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# State of New Mexico

Susana Martinez  
*Governor*

May 26, 2017

## HOUSE EXECUTIVE MESSAGE NO. 3

The Honorable Brian Egolf, Jr., Speaker of the House and  
Members of the House of Representatives  
State Capitol Building  
Santa Fe, NM 87501

Honorable Speaker Egolf and Members of the House:

I have this day SIGNED HOUSE BILL 2, as amended, enacted by the Fifty-Third Legislature, First Special Session, 2017, except the following part or parts, item or items, which I have vetoed pursuant to Article IV, Section 22 of the Constitution of the State of New Mexico:

On page 5, I have vetoed all of lines 2 through 25; on page 6, I have vetoed all of lines 1 through 25; and on page 7, I have vetoed all of lines 1 and 2;

On page 7, I have vetoed all of lines 3 through 25 and on page 8, I have vetoed all of lines 1 through 22;

On page 9, I have vetoed all of lines 21 through 25 and on page 10 I have vetoed all of lines 1 through 23;

On page 10, I have vetoed all of lines 24 and 25; on page 11 I have vetoed all of lines 1 through 25; on page 12, I have vetoed all of lines 1 through 25; on page 13, I have vetoed all of lines 1 through 25; and on page 14, I have vetoed all of lines 1 through 23;

On page 14, I have vetoed all of lines 24 and 25; on page 15, I have vetoed all of lines 1 through 6;

On page 15, I have vetoed all of lines 7 through 25 and on page 16, I have vetoed all of lines 1 through 9;

On page 16 I have vetoed all of lines 10 through 25; on page 17, I have vetoed all of lines 1 through 25; on page 18 I have vetoed all of lines 1 through 25; and on page 19, I have vetoed all of lines 1 through 25;

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On page 20, I have vetoed all of lines 1 through 12;

On page 20, I have vetoed all lines 13 through 25 and page 21, I have vetoed all of lines 1 through 17;

On page 21, I have vetoed all of lines 23 through 25; on page 22, I have vetoed all of lines 1 through 25; and on page 23, I have vetoed all of lines 1 through 5;

On page 23, I have vetoed all of lines 17 through 25 and on page 24, I have vetoed all of lines 1 through 6;

On page 24, I have vetoed all of lines 7 through 25 and on page 25, I have vetoed all of lines 1 through 18;

On page 25, I have vetoed all of lines 19 through 25 and on page 26, I have vetoed all of lines 1 through 12;

On page 26, I have vetoed all of lines 13 through 25 and on page 27, I have vetoed all of lines 1 through 11;

On page 27, I have vetoed all of lines 12 through 25, and on page 28 I have vetoed all of lines 1 and 2;

On page 28, I have vetoed all of lines 3 through 12; and,

On page 28, I have vetoed all of lines 15 through 17.

While I am supportive of establishing a distribution to the Tax Stabilization Reserve to operate as a “rainy day fund” to protect state finances during periods of reduced state revenue, such as the most recent global oil and gas price crash, I am not supportive of other aspects of this bill.

Had the “rainy day fund” been in place in 2010, it would have a balance of \$185 million, which would have prevented the state from being in its current situation. Continuing to tie the establishment of this fund to tax increases is the product of political games. This is irresponsible.

The other aspects of this bill are a thinly veiled attempt at pushing forward a partisan agenda that would place the burden of our state’s budgetary struggles on the backs of New Mexican families and taxpayers. They are yet another false attempt at tax reform, and they again fall embarrassingly short. Independent of true comprehensive tax reform, they are purely tax increases. While I have long championed reforming our tax code, I have also repeatedly made clear that I will not support standalone tax increases.

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Subjecting only our hospitals to new taxes is bad tax policy; it defeats the reform intent of broadening the base so that New Mexicans can pay a lower tax rate. Additionally, the effective date provided is unrealistic for accurate implementation.

The proposed internet sales tax provisions were poorly crafted and could cause more harm than good. While they allegedly attempt to level the playing field between brick-and-mortar and internet sellers to allow more tax revenue to flow to both the general fund and to local governments, they include many technical issues, including the references to “physical presence”—used differently in different sections—would cause perverse results, some of which counter its very intent.

The proposed sourcing provisions fail to accomplish the intended result of requiring internet vendors to source sales to the destination in which the product is delivered and collect the local tax increments. The way in which the bill is written subjects to gross receipts tax only part of the industry this bill intends to capture, which fails to truly level the playing field. Additionally, sourcing licenses and services to the product’s destination further complicates and increases regulation by the Taxation and Revenue Department.

Finally, the bill attempts to expand tax liability from the actual seller to the marketplace when a consumer uses a third-party internet platform to purchase a product. The bill attempts to do this in only three-and-a-half lines of the bill. This requires a much closer and thorough vetting.


No other state has passed a law relative to the marketplace that reaches this far, or does it so recklessly. These provisions are legally dubious. Given the questionable legality, it would fall on New Mexico as the first state to pass this to defend it in court.

While I support the provisions requiring separate reporting for several tax deductions, the implementation date in this bill is unworkable. As written, administering these provisions would be almost impossible.

I continue to hope that the legislature will work towards true comprehensive tax reform without trying to push partisan agendas and tax increases that only wind up hurting those that we have been elected to serve. I am confident that through true leadership, this can be accomplished.

For these reasons, I hereby sign House Bill 2, with the exception of these items.

Respectfully yours,



Susana Martinez  
Governor

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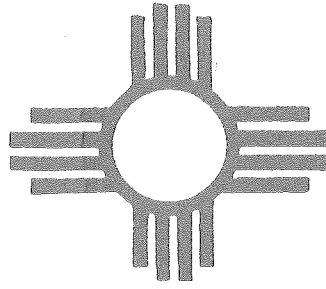
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Time: 4:49 a.m. p.m.  
Date: May 26<sup>th</sup>, 2017

By   
Secretary of State

Time: \_\_\_\_\_ a.m. p.m.  
Date: \_\_\_\_\_, 2017

By \_\_\_\_\_  
Chief Clerk of the House



The Legislature  
of the  
State of New Mexico

53rd Legislature, 1<sup>st</sup> Special Session

LAWS 2017

CHAPTER 3

HOUSE BILL 2, as amended

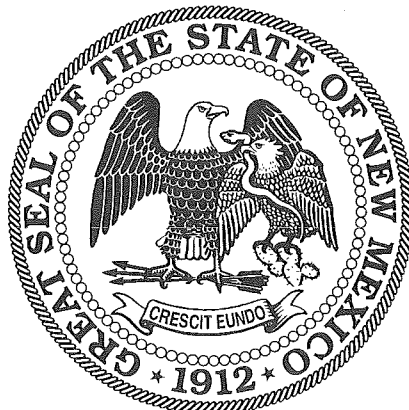
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**PARTIAL VETO**

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Introduced by

REPRESENTATIVE JIM R. TRUJILLO  
REPRESENTATIVE CARL TRUJILLO  
REPRESENTATIVE BRIAN EGOLF



# CHAPTER 3

## AN ACT

1  
2 RELATING TO TAXATION; DISTRIBUTING REVENUE IN EXCESS OF A  
3 FIVE-YEAR AVERAGE OF THE OIL AND GAS EMERGENCY SCHOOL TAX TO  
4 THE TAX STABILIZATION RESERVE; ELIMINATING THE TAXPAYERS  
5 DIVIDEND FUND; SUSPENDING A DISTRIBUTION TO THE LEGISLATIVE  
6 RETIREMENT FUND FOR TWO YEARS; DISTRIBUTING A PORTION OF THE  
7 GROSS RECEIPTS TAX TO THE COUNTY-SUPPORTED MEDICAID FUND;  
8 PROVIDING THAT THE PLACE OF BUSINESS OF A PERSON WITHOUT  
9 PHYSICAL PRESENCE IN THIS STATE IS WHERE THE PROPERTY OR  
10 SERVICE BEING SOLD IS DELIVERED; ALLOWING A REFUND OF GROSS  
11 RECEIPTS TAX DUE A PERSON TO BE APPLIED AGAINST COMPENSATING  
12 TAX OWED BY THE PERSON'S CUSTOMER AS A RESULT OF TRANSACTIONS  
13 WITH THAT PERSON; CLARIFYING THAT A PERSON WITHOUT PHYSICAL  
14 PRESENCE IN THE STATE THAT HAS LESS THAN ONE HUNDRED THOUSAND  
15 DOLLARS (\$100,000) IN GROSS RECEIPTS IS NOT ENGAGING IN  
16 BUSINESS PURSUANT TO THE GROSS RECEIPTS AND COMPENSATING TAX  
17 ACT; BARRING THE TAXATION AND REVENUE DEPARTMENT FROM  
18 ENFORCING COLLECTION OF THE GROSS RECEIPTS TAX IN CERTAIN  
19 CIRCUMSTANCES; IMPOSING THE STATE GROSS RECEIPTS TAX ON  
20 NONPROFIT HOSPITALS; IMPOSING THE GOVERNMENTAL GROSS RECEIPTS  
21 TAX ON GOVERNMENT HOSPITALS; DISTRIBUTING THE REVENUE  
22 ATTRIBUTABLE TO TAXING ALL HOSPITALS TO THE GENERAL FUND;  
23 ADJUSTING CERTAIN DEDUCTIONS AND EXEMPTIONS FROM GROSS  
24 RECEIPTS AND GOVERNMENTAL GROSS RECEIPTS FOR HOSPITALS;  
25 REQUIRING SEPARATE REPORTING FOR CERTAIN DEDUCTIONS FROM

1 GROSS RECEIPTS; AMENDING, REPEALING AND ENACTING SECTIONS OF  
2 THE NMSA 1978; MAKING AN APPROPRIATION.  
3

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

5 SECTION 1. Section 6-4-4 NMSA 1978 (being Laws 1987,  
6 Chapter 347, Section 4, as amended) is amended to read:

7 "6-4-4. RESERVATION OF EXCESS GENERAL FUND  
8 REVENUES.--For the seventy-seventh and subsequent fiscal  
9 years, if the revenues of the general fund exceed the total  
10 of appropriations from the general fund, the excess revenue  
11 shall be transferred to the operating reserve; provided that  
12 if the sum of the excess revenue plus the balance in the  
13 operating reserve prior to the transfer is greater than eight  
14 percent of the aggregate recurring appropriations from the  
15 general fund for the previous fiscal year, then an amount  
16 equal to the smaller of either the amount of the excess  
17 revenue or the difference between the sum and eight percent  
18 of the aggregate recurring appropriations from the general  
19 fund for the previous fiscal year shall be transferred to the  
20 tax stabilization reserve."

21 SECTION 2. Section 7-1-6.20 NMSA 1978 (being Laws 1985,  
22 Chapter 65, Section 6, as amended) is amended to read:

23 "7-1-6.20. IDENTIFICATION OF MONEY IN EXTRACTION TAXES  
24 SUSPENSE FUND--DISTRIBUTION.--

25 A. Except as provided in Subsection B of this

1 section, after the necessary disbursements have been made  
2 from the extraction taxes suspense fund, the money remaining  
3 in the suspense fund as of the last day of the month shall be  
4 identified by tax source and distributed or transferred in  
5 accordance with the provisions of Sections 7-1-6.21 through  
6 7-1-6.23 NMSA 1978 and Section 3 of this 2017 act. After the  
7 necessary distributions and transfers, any balance, except  
8 for remittances unidentified as to source or disposition,  
9 shall be transferred to the general fund.

10 B. Payments on assessments issued by the  
11 department pursuant to the Oil and Gas Conservation Tax Act,  
12 the Oil and Gas Emergency School Tax Act, the Oil and Gas Ad  
13 Valorem Production Tax Act and the Oil and Gas Severance Tax  
14 Act shall be held in the extraction taxes suspense fund until  
15 the secretary determines that there is no substantial risk of  
16 protest or other litigation, whereupon after the necessary  
17 disbursements have been made from the extraction taxes  
18 suspense fund, the money remaining in the suspense fund as of  
19 the last day of the month attributed to these payments shall  
20 be identified by tax source and distributed or transferred in  
21 accordance with the provisions of Sections 7-1-6.21 through  
22 7-1-6.23 NMSA 1978 and Section 3 of this 2017 act. After the  
23 necessary distributions and transfers, any balance, except  
24 for remittance unidentified as to source or disposition,  
25 shall be transferred to the general fund."



1           **SECTION 3.** A new section of the Tax Administration Act  
2 is enacted to read:

3           "DISTRIBUTION--TAX STABILIZATION RESERVE FROM THE OIL  
4 AND GAS EMERGENCY SCHOOL TAX.--

5           A. A distribution pursuant to Section 7-1-6.20  
6 NMSA 1978 shall be made to the tax stabilization reserve in  
7 an amount as calculated pursuant to Subsection B of this  
8 section.

9           B. If the year-to-date amount plus the current net  
10 receipts exceeds the annual average amount, the excess shall  
11 be distributed to the tax stabilization reserve. If there is  
12 not an excess amount, no distribution shall be made to the  
13 tax stabilization reserve. Each month the department shall  
14 make the calculation to determine if an excess amount should  
15 be distributed.

16           C. As used in this section:

17           (1) "annual average amount" means the total  
18 net receipts attributable to the tax imposed pursuant to  
19 Section 7-31-4 NMSA 1978 and distributed pursuant to Section  
20 7-1-6.20 NMSA 1978 in the immediately preceding five fiscal  
21 years, divided by five; and

22           (2) "year-to-date amount" means the  
23 cumulative year-to-date net receipts attributable to the tax  
24 imposed pursuant to Section 7-31-4 NMSA 1978 and distributed  
25 to the general fund in the prior months of the current fiscal

1 year."

2 ~~SM~~ SECTION 4. Section 7-1-6.4 NMSA 1978 (being Laws 1983,  
3 Chapter 211, Section 9, as amended) is amended to read:

4 ~~"7-1-6.4. DISTRIBUTION--MUNICIPALITY FROM GROSS~~  
5 ~~RECEIPTS TAX.--~~

6 ~~—A. Except as provided in Subsection B of this~~  
7 ~~section, a distribution pursuant to Section 7-1-6.1 NMSA 1978~~  
8 ~~shall be made to each municipality in an amount, subject to~~  
9 ~~any increase or decrease made pursuant to Section 7-1-6.15~~  
10 ~~NMSA 1978, equal to the product of the quotient of one and~~  
11 ~~two hundred twenty-five thousandths percent divided by the~~  
12 ~~tax rate imposed by Section 7-9-4 NMSA 1978 multiplied by the~~  
13 ~~net receipts, except receipts attributable to a nonprofit~~  
14 ~~hospital licensed by the department of health, for the month~~  
15 ~~attributable to the gross receipts tax from business~~  
16 ~~locations:~~

- 17 ~~(1) within that municipality;~~  
18 ~~(2) on land owned by the state, commonly~~  
19 ~~known as the "state fairgrounds", within the exterior~~  
20 ~~boundaries of that municipality;~~  
21 ~~(3) outside the boundaries of any~~  
22 ~~municipality on land owned by that municipality; and~~  
23 ~~(4) on an Indian reservation or pueblo grant~~  
24 ~~in an area that is contiguous to that municipality and in~~  
25 ~~which the municipality performs services pursuant to a~~ ~~SM~~

SM  
1 ~~contract between the municipality and the Indian tribe or~~  
2 ~~Indian pueblo if:~~  
3 ~~(a) the contract describes an area in~~  
4 ~~which the municipality is required to perform services and~~  
5 ~~requires the municipality to perform services that are~~  
6 ~~substantially the same as the services the municipality~~  
7 ~~performs for itself; and~~

8 ~~(b) the governing body of the~~  
9 ~~municipality has submitted a copy of the contract to the~~  
10 ~~secretary.~~

11 ~~B. If the reduction made by Laws 1991, Chapter 9,~~  
12 ~~Section 9 to the distribution under this section impairs the~~  
13 ~~ability of a municipality to meet its principal or interest~~  
14 ~~payment obligations for revenue bonds outstanding prior to~~  
15 ~~July 1, 1991 that are secured by the pledge of all or part of~~  
16 ~~the municipality's revenue from the distribution made under~~  
17 ~~this section, then the amount distributed pursuant to this~~  
18 ~~section to that municipality shall be increased by an amount~~  
19 ~~sufficient to meet any required payment, provided that the~~  
20 ~~distribution amount does not exceed the amount that would~~  
21 ~~have been due that municipality under this section as it was~~  
22 ~~in effect on June 30, 1992.~~

23 ~~C. A distribution pursuant to this section may be~~  
24 ~~adjusted for a distribution made to a tax increment~~  
25 ~~development district with respect to a portion of a gross~~

1 ~~SM~~ receipts tax increment dedicated by a municipality pursuant  
2 to the Tax Increment for Development Act." ~~SM~~

3 ~~SM~~ SECTION 5. Section 7-1-6.38 NMSA 1978 (being Laws 1994,  
4 Chapter 145, Section 1, as amended) is amended to read:

5 ~~"7-1-6.38. DISTRIBUTION--GOVERNMENTAL GROSS RECEIPTS~~  
6 ~~TAX.--~~

7 ~~A. A distribution pursuant to Section 7-1-6.1 NMSA~~  
8 ~~1978 shall be made in amounts equal to the following~~  
9 ~~percentages of the net receipts attributable to the~~  
10 ~~governmental gross receipts tax, less the net receipts~~  
11 ~~attributable to a hospital licensed by the department of~~  
12 ~~health:~~

13 ~~(1) seventy five percent to the public~~  
14 ~~project revolving fund administered by the New Mexico finance~~  
15 ~~authority;~~

16 ~~(2) twenty four percent to the energy,~~  
17 ~~minerals and natural resources department; provided that~~  
18 ~~forty one and two thirds percent of the distribution is~~  
19 ~~appropriated to the energy, minerals and natural resources~~  
20 ~~department to implement the provisions of the New Mexico~~  
21 ~~Youth Conservation Corps Act and fifty eight and one third~~  
22 ~~percent of the distribution is appropriated to the energy,~~  
23 ~~minerals and natural resources department for state park and~~  
24 ~~recreation area capital improvements, including the costs of~~  
25 ~~planning, engineering, design, construction, renovation,~~ ~~SM~~

SM

1 ~~repair, equipment and furnishings; and~~  
2 ~~(3) one percent to the cultural affairs~~  
3 ~~department for capital improvements at state museums and~~  
4 ~~monuments administered by the cultural affairs department.~~  
5 ~~B. The state pledges to and agrees with the~~  
6 ~~holders of any bonds or notes issued by the New Mexico~~  
7 ~~finance authority or by the energy, minerals and natural~~  
8 ~~resources department and payable from the net receipts~~  
9 ~~attributable to the governmental gross receipts tax~~  
10 ~~distributed to the New Mexico finance authority or the~~  
11 ~~energy, minerals and natural resources department pursuant to~~  
12 ~~this section that the state will not limit, reduce or alter~~  
13 ~~the distribution of the net receipts attributable to the~~  
14 ~~governmental gross receipts tax to the New Mexico finance~~  
15 ~~authority or the energy, minerals and natural resources~~  
16 ~~department or limit, reduce or alter the rate of imposition~~  
17 ~~of the governmental gross receipts tax until the bonds or~~  
18 ~~notes together with the interest thereon are fully met and~~  
19 ~~discharged. The New Mexico finance authority and the energy,~~  
20 ~~minerals and natural resources department are authorized to~~  
21 ~~include this pledge and agreement of the state in any~~  
22 ~~agreement with the holders of the bonds or notes." SM~~

23 SECTION 6. Section 7-1-6.43 NMSA 1978 (being Laws 2003,  
24 Chapter 86, Section 1, as amended) is amended to read:

25 "7-1-6.43. DISTRIBUTION--LEGISLATIVE RETIREMENT FUND.--

1           A. Beginning on July 1, 2019, a distribution  
2 pursuant to Section 7-1-6.1 NMSA 1978 from the net receipts  
3 attributable to the amount of tax deducted pursuant to the  
4 Oil and Gas Proceeds and Pass-Through Entity Withholding Tax  
5 Act shall be made to the legislative retirement fund in the  
6 amount of seventy-five thousand dollars (\$75,000) or, if  
7 larger, in an amount equal to one-twelfth of the amount  
8 necessary to pay out the retirement benefits due under state  
9 legislator member coverage plan 2 and Paragraph (2) of  
10 Subsection C of Section 10-11-41 NMSA 1978 for the succeeding  
11 calendar year.

12           B. In regard to the distribution to the  
13 legislative retirement fund, in December 2003 and in each  
14 December thereafter, except in 2017, the public employees  
15 retirement association, with the assistance of the  
16 legislative council service, shall determine the amount of  
17 retirement benefits for the succeeding calendar year. If the  
18 monthly average exceeds seventy-five thousand dollars  
19 (\$75,000), the association shall immediately notify the  
20 department of the average amount."

21     ~~SECTION 7. Section 7-1-14 NMSA 1978 (being Laws 1969,~~  
22 ~~Chapter 145, Section 1, as amended) is amended to read:~~

23     ~~"7-1-14. SECRETARY MAY DETERMINE WHERE CERTAIN GROSS~~  
24 ~~RECEIPTS ARE TO BE REPORTED--PLACE OF BUSINESS FOR~~  
25 ~~CONSTRUCTION PROJECTS, CERTAIN REAL PROPERTY SALES AND SALES~~

1 ~~SM~~ OF OUT OF STATE VENDORS.

2 ~~A. By regulation, the secretary may require any~~  
3 ~~person maintaining one or more places of business to report~~  
4 ~~the person's taxable gross receipts and deductions for each~~  
5 ~~municipality or county or area within an Indian reservation~~  
6 ~~or pueblo grant in which the person maintains a place of~~  
7 ~~business.~~

8 ~~B. For persons engaged in the construction~~  
9 ~~business, the place where the construction project is~~  
10 ~~performed is a "place of business", and all receipts from~~  
11 ~~that project are to be reported from that place of business.~~

12 ~~C. The secretary may, by regulation, also require~~  
13 ~~any person maintaining a business outside the boundaries of a~~  
14 ~~municipality on land owned by that municipality to report the~~  
15 ~~person's taxable gross receipts for that municipality.~~

16 ~~D. For a person engaged in the business of selling~~  
17 ~~real estate, the location of the real property sold is the~~  
18 ~~"place of business", and all receipts from that sale are to~~  
19 ~~be reported from that place of business.~~

20 ~~E. For a person engaging in business but is~~  
21 ~~without physical presence in this state, "place of business"~~  
22 ~~is the location where the property or the product of a~~  
23 ~~service being sold by the person is delivered."~~ ~~SM~~

24 ~~SM~~ SECTION 8. Section 7-1-29 NMSA 1978 (being Laws 1965,  
25 ~~Chapter 248, Section 31, as amended) is amended to read:~~ ~~SM~~

~~SM~~ 7-1-29. AUTHORITY TO MAKE REFUNDS OR CREDITS.---

~~A. In response to a claim for refund, credit or rebate made as provided in Section 7-1-26 NMSA 1978, but before a court acquires jurisdiction of the matter, the secretary or the secretary's delegate may authorize payment to a person in the amount of the credit or rebate claimed or refund an overpayment of tax determined by the secretary or the secretary's delegate to have been erroneously made by the person, together with allowable interest. A payment of a credit rebate claimed or a refund of tax and interest erroneously paid amounting to twenty thousand dollars (\$20,000) or more shall be made with the prior approval of the attorney general, except that the secretary or the secretary's delegate may make refunds with respect to the Oil and Gas Severance Tax Act, the Oil and Gas Conservation Tax Act, the Oil and Gas Emergency School Tax Act, the Oil and Gas Ad Valorem Production Tax Act, the Natural Gas Processors Tax Act or the Oil and Gas Production Equipment Ad Valorem Tax Act, Section 7-13-17 NMSA 1978 and the Cigarette Tax Act without the prior approval of the attorney general regardless of the amount.~~

~~B. Pursuant to the final order of the district court, the court of appeals, the supreme court of New Mexico or a federal court, from which order, appeal or review is not successfully taken, adjudging that a person has properly~~



1 ~~claimed a credit or rebate or made an overpayment of tax, the~~  
2 ~~secretary shall authorize the payment to the person of the~~  
3 ~~amount thereof.~~

4 ~~C. In the discretion of the secretary, any amount~~  
5 ~~of credit or rebate to be paid or tax to be refunded may be~~  
6 ~~offset against any amount of tax for which the person due to~~  
7 ~~receive the credit, rebate payment or refund is liable, or in~~  
8 ~~the case of a refund of gross receipts tax, any compensating~~  
9 ~~tax owed by that person's customer as a result of~~  
10 ~~transactions with that person. The secretary or the~~  
11 ~~secretary's delegate shall give notice to the taxpayer that~~  
12 ~~the credit, rebate payment or refund will be made in this~~  
13 ~~manner, and the taxpayer shall be entitled to interest~~  
14 ~~pursuant to Section 7-1-68 NMSA 1978 until the tax liability~~  
15 ~~is credited with the credit, rebate or refund amount.~~

16 ~~D. In an audit by the department or a managed~~  
17 ~~audit covering multiple reporting periods in which both~~  
18 ~~underpayments and overpayments of a tax have been made in~~  
19 ~~different reporting periods, the department shall credit the~~  
20 ~~tax overpayments against the underpayments, provided that the~~  
21 ~~taxpayer files a claim for refund of the overpayments. An~~  
22 ~~overpayment shall be applied as a credit first to the~~  
23 ~~earliest underpayment and then to succeeding underpayments.~~  
24 ~~An underpayment of tax to which an overpayment is credited~~  
25 ~~pursuant to this section shall be deemed paid in the period~~

1 ~~SM~~ in which the overpayment was made or the period to which the  
2 overpayment was credited against an underpayment, whichever  
3 is later. If the overpayments credited pursuant to this  
4 section exceed the underpayments of a tax, the amount of the  
5 net overpayment for the periods covered in the audit shall be  
6 refunded to the taxpayer.

7 E. When a taxpayer makes a payment identified to a  
8 particular return or assessment, and the department  
9 determines that the payment exceeds the amount due pursuant  
10 to that return or assessment, the secretary may apply the  
11 excess to the taxpayer's other liabilities pursuant to the  
12 tax acts to which the return or assessment applies, without  
13 requiring the taxpayer to file a claim for a refund. The  
14 liability to which an overpayment is applied pursuant to this  
15 section shall be deemed paid in the period in which the  
16 overpayment was made or the period to which the overpayment  
17 was applied, whichever is later.

18 F. If the department determines, upon review of an  
19 original or amended income tax return, corporate income and  
20 franchise tax return, estate tax return, special fuels excise  
21 tax return or oil and gas tax return, that there has been an  
22 overpayment of tax for the taxable period to which the return  
23 or amended return relates in excess of the amount due to be ~~SM~~

24 ~~SM~~ refunded to the taxpayer pursuant to the provisions of  
25 Subsection K of Section 7-1-26 NMSA 1978, the department may ~~SM~~

1 ~~refund that excess amount to the taxpayer without requiring~~  
2 ~~the taxpayer to file a refund claim.~~

3 ~~C. Records of refunds and credits made in excess~~  
4 ~~of ten thousand dollars (\$10,000) shall be available for~~  
5 ~~inspection by the public. The department shall keep such~~  
6 ~~records for a minimum of three years from the date of the~~  
7 ~~refund or credit.~~

8 ~~H. In response to a timely refund claim pursuant~~  
9 ~~to Section 7-1-26 NMSA 1978 and notwithstanding any other~~  
10 ~~provision of the Tax Administration Act, the secretary or the~~  
11 ~~secretary's delegate may refund or credit a portion of an~~  
12 ~~assessment of tax paid, including applicable penalties and~~  
13 ~~interest representing the amount of tax previously paid by~~  
14 ~~another person on behalf of the taxpayer on the same~~  
15 ~~transaction, provided that the requirements of equitable~~  
16 ~~recoupment are met. For purposes of this subsection, the~~  
17 ~~refund claim may be filed by the taxpayer to whom the~~  
18 ~~assessment was issued or by another person who claims to have~~  
19 ~~previously paid the tax on behalf of the taxpayer. Prior to~~  
20 ~~granting the refund or credit, the secretary may require a~~  
21 ~~waiver of all rights to claim a refund or credit of the tax~~  
22 ~~previously paid by another person paying a tax on behalf of~~  
23 ~~the taxpayer."~~

24 ~~SECTION 9. A new section of the Tax Administration Act~~  
25 ~~is enacted to read:~~

1 ~~SM "DISTRIBUTION - GROSS RECEIPTS TAX TO COUNTY-SUPPORTED-~~  
2 ~~MEDICAID FUND.--A distribution pursuant to Section 7-1-6.1-~~  
3 ~~NMSA 1978 of the net receipts attributable to the gross-~~  
4 ~~receipts tax shall be made to the county-supported medicaid-~~  
5 ~~fund in the amount of two million two hundred thousand-~~  
6 ~~dollars (\$2,200,000)."~~ SM

7 ~~SM SECTION 10. Section 7-9-3.3 NMSA 1978 (being Laws 2003,~~  
8 ~~Chapter 272, Section 4) is amended to read:--~~

9 ~~"7-9-3.3. DEFINITION--ENGAGING IN BUSINESS.--As used in-~~  
10 ~~the Gross Receipts and Compensating Tax Act, "engaging in-~~  
11 ~~business" means carrying on or causing to be carried on any-~~  
12 ~~activity with the purpose of direct or indirect benefit,-~~  
13 ~~without regard to having physical presence, including the-~~  
14 ~~presence of a representative acting on behalf of the person,-~~  
15 ~~in the state, except that "engaging in business" does not-~~  
16 ~~include:--~~

17 ~~A. having a worldwide website as a third-party-~~  
18 ~~content provider on a computer physically located in New-~~  
19 ~~Mexico but owned by another nonaffiliated person;-~~

20 ~~B. using a nonaffiliated third party call center-~~  
21 ~~to accept and process telephone or electronic orders of-~~  
22 ~~tangible personal property or licenses primarily from non-New-~~  
23 ~~Mexico buyers, which orders are forwarded to a location-~~  
24 ~~outside New Mexico for filling, or to provide services-~~  
25 ~~primarily to non-New Mexico customers; and~~ SM

1 ~~SM~~ C. ~~the activities of a person without physical~~  
2 ~~presence in this state if the person and the person's~~  
3 ~~affiliates have less than one hundred thousand dollars~~  
4 ~~(\$100,000) of gross receipts in the state, based on receipts~~  
5 ~~during the prior calendar year. As used in this subsection,~~  
6 ~~"affiliate" means a business entity that, directly or~~  
7 ~~indirectly, through one or more intermediaries, controls, is~~  
8 ~~controlled by or is under common control with another~~  
9 ~~business entity."~~ ~~SM~~

10 ~~SM~~ SECTION 11. ~~Section 7-9-3.5 NMSA 1978 (being Laws 2003,~~  
11 ~~Chapter 272, Section 3, as amended) is amended to read:~~

12 ~~"7-9-3.5. DEFINITION--GROSS RECEIPTS.--~~

13 ~~A. As used in the Cross Receipts and Compensating~~  
14 ~~Tax Act:~~

15 ~~(1) "gross receipts" means the total amount~~  
16 ~~of money or the value of other consideration received from~~  
17 ~~selling property in New Mexico, from leasing or licensing~~  
18 ~~property employed in New Mexico, from granting a right to use~~  
19 ~~a franchise employed in New Mexico, from selling services~~  
20 ~~performed outside New Mexico, the product of which is~~  
21 ~~initially used in New Mexico, or from performing services in~~  
22 ~~New Mexico. In an exchange in which the money or other~~  
23 ~~consideration received does not represent the value of the~~  
24 ~~property or service exchanged, "gross receipts" means the~~  
25 ~~reasonable value of the property or service exchanged;~~ ~~SM~~

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~~JM~~(2) "gross receipts" includes:-

~~(a) any receipts from sales of tangible personal property handled on consignment, including third-party sales made over a multi-vendor marketplace platform that acts as the intermediary, typically as the processor of the transaction, between the seller and the purchaser;~~

~~(b) the total commissions or fees derived from the business of buying, selling or promoting the purchase, sale or lease, as an agent or broker on a commission or fee basis, of any property, service, stock, bond or security;~~

~~(c) amounts paid by members of any cooperative association or similar organization for sales or leases of personal property or performance of services by such organization;~~

~~(d) amounts received from transmitting messages or conversations by persons providing telephone or telegraph services;~~

~~(e) amounts received by a New Mexico florist from the sale of flowers, plants or other products that are customarily sold by florists where the sale is made pursuant to orders placed with the New Mexico florist that are filled and delivered outside New Mexico by an out-of-state florist; and~~

~~(f) the receipts of a home service ~~JM~~~~

1 ~~SM~~ provider from providing mobile telecommunications services to  
2 customers whose place of primary use is in New Mexico if: 1)  
3 the mobile telecommunications services originate and  
4 terminate in the same state, regardless of where the services  
5 originate, terminate or pass through; and 2) the charges for  
6 mobile telecommunications services are billed by or for a  
7 customer's home service provider and are deemed provided by  
8 the home service provider. For the purposes of this section,  
9 "home service provider", "mobile telecommunications  
10 services", "customer" and "place of primary use" have the  
11 meanings given in the federal Mobile Telecommunications  
12 Sourcing Act; and

13 ~~(3) "gross receipts" excludes:~~

- 14 ~~(a) cash discounts allowed and taken;~~
- 15 ~~(b) New Mexico gross receipts tax,~~  
16 ~~governmental gross receipts tax and leased vehicle gross~~  
17 ~~receipts tax payable on transactions for the reporting~~  
18 ~~period;~~
- 19 ~~(c) taxes imposed pursuant to the~~  
20 ~~provisions of any local option gross receipts tax that is~~  
21 ~~payable on transactions for the reporting period;~~
- 22 ~~(d) any gross receipts or sales taxes~~  
23 ~~imposed by an Indian nation, tribe or pueblo; provided that~~  
24 ~~the tax is approved, if approval is required by federal law~~  
25 ~~or regulation, by the secretary of the interior of the United~~

1 ~~States; and provided further that the gross receipts or sales~~  
2 ~~tax imposed by the Indian nation, tribe or pueblo provides a~~  
3 ~~reciprocal exclusion for gross receipts, sales or gross~~  
4 ~~receipts-based excise taxes imposed by the state or its~~  
5 ~~political subdivisions;~~

6 ~~(e) any type of time-price~~  
7 ~~differential;~~

8 ~~(f) amounts received solely on behalf~~  
9 ~~of another in a disclosed agency capacity; and~~

10 ~~(g) amounts received by a New Mexico~~  
11 ~~florist from the sale of flowers, plants or other products~~  
12 ~~that are customarily sold by florists where the sale is made~~  
13 ~~pursuant to orders placed with an out-of-state florist for~~  
14 ~~filling and delivery in New Mexico by a New Mexico florist.~~

15 ~~B. When the sale of property or service is made~~  
16 ~~under any type of charge, conditional or time-sales contract~~  
17 ~~or the leasing of property is made under a leasing contract,~~  
18 ~~the seller or lessor may elect to treat all receipts,~~  
19 ~~excluding any type of time price differential, under such~~  
20 ~~contracts as gross receipts as and when the payments are~~  
21 ~~actually received. If the seller or lessor transfers the~~  
22 ~~seller's or lessor's interest in any such contract to a third~~  
23 ~~person, the seller or lessor shall pay the gross receipts tax~~  
24 ~~upon the full sale or leasing contract amount, excluding any~~  
25 ~~type of time price differential."~~



1 ~~SM SECTION 12. Section 7-9-4.3 NMSA 1978 (being Laws 1991,~~  
2 ~~Chapter 8, Section 2, as amended by Laws 1993, Chapter 332,~~  
3 ~~Section 1 and by Laws 1993, Chapter 352, Section 1) is~~  
4 ~~amended to read:~~

5 ~~"7-9-4.3. IMPOSITION AND RATE OF TAX--DENOMINATION AS-~~  
6 ~~"GOVERNMENTAL GROSS RECEIPTS TAX". For the privilege of~~  
7 ~~engaging in certain activities by governments, there is~~  
8 ~~imposed on every agency, institution, instrumentality or~~  
9 ~~political subdivision of the state, except any school~~  
10 ~~district, an excise tax of five percent of governmental gross~~  
11 ~~receipts. The tax imposed by this section shall be referred~~  
12 ~~to as the "governmental gross receipts tax".~~ SM

13 ~~SM SECTION 13. Section 7-9-7.1 NMSA 1978 (being Laws 1993,~~  
14 ~~Chapter 45, Section 1, as amended) is amended to read:~~

15 ~~"7-9-7.1. DEPARTMENT BARRED FROM TAKING COLLECTION~~  
16 ~~ACTIONS WITH RESPECT TO CERTAIN COMPENSATING TAX~~  
17 ~~LIABILITIES.~~

18 ~~A. The department shall take no action to enforce~~  
19 ~~collection of compensating tax due on purchases made by an~~  
20 ~~individual if:~~

21 ~~(1) the property is used only for~~  
22 ~~nonbusiness purposes;~~

23 ~~(2) the property is not a manufactured home;~~

24 ~~and~~

25 ~~(3) the individual is not an agent for~~ SM

1 ~~SM~~ collection of compensating tax pursuant to Section 7-9-10

2 NMSA 1978.

3 B. ~~The department shall take no action to enforce~~  
4 ~~collection of gross receipts tax for a tax period prior to~~  
5 ~~the effective date of this 2017 act on persons engaging in~~  
6 ~~business if, for those tax periods, those persons:~~

7 (1) ~~lacked physical presence in the state;~~

8 ~~and~~

9 (2) ~~did not report taxable gross receipts.~~

10 C. ~~The prohibition in Subsection A of this section~~  
11 ~~does not prevent the department from enforcing collection of~~  
12 ~~compensating tax on purchases from persons who are not~~  
13 ~~individuals, who are agents for collection pursuant to~~  
14 ~~Section 7-9-10 NMSA 1978 or who use the property in the~~  
15 ~~course of engaging in business in New Mexico or from~~  
16 ~~enforcing collection of compensating tax due on purchase of~~  
17 ~~manufactured homes." SM~~

18 SECTION 14. Section 7-9-12 NMSA 1978 (being Laws 1969,  
19 Chapter 144, Section 5, as amended) is amended to read:

20 "7-9-12. EXEMPTIONS.-- Exemptions from either the gross  
21 receipts tax or the compensating tax are not exemptions from  
22 both taxes unless explicitly stated otherwise by law."

23 ~~SM~~ SECTION 15. ~~Section 7-9-29 NMSA 1978 (being Laws 1970,~~  
24 ~~Chapter 12, Section 3, as amended) is amended to read:~~

25 ~~"7-9-29. EXEMPTION--GROSS RECEIPTS TAX--CERTAIN SM~~

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~~SM~~ ORGANIZATIONS.

~~A. Exempted from the gross receipts tax are the receipts of organizations that demonstrate to the department that they have been granted exemption from the federal income tax by the United States commissioner of internal revenue as organizations described in Section 501(c)(3) of the United States Internal Revenue Code of 1986, as that section may be amended or renumbered, except receipts as provided in Subsection B of this section.~~

~~B. Exempted from any local option gross receipts tax, but not the state gross receipts tax, are receipts of an organization that is a hospital licensed by the department of health that demonstrates to the department that it has been granted exemption from the federal income tax by the United States commissioner of internal revenue as organizations described in Section 501(c)(3) of the United States Internal Revenue Code of 1986, as that section may be amended or renumbered.~~

~~C. Exempted from the gross receipts tax are the receipts from carrying on chamber of commerce, visitor bureau and convention bureau functions of organizations that demonstrate to the department that they have been granted exemption from the federal income tax by the United States commissioner of internal revenue as organizations described in Section 501(c)(6) of the United States Internal Revenue.~~

1 ~~Code of 1986, as that section may be amended or renumbered.~~

2 ~~D. This section does not apply to receipts derived~~  
3 ~~from an unrelated trade or business as defined in Section 513~~  
4 ~~of the United States Internal Revenue Code of 1986, as that~~  
5 ~~section may be amended or renumbered."~~

6 SECTION 16. Section 7-9-45 NMSA 1978 (being Laws 1969,  
7 Chapter 144, Section 35, as amended) is amended to read:

8 "7-9-45. DEDUCTIONS.--

9 A. Receipts may only be deducted once from gross  
10 receipts or governmental gross receipts when computing the  
11 gross receipts tax or governmental gross receipts tax due.

12 B. The same receipts shall not be both exempt from  
13 the gross receipts tax and deducted from gross receipts.

14 C. The same receipts shall not be both exempt from  
15 the governmental gross receipts tax and deducted from  
16 governmental gross receipts."

17 ~~SECTION 17. Section 7-9-48 NMSA 1978 (being Laws 1969,~~  
18 ~~Chapter 144, Section 38, as amended) is amended to read:~~

19 ~~"7-9-48. DEDUCTION--GROSS RECEIPTS TAX--GOVERNMENTAL~~  
20 ~~GROSS RECEIPTS--SALE OF A SERVICE FOR RESALE.--~~

21 ~~A. Receipts from selling a service for resale may~~  
22 ~~be deducted from gross receipts or from governmental gross~~  
23 ~~receipts if the sale is made to a person who delivers a~~  
24 ~~nontaxable transaction certificate to the seller. The buyer~~  
25 ~~delivering the nontaxable transaction certificate must resell~~

1 ~~the service in the ordinary course of business and the resale~~  
2 ~~must be subject to the gross receipts tax or governmental~~  
3 ~~gross receipts tax.~~

4 ~~B. A taxpayer allowed a deduction pursuant to this~~  
5 ~~section shall report the amount deducted separately in a~~  
6 ~~manner required by the department."~~ SM

7 ~~SECTION 18. Section 7-9-54.3 NMSA 1978 (being Laws~~  
8 ~~2002, Chapter 37, Section 8, as amended by Laws 2010, Chapter~~  
9 ~~77, Section 2 and by Laws 2010, Chapter 78, Section 2) is~~  
10 ~~amended to read:~~

11 ~~"7-9-54.3. DEDUCTION - GROSS RECEIPTS TAX - WIND AND~~  
12 ~~SOLAR GENERATION EQUIPMENT SALES TO GOVERNMENTS.~~

13 ~~A. Receipts from selling wind generation equipment~~  
14 ~~or solar generation equipment to a government for the purpose~~  
15 ~~of installing a wind or solar electric generation facility~~  
16 ~~may be deducted from gross receipts.~~

17 ~~B. The deduction allowed pursuant to this section~~  
18 ~~shall not be claimed for receipts from an expenditure for~~  
19 ~~which a taxpayer claims a credit pursuant to Section~~  
20 ~~7-2-18.25 or 7-2A-25 NMSA 1978.~~

21 ~~C. A taxpayer allowed a deduction pursuant to this~~  
22 ~~section shall report the amount deducted separately in a~~  
23 ~~manner required by the department.~~

24 ~~D. As used in this section:~~

25 ~~(1) "government" means the United States or~~ SM

1 ~~the state or a governmental unit or a subdivision, agency,~~  
2 ~~department or instrumentality of the federal government or~~  
3 ~~the state;~~

4 ~~(2) "related equipment" means transformers,~~  
5 ~~circuit breakers and switching and metering equipment used to~~  
6 ~~connect a wind or solar electric generation plant to the~~  
7 ~~electric grid;~~

8 ~~(3) "solar generation equipment" means solar~~  
9 ~~thermal energy collection, concentration and heat transfer~~  
10 ~~and conversion equipment; solar tracking hardware and~~  
11 ~~software; photovoltaic panels and inverters; support~~  
12 ~~structures; turbines and associated electrical generating~~  
13 ~~equipment used to generate electricity from solar thermal~~  
14 ~~energy; and related equipment; and~~

15 ~~(4) "wind generation equipment" means wind~~  
16 ~~generation turbines, blades, nacelles, rotors and supporting~~  
17 ~~structures used to generate electricity from wind and related~~  
18 ~~equipment."~~

19 ~~SECTION 19. Section 7-9-73.1 NMSA 1978 (being Laws~~  
20 ~~1991, Chapter 8, Section 3, as amended) is amended to read:~~

21 ~~"7-9-73.1. DEDUCTION--GROSS RECEIPTS--HOSPITALS.--~~

22 ~~A. Prior to July 1, 2018, sixty percent, and on~~  
23 ~~and after July 1, 2018, sixty five percent of the receipts of~~  
24 ~~hospitals licensed by the department of health may be~~  
25 ~~deducted from gross receipts; provided that this deduction~~

1 ~~It~~ may be applied only to the taxable gross receipts remaining  
2 after all other appropriate deductions have been taken.

3 B. Prior to July 1, 2018, sixty percent, and on  
4 and after July 1, 2018, sixty five percent of the receipts of  
5 a hospital licensed by the department of health may be  
6 deducted from governmental gross receipts; provided that this  
7 deduction may be applied only to the taxable governmental  
8 gross receipts remaining after all other appropriate  
9 deductions have been taken.

10 C. A taxpayer allowed a deduction pursuant to this  
11 section shall report the amount deducted separately in a  
12 manner required by the department." ~~SM~~

13 ~~SECTION 20.~~ Section 7-9-73.2 NMSA 1978 (being Laws  
14 1998, Chapter 95, Section 2 and Laws 1998, Chapter 99,  
15 Section 4, as amended) is amended to read:

16 ~~"7-9-73.2. DEDUCTION--GROSS RECEIPTS TAX AND~~  
17 ~~GOVERNMENTAL GROSS RECEIPTS TAX--PRESCRIPTION DRUGS~~  
18 ~~OXYGEN.~~

19 A. Receipts from the sale of prescription drugs  
20 and oxygen and oxygen services provided by a licensed  
21 medicare durable medical equipment provider may be deducted  
22 from gross receipts and governmental gross receipts.

23 B. A taxpayer allowed a deduction pursuant to this  
24 section shall report the amount deducted separately in a  
25 manner required by the department. ~~SM~~

1 ~~SM~~C. For the purposes of this section, "prescription  
2 ~~drugs" means insulin and substances that are:~~

3 ~~(1) dispensed by or under the supervision of~~  
4 ~~a licensed pharmacist or by a physician or other person~~  
5 ~~authorized under state law to do so;~~

6 ~~(2) prescribed for a specified person by a~~  
7 ~~person authorized under state law to prescribe the substance;~~  
8 ~~and~~

9 ~~(3) subject to the restrictions on sale~~  
10 ~~contained in Subparagraph 1 of Subsection (b) of 21-~~  
11 ~~USCA 353."~~ ~~SM~~

12 ~~SM~~ SECTION 21. Section 7-9-75 NMSA 1978 (being Laws 1972,  
13 Chapter 39, Section 2) is amended to read:

14 ~~"7-9-75. DEDUCTION--GROSS RECEIPTS TAX--SALE OF CERTAIN-~~  
15 ~~SERVICES PERFORMED DIRECTLY ON PRODUCT MANUFACTURED.--~~

16 ~~A. Receipts from selling the service of combining~~  
17 ~~or processing components or materials may be deducted from~~  
18 ~~gross receipts if the sale is made to a person engaged in the~~  
19 ~~business of manufacturing who delivers a nontaxable~~  
20 ~~transaction certificate to the seller. The buyer delivering~~  
21 ~~the nontaxable transaction certificate must have the service~~  
22 ~~performed directly upon tangible personal property that the~~  
23 ~~buyer is in the business of manufacturing or upon ingredients~~  
24 ~~or component parts thereof.~~

25 ~~B. A taxpayer allowed a deduction pursuant to this~~ HB 2



1 ~~section shall report the amount deducted separately in a~~  
2 ~~manner required by the department."~~ SM

3 ~~SECTION 22. TEMPORARY PROVISION--TAXATION AND REVENUE--~~  
4 ~~DEPARTMENT REPORT TO LEGISLATURE HEALTH CARE INDUSTRY--~~  
5 ~~REVENUE AND TAX EXPENDITURES. The taxation and revenue~~  
6 ~~department shall evaluate health care industry related~~  
7 ~~revenue collections and tax expenditures and shall, by~~  
8 ~~December 1, 2017, report to the legislative finance committee~~  
9 ~~and the revenue stabilization and tax policy committee the~~  
10 ~~result of that evaluation with a recommendation as to whether~~  
11 ~~existing tax expenditures for that industry should be~~  
12 ~~adjusted.~~ SM

13 SECTION 23. REPEAL.--Section 6-4-5 NMSA 1978 (being  
14 Laws 1987, Chapter 347, Section 5) is repealed.

15 ~~SECTION 24. ADDITIONAL REPEAL. Sections 7-1-6.57 and~~  
16 ~~7-9-96.1 NMSA 1978 (being Laws 2007, Chapter 361, Sections 1-~~  
17 ~~and 7) are repealed.~~ SM

18 SECTION 25. EFFECTIVE DATE.--


19 A. If this act takes effect on or before July 1,  
20 2017, the effective date of the provisions of Sections 4  
21 through 22 and 24 of this act is July 1, 2017.

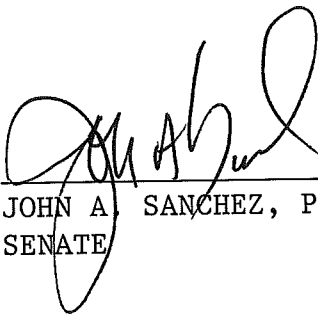
22 B. If this act takes effect after July 1, 2017,  
23 the effective date of the provisions of Sections 4 through 22  
24 and 24 of this act is the first day of the month following  
25 the date this act takes effect.

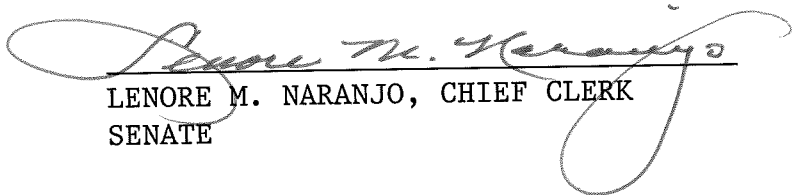
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C. The effective date of the provisions of  
Sections 1 through 3 and 23 of this act is July 1, 2018.

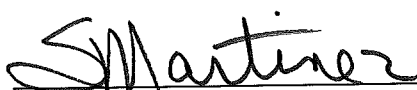
  
BRIAN EGOLF, SPEAKER  
HOUSE OF REPRESENTATIVES

  
LISA M. ORTIZ MCCUTCHEON, CHIEF CLERK  
HOUSE OF REPRESENTATIVES

  
JOHN A. SANCHEZ, PRESIDENT  
SENATE

  
LENORE M. NARANJO, CHIEF CLERK  
SENATE

Approved by me this 26<sup>th</sup> day of May, 2017

  
SUSANA MARTINEZ, GOVERNOR  
STATE OF NEW MEXICO