

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR  
SENATE BILL 90

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

AN ACT

RELATING TO HEALTH CARE; UPDATING PROVISIONS OF THE  
PROFESSIONAL PSYCHOLOGIST ACT RELATING TO PRESCRIBING  
PSYCHOLOGISTS AND PSYCHOLOGISTS WITH A CONDITIONAL PRESCRIPTION  
CERTIFICATE; REPEALING A SECTION OF THE PROFESSIONAL  
PSYCHOLOGIST ACT TO ELIMINATE THE PURPOSE SECTION; DECLARING AN  
EMERGENCY.

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

**SECTION 1.** Section 61-9-3 NMSA 1978 (being Laws 1963,  
Chapter 92, Section 3, as amended) is amended to read:

"61-9-3. DEFINITIONS.--As used in the Professional  
Psychologist Act:

A. "board" means the New Mexico state board of  
psychologist examiners;

B. "conditional prescription certificate" means a

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underscored material = new  
[bracketed material] = delete

1 document issued by the board to a licensed psychologist that  
2 permits the holder to prescribe psychotropic medication under  
3 the supervision of a [~~licensed physician~~] supervising clinician  
4 pursuant to the Professional Psychologist Act;

5 C. "independently licensed prescribing clinician"  
6 means a licensed physician, osteopathic physician, nurse  
7 practitioner, psychiatric nurse practitioner or clinical nurse  
8 specialist;

9 [~~G.~~] D. "person" includes an individual, firm,  
10 partnership, association or corporation;

11 [~~D.~~] E. "prescribing psychologist" means a licensed  
12 psychologist who holds a valid prescription certificate;

13 [~~E.~~] F. "prescription certificate" means a document  
14 issued by the board to a licensed psychologist that permits the  
15 holder to prescribe psychotropic medication pursuant to the  
16 Professional Psychologist Act;

17 [~~F.~~] G. "psychotropic medication" means a  
18 controlled substance or dangerous drug that may not be  
19 dispensed or administered without a prescription and whose  
20 primary indication for use has been approved by the federal  
21 food and drug administration for the treatment of mental  
22 disorders [~~and~~] or is listed as a psychotherapeutic agent in  
23 Drug Facts and Comparisons 2016, or the most recent edition of  
24 that book, or in the American hospital formulary service;

25 [~~G.~~] H. "psychologist" means a person who engages

1 in the practice of psychology or holds [~~himself~~] the person's  
2 self out to the public by any title or description of services  
3 representing [~~himself~~] the person as a psychologist, which  
4 incorporates the words "psychological", "psychologist",  
5 "psychology", or when a person describes [~~himself~~] the person's  
6 own self as above and, under such title or description, offers  
7 to render or renders services involving the application of  
8 principles, methods and procedures of the science and  
9 profession of psychology to persons for compensation or other  
10 personal gain;

11 [~~H.~~] I. "practice of psychology" means the  
12 observation, description, evaluation, interpretation and  
13 modification of human behavior by the application of  
14 psychological principles, methods and procedures for the  
15 purpose of preventing or eliminating symptomatic, maladaptive  
16 or undesired behavior and of enhancing interpersonal  
17 relationships, work and life adjustment, personal  
18 effectiveness, behavioral health and mental health, and further  
19 means the rendering of such psychological services to  
20 individuals, families or groups regardless of whether payment  
21 is received for services rendered. The practice of psychology  
22 includes psychological testing or neuropsychological testing  
23 and the evaluation or assessment of personal characteristics  
24 such as intelligence, personality, abilities, interests,  
25 aptitudes and neuropsychological functioning; counseling,

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1 psychoanalysis, psychotherapy, hypnosis, biofeedback, behavior  
2 analysis and therapy; diagnosis and treatment of [~~any~~] a mental  
3 and emotional disorder or disability, alcoholism and substance  
4 abuse, disorders of habit or conduct and the psychological  
5 aspects of physical illness, accident, injury and disability;  
6 and psychoeducational evaluation, therapy, remediation and  
7 consultation; [~~and~~

8           ~~F.~~] J. "school" or "college" means a university or  
9 other institution of higher education that is regionally  
10 accredited and that offers a full-time graduate course of study  
11 in psychology as defined by rule of the board or that is  
12 approved by the American psychological association; and

13           K. "supervising clinician" means a licensed  
14 physician, osteopathic physician, nurse practitioner,  
15 psychiatric nurse practitioner or clinical nurse specialist who  
16 is supervising a psychologist in the prescribing of  
17 psychotropic medication."

18           SECTION 2. Section 61-9-10 NMSA 1978 (being Laws 1963,  
19 Chapter 92, Section 9, as amended) is amended to read:

20           "61-9-10. LICENSURE OF PSYCHOLOGISTS FROM OTHER AREAS--  
21 RECIPROCITY.--Subject to the provisions of Section 61-9-10.1  
22 NMSA 1978, upon application accompanied by a fee as required by  
23 the Professional Psychologist Act, the board may, without  
24 written or oral examination, issue a license to a person who  
25 furnishes, upon a form and in such manner as the board

1 prescribes, evidence satisfactory to the board that the person  
 2 has been licensed or certified as a psychologist or prescribing  
 3 psychologist by another state, a territorial possession of the  
 4 United States, the District of Columbia or another country for  
 5 a minimum of five years. An applicant seeking reciprocity  
 6 shall demonstrate to the satisfaction of the board that the  
 7 training and education received by the applicant is equivalent  
 8 to the requirements for a doctoral degree in psychology as  
 9 provided in the Professional Psychologist Act."

10 SECTION 3. Section 61-9-13 NMSA 1978 (being Laws 1963,  
 11 Chapter 92, Section 12, as amended) is amended to read:

12 "61-9-13. DENIAL, REVOCATION OR SUSPENSION OF LICENSE.--

13 A. The board, by an affirmative vote of at least  
 14 five of its eight members, shall withhold, deny, revoke or  
 15 suspend a psychologist or psychologist associate license issued  
 16 or applied for in accordance with the provisions of the  
 17 Professional Psychologist Act or otherwise discipline a  
 18 licensed psychologist or psychologist associate upon proof that  
 19 the applicant, licensed psychologist or psychologist associate:

20 (1) has been convicted of a felony or an  
 21 offense involving moral turpitude, the record of conviction  
 22 being conclusive evidence thereof;

23 (2) is using a drug, substance or alcoholic  
 24 beverage to an extent or in a manner dangerous to the  
 25 psychologist or psychologist associate, any other person or the

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1 public or to an extent that the use impairs the psychologist's  
2 or psychologist associate's ability to perform the work of a  
3 professional psychologist or psychologist associate with safety  
4 to the public;

5 (3) has impersonated another person holding a  
6 psychologist or psychologist associate license or allowed  
7 another person to use the psychologist's or psychologist  
8 associate's license;

9 (4) has used fraud or deception in applying  
10 for a license or in taking an examination provided for in the  
11 Professional Psychologist Act;

12 (5) has accepted commissions or rebates or  
13 other forms of remuneration for referring clients to other  
14 professional persons;

15 (6) has allowed the psychologist's or  
16 psychologist associate's name or license issued under the  
17 Professional Psychologist Act to be used in connection with a  
18 person who performs psychological services outside of the area  
19 of that person's training, experience or competence;

20 (7) is legally adjudicated insane or mentally  
21 incompetent, the record of such adjudication being conclusive  
22 evidence thereof;

23 (8) has willfully or negligently violated the  
24 provisions of the Professional Psychologist Act;

25 (9) has violated any code of conduct adopted

1 by the board;

2 (10) has been disciplined by another state for  
3 acts similar to acts described in this subsection, and a  
4 certified copy of the record of discipline of the state  
5 imposing the discipline is conclusive evidence;

6 (11) is incompetent to practice psychology;

7 (12) has failed to furnish to the board or its  
8 representative information requested by the board;

9 (13) has abandoned patients or clients;

10 (14) has failed to report to the board adverse  
11 action taken against the licensee by:

12 (a) another licensing jurisdiction;

13 (b) a professional psychologist  
14 association of which the psychologist or psychologist associate  
15 is or has been a member;

16 (c) a government agency; or

17 (d) a court for actions or conduct  
18 similar to acts or conduct that would constitute grounds for  
19 action as described in this subsection;

20 (15) has failed to report to the board  
21 surrender of a license or other authorization to practice  
22 psychology in another jurisdiction or surrender of membership  
23 on a health care staff or in a professional association  
24 following, in lieu of or while under a disciplinary  
25 investigation by any of those authorities for acts or conduct

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1 that would constitute grounds for action as defined in this  
2 subsection;

3 (16) has failed to adequately supervise a  
4 psychologist associate or a licensed psychologist holding a  
5 conditional prescription certificate;

6 (17) has employed abusive billing practices;  
7 or

8 (18) has aided or abetted the practice of  
9 psychology by a person not licensed by the board.

10 B. A person who has been refused a license or whose  
11 license has been restricted or suspended under the provisions  
12 of this section may reapply for licensure after more than two  
13 years have elapsed from the date the restriction or suspension  
14 is terminated."

15 SECTION 4. Section 61-9-17 NMSA 1978 (being Laws 1963,  
16 Chapter 92, Section 16, as amended) is amended to read:

17 "61-9-17. DRUGS--MEDICINES.--

18 A. Except as provided in Subsections B and C of  
19 this section, psychologists or psychologist associates shall  
20 not administer or prescribe drugs or medicine or in any manner  
21 engage in the practice of medicine as defined by the laws of  
22 this state.

23 B. A licensed psychologist holding a conditional  
24 prescription certificate may prescribe psychotropic medication  
25 under the supervision of a [~~licensed physician~~] supervising

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1 clinician pursuant to the Professional Psychologist Act.

2 C. A prescribing psychologist may prescribe  
3 psychotropic medication pursuant to the Professional  
4 Psychologist Act."

5 SECTION 5. Section 61-9-17.1 NMSA 1978 (being Laws 2002,  
6 Chapter 100, Section 6) is amended to read:

7 "61-9-17.1. CONDITIONAL PRESCRIPTION CERTIFICATE--  
8 PRESCRIPTION CERTIFICATE--APPLICATION--REQUIREMENTS--RULEMAKING  
9 BY BOARD--ISSUANCE, DENIAL, RENEWAL AND REVOCATION OF  
10 CERTIFICATION.--

11 A. A psychologist may apply to the board for a  
12 conditional prescription certificate. The application shall be  
13 made on a form approved by the board and be accompanied by  
14 evidence satisfactory to the board that the applicant:

15 (1) has completed a doctoral program in  
16 psychology from an accredited institution of higher education  
17 or professional school, or, if the program was not accredited  
18 at the time of the applicant's graduation, that the program  
19 meets professional standards determined acceptable by the  
20 board;

21 (2) holds a current license to practice  
22 psychology in New Mexico;

23 (3) has successfully completed pharmacological  
24 training from an institution of higher education approved by  
25 the board and the New Mexico medical board [~~of medical~~

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1 ~~examiners~~] or from a provider of continuing education approved  
2 by the board and the New Mexico medical board [~~of medical~~  
3 ~~examiners~~];

4 (4) has passed a national certification  
5 examination approved by the board and the New Mexico medical  
6 board [~~of medical examiners~~] that tests the applicant's  
7 knowledge of pharmacology in the diagnosis, care and treatment  
8 of mental disorders;

9 (5) within the five years immediately  
10 preceding the date of application, has successfully completed  
11 an organized program of education approved by the board and the  
12 New Mexico medical board [~~of medical examiners~~] and consisting  
13 of didactic instruction of no fewer than four hundred fifty  
14 classroom hours in at least the following core areas of  
15 instruction:

- 16 (a) neuroscience;  
17 (b) pharmacology;  
18 (c) psychopharmacology;  
19 (d) physiology;  
20 (e) pathophysiology;  
21 (f) appropriate and relevant physical  
22 and laboratory assessment; and  
23 (g) clinical pharmacotherapeutics;

24 (6) within the five years immediately  
25 preceding the date of application, has been certified by each

1 of the applicant's supervising [~~psychiatrist or physician~~]  
2 independently licensed prescribing clinicians as having  
3 successfully completed a supervised and relevant clinical  
4 experience, approved by the board and the New Mexico medical  
5 board [~~of medical examiners~~], of:

6 (a) no less than an eighty-hour  
7 practicum in clinical assessment and pathophysiology under the  
8 supervision of a licensed physician, osteopathic physician,  
9 nurse practitioner, psychiatric nurse practitioner or clinical  
10 nurse specialist; and

11 (b) an additional supervised practicum  
12 of at least four hundred hours treating no fewer than one  
13 hundred patients with mental disorders, the practica to have  
14 been supervised by any one or a combination of a psychiatrist  
15 or other appropriately trained physician, osteopathic  
16 physician, nurse practitioner, psychiatric nurse practitioner  
17 or clinical nurse specialist and determined by the board and  
18 the New Mexico medical board [~~of medical examiners~~] to be  
19 sufficient to competently train the applicant in the treatment  
20 of a diverse patient population. One-to-one supervision shall  
21 be provided either face-to-face, telephonically or by video  
22 conference;

23 (7) has malpractice insurance in place,  
24 sufficient to satisfy the rules adopted by the board and the  
25 New Mexico medical board [~~of medical examiners~~], that will

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1 cover the applicant during the period the conditional  
2 prescription certificate is in effect; and

3 (8) meets all other requirements, as  
4 determined by rule of the board, for obtaining a conditional  
5 prescription certificate.

6 B. The board shall issue a conditional prescription  
7 certificate if it finds that the applicant has met the  
8 requirements of Subsection A of this section. The certificate  
9 shall be valid for a period of two years, at the end of which  
10 the holder may again apply pursuant to the provisions of  
11 Subsection A of this section. A psychologist with a  
12 conditional prescription certificate may prescribe psychotropic  
13 medication under the supervision of a [~~licensed physician~~]  
14 supervising clinician subject to the following conditions:

15 (1) the psychologist shall continue to hold a  
16 current license to practice psychology in New Mexico and  
17 continue to maintain malpractice insurance;

18 [~~(2) the psychologist shall inform the board~~  
19 ~~and the New Mexico board of medical examiners of the name of~~  
20 ~~the physician under whose supervision the psychologist will~~  
21 ~~prescribe psychotropic medication and promptly inform the board~~  
22 ~~and the New Mexico board of medical examiners of any change of~~  
23 ~~the supervising physician; and~~

24 (3) ~~a physician supervising a psychologist~~  
25 ~~prescribing psychotropic medication pursuant to a conditional~~

1 ~~prescription certificate shall inform the board and the New~~  
 2 ~~Mexico board of medical examiners that he is supervising the~~  
 3 ~~psychologist. The physician shall be individually responsible~~  
 4 ~~for the acts and omissions of the psychologist while under his~~  
 5 ~~supervision. This provision does not relieve the psychologist~~  
 6 ~~from liability for his acts and omissions]~~

7 (2) the psychologist shall notify the board of  
 8 the name of the psychologist's supervising clinician; and

9 (3) a supervising clinician shall notify the  
 10 supervising clinician's own licensing board of the name of each  
 11 psychologist under the supervising clinician's supervision.

12 C. A supervising clinician shall not be liable for  
 13 the acts of a psychologist under the supervising clinician's  
 14 supervision unless the injury or loss arises from those acts  
 15 under the direction and control of the supervising clinician.

16 ~~[G.]~~ D. A psychologist may apply to the board for a  
 17 prescription certificate. The application shall be made on a  
 18 form approved by the board and be accompanied by evidence  
 19 satisfactory to the board that the applicant:

20 (1) has been issued a conditional prescription  
 21 certificate and has successfully completed two years of  
 22 prescribing psychotropic medication as certified by the  
 23 supervising ~~[licensed physician]~~ clinician;

24 (2) has successfully undergone a process of  
 25 independent peer review approved by the board and the New

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1 Mexico medical board [~~of medical examiners~~];

2 (3) holds a current license to practice  
3 psychology in New Mexico;

4 (4) has malpractice insurance in place,  
5 sufficient to satisfy the rules adopted by the board, that will  
6 cover the applicant as a prescribing psychologist; and

7 (5) meets all other requirements, as  
8 determined by rule of the board, for obtaining a prescription  
9 certificate.

10 [~~D.~~] E. The board shall issue a prescription  
11 certificate if it finds that the applicant has met the  
12 requirements of Subsection [~~E.~~] D. of this section. A  
13 psychologist with a prescription certificate may prescribe  
14 psychotropic medication pursuant to the provisions of the  
15 Professional Psychologist Act if the psychologist:

16 (1) continues to hold a current license to  
17 practice psychology in New Mexico and continues to maintain  
18 malpractice insurance; and

19 (2) annually satisfies the continuing  
20 education requirements for prescribing psychologists, as set by  
21 the board, which shall be no fewer than twenty hours each year.

22 [~~E.~~] F. The board shall promulgate rules providing  
23 for the procedures to be followed in obtaining a conditional  
24 prescription certificate, a prescription certificate and  
25 renewals of a prescription certificate. The board may set

1 reasonable application and renewal fees.

2           ~~[F-]~~ G. The board shall promulgate rules  
3 establishing the grounds for denial, suspension or revocation  
4 of conditional prescription certificates and prescription  
5 certificates authorized to be issued pursuant to this section,  
6 including a provision for suspension or revocation of a license  
7 to practice psychology upon suspension or revocation of a  
8 certificate. Actions of denial, suspension or revocation of a  
9 certificate shall be in accordance with the Uniform Licensing  
10 Act."

11           **SECTION 6.** Section 61-9-17.2 NMSA 1978 (being Laws 2002,  
12 Chapter 100, Section 7) is amended to read:

13           "61-9-17.2. PRESCRIBING PRACTICES.--

14           A. A prescribing psychologist or a psychologist  
15 with a conditional prescription certificate may administer and  
16 prescribe psychotropic medication within the recognized scope  
17 of the profession, including the ordering and review of  
18 laboratory tests in conjunction with the prescription, for the  
19 treatment of mental disorders.

20           B. When prescribing psychotropic medication for a  
21 patient, the prescribing psychologist or the psychologist with  
22 a conditional prescription certificate shall maintain an  
23 ongoing collaborative relationship with the health care  
24 practitioner who oversees the patient's general medical care to  
25 ensure that necessary medical examinations are conducted, the

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1 psychotropic medication is appropriate for the patient's  
2 medical condition and significant changes in the patient's  
3 medical or psychological condition are discussed.

4 C. The ongoing collaborative relationship shall be  
5 maintained pursuant to guidelines developed by the board and  
6 the New Mexico medical board [~~of medical examiners~~], which  
7 shall optimize patient care.

8 D. The guidelines shall ensure that the prescribing  
9 psychologist or the psychologist with a conditional  
10 prescription certificate and the [~~treating physician~~] health  
11 care practitioner coordinate, and collaborate on, the care of  
12 the patient to provide optimal care. Nothing in this  
13 subsection shall require a prescribing psychologist or  
14 psychologist with a conditional prescription certificate to  
15 give prior notice to or obtain prior approval from a health  
16 care practitioner to prescribe psychotropic medication to a  
17 patient with whom the prescribing psychologist has established  
18 a psychologist-patient relationship; provided that the  
19 psychologist provides written notice of the prescription to the  
20 health care practitioner within twenty-four hours of its  
21 issuance to such patient.

22 E. A committee composed of members of [~~both boards~~]  
23 the board and the New Mexico medical board shall be established  
24 and, pursuant to the guidelines, shall evaluate complaints.  
25 The committee shall report its findings and recommendations to



1 each board for each board's appropriate actions.

2 ~~[G.]~~ F. A prescription written by a prescribing  
3 psychologist or a psychologist with a conditional prescription  
4 certificate shall:

5 (1) comply with applicable state and federal  
6 laws;

7 (2) be identified as issued by the  
8 psychologist as "psychologist certified to prescribe"; and

9 (3) include the psychologist's board-assigned  
10 identification number.

11 ~~[D.]~~ G. A prescribing psychologist or a  
12 psychologist with a conditional prescription certificate shall  
13 not delegate prescriptive authority to any other person.  
14 Records of all prescriptions shall be maintained in patient  
15 records.

16 ~~[E.]~~ H. When authorized to prescribe controlled  
17 substances, a prescribing psychologist or a psychologist with a  
18 conditional prescription certificate shall file with the board  
19 in a timely manner all individual federal drug enforcement  
20 ~~[agency]~~ administration registrations and numbers. The board  
21 and the New Mexico medical board ~~[of medical examiners]~~ shall  
22 maintain current records on every psychologist, including  
23 federal registrations and numbers.

24 ~~[F.]~~ I. The board shall provide to the board of  
25 pharmacy and the New Mexico medical board ~~[of medical~~

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1 ~~examiners]~~ an annual list of prescribing psychologists and  
2 psychologists with conditional prescription certificates that  
3 contains the information agreed upon between the board, the New  
4 Mexico medical board [~~of medical examiners]~~ and the board of  
5 pharmacy. The board shall promptly notify the board of  
6 pharmacy of psychologists who are added to or deleted from the  
7 list.

8 [~~G-~~] J. For the purpose of this section:

9 (1) "collaborative relationship" means a  
10 cooperative working relationship between a prescribing  
11 psychologist or a psychologist with a conditional prescription  
12 certificate and a health care practitioner in the provision of  
13 patient care, including diagnosis and cooperation in the  
14 management and delivery of physical and mental health care; and

15 (2) "health care practitioner" means a  
16 physician, osteopathic physician, [~~or~~] nurse practitioner,  
17 physician assistant or clinical nurse specialist."

18 SECTION 7. A new section of the Nursing Practice Act is  
19 enacted to read:

20 "[NEW MATERIAL] SUPERVISION OF PSYCHOLOGIST IN THE  
21 PRESCRIBING OF PSYCHOTROPIC MEDICATION BY NURSE PRACTITIONER OR  
22 CLINICAL NURSE SPECIALIST.--

23 A. Subject to rules promulgated by the board, a  
24 nurse practitioner or clinical nurse specialist may supervise a  
25 psychologist in the prescribing of psychotropic medication

1 pursuant to the Professional Psychologist Act.

2 B. No later than January 1, 2018, the board shall  
3 promulgate regulations for a nurse practitioner or clinical  
4 nurse specialist who supervises a psychologist in the  
5 prescribing of psychotropic medication pursuant to the  
6 Professional Psychologist Act."

7 SECTION 8. A new section of the Professional Psychologist  
8 Act is enacted to read:

9 "[NEW MATERIAL] PRESCRIPTION MONITORING PROGRAM--BOARD TO  
10 PROMULGATE RULES.--By January 1, 2018, the board shall  
11 promulgate rules to carry out the provisions of the  
12 prescription monitoring program established by Section  
13 26-1-16.1 NMSA 1978 insofar as that program applies to  
14 prescribing psychologists."

15 SECTION 9. A new section of the Osteopathic Medicine Act  
16 is enacted to read:

17 "[NEW MATERIAL] SUPERVISION OF PSYCHOLOGIST IN THE  
18 PRESCRIBING OF PSYCHOTROPIC MEDICATION BY OSTEOPATHIC  
19 PHYSICIAN.--

20 A. Subject to rules promulgated by the board, an  
21 osteopathic physician may supervise a psychologist in the  
22 prescribing of psychotropic medication pursuant to the  
23 Professional Psychologist Act.

24 B. No later than January 1, 2018, the board shall  
25 promulgate regulations for an osteopathic physician who

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1 supervises a psychologist in the prescribing of psychotropic  
2 medication pursuant to the Professional Psychologist Act."

3 SECTION 10. REPEAL.--Section 61-9-2 NMSA 1978 (being Laws  
4 1989, Chapter 41, Section 2) is repealed.

5 SECTION 11. EMERGENCY.--It is necessary for the public  
6 peace, health and safety that this act take effect immediately.