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**HOUSE BILL 786**

**45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001**

**INTRODUCED BY**

**Daniel Foley**

**AN ACT**

**RELATING TO THE ENVIRONMENT; ENACTING THE DRYCLEANER ENVIRONMENTAL RESPONSE ACT; REGULATING THE RELEASE OF DRYCLEANING SOLVENTS INTO THE ENVIRONMENT; PROVIDING FOR A RESPONSE PROGRAM; PRECLUDING CERTAIN ACTIONS; CREATING THE DRYCLEANER ENVIRONMENTAL RESPONSE FUND; PROVIDING FOR EXPENDITURES FROM THE FUND; ENACTING A TAX ON THE GROSS RECEIPTS OF DRYCLEANING FACILITIES; PROVIDING PENALTIES; MAKING AN APPROPRIATION.**

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

**Section 1. [NEW MATERIAL] SHORT TITLE. --Sections 1 through 11 of this act may be cited as the "Drycleaner Environmental Response Act".**

**Section 2. [NEW MATERIAL] DEFINITIONS. --As used in the Drycleaner Environmental Response Act:**

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1           A. "board" means the environmental improvement  
2 board;

3           B. "department" means the department of  
4 environment;

5           C. "drycleaning facility" means a facility that is  
6 or has been engaged in drycleaning operations, other than:

7                   (1) a coin-operated drycleaning operation;

8                   (2) a facility located on a United States  
9 military base;

10                  (3) a uniform service or linen supply  
11 facility; or

12                  (4) a correctional facility;

13           D. "drycleaning operations" means drycleaning of  
14 apparel and household fabrics for the general public using one  
15 or more drycleaning solvents;

16           E. "drycleaning solvent" means a non-aqueous  
17 formulation or product that is used as a primary cleaning  
18 agent in drycleaning operations;

19           F. "fund" means the drycleaner environmental  
20 response fund; and

21           G. "gross receipts" means the gross receipts  
22 reported by a drycleaning facility pursuant to the Gross  
23 Receipts and Compensating Tax Act.

24           Section 3. [NEW MATERIAL] ESTABLISHMENT OF STANDARDS. --

25 No later than December 31, 2001, the board shall, by rule,

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1 establish standards for evaluating releases of drycleaning  
2 solvent at or from drycleaning facilities and the standardized  
3 methods and techniques necessary to adequately respond to the  
4 releases of drycleaning solvent. The rules:

5 A. shall, to the maximum extent practicable, be  
6 applicable to all drycleaning facilities in the state and  
7 shall be cost effective, reasonable and technically feasible;

8 B. may include requirements for measures to  
9 prevent the release of additional contaminants from  
10 contaminated soils into ground water; and

11 C. may require the extraction, treatment and  
12 reinjection of ground water contaminated with drycleaning  
13 solvent if:

14 (1) the ground water is or may reasonably be  
15 expected to be used as a drinking water supply source;

16 (2) the treatment of the ground water at the  
17 time it is extracted for purposes of supplying drinking water  
18 cannot be reasonably expected to adequately protect human  
19 health and the environment; and

20 (3) implementing and continuing the treatment  
21 is likely to achieve significant further reductions in levels  
22 of drycleaning solvent contamination in the ground water.

23 Section 4. [NEW MATERIAL] DRYCLEANER RESPONSE PROGRAM --

24 A. Within six months after the establishment of  
25 standards pursuant to Section 3 of the Drycleaner

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1 Environmental Response Act, the board shall, by rule, enact a  
2 drycleaner response program that:

3 (1) is uniform for all drycleaning facilities  
4 in the state;

5 (2) incorporates the standards established  
6 pursuant to Section 3 of the Drycleaner Environmental Response  
7 Act as the sole criteria for determining what, if any,  
8 response action is necessary at drycleaning facilities; and

9 (3) includes a plan for expending money from  
10 the fund for:

11 (a) an initial assessment of  
12 drycleaning facilities and the degree of compliance with the  
13 standards;

14 (b) prioritizing those drycleaning  
15 facilities for which a response action is necessary; and

16 (c) taking the appropriate response  
17 action.

18 B. The rules adopted pursuant to Subsection A of  
19 this section shall adequately address releases and potential  
20 noncompliant releases of drycleaning solvents from drycleaning  
21 facilities. Except as provided in those rules, the department  
22 shall take no action relating to drycleaning facilities except  
23 in a situation where a release of drycleaning solvent presents  
24 an imminent and substantial hazard to human health.

25 Section 5. [NEW MATERIAL] PREVENTION MEASURES FOR

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1 DRYCLEANING FACILITIES. --

2 A. Effective July 1, 2002:

3 (1) all wastes generated at a drycleaning  
4 facility containing perchloroethylene shall be managed as  
5 hazardous wastes in accordance with state and federal law;

6 (2) no discharges of wastewater from  
7 drycleaning machines or of drycleaning solvent from  
8 drycleaning operations shall be made to a sanitary sewer, a  
9 septic tank or the waters of this state;

10 (3) all newly installed drycleaning systems  
11 using perchloroethylene shall be of the dry-to-dry type and be  
12 equipped with integral refrigerated condensers for the control  
13 of perchloroethylene emissions;

14 (4) each drycleaning facility shall:

15 (a) install dikes or other containment  
16 structures around each machine or item of equipment in which  
17 any drycleaning solvent is used in order to contain any leak,  
18 spill or release of drycleaning solvent; and

19 (b) to the extent practicable, seal or  
20 otherwise render impervious those portions of all diked floor  
21 surfaces upon which drycleaning solvent may leak, spill or  
22 otherwise be released; and

23 (5) perchloroethylene drycleaning solvent  
24 shall only be delivered to drycleaning facilities by means of  
25 closed, direct-coupled delivery systems.

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1           B. Effective July 1, 2006, no drycleaning facility  
2 shall operate transfer-type drycleaning equipment using  
3 perchloroethylene.

4           C. The board may adopt rules necessary to carry  
5 out the intent of this section and may, by rule, adopt an  
6 alternative measure in lieu of a requirement contained in  
7 Subsection A of this section upon a finding that the  
8 alternative measure will provide equivalent protection for  
9 human health and the environment and will achieve equivalent  
10 prevention of contamination.

11           Section 6. [NEW MATERIAL] DRYCLEANER ENVIRONMENTAL  
12 RESPONSE FUND--EXPENDITURES. --

13           A. The "drycleaner environmental response fund" is  
14 created in the state treasury. The fund shall consist of  
15 distributions and appropriations made to the fund. All  
16 earnings from investment of the fund shall be credited to the  
17 fund. Money in the fund is appropriated to the department of  
18 environment to carry out provisions of the Drycleaner  
19 Environmental Response Act. Disbursements from the fund shall  
20 be by warrant drawn by the secretary of finance and  
21 administration pursuant to vouchers signed by the secretary of  
22 environment or his designee. Any unexpended or unencumbered  
23 balance in the fund at the end of any fiscal year shall not  
24 revert.

25           B. Expenditures from the fund shall be used

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1 exclusively for carrying out the provisions of the Drycleaner  
2 Environmental Response Act; provided that:

3 (1) no more than ten percent of each  
4 expenditure shall be used for overhead and administrative  
5 costs;

6 (2) for each response action taken pursuant  
7 to Section 4 of the Drycleaner Environmental Response Act, the  
8 owner of the drycleaning facility shall be liable of the first  
9 ten thousand dollars (\$10,000) of the cost of the response  
10 action; and

11 (3) no more than one hundred thousand dollars  
12 (\$100,000) shall be expended from the fund for all response  
13 actions taken at a single remediation site.

14 Section 7. [NEW MATERIAL] PRECLUSION OF ACTIONS. --

15 A. Except as provided elsewhere in the Drycleaning  
16 Environmental Response Act, no person who owns or operates, or  
17 formerly owned or operated, a drycleaning facility, or who  
18 otherwise could be liable as a result of any release of  
19 drycleaning solvent at or from a drycleaning facility, shall  
20 be subject to an administrative or judicial action brought by  
21 or on behalf of a person, including the state or its agencies,  
22 instrumentalities or political subdivisions, to recover  
23 damages or other costs associated with an action to assess,  
24 clean up, remediate or otherwise respond to a release or  
25 potential noncompliant release of drycleaning solvent at or

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1 from a drycleaning facility unless the person against whom the  
2 claim is brought owned or operated the facility after July 1,  
3 2001 and:

4 (1) has failed to pay the drycleaning  
5 facility gross receipts tax due pursuant to Section 11 of the  
6 Drycleaner Environmental Response Act; or

7 (2) has failed to comply with a substantive  
8 state or federal law or rule relating to the operation of the  
9 drycleaning facility or the release or threatened release of  
10 drycleaning solvent.

11 B. Except as provided elsewhere in the Drycleaner  
12 Environmental Response Act, no person who owns or operates, or  
13 formerly owned or operated, a drycleaning facility, or who  
14 otherwise could be liable as a result of any release of  
15 drycleaning solvent at or from a drycleaning facility, shall  
16 be subject to an administrative or judicial action brought by  
17 or on behalf of a person, including the state or its agencies,  
18 instrumentalities or political subdivisions, to recover  
19 damages caused by a release of drycleaning solvent at or from  
20 a drycleaning facility unless the person against whom the  
21 claim is brought owned or operated the facility after July 1,  
22 2001 and:

23 (1) has failed to pay tax due under Section  
24 11 of the Drycleaner Environmental Response Act; or

25 (2) has failed to comply with a substantive



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1 state or federal law or rule relating to the operation of the  
2 drycleaning facility or the release or threatened release of  
3 drycleaning solvent.

4 C. Nothing in this section affects the liability  
5 of a person who, in the course of delivering or supplying  
6 drycleaning solvent to a drycleaning facility, violates the  
7 provisions of Paragraph (5) of Subsection A of Section 5 of  
8 the Drycleaner Environmental Response Act.

9 Section 8. [NEW MATERIAL] DEPARTMENT-- DUTIES-- CIVIL  
10 PENALTIES. --

11 A. The department is responsible for the  
12 administration and enforcement of the provisions of the  
13 Drycleaner Environmental Response Act and of all rules adopted  
14 by the board pursuant to that act. The department is  
15 delegated all authority necessary and appropriate to carry out  
16 its responsibilities.

17 B. The department shall establish and maintain a  
18 list of active and inactive drycleaning facilities in this  
19 state.

20 C. Except for violations of the Tax Administration  
21 Act related to taxes due or paid pursuant to Section 11 of the  
22 Drycleaner Environmental Response Act, a person who violates a  
23 provision of the Drycleaner Environmental Response Act or a  
24 rule adopted pursuant to that act shall be subject to a civil  
25 penalty not to exceed five hundred dollars (\$500) for each

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1 offense. All actions to recover the penalties provided for in  
2 this section may be brought by the department before a  
3 district court. The department may bring an action in the  
4 district court seeking injunctive relief to enforce provisions  
5 of the Drycleaner Environmental Response Act.

6 Section 9. [NEW MATERIAL] DRYCLEANER ADVISORY  
7 COMMITTEE. --The secretary of environment shall appoint a  
8 "drycleaner advisory committee" composed of three or more  
9 representatives from the drycleaning industry in New Mexico.  
10 The committee shall advise the department and the board on all  
11 matters relating to the adoption of rules pursuant to the  
12 Drycleaner Environmental Response Act.

13 Section 10. [NEW MATERIAL] STATE LIABILITY-- EXEMPTION  
14 FROM NEW MEXICO INSURANCE CODE. --

15 A. Nothing in the Drycleaner Environmental  
16 Response Act establishes or creates any liability or  
17 responsibility on the part of the department or the state to  
18 pay the costs of a response action from any source other than  
19 the fund, in the manner described, nor shall the department or  
20 the state have any liability or responsibility to make any  
21 payments for response action costs if the balance in the fund  
22 is insufficient to cover those costs.

23 B. Nothing in the Drycleaner Environmental  
24 Response Act creates an insurance company or an insurance  
25 fund. The fund is not subject to the provisions of the New

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1 Mexico Insurance Code.

2 Section 11. [NEW MATERIAL] DRYCLEANING FACILITY GROSS  
3 RECEIPTS TAX. --

4 A. An excise tax is imposed on the gross receipts  
5 of any person operating a drycleaning facility in New Mexico.  
6 Until adjusted pursuant to Subsection B of this section, the  
7 rate of the tax shall be two percent. The tax imposed by this  
8 section shall be referred to as the "drycleaning facility  
9 gross receipts tax".

10 B. On March 31 of each year, the secretary of  
11 environment shall certify to the secretary of taxation and  
12 revenue the amount of the unexpended or unencumbered balance  
13 remaining in the fund. The rate of the tax for the succeeding  
14 fiscal year shall be as follows:

15 (1) if the amount certified is less than two  
16 million dollars (\$2,000,000), the tax rate shall be two  
17 percent;

18 (2) if the amount certified is two million  
19 dollars (\$2,000,000) or more but less than three million  
20 dollars (\$3,000,000), the tax rate shall be one percent; and

21 (3) if the amount certified is three million  
22 dollars (\$3,000,000) or more, the tax rate shall be zero.

23 C. The drycleaning facility gross receipts tax is  
24 to be paid on or before the twenty-fifth day of the month  
25 following the month in which the taxable event occurs.

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1           D. The taxation and revenue department shall  
2 administer and enforce the collection of the drycleaning  
3 facility gross receipts tax, and the Tax Administration Act  
4 applies to the administration and enforcement of the tax.

5           Section 12. A new section of the Tax Administration Act  
6 is enacted to read:

7           "[NEW MATERIAL] DISTRIBUTION-- DRYCLEANER ENVIRONMENTAL  
8 RESPONSE FUND.--Pursuant to Section 7-1-6.1 NMSA 1978, a  
9 distribution shall be made to the drycleaner environmental  
10 response fund in an amount equal to the net receipts  
11 attributable to the drycleaning facility gross receipts tax."

12           Section 13. Section 7-9-3 NMSA 1978 (being Laws 1978,  
13 Chapter 46, Section 1, as amended by Laws 2000, Chapter 84,  
14 Section 1 and also by Laws 2000, Chapter 101, Section 1) is  
15 amended to read:

16           "7-9-3. DEFINITIONS.--As used in the Gross Receipts and  
17 Compensating Tax Act:

18           A. "department" means the taxation and revenue  
19 department, the secretary of taxation and revenue or any  
20 employee of the department exercising authority lawfully  
21 delegated to that employee by the secretary;

22           B. "buying" or "selling" means any transfer of  
23 property for consideration or any performance of service for  
24 consideration;

25           C. "construction" means building, altering,

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1 repairing or demolishing in the ordinary course of business  
2 any:

3 (1) road, highway, bridge, parking area or  
4 related project;

5 (2) building, stadium or other structure;

6 (3) airport, subway or similar facility;

7 (4) park, trail, athletic field, golf course  
8 or similar facility;

9 (5) dam, reservoir, canal, ditch or similar  
10 facility;

11 (6) sewerage or water treatment facility,  
12 power generating plant, pump station, natural gas compressing  
13 station, gas processing plant, coal gasification plant,  
14 refinery, distillery or similar facility;

15 (7) sewerage, water, gas or other pipeline;

16 (8) transmission line;

17 (9) radio, television or other tower;

18 (10) water, oil or other storage tank;

19 (11) shaft, tunnel or other mining  
20 appurtenance;

21 (12) microwave station or similar facility;

22 [~~or~~]

23 (13) retaining wall, wall, fence gate or  
24 similar structure; or

25 [~~(13)~~] (14) similar work;

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1 "construction" also means:

2 [~~(14)~~] (15) leveling or clearing land;

3 [~~(15)~~] (16) excavating earth;

4 [~~(16)~~] (17) drilling wells of any type,

5 including seismograph shot holes or core drilling; or

6 [~~(17)~~] (18) similar work;

7 D. "financial corporation" means any savings and  
8 loan association or any incorporated savings and loan company,  
9 trust company, mortgage banking company, consumer finance  
10 company or other financial corporation;

11 E. "engaging in business" means carrying on or  
12 causing to be carried on any activity with the purpose of  
13 direct or indirect benefit, except that:

14 (1) "engaging in business" does not include  
15 having a world wide web site as a third-party content provider  
16 on a computer physically located in New Mexico but owned by  
17 another nonaffiliated person; and

18 (2) "engaging in business" does not include  
19 using a nonaffiliated third-party call center to accept and  
20 process telephone or electronic orders of tangible personal  
21 property or licenses primarily from non-New Mexico buyers,  
22 which orders are forwarded to a location outside New Mexico  
23 for filling;

24 F. "gross receipts" means the total amount of  
25 money or the value of other consideration received from

1 selling property in New Mexico, from leasing property employed  
2 in New Mexico, from selling services performed outside New  
3 Mexico the product of which is initially used in New Mexico or  
4 from performing services in New Mexico. In an exchange in  
5 which the money or other consideration received does not  
6 represent the value of the property or service exchanged,  
7 "gross receipts" means the reasonable value of the property or  
8 service exchanged.

9 (1) "Gross receipts" includes:

10 (a) any receipts from sales of tangible  
11 personal property handled on consignment;

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

17 (c) amounts paid by members of any  
18 cooperative association or similar organization for sales or  
19 leases of personal property or performance of services by such  
20 organization; and

21 (d) amounts received from transmitting  
22 messages or conversations by persons providing telephone or  
23 telegraph services.

24 (2) "Gross receipts" excludes:

25 (a) cash discounts allowed and taken;

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1 (b) New Mexico gross receipts tax,  
2 governmental gross receipts tax, drycleaning facility gross  
3 receipts tax and leased vehicle gross receipts tax payable on  
4 transactions for the reporting period;

5 (c) taxes imposed pursuant to the  
6 provisions of any local option gross receipts tax that is  
7 payable on transactions for the reporting period;

8 (d) any gross receipts or sales taxes  
9 imposed by an Indian nation, tribe or pueblo; provided that  
10 the tax is approved, if approval is required by federal law or  
11 regulation, by the secretary of the interior of the United  
12 States; and provided further that the gross receipts or sales  
13 tax imposed by the Indian nation, tribe or pueblo provides a  
14 reciprocal exclusion for gross receipts, sales or gross  
15 receipts-based excise taxes imposed by the state or its  
16 political subdivisions;

17 (e) any type of time-price  
18 differential; and

19 (f) amounts received solely on behalf  
20 of another in a disclosed agency capacity.

21 (3) When the sale of property or service is  
22 made under any type of charge, conditional or time-sales  
23 contract or the leasing of property is made under a leasing  
24 contract, the seller or lessor may elect to treat all  
25 receipts, excluding any type of time-price differential, under



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1 such contracts as gross receipts as and when the payments are  
2 actually received. If the seller or lessor transfers his  
3 interest in any such contract to a third person, the seller or  
4 lessor shall pay the gross receipts tax upon the full sale or  
5 leasing contract amount, excluding any type of time-price  
6 differential;

7 G. "manufacturing" means combining or processing  
8 components or materials to increase their value for sale in  
9 the ordinary course of business, but does not include  
10 construction;

11 H. "person" means:

12 (1) an individual, estate, trust, receiver,  
13 cooperative association, club, corporation, company, firm,  
14 partnership, limited liability company, limited liability  
15 partnership, joint venture, syndicate or other entity,  
16 including any gas, water or electric utility owned or operated  
17 by a county, municipality or other political subdivision of  
18 the state; or

19 (2) a national, federal, state, Indian or  
20 other governmental unit or subdivision, or an agency,  
21 department or instrumentality of any of the foregoing;

22 I. "property" means real property, tangible  
23 personal property, licenses, franchises, patents, trademarks  
24 and copyrights. Tangible personal property includes  
25 electricity and manufactured homes;

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[bracketed material] = delete

1           J. "leasing" means an arrangement whereby, for a  
2 consideration, property is employed for or by any person other  
3 than the owner of the property, except that the granting of a  
4 license to use property is the sale of a license and not a  
5 lease;

6           K. "service" means all activities engaged in for  
7 other persons for a consideration, which activities involve  
8 predominantly the performance of a service as distinguished  
9 from selling or leasing property. "Service" includes  
10 activities performed by a person for its members or  
11 shareholders. In determining what is a service, the intended  
12 use, principal objective or ultimate objective of the  
13 contracting parties shall not be controlling. "Service"  
14 includes construction activities and all tangible personal  
15 property that will become an ingredient or component part of a  
16 construction project. Such tangible personal property retains  
17 its character as tangible personal property until it is  
18 installed as an ingredient or component part of a construction  
19 project in New Mexico. However, sales of tangible personal  
20 property that will become an ingredient or component part of a  
21 construction project to persons engaged in the construction  
22 business are sales of tangible personal property;

23           L. "use" or "using" includes use, consumption or  
24 storage other than storage for subsequent sale in the ordinary  
25 course of business or for use solely outside this state;

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[bracketed material] = delete

1 M "secretary" means the secretary of taxation and  
2 revenue or the secretary's delegate;

3 N. "manufactured home" means a movable or portable  
4 housing structure for human occupancy that exceeds either a  
5 width of eight feet or a length of forty feet constructed to  
6 be towed on its own chassis and designed to be installed with  
7 or without a permanent foundation;

8 O. "initial use" or "initially used" means the  
9 first employment for the intended purpose and does not include  
10 the following activities:

11 (1) observation of tests conducted by the  
12 performer of services;

13 (2) participation in progress reviews,  
14 briefings, consultations and conferences conducted by the  
15 performer of services;

16 (3) review of preliminary drafts, drawings  
17 and other materials prepared by the performer of the services;

18 (4) inspection of preliminary prototypes  
19 developed by the performer of services; or

20 (5) similar activities;

21 P. "research and development services" means an  
22 activity engaged in for other persons for consideration, for  
23 one or more of the following purposes:

24 (1) advancing basic knowledge in a recognized  
25 field of natural science;

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1 (2) advancing technology in a field of  
2 technical endeavor;

3 (3) the development of a new or improved  
4 product, process or system with new or improved function,  
5 performance, reliability or quality, whether or not the new or  
6 improved product, process or system is offered for sale, lease  
7 or other transfer;

8 (4) the development of new uses or  
9 applications for an existing product, process or system,  
10 whether or not the new use or application is offered as the  
11 rationale for purchase, lease or other transfer of the  
12 product, process or system;

13 (5) analytical or survey activities  
14 incorporating technology review, application, trade-off study,  
15 modeling, simulation, conceptual design or similar activities,  
16 whether or not offered for sale, lease or other transfer; or

17 (6) the design and development of prototypes  
18 or the integration of systems incorporating advances,  
19 developments or improvements included in Paragraphs (1)  
20 through (5) of this subsection;

21 Q. "local option gross receipts tax" means a tax  
22 authorized to be imposed by a county or municipality upon the  
23 taxpayer's gross receipts and required to be collected by the  
24 department at the same time and in the same manner as the  
25 gross receipts tax; "local option gross receipts tax" includes

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1 the taxes imposed pursuant to the Municipal Local Option Gross  
2 Receipts Taxes Act, Supplemental Municipal Gross Receipts Tax  
3 Act, County Local Option Gross Receipts Taxes Act, Local  
4 Hospital Gross Receipts Tax Act, County Correctional Facility  
5 Gross Receipts Tax Act and such other acts as may be enacted  
6 authorizing counties or municipalities to impose taxes on  
7 gross receipts, which taxes are to be collected by the  
8 department; and

9 R. "prescription drugs" means insulin and  
10 substances that are:

11 (1) dispensed by or under the supervision of  
12 a licensed pharmacist or by a physician or other person  
13 authorized under state law to do so;

14 (2) prescribed for a specified person by a  
15 person authorized under state law to prescribe the substance;  
16 and

17 (3) subject to the restrictions on sale  
18 contained in Subparagraph 1 of Subsection (b) of 21 USCA 353. "

19 Section 14. EFFECTIVE DATE. -- The effective date of the  
20 provisions of this act is July 1, 2001.

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