

SENATE TAX, BUSINESS AND TRANSPORTATION
COMMITTEE SUBSTITUTE FOR
SENATE BILL 288

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

AN ACT

RELATING TO CANNABIS; ENACTING THE CANNABIS REGULATION ACT;
CREATING THE CANNABIS CONTROL COMMISSION AND PROVIDING DUTIES;
REVISING SECTIONS OF LAW RELATED TO CANNABIS; ESTABLISHING
DUTIES FOR THE DEPARTMENT OF ENVIRONMENT; CREATING THE CANNABIS
REGULATION FUND AND THE ROAD SAFETY FUND; REVISING THE LOCAL
DWI GRANT PROGRAM; ENACTING THE CANNABIS TAX ACT; PROVIDING AND
REVISING PENALTIES; AMENDING, REPEALING AND ENACTING SECTIONS
OF THE NMSA 1978; MAKING AN APPROPRIATION; DECLARING AN
EMERGENCY.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
through 35 of this act may be cited as the "Cannabis Regulation
Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
.220534.3

underscored material = new
[bracketed material] = delete

1 Cannabis Regulation Act:

2 A. "adult-use cannabis" means cannabis that is
3 authorized for sale pursuant to the Cannabis Regulation Act,
4 but does not include medical cannabis;

5 B. "board" means the board of regents of New Mexico
6 state university;

7 C. "cannabis":

8 (1) means all parts of the plant Cannabis
9 sativa Linnaeus, whether growing or not, containing more than
10 three-tenths percent tetrahydrocannabinol; the seeds of the
11 plant; the resin extracted from any part of the plant; and
12 every compound, manufacture, salt, derivative, mixture or
13 preparation of the plant, its seeds or its resin; and

14 (2) does not include:

15 (a) the mature stalks of the plant;
16 fiber produced from the stalks; oil or cake made from the seeds
17 of the plant; any other compound, manufacture, salt,
18 derivative, mixture or preparation of the mature stalks, fiber,
19 oil or cake; or the sterilized seed of the plant that is
20 incapable of germination; or

21 (b) the weight of any other ingredient
22 combined with cannabis to prepare topical or oral
23 administrations, food, drink or another product;

24 D. "cannabis courier" means a person licensed by
25 the commission only to transport usable cannabis and cannabis

.220534.3

1 products directly to consumers;

2 E. "cannabis establishment" means:

- 3 (1) a cannabis testing laboratory;
- 4 (2) a cannabis producer;
- 5 (3) a cannabis manufacturing facility;
- 6 (4) a lounge; or
- 7 (5) a dispensary;

8 F. "cannabis extract":

9 (1) means a product obtained by separating
10 resins from cannabis by solvent extraction using volatile
11 solvents, such as butane, hexane, isopropyl alcohol, ethanol or
12 carbon dioxide; and

13 (2) does not include the weight of any other
14 ingredient combined with cannabis extract to prepare topical or
15 oral administrations, food, drink or another product;

16 G. "cannabis flowers" means only the flowers of a
17 cannabis plant;

18 H. "cannabis items" means cannabis, cannabis
19 products and cannabis extracts;

20 I. "cannabis leaves" means only the leaves of a
21 cannabis plant;

22 J. "cannabis manufacturer" means a person licensed
23 to:

- 24 (1) manufacture and package cannabis items;
- 25 (2) have cannabis items tested by a cannabis

.220534.3

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

1 testing laboratory; and

2 (3) buy, sell, consign or transport cannabis
3 items;

4 K. "cannabis producer" means a person licensed to:

5 (1) cultivate or prepare cannabis in a raw
6 form for consumption;

7 (2) have cannabis items tested by a cannabis
8 testing laboratory; and

9 (3) sell, consign or transport cannabis items;

10 L. "cannabis product":

11 (1) means a product that contains cannabis or
12 cannabis extracts, including edible or topical products that
13 may also contain other ingredients; and

14 (2) does not include the weight of any other
15 ingredient combined with cannabis or cannabis extracts to
16 prepare topical or oral administrations, food, drink or another
17 product;

18 M. "cannabis testing laboratory" means a facility
19 licensed by the department of environment to collect, transport
20 and test cannabis items to analyze the strength or purity of
21 the items;

22 N. "commercial cannabis activity":

23 (1) means the cultivation, production,
24 possession, manufacture, storage, testing, labeling,
25 transportation, couriering, sale or consignment of cannabis and

.220534.3

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

1 cannabis items; and

2 (2) does not include activities related only
3 to the medical cannabis program;

4 O. "commission" means the cannabis control
5 commission;

6 P. "consumer" means a person who purchases,
7 acquires, owns, possesses or uses a cannabis item for a purpose
8 other than resale;

9 Q. "controlling person":

10 (1) means an officer, board member or other
11 natural person who has a financial or voting interest of ten
12 percent or greater in a cannabis establishment; and

13 (2) does not include a bank or licensed
14 lending institution;

15 R. "cultivation" means any activity involving the
16 planting, growing, harvesting, drying, curing, grading or
17 trimming of cannabis;

18 S. "director" means the executive director of the
19 cannabis control commission;

20 T. "dispensary" means a commission regulated
21 facility at which cannabis items are stored or offered for
22 retail sale to the public;

23 U. "dual licensed dispensary" means an
24 establishment licensed to sell both medical and adult-use
25 cannabis for off-site consumption;

.220534.3

1 V. "financial consideration" means the value that
2 is given or received, directly or indirectly, through sales,
3 barter, trade, fees, charges, dues, contributions or donations;

4 W. "licensed premises" means a location that is
5 licensed pursuant to the Cannabis Regulation Act and includes:

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

10 (2) all areas outside of a building
11 specifically licensed for the production and manufacturing of
12 cannabis items; and

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

18 X. "licensee representative" means an owner,
19 director, officer, manager, employee, agent or other
20 representative of a licensee, to the extent that person acts in
21 a representative capacity;

22 Y. "local jurisdiction" means a municipality or a
23 county;

24 Z. "lounge" means a facility licensed by the
25 commission to sell cannabis items only for on-site consumption;

.220534.3

1 AA. "manufacture":

2 (1) means to compound, blend, extract, infuse,
3 package or otherwise prepare a cannabis item; and

4 (2) does not include cultivating the cannabis
5 contained in a cannabis item;

6 BB. "medical cannabis" means cannabis items used by
7 a qualified patient in accordance with the Lynn and Erin
8 Compassionate Use Act;

9 CC. "medical cannabis collective" means a group of
10 not more than five qualified patients, as defined in the Lynn
11 and Erin Compassionate Use Act, licensed by the board through
12 the New Mexico department of agriculture to cultivate and sell
13 certain medical cannabis items pursuant to rule;

14 DD. "medical cannabis program" means the regulated
15 system allowing for the beneficial use of medical cannabis as
16 established in the Lynn and Erin Compassionate Use Act;

17 EE. "medical cannabis registry" means that term as
18 defined in the Lynn and Erin Compassionate Use Act;

19 FF. "person" means an individual or a firm,
20 partnership, joint venture, association, corporation, limited
21 liability company, estate, trust, business trust, receiver or
22 any other legal or commercial entity;

23 GG. "public place" means a place to which the
24 general public has access and includes hallways, lobbies and
25 other parts of apartment houses and hotels that do not

.220534.3

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

1 constitute rooms or apartments designed for actual residence;
2 highways; streets; schools; places of amusement; parks;
3 playgrounds; and places used in connection with public
4 passenger transportation;

5 HH. "qualified patient" means that term as defined
6 in the Lynn and Erin Compassionate Use Act;

7 II. "safety-sensitive position" means a position in
8 which performance by a person under the influence of drugs or
9 alcohol would constitute an immediate and direct threat of
10 injury or death to that person or to another;

11 JJ. "usable cannabis" means dried cannabis flowers
12 and dried cannabis leaves and any mixture or preparation of
13 those flowers or leaves; and

14 KK. "volatile solvent" means a solvent that is or
15 produces a flammable gas or vapor that, when present in the air
16 in sufficient quantities, will create explosive or ignitable
17 mixtures.

18 SECTION 3. [NEW MATERIAL] CANNABIS CONTROL COMMISSION
19 CREATED--DUTIES--RULEMAKING.--

20 A. The "cannabis control commission" is created.
21 The commission is a governmental entity for purposes of the
22 Tort Claims Act. The commission consists of:

23 (1) the secretary of environment or a member
24 of the secretary's staff designated by the secretary in an
25 advisory role;

.220534.3

1 (2) the secretary of health or a member of the
2 secretary's staff designated by the secretary in an advisory
3 role;

4 (3) the director of the New Mexico department
5 of agriculture or a member of the director's staff designated
6 by the director in an advisory role; and

7 (4) five public members appointed by the
8 governor with the consent of the senate, including:

9 (a) one member who is engaged in the
10 active commercial cultivation of non-cannabis crops;

11 (b) one member who is currently or has
12 previously served as a certified law enforcement officer; and

13 (c) one member who is currently or was
14 formerly licensed pursuant to the Medical Practice Act or the
15 Osteopathic Medicine Act.

16 B. Public members shall reside in New Mexico and
17 shall not have a financial interest in any entity engaged in
18 the commercial production, manufacture or sale of cannabis
19 products, and no more than three public members may be from the
20 same political party.

21 C. Public members shall serve staggered four-year
22 terms, except that of the initial public members appointed to
23 the commission, the governor shall select two members whose
24 initial terms are two years and three members whose initial
25 terms are four years.

.220534.3

1 D. Public members of the commission shall be
2 reimbursed as provided in the Per Diem and Mileage Act.

3 E. Except as provided in the Lynn and Erin
4 Compassionate Use Act, the commission has exclusive authority
5 to regulate and administer the testing, manufacture, packaging
6 and transportation of cannabis items in the state.

7 F. The commission shall employ such personnel and
8 hire such consultants as are required to carry out its duties
9 pursuant to the Cannabis Regulation Act; provided that the
10 commission shall not employ or hire a person who has a direct
11 or indirect financial interest in a cannabis establishment or
12 cannabis cultivation.

13 G. Not later than September 1, 2021, the
14 commission, in compliance with the State Rules Act, shall
15 promulgate rules necessary to carry out the commission's duties
16 as provided in the Cannabis Regulation Act, and those rules
17 shall include:

18 (1) procedures for the issuance, renewal,
19 suspension or revocation of licenses issued by the commission,
20 the department of environment and the department of health;

21 (2) qualifications for licensure that are
22 directly and demonstrably related to the operation of a
23 cannabis establishment;

24 (3) security requirements for a cannabis
25 establishment;

.220534.3

- 1 (4) requirements related to:
- 2 (a) inspection and monitoring of a
- 3 cannabis establishment;
- 4 (b) a cannabis establishment's
- 5 recordkeeping and tracking of cannabis items;
- 6 (c) prevention of the unauthorized sale
- 7 or diversion of cannabis items in commercial cannabis activity;
- 8 (d) labeling of cannabis items; and
- 9 (e) language for labels of cannabis
- 10 items related to potential adverse effects;
- 11 (5) rules on a licensee's advertisement and
- 12 marketing of cannabis products and on how a licensee may
- 13 display cannabis products for sale;
- 14 (6) rules developed in consultation with the
- 15 department of environment to establish:
- 16 (a) health and safety standards
- 17 applicable to the cultivation of cannabis and the manufacture
- 18 of cannabis items;
- 19 (b) standards for quality control,
- 20 inspection and testing of cannabis items;
- 21 (c) standards for food and product
- 22 safety applicable to cannabis items; and
- 23 (d) which additives and ingredients are
- 24 approved for and prohibited from inclusion in cannabis items;
- 25 and

.220534.3

1 (7) rules developed in consultation with the
2 department of environment and proposed for adoption by the
3 board, on behalf of the New Mexico department of agriculture,
4 to establish:

5 (a) standards for the use of pesticides
6 in the manufacture of cannabis, including the maximum
7 allowances for pesticides and other foreign material such as
8 hair, insects or other similar adulterants, in harvested
9 cannabis;

10 (b) environmental protections that apply
11 to all licensees;

12 (c) protocols to ensure licensees'
13 compliance with state laws governing environmental impacts,
14 natural resource protection, water quality, water supply,
15 hazardous materials, pesticide use and wastewater discharge;
16 and

17 (d) occupational health and safety
18 standards for persons working in the cannabis industry.

19 H. Except as provided in Subsection K of this
20 section, the commission may in its discretion license
21 dispensaries or lounges at any location within the state. Any
22 person employed to sell retail cannabis items under the
23 provisions of the Cannabis Regulation Act shall not sell
24 cannabis items except as may be legally obtained under the
25 provisions of the Cannabis Regulation Act.

.220534.3

1 I. Regarding commercial cannabis activity, the
2 commission shall not limit the number of plants a cannabis
3 establishment may possess, cultivate or manufacture.

4 J. The commission shall not limit the type or
5 number of licenses issued pursuant to the Cannabis Regulation
6 Act or the type or number of licenses that a licensee may be
7 issued pursuant to the Cannabis Regulation Act.

8 K. The commission shall not license a dispensary
9 that is located within three hundred feet from the perimeter of
10 school grounds on which instruction is provided at any level
11 from kindergarten through twelfth grade, a playground, a child
12 care center, a youth center, a public park or a library that
13 was in existence at the time the dispensary was established at
14 that location.

15 L. The commission shall not license a dispensary
16 unless the dispensary agrees as a condition of its license to
17 accept cannabis items on consignment for resale from any
18 manufacturer or producer licensed pursuant to Section 6 of the
19 Cannabis Regulation Act.

20 SECTION 4. [NEW MATERIAL] DEPARTMENT OF HEALTH--DUTIES--
21 PUBLIC HEALTH AND SAFETY ADVISORY COMMITTEE.--

22 A. The department of health shall monitor emerging
23 scientific and medical information relevant to the health
24 effects associated with cannabis use and shall monitor changes
25 in cannabis use patterns for children and adults within the

.220534.3

1 state, broken down by county, race and ethnicity.

2 B. The secretary of health shall appoint a "public
3 health and safety advisory committee" composed of professionals
4 with expertise related to cannabis through work, training or
5 research in public health, epidemiology, medicine, medical
6 toxicology, poison control, road safety, occupational safety,
7 environmental safety, laboratory testing and emergency
8 medicine.

9 C. The public health and safety advisory committee
10 shall provide to the legislature and the department of health
11 shall publish on its website an annual report on the health
12 effects of legalizing cannabis for adult use. The report shall
13 include the following elements relating to cannabis use:

- 14 (1) child access;
15 (2) road safety and driving while impaired;
16 (3) workplace safety;
17 (4) percentage of emergency room visits and
18 outcomes;
19 (5) educational needs for children and adults;
20 (6) consumer and product safety; and
21 (7) percentage of poison control center calls.

22 D. Public members of the committee are entitled to
23 per diem and mileage as provided for state employees in the Per
24 Diem and Mileage Act.

25 SECTION 5. [NEW MATERIAL] DEPARTMENT OF PUBLIC SAFETY--

.220534.3

1 REPORTING REQUIREMENTS.--

2 A. Within sixty days following the end of each
3 fiscal year, every police and sheriff's department shall report
4 on a form approved by the department of public safety:

5 (1) the total number of arrests and citations
6 for cannabis-related violations broken down by:

7 (a) category and penalty level; and

8 (b) race, ethnicity, age and gender; and

9 (2) the number of motor vehicle accidents in
10 which the driver of one of the vehicles tested positive for
11 cannabis.

12 B. Each law enforcement agency shall submit its
13 annual report to the department of public safety. A law
14 enforcement agency that does not issue a citation or make an
15 arrest for a cannabis law violation shall report that fact in
16 its annual report.

17 C. The department of public safety shall compile
18 the reports submitted and shall issue by November 1 of each
19 year an annual report of all cannabis law violations in the
20 state. The report shall aggregate the data for the state and
21 shall disaggregate the data by agency, race, ethnicity, age and
22 gender. The department of public safety shall make all annual
23 reports submitted for previous fiscal years available on the
24 department's website.

25 SECTION 6. [NEW MATERIAL] LICENSING--LIMITATIONS.--

.220534.3

underscored material = new
[bracketed material] = delete

1 A. The department of environment shall regulate and
2 license cannabis manufacturers, dual licensed dispensaries and
3 cannabis testing laboratories pursuant to rules promulgated by
4 the commission.

5 B. The department of environment shall begin
6 issuing licenses pursuant to the Cannabis Regulation Act for
7 cannabis manufacturers no sooner than September 1, 2022 except
8 to persons who possess valid dual licenses; provided that:

9 (1) the department shall condition renewal of
10 a license for cannabis manufacturers currently manufacturing
11 medical cannabis products upon a requirement that the
12 manufacturer sell a minimum amount of medical cannabis products
13 as a percentage of total cannabis products sold. The
14 department shall determine the minimum percentage by rule;
15 provided that the minimum percentage shall be not less than
16 twenty percent and not more than forty percent of total
17 cannabis products sold from the preceding twelve months'
18 operation of the manufacturer; and

19 (2) all medical cannabis products shall be
20 sold at a grade and quality determined by rule and a cannabis
21 testing laboratory to be suitable for medical consumption.

22 C. The New Mexico department of agriculture shall
23 regulate and license cannabis producers pursuant to rules
24 promulgated by the board and shall begin issuing licenses no
25 sooner than April 1, 2022 and shall regulate and issue licenses

1 to persons who possess a valid dual license for both medical
2 and adult-use cannabis production no later than September 1,
3 2021.

4 D. The commission shall regulate and license
5 lounges for the on-site consumption of cannabis items in
6 conjunction with a cannabis producer or manufacturer license
7 and shall begin issuing licenses for lounges except to persons
8 who possess valid dual licenses no sooner than September 1,
9 2022.

10 E. The department of environment shall assume all
11 responsibilities for licensing and regulation under the Lynn
12 and Erin Compassionate Use Act except for personal production
13 licenses as defined in the Lynn and Erin Compassionate Use Act
14 no later than September 1, 2021.

15 F. The department of environment may issue a dual
16 license that provides for the manufacturing and sale of on-site
17 and off-site consumption of adult-use cannabis to a person that
18 holds a valid medical cannabis manufacturer or producer
19 license; provided that the person shall sell a minimum quantity
20 of medical cannabis products as provided in Subsection B of
21 this section and shall meet quality standards promulgated by
22 the department of environment.

23 G. The commission may issue a dispensary license to
24 a person who holds a valid adult-use cannabis manufacturer or
25 producer license or a valid dual license; provided that the

.220534.3

1 dispensary shall meet quality standards promulgated by the
2 commission for a dispensary.

3 H. The commission may propose rules to the board
4 for adoption regarding the regulating and licensing of cannabis
5 producers as provided for in the Cannabis Regulation Act.

6 I. A license issued pursuant to the Cannabis
7 Regulation Act is valid for twelve months from the date the
8 license is issued and may be renewed annually or as provided
9 for in the rules promulgated by the commission.

10 J. An application for an initial license or renewal
11 may be denied if:

12 (1) the applicant has violated any provision
13 of the Lynn and Erin Compassionate Use Act or the Cannabis
14 Regulation Act or a rule promulgated pursuant to either of
15 those acts;

16 (2) the applicant's application does not
17 include all information required;

18 (3) the applicant or a controlling person in
19 the applicant's entity has been convicted of an offense that is
20 substantially related to the qualifications, functions or
21 duties of the applicant entity's business; provided that if the
22 constituent agency determines that the controlling person and
23 the applicant entity are otherwise qualified for a license and
24 issuing a license to the applicant entity would not compromise
25 public safety, the constituent agency shall conduct a thorough

.220534.3

1 review of the conviction, including the nature of the offense,
2 surrounding circumstances and any evidence of the controlling
3 person's rehabilitation following the conviction, and based on
4 that review, determine whether the applicant entity should be
5 issued a license; or

6 (4) the applicant or a controlling person in
7 the applicant's entity has been penalized for a violation of
8 the Cannabis Regulation Act or the Lynn and Erin Compassionate
9 Use Act in the three years immediately preceding the date on
10 which the application was filed.

11 K. For the purposes of Subsection J of this
12 section:

13 (1) the following are considered substantially
14 related to the qualifications, functions or duties of a
15 business seeking a license:

16 (a) a felony conviction involving fraud,
17 deceit or embezzlement;

18 (b) a felony conviction for hiring,
19 employing or otherwise using a person younger than eighteen
20 years of age to: 1) prepare for sale, transport or carry a
21 controlled substance; or 2) sell, give away or offer to sell a
22 controlled substance to any person; and

23 (c) any other offense as determined by
24 the commission by rule, except as provided in Paragraph (2) of
25 this subsection; and

.220534.3

1 (2) a conviction for which the related
2 sentence, including any term of probation or parole, is
3 completed for the possession, use, manufacture, distribution or
4 dispensing or the possession with the intent to manufacture,
5 distribute or dispense a controlled substance is not considered
6 substantially related to the qualifications, functions or
7 duties of a person seeking a license and shall not be a ground
8 on which an application is denied unless the offense involved
9 the distribution of alcohol or a controlled substance to a
10 minor.

11 L. An application shall be denied if an applicant,
12 a controlling person in an applicant's entity or the premises
13 for which a license is sought does not qualify for licensure
14 under the Cannabis Regulation Act or the Lynn and Erin
15 Compassionate Use Act.

16 M. The commission shall regulate and license
17 cannabis couriers. The commission shall begin issuing licenses
18 for cannabis couriers no sooner than September 1, 2021.

19 SECTION 7. [NEW MATERIAL] LICENSING FEES.--

20 A. The commission shall establish application and
21 licensing fees applicable to licenses for commercial cannabis
22 activity and activity related to medical cannabis. The fees
23 shall be reasonably calculated to cover the cost of
24 administering and enforcing the programs established in the
25 Cannabis Regulation Act; provided that:

.220534.3

1 (1) the fee shall be scaled to reflect the
2 size of a business seeking or renewing a license; and

3 (2) for a license or renewal of a license that
4 authorizes only medical cannabis activity, the fee shall not
5 exceed one-half of the fee charged for a license or renewal of
6 a license for a similarly sized business that authorizes both
7 commercial and medical cannabis activities.

8 B. The commission, the department of environment
9 and the New Mexico department of agriculture shall deposit all
10 fees collected pursuant to the Cannabis Regulation Act in the
11 cannabis regulation fund.

12 C. The board, on behalf of the New Mexico
13 department of agriculture, shall establish application and
14 licensing fees applicable to licenses for cannabis cultivation.
15 The fees shall be reasonably calculated to cover the cost of
16 administering and enforcing the programs established pursuant
17 to the Cannabis Regulation Act.

18 **SECTION 8. [NEW MATERIAL] DISCIPLINARY PROCEEDINGS--**
19 **APPLICATION OF UNIFORM LICENSING ACT.--**In accordance with the
20 procedures contained in the Uniform Licensing Act, the
21 commission, the department of environment or the department of
22 health may revoke or suspend any permanent or temporary license
23 held or applied for under the Cannabis Regulation Act upon
24 findings that the licensee or applicant:

25 A. engaged in fraud or deceit in procuring or

1 attempting to procure a license;

2 B. has been convicted of a felony; provided that a
3 certified copy of the record of conviction shall be conclusive
4 evidence of such conviction;

5 C. is guilty of any violation of the Controlled
6 Substances Act; or

7 D. has violated any provision of the Cannabis
8 Regulation Act or rules promulgated by the commission or the
9 board, on behalf of the New Mexico department of agriculture.

10 SECTION 9. [NEW MATERIAL] LOCAL CONTROL.--

11 A. Except as provided in Subsection B of this
12 section, a local jurisdiction may:

13 (1) adopt reasonable time, place and manner
14 rules that do not conflict with the Cannabis Regulation Act;

15 (2) prohibit, in accordance with the Cannabis
16 Regulation Act, the operation of a cannabis establishment; and

17 (3) limit the location of a cannabis
18 establishment, which distance shall be three hundred feet or
19 more from the perimeter of school grounds on which instruction
20 is provided at any level from kindergarten through twelfth
21 grade, a playground, a child care center, a youth center, a
22 public park or a library that was in existence at the time the
23 cannabis establishment was licensed.

24 B. A local jurisdiction shall not:

25 (1) prevent transportation of cannabis

1 products on public roads by a licensee that transports cannabis
2 products in compliance with the Cannabis Regulation Act;

3 (2) prohibit the personal production of
4 cannabis or cannabis products made without the use of volatile
5 solvents for personal use provided for in the Cannabis
6 Regulation Act or the Lynn and Erin Compassionate Use Act; or

7 (3) prohibit the operation of a business that
8 limits its sales of cannabis to medical cannabis.

9 SECTION 10. [NEW MATERIAL] LICENSEE PROTECTIONS.--

10 A. Conduct by a licensee or a licensee
11 representative that is allowed pursuant to a license and
12 conduct by a person who allows property to be used by a
13 licensee or a licensee representative for conduct allowed
14 pursuant to a license is lawful and is not a basis for seizure
15 or forfeiture of any property or assets.

16 B. A local jurisdiction shall not impose a
17 criminal, civil or administrative penalty on a licensee or a
18 licensee representative or on a person who allows property to
19 be used by a licensee or a licensee representative pursuant to
20 a license, solely for conduct allowed pursuant to a license.

21 SECTION 11. [NEW MATERIAL] TRANSPORT VIA COURIER.--

22 A. Only a cannabis courier may courier cannabis
23 products.

24 B. A consumer who requests courier service shall
25 maintain a physical or electronic copy of the courier request

.220534.3

underscoring material = new
[bracketed material] = delete

1 for the duration of time that the consumer possesses the
2 cannabis product that was purchased and received by courier and
3 shall make the copy available upon request by the commission or
4 a law enforcement officer.

5 SECTION 12. [NEW MATERIAL] PROTECTION OF UNDERAGE
6 PERSON--TRAFFICKING--PENALTIES.--

7 A. A licensee shall not employ a person younger
8 than twenty-one years of age.

9 B. Except as allowed in the Cannabis Regulation Act
10 or the Lynn and Erin Compassionate Use Act, a licensee shall
11 not sell a cannabis product to a person younger than twenty-one
12 years of age. The commission shall suspend or revoke the
13 license and may fine the licensee in an amount not to exceed
14 ten thousand dollars (\$10,000), or both, when the commission
15 finds that any licensee or the licensee's employee or agent
16 knowingly has sold, served or given any cannabis product to a
17 minor on two separate occasions within any twelve-month period.

18 C. The establishment of all of the following facts
19 by a licensee prosecuted for a violation of Subsection B of
20 this section shall constitute a defense that:

21 (1) the purchaser falsely represented in
22 writing; by producing a driver's license bearing the
23 purchaser's photograph; by producing a photographic
24 identification card issued by the motor vehicle division of the
25 taxation and revenue department; or by producing a similar

.220534.3

1 identification card issued pursuant to the laws of this state,
 2 another state, the federal government or the government of an
 3 Indian nation, tribe or pueblo that the person was twenty-one
 4 years of age or older;

5 (2) the purchaser's appearance was such that
 6 an ordinary, prudent person would believe that the purchaser
 7 was twenty-one years of age or older; and

8 (3) the sale was made in good faith, relying
 9 upon the purchaser's false written representation, driver's
 10 license or identification card produced as provided in
 11 Paragraph (1) of this subsection, and with the reasonable
 12 belief that the purchaser was actually twenty-one years of age
 13 or older.

14 D. A person who is eighteen years of age or older
 15 shall not intentionally traffic cannabis to a minor. A person
 16 who violates this subsection is guilty of a fourth degree
 17 felony and shall be sentenced pursuant to Section 31-18-15 NMSA
 18 1978.

19 E. For the purposes of this section, "traffic"
 20 means the:

21 (1) distribution, sale, barter or giving away
 22 of cannabis; or

23 (2) possession with intent to distribute,
 24 sell, barter or give away cannabis.

25 SECTION 13. [NEW MATERIAL] DISTRIBUTION AND TRANSPORT.--

.220534.3

1 The Cannabis Regulation Act shall not be construed to authorize
2 a licensee to transport or distribute, or cause to be
3 transported or distributed, cannabis items outside the state,
4 unless authorized by federal law.

5 SECTION 14. [NEW MATERIAL] PACKAGING AND LABELING.--

6 A. Before sale to the public, cannabis items shall
7 be labeled and placed in a resealable, child-resistant package.

8 B. Packages and labels for cannabis items shall not
9 be designed to be appealing to a child.

10 C. Labels shall include:

11 (1) total tetrahydrocannabinol concentration
12 for the package;

13 (2) for a package containing only cannabis
14 flower, the net weight of cannabis in the package;

15 (3) identification of the licensee or
16 licensees that produced or manufactured the cannabis item, the
17 date on which the cannabis was harvested, the type of cannabis
18 item and the date on which the cannabis item was manufactured
19 and packaged;

20 (4) a list of pharmacologically active
21 ingredients;

22 (5) for cannabis products, a list of all
23 ingredients, and for edibles, a disclosure of nutritional
24 information for the product or cannabis extract, disclosed in
25 the same manner required under federal law for nutritional

.220534.3

1 labeling for food for human consumption;

2 (6) a warning, if nuts or other known
3 allergens are used in the item or in its manufacture; and

4 (7) a warning of possible adverse effects of
5 consumption and the New Mexico poison and drug information
6 center phone number.

7 SECTION 15. [NEW MATERIAL] CANNABIS PRODUCTS--
8 APPEARANCE.--

9 A. Cannabis products shall:

10 (1) not be designed to appeal to children or
11 in such a way that the products could be easily confused with
12 commercially sold candy or foods that do not contain cannabis;

13 (2) be delineated or scored into standardized
14 serving sizes, if the cannabis product contains more than one
15 serving and is an edible cannabis product in solid form;

16 (3) contain a uniform disbursement of
17 cannabinoids throughout the product;

18 (4) be manufactured and sold under health and
19 sanitation standards established by the commission, with the
20 assistance of the department of environment, for the
21 preparation, storage, handling and sale of food products; and

22 (5) be sold with sufficient information to
23 enable the informed consumption of the product, including
24 information on the potential effects of the product and
25 directions on how to consume the cannabis product.

.220534.3

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

1 B. Cannabis or cannabis extracts included in a
2 cannabis product that is manufactured in compliance with
3 applicable law are not considered to be an adulterant under
4 state law.

5 SECTION 16. [NEW MATERIAL] CANNABIS MANUFACTURERS AND
6 TESTING LABORATORIES--DEPARTMENT OF ENVIRONMENT--RULEMAKING.--

7 A. The department of environment shall promulgate
8 rules to govern the licensing of a cannabis manufacturer and a
9 cannabis testing laboratory. The department shall issue
10 licenses as follows:

11 (1) "cannabis manufacturing level 1" for a
12 site that manufactures cannabis extracts using nonvolatile
13 solvents or no solvents;

14 (2) "cannabis manufacturing level 2" for a
15 site that manufactures cannabis extracts using volatile
16 solvents; and

17 (3) "cannabis testing laboratory" for a
18 licensee that tests cannabis products.

19 B. Except as otherwise provided by law, cannabis
20 shall not be sold unless a representative sample from every
21 five pounds of cannabis flower or each batch of cannabis has
22 been tested by a cannabis testing laboratory to determine:

23 (1) the chemical profile of the sample,
24 including:

25 (a) delta-9-tetrahydrocannabinol;

- 1 (b) tetrahydrocannabinolic acid;
- 2 (c) cannabidiol;
- 3 (d) cannabidiolic acid;
- 4 (e) cannabigerol; and
- 5 (f) cannabinol; and

6 (2) that the presence of the following
7 contaminants does not exceed harmful levels:

8 (a) residual solvents or chemicals, such
9 as butane, propane, methanol, methylene chloride, acetone,
10 benzene, toluene and trichloroethylene; and

11 (b) microbiological impurity, including
12 total aerobic microbial count; total yeast mold count;
13 aspergillus species; E. coli; salmonella spp.; bile-tolerant
14 gram-negative organisms; aflatoxin B1, B2, G1 or G2; or
15 ochratoxin A.

16 C. Residual levels of volatile organic compounds
17 shall not exceed harmful levels.

18 D. The testing required by this section shall be
19 performed in a manner consistent with general requirements for
20 the competence of testing and calibration activities, including
21 sampling, using validated methods to ensure conformity,
22 competence and impartiality to test cannabis products.

23 E. Any pre-sale inspection, testing transfer or
24 transportation of cannabis products pursuant to this section
25 shall conform to a chain of custody protocol and any other

.220534.3

1 requirements imposed by the commission in accordance with the
2 Cannabis Regulation Act.

3 SECTION 17. [NEW MATERIAL] TESTING CANNABIS PRODUCTS--
4 DEPARTMENT OF ENVIRONMENT.--

5 A. A cannabis testing laboratory's testing of
6 cannabis products shall comply with the requirements set forth
7 in applicable law and rules.

8 B. The commission shall develop rules and
9 procedures to:

10 (1) ensure that testing of cannabis products
11 occurs prior to distribution;

12 (2) specify how often licensees shall test
13 cannabis products;

14 (3) specify which entities bear the cost of
15 testing cannabis and medical cannabis;

16 (4) ensure that testing samples are
17 transported and stored in a manner that prevents degradation,
18 contamination and tampering;

19 (5) specify protocols for sample collection
20 that ensure that representative samples have been taken and
21 that require testing samples be collected by laboratory staff
22 trained in sample collection; and

23 (6) require destruction of a harvested batch
24 of cannabis or of cannabis products if the testing samples from
25 the batch or items indicate noncompliance with applicable

.220534.3

1 health and safety standards promulgated by the commission,
2 unless remedial measures can bring the cannabis or cannabis
3 products into compliance with the standards.

4 C. Not later than January 1, 2022, the department
5 of environment shall identify and designate to the commission
6 acceptable and accredited standards, where necessary to be used
7 by cannabis testing laboratories.

8 SECTION 18. [NEW MATERIAL] ADVERTISING AND MARKETING
9 RESTRICTIONS.--The commission shall promulgate rules that
10 explicitly:

11 A. prohibit the advertisement and marketing of
12 cannabis products:

13 (1) on a billboard, radio, television or other
14 broadcast media;

15 (2) that is false, deceptive or misleading,
16 including making unproven health benefit claims;

17 (3) that depicts consumption by children or
18 other persons younger than twenty-one years of age;

19 (4) that is designed using cartoon characters
20 or to mimic any other product brand;

21 (5) within three hundred feet of a school,
22 church or daycare center;

23 (6) that is in public transit vehicles or
24 stations;

25 (7) that is in the form of an unsolicited

.220534.3

1 internet pop-up; or

2 (8) that is on publicly owned or operated
3 property; and

4 B. require:

5 (1) all advertisements and marketing to
6 accurately and legibly identify the licensee responsible for
7 its content; and

8 (2) print and digital communications
9 advertisements to be placed only where the audience is
10 reasonably expected to be twenty-one years of age or older, as
11 determined by reliable, current audience composition data.

12 SECTION 19. [NEW MATERIAL] CONTRACTS.--A contract related
13 to operation of a license issued pursuant to the Cannabis
14 Regulation Act is enforceable, and a contract entered into by a
15 licensee or a licensee representative for conduct allowed
16 pursuant to a license or entered into by a person who allows
17 property to be used by a licensee or a licensee representative
18 for conduct allowed pursuant to a license shall not be deemed
19 unenforceable on the basis that the conduct allowed pursuant to
20 the license is prohibited by federal law.

21 SECTION 20. [NEW MATERIAL] PROVISION OF PROFESSIONAL
22 SERVICES.--A person engaged in a profession subject to state
23 licensure shall not be subject to disciplinary action because
24 the person provides professional services or assistance to
25 prospective or licensed cannabis establishments or another

.220534.3

1 person in connection with activity that the person reasonably
2 believes complies with the Cannabis Regulation Act and rules
3 promulgated pursuant to that act. The provisions of this
4 section shall not apply to an attorney licensed to practice law
5 in this state.

6 SECTION 21. [NEW MATERIAL] PROTECTIONS FOR THE USE OF
7 CANNABIS.--A person or a licensee shall not be subject to
8 arrest, prosecution, penalty, civil liability or disciplinary
9 action by a business or professional licensing entity and shall
10 not be denied any right or privilege solely for conduct allowed
11 pursuant to the Cannabis Regulation Act. Except by court
12 order, state and local law enforcement agencies shall not
13 cooperate with or provide assistance to the United States
14 government, or any federal agency thereof, in enforcing the
15 federal Controlled Substances Act solely for conduct that
16 complies with the Cannabis Regulation Act or the Lynn and Erin
17 Compassionate Use Act. The supreme court and any disciplinary
18 or character and fitness committees established by that court
19 are considered business or professional licensing entities for
20 the purposes of this section.

21 SECTION 22. [NEW MATERIAL] PROTECTIONS FROM
22 DISCRIMINATION FOR THE USE OF CANNABIS OR MEDICAL CANNABIS.--

23 A. No educational institution shall refuse to
24 enroll or otherwise penalize a person for conduct allowed
25 pursuant to the Cannabis Regulation Act or the Lynn and Erin

.220534.3

1 Compassionate Use Act, unless failing to do so would cause the
2 educational institution to lose a monetary or licensing-related
3 benefit under federal law or regulation.

4 B. A person may prohibit or restrict any of the
5 actions or conduct otherwise allowed under Section 24 of the
6 Cannabis Regulation Act on that person's privately owned
7 property.

8 C. A person shall not be denied custody of or
9 visitation or parenting time with a child for conduct allowed
10 under Section 24 of the Cannabis Regulation Act or under the
11 Lynn and Erin Compassionate Use Act, unless the court
12 determines that the person's behavior is contrary to the best
13 interests of the child pursuant to Sections 40-4-9 and 40-4-9.1
14 NMSA 1978.

15 SECTION 23. [NEW MATERIAL] EMPLOYMENT PROTECTIONS.--

16 A. Nothing in the Cannabis Regulation Act shall:

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

21 (2) require an employer to commit any act that
22 would cause the employer to be in violation of federal law or
23 that would result in the loss of a federal contract or federal
24 funding; or

25 (3) prevent or infringe upon the rights of an

.220534.3

1 employer to adopt and implement a written zero-tolerance policy
2 regarding the use of cannabis. A zero-tolerance policy may
3 permit the discipline or termination of an employee on the
4 basis of a positive drug test that indicates any amount of
5 delta-9-tetrahydrocannabinol or delta-9-tetrahydrocannabinol
6 metabolite.

7 B. Every workplace shall post signs warning of the
8 potential impairment effects of cannabis, any discipline or
9 penalty an employee may receive for using cannabis while at
10 work or for coming to work impaired and a statement that
11 possession or use of cannabis is prohibited pursuant to federal
12 law.

13 C. As used in this section, "adverse employment
14 action" means refusing to hire or employ a person; barring or
15 discharging a person from employment; requiring a person to
16 retire from employment; or discriminating against an employee
17 in compensation or in terms, conditions or privileges of
18 employment.

19 SECTION 24. [NEW MATERIAL] PERSONAL USE OF CANNABIS.--

20 A. The following conduct is lawful for a person who
21 is twenty-one years of age or older and shall not constitute
22 grounds for detention, search or arrest of a person, and
23 cannabis items that relate to the conduct are not contraband or
24 subject to seizure or forfeiture pursuant to the Controlled
25 Substances Act or the Forfeiture Act; provided that the person

.220534.3

1 has proof that the cannabis items were purchased from a
2 licensed dispensary or are authorized pursuant to the medical
3 cannabis program:

4 (1) possessing, using, being under the
5 influence of, displaying, purchasing, obtaining or transporting
6 not more than two ounces of cannabis or sixteen grams of
7 cannabis extracts;

8 (2) transferring, without financial
9 consideration, to a person who is twenty-one years of age or
10 older not more than two ounces of cannabis or sixteen grams of
11 cannabis extracts;

12 (3) possessing not more than two ounces of
13 cannabis or sixteen grams of cannabis extracts outside the
14 person's private residence;

15 (4) transporting cannabis as described in
16 Paragraph (2) of this subsection when the person is moving the
17 person's residence to another location or for purposes of
18 testing or manufacturing;

19 (5) smoking, ingesting or otherwise consuming
20 cannabis or cannabis items;

21 (6) possessing, using, displaying, purchasing,
22 obtaining, manufacturing, transporting or giving away to a
23 person twenty-one years of age or older cannabis paraphernalia;
24 and

25 (7) assisting another person who is twenty-one

1 years of age or older in, or allowing property to be used in,
 2 any of the acts described in Paragraphs (1) through (6) of this
 3 subsection.

4 B. Paragraphs (6) and (7) of Subsection A of this
 5 section meet the requirements of 21 U.S.C. Section 863(f) by
 6 authorizing, under state law, any person in compliance with
 7 this section to manufacture, possess or distribute cannabis
 8 paraphernalia.

9 SECTION 25. [NEW MATERIAL] LIMITS ON PERSONAL
 10 CONSUMPTION--PENALTY.--

11 A. Nothing in Section 24 of the Cannabis Regulation
 12 Act shall be construed to restrict the ability of an individual
 13 or private entity to prohibit conduct otherwise allowed in
 14 Section 24 of the Cannabis Regulation Act on the individual's
 15 or private entity's privately owned property.

16 B. No person shall smoke cannabis or consume
 17 cannabis items in a public place.

18 C. A person who violates Subsection B of this
 19 section shall be subject to a civil penalty of fifty dollars
 20 (\$50.00).

21 SECTION 26. [NEW MATERIAL] UNLICENSED SALES OF CANNABIS--
 22 PENALTIES.--

23 A. Except as allowed in the Cannabis Regulation
 24 Act, the Lynn and Erin Compassionate Use Act or Chapter 76,
 25 Article 24 NMSA 1978, it is unlawful for a person without a

.220534.3

underscored material = new
 [bracketed material] = delete

1 license to intentionally distribute cannabis items. It is
2 unlawful for a person to sell or deliver cannabis items from a
3 drive-up window.

4 B. A person under eighteen years of age who
5 violates Subsection A of this section shall:

6 (1) for a first violation, be subject to:

7 (a) a fine of one hundred dollars
8 (\$100);

9 (b) attendance at a four-hour drug
10 education program; and

11 (c) four hours of community service;

12 (2) for a second violation, be subject to:

13 (a) a fine of two hundred fifty dollars
14 (\$250);

15 (b) attendance at a four-hour drug
16 education program; and

17 (c) four hours of community service; and

18 (3) for a third or subsequent violation, be
19 subject to:

20 (a) a fine of one thousand dollars
21 (\$1,000);

22 (b) attendance at a four-hour drug
23 education program; and

24 (c) not less than one hundred hours of
25 community service.

.220534.3

1 C. A person eighteen years of age or older who
 2 violates Subsection A of this section is guilty of a
 3 misdemeanor and shall be sentenced pursuant to the provisions
 4 of Section 31-19-1 NMSA 1978.

5 **SECTION 27. [NEW MATERIAL] CANNABIS WITHIN RESTRICTED**
 6 **AREA--PENALTY.--**Except as allowed in the Cannabis Regulation
 7 Act or the Lynn and Erin Compassionate Use Act, a person shall
 8 not possess or intentionally distribute any amount of a
 9 cannabis item within three hundred feet of the perimeter of
 10 school grounds on which instruction is provided at any level
 11 from kindergarten through twelfth grade, a playground, a child
 12 care center, a youth center, a public park or a library unless
 13 the person is a qualified patient or is in or upon or traveling
 14 to or from the grounds of a private residence, as an invitee or
 15 resident. A person who violates this section is guilty of a
 16 misdemeanor and shall be sentenced pursuant to the provisions
 17 of Section 31-19-1 NMSA 1978.

18 **SECTION 28. [NEW MATERIAL] UNLAWFUL POSSESSION OF**
 19 **CANNABIS--PENALTIES.--**Except as allowed in the Lynn and Erin
 20 Compassionate Use Act:

21 A. a person eighteen years of age or older and
 22 younger than twenty-one years of age shall not possess cannabis
 23 items. A person who violates this subsection shall be subject
 24 to:

25 (1) a fine of seventy-five dollars (\$75.00);

.220534.3

1 (2) attendance at a four-hour drug education
2 program; and

3 (3) four hours of community service;

4 B. a person younger than eighteen years of age
5 shall not possess cannabis items. A person who violates this
6 subsection shall be subject to:

7 (1) a fine of fifty dollars (\$50.00);

8 (2) attendance at a four-hour drug education
9 program; and

10 (3) four hours of community service; and

11 C. or as allowed in the Cannabis Regulation Act, a
12 person twenty-one years of age or older shall not possess
13 cannabis containing more than three-tenths percent
14 tetrahydrocannabinol except pursuant to a certificate of
15 purchase issued by a licensed dispensary. A person who
16 violates this subsection, if the amount is:

17 (1) one ounce of cannabis or eight grams of
18 cannabis extracts or less, shall be subject to a civil penalty
19 of five hundred dollars (\$500);

20 (2) more than one ounce of cannabis or eight
21 grams of cannabis extracts but not more than sixteen ounces of
22 cannabis or one hundred twenty-eight grams of cannabis
23 extracts, is guilty of a petty misdemeanor and shall be subject
24 to a fine in an amount not more than five hundred dollars
25 (\$500); or

.220534.3

1 (3) more than sixteen ounces of cannabis or
 2 one hundred twenty-eight grams of cannabis extracts, is guilty
 3 of a fourth degree felony and shall be sentenced to twelve
 4 months imprisonment and subject to a fine of not more than five
 5 thousand dollars (\$5,000).

6 SECTION 29. [NEW MATERIAL] UNLICENSED MANUFACTURING OF
 7 CANNABIS EXTRACTS--PENALTY.--Except as permitted by the Lynn
 8 and Erin Compassionate Use Act, it is unlawful for any person
 9 to use volatile solvents to manufacture cannabis extracts
 10 without a license issued pursuant to the Cannabis Regulation
 11 Act or the Lynn and Erin Compassionate Use Act. A person who
 12 violates this section shall be subject to a civil penalty of
 13 four hundred fifty dollars (\$450).

14 SECTION 30. [NEW MATERIAL] IMPORTS AND EXPORTS.--

15 A. Notwithstanding the provisions any other
 16 provision of law, the governor shall enter into agreements with
 17 other jurisdictions within or outside of the United States for
 18 the purposes of cross-jurisdictional delivery of cannabis items
 19 between this state and other jurisdictions. Such agreements
 20 shall:

- 21 (1) ensure enforceable public health and
 22 safety standards;
 23 (2) include a system to regulate and track the
 24 interstate or international delivery of cannabis items; and
 25 (3) ensure that any cannabis items delivered

.220534.3

1 into this state, prior to sale to a consumer, are tested,
2 packaged and labeled pursuant to New Mexico statutes and rules.

3 B. Notwithstanding any other provision of law and
4 in accordance with the agreement as described in Subsection A
5 of this section:

6 (1) a licensee permitted to courier cannabis
7 items may deliver cannabis items to a person located in,
8 and authorized to receive cannabis items by, another
9 jurisdiction in the United States or internationally; and

10 (2) a licensee permitted to receive cannabis
11 items may receive cannabis items from a person located in, and
12 authorized to export cannabis items by, another jurisdiction in
13 the United States or internationally.

14 C. This section shall take effect on the earlier
15 date on which:

16 (1) federal law is amended to allow for the
17 interstate or international transfer of cannabis items between
18 authorized cannabis-related businesses; or

19 (2) the United States department of justice
20 issues an opinion or memorandum allowing or tolerating the
21 interstate or international transfer of cannabis items between
22 cannabis-related businesses as authorized by state law.

23 SECTION 31. [NEW MATERIAL] INDIAN NATIONS, TRIBES AND
24 PUEBLOS--INTERGOVERNMENTAL AGREEMENTS.--

25 A. The commission may enter into one or more

.220534.3

1 intergovernmental agreements with any tribal government to
2 efficiently coordinate the cross-jurisdictional administration
3 of the laws of this state and the laws of tribal governments
4 relating to the use of cannabis items set forth in the Lynn and
5 Erin Compassionate Use Act and the Cannabis Regulation Act.
6 The agreements may include, without limitation, provisions
7 relating to:

- 8 (1) criminal and civil law enforcement;
- 9 (2) regulatory issues relating to the
10 possession, delivery, production, processing or use of cannabis
11 items;
- 12 (3) the administration of laws relating to
13 taxation;
- 14 (4) any immunity, preemption or conflict of
15 law relating to the possession, delivery, production,
16 processing or use of cannabis items; and
- 17 (5) the resolution of any disputes between a
18 tribal government and the state, which may include, without
19 limitation, the use of mediation or other nonjudicial
20 processes.

21 B. An agreement entered into pursuant to this
22 section shall:

- 23 (1) provide for the preservation of public
24 health and safety;
- 25 (2) ensure the security of cannabis

.220534.3

1 establishments and the corresponding facilities on tribal land;

2 (3) establish provisions regulating business
3 involving cannabis that passes between tribal land and
4 nontribal land in New Mexico; and

5 (4) be negotiated in good faith, which shall
6 respect and protect state and tribal sovereign immunity.

7 C. As used in this section, "tribal government"
8 means a federally recognized Indian nation, tribe or pueblo
9 located wholly or partially in the state.

10 SECTION 32. [NEW MATERIAL] WRIT OF MANDAMUS.--Any person
11 may commence a legal action for a writ of mandamus to compel
12 the commission to perform its duties pursuant to the Cannabis
13 Regulation Act.

14 SECTION 33. [NEW MATERIAL] CANNABIS REGULATION FUND.--

15 A. The "cannabis regulation fund" is created in the
16 state treasury. The fund consists of appropriations, gifts,
17 grants, donations and fees collected pursuant to the Cannabis
18 Regulation Act. Any unexpended or unencumbered balance
19 remaining at the end of a fiscal year shall revert to the
20 general fund.

21 B. The commission shall administer the fund, and
22 money in the fund is appropriated to the commission to support
23 the commission in its duties established in the Cannabis
24 Regulation Act. Money from the fund shall not be used for
25 capital expenditures.

.220534.3

1 C. Money in the fund shall be disbursed on warrants
2 signed by the secretary of finance and administration pursuant
3 to vouchers signed by the director or the director's authorized
4 representative.

5 **SECTION 34. [NEW MATERIAL] EXEMPTION FROM CRIMINAL AND**
6 **CIVIL PENALTIES--RESEARCHERS.--**A person shall not be subject to
7 arrest or prosecution, penalized in any manner or denied any
8 right or privilege solely because the person produced,
9 possessed, distributed, dispensed or purchased cannabis from a
10 person licensed pursuant to the Lynn and Erin Compassionate Use
11 Act or the Cannabis Regulation Act if the person produced,
12 possessed, distributed, dispensed or purchased the cannabis
13 solely for the purpose of research conducted pursuant to the
14 Lynn and Erin Compassionate Use Act or the Cannabis Regulation
15 Act.

16 **SECTION 35. [NEW MATERIAL] ROAD SAFETY FUND.--**

17 A. The "road safety fund" is created in the state
18 treasury. The fund consists of money transferred from the
19 cannabis excise tax, appropriations, other money deposited in
20 the fund and money otherwise accruing to the fund. The
21 department of public safety shall administer the fund, and
22 money in the fund is subject to appropriation to the department
23 of public safety for the purposes described in this section.
24 Any unexpended or unencumbered balance remaining at the end of
25 a fiscal year shall not revert to the general fund. Money in

.220534.3

1 the fund shall be disbursed on warrants signed by the secretary
2 of finance and administration pursuant to vouchers signed by
3 the secretary of public safety or the secretary's authorized
4 representative.

5 B. Money in the fund is subject to appropriation by
6 the department of public safety for:

7 (1) research to determine whether a driver is
8 operating a vehicle while impaired, including impairment by the
9 use of cannabis items;

10 (2) implementing best practices in law
11 enforcement agencies regarding impairment by the use of
12 cannabis items; and

13 (3) drug recognition expert field
14 certification training for law enforcement officers and for
15 purchasing roadside impairment tests that are validated for
16 testing cannabis impairment.

17 SECTION 36. [NEW MATERIAL] SHORT TITLE.--Sections 36
18 through 42 of this act may be cited as the "Cannabis Tax Act".

19 SECTION 37. [NEW MATERIAL] DEFINITIONS.--As used in the
20 Cannabis Tax Act:

21 A. "cannabis":

22 (1) means all parts of the plant Cannabis
23 sativa Linnaeus, whether growing or not; the seeds of the
24 plant; the resin extracted from any part of the plant; and
25 every compound, manufacture, salt, derivative, mixture or

.220534.3

1 preparation of the plant, its seeds or its resin; and

2 (2) does not include:

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

9 (b) the weight of any other ingredient
10 combined with cannabis to prepare topical or oral
11 administrations, food, drink or another product;

12 B. "cannabis extract":

13 (1) means a product obtained by separating
14 resins from cannabis by solvent extraction using solvents other
15 than vegetable glycerin, such as butane, hexane, isopropyl
16 alcohol, ethanol or carbon dioxide; and

17 (2) does not include the weight of any other
18 ingredient combined with cannabis extract to prepare topical or
19 oral administrations, food, drink or another product;

20 C. "cannabis items" means cannabis, cannabis
21 products and cannabis extracts;

22 D. "cannabis product":

23 (1) means a product that contains cannabis or
24 cannabis extracts, including edible or topical products that
25 may also contain other ingredients; and

.220534.3

1 (2) does not include the weight of any other
2 ingredient combined with cannabis or cannabis extracts to
3 prepare topical or oral administrations, food, drink or another
4 product; and

5 E. "department" means the taxation and revenue
6 department.

7 SECTION 38. [NEW MATERIAL] CANNABIS EXCISE TAX.--

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

15 B. The rate of the cannabis excise tax is two
16 percent and is applied to the price paid for the cannabis item.

17 C. The cannabis excise tax shall not apply to:

18 (1) retail sales of medical cannabis products
19 sold to a qualified patient or to a primary caregiver who
20 presents a registry identification card issued pursuant to the
21 Lynn and Erin Compassionate Use Act at the time of the sale; or

22 (2) receipts of cannabis producers from
23 selling cannabis wholesale.

24 SECTION 39. [NEW MATERIAL] MUNICIPAL CANNABIS TAX.--

25 A. There is imposed an excise tax at a rate of two

.220534.3

1 percent on the sale of cannabis items in the municipality on
 2 which the tax imposed by this section has not been paid. The
 3 tax imposed pursuant to this section may be referred to as the
 4 "municipal cannabis tax".

5 B. The governing body of the municipality may
 6 dedicate the revenue for any municipal purpose.

7 SECTION 40. [NEW MATERIAL] COUNTY CANNABIS TAX.--

8 A. There is imposed in a county that does not
 9 prohibit the sale of cannabis items an excise tax at a rate of
 10 two percent on the sale of cannabis items on which the tax
 11 imposed by this section has not been paid. The tax imposed
 12 pursuant to this section may be referred to as the "county
 13 cannabis tax".

14 B. The governing body of the county may dedicate
 15 the revenue for any county purpose.

16 SECTION 41. [NEW MATERIAL] DATE PAYMENT DUE.--The taxes
 17 imposed pursuant to the Cannabis Tax Act are to be paid on or
 18 before the twenty-fifth day of the month following the month in
 19 which the taxable event occurs.

20 SECTION 42. [NEW MATERIAL] INTERPRETATION OF ACT--
 21 ADMINISTRATION AND ENFORCEMENT OF TAX.--The department shall
 22 administer and enforce the collection of the cannabis excise
 23 tax, municipal cannabis tax and county cannabis tax pursuant to
 24 the Tax Administration Act.

25 SECTION 43. A new section of the Tax Administration Act

.220534.3

1 is enacted to read:

2 "[NEW MATERIAL] DISTRIBUTION--CANNABIS EXCISE TAX.--

3 A. A distribution pursuant to Section 7-1-6.1 NMSA
4 1978 shall be made to the local DWI grant fund in an amount
5 equal to six percent of the net receipts attributable to the
6 cannabis excise tax.

7 B. A distribution pursuant to Section 7-1-6.1 NMSA
8 1978 shall be made to the road safety fund in an amount equal
9 to two percent of the net receipts attributable to the cannabis
10 excise tax."

11 SECTION 44. A new section of the Tax Administration Act
12 is enacted to read:

13 "[NEW MATERIAL] TRANSFER--REVENUES FROM MUNICIPAL CANNABIS
14 TAX AND COUNTY CANNABIS TAX.--

15 A. A transfer pursuant to Section 7-1-6.1 NMSA 1978
16 shall be made to each municipality for which the department is
17 collecting a municipal cannabis tax imposed by that
18 municipality in an amount, subject to any increase or decrease
19 made pursuant to Section 7-1-6.15 NMSA 1978, equal to the net
20 receipts attributable to the municipal cannabis tax.

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

.220534.3

1 attributable to the county cannabis tax."

2 SECTION 45. Section 7-1-2 NMSA 1978 (being Laws 1965,
3 Chapter 248, Section 2, as amended by Laws 2019, Chapter 47,
4 Section 1 and by Laws 2019, Chapter 53, Section 10 and also by
5 Laws 2019, Chapter 270, Section 1) is amended to read:

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

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

- 11 (1) Income Tax Act;
- 12 (2) Withholding Tax Act;
- 13 (3) Oil and Gas Proceeds and Pass-Through
14 Entity Withholding Tax Act;
- 15 (4) Gross Receipts and Compensating Tax Act,
16 Interstate Telecommunications Gross Receipts Tax Act and Leased
17 Vehicle Gross Receipts Tax Act;
- 18 (5) Liquor Excise Tax Act;
- 19 (6) Local Liquor Excise Tax Act;
- 20 (7) any municipal local option gross receipts
21 tax or municipal compensating tax;
- 22 (8) any county local option gross receipts tax
23 or county compensating tax;
- 24 (9) Special Fuels Supplier Tax Act;
- 25 (10) Gasoline Tax Act;

.220534.3

1 (11) petroleum products loading fee, which fee
2 shall be considered a tax for the purpose of the Tax
3 Administration Act;

4 (12) Alternative Fuel Tax Act;

5 (13) Cigarette Tax Act;

6 (14) Estate Tax Act;

7 (15) Railroad Car Company Tax Act;

8 (16) Investment Credit Act, rural job tax
9 credit, Laboratory Partnership with Small Business Tax Credit
10 Act, Technology Jobs and Research and Development Tax Credit
11 Act, Film Production Tax Credit Act, Affordable Housing Tax
12 Credit Act and high-wage jobs tax credit;

13 (17) Corporate Income and Franchise Tax Act;

14 (18) Uniform Division of Income for Tax
15 Purposes Act;

16 (19) Multistate Tax Compact;

17 (20) Tobacco Products Tax Act;

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

22 (22) the Insurance Premium Tax Act;

23 (23) the Health Care Quality Surcharge Act;

24 and

25 (24) the Cannabis Tax Act;

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

- 4 (1) Resources Excise Tax Act;
5 (2) Severance Tax Act;
6 (3) any severance surtax;
7 (4) Oil and Gas Severance Tax Act;
8 (5) Oil and Gas Conservation Tax Act;
9 (6) Oil and Gas Emergency School Tax Act;
10 (7) Oil and Gas Ad Valorem Production Tax Act;
11 (8) Natural Gas Processors Tax Act;
12 (9) Oil and Gas Production Equipment Ad
13 Valorem Tax Act;
14 (10) Copper Production Ad Valorem Tax Act;
15 (11) any advance payment required to be made
16 by any act specified in this subsection, which advance payment
17 shall be considered a tax for the purposes of the Tax
18 Administration Act;
19 (12) Enhanced Oil Recovery Act;
20 (13) Natural Gas and Crude Oil Production
21 Incentive Act; and
22 (14) intergovernmental production tax credit
23 and intergovernmental production equipment tax credit;

24 C. the administration and enforcement of the
25 following taxes, surcharges, fees or acts as they now exist or

.220534.3

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

1 may hereafter be amended:

2 (1) Weight Distance Tax Act;

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

6 (3) Uniform Unclaimed Property Act (1995);

7 (4) 911 emergency surcharge and the network
8 and database surcharge, which surcharges shall be considered
9 taxes for purposes of the Tax Administration Act;

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

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

16 (7) the gaming tax imposed pursuant to the
17 Gaming Control Act; and

18 D. the administration and enforcement of all other
19 laws, with respect to which the department is charged with
20 responsibilities pursuant to the Tax Administration Act, but
21 only to the extent that the other laws do not conflict with the
22 Tax Administration Act."

23 SECTION 46. Section 7-1-6.15 NMSA 1978 (being Laws 1983,
24 Chapter 211, Section 20, as amended by Laws 2015, Chapter 89,
25 Section 1 and by Laws 2015, Chapter 100, Section 1) is amended

.220534.3

1 to read:

2 "7-1-6.15. ADJUSTMENTS OF DISTRIBUTIONS OR TRANSFERS TO
3 MUNICIPALITIES OR COUNTIES.--

4 A. The provisions of this section apply to:

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

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

10 (3) any transfer to a county with respect to
11 any local option gross receipts tax or county cannabis tax
12 imposed by that county;

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

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

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

20 (7) any distribution to a county from the
21 county government road fund pursuant to Section 7-1-6.26 NMSA
22 1978;

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

25 (9) any distribution to a municipality of

.220534.3

underscored material = new
[bracketed material] = delete

1 compensating taxes pursuant to Section 7-1-6.55 NMSA 1978.

2 B. Before making a distribution or transfer
3 specified in Subsection A of this section to a municipality or
4 county for the month, amounts comprising the net receipts shall
5 be segregated into two mutually exclusive categories. One
6 category shall be for amounts relating to the current month,
7 and the other category shall be for amounts relating to prior
8 periods. The total of each category for a municipality or
9 county shall be reported each month to that municipality or
10 county. If the total of the amounts relating to prior periods
11 is less than zero and its absolute value exceeds the greater of
12 one hundred dollars (\$100) or an amount equal to twenty percent
13 of the average distribution or transfer amount for that
14 municipality or county, then the following procedures shall be
15 carried out:

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

.220534.3

1 (2) if the revised total for prior periods
2 determined pursuant to Paragraph (1) of this subsection is
3 negative and its absolute value exceeds the greater of one
4 hundred dollars (\$100) or an amount equal to twenty percent of
5 the average distribution or transfer amount for that
6 municipality or county, the revised total for prior periods
7 shall be excluded from the distribution or transfers and the
8 net receipts to be distributed or transferred to the
9 municipality or county shall be equal to the amount for the
10 current month.

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

15 D. Prior to or concurrently with the distribution
16 or transfer to the municipality or county of the adjusted net
17 receipts, the department shall notify the municipality or
18 county whose distribution or transfer has been adjusted
19 pursuant to Paragraph (2) of Subsection B of this section:

20 (1) that the department has made such an
21 adjustment, that the department has determined that a specified
22 amount is recoverable from the municipality or county and that
23 the department intends to recover that amount from future
24 distributions or transfers to the municipality or county;

25 (2) that the municipality or county has ninety

.220534.3

1 days from the date notice is made to enter into a mutually
2 agreeable repayment agreement with the department;

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

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

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

16 (1) the department may collect the recoverable
17 amount by:

18 (a) decreasing distributions or
19 transfers to the municipality or county in accordance with a
20 repayment agreement entered into with the municipality or
21 county; or

22 (b) except as provided in Paragraphs (2)
23 and (3) of this subsection, if the municipality or county fails
24 to act within the ninety days, decreasing the amount of the
25 next six distributions or transfers to the municipality or

.220534.3

1 county following expiration of the ninety-day period in
2 increments as nearly equal as practicable and sufficient to
3 recover the amount;

4 (2) if, pursuant to Subsection B of this
5 section, the secretary determines that the recoverable amount
6 is more than fifty percent of the average distribution or
7 transfer of net receipts for that municipality or county, the
8 secretary:

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

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

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

25 F. No later than ninety days from the date notice

.220534.3

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

1 pursuant to Subsection D of this section is given, the
2 department shall provide the municipality or county adequate
3 opportunity to review an application for a claim for refund
4 that gave rise to the recoverable amount, exclusive of any
5 amended returns that may be attached to the application,
6 pursuant to Section 7-1-8.9 NMSA 1978.

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

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

.220534.3

1 state distributions intercept authorized by the secretary of
2 finance and administration pursuant to the State Aid Intercept
3 Act or by the amount of the state distribution intercept
4 authorized pursuant to an ordinance or a resolution passed by
5 the county or municipality and a written agreement with the New
6 Mexico finance authority. The secretary shall transfer the
7 state distributions intercept amount to the municipal or county
8 treasurer or other person designated by the secretary of
9 finance and administration or to the New Mexico finance
10 authority pursuant to written agreement to pay the debt service
11 to avoid default on qualified local revenue bonds or meet other
12 local revenue bond, loan or other debt obligations of the
13 municipality or county to the New Mexico finance authority. A
14 decrease to or redirection of a distribution or transfer
15 pursuant to this subsection that arose:

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

23 (2) after an adjustment of a distribution or
24 transfer of net receipts creating a recoverable amount owed to
25 the department shall be subordinate to any collection of any

.220534.3

1 recoverable amount pursuant to Paragraph (2) of Subsection B of
2 this section.

3 I. Upon the direction of the secretary of finance
4 and administration pursuant to Section 9-6-5.2 NMSA 1978, the
5 secretary shall temporarily withhold the balance of a
6 distribution to a municipality or county, net of any decrease
7 or redirected amount pursuant to Subsection H of this section
8 and any recoverable amount pursuant to Paragraph (2) of
9 Subsection B of this section, that has failed to submit an
10 audit report required by the Audit Act or a financial report
11 required by Subsection F of Section 6-6-2 NMSA 1978. The
12 amount to be withheld, the source of the withheld distribution
13 and the number of months that the distribution is to be
14 withheld shall be as directed by the secretary of finance and
15 administration. A distribution withheld pursuant to this
16 subsection shall remain in the tax administration suspense fund
17 until distributed to the municipality or county and shall not
18 be distributed to the general fund. An amount withheld
19 pursuant to this subsection shall be distributed to the
20 municipality or county upon direction of the secretary of
21 finance and administration.

22 J. As used in this section:

23 (1) "amounts relating to the current month"
24 means any amounts included in the net receipts of the current
25 month that represent payment of tax due for the current month,

.220534.3

1 correction of amounts processed in the current month that
2 relate to the current month or that otherwise relate to
3 obligations due for the current month;

4 (2) "amounts relating to prior periods" means
5 any amounts processed during the current month that adjust
6 amounts processed in a period or periods prior to the current
7 month regardless of whether the adjustment is a correction of a
8 department error or due to the filing of amended returns,
9 payment of department-issued assessments, filing or approval of
10 claims for refund, audit adjustments or other cause;

11 (3) "average distribution or transfer amount"
12 means the following amounts; provided that a distribution or
13 transfer that is negative shall not be used in calculating the
14 amounts:

15 (a) the annual average of the total
16 amount distributed or transferred to a municipality or county
17 in each of the three twelve-month periods preceding the current
18 month;

19 (b) if a distribution or transfer to a
20 municipality or county has been made for less than three years,
21 the total amount distributed or transferred in the year
22 preceding the current month; or

23 (c) if a municipality or county has not
24 received distributions or transfers of net receipts for twelve
25 or more months, the monthly average of net receipts distributed

.220534.3

1 or transferred to the municipality or county preceding the
2 current month multiplied by twelve;

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

5 (5) "repayment agreement" means an agreement
6 between the department and a municipality or county under which
7 the municipality or county agrees to allow the department to
8 recover an amount determined pursuant to Paragraph (2) of
9 Subsection B of this section by decreasing distributions or
10 transfers to the municipality or county for one or more months
11 beginning with the distribution or transfer to be made with
12 respect to a designated month. No interest shall be charged."

13 SECTION 47. Section 7-2-2 NMSA 1978 (being Laws 1986,
14 Chapter 20, Section 26, as amended) is amended to read:

15 "7-2-2. DEFINITIONS.--For the purpose of the Income Tax
16 Act and unless the context requires otherwise:

17 A. "adjusted gross income" means adjusted gross
18 income as defined in Section 62 of the Internal Revenue Code,
19 as that section may be amended or renumbered;

20 B. "base income":

21 (1) means, for estates and trusts, that part
22 of the estate's or trust's income defined as taxable income and
23 upon which the federal income tax is calculated in the Internal
24 Revenue Code for income tax purposes plus, for taxable years
25 beginning on or after January 1, 1991, the amount of the net

.220534.3

1 operating loss deduction allowed by Section 172(a) of the
2 Internal Revenue Code, as that section may be amended or
3 renumbered, and taken by the taxpayer for that year;

4 (2) means, for taxpayers other than estates or
5 trusts, that part of the taxpayer's income defined as adjusted
6 gross income plus, for taxable years beginning on or after
7 January 1, 1991, the amount of the net operating loss deduction
8 allowed by Section 172(a) of the Internal Revenue Code, as that
9 section may be amended or renumbered, and taken by the taxpayer
10 for that year;

11 (3) includes, for all taxpayers, any other
12 income of the taxpayer not included in adjusted gross income
13 but upon which a federal tax is calculated pursuant to the
14 Internal Revenue Code for income tax purposes, except amounts
15 for which a calculation of tax is made pursuant to Section 55
16 of the Internal Revenue Code, as that section may be amended or
17 renumbered; "base income" also includes interest received on a
18 state or local bond; ~~[and]~~

19 (4) includes, for all taxpayers, an amount
20 deducted pursuant to Section 7-2-32 NMSA 1978 in a prior
21 taxable year if:

22 (a) such amount is transferred to
23 another qualified tuition program, as defined in Section 529 of
24 the Internal Revenue Code, not authorized in the Education
25 Trust Act; or

.220534.3

1 (b) a distribution or refund is made for
2 any reason other than: 1) to pay for qualified higher
3 education expenses, as defined pursuant to Section 529 of the
4 Internal Revenue Code; or 2) upon the beneficiary's death,
5 disability or receipt of a scholarship; and

6 (5) excludes, for taxpayers who conduct lawful
7 businesses pursuant to the laws of the state, subtracting an
8 amount equal to any expenditure that is eligible to be claimed
9 as a federal income tax deduction but is disallowed by Section
10 280E of the Internal Revenue Code, as that section may be
11 amended or renumbered;

12 C. "compensation" means wages, salaries,
13 commissions and any other form of remuneration paid to
14 employees for personal services;

15 D. "department" means the taxation and revenue
16 department, the secretary or any employee of the department
17 exercising authority lawfully delegated to that employee by the
18 secretary;

19 E. "fiduciary" means a guardian, trustee, executor,
20 administrator, committee, conservator, receiver, individual or
21 corporation acting in any fiduciary capacity;

22 F. "filing status" means "married filing joint
23 returns", "married filing separate returns", "head of
24 household", "surviving spouse" and "single", as those terms are
25 generally defined for federal tax purposes;

.220534.3

1 G. "fiscal year" means any accounting period of
2 twelve months ending on the last day of any month other than
3 December;

4 H. "head of household" means "head of household" as
5 generally defined for federal income tax purposes;

6 I. "individual" means a natural person, an estate,
7 a trust or a fiduciary acting for a natural person, trust or
8 estate;

9 J. "Internal Revenue Code" means the United States
10 Internal Revenue Code of 1986, as amended;

11 K. "lump-sum amount" means, for the purpose of
12 determining liability for federal income tax, an amount that
13 was not included in adjusted gross income but upon which the
14 five-year-averaging or the ten-year-averaging method of tax
15 computation provided in Section 402 of the Internal Revenue
16 Code, as that section may be amended or renumbered, was
17 applied;

18 L. "modified gross income" means all income of the
19 taxpayer and, if any, the taxpayer's spouse and dependents,
20 undiminished by losses and from whatever source, including:

- 21 (1) compensation;
- 22 (2) net profit from business;
- 23 (3) gains from dealings in property;
- 24 (4) interest;
- 25 (5) net rents;

.220534.3

- 1 (6) royalties;
- 2 (7) dividends;
- 3 (8) alimony and separate maintenance payments;
- 4 (9) annuities;
- 5 (10) income from life insurance and endowment
- 6 contracts;
- 7 (11) pensions;
- 8 (12) discharge of indebtedness;
- 9 (13) distributive share of partnership income;
- 10 (14) income in respect of a decedent;
- 11 (15) income from an interest in an estate or a
- 12 trust;
- 13 (16) social security benefits;
- 14 (17) unemployment compensation benefits;
- 15 (18) workers' compensation benefits;
- 16 (19) public assistance and welfare benefits;
- 17 (20) cost-of-living allowances; and
- 18 (21) gifts;

19 M. "modified gross income" excludes:

- 20 (1) payments for hospital, dental, medical or
- 21 drug expenses to or on behalf of the taxpayer;
- 22 (2) the value of room and board provided by
- 23 federal, state or local governments or by private individuals
- 24 or agencies based upon financial need and not as a form of
- 25 compensation;

.220534.3

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

1 (3) payments pursuant to a federal, state or
2 local government program directly or indirectly to a third
3 party on behalf of the taxpayer when identified to a particular
4 use or invoice by the payer; or

5 (4) payments for credits and rebates pursuant
6 to the Income Tax Act and made for a credit pursuant to Section
7 7-3-9 NMSA 1978;

8 N. "net income" means, for estates and trusts, base
9 income adjusted to exclude amounts that the state is prohibited
10 from taxing because of the laws or constitution of this state
11 or the United States and means, for taxpayers other than
12 estates or trusts, base income adjusted to exclude:

13 (1) an amount equal to the standard deduction
14 allowed the taxpayer for the taxpayer's taxable year by Section
15 63 of the Internal Revenue Code, as that section may be amended
16 or renumbered;

17 (2) an amount equal to the itemized deductions
18 defined in Section 63 of the Internal Revenue Code, as that
19 section may be amended or renumbered, allowed the taxpayer for
20 the taxpayer's taxable year less the amount excluded pursuant
21 to Paragraph (1) of this subsection and less the amount of
22 state and local income and sales taxes included in the
23 taxpayer's itemized deductions;

24 (3) an amount equal to the product of the
25 exemption amount allowed for the taxpayer's taxable year by

.220534.3

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

1 Section 151 of the Internal Revenue Code, as that section may
2 be amended or renumbered, multiplied by the number of personal
3 exemptions allowed for federal income tax purposes;

4 (4) income from obligations of the United
5 States of America less expenses incurred to earn that income;

6 (5) other amounts that the state is prohibited
7 from taxing because of the laws or constitution of this state
8 or the United States;

9 (6) for taxable years that began prior to
10 January 1, 1991, an amount equal to the sum of:

11 (a) net operating loss carryback
12 deductions to that year from taxable years beginning prior to
13 January 1, 1991 claimed and allowed, as provided by the
14 Internal Revenue Code; and

15 (b) net operating loss carryover
16 deductions to that year claimed and allowed;

17 (7) for taxable years beginning on or after
18 January 1, 1991 and prior to January 1, 2013, an amount equal
19 to the sum of any net operating loss carryover deductions to
20 that year claimed and allowed, provided that the amount of any
21 net operating loss carryover from a taxable year beginning on
22 or after January 1, 1991 and prior to January 1, 2013 may be
23 excluded only as follows:

24 (a) in the case of a timely filed
25 return, in the taxable year immediately following the taxable

.220534.3

1 year for which the return is filed; or

2 (b) in the case of amended returns or
3 original returns not timely filed, in the first taxable year
4 beginning after the date on which the return or amended return
5 establishing the net operating loss is filed; and

6 (c) in either case, if the net operating
7 loss carryover exceeds the amount of net income exclusive of
8 the net operating loss carryover for the taxable year to which
9 the exclusion first applies, in the next four succeeding
10 taxable years in turn until the net operating loss carryover is
11 exhausted for any net operating loss carryover from a taxable
12 year prior to January 1, 2013; in no event shall a net
13 operating loss carryover from a taxable year beginning prior to
14 January 1, 2013 be excluded in any taxable year after the
15 fourth taxable year beginning after the taxable year to which
16 the exclusion first applies;

17 (8) for taxable years beginning on or after
18 January 1, 2013, an amount equal to the sum of any net
19 operating loss carryover deductions to that year claimed and
20 allowed; provided that the amount of any net operating loss
21 carryover may be excluded only as follows:

22 (a) in the case of a timely filed
23 return, in the taxable year immediately following the taxable
24 year for which the return is filed; or

25 (b) in the case of amended returns or

.220534.3

1 original returns not timely filed, in the first taxable year
2 beginning after the date on which the return or amended return
3 establishing the net operating loss is filed; and

4 (c) in either case, if the net operating
5 loss carryover exceeds the amount of net income exclusive of
6 the net operating loss carryover for the taxable year to which
7 the exclusion first applies, in the next nineteen succeeding
8 taxable years in turn until the net operating loss carryover is
9 exhausted for any net operating loss carryover from a taxable
10 year beginning on or after January 1, 2013; in no event shall a
11 net operating loss carryover from a taxable year beginning: 1)
12 prior to January 1, 2013 be excluded in any taxable year after
13 the fourth taxable year beginning after the taxable year to
14 which the exclusion first applies; and 2) on or after January
15 1, 2013 be excluded in any taxable year after the nineteenth
16 taxable year beginning after the taxable year to which the
17 exclusion first applies; and

18 (9) for taxable years beginning on or after
19 January 1, 2011, an amount equal to the amount included in
20 adjusted gross income that represents a refund of state and
21 local income and sales taxes that were deducted for federal tax
22 purposes in taxable years beginning on or after January 1,
23 2010;

24 0. "net operating loss" means any net operating
25 loss, as defined by Section 172(c) of the Internal Revenue

.220534.3

1 Code, as that section may be amended or renumbered, for a
2 taxable year as further increased by the income, if any, from
3 obligations of the United States for that year less related
4 expenses;

5 P. "net operating loss carryover" means the amount,
6 or any portion of the amount, of a net operating loss for any
7 taxable year that, pursuant to Paragraph (6), (7) or (8) of
8 Subsection N of this section, may be excluded from base income;

9 Q. "nonresident" means every individual not a
10 resident of this state;

11 R. "person" means any individual, estate, trust,
12 receiver, cooperative association, club, corporation, company,
13 firm, partnership, limited liability company, joint venture,
14 syndicate or other association; "person" also means, to the
15 extent permitted by law, any federal, state or other
16 governmental unit or subdivision or agency, department or
17 instrumentality thereof;

18 S. "resident" means an individual who is domiciled
19 in this state during any part of the taxable year or an
20 individual who is physically present in this state for one
21 hundred eighty-five days or more during the taxable year; but
22 any individual, other than someone who was physically present
23 in the state for one hundred eighty-five days or more during
24 the taxable year, who, on or before the last day of the taxable
25 year, changed the individual's place of abode to a place

.220534.3

1 without this state with the bona fide intention of continuing
2 actually to abide permanently without this state is not a
3 resident for the purposes of the Income Tax Act for periods
4 after that change of abode;

5 T. "secretary" means the secretary of taxation and
6 revenue or the secretary's delegate;

7 U. "state" means any state of the United States,
8 the District of Columbia, the commonwealth of Puerto Rico, any
9 territory or possession of the United States or any political
10 subdivision of a foreign country;

11 V. "state or local bond" means a bond issued by a
12 state other than New Mexico or by a local government other than
13 one of New Mexico's political subdivisions, the interest from
14 which is excluded from income for federal income tax purposes
15 under Section 103 of the Internal Revenue Code, as that section
16 may be amended or renumbered;

17 W. "surviving spouse" means "surviving spouse" as
18 generally defined for federal income tax purposes;

19 X. "taxable income" means net income less any lump-
20 sum amount;

21 Y. "taxable year" means the calendar year or fiscal
22 year upon the basis of which the net income is computed under
23 the Income Tax Act and includes, in the case of the return made
24 for a fractional part of a year under the provisions of the
25 Income Tax Act, the period for which the return is made; and

.220534.3

1 Z. "taxpayer" means any individual subject to the
2 tax imposed by the Income Tax Act."

3 **SECTION 48.** Section 7-2A-2 NMSA 1978 (being Laws 1986,
4 Chapter 20, Section 33, as amended) is amended to read:

5 "7-2A-2. DEFINITIONS.--For the purpose of the Corporate
6 Income and Franchise Tax Act and unless the context requires
7 otherwise:

8 A. "bank" means any national bank, national banking
9 association, state bank or bank holding company;

10 B. "apportioned net income" or "apportioned net
11 loss" means net income allocated and apportioned to New Mexico
12 pursuant to the provisions of the Corporate Income and
13 Franchise Tax Act or the Uniform Division of Income for Tax
14 Purposes Act, but excluding from the sales factor any sales
15 that represent intercompany transactions between members of the
16 filing group;

17 C. "base income" means the federal taxable income
18 or the federal net operating loss of a corporation for the
19 taxable year calculated pursuant to the Internal Revenue Code,
20 after special deductions provided in Sections 241 through 249
21 of the Internal Revenue Code but without any deduction for net
22 operating losses, as if the corporation filed a federal tax
23 return as a separate domestic entity, modified as follows:

24 (1) adding to that income:

25 (a) interest received on a state or

.220534.3

1 local bond exempt under the Internal Revenue Code;

2 (b) the amount of any deduction claimed
3 in calculating taxable income for all expenses and costs
4 directly or indirectly paid, accrued or incurred to a captive
5 real estate investment trust; and

6 (c) the amount of any deduction, other
7 than for premiums, for amounts paid directly or indirectly to a
8 commonly controlled entity that is exempt from corporate income
9 tax pursuant to Section 7-2A-4 NMSA 1978;

10 (2) subtracting from that income:

11 (a) income from obligations of the
12 United States net of expenses incurred to earn that income;

13 (b) other amounts that the state is
14 prohibited from taxing because of the laws or constitution of
15 this state or the United States net of any related expenses;

16 (c) an amount equal to one hundred
17 percent of the subpart F income, as that term is defined in
18 Section 952 of the Internal Revenue Code, as that section may
19 be amended or renumbered, included in the income of the
20 corporation; and

21 (d) an amount equal to one hundred
22 percent of the income of the corporation under Section 951A of
23 the Internal Revenue Code, after allowing the deduction
24 provided in Section 250 of the Internal Revenue Code; [~~and~~]

25 (3) making other adjustments deemed necessary

.220534.3

1 to properly reflect income of the unitary group, including
2 attribution of income or expense related to unitary assets held
3 by related corporations that are not part of the filing group;
4 and

5 (4) for taxpayers that conduct lawful
6 businesses pursuant to the laws of the state, subtracting an
7 amount equal to any expenditure that is eligible to be claimed
8 as a federal income tax deduction but is disallowed by Section
9 280E of the Internal Revenue Code, as that section may be
10 amended or renumbered;

11 D. "captive real estate investment trust" means a
12 corporation, trust or association taxed as a real estate
13 investment trust pursuant to Section 857 of the Internal
14 Revenue Code, the shares or beneficial interests of which are
15 not regularly traded on an established securities market;
16 provided that more than fifty percent of any class of
17 beneficial interests or shares of the real estate investment
18 trust are owned directly, indirectly or constructively by the
19 taxpayer during all or a part of the taxpayer's taxable year;

20 E. "common ownership" means the direct or indirect
21 control or ownership of more than fifty percent of the
22 outstanding voting stock, ownership of which is determined
23 pursuant to Section 1563 of the Internal Revenue Code, as that
24 section may be amended or renumbered, of:

25 (1) a parent-subsidary controlled group as

.220534.3

underscoring material = new
[bracketed material] = delete

1 defined in Section 1563 of the Internal Revenue Code, except
2 that fifty percent shall be substituted for eighty percent;

3 (2) a brother-sister controlled group as
4 defined in Section 1563 of the Internal Revenue Code; or

5 (3) three or more corporations each of which
6 is a member of a group of corporations described in Paragraph
7 (1) or (2) of this subsection, and one of which is:

8 (a) a common parent corporation included
9 in a group of corporations described in Paragraph (1) of this
10 subsection; and

11 (b) included in a group of corporations
12 described in Paragraph (2) of this subsection;

13 F. "consolidated group" means the group of entities
14 properly filing a federal consolidated return under the
15 Internal Revenue Code for the taxable year;

16 G. "corporation" means corporations, joint stock
17 companies, real estate trusts organized and operated under the
18 Real Estate Trust Act, financial corporations and banks, other
19 business associations and, for corporate income tax purposes,
20 partnerships and limited liability companies taxed as
21 corporations under the Internal Revenue Code;

22 H. "department" means the taxation and revenue
23 department, the secretary of taxation and revenue or any
24 employee of the department exercising authority lawfully
25 delegated to that employee by the secretary;

.220534.3

1 I. "filing group" means a group of corporations
2 properly included in a return pursuant to Section 7-2A-8.3 NMSA
3 1978 for a particular taxable year;

4 J. "fiscal year" means any accounting period of
5 twelve months ending on the last day of any month other than
6 December;

7 K. "grandfathered net operating loss carryover"
8 means:

9 (1) the amount of net loss properly reported
10 to New Mexico for taxable years beginning January 1, 2013 and
11 prior to January 1, 2020 as part of a timely filed original
12 return, or an amended return for those taxable years filed
13 prior to January 1, 2020, to the extent such loss can be
14 attributed to one or more corporations that are properly
15 included in the taxpayer's return for the first taxable year
16 beginning on or after January 1, 2020;

17 (2) reduced by:

18 (a) adding back deductions that were
19 taken by the corporation or corporations for royalties or
20 interest paid to one or more related corporations, but only to
21 the extent that such adjustment would not create a net loss for
22 such related corporations; and

23 (b) the amount of net operating loss
24 deductions taken prior to January 1, 2020 that would be charged
25 against those losses consistent with the Internal Revenue Code

.220534.3

1 and provisions of the Corporate Income and Franchise Tax Act
2 applicable to the year of the deduction; and

3 (3) apportioned to New Mexico using the
4 apportionment factors that can properly be attributed to the
5 corporation or corporations for the year of the net loss;

6 L. "Internal Revenue Code" means the United States
7 Internal Revenue Code of 1986, as amended;

8 M. "net income" means:

9 (1) the base income of a corporation properly
10 filing a tax return as a separate entity; or

11 (2) the combined base income and losses of
12 corporations that are part of a filing group that is computed
13 after eliminating intercompany income and expense in a manner
14 consistent with the consolidated filing requirements of the
15 Internal Revenue Code and the Corporate Income and Franchise
16 Tax Act;

17 N. "net operating loss carryover" means the
18 apportioned net loss properly reported on an original or
19 amended tax return for taxable years beginning on or after
20 January 1, 2020 by the taxpayer:

21 (1) plus:

22 (a) the portion of an apportioned net
23 loss properly reported to New Mexico for a taxable year
24 beginning on or after January 1, 2020, on a separate year
25 return, to the extent the taxpayer would have been entitled to

.220534.3

1 include the portion of such apportioned net loss in the
2 taxpayer's consolidated net operating loss carryforward under
3 the Internal Revenue Code if the taxpayer filed a consolidated
4 federal return; and

5 (b) the taxpayer's grandfathered net
6 operating loss carryover; and

7 (2) minus:

8 (a) the amount of the net operating loss
9 carryover attributed to an entity that has left the filing
10 group, computed in a manner consistent with the consolidated
11 filing requirements of the Internal Revenue Code and applicable
12 regulations, as if the taxpayer were filing a consolidated
13 return; and

14 (b) the amount of net operating loss
15 deductions properly taken by the taxpayer;

16 O. "net operating loss deduction" means the portion
17 of the net operating loss carryover that may be deducted from
18 the taxpayer's apportioned net income under the Internal
19 Revenue Code as of January 1, 2018 for the taxable year in
20 which the deduction is taken, including the eighty percent
21 limitation of Section 172(a) of the Internal Revenue Code as of
22 January 1, 2018 calculated on the basis of the taxpayer's
23 apportioned net income;

24 P. "person" means any individual, estate, trust,
25 receiver, cooperative association, club, corporation, company,

.220534.3

1 firm, partnership, limited liability company, joint venture,
2 syndicate or other association; "person" also means, to the
3 extent permitted by law, any federal, state or other
4 governmental unit or subdivision or agency, department or
5 instrumentality thereof;

6 Q. "real estate investment trust" has the meaning
7 ascribed to the term in Section 856 of the Internal Revenue
8 Code, as that section may be amended or renumbered;

9 R. "related corporation" means a corporation that
10 is under common ownership with one or more corporations but
11 that is not included in the same tax return;

12 S. "return" means any tax or information return,
13 including a water's-edge or worldwide combined return, a
14 consolidated return, a declaration of estimated tax or a claim
15 for refund, including any amendments or supplements to the
16 return, required or permitted pursuant to a law subject to
17 administration and enforcement pursuant to the Tax
18 Administration Act and filed with the department by or on
19 behalf of any person;

20 T. "secretary" means the secretary of taxation and
21 revenue or the secretary's delegate;

22 U. "separate year return" means a properly filed
23 original or amended return for a taxable year beginning on or
24 after January 1, 2020 by a taxpayer reporting a loss, a portion
25 of which is claimed as part of the net operating loss carryover

.220534.3

1 by another taxpayer in a subsequent return period;

2 V. "state" means any state of the United States,
3 the District of Columbia, the commonwealth of Puerto Rico, any
4 territory or possession of the United States or political
5 subdivision thereof or any political subdivision of a foreign
6 country;

7 W. "state or local bond" means a bond issued by a
8 state other than New Mexico or by a local government other than
9 one of New Mexico's political subdivisions, the interest from
10 which is excluded from income for federal income tax purposes
11 under Section 103 of the Internal Revenue Code, as that section
12 may be amended or renumbered;

13 X. "taxable income" means a taxpayer's apportioned
14 net income minus the net operating loss deduction for the
15 taxable year;

16 Y. "taxable year" means the calendar year or fiscal
17 year upon the basis of which the net income is computed under
18 the Corporate Income and Franchise Tax Act and includes, in the
19 case of the return made for a fractional part of a year under
20 the provisions of that act, the period for which the return is
21 made;

22 Z. "taxpayer" means any corporation or group of
23 corporations filing a return pursuant to Section 7-2A-8.3 NMSA
24 1978 subject to the taxes imposed by the Corporate Income and
25 Franchise Tax Act;

.220534.3

1 AA. "unitary group" means a group of two or more
2 corporations, including a captive real estate investment trust,
3 but not including an S corporation, an insurance company
4 subject to the provisions of the New Mexico Insurance Code, an
5 insurance company that would be subject to the New Mexico
6 Insurance Code if the insurance company engaged in business in
7 this state or a real estate investment trust that is not a
8 captive real estate investment trust, that are:

9 (1) related through common ownership; and

10 (2) economically interdependent with one
11 another as demonstrated by the following factors:

12 (a) centralized management;

13 (b) functional integration; and

14 (c) economies of scale;

15 BB. "water's-edge group" means all corporations
16 that are part of a unitary group, except:

17 (1) corporations that are exempt from
18 corporate income tax pursuant to Section 7-2A-4 NMSA 1978; and

19 (2) corporations wherever organized or
20 incorporated that have less than twenty percent of their
21 property, payroll and sales sourced to locations within the
22 United States, following the sourcing rules of the Uniform
23 Division of Income for Tax Purposes Act; and

24 CC. "worldwide combined group" means all members of
25 a unitary group, except members that are exempt from corporate

1 income tax pursuant to Section 7-2A-4 NMSA 1978, irrespective
 2 of the country in which the corporations are incorporated or
 3 conduct business activity."

4 SECTION 49. Section 7-9-13 NMSA 1978 (being Laws 1969,
 5 Chapter 144, Section 6, as amended) is amended to read:

6 "7-9-13. EXEMPTION--GROSS RECEIPTS TAX--GOVERNMENTAL
 7 AGENCIES.--

8 A. Except as otherwise provided in this section,
 9 exempted from the gross receipts tax are receipts of:

10 (1) the United States or any agency,
 11 department or instrumentality thereof;

12 (2) the state of New Mexico or any political
 13 subdivision thereof;

14 (3) any Indian nation, tribe or pueblo from
 15 activities or transactions occurring on its sovereign
 16 territory; [~~or~~]

17 (4) any foreign nation or agency,
 18 instrumentality or political subdivision thereof, but only when
 19 required by a treaty in force to which the United States is a
 20 party; or

21 (5) cannabis producers for the sale of
 22 cannabis wholesale.

23 B. Receipts from the sale of gas or electricity by
 24 a utility owned or operated by a county, municipality or other
 25 political subdivision of a state are not exempted from the

.220534.3

1 gross receipts tax.

2 C. Receipts from the operation of a cable
3 television system owned or operated by a municipality are not
4 exempted from the gross receipts tax."

5 SECTION 50. Section 7-9-73.2 NMSA 1978 (being Laws 1998,
6 Chapter 95, Section 2 and Laws 1998, Chapter 99, Section 4, as
7 amended) is amended to read:

8 "7-9-73.2. DEDUCTION--GROSS RECEIPTS TAX AND GOVERNMENTAL
9 GROSS RECEIPTS TAX--PRESCRIPTION DRUGS--OXYGEN--CANNABIS.--

10 A. Receipts from the sale of prescription drugs
11 [~~and~~], oxygen and oxygen services provided by a licensed
12 medicare durable medical equipment provider and cannabis that
13 is purchased in accordance with the Lynn and Erin Compassionate
14 Use Act may be deducted from gross receipts and governmental
15 gross receipts.

16 B. For the purposes of this section, "prescription
17 drugs" means insulin and substances that are:

18 (1) dispensed by or under the supervision of a
19 licensed pharmacist or by a physician or other person
20 authorized under state law to do so;

21 (2) prescribed for a specified person by a
22 person authorized under state law to prescribe the substance;
23 and

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

.220534.3

1 SECTION 51. Section 11-6A-3 NMSA 1978 (being Laws 1993,
2 Chapter 65, Section 3, as amended) is amended to read:

3 "11-6A-3. LOCAL DWI GRANT PROGRAM--FUND.--

4 A. The division shall establish a local DWI grant
5 program to make grants to municipalities or counties for:

6 (1) new, innovative or model programs,
7 services or activities to prevent or reduce the incidence of
8 DWI, alcoholism, alcohol abuse, drug addiction or drug abuse;
9 [~~and~~]

10 (2) programs, services or activities to
11 prevent or reduce the incidence of domestic abuse related to
12 DWI, alcoholism, alcohol abuse, drug addiction or drug abuse;

13 (3) implementing best practices in law
14 enforcement agencies regarding impairment by the use of
15 cannabis products; and

16 (4) funding drug recognition expert field
17 certification training for law enforcement officers and for
18 purchasing roadside impairment tests that are validated for
19 testing cannabis impairment.

20 B. Grants shall be awarded by the council pursuant
21 to the advice and recommendations of the division.

22 C. The "local DWI grant fund" is created in the
23 state treasury and shall be administered by the division. Two
24 million five hundred thousand dollars (\$2,500,000) of liquor
25 excise tax revenues distributed to the fund and all other money

.220534.3

1 in the fund, other than money appropriated for distribution
2 pursuant to Subsections D and E of this section and money
3 appropriated for DWI program distributions, are appropriated to
4 the division to make grants to municipalities and counties upon
5 council approval in accordance with the program established
6 under the Local DWI Grant Program Act and to evaluate DWI
7 grantees and the local DWI grant program. Money in the fund
8 may be used for drug courts. An amount equal to the liquor
9 excise tax revenues distributed annually to the fund, less five
10 million six hundred thousand dollars (\$5,600,000), is
11 appropriated to the division to make DWI program distributions
12 to counties upon council approval of programs in accordance
13 with the provisions of the Local DWI Grant Program Act. No
14 more than six hundred thousand dollars (\$600,000) of liquor
15 excise tax revenues distributed to the fund in any fiscal year
16 shall be expended for administration of the grant program.
17 Balances in the fund at the end of any fiscal year shall not
18 revert to the general fund.

19 D. Two million eight hundred thousand dollars
20 (\$2,800,000) of the liquor excise tax revenues distributed to
21 the local DWI grant fund is appropriated to the division for
22 distribution to the following counties in the following amounts
23 for funding of alcohol detoxification and treatment facilities:

24 (1) one million seven hundred thousand dollars
25 (\$1,700,000) to class A counties with a population of over

.220534.3

1 three hundred thousand persons according to the 1990 federal
2 decennial census;

3 (2) three hundred thousand dollars (\$300,000)
4 each to counties reclassified in 2002 as class A counties with
5 a population of more than ninety thousand but less than one
6 hundred thousand persons according to the 1990 federal
7 decennial census;

8 (3) two hundred thousand dollars (\$200,000) to
9 class B counties with a population of more than thirty thousand
10 but less than forty thousand persons according to the 1990
11 federal decennial census;

12 (4) one hundred fifty thousand dollars
13 (\$150,000) to class B counties with a population of more than
14 sixty-two thousand but less than sixty-five thousand persons
15 according to the 1990 federal decennial census; and

16 (5) one hundred fifty thousand dollars
17 (\$150,000) to class B counties with a population of more than
18 thirteen thousand but less than fifteen thousand persons
19 according to the 1990 federal decennial census.

20 E. Three hundred thousand dollars (\$300,000) of the
21 liquor excise tax revenues distributed to the local DWI grant
22 fund is appropriated to the division for the interlock device
23 fund.

24 F. In awarding DWI grants to local communities, the
25 council:

.220534.3

1 (1) may fund new or existing innovative or
2 model programs, services or activities designed to prevent or
3 reduce the incidence of DWI, alcoholism or alcohol abuse;

4 (2) may fund existing community-based
5 programs, services or facilities for prevention, screening and
6 treatment of alcoholism and alcohol abuse;

7 (3) may fund new or existing innovative or
8 model programs, services or activities of any kind designed to
9 prevent or reduce the incidence of domestic abuse related to
10 DWI, alcoholism or alcohol abuse;

11 (4) may fund existing community-based
12 programs, services or facilities for prevention and treatment
13 of domestic abuse related to DWI, alcoholism or alcohol abuse;

14 (5) shall give consideration to a broad range
15 of approaches to prevention, education, screening, treatment or
16 alternative sentencing, including programs that combine
17 incarceration, treatment and aftercare, to address the problem
18 of DWI, alcoholism or alcohol abuse; and

19 (6) shall make grants only to counties or
20 municipalities in counties that have established a DWI planning
21 council and adopted a county DWI plan or are parties to a
22 multicounty DWI plan that has been approved by the council and
23 approved pursuant to Chapter 43, Article 3 NMSA 1978 and only
24 for programs, services or activities consistent with that plan.

25 A DWI plan shall also comply with local DWI grant program rules

.220534.3

1 and guidelines.

2 G. The council shall use the criteria in Subsection
3 F of this section to approve DWI programs, services or
4 activities for funding through the county DWI program
5 distribution. Sixty-five percent of the DWI grants awarded to
6 local communities shall be used for alcohol-related treatment
7 and detoxification programs."

8 SECTION 52. Section 30-31-2 NMSA 1978 (being Laws 1972,
9 Chapter 84, Section 2, as amended) is amended to read:

10 "30-31-2. DEFINITIONS.--As used in the Controlled
11 Substances Act:

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

15 B. "agent" includes an authorized person who acts
16 on behalf of a manufacturer, distributor or dispenser. It does
17 not include a common or contract carrier, public
18 warehouseperson or employee of the carrier or warehouseperson;

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

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

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

.220534.3

1 F. "counterfeit substance" means a controlled
2 substance that bears the unauthorized trademark, trade name,
3 imprint, number, device or other identifying mark or likeness
4 of a manufacturer, distributor or dispenser other than the
5 person who in fact manufactured, distributed or dispensed the
6 controlled substance;

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

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

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

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

23 K. "drug" or "substance" means substances
24 recognized as drugs in the official United States
25 pharmacopoeia, official homeopathic pharmacopoeia of the United

.220534.3

1 States or official national formulary or any respective
2 supplement to those publications. It does not include devices
3 or their components, parts or accessories;

4 ~~[L. "hashish" means the resin extracted from any~~
5 ~~part of marijuana, whether growing or not, and every compound,~~
6 ~~manufacture, salt, derivative, mixture or preparation of such~~
7 ~~resins;~~

8 M.] L. "hemp" means the plant Cannabis sativa L.
9 and any part of that plant, including seeds and all
10 derivatives, extracts, cannabinoids, isomers, acids, salts and
11 salts of isomers, whether growing or not, with a delta-9-
12 tetrahydrocannabinol concentration of not more than three-
13 tenths percent on a dry weight basis;

14 ~~[N.]~~ M. "manufacture" means the production,
15 preparation, compounding, conversion or processing of a
16 controlled substance or controlled substance analog by
17 extraction from substances of natural origin or independently
18 by means of chemical synthesis or by a combination of
19 extraction and chemical synthesis and includes any packaging or
20 repackaging of the substance or labeling or relabeling of its
21 container, except that this term does not include the
22 preparation or compounding of a controlled substance:

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

.220534.3

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

5 ~~[0. "marijuana" means all parts of the plant~~
6 ~~cannabis, including any and all varieties, species and~~
7 ~~subspecies of the genus Cannabis, whether growing or not, the~~
8 ~~seeds thereof and every compound, manufacture, salt,~~
9 ~~derivative, mixture or preparation of the plant or its seeds.~~
10 ~~It does not include the mature stalks of the plant, hashish,~~
11 ~~tetrahydrocannabinols extracted or isolated from marijuana,~~
12 ~~fiber produced from the stalks, oil or cake made from the seeds~~
13 ~~of the plant, any other compound, manufacture, salt,~~
14 ~~derivative, mixture or preparation of the mature stalks, fiber,~~
15 ~~oil or cake, or the sterilized seed of the plant that is~~
16 ~~incapable of germination; or the plant Cannabis sativa L. and~~
17 ~~any part of the plant, whether growing or not, containing a~~
18 ~~delta-9-tetrahydrocannabinol concentration of no more than~~
19 ~~three-tenths percent on a dry weight basis;~~

20 P.] N. "narcotic drug" means any of the following,
21 whether produced directly or indirectly by extraction from
22 substances of vegetable origin or independently by means of
23 chemical synthesis or by a combination of extraction and
24 chemical synthesis:

25 (1) opium and opiate and any salt, compound,

.220534.3

underscored material = new
[bracketed material] = delete

1 derivative or preparation of opium or opiate;

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

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

9 (4) coca leaves and any salt, compound,
10 derivative or preparation of coca leaves, any salt, compound,
11 isomer, derivative or preparation that is a chemical equivalent
12 of any of these substances except decocainized coca leaves or
13 extractions of coca leaves that do not contain cocaine or
14 ecgonine;

15 ~~[Q-]~~ Q. "opiate" means any substance having an
16 addiction-forming or addiction-sustaining liability similar to
17 morphine or being capable of conversion into a drug having
18 addiction-forming or addiction-sustaining liability. "Opiate"
19 does not include, unless specifically designated as controlled
20 under Section 30-31-5 NMSA 1978, the dextrorotatory isomer of
21 3-methoxy-n-methylmorphinan and its salts, dextromethorphan.
22 "Opiate" does include its racemic and levorotatory forms;

23 ~~[R-]~~ P. "person" means an individual, partnership,
24 corporation, association, institution, political subdivision,
25 government agency or other legal entity;

.220534.3

1 [~~S-~~] Q. "practitioner" means a physician, certified
2 advanced practice chiropractic physician, doctor of oriental
3 medicine, dentist, physician assistant, certified nurse
4 practitioner, clinical nurse specialist, certified nurse-
5 midwife, prescribing psychologist, veterinarian, euthanasia
6 technician, pharmacist, pharmacist clinician or other person
7 licensed or certified to prescribe and administer drugs that
8 are subject to the Controlled Substances Act;

9 [~~F-~~] R. "prescription" means an order given
10 individually for the person for whom is prescribed a controlled
11 substance, either directly from a licensed practitioner or the
12 practitioner's agent to the pharmacist, including by means of
13 electronic transmission, or indirectly by means of a written
14 order signed by the prescriber, bearing the name and address of
15 the prescriber, the prescriber's license classification, the
16 name and address of the patient, the name and quantity of the
17 drug prescribed, directions for use and the date of issue and
18 in accordance with the Controlled Substances Act or rules
19 adopted thereto;

20 [~~U-~~] S. "scientific investigator" means a person
21 registered to conduct research with controlled substances in
22 the course of the person's professional practice or research
23 and includes analytical laboratories;

24 [~~V-~~] T. "ultimate user" means a person who lawfully
25 possesses a controlled substance for the person's own use or

1 for the use of a member of the person's household or for
2 administering to an animal under the care, custody and control
3 of the person or by a member of the person's household;

4 [W-] U. "drug paraphernalia" means all equipment,
5 products and materials of any kind that are used, intended for
6 use or designed for use in planting, propagating, cultivating,
7 growing, harvesting, manufacturing, compounding, converting,
8 producing, processing, preparing, testing, analyzing,
9 packaging, repackaging, storing, containing, concealing,
10 injecting, ingesting, inhaling or otherwise introducing into
11 the human body a controlled substance or controlled substance
12 analog in violation of the Controlled Substances Act. It
13 includes:

14 (1) kits used, intended for use or designed
15 for use in planting, propagating, cultivating, growing or
16 harvesting any species of plant that is a controlled substance
17 or controlled substance analog or from which a controlled
18 substance can be derived;

19 (2) kits used, intended for use or designed
20 for use in manufacturing, compounding, converting, producing,
21 processing or preparing controlled substances or controlled
22 substance analogs;

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

.220534.3

1 (4) testing equipment used, intended for use
2 or designed for use in identifying or in analyzing the
3 strength, effectiveness or purity of controlled substances or
4 controlled substance analogs;

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

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

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

15 (8) blenders, bowls, containers, spoons and
16 mixing devices used, intended for use or designed for use in
17 compounding controlled substances or controlled substance
18 analogs;

19 (9) capsules, balloons, envelopes and other
20 containers used, intended for use or designed for use in
21 packaging small quantities of controlled substances or
22 controlled substance analogs;

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

.220534.3

1 (11) hypodermic syringes, needles and other
2 objects used, intended for use or designed for use in
3 parenterally injecting controlled substances or controlled
4 substance analogs into the human body;

5 (12) objects used, intended for use or
6 designed for use in ingesting, inhaling or otherwise
7 introducing marijuana, cocaine, hashish or hashish oil into the
8 human body, such as:

9 (a) metal, wooden, acrylic, glass,
10 stone, plastic or ceramic pipes, with or without screens,
11 permanent screens, hashish heads or punctured metal bowls;

12 (b) water pipes;

13 (c) carburetion tubes and devices;

14 (d) smoking and carburetion masks;

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

18 (f) miniature cocaine spoons and cocaine
19 vials;

20 (g) chamber pipes;

21 (h) carburetor pipes;

22 (i) electric pipes;

23 (j) air-driven pipes;

24 (k) chilams;

25 (l) bongs; or

.220534.3

1 (m) ice pipes or chillers; and
2 (13) in determining whether an object is drug
3 paraphernalia, a court or other authority should consider, in
4 addition to all other logically relevant factors, the
5 following:

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

8 (b) the proximity of the object, in time
9 and space, to a direct violation of the Controlled Substances
10 Act or any other law relating to controlled substances or
11 controlled substance analogs;

12 (c) the proximity of the object to
13 controlled substances or controlled substance analogs;

14 (d) the existence of any residue of a
15 controlled substance or controlled substance analog on the
16 object;

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

19 (f) descriptive materials accompanying
20 the object that explain or depict its use;

21 (g) the manner in which the object is
22 displayed for sale; and

23 (h) expert testimony concerning its use;

24 [~~X~~] V. "controlled substance analog":

25 (1) means a substance other than a controlled

1 substance that has a chemical structure substantially similar
2 to that of a controlled substance in Schedule I, II, III, IV or
3 V or that was specifically designed to produce effects
4 substantially similar to that of controlled substances in
5 Schedule I, II, III, IV or V. Examples of chemical classes in
6 which controlled substance analogs are found include the
7 following:

- 8 [~~(1)~~] (a) phenethylamines;
- 9 [~~(2)~~] (b) N-substituted piperidines;
- 10 [~~(3)~~] (c) morphinans;
- 11 [~~(4)~~] (d) ecgonines;
- 12 [~~(5)~~] (e) quinazolinones;
- 13 [~~(6)~~] (f) substituted indoles; and
- 14 [~~(7)~~] (g) arylcycloalkylamines;

15 [~~Specifically excluded from the definition of "controlled~~
16 ~~substance analog" are those] and~~

17 (2) does not include substances that are
18 generally recognized as safe and effective within the meaning
19 of the Federal Food, Drug, and Cosmetic Act or have been
20 manufactured, distributed or possessed in conformance with the
21 provisions of an approved new drug application or an exemption
22 for investigational use within the meaning of Section 505 of
23 the Federal Food, Drug, and Cosmetic Act;

24 [~~Y.~~] W. "human consumption" includes application,
25 injection, inhalation, ingestion or any other manner of

.220534.3

1 introduction;

2 [Z-] X. "drug-free school zone" means a public
3 school, parochial school or private school or property that is
4 used for a public, parochial or private school purpose and the
5 area within one thousand feet of the school property line, but
6 it does not mean any post-secondary school; and

7 [AA-] Y. "valid practitioner-patient relationship"
8 means a professional relationship, as defined by the
9 practitioner's licensing board, between the practitioner and
10 the patient."

11 SECTION 53. Section 30-31-6 NMSA 1978 (being Laws 1972,
12 Chapter 84, Section 6, as amended) is amended to read:

13 "30-31-6. SCHEDULE I.--The following controlled
14 substances are included in Schedule I:

15 A. any of the following opiates, including their
16 isomers, esters, ethers, salts, and salts of isomers, esters
17 and ethers, unless specifically exempted, whenever the
18 existence of these isomers, esters, ethers and salts is
19 possible within the specific chemical designation:

- 20 (1) acetylmethadol;
- 21 (2) allylprodine;
- 22 (3) alphacetylmethadol;
- 23 (4) alphameprodine;
- 24 (5) alphamethadol;
- 25 (6) benzethidine;

.220534.3

- underscored material = new
[bracketed material] = delete
- 1 (7) betacetylmethadol;
 - 2 (8) betameprodine;
 - 3 (9) betamethadol;
 - 4 (10) betaprodine;
 - 5 (11) clonitazene;
 - 6 (12) dextromoramide;
 - 7 (13) dextrorphan;
 - 8 (14) diampromide;
 - 9 (15) diethylthiambutene;
 - 10 (16) dimenoxadol;
 - 11 (17) dimepheptanol;
 - 12 (18) dimethylthiambutene;
 - 13 (19) dioxaphetyl butyrate;
 - 14 (20) dipipanone;
 - 15 (21) ethylmethylthiambutene;
 - 16 (22) etonitazene;
 - 17 (23) etoxeridine;
 - 18 (24) furethidine;
 - 19 (25) hydroxypethidine;
 - 20 (26) ketobemidone;
 - 21 (27) levomoramide;
 - 22 (28) levophenacymorphan;
 - 23 (29) morpheridine;
 - 24 (30) noracymethadol;
 - 25 (31) norlevorphanol;

- 1 (32) normethadone;
- 2 (33) norpipanone;
- 3 (34) phenadoxone;
- 4 (35) phenampromide;
- 5 (36) phenomorphan;
- 6 (37) phenoperidine;
- 7 (38) piritramide;
- 8 (39) proheptazine;
- 9 (40) properidine;
- 10 (41) racemoramide; and
- 11 (42) trimeperidine;

12 B. any of the following opium derivatives, their
13 salts, isomers and salts of isomers, unless specifically
14 exempted, whenever the existence of these salts, isomers and
15 salts of isomers is possible within the specific chemical
16 designation:

- 17 (1) acetorphine;
- 18 (2) acetyldihydrocodeine;
- 19 (3) benzylmorphine;
- 20 (4) codeine methylbromide;
- 21 (5) codeine-N-oxide;
- 22 (6) cyprenorphine;
- 23 (7) desomorphine;
- 24 (8) dihydromorphine;
- 25 (9) etorphine;

- 1 (10) heroin;
- 2 (11) hydromorphenol;
- 3 (12) methylodesorphine;
- 4 (13) methyldehydromorphine;
- 5 (14) morphine methylbromide;
- 6 (15) morphine methylsulfonate;
- 7 (16) morphine-N-oxide;
- 8 (17) myrophine;
- 9 (18) nicocodeine;
- 10 (19) nicomorphine;
- 11 (20) normorphine;
- 12 (21) pholcodine; and
- 13 (22) thebacon;

14 C. any material, compound, mixture or preparation
15 that contains any quantity of the following hallucinogenic
16 substances, their salts, isomers and salts of isomers, unless
17 specifically exempted, whenever the existence of these salts,
18 isomers and salts of isomers is possible within the specific
19 chemical designation:

- 20 (1) 3,4-methylenedioxy amphetamine;
- 21 (2) 5-methoxy-3,4-methylenedioxy amphetamine;
- 22 (3) 3,4,5-trimethoxy amphetamine;
- 23 (4) bufotenine;
- 24 (5) diethyltryptamine;
- 25 (6) dimethyltryptamine;

.220534.3

- 1 (7) 4-methyl-2,5-dimethoxy amphetamine;
2 (8) ibogaine;
3 (9) lysergic acid diethylamide;
4 [~~(10)~~] ~~marijuana~~;
5 ~~(11)~~ (10) mescaline;
6 [~~(12)~~] (11) peyote, except as otherwise
7 provided in the Controlled Substances Act;
8 [~~(13)~~] (12) N-ethyl-3-piperidyl benzilate;
9 [~~(14)~~] (13) N-methyl-3-piperidyl benzilate;
10 [~~(15)~~] (14) psilocybin;
11 [~~(16)~~] (15) psilocyn;
12 [~~(17)~~] ~~tetrahydrocannabinols~~;
13 ~~(18)~~ ~~hashish~~;
14 ~~(19)~~ (16) synthetic cannabinoids, including:
15 (a) 1-[2-(4-(morpholinyl)ethyl)-3-(1-
16 naphthoyl)indole];
17 (b) 1-butyl-3-(1-naphthoyl)indole;
18 (c) 1-hexyl-3-(1-naphthoyl)indole;
19 (d) 1-pentyl-3-(1-naphthoyl)indole;
20 (e) 1-pentyl-3-(2-methoxyphenylacetyl)
21 indole;
22 (f) cannabicyclohexanol (CP 47, 497 and
23 homologues: 5-(1,1-dimethylheptyl)-2-[(1R,3S) -3-
24 hydroxycyclohexyl]-phenol (CP-47,497); and 5-(1, 1-
25 dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol;

.220534.3

1 (g) 6aR,10aR)-9-(hydroxymethyl) -6,6-
 2 dimethyl-3-(2-methyloctan-2-yl)-6a,7,10, 10a-
 3 tetrahydrobenzo[c]chromen-1-ol);

4 (h) dexanabinol, (6aS,10aS) -9-
 5 (hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl) -
 6 6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol;

7 (i) 1-pentyl-3-(4-chloro naphthoyl)
 8 indole;

9 (j) (2-methyl-1-propyl-1H-indol-3-yl) -
 10 1-naphthalenyl-methanone; and

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

13 ~~(17)~~ (17) 3,4-methylenedioxymethcathinone;

14 ~~(18)~~ (18) 3,4-methylenedioxypyrovalerone;

15 ~~(19)~~ (19) 4-methylmethcathinone;

16 ~~(20)~~ (20) 4-methoxymethcathinone;

17 ~~(21)~~ (21) 3-fluoromethcathinone; and

18 ~~(22)~~ (22) 4-fluoromethcathinone;

19 D. the enumeration of peyote as a controlled
 20 substance does not apply to the use of peyote in bona fide
 21 religious ceremonies by a bona fide religious organization, and
 22 members of the organization so using peyote are exempt from
 23 registration. Any person who manufactures peyote for or
 24 distributes peyote to the organization or its members shall
 25 comply with the federal Comprehensive Drug Abuse Prevention and

.220534.3

1 Control Act of 1970 and all other requirements of law; and

2 ~~[E.— the enumeration of marijuana,~~
3 ~~tetrahydrocannabinols or chemical derivatives of~~
4 ~~tetrahydrocannabinol as Schedule I controlled substances does~~
5 ~~not apply to:~~

6 ~~(1) hemp pursuant to rules promulgated by the~~
7 ~~board of regents of New Mexico state university on behalf of~~
8 ~~the New Mexico department of agriculture;~~

9 ~~(2) cultivation of hemp by persons pursuant to~~
10 ~~rules promulgated by the board of regents of New Mexico state~~
11 ~~university on behalf of the New Mexico department of~~
12 ~~agriculture;~~

13 ~~(3) tetrahydrocannabinols or chemical~~
14 ~~derivatives of tetrahydrocannabinols, including~~
15 ~~tetrahydrocannabinols or chemical derivatives of~~
16 ~~tetrahydrocannabinols with concentrations of up to five percent~~
17 ~~as measured using a post-decarboxylation method and based on~~
18 ~~percentage dry weight, possessed by a person in connection with~~
19 ~~the cultivation, transportation, testing, researching,~~
20 ~~manufacturing or other processing of the plant Cannabis sativa~~
21 ~~L., or any part of the plant whether growing or not, if~~
22 ~~authorized pursuant to rules promulgated, pursuant to the Hemp~~
23 ~~Manufacturing Act, by the board of regents of New Mexico state~~
24 ~~university on behalf of the New Mexico department of~~
25 ~~agriculture or the department of environment;~~

.220534.3

1 ~~(4) tetrahydrocannabinols or chemical~~
 2 ~~derivatives of tetrahydrocannabinols, including~~
 3 ~~tetrahydrocannabinols or chemical derivatives of~~
 4 ~~tetrahydrocannabinols in any concentration possessed by a~~
 5 ~~person in connection with the extraction of~~
 6 ~~tetrahydrocannabinols or chemical derivatives of~~
 7 ~~tetrahydrocannabinols, if authorized pursuant to rules~~
 8 ~~promulgated, pursuant to the Hemp Manufacturing Act, by the~~
 9 ~~board of regents of New Mexico state university on behalf of~~
 10 ~~the New Mexico department of agriculture or the department of~~
 11 ~~environment;~~

12 ~~(5) the use of marijuana,~~
 13 ~~tetrahydrocannabinols or chemical derivatives of~~
 14 ~~tetrahydrocannabinol by certified patients pursuant to the~~
 15 ~~Controlled Substances Therapeutic Research Act or by qualified~~
 16 ~~patients pursuant to the provisions of the Lynn and Erin~~
 17 ~~Compassionate Use Act; or~~

18 ~~(6) the use, dispensing, possession,~~
 19 ~~prescribing, storage or transport of a prescription drug that~~
 20 ~~the United States food and drug administration has approved and~~
 21 ~~that contains marijuana, a tetrahydrocannabinol derivative or a~~
 22 ~~chemical derivative of tetrahydrocannabinol; and~~

23 F.] E. controlled substances added to Schedule I by
 24 rule adopted by the board pursuant to Section 30-31-3 NMSA
 25 1978."

.220534.3

1 SECTION 54. Section 30-31-7 NMSA 1978 (being Laws 1972,
2 Chapter 84, Section 7, as amended) is amended to read:

3 "30-31-7. SCHEDULE II.--

4 A. The following controlled substances are included
5 in Schedule II:

6 (1) any of the following substances, except
7 those narcotic drugs listed in other schedules, whether
8 produced directly or indirectly by extraction from substances
9 of vegetable origin, or independently by means of chemical
10 synthesis, or by combination of extraction and chemical
11 synthesis:

12 (a) opium and opiate, and any salt,
13 compound, derivative or preparation of opium or opiate;

14 (b) any salt, compound, isomer,
15 derivative or preparation thereof that is chemically equivalent
16 or identical with any of the substances referred to in
17 Subparagraph (a) of this paragraph, but not including the
18 isoquinoline alkaloids of opium;

19 (c) opium poppy and poppy straw; and

20 (d) coca leaves and any salt, compound,
21 derivative or preparation of coca leaves, and any salt,
22 compound, derivative or preparation thereof that is chemically
23 equivalent or identical with any of these substances, but not
24 including decocainized coca leaves or extractions that do not
25 contain cocaine or ecgonine;

.220534.3

1 ~~[(e) marijuana, but only for the use by~~
 2 ~~certified patients pursuant to the Controlled Substances~~
 3 ~~Therapeutic Research Act or by qualified patients pursuant to~~
 4 ~~the provisions of the Lynn and Erin Compassionate Use Act; and~~
 5 ~~(f) tetrahydrocannabinols or chemical~~
 6 ~~derivatives of tetrahydrocannabinol, but only for the use by~~
 7 ~~certified patients pursuant to the Controlled Substances~~
 8 ~~Therapeutic Research Act or by qualified patients pursuant to~~
 9 ~~the provisions of the Lynn and Erin Compassionate Use Act.~~

10 ~~Marijuana, tetrahydrocannabinols or chemical derivatives~~
 11 ~~of tetrahydrocannabinol shall be considered Schedule II~~
 12 ~~controlled substances only for the purposes enumerated in the~~
 13 ~~Controlled Substances Therapeutic Research Act or the Lynn and~~
 14 ~~Erin Compassionate Use Act;]~~

15 (2) any of the following opiates, including
 16 their isomers, esters, ethers, salts and salts of isomers,
 17 whenever the existence of these isomers, esters, ethers and
 18 salts is possible within the specific chemical designation:

- 19 (a) alphaprodine;
- 20 (b) anileridine;
- 21 (c) bezitramide;
- 22 (d) dihydrocodeine;
- 23 (e) diphenoxylate;
- 24 (f) fentanyl;
- 25 (g) hydromorphone;

- 1 (h) isomethadone;
- 2 (i) levomethorphan;
- 3 (j) levorphanol;
- 4 (k) meperidine;
- 5 (l) metazocine;
- 6 (m) methadone;
- 7 (n) methadone--intermediate,
- 8 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
- 9 (o) moramide--intermediate,
- 10 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid;
- 11 (p) oxycodone;
- 12 (q) pethidine;
- 13 (r) pethidine--intermediate--A,
- 14 4-cyano-1-methyl-4-phenylpiperidine;
- 15 (s) pethidine--intermediate--B,
- 16 ethyl-4-phenyl-piperidine-4-carboxylate;
- 17 (t) pethidine--intermediate--C,
- 18 1-methyl-4-phenylpiperidine-4-carboxylic acid;
- 19 (u) phenazocine;
- 20 (v) piminodine;
- 21 (w) racemethorphan; and
- 22 (x) racemorphan;

23 (3) unless listed in another schedule, any
24 material, compound, mixture or preparation that contains any
25 quantity of the following substances having a potential for

.220534.3

1 abuse associated with a stimulant effect on the central nervous
2 system:

- 3 (a) amphetamine, its salts, optical
4 isomers and salts of its optical isomers;
5 (b) phenmetrazine and its salts;
6 (c) methamphetamine, its salts, isomers
7 and salts of isomers; and
8 (d) methylphenidate; and
9 (4) controlled substances added to Schedule II
10 by rule adopted by the board pursuant to Section 30-31-3 NMSA
11 1978.

12 B. Where methadone is prescribed, administered or
13 dispensed by a practitioner of a drug abuse rehabilitation
14 program while acting in the course of the practitioner's
15 professional practice, or otherwise lawfully obtained or
16 possessed by a person, such person shall not possess such
17 methadone beyond the date stamped or typed on the label of the
18 container of the methadone, nor shall any person possess
19 methadone except in the container in which it was originally
20 administered or dispensed to such person, and such container
21 shall include a label showing the name of the prescribing
22 physician or practitioner, the identity of methadone, the name
23 of the ultimate user, the date when the methadone is to be
24 administered to or used or consumed by the named ultimate user
25 shown on the label and a warning on the label of the methadone

.220534.3

1 container that the ultimate user must use, consume or
2 administer to the ultimate user the methadone in such
3 container. Any person who violates this subsection is guilty
4 of a felony and shall be punished by imprisonment for not less
5 than one year nor more than five years, or by a fine of up to
6 five thousand dollars (\$5,000), or both."

7 SECTION 55. Section 30-31-21 NMSA 1978 (being Laws 1972,
8 Chapter 84, Section 21, as amended) is amended to read:

9 "30-31-21. DISTRIBUTION TO A MINOR.--Except as
10 authorized by the Controlled Substances Act, no person who is
11 eighteen years of age or older shall intentionally distribute a
12 controlled substance to a person under the age of eighteen
13 years. Any person who violates this section with respect to

14 ~~A. marijuana is:~~

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

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

21 ~~B. any other] a~~ controlled substance enumerated in
22 ~~[Schedules] Schedule~~ I, II, III or IV or a controlled substance
23 analog of any controlled substance enumerated in Schedule I,
24 II, III or IV is:

25 ~~{1}~~ A. for the first offense, guilty of a second

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

3 [~~2~~] B. for the second and subsequent offenses,
4 guilty of a first degree felony and shall be sentenced pursuant
5 to the provisions of Section 31-18-15 NMSA 1978."

6 SECTION 56. Section 30-31-22 NMSA 1978 (being Laws 1972,
7 Chapter 84, Section 22, as amended) is amended to read:

8 "30-31-22. CONTROLLED OR COUNTERFEIT SUBSTANCES--
9 DISTRIBUTION PROHIBITED.--

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

19 (1) [~~marijuana or~~] synthetic cannabinoids is:

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

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

.220534.3

1 1978;

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

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

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

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

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

.220534.3

1 1978; and

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

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

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

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

25 C. Except as authorized by the Controlled

.220534.3

1 Substances Act, it is unlawful for a person to intentionally
2 create or deliver, or possess with intent to deliver, a
3 counterfeit substance. A person who violates this subsection
4 with respect to:

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

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

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

17 (1) ~~[marijuana or]~~ synthetic cannabinoids is:

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

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

25 (c) for the first offense, if more than

1 one hundred pounds is possessed with intent to distribute or
2 distributed or both, guilty of a second degree felony and shall
3 be sentenced pursuant to the provisions of Section 31-18-15
4 NMSA 1978; and

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

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

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

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

25 (3) a controlled substance enumerated in

.220534.3

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

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

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

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

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

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

22 SECTION 57. Section 30-31-23 NMSA 1978 (being Laws 1972,
23 Chapter 84, Section 23, as amended) is amended to read:

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

.220534.3

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

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

10 ~~(1) up to one-half ounce of marijuana shall be~~
11 ~~issued a penalty assessment, pursuant to Section 3 of this 2019~~
12 ~~act and is subject to a fine of fifty dollars (\$50.00);~~

13 ~~(2) more than one-half ounce but up to and~~
14 ~~including one ounce of marijuana is, for the first offense,~~
15 ~~guilty of a petty misdemeanor and shall be punished by a fine~~
16 ~~of not less than fifty dollars (\$50.00) or more than one~~
17 ~~hundred dollars (\$100) and by imprisonment for not more than~~
18 ~~fifteen days, and, for a second or subsequent offense, is~~
19 ~~guilty of a misdemeanor and shall be punished by a fine of not~~
20 ~~less than one hundred dollars (\$100) or more than one thousand~~
21 ~~dollars (\$1,000) or by imprisonment for a definite term of less~~
22 ~~than one year, or both;~~

23 ~~(3) more than one ounce but less than eight~~
24 ~~ounces of marijuana is guilty of a misdemeanor and shall be~~
25 ~~punished by a fine of not less than one hundred dollars (\$100)~~

.220534.3

1 ~~or more than one thousand dollars (\$1,000) or by imprisonment~~
2 ~~for a definite term of less than one year, or both; or~~

3 ~~(4) eight ounces or more of marijuana is~~
4 ~~guilty of a fourth degree felony and shall be sentenced~~
5 ~~pursuant to the provisions of Section 31-18-15 NMSA 1978.~~

6 ~~E.]~~ B. A person who violates this section with
7 respect to:

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

17 (2) more than one ounce and less than eight
18 ounces of synthetic cannabinoids is guilty of a misdemeanor and
19 shall be punished by a fine of not less than one hundred
20 dollars (\$100) or more than one thousand dollars (\$1,000) or by
21 imprisonment for a definite term less than one year, or both;
22 or

23 (3) eight ounces or more of synthetic
24 cannabinoids is guilty of a fourth degree felony and shall be
25 sentenced pursuant to the provisions of Section 31-18-15 NMSA

1 1978.

2 ~~[D-]~~ C. A minor who violates this section with
 3 respect to the substances listed in this subsection is guilty
 4 of a petty misdemeanor and, notwithstanding the provisions of
 5 Sections 32A-1-5 and 32A-2-19 NMSA 1978, shall be punished by a
 6 fine not to exceed one hundred dollars (\$100) or forty-eight
 7 hours of community service. For the third or subsequent
 8 violation by a minor of this section with respect to those
 9 substances, the provisions of Section 32A-2-19 NMSA 1978 shall
 10 govern punishment of the minor. ~~[As used in this subsection,~~
 11 ~~"minor" means a person who is less than eighteen years of age.]~~
 12 The provisions of this subsection apply to the following
 13 substances:

- 14 (1) synthetic cannabinoids;
 15 (2) any of the substances listed in Paragraphs
 16 ~~[(20) through (25)]~~ (17) through (22) of Subsection C of
 17 Section 30-31-6 NMSA 1978; or
 18 (3) a substance added to Schedule I by a rule
 19 of the board adopted on or after March 31, 2011 if the board
 20 determines that the pharmacological effect of the substance,
 21 the risk to the public health by abuse of the substance and the
 22 potential of the substance to produce psychic or physiological
 23 dependence liability is similar to the substances described in
 24 Paragraph (1) or (2) of this subsection.

25 ~~[E-]~~ D. Except as provided in Subsections B ~~[G]~~ and
 .220534.3

1 [G] F of this section, and for those substances listed in
2 Subsection [F] E of this section, a person who violates this
3 section with respect to any amount of any controlled substance
4 enumerated in Schedule I, II, III or IV or a controlled
5 substance analog of a substance enumerated in Schedule I, II,
6 III or IV is guilty of a misdemeanor and shall be punished by a
7 fine of not less than five hundred dollars (\$500) or more than
8 one thousand dollars (\$1,000) or by imprisonment for a definite
9 term less than one year, or both.

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

.220534.3

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

13 ~~[G.]~~ F. Except for a minor ~~[as defined in~~
14 ~~Subsection D of this section]~~, a person who violates Subsection
15 A of this section while within a posted drug-free school zone,
16 excluding private property residentially zoned or used
17 primarily as a residence and excluding a person in or on a
18 motor vehicle in transit through the posted drug-free school
19 zone, with respect to:

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

.220534.3

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

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

7 (3) eight ounces or more of [~~marijuana or~~]
8 synthetic cannabinoids is guilty of a third degree felony and
9 shall be sentenced pursuant to the provisions of Section
10 31-18-15 NMSA 1978;

11 (4) any amount of any other controlled
12 substance enumerated in Schedule I, II, III or IV or a
13 controlled substance analog of a substance enumerated in
14 Schedule I, II, III or IV, except phencyclidine as enumerated
15 in Schedule III, a narcotic drug enumerated in Schedule I or II
16 or a controlled substance analog of a narcotic drug enumerated
17 in Schedule I or II, is guilty of a fourth degree felony and
18 shall be sentenced pursuant to the provisions of Section
19 31-18-15 NMSA 1978; and

20 (5) phencyclidine as enumerated in Schedule
21 III, a narcotic drug enumerated in Schedule I or II, a
22 controlled substance analog of phencyclidine or a controlled
23 substance analog of a narcotic drug enumerated in Schedule I or
24 II is guilty of a third degree felony and shall be sentenced
25 pursuant to the provisions of Section 31-18-15 NMSA 1978.

.220534.3

1 G. For purposes of this section, "minor" means a
 2 person who is younger than eighteen years of age."

3 SECTION 58. Section 30-31-28 NMSA 1978 (being Laws 1972,
 4 Chapter 84, Section 28) is amended to read:

5 "30-31-28. CONDITIONAL DISCHARGE FOR POSSESSION AS FIRST
 6 OFFENSE.--

7 A. If [~~any~~] a person, who has not previously been
 8 convicted of violating the laws of [~~any~~] a state or [~~any~~] laws
 9 of the United States relating to narcotic drugs, [~~marijuana~~]
 10 hallucinogenic or depressant or stimulant substances, is found
 11 guilty of a violation of Section [~~23~~] 30-31-23 NMSA 1978, after
 12 trial or upon a plea of guilty, the court may, without entering
 13 a judgment of guilty and with the consent of the person, defer
 14 further proceedings and place [~~him~~] the person on probation
 15 upon reasonable conditions and for a period, not to exceed one
 16 year, as the court may prescribe.

17 B. Upon violation of a condition of the probation,
 18 the court may enter an adjudication of guilt and proceed as
 19 otherwise provided. The court may, in its discretion, dismiss
 20 the proceedings against the person and discharge [~~him~~] the
 21 person from probation before the expiration of the maximum
 22 period prescribed from the person's probation.

23 C. If during the period of [~~his~~] probation the
 24 person does not violate [~~any of~~] the conditions of the
 25 probation, then upon expiration of the period the court shall

.220534.3

1 discharge such person and dismiss the proceedings against [~~him~~]
2 the person. Discharge and dismissal under this section shall
3 be without court adjudication of guilt, but a nonpublic record
4 shall be retained by the attorney general solely for the
5 purpose of use by the courts in determining whether or not, in
6 subsequent proceedings, the person qualifies under this
7 section. A discharge or dismissal shall not be deemed a
8 conviction for purposes of disqualifications or disabilities
9 imposed by law upon conviction of a crime, including the
10 penalties prescribed under this section for second or
11 subsequent convictions or for any other purpose. Discharge and
12 dismissal under this section may occur only once with respect
13 to [~~any~~] a person.

14 D. Upon the dismissal of a person and discharge of
15 the proceedings against [~~him~~] the person under this section, a
16 person, if [~~he was~~] not over eighteen years of age at the time
17 of the offense, may apply to the court for an order to expunge
18 from all official records all recordation relating to [~~his~~] the
19 arrest, indictment or information, trial, finding or plea of
20 guilty, and dismissal and discharge pursuant to this section
21 except nonpublic records filed with the attorney general. If
22 the court determines, after hearing, that the person was
23 dismissed and the proceedings against [~~him~~] the person
24 discharged and that [~~he~~] the person was not over eighteen years
25 of age at the time of the offense, it shall enter the order.

.220534.3

1 The effect of the order shall be to restore the person, in the
2 contemplation of the law, to the status [~~he~~] the person
3 occupied before the arrest or indictment or information. No
4 person in whose behalf an order has been entered shall be held
5 thereafter under any provision of any law to be guilty of
6 perjury or otherwise giving a false statement by reason of
7 [~~his~~] the person's failures to recite or acknowledge such
8 arrest, or indictment or information or trial in response to
9 any inquiry made of [~~him~~] the person for any purpose."

10 SECTION 59. Section 30-31-34 NMSA 1978 (being Laws 1972,
11 Chapter 84, Section 33, as amended) is amended to read:

12 "30-31-34. FORFEITURES--PROPERTY SUBJECT.--The following
13 are subject to forfeiture pursuant to the provisions of the
14 Forfeiture Act:

15 A. all raw materials, products and equipment of any
16 kind, including firearms that are used or intended for use in
17 manufacturing, compounding, processing, delivering, importing
18 or exporting any controlled substance or controlled substance
19 analog in violation of the Controlled Substances Act;

20 B. all property that is used or intended for use as
21 a container for property described in Subsection A of this
22 section;

23 C. all conveyances, including aircraft, vehicles or
24 vessels that are used or intended for use to transport or in
25 any manner to facilitate the transportation for the purpose of

.220534.3

1 sale of property described in Subsection A of this section;

2 D. all books, records and research products and
3 materials, including formulas, microfilm, tapes and data that
4 are used or intended for use in violation of the Controlled
5 Substances Act;

6 E. narcotics paraphernalia or money that is a fruit
7 or instrumentality of the crime; and

8 F. notwithstanding Subsection C of this section and
9 the provisions of the Forfeiture Act:

10 (1) a conveyance used by a person as a common
11 carrier in the transaction of business as a common carrier
12 shall not be subject to forfeiture pursuant to this section
13 unless it appears that the owner or other person in charge of
14 the conveyance is a consenting party or privy to a violation of
15 the Controlled Substances Act;

16 (2) a conveyance shall not be subject to
17 forfeiture pursuant to this section by reason of an act or
18 omission established for the owner to have been committed or
19 omitted without the owner's knowledge or consent;

20 (3) a conveyance is not subject to forfeiture
21 for a violation of law the penalty for which is a misdemeanor;
22 and

23 (4) a forfeiture of a conveyance encumbered by
24 a bona fide security interest shall be subject to the interest
25 of a secured party if the secured party neither had knowledge

.220534.3

1 of nor consented to the act or omission [~~and~~

2 G. ~~all drug paraphernalia as defined by Subsection~~
3 ~~V of Section 30-31-2 NMSA 1978]."~~

4 SECTION 60. [NEW MATERIAL] COOPERATION OF AGENCIES.--All
5 state agencies shall cooperate with the cannabis control
6 commission in carrying out the provisions of the Cannabis
7 Regulation Act.

8 SECTION 61. TEMPORARY PROVISION--TRANSFER.--On the
9 effective date of this act, any unexpended or unencumbered
10 balance in the medical cannabis fund is transferred to the
11 cannabis regulation fund.

12 SECTION 62. REPEAL.--Sections 9-7-17.1 and 30-31-25.1
13 NMSA 1978 (being Laws 2012, Chapter 42, Section 1 and Laws
14 1981, Chapter 31, Section 2, as amended) are repealed.

15 SECTION 63. EMERGENCY.--It is necessary for the public
16 peace, health and safety that this act take effect immediately.

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