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HOUSE BILL 312

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

INTRODUCED BY

Javier Martínez and Bill McCamley and Antonio "Moe" Maestas
and Deborah A. Armstrong and Angelica Rubio

AN ACT

RELATING TO CANNABIS; ENACTING THE CANNABIS TAXATION AND
REGULATION ACT; ENACTING THE CANNABIS TAX ACT; CREATING THE
DIVISION OF CANNABIS CONTROL IN THE REGULATION AND LICENSING
DEPARTMENT AND PROVIDING DUTIES; REVISING THE LYNN AND ERIN
COMPASSIONATE USE ACT; REVISING SECTIONS OF LAW RELATED TO
CANNABIS; CREATING THE CANNABIS REGULATION FUND, THE COMMUNITY
GRANTS REINVESTMENT FUND AND THE COMMUNITY GRANTS REINVESTMENT
PROGRAM; PROVIDING AND REVISING PENALTIES; REPEALING SECTION
30-31-25.1 NMSA 1978 (BEING LAWS 1981, CHAPTER 31, SECTION 2,
AS AMENDED); MAKING AN APPROPRIATION; AUTHORIZING
RECONCILIATION OF MULTIPLE AMENDMENTS TO THE SAME SECTION OF
LAW.

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

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

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1 through 38 of this act may be cited as the "Cannabis Taxation
2 and Regulation Act".

3 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
4 Cannabis Taxation and Regulation Act:

5 A. "advertisement":

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

11 (2) does not include:

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

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

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

22 B. "advertising" means the publication or
23 dissemination of an advertisement;

24 C. "cannabis":

25 (1) means all parts of the plant Cannabis

1 sativa Linnaeus, whether growing or not; the seeds of the
2 plant; the resin extracted from any part of the plant; and
3 every compound, manufacture, salt, derivative, mixture or
4 preparation of the plant, its seeds or its resin; and

5 (2) does not include:

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

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

15 D. "cannabis consumption area" means an area within
16 a cannabis retailer's licensed premises where cannabis items
17 may be consumed;

18 E. "cannabis courier" means a person who is
19 licensed by the division only to transport usable cannabis and
20 cannabis items directly to consumers;

21 F. "cannabis establishment" means a licensed:

- 22 (1) cannabis courier;
23 (2) cannabis testing laboratory;
24 (3) cannabis manufacturer;
25 (4) cannabis microbusiness;

- 1 (5) cannabis nursery;
- 2 (6) cannabis producer;
- 3 (7) cannabis retailer; or
- 4 (8) another type of licensee whose operations
- 5 are provided for by the division in accordance with the
- 6 Cannabis Taxation and Regulation Act;

7 G. "cannabis extract":

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

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

15 H. "cannabis flowers" means only the flowers of a
16 cannabis plant;

17 I. "cannabis items" means cannabis, cannabis
18 products and cannabis extracts;

19 J. "cannabis leaves" means only the leaves of a
20 cannabis plant;

21 K. "cannabis testing laboratory" means a person who
22 is licensed by the division to perform tests of cannabis items
23 to analyze the strength or purity of the items;

24 L. "cannabis manufacturer" means a person who is
25 licensed by the division to:

- 1 (1) produce cannabis;
2 (2) manufacture cannabis items;
3 (3) package and transport cannabis items;
4 (4) have cannabis items tested by a cannabis
5 testing laboratory; and
6 (5) sell and transport cannabis items to other
7 cannabis establishments;

8 M. "cannabis microbusiness" means a person licensed
9 by the division to:

- 10 (1) produce cannabis in an area that is less
11 than ten thousand square feet in size;
12 (2) manufacture cannabis items;
13 (3) package and transport cannabis items;
14 (4) have cannabis items tested by a cannabis
15 testing laboratory; and
16 (5) sell and transport or courier the cannabis
17 items to other cannabis establishments and to consumers;

18 N. "cannabis nursery" means a person licensed by
19 the division to produce only clones of cannabis plants,
20 immature plants, seeds and other agricultural products used
21 specifically for the planting, propagation and cultivation of
22 cannabis;

23 O. "cannabis producer" means a person who is
24 licensed by the division only to produce cannabis;

25 P. "cannabis product":

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

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

8 Q. "cannabis retailer" means a person who is
9 licensed by the division to sell and courier cannabis items to
10 a consumer in this state;

11 R. "commercial cannabis activity":

12 (1) means the cultivation, production,
13 possession, manufacture, storing, testing, labeling,
14 transportation, couriating and sale of cannabis and cannabis
15 items; and

16 (2) does not include activities related to the
17 medical cannabis program;

18 S. "consumer" means a person who purchases,
19 acquires, owns, possesses or uses a cannabis item for a purpose
20 other than resale;

21 T. "controlling person":

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

25 (2) does not include a bank or licensed

1 lending institution;

2 U. "courier" means to transport usable cannabis or
3 cannabis items directly to a consumer;

4 V. "department" means the regulation and licensing
5 department;

6 W. "division" means the division of cannabis
7 control of the department;

8 X. "evidence-based drug education program" means a
9 research- and scientific evidence-based education program that
10 has been thoroughly tested and has been shown to significantly
11 reduce problematic use of substances such as nicotine, alcohol
12 or drugs;

13 Y. "financial consideration":

14 (1) means the value that is given or received,
15 directly or indirectly, through sales, barter, trade, fees,
16 charges, dues, contributions or donations; and

17 (2) does not mean the value in homegrown
18 cannabis produced or homemade cannabis items manufactured by
19 another person;

20 Z. "homegrown" or "homemade" means grown or made by
21 a person for purposes that are not dependent or conditioned
22 upon the provision or receipt of financial consideration;

23 AA. "household" means a housing unit and includes
24 any place in or around the housing unit at which an occupant of
25 the housing unit produces, manufactures, keeps or stores

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1 homegrown cannabis or homemade cannabis items;

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

9 CC. "immature cannabis plant" means a cannabis
10 plant that has no observable flowers or buds;

11 DD. "license" means a license issued pursuant to
12 the Cannabis Taxation and Regulation Act;

13 EE. "licensed premises" means a location that is
14 licensed pursuant to the Cannabis Taxation and Regulation Act
15 and includes:

16 (1) all enclosed public and private areas at
17 the location that are used in the business operated pursuant to
18 a license and includes offices, kitchens, restrooms and
19 storerooms;

20 (2) all areas outside of a building that the
21 department has specifically licensed for the production,
22 manufacturing, wholesale sale or retail sale of cannabis items;
23 and

24 (3) with respect to a location that the
25 department has specifically licensed for the production of

.208902.3

1 cannabis outside of a building, the entire unit of land that is
2 created by subsection or partition of land that the licensee
3 owns, leases or has a right to occupy;

4 FF. "licensee" means a person who holds a license;

5 GG. "licensee representative" means an owner,
6 director, officer, manager, employee, agent or other
7 representative of a licensee, to the extent that that person
8 acts in a representative capacity;

9 HH. "local jurisdiction" means a municipality, home
10 rule municipality or a county;

11 II. "manufacture":

12 (1) means to compound, blend, extract, infuse
13 or otherwise prepare a cannabis item; and

14 (2) does not include producing the cannabis
15 contained in a cannabis item;

16 JJ. "marketing" means the act of promoting or
17 selling a cannabis item or cannabis-related products or
18 services and includes the sponsorship of entertainment or
19 athletic events, product placement in film or television
20 productions and the development of products designed to appeal
21 to a particular demographic;

22 KK. "mature cannabis plant" means a cannabis plant
23 that is not an immature cannabis plant;

24 LL. "medical cannabis" means cannabis items used by
25 a qualified patient in accordance with the Lynn and Erin

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1 Compassionate Use Act;

2 MM. "medical cannabis program" means the regulated
3 system allowing for the beneficial use of medical cannabis as
4 established in the Lynn and Erin Compassionate Use Act;

5 NN. "medical cannabis registry" means the system by
6 which the department of health, pursuant to the Lynn and Erin
7 Compassionate Use Act, receives applications for registry
8 identification cards; approves and denies applications; issues
9 and renews registry identification cards; and maintains files
10 related to applicants for and recipients of registry
11 identification cards;

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

16 PP. "produce" means any activity involving the
17 planting, growing, harvesting, drying, curing, grading or
18 trimming of cannabis;

19 QQ. "public place" means a place to which the
20 general public has access and includes hallways, lobbies and
21 other parts of apartment houses and hotels that do not
22 constitute rooms or apartments designed for actual residence;
23 highways; streets; schools; places of amusement; parks;
24 playgrounds; and places used in connection with public
25 passenger transportation;

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1 RR. "qualified patient" means a New Mexico resident
2 who has been diagnosed by a practitioner as having a
3 debilitating medical condition and has received written
4 certification and a registry identification card as part of the
5 medical cannabis program;

6 SS. "usable cannabis" means dried cannabis flowers
7 and dried cannabis leaves and any mixture or preparation of
8 those flowers or leaves; and

9 TT. "volatile solvent" means a solvent that is or
10 produces a flammable gas or vapor that, when present in the air
11 in sufficient quantities, will create explosive or ignitable
12 mixtures.

13 SECTION 3. [NEW MATERIAL] DIVISION OF CANNABIS CONTROL--
14 DUTIES--RULEMAKING--ADVISORY COMMITTEE.--

15 A. The division is subject to the Administrative
16 Procedures Act.

17 B. The division shall regulate and administer, and
18 may collect fees in connection with the administration of:

19 (1) commercial cannabis activity and licensing
20 related to the activity; and

21 (2) the medical cannabis program, except for
22 the medical cannabis registry.

23 C. Not later than July 1, 2019, the division shall
24 promulgate rules necessary for the division to carry out its
25 duties provided in the Cannabis Taxation and Regulation Act,

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1 and those rules shall include:

2 (1) procedures for the issuance, renewal,
3 suspension and revocation of a license;

4 (2) the limit, if any, on the number of
5 distinct types of licenses a person may hold;

6 (3) the total number of licenses the division
7 may issue and renew each year. In determining the number of
8 licenses to issue, the division shall consider:

9 (a) the number, location and population
10 of local jurisdictions that have restricted the operation of
11 cannabis retailers and cannabis microbusinesses that sell
12 cannabis;

13 (b) the market demand for cannabis and
14 medical cannabis;

15 (c) in-state and out-of-state
16 transactions in the illicit unregulated market for cannabis
17 items;

18 (d) the use and misuse of cannabis items
19 by underage and adult persons; and

20 (e) the illegal diversion of cannabis
21 items out of the state;

22 (4) a schedule of fees applicable to
23 application for and issuance of a new or renewal license;

24 (5) qualifications for licensure that are
25 directly and demonstrably related to the operation of a

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1 cannabis establishment;

2 (6) security requirements for a cannabis
3 establishment;

4 (7) requirements related to:

5 (a) inspection and monitoring of a
6 cannabis establishment;

7 (b) a cannabis establishment's
8 recordkeeping and tracking of cannabis from seed until it is
9 sold;

10 (c) prevention of the sale or diversion
11 of cannabis items in commercial cannabis activity to a person
12 under the age of twenty-one; and

13 (d) labeling of cannabis items packaged,
14 sold or distributed by a cannabis establishment;

15 (8) a provision regarding whether a licensee
16 who sells cannabis items may sell any other products;

17 (9) regulations on a licensee's advertisement
18 and marketing of cannabis items and on how a licensee may
19 display cannabis items for sale;

20 (10) civil penalties applicable to violations
21 of rules promulgated by the division in accordance with this
22 section;

23 (11) procedures that promote and encourage
24 full participation in the cannabis industry governed by the
25 Cannabis Taxation and Regulation Act by representatives of

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1 communities that have been disproportionately harmed by the
2 enforcement of cannabis prohibitions in law and policy,
3 including harms from disproportionate rates of related
4 interactions with law enforcement officers, arrests,
5 incarceration and collateral consequences;

6 (12) rules developed in consultation with the
7 department of environment to establish:

8 (a) health and safety standards
9 applicable to the cultivation of cannabis and the manufacture
10 of cannabis items;

11 (b) standards for quality control,
12 inspection and testing of cannabis items;

13 (c) standards for food and product
14 safety applicable to cannabis items; and

15 (d) which additives and ingredients are
16 approved for and prohibited from inclusion in cannabis items;
17 and

18 (13) rules developed in consultation with the
19 New Mexico department of agriculture and the department of
20 environment to establish:

21 (a) standards for the use of pesticides
22 in the manufacture of cannabis, including the maximum
23 allowances for pesticides and other foreign material such as
24 hair, insects or other similar adulterants, in harvested
25 cannabis;

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1 (b) environmental protections that apply
2 to all licensees;

3 (c) protocols to ensure licensees'
4 compliance with state laws governing environmental impacts,
5 natural resource protection, water quality, water supply,
6 hazardous materials, pesticide use and wastewater discharge;
7 and

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

10 D. Not later than January 1, 2019, the division
11 shall:

12 (1) establish a medical cannabis subsidy
13 program by which the department of health shall make
14 distributions of a portion of cannabis tax revenue to qualified
15 patients; and

16 (2) promulgate rules to govern the medical
17 cannabis subsidy program.

18 E. Not later than September 1, 2018, the division
19 shall convene an advisory committee to advise the division on
20 the development of standards and rules pursuant to the Cannabis
21 Taxation and Regulation Act, including best practices and
22 guidelines that protect public health and safety while ensuring
23 a regulated environment for commercial cannabis activity that
24 does not impose unreasonable barriers so as to perpetuate,
25 rather than reduce and eliminate, the illicit market for

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1 cannabis. The advisory committee members shall be appointed by
2 the director of the division for two-year terms and shall
3 include representatives:

- 4 (1) of the cannabis industry;
- 5 (2) of cannabis policy advocacy organizations;
- 6 (3) of labor organizations;
- 7 (4) who are medical cannabis patients;
- 8 (5) from state or local agencies with relevant
9 expertise as the director deems appropriate;
- 10 (6) with expertise in public health;
- 11 (7) with expertise in regulating commercial
12 activity for adult-use intoxicating substances; and
- 13 (8) with expertise in other relevant areas as
14 the director deems appropriate.

15 F. Beginning January 1, 2020, the advisory
16 committee shall publish and provide to the legislature an
17 annual report detailing its activities and recommendations made
18 to the division during the preceding year and noting whether
19 the division implemented any of the recommendations. The
20 report shall include a recommendation on whether the
21 legislature should adjust the cannabis excise tax based on the
22 following considerations:

- 23 (1) demand for cannabis items;
- 24 (2) undercutting the illicit cannabis market;
- 25 (3) preventing the cannabis market from

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1 undercutting the medical cannabis market;

2 (4) preventing cannabis use by a person
3 younger than twenty-one years of age; and

4 (5) preventing cannabis use disorder.

5 SECTION 4. [NEW MATERIAL] LICENSING--LIMITATIONS.--

6 A. The division shall begin issuing licenses no
7 later than January 1, 2020.

8 B. The department shall administer a licensing
9 program for commercial cannabis activity provided for in the
10 Cannabis Taxation and Regulation Act and for the medical
11 cannabis program provided for in the Lynn and Erin
12 Compassionate Use Act, which shall include licenses for:

13 (1) cannabis couriers;

14 (2) cannabis manufacturers;

15 (3) cannabis microbusinesses;

16 (4) cannabis nurseries;

17 (5) cannabis producers;

18 (6) cannabis retailers;

19 (7) cannabis testing laboratories; and

20 (8) any other activity or person as deemed
21 necessary by the division.

22 C. The division shall include a clear designation
23 on all licenses that indicates whether the license is for
24 commercial cannabis activity or activity related to medical
25 cannabis or both.

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1 D. If a cannabis establishment is licensed for both
2 commercial cannabis activity and activity related to medical
3 cannabis, the division shall require that at least thirty-three
4 percent of the total value of the establishment's inventory is
5 composed of medical cannabis items.

6 E. The division may designate subcategories of
7 licenses based on:

8 (1) the size of a business; or

9 (2) for cannabis producers, whether the
10 cannabis is produced indoors, outdoors or in a setting that
11 combines natural light with other light sources.

12 F. A license is valid for twelve months from the
13 date it is issued and may be renewed annually; provided,
14 however, that until July 1, 2020, and longer if the division
15 deems it necessary, the division may issue a temporary license
16 that is valid for a period of less than twelve months.

17 G. The division shall not issue any other license
18 provided for in this section to a cannabis testing laboratory
19 licensee.

20 H. The division shall allow only a cannabis
21 retailer or a cannabis microbusiness to operate a cannabis
22 consumption area.

23 I. The division shall not issue a license to a
24 person who cannot demonstrate continuous residency in New
25 Mexico for at least two years prior to the date on which the

.208902.3

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1 person submits a license application. If an applicant is an
2 entity, all controlling persons in the entity shall be required
3 to demonstrate continuous residency in New Mexico for two years
4 prior to the date on which the entity submits its license
5 application.

6 SECTION 5. [NEW MATERIAL] LICENSING--APPLICATION--
7 ISSUANCE AND DENIAL OF A LICENSE.--

8 A. In carrying out its licensing duties, the
9 division shall:

10 (1) no later than July 1, 2019, begin
11 accepting and processing license applications;

12 (2) issue a license, or a written notice
13 detailing why an application was denied, no later than ninety
14 days following the day on which the application was submitted
15 to the division;

16 (3) in evaluating applications, consider how
17 to achieve racial, ethnic, gender and geographic diversity
18 among licensees; and

19 (4) actively encourage submission of and
20 prioritize applications submitted by persons:

21 (a) who propose to use captured or
22 natural solar energy or recycled water to produce cannabis or
23 otherwise in the business licensed;

24 (b) who propose to use an employee
25 profit-sharing business model or are organized using a worker-

.208902.3

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1 owned cooperative business structure or as a social benefit
2 corporation; or

3 (c) whose maximum household income is
4 equal to or less than two hundred percent of the federal
5 poverty guidelines established by the federal department of
6 health and human services.

7 B. The division may deny an application for a new
8 or renewed license if:

9 (1) the applicant has violated any provisions
10 of the Cannabis Taxation and Regulation Act or a rule
11 promulgated pursuant to that act;

12 (2) the applicant's application does not
13 include all information required by the division;

14 (3) issuance of the license would lead to
15 monopolization of the cannabis or medical cannabis industry in
16 the state or would unreasonably restrain competition in those
17 industries;

18 (4) 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, however,
22 that if the division 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 division shall conduct a thorough review of

.208902.3

1 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;

6 (5) the applicant or a controlling person in
7 the applicant's entity has been penalized for conduct that
8 violated the Cannabis Taxation and Regulation Act or the Lynn
9 and Erin Compassionate Use Act; or

10 (6) the applicant or a controlling person in
11 the applicant's entity has had a license revoked by the
12 division in the three years immediately preceding the date on
13 which the application was filed.

14 C. For the purposes of Subsection B of this
15 section:

16 (1) the following are considered substantially
17 related to the qualifications, functions or duties of a
18 business seeking a license:

19 (a) a felony conviction involving fraud,
20 deceit or embezzlement;

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

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1 (c) any other offense as determined by
2 the division, except as provided in Paragraph (2) of this
3 subsection; and

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

12 D. The division shall deny an application if an
13 applicant, a controlling person in an applicant's entity or the
14 premises for which a license is sought does not qualify for
15 licensure under the Cannabis Taxation and Regulation Act.

16 SECTION 6. [NEW MATERIAL] LICENSING FEES.--

17 A. The division shall establish application and
18 licensing fees applicable to licenses for commercial cannabis
19 activity and activity related to medical cannabis. The fees
20 shall be:

21 (1) reasonably calculated to cover the cost of
22 administering and enforcing the programs established in the
23 Cannabis Taxation and Regulation Act and the Lynn and Erin
24 Compassionate Use Act, including the administration of the
25 medical cannabis registry by the department of health; and

.208902.3

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1 (2) scaled to reflect the size of a business
2 seeking or renewing a license.

3 B. The division shall deposit all fees collected
4 pursuant to the Cannabis Taxation and Regulation Act in the
5 cannabis regulation fund.

6 SECTION 7. [NEW MATERIAL] LOCAL CONTROL.--

7 A. A local jurisdiction may:

8 (1) adopt reasonable time, place and manner
9 regulations that do not conflict with the Cannabis Taxation and
10 Regulation Act;

11 (2) adopt reasonable health and safety-related
12 regulations on the production of homegrown cannabis; provided,
13 however, that a violation of the regulations shall constitute a
14 civil offense;

15 (3) prohibit, in accordance with the Cannabis
16 Taxation and Regulation Act, the operation of a cannabis
17 retailer or a cannabis microbusiness that sells cannabis items;
18 and

19 (4) allow for the smoking, vaporizing and
20 ingesting of cannabis items within a cannabis consumption area
21 on the premises of a cannabis retailer or cannabis
22 microbusiness if:

23 (a) access to the cannabis consumption
24 area is restricted to persons twenty-one years of age and
25 older;

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1 (b) cannabis consumption is not visible
2 from any public place or from outside the cannabis consumption
3 area; and

4 (c) the cannabis retailer or cannabis
5 microbusiness is located three hundred feet or more from a
6 school that provides instruction at any level from kindergarten
7 through twelfth grade, a daycare center or a youth center that
8 was in existence at the time the retailer or microbusiness was
9 licensed.

10 B. A local jurisdiction shall not:

11 (1) prevent transportation or courier of
12 cannabis items on public roads by a licensee that transports
13 cannabis items in compliance with the Cannabis Taxation and
14 Regulation Act;

15 (2) completely prohibit the operation of any
16 category of license other than a cannabis retailer and cannabis
17 microbusinesses; or

18 (3) prohibit the personal production of
19 cannabis or cannabis items made without the use of volatile
20 substances for personal use provided for in the Cannabis
21 Taxation and Regulation Act.

22 SECTION 8. [NEW MATERIAL] LOCAL OPTION ELECTION--EFFECT
23 OF LOCAL OPTION.--A municipality with a population greater than
24 five thousand according to the most recent federal decennial
25 census, whether or not the county in which that municipality is

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1 situated has held an election provided for in this section, or
2 a county in the state may prohibit the operation of a cannabis
3 retailer or a cannabis microbusiness that sells cannabis items
4 upon the following terms and conditions:

5 A. at any time after the effective date of the
6 Cannabis Taxation and Regulation Act, the registered qualified
7 electors of the municipality or county may petition the
8 governing body by filing one or more petitions in the
9 appropriate office to hold an election for the purpose of
10 determining whether to prohibit the operations of a cannabis
11 retailer or a cannabis microbusiness that sells cannabis items
12 in the municipality or county. If the aggregate of the
13 signatures of such electors on all the petitions equals or
14 exceeds five percent of the number of registered voters of the
15 municipality or county, the governing body shall call an
16 election within seventy-five days of the verification of the
17 petition. The date of the filing of the petition shall be the
18 date of the filing of the last petition that brings the number
19 of signatures up to the required five percent; provided,
20 however, that the governing body shall refuse to recognize the
21 petition if more than three months have elapsed between the
22 date of the first signature and the filing of the last petition
23 necessary to bring the number of signatures on the petition up
24 to five percent;

25 B. the election shall be called, conducted, counted

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1 and canvassed substantially in the manner provided by law for
2 general elections within the county or special municipal
3 elections within the municipality, except as otherwise provided
4 in this section;

5 C. the votes at the election shall be counted,
6 returned and canvassed as provided for in the case of general
7 elections within the county or special municipal elections
8 within the municipality;

9 D. except as otherwise provided in this section,
10 contests, recounts and rechecks shall be permitted as provided
11 for in the case of candidates for county office in general
12 elections or as provided for in the case of special municipal
13 elections within the municipality. Applications for contests,
14 recounts or rechecks may be filed by any person who voted in
15 the election, and service shall be made upon the county clerk
16 or municipal clerk as the case may be;

17 E. if the majority of all of the votes cast at the
18 election are cast in favor of the prohibition of the operations
19 of a cannabis retailer or a cannabis microbusiness that sells
20 cannabis items in the county or municipality, the chair of the
21 governing body shall declare by order entered upon the records
22 of the county or municipality that the county or municipality
23 has approved the prohibition and shall notify the department of
24 the election results;

25 F. no election held pursuant to this section shall

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1 be held within forty-two days of any primary, general,
2 municipal or school district election. If, within sixty days
3 from the verification of any petition as provided in Subsection
4 A of this section, a primary, general, municipal or school
5 election is held, the governing body may call an election for a
6 day not less than sixty days after the primary, general,
7 municipal or school election;

8 G. if an election is held pursuant to this section
9 in a county that contains within its limits a municipality of
10 more than five thousand persons according to the most recent
11 federal decennial census, it is not necessary for the
12 registered qualified electors in the municipality to file a
13 separate petition asking for a separate or different vote on
14 the question of whether to prohibit the operations of a
15 cannabis retailer or a cannabis microbusiness that sells
16 cannabis items. The election in the county shall be conducted
17 so as to separate the votes in the municipality from those in
18 the remaining parts of the county. If the majority of the
19 voters in the county, including the voters in the municipality,
20 vote to prohibit the operations of a cannabis retailer or a
21 cannabis microbusiness that sells cannabis items, the county
22 shall not allow the prohibited operations; but if the majority
23 of the votes in the municipality are in favor of allowing the
24 operations of a cannabis retailer or a cannabis microbusiness
25 that sells cannabis items, the municipality shall have allowed

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1 the approved operations in the municipality. Nothing contained
2 in this subsection shall prevent any municipality from having a
3 separate election under the terms of this section; and

4 H. any county or municipality that has voted to
5 prohibit the operations of a cannabis retailer or a cannabis
6 microbusiness that sells cannabis items may vote to discontinue
7 the prohibition and to allow the previously prohibited
8 operations in that county or municipality; the discontinuance
9 shall become effective on the ninetieth day after the local
10 option election is held as provided for in this subsection.

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

12 A. Conduct by a licensee or a licensee
13 representative that is allowed pursuant to a license and
14 conduct by a person who allows property to be used by a
15 licensee or a licensee representative for conduct allowed
16 pursuant to a license is lawful, not a violation of state or
17 local law and is not a basis for seizure or forfeiture of any
18 property or assets under state or local law.

19 B. A state or local government shall not impose a
20 criminal, civil or administrative penalty on a licensee or a
21 licensee representative or on a person who allows property to
22 be used by a licensee or a licensee representative pursuant to
23 a license, solely for conduct allowed pursuant to a license.

24 SECTION 10. [NEW MATERIAL] PROTECTION OF UNDERAGE
25 PERSONS--TRAFFICKING--PENALTIES.--

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1 A. A person who is not a licensee and who is
2 eighteen years of age or older shall not intentionally
3 distribute a cannabis item to a minor who is two or more years
4 younger than the person. A person who violates this subsection
5 is guilty of a fourth degree felony and shall be sentenced
6 pursuant to Section 31-18-15 NMSA 1978.

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

9 C. Except as allowed in the Cannabis Taxation and
10 Regulation Act or the Lynn and Erin Compassionate Use Act, a
11 licensee shall not sell a cannabis item to a person younger
12 than twenty-one years of age. A licensee who violates this
13 subsection shall be fined an amount not greater than one
14 thousand dollars (\$1,000) and sentenced to:

15 (1) thirty hours of community service for a
16 first violation;

17 (2) forty hours of community service for a
18 second violation; and

19 (3) sixty hours of community service for a
20 third or subsequent violation.

21 D. The establishment of all of the following facts
22 by a licensee prosecuted for a violation of Subsection C of
23 this section shall constitute a defense:

24 (1) that the purchaser falsely represented in
25 writing; by producing a driver's license bearing the

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1 purchaser's photograph; by producing a photographic
2 identification card issued by the motor vehicle division of the
3 taxation and revenue department; or by producing a similar
4 identification card issued pursuant to the laws of this state,
5 another state, the federal government or the government of an
6 Indian nation, tribe or pueblo that the person was twenty-one
7 years of age or older;

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

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

17 E. Nothing in this section shall be construed or
18 interpreted to prevent:

19 (1) the division from enforcing its rules
20 against a licensee;

21 (2) a state agency from enforcing a law or
22 regulation that does not conflict with the Cannabis Taxation
23 and Regulation Act or rules promulgated pursuant to that act;
24 or

25 (3) a local jurisdiction from enforcing a

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1 local ordinance that does not conflict with the Cannabis
2 Taxation and Regulation Act or rules promulgated pursuant to
3 that act.

4 F. Notwithstanding the provisions of Subsections A
5 and C of this section, a person who is not a licensee and who
6 is eighteen years of age or older shall not intentionally
7 traffic cannabis. A person who violates this subsection, if
8 the amount of cannabis trafficked is:

9 (1) two ounces or less, shall be subject to a
10 civil penalty of fifty dollars (\$50.00);

11 (2) more than two ounces but one pound or
12 less, shall be subject to a civil penalty of two hundred fifty
13 dollars (\$250);

14 (3) more than one pound but five pounds or
15 less, is guilty of a petty misdemeanor and, notwithstanding the
16 provisions of Section 31-19-1 NMSA 1978, shall be sentenced to
17 a fine in an amount not less than five hundred dollars (\$500)
18 and not more than one thousand dollars (\$1,000);

19 (4) more than five pounds but twenty-five
20 pounds or less, is guilty of a misdemeanor and, notwithstanding
21 the provisions of Section 31-19-1 NMSA 1978, shall be sentenced
22 to a fine in an amount not less than one thousand dollars
23 (\$1,000) and not more than ten thousand dollars (\$10,000); and

24 (5) more than twenty-five pounds, is guilty of
25 a fourth degree felony and, notwithstanding the provisions of

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1 Section 31-18-15 NMSA 1978, shall be sentenced to a basic
2 sentence of imprisonment of twelve months and to the payment of
3 a fine in an amount not less than twenty-five thousand dollars
4 (\$25,000) and not more than seventy-five thousand dollars
5 (\$75,000).

6 G. For the purposes of this section, "traffic"
7 means the:

8 (1) distribution, sale, barter or giving away
9 of cannabis; or

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

12 SECTION 11. [NEW MATERIAL] DISTRIBUTION AND
13 TRANSPORT.--The Cannabis Taxation and Regulation Act shall not
14 be construed to authorize a licensee to transport or
15 distribute, or cause to be transported or distributed, cannabis
16 items outside the state, unless authorized by federal law.

17 SECTION 12. [NEW MATERIAL] COURIERING.--

18 A. Only a cannabis retailer, cannabis microbusiness
19 or cannabis courier may courier cannabis items.

20 B. A consumer who requests courier service shall
21 maintain a physical or electronic copy of the courier request
22 for the duration of time that the consumer possesses the
23 cannabis item that was purchased and received by courier and
24 shall make the copy available upon request by the division or a
25 law enforcement officer.

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1 SECTION 13. ~~[NEW MATERIAL]~~ PACKAGING AND LABELING.--

2 A. Before sale or couriering of a cannabis item,
3 the cannabis item shall be labeled and placed in a resealable,
4 child-resistant package.

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

7 C. Labels shall include:

8 (1) for a package containing only cannabis
9 flower, the net weight of cannabis in the package;

10 (2) identification of the licensee or
11 licensees that produced or manufactured the cannabis item, the
12 date on which the cannabis was cultivated, the type of cannabis
13 item and the date on which the cannabis item was manufactured
14 and packaged;

15 (3) a list of pharmacologically active
16 ingredients;

17 (4) for cannabis products, a list of all
18 ingredients and a disclosure of nutritional information for the
19 product or cannabis extract, disclosed in the same manner
20 required under federal law for nutritional labeling for food
21 for human consumption; and

22 (5) a warning, if nuts or other known
23 allergens are used in the item or in its manufacture.

24 SECTION 14. ~~[NEW MATERIAL]~~ CANNABIS PRODUCTS.--

25 A. Cannabis products shall:

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

4 (2) be produced and sold with a standardized
5 dosage of cannabinoids not to exceed ten milligrams
6 tetrahydrocannabinol per serving;

7 (3) be delineated or scored into standardized
8 serving sizes, if the cannabis product contains more than one
9 serving and is an edible cannabis product in solid form;

10 (4) be homogenized to ensure uniform
11 disbursement of cannabinoids throughout the product;

12 (5) be manufactured and sold under health and
13 sanitation standards established by the division for the
14 preparation, storage, handling and sale of food products; and

15 (6) be provided to customers with sufficient
16 information to enable the informed consumption of the product,
17 including information on the potential effects of the product
18 and directions on how to consume the cannabis product.

19 B. Cannabis or cannabis extracts included in a
20 cannabis product that is manufactured in compliance with
21 applicable law are not considered to be an adulterant under
22 state law.

23 SECTION 15. [NEW MATERIAL] CANNABIS MANUFACTURERS AND
24 TESTING LABORATORIES--DEPARTMENT OF ENVIRONMENT--RULEMAKING.--

25 A. The department of environment shall promulgate

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1 rules to govern the licensing of a cannabis manufacturer and a
2 cannabis testing laboratory. Licenses to be issued are as
3 follows:

4 (1) "cannabis manufacturing level 1" for a
5 site that manufactures cannabis extracts using nonvolatile
6 solvents or no solvents;

7 (2) "cannabis manufacturing level 2" for a
8 site that manufactures cannabis extracts using volatile
9 solvents; and

10 (3) "cannabis testing laboratory" for a
11 licensee that tests cannabis items. A cannabis testing
12 laboratory licensee shall have the licensee's facilities or
13 devices used to test cannabis items licensed according to rules
14 promulgated by the department of environment. A laboratory
15 licensee shall not own or have ownership interest in a
16 non-laboratory facility licensed pursuant to the Cannabis
17 Taxation and Regulation Act.

18 B. Except as otherwise provided by law, a cannabis
19 item shall not be sold by a licensee unless a representative
20 sample of the cannabis item has been tested by a cannabis
21 testing laboratory to determine:

22 (1) whether the chemical profile of the sample
23 conforms to the labeled content of compounds, including:

24 (a) tetrahydrocannabinol;

25 (b) tetrahydrocannabinolic acid;

.208902.3

- 1 (c) cannabidiol;
- 2 (d) cannabidiolic acid;
- 3 (e) terpenes;
- 4 (f) cannabigerol; and
- 5 (g) cannabitol; and

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

8 (a) residual solvents or chemicals,
9 including explosive gases such as butane, propane and hydrogen,
10 and poisons, toxins or carcinogens such as methanol, methylene
11 chloride, acetone, benzene, toluene and trichloroethylene;

12 (b) foreign material, including hair,
13 insects or other similar adulterants; and

14 (c) microbiological impurity, including
15 total aerobic microbial count; total yeast mold count;
16 pseudomonas aeruginosa; aspergillus species; staphylococcus
17 aureus; aflatoxin B1, B2, G1 or G2; or ochratoxin A.

18 C. Residual levels of volatile organic compounds
19 shall not exceed harmful levels.

20 D. The testing required by this section shall be
21 performed in a manner consistent with general requirements for
22 the competence of testing and calibrations activities,
23 including sampling, using standard methods to ensure
24 conformity, competence and impartiality to test cannabis items.

25 E. Any pre-sale inspection, testing transfer or

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1 transportation of cannabis items pursuant to this section shall
2 conform to a chain of custody protocol and any other
3 requirements imposed by the division in accordance with the
4 Cannabis Taxation and Regulation Act.

5 SECTION 16. [NEW MATERIAL] TESTING CANNABIS ITEMS.--

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

9 B. The division shall develop rules and procedures
10 to:

11 (1) ensure that testing of cannabis items
12 occurs prior to distribution to cannabis retailers or cannabis
13 microbusinesses;

14 (2) specify how often licensees shall test
15 cannabis items;

16 (3) specify which entities bear the cost of
17 testing cannabis and medical cannabis; and

18 (4) require destruction of a harvested batch
19 of cannabis or of cannabis items if the testing samples from
20 the batch or items indicate noncompliance with applicable
21 health and safety standards promulgated by the division, unless
22 remedial measures can bring the cannabis or cannabis items into
23 compliance with the standards.

24 SECTION 17. [NEW MATERIAL] ADVERTISING AND MARKETING
25 RESTRICTIONS.--

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1 A. The division shall promulgate rules that
2 explicitly:

3 (1) prohibit the advertisement and marketing
4 of cannabis items:

5 (a) on broadcast television, cable or
6 radio;

7 (b) that is false, deceptive, or
8 misleading;

9 (c) that promotes overconsumption;

10 (d) that depicts consumption by children
11 or other persons younger than twenty-one;

12 (e) that is designed in any way to
13 appeal to a person younger than twenty-one;

14 (f) that is within two hundred feet of
15 the perimeter of school grounds, a playground, a child care
16 center, a public park or a library;

17 (g) that is in public transit vehicles
18 or stations;

19 (h) that is in the form of an
20 unsolicited internet pop-up; or

21 (i) that is on publicly owned or
22 operated property; and

23 (2) require:

24 (a) all advertisements and marketing to
25 accurately and legibly identify the licensee responsible for

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1 its content; and

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

6 B. Upon a determination by the New Mexico attorney
7 general that the use of cannabis, other than as provided for in
8 the Lynn and Erin Compassionate Use Act, is lawful in the state
9 under federal law:

10 (1) Subparagraph (a) of Paragraph (1) of
11 Subsection A of this section shall cease to be in effect; and

12 (2) Subparagraph (b) of Paragraph (2) of
13 Subsection A of this section shall include broadcast
14 television, cable and radio advertisements.

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

24 SECTION 19. [NEW MATERIAL] PROVISION OF PROFESSIONAL
25 SERVICES.--An attorney, accountant, insurance agent, real

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1 estate agent, security guard or other person engaged in a
2 profession subject to state licensure shall not be subject to
3 disciplinary action by a professional association, a state
4 professional board or a state licensing entity because the
5 professional provides professional services or assistance to
6 prospective or licensed cannabis establishments or another
7 person in connection with activity that the professional
8 reasonably believes complies with the Cannabis Taxation and
9 Regulation Act and rules promulgated pursuant to that act.

10 SECTION 20. [NEW MATERIAL] MEDICAL CANNABIS PROVISIONS

11 UNAFFECTED.--Nothing in the Cannabis Taxation and Regulation
12 Act shall be construed to:

13 A. limit a privilege or right of a qualified
14 patient or a primary caregiver participating in the medical
15 cannabis program or a person issued a permit to operate as a
16 medical cannabis licensed producer or to be a director, officer
17 or employee of a medical cannabis licensed producer;

18 B. allow a medical cannabis licensed producer to
19 distribute cannabis to a person who is not a qualified patient
20 without first obtaining a cannabis retailer or cannabis
21 microbusiness license from the division; or

22 C. allow a medical cannabis licensed producer to
23 purchase cannabis items in a manner or from a source not
24 authorized under the Lynn and Erin Compassionate Use Act
25 without first obtaining a cannabis retailer or cannabis

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1 microbusiness license from the division.

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

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

20 A. A school shall not refuse to enroll or otherwise
21 penalize a person solely for conduct allowed pursuant to the
22 Cannabis Taxation and Regulation Act or the Lynn and Erin
23 Compassionate Use Act, unless failing to do so would cause the
24 school to lose a monetary or licensing-related benefit under
25 federal law or regulation.

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1 B. A landlord shall not refuse to lease property to
2 or to otherwise penalize a person solely for conduct allowed
3 pursuant to the Cannabis Taxation and Regulation Act or the
4 Lynn and Erin Compassionate Use Act, unless failing to do so
5 would cause the landlord to lose a monetary or licensing-
6 related benefit under federal law or regulation.

7 C. Notwithstanding Subsection B of this section, an
8 individual or private entity may prohibit or restrict any of
9 the actions or conduct otherwise allowed under Sections 25 and
10 26 of the Cannabis Taxation and Regulation Act on that
11 individual's or private entity's privately owned property.

12 D. For the purposes of medical care, including
13 organ transplants, a qualified patient's use of medical
14 cannabis pursuant to the Lynn and Erin Compassionate Use Act
15 shall be considered the equivalent of the use of any other
16 medication under the direction of a physician and does not
17 constitute the use of an illicit substance or otherwise
18 disqualify a qualified patient from medical care.

19 E. A person shall not be denied custody of or
20 visitation or parenting time with a child, and there is no
21 presumption of neglect or child endangerment, for conduct
22 allowed under Sections 25 and 26 of the Cannabis Taxation and
23 Regulation Act or under the Lynn and Erin Compassionate Use
24 Act, unless the person's behavior creates an immediate danger
25 to the safety of the child as established by clear and

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1 convincing evidence. For the purposes of this section, a
2 determination that behavior creates an "immediate danger" shall
3 not be based solely on whether, when or how often a person uses
4 cannabis or medical cannabis.

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

6 A. Unless an employer establishes by a
7 preponderance of the evidence that an employee's lawful use of
8 cannabis has impaired the ability to perform the employee's job
9 responsibilities, it shall be unlawful to take an adverse
10 employment action against the employee based on either:

11 (1) conduct allowed under Sections 25 and 26
12 of the Cannabis Taxation and Regulation Act or the Lynn and
13 Erin Compassionate Use Act; or

14 (2) the employee's positive drug test for
15 cannabis components or metabolites.

16 B. For the purposes of this section, an employer
17 may consider an employee's ability to perform the employee's
18 job responsibilities to be impaired when the employee manifests
19 specific articulable symptoms while working that decrease or
20 reduce the employee's performance of the duties or tasks of the
21 employee's job.

22 C. Nothing in this section shall:

23 (1) restrict an employer's ability to prohibit
24 or take adverse employment action against an employee for the
25 possession or use of intoxicating substances during work hours;

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1 or

2 (2) require an employer to commit any act that
3 would cause the employer to be in violation of federal law or
4 that would result in the loss of a federal contract or federal
5 funding.

6 D. As used in this section, "adverse employment
7 action" means refusing to hire or employ a person; barring or
8 discharging a person from employment; requiring a person to
9 retire from employment; or discriminating against an employee
10 in compensation or in terms, conditions or privileges of
11 employment.

12 SECTION 24. [NEW MATERIAL] PROTECTIONS FOR A PERSON UNDER
13 STATE SUPERVISION.--A person who is serving a period of
14 probation or parole or who is in the custody or under the
15 supervision of the state or a local government pending trial or
16 as part of a community supervision program shall not be
17 penalized for conduct allowed under Sections 25 and 26 of the
18 Cannabis Taxation and Regulation Act or the Lynn and Erin
19 Compassionate Use Act.

20 SECTION 25. [NEW MATERIAL] PERSONAL USE OF CANNABIS.--

21 A. Notwithstanding any other provision of law, the
22 following conduct is lawful for a person who is twenty-one
23 years of age or older and shall not constitute grounds for
24 detention, search or arrest of a person or for a violation of
25 probation or parole, and cannabis items that relate to the

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1 conduct are not contraband or subject to seizure or forfeiture
2 pursuant to the Controlled Substances Act or the Forfeiture
3 Act:

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 two ounces of cannabis and
13 sixteen grams of cannabis extracts within the person's private
14 residence;

15 (4) making, manufacturing, keeping, storing or
16 transferring without remuneration to a person who is twenty-one
17 years of age or older homemade cannabis extract or cannabis
18 products containing not more than two ounces of cannabis or
19 sixteen grams of cannabis extracts;

20 (5) with respect to homegrown cannabis,
21 possessing, planting, cultivating, harvesting, drying,
22 manufacturing or transporting not more than six mature cannabis
23 plants and six immature cannabis plants and possessing the
24 cannabis produced by the plants;

25 (6) transporting homegrown cannabis, mature or

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1 immature cannabis plants or cannabis products as described in
2 Paragraphs (2) and (4) of this subsection when the person is
3 moving the person's residence to another location;

4 (7) smoking, ingesting or otherwise consuming
5 cannabis or cannabis items;

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

10 (9) assisting another person who is twenty-one
11 years of age or older in, or allowing property to be used in,
12 any of the acts described in Paragraphs (1) through (8) of this
13 subsection.

14 B. Paragraphs (8) and (9) of Subsection A of this
15 section are intended to meet the requirements of 21 U.S.C.
16 Section 863(f) by authorizing, under state law, any person in
17 compliance with this section to manufacture, possess or
18 distribute cannabis paraphernalia.

19 C. Except as provided in Subsection D of this
20 section, none of the following shall, individually or in
21 combination with each other, constitute reasonable articulable
22 suspicion of a crime:

23 (1) the odor of cannabis or cannabis extracts
24 or of burnt cannabis or cannabis extracts;

25 (2) the possession of or the suspicion of

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1 possession of cannabis without evidence of quantity in excess
2 of two ounces;

3 (3) the possession of multiple containers of
4 cannabis without evidence of quantity in excess of two ounces;

5 (4) the possession of or the suspicion of
6 possession of cannabis extracts without evidence of quantity in
7 excess of sixteen grams;

8 (5) the possession of multiple containers of
9 cannabis extracts without evidence of quantity in excess of
10 sixteen grams; or

11 (6) the possession of cannabis or cannabis
12 extracts in proximity to any amount of cash or currency without
13 evidence of cannabis quantity in excess of two ounces or
14 cannabis extracts quantity in excess of sixteen grams.

15 D. Subsection C of this section shall not apply
16 when a law enforcement officer is investigating whether a
17 person is operating or in physical control of a vehicle or
18 watercraft while intoxicated, under the influence of or
19 impaired by alcohol or a drug or any combination thereof in
20 violation of Section 17-2-29 or 66-8-102 NMSA 1978.

21 SECTION 26. [NEW MATERIAL] PERSONAL CULTIVATION OF
22 CANNABIS.--

23 A. Personal cultivation of cannabis as provided for
24 in Section 25 of the Cannabis Taxation and Regulation Act is
25 subject to the following restrictions:

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1 (1) a person shall plant, produce, harvest,
2 dry or manufacture plants in accordance with a local ordinance
3 that does not conflict with the Cannabis Taxation and
4 Regulation Act;

5 (2) the living plants and any cannabis
6 produced by the plants in excess of two ounces shall be kept
7 within the person's private residence, or upon the grounds of
8 that private residence, in a locked space and shall not be
9 visible by normal unaided vision from a public place; and

10 (3) not more than six mature plants and six
11 immature plants may be produced per person; provided, however,
12 that no more than twelve mature plants may be present in one
13 household.

14 B. A local jurisdiction shall not prohibit a person
15 from producing homegrown cannabis as provided for in Section 25
16 of the Cannabis Taxation and Regulation Act.

17 SECTION 27. [NEW MATERIAL] LIMITS ON PERSONAL
18 CONSUMPTION--PENALTIES.--

19 A. Nothing in Section 25 or 26 of the Cannabis
20 Taxation and Regulation Act shall be construed to:

- 21 (1) allow a person to:
- 22 (a) smoke cannabis or cannabis items in
 - 23 a public place, except in a cannabis consumption area;
 - 24 (b) produce cannabis in public view; or
 - 25 (c) possess, smoke or ingest a cannabis

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1 item in or upon the grounds of a school while children are
2 present; or

3 (2) restrict the ability of an individual or
4 private entity to prohibit conduct otherwise allowed in
5 Sections 25 and 26 of the Cannabis Taxation and Regulation Act
6 on the individual's or private entity's privately owned
7 property.

8 B. A person who violates:

9 (1) Subparagraph (a) or (c) of Paragraph (1)
10 of Subsection A of this section shall be subject to a civil
11 penalty of fifty dollars (\$50.00); and

12 (2) Subparagraph (b) of Paragraph (1) of
13 Subsection A of this section shall be subject to a civil
14 penalty of twenty-five dollars (\$25.00).

15 C. For purposes of this section, "smoke":

16 (1) means to inhale, exhale, burn or carry any
17 lighted or heated device or pipe, or any other lighted or
18 heated cannabis item intended for inhalation, whether natural
19 or synthetic, in any manner or in any form; and

20 (2) does not include the use of an electronic
21 smoking device that creates an aerosol or vapor.

22 SECTION 28. [NEW MATERIAL] UNLICENSED SALES OF CANNABIS--
23 PENALTIES.--

24 A. Except as allowed in the Cannabis Taxation and
25 Regulation Act or the Lynn and Erin Compassionate Use Act, it

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1 is unlawful for a person without a license to intentionally
2 distribute cannabis items.

3 B. A person under eighteen years of age who
4 violates Subsection A of this section shall be subject to:

- 5 (1) a fine of one hundred dollars (\$100);
- 6 (2) attendance at a four-hour evidence-based
7 drug education program; or
- 8 (3) four hours of community service.

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

13 SECTION 29. [NEW MATERIAL] CANNABIS NEAR A SCHOOL--
14 PENALTY.--Except as allowed in the Cannabis Taxation and
15 Regulation Act or the Lynn and Erin Compassionate Use Act, a
16 person shall not possess or intentionally distribute any amount
17 of a cannabis item within one thousand feet of a school,
18 daycare center or youth center while children are present at
19 the school, daycare center or youth center, unless the person
20 is in or upon the grounds of a private residence or a cannabis
21 consumption area. A person who violates this section is guilty
22 of a misdemeanor and shall be sentenced pursuant to the
23 provisions of Section 31-19-1 NMSA 1978.

24 SECTION 30. [NEW MATERIAL] UNLAWFUL POSSESSION OF
25 CANNABIS--PENALTIES.--Except as allowed in the Lynn and Erin

1 Compassionate Use Act:

2 A. a person eighteen years of age or older and
3 younger than twenty-one years of age shall not possess cannabis
4 items. A person who violates this subsection shall be subject
5 to:

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

7 (2) attendance at a four-hour evidence-based
8 drug education program; or

9 (3) four hours of community service;

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

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

14 (2) attendance at a four-hour evidence-based
15 drug education program; or

16 (3) four hours of community service; and

17 C. or as allowed in the Cannabis Taxation and
18 Regulation Act, a person twenty-one years of age or older shall
19 not possess more than two ounces of cannabis outside a private
20 residence or more than sixteen grams of cannabis extracts
21 outside a private residence. A person who violates this
22 subsection with respect to:

23 (1) between two and eight ounces of cannabis

24 or between sixteen and sixty-four grams of cannabis extracts

25 shall be subject to a fine of two hundred fifty dollars (\$250);

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1 or

2 (2) more than eight ounces of cannabis or more
3 than sixty-four grams of cannabis extracts shall be guilty of a
4 petty misdemeanor and shall be sentenced pursuant to the
5 provisions of Section 31-19-1 NMSA 1978.

6 SECTION 31. [NEW MATERIAL] UNLICENSED PRODUCTION OF
7 CANNABIS--PENALTIES.--Except as allowed in the Lynn and Erin
8 Compassionate Use Act:

9 A. a person younger than twenty-one years of age
10 shall not produce cannabis. A person who violates this
11 subsection shall be subject to:

12 (1) a fine of fifty dollars (\$50.00); or
13 (2) attendance at a four-hour evidence-based
14 drug education program or four hours of community service;

15 B. a person eighteen years of age or older and
16 younger than twenty-one years of age shall not produce
17 cannabis. A person who violates this subsection shall be
18 subject to a civil penalty of fifty dollars (\$50.00); and

19 C. or as allowed in the Cannabis Taxation and
20 Regulation Act, a person twenty-one years of age or older shall
21 not produce more than six mature cannabis plants and six
22 immature cannabis plants. A person who violates this
23 subsection shall be subject to a civil penalty of two hundred
24 fifty dollars (\$250).

25 SECTION 32. [NEW MATERIAL] UNLICENSED MANUFACTURING OF

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1 CANNABIS EXTRACTS--PENALTY.--Except as permitted by the Lynn
2 and Erin Compassionate Use Act, it is unlawful for any person
3 to use volatile solvents to manufacture cannabis extracts
4 without a license issued pursuant to the Cannabis Taxation and
5 Regulation Act or the Lynn and Erin Compassionate Use Act. A
6 person who violates this section shall be subject to a civil
7 penalty of two hundred fifty dollars (\$250).

8 SECTION 33. [NEW MATERIAL] DESTRUCTION OF ARREST AND
9 CONVICTION RECORDS--PROCEDURE.--

10 A. If a person is charged with any offense provided
11 in Sections 28 through 32 of the Cannabis Taxation and
12 Regulation Act, whether or not the person is convicted, all
13 records held by a court, or an agency of the state or a local
14 government, that relate to the person's arrest or conviction
15 shall be automatically destroyed two years after the date of
16 the person's conviction or the date of the person's arrest if
17 there was no conviction. If the person is or was a juvenile at
18 the time of the arrest or conviction, the records shall be
19 retained for two years or until the person is eighteen years of
20 age, whichever comes first, and shall then be destroyed. The
21 records shall also be removed from any statewide criminal
22 databases.

23 B. After destruction of records pursuant to
24 Subsection A of this section, a court, an agency of the state
25 or a local government shall treat the case as if it never

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1 occurred, and all index references to the case shall be
2 deleted. The court or agency shall respond to an inquiry
3 regarding the case that no record exists with respect to the
4 referenced person with respect to that case.

5 SECTION 34. [NEW MATERIAL] DESTRUCTION OF ARREST AND
6 CONVICTION RECORDS--PROCEDURE--RETROACTIVE.--

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

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

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

6 SECTION 35. [NEW MATERIAL] RECALL OR DISMISSAL OF
7 SENTENCES--INCARCERATED PERSONS.--

8 A. A corrections facility, a county jail or a
9 juvenile corrections facility in which a person is currently
10 serving a sentence for a conviction, whether by trial or by
11 open or negotiated plea, for an offense that would not have
12 resulted in the person's conviction or would have resulted in a
13 lesser offense if the Cannabis Taxation and Regulation Act had
14 been in effect at the time of the offense, shall notify the
15 court that the convicted person's case should be reopened to
16 consider possible recall or dismissal of the person's sentence.

17 B. A court shall reopen a case pursuant to
18 Subsection A of this section and recall the person's sentence
19 or dismiss the person's sentence because it is legally invalid,
20 unless the court determines that doing so would pose an
21 unreasonable risk of danger to public safety.

22 C. A person who is resentenced pursuant to this
23 section shall be given credit against the person's new sentence
24 for time already served.

25 D. A person who is resentenced pursuant to this

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1 section shall not be sentenced to a term longer than the
2 person's original sentence and shall not have any charges
3 reinstated that were originally dismissed pursuant to a
4 negotiated plea agreement.

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

19 F. Nothing in this section is intended to diminish
20 or abrogate any rights or remedies otherwise available to a
21 person who was convicted of or incarcerated for an offense.

22 G. The provisions of this section shall apply
23 equally to juvenile delinquency adjudications and convictions
24 of a juvenile person if the juvenile would not have been guilty
25 of an offense or would have been guilty of a lesser offense as

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1 provided in the Cannabis Taxation and Regulation Act.

2 SECTION 36. [NEW MATERIAL] WRIT OF MANDAMUS.--Any person
3 may commence a legal action for a writ of mandamus to compel
4 the division to perform its duties pursuant to the Cannabis
5 Taxation and Regulation Act.

6 SECTION 37. [NEW MATERIAL] CANNABIS REGULATION FUND.--

7 A. The "cannabis regulation fund" is created in the
8 state treasury. The fund consists of fees collected by the
9 division pursuant to the Cannabis Taxation and Regulation Act
10 and the medical cannabis program administered by the division
11 and money otherwise accruing to the fund. Any unexpended or
12 unencumbered balance remaining at the end of any fiscal year
13 shall revert to the general fund.

14 B. The division shall administer the fund, and
15 money in the fund is appropriated to the division to support
16 the division in its duties established in the Cannabis Taxation
17 and Regulation Act and the medical cannabis program. Money
18 from the fund shall not be used for capital expenditures.

19 C. Money in the fund shall be disbursed on warrants
20 signed by the secretary of finance and administration pursuant
21 to vouchers signed by the superintendent of regulation and
22 licensing or the superintendent's authorized representative.

23 SECTION 38. [NEW MATERIAL] COMMUNITY GRANTS REINVESTMENT
24 FUND--COMMUNITY GRANTS REINVESTMENT PROGRAM.--

25 A. The "community grants reinvestment fund" is

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1 created in the state treasury. The fund consists of
2 appropriations, other money deposited in the fund and money
3 otherwise accruing to the fund. The department of health shall
4 administer the fund, and money in the fund is subject to
5 appropriation to the department of health for the community
6 grants reinvestment program as described in this section. Any
7 unexpended or unencumbered balance remaining at the end of any
8 fiscal year shall not revert to the general fund. Money in the
9 fund shall be disbursed on warrants signed by the secretary of
10 finance and administration pursuant to vouchers signed by the
11 secretary of health or the secretary's authorized
12 representative.

13 B. The community grants reinvestment program shall
14 be established and operated by an executive steering committee
15 in collaboration with the department of health to provide
16 grants to qualified community-based nonprofit organizations for
17 the purpose of reinvesting in communities disproportionately
18 affected by past federal and state drug policies by supporting
19 job placement, mental health treatment, substance use disorder
20 treatment, navigation of government programs, legal services to
21 address barriers faced by formerly incarcerated persons and
22 linkages to medical care and women's health services. The
23 program may also include provision of grants for:

24 (1) prevention, early intervention and
25 outreach services; risk surveys; and education for youth,

.208902.3

1 families, caregivers, schools, primary care health providers,
2 behavioral health and substance use disorder service providers,
3 community and faith-based organizations, foster care providers,
4 juvenile and family courts and others working to recognize and
5 reduce risks related to substance use and the early signs of
6 problematic use and of substance use disorders;

7 (2) schools to develop and support evidence-
8 based substance use educational programs designed to prevent
9 and reduce substance use and improve school retention and
10 performance by supporting students who are at risk of dropping
11 out of school and promoting alternatives to suspension or
12 expulsion that focus on school retention, remediation and
13 professional care. Schools with higher-than-average dropout
14 rates should be prioritized for grants for this purpose;

15 (3) programs for outreach, education and
16 treatment for homeless youth and out-of-school youth with
17 substance use disorders;

18 (4) access and linkage to care provided by
19 county behavioral health programs for youth and their families
20 and caregivers who have a substance use disorder or who are at
21 risk for developing a substance use disorder;

22 (5) youth-focused substance use disorder
23 treatment programs that are culturally and gender competent,
24 trauma-informed and evidence-based and that provide a continuum
25 of care that includes screening and assessment for substance

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1 use disorder as well as mental health care, early intervention,
2 active treatment, family involvement, case management, overdose
3 prevention, prevention of communicable diseases related to
4 substance use, relapse management for substance use and other
5 co-occurring behavioral health disorders, vocational services,
6 literacy services, parenting classes, family therapy and
7 counseling services, medication-assisted treatments,
8 psychiatric medication, psychotherapy and other related
9 services;

10 (6) to the extent permitted by law and where
11 indicated, interventions that utilize a two-generation approach
12 to addressing substance use disorders with the capacity to
13 treat youth and adults together, including support for the
14 development of family-based interventions that address
15 substance use disorders and related problems within the context
16 of families of all types and their children;

17 (7) programs to assist individuals, as well as
18 families and friends of drug-using young people, to reduce the
19 stigma associated with substance use, including being diagnosed
20 with a substance use disorder or seeking substance use disorder
21 services. This includes peer-run outreach and education to
22 reduce stigma, anti-stigma campaigns and community recovery
23 networks;

24 (8) workforce training and wage structures
25 that increase the hiring pool of behavioral health staff with

.208902.3

1 substance use disorder prevention and treatment expertise,
2 provide ongoing education and coaching that increases substance
3 use treatment providers' core competencies and train providers
4 on promising and evidenced-based practices;

5 (9) construction of community-based youth
6 treatment facilities; and

7 (10) contracts with county behavioral health
8 programs for the provision of services described in this
9 subsection.

10 C. A qualified community-based nonprofit
11 organization may apply for a grant from the community grants
12 reinvestment fund. Applications shall be reviewed by the grant
13 application review committee, composed of members appointed to
14 two-year terms by the secretary of health or the secretary's
15 designee in collaboration with the director of the division.
16 The committee shall review applications and make
17 recommendations to the secretary of health regarding the
18 design, efficacy and viability of grant applications. In
19 making its recommendations, the committee shall prioritize
20 proposals that provide:

- 21 (1) community-based job skills services;
22 (2) community-based job placement services;
23 (3) adult education services; or
24 (4) other community-based supportive services.

25 D. The community grants reinvestment program shall:

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1 (1) periodically evaluate the programs that
2 receive grants to determine the effectiveness of those programs
3 and self-evaluate the program's activities; and

4 (2) be governed and administered by an
5 executive steering committee appointed by the secretary of
6 health that includes a balanced and diverse membership from
7 relevant state and local government entities and community-
8 based job skills and job placement service providers. The
9 committee shall have expertise in job placement; homelessness
10 and housing; behavioral health and substance abuse treatment;
11 community reentry for formerly incarcerated persons; ending
12 mass incarceration; and effective rehabilitative treatment for
13 adults and juveniles.

14 SECTION 39. [NEW MATERIAL] SHORT TITLE.--Sections 39
15 through 48 of this act may be cited as the "Cannabis Tax Act".

16 SECTION 40. [NEW MATERIAL] DEFINITIONS.--As used in the
17 Cannabis Tax Act:

18 A. "cannabis items" means "cannabis items" as that
19 term is defined in the Cannabis Taxation and Regulation Act;

20 B. "consumer price index" means the consumer price
21 index for all urban consumers, United States city average for
22 all items, published by the United States department of labor;

23 C. "county area" means that portion of a county
24 located outside the boundaries of any municipality, except that
25 for H class counties, "county area" means the entire county;

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1 D. "department" means the taxation and revenue
2 department;

3 E. "governing body" means:

4 (1) in the case of a municipality, the city
5 council or city commission of a city, the board of trustees of
6 a town or village or the board of county commissioners of H
7 class counties; or

8 (2) in the case of a county, the county
9 commission of a county or the county council of an H class
10 county; and

11 F. "licensee" means a person who holds a license
12 issued pursuant to the Cannabis Taxation and Regulation Act.

13 SECTION 41. [NEW MATERIAL] CANNABIS HARVEST TAX.--

14 A. There is imposed a tax on a licensee who
15 harvests cannabis that enters the commercial market, which may
16 be referred to as the "cannabis harvest tax", as follows:

17 (1) cannabis flowers shall be taxed at a rate
18 of sixty-two cents (\$.62) per dry-weight gram; and

19 (2) cannabis leaves shall be taxed at a rate
20 of ten cents (\$.10) per dry-weight gram.

21 B. No later than April 30, 2020 and April 30 of
22 each subsequent year, the department shall calculate the rate
23 of the cannabis harvest tax to be imposed as of July 1 of that
24 year. The rate of the cannabis harvest tax shall be equal to
25 the product, rounded down to the nearest whole cent, of:

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1 (1) for cannabis flowers, sixty-two cents
2 (\$.62) multiplied by a fraction with a numerator equal to the
3 consumer price index for the previous calendar year and a
4 denominator equal to the consumer price index for the most
5 current calendar year available; and

6 (2) for cannabis leaves, ten cents (\$.10)
7 multiplied by a fraction with a numerator equal to the consumer
8 price index for the previous calendar year and a denominator
9 equal to the consumer price index for the most current calendar
10 year available.

11 C. The cannabis harvest tax shall not apply to
12 cannabis produced for personal use as provided for in the
13 Cannabis Taxation and Regulation Act or by a qualified patient
14 or primary caregiver in accordance with the Lynn and Erin
15 Compassionate Use Act.

16 SECTION 42. [NEW MATERIAL] CANNABIS NURSERY TAX.--

17 A. There is imposed a tax on a licensee who
18 produces immature cannabis plants that enter the commercial
19 market at a rate of one dollar thirty-five cents (\$1.35) per
20 plant. The tax imposed by this section may be referred to as
21 the "cannabis nursery tax".

22 B. No later than April 30, 2020 and April 30 of
23 each subsequent year, the department shall calculate the rate
24 of the cannabis nursery tax to be imposed as of July 1 of that
25 year. The rate of the cannabis nursery tax shall be equal to

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1 the product, rounded down to the nearest whole cent, of one
2 dollar thirty-five cents (\$1.35) multiplied by a fraction with
3 a numerator equal to the consumer price index for the previous
4 calendar year and a denominator equal to the consumer price
5 index for the most current calendar year available.

6 SECTION 43. [NEW MATERIAL] CANNABIS EXCISE TAX.--

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

15 B. The rate of the cannabis excise tax is fifteen
16 percent and is applied to the non-bundled price paid for the
17 cannabis item.

18 C. The cannabis excise tax shall not apply to
19 retail sales of medical cannabis items sold to a qualified
20 patient or to a primary caregiver who presents a registry
21 identification card issued pursuant to the Lynn and Erin
22 Compassionate Use Act at the time of the sale.

23 SECTION 44. [NEW MATERIAL] MUNICIPAL CANNABIS TAX.--

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

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

5 B. The rate of the municipal cannabis tax is no
6 more than five percent, which shall be imposed in one-sixteenth
7 percent increments and is applied to the price of the cannabis
8 item. If the price of the cannabis item does not represent the
9 value of the item, the tax rate shall be applied to the
10 reasonable value of the item at the time that the item was
11 purchased.

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

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

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

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

11 SECTION 45. [NEW MATERIAL] COUNTY CANNABIS TAX.--

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

18 B. The rate of the county cannabis tax is no more
19 than five percent, which shall be imposed in one-sixteenth
20 percent increments and is applied to the price of the cannabis
21 item. If the price of the cannabis item does not represent the
22 value of the item, the tax rate shall be applied to the
23 reasonable value of the item at the time that the item was
24 purchased.

25 C. The governing body of a county, at the time of

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1 enacting any ordinance imposing a county cannabis tax, may
2 dedicate the revenue for county general purposes.

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

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

21 SECTION 46. [NEW MATERIAL] DATE PAYMENT DUE.--The taxes
22 imposed pursuant to the Cannabis Tax Act are to be paid on or
23 before the twenty-fifth day of the month following the month in
24 which the taxable event occurs.

25 SECTION 47. [NEW MATERIAL] ADMINISTRATIVE CHARGE.--The

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1 department may deduct an amount not to exceed three percent of
2 the proceeds of the municipal cannabis tax and county cannabis
3 tax as a charge for the administrative costs of collection,
4 which amount shall be retained by the department for use in
5 administration of those taxes.

6 SECTION 48. [NEW MATERIAL] INTERPRETATION OF ACT--
7 ADMINISTRATION AND ENFORCEMENT OF TAX.--The department shall:

8 A. interpret the provisions of the Cannabis Tax
9 Act; and

10 B. administer and enforce the collection of the
11 cannabis harvest tax, cannabis nursery tax, cannabis excise
12 tax, municipal cannabis tax and county cannabis tax.

13 SECTION 49. A new section of the Tax Administration Act
14 is enacted to read:

15 "[NEW MATERIAL] DISTRIBUTION.--A distribution pursuant to
16 Section 7-1-6.1 NMSA 1978 shall be made to:

17 A. the department of health, in an amount equal to
18 two percent of the net receipts attributable to the taxes
19 imposed in the Cannabis Tax Act, to support qualified patients
20 participating in the medical cannabis program in accordance
21 with the Lynn and Erin Compassionate Use Act who also
22 participate in the medical cannabis subsidy program;

23 B. the board of regents of the university of New
24 Mexico, in fiscal years 2020 through 2030, in an amount of five
25 hundred thousand dollars (\$500,000), for research and analysis

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1 of the effect of the implementation of the Cannabis Taxation
2 and Regulation Act and to make any related recommendations to
3 the legislature and the governor regarding amendments to that
4 act. A report of the research and analysis shall be published
5 every two years through 2030 and shall include analysis of:

6 (1) impacts on public health, health costs
7 associated with cannabis use and whether cannabis use is
8 associated with an increase or decrease in the use of alcohol
9 or other drugs;

10 (2) the impact of treatment for maladaptive
11 cannabis use and the effectiveness of different treatment
12 programs;

13 (3) public safety issues related to cannabis
14 use and the effectiveness of the packaging and labeling
15 requirements and advertising and marketing restrictions on the
16 prevention of underage access to and use of cannabis items;

17 (4) cannabis use rates, maladaptive use rates
18 for adults and youth and diagnosis rates of cannabis-related
19 substance use disorders;

20 (5) cannabis market prices; illicit market
21 prices; tax structures and rates; and how to best tax cannabis
22 based on potency and the structure and function of licensed
23 cannabis businesses;

24 (6) whether additional protections are needed
25 to prevent unlawful monopolies or anti-competitive behavior

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1 from occurring in the nonmedical cannabis industry and, if so,
2 recommendations as to the most effective measures for
3 preventing that behavior;

4 (7) the economic impacts in the private and
5 public sectors, including job creation, workplace safety and
6 revenues;

7 (8) criminal justice impacts, including
8 impacts on law enforcement and public resources, short- and
9 long-term consequences of involvement in the criminal justice
10 system and state and local government agency administrative
11 costs and revenue;

12 (9) whether the regulatory agencies tasked
13 with implementing and enforcing the Cannabis Taxation and
14 Regulation Act are doing so consistent with the purposes of
15 that act and whether other agencies might do so more
16 effectively;

17 (10) environmental issues related to cannabis
18 production and the criminal prohibition of cannabis production;
19 and

20 (11) the geographic location, structure and
21 function of licensed cannabis businesses and demographic data,
22 including race, ethnicity and gender of license holders;

23 C. the department of public safety, in fiscal years
24 2020 through 2022, in an amount of five hundred thousand
25 dollars (\$500,000), to establish and adopt protocols:

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1 (1) to determine whether a driver is operating
2 a vehicle while impaired, including impairment by the use of
3 cannabis items; and

4 (2) that set forth best practices to assist
5 law enforcement agencies. The department of public safety may
6 hire personnel and contract with other entities to establish
7 the protocols provided for in this subsection; and

8 D. to the community grants reinvestment fund in an
9 amount equal to twenty percent of the net receipts attributable
10 to the taxes imposed in the Cannabis Tax Act to establish and
11 operate the community grants reinvestment program."

12 SECTION 50. A new section of the Tax Administration Act
13 is enacted to read:

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

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

24 B. A transfer pursuant to Section 7-1-6.1 NMSA 1978
25 shall be made to each county for which the department is

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1 collecting a county cannabis tax imposed by that county in an
2 amount, subject to any increase or decrease made pursuant to
3 Section 7-1-6.15 NMSA 1978, equal to the net receipts
4 attributable to the county cannabis tax, less any deduction for
5 administrative costs determined and made by the department
6 pursuant to the Cannabis Tax Act."

7 SECTION 51. Section 7-1-2 NMSA 1978 (being Laws 1965,
8 Chapter 248, Section 2, as amended) is amended to read:

9 "7-1-2. APPLICABILITY.--The Tax Administration Act
10 applies to and governs:

11 A. the administration and enforcement of the
12 following taxes or tax acts as they now exist or may hereafter
13 be amended:

- 14 (1) Income Tax Act;
15 (2) Withholding Tax Act;
16 (3) Venture Capital Investment Act;
17 (4) Gross Receipts and Compensating Tax Act
18 and any state gross receipts tax;
19 (5) Liquor Excise Tax Act;
20 (6) Local Liquor Excise Tax Act;
21 (7) any municipal local option gross receipts
22 tax;
23 (8) any county local option gross receipts
24 tax;
25 (9) Special Fuels Supplier Tax Act;

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- 1 (10) Gasoline Tax Act;
- 2 (11) petroleum products loading fee, which fee
3 shall be considered a tax for the purpose of the Tax
4 Administration Act;
- 5 (12) Alternative Fuel Tax Act;
- 6 (13) Cigarette Tax Act;
- 7 (14) Estate Tax Act;
- 8 (15) Railroad Car Company Tax Act;
- 9 (16) Investment Credit Act, rural job tax
10 credit, Laboratory Partnership with Small Business Tax Credit
11 Act, Technology Jobs and Research and Development Tax Credit
12 Act, Film Production Tax Credit Act, Affordable Housing Tax
13 Credit Act and high-wage jobs tax credit;
- 14 (17) Corporate Income and Franchise Tax Act;
- 15 (18) Uniform Division of Income for Tax
16 Purposes Act;
- 17 (19) Multistate Tax Compact;
- 18 (20) Tobacco Products Tax Act; ~~and~~
- 19 (21) the telecommunications relay service
20 surcharge imposed by Section 63-9F-11 NMSA 1978, which
21 surcharge shall be considered a tax for the purposes of the Tax
22 Administration Act; and
- 23 (22) the Cannabis Tax Act;

24 B. the administration and enforcement of the
25 following taxes, surtaxes, advanced payments or tax acts as

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1 they now exist or may hereafter be amended:

2 (1) Resources Excise Tax Act;

3 (2) Severance Tax Act;

4 (3) any severance surtax;

5 (4) Oil and Gas Severance Tax Act;

6 (5) Oil and Gas Conservation Tax Act;

7 (6) Oil and Gas Emergency School Tax Act;

8 (7) Oil and Gas Ad Valorem Production Tax Act;

9 (8) Natural Gas Processors Tax Act;

10 (9) Oil and Gas Production Equipment Ad

11 Valorem Tax Act;

12 (10) Copper Production Ad Valorem Tax Act;

13 (11) any advance payment required to be made

14 by any act specified in this subsection, which advance payment

15 shall be considered a tax for the purposes of the Tax

16 Administration Act;

17 (12) Enhanced Oil Recovery Act;

18 (13) Natural Gas and Crude Oil Production

19 Incentive Act; and

20 (14) intergovernmental production tax credit

21 and intergovernmental production equipment tax credit;

22 C. the administration and enforcement of the
23 following taxes, surcharges, fees or acts as they now exist or
24 may hereafter be amended:

25 (1) Weight Distance Tax Act;

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

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

5 (4) 911 emergency surcharge and the network
6 and database surcharge, which surcharges shall be considered
7 taxes for purposes of the Tax Administration Act;

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

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

14 (7) the gaming tax imposed pursuant to the
15 Gaming Control Act; and

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

21 SECTION 52. Section 7-1-6.15 NMSA 1978 (being Laws 1983,
22 Chapter 211, Section 20, as amended by Laws 2015, Chapter 89,
23 Section 1 and by Laws 2015, Chapter 100, Section 1) is amended
24 to read:

25 "7-1-6.15. ADJUSTMENTS OF DISTRIBUTIONS OR TRANSFERS TO

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1 MUNICIPALITIES OR COUNTIES.--

2 A. The provisions of this section apply to:

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

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

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

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

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

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

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

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

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

25 B. Before making a distribution or transfer

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

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

24 (2) if the revised total for prior periods
25 determined pursuant to Paragraph (1) of this subsection is

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

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

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

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

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

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

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

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

14 (1) the department may collect the recoverable
15 amount by:

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

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

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1 recover the amount;

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

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

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

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

23 F. No later than ninety days from the date notice
24 pursuant to Subsection D of this section is given, the
25 department shall provide the municipality or county adequate

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1 opportunity to review an application for a claim for refund
2 that gave rise to the recoverable amount, exclusive of any
3 amended returns that may be attached to the application,
4 pursuant to Section 7-1-8.9 NMSA 1978.

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

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

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

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

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

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

20 J. As used in this section:

21 (1) "amounts relating to the current month"
22 means any amounts included in the net receipts of the current
23 month that represent payment of tax due for the current month,
24 correction of amounts processed in the current month that
25 relate to the current month or that otherwise relate to

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1 obligations due for the current month;

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

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

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

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

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

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

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

11 SECTION 53. Section 7-9-73.2 NMSA 1978 (being Laws 1998,
12 Chapter 95, Section 2 and Laws 1998, Chapter 99, Section 4, as
13 amended) is amended to read:

14 "7-9-73.2. DEDUCTION--GROSS RECEIPTS TAX AND GOVERNMENTAL
15 GROSS RECEIPTS TAX--PRESCRIPTION DRUGS--OXYGEN--OXYGEN
16 SERVICES--MEDICAL CANNABIS.--

17 A. Receipts from the sale of prescription drugs
18 [~~and~~], oxygen [~~and~~], oxygen services provided by a licensed
19 medicare durable medical equipment provider and medical
20 cannabis that is purchased in accordance with the Lynn and Erin
21 Compassionate Use Act may be deducted from gross receipts and
22 governmental gross receipts.

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

25 (1) dispensed by or under the supervision of a

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1 licensed pharmacist or by a physician or other person
2 authorized under state law to do so;

3 (2) prescribed for a specified person by a
4 person authorized under state law to prescribe the substance;
5 and

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

8 SECTION 54. Section 9-16-4 NMSA 1978 (being Laws 1983,
9 Chapter 297, Section 20, as amended) is amended to read:

10 "9-16-4. DEPARTMENT ESTABLISHED.--There is created in the
11 executive branch the "regulation and licensing department".
12 The department shall not be a cabinet department. The
13 department shall consist of but not be limited to ~~[six]~~ the
14 following divisions ~~[as follows]~~:

- 15 A. the administrative services division;
- 16 B. the construction industries division;
- 17 C. the financial institutions division;
- 18 D. the securities division;
- 19 E. the manufactured housing division; ~~[and]~~
- 20 F. the alcohol and gaming division; and
- 21 G. the division of cannabis control."

22 SECTION 55. Section 26-2B-1 NMSA 1978 (being Laws 2007,
23 Chapter 210, Section 1) is amended to read:

24 "26-2B-1. SHORT TITLE.--~~[Sections 1 through 7 of this~~
25 ~~act]~~ Chapter 26, Article 2B NMSA 1978 may be cited as the "Lynn

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1 and Erin Compassionate Use Act" in honor of Lynn Pierson and
2 Erin Armstrong."

3 SECTION 56. Section 26-2B-7 NMSA 1978 (being Laws 2007,
4 Chapter 210, Section 7) is amended to read:

5 "26-2B-7. [~~REGISTRY IDENTIFICATION CARDS~~] DEPARTMENT
6 RULES--DUTIES--REGISTRY IDENTIFICATION CARDS.--

7 A. No later than October 1, 2007, and after
8 consultation with the advisory board, the department shall
9 promulgate rules in accordance with the State Rules Act to
10 implement the purpose of the Lynn and Erin Compassionate Use
11 Act. The rules shall:

12 (1) govern the manner in which the department
13 will consider applications for registry identification cards
14 and for the renewal of identification cards for qualified
15 patients and primary caregivers;

16 (2) define the amount of cannabis that is
17 necessary to constitute an adequate supply, including amounts
18 for topical treatments;

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

25 (4) set forth additional medical conditions,

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1 medical treatments or diseases to the list of debilitating
2 medical conditions that qualify for the medical use of cannabis
3 as recommended by the advisory board;

4 ~~[(5) identify requirements for the licensure~~
5 ~~of producers and cannabis production facilities and set forth~~
6 ~~procedures to obtain licenses;~~

7 ~~(6) develop a distribution system for medical~~
8 ~~cannabis that provides for:~~

9 ~~(a) cannabis production facilities~~
10 ~~within New Mexico housed on secured grounds and operated by~~
11 ~~licensed producers; and~~

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

17 ~~(7)] (5) determine additional duties and~~
18 ~~responsibilities of the advisory board; and~~

19 ~~[(8)] (6) be revised and updated as necessary.~~

20 B. The department shall issue registry
21 identification cards to a patient and to the primary caregiver
22 for that patient, if any, who submit the following, in
23 accordance with the department's rules:

24 (1) a written certification;

25 (2) the name, address and date of birth of the

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1 patient;

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

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

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

16 D. The department shall issue a registry
17 identification card within five days of approving an
18 application, and a card shall expire one year after the date of
19 issuance. A registry identification card shall contain:

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

22 (2) the date of issuance and expiration date
23 of the registry identification card; and

24 (3) other information that the department may
25 require by rule.

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1 E. A person who possesses a registry identification
2 card shall notify the department of any change in the person's
3 name, address, qualified patient's practitioner, qualified
4 patient's primary caregiver or change in status of the
5 qualified patient's debilitating medical condition within ten
6 days of the change.

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

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

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

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

25 (3) as provided in the federal Health

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1 Insurance Portability and Accountability Act of 1996."

2 SECTION 57. Section 30-31-2 NMSA 1978 (being Laws 1972,
3 Chapter 84, Section 2, as amended) is amended to read:

4 "30-31-2. DEFINITIONS.--As used in the Controlled
5 Substances Act:

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

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

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

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

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

20 F. "counterfeit substance" means a controlled
21 substance that bears the unauthorized trademark, trade name,
22 imprint, number, device or other identifying mark or likeness
23 of a manufacturer, distributor or dispenser other than the
24 person who in fact manufactured, distributed or dispensed the
25 controlled substance;

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1 G. "deliver" means the actual, constructive or
2 attempted transfer from one person to another of a controlled
3 substance or controlled substance analog, whether or not there
4 is an agency relationship;

5 H. "dispense" means to deliver a controlled
6 substance to an ultimate user or research subject pursuant to
7 the lawful order of a practitioner, including the
8 administering, prescribing, packaging, labeling or compounding
9 necessary to prepare the controlled substance for that
10 delivery;

11 I. "dispenser" means a practitioner who dispenses
12 and includes hospitals, pharmacies and clinics where controlled
13 substances are dispensed;

14 J. "distribute" means to deliver other than by
15 administering or dispensing a controlled substance or
16 controlled substance analog;

17 K. "drug" or "substance" means substances
18 recognized as drugs in the official United States
19 pharmacopoeia, official homeopathic pharmacopoeia of the United
20 States or official national formulary or any respective
21 supplement to those publications. It does not include devices
22 or their components, parts or accessories;

23 ~~[L. "hashish" means the resin extracted from any~~
24 ~~part of marijuana, whether growing or not, and every compound,~~
25 ~~manufacture, salt, derivative, mixture or preparation of such~~

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1 resins;

2 M.] L. "manufacture" means the production,
3 preparation, compounding, conversion or processing of a
4 controlled substance or controlled substance analog by
5 extraction from substances of natural origin or independently
6 by means of chemical synthesis or by a combination of
7 extraction and chemical synthesis and includes any packaging or
8 repackaging of the substance or labeling or relabeling of its
9 container, except that this term does not include the
10 preparation or compounding of a controlled substance:

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

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

18 ~~[N. "marijuana" means all parts of the plant~~
19 ~~cannabis, including any and all varieties, species and~~
20 ~~subspecies of the genus Cannabis, whether growing or not, the~~
21 ~~seeds thereof and every compound, manufacture, salt,~~
22 ~~derivative, mixture or preparation of the plant or its seeds.~~
23 ~~It does not include the mature stalks of the plant, hashish,~~
24 ~~tetrahydrocannabinols extracted or isolated from marijuana,~~
25 ~~fiber produced from the stalks, oil or cake made from the seeds~~

.208902.3

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1 ~~of the plant, any other compound, manufacture, salt,~~
2 ~~derivative, mixture or preparation of the mature stalks, fiber,~~
3 ~~oil or cake, or the sterilized seed of the plant that is~~
4 ~~incapable of germination;~~

5 ~~Θ.]~~ M. "narcotic drug" means any of the following,
6 whether produced directly or indirectly by extraction from
7 substances of vegetable origin or independently by means of
8 chemical synthesis or by a combination of extraction and
9 chemical synthesis:

10 (1) opium and opiate and any salt, compound,
11 derivative or preparation of opium or opiate;

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

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

19 (4) coca leaves and any salt, compound,
20 derivative or preparation of coca leaves, any salt, compound,
21 isomer, derivative or preparation that is a chemical equivalent
22 of any of these substances except decocainized coca leaves or
23 extractions of coca leaves that do not contain cocaine or
24 ecgonine;

25 ~~[P.]~~ N. "opiate" means any substance having an

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~~[bracketed material] = delete~~

1 addiction-forming or addiction-sustaining liability similar to
2 morphine or being capable of conversion into a drug having
3 addiction-forming or addiction-sustaining liability. "Opiate"
4 does not include, unless specifically designated as controlled
5 under Section 30-31-5 NMSA 1978, the dextrorotatory isomer of
6 3-methoxy-n-methylmorphinan and its salts, dextromethorphan.
7 "Opiate" does include its racemic and levorotatory forms;

8 [Q-] O. "person" means an individual, partnership,
9 corporation, association, institution, political subdivision,
10 government agency or other legal entity;

11 [R-] P. "practitioner" means a physician, certified
12 advanced practice chiropractic physician, doctor of oriental
13 medicine, dentist, physician assistant, certified nurse
14 practitioner, clinical nurse specialist, certified nurse-
15 midwife, prescribing psychologist, veterinarian, euthanasia
16 technician, pharmacist, pharmacist clinician or other person
17 licensed or certified to prescribe and administer drugs that
18 are subject to the Controlled Substances Act;

19 [S-] Q. "prescription" means an order given
20 individually for the person for whom is prescribed a controlled
21 substance, either directly from a licensed practitioner or the
22 practitioner's agent to the pharmacist, including by means of
23 electronic transmission, or indirectly by means of a written
24 order signed by the prescriber, bearing the name and address of
25 the prescriber, the prescriber's license classification, the

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1 name and address of the patient, the name and quantity of the
2 drug prescribed, directions for use and the date of issue and
3 in accordance with the Controlled Substances Act or rules
4 adopted thereto;

5 [F.] R. "scientific investigator" means a person
6 registered to conduct research with controlled substances in
7 the course of the person's professional practice or research
8 and includes analytical laboratories;

9 [U.] S. "ultimate user" means a person who lawfully
10 possesses a controlled substance for the person's own use or
11 for the use of a member of the person's household or for
12 administering to an animal under the care, custody and control
13 of the person or by a member of the person's household;

14 ~~[V.] "drug paraphernalia" means all equipment,~~
15 ~~products and materials of any kind that are used, intended for~~
16 ~~use or designed for use in planting, propagating, cultivating,~~
17 ~~growing, harvesting, manufacturing, compounding, converting,~~
18 ~~producing, processing, preparing, testing, analyzing,~~
19 ~~packaging, repackaging, storing, containing, concealing,~~
20 ~~injecting, ingesting, inhaling or otherwise introducing into~~
21 ~~the human body a controlled substance, or controlled substance~~
22 ~~analog in violation of the Controlled Substances Act. It~~
23 ~~includes:~~

24 ~~(1) kits used, intended for use or designed~~
25 ~~for use in planting, propagating, cultivating, growing or~~

.208902.3

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[bracketed material] = delete

1 ~~harvesting any species of plant that is a controlled substance~~
2 ~~or controlled substance analog or from which a controlled~~
3 ~~substance can be derived;~~

4 ~~(2) kits used, intended for use or designed~~
5 ~~for use in manufacturing, compounding, converting, producing,~~
6 ~~processing or preparing controlled substances or controlled~~
7 ~~substance analogs;~~

8 ~~(3) isomerization devices used, intended for~~
9 ~~use or designed for use in increasing the potency of any~~
10 ~~species of plant that is a controlled substance;~~

11 ~~(4) testing equipment used, intended for use~~
12 ~~or designed for use in identifying or in analyzing the~~
13 ~~strength, effectiveness or purity of controlled substances or~~
14 ~~controlled substance analogs;~~

15 ~~(5) scales or balances used, intended for use~~
16 ~~or designed for use in weighing or measuring controlled~~
17 ~~substances or controlled substance analogs;~~

18 ~~(6) diluents and adulterants, such as quinine~~
19 ~~hydrochloride, mannitol, mannite dextrose and lactose, used,~~
20 ~~intended for use or designed for use in cutting controlled~~
21 ~~substances or controlled substance analogs;~~

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

25 ~~(8) blenders, bowls, containers, spoons and~~

.208902.3

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[bracketed material] = delete

1 ~~mixing devices used, intended for use or designed for use in~~
2 ~~compounding controlled substances or controlled substance~~
3 ~~analogs;~~

4 ~~(9) capsules, balloons, envelopes and other~~
5 ~~containers used, intended for use or designed for use in~~
6 ~~packaging small quantities of controlled substances or~~
7 ~~controlled substance analogs;~~

8 ~~(10) containers and other objects used,~~
9 ~~intended for use or designed for use in storing or concealing~~
10 ~~controlled substances or controlled substance analogs;~~

11 ~~(11) hypodermic syringes, needles and other~~
12 ~~objects used, intended for use or designed for use in~~
13 ~~parenterally injecting controlled substances or controlled~~
14 ~~substance analogs into the human body;~~

15 ~~(12) objects used, intended for use or~~
16 ~~designed for use in ingesting, inhaling or otherwise~~
17 ~~introducing marijuana, cocaine, hashish or hashish oil into the~~
18 ~~human body, such as:~~

19 ~~(a) metal, wooden, acrylic, glass,~~
20 ~~stone, plastic or ceramic pipes, with or without screens,~~
21 ~~permanent screens, hashish heads or punctured metal bowls;~~

22 ~~(b) water pipes;~~

23 ~~(c) carburetion tubes and devices;~~

24 ~~(d) smoking and carburetion masks;~~

25 ~~(e) roach clips, meaning objects used to~~

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[bracketed material] = delete

1 ~~hold burning material, such as a marijuana cigarette, that has~~
2 ~~become too small to hold in the hand;~~

3 ~~(f) miniature cocaine spoons and cocaine~~
4 ~~vials;~~

5 ~~(g) chamber pipes;~~

6 ~~(h) carburetor pipes;~~

7 ~~(i) electric pipes;~~

8 ~~(j) air-driven pipes;~~

9 ~~(k) chilams;~~

10 ~~(l) bonges; or~~

11 ~~(m) ice pipes or chillers; and~~

12 ~~(13) in determining whether an object is drug~~
13 ~~paraphernalia, a court or other authority should consider, in~~
14 ~~addition to all other logically relevant factors, the~~
15 ~~following:~~

16 ~~(a) statements by the owner or by anyone~~
17 ~~in control of the object concerning its use;~~

18 ~~(b) the proximity of the object, in time~~
19 ~~and space, to a direct violation of the Controlled Substances~~
20 ~~Act or any other law relating to controlled substances or~~
21 ~~controlled substance analogs;~~

22 ~~(c) the proximity of the object to~~
23 ~~controlled substances or controlled substance analogs;~~

24 ~~(d) the existence of any residue of a~~
25 ~~controlled substance or controlled substance analog on the~~

underscoring material = new
[bracketed material] = delete

1 object;

2 ~~(e) instructions, written or oral,~~
3 ~~provided with the object concerning its use;~~

4 ~~(f) descriptive materials accompanying~~
5 ~~the object that explain or depict its use;~~

6 ~~(g) the manner in which the object is~~
7 ~~displayed for sale; and~~

8 ~~(h) expert testimony concerning its use;~~

9 W.] T. "controlled substance analog":

10 (1) means a substance other than a controlled
11 substance that has a chemical structure substantially similar
12 to that of a controlled substance in Schedule I, II, III, IV or
13 V or that was specifically designed to produce effects
14 substantially similar to that of controlled substances in
15 Schedule I, II, III, IV or V. Examples of chemical classes in
16 which controlled substance analogs are found include the
17 following:

- 18 [~~(1)~~] (a) phenethylamines;
- 19 [~~(2)~~] (b) N-substituted piperidines;
- 20 [~~(3)~~] (c) morphinans;
- 21 [~~(4)~~] (d) ecgonines;
- 22 [~~(5)~~] (e) quinazolinones;
- 23 [~~(6)~~] (f) substituted indoles; and
- 24 [~~(7)~~] (g) arylcycloalkylamines;

25 [~~Specifically excluded from the definition of "controlled~~

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[bracketed material] = delete

1 ~~substance analog" are those] and~~

2 (2) does not include substances that are
3 generally recognized as safe and effective within the meaning
4 of the Federal Food, Drug and Cosmetic Act or have been
5 manufactured, distributed or possessed in conformance with the
6 provisions of an approved new drug application or an exemption
7 for investigational use within the meaning of Section 505 of
8 the Federal Food, Drug and Cosmetic Act;

9 [~~X-~~] U. "human consumption" includes application,
10 injection, inhalation, ingestion or any other manner of
11 introduction;

12 [~~Y-~~] V. "drug-free school zone" means a public
13 school, parochial school or private school or property that is
14 used for a public, parochial or private school purpose and the
15 area within one thousand feet of the school property line, but
16 it does not mean any post-secondary school; and

17 [~~Z-~~] W. "valid practitioner-patient relationship"
18 means a professional relationship, as defined by the
19 practitioner's licensing board, between the practitioner and
20 the patient."

21 **SECTION 58.** Section 30-31-6 NMSA 1978 (being Laws 1972,
22 Chapter 84, Section 6, as amended) is amended to read:

23 "30-31-6. SCHEDULE I.--The following controlled
24 substances are included in Schedule I:

25 A. any of the following opiates, including their

.208902.3

1 isomers, esters, ethers, salts, and salts of isomers, esters
2 and ethers, unless specifically exempted, whenever the
3 existence of these isomers, esters, ethers and salts is
4 possible within the specific chemical designation:

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

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

22 B. any of the following opium derivatives, their
23 salts, isomers and salts of isomers, unless specifically
24 exempted, whenever the existence of these salts, isomers and
25 salts of isomers is possible within the specific chemical

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1 designation:

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

24 C. any material, compound, mixture or preparation
25 that contains any quantity of the following hallucinogenic

.208902.3

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[bracketed material] = delete

1 substances, their salts, isomers and salts of isomers, unless
2 specifically exempted, whenever the existence of these salts,
3 isomers and salts of isomers is possible within the specific
4 chemical designation:

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

- 1 -3-(1-naphthoyl)indole;
2 (b) 1-butyl-3-(1-naphthoyl)indole;
3 (c) 1-hexyl-3-(1-naphthoyl)indole;
4 (d) 1-pentyl-3-(1-naphthoyl)indole;
5 (e) 1-pentyl-3-(2-methoxyphenylacetyl)
6 indole;
7 (f) cannabicyclohexanol (CP 47, 497 and
8 homologues: 5-(1,1-dimethylheptyl)-2-[(1R,3S)
9 -3-hydroxycyclohexyl]-phenol (CP-47,497); and 5-(1,
10 1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol;
11 (g) 6aR,10aR)-9-(hydroxymethyl)
12 -6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,
13 10a-tetrahydrobenzo[c]chromen-1-ol);
14 (h) dexanabinol, (6aS,10aS)
15 -9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)
16 -6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol;
17 (i) 1-pentyl-3-(4-chloro naphthoyl)
18 indole;
19 (j) (2-methyl-1-propyl-1H-indol-3-yl)
20 -1-naphthalenyl-methanone; and
21 (k) 5-(1,1-dimethylheptyl)-2-(3-hydroxy
22 cyclohexyl)-phenol;
23 [~~+20~~] (18) 3,4-methylenedioxymethcathinone;
24 [~~+21~~] (19) 3,4-methylenedioxypyrovalerone;
25 [~~+22~~] (20) 4-methylmethcathinone;

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1 [~~(23)~~] (21) 4-methoxymethcathinone;

2 [~~(24)~~] (22) 3-fluoromethcathinone; and

3 [~~(25)~~] (23) 4-fluoromethcathinone;

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

12 E. the enumeration of [~~marijuana~~]
13 tetrahydrocannabinols or chemical derivatives of
14 tetrahydrocannabinol as Schedule I controlled substances does
15 not apply to the use of [~~marijuana~~] tetrahydrocannabinols or
16 chemical derivatives of tetrahydrocannabinol by:

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

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

21 F. controlled substances added to Schedule I by
22 rule adopted by the board pursuant to Section 30-31-3 NMSA
23 1978."

24 SECTION 59. Section 30-31-7 NMSA 1978 (being Laws 1972,
25 Chapter 84, Section 7, as amended) is amended to read:

.208902.3

1 "30-31-7. SCHEDULE II.--

2 A. The following controlled substances are included
3 in Schedule II:

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

10 (a) opium and opiate, and any salt,
11 compound, derivative or preparation of opium or opiate;

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

17 (c) opium poppy and poppy straw;

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

24 [~~(e) marijuana, but only for the use by~~
25 ~~certified patients pursuant to the Controlled Substances~~

.208902.3

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

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

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

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

- 1 (j) levorphanol;
2 (k) meperidine;
3 (l) metazocine;
4 (m) methadone;
5 (n) methadone--intermediate,
6 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
7 (o) moramide--intermediate,
8 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid;
9 (p) oxycodone;
10 (q) pethidine;
11 (r) pethidine--intermediate--A,
12 4-cyano-1-methyl-4-phenylpiperidine;
13 (s) pethidine--intermediate--B,
14 ethyl-4-phenyl-piperidine-4-carboxylate;
15 (t) pethidine--intermediate--C,
16 1-methyl-4-phenylpiperidine-4-carboxylic acid;
17 (u) phenazocine;
18 (v) piminodine;
19 (w) racemethorphan; and
20 (x) racemorphan;
21 (3) unless listed in another schedule, any
22 material, compound, mixture or preparation that contains any
23 quantity of the following substances having a potential for
24 abuse associated with a stimulant effect on the central nervous
25 system:

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~~[bracketed material] = delete~~

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

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

.208902.3

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[bracketed material] = delete

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

5 SECTION 60. Section 30-31-21 NMSA 1978 (being Laws 1972,
6 Chapter 84, Section 21, as amended) is amended to read:

7 "30-31-21. DISTRIBUTION TO A MINOR.--Except as authorized
8 by the Controlled Substances Act, no person who is eighteen
9 years of age or older shall intentionally distribute a
10 controlled substance to a person under the age of eighteen
11 years. Any person who violates this section with respect to

12 [~~A. marijuana is:~~

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

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

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

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

.208902.3

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

4 **SECTION 61.** Section 30-31-22 NMSA 1978 (being Laws 1972,
5 Chapter 84, Section 22, as amended) is amended to read:

6 "30-31-22. CONTROLLED OR COUNTERFEIT SUBSTANCES--
7 DISTRIBUTION PROHIBITED.--

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

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

18 (a) for the first offense, guilty of a
19 fourth 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 third 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

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~~[bracketed material] = delete~~

1 one hundred pounds is possessed with intent to distribute or
2 distributed or both, guilty of a third 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 second
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 in
11 Schedule I, II, III or IV or a controlled substance analog of a
12 controlled substance enumerated in Schedule I, II, III or IV
13 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 third
19 degree felony and shall be sentenced pursuant to the provisions
20 of Section 31-18-15 NMSA 1978; and

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

24 (3) a controlled substance enumerated in
25 Schedule V or a controlled substance analog of a controlled

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

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

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

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

22 C. Except as authorized by the Controlled Substances
23 Act, it is unlawful for a person to intentionally create or
24 deliver, or possess with intent to deliver, a counterfeit
25 substance. A person who violates this subsection with respect

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1 to:

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

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

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

14 (1) ~~marijuana or~~ synthetic cannabinoids is:

15 (a) 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;

18 (b) 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;

21 (c) for the first offense, if more than one
22 hundred pounds is possessed with intent to distribute or
23 distributed or both, guilty of a second degree felony and shall
24 be sentenced pursuant to the provisions of Section 31-18-15
25 NMSA 1978; and

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

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

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

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

20 (3) a controlled substance enumerated in
21 Schedule V or a controlled substance analog of a controlled
22 substance enumerated in Schedule V is guilty of a fourth degree
23 felony and shall be sentenced pursuant to the provisions of
24 Section 31-18-15 NMSA 1978; and

25 (4) the intentional creation, delivery or

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1 possession with the intent to deliver:

2 (a) a counterfeit substance enumerated in
3 Schedule I, II, III or IV is guilty of a third degree felony
4 and shall be sentenced pursuant to the provisions of Section
5 31-18-15 NMSA 1978; and

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

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

17 **SECTION 62.** Section 30-31-23 NMSA 1978 (being Laws 1972,
18 Chapter 84, Section 23, as amended) is amended to read:

19 "30-31-23. CONTROLLED SUBSTANCES--POSSESSION
20 PROHIBITED.--

21 A. It is unlawful for a person intentionally to
22 possess a controlled substance unless the substance was
23 obtained pursuant to a valid prescription or order of a
24 practitioner while acting in the course of professional
25 practice or except as otherwise authorized by the Controlled

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1 Substances Act. It is unlawful for a person intentionally to
2 possess a controlled substance analog.

3 B. A person who violates this section with respect
4 to:

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

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

20 (3) eight ounces or more of [~~marijuana or~~]
21 synthetic cannabinoids is guilty of a fourth degree felony and
22 shall be sentenced pursuant to the provisions of Section
23 31-18-15 NMSA 1978.

24 C. A minor who violates this section with respect to
25 the substances listed in this subsection is guilty of a petty

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

- 11 (1) synthetic cannabinoids;
- 12 (2) any of the substances listed in Paragraphs
13 [~~(20)~~] (18) through [~~(25)~~] (23) of Subsection C of Section
14 30-31-6 NMSA 1978; or
- 15 (3) a substance added to Schedule I by a rule of
16 the board adopted on or after [~~the effective date of this~~]
17 March 31, 2011 [~~act~~] if the board determines that the
18 pharmacological effect of the substance, the risk to the public
19 health by abuse of the substance and the potential of the
20 substance to produce psychic or physiological dependence
21 liability is similar to the substances described in Paragraph
22 (1) or (2) of this subsection.

23 D. Except for those substances listed in Subsection E
24 of this section, a person who violates this section with
25 respect to any amount of any controlled substance enumerated in

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1 Schedule I, II, III or IV, or a controlled substance analog of
2 a substance enumerated in Schedule I, II, III or IV is guilty
3 of a misdemeanor and shall be punished by a fine of not less
4 than five hundred dollars (\$500) or more than one thousand
5 dollars (\$1,000) or by imprisonment for a definite term less
6 than one year, or both.

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

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

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

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

24 (2) more than one ounce and less than eight
25 ounces of [~~marijuana or~~] synthetic cannabinoids is guilty of a

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

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

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

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

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

23 **SECTION 63.** Section 30-31-28 NMSA 1978 (being Laws 1972,
24 Chapter 84, Section 28) is amended to read:

25 "30-31-28. **CONDITIONAL DISCHARGE FOR POSSESSION AS FIRST**

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1 OFFENSE.--

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

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

18 C. If during the period of [~~his~~] probation the person
19 does not violate [~~any of~~] the conditions of the probation, then
20 upon expiration of the period the court shall discharge such
21 person and dismiss the proceedings against [~~him~~] the person.
22 Discharge and dismissal under this section shall be without
23 court adjudication of guilt, but a nonpublic record shall be
24 retained by the attorney general solely for the purpose of use
25 by the courts in determining whether or not, in subsequent

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1 proceedings, the person qualifies under this section. A
2 discharge or dismissal shall not be deemed a conviction for
3 purposes of disqualifications or disabilities imposed by law
4 upon conviction of a crime, including the penalties prescribed
5 under this section for second or subsequent convictions or for
6 any other purpose. Discharge and dismissal under this section
7 may occur only once with respect to ~~[any]~~ a person.

8 D. Upon the dismissal of a person and discharge of
9 the proceedings against ~~[him]~~ the person under this section, a
10 person, if ~~[he was]~~ not over eighteen years of age at the time
11 of the offense, may apply to the court for an order to expunge
12 from all official records all recordation relating to ~~[his]~~ the
13 arrest, indictment or information, trial, finding or plea of
14 guilty, and dismissal and discharge pursuant to this section
15 except nonpublic records filed with the attorney general. If
16 the court determines, after hearing, that the person was
17 dismissed and the proceedings against ~~[him]~~ the person
18 discharged and that ~~[he]~~ the person was not over eighteen years
19 of age at the time of the offense, it shall enter the order.
20 The effect of the order shall be to restore the person, in the
21 contemplation of the law, to the status ~~[he]~~ the person
22 occupied before the arrest or indictment or information. No
23 person in whose behalf an order has been entered shall be held
24 thereafter under any provision of any law to be guilty of
25 perjury or otherwise giving a false statement by reason of

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1 ~~[his]~~ the person's failures to recite or acknowledge such
2 arrest, or indictment or information or trial in response to
3 any inquiry made of ~~[him]~~ the person for any purpose."

4 **SECTION 64.** Section 30-31-34 NMSA 1978 (being Laws 1972,
5 Chapter 84, Section 33, as amended) is amended to read:

6 "30-31-34. FORFEITURES--PROPERTY SUBJECT.--The following
7 are subject to forfeiture pursuant to the provisions of the
8 Forfeiture Act:

9 A. all raw materials, products and equipment of any
10 kind, including firearms that are used or intended for use in
11 manufacturing, compounding, processing, delivering, importing
12 or exporting any controlled substance or controlled substance
13 analog in violation of the Controlled Substances Act;

14 B. all property that is used or intended for use as a
15 container for property described in Subsection A of this
16 section;

17 C. all conveyances, including aircraft, vehicles or
18 vessels that are used or intended for use to transport or in
19 any manner to facilitate the transportation for the purpose of
20 sale of property described in Subsection A of this section;

21 D. all books, records and research products and
22 materials, including formulas, microfilm, tapes and data that
23 are used or intended for use in violation of the Controlled
24 Substances Act;

25 E. narcotics paraphernalia or money that is a fruit

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1 or instrumentality of the crime; and

2 F. notwithstanding Subsection C of this section and
3 the provisions of the Forfeiture Act:

4 (1) a conveyance used by a person as a common
5 carrier in the transaction of business as a common carrier
6 shall not be subject to forfeiture pursuant to this section
7 unless it appears that the owner or other person in charge of
8 the conveyance is a consenting party or privy to a violation of
9 the Controlled Substances Act;

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

14 (3) a conveyance is not subject to forfeiture
15 for a violation of law the penalty for which is a misdemeanor;
16 and

17 (4) a forfeiture of a conveyance encumbered by a
18 bona fide security interest shall be subject to the interest of
19 a secured party if the secured party neither had knowledge of
20 nor consented to the act or omission [~~and~~

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

23 SECTION 65. TEMPORARY PROVISION--COMPILATION

24 INSTRUCTION--RECONCILIATION.--If acts making amendments to
25 Sections 30-31-2 and 30-31-6 NMSA 1978 are enacted by the first
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1 and second sessions of the fifty-third legislature, the
2 provisions of those acts shall be reconciled and compiled in
3 accordance with the provisions of Section 12-1-8 NMSA 1978,
4 notwithstanding that the amendments were not made in the same
5 session of the legislature.

6 SECTION 66. REPEAL.--Section 30-31-25.1 NMSA 1978 (being
7 Laws 1981, Chapter 31, Section 2, as amended) is repealed.

8 SECTION 67. EFFECTIVE DATE.--The effective date of the
9 provisions of this act is July 1, 2018.

