

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

HOUSE BILL 593

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

INTRODUCED BY

W. Ken Martinez

AN ACT

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

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

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

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

.176242.1GR

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

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

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

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

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

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

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

25                   (4) an "antitoxin" is a product containing the

underscored material = new  
[bracketed material] = delete

1 soluble substance in serum or other body fluid of an immunized  
2 animal that specifically neutralizes the toxin against which  
3 the animal is immune;

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

7 E. "drug" means articles:

8 (1) recognized in an official compendium;

9 (2) intended for use in the diagnosis, cure,  
10 mitigation, treatment or prevention of disease in humans or  
11 other animals and includes the domestic animal biological  
12 products regulated under the federal Virus-Serum-Toxin Act,  
13 37 Stat 832-833, 21 U.S.C. 151-158, and the biological products  
14 applicable to humans regulated under Federal 58 Stat 690, as  
15 amended, 42 U.S.C. 216, Section 351, 58 Stat 702, as amended,  
16 and 42 U.S.C. 262;

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

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

23 F. "dangerous drug" means a drug, other than a  
24 controlled substance enumerated in Schedule I of the Controlled  
25 Substances Act, that because of a potentiality for harmful

.176242.1GR

underscoring material = new  
[bracketed material] = delete

1 effect or the method of its use or the collateral measures  
2 necessary to its use is not safe except under the supervision  
3 of a practitioner licensed by law to direct the use of such  
4 drug and hence for which adequate directions for use cannot be  
5 prepared. "Adequate directions for use" means directions under  
6 which the layperson can use a drug or device safely and for the  
7 purposes for which it is intended. A drug shall be dispensed  
8 only upon the prescription of a practitioner licensed by law to  
9 administer or prescribe the drug if it:

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

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

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

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

25 (5) bears the legend: "Caution: federal law

.176242.1GR

1 restricts this drug to use by or on the order of a licensed  
2 veterinarian."; or

3 (6) bears the legend "RX only";

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

8 (1) "identical copies", which are counterfeits  
9 made with the same ingredients, formulas and packaging as the  
10 originals but not made by the original manufacturer;

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

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

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

22 H. "device", except when used in Subsection P of  
23 this section and in Subsection G of Section 26-1-3, Subsection  
24 L and Paragraph (4) of Subsection A of Section 26-1-11 and  
25 Subsection C of Section 26-1-24 NMSA 1978, means an instrument,

.176242.1GR

underscored material = new  
[bracketed material] = delete

1 apparatus, implement, machine, contrivance, implant, in vitro  
2 reagent or other similar or related article, including any  
3 component, part or accessory, that is:

4 (1) recognized in an official compendium;

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

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

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

25 J. "practitioner" means a certified advanced

.176242.1GR

underscored material = new  
[bracketed material] = delete

1 practice chiropractic physician, physician, doctor of oriental  
2 medicine, dentist, veterinarian, euthanasia technician,  
3 certified nurse practitioner, clinical nurse specialist,  
4 pharmacist, pharmacist clinician, certified nurse-midwife,  
5 physician assistant, prescribing psychologist or other person  
6 licensed or certified to prescribe and administer drugs that  
7 are subject to the New Mexico Drug, Device and Cosmetic Act;

8 K. "cosmetic" means:

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

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

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

21 M. "label" means a display of written, printed or  
22 graphic matter upon the immediate container of an article. A  
23 requirement made by or under the authority of the New Mexico  
24 Drug, Device and Cosmetic Act that any word, statement or other  
25 information appear on the label shall not be considered to be

.176242.1GR

1 complied with unless the word, statement or other information  
2 also appears on the outside container or wrapper, if any, of  
3 the retail package of the article or is easily legible through  
4 the outside container or wrapper;

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

7 O. "labeling" means all labels and other written,  
8 printed or graphic matter:

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

11 (2) accompanying an article;

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

23 Q. "advertisement" means all representations  
24 disseminated in any manner or by any means, other than by  
25 labeling, for the purpose of inducing, or that are likely to

underscored material = new  
[bracketed material] = delete

1 induce, directly or indirectly, the purchase of drugs, devices  
2 or cosmetics;

3 R. "antiseptic", when used in the labeling or  
4 advertisement of an antiseptic, shall be considered to be a  
5 representation that it is a germicide, except in the case of a  
6 drug purporting to be or represented as an antiseptic for  
7 inhibitory use as a wet dressing, ointment, dusting powder or  
8 such other use as involves prolonged contact with the body;

9 S. "new drug" means a drug:

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

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

22 T. "contaminated with filth" applies to a drug,  
23 device or cosmetic not securely protected from dirt, dust and,  
24 as far as may be necessary by all reasonable means, from all  
25 foreign or injurious contaminations, or a drug, device or

.176242.1GR

1 cosmetic found to contain dirt, dust, foreign or injurious  
2 contamination or infestation;

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

9 V. "color additive" means a material that:

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

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

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

23 X. "restricted device" means a device for which the  
24 sale, distribution or use is lawful only upon the written or  
25 oral authorization of a practitioner licensed by law to

1 administer, prescribe or use the device and for which the  
2 federal food and drug administration requires special training  
3 or skills of the practitioner to use or prescribe. This  
4 definition does not include custom devices defined in the  
5 federal act and exempt from performance standards or premarket  
6 approval requirements under Section 520(b) of the federal act;

7 Y. "prescription device" means a device that,  
8 because of its potential for harm, the method of its use or the  
9 collateral measures necessary to its use, is not safe except  
10 under the supervision of a practitioner licensed in this state  
11 to direct the use of such device and for which "adequate  
12 directions for use" cannot be prepared, but that bears the  
13 label: "Caution: federal law restricts this device to sale by  
14 or on the order of a \_\_\_\_\_", the blank to be filled with  
15 the word "physician", "physician assistant", "certified  
16 advanced practice chiropractic physician", "doctor of oriental  
17 medicine", "dentist", "veterinarian", "euthanasia technician",  
18 "certified nurse practitioner", "clinical nurse specialist",  
19 "pharmacist", "pharmacist clinician" or "certified nurse-  
20 midwife" or with the descriptive designation of any other  
21 practitioner licensed in this state to use or order the use of  
22 the device;

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

underscoring material = new  
[bracketed material] = delete

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

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

5 "30-31-2. DEFINITIONS.--As used in the Controlled  
6 Substances Act:

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

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

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

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

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

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

.176242.1GR

underscoring material = new  
[bracketed material] = delete

1 controlled substance;

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

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

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

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

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

24 L. "hashish" means the resin extracted from any  
25 part of marijuana, whether growing or not, and every compound,

.176242.1GR

1 manufacture, salt, derivative, mixture or preparation of such  
2 resins;

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

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

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

19 N. "marijuana" means all parts of the plant  
20 cannabis, including any and all varieties, species and  
21 subspecies of the genus Cannabis, whether growing or not, the  
22 seeds thereof and every compound, manufacture, salt,  
23 derivative, mixture or preparation of the plant or its seeds.  
24 It does not include the mature stalks of the plant, hashish,  
25 tetrahydrocannabinols extracted or isolated from marijuana,

.176242.1GR

1 fiber produced from the stalks, oil or cake made from the seeds  
2 of the plant, any other compound, manufacture, salt,  
3 derivative, mixture or preparation of the mature stalks, fiber,  
4 oil or cake, or the sterilized seed of the plant that is  
5 incapable of germination;

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

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

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

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

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

.176242.1GR

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

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

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

20 S. "prescription" means an order given individually  
21 for the person for whom is prescribed a controlled substance,  
22 either directly from a licensed practitioner or the  
23 practitioner's agent to the pharmacist, including by means of  
24 electronic transmission, or indirectly by means of a written  
25 order signed by the prescriber, bearing the name and address of

underscored material = new  
[bracketed material] = delete

1 the prescriber, the prescriber's license classification, the  
2 name and address of the patient, the name and quantity of the  
3 drug prescribed, directions for use and the date of issue and  
4 in accordance with the Controlled Substances Act or rules  
5 adopted thereto;

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

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

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

25 (1) kits used, intended for use or designed

.176242.1GR

underscored material = new  
[bracketed material] = delete

1 for use in planting, propagating, cultivating, growing or  
2 harvesting any species of plant that is a controlled substance  
3 or controlled substance analog or from which a controlled  
4 substance can be derived;

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

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

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

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

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

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

.176242.1GR

underscored material = new  
[bracketed material] = delete

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

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

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

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

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

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

23 (b) water pipes;

24 (c) carburetion tubes and devices;

25 (d) smoking and carburetion masks;

.176242.1GR

underscoring material = new  
[bracketed material] = delete

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

4 (f) miniature cocaine spoons and cocaine  
5 vials;

6 (g) chamber pipes;

7 (h) carburetor pipes;

8 (i) electric pipes;

9 (j) air-driven pipes;

10 (k) chilams;

11 (l) bongs; or

12 (m) ice pipes or chillers; and

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

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

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

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

25 (d) the existence of any residue of a

.176242.1GR

underscored material = new  
[bracketed material] = delete

1 controlled substance or controlled substance analog on the  
2 object;

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

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

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

9 (h) expert testimony concerning its use;

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

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

25 Specifically excluded from the definition of "controlled

underscored material = new  
[bracketed material] = delete

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

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

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

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

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

21 "77-1B-1. SHORT TITLE.--~~[This act]~~ Chapter 77, Article 1B  
22 NMSA 1978 may be cited as the "Animal Sheltering [~~Services~~]  
23 Act"."

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

.176242.1GR

underscored material = new  
[bracketed material] = delete

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

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

5 B. "animal shelter":

6 (1) means:

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

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

14 (2) does not include a municipal zoological  
15 park;

16 C. "board" means the animal sheltering [~~services~~]  
17 board;

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

20 E. "disposition" means adoption of an animal;  
21 return of an animal to the owner; release of an animal to a  
22 rescue organization; release of an animal to another animal  
23 shelter [~~licensed pursuant to the Animal Sheltering Services~~  
24 ~~Act~~] or to a rehabilitator licensed by the department of game  
25 and fish or the United States fish and wildlife service; or

.176242.1GR

1 euthanasia of an animal;

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

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

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

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

18 J. "euthanasia instructor" means a veterinarian or  
19 a euthanasia [provider licensed and] technician certified by  
20 the board to instruct other individuals in euthanasia  
21 techniques;

22 K. "euthanasia [~~provider~~] technician" means a  
23 person licensed by the board to euthanize animals for a  
24 euthanasia agency;

25 L. "livestock" means all domestic or domesticated

underscored material = new  
[bracketed material] = delete

1 animals that are used or raised on a farm or ranch and exotic  
2 animals in captivity and includes horses, asses, mules, cattle,  
3 sheep, goats, swine, bison, poultry, ostriches, emus, rheas,  
4 camelids and farmed cervidae but does not include canine or  
5 feline animals;

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

9 ~~[N. "supervising veterinarian" means a person who  
10 is a veterinarian, who holds both a valid New Mexico controlled  
11 substance license and a valid federal drug enforcement agency  
12 license and who approves the drug protocols and the procurement  
13 and administration of all pharmaceuticals; and~~

14 ~~0.]~~ N. "veterinarian" means a person who is  
15 licensed as a doctor of veterinary medicine by the board of  
16 veterinary medicine pursuant to the Veterinary Practice Act."

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

19 "77-1B-3. ANIMAL SHELTERING BOARD CREATED--MEMBERS--  
20 QUALIFICATIONS--TERMS--VACANCIES--REMOVAL.--

21 A. The "animal sheltering [~~services~~] board" is  
22 created. The board shall consist of nine members as follows:

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

25 (2) one [~~licensed~~] veterinarian who has

.176242.1GR

underscored material = new  
[bracketed material] = delete

1 provided paid or unpaid services to an animal shelter;

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

4 (4) one member of the public;

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

9 (6) one representative of the New Mexico  
10 association of counties;

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

13 (8) one member of a rescue organization; and

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

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

20 C. The board is administratively attached to the  
21 department.

22 D. The board and its operations are governed by the  
23 Uniform Licensing Act. If the provisions of the Uniform  
24 Licensing Act conflict with the provisions of the Animal  
25 Sheltering [~~Services~~] Act, the provisions of the Animal

.176242.1GR

underscoring material = new  
[bracketed material] = delete

1 Sheltering [~~Services~~] Act shall prevail.

2 E. The governor shall appoint board members for  
3 terms of four years, except in the first year of the enactment  
4 of the Animal Sheltering [~~Services~~] Act, when board members  
5 shall be appointed for staggered terms. Of the first  
6 appointments, three board members shall be appointed for four-  
7 year terms, two board members shall be appointed for three-year  
8 terms, two board members shall be appointed for two-year terms  
9 and two board members shall be appointed for one-year terms.  
10 Subsequent appointments shall be made to fill vacancies created  
11 in unexpired terms, but only until the term ends or for a full  
12 four-year term when the term of a board member expires. Board  
13 members shall hold office until their successors are duly  
14 qualified and appointed. Vacancies shall be filled by  
15 appointment by the governor for the unexpired term within sixty  
16 days of the vacancy to maintain the required composition of the  
17 board.

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

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

.176242.1GR

underscored material = new  
[bracketed material] = delete

1 H. The board shall hold at least [~~four~~] one regular  
2 [~~meetings~~] meeting each year and may meet at such other times  
3 as it deems necessary.

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

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

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

12 L. The department shall hire employees to execute  
13 the daily operations of the board. [~~One employee shall be a~~  
14 ~~veterinarian who holds both a valid New Mexico controlled~~  
15 ~~substance license and a valid federal drug enforcement agency~~  
16 ~~license, and who will be responsible for ordering, maintaining~~  
17 ~~and dispensing euthanasia drugs as necessary in accordance with~~  
18 ~~local, state and federal laws.]"~~

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

21 "77-1B-4. ANIMAL CARE AND FACILITY FUND CREATED--  
22 ADMINISTRATION.--

23 A. The "animal care and facility fund" is created  
24 in the state treasury. All fees collected pursuant to the  
25 Animal Sheltering [~~Services~~] Act shall be deposited in the

.176242.1GR

underscored material = new  
[bracketed material] = delete

1 fund.

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

12 C. Money in the fund is subject to appropriation by  
13 the legislature to the department to be used to help animal  
14 shelters and communities defray the cost of implementing the  
15 board's initiatives conducted pursuant to the Animal Sheltering  
16 [~~Services~~] Act. The fund shall be administered by the  
17 department to carry out the purposes of the Animal Sheltering  
18 [~~Services~~] Act.

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

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

.176242.1GR

underscored material = new  
[bracketed material] = delete

1 fund."

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

4 "77-1B-5. BOARD POWERS AND DUTIES.--The board shall:

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

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

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

11 D. adopt, promulgate and revise rules necessary to  
12 carry out the provisions of the Animal Sheltering [~~Services~~]  
13 Act;

14 E. have authority to issue licenses and  
15 certificates pursuant to the Animal Sheltering [~~Services~~] Act;

16 F. establish the types of licenses and certificates  
17 that may be issued pursuant to the Animal Sheltering [~~Services~~]  
18 Act and establish criteria for issuing the licenses and  
19 certificates;

20 G. prescribe standards and approve curricula for  
21 educational programs that will be used to train and prepare  
22 persons for licensure or certification pursuant to the Animal  
23 Sheltering [~~Services~~] Act;

24 H. implement continuing education requirements for  
25 licensees and certificate holders pursuant to the Animal

.176242.1GR

underscoring material = new  
[bracketed material] = delete

1 Sheltering [~~Services~~] Act;

2 I. conduct administrative hearings upon charges  
3 relating to violations of provisions of the Animal Sheltering  
4 [~~Services~~] Act or rules adopted pursuant to that act in  
5 accordance with the Uniform Licensing Act;

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

8 K. establish fees not to exceed one hundred fifty  
9 dollars (\$150) for licenses and certificates pursuant to the  
10 Animal Sheltering [~~Services~~] Act;

11 L. establish committees as the board deems  
12 necessary to effect the provisions of the Animal Sheltering  
13 [~~Services~~] Act;

14 M. apply for injunctive relief to enforce the  
15 provisions of the Animal Sheltering [~~Services~~] Act;

16 N. conduct national criminal background checks on  
17 applicants seeking licensure or certification under the Animal  
18 Sheltering [~~Services~~] Act;

19 O. keep a record of all proceedings;

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

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

24 R. develop mechanisms to address complaints of  
25 misconduct at animal shelters and euthanasia agencies and

.176242.1GR

underscored material = new  
[bracketed material] = delete

1 noncompliance with the provisions of the Animal Sheltering  
2 [~~Services~~] Act or rules adopted pursuant to that act;

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

5 T. develop and [~~implement comprehensive~~] recommend  
6 dog and cat spay and neuter plans and community outreach plans  
7 in support of and in conjunction with animal shelters and  
8 euthanasia agencies;

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

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

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

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

18 "77-1B-6. EUTHANASIA [~~PROVIDER~~] TECHNICIAN--LICENSE.--

19 A. The board shall have authority to license  
20 euthanasia [~~providers~~] technicians.

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

24 C. Applicants for licensure by examination as a  
25 euthanasia [~~provider~~] technician shall be required to pass a

.176242.1GR

underscored material = new  
[bracketed material] = delete

1 euthanasia [~~provider~~] technician examination [~~administered~~]  
2 approved by the board and shall be required to complete a  
3 training course approved by the board in euthanasia practices.

4 ~~[D. The board shall adopt rules to provide for~~  
5 ~~interim placements for euthanasia agencies that have no~~  
6 ~~permanent employees who are euthanasia providers.]~~

7 ~~E.]~~ D. A person licensed to practice as a  
8 euthanasia [~~provider~~] technician shall:

9 (1) have passed the examination to qualify as  
10 a euthanasia [~~provider~~] technician;

11 (2) hold a certificate of completion in a  
12 training course in euthanasia issued within three years of the  
13 date that the euthanasia [~~provider~~] technician examination is  
14 successfully completed;

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

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

19 (5) pay the required fee to be determined by  
20 the board, but not to exceed fifty dollars (\$50.00); and

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

23 ~~[F.]~~ E. The board may issue a license to practice  
24 as a euthanasia [~~provider~~] technician without examination to an  
25 applicant who meets the qualifications required for euthanasia

.176242.1GR

underscored material = new  
[bracketed material] = delete

1     ~~[providers]~~ technicians in this state as set forth in  
2     Paragraphs (3) through (6) of Subsection ~~[E]~~ D of this section.  
3     The application for a license as a euthanasia ~~[provider]~~  
4     technician shall be accompanied by proof of completion of  
5     training in euthanasia practices, as approved by the board.

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

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

19             "[NEW MATERIAL] EUTHANASIA TECHNICIAN AUTHORITY DEFINED.--  
20    A euthanasia technician may purchase, possess and administer  
21    euthanasia drugs for the purpose of performing euthanasia and  
22    pre-euthanasia on animals for a euthanasia agency. A formulary  
23    shall be developed by the board and be approved by the board of  
24    pharmacy."

25             Section 10. Section 77-1B-7 NMSA 1978 (being Laws 2007,  
    .176242.1GR

underscored material = new  
[bracketed material] = delete

1 Chapter 60, Section 7) is amended to read:

2 "77-1B-7. EUTHANASIA INSTRUCTORS--CERTIFICATION.--

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

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

7 (1) have passed the examination [~~administered~~]  
8 approved by the board to qualify as a euthanasia instructor;

9 (2) have completed [~~instructor~~] training in  
10 euthanasia practices, as defined by the board, within one year  
11 preceding the date the application for certification is  
12 submitted;

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

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

19 (5) pay the required fee.

20 C. The board may certify an applicant as a  
21 euthanasia instructor without an examination if the applicant  
22 has been certified or licensed under the laws of another state  
23 and the applicant meets the qualifications set forth in  
24 Paragraphs (3) through (5) of Subsection B of this section.

25 [~~The application for certification shall be accompanied by~~

.176242.1GR

underscoring material = new  
[bracketed material] = delete

1 ~~proof of completion of instructor training in euthanasia~~  
2 ~~practices, as approved by the board.]~~

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

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

16 "77-1B-8. EUTHANASIA AGENCIES--INSPECTIONS--EXEMPTIONS.--

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

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

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

.176242.1GR

underscored material = new  
[bracketed material] = delete

1           D. The board shall establish policies and  
2 procedures for record keeping and for securing, using and  
3 disposing of euthanasia drugs in accordance with requirements  
4 of the Controlled Substances Act, the ~~[federal]~~ United States  
5 drug enforcement ~~[agency]~~ administration's Controlled  
6 Substances Act and the rules of the board of pharmacy.

7           E. Euthanasia agencies using controlled substances  
8 shall have on staff or under contract ~~[a supervising~~  
9 ~~veterinarian and]~~ a consulting pharmacist as that position is  
10 defined in the Pharmacy Act.

11           ~~[F. A supervising veterinarian is not required to~~  
12 ~~be on the premises of a euthanasia agency when euthanasia is~~  
13 ~~performed.~~

14           ~~G.]~~ F. Nothing in the Animal Sheltering ~~[Services]~~  
15 Act shall be construed as allowing a ~~[licensed]~~ euthanasia  
16 ~~[provider]~~ technician or a ~~[certified]~~ euthanasia instructor to  
17 engage in the practice of veterinary medicine when performing  
18 the duties set forth in that act.

19           ~~[H.]~~ G. Nothing in the Animal Sheltering ~~[Services]~~  
20 Act shall be construed as preventing a ~~[certified]~~ euthanasia  
21 instructor from euthanizing animals during a board-approved  
22 course on euthanasia instruction.

23           ~~[I.]~~ H. Nothing in the Animal Sheltering ~~[Services]~~  
24 Act affects wildlife rehabilitators working under the auspices  
25 of the department of game and fish.

.176242.1GR

underscored material = new  
[bracketed material] = delete

1           ~~[J-]~~ I. A veterinary clinic serving as a euthanasia  
2 agency pursuant to a contract with a local government is exempt  
3 from the provisions of the Animal Sheltering ~~[Services]~~ Act;  
4 provided that the veterinary clinic is subject to licensure and  
5 rules adopted pursuant to the Veterinary Practice Act.

6           ~~[K-]~~ J. A municipal facility that is a zoological  
7 park is exempt from the provisions of the Animal Sheltering  
8 ~~[Services]~~ Act."

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

11           "77-1B-9. VIOLATIONS.--

12           A. Unless otherwise provided in the Animal  
13 Sheltering ~~[Services]~~ Act, it is a violation of that act for a  
14 person to:

15                   (1) perform euthanasia for a euthanasia agency  
16 or an animal shelter in this state without possessing a valid  
17 license pursuant to the Animal Sheltering ~~[Services]~~ Act;

18                   (2) solicit, advertise or offer to perform an  
19 act for which licensure or certification is required pursuant  
20 to the Animal Sheltering ~~[Services]~~ Act, unless the person  
21 holds a license or certification;

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

24                   (4) refuse or fail to comply with the  
25 provisions of the Animal Sheltering ~~[Services]~~ Act;

.176242.1GR

underscored material = new  
[bracketed material] = delete

1 (5) make a material misstatement in an  
2 application for licensure or certification;

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

5 (7) impersonate an official or inspector;

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

9 (9) aid or abet another in violating  
10 provisions of the Animal Sheltering [~~Services~~] Act, or a rule  
11 adopted by the board;

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

14 (11) fail to carry out the duties of a  
15 euthanasia [~~provider~~] technician in a professional manner;

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

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

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

23 B. It is a violation of the Animal Sheltering  
24 [~~Services~~] Act for a euthanasia agency or an animal shelter to:

25 (1) refuse to permit entry or inspection of

.176242.1GR

underscoring material = new  
[bracketed material] = delete

1 its facilities by the board or its designees;

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

13 (3) allow a license or certificate issued  
14 pursuant to the Animal Sheltering [~~Services~~] Act to be used by  
15 an unlicensed or uncertified person; or

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

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

24 Section 13. Section 77-1B-10 NMSA 1978 (being Laws 2007,  
25 Chapter 60, Section 10) is amended to read:

.176242.1GR

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

2 A. The board or the board's designees shall enforce  
3 the provisions of the Animal Sheltering [~~Services~~] Act.

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

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

24 Section 14. Section 77-1B-11 NMSA 1978 (being Laws 2007,  
25 Chapter 60, Section 11) is amended to read:

.176242.1GR

underscored material = new  
[bracketed material] = delete

1 "77-1B-11. DISCIPLINARY ACTIONS--EUTHANASIA [~~PROVIDERS~~]  
2 TECHNICIANS, EUTHANASIA AGENCIES AND EUTHANASIA INSTRUCTORS--  
3 HEARINGS--PENALTIES.--

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

6 B. The board may:

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

15 (2) impose an administrative penalty on a  
16 person who makes a false representation as being a licensed  
17 euthanasia [~~provider~~] technician, a certified euthanasia  
18 instructor or a licensed euthanasia agency.

19 C. The board may issue letters of admonition or  
20 deny, suspend, refuse to renew, restrict or revoke a license or  
21 certification authorized pursuant to the Animal Sheltering  
22 [~~Services~~] Act if the applicant or licensee:

23 (1) has refused or failed to comply with a  
24 provision of the Animal Sheltering [~~Services~~] Act, a rule  
25 adopted pursuant to that act or an order of the board;

.176242.1GR

underscoring material = new  
[bracketed material] = delete

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

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

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

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

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

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

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

22 G. The board may administer oaths, take statements  
23 and compel disclosure by the witnesses of all facts known to  
24 them relative to matters under investigation.

25 H. The board may impose an administrative penalty

.176242.1GR

underscored material = new  
[bracketed material] = delete

1 in an amount not to exceed five hundred dollars (\$500) on a  
2 holder of a license or certificate for violations of the Animal  
3 Sheltering [~~Services~~] Act.

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

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

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

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

18 M. A person who practices, offers to practice,  
19 attempts to practice or makes any representation as being a  
20 euthanasia [~~provider~~] technician, a euthanasia instructor or a  
21 licensed euthanasia agency without holding a license or  
22 certificate issued by the board shall, in addition to any other  
23 penalty provided in this section or any other law, pay an  
24 administrative penalty to the board in an amount not to exceed  
25 five hundred dollars (\$500) for each offense."

.176242.1GR

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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

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