AN ACT

RELATING TO PRESCRIPTION DRUGS; REVISING FEES FOR CERTAIN PHARMACEUTICAL BUSINESS LICENSES; AMENDING AND ENACTING SECTIONS OF THE PHARMACY ACT.

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

Section 1. Section 61-11-14 NMSA 1978 (being Laws 1969, Chapter 29, Section 13, as amended) is amended to read:

"61-11-14. PHARMACY LICENSURE--WHOLESALE DRUG DISTRIBUTION BUSINESS LICENSURE--REQUIREMENTS--FEES--REVOCATION.--

A. Any person who desires to operate or maintain the operation of a pharmacy or who engages in a wholesale drug distribution business in this state shall apply to the board for the proper license and shall meet the requirements of the board and pay the annual fee for the license and its renewal.

B. The board shall issue the following classes of licenses that shall be defined and limited by regulation of the board:

(1) retail pharmacy;

(2) nonresident pharmacy;

(3) wholesale drug distributor;

(4) drug manufacturer;

(5) hospital pharmacy;

(6) industrial health clinic;

(7) community health clinic;

(8) department of health public health offices;

(9) custodial care facility;

(10) home care services;

(11) emergency medical services;

(12) animal control facilities;

(13) wholesaler, retailer or distributor of veterinary drugs bearing the legend: "caution: federal law restricts this drug to use by or on the order of a licensed veterinarian". Such drugs may be sold or dispensed by any person possessing a retail pharmacy license, wholesale drug distributor's license or drug manufacturer's license issued by the board, without the necessity of acquiring an additional license for veterinary drugs;

(14) returned drugs processors;

(15) drug research facilities; and

(16) drug warehouses.

C. Every application for the issuance or annual renewal of:

(1) a license for a retail pharmacy, nonresident pharmacy, hospital pharmacy or drug research facility shall be accompanied by a fee set by the board in an amount not to exceed three hundred dollars ($300);

(2) a license for a wholesale drug distributor, drug manufacturer or drug warehouse shall be accompanied by an annual fee not to exceed five thousand dollars ($5,000); provided that the annual fee shall not exceed one thousand dollars ($1,000) upon the implementation of a medicare prescription drug benefit program, pursuant to Sections 1860D-1 through 1860D-24, except Section 1860D-4, of Public Law 108-173, the Medicare Prescription Drug, Improvement, and Modernization Act of 2003;

(3) a license for a custodial care facility or a returned drugs processor business shall be accompanied by a fee set by the board in an amount not to exceed two hundred dollars ($200); and

(4) a license for an industrial health clinic; a community health clinic; a department of health public health office; home care services; emergency medical services; animal control facilities; or wholesaler, retailer or distributor of veterinary drugs shall be accompanied by a fee set by the board in an amount not to exceed two hundred dollars ($200).

D. If it is desired to operate or maintain a pharmaceutical business at more than one location, a separate license shall be obtained for each location.

E. Each application for a license shall be made on forms prescribed and furnished by the board.

F. Any person making application to the board for a license to operate a facility or business listed in Subsection B of this section in this state shall submit to the board an application for licensure indicating:

(1) the name under which the business is to be operated;

(2) the address of each location to be licensed and the address of the principal office of the business;

(3) in the case of a retail pharmacy, the name and address of the owner, partner or officer or director of a corporate owner;

(4) the type of business to be conducted at each location;

(5) a rough drawing of the floor plan of each location to be licensed;

(6) the proposed days and hours of operation of the business; and

(7) other information the board may require.

G. After preliminary approval of the application for a license for any facility or business listed in Paragraphs (1) through (8) and (10) through (16) of Subsection B of this section, a request for an inspection, together with an inspection fee not to exceed two hundred dollars ($200), shall be submitted to the board for each

business location, and an inspection shall be made of each location by the board or its agent.

H. Following a deficiency-free inspection, the executive director of the board may issue a temporary license to the applicant. The temporary license shall expire at the close of business on the last day of the next regular board meeting.

I. Licenses, except temporary licenses provided pursuant to Subsection H of this section, issued by the board pursuant to this section are not transferable and shall expire on December 31 of each year unless renewed. Any person failing to renew his license on or before December 31 of each year shall not have his license reinstated except upon reapplication and payment of a reinstatement fee set by the board in an amount not to exceed one hundred dollars ($100) and all delinquent renewal fees.

J. The board, after notice and a refusal or failure to comply, may suspend or revoke any license issued under the provisions of the Pharmacy Act at any time examination or inspection of the operation for which the license was granted discloses that the operation is not being conducted according to law or regulations of the board.

K. Pharmaceutical sales representatives who carry dangerous drugs shall provide the board with a written statement from the representative's employer that describes

the employer's policy relating to the safety and security of the handling of dangerous drugs and to the employer's compliance with the federal Prescription Drug Marketing Act of 1987. Pharmaceutical sales representatives are not subject to the licensing provisions of the Pharmacy Act."

Section 2. Section 61-11-19 NMSA 1978 (being Laws 1969, Chapter 29, Section 18, as amended) is amended to read:

"61-11-19. FUND ESTABLISHED--DISPOSITION--METHOD OF PAYMENT.--

A. There is established in the state treasury the "pharmacy fund".

B. All funds received by the board and all money collected under the Pharmacy Act or any other act administered by the board shall be deposited with the state treasurer for credit to the pharmacy fund.

C. Payments from the pharmacy fund shall be made upon warrants of the secretary of finance and administration on vouchers issued in accordance with the budget approved by the department of finance and administration.

D. Amounts paid into the pharmacy fund pursuant to Paragraph (2) of Subsection C of Section 61-11-14 NMSA 1978 shall be used for a prescription drug program for persons over the age of sixty-five; provided that the board enters into an arrangement with a state agency or a state-created entity for the operation of the program.

E. All amounts paid into the pharmacy fund shall only be used for the purpose of meeting necessary expenses incurred in the enforcement of the purposes of the Pharmacy Act and any other acts administered by the board, the duties imposed thereby and the promotion of pharmacy education and standards in this state. All money unused at the end of the fiscal year shall remain in the pharmacy fund for use in accordance with the provisions of the Pharmacy Act.

F. All funds which may have accumulated to the credit of the pharmacy fund shall be continued for use by the board in administration of the Pharmacy Act."

Section 3. APPLICABILITY.--The provisions of Paragraph (2) of Subsection C of Section 61-11-14 NMSA 1978 shall apply to the issuance of a license or annual renewal in calendar year 2004 and subsequent years; provided that the 2004 fee is collectible immediately and that any fee already paid shall be credited to the new fee amount.