

1 SENATE BILL 278

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

4 Gerald Ortiz y Pino and Mimi Stewart

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10 AN ACT

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

23
24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

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1 through 46 of this act may be cited as the "Cannabis Revenue
2 and Freedom Act".

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

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

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

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

13 D. to establish a licensing and permitting system
14 for industrial hemp and agricultural hemp seed production; and

15 E. together with existing provisions of law, to
16 prevent:

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

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

21 (3) the diversion of marijuana from this state
22 to other states;

23 (4) legal marijuana activity from being used
24 as a cover for the trafficking of illegal drugs or for other
25 illegal activity; and

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1 (5) impaired driving and the exacerbation of
2 other adverse public health consequences associated with the
3 use of marijuana.

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

6 A. "advertisement":

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

12 (2) does not include:

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

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

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

23 B. "agricultural hemp seed" means seed of the plant
24 of the genus Cannabis that is intended for sale or is sold to
25 or purchased by a licensed grower;

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- 1 C. "board" means the cannabis control board;
- 2 D. "consumer" means a person who purchases,
3 acquires, owns, holds or uses marijuana items for a purpose
4 other than resale;
- 5 E. "crop" means a contiguous field of industrial
6 hemp grown pursuant to a single license;
- 7 F. "department" means the regulation and licensing
8 department;
- 9 G. "financial consideration":
- 10 (1) means the value that is given or received,
11 directly or indirectly, through sales, barter, trade, fees,
12 charges, dues, contributions or donations; and
- 13 (2) does not mean the value in homegrown
14 marijuana or homemade marijuana products that are grown or made
15 by another person;
- 16 H. "grower" means a person who produces industrial
17 hemp;
- 18 I. "handler" means a person who receives industrial
19 hemp for processing into a commodity, a product or agricultural
20 hemp seeds;
- 21 J. "hashish" means the resin extracted from any
22 part of marijuana and includes every compound, manufacture,
23 salt, derivative, mixture or preparation of the resin;
- 24 K. "homegrown" or "homemade" means grown or made by
25 a person for noncommercial purposes;

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1 L. "household" means a housing unit and includes
2 any place in or around the housing unit at which an occupant of
3 the housing unit produces, processes, keeps or stores homegrown
4 marijuana or homemade marijuana products;

5 M. "housing unit" means a house, an apartment, a
6 mobile home, a group of rooms or a single room that is occupied
7 as separate living quarters in which an occupant lives and eats
8 separately from any other person in the building who do not
9 occupy the same housing unit, and which unit includes direct
10 access from the outside of the building or through a common
11 hall;

12 N. "immature marijuana plant" means a marijuana
13 plant with no observable flowers or buds;

14 O. "industrial hemp":

15 (1) means:

16 (a) all non-seed parts and varieties of
17 the plant of the genus Cannabis, whether growing or not, that
18 contain a crop-wide average tetrahydrocannabinol concentration
19 that does not exceed three-tenths percent on a dry weight
20 basis; and

21 (b) any Cannabis sativa seed that is
22 part of a growing crop, is retained by a grower for future
23 planting or is for processing into or use as agricultural hemp
24 seed; and

25 (2) does not mean a commodity or product made

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1 from industrial hemp;

2 P. "license" means a license issued pursuant to the
3 Cannabis Revenue and Freedom Act;

4 Q. "licensed premises" means a location that is
5 licensed pursuant to the Cannabis Revenue and Freedom Act and
6 includes:

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

11 (2) all areas outside of a building that the
12 department has specifically licensed for the production,
13 processing, wholesale sale or retail sale of marijuana items;
14 and

15 (3) with respect to a location that the
16 department has specifically licensed for the production of
17 marijuana outside of a building, the entire unit of land that
18 is created by subdivision or partition of land that the
19 licensee owns, leases or has a right to occupy;

20 R. "licensee" means a person who holds a license;

21 S. "licensee representative" means an owner,
22 director, officer, manager, employee, agent or other
23 representative of a licensee, to the extent that the person
24 acts in a representative capacity;

25 T. "marijuana":

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1 (1) means all parts of the plant cannabis,
2 including any and all varieties, species and subspecies of the
3 genus Cannabis, whether growing or not, the seeds thereof and
4 every compound, manufacture, salt, derivative, mixture or
5 preparation of the plant or its seeds; and

6 (2) does not include:

7 (a) the mature stalks of the plant;

8 (b) hashish;

9 (c) tetrahydrocannabinols extracted or
10 isolated from marijuana;

11 (d) fiber produced from the stalks;

12 (e) oil or cake made from the seeds of
13 the plant;

14 (f) any other compound, manufacture,
15 salt, derivative, mixture or preparation of the mature stalks,
16 fiber, oil or cake;

17 (g) the sterilized seed of the plant
18 that is incapable of germination;

19 (h) marijuana extracts; or

20 (i) industrial hemp or a commodity or
21 product made from industrial hemp;

22 U. "marijuana consumption area" means an area
23 within a marijuana retailer's licensed premises where marijuana
24 items may be consumed;

25 V. "marijuana extract" means a product obtained by

1 separating resins from marijuana by solvent extraction, using
2 solvents other than vegetable glycerin, such as butane, hexane,
3 isopropyl alcohol, ethanol or carbon dioxide;

4 W. "marijuana flowers" means only the flowers of a
5 marijuana plant;

6 X. "marijuana items" means marijuana, marijuana
7 products, marijuana extracts and hashish;

8 Y. "marijuana leaves" means only the leaves of a
9 marijuana plant;

10 Z. "marijuana processor" means a person who
11 processes marijuana items in this state;

12 AA. "marijuana producer" means a person who
13 produces marijuana in this state;

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

18 CC. "marijuana retailer" means a person who sells
19 marijuana items to a consumer in this state;

20 DD. "marijuana tester" means a person who performs
21 tests of marijuana items to identify or analyze the strength,
22 effectiveness or purity of the marijuana items;

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

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1 FF. "mature marijuana plant" means a marijuana
2 plant that is not an immature marijuana plant;

3 GG. "medical cannabis" means marijuana items used
4 by a qualified patient pursuant to the Lynn and Erin
5 Compassionate Use Act;

6 HH. "medical cannabis program" means the regulated
7 system allowing for the beneficial use of medical cannabis
8 established in the Lynn and Erin Compassionate Use Act;

9 II. "noncommercial" means not dependent or
10 conditioned upon the provision or receipt of financial
11 consideration;

12 JJ. "person" means an individual, corporation,
13 business trust, estate, trust, partnership, limited liability
14 company, association, joint venture or any legal or commercial
15 entity;

16 KK. "personal production license" means a license
17 issued to a qualified patient pursuant to the Lynn and Erin
18 Compassionate Use Act that allows the qualified patient to
19 produce medical cannabis for that qualified patient's personal
20 use in accordance with board rules;

21 LL. "processes":

22 (1) means:

23 (a) the processing, compounding or
24 conversion of marijuana into marijuana products or marijuana
25 extracts;

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1 (b) the processing, compounding or
2 conversion of marijuana, either directly or indirectly, by
3 extraction from substances of natural origin or independently
4 by means of chemical synthesis or by a combination of
5 extraction and chemical synthesis;

6 (c) the packaging or repackaging of
7 marijuana items; and

8 (d) the labeling or relabeling of a
9 package or container of marijuana items; and

10 (2) does not mean:

11 (a) the drying of marijuana by a
12 marijuana producer, if the marijuana producer is not otherwise
13 processing marijuana; or

14 (b) the packaging and labeling of
15 marijuana by a marijuana producer in preparation for delivery
16 to a marijuana processor;

17 MM. "produces" means the manufacture, planting,
18 cultivation, growing or harvesting of marijuana, but does not
19 include:

20 (1) the drying of marijuana by a marijuana
21 processor, if the marijuana processor is not otherwise
22 producing marijuana; or

23 (2) the cultivation and growing of an immature
24 marijuana plant by a marijuana processor, marijuana wholesaler
25 or marijuana retailer if the marijuana processor, marijuana

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1 wholesaler or marijuana retailer purchased or otherwise
2 received the plant from a licensed marijuana producer;

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

10 OO. "qualified patient" means a resident of New
11 Mexico who, in accordance with the Lynn and Erin Compassionate
12 Use Act, has been diagnosed by a practitioner as having a
13 debilitating medical condition and has received written
14 certification and a registry identification card issued
15 pursuant to that act; and

16 PP. "usable marijuana" means dried marijuana
17 flowers and dried marijuana leaves and any mixture or
18 preparation of those flowers or leaves.

19 SECTION 4. [NEW MATERIAL] LIMITATIONS--EXEMPTIONS--
20 PERMISSIBLE CONDUCT.--

21 A. The Cannabis Revenue and Freedom Act shall not
22 be construed to:

23 (1) prevent a recipient of or an applicant for
24 a federal grant from prohibiting the manufacture, possession,
25 delivery or use of marijuana items to the extent necessary to

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1 satisfy the federal grant's requirements;

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

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

8 (4) exempt a person from a federal law or
9 obstruct the enforcement of a federal law; or

10 (5) limit a person's privilege, right or duty
11 pursuant to the Lynn and Erin Compassionate Use Act.

12 B. Notwithstanding any other provision of law, the
13 following acts by a person twenty-one years of age or older are
14 lawful and shall not constitute grounds for detention, search
15 or arrest:

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

19 (a) fifty grams at the person's
20 household; or

21 (b) twenty-five grams outside the
22 person's household;

23 (2) the possession of up to seven grams of
24 marijuana extract;

25 (3) the possession of up to fourteen grams of

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1 hashish;

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

7 (a) six mature marijuana plants and six
8 immature marijuana plants per person; provided, however that no
9 more than twelve mature marijuana plants and twelve immature
10 marijuana plants may be present in one household;

11 (b) two hundred twenty-five grams of
12 usable marijuana; and

13 (c) seven grams of marijuana extract;

14 (5) the making, processing, keeping or storing
15 of homemade marijuana products at a household by one or more
16 persons who are twenty-one years of age or older, if the total
17 of homemade marijuana products at the household does not exceed
18 at any given time:

19 (a) four hundred fifty grams in solid
20 form; or

21 (b) two thousand grams in liquid form;

22 (6) the transfer for noncommercial purposes to
23 another person who is twenty-one years of age or older of not
24 more than, at any given time:

25 (a) twenty-five grams of usable

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1 marijuana;

2 (b) fourteen grams of hashish;

3 (c) four hundred fifty grams of
4 marijuana products in solid form;

5 (d) two thousand grams of marijuana
6 products in liquid form; or

7 (e) seven grams of marijuana extract;

8 (7) the transport of homegrown marijuana,
9 mature or immature marijuana plants or marijuana products as
10 described in Paragraphs (1) through (5) of this subsection when
11 the person is moving the person's residence to another
12 location; and

13 (8) smoking, ingesting or otherwise consuming
14 marijuana or marijuana items.

15 SECTION 5. [NEW MATERIAL] CANNABIS CONTROL BOARD--
16 CREATED.--

17 A. The "cannabis control board" is created and is
18 administratively attached to the department. The board shall
19 consist of thirteen members appointed by the governor with the
20 advice and consent of the senate. All members of the board
21 shall be residents of New Mexico and citizens of the United
22 States and no more than seven members shall be from the same
23 political party. The board shall include:

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

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- 1 (2) two members who are medical or public
- 2 health professionals;
- 3 (3) two members who are qualified patients in
- 4 the medical cannabis program;
- 5 (4) one member who is an interested member of
- 6 the public;
- 7 (5) one member who is a banking or finance
- 8 professional;
- 9 (6) one member who is a representative of the
- 10 labor industry;
- 11 (7) one member who is a representative of the
- 12 regulation and licensing department;
- 13 (8) one member who is a representative of the
- 14 New Mexico department of agriculture;
- 15 (9) one member who is a representative of the
- 16 department of health; and
- 17 (10) one member who is a representative of the
- 18 department of environment.

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

- 22 (1) the two members who are licensed pursuant
- 23 to the Cannabis Revenue and Freedom Act and the member who is
- 24 an interested member of the public shall be appointed to five-
- 25 year terms;

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

4 (3) the two members who are qualified patients
5 in the medical cannabis program and the member who is a
6 representative of the labor industry shall be appointed to
7 three-year terms;

8 (4) the members who represent the regulation
9 and licensing department, the New Mexico department of
10 agriculture and the department of health shall be appointed to
11 two-year terms; and

12 (5) the member who represents the department
13 of environment shall be appointed to a one-year term.

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

18 D. The board members shall elect a board chair by
19 majority vote. The board shall meet at the call of the chair
20 and at least once in each calendar quarter. Seven members
21 shall constitute a quorum of the board.

22 E. Board members are entitled to reimbursement as
23 provided by the Per Diem and Mileage Act and shall receive no
24 other compensation, perquisite or allowance for their service
25 on the board.

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1 SECTION 6. [NEW MATERIAL] CANNABIS CONTROL BOARD--

2 DUTIES.--The board shall:

3 A. regulate the marijuana program established in
4 the Cannabis Revenue and Freedom Act;

5 B. by July 1, 2018, establish a medical cannabis
6 subsidy program through which the department of health shall
7 make distributions of a portion of cannabis tax revenue to
8 qualified patients in the medical cannabis program and
9 promulgate rules to govern the program;

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

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

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

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

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

24 (b) an additional five thousand dollars
25 (\$5,000) for each additional fifty mature cannabis plants the

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1 producer will possess; provided, however, that the maximum fee
2 charged for a new or renewal producer license shall not exceed
3 forty-five thousand dollars (\$45,000);

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

7 (5) establish a procedure by which a qualified
8 patient may produce medical cannabis for the patient's personal
9 use;

10 (6) develop a distribution system for medical
11 cannabis that provides for:

12 (a) cannabis production facilities
13 within New Mexico housed on secured grounds and operated by
14 licensed producers; and

15 (b) distribution of medical cannabis to
16 qualified patients or their primary caregivers to take place at
17 locations that are designated by the board and that are not
18 within three hundred feet of any school, church or daycare
19 center;

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

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

25 (b) two thousand, between July 1, 2018

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1 and June 30, 2019; and

2 (8) provide that a qualified patient who holds
3 a personal production license may sell those mature cannabis
4 plants that the patient possesses in accordance with the
5 patient's personal production license to a licensed producer
6 participating in the medical cannabis program or to a marijuana
7 producer, and that the licensed producer or the marijuana
8 producer may sell those plants in accordance with applicable
9 law and rules;

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

13 (1) establish standards for the growing and
14 testing of marijuana and medical cannabis that address, in
15 addition to any other relevant issues, the use of pesticides
16 and other substances in the cultivation of the plants and that
17 require compliance with federal and state environmental laws;

18 (2) establish standards for quality and safety
19 of marijuana items; and

20 (3) establish a system for tracking marijuana
21 plants and medical cannabis plants;

22 E. establish the required characteristics of a
23 licensed premises;

24 F. provide how to determine what constitutes a
25 sufficient number of licensed premises in a locality, to ensure

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1 that the needs of the locality are met;

2 G. regulate the use of marijuana items for
3 scientific, pharmaceutical, manufacturing, mechanical,
4 industrial and other purposes;

5 H. prohibit advertisement of marijuana or a
6 marijuana item by a licensee; and

7 I. require documentation of the source of
8 production and the tetrahydrocannabinol concentration for all
9 marijuana items and medical cannabis.

10 SECTION 7. [NEW MATERIAL] DEPARTMENT--DUTIES.--The
11 department shall:

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

16 B. provide for licensing of licensed producers in
17 the medical cannabis program; and

18 C. on or before January 1, 2019:

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

25 (2) present the results of the department's

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

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

6 A. The New Mexico department of agriculture shall:

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

11 (2) regulate industrial hemp production and
12 possession and regulate commerce in commodities and products
13 made from industrial hemp in this state;

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

16 (4) promulgate rules necessary to carry out
17 duties pursuant to that act.

18 B. The New Mexico department of agriculture may:

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

21 (2) with at least three days' notice and
22 during normal business hours, inspect or audit records required
23 to be kept by growers and handlers for the purpose of ensuring
24 compliance with:

25 (a) the Cannabis Revenue and Freedom Act

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1 and rules promulgated pursuant to that act;

2 (b) industrial hemp license or
3 agricultural hemp seed production permit requirements; or

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

7 (3) detain, seize or embargo a crop if the
8 crop contains an average tetrahydrocannabinol concentration
9 exceeding three-tenths percent on a dry weight basis;

10 (4) charge growers and handlers reasonable
11 fees;

12 (5) refuse, suspend or cancel an industrial
13 hemp license or an agricultural hemp seed production permit for
14 a violation of the Cannabis Revenue and Freedom Act;

15 (6) refuse, suspend or cancel an industrial
16 hemp license or an agricultural hemp seed production permit for
17 violation of any New Mexico department of agriculture rule
18 relating to agricultural operations or activities; and

19 (7) impose a civil penalty for a violation of:

20 (a) a license or permit requirement,
21 term or condition;

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

24 (c) orders by the New Mexico department
25 of agriculture regarding growers' or handlers' operations or

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1 activities.

2 C. The New Mexico department of agriculture shall
3 not impose a civil penalty pursuant to the Cannabis Revenue and
4 Freedom Act that exceeds two thousand five hundred dollars
5 (\$2,500). The provisions of the Administrative Procedures Act
6 shall apply when the New Mexico department of agriculture
7 imposes a penalty as provided in this section; detains, seizes
8 or embargoes a crop as provided in this section; or refuses,
9 suspends or cancels an industrial hemp license or an
10 agricultural hemp seed production permit.

11 D. Money collected by the New Mexico department of
12 agriculture for industrial hemp license fees and agricultural
13 hemp seed production permit fees is appropriated to the New
14 Mexico department of agriculture for administrative purposes.

15 SECTION 9. [NEW MATERIAL] DEPARTMENT OF HEALTH--DUTIES.--
16 The department of health shall:

17 A. cooperate with the board, the department and the
18 New Mexico department of agriculture to the extent necessary
19 for each department to carry out powers and duties pursuant to
20 the Cannabis Revenue and Freedom Act; and

21 B. administer the medical cannabis subsidy program
22 established by the board.

23 SECTION 10. [NEW MATERIAL] DUTIES OF DEPARTMENTS--FEDERAL
24 LAW--CONTRACT ENFORCEABILITY.--

25 A. The board, the department, the taxation and

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1 revenue department, the New Mexico department of agriculture
2 and the department of health shall not refuse to perform any
3 duty provided in the Cannabis Revenue and Freedom Act on the
4 basis that manufacturing, distributing, dispensing, possessing
5 or using marijuana is prohibited by federal law.

6 B. The department and the New Mexico department of
7 agriculture shall not refuse, suspend or cancel a license or an
8 agricultural hemp seed production permit on the basis that
9 manufacturing, distributing, dispensing, possessing or using
10 marijuana is prohibited by federal law.

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

14 SECTION 11. [NEW MATERIAL] INDUSTRIAL HEMP LICENSE--
15 AGRICULTURAL HEMP SEED PRODUCTION PERMIT.--

16 A. Industrial hemp production and possession and
17 commerce in commodities and products made from industrial hemp
18 are authorized in New Mexico. Industrial hemp and agricultural
19 hemp seed are agricultural products that are subject to
20 regulation by the New Mexico department of agriculture.

21 B. All growers and handlers shall hold an
22 industrial hemp license. A grower or handler who is engaged in
23 the production of agricultural hemp seed shall also hold an
24 agricultural hemp seed production permit.

25 C. A person who seeks an industrial hemp license or

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1 an agricultural hemp seed production permit shall submit an
2 application to the New Mexico department of agriculture that
3 includes:

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

5 (2) the name and address of the applicant's
6 industrial hemp operation;

7 (3) the latitude and longitude and legal
8 description for the property to be used for industrial hemp
9 production;

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

14 (5) any other information required by the New
15 Mexico department of agriculture.

16 D. An industrial hemp license or agricultural hemp
17 seed production permit is valid for three years and may be
18 renewed as provided by New Mexico department of agriculture
19 rules. The license or permit is a personal privilege that is
20 not transferable.

21 E. An agricultural hemp seed production permit
22 allows a grower or handler to produce and handle agricultural
23 hemp seed for sale to licensed industrial hemp growers and
24 handlers. An agricultural hemp seed seller shall ensure that
25 the seller's seed complies with any standards established by

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1 the New Mexico department of agriculture.

2 F. Subject to New Mexico department of agriculture
3 rules, a grower may, without an agricultural hemp seed
4 production permit, retain seed from each crop to ensure a
5 sufficient seed supply for the grower's use in a subsequent
6 year. Seed retained by a grower shall not be sold or
7 transferred and shall not be required to meet agricultural hemp
8 seed standards.

9 SECTION 12. [NEW MATERIAL] LICENSES REQUIRED.--

10 A. A marijuana producer shall hold a production
11 license issued by the department for the licensed premises at
12 which the marijuana is produced and that is separate from any
13 other license the person may hold that authorizes production of
14 medical cannabis.

15 B. A marijuana processor shall possess a processor
16 license issued by the department for the licensed premises at
17 which marijuana items are processed.

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

21 D. A marijuana retailer shall possess a retail
22 license issued by the department for the licensed premises on
23 which marijuana items are sold. A marijuana retailer that
24 sells and allows the consumption of marijuana items in a
25 marijuana consumption area on the retailer's licensed premises

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1 shall possess an on-site consumption endorsement to the
2 retailer's retail license.

3 E. A marijuana tester shall possess a testing
4 license issued by the department for the licensed premises on
5 which marijuana items are tested.

6 SECTION 13. [NEW MATERIAL] DEPARTMENT LICENSING DUTIES.--

7 A. The department shall:

8 (1) beginning July 1, 2018, accept
9 applications from persons licensed as producers pursuant to the
10 Lynn and Erin Compassionate Use Act for licenses to produce,
11 process, sell and test marijuana items pursuant to the Cannabis
12 Revenue and Freedom Act; and

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

17 B. Beginning July 1, 2020, the department shall:

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

20 (2) issue licenses to qualified applicants in
21 accordance with the provisions of the Cannabis Revenue and
22 Freedom Act.

23 C. The department shall not unreasonably delay the
24 processing of applications or the issuance of licenses.

25 SECTION 14. [NEW MATERIAL] LICENSE TERMS--APPLICATION--

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1 FEES.--

2 A. An application for a new or renewed license
3 shall be submitted to the department on a form prescribed by
4 the department. The application shall include:

5 (1) the applicant's name and address;
6 (2) the location of the place of business to
7 be operated pursuant to the license;

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

13 (4) any other information required by the
14 department.

15 B. A license shall not be issued or renewed unless
16 the applicant has complied with the provisions of the Cannabis
17 Revenue and Freedom Act and rules promulgated pursuant to that
18 act.

19 C. All licenses shall be issued or renewed for a
20 period of one year, except that a license issued to an
21 applicant for the first time may be issued for less than one
22 year. The fee for a license that is issued for less than one
23 year shall be the annual license fee provided in this section.

24 D. The department may deny an application that is
25 not submitted on the prescribed form. If an application is

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1 denied pursuant to this subsection, the department shall
2 provide the applicant an opportunity to be heard at a hearing
3 that is not subject to the Administrative Procedures Act.

4 E. Notwithstanding the provisions of Subsections B
5 and C of this section, the department's cancellation of or
6 denial of an application for a license is subject to the
7 Administrative Procedures Act.

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

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

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

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

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

23 (2) an additional five thousand dollars
24 (\$5,000) for each additional fifty marijuana plants the
25 marijuana producer will possess; provided, however, that the

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1 maximum fee charged for a new or renewal production license
2 shall not exceed forty-five thousand dollars (\$45,000).

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

6 K. Money collected by the department for license
7 fees is appropriated to the department for administrative
8 purposes.

9 SECTION 15. [NEW MATERIAL] GROUNDS FOR DENYING A LICENSE
10 APPLICATION.--

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

13 B. The department may deny a license application if
14 the department:

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

18 (2) reasonably believes that the applicant:

19 (a) has made false statements to the
20 department;

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

23 (c) notwithstanding the provisions of
24 Subsection C of this section, has been convicted of violating a
25 federal law or the law of any state or any local government if

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1 the conviction is substantially related to the applicant's
2 fitness and ability to lawfully carry out activities pursuant
3 to the license;

4 (d) has failed to maintain a sanitary
5 establishment;

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

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

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

15 (1) consider whether an applicant who was
16 previously convicted as described in Subparagraph (c) of
17 Paragraph (2) of Subsection B of this section has completed the
18 sentence, including any period of probation or parole, related
19 to the conviction and can demonstrate fitness and ability to
20 fulfill the responsibilities of a licensee; and

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

24 (a) the manufacture of marijuana, if:
25 1) the date of the conviction is more than five years before

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1 the date of the application; and 2) the person has not been
2 convicted more than once for the manufacture or delivery of
3 marijuana;

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

10 (c) the possession of marijuana or
11 another controlled substance.

12 SECTION 16. [NEW MATERIAL] GROUNDS FOR SUSPENDING OR
13 CANCELING A LICENSE.--The department may suspend or cancel a
14 license if the department finds or reasonably believes that the
15 licensee:

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

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

20 C. has maintained an unsanitary establishment;

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

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

25 F. after receiving a license, is convicted of a

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1 felony or of violating any state law relating to marijuana or
2 marijuana items or is convicted of a misdemeanor or violation
3 of a municipal ordinance, if that violation is committed on the
4 licensed premises.

5 SECTION 17. [NEW MATERIAL] LIMITATION ON CIVIL AND
6 CRIMINAL LIABILITY--LICENSEES AND REPRESENTATIVES.--

7 A. A licensed marijuana producer, marijuana
8 processor, marijuana wholesaler, marijuana retailer or
9 marijuana tester, or a licensee representative of one of those
10 licensees, may produce, possess and deliver marijuana items
11 subject to the provisions of the Cannabis Revenue and Freedom
12 Act, and those acts shall not constitute a criminal or civil
13 offense pursuant to New Mexico law.

14 B. A licensed grower or the grower's licensed
15 representative or a person who holds an agricultural hemp seed
16 production permit may produce, possess and deliver industrial
17 hemp, agricultural hemp seeds and commodities and products made
18 from industrial hemp, and those acts shall not constitute a
19 criminal or civil offense pursuant to New Mexico law.

20 SECTION 18. [NEW MATERIAL] CHARACTERISTICS OF A LICENSE--
21 MULTIPLE LICENSES.--

22 A. A license issued by the department shall:
23 (1) be a personal privilege;
24 (2) be valid only for the period stated on the
25 license;

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

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

8 (5) not constitute property;

9 (6) not be alienable;

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

11 and

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

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

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

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

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

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1 default on the indebtedness.

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

8 SECTION 19. [NEW MATERIAL] AGE RESTRICTION FOR SALE OR
9 DELIVERY OF MARIJUANA ITEMS--PENALTIES--DEFENSE.--

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

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

18 (1) for the first offense, may suspend or
19 revoke the licensee's license or fine the licensee in an amount
20 not to exceed ten thousand dollars (\$10,000), or both; and

21 (2) for a second offense within a twelve-month
22 period, shall suspend or revoke the licensee's license and may
23 fine the licensee in an amount not to exceed ten thousand
24 dollars (\$10,000), or both.

25 C. A licensee whose license is revoked or suspended

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1 or who is fined in accordance with this section shall be given
2 an opportunity to be heard, in a hearing that is subject to the
3 Administrative Procedures Act, before the revocation,
4 suspension or fine is effective.

5 D. If a licensee or licensee representative has
6 reasonable doubt that a person is twenty-one years of age or
7 older, before selling or delivering marijuana items to the
8 person, the licensee or licensee representative shall require
9 the person to produce one of the following forms of
10 identification to verify the person's age:

11 (1) the person's passport;

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

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

17 (4) a United States military identification
18 card; or

19 (5) any other identification card that was
20 issued by a state or an Indian nation, tribe or pueblo that
21 includes the person's:

22 (a) photograph;

23 (b) name;

24 (c) date of birth; and

25 (d) physical description.

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1 E. A person shall not produce a form of
2 identification as provided in this section that falsely
3 indicates the person's age.

4 F. In an administrative proceeding for a violation
5 of Subsection A of this section, a licensee or licensee
6 representative shall not be found to have committed the
7 violation unless it is demonstrated that a reasonable person
8 would have determined that the form of identification shown to
9 the licensee or licensee representative and that is offered as
10 evidence in the proceeding was altered or did not accurately
11 describe the person to whom the licensee or licensee
12 representative sold or delivered marijuana items.

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

24 **SECTION 21. [NEW MATERIAL] INSPECTION OF LICENSEE BOOKS**
25 **AND LICENSED PREMISES.--**

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1 A. The department may:

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

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

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

10 SECTION 22. [NEW MATERIAL] IMPORTING AND EXPORTING
11 MARIJUANA ITEMS PROHIBITED--PENALTY.--Marijuana items shall not
12 be imported into this state or exported from this state by any
13 licensee or licensee representative. A person who violates the
14 provisions of this section is guilty of a misdemeanor.

15 SECTION 23. [NEW MATERIAL] MARIJUANA ITEMS AS A PRIZE
16 PROHIBITED--PENALTY.--Marijuana items shall not be given as a
17 prize, premium or consideration for a lottery, contest, game of
18 chance or skill or competition of any kind. A person who
19 violates the provisions of this section shall be punished by a
20 fifty-dollar (\$50.00) civil penalty.

21 SECTION 24. [NEW MATERIAL] PROVIDING MARIJUANA ITEMS TO
22 AN INTOXICATED PERSON PROHIBITED--ALLOWING CONSUMPTION OF
23 MARIJUANA ITEMS BY PERSONS WHO ARE YOUNGER THAN TWENTY-ONE
24 YEARS OF AGE PROHIBITED--PENALTIES.--

25 A. A person shall not sell, give or otherwise make

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1 a marijuana item available to a person who is visibly
2 intoxicated. A person who violates the provisions of this
3 subsection shall be punished by a fifty-dollar (\$50.00) civil
4 penalty.

5 B. A person who exercises control over a licensed
6 premises shall not:

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

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

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

15 SECTION 25. [NEW MATERIAL] LICENSEE MISREPRESENTATIONS--
16 MAINTENANCE OF DISORDERLY ESTABLISHMENT--PENALTY.--

17 A. A licensee or licensee representative shall not:

18 (1) make false representations or statements
19 to the department to induce or prevent action by the
20 department;

21 (2) maintain a noisy, lewd, disorderly or
22 unsanitary establishment or supply impure or otherwise
23 deleterious marijuana items; or

24 (3) misrepresent marijuana items to any
25 person.

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1 B. A person who violates the provisions of this
2 section is guilty of a misdemeanor.

3 **SECTION 26. [NEW MATERIAL] UNDERAGE PERSONS--RESTRICTIONS**
4 **ON PURCHASE OF MARIJUANA ITEMS AND PRESENCE ON LICENSED**
5 **PREMISES--PENALTY.--**

6 A. Except as provided in Section 30 of the Cannabis
7 Revenue and Freedom Act or as authorized by rule or as
8 necessitated in an emergency, a person who is younger than
9 twenty-one years of age shall not enter or attempt to enter a
10 licensed premises that is posted or otherwise identified as
11 being prohibited to the use of persons under the age of twenty-
12 one years of age.

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

16 **SECTION 27. [NEW MATERIAL] MARIJUANA ITEMS--MANUFACTURING**
17 **AND CONSUMER INFORMATION REQUIREMENTS.--Marijuana items:**

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

22 B. shall be:
23 (1) produced and sold with a standardized
24 dosage of cannabinoids of not more than ten milligrams of
25 tetrahydrocannabinol per serving;

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

4 (3) homogenized to ensure uniform disbursement
5 of cannabinoids throughout the product;

6 (4) manufactured and sold in compliance with
7 rules promulgated by the board that relate to sanitation and
8 the preparation, storage, handling and sale of food products;
9 and

10 (5) provided to a consumer with sufficient
11 information, including information about the potential effects
12 of the marijuana item and instructions on how to safely consume
13 the item, to allow informed consumption of the item.

14 SECTION 28. [NEW MATERIAL] COMPLIANCE WITH STANDARDS FOR
15 MARIJUANA ITEMS--PENALTY.--

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

20 B. The department may require a marijuana producer,
21 marijuana processor or marijuana wholesaler to provide a report
22 from a marijuana tester that demonstrates to the department's
23 satisfaction that particular marijuana items comply with
24 minimum standards.

25 C. Marijuana items offered for sale shall not be

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1 altered in any way by a person who is not licensed to alter the
2 items.

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

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

9 SECTION 29. [NEW MATERIAL] MISLEADING MARKS OR LABELS--
10 INJURIOUS OR ADULTERATED INGREDIENTS--PENALTY.--

11 A. A licensee shall not use or allow the use of a
12 mark or label on the container of a marijuana item that is kept
13 for sale if the container does not precisely and clearly
14 indicate the nature of its contents or if the mark or label
15 could deceive a person as to the nature, composition, quantity,
16 age or quality of the marijuana item. A person who violates
17 the provisions of this subsection is guilty of a misdemeanor.

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

22 SECTION 30. [NEW MATERIAL] EMPLOYMENT--MINIMUM AGE
23 REQUIREMENT--PENALTY.--

24 A. A licensee shall not employ a person who is
25 younger than twenty-one years of age in any part of a licensed

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1 premises. A person who violates the provisions of this
2 subsection is guilty of a misdemeanor.

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

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

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

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1 SECTION 32. ~~[NEW MATERIAL]~~ EMPLOYMENT PROTECTIONS.--

2 A. Unless an employer establishes by a
3 preponderance of the evidence that an employee's use of
4 marijuana in compliance with the Cannabis Revenue and Freedom
5 Act has impaired the employee's ability to perform the
6 employee's job responsibilities, the employer shall not take
7 any adverse employment action against the employee for:

8 (1) the employee's conduct that complies with
9 that act; or

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

12 B. For the purpose of this section, an employer may
13 consider an employee's ability to perform the employee's job
14 responsibilities to be impaired if, while working, the employee
15 manifests specific articulable symptoms that decrease the
16 employee's performance of the duties of the employee's job.

17 C. Nothing in this section shall:

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

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

24 D. As used in this section, "adverse employment
25 action" means an employer refusing to hire or employ, barring

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1 or discharging from employment, requiring an employee to retire
2 from employment or discriminating against an employee with
3 respect to compensation or the terms, conditions or privileges
4 of employment.

5 SECTION 33. [NEW MATERIAL] PROTECTIONS FROM
6 DISCRIMINATION.--

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

14 B. Unless a person's conduct that complies with the
15 Cannabis Revenue and Freedom Act creates an unreasonable danger
16 to the safety of the person's dependent child as established by
17 clear and convincing evidence, the person's conduct shall not
18 alone:

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

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

23 SECTION 34. [NEW MATERIAL] RESTRICTION ON THE USE OF
24 MARIJUANA ITEMS IN A PUBLIC PLACE--MARIJUANA RETAILER ON-SITE
25 CONSUMPTION LICENSE ENDORSEMENT--PENALTY.--

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

3 B. Pursuant to rules promulgated by the department,
4 a marijuana retailer may apply for an on-site consumption
5 endorsement to the retailer's marijuana retailer license to
6 allow the sale of marijuana items for on-site consumption and
7 the consumption of the marijuana items in a marijuana
8 consumption area.

9 C. A person may purchase and consume marijuana
10 items in a marijuana consumption area on the licensed premises
11 of a marijuana retailer who has been issued an on-site
12 consumption endorsement.

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

16 **SECTION 35. [NEW MATERIAL] HOMEGROWN MARIJUANA IN PUBLIC**
17 **VIEW PROHIBITED--PENALTY.--**

18 A. A person shall not produce, process, keep or
19 store homegrown marijuana or homemade marijuana products if the
20 homegrown marijuana or homemade marijuana products can be
21 readily seen by normal unaided vision from a public place.

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

25 **SECTION 36. [NEW MATERIAL] CERTAIN HOMEMADE MARIJUANA**

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1 EXTRACTS PROHIBITED--PENALTY.--A person shall not produce,
2 process, keep or store a homemade marijuana extract if the
3 extract is produced or processed using a volatile solvent such
4 as butane, hexane, isopropyl alcohol, ethanol or carbon
5 dioxide. A person who violates the provisions of this section
6 shall be punished by a fifty-dollar (\$50.00) civil penalty.

7 SECTION 37. [NEW MATERIAL] INCONSISTENT LOCAL LAWS AND
8 ORDINANCES SUPERSEDED AND REPEALED.--Notwithstanding the
9 provisions of Sections 38 and 39 of the Cannabis Revenue and
10 Freedom Act, the provisions of that act shall operate uniformly
11 throughout the state and shall be superior to and shall
12 supersede all local laws or ordinances, including a law or
13 ordinance of a home rule municipality, that are inconsistent or
14 in conflict with that act. Any conflicting local laws or
15 ordinances are repealed.

16 SECTION 38. [NEW MATERIAL] LOCAL GOVERNMENT AUTHORITY TO
17 REGULATE--LIMITATION.--

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

24 B. The authority granted to a municipality or
25 county by this section is in addition to the authority granted

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1 to a municipality or county pursuant to its charter, state laws
2 and the constitution of New Mexico.

3 C. A municipality or county shall not prevent the
4 transportation on public roads of marijuana items by a licensee
5 transporting marijuana items in compliance with the Cannabis
6 Revenue and Freedom Act.

7 SECTION 39. [NEW MATERIAL] LOCAL OPTION ELECTION--SALES
8 NOT AFFECTED BY LOCAL OPTION.--

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

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

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1 registered voters of the municipality or county, the governing
2 body shall call an election within seventy-five days of the
3 verification of the petition. The date of the filing of the
4 petition shall be the date of the filing of the last petition
5 that brings the number of signatures up to the required five
6 percent; provided, however, that the governing body shall
7 refuse to recognize the petition if more than three months have
8 elapsed between the date of the first signature and the filing
9 of the last petition necessary to bring the number of
10 signatures on the petition up to five percent;

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

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

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

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1 voted in the election and service shall be made upon the county
2 clerk or municipal clerk as the case may be;

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

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

20 (7) if an election is held pursuant to this
21 section in a county that contains within its limits a
22 municipality of more than five thousand persons according to
23 the most recent federal decennial census, it is not necessary
24 for the registered qualified electors in the municipality to
25 file a separate petition asking for a separate or different

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1 vote on the question of whether to prohibit the operations of a
2 licensed marijuana processor, marijuana producer, marijuana
3 retailer or marijuana wholesaler. The election in the county
4 shall be conducted so as to separate the votes in the
5 municipality from those in the remaining parts of the county.

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

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

25 B. The provisions of Subsection A of this section

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1 shall not prevent a person who resides in a municipality or
2 county that has elected to prohibit the operations of a
3 licensed marijuana processor, marijuana producer, marijuana
4 retailer or marijuana wholesaler from possessing marijuana
5 items that were purchased from licensed marijuana retailers for
6 the person's personal use.

7 SECTION 40. [NEW MATERIAL] ENFORCEMENT--DUTY OF LAW
8 ENFORCEMENT OFFICERS.--The state and local law enforcement
9 officers in the state shall enforce the Cannabis Revenue and
10 Freedom Act and shall assist the department with identifying
11 violations of that act and with apprehending offenders. Any
12 state or local law enforcement officer that has notice or
13 knowledge of or reasonable belief regarding a violation of that
14 act shall immediately notify the district attorney and provide
15 the district attorney with the names and addresses of any
16 witnesses to the violation and other information related to the
17 violation.

18 SECTION 41. [NEW MATERIAL] CONVICTION OF LICENSEE--DUTY
19 TO NOTIFY THE DEPARTMENT.--All court officials, district
20 attorneys and municipal authorities in the state shall notify
21 the department as soon as possible following the conviction of
22 a person who is licensed pursuant to the Cannabis Revenue and
23 Freedom Act for a violation of any provision of that act or of
24 a state or local law that relates in any way to marijuana
25 items. The notification shall include information about any

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1 acts, practices or other conduct of the licensee that may be
2 subversive of the general welfare or contrary to the spirit of
3 that act and shall make recommendations that the department
4 could take to remedy the acts, practices or conduct of the
5 licensee.

6 SECTION 42. [NEW MATERIAL] PROPERTY AND PLACES AS COMMON
7 NUISANCES--PENALTY.--

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

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

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

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

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

21 B. A person who maintains or assists in maintaining
22 a common nuisance or who knowingly allows a common nuisance to
23 exist in a place of which the person is the owner, manager or
24 lessor shall be punished by a fifty-dollar (\$50.00) civil
25 penalty.

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1 SECTION 43. [NEW MATERIAL] PENALTIES.--Except as
2 otherwise specifically provided in the Cannabis Revenue and
3 Freedom Act, a violation of a provision of that act shall be
4 punished by a fifty-dollar (\$50.00) civil penalty.

5 SECTION 44. [NEW MATERIAL] DESTRUCTION OF ARREST AND
6 CONVICTION RECORDS--PROCEDURE--EXCEPTIONS.--

7 A. Records held by a court, or an agency of the
8 state or a local government, that relate to a person's arrest
9 or conviction for trafficking marijuana in violation of Section
10 30-31-20 NMSA 1978, distribution of marijuana, possession with
11 intent to distribute marijuana in violation of Section 30-31-22
12 NMSA 1978 or possession of marijuana in violation of Section
13 30-31-23 NMSA 1978 shall not be kept beyond two years from the
14 date of the person's conviction or from the date of the
15 person's arrest if there was no conviction. If the person was
16 a juvenile at the time of the arrest or conviction, the records
17 shall be retained until the offender is eighteen years of age
18 and shall then be destroyed. The records shall also be removed
19 from any statewide criminal databases.

20 B. If a person whose records would be subject to
21 destruction pursuant to Subsection A of this section is
22 incarcerated for an offense listed in that subsection at the
23 time the person's records would be destroyed, the two-year
24 record retention period shall begin upon the person's release
25 from incarceration.

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1 C. For the purpose of this section, "records"
2 includes records of arrests resulting in a criminal proceeding
3 and records relating to other offenses charged in the
4 accusatory pleading, whether the defendant was acquitted or the
5 charges were dismissed.

6 SECTION 45. [NEW MATERIAL] PETITION FOR DISMISSAL.--

7 A. A person currently serving a sentence for a
8 conviction, whether by trial or by open or negotiated plea, who
9 would not have been guilty of an offense or who would have been
10 guilty of a lesser offense as provided in this 2017 act, had
11 that act been in effect at the time of the offense, may
12 petition the trial court that convicted the person for a recall
13 or dismissal of the person's sentence.

14 B. A court shall grant a petition submitted
15 pursuant to Subsection A of this section and recall the
16 sentence or dismiss the sentence because it is legally invalid,
17 unless the court determines that granting the petition would
18 pose an unreasonable risk of danger to public safety.

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

22 D. A person who is resentenced after a petition to
23 recall the person's sentence shall not be sentenced to a term
24 longer than the person's original sentence and shall not have
25 any charges reinstated that were originally dismissed pursuant

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1 to a negotiated plea agreement.

2 E. A person who has completed the person's sentence
3 for a conviction, whether by trial or open or negotiated plea,
4 who would not have been guilty of an offense or who would have
5 been guilty of a lesser offense as provided in this 2017 act,
6 had that act been in effect at the time of the offense, may
7 file an application before the trial court that convicted the
8 person to have the conviction dismissed and sealed because the
9 prior conviction is now legally invalid or redesignated as an
10 infraction. The court shall redesignate the conviction as an
11 infraction or dismiss and seal the conviction as legally
12 invalid as provided in this 2017 act unless it makes a finding
13 that the conviction is not legally invalid or was not
14 redesignated as an infraction pursuant to this 2017 act.

15 F. Nothing in this section is intended to diminish
16 or abrogate any rights or remedies otherwise available to a
17 petitioner or applicant.

18 G. The provisions of this section shall apply
19 equally to juvenile delinquency adjudications and convictions
20 of a juvenile person if the juvenile would not have been guilty
21 of an offense or would have been guilty of a lesser offense as
22 provided in this 2017 act.

23 SECTION 46. [NEW MATERIAL] SEVERABILITY.--If any part or
24 application of the Cannabis Revenue and Freedom Act is held
25 invalid, unconstitutional or illegal, the remainder or its

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1 application to other situations or persons shall not be
2 affected.

3 SECTION 47. [NEW MATERIAL] SUBSTANCE ABUSE PREVENTION AND
4 BEHAVIORAL HEALTH FUND.--The "substance abuse prevention and
5 behavioral health fund" is created in the state treasury. The
6 fund consists of appropriations, other money deposited in the
7 fund and money otherwise accruing to the fund. The department
8 of health shall administer the fund, and money in the fund is
9 appropriated to the department of health to establish, operate
10 and maintain alcohol and substance abuse prevention, early
11 intervention and treatment and related behavioral health
12 services. Money in the fund shall be disbursed on warrants
13 signed by the secretary of finance and administration pursuant
14 to vouchers signed by the secretary of health or the
15 secretary's designee. Any balance remaining in the fund at the
16 end of a fiscal year shall not revert to the general fund.

17 SECTION 48. [NEW MATERIAL] DISTRICT ATTORNEY PUBLIC
18 SAFETY FUND.--The "district attorney public safety fund" is
19 created in the state treasury. The fund consists of
20 appropriations, other money deposited in the fund and money
21 otherwise accruing to the fund. The administrative office of
22 the district attorneys shall administer the fund, and money in
23 the fund is appropriated to the administrative office of the
24 district attorneys to support evidence-based arrest and
25 incarceration diversion programs for low-level nonviolent drug

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1 related offenses and to support development of intoxicated
2 driving detection programs. Money in the fund shall be
3 disbursed on warrants signed by the secretary of finance and
4 administration pursuant to vouchers signed by the director of
5 the administrative office of the district attorneys or the
6 director's designee. Any balance remaining in the fund at the
7 end of a fiscal year shall not revert to the general fund.

8 SECTION 49. [NEW MATERIAL] PUBLIC DEFENDER PUBLIC SAFETY
9 FUND.--The "public defender public safety fund" is created in
10 the state treasury. The fund consists of appropriations, other
11 money deposited in the fund and money otherwise accruing to the
12 fund. The public defender department shall administer the
13 fund, and money in the fund is appropriated to the public
14 defender for operations. Money in the fund shall be disbursed
15 on warrants signed by the secretary of finance and
16 administration pursuant to vouchers signed by the chief public
17 defender or the chief's designee. Any balance remaining in the
18 fund at the end of a fiscal year shall not revert to the
19 general fund.

20 SECTION 50. [NEW MATERIAL] CANNABIS REVENUE ECONOMIC
21 DEVELOPMENT FUND.--The "cannabis revenue economic development
22 fund" is created in the state treasury. The fund consists of
23 appropriations, other money deposited in the fund and money
24 otherwise accruing to the fund. The economic development
25 department shall administer the fund. Money in the fund is

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1 appropriated to the economic development department for:
2 training to support local entrepreneurs; local business
3 development through small business development centers and
4 community college and university programs; business growth and
5 marketing programs through regional economic development
6 organizations; and community reinvestment grant programs to
7 support job training for and placement of formerly incarcerated
8 persons. Money in the fund shall be disbursed on warrants
9 signed by the secretary of finance and administration pursuant
10 to vouchers signed by the secretary of economic development or
11 the secretary's designee. Any balance remaining in the fund at
12 the end of a fiscal year shall not revert to the general fund.

13 SECTION 51. [NEW MATERIAL] SHORT TITLE.--Sections 51
14 through 57 of this act may be cited as the "Cannabis Tax Act".

15 SECTION 52. [NEW MATERIAL] DEFINITIONS.--As used in the
16 Cannabis Tax Act:

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

20 B. "department" means the taxation and revenue
21 department;

22 C. "governing body" means:

23 (1) in the case of a municipality, the city
24 council or city commission of a city, the board of trustees of
25 a town or village or the board of county commissioners of H

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1 class counties; or

2 (2) in the case of a county, the county
3 commission of a county or the county council of an H class
4 county;

5 D. "marijuana items" means "marijuana items" as
6 that term is defined in the Cannabis Revenue and Freedom Act;
7 and

8 E. "marijuana retailer" means "marijuana retailer"
9 as that term is defined in the Cannabis Revenue and Freedom
10 Act.

11 SECTION 53. [NEW MATERIAL] IMPOSITION AND RATE OF
12 CANNABIS TAX.--

13 A. There is imposed an excise tax on a marijuana
14 retailer that sells marijuana items in this state on which the
15 tax imposed by this section has not been paid. If the price
16 paid does not represent the value of the marijuana item, the
17 tax rate shall be applied to the reasonable value of the
18 marijuana item at the time the item was purchased. The excise
19 tax imposed by this section may be referred to as the "cannabis
20 tax".

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

23 SECTION 54. [NEW MATERIAL] MUNICIPAL CANNABIS TAX.--

24 A. A majority of the members of the governing body
25 of a municipality may enact an ordinance imposing an excise tax

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1 on a marijuana retailer that sells marijuana items in the
2 municipality on which the tax imposed by this section has not
3 been paid. The tax imposed pursuant to this section may be
4 referred to as the "municipal cannabis tax".

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

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

14 D. Any ordinance enacted under the provisions of
15 Subsection A of this section shall include an effective date of
16 either July 1 or January 1.

17 E. An ordinance imposing the municipal cannabis tax
18 shall not go into effect until after an election is held and
19 the majority of the voters of the municipality voting in the
20 election vote in favor of imposing the tax. The governing body
21 shall adopt a resolution calling for an election within
22 seventy-five days of the date the ordinance is adopted on the
23 question of imposing the tax. The question shall be submitted
24 to the voters of the municipality as a separate question at a
25 regular municipal election or at a special election called for

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1 that purpose by the governing body. A special municipal
2 election shall be called, conducted and canvassed as provided
3 in the Municipal Election Code. If the majority of the voters
4 voting on the question approves the ordinance imposing the
5 municipal cannabis tax, the ordinance shall become effective in
6 accordance with the provisions of the Cannabis Tax Act. If the
7 question of imposing the municipal cannabis tax fails, the
8 governing body shall not again propose the imposition of the
9 tax for a period of one year from the date of the election.

10 SECTION 55. [NEW MATERIAL] COUNTY CANNABIS TAX.--

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

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

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

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

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

19 SECTION 56. [NEW MATERIAL] DATE PAYMENT DUE.--The taxes
20 imposed pursuant to the Cannabis Tax Act are to be paid on or
21 before the twenty-fifth day of the month following the month in
22 which the taxable event occurs.

23 SECTION 57. [NEW MATERIAL] ADMINISTRATIVE CHARGE.--The
24 department may deduct an amount not to exceed three percent of
25 the proceeds of the municipal cannabis tax and county cannabis

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1 tax as a charge for the administrative costs of collection,
2 which amount shall be retained by the department for use in
3 administration of those taxes.

4 SECTION 58. A new section of the Tax Administration Act
5 is enacted to read:

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

13 A. the public school fund to augment the
14 appropriations for the state equalization guarantee
15 distribution in an amount equal to forty percent of the net
16 receipts attributable to the cannabis tax;

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

20 C. the cannabis revenue economic development fund
21 in an amount equal to twenty percent of the net receipts
22 attributable to the cannabis tax;

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

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

4 F. the department of health in an amount equal to
5 two percent of the net receipts attributable to the cannabis
6 tax to support qualified patients pursuant to the medical
7 cannabis subsidy program."

8 **SECTION 59.** A new section of the Tax Administration Act
9 is enacted to read:

10 "[NEW MATERIAL] TRANSFER--REVENUES FROM MUNICIPAL CANNABIS
11 TAX AND COUNTY CANNABIS TAX.--

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

20 B. A transfer pursuant to Section 7-1-6.1 NMSA 1978
21 shall be made to each county for which the department is
22 collecting a county cannabis tax imposed by that county in an
23 amount, subject to any increase or decrease made pursuant to
24 Section 7-1-6.15 NMSA 1978, equal to the net receipts
25 attributable to the county cannabis tax, less any deduction for

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1 administrative costs determined and made by the department
2 pursuant to the Cannabis Tax Act."

3 SECTION 60. Section 7-1-2 NMSA 1978 (being Laws 1965,
4 Chapter 248, Section 2, as amended) is amended to read:

5 "7-1-2. APPLICABILITY.--The Tax Administration Act
6 applies to and governs:

7 A. the administration and enforcement of the
8 following taxes or tax acts as they now exist or may hereafter
9 be amended:

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

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- 1 (12) Alternative Fuel Tax Act;
2 (13) Cigarette Tax Act;
3 (14) Estate Tax Act;
4 (15) Railroad Car Company Tax Act;
5 (16) Investment Credit Act, rural job tax
6 credit, Laboratory Partnership with Small Business Tax Credit
7 Act, Technology Jobs and Research and Development Tax Credit
8 Act, Film Production Tax Credit Act, Affordable Housing Tax
9 Credit Act and high-wage jobs tax credit;
10 (17) Corporate Income and Franchise Tax Act;
11 (18) Uniform Division of Income for Tax
12 Purposes Act;
13 (19) Multistate Tax Compact;
14 (20) Tobacco Products Tax Act; ~~and~~
15 (21) the telecommunications relay service
16 surcharge imposed by Section 63-9F-11 NMSA 1978, which
17 surcharge shall be considered a tax for the purposes of the Tax
18 Administration Act; and
19 (22) the Cannabis Tax Act;
20 B. the administration and enforcement of the
21 following taxes, surtaxes, advanced payments or tax acts as
22 they now exist or may hereafter be amended:
23 (1) Resources Excise Tax Act;
24 (2) Severance Tax Act;
25 (3) any severance surtax;

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- 1 (4) Oil and Gas Severance Tax Act;
- 2 (5) Oil and Gas Conservation Tax Act;
- 3 (6) Oil and Gas Emergency School Tax Act;
- 4 (7) Oil and Gas Ad Valorem Production Tax Act;
- 5 (8) Natural Gas Processors Tax Act;
- 6 (9) Oil and Gas Production Equipment Ad

7 Valorem Tax Act;

- 8 (10) Copper Production Ad Valorem Tax Act;

9 (11) any advance payment required to be made
10 by any act specified in this subsection, which advance payment
11 shall be considered a tax for the purposes of the Tax

12 Administration Act;

- 13 (12) Enhanced Oil Recovery Act;

14 (13) Natural Gas and Crude Oil Production
15 Incentive Act; and

16 (14) intergovernmental production tax credit
17 and intergovernmental production equipment tax credit;

18 C. the administration and enforcement of the
19 following taxes, surcharges, fees or acts as they now exist or
20 may hereafter be amended:

- 21 (1) Weight Distance Tax Act;

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

- 25 (3) Uniform Unclaimed Property Act (1995);

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1 (4) 911 emergency surcharge and the network
2 and database surcharge, which surcharges shall be considered
3 taxes for purposes of the Tax Administration Act;

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

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

10 (7) the gaming tax imposed pursuant to the
11 Gaming Control Act; and

12 D. the administration and enforcement of all other
13 laws, with respect to which the department is charged with
14 responsibilities pursuant to the Tax Administration Act, but
15 only to the extent that the other laws do not conflict with the
16 Tax Administration Act."

17 SECTION 61. Section 7-1-6.15 NMSA 1978 (being Laws 1983,
18 Chapter 211, Section 20, as amended by Laws 2015, Chapter 89,
19 Section 1 and by Laws 2015, Chapter 100, Section 1) is amended
20 to read:

21 "7-1-6.15. ADJUSTMENTS OF DISTRIBUTIONS OR TRANSFERS TO
22 MUNICIPALITIES OR COUNTIES.--

23 A. The provisions of this section apply to:

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

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

4 (3) any transfer to a county with respect to
5 any local option gross receipts tax or county cannabis tax
6 imposed by that county;

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

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

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

14 (7) any distribution to a county from the
15 county government road fund pursuant to Section 7-1-6.26 NMSA
16 1978;

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

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

21 B. Before making a distribution or transfer
22 specified in Subsection A of this section to a municipality or
23 county for the month, amounts comprising the net receipts shall
24 be segregated into two mutually exclusive categories. One
25 category shall be for amounts relating to the current month,

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1 and the other category shall be for amounts relating to prior
2 periods. The total of each category for a municipality or
3 county shall be reported each month to that municipality or
4 county. If the total of the amounts relating to prior periods
5 is less than zero and its absolute value exceeds the greater of
6 one hundred dollars (\$100) or an amount equal to twenty percent
7 of the average distribution or transfer amount for that
8 municipality or county, then the following procedures shall be
9 carried out:

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

20 (2) if the revised total for prior periods
21 determined pursuant to Paragraph (1) of this subsection is
22 negative and its absolute value exceeds the greater of one
23 hundred dollars (\$100) or an amount equal to twenty percent of
24 the average distribution or transfer amount for that
25 municipality or county, the revised total for prior periods

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1 shall be excluded from the distribution or transfers and the
2 net receipts to be distributed or transferred to the
3 municipality or county shall be equal to the amount for the
4 current month.

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

9 D. Prior to or concurrently with the distribution
10 or transfer to the municipality or county of the adjusted net
11 receipts, the department shall notify the municipality or
12 county whose distribution or transfer has been adjusted
13 pursuant to Paragraph (2) of Subsection B of this section:

14 (1) that the department has made such an
15 adjustment, that the department has determined that a specified
16 amount is recoverable from the municipality or county and that
17 the department intends to recover that amount from future
18 distributions or transfers to the municipality or county;

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

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

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

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

10 (1) the department may collect the recoverable
11 amount by:

12 (a) decreasing distributions or
13 transfers to the municipality or county in accordance with a
14 repayment agreement entered into with the municipality or
15 county; or

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

23 (2) if, pursuant to Subsection B of this
24 section, the secretary determines that the recoverable amount
25 is more than fifty percent of the average distribution or

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1 transfer of net receipts for that municipality or county, the
2 secretary:

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

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

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

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

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

7 H. The secretary is authorized to decrease a
8 distribution or transfer to a municipality or county upon being
9 directed to do so by the secretary of finance and
10 administration pursuant to the State Aid Intercept Act or to
11 redirect a distribution or transfer to the New Mexico finance
12 authority pursuant to an ordinance or a resolution passed by
13 the county or municipality and a written agreement of the
14 municipality or county and the New Mexico finance authority.
15 Upon direction to decrease a distribution or transfer or notice
16 to redirect a distribution or transfer to a municipality or
17 county, the secretary shall decrease or redirect the next
18 designated distribution or transfer, and succeeding
19 distributions or transfers as necessary, by the amount of the
20 state distributions intercept authorized by the secretary of
21 finance and administration pursuant to the State Aid Intercept
22 Act or by the amount of the state distribution intercept
23 authorized pursuant to an ordinance or a resolution passed by
24 the county or municipality and a written agreement with the New
25 Mexico finance authority. The secretary shall transfer the

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1 state distributions intercept amount to the municipal or county
2 treasurer or other person designated by the secretary of
3 finance and administration or to the New Mexico finance
4 authority pursuant to written agreement to pay the debt service
5 to avoid default on qualified local revenue bonds or meet other
6 local revenue bond, loan or other debt obligations of the
7 municipality or county to the New Mexico finance authority. A
8 decrease to or redirection of a distribution or transfer
9 pursuant to this subsection that arose:

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

17 (2) after an adjustment of a distribution or
18 transfer of net receipts creating a recoverable amount owed to
19 the department shall be subordinate to any collection of any
20 recoverable amount pursuant to Paragraph (2) of Subsection B of
21 this section.

22 I. Upon the direction of the secretary of finance
23 and administration pursuant to Section 9-6-5.2 NMSA 1978, the
24 secretary shall temporarily withhold the balance of a
25 distribution to a municipality or county, net of any decrease

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1 or redirected amount pursuant to Subsection H of this section
2 and any recoverable amount pursuant to Paragraph (2) of
3 Subsection B of this section, that has failed to submit an
4 audit report required by the Audit Act or a financial report
5 required by Subsection F of Section 6-6-2 NMSA 1978. The
6 amount to be withheld, the source of the withheld distribution
7 and the number of months that the distribution is to be
8 withheld shall be as directed by the secretary of finance and
9 administration. A distribution withheld pursuant to this
10 subsection shall remain in the tax administration suspense fund
11 until distributed to the municipality or county and shall not
12 be distributed to the general fund. An amount withheld
13 pursuant to this subsection shall be distributed to the
14 municipality or county upon direction of the secretary of
15 finance and administration.

16 J. As used in this section:

17 (1) "amounts relating to the current month"
18 means any amounts included in the net receipts of the current
19 month that represent payment of tax due for the current month,
20 correction of amounts processed in the current month that
21 relate to the current month or that otherwise relate to
22 obligations due for the current month;

23 (2) "amounts relating to prior periods" means
24 any amounts processed during the current month that adjust
25 amounts processed in a period or periods prior to the current

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1 month regardless of whether the adjustment is a correction of a
2 department error or due to the filing of amended returns,
3 payment of department-issued assessments, filing or approval of
4 claims for refund, audit adjustments or other cause;

5 (3) "average distribution or transfer amount"
6 means the following amounts; provided that a distribution or
7 transfer that is negative shall not be used in calculating the
8 amounts:

9 (a) the annual average of the total
10 amount distributed or transferred to a municipality or county
11 in each of the three twelve-month periods preceding the current
12 month;

13 (b) if a distribution or transfer to a
14 municipality or county has been made for less than three years,
15 the total amount distributed or transferred in the year
16 preceding the current month; or

17 (c) if a municipality or county has not
18 received distributions or transfers of net receipts for twelve
19 or more months, the monthly average of net receipts distributed
20 or transferred to the municipality or county preceding the
21 current month multiplied by twelve;

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

24 (5) "repayment agreement" means an agreement
25 between the department and a municipality or county under which

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1 the municipality or county agrees to allow the department to
2 recover an amount determined pursuant to Paragraph (2) of
3 Subsection B of this section by decreasing distributions or
4 transfers to the municipality or county for one or more months
5 beginning with the distribution or transfer to be made with
6 respect to a designated month. No interest shall be charged."

7 SECTION 62. Section 26-2B-1 NMSA 1978 (being Laws 2007,
8 Chapter 210, Section 1) is amended to read:

9 "26-2B-1. SHORT TITLE.--~~[Sections 1 through 7 of this~~
10 ~~act]~~ Chapter 26, Article 2B NMSA 1978 may be cited as the "Lynn
11 and Erin Compassionate Use Act" in honor of Lynn Pierson and
12 Erin Armstrong."

13 SECTION 63. Section 26-2B-3 NMSA 1978 (being Laws 2007,
14 Chapter 210, Section 3) is amended to read:

15 "26-2B-3. DEFINITIONS.--As used in the Lynn and Erin
16 Compassionate Use Act:

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

25 B. "debilitating medical condition" means:

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- 1 (1) cancer;
- 2 (2) glaucoma;
- 3 (3) multiple sclerosis;
- 4 (4) damage to the nervous tissue of the spinal
5 cord, with objective neurological indication of intractable
6 spasticity;
- 7 (5) epilepsy;
- 8 (6) positive status for human immunodeficiency
9 virus or acquired immune deficiency syndrome;
- 10 (7) admitted into hospice care in accordance
11 with rules promulgated by the department; or
- 12 (8) any other medical condition, medical
13 treatment or disease as approved by the department;
- 14 C. "department" means the department of health;
- 15 D. "licensed producer" means any person or
16 association of persons within New Mexico that the [~~department~~]
17 cannabis control board determines to be qualified to produce,
18 possess, distribute and dispense cannabis pursuant to the Lynn
19 and Erin Compassionate Use Act and that is licensed by the
20 department;
- 21 E. "personal production license" means a license
22 issued to a qualified patient that allows the qualified patient
23 to produce medical cannabis for that qualified patient's
24 personal use in accordance with cannabis control board rules;
- 25 [~~E.~~] F. "practitioner" means a person licensed in

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1 New Mexico to prescribe and administer drugs that are subject
2 to the Controlled Substances Act;

3 ~~[F.]~~ G. "primary caregiver" means a resident of New
4 Mexico who is at least eighteen years of age and who has been
5 designated by the patient's practitioner as being necessary to
6 take responsibility for managing the well-being of a qualified
7 patient with respect to the medical use of cannabis pursuant to
8 the provisions of the Lynn and Erin Compassionate Use Act;

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

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

22 SECTION 64. Section 26-2B-7 NMSA 1978 (being Laws 2007,
23 Chapter 210, Section 7) is amended to read:

24 "26-2B-7. ~~[REGISTRY IDENTIFICATION CARDS]~~ DEPARTMENT
25 RULES--DUTIES--REGISTRY IDENTIFICATION CARDS.--

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

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

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

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

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

20 (4) set forth additional medical conditions,
21 medical treatments or diseases to the list of debilitating
22 medical conditions that qualify for the medical use of cannabis
23 as recommended by the advisory board;

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

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1 ~~procedures to obtain licenses;~~

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

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

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

12 [~~(7)~~] (5) determine additional duties and
13 responsibilities of the advisory board; and

14 [~~(8)~~] (6) be revised and updated as necessary.

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

19 (1) a written certification;
20 (2) the name, address and date of birth of the
21 patient;

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

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

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1 C. The department shall verify the information
2 contained in an application submitted [~~pursuant to~~] as provided
3 in Subsection B of this section and shall approve or deny [~~an~~]
4 the application within thirty days of receipt. The department
5 may deny an application only if the applicant did not provide
6 the information required [~~pursuant to~~] as provided in
7 Subsection B of this section or if the department determines
8 that the information provided is false. A person whose
9 application has been denied shall not reapply for six months
10 from the date of the denial unless otherwise authorized by [~~the~~
11 ~~department~~] rule.

12 D. The department shall issue a registry
13 identification card within five days of approving an
14 application, and [~~a~~] the card shall expire one year after the
15 date of issuance. A registry identification card shall
16 contain:

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

19 (2) the date of issuance and expiration date
20 of the registry identification card; and

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

23 E. A person who possesses a registry identification
24 card shall notify the department of any change in the person's
25 name, address, qualified patient's practitioner, qualified

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1 patient's primary caregiver or change in status of the
2 qualified patient's debilitating medical condition within ten
3 days of the change.

4 F. Possession of or application for a registry
5 identification card shall not constitute probable cause or give
6 rise to reasonable suspicion for a governmental agency to
7 search the person or property of the person possessing or
8 applying for the card.

9 G. The department shall maintain a confidential
10 file containing the names and addresses of the persons who have
11 either applied for or received a registry identification card.
12 Individual names on the list shall be confidential and not
13 subject to disclosure, except:

14 (1) to authorized employees or agents of the
15 department as necessary to perform the duties of the department
16 pursuant to the provisions of the Lynn and Erin Compassionate
17 Use Act;

18 (2) to authorized employees of state or local
19 law enforcement agencies, but only for the purpose of verifying
20 that a person is lawfully in possession of a registry
21 identification card; or

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

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

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1 "30-31-2. DEFINITIONS.--As used in the Controlled
2 Substances Act:

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

6 B. "agent" includes an authorized person who acts
7 on behalf of a manufacturer, distributor or dispenser. It does
8 not include a common or contract carrier, public
9 warehouseperson or employee of the carrier or warehouseperson;

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

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

14 E. "controlled substance":

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

18 (2) does not include industrial hemp,
19 marijuana or hashish for the purpose of conduct that complies
20 with the Cannabis Revenue and Freedom Act;

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

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,

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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":

20 (1) means all parts of the plant cannabis,
21 including any and all varieties, species and subspecies of the
22 genus Cannabis, whether growing or not, the seeds thereof and
23 every compound, manufacture, salt, derivative, mixture or
24 preparation of the plant or its seeds; [~~It~~] and

25 (2) does not include:

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- 1 (a) the mature stalks of the plant;
2 (b) hashish;
3 (c) tetrahydrocannabinols extracted or
4 isolated from marijuana;
5 (d) fiber produced from the stalks;
6 (e) oil or cake made from the seeds of
7 the plant;
8 (f) any other compound, manufacture,
9 salt, derivative, mixture or preparation of the mature stalks,
10 fiber, oil or cake; [~~or~~]
11 (g) the sterilized seed of the plant
12 that is incapable of germination; or
13 (h) industrial hemp or commodities or
14 products made from industrial hemp;

15 0. "narcotic drug" means any of the following,
16 whether produced directly or indirectly by extraction from
17 substances of vegetable origin or independently by means of
18 chemical synthesis or by a combination of extraction and
19 chemical synthesis:

- 20 (1) opium and opiate and any salt, compound,
21 derivative or preparation of opium or opiate;
22 (2) any salt, compound, isomer, derivative or
23 preparation that is a chemical equivalent of any of the
24 substances referred to in Paragraph (1) of this subsection,
25 except the isoquinoline alkaloids of opium;

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

4 (4) coca leaves and any salt, compound,
5 derivative or preparation of coca leaves, any salt, compound,
6 isomer, derivative or preparation that is a chemical equivalent
7 of any of these substances except decocainized coca leaves or
8 extractions of coca leaves that do not contain cocaine or
9 ecgonine;

10 P. "opiate" means any substance having an
11 addiction-forming or addiction-sustaining liability similar to
12 morphine or being capable of conversion into a drug having
13 addiction-forming or addiction-sustaining liability. "Opiate"
14 does not include, unless specifically designated as controlled
15 under Section 30-31-5 NMSA 1978, the dextrorotatory isomer of
16 3-methoxy-n-methylmorphinan and its salts, dextromethorphan.
17 "Opiate" does include its racemic and levorotatory forms;

18 Q. "person" means an individual, partnership,
19 corporation, association, institution, political subdivision,
20 government agency or other legal entity;

21 R. "practitioner" means a physician, certified
22 advanced practice chiropractic physician, doctor of oriental
23 medicine, dentist, physician assistant, certified nurse
24 practitioner, clinical nurse specialist, certified nurse-
25 midwife, prescribing psychologist, veterinarian, euthanasia

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1 technician, pharmacist, pharmacist clinician or other person
2 licensed or certified to prescribe and administer drugs that
3 are subject to the Controlled Substances Act;

4 S. "prescription" means an order given individually
5 for the person for whom is prescribed a controlled substance,
6 either directly from a licensed practitioner or the
7 practitioner's agent to the pharmacist, including by means of
8 electronic transmission, or indirectly by means of a written
9 order signed by the prescriber, bearing the name and address of
10 the prescriber, the prescriber's license classification, the
11 name and address of the patient, the name and quantity of the
12 drug prescribed, directions for use and the date of issue and
13 in accordance with the Controlled Substances Act or rules
14 adopted thereto;

15 T. "scientific investigator" means a person
16 registered to conduct research with controlled substances in
17 the course of the person's professional practice or research
18 and includes analytical laboratories;

19 U. "ultimate user" means a person who lawfully
20 possesses a controlled substance for the person's own use or
21 for the use of a member of the person's household or for
22 administering to an animal under the care, custody and control
23 of the person or by a member of the person's household;

24 V. "drug paraphernalia" means all equipment,
25 products and materials of any kind that are used, intended for

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1 use or designed for use in planting, propagating, cultivating,
2 growing, harvesting, manufacturing, compounding, converting,
3 producing, processing, preparing, testing, analyzing,
4 packaging, repackaging, storing, containing, concealing,
5 injecting, ingesting, inhaling or otherwise introducing into
6 the human body a controlled substance or controlled substance
7 analog, other than marijuana, in violation of the Controlled
8 Substances Act. It includes:

9 (1) kits used, intended for use or designed
10 for use in planting, propagating, cultivating, growing or
11 harvesting any species of plant that is a controlled substance
12 or controlled substance analog or from which a controlled
13 substance can be derived;

14 (2) kits used, intended for use or designed
15 for use in manufacturing, compounding, converting, producing,
16 processing or preparing controlled substances or controlled
17 substance analogs;

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

21 (4) testing equipment used, intended for use
22 or designed for use in identifying or in analyzing the
23 strength, effectiveness or purity of controlled substances or
24 controlled substance analogs;

25 (5) scales or balances used, intended for use

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1 or designed for use in weighing or measuring controlled
2 substances or controlled substance analogs;

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

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

10 (8) blenders, bowls, containers, spoons and
11 mixing devices used, intended for use or designed for use in
12 compounding controlled substances or controlled substance
13 analogs;

14 (9) capsules, balloons, envelopes and other
15 containers used, intended for use or designed for use in
16 packaging small quantities of controlled substances or
17 controlled substance analogs;

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

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

25 (12) objects used, intended for use or

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1 designed for use in ingesting, inhaling or otherwise
2 introducing [~~marijuana~~] cocaine [~~hashish or hashish oil~~] into
3 the human body, such as:

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

7 (b) water pipes;

8 (c) carburetion tubes and devices;

9 (d) smoking and carburetion masks;

10 [~~(e) roach clips, meaning objects used~~
11 ~~to hold burning material, such as a marijuana cigarette, that~~
12 ~~has become too small to hold in the hand;~~

13 ~~(f)]~~ (e) miniature cocaine spoons and
14 cocaine vials;

15 [~~(g)]~~ (f) chamber pipes;

16 [~~(h)]~~ (g) carburetor pipes;

17 [~~(i)]~~ (h) electric pipes; or

18 [~~(j)]~~ (i) air-driven pipes;

19 [~~(k) chilams;~~

20 ~~(l) bonges; or~~

21 ~~(m) ice pipes or chillers;]~~ and

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

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

3 (b) the proximity of the object, in time
4 and space, to a direct violation of the Controlled Substances
5 Act or any other law relating to controlled substances or
6 controlled substance analogs;

7 (c) the proximity of the object to
8 controlled substances or controlled substance analogs;

9 (d) the existence of any residue of a
10 controlled substance or controlled substance analog on the
11 object;

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

14 (f) descriptive materials accompanying
15 the object that explain or depict its use;

16 (g) the manner in which the object is
17 displayed for sale; and

18 (h) expert testimony concerning its use;

19 W. "controlled substance analog" means a substance
20 other than a controlled substance that has a chemical structure
21 substantially similar to that of a controlled substance in
22 Schedule I, II, III, IV or V or that was specifically designed
23 to produce effects substantially similar to that of controlled
24 substances in Schedule I, II, III, IV or V. Examples of
25 chemical classes in which controlled substance analogs are

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1 found include the following:

- 2 (1) phenethylamines;
- 3 (2) N-substituted piperidines;
- 4 (3) morphinans;
- 5 (4) ecgonines;
- 6 (5) quinazolinones;
- 7 (6) substituted indoles; and
- 8 (7) arylcycloalkylamines.

9 Specifically excluded from the definition of "controlled
10 substance analog" are those substances that are generally
11 recognized as safe and effective within the meaning of the
12 Federal Food, Drug, and Cosmetic Act or have been manufactured,
13 distributed or possessed in conformance with the provisions of
14 an approved new drug application or an exemption for
15 investigational use within the meaning of Section 505 of the
16 Federal Food, Drug, and Cosmetic Act;

17 X. "human consumption" includes application,
18 injection, inhalation, ingestion or any other manner of
19 introduction;

20 Y. "drug-free school zone" means a public school,
21 parochial school or private school or property that is used for
22 a public, parochial or private school purpose and the area
23 within one thousand feet of the school property line, but it
24 does not mean any post-secondary school; and

25 Z. "valid practitioner-patient relationship" means

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1 a professional relationship, as defined by the practitioner's
2 licensing board, between the practitioner and the patient."

3 SECTION 66. Section 30-31-6 NMSA 1978 (being Laws 1972,
4 Chapter 84, Section 6, as amended) is amended to read:

5 "30-31-6. SCHEDULE I.--The following controlled
6 substances are included in Schedule I:

7 A. any of the following opiates, including their
8 isomers, esters, ethers, salts, and salts of isomers, esters
9 and ethers, unless specifically exempted, whenever the
10 existence of these isomers, esters, ethers and salts is
11 possible within the specific chemical designation:

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

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

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- 1 (40) properidine;
- 2 (41) racemoramide; and
- 3 (42) trimeperidine;

4 B. any of the following opium derivatives, their
5 salts, isomers and salts of isomers, unless specifically
6 exempted, whenever the existence of these salts, isomers and
7 salts of isomers is possible within the specific chemical
8 designation:

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

- 1 (18) nicocodeine;
- 2 (19) nicomorphine;
- 3 (20) normorphine;
- 4 (21) pholcodine; and
- 5 (22) thebacon;

6 C. any material, compound, mixture or preparation
7 that contains any quantity of the following hallucinogenic
8 substances, their salts, isomers and salts of isomers, unless
9 specifically exempted, whenever the existence of these salts,
10 isomers and salts of isomers is possible within the specific
11 chemical designation:

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

- 1 (14) N-methyl-3-piperidyl benzilate;
2 (15) psilocybin;
3 (16) psilocyn;
4 (17) tetrahydrocannabinols;
5 (18) hashish;
6 (19) synthetic cannabinoids, including:
7 (a) 1-[2-(4-(morpholinyl)ethyl)
8 -3-(1-naphthoyl)indole;
9 (b) 1-butyl-3-(1-naphthoyl)indole;
10 (c) 1-hexyl-3-(1-naphthoyl)indole;
11 (d) 1-pentyl-3-(1-naphthoyl)indole;
12 (e) 1-pentyl-3-(2-methoxyphenylacetyl)
13 indole;
14 (f) cannabicyclohexanol (CP 47, 497 and
15 homologues: 5-(1,1-dimethylheptyl)-2-[(1R,3S)
16 -3-hydroxycyclohexyl]-phenol (CP-47,497); and 5-(1,
17 1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol;
18 (g) 6aR,10aR)-9-(hydroxymethyl)
19 -6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,
20 10a-tetrahydrobenzo[c]chromen-1-ol);
21 (h) dexanabinol, (6aS,10aS)
22 -9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)
23 -6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol;
24 (i) 1-pentyl-3-(4-chloro naphthoyl)
25 indole;

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

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

5 (20) 3,4-methylenedioxy methcathinone;

6 (21) 3,4-methylenedioxy pyrovalerone;

7 (22) 4-methylmethcathinone;

8 (23) 4-methoxymethcathinone;

9 (24) 3-fluoromethcathinone; and

10 (25) 4-fluoromethcathinone;

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

19 E. the enumeration of marijuana, hashish,
20 tetrahydrocannabinols or chemical derivatives of
21 tetrahydrocannabinol as Schedule I controlled substances does
22 not apply to the use of marijuana, tetrahydrocannabinols or
23 chemical derivatives of tetrahydrocannabinol by:

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

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1 (2) a qualified ~~[patients]~~ patient pursuant to
2 the provisions of the Lynn and Erin Compassionate Use Act;
3 ~~[and]~~ or

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

6 F. controlled substances added to Schedule I by
7 rule adopted by the board pursuant to Section 30-31-3 NMSA
8 1978."

9 SECTION 67. Section 30-31-20 NMSA 1978 (being Laws 1972,
10 Chapter 84, Section 20, as amended) is amended to read:

11 "30-31-20. TRAFFICKING CONTROLLED SUBSTANCES--
12 VIOLATION.--

13 A. As used in the Controlled Substances Act,
14 "traffic" means the:

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

18 (2) distribution, sale, barter or giving away
19 of:

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

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

25 (c) methamphetamine, its salts, isomers

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1 and salts of isomers; or

2 (3) possession with intent to distribute:

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

5 (b) a controlled substance analog of a
6 controlled substance enumerated in Schedule I or II that is a
7 narcotic drug; or

8 (c) methamphetamine, its salts, isomers
9 and salts of isomers.

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

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

16 (2) for the first offense if the controlled
17 substance is not marijuana, guilty of a second degree felony
18 and shall be sentenced pursuant to the provisions of Section
19 31-18-15 NMSA 1978; and

20 [~~2~~] (3) for the second and subsequent
21 offenses if the controlled substance is not marijuana, guilty
22 of a first degree felony and shall be sentenced pursuant to the
23 provisions of Section 31-18-15 NMSA 1978.

24 C. A person who knowingly violates Subsection B of
25 this section within a drug-free school zone excluding private

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1 property residentially zoned or used primarily as a residence
2 is guilty of:

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

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

9 SECTION 68. Section 30-31-22 NMSA 1978 (being Laws 1972,
10 Chapter 84, Section 22, as amended) is amended to read:

11 "30-31-22. CONTROLLED OR COUNTERFEIT SUBSTANCES--
12 DISTRIBUTION PROHIBITED.--

13 A. Except as authorized by the Controlled
14 Substances Act, it is unlawful for a person to intentionally
15 distribute or possess with intent to distribute a controlled
16 substance or a controlled substance analog except a substance
17 enumerated in Schedule I or II that is a narcotic drug, a
18 controlled substance analog of a controlled substance
19 enumerated in Schedule I or II that is a narcotic drug or
20 methamphetamine, its salts, isomers and salts of isomers. A
21 person who violates this subsection with respect to:

22 (1) marijuana or synthetic cannabinoids is:
23 ~~[(a) for the first offense, guilty of a~~
24 ~~fourth degree felony and shall be sentenced pursuant to the~~
25 ~~provisions of Section 31-18-15 NMSA 1978;~~

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1 ~~(b) for the second and subsequent~~
2 ~~offenses, guilty of a third degree felony and shall be~~
3 ~~sentenced pursuant to the provisions of Section 31-18-15 NMSA~~
4 ~~1978;~~

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

10 ~~(d) for the second and subsequent~~
11 ~~offenses, if more than one hundred pounds is possessed with~~
12 ~~intent to distribute or distributed or both, guilty of a second~~
13 ~~degree felony and shall be sentenced pursuant to the provisions~~
14 ~~of Section 31-18-15] guilty of a misdemeanor and shall be~~
15 ~~sentenced pursuant to the provisions of Section 31-19-1 NMSA~~
16 ~~1978;~~

17 (2) any other controlled substance enumerated in
18 Schedule I, II, III or IV or a controlled substance analog of a
19 controlled substance enumerated in Schedule I, II, III or IV
20 except a substance enumerated in Schedule I or II that is a
21 narcotic drug, a controlled substance analog of a controlled
22 substance enumerated in Schedule I or II that is a narcotic
23 drug or methamphetamine, its salts, isomers and salts of
24 isomers, is:

25 (a) for the first offense, guilty of a third

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~~[bracketed material] = delete~~

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

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

6 (3) a controlled substance enumerated in
7 Schedule V or a controlled substance analog of a controlled
8 substance enumerated in Schedule V is guilty of a misdemeanor
9 and shall be punished by a fine of not less than one hundred
10 dollars (\$100) or more than five hundred dollars (\$500) or by
11 imprisonment for a definite term not less than one hundred
12 eighty days but less than one year, or both.

13 B. It is unlawful for a person to distribute gamma
14 hydroxybutyric acid or flunitrazepam to another person without
15 that person's knowledge and with intent to commit a crime
16 against that person, including criminal sexual penetration.
17 For the purposes of this subsection, "without that person's
18 knowledge" means the person is unaware that a substance with
19 the ability to alter that person's ability to appraise conduct
20 or to decline participation in or communicate unwillingness to
21 participate in conduct is being distributed to that person.

22 Any person who violates this subsection is:

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

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

4 C. Except as authorized by the Controlled Substances
5 Act, it is unlawful for a person to intentionally create or
6 deliver, or possess with intent to deliver, a counterfeit
7 substance. A person who violates this subsection with respect
8 to:

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

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

16 [~~2~~] (3) a counterfeit substance enumerated in
17 Schedule V is guilty of a petty misdemeanor and shall be
18 punished by a fine of not more than one hundred dollars (\$100)
19 or by imprisonment for a definite term not to exceed six
20 months, or both.

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

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

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

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

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

11 ~~(d) for the second and subsequent offenses,~~
12 ~~if more than one hundred pounds is possessed with intent to~~
13 ~~distribute or distributed or both, guilty of a first degree~~
14 ~~felony and shall be sentenced pursuant to the provisions of~~
15 ~~Section 31-18-15] guilty of a misdemeanor and shall be~~
16 ~~sentenced pursuant to the provisions of Section 31-19-1 NMSA~~
17 ~~1978;~~

18 (2) any other controlled substance enumerated in
19 Schedule I, II, III or IV or a controlled substance analog of a
20 controlled substance enumerated in Schedule I, II, III or IV
21 except a substance enumerated in Schedule I or II that is a
22 narcotic drug, a controlled substance analog of a controlled
23 substance enumerated in Schedule I or II that is a narcotic
24 drug or methamphetamine, its salts, isomers and salts of
25 isomers, is:

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

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

7 (3) a controlled substance enumerated in
8 Schedule V or a controlled substance analog of a controlled
9 substance enumerated in Schedule V is guilty of a fourth degree
10 felony and shall be sentenced pursuant to the provisions of
11 Section 31-18-15 NMSA 1978; and

12 (4) the intentional creation, delivery or
13 possession with the intent to deliver:

14 (a) a counterfeit substance enumerated in
15 Schedule I, II, III or IV is guilty of a third degree felony
16 and shall be sentenced pursuant to the provisions of Section
17 31-18-15 NMSA 1978; and

18 (b) a counterfeit substance enumerated in
19 Schedule V is guilty of a misdemeanor and shall be punished by
20 a fine of not less than one hundred dollars (\$100) nor more
21 than five hundred dollars (\$500) or by imprisonment for a
22 definite term not less than one hundred eighty days but less
23 than one year, or both.

24 E. Notwithstanding the provisions of Subsection A of
25 this section, distribution of a small amount of marijuana or

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1 synthetic cannabinoids for no remuneration shall be treated as
2 provided in Paragraph (1) of Subsection B of Section 30-31-23
3 NMSA 1978."

4 SECTION 69. Section 30-31-23 NMSA 1978 (being Laws 1972,
5 Chapter 84, Section 23, as amended) is amended to read:

6 "30-31-23. CONTROLLED SUBSTANCES--POSSESSION
7 PROHIBITED.--

8 A. It is unlawful for a person to intentionally [~~to~~]
9 possess a controlled substance unless the substance was
10 obtained pursuant to a valid prescription or order of a
11 practitioner while acting in the course of professional
12 practice or except as otherwise authorized by the Controlled
13 Substances Act. It is unlawful for a person to intentionally
14 [~~to~~] possess a controlled substance analog.

15 B. A person who violates this section with respect
16 to:

17 [~~(1) one ounce or less of marijuana or synthetic~~
18 ~~cannabinoids is, for the first offense, guilty of a petty~~
19 ~~misdemeanor and shall be punished by a fine of not less than~~
20 ~~fifty dollars (\$50.00) or more than one hundred dollars (\$100)~~
21 ~~and by imprisonment for not more than fifteen days, and, for~~
22 ~~the second and subsequent offenses, guilty of a misdemeanor and~~
23 ~~shall be punished by a fine of not less than one hundred~~
24 ~~dollars (\$100) or more than one thousand dollars (\$1,000) or by~~
25 ~~imprisonment for a definite term less than one year, or both;~~

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

8 ~~(3)~~ (2) eight ounces or more of marijuana or
9 synthetic cannabinoids possessed outside a person's residence
10 is guilty of a ~~[fourth degree felony]~~ misdemeanor and shall be
11 sentenced pursuant to the provisions of Section ~~[31-18-15]~~
12 31-19-1 NMSA 1978.

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

14 (1) synthetic cannabinoids shall:

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

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

21 (2) the substances listed in [this subsection]
22 Subparagraphs (a) and (b) of this paragraph is guilty of a
23 petty misdemeanor and, notwithstanding the provisions of
24 Sections 32A-1-5 and 32A-2-19 NMSA 1978, shall be punished by a
25 fine not to exceed one hundred dollars (\$100) or forty-eight

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1 hours of community service. For the third or subsequent
2 violation [~~by a minor of this section~~] with respect to those
3 substances, the provisions of Section 32A-2-19 NMSA 1978 shall
4 govern punishment of the minor. [~~As used in this subsection,~~
5 ~~"minor" means a person who is less than eighteen years of age.~~]
6 The provisions of this [~~subsection~~] paragraph apply to the
7 following substances:

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

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

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

20 D. Except for those substances listed in Subsection E
21 of this section, a person who violates this section with
22 respect to any amount of any controlled substance enumerated in
23 Schedule I, II, III or IV other than marijuana or a controlled
24 substance analog of a substance enumerated in Schedule I, II,
25 III or IV other than marijuana is guilty of a misdemeanor and

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~~[bracketed material] = delete~~

1 shall be punished by a fine of not less than five hundred
2 dollars (\$500) or more than one thousand dollars (\$1,000) or by
3 imprisonment for a definite term less than one year, or both.

4 E. A person who violates this section with respect to
5 phencyclidine as enumerated in Schedule III or a controlled
6 substance analog of phencyclidine; methamphetamine, its salts,
7 isomers or salts of isomers as enumerated in Schedule II or a
8 controlled substance analog of methamphetamine, its salts,
9 isomers or salts of isomers; flunitrazepam, its salts, isomers
10 or salts of isomers as enumerated in Schedule I or a controlled
11 substance analog of flunitrazepam, including naturally
12 occurring metabolites, its salts, isomers or salts of isomers;
13 gamma hydroxybutyric acid and any chemical compound that is
14 metabolically converted to gamma hydroxybutyric acid, its
15 salts, isomers or salts of isomers as enumerated in Schedule I
16 or a controlled substance analog of gamma hydroxybutyric acid,
17 its salts, isomers or salts of isomers; gamma butyrolactone and
18 any chemical compound that is metabolically converted to gamma
19 hydroxybutyric acid, its salts, isomers or salts of isomers as
20 enumerated in Schedule I or a controlled substance analog of
21 gamma butyrolactone, its salts, isomers or salts of isomers; 1-
22 4 butane diol and any chemical compound that is metabolically
23 converted to gamma hydroxybutyric acid, its salts, isomers or
24 salts of isomers as enumerated in Schedule I or a controlled
25 substance analog of 1-4 butane diol, its salts, isomers or

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1 salts of isomers; or a narcotic drug enumerated in Schedule I
2 or II or a controlled substance analog of a narcotic drug
3 enumerated in Schedule I or II is guilty of a fourth degree
4 felony and shall be sentenced pursuant to the provisions of
5 Section 31-18-15 NMSA 1978.

6 F. Except for a minor [~~as defined in Subsection C of~~
7 ~~this section~~], a person who violates Subsection A of this
8 section while within a posted drug-free school zone, excluding
9 private property residentially zoned or used primarily as a
10 residence and excluding a person in or on a motor vehicle in
11 transit through the posted drug-free school zone, with respect
12 to:

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

21 ~~(2)]~~ (1) more than one ounce [~~and less than~~
22 ~~eight ounces~~] of marijuana or synthetic cannabinoids is guilty
23 of a [~~fourth degree felony~~] misdemeanor and shall be sentenced
24 pursuant to the provisions of Section [~~31-18-15~~] 31-19-1 NMSA
25 1978;

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[bracketed material] = delete

1 ~~[(3) eight ounces or more of marijuana or~~
2 ~~synthetic cannabinoids is guilty of a third degree felony and~~
3 ~~shall be sentenced pursuant to the provisions of Section~~
4 ~~31-18-15 NMSA 1978;~~

5 ~~(4)~~ (2) any amount of any other controlled
6 substance enumerated in Schedule I, II, III or IV or a
7 controlled substance analog of a substance enumerated in
8 Schedule I, II, III or IV, except phencyclidine as enumerated
9 in Schedule III, a narcotic drug enumerated in Schedule I or II
10 or a controlled substance analog of a narcotic drug enumerated
11 in Schedule I or II, is guilty of a fourth degree felony and
12 shall be sentenced pursuant to the provisions of Section
13 31-18-15 NMSA 1978; and

14 ~~[(5)]~~ (3) phencyclidine as enumerated in
15 Schedule III, a narcotic drug enumerated in Schedule I or II, a
16 controlled substance analog of phencyclidine or a controlled
17 substance analog of a narcotic drug enumerated in Schedule I or
18 II is guilty of a third degree felony and shall be sentenced
19 pursuant to the provisions of Section 31-18-15 NMSA 1978.

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

22 SECTION 70. Section 30-31B-2 NMSA 1978 (being Laws 1989,
23 Chapter 177, Section 2, as amended) is amended to read:

24 "30-31B-2. DEFINITIONS.--As used in the Drug Precursor
25 Act:

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

4 B. "agent" includes an authorized person who acts on
5 behalf of a manufacturer, distributor or dispenser. "Agent"
6 does not include a common or contract carrier, public
7 warehouseperson or employee of the carrier or warehouseperson;

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

9 D. "bureau" means the bureau of narcotics and
10 dangerous drugs of the United States department of justice or
11 its successor agency;

12 E. "controlled substance":

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

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

19 F. "controlled substance analog" means a substance
20 other than a controlled substance that has a chemical structure
21 substantially similar to that of a controlled substance in
22 Schedule I, II, III, IV or V or that was specifically designed
23 to produce effects substantially similar to that of controlled
24 substances in Schedule I, II, III, IV or V. Examples of
25 chemical classes in which controlled substance analogs are

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~~[bracketed material] = delete~~

1 found include, but are not limited to, the following:

- 2 (1) phenethylamines;
- 3 (2) N-substituted piperidines;
- 4 (3) morphinans;
- 5 (4) ecgonines;
- 6 (5) quinazolinones;
- 7 (6) substituted indoles; and
- 8 (7) arylcycloalkylamines.

9 Specifically excluded from the definition of "controlled
10 substance analog" are those substances that are generally
11 recognized as safe and effective within the meaning of the
12 Federal Food, Drug, and Cosmetic Act or have been manufactured,
13 distributed or possessed in conformance with the provisions of
14 an approved new drug application or an exemption for
15 investigational use within the meaning of Section 505 of the
16 Federal Food, Drug, and Cosmetic Act;

17 G. "deliver" means the actual, constructive or
18 attempted transfer from one person to another of a controlled
19 substance or controlled substance analog, whether or not there
20 is an agency relationship;

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

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underscoring material = new
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1 I. "dispenser" means a practitioner who dispenses and
2 includes hospitals, pharmacies and clinics where controlled
3 substances are dispensed;

4 J. "distribute" means to deliver other than by
5 administering or dispensing a controlled substance or
6 controlled substance analog;

7 K. "drug" means substances recognized as drugs in the
8 official United States pharmacopoeia, official homeopathic
9 pharmacopoeia of the United States, official national formulary
10 or any respective supplement to these publications. "Drug"
11 does not include devices or their components, parts or
12 accessories;

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

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1 the findings required pursuant to Subsection B of Section
2 30-31B-4 NMSA 1978;

3 M. "immediate precursor" means a substance that is a
4 compound commonly used or produced primarily as an immediate
5 chemical intermediary used in the manufacture of a controlled
6 substance, the control of which is necessary to prevent,
7 curtail or limit the manufacture of controlled substances;

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

10 O. "manufacture" means the production, preparation,
11 compounding, conversion or processing of a drug precursor by
12 extraction from substances of natural origin, independently by
13 means of chemical synthesis or by a combination of extraction
14 and chemical synthesis and includes any packaging or
15 repackaging of the substance or labeling or relabeling of its
16 container, except that this term does not include the
17 preparation or compounding of a controlled substance by a
18 practitioner:

19 (1) as an incident to the practitioner's
20 administering or dispensing of a controlled substance in the
21 course of professional practice; or

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

25 P. "person" includes an individual, sole

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1 proprietorship, partnership, corporation, association, the
2 state or a political subdivision of the state or other legal
3 entity;

4 Q. "possession" means to actively or constructively
5 exercise dominion over;

6 R. "practitioner" means a physician, certified
7 advanced practice chiropractic physician, dentist, veterinarian
8 or other person licensed to prescribe and administer drugs that
9 are subject to the Controlled Substances Act;

10 S. "prescription" means an order given individually
11 for the person for whom is prescribed a controlled substance,
12 either directly from the prescriber to the pharmacist or
13 indirectly by means of a written order signed by the prescriber
14 and in accordance with the Controlled Substances Act or
15 regulations adopted thereto; and

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

18 SECTION 71. EFFECTIVE DATE.--The effective date of the
19 provisions of this act is July 1, 2017.