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SENATE BILL 204

48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008

INTRODUCED BY

Joseph J. Carraro

AN ACT

RELATING TO LAW ENFORCEMENT; REVISING THE DEFINITION OF "SEX OFFENDER"; REDUCING THE TIME SEX OFFENDERS HAVE BEFORE THEY HAVE TO REGISTER WITH THE COUNTY SHERIFF; LENGTHENING REGISTRATION PERIODS FOR CERTAIN SEX OFFENDERS; REQUIRING A SEX OFFENDER TO PROVIDE ADDITIONAL REGISTRATION INFORMATION; AMENDING SECTIONS OF THE SEX OFFENDER REGISTRATION AND NOTIFICATION ACT; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTIONS OF LAW IN LAWS 2007; DECLARING AN EMERGENCY.

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

Section 1. Section 29-11A-2 NMSA 1978 (being Laws 1995, Chapter 106, Section 2, as amended) is amended to read:

"29-11A-2. FINDINGS--PURPOSE.--

A. The legislature finds that:

(1) sex offenders pose a significant risk of

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1 recidivism; and

2 (2) the efforts of law enforcement agencies to
3 protect their communities from sex offenders are impaired by
4 the lack of information available concerning convicted sex
5 offenders who live within the agencies' jurisdictions.

6 B. The purpose of the Sex Offender Registration and
7 Notification Act is to assist law enforcement agencies' efforts
8 to protect their communities by:

9 (1) requiring a sex ~~[offenders]~~ offender who
10 ~~[are residents]~~ is a resident of New Mexico to register with
11 the ~~[county]~~ sheriff of the county in which the sex offender
12 resides;

13 (2) requiring a sex ~~[offenders]~~ offender who
14 ~~[are residents]~~ is a resident in ~~[other states]~~ another state,
15 but who ~~[are]~~ is employed in New Mexico, ~~[or who attend]~~
16 attends school in New Mexico or visits New Mexico for more than
17 seventy-two hours, to register with the ~~[county]~~ sheriff of the
18 county in which the sex offender visits, works or attends
19 school;

20 (3) requiring the establishment of a central
21 registry for sex offenders; and

22 (4) providing public access to information
23 regarding certain registered sex offenders."

24 Section 2. Section 29-11A-3 NMSA 1978 (being Laws 1995,
25 Chapter 106, Section 3, as amended by Laws 2007, Chapter 68,

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1 Section 1 and by Laws 2007, Chapter 69, Section 5) is amended
2 to read:

3 "29-11A-3. DEFINITIONS.--As used in the Sex Offender
4 Registration and Notification Act:

5 A. "conviction" means a conviction in any court of
6 competent jurisdiction and includes a deferred sentence, but
7 does not include a conditional discharge;

8 B. "institution of higher education" means a:

9 (1) private or public post-secondary
10 educational institution;

11 (2) trade school; or

12 (3) professional school;

13 C. "registration requirement" means any requirement
14 set forth in Section 29-11A-4 NMSA 1978 that requires a sex
15 offender to register, provide information, including a DNA
16 sample, renew, revise or change registration information or
17 provide written notice or disclosure regarding the sex
18 offender's status as a sex offender;

19 D. "sex offender" means a person who:

20 (1) is a resident of New Mexico who is
21 convicted of a sex offense pursuant to state, federal, tribal
22 or military law;

23 (2) changes residence to New Mexico, when that
24 person has been convicted of a sex offense pursuant to state,
25 federal, tribal or military law;

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1 (3) does not have an established residence in
2 New Mexico, but lives in a shelter, halfway house or
3 transitional living facility or stays in multiple locations in
4 New Mexico and who has been convicted of a sex offense pursuant
5 to state, federal, tribal or military law; or

6 (4) is a resident of another state and who has
7 been convicted of a sex offense pursuant to state, federal,
8 tribal or military law, but who is:

9 (a) employed full time or part time in
10 New Mexico for a period of time exceeding fourteen days or for
11 an aggregate period of time exceeding thirty days during any
12 calendar year, including any employment or vocation, whether
13 financially compensated, volunteered or for the purpose of
14 government or educational benefit; ~~or~~

15 (b) enrolled on a full-time or
16 part-time basis in a private or public school or an institution
17 of higher education in New Mexico; ~~and~~ or

18 (c) a visitor from another state and
19 will be in New Mexico for more than seventy-two hours; and

20 E. "sex offense" means any of the following
21 offenses or their equivalents in any other jurisdiction:

22 (1) aggravated criminal sexual penetration or
23 criminal sexual penetration in the first, second, third or
24 fourth degree, as provided in Section 30-9-11 NMSA 1978;

25 (2) criminal sexual contact in the fourth

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1 degree, as provided in Section 30-9-12 NMSA 1978;

2 (3) criminal sexual contact of a minor in the
3 second, third or fourth degree, as provided in Section
4 30-9-13 NMSA 1978;

5 (4) sexual exploitation of children, as
6 provided in Section 30-6A-3 NMSA 1978;

7 (5) sexual exploitation of children by
8 prostitution, as provided in Section 30-6A-4 NMSA 1978;

9 (6) kidnapping, as provided in Section
10 30-4-1 NMSA 1978, when the victim is less than eighteen years
11 of age and the offender is not a parent of the victim;

12 (7) false imprisonment, as provided in Section
13 30-4-3 NMSA 1978, when the victim is less than eighteen years
14 of age and the offender is not a parent of the victim;

15 (8) aggravated indecent exposure, as provided
16 in Section 30-9-14.3 NMSA 1978;

17 (9) enticement of child, as provided in
18 Section 30-9-1 NMSA 1978;

19 (10) incest, as provided in Section 30-10-3
20 NMSA 1978, when the victim is less than eighteen years of age;

21 (11) child solicitation by electronic
22 communication device, as provided in Section 30-37-3.2 NMSA
23 1978;

24 (12) solicitation to commit criminal sexual
25 contact of a minor in the second, third or fourth degree, as

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1 provided in Sections 30-9-13 and 30-28-3 NMSA 1978; or

2 (13) attempt to commit any of the sex offenses
3 set forth in Paragraphs (1) through (10) of this subsection, as
4 provided in Section 30-28-1 NMSA 1978."

5 Section 3. Section 29-11A-4 NMSA 1978 (being Laws 1995,
6 Chapter 106, Section 4, as amended) is amended to read:

7 "29-11A-4. REGISTRATION OF SEX OFFENDERS--INFORMATION
8 REQUIRED--CRIMINAL PENALTY FOR NONCOMPLIANCE.--

9 A. A sex offender residing in this state shall
10 register with the [county] sheriff for the county in which the
11 sex offender resides.

12 B. A sex offender who is a resident of New Mexico
13 shall register with the county sheriff no later than [~~ten days~~]
14 seventy-two hours after being released from the custody of the
15 corrections department, a municipal or county jail or a
16 federal, military or tribal correctional facility or detention
17 center or being placed on probation or parole. A sex offender
18 who changes [his] residence to New Mexico shall register with
19 the county sheriff no later than [~~ten days~~] seventy-two hours
20 after [his] arrival in this state. When a sex offender
21 registers with the county sheriff, [he] the sex offender shall
22 provide the following registration information:

23 (1) [his] the sex offender's legal name and
24 any other names or aliases that [he] the sex offender is using
25 or has used;

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1 (2) [~~his~~] the sex offender's date of birth;

2 (3) [~~his~~] the sex offender's social security
3 number;

4 (4) [~~his current address~~] the addresses of all
5 residences of the sex offender, specifying which address is the
6 sex offender's primary residence;

7 (5) [~~his~~] the sex offender's place of
8 employment;

9 (6) the sex offense for which [~~he~~] the sex
10 offender was convicted; [~~and~~]

11 (7) the date and place of [~~his~~] the sex
12 offense conviction; and

13 (8) the sex offender's motor vehicle
14 registration information with a description of all motor
15 vehicles that are owned in full or in part by the sex offender
16 or that the sex offender may use.

17 C. A sex offender who is a resident of another
18 state but who is employed in New Mexico, [~~or~~] attending public
19 or private school or an institution of higher education in New
20 Mexico or visiting New Mexico shall register with the [~~county~~]
21 sheriff for the county in which the sex offender is working or
22 attending school or an institution of higher education or
23 visiting New Mexico.

24 D. A sex offender who is a resident of another
25 state but who is employed in New Mexico or attending public or

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1 private school or an institution of higher education in New
2 Mexico or visiting New Mexico shall register with the county
3 sheriff no later than [~~ten days~~] seventy-two hours after
4 beginning work, [~~or~~] school or the visit. When the sex
5 offender registers with the county sheriff, [~~he~~] the sex
6 offender shall provide the following registration information:

7 (1) [~~his~~] the sex offender's legal name and
8 any other names or aliases that [~~he~~] the sex offender is using
9 or has used;

10 (2) [~~his~~] the sex offender's date of birth;

11 (3) [~~his~~] the sex offender's social security
12 number;

13 (4) [~~his~~] the sex offender's current address
14 in [~~his~~] the sex offender's state of residence and, if
15 applicable, the address of [~~his~~] the sex offender's place of
16 lodging in New Mexico while [~~he is~~] working or attending school
17 or an institution of higher education;

18 (5) [~~his~~] the sex offender's place of
19 employment or the name of the school [~~he~~] the sex offender is
20 attending;

21 (6) the sex offense for which [~~he~~] the sex
22 offender was convicted; [~~and~~]

23 (7) the date and place of [~~his~~] the sex
24 offense conviction; and

25 (8) the sex offender's motor vehicle

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1 registration information and a description of all motor
2 vehicles that the sex offender may use in New Mexico.

3 E. When a sex offender registers with a county
4 sheriff, the sheriff shall obtain:

5 (1) a photograph of the sex offender and a
6 complete set of the sex offender's fingerprints;

7 (2) a description of [~~any~~] tattoos, scars or
8 other distinguishing features on the sex offender's body that
9 would assist in identifying the sex offender; and

10 (3) a DNA sample [~~of his DNA~~] for inclusion in
11 the sex offender DNA identification system pursuant to the
12 provisions of the DNA Identification Act.

13 F. When a sex offender who is registered changes
14 [~~his~~] residence within the same county, the sex offender shall
15 send written notice of [~~his~~] the change of address to the
16 county sheriff [~~no later than ten days after~~] prior to
17 establishing [~~his~~] the new residence.

18 G. When a sex offender who is registered changes
19 [~~his~~] residence to a new county in New Mexico, the sex offender
20 shall register with the [~~county~~] sheriff of the new county no
21 later than [~~ten days~~] seventy-two hours after establishing
22 [~~his~~] the new residence, including proof of the new residence.
23 The sex offender shall also send written notice of the change
24 in residence to the county sheriff with whom [~~he~~] the sex
25 offender last registered no later than [~~ten days~~] seventy-two

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1 hours after establishing [~~his~~] the new residence, including
2 proof of the new residence.

3 H. When a sex offender who is registered or
4 required to register does not have an established residence,
5 but lives in a shelter, halfway house or transitional living
6 facility or stays in multiple locations in New Mexico, the sex
7 offender shall register with the [~~county~~] sheriff for each
8 county in which the sex offender is living or temporarily
9 located. The sex offender shall register no later than [~~ten~~
10 ~~days~~] seventy-two hours after a change in [~~his~~] living
11 arrangements or temporary location.

12 I. When a sex offender who is registered or
13 required to register is employed, begins a vocation or is
14 enrolled as a student at an institution of higher education in
15 New Mexico, the sex offender shall disclose [~~his~~] the sex
16 offender's status as a sex offender in writing to the [~~county~~]
17 sheriff for the county in which the institution of higher
18 education is located, the law enforcement entity responsible
19 for the institution of higher education and the registrar for
20 the institution of higher education no later than [~~ten days~~]
21 seventy-two hours after beginning employment, beginning a
22 vocation or enrolling at the institution of higher education.
23 The sex offender shall also send written notice of any change
24 regarding [~~his~~] employment, vocation or enrollment status at an
25 institution of higher education to the county sheriff, the law

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1 enforcement entity and the registrar no later than [~~ten days~~]
2 seventy-two hours after the change in [~~his~~] employment,
3 vocation or enrollment status.

4 J. When a sex offender who is registered or
5 required to register is employed or is enrolled as a student at
6 a public or private school in New Mexico, the sex offender
7 shall disclose [~~his~~] the sex offender's status as a sex
8 offender in writing to the [~~county~~] sheriff for the county in
9 which the school is located and to the principal of the school
10 no later than [~~ten days~~] seventy-two hours after enrolling at
11 the school. The sex offender shall also send written notice of
12 any change regarding [~~his~~] enrollment status at a school to the
13 county sheriff and the principal no later than [~~ten days~~]
14 seventy-two hours after the change in [~~his~~] enrollment status.

15 K. When a sex offender who is registered or
16 required to register is employed, begins a vocation or
17 volunteers [~~his~~] services, regardless of whether the sex
18 offender receives payment or other compensation, the sex
19 offender shall disclose [~~his~~] the sex offender's status as a
20 sex offender in writing to [~~his~~] the sex offender's employer,
21 supervisor or person similarly situated. The written
22 disclosure shall be made immediately upon beginning [~~his~~]
23 employment, vocation or volunteer service.

24 L. Following [~~his~~] initial registration pursuant to
25 the provisions of this section:

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1 (1) a sex offender required to register
2 pursuant to the provisions of Subsection D of Section 29-11A-5
3 NMSA 1978 shall renew [~~his~~] registration with the county
4 sheriff not less than once in each ninety-day period following
5 the date of the sex offender's initial registration for the
6 entirety of [~~his~~] the sex offender's natural life; and

7 (2) a sex offender required to register
8 pursuant to the provisions of Subsection E of Section 29-11A-5
9 NMSA 1978 shall [~~annually~~] renew [~~his~~] the sex offender's
10 registration with the county sheriff [~~prior to December 31 of~~
11 ~~each subsequent calendar year~~] not less than once in each
12 ninety-day period following the date of the sex offender's
13 initial registration for a period of [~~ten~~] twenty years.

14 M. Notwithstanding the provisions of Paragraph (2)
15 of Subsection L of this section, if a sex offender is convicted
16 a second or subsequent time for a sex offense set forth in
17 Subsection E of Section 29-11A-5 NMSA 1978, [~~he~~] the sex
18 offender shall renew [~~his~~] registration with the county sheriff
19 not less than once in each ninety-day period following the date
20 of the sex offender's initial registration for the entirety of
21 [~~his~~] the sex offender's natural life.

22 N. A sex offender who willfully or knowingly fails
23 to comply with the registration requirements set forth in this
24 section is guilty of a fourth degree felony and shall be
25 sentenced pursuant to the provisions of Section 31-18-15 NMSA

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1 1978. A sex offender who willfully or knowingly fails to
2 comply with the registration requirements set forth in this
3 section after a first or subsequent conviction for a violation
4 pursuant to this section is guilty of a third degree felony and
5 shall be sentenced pursuant to the provisions of Section
6 31-18-15 NMSA 1978. The willful failure to comply with any
7 registration requirement set forth in this section shall be
8 deemed part of a continuing transaction or occurrence. A
9 conviction pursuant to this subsection shall not be considered
10 a felony for purposes of the imposition of sentencing
11 enhancements pursuant to the provisions of Section 31-18-17
12 NMSA 1978.

13 0. A sex offender who willfully or knowingly
14 provides false information when complying with the registration
15 requirements set forth in this section is guilty of a fourth
16 degree felony and shall be sentenced pursuant to the provisions
17 of Section 31-18-15 NMSA 1978. A sex offender who willfully or
18 knowingly provides false information when complying with the
19 registration requirements set forth in this section after a
20 first or subsequent conviction for a violation pursuant to this
21 section is guilty of a third degree felony and shall be
22 sentenced pursuant to the provisions of Section 31-18-15 NMSA
23 1978. The willful providing by a sex offender of false
24 information with respect to the registration requirements set
25 forth in this section shall be deemed part of a continuing

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1 transaction or occurrence. A conviction pursuant to this
2 subsection shall not be considered a felony for purposes of the
3 imposition of sentencing enhancements pursuant to the
4 provisions of Section 31-18-17 NMSA 1978."

5 Section 4. Section 29-11A-4.1 NMSA 1978 (being Laws 2000,
6 Chapter 8, Section 6, as amended) is amended to read:

7 "29-11A-4.1. PROCEDURES WHEN A SEX OFFENDER MOVES FROM
8 NEW MEXICO TO ANOTHER STATE.--

9 A. If a sex offender intends to move from New
10 Mexico to another state, no later than thirty days prior to
11 moving to the other state, ~~[he]~~ the sex offender shall:

12 (1) notify the ~~[county]~~ sheriff of the county
13 ~~[he]~~ the sex offender resides in that ~~[he]~~ the sex offender is
14 moving to the other state; and

15 (2) provide the county sheriff with a written
16 notice that identifies the ~~[state]~~ new address of the residence
17 to which the sex offender is moving.

18 B. Within five days of receiving a sex offender's
19 written notice of intent to move to another state, the county
20 sheriff shall transmit that information to the department of
21 public safety. Within five days of receiving that information
22 from a county sheriff, the department shall contact the state
23 agency responsible for registering sex offenders in the state
24 to which the sex offender is moving. The department shall
25 provide that state agency with registration information

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1 regarding the sex offender. The department shall also obtain
2 information regarding registration requirements for sex
3 offenders in the state to which the sex offender is moving.
4 The department shall provide the sex offender with written
5 notification of the registration requirements in the state to
6 which the sex offender is moving.

7 C. A sex offender who willfully fails to comply
8 with the requirements set forth in this section is guilty of a
9 fourth degree felony and shall be sentenced pursuant to the
10 provisions of Section 31-18-15 NMSA 1978."

11 Section 5. Section 29-11A-5 NMSA 1978 (being Laws 1995,
12 Chapter 106, Section 5, as amended by Laws 2007, Chapter 68,
13 Section 2 and by Laws 2007, Chapter 69, Section 6) is amended
14 to read:

15 "29-11A-5. LOCAL REGISTRY--CENTRAL REGISTRY--
16 ADMINISTRATION BY DEPARTMENT OF PUBLIC SAFETY--PARTICIPATION IN
17 THE NATIONAL SEX OFFENDER REGISTRY--RULES.--

18 A. A county sheriff shall maintain a local registry
19 of sex offenders in the sheriff's jurisdiction required to
20 register pursuant to the provisions of the Sex Offender
21 Registration and Notification Act.

22 B. The county sheriff shall forward:

23 (1) registration information obtained from sex
24 offenders to the department of public safety. The initial
25 registration information and any new registration information

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1 subsequently obtained from a sex offender shall be forwarded by
2 the county sheriff no later than ten working days after the
3 information is obtained from a sex offender. If the department
4 of public safety receives information regarding a sex offender
5 from a governmental entity other than a county sheriff, the
6 department shall send that information to the sheriff for the
7 county in which the sex offender resides; and

8 (2) samples of DNA obtained from sex offenders
9 to the administrative center for the sex offender DNA
10 identification system pursuant to the provisions of the DNA
11 Identification Act.

12 C. The department of public safety shall maintain a
13 central registry of sex offenders required to register pursuant
14 to the provisions of the Sex Offender Registration and
15 Notification Act. The department shall participate in the
16 national sex offender registry administered by the United
17 States department of justice. The department shall send
18 conviction information and fingerprints for all sex offenders
19 registered in New Mexico to the national sex offender registry
20 administered by the United States department of justice and to
21 the federal bureau of investigation.

22 D. The department of public safety shall retain
23 registration information regarding a sex offender convicted for
24 any of the following sex offenses for the entirety of the sex
25 offender's natural life:

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1 (1) aggravated criminal sexual penetration or
2 criminal sexual penetration in the first, second or third
3 degree, as provided in Section 30-9-11 NMSA 1978;

4 (2) criminal sexual contact of a minor in the
5 second, third or fourth degree, as provided in Section
6 30-9-13 NMSA 1978;

7 (3) sexual exploitation of children, as
8 provided in Section 30-6A-3 NMSA 1978;

9 (4) kidnapping, as provided in Section
10 30-4-1 NMSA 1978, when the victim is less than eighteen years
11 of age and the offender is not a parent of the victim;

12 (5) criminal sexual contact in the fourth
13 degree, as provided in Section 30-9-12 NMSA 1978; [~~or~~]

14 (6) aggravated indecent exposure, as provided
15 in Section 30-9-14.3 NMSA 1978;

16 (7) enticement of child, as provided in
17 Section 30-9-1 NMSA 1978; or

18 [~~(6)~~] (8) attempt to commit any of the sex
19 offenses set forth in Paragraphs (1) through [~~(5)~~] (7) of this
20 subsection, as provided in Section 30-28-1 NMSA 1978.

21 E. The department of public safety shall retain
22 registration information regarding a sex offender convicted for
23 the following offenses for a period of [~~ten~~] twenty years
24 following the sex offender's conviction, release from prison or
25 release from probation or parole, whichever occurs later:

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1 (1) criminal sexual penetration in the fourth
2 degree, as provided in Section 30-9-11 NMSA 1978;

3 (2) sexual exploitation of children by
4 prostitution, as provided in Section 30-6A-4 NMSA 1978;

5 (3) false imprisonment, as provided in Section
6 30-4-3 NMSA 1978, when the victim is less than eighteen years
7 of age and the offender is not a parent of the victim;

8 [~~(4)~~] ~~aggravated indecent exposure, as provided~~
9 ~~in Section 30-9-14.3 NMSA 1978;~~

10 [~~(5)~~] ~~enticement of child, as provided in~~
11 ~~Section 30-9-1 NMSA 1978;~~

12 ~~(6)]~~ (4) incest, as provided in Section
13 30-10-3 NMSA 1978, when the victim is less than eighteen years
14 of age;

15 [~~(7)]~~ (5) solicitation to commit criminal
16 sexual contact of a minor in the second, third or fourth
17 degree, as provided in Sections 30-9-13 and 30-28-3 NMSA 1978;

18 [~~(8)]~~ (6) child solicitation by electronic
19 communication device, as provided in Section 30-37-3.2 NMSA
20 1978; or

21 [~~(9)]~~ (7) attempt to commit any of the sex
22 offenses set forth in Paragraphs (1) through [~~(6)]~~ (4) of this
23 subsection, as provided in Section 30-28-1 NMSA 1978.

24 F. Notwithstanding the provisions of Subsection E
25 of this section, if a sex offender is convicted a second or

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1 subsequent time for a sex offense set forth in that subsection,
2 the department of public safety shall retain information
3 regarding the sex offender for the entirety of the sex
4 offender's natural life.

5 G. The department of public safety shall adopt
6 rules necessary to carry out the provisions of the Sex Offender
7 Registration and Notification Act. Rules necessary for the
8 collection of DNA samples and the administration and operation
9 of the sex offender DNA identification system shall be adopted
10 by the DNA identification system oversight committee pursuant
11 to the provisions of the DNA Identification Act."

12 Section 6. EMERGENCY.--It is necessary for the public
13 peace, health and safety that this act take effect immediately.