

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR  
SENATE BILL 278

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

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 DEPARTMENT OF HEALTH AND THE DEPARTMENT  
OF ENVIRONMENT; 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; REPEALING A SECTION OF LAW; 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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underscoring material = new  
[bracketed material] = delete

1 through 43 of this act may be cited as the "Cannabis Revenue  
2 and Freedom Act".

3 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the  
4 Cannabis Revenue and Freedom Act:

5 A. "advertisement":

6 (1) means a statement or a depiction intended  
7 to induce the sale of an item and that is displayed in printed  
8 material or on a sign or other outdoor display or presented in  
9 a radio, television or other media broadcast; and

10 (2) does not include:

11 (a) a sign or outdoor display or other  
12 statement permanently affixed to a licensed premises that is  
13 intended to induce the sale of a marijuana item produced or  
14 sold on the premises;

15 (b) a label affixed to a marijuana item  
16 or the covering, wrapper or container of a marijuana item; or

17 (c) an editorial or other material  
18 printed in a publication when the publication of the editorial  
19 or material was not paid for by a licensee and was not  
20 published by or at the direction of a licensee;

21 B. "board" means the cannabis control board;

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

25 D. "department" means the regulation and licensing

1 department;

2 E. "financial consideration":

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

6 (2) does not mean the value in homegrown  
7 marijuana or homemade marijuana products that are grown or made  
8 by another person;

9 F. "hashish" means the resin extracted from any  
10 part of marijuana and includes every compound, manufacture,  
11 salt, derivative, mixture or preparation of the resin;

12 G. "homegrown" or "homemade" means grown or made by  
13 a person for noncommercial purposes;

14 H. "household" means a housing unit and includes  
15 any place in or around the housing unit at which an occupant of  
16 the housing unit produces, processes, keeps or stores homegrown  
17 marijuana or homemade marijuana products;

18 I. "housing unit" means a house, an apartment, a  
19 mobile home, a group of rooms or a single room that is occupied  
20 as separate living quarters in which an occupant lives and eats  
21 separately from any other person in the building who do not  
22 occupy the same housing unit, and which unit includes direct  
23 access from the outside of the building or through a common  
24 hall;

25 J. "immature marijuana plant" means a marijuana

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1 plant with no observable flowers or buds;

2 K. "industrial hemp" means all non-seed parts and  
3 varieties of the plant of the genus Cannabis, whether growing  
4 or not, that contain a crop-wide average tetrahydrocannabinol  
5 concentration that does not exceed three-tenths percent on a  
6 dry weight basis;

7 L. "license" means a license issued pursuant to the  
8 Cannabis Revenue and Freedom Act;

9 M. "licensed premises" means a location that is  
10 licensed pursuant to the Cannabis Revenue and Freedom Act and  
11 includes:

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

16 (2) all areas outside of a building that the  
17 department has specifically licensed for the production,  
18 processing, wholesale sale or retail sale of marijuana items;  
19 and

20 (3) with respect to a location that the  
21 department has specifically licensed for the production of  
22 marijuana outside of a building, the entire unit of land that  
23 is created by subdivision or partition of land that the  
24 licensee owns, leases or has a right to occupy;

25 N. "licensee" means a person who holds a license;

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1           O. "licensee representative" means an owner,  
2 director, officer, manager, employee, agent or other  
3 representative of a licensee, to the extent that the person  
4 acts in a representative capacity;

5           P. "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; 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;
- 22                         (g) the sterilized seed of the plant  
23 that is incapable of germination;
- 24                         (h) marijuana extracts; or
- 25                         (i) industrial hemp or a commodity or

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1 product made from industrial hemp;

2 Q. "marijuana consumption area" means an area  
3 within a marijuana retailer's licensed premises where marijuana  
4 items may be consumed;

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

9 S. "marijuana flowers" means only the flowers of a  
10 marijuana plant;

11 T. "marijuana items" means marijuana, marijuana  
12 products, marijuana extracts and hashish;

13 U. "marijuana leaves" means only the leaves of a  
14 marijuana plant;

15 V. "marijuana processor" means a person who  
16 processes marijuana items in this state;

17 W. "marijuana producer" means a person who produces  
18 marijuana in this state;

19 X. "marijuana products" means products that contain  
20 marijuana or marijuana extracts and that are intended for human  
21 consumption, but does not mean marijuana by itself or a  
22 marijuana extract by itself;

23 Y. "marijuana retailer" means a person who sells  
24 marijuana items to a consumer in this state;

25 Z. "marijuana tester" means a person who performs

1 tests of marijuana items to identify or analyze the strength,  
2 effectiveness or purity of the marijuana items;

3 AA. "marijuana wholesaler" means a person who  
4 purchases marijuana items in this state for resale in this  
5 state to a person other than a consumer;

6 BB. "mature marijuana plant" means a marijuana  
7 plant that is not an immature marijuana plant;

8 CC. "medical cannabis" means marijuana items used  
9 by a qualified patient pursuant to the Lynn and Erin  
10 Compassionate Use Act;

11 DD. "medical cannabis program" means the regulated  
12 system allowing for the beneficial use of medical cannabis  
13 established in the Lynn and Erin Compassionate Use Act;

14 EE. "noncommercial" means not dependent or  
15 conditioned upon the provision or receipt of financial  
16 consideration;

17 FF. "person" means an individual, corporation,  
18 business trust, estate, trust, partnership, limited liability  
19 company, association, joint venture or any legal or commercial  
20 entity;

21 GG. "personal production license" means a license  
22 issued to a qualified patient pursuant to the Lynn and Erin  
23 Compassionate Use Act that allows the qualified patient to  
24 produce medical cannabis for that qualified patient's personal  
25 use in accordance with board rules;

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1 HH. "processes":

2 (1) means:

3 (a) the processing, compounding or  
4 conversion of marijuana into marijuana products or marijuana  
5 extracts;

6 (b) the processing, compounding or  
7 conversion of marijuana, either directly or indirectly, by  
8 extraction from substances of natural origin or independently  
9 by means of chemical synthesis or by a combination of  
10 extraction and chemical synthesis;

11 (c) the packaging or repackaging of  
12 marijuana items; and

13 (d) the labeling or relabeling of a  
14 package or container of marijuana items; and

15 (2) does not mean:

16 (a) the drying of marijuana by a  
17 marijuana producer, if the marijuana producer is not otherwise  
18 processing marijuana; or

19 (b) the packaging and labeling of  
20 marijuana by a marijuana producer in preparation for delivery  
21 to a marijuana processor;

22 II. "produces" means the manufacture, planting,  
23 cultivation, growing or harvesting of marijuana, but does not  
24 include:

25 (1) the drying of marijuana by a marijuana



1 processor, if the marijuana processor is not otherwise  
2 producing marijuana; or

3 (2) the cultivation and growing of an immature  
4 marijuana plant by a marijuana processor, marijuana wholesaler  
5 or marijuana retailer if the marijuana processor, marijuana  
6 wholesaler or marijuana retailer purchased or otherwise  
7 received the plant from a licensed marijuana producer;

8 JJ. "public place" means a place to which the  
9 general public has access and includes hallways, lobbies and  
10 other parts of apartment houses and hotels that do not  
11 constitute rooms or apartments designed for actual residence;  
12 highways; streets; schools; places of amusement; parks;  
13 playgrounds; and places used in connection with public  
14 passenger transportation;

15 KK. "qualified patient" means a resident of New  
16 Mexico who, in accordance with the Lynn and Erin Compassionate  
17 Use Act, has been diagnosed by a practitioner as having a  
18 debilitating medical condition and has received written  
19 certification and a registry identification card issued  
20 pursuant to that act; and

21 LL. "usable marijuana" means dried marijuana  
22 flowers and dried marijuana leaves and any mixture or  
23 preparation of those flowers or leaves.

24 SECTION 3. [NEW MATERIAL] LIMITATIONS--EXEMPTIONS--  
25 PERMISSIBLE CONDUCT.--

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1           A. The Cannabis Revenue and Freedom Act shall not  
2 be construed to:

3                   (1) prevent a recipient of or an applicant for  
4 a federal grant from prohibiting the manufacture, possession,  
5 delivery or use of marijuana items to the extent necessary to  
6 satisfy the federal grant's requirements;

7                   (2) prevent a party or a person applying to be  
8 a party to a federal contract from prohibiting the manufacture,  
9 possession, delivery or use of marijuana items to the extent  
10 necessary to comply with the contract terms and conditions or  
11 to satisfy the federal contract's requirements;

12                   (3) require a person to violate a federal law;

13                   (4) exempt a person from a federal law or  
14 obstruct the enforcement of a federal law; or

15                   (5) limit a person's privilege, right or duty  
16 pursuant to the Lynn and Erin Compassionate Use Act, regardless  
17 of the person's age.

18           B. Notwithstanding any other provision of law, the  
19 following acts by a person twenty-one years of age or older are  
20 lawful and shall not constitute grounds for detention, search  
21 or arrest of a person or for a probation or parole violation,  
22 and marijuana items that relate to those acts are not  
23 contraband or subject to seizure or forfeiture pursuant to the  
24 Controlled Substances Act:

25                   (1) the possession of usable marijuana by a

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1 person who is twenty-one years of age or older, if the total of  
2 usable marijuana does not exceed:

3 (a) two ounces at the person's  
4 household; or

5 (b) one ounce outside the person's  
6 household;

7 (2) the possession of up to seven grams of  
8 marijuana extract;

9 (3) the possession of up to fourteen grams of  
10 hashish;

11 (4) the production, processing, keeping or  
12 storing of homegrown marijuana at a household by one or more  
13 persons who are twenty-one years of age or older, if the total  
14 of homegrown marijuana at the household does not exceed at any  
15 given time:

16 (a) six mature marijuana plants and six  
17 immature marijuana plants per person; provided, however that no  
18 more than twelve mature marijuana plants and twelve immature  
19 marijuana plants may be present in one household;

20 (b) eight ounces of usable marijuana;  
21 and

22 (c) seven grams of marijuana extract;

23 (5) the making, processing, keeping or storing  
24 of homemade marijuana products at a household by one or more  
25 persons who are twenty-one years of age or older, if the total

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1 of homemade marijuana products at the household does not exceed  
2 at any given time:

3 (a) sixteen ounces in solid form; or  
4 (b) seventy-two ounces in liquid form;  
5 (6) the transfer for noncommercial purposes to  
6 another person who is twenty-one years of age or older of not  
7 more than, at any given time:

8 (a) one ounce of usable marijuana;  
9 (b) fourteen grams of hashish;  
10 (c) sixteen ounces of marijuana products  
11 in solid form;

12 (d) seventy-two ounces of marijuana  
13 products in liquid form; or

14 (e) seven grams of marijuana extract;

15 (7) the transport of homegrown marijuana,  
16 mature or immature marijuana plants or marijuana products as  
17 described in Paragraphs (1) through (5) of this subsection when  
18 the person is moving the person's residence to another  
19 location; and

20 (8) smoking, ingesting or otherwise consuming  
21 marijuana or marijuana items.

22 C. A person eighteen years of age or older but  
23 younger than twenty-one years of age who engages in conduct  
24 provided in Subsection B of this section in violation of the  
25 Cannabis Revenue and Freedom Act shall be punished by a fifty-

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1 dollar (\$50.00) civil penalty.

2 D. A person younger than eighteen years of age who  
3 engages in conduct provided in Subsection B of this section in  
4 violation of the Cannabis Revenue and Freedom Act shall be  
5 punished by a fifty-dollar (\$50.00) civil penalty and shall be  
6 required to complete a court-ordered drug education or  
7 counseling program or a period of community service, or both.

8 SECTION 4. [NEW MATERIAL] CANNABIS CONTROL BOARD--  
9 CREATED.--

10 A. The "cannabis control board" is created and is  
11 administratively attached to the department. The board  
12 consists of thirteen members appointed by the governor with the  
13 advice and consent of the senate. All members of the board  
14 shall be residents of New Mexico and citizens of the United  
15 States, and no more than seven members shall be from the same  
16 political party. The board includes:

17 (1) one member who is a representative of the  
18 agriculture industry;

19 (2) two members who are medical or public  
20 health professionals;

21 (3) two members who are qualified patients in  
22 the medical cannabis program;

23 (4) two members who are interested members of  
24 the public;

25 (5) one member who is a banking or finance

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1 professional;

2 (6) one member who represents workers;

3 (7) one member who is a representative of the  
4 regulation and licensing department;

5 (8) one member who is a representative of the  
6 department of health;

7 (9) one member who is a representative of the  
8 department of environment; and

9 (10) one member who is a representative of the  
10 taxation and revenue department.

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

14 (1) the member who is a representative of the  
15 agriculture industry and the two members who are medical or  
16 public health professionals shall be appointed to five-year  
17 terms;

18 (2) the two members who are qualified patients  
19 in the medical cannabis program and the member who is a banking  
20 or finance professional shall be appointed to four-year terms;

21 (3) the two members who are interested members  
22 of the public and the member who represents workers shall be  
23 appointed to three-year terms;

24 (4) the member who represents the regulation  
25 and licensing department, the member who represents the

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1 department of health and the member who represents the  
2 department of environment shall be appointed to two-year terms;  
3 and

4 (5) the member who represents the taxation and  
5 revenue department shall be appointed to a one-year term.

6 C. A vacancy on the board shall be filled by the  
7 governor within thirty days for the unexpired portion of the  
8 term in which the vacancy occurs. A person appointed to fill a  
9 vacancy shall meet all qualifications of the position vacated.

10 D. The board members shall elect a board chair by  
11 majority vote. The board shall meet at the call of the chair  
12 and at least once in each calendar quarter. Seven members  
13 shall constitute a quorum of the board.

14 E. Board members are entitled to reimbursement as  
15 provided by the Per Diem and Mileage Act and shall receive no  
16 other compensation, perquisite or allowance for their service  
17 on the board.

18 SECTION 5. [NEW MATERIAL] CANNABIS CONTROL BOARD--  
19 DUTIES.--The board shall:

20 A. regulate the marijuana program established in  
21 the Cannabis Revenue and Freedom Act;

22 B. by July 1, 2018, establish a medical cannabis  
23 subsidy program through which the department of health shall  
24 make distributions of a portion of cannabis tax revenue to  
25 qualified patients in the medical cannabis program and

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1 promulgate rules to govern the program;

2 C. by January 1, 2018, promulgate rules related to  
3 the medical cannabis program, including rules that:

4 (1) provide for the licensure of producers and  
5 medical cannabis production facilities by the department;

6 (2) establish qualifications for a person to  
7 be licensed to produce, possess, distribute or dispense medical  
8 cannabis and establish procedures for the evaluation of license  
9 applications;

10 (3) provide that, for a new or renewal medical  
11 cannabis producer license, the department shall charge an  
12 annual license fee of:

13 (a) seven thousand five hundred dollars  
14 (\$7,500), if the producer will possess up to one hundred fifty  
15 mature cannabis plants; and

16 (b) an additional two thousand five  
17 hundred dollars (\$2,500) for each additional fifty mature  
18 cannabis plants the producer will possess; provided, however,  
19 that the maximum fee charged for a new or renewal producer  
20 license shall not exceed twenty-two thousand five hundred  
21 dollars (\$22,500);

22 (4) identify the process by which a person may  
23 reapply for a license after the person's application was  
24 denied;

25 (5) establish a procedure by which a qualified



1 patient may produce medical cannabis for the patient's personal  
2 use;

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

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

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

13 (7) until June 30, 2019, restrict the number  
14 of mature cannabis plants a licensed producer may possess at  
15 any given time to:

16 (a) one thousand, between July 1, 2017  
17 and June 30, 2018; and

18 (b) two thousand, between July 1, 2018  
19 and June 30, 2019; and

20 (8) provide that a qualified patient who holds  
21 a personal production license may sell those mature cannabis  
22 plants that the patient possesses in accordance with the  
23 patient's personal production license to a licensed producer  
24 participating in the medical cannabis program or to a marijuana  
25 producer, and that the licensed producer or the marijuana

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1 producer may sell those plants in accordance with applicable  
2 law and rules;

3 D. by January 1, 2018, promulgate rules applicable  
4 to the medical cannabis program and the marijuana program  
5 established in the Cannabis Revenue and Freedom Act that:

6 (1) establish standards for the growing and  
7 testing of marijuana and medical cannabis that address, in  
8 addition to any other relevant issues, the use of pesticides  
9 and other substances in the cultivation of the plants and that  
10 require compliance with federal and state environmental laws;

11 (2) establish standards for quality and safety  
12 of marijuana items; and

13 (3) establish a system for tracking marijuana  
14 plants and medical cannabis plants;

15 E. establish the required characteristics of a  
16 licensed premises;

17 F. provide how to determine what constitutes a  
18 sufficient number of licensed premises in a locality, to ensure  
19 that the needs of the locality are met;

20 G. regulate the use of marijuana items for  
21 scientific, pharmaceutical, manufacturing, mechanical,  
22 industrial and other purposes;

23 H. prohibit advertisement of marijuana or a  
24 marijuana item by a licensee; and

25 I. require documentation of the source of

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1 production and the tetrahydrocannabinol concentration for all  
2 marijuana items and medical cannabis.

3 SECTION 6. [NEW MATERIAL] DEPARTMENT--DUTIES.--The  
4 department shall:

5 A. in consultation with the department of health,  
6 the board and the department of environment, adopt rules and  
7 prescribe forms necessary to implement the provisions of the  
8 Cannabis Revenue and Freedom Act;

9 B. provide for licensing of licensed producers in  
10 the medical cannabis program; and

11 C. on or before January 1, 2019:

12 (1) review available research and conduct or  
13 commission any additional research necessary to examine the  
14 influence of marijuana items on a person's ability to drive a  
15 vehicle and on the concentration of delta-9  
16 tetrahydrocannabinol in a person's blood, taking into account  
17 all relevant factors; and

18 (2) present the results of the department's  
19 review and examination to the appropriate legislative interim  
20 committees and make recommendations to the legislature  
21 regarding any appropriate amendments to the Motor Vehicle Code.

22 SECTION 7. [NEW MATERIAL] DEPARTMENT OF HEALTH--DUTIES.--  
23 The department of health shall:

24 A. cooperate with the board, the department and the  
25 department of environment to the extent necessary to carry out

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1 powers and duties pursuant to the Cannabis Revenue and Freedom  
2 Act; and

3 B. administer the medical cannabis subsidy program  
4 established by the board.

5 SECTION 8. [NEW MATERIAL] DEPARTMENT OF ENVIRONMENT--  
6 DUTIES.--The department of environment shall cooperate with the  
7 board and the regulation and licensing department to the extent  
8 necessary to carry out powers and duties pursuant to the  
9 Cannabis Revenue and Freedom Act.

10 SECTION 9. [NEW MATERIAL] DUTIES OF DEPARTMENTS--FEDERAL  
11 LAW--CONTRACT ENFORCEABILITY.--

12 A. The board, the department, the taxation and  
13 revenue department, the department of health and the department  
14 of environment shall not refuse to perform any duty provided in  
15 the Cannabis Revenue and Freedom Act on the basis that  
16 manufacturing, distributing, dispensing, possessing or using  
17 marijuana is prohibited by federal law.

18 B. The department shall not refuse, suspend or  
19 cancel a license on the basis that manufacturing, distributing,  
20 dispensing, possessing or using marijuana is prohibited by  
21 federal law.

22 SECTION 10. [NEW MATERIAL] LICENSES REQUIRED.--

23 A. A marijuana producer shall hold a production  
24 license issued by the department for the licensed premises at  
25 which the marijuana is produced and that is separate from any

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1 other license the person may hold that authorizes production of  
2 medical cannabis.

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

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

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

16 E. A marijuana tester shall possess a testing  
17 license issued by the department for the licensed premises on  
18 which marijuana items are tested.

19 SECTION 11. [NEW MATERIAL] DEPARTMENT LICENSING DUTIES.--

20 A. The department shall:

21 (1) beginning July 1, 2018, accept  
22 applications from persons licensed as producers pursuant to the  
23 Lynn and Erin Compassionate Use Act for licenses to produce,  
24 process, sell and test marijuana items pursuant to the Cannabis  
25 Revenue and Freedom Act; and

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1 (2) beginning October 1, 2018, in accordance  
2 with the provisions of the Cannabis Revenue and Freedom Act,  
3 issue licenses to qualified applicants who are already licensed  
4 producers pursuant to the Lynn and Erin Compassionate Use Act.

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

6 (1) accept applications for licenses to  
7 produce, process, sell and test marijuana items; and

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

11 C. The department shall not unreasonably delay the  
12 processing of applications or the issuance of licenses.

13 SECTION 12. [NEW MATERIAL] LICENSE TERMS--APPLICATION--  
14 FEES.--

15 A. An application for a new or renewed license  
16 shall be submitted to the department on a form prescribed by  
17 the department. The application shall include:

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

19 (2) the location of the place of business to  
20 be operated pursuant to the license;

21 (3) if the application is for a production  
22 license, the applicant's certification that, in addition to any  
23 other marijuana produced, the applicant will produce at least  
24 five hundred thousand grams of marijuana for use by qualified  
25 patients of the medical cannabis program; and

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1                   (4) any other information required by the  
2 department.

3                   B. A license shall not be renewed unless the  
4 applicant is in compliance with the provisions of the Cannabis  
5 Revenue and Freedom Act and rules promulgated pursuant to that  
6 act.

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

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

17                   E. Notwithstanding the provisions of Subsections B  
18 and C of this section, the department's cancellation of or  
19 refusal to renew a license is subject to the Administrative  
20 Procedures Act.

21                   F. The department shall assess a nonrefundable fee  
22 not greater than five hundred dollars (\$500) for processing a  
23 new or renewal license application.

24                   G. For a new or renewal processor license,  
25 wholesale license or retail license, the department shall

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1 charge an annual license fee of not more than two thousand  
2 dollars (\$2,000).

3 H. For a new or renewal testing license, the  
4 department shall charge an annual license fee of not more than  
5 five hundred dollars (\$500).

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

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

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

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

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

22 SECTION 13. [NEW MATERIAL] GROUNDS FOR DENYING A LICENSE  
23 APPLICATION.--

24 A. The department shall not issue a license to an  
25 applicant who is younger than twenty-one years of age.



1           B. The department may deny a license application if  
2 the department:

3                   (1) determines, in accordance with rules  
4 promulgated by the board, that there are sufficient licensed  
5 premises in the locality set out in the application; or

6                   (2) reasonably believes that the applicant:

7                           (a) has made false statements to the  
8 department;

9                           (b) is unable to carry on the management  
10 of the business proposed to be licensed;

11                           (c) notwithstanding the provisions of  
12 Subsection C of this section, has been convicted of violating a  
13 federal law or the law of any state or any local government if  
14 the conviction is substantially related to the applicant's  
15 fitness and ability to lawfully carry out activities pursuant  
16 to the license;

17                           (d) has failed to maintain a sanitary  
18 establishment;

19                           (e) has a record of noncompliance with  
20 the Cannabis Revenue and Freedom Act or rules promulgated  
21 pursuant to that act; or

22                           (f) is not the owner of the business  
23 proposed to be licensed or that additional ownership interests  
24 in the business proposed to be licensed have not been  
25 disclosed.

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

3                   (1) consider whether an applicant who was  
4 previously convicted as described in Subparagraph (c) of  
5 Paragraph (2) of Subsection B of this section has completed the  
6 sentence, including any period of probation or parole, related  
7 to the conviction and can demonstrate fitness and ability to  
8 fulfill the responsibilities of a licensee; and

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

12                           (a) the manufacture of marijuana, if:  
13 1) the date on which the applicant completed all requirements  
14 of the sentence for the conviction is more than five years  
15 before the date of the application; and 2) the person has not  
16 been convicted more than once for the manufacture or delivery  
17 of marijuana;

18                           (b) the delivery of marijuana to a  
19 person who was twenty-one years of age or older at the time of  
20 the delivery, if: 1) the date on which the applicant completed  
21 all requirements of the sentence for the conviction is more  
22 than five years before the date of the application; and 2) the  
23 person has not been convicted more than once for the  
24 manufacture or delivery of marijuana; or

25                           (c) the possession of marijuana or

1 another controlled substance.

2 SECTION 14. [NEW MATERIAL] GROUNDS FOR SUSPENDING OR  
3 CANCELING A LICENSE.--The department may suspend or cancel a  
4 license if the department finds or reasonably believes that the  
5 licensee:

6 A. has violated a provision of the Cannabis Revenue  
7 and Freedom Act or a rule promulgated pursuant to that act;

8 B. has made a false representation or statement to  
9 the department to induce or prevent action by the department;

10 C. has maintained an unsanitary establishment;

11 D. is insolvent, or otherwise unable to manage the  
12 licensee's establishment;

13 E. has misrepresented a marijuana item sold by the  
14 licensee to a customer or to the public; or

15 F. after receiving a license, is convicted of a  
16 felony or of violating any state law relating to marijuana or  
17 marijuana items or is convicted of a misdemeanor or violation  
18 of a municipal ordinance, if that violation is committed on the  
19 licensed premises.

20 SECTION 15. [NEW MATERIAL] CHARACTERISTICS OF A LICENSE--  
21 MULTIPLE LICENSES.--

22 A. A license issued by the department shall:

23 (1) be a personal privilege;

24 (2) be valid only for the period stated on the  
25 license;

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

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

8 (5) not constitute property;

9 (6) not be alienable;

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

11 and

12 (8) not descend by the laws of testate or  
13 intestate devolution.

14 B. The department may provide for procedures and  
15 conditions under which:

16 (1) marijuana items left by a deceased,  
17 insolvent or bankrupt licensee, or marijuana items that are  
18 subject to a security interest, may be foreclosed, sold under  
19 execution or otherwise disposed of;

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

23 (3) a business licensed by the department that  
24 is subject to a security interest may be continued in business  
25 by a secured party for a reasonable period after a debtor's

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1 default on the indebtedness.

2 C. A person may hold more than one production  
3 license, processor license, wholesale license or retail  
4 license, but a person who holds a marijuana testing license  
5 shall not hold any other license issued pursuant to the  
6 Cannabis Revenue and Freedom Act or the Lynn and Erin  
7 Compassionate Use Act.

8 SECTION 16. [NEW MATERIAL] AGE RESTRICTION FOR SALE OR  
9 DELIVERY OF MARIJUANA ITEMS--PENALTIES.--

10 A. A licensed marijuana producer, marijuana  
11 processor, marijuana wholesaler or marijuana retailer or a  
12 licensee representative of one of those licensees shall not  
13 sell or deliver marijuana items to a person who is younger than  
14 twenty-one years of age.

15 B. If the department finds that a licensee or  
16 licensee representative has violated the provisions of  
17 Subsection A of this section, the department:

18 (1) for the first offense, shall revoke the  
19 licensee's license and prohibit the licensee from receiving a  
20 license pursuant to the Cannabis Revenue and Freedom Act for a  
21 period of three years and fine the licensee in an amount not to  
22 exceed ten thousand dollars (\$10,000); and

23 (2) for a second offense committed within  
24 twelve months of the first offense, shall permanently revoke  
25 the licensee's license, fine the licensee in an amount not to

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1 exceed ten thousand dollars (\$10,000) and permanently prohibit  
2 the licensee from receiving a license pursuant to the Cannabis  
3 Revenue and Freedom Act.

4 C. A licensee whose license is revoked or who is  
5 fined in accordance with this section shall be given an  
6 opportunity to be heard, in a hearing subject to the  
7 Administrative Procedures Act, before the revocation or fine is  
8 effective.

9 D. A licensee or licensee representative shall  
10 refuse to sell or deliver a marijuana item to a person who is  
11 unable to produce one of the following forms of identification  
12 as proof that the person is twenty-one years of age or older:

13 (1) the person's passport;

14 (2) the person's motor vehicle operator's  
15 license that includes a photograph of the person, whether  
16 issued in this state or in another state;

17 (3) an identification card issued by the motor  
18 vehicle division of the taxation and revenue department;

19 (4) a United States military identification  
20 card; or

21 (5) any other identification card that was  
22 issued by a state or by an Indian nation, tribe or pueblo to a  
23 member of the Indian nation, tribe or pueblo that includes the  
24 person's:

25 (a) photograph;

- 1 (b) name;  
 2 (c) date of birth; and  
 3 (d) physical description.

4 E. A person who presents a form of identification  
 5 as required in Subsection D of this section that falsely  
 6 indicates the person's age for the purpose of procuring or  
 7 attempting to procure a marijuana item is guilty of a petty  
 8 misdemeanor and shall be sentenced pursuant to the provisions  
 9 of Section 31-19-1 NMSA 1978.

10 SECTION 17. [NEW MATERIAL] DELIVERY OF MARIJUANA ITEMS--  
 11 PENALTY.--A marijuana producer, marijuana processor, marijuana  
 12 wholesaler or marijuana tester may deliver marijuana items only  
 13 to or on a licensed premises. The sale of marijuana items  
 14 pursuant to a retail license shall be restricted to sales made  
 15 on the licensed premises described in the license; provided  
 16 that deliveries may be made by the marijuana retailer to  
 17 consumers pursuant to bona fide orders received by the licensee  
 18 on the licensed premises prior to delivery. A person who  
 19 violates the provisions of this section is guilty of a  
 20 misdemeanor.

21 SECTION 18. [NEW MATERIAL] INSPECTION OF LICENSEE BOOKS  
 22 AND LICENSED PREMISES.--

23 A. The department may:

24 (1) after forty-eight hours' notice to the  
 25 owner or the owner's agent, inspect a licensee's books; and

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

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

7 SECTION 19. [NEW MATERIAL] IMPORTING AND EXPORTING  
8 MARIJUANA ITEMS PROHIBITED--PENALTY.--Marijuana items shall not  
9 be imported into this state or exported from this state by any  
10 licensee or licensee representative. A person who violates the  
11 provisions of this section is guilty of a misdemeanor.

12 SECTION 20. [NEW MATERIAL] MARIJUANA ITEMS AS A PRIZE  
13 PROHIBITED--PENALTY.--Marijuana items shall not be given as a  
14 prize, premium or consideration for a lottery, contest, game of  
15 chance or skill or competition of any kind. A person who  
16 violates the provisions of this section shall be punished by a  
17 two-hundred-fifty-dollar (\$250.00) civil penalty.

18 SECTION 21. [NEW MATERIAL] PROVIDING MARIJUANA ITEMS TO  
19 AN INTOXICATED PERSON PROHIBITED--ALLOWING CONSUMPTION OF  
20 MARIJUANA ITEMS BY PERSONS WHO ARE YOUNGER THAN TWENTY-ONE  
21 YEARS OF AGE PROHIBITED--PENALTIES.--

22 A. A person shall not sell, give or otherwise make  
23 a marijuana item available to a person who is visibly  
24 intoxicated. A person who violates the provisions of this  
25 subsection shall be punished by a two-hundred-fifty-dollar



1 (\$250.00) civil penalty.

2 B. A person who exercises control over a licensed  
3 premises shall not:

4 (1) knowingly allow a person who is younger  
5 than twenty-one years of age to consume marijuana items on the  
6 property; or

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

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

12 SECTION 22. [NEW MATERIAL] LICENSEE MISREPRESENTATIONS--  
13 MAINTENANCE OF DISORDERLY ESTABLISHMENT--PENALTY.--

14 A. A licensee or licensee representative shall not:

15 (1) make false representations or statements  
16 to the department to induce or prevent action by the  
17 department;

18 (2) maintain a noisy, lewd, disorderly or  
19 unsanitary establishment or supply impure or otherwise  
20 deleterious marijuana items; or

21 (3) misrepresent marijuana items to any  
22 person.

23 B. A person who violates the provisions of this  
24 section is guilty of a misdemeanor.

25 SECTION 23. [NEW MATERIAL] UNDERAGE PERSONS--RESTRICTIONS

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1 ON PRESENCE ON LICENSED PREMISES--PENALTY.--

2 A. Except as provided in Section 27 of the Cannabis  
3 Revenue and Freedom Act or as authorized by rule or as  
4 necessitated in an emergency, a person who is younger than  
5 twenty-one years of age shall not enter or attempt to enter a  
6 licensed premises that is posted or otherwise identified as  
7 being prohibited to the use of persons under the age of twenty-  
8 one years of age.

9 B. A person who violates Subsection A of this  
10 section shall be punished by a one-hundred-dollar (\$100) civil  
11 penalty.

12 SECTION 24. [NEW MATERIAL] MARIJUANA ITEMS--MANUFACTURING  
13 AND CONSUMER INFORMATION REQUIREMENTS.--Marijuana items:

14 A. shall not be packaged or labeled to appeal to a  
15 minor or so that the items are easily confused with or mistaken  
16 for commercially sold candy or other food items that do not  
17 contain marijuana; and

18 B. shall be:

19 (1) produced and sold with a standardized  
20 dosage of cannabinoids of not more than ten milligrams of  
21 tetrahydrocannabinol per serving;

22 (2) portioned or marked into standardized  
23 serving sizes if the marijuana item contains more than one  
24 serving and is an edible marijuana item in solid form;

25 (3) homogenized to ensure uniform disbursement

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1 of cannabinoids throughout the product;

2 (4) manufactured and sold in compliance with  
3 rules promulgated by the board that relate to sanitation and  
4 the preparation, storage, handling and sale of food products;  
5 and

6 (5) provided to a consumer with sufficient  
7 information, including information about the potential effects  
8 of the marijuana item and instructions on how to safely consume  
9 the item, to allow informed consumption of the item.

10 SECTION 25. [NEW MATERIAL] COMPLIANCE WITH STANDARDS FOR  
11 MARIJUANA ITEMS REQUIRED--PENALTY.--

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

16 B. The department may require a marijuana producer,  
17 marijuana processor or marijuana wholesaler to provide a report  
18 from a marijuana tester that demonstrates to the department's  
19 satisfaction that particular marijuana items comply with  
20 minimum standards.

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

24 D. The department may prohibit the sale of  
25 marijuana items for a reasonable period of time while it

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1 determines whether the marijuana items comply with established  
2 minimum standards.

3 E. A person who violates the provisions of  
4 Subsection A or C of this section is guilty of a misdemeanor.

5 SECTION 26. [NEW MATERIAL] MISLEADING MARKS OR LABELS--  
6 INJURIOUS OR ADULTERATED INGREDIENTS--PENALTY.--

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. A person who violates  
13 the provisions of this subsection is guilty of a misdemeanor.

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

18 SECTION 27. [NEW MATERIAL] EMPLOYMENT--MINIMUM AGE  
19 REQUIREMENT--PENALTY.--

20 A. A licensee shall not employ a person who is  
21 younger than twenty-one years of age in any part of a licensed  
22 premises. A person who violates the provisions of this  
23 subsection is guilty of a misdemeanor.

24 B. During an inspection of a licensed premises, the  
25 department may require proof that a person who is performing

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

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

19 SECTION 28. [NEW MATERIAL] MATURE MARIJUANA PLANTS.--Only  
 20 a licensed marijuana producer and the producer's licensee  
 21 representatives may possess or sell a mature marijuana plant.

22 SECTION 29. [NEW MATERIAL] EMPLOYMENT PROTECTIONS.--

23 A. Unless an employer establishes that an  
 24 employee's use of marijuana in compliance with the Lynn and  
 25 Erin Compassionate Use Act has impaired the employee's ability

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1 to perform the employee's job responsibilities, the employer  
2 shall not take any adverse employment action against the  
3 employee for:

4 (1) the employee's conduct that complies with  
5 that act; or

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

8 B. Nothing in this section shall:

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

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

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

21 SECTION 30. [NEW MATERIAL] PROTECTIONS FROM  
22 DISCRIMINATION.--

23 A. A landlord shall not refuse to lease to or evict  
24 a person from property solely based on the person's conduct  
25 that complies with the Cannabis Revenue and Freedom Act, unless

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1 failing to do so would cause the landlord to lose a monetary or  
 2 licensing-related benefit pursuant to federal law; provided,  
 3 however, that a landlord may prohibit a person from cultivating  
 4 or smoking marijuana on the landlord's property.

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

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

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

14 SECTION 31. [NEW MATERIAL] RESTRICTION ON THE USE OF  
 15 MARIJUANA ITEMS IN A PUBLIC PLACE--MARIJUANA RETAILER ON-SITE  
 16 CONSUMPTION LICENSE ENDORSEMENT--PENALTY.--

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

19 B. Pursuant to rules promulgated by the department,  
 20 a marijuana retailer may apply for an on-site consumption  
 21 endorsement to the retailer's marijuana retailer license to  
 22 allow the sale of marijuana items for on-site consumption and  
 23 the consumption of the marijuana items in a marijuana  
 24 consumption area; provided, however, that an on-site  
 25 consumption endorsement shall not be issued for a marijuana

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1 retailer that is within three hundred feet of a school.

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

6 D. A person who violates Subsection A of this  
7 section shall be punished by a fifty-dollar (\$50.00) civil  
8 penalty.

9 SECTION 32. [NEW MATERIAL] HOMEGROWN MARIJUANA IN PUBLIC  
10 VIEW PROHIBITED--PENALTY.--

11 A. A person shall not produce, process, keep or  
12 store homegrown marijuana or homemade marijuana products if the  
13 homegrown marijuana or homemade marijuana products can be  
14 readily seen by normal unaided vision from a public place.

15 B. A person who violates Subsection A of this  
16 section shall be punished by a fifty-dollar (\$50.00) civil  
17 penalty.

18 SECTION 33. [NEW MATERIAL] CERTAIN HOMEMADE MARIJUANA  
19 EXTRACTS PROHIBITED--PENALTY.--A person shall not produce,  
20 process, keep or store a homemade marijuana extract if the  
21 extract is produced or processed using a volatile solvent such  
22 as butane, hexane, isopropyl alcohol, ethanol or carbon  
23 dioxide. A person who violates the provisions of this section  
24 shall be punished by a two-hundred-fifty-dollar (\$250.00) civil  
25 penalty.

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1           **SECTION 34. [NEW MATERIAL] INCONSISTENT LOCAL LAWS AND**  
 2           ORDINANCES SUPERSEDED AND REPEALED.--Notwithstanding the  
 3           provisions of Sections 35 and 36 of the Cannabis Revenue and  
 4           Freedom Act, the provisions of that act shall operate uniformly  
 5           throughout the state and shall be superior to and shall  
 6           supersede all local laws or ordinances, including a law or  
 7           ordinance of a home rule municipality, that are inconsistent or  
 8           in conflict with that act.

9           **SECTION 35. [NEW MATERIAL] LOCAL GOVERNMENT AUTHORITY TO**  
 10          REGULATE--LIMITATION.--

11           A. A municipality or county may adopt reasonable  
 12          time, place and manner regulations related to nuisance aspects  
 13          of a licensed marijuana producer's, marijuana retailer's or a  
 14          marijuana wholesaler's business if the municipality or county  
 15          makes specific findings that the business would cause adverse  
 16          effects to occur.

17           B. The authority granted to a municipality or  
 18          county by this section is in addition to the authority granted  
 19          to a municipality or county pursuant to its charter, state laws  
 20          and the constitution of New Mexico.

21           C. A municipality or county shall not prevent the  
 22          transportation on public roads of marijuana items by a licensee  
 23          transporting marijuana items in compliance with the Cannabis  
 24          Revenue and Freedom Act.

25          **SECTION 36. [NEW MATERIAL] LOCAL OPTION ELECTION--EFFECT**

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1 OF LOCAL OPTION.--

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

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

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underscored material = new  
~~[bracketed material]~~ = delete

1 body shall refuse to recognize the petition if more than three  
2 months have elapsed between the date of the first signature and  
3 the filing of the last petition necessary to bring the number  
4 of signatures on the petition up to five percent;

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

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

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

22 (5) if the majority of all of the votes cast  
23 at the election are cast in favor of the prohibition of the  
24 operations of a licensed marijuana processor, marijuana  
25 producer, marijuana retailer, marijuana wholesaler or marijuana

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1     tester in the county or municipality, the chair of the  
2     governing body shall declare by order entered upon the records  
3     of the county or municipality that the county or municipality  
4     has approved the prohibition and shall notify the department of  
5     the election results;

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

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

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

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

20 B. The provisions of Subsection A of this section  
21 shall not prevent a person who resides in a municipality or  
22 county that has elected to prohibit the operations of a  
23 licensed marijuana processor, marijuana producer, marijuana  
24 retailer, marijuana wholesaler or marijuana tester from  
25 possessing marijuana items that were purchased from licensed

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1 marijuana retailers for the person's personal use.

2           **SECTION 37. [NEW MATERIAL] ENFORCEMENT--DUTY OF LAW**  
3 **ENFORCEMENT OFFICERS.--**The state and local law enforcement  
4 officers in the state shall enforce the Cannabis Revenue and  
5 Freedom Act and shall assist the department with identifying  
6 violations of that act and with apprehending offenders. Any  
7 state or local law enforcement officer that has notice or  
8 knowledge of or reasonable belief regarding a violation of that  
9 act shall immediately notify the district attorney and provide  
10 the district attorney with the names and addresses of any  
11 witnesses to the violation and other information related to the  
12 violation.

13           **SECTION 38. [NEW MATERIAL] CONVICTION OF LICENSEE--DUTY**  
14 **TO NOTIFY THE DEPARTMENT.--**A prosecuting attorney shall notify  
15 the department as soon as possible following the conviction of  
16 a person who is licensed pursuant to the Cannabis Revenue and  
17 Freedom Act for a violation of any provision of that act or of  
18 a state or local law that relates in any way to marijuana  
19 items.

20           **SECTION 39. [NEW MATERIAL] PROPERTY AND PLACES AS COMMON**  
21 **NUISANCES--PENALTY.--**

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

24                   (1) a room, house, building, boat, structure  
25 or other place where marijuana items are sold, manufactured,

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1 bartered or given away in violation of state law;

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

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

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

10 B. A person who maintains or assists in maintaining  
11 a common nuisance or who knowingly allows a common nuisance to  
12 exist in a place of which the person is the owner, manager or  
13 lessor shall be punished by a two-hundred-fifty-dollar (\$250)  
14 civil penalty.

15 SECTION 40. [NEW MATERIAL] PENALTIES.--Except as  
16 otherwise specifically provided in the Cannabis Revenue and  
17 Freedom Act, a violation of a provision of that act shall be  
18 punished by a fifty-dollar (\$50.00) civil penalty.

19 SECTION 41. [NEW MATERIAL] DESTRUCTION OF ARREST AND  
20 CONVICTION RECORDS--PROCEDURE--EXCEPTIONS.--

21 A. Records held by a court, or an agency of the  
22 state or a local government, that relate to a person's arrest  
23 or conviction for trafficking marijuana in violation of Section  
24 30-31-20 NMSA 1978, distribution of marijuana, possession with  
25 intent to distribute marijuana in violation of Section 30-31-22

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1 NMSA 1978 or possession of marijuana in violation of Section  
2 30-31-23 NMSA 1978 shall not be kept beyond two years from the  
3 date of the person's conviction or from the date of the  
4 person's arrest if there was no conviction. If the person was  
5 a juvenile at the time of the arrest or conviction, the records  
6 shall be retained until the offender is eighteen years of age  
7 and shall then be destroyed. The records shall also be removed  
8 from any statewide criminal databases.

9 B. If a person whose records would be subject to  
10 destruction pursuant to Subsection A of this section is  
11 incarcerated for an offense listed in that subsection at the  
12 time the person's records would be destroyed, the two-year  
13 record retention period shall begin upon the person's release  
14 from incarceration.

15 C. For the purpose of this section, "records"  
16 includes records of arrests resulting in a criminal proceeding  
17 and records relating to other offenses charged in the  
18 accusatory pleading, whether the defendant was acquitted or the  
19 charges were dismissed.

20 SECTION 42. [NEW MATERIAL] PETITION FOR DISMISSAL.--

21 A. A person currently serving a sentence for a  
22 conviction, whether by trial or by open or negotiated plea, who  
23 would not have been guilty of an offense or who would have been  
24 guilty of a lesser offense as provided in this 2017 act, had  
25 that act been in effect at the time of the offense, may

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1 petition the trial court that convicted the person for a recall  
2 or dismissal of the person's sentence.

3 B. A court shall grant a petition submitted  
4 pursuant to Subsection A of this section and recall the  
5 sentence or dismiss the sentence because it is legally invalid,  
6 unless the court determines that granting the petition would  
7 pose an unreasonable risk of danger to public safety.

8 C. A person who is resentenced after a petition to  
9 recall the person's sentence shall be given credit against the  
10 person's new sentence for time already served.

11 D. A person who is resentenced after a petition to  
12 recall the person's sentence shall not be sentenced to a term  
13 longer than the person's original sentence and shall not have  
14 any charges reinstated that were originally dismissed pursuant  
15 to a negotiated plea agreement.

16 E. A person who has completed the person's sentence  
17 for a conviction, whether by trial or open or negotiated plea,  
18 who would not have been guilty of an offense or who would have  
19 been guilty of a lesser offense as provided in this 2017 act,  
20 had that act been in effect at the time of the offense, may  
21 file an application before the trial court that convicted the  
22 person to have the conviction dismissed and sealed because the  
23 prior conviction is now legally invalid or redesignated as an  
24 infraction. The court shall redesignate the conviction as an  
25 infraction or dismiss and seal the conviction as legally

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1 invalid as provided in this 2017 act unless it makes a finding  
2 that the conviction is not legally invalid or was not  
3 redesignated as an infraction pursuant to this 2017 act.

4 F. Nothing in this section is intended to diminish  
5 or abrogate any rights or remedies otherwise available to a  
6 petitioner or applicant.

7 G. The provisions of this section shall apply  
8 equally to juvenile delinquency adjudications and convictions  
9 of a juvenile person if the juvenile would not have been guilty  
10 of an offense or would have been guilty of a lesser offense as  
11 provided in this 2017 act.

12 SECTION 43. [NEW MATERIAL] ENFORCEMENT.--

13 A. The department and local and state law  
14 enforcement officers are authorized to enforce the provisions  
15 of the Cannabis Revenue and Freedom Act that relate to  
16 licensing and the conduct of licensees and licensee  
17 representatives.

18 B. Local and state law enforcement officers are  
19 authorized to enforce all other provisions of the Cannabis  
20 Revenue and Freedom Act.

21 SECTION 44. [NEW MATERIAL] SUBSTANCE ABUSE PREVENTION AND  
22 BEHAVIORAL HEALTH FUND.--The "substance abuse prevention and  
23 behavioral health fund" is created in the state treasury. The  
24 fund consists of appropriations, other money deposited in the  
25 fund and money otherwise accruing to the fund. The department

1 of health shall administer the fund, and money in the fund is  
2 appropriated to the department of health to establish, operate  
3 and maintain alcohol and substance abuse prevention, early  
4 intervention and treatment and related behavioral health  
5 services. Money in the fund shall be disbursed on warrants  
6 signed by the secretary of finance and administration pursuant  
7 to vouchers signed by the secretary of health or the  
8 secretary's designee. Any balance remaining in the fund at the  
9 end of a fiscal year shall not revert to the general fund.

10 SECTION 45. [NEW MATERIAL] DISTRICT ATTORNEY PUBLIC  
11 SAFETY FUND.--The "district attorney public safety fund" is  
12 created in the state treasury. The fund consists of  
13 appropriations, other money deposited in the fund and money  
14 otherwise accruing to the fund. The administrative office of  
15 the district attorneys shall administer the fund, and money in  
16 the fund is appropriated to the administrative office of the  
17 district attorneys to support evidence-based arrest and  
18 incarceration diversion programs for low-level nonviolent drug  
19 related offenses and to support development of intoxicated  
20 driving detection programs. Money in the fund shall be  
21 disbursed on warrants signed by the secretary of finance and  
22 administration pursuant to vouchers signed by the director of  
23 the administrative office of the district attorneys or the  
24 director's designee. Any balance remaining in the fund at the  
25 end of a fiscal year shall not revert to the general fund.

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1           **SECTION 46. [NEW MATERIAL] PUBLIC DEFENDER PUBLIC SAFETY**

2           FUND.--The "public defender public safety fund" is created in  
3           the state treasury. The fund consists of appropriations, other  
4           money deposited in the fund and money otherwise accruing to the  
5           fund. The public defender department shall administer the  
6           fund, and money in the fund is appropriated to the public  
7           defender for operations. Money in the fund shall be disbursed  
8           on warrants signed by the secretary of finance and  
9           administration pursuant to vouchers signed by the chief public  
10          defender or the chief's designee. Any balance remaining in the  
11          fund at the end of a fiscal year shall not revert to the  
12          general fund.

13           **SECTION 47. [NEW MATERIAL] CANNABIS REVENUE ECONOMIC**

14          DEVELOPMENT FUND.--The "cannabis revenue economic development  
15          fund" is created in the state treasury. The fund consists of  
16          appropriations, other money deposited in the fund and money  
17          otherwise accruing to the fund. The economic development  
18          department shall administer the fund. Money in the fund is  
19          appropriated to the economic development department for:  
20          training to support local entrepreneurs; local business  
21          development through small business development centers and  
22          community college and university programs; business growth and  
23          marketing programs through regional economic development  
24          organizations; and community reinvestment grant programs to  
25          support job training for and placement of formerly incarcerated

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1 persons. Money in the fund shall be disbursed on warrants  
 2 signed by the secretary of finance and administration pursuant  
 3 to vouchers signed by the secretary of economic development or  
 4 the secretary's designee. Any balance remaining in the fund at  
 5 the end of a fiscal year shall not revert to the general fund.

6 SECTION 48. ~~[NEW MATERIAL]~~ SHORT TITLE.--Sections 48  
 7 through 54 of this act may be cited as the "Cannabis Tax Act".

8 SECTION 49. ~~[NEW MATERIAL]~~ DEFINITIONS.--As used in the  
 9 Cannabis Tax Act:

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

13 B. "department" means the taxation and revenue  
 14 department;

15 C. "governing body" means:

16 (1) in the case of a municipality, the city  
 17 council or city commission of a city, the board of trustees of  
 18 a town or village or the board of county commissioners of H  
 19 class counties; or

20 (2) in the case of a county, the county  
 21 commission of a county or the county council of an H class  
 22 county;

23 D. "marijuana items" means "marijuana items" as  
 24 that term is defined in the Cannabis Revenue and Freedom Act;  
 25 and

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1           E. "marijuana retailer" means "marijuana retailer"  
2 as that term is defined in the Cannabis Revenue and Freedom  
3 Act.

4           SECTION 50. [NEW MATERIAL] IMPOSITION AND RATE OF  
5 CANNABIS TAX.--

6           A. There is imposed an excise tax on a marijuana  
7 retailer that sells marijuana items in this state on which the  
8 tax imposed by this section has not been paid. If the price  
9 paid does not represent the value of the marijuana item, the  
10 tax rate shall be applied to the reasonable value of the  
11 marijuana item at the time the item was purchased. The excise  
12 tax imposed by this section may be referred to as the "cannabis  
13 tax".

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

16           SECTION 51. [NEW MATERIAL] MUNICIPAL CANNABIS TAX.--

17           A. A majority of the members of the governing body  
18 of a municipality may enact an ordinance imposing an excise tax  
19 on a marijuana retailer that sells marijuana items in the  
20 municipality on which the tax imposed by this section has not  
21 been paid. The tax imposed pursuant to this section may be  
22 referred to as the "municipal cannabis tax".

23           B. The rate of the municipal cannabis tax is no  
24 more than five percent, which shall be imposed in one-sixteenth  
25 percent increments and is applied to the price of the marijuana

1 item. If the price of the marijuana item does not represent  
2 the value of the item, the tax rate shall be applied to the  
3 reasonable value of the item at the time that the item was  
4 purchased.

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

8 D. Any ordinance enacted under the provisions of  
9 Subsection A of this section shall include an effective date of  
10 either July 1 or January 1.

11 E. An ordinance imposing the municipal cannabis tax  
12 shall not go into effect until after an election is held and  
13 the majority of the voters of the municipality voting in the  
14 election vote in favor of imposing the tax. The governing body  
15 shall adopt a resolution calling for an election within  
16 seventy-five days of the date the ordinance is adopted on the  
17 question of imposing the tax. The question shall be submitted  
18 to the voters of the municipality as a separate question at a  
19 regular municipal election or at a special election called for  
20 that purpose by the governing body. A special municipal  
21 election shall be called, conducted and canvassed as provided  
22 in the Municipal Election Code. If the majority of the voters  
23 voting on the question approves the ordinance imposing the  
24 municipal cannabis tax, the ordinance shall become effective in  
25 accordance with the provisions of the Cannabis Tax Act. If the

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

4 SECTION 52. [NEW MATERIAL] COUNTY CANNABIS TAX.--

5 A. The majority of the members of the governing  
6 body of a county may enact an ordinance imposing an excise tax  
7 on a marijuana retailer that sells marijuana items in the  
8 county area on which the tax imposed by this section has not  
9 been paid. The tax imposed pursuant to this section may be  
10 referred to as the "county cannabis tax".

11 B. The rate of the county cannabis tax is no more  
12 than five percent, which shall be imposed in one-sixteenth  
13 percent increments and is applied to the price of the marijuana  
14 item. If the price of the marijuana item does not represent  
15 the value of the item, the tax rate shall be applied to the  
16 reasonable value of the item at the time that the item was  
17 purchased.

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

21 D. Any ordinance enacted under the provisions of  
22 Subsection A of this section shall include an effective date of  
23 either July 1 or January 1.

24 E. An ordinance imposing the county cannabis tax  
25 shall not go into effect until after an election is held and



1 the majority of the qualified electors of the county area  
 2 voting in the election vote in favor of imposing the tax. The  
 3 governing body shall adopt a resolution calling for an election  
 4 within seventy-five days of the date that the ordinance is  
 5 adopted on the question of imposing the tax. The question may  
 6 be submitted to the qualified electors and voted upon as a  
 7 separate question at any special election called for that  
 8 purpose by the governing body. The election on the question  
 9 shall be called, held, conducted and canvassed in substantially  
 10 the same manner as provided by law for general elections. If  
 11 the question of imposing a county cannabis tax fails, the  
 12 governing body shall not again propose a county cannabis tax  
 13 for a period of one year after the election.

14 SECTION 53. [NEW MATERIAL] DATE PAYMENT DUE.--The taxes  
 15 imposed pursuant to the Cannabis Tax Act are to be paid on or  
 16 before the twenty-fifth day of the month following the month in  
 17 which the taxable event occurs.

18 SECTION 54. [NEW MATERIAL] ADMINISTRATIVE CHARGE.--The  
 19 department may deduct an amount not to exceed three percent of  
 20 the proceeds of the municipal cannabis tax and county cannabis  
 21 tax as a charge for the administrative costs of collection,  
 22 which amount shall be retained by the department for use in  
 23 administration of those taxes.

24 SECTION 55. A new section of the Tax Administration Act  
 25 is enacted to read:

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1           "[NEW MATERIAL] DISTRIBUTION--PUBLIC SCHOOL FUND FOR STATE  
2 EQUALIZATION GUARANTEE DISTRIBUTION--SUBSTANCE ABUSE PREVENTION  
3 AND BEHAVIORAL HEALTH FUND--CANNABIS REVENUE ECONOMIC  
4 DEVELOPMENT FUND--DISTRICT ATTORNEY PUBLIC SAFETY FUND--PUBLIC  
5 DEFENDER PUBLIC SAFETY FUND--DEPARTMENT OF HEALTH--CANNABIS  
6 TAX.--A distribution pursuant to Section 7-1-6.1 NMSA 1978  
7 shall be made to:

8           A. the public school fund to augment the  
9 appropriations for the state equalization guarantee  
10 distribution in an amount equal to forty percent of the net  
11 receipts attributable to the cannabis tax;

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

15           C. the cannabis revenue economic development fund  
16 in an amount equal to twenty percent of the net receipts  
17 attributable to the cannabis tax;

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

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

24           F. the department of health in an amount equal to  
25 two percent of the net receipts attributable to the cannabis

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1 tax to support qualified patients pursuant to the medical  
2 cannabis subsidy program."

3 SECTION 56. A new section of the Tax Administration Act  
4 is enacted to read:

5 "[NEW MATERIAL] TRANSFER--REVENUES FROM MUNICIPAL CANNABIS  
6 TAX AND COUNTY CANNABIS TAX.--

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

15 B. A transfer pursuant to Section 7-1-6.1 NMSA 1978  
16 shall be made to each county for which the department is  
17 collecting a county cannabis tax imposed by that county in an  
18 amount, subject to any increase or decrease made pursuant to  
19 Section 7-1-6.15 NMSA 1978, equal to the net receipts  
20 attributable to the county cannabis tax, less any deduction for  
21 administrative costs determined and made by the department  
22 pursuant to the Cannabis Tax Act."

23 SECTION 57. Section 7-1-2 NMSA 1978 (being Laws 1965,  
24 Chapter 248, Section 2, as amended) is amended to read:

25 "7-1-2. APPLICABILITY.--The Tax Administration Act

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1 applies to and governs:

2 A. the administration and enforcement of the  
3 following taxes or tax acts as they now exist or may hereafter  
4 be amended:

- 5 (1) Income Tax Act;
- 6 (2) Withholding Tax Act;
- 7 (3) Venture Capital Investment Act;
- 8 (4) Gross Receipts and Compensating Tax Act  
9 and any state gross receipts tax;
- 10 (5) Liquor Excise Tax Act;
- 11 (6) Local Liquor Excise Tax Act;
- 12 (7) any municipal local option gross receipts  
13 tax;
- 14 (8) any county local option gross receipts  
15 tax;
- 16 (9) Special Fuels Supplier Tax Act;
- 17 (10) Gasoline Tax Act;
- 18 (11) petroleum products loading fee, which fee  
19 shall be considered a tax for the purpose of the Tax  
20 Administration Act;
- 21 (12) Alternative Fuel Tax Act;
- 22 (13) Cigarette Tax Act;
- 23 (14) Estate Tax Act;
- 24 (15) Railroad Car Company Tax Act;
- 25 (16) Investment Credit Act, rural job tax

1 credit, Laboratory Partnership with Small Business Tax Credit  
 2 Act, Technology Jobs and Research and Development Tax Credit  
 3 Act, Film Production Tax Credit Act, Affordable Housing Tax  
 4 Credit Act and high-wage jobs tax credit;

5 (17) Corporate Income and Franchise Tax Act;

6 (18) Uniform Division of Income for Tax  
 7 Purposes Act;

8 (19) Multistate Tax Compact;

9 (20) Tobacco Products Tax Act; ~~and~~

10 (21) the telecommunications relay service  
 11 surcharge imposed by Section 63-9F-11 NMSA 1978, which  
 12 surcharge shall be considered a tax for the purposes of the Tax  
 13 Administration Act; and

14 (22) the Cannabis Tax Act;

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

18 (1) Resources Excise Tax Act;

19 (2) Severance Tax Act;

20 (3) any severance surtax;

21 (4) Oil and Gas Severance Tax Act;

22 (5) Oil and Gas Conservation Tax Act;

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

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

25 (8) Natural Gas Processors Tax Act;

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1 (9) Oil and Gas Production Equipment Ad  
2 Valorem Tax Act;  
3 (10) Copper Production Ad Valorem Tax Act;  
4 (11) any advance payment required to be made  
5 by any act specified in this subsection, which advance payment  
6 shall be considered a tax for the purposes of the Tax  
7 Administration Act;

8 (12) Enhanced Oil Recovery Act;  
9 (13) Natural Gas and Crude Oil Production  
10 Incentive Act; and

11 (14) intergovernmental production tax credit  
12 and intergovernmental production equipment tax credit;

13 C. the administration and enforcement of the  
14 following taxes, surcharges, fees or acts as they now exist or  
15 may hereafter be amended:

16 (1) Weight Distance Tax Act;  
17 (2) the workers' compensation fee authorized  
18 by Section 52-5-19 NMSA 1978, which fee shall be considered a  
19 tax for purposes of the Tax Administration Act;

20 (3) Uniform Unclaimed Property Act (1995);  
21 (4) 911 emergency surcharge and the network  
22 and database surcharge, which surcharges shall be considered  
23 taxes for purposes of the Tax Administration Act;

24 (5) the solid waste assessment fee authorized  
25 by the Solid Waste Act, which fee shall be considered a tax for

1 purposes of the Tax Administration Act;

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

5 (7) the gaming tax imposed pursuant to the  
6 Gaming Control Act; and

7 D. the administration and enforcement of all other  
8 laws, with respect to which the department is charged with  
9 responsibilities pursuant to the Tax Administration Act, but  
10 only to the extent that the other laws do not conflict with the  
11 Tax Administration Act."

12 SECTION 58. Section 7-1-6.15 NMSA 1978 (being Laws 1983,  
13 Chapter 211, Section 20, as amended by Laws 2015, Chapter 89,  
14 Section 1 and by Laws 2015, Chapter 100, Section 1) is amended  
15 to read:

16 "7-1-6.15. ADJUSTMENTS OF DISTRIBUTIONS OR TRANSFERS TO  
17 MUNICIPALITIES OR COUNTIES.--

18 A. The provisions of this section apply to:

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

21 (2) any transfer to a municipality with  
22 respect to any local option gross receipts tax or municipal  
23 cannabis tax imposed by that municipality;

24 (3) any transfer to a county with respect to  
25 any local option gross receipts tax or county cannabis tax

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1 imposed by that county;

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

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

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

9 (7) any distribution to a county from the  
10 county government road fund pursuant to Section 7-1-6.26 NMSA  
11 1978;

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

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

16 B. Before making a distribution or transfer  
17 specified in Subsection A of this section to a municipality or  
18 county for the month, amounts comprising the net receipts shall  
19 be segregated into two mutually exclusive categories. One  
20 category shall be for amounts relating to the current month,  
21 and the other category shall be for amounts relating to prior  
22 periods. The total of each category for a municipality or  
23 county shall be reported each month to that municipality or  
24 county. If the total of the amounts relating to prior periods  
25 is less than zero and its absolute value exceeds the greater of

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1 one hundred dollars (\$100) or an amount equal to twenty percent  
2 of the average distribution or transfer amount for that  
3 municipality or county, then the following procedures shall be  
4 carried out:

5 (1) all negative amounts relating to any  
6 period prior to the three calendar years preceding the year of  
7 the current month, net of any positive amounts in that same  
8 time period for the same taxpayers to which the negative  
9 amounts pertain, shall be excluded from the total relating to  
10 prior periods. Except as provided in Paragraph (2) of this  
11 subsection, the net receipts to be distributed or transferred  
12 to the municipality or county shall be adjusted to equal the  
13 amount for the current month plus the revised total for prior  
14 periods; and

15 (2) if the revised total for prior periods  
16 determined pursuant to Paragraph (1) of this subsection is  
17 negative and its absolute value exceeds the greater of one  
18 hundred dollars (\$100) or an amount equal to twenty percent of  
19 the average distribution or transfer amount for that  
20 municipality or county, the revised total for prior periods  
21 shall be excluded from the distribution or transfers and the  
22 net receipts to be distributed or transferred to the  
23 municipality or county shall be equal to the amount for the  
24 current month.

25 C. The department shall recover from a municipality

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1 or county the amount excluded by Paragraph (2) of Subsection B  
2 of this section. This amount may be referred to as the  
3 "recoverable amount".

4 D. Prior to or concurrently with the distribution  
5 or transfer to the municipality or county of the adjusted net  
6 receipts, the department shall notify the municipality or  
7 county whose distribution or transfer has been adjusted  
8 pursuant to Paragraph (2) of Subsection B of this section:

9 (1) that the department has made such an  
10 adjustment, that the department has determined that a specified  
11 amount is recoverable from the municipality or county and that  
12 the department intends to recover that amount from future  
13 distributions or transfers to the municipality or county;

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

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

21 (4) that the municipality or county may  
22 inspect, pursuant to Section 7-1-8.9 NMSA 1978, an application  
23 for a claim for refund that gave rise to the recoverable  
24 amount, exclusive of any amended returns that may be attached  
25 to the application.

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

5                   (1) the department may collect the recoverable  
6 amount by:

7                           (a) decreasing distributions or  
8 transfers to the municipality or county in accordance with a  
9 repayment agreement entered into with the municipality or  
10 county; or

11                           (b) except as provided in Paragraphs (2)  
12 and (3) of this subsection, if the municipality or county fails  
13 to act within the ninety days, decreasing the amount of the  
14 next six distributions or transfers to the municipality or  
15 county following expiration of the ninety-day period in  
16 increments as nearly equal as practicable and sufficient to  
17 recover the amount;

18                   (2) if, pursuant to Subsection B of this  
19 section, the secretary determines that the recoverable amount  
20 is more than fifty percent of the average distribution or  
21 transfer of net receipts for that municipality or county, the  
22 secretary:

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

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

4 (3) if, after application of a refund claim,  
5 audit adjustment, correction of a mistake by the department or  
6 other adjustment of a prior period, but prior to any recovery  
7 of the department pursuant to this section, the total net  
8 receipts of a municipality or county for the twelve-month  
9 period beginning with the current month are reduced or are  
10 projected to be reduced to less than fifty percent of the  
11 average distribution or transfer of net receipts, the secretary  
12 may waive recovery of any portion of the recoverable amount,  
13 subject to approval by the state board of finance.

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

21 G. On or before September 1 of each year beginning  
22 in 2016, the secretary shall report to the state board of  
23 finance and the legislative finance committee the total  
24 recoverable amount waived pursuant to Subparagraph (b) of  
25 Paragraph (2) and Paragraph (3) of Subsection E of this section

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1 for each municipality and county in the prior fiscal year.

2 H. The secretary is authorized to decrease a  
3 distribution or transfer to a municipality or county upon being  
4 directed to do so by the secretary of finance and  
5 administration pursuant to the State Aid Intercept Act or to  
6 redirect a distribution or transfer to the New Mexico finance  
7 authority pursuant to an ordinance or a resolution passed by  
8 the county or municipality and a written agreement of the  
9 municipality or county and the New Mexico finance authority.  
10 Upon direction to decrease a distribution or transfer or notice  
11 to redirect a distribution or transfer to a municipality or  
12 county, the secretary shall decrease or redirect the next  
13 designated distribution or transfer, and succeeding  
14 distributions or transfers as necessary, by the amount of the  
15 state distributions intercept authorized by the secretary of  
16 finance and administration pursuant to the State Aid Intercept  
17 Act or by the amount of the state distribution intercept  
18 authorized pursuant to an ordinance or a resolution passed by  
19 the county or municipality and a written agreement with the New  
20 Mexico finance authority. The secretary shall transfer the  
21 state distributions intercept amount to the municipal or county  
22 treasurer or other person designated by the secretary of  
23 finance and administration or to the New Mexico finance  
24 authority pursuant to written agreement to pay the debt service  
25 to avoid default on qualified local revenue bonds or meet other

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1 local revenue bond, loan or other debt obligations of the  
2 municipality or county to the New Mexico finance authority. A  
3 decrease to or redirection of a distribution or transfer  
4 pursuant to this subsection that arose:

5 (1) prior to an adjustment of a distribution  
6 or transfer of net receipts creating a recoverable amount owed  
7 to the department takes precedence over any collection of any  
8 recoverable amount pursuant to Paragraph (2) of Subsection B of  
9 this section, which may be made only from the net amount of the  
10 distribution or transfer remaining after application of the  
11 decrease or redirection pursuant to this subsection; and

12 (2) after an adjustment of a distribution or  
13 transfer of net receipts creating a recoverable amount owed to  
14 the department shall be subordinate to any collection of any  
15 recoverable amount pursuant to Paragraph (2) of Subsection B of  
16 this section.

17 I. Upon the direction of the secretary of finance  
18 and administration pursuant to Section 9-6-5.2 NMSA 1978, the  
19 secretary shall temporarily withhold the balance of a  
20 distribution to a municipality or county, net of any decrease  
21 or redirected amount pursuant to Subsection H of this section  
22 and any recoverable amount pursuant to Paragraph (2) of  
23 Subsection B of this section, that has failed to submit an  
24 audit report required by the Audit Act or a financial report  
25 required by Subsection F of Section 6-6-2 NMSA 1978. The

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1 amount to be withheld, the source of the withheld distribution  
2 and the number of months that the distribution is to be  
3 withheld shall be as directed by the secretary of finance and  
4 administration. A distribution withheld pursuant to this  
5 subsection shall remain in the tax administration suspense fund  
6 until distributed to the municipality or county and shall not  
7 be distributed to the general fund. An amount withheld  
8 pursuant to this subsection shall be distributed to the  
9 municipality or county upon direction of the secretary of  
10 finance and administration.

11 J. As used in this section:

12 (1) "amounts relating to the current month"  
13 means any amounts included in the net receipts of the current  
14 month that represent payment of tax due for the current month,  
15 correction of amounts processed in the current month that  
16 relate to the current month or that otherwise relate to  
17 obligations due for the current month;

18 (2) "amounts relating to prior periods" means  
19 any amounts processed during the current month that adjust  
20 amounts processed in a period or periods prior to the current  
21 month regardless of whether the adjustment is a correction of a  
22 department error or due to the filing of amended returns,  
23 payment of department-issued assessments, filing or approval of  
24 claims for refund, audit adjustments or other cause;

25 (3) "average distribution or transfer amount"

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1 means the following amounts; provided that a distribution or  
2 transfer that is negative shall not be used in calculating the  
3 amounts:

4 (a) the annual average of the total  
5 amount distributed or transferred to a municipality or county  
6 in each of the three twelve-month periods preceding the current  
7 month;

8 (b) if a distribution or transfer to a  
9 municipality or county has been made for less than three years,  
10 the total amount distributed or transferred in the year  
11 preceding the current month; or

12 (c) if a municipality or county has not  
13 received distributions or transfers of net receipts for twelve  
14 or more months, the monthly average of net receipts distributed  
15 or transferred to the municipality or county preceding the  
16 current month multiplied by twelve;

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

19 (5) "repayment agreement" means an agreement  
20 between the department and a municipality or county under which  
21 the municipality or county agrees to allow the department to  
22 recover an amount determined pursuant to Paragraph (2) of  
23 Subsection B of this section by decreasing distributions or  
24 transfers to the municipality or county for one or more months  
25 beginning with the distribution or transfer to be made with



1 respect to a designated month. No interest shall be charged."

2 SECTION 59. Section 26-2B-1 NMSA 1978 (being Laws 2007,  
3 Chapter 210, Section 1) is amended to read:

4 "26-2B-1. SHORT TITLE.--~~[Sections 1 through 7 of this~~  
5 ~~act]~~ Chapter 26, Article 2B NMSA 1978 may be cited as the "Lynn  
6 and Erin Compassionate Use Act" in honor of Lynn Pierson and  
7 Erin Armstrong."

8 SECTION 60. Section 26-2B-3 NMSA 1978 (being Laws 2007,  
9 Chapter 210, Section 3) is amended to read:

10 "26-2B-3. DEFINITIONS.--As used in the Lynn and Erin  
11 Compassionate Use Act:

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

20 B. "debilitating medical condition" means:

- 21 (1) cancer;
- 22 (2) glaucoma;
- 23 (3) multiple sclerosis;
- 24 (4) damage to the nervous tissue of the spinal  
25 cord, with objective neurological indication of intractable

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1 spasticity;

2 (5) epilepsy;

3 (6) positive status for human immunodeficiency  
4 virus or acquired immune deficiency syndrome;

5 (7) admitted into hospice care in accordance  
6 with rules promulgated by the department; or

7 (8) any other medical condition, medical  
8 treatment or disease as approved by the department;

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

10 D. "licensed producer" means any person or  
11 association of persons within New Mexico that the [~~department~~]  
12 cannabis control board determines to be qualified to produce,  
13 possess, distribute and dispense cannabis pursuant to the Lynn  
14 and Erin Compassionate Use Act and that is licensed by the  
15 department;

16 E. "personal production license" means a license  
17 issued to a qualified patient that allows the qualified patient  
18 to produce medical cannabis for that qualified patient's  
19 personal use in accordance with cannabis control board rules;

20 [~~E.~~] F. "practitioner" means a person licensed in  
21 New Mexico to prescribe and administer drugs that are subject  
22 to the Controlled Substances Act;

23 [~~F.~~] G. "primary caregiver" means a resident of New  
24 Mexico who is at least eighteen years of age and who has been  
25 designated by the patient's practitioner as being necessary to

1 take responsibility for managing the well-being of a qualified  
 2 patient with respect to the medical use of cannabis pursuant to  
 3 the provisions of the Lynn and Erin Compassionate Use Act;

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

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

17 **SECTION 61.** Section 26-2B-7 NMSA 1978 (being Laws 2007,  
 18 Chapter 210, Section 7) is amended to read:

19 "26-2B-7. ~~[REGISTRY IDENTIFICATION CARDS]~~ DEPARTMENT  
 20 RULES--DUTIES--REGISTRY IDENTIFICATION CARDS.--

21 A. No later than ~~[October 1, 2007]~~ October 1, 2017,  
 22 and after consultation with the advisory board, the department  
 23 shall promulgate rules in accordance with the State Rules Act  
 24 to: ~~[implement the purpose of the Lynn and Erin Compassionate~~  
 25 ~~Use Act. The rules shall:~~

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

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

6                   (2) define the amount of cannabis that is  
7 necessary to constitute an adequate supply, including amounts  
8 for topical treatments;

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

15                   (4) set forth additional medical conditions,  
16 medical treatments or diseases to the list of debilitating  
17 medical conditions that qualify for the medical use of cannabis  
18 as recommended by the advisory board;

19                   ~~[(5) identify requirements for the licensure~~  
20 ~~of producers and cannabis production facilities and set forth~~  
21 ~~procedures to obtain licenses;~~

22                   ~~(6) develop a distribution system for medical~~  
23 ~~cannabis that provides for:~~

24                   ~~(a) cannabis production facilities~~  
25 ~~within New Mexico housed on secured grounds and operated by~~

1 ~~licensed producers; and~~

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

7 ~~(7)~~ (5) determine additional duties and  
 8 responsibilities of the advisory board; and

9 ~~(8)~~ (6) be revised and updated as necessary.

10 B. The department shall issue registry  
 11 identification cards to a patient and to the primary caregiver,  
 12 if any, for that patient ~~if any~~ who submit the following, in  
 13 accordance with ~~the department's~~ applicable rules:

14 (1) a written certification;

15 (2) the name, address and date of birth of the  
 16 patient;

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

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

21 C. The department shall verify the information  
 22 contained in an application submitted ~~pursuant to~~ as provided  
 23 in Subsection B of this section and shall approve or deny ~~an~~  
 24 the application within thirty days of receipt. The department  
 25 may deny an application only if the applicant did not provide

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1 the information required [~~pursuant to~~] as provided in  
2 Subsection B of this section or if the department determines  
3 that the information provided is false. A person whose  
4 application has been denied shall not reapply for six months  
5 from the date of the denial unless otherwise authorized by [~~the~~  
6 ~~department~~] rule.

7 D. The department shall issue a registry  
8 identification card within five days of approving an  
9 application, and [~~a~~] the card shall expire one year after the  
10 date of issuance. A registry identification card shall  
11 contain:

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

14 (2) the date of issuance and expiration date  
15 of the registry identification card; and

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

18 E. A person who possesses a registry identification  
19 card shall notify the department of any change in the person's  
20 name, address, qualified patient's practitioner, qualified  
21 patient's primary caregiver or change in status of the  
22 qualified patient's debilitating medical condition within ten  
23 days of the change.

24 F. Possession of or application for a registry  
25 identification card shall not constitute probable cause or give

1 rise to reasonable suspicion for a governmental agency to  
2 search the person or property of the person possessing or  
3 applying for the card.

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

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

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

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

19 **SECTION 62.** Section 30-31-2 NMSA 1978 (being Laws 1972,  
20 Chapter 84, Section 2, as amended) is amended to read:

21 "30-31-2. DEFINITIONS.--As used in the Controlled  
22 Substances Act:

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

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

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

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

9           E. "controlled substance":

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

13                 (2) does not include marijuana or hashish for  
14 the purpose of conduct that complies with the Cannabis Revenue  
15 and Freedom Act;

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

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



1           H. "dispense" means to deliver a controlled  
2 substance to an ultimate user or research subject pursuant to  
3 the lawful order of a practitioner, including the  
4 administering, prescribing, packaging, labeling or compounding  
5 necessary to prepare the controlled substance for that  
6 delivery;

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

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

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

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

23          M. "manufacture" means the production, preparation,  
24 compounding, conversion or processing of a controlled substance  
25 or controlled substance analog by extraction from substances of

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

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

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

14 N. "marijuana":

15 (1) means all parts of the plant cannabis,  
16 including any and all varieties, species and subspecies of the  
17 genus Cannabis, whether growing or not, the seeds thereof and  
18 every compound, manufacture, salt, derivative, mixture or  
19 preparation of the plant or its seeds; [~~It~~] and

20 (2) does not include:

- 21 (a) the mature stalks of the plant;  
22 (b) hashish;  
23 (c) tetrahydrocannabinols extracted or  
24 isolated from marijuana;  
25 (d) fiber produced from the stalks;

1                   (e) oil or cake made from the seeds of  
2 the plant;

3                   (f) any other compound, manufacture,  
4 salt, derivative, mixture or preparation of the mature stalks,  
5 fiber, oil or cake; or

6                   (g) the sterilized seed of the plant  
7 that is incapable of germination;

8                   0. "narcotic drug" means any of the following,  
9 whether produced directly or indirectly by extraction from  
10 substances of vegetable origin or independently by means of  
11 chemical synthesis or by a combination of extraction and  
12 chemical synthesis:

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

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

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

22                   (4) coca leaves and any salt, compound,  
23 derivative or preparation of coca leaves, any salt, compound,  
24 isomer, derivative or preparation that is a chemical equivalent  
25 of any of these substances except decocainized coca leaves or

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1 extractions of coca leaves that do not contain cocaine or  
2 ecgonine;

3 P. "opiate" means any substance having an  
4 addiction-forming or addiction-sustaining liability similar to  
5 morphine or being capable of conversion into a drug having  
6 addiction-forming or addiction-sustaining liability. "Opiate"  
7 does not include, unless specifically designated as controlled  
8 under Section 30-31-5 NMSA 1978, the dextrorotatory isomer of  
9 3-methoxy-n-methylmorphinan and its salts, dextromethorphan.  
10 "Opiate" does include its racemic and levorotatory forms;

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

14 R. "practitioner" means a physician, certified  
15 advanced practice chiropractic physician, doctor of oriental  
16 medicine, dentist, physician assistant, certified nurse  
17 practitioner, clinical nurse specialist, certified nurse-  
18 midwife, prescribing psychologist, veterinarian, euthanasia  
19 technician, pharmacist, pharmacist clinician or other person  
20 licensed or certified 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 a licensed practitioner or the  
25 practitioner's agent to the pharmacist, including by means of

1 electronic transmission, or indirectly by means of a written  
2 order signed by the prescriber, bearing the name and address of  
3 the prescriber, the prescriber's license classification, the  
4 name and address of the patient, the name and quantity of the  
5 drug prescribed, directions for use and the date of issue and  
6 in accordance with the Controlled Substances Act or rules  
7 adopted thereto;

8 T. "scientific investigator" means a person  
9 registered to conduct research with controlled substances in  
10 the course of the person's professional practice or research  
11 and includes analytical laboratories;

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

17 V. "drug paraphernalia" means all equipment,  
18 products and materials of any kind that are used, intended for  
19 use or designed for use in planting, propagating, cultivating,  
20 growing, harvesting, manufacturing, compounding, converting,  
21 producing, processing, preparing, testing, analyzing,  
22 packaging, repackaging, storing, containing, concealing,  
23 injecting, ingesting, inhaling or otherwise introducing into  
24 the human body a controlled substance or controlled substance  
25 analog, other than marijuana, in violation of the Controlled

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1 Substances Act. It includes:

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

7 (2) kits used, intended for use or designed  
8 for use in manufacturing, compounding, converting, producing,  
9 processing or preparing controlled substances or controlled  
10 substance analogs;

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

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

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

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

25 (7) separation gins and sifters used, intended

1 for use or designed for use in removing twigs and seeds from,  
2 or in otherwise cleaning and refining, marijuana;

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

7 (9) capsules, balloons, envelopes and other  
8 containers used, intended for use or designed for use in  
9 packaging small quantities of controlled substances or  
10 controlled substance analogs;

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

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

18 (12) objects used, intended for use or  
19 designed for use in ingesting, inhaling or otherwise  
20 introducing [marijuana] cocaine [~~hashish or hashish oil~~] into  
21 the human body, such as:

22 (a) metal, wooden, acrylic, glass,  
23 stone, plastic or ceramic pipes, with or without screens,  
24 permanent screens [~~hashish heads~~] or punctured metal bowls;

25 (b) water pipes;

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- 1 (c) carburetion tubes and devices;  
2 (d) smoking and carburetion masks;  
3 ~~[(e) roach clips, meaning objects used~~  
4 ~~to hold burning material, such as a marijuana cigarette, that~~  
5 ~~has become too small to hold in the hand;~~  
6 ~~(f)]~~ (e) miniature cocaine spoons and  
7 cocaine vials;  
8 ~~[(g)]~~ (f) chamber pipes;  
9 ~~[(h)]~~ (g) carburetor pipes;  
10 ~~[(i)]~~ (h) electric pipes; or  
11 ~~[(j)]~~ (i) air-driven pipes;  
12 ~~[(k) chilams;~~  
13 ~~(l) bonges; or~~  
14 ~~(m) ice pipes or chillers;]~~ and  
15 (13) in determining whether an object is drug  
16 paraphernalia, a court or other authority should consider, in  
17 addition to all other logically relevant factors, the  
18 following:  
19 (a) statements by the owner or by anyone  
20 in control of the object concerning its use;  
21 (b) the proximity of the object, in time  
22 and space, to a direct violation of the Controlled Substances  
23 Act or any other law relating to controlled substances or  
24 controlled substance analogs;  
25 (c) the proximity of the object to



1 controlled substances or controlled substance analogs;

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

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

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

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

11 (h) expert testimony concerning its use;

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

- 20 (1) phenethylamines;
- 21 (2) N-substituted piperidines;
- 22 (3) morphinans;
- 23 (4) ecgonines;
- 24 (5) quinazolinones;
- 25 (6) substituted indoles; and

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1 (7) arylcycloalkylamines.

2 Specifically excluded from the definition of "controlled  
3 substance analog" are those substances that are generally  
4 recognized as safe and effective within the meaning of the  
5 Federal Food, Drug, and Cosmetic Act or have been manufactured,  
6 distributed or possessed in conformance with the provisions of  
7 an approved new drug application or an exemption for  
8 investigational use within the meaning of Section 505 of the  
9 Federal Food, Drug, and Cosmetic Act;

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

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

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

21 **SECTION 63.** Section 30-31-6 NMSA 1978 (being Laws 1972,  
22 Chapter 84, Section 6, as amended) is amended to read:

23 "30-31-6. SCHEDULE I.--The following controlled  
24 substances are included in Schedule I:

25 A. any of the following opiates, including their

1 isomers, esters, ethers, salts, and salts of isomers, esters  
2 and ethers, unless specifically exempted, whenever the  
3 existence of these isomers, esters, ethers and salts is  
4 possible within the specific chemical designation:

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

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underscoring material = new  
~~[bracketed material] = delete~~

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

22 B. any of the following opium derivatives, their  
23 salts, isomers and salts of isomers, unless specifically  
24 exempted, whenever the existence of these salts, isomers and  
25 salts of isomers is possible within the specific chemical

1 designation:

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

24 C. any material, compound, mixture or preparation  
25 that contains any quantity of the following hallucinogenic

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1 substances, their salts, isomers and salts of isomers, unless  
2 specifically exempted, whenever the existence of these salts,  
3 isomers and salts of isomers is possible within the specific  
4 chemical designation:

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

- 1 -3-(1-naphthoyl)indole;
- 2 (b) 1-butyl-3-(1-naphthoyl)indole;
- 3 (c) 1-hexyl-3-(1-naphthoyl)indole;
- 4 (d) 1-pentyl-3-(1-naphthoyl)indole;
- 5 (e) 1-pentyl-3-(2-methoxyphenylacetyl)
- 6 indole;
- 7 (f) cannabicyclohexanol (CP 47, 497 and
- 8 homologues: 5-(1,1-dimethylheptyl)-2-[(1R,3S)
- 9 -3-hydroxycyclohexyl]-phenol (CP-47,497); and 5-(1,
- 10 1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol;
- 11 (g) 6aR,10aR)-9-(hydroxymethyl)
- 12 -6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,
- 13 10a-tetrahydrobenzo[c]chromen-1-ol);
- 14 (h) dexanabinol, (6aS,10aS)
- 15 -9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)
- 16 -6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol;
- 17 (i) 1-pentyl-3-(4-chloro naphthoyl)
- 18 indole;
- 19 (j) (2-methyl-1-propyl-1H-indol-3-yl)
- 20 -1-naphthalenyl-methanone; and
- 21 (k) 5-(1,1-dimethylheptyl)-2-(3-hydroxy
- 22 cyclohexyl)-phenol;
- 23 (20) 3,4-methylenedioxy methcathinone;
- 24 (21) 3,4-methylenedioxy pyrovalerone;
- 25 (22) 4-methylmethcathinone;

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1 (23) 4-methoxymethcathinone;

2 (24) 3-fluoromethcathinone; and

3 (25) 4-fluoromethcathinone;

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

12 E. the enumeration of marijuana, hashish,  
13 tetrahydrocannabinols or chemical derivatives of  
14 tetrahydrocannabinol as Schedule I controlled substances does  
15 not apply to the use of marijuana, tetrahydrocannabinols or  
16 chemical derivatives of tetrahydrocannabinol by:

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

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

21 [~~and~~] or

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

24 F. controlled substances added to Schedule I by  
25 rule adopted by the board pursuant to Section 30-31-3 NMSA



1 1978."

2 SECTION 64. Section 30-31-20 NMSA 1978 (being Laws 1972,  
3 Chapter 84, Section 20, as amended) is amended to read:

4 "30-31-20. TRAFFICKING CONTROLLED SUBSTANCES--  
5 VIOLATION.--

6 A. As used in the Controlled Substances Act,  
7 "traffic" means the:

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

11 (2) distribution, sale, barter or giving away  
12 of:

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

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

18 (c) methamphetamine, its salts, isomers  
19 and salts of isomers; or

20 (3) possession with intent to distribute:

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

23 (b) a controlled substance analog of a  
24 controlled substance enumerated in Schedule I or II that is a  
25 narcotic drug; or

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

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

6 (1) if the controlled substance is marijuana,  
7 guilty of a misdemeanor and shall be sentenced pursuant to the  
8 provisions of Section 31-19-1 NMSA 1978;

9 (2) for the first offense if the controlled  
10 substance is not marijuana, guilty of a second degree felony  
11 and shall be sentenced pursuant to the provisions of Section  
12 31-18-15 NMSA 1978; and

13 [~~2~~] (3) for the second and subsequent  
14 offenses if the controlled substance is not marijuana, guilty  
15 of a first degree felony and shall be sentenced pursuant to the  
16 provisions of Section 31-18-15 NMSA 1978.

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

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

24 (2) if the controlled substance is not  
25 marijuana, a first degree felony and shall be sentenced

1 pursuant to the provisions of Section 31-18-15 NMSA 1978."

2 SECTION 65. Section 30-31-22 NMSA 1978 (being Laws 1972,  
3 Chapter 84, Section 22, as amended) is amended to read:

4 "30-31-22. CONTROLLED OR COUNTERFEIT SUBSTANCES--  
5 DISTRIBUTION PROHIBITED.--

6 A. Except as authorized by the Controlled  
7 Substances Act, it is unlawful for a person to intentionally  
8 distribute or possess with intent to distribute a controlled  
9 substance or a controlled substance analog except a substance  
10 enumerated in Schedule I or II that is a narcotic drug, a  
11 controlled substance analog of a controlled substance  
12 enumerated in Schedule I or II that is a narcotic drug or  
13 methamphetamine, its salts, isomers and salts of isomers. A  
14 person who violates this subsection with respect to:

15 (1) marijuana or synthetic cannabinoids is:

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

19 ~~(b) for the second and subsequent~~  
20 ~~offenses, guilty of a third degree felony and shall be~~  
21 ~~sentenced pursuant to the provisions of Section 31-18-15 NMSA~~  
22 ~~1978;~~

23 ~~(c) for the first offense, if more than~~  
24 ~~one hundred pounds is possessed with intent to distribute or~~  
25 ~~distributed or both, guilty of a third degree felony and shall~~

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1 ~~be sentenced pursuant to the provisions of Section 31-18-15~~  
2 ~~NMSA 1978; and~~

3 ~~(d) for the second and subsequent~~  
4 ~~offenses, if more than one hundred pounds is possessed with~~  
5 ~~intent to distribute or distributed or both, guilty of a second~~  
6 ~~degree felony and shall be sentenced pursuant to the provisions~~  
7 ~~of Section 31-18-15] guilty of a misdemeanor and shall be~~  
8 ~~sentenced pursuant to the provisions of Section 31-19-1 NMSA~~  
9 ~~1978;~~

10 (2) any other controlled substance enumerated in  
11 Schedule I, II, III or IV or a controlled substance analog of a  
12 controlled substance enumerated in Schedule I, II, III or IV  
13 except a substance enumerated in Schedule I or II that is a  
14 narcotic drug, a controlled substance analog of a controlled  
15 substance enumerated in Schedule I or II that is a narcotic  
16 drug or methamphetamine, its salts, isomers and salts of  
17 isomers, is:

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

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

24 (3) a controlled substance enumerated in  
25 Schedule V or a controlled substance analog of a controlled

1 substance enumerated in Schedule V is guilty of a misdemeanor  
2 and shall be punished by a fine of not less than one hundred  
3 dollars (\$100) or more than five hundred dollars (\$500) or by  
4 imprisonment for a definite term not less than one hundred  
5 eighty days but less than one year, or both.

6 B. It is unlawful for a person to distribute gamma  
7 hydroxybutyric acid or flunitrazepam to another person without  
8 that person's knowledge and with intent to commit a crime  
9 against that person, including criminal sexual penetration.

10 For the purposes of this subsection, "without that person's  
11 knowledge" means the person is unaware that a substance with  
12 the ability to alter that person's ability to appraise conduct  
13 or to decline participation in or communicate unwillingness to  
14 participate in conduct is being distributed to that person.

15 Any person who violates this subsection is:

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

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

22 C. Except as authorized by the Controlled Substances  
23 Act, it is unlawful for a person to intentionally create or  
24 deliver, or possess with intent to deliver, a counterfeit  
25 substance. A person who violates this subsection with respect

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1 to:

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

5 (2) a counterfeit substance enumerated in  
6 Schedule I, II, III or IV that is not marijuana is guilty of a  
7 fourth degree felony and shall be sentenced pursuant to the  
8 provisions of Section 31-18-15 NMSA 1978; and

9 ~~[(2)]~~ (3) a counterfeit substance enumerated in  
10 Schedule V is guilty of a petty misdemeanor and shall be  
11 punished by a fine of not more than one hundred dollars (\$100)  
12 or by imprisonment for a definite term not to exceed six  
13 months, or both.

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

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

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

24 ~~(c) for the first offense, if more than one~~  
25 ~~hundred pounds is possessed with intent to distribute or~~

1 ~~distributed or both, guilty of a second degree felony and shall~~  
2 ~~be sentenced pursuant to the provisions of Section 31-18-15~~  
3 ~~NMSA 1978; and~~

4 ~~(d) for the second and subsequent offenses,~~  
5 ~~if more than one hundred pounds is possessed with intent to~~  
6 ~~distribute or distributed or both, guilty of a first degree~~  
7 ~~felony and shall be sentenced pursuant to the provisions of~~  
8 ~~Section 31-18-15] guilty of a misdemeanor and shall be~~  
9 ~~sentenced pursuant to the provisions of Section 31-19-1 NMSA~~  
10 ~~1978;~~

11 (2) any other controlled substance enumerated in  
12 Schedule I, II, III or IV or a controlled substance analog of a  
13 controlled substance enumerated in Schedule I, II, III or IV  
14 except a substance enumerated in Schedule I or II that is a  
15 narcotic drug, a controlled substance analog of a controlled  
16 substance enumerated in Schedule I or II that is a narcotic  
17 drug or methamphetamine, its salts, isomers and salts of  
18 isomers, is:

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

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

25 (3) a controlled substance enumerated in

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1 Schedule V or a controlled substance analog of a controlled  
2 substance enumerated in Schedule V is guilty of a fourth degree  
3 felony and shall be sentenced pursuant to the provisions of  
4 Section 31-18-15 NMSA 1978; and

5 (4) the intentional creation, delivery or  
6 possession with the intent to deliver:

7 (a) a counterfeit substance enumerated in  
8 Schedule I, II, III or IV is guilty of a third degree felony  
9 and shall be sentenced pursuant to the provisions of Section  
10 31-18-15 NMSA 1978; and

11 (b) a counterfeit substance enumerated in  
12 Schedule V is guilty of a misdemeanor and shall be punished by  
13 a fine of not less than one hundred dollars (\$100) nor more  
14 than five hundred dollars (\$500) or by imprisonment for a  
15 definite term not less than one hundred eighty days but less  
16 than one year, or both.

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

22 **SECTION 66.** Section 30-31-23 NMSA 1978 (being Laws 1972,  
23 Chapter 84, Section 23, as amended) is amended to read:

24 "30-31-23. CONTROLLED SUBSTANCES--POSSESSION  
25 PROHIBITED.--

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1           A. It is unlawful for a person to intentionally [~~to~~]  
2 possess a controlled substance unless the substance was  
3 obtained pursuant to a valid prescription or order of a  
4 practitioner while acting in the course of professional  
5 practice or except as otherwise authorized by the Controlled  
6 Substances Act. It is unlawful for a person to intentionally  
7 [~~to~~] possess a controlled substance analog.

8           B. A person who violates this section with respect  
9 to:

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

19                   ~~(2)]~~ (1) more than one ounce and less than eight  
20 ounces of marijuana or synthetic cannabinoids [~~is guilty of a~~  
21 ~~misdemeanor and] possessed outside a person's residence shall  
22 be punished by a fine of [~~not less than~~] one hundred dollars  
23 (\$100) [~~or more than one thousand dollars (\$1,000) or by~~  
24 ~~imprisonment for a definite term less than one year, or both];~~  
25 or~~

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1                   ~~[(3)]~~ (2) eight ounces or more of marijuana or  
2 synthetic cannabinoids possessed outside a person's residence  
3 is guilty of a ~~[fourth degree felony]~~ misdemeanor and shall be  
4 sentenced pursuant to the provisions of Section ~~[31-18-15]~~  
5 31-19-1 NMSA 1978.

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

7                   (1) synthetic cannabinoids shall:

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

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

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

24 The provisions of this ~~[subsection]~~ paragraph apply to the  
25 following substances:

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underscored material = new  
[bracketed material] = delete

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

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

5                    [~~(3)~~] (b) a substance added to Schedule I by  
 6 a rule of the board adopted on or after [~~the effective date of~~  
 7 ~~this~~] March 31, 2011 [~~act~~] if the board determines that the  
 8 pharmacological effect of the substance, the risk to the public  
 9 health by abuse of the substance and the potential of the  
 10 substance to produce psychic or physiological dependence  
 11 liability is similar to the substances described in [~~Paragraph~~  
 12 ~~(1) or (2)~~] Subparagraph (a) of this [~~subsection~~] paragraph.

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

22                    E. A person who violates this section with respect to  
 23 phencyclidine as enumerated in Schedule III or a controlled  
 24 substance analog of phencyclidine; methamphetamine, its salts,  
 25 isomers or salts of isomers as enumerated in Schedule II or a

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

24 F. Except for a minor [~~as defined in Subsection C of~~  
25 ~~this section~~], a person who violates Subsection A of this

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1 section while within a posted drug-free school zone, excluding  
2 private property residentially zoned or used primarily as a  
3 residence and excluding a person in or on a motor vehicle in  
4 transit through the posted drug-free school zone, with respect  
5 to:

6 ~~[(1) one ounce or less of marijuana or synthetic~~  
7 ~~cannabinoids is, for the first offense, guilty of a misdemeanor~~  
8 ~~and shall be punished by a fine of not less than one hundred~~  
9 ~~dollars (\$100) or more than one thousand dollars (\$1,000) or by~~  
10 ~~imprisonment for a definite term less than one year, or both,~~  
11 ~~and for the second or subsequent offense, is guilty of a fourth~~  
12 ~~degree felony and shall be sentenced pursuant to the provisions~~  
13 ~~of Section 31-18-15 NMSA 1978;~~

14 ~~(2)]~~ (1) more than one ounce [~~and less than~~  
15 ~~eight ounces]~~ of marijuana or synthetic cannabinoids is guilty  
16 of a [~~fourth degree felony]~~ misdemeanor and shall be sentenced  
17 pursuant to the provisions of Section [~~31-18-15]~~ 31-19-1 NMSA  
18 1978;

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

23 ~~(4)]~~ (2) any amount of any other controlled  
24 substance enumerated in Schedule I, II, III or IV or a  
25 controlled substance analog of a substance enumerated in

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1 Schedule I, II, III or IV, except phencyclidine as enumerated  
2 in Schedule III, a narcotic drug enumerated in Schedule I or II  
3 or a controlled substance analog of a narcotic drug enumerated  
4 in Schedule I or II, is guilty of a fourth degree felony and  
5 shall be sentenced pursuant to the provisions of Section  
6 31-18-15 NMSA 1978; and

7 [~~5~~] (3) phencyclidine as enumerated in  
8 Schedule III, a narcotic drug enumerated in Schedule I or II, a  
9 controlled substance analog of phencyclidine or a controlled  
10 substance analog of a narcotic drug enumerated in Schedule I or  
11 II is guilty of a third degree felony and shall be sentenced  
12 pursuant to the provisions of Section 31-18-15 NMSA 1978.

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

15 SECTION 67. Section 30-31B-2 NMSA 1978 (being Laws 1989,  
16 Chapter 177, Section 2, as amended) is amended to read:

17 "30-31B-2. DEFINITIONS.--As used in the Drug Precursor  
18 Act:

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

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

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

2 D. "bureau" means the bureau of narcotics and  
3 dangerous drugs of the United States department of justice or  
4 its successor agency;

5 E. "controlled substance":

6 (1) means a drug or substance listed in  
7 Schedules I through V of the Controlled Substances Act or  
8 regulations adopted thereto; and

9 (2) does not include marijuana or hashish for  
10 the purpose of conduct that complies with the Cannabis Revenue  
11 and Freedom Act;

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

- 20 (1) phenethylamines;
- 21 (2) N-substituted piperidines;
- 22 (3) morphinans;
- 23 (4) ecgonines;
- 24 (5) quinazolinones;
- 25 (6) substituted indoles; and

1                   (7) arylcycloalkylamines.

2                   Specifically excluded from the definition of "controlled  
3 substance analog" are those substances that are generally  
4 recognized as safe and effective within the meaning of the  
5 Federal Food, Drug, and Cosmetic Act or have been manufactured,  
6 distributed or possessed in conformance with the provisions of  
7 an approved new drug application or an exemption for  
8 investigational use within the meaning of Section 505 of the  
9 Federal Food, Drug, and Cosmetic Act;

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

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

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

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

25                  K. "drug" means substances recognized as drugs in the



1 official United States pharmacopoeia, official homeopathic  
2 pharmacopoeia of the United States, official national formulary  
3 or any respective supplement to these publications. "Drug"  
4 does not include devices or their components, parts or  
5 accessories;

6 L. "drug precursor" means a substance, material,  
7 compound, mixture or preparation listed in Section 30-31B-3  
8 NMSA 1978 or regulations adopted thereto or any of their salts  
9 or isomers. "Drug precursor" specifically excludes those  
10 substances, materials, compounds, mixtures or preparations that  
11 are prepared for dispensing pursuant to a prescription or over-  
12 the-counter distribution as a substance that is generally  
13 recognized as safe and effective within the meaning of the  
14 Federal Food, Drug, and Cosmetic Act or have been manufactured,  
15 distributed or possessed in conformance with the provisions of  
16 an approved new drug application or an exemption for  
17 investigational use within the meaning of Section 505 of the  
18 Federal Food, Drug, and Cosmetic Act, unless the board makes  
19 the findings required pursuant to Subsection B of Section  
20 30-31B-4 NMSA 1978;

21 M. "immediate precursor" means a substance that is a  
22 compound commonly used or produced primarily as an immediate  
23 chemical intermediary used in the manufacture of a controlled  
24 substance, the control of which is necessary to prevent,  
25 curtail or limit the manufacture of controlled substances;

.207204.2

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

3 O. "manufacture" means the production, preparation,  
4 compounding, conversion or processing of a drug precursor by  
5 extraction from substances of natural origin, independently by  
6 means of chemical synthesis or by a combination of extraction  
7 and chemical synthesis and includes any packaging or  
8 repackaging of the substance or labeling or relabeling of its  
9 container, except that this term does not include the  
10 preparation or compounding of a controlled substance by a  
11 practitioner:

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

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

18 P. "person" includes an individual, sole  
19 proprietorship, partnership, corporation, association, the  
20 state or a political subdivision of the state or other legal  
21 entity;

22 Q. "possession" means to actively or constructively  
23 exercise dominion over;

24 R. "practitioner" means a physician, certified  
25 advanced practice chiropractic physician, dentist, veterinarian

1 or other person licensed to prescribe and administer drugs that  
2 are subject to the Controlled Substances Act;

3 S. "prescription" means an order given individually  
4 for the person for whom is prescribed a controlled substance,  
5 either directly from the prescriber to the pharmacist or  
6 indirectly by means of a written order signed by the prescriber  
7 and in accordance with the Controlled Substances Act or  
8 regulations adopted thereto; and

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

11 SECTION 68. REPEAL.--Section 26-2B-2 NMSA 1978 (being  
12 Laws 2007, Chapter 210, Section 2) is repealed.

13 SECTION 69. EFFECTIVE DATE.--The effective date of the  
14 provisions of this act is July 1, 2017.

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underscored material = new  
[bracketed material] = delete