

25 ~~(8) be revised and updated as necessary.]~~

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1 B. The department shall issue registry
2 identification cards to a patient and to the primary caregiver,
3 if any, for that patient [~~if any~~] who submit the following, in
4 accordance with [~~the department's~~] applicable rules:

- 5 (1) a written certification;
- 6 (2) the name, address and date of birth of the
7 patient;
- 8 (3) the name, address and telephone number of
9 the patient's practitioner; and
- 10 (4) the name, address and date of birth of the
11 patient's primary caregiver, if any.

12 C. The department shall verify the information
13 contained in an application submitted [~~pursuant to~~] as provided
14 in Subsection B of this section and shall approve or deny [~~an~~]
15 the application within thirty days of receipt. The department
16 may deny an application only if the applicant did not provide
17 the information required [~~pursuant to~~] as provided in
18 Subsection B of this section or if the department determines
19 that the information provided is false. A person whose
20 application has been denied shall not reapply for six months
21 from the date of the denial unless otherwise authorized by [~~the~~
22 ~~department~~] rule.

23 D. The department shall issue a registry
24 identification card within five days of approving an
25 application, and [~~a~~] the card shall expire one year after the

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1 date of issuance. A registry identification card shall
2 contain:

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

5 (2) the date of issuance and expiration date
6 of the registry identification card; and

7 (3) other information [~~that the department may~~
8 ~~require~~] as required by rule.

9 E. A person who possesses a registry identification
10 card shall notify the department of any change in the person's
11 name, address, qualified patient's practitioner, qualified
12 patient's primary caregiver or change in status of the
13 qualified patient's debilitating medical condition within ten
14 days of the change.

15 F. Possession of or application for a registry
16 identification card shall not constitute probable cause or give
17 rise to reasonable suspicion for a governmental agency to
18 search the person or property of the person possessing or
19 applying for the card.

20 G. The department shall maintain a confidential
21 file containing the names and addresses of the persons who have
22 either applied for or received a registry identification card.
23 Individual names on the list shall be confidential and not
24 subject to disclosure, except:

25 (1) to authorized employees or agents of the

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1 department as necessary to perform the duties of the department
2 pursuant to the provisions of the Lynn and Erin Compassionate
3 Use Act;

4 (2) to authorized employees of state or local
5 law enforcement agencies, but only for the purpose of verifying
6 that a person is lawfully in possession of a registry
7 identification card; or

8 (3) as provided in the federal Health
9 Insurance Portability and Accountability Act of 1996."

10 **SECTION 68.** Section 30-31-2 NMSA 1978 (being Laws 1972,
11 Chapter 84, Section 2, as amended) is amended to read:

12 "30-31-2. DEFINITIONS.--As used in the Controlled
13 Substances Act:

14 A. "administer" means the direct application of a
15 controlled substance by any means to the body of a patient or
16 research subject by a practitioner or the practitioner's agent;

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

21 C. "board" means the board of pharmacy;

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

25 E. "controlled substance":

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1 (1) means a drug or substance listed in
2 Schedules I through V of the Controlled Substances Act or rules
3 adopted thereto; and

4 (2) does not include industrial hemp or
5 marijuana for the purpose of conduct that complies with the
6 Cannabis Revenue and Freedom Act;

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

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

17 H. "dispense" means to deliver a controlled
18 substance to an ultimate user or research subject pursuant to
19 the lawful order of a practitioner, including the
20 administering, prescribing, packaging, labeling or compounding
21 necessary to prepare the controlled substance for that
22 delivery;

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

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

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

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

14 M. "manufacture" means the production, preparation,
15 compounding, conversion or processing of a controlled substance
16 or controlled substance analog by extraction from substances of
17 natural origin or independently by means of chemical synthesis
18 or by a combination of extraction and chemical synthesis and
19 includes any packaging or repackaging of the substance or
20 labeling or relabeling of its container, except that this term
21 does not include the preparation or compounding of a controlled
22 substance:

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

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

5 N. "marijuana":

6 (1) means all parts of the plant cannabis,
7 including any and all varieties, species and subspecies of the
8 genus Cannabis, whether growing or not, the seeds thereof and
9 every compound, manufacture, salt, derivative, mixture or
10 preparation of the plant or its seeds; [~~It~~] and

11 (2) does not include:

- 12 (a) the mature stalks of the plant;
- 13 (b) hashish;
- 14 (c) tetrahydrocannabinols extracted or
15 isolated from marijuana;
- 16 (d) fiber produced from the stalks;
- 17 (e) oil or cake made from the seeds of
18 the plant;
- 19 (f) any other compound, manufacture,
20 salt, derivative, mixture or preparation of the mature stalks,
21 fiber, oil or cake; [~~or~~]
- 22 (g) the sterilized seed of the plant
23 that is incapable of germination; or
- 24 (h) industrial hemp or industrial hemp
25 commodities or products as defined in the Cannabis Revenue and

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1 Freedom Act;

2 O. "narcotic drug" means any of the following,
3 whether produced directly or indirectly by extraction from
4 substances of vegetable origin or independently by means of
5 chemical synthesis or by a combination of extraction and
6 chemical synthesis:

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

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

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

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

22 P. "opiate" means any substance having an
23 addiction-forming or addiction-sustaining liability similar to
24 morphine or being capable of conversion into a drug having
25 addiction-forming or addiction-sustaining liability. "Opiate"

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1 does not include, unless specifically designated as controlled
2 under Section 30-31-5 NMSA 1978, the dextrorotatory isomer of
3 3-methoxy-n-methylmorphinan and its salts, dextromethorphan.

4 "Opiate" does include its racemic and levorotatory forms;

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

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

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

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1 adopted thereto;

2 T. "scientific investigator" means a person
3 registered to conduct research with controlled substances in
4 the course of the person's professional practice or research
5 and includes analytical laboratories;

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

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

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

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1 (2) kits used, intended for use or designed
2 for use in manufacturing, compounding, converting, producing,
3 processing or preparing controlled substances or controlled
4 substance analogs;

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

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

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

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

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

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

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1 (9) capsules, balloons, envelopes and other
2 containers used, intended for use or designed for use in
3 packaging small quantities of controlled substances or
4 controlled substance analogs;

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

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

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

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

19 (b) water pipes;

20 (c) carburetion tubes and devices;

21 (d) smoking and carburetion masks;

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

25 (f) miniature cocaine spoons and cocaine

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1 vials;

2 (g) chamber pipes;

3 (h) carburetor pipes;

4 (i) electric pipes;

5 (j) air-driven pipes;

6 (k) chilams;

7 (l) bonges; or

8 (m) ice pipes or chillers; and

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

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

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

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

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

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

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

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

5 (h) expert testimony concerning its use;

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

14 (1) phenethylamines;

15 (2) N-substituted piperidines;

16 (3) morphinans;

17 (4) ecgonines;

18 (5) quinazolinones;

19 (6) substituted indoles; and

20 (7) arylcycloalkylamines.

21 Specifically excluded from the definition of "controlled
22 substance analog" are those substances that are generally
23 recognized as safe and effective within the meaning of the
24 Federal Food, Drug, and Cosmetic Act or have been manufactured,
25 distributed or possessed in conformance with the provisions of

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1 an approved new drug application or an exemption for
2 investigational use within the meaning of Section 505 of the
3 Federal Food, Drug, and Cosmetic Act;

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

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

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

15 SECTION 69. Section 30-31-6 NMSA 1978 (being Laws 1972,
16 Chapter 84, Section 6, as amended) is amended to read:

17 "30-31-6. SCHEDULE I.--The following controlled
18 substances are included in Schedule I:

19 A. any of the following opiates, including their
20 isomers, esters, ethers, salts, and salts of isomers, esters
21 and ethers, unless specifically exempted, whenever the
22 existence of these isomers, esters, ethers and salts is
23 possible within the specific chemical designation:

- 24 (1) acetylmethadol;
25 (2) allylprodine;

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- 1 (3) alphacetylmethadol;
- 2 (4) alphameprodine;
- 3 (5) alphamethadol;
- 4 (6) benzethidine;
- 5 (7) betacetylmethadol;
- 6 (8) betameprodine;
- 7 (9) betamethadol;
- 8 (10) betaprodine;
- 9 (11) clonitazene;
- 10 (12) dextromoramide;
- 11 (13) dextrorphan;
- 12 (14) diampromide;
- 13 (15) diethylthiambutene;
- 14 (16) dimenoxadol;
- 15 (17) dimepheptanol;
- 16 (18) dimethylthiambutene;
- 17 (19) dioxaphetyl butyrate;
- 18 (20) dipipanone;
- 19 (21) ethylmethylthiambutene;
- 20 (22) etonitazene;
- 21 (23) etoxeridine;
- 22 (24) furethidine;
- 23 (25) hydroxypethidine;
- 24 (26) ketobemidone;
- 25 (27) levomoramide;

- 1 (28) levophenacylmorphan;
- 2 (29) morpheridine;
- 3 (30) noracymethadol;
- 4 (31) norlevorphanol;
- 5 (32) normethadone;
- 6 (33) norpipanone;
- 7 (34) phenadoxone;
- 8 (35) phenampromide;
- 9 (36) phenomorphan;
- 10 (37) phenoperidine;
- 11 (38) piritramide;
- 12 (39) proheptazine;
- 13 (40) properidine;
- 14 (41) racemoramide; and
- 15 (42) trimeperidine;

16 B. any of the following opium derivatives, their
17 salts, isomers and salts of isomers, unless specifically
18 exempted, whenever the existence of these salts, isomers and
19 salts of isomers is possible within the specific chemical
20 designation:

- 21 (1) acetorphine;
- 22 (2) acetyldihydrocodeine;
- 23 (3) benzylmorphine;
- 24 (4) codeine methylbromide;
- 25 (5) codeine-N-oxide;

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

18 C. any material, compound, mixture or preparation
19 that contains any quantity of the following hallucinogenic
20 substances, their salts, isomers and salts of isomers, unless
21 specifically exempted, whenever the existence of these salts,
22 isomers and salts of isomers is possible within the specific
23 chemical designation:

- 24 (1) 3,4-methylenedioxy amphetamine;
- 25 (2) 5-methoxy-3,4-methylenedioxy amphetamine;

- 1 (3) 3,4,5-trimethoxy amphetamine;
- 2 (4) bufotenine;
- 3 (5) diethyltryptamine;
- 4 (6) dimethyltryptamine;
- 5 (7) 4-methyl-2,5-dimethoxy amphetamine;
- 6 (8) ibogaine;
- 7 (9) lysergic acid diethylamide;
- 8 (10) marijuana;
- 9 (11) mescaline;
- 10 (12) peyote, except as otherwise provided in
- 11 the Controlled Substances Act;
- 12 (13) N-ethyl-3-piperidyl benzilate;
- 13 (14) N-methyl-3-piperidyl benzilate;
- 14 (15) psilocybin;
- 15 (16) psilocyn;
- 16 (17) tetrahydrocannabinols;
- 17 (18) hashish;
- 18 (19) synthetic cannabinoids, including:
- 19 (a) 1-[2-(4-(morpholinyl)ethyl)
- 20 -3-(1-naphthoyl)indole;
- 21 (b) 1-butyl-3-(1-naphthoyl)indole;
- 22 (c) 1-hexyl-3-(1-naphthoyl)indole;
- 23 (d) 1-pentyl-3-(1-naphthoyl)indole;
- 24 (e) 1-pentyl-3-(2-methoxyphenylacetyl)
- 25 indole;

1 (f) cannabicyclohexanol (CP 47, 497 and
2 homologues: 5-(1,1-dimethylheptyl)-2-[(1R,3S)
3 -3-hydroxycyclohexyl]-phenol (CP-47,497); and 5-(1,
4 1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol;

5 (g) 6aR,10aR)-9-(hydroxymethyl)
6 -6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,
7 10a-tetrahydrobenzo[c]chromen-1-ol);

8 (h) dexanabinol, (6aS,10aS)
9 -9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)
10 -6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol;

11 (i) 1-pentyl-3-(4-chloro naphthoyl)
12 indole;

13 (j) (2-methyl-1-propyl-1H-indol-3-yl)
14 -1-naphthalenyl-methanone; and

15 (k) 5-(1,1-dimethylheptyl)-2-(3-hydroxy
16 cyclohexyl)-phenol;

17 (20) 3,4-methylenedioxy methcathinone;

18 (21) 3,4-methylenedioxy pyrovalerone;

19 (22) 4-methylmethcathinone;

20 (23) 4-methoxymethcathinone;

21 (24) 3-fluoromethcathinone; and

22 (25) 4-fluoromethcathinone;

23 D. the enumeration of peyote as a controlled
24 substance does not apply to the use of peyote in bona fide
25 religious ceremonies by a bona fide religious organization, and

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1 members of the organization so using peyote are exempt from
2 registration. Any person who manufactures peyote for or
3 distributes peyote to the organization or its members shall
4 comply with the federal Comprehensive Drug Abuse Prevention and
5 Control Act of 1970 and all other requirements of law;

6 E. the enumeration of marijuana,
7 tetrahydrocannabinols or chemical derivatives of
8 tetrahydrocannabinol as Schedule I controlled substances does
9 not apply to the use of marijuana, tetrahydrocannabinols or
10 chemical derivatives of tetrahydrocannabinol by:

11 (1) a certified [patients] patient pursuant to
12 the Controlled Substances Therapeutic Research Act [~~or by~~];

13 (2) a qualified [patients] patient pursuant to
14 the provisions of the Lynn and Erin Compassionate Use Act;

15 [~~and~~] or

16 (3) a person whose conduct complies with the
17 Cannabis Revenue and Freedom Act; and

18 F. controlled substances added to Schedule I by
19 rule adopted by the board pursuant to Section 30-31-3 NMSA
20 1978."

21 SECTION 70. Section 30-31-20 NMSA 1978 (being Laws 1972,
22 Chapter 84, Section 20, as amended) is amended to read:

23 "30-31-20. TRAFFICKING CONTROLLED SUBSTANCES--
24 VIOLATION.--

25 A. As used in the Controlled Substances Act,

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1 "traffic" means the:

2 (1) manufacture of a controlled substance
3 enumerated in Schedules I through V or a controlled substance
4 analog as defined in Subsection W of Section 30-31-2 NMSA 1978;

5 (2) distribution, sale, barter or giving away
6 of:

7 (a) a controlled substance enumerated in
8 Schedule I or II that is a narcotic drug;

9 (b) a controlled substance analog of a
10 controlled substance enumerated in Schedule I or II that is a
11 narcotic drug; or

12 (c) methamphetamine, its salts, isomers
13 and salts of isomers; or

14 (3) possession with intent to distribute:

15 (a) a controlled substance enumerated in
16 Schedule I or II that is a narcotic drug;

17 (b) a controlled substance analog of a
18 controlled substance enumerated in Schedule I or II that is a
19 narcotic drug; or

20 (c) methamphetamine, its salts, isomers
21 and salts of isomers.

22 B. Except as authorized by the Controlled
23 Substances Act, it is unlawful for a person to intentionally
24 traffic. A person who violates this subsection is:

25 (1) if the controlled substance is marijuana,

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1 guilty of a misdemeanor and shall be sentenced pursuant to the
2 provisions of Section 31-19-1 NMSA 1978;

3 (2) for the first offense if the controlled
4 substance is not marijuana, guilty of a second degree felony
5 and shall be sentenced pursuant to the provisions of Section
6 31-18-15 NMSA 1978; and

7 [~~2~~] (3) for the second and subsequent
8 offenses if the controlled substance is not marijuana, guilty
9 of a first degree felony and shall be sentenced pursuant to the
10 provisions of Section 31-18-15 NMSA 1978.

11 C. A person who knowingly violates Subsection B of
12 this section within a drug-free school zone excluding private
13 property residentially zoned or used primarily as a residence
14 is guilty of:

15 (1) if the controlled substance is marijuana,
16 a misdemeanor and shall be sentenced pursuant to the provisions
17 of Section 31-19-1 NMSA 1978; or

18 (2) if the controlled substance is not
19 marijuana, a first degree felony and shall be sentenced
20 pursuant to the provisions of Section 31-18-15 NMSA 1978."

21 SECTION 71. Section 30-31-22 NMSA 1978 (being Laws 1972,
22 Chapter 84, Section 22, as amended) is amended to read:

23 "30-31-22. CONTROLLED OR COUNTERFEIT SUBSTANCES--
24 DISTRIBUTION PROHIBITED.--

25 A. Except as authorized by the Controlled

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1 Substances Act, it is unlawful for a person to intentionally
2 distribute or possess with intent to distribute a controlled
3 substance or a controlled substance analog except a substance
4 enumerated in Schedule I or II that is a narcotic drug, a
5 controlled substance analog of a controlled substance
6 enumerated in Schedule I or II that is a narcotic drug or
7 methamphetamine, its salts, isomers and salts of isomers. A
8 person who violates this subsection with respect to:

9 (1) marijuana or synthetic cannabinoids is:

10 ~~[(a) for the first offense, guilty of a~~
11 ~~fourth degree felony and shall be sentenced pursuant to the~~
12 ~~provisions of Section 31-18-15 NMSA 1978;~~

13 ~~(b) for the second and subsequent~~
14 ~~offenses, guilty of a third degree felony and shall be~~
15 ~~sentenced pursuant to the provisions of Section 31-18-15 NMSA~~
16 ~~1978;~~

17 ~~(c) for the first offense, if more than~~
18 ~~one hundred pounds is possessed with intent to distribute or~~
19 ~~distributed or both, guilty of a third degree felony and shall~~
20 ~~be sentenced pursuant to the provisions of Section 31-18-15~~
21 ~~NMSA 1978; and~~

22 ~~(d) for the second and subsequent~~
23 ~~offenses, if more than one hundred pounds is possessed with~~
24 ~~intent to distribute or distributed or both, guilty of a second~~
25 ~~degree felony and shall be sentenced pursuant to the provisions~~

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1 ~~of Section 31-18-15]~~ guilty of a misdemeanor and shall be
2 sentenced pursuant to the provisions of Section 31-19-1 NMSA
3 1978;

4 (2) any other controlled substance enumerated in
5 Schedule I, II, III or IV or a controlled substance analog of a
6 controlled substance enumerated in Schedule I, II, III or IV
7 except a substance enumerated in Schedule I or II that is a
8 narcotic drug, a controlled substance analog of a controlled
9 substance enumerated in Schedule I or II that is a narcotic
10 drug or methamphetamine, its salts, isomers and salts of
11 isomers, is:

12 (a) for the first offense, guilty of a third
13 degree felony and shall be sentenced pursuant to the provisions
14 of Section 31-18-15 NMSA 1978; and

15 (b) for the second and subsequent offenses,
16 guilty of a second degree felony and shall be sentenced
17 pursuant to the provisions of Section 31-18-15 NMSA 1978; and

18 (3) a controlled substance enumerated in
19 Schedule V or a controlled substance analog of a controlled
20 substance enumerated in Schedule V is guilty of a misdemeanor
21 and shall be punished by a fine of not less than one hundred
22 dollars (\$100) or more than five hundred dollars (\$500) or by
23 imprisonment for a definite term not less than one hundred
24 eighty days but less than one year, or both.

25 B. It is unlawful for a person to distribute gamma

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1 hydroxybutyric acid or flunitrazepam to another person without
2 that person's knowledge and with intent to commit a crime
3 against that person, including criminal sexual penetration.

4 For the purposes of this subsection, "without that person's
5 knowledge" means the person is unaware that a substance with
6 the ability to alter that person's ability to appraise conduct
7 or to decline participation in or communicate unwillingness to
8 participate in conduct is being distributed to that person.

9 Any person who violates this subsection is:

10 (1) for the first offense, guilty of a third
11 degree felony and shall be sentenced pursuant to the provisions
12 of Section 31-18-15 NMSA 1978; and

13 (2) for the second and subsequent offenses,
14 guilty of a second degree felony and shall be sentenced
15 pursuant to the provisions of Section 31-18-15 NMSA 1978.

16 C. Except as authorized by the Controlled Substances
17 Act, it is unlawful for a person to intentionally create or
18 deliver, or possess with intent to deliver, a counterfeit
19 substance. A person who violates this subsection with respect
20 to:

21 (1) a counterfeit substance that is marijuana is
22 guilty of a misdemeanor and shall be sentenced pursuant to the
23 provisions of Section 31-19-1 NMSA 1978;

24 (2) a counterfeit substance enumerated in
25 Schedule I, II, III or IV that is not marijuana is guilty of a

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1 fourth degree felony and shall be sentenced pursuant to the
2 provisions of Section 31-18-15 NMSA 1978; and

3 [~~(2)~~] (3) a counterfeit substance enumerated in
4 Schedule V is guilty of a petty misdemeanor and shall be
5 punished by a fine of not more than one hundred dollars (\$100)
6 or by imprisonment for a definite term not to exceed six
7 months, or both.

8 D. A person who knowingly violates Subsection A or C
9 of this section while within a drug-free school zone with
10 respect to:

11 (1) marijuana or synthetic cannabinoids is
12 [~~(a) for the first offense, guilty of a~~
13 ~~third degree felony and shall be sentenced pursuant to the~~
14 ~~provisions of Section 31-18-15 NMSA 1978;~~

15 [~~(b) for the second and subsequent offenses,~~
16 ~~guilty of a second degree felony and shall be sentenced~~
17 ~~pursuant to the provisions of Section 31-18-15 NMSA 1978;~~

18 [~~(c) for the first offense, if more than one~~
19 ~~hundred pounds is possessed with intent to distribute or~~
20 ~~distributed or both, guilty of a second degree felony and shall~~
21 ~~be sentenced pursuant to the provisions of Section 31-18-15~~
22 ~~NMSA 1978; and~~

23 [~~(d) for the second and subsequent offenses,~~
24 ~~if more than one hundred pounds is possessed with intent to~~
25 ~~distribute or distributed or both, guilty of a first degree~~

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1 ~~felony and shall be sentenced pursuant to the provisions of~~
2 ~~Section 31-18-15] guilty of a misdemeanor and shall be~~
3 ~~sentenced pursuant to the provisions of Section 31-19-1 NMSA~~
4 1978;

5 (2) any other controlled substance enumerated in
6 Schedule I, II, III or IV or a controlled substance analog of a
7 controlled substance enumerated in Schedule I, II, III or IV
8 except a substance enumerated in Schedule I or II that is a
9 narcotic drug, a controlled substance analog of a controlled
10 substance enumerated in Schedule I or II that is a narcotic
11 drug or methamphetamine, its salts, isomers and salts of
12 isomers, is:

13 (a) for the first offense, guilty of a
14 second degree felony and shall be sentenced pursuant to the
15 provisions of Section 31-18-15 NMSA 1978; and

16 (b) for the second and subsequent offenses,
17 guilty of a first degree felony and shall be sentenced pursuant
18 to the provisions of Section 31-18-15 NMSA 1978;

19 (3) a controlled substance enumerated in
20 Schedule V or a controlled substance analog of a controlled
21 substance enumerated in Schedule V is guilty of a fourth degree
22 felony and shall be sentenced pursuant to the provisions of
23 Section 31-18-15 NMSA 1978; and

24 (4) the intentional creation, delivery or
25 possession with the intent to deliver:

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1 (a) a counterfeit substance enumerated in
2 Schedule I, II, III or IV is guilty of a third degree felony
3 and shall be sentenced pursuant to the provisions of Section
4 31-18-15 NMSA 1978; and

5 (b) a counterfeit substance enumerated in
6 Schedule V is guilty of a misdemeanor and shall be punished by
7 a fine of not less than one hundred dollars (\$100) nor more
8 than five hundred dollars (\$500) or by imprisonment for a
9 definite term not less than one hundred eighty days but less
10 than one year, or both.

11 E. Notwithstanding the provisions of Subsection A of
12 this section, distribution of a small amount of marijuana or
13 synthetic cannabinoids for no remuneration shall be treated as
14 provided in Paragraph (1) of Subsection B of Section 30-31-23
15 NMSA 1978."

16 SECTION 72. Section 30-31-23 NMSA 1978 (being Laws 1972,
17 Chapter 84, Section 23, as amended) is amended to read:

18 "30-31-23. CONTROLLED SUBSTANCES--POSSESSION
19 PROHIBITED.--

20 A. It is unlawful for a person to intentionally [~~to~~]
21 possess a controlled substance unless the substance was
22 obtained pursuant to a valid prescription or order of a
23 practitioner while acting in the course of professional
24 practice or except as otherwise authorized by the Controlled
25 Substances Act. It is unlawful for a person to intentionally

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1 ~~[to]~~ possess a controlled substance analog.

2 B. A person who violates this section with respect
3 to:

4 (1) one ounce or less of marijuana or synthetic
5 cannabinoids ~~[is]~~, for the first offense, ~~[guilty of a petty~~
6 ~~misdemeanor and]~~ shall be punished by a fine of ~~[not less than]~~
7 fifty dollars (\$50.00) ~~[or more than one hundred dollars (\$100)~~
8 ~~and by imprisonment for not more than fifteen days]~~, and, for
9 the second and subsequent offenses, ~~[guilty of a misdemeanor~~
10 ~~and]~~ shall be punished by a fine of ~~[not less than]~~ one hundred
11 dollars (\$100) ~~[or more than one thousand dollars (\$1,000) or~~
12 ~~by imprisonment for a definite term less than one year, or~~
13 ~~both];~~

14 (2) more than one ounce and less than eight
15 ounces of marijuana or synthetic cannabinoids ~~[is guilty of a~~
16 ~~misdemeanor and]~~ shall be punished by a fine of ~~[not less than]~~
17 one hundred dollars (\$100) ~~[or more than one thousand dollars~~
18 ~~(\$1,000) or by imprisonment for a definite term less than one~~
19 ~~year, or both]; or~~

20 (3) eight ounces or more of marijuana or
21 synthetic cannabinoids is guilty of a ~~[fourth degree felony]~~
22 misdemeanor and shall be sentenced pursuant to the provisions
23 of Section ~~[31-18-15]~~ 31-19-1 NMSA 1978.

24 C. A minor who violates this section with respect to:

25 (1) synthetic cannabinoids shall:

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1 (a) notwithstanding the provisions of
2 Sections 32A-1-5 and 32A-2-19 NMSA 1978, be punished by a fine
3 of fifty dollars (\$50.00); and

4 (b) for a third or subsequent violation, the
5 provisions of Section 32A-2-19 NMSA 1978 shall govern
6 punishment of the minor; and

7 (2) the substances listed in [this subsection]
8 Subparagraphs (a) and (b) of this paragraph is guilty of a
9 petty misdemeanor and, notwithstanding the provisions of
10 Sections 32A-1-5 and 32A-2-19 NMSA 1978, shall be punished by a
11 fine not to exceed one hundred dollars (\$100) or forty-eight
12 hours of community service. For the third or subsequent
13 violation [by a minor of this section] with respect to those
14 substances, the provisions of Section 32A-2-19 NMSA 1978 shall
15 govern punishment of the minor. [As used in this subsection,
16 "minor" means a person who is less than eighteen years of age.]
17 The provisions of this [subsection] paragraph apply to the
18 following substances:

19 ~~[(1) synthetic cannabinoids;~~

20 ~~(2)]~~ (a) any of the substances listed in
21 Paragraphs (20) through (25) of Subsection C of Section 30-31-6
22 NMSA 1978; or

23 ~~[(3)]~~ (b) a substance added to Schedule I by
24 a rule of the board adopted on or after [the effective date of
25 this] March 31, 2011 [act] if the board determines that the

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1 pharmacological effect of the substance, the risk to the public
2 health by abuse of the substance and the potential of the
3 substance to produce psychic or physiological dependence
4 liability is similar to the substances described in [~~Paragraph~~
5 ~~(1) or (2)~~] Subparagraph (a) of this [~~subsection~~] paragraph.

6 D. Except for those substances listed in Subsection E
7 of this section, a person who violates this section with
8 respect to any amount of any controlled substance enumerated in
9 Schedule I, II, III or IV other than marijuana or a controlled
10 substance analog of a substance enumerated in Schedule I, II,
11 III or IV other than marijuana is guilty of a misdemeanor and
12 shall be punished by a fine of not less than five hundred
13 dollars (\$500) or more than one thousand dollars (\$1,000) or by
14 imprisonment for a definite term less than one year, or both.

15 E. A person who violates this section with respect to
16 phencyclidine as enumerated in Schedule III or a controlled
17 substance analog of phencyclidine; methamphetamine, its salts,
18 isomers or salts of isomers as enumerated in Schedule II or a
19 controlled substance analog of methamphetamine, its salts,
20 isomers or salts of isomers; flunitrazepam, its salts, isomers
21 or salts of isomers as enumerated in Schedule I or a controlled
22 substance analog of flunitrazepam, including naturally
23 occurring metabolites, its salts, isomers or salts of isomers;
24 gamma hydroxybutyric acid and any chemical compound that is
25 metabolically converted to gamma hydroxybutyric acid, its

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1 salts, isomers or salts of isomers as enumerated in Schedule I
2 or a controlled substance analog of gamma hydroxybutyric acid,
3 its salts, isomers or salts of isomers; gamma butyrolactone and
4 any chemical compound that is metabolically converted to gamma
5 hydroxybutyric acid, its salts, isomers or salts of isomers as
6 enumerated in Schedule I or a controlled substance analog of
7 gamma butyrolactone, its salts, isomers or salts of isomers; 1-
8 4 butane diol and any chemical compound that is metabolically
9 converted to gamma hydroxybutyric acid, its salts, isomers or
10 salts of isomers as enumerated in Schedule I or a controlled
11 substance analog of 1-4 butane diol, its salts, isomers or
12 salts of isomers; or a narcotic drug enumerated in Schedule I
13 or II or a controlled substance analog of a narcotic drug
14 enumerated in Schedule I or II is guilty of a fourth degree
15 felony and shall be sentenced pursuant to the provisions of
16 Section 31-18-15 NMSA 1978.

17 F. Except for a minor [~~as defined in Subsection C of~~
18 ~~this section~~], a person who violates Subsection A of this
19 section while within a posted drug-free school zone, excluding
20 private property residentially zoned or used primarily as a
21 residence and excluding a person in or on a motor vehicle in
22 transit through the posted drug-free school zone, with respect
23 to:

24 (1) one ounce or less of marijuana or synthetic
25 cannabinoids [~~is~~], for the first offense, [~~guilty of a~~

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1 ~~misdemeanor and~~ shall be punished by a fine of [~~not less than~~]
2 one hundred dollars (\$100) [~~or more than one thousand dollars~~
3 ~~(\$1,000) or by imprisonment for a definite term less than one~~
4 ~~year, or both~~], and for the second or subsequent offense, is
5 guilty of a [~~fourth degree felony~~] misdemeanor and shall be
6 sentenced pursuant to the provisions of Section [~~31-18-15~~]
7 31-19-1 NMSA 1978;

8 (2) more than one ounce [~~and less than eight~~
9 ~~ounces~~] of marijuana or synthetic cannabinoids is guilty of a
10 [~~fourth degree felony~~] misdemeanor and shall be sentenced
11 pursuant to the provisions of Section [~~31-18-15~~] 31-19-1 NMSA
12 1978;

13 [~~(3) eight ounces or more of marijuana or~~
14 ~~synthetic cannabinoids is guilty of a third degree felony and~~
15 ~~shall be sentenced pursuant to the provisions of Section~~
16 ~~31-18-15 NMSA 1978;~~

17 ~~(4)~~] (3) any amount of any other controlled
18 substance enumerated in Schedule I, II, III or IV or a
19 controlled substance analog of a substance enumerated in
20 Schedule I, II, III or IV, except phencyclidine as enumerated
21 in Schedule III, a narcotic drug enumerated in Schedule I or II
22 or a controlled substance analog of a narcotic drug enumerated
23 in Schedule I or II, is guilty of a fourth degree felony and
24 shall be sentenced pursuant to the provisions of Section
25 31-18-15 NMSA 1978; and

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1 [~~(5)~~] (4) phencyclidine as enumerated in
2 Schedule III, a narcotic drug enumerated in Schedule I or II, a
3 controlled substance analog of phencyclidine or a controlled
4 substance analog of a narcotic drug enumerated in Schedule I or
5 II is guilty of a third degree felony and shall be sentenced
6 pursuant to the provisions of Section 31-18-15 NMSA 1978.

7 G. For the purpose of this section, "minor" means a
8 person who is younger than eighteen years of age."

9 SECTION 73. Section 30-31B-2 NMSA 1978 (being Laws 1989,
10 Chapter 177, Section 2, as amended) is amended to read:

11 "30-31B-2. DEFINITIONS.--As used in the Drug Precursor
12 Act:

13 A. "administer" means the direct application of a
14 controlled substance by any means to the body of a patient or
15 research subject by a practitioner or the practitioner's agent;

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

20 C. "board" means the board of pharmacy;

21 D. "bureau" means the bureau of narcotics and
22 dangerous drugs of the United States department of justice or
23 its successor agency;

24 E. "controlled substance":

25 (1) means a drug or substance listed in

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1 Schedules I through V of the Controlled Substances Act or
2 regulations adopted thereto; and

3 (2) does not include industrial hemp or
4 marijuana for the purpose of conduct that complies with the
5 Cannabis Revenue and Freedom Act;

6 F. "controlled substance analog" means a substance
7 other than a controlled substance that has a chemical structure
8 substantially similar to that of a controlled substance in
9 Schedule I, II, III, IV or V or that was specifically designed
10 to produce effects substantially similar to that of controlled
11 substances in Schedule I, II, III, IV or V. Examples of
12 chemical classes in which controlled substance analogs are
13 found include, but are not limited to, the following:

- 14 (1) phenethylamines;
- 15 (2) N-substituted piperidines;
- 16 (3) morphinans;
- 17 (4) ecgonines;
- 18 (5) quinazolinones;
- 19 (6) substituted indoles; and
- 20 (7) arylcycloalkylamines.

21 Specifically excluded from the definition of "controlled
22 substance analog" are those substances that are generally
23 recognized as safe and effective within the meaning of the
24 Federal Food, Drug, and Cosmetic Act or have been manufactured,
25 distributed or possessed in conformance with the provisions of

1 an approved new drug application or an exemption for
2 investigational use within the meaning of Section 505 of the
3 Federal Food, Drug, and Cosmetic Act;

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

8 H. "dispense" means to deliver a controlled substance
9 to an ultimate user or research subject pursuant to the lawful
10 order of a practitioner, including the administering,
11 prescribing, packaging, labeling or compounding necessary to
12 prepare the controlled substance for that delivery;

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

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

19 K. "drug" means substances recognized as drugs in the
20 official United States pharmacopoeia, official homeopathic
21 pharmacopoeia of the United States, official national formulary
22 or any respective supplement to these publications. "Drug"
23 does not include devices or their components, parts or
24 accessories;

25 L. "drug precursor" means a substance, material,

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1 compound, mixture or preparation listed in Section 30-31B-3
2 NMSA 1978 or regulations adopted thereto or any of their salts
3 or isomers. "Drug precursor" specifically excludes those
4 substances, materials, compounds, mixtures or preparations that
5 are prepared for dispensing pursuant to a prescription or over-
6 the-counter distribution as a substance that is generally
7 recognized as safe and effective within the meaning of the
8 Federal Food, Drug, and Cosmetic Act or have been manufactured,
9 distributed or possessed in conformance with the provisions of
10 an approved new drug application or an exemption for
11 investigational use within the meaning of Section 505 of the
12 Federal Food, Drug, and Cosmetic Act, unless the board makes
13 the findings required pursuant to Subsection B of Section
14 30-31B-4 NMSA 1978;

15 M. "immediate precursor" means a substance that is a
16 compound commonly used or produced primarily as an immediate
17 chemical intermediary used in the manufacture of a controlled
18 substance, the control of which is necessary to prevent,
19 curtail or limit the manufacture of controlled substances;

20 N. "license" means a license issued by the board to
21 manufacture, possess, transfer or transport a drug precursor;

22 O. "manufacture" means the production, preparation,
23 compounding, conversion or processing of a drug precursor by
24 extraction from substances of natural origin, independently by
25 means of chemical synthesis or by a combination of extraction

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1 and chemical synthesis and includes any packaging or
2 repackaging of the substance or labeling or relabeling of its
3 container, except that this term does not include the
4 preparation or compounding of a controlled substance by a
5 practitioner:

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

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

12 P. "person" includes an individual, sole
13 proprietorship, partnership, corporation, association, the
14 state or a political subdivision of the state or other legal
15 entity;

16 Q. "possession" means to actively or constructively
17 exercise dominion over;

18 R. "practitioner" means a physician, certified
19 advanced practice chiropractic physician, dentist, veterinarian
20 or other person licensed to prescribe and administer drugs that
21 are subject to the Controlled Substances Act;

22 S. "prescription" means an order given individually
23 for the person for whom is prescribed a controlled substance,
24 either directly from the prescriber to the pharmacist or
25 indirectly by means of a written order signed by the prescriber

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1 and in accordance with the Controlled Substances Act or
2 regulations adopted thereto; and

3 T. "transfer" means the sale, possession with intent
4 to sell, barter or giving away of a drug precursor."

5 SECTION 74. EFFECTIVE DATE.--The effective date of the
6 provisions of this act is July 1, 2017.