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SENATE BILL 6

**52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SPECIAL SESSION, 2016**

INTRODUCED BY

John Arthur Smith and Carlos Cisneros

AN ACT

RELATING TO TAXATION; ACCELERATING THE PHASE-OUT OF THE HOLD  
HARMLESS DISTRIBUTIONS; PROVIDING A CIVIL PENALTY IF A TAXPAYER  
FAILS TO CORRECTLY FILE FOR A GROSS RECEIPTS DEDUCTION PURSUANT  
TO SECTION 7-9-92 NMSA 1978 (BEING LAWS 2004, CHAPTER 116,  
SECTION 5) OR SECTION 7-9-93 NMSA 1978 (BEING LAWS 2004,  
CHAPTER 116, SECTION 6, AS AMENDED); CLARIFYING THAT A PERSON  
WITHOUT PHYSICAL PRESENCE IN THE STATE THAT HAS LESS THAN ONE  
HUNDRED THOUSAND DOLLARS (\$100,000) IN GROSS RECEIPTS IS NOT  
ENGAGING IN BUSINESS PURSUANT TO THE GROSS RECEIPTS AND  
COMPENSATING TAX ACT; BARRING THE TAXATION AND REVENUE  
DEPARTMENT FROM ENFORCING COLLECTION OF THE GROSS RECEIPTS TAX  
IN CERTAIN CIRCUMSTANCES; CLARIFYING THE TYPE OF HEALTH CARE  
PROVIDER THAT MAY TAKE CERTAIN GROSS RECEIPTS TAX DEDUCTIONS  
FOR MEDICAL AND HEALTH CARE SERVICES; PROVIDING ADDITIONAL  
REQUIREMENTS TO BE ELIGIBLE TO CLAIM A HIGH-WAGE JOBS TAX

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1 CREDIT; EXCLUDING BENEFITS FROM CALCULATION OF THE CREDIT  
2 AMOUNT; LIMITING THE AMOUNT OF HIGH-WAGE JOBS TAX CREDITS TO AN  
3 AGGREGATE AMOUNT OF TWENTY-FOUR MILLION DOLLARS (\$24,000,000)  
4 PER FISCAL YEAR; DECLARING AN EMERGENCY.

5  
6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

7 SECTION 1. Section 7-1-6.46 NMSA 1978 (being Laws 2004,  
8 Chapter 116, Section 1, as amended) is amended to read:

9 "7-1-6.46. DISTRIBUTION TO MUNICIPALITIES--OFFSET FOR  
10 FOOD DEDUCTION AND HEALTH CARE PRACTITIONER SERVICES  
11 DEDUCTION.--

12 A. For a municipality that [~~has not elected to~~  
13 ~~impose~~] does not have in effect a municipal hold harmless gross  
14 receipts tax through an ordinance and that has a population of  
15 less than ten thousand according to the most recent federal  
16 decennial census, a distribution pursuant to Section 7-1-6.1  
17 NMSA 1978 shall be made to [~~a~~] the municipality in an amount,  
18 subject to any increase or decrease made pursuant to Section  
19 7-1-6.15 NMSA 1978, equal to the [~~sum of:~~

20 ~~(1) the total deductions claimed pursuant to~~  
21 ~~Section 7-9-92 NMSA 1978 for the month by taxpayers from~~  
22 ~~business locations attributable to the municipality multiplied~~  
23 ~~by the sum of the combined rate of all municipal local option~~  
24 ~~gross receipts taxes in effect in the municipality for the~~  
25 ~~month plus one and two hundred twenty-five thousandths percent;~~

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1 and

2 ~~(2) the total deductions claimed pursuant to~~  
3 ~~Section 7-9-93 NMSA 1978 for the month by taxpayers from~~  
4 ~~business locations attributable to the municipality multiplied~~  
5 ~~by the sum of the combined rate of all municipal local option~~  
6 ~~gross receipts taxes in effect in the municipality for the~~  
7 ~~month plus one and two hundred twenty-five thousandths percent]~~  
8 applicable maximum distribution for the municipality.

9 B. For a municipality not described in Subsection A  
10 of this section, a distribution pursuant to Section 7-1-6.1  
11 NMSA 1978 shall be made to the municipality in an amount,  
12 subject to any increase or decrease made pursuant to Section  
13 7-1-6.15 NMSA 1978, equal to the ~~[sum of:~~

14 ~~(1) the total deductions claimed pursuant to~~  
15 ~~Section 7-9-92 NMSA 1978 for the month by taxpayers from~~  
16 ~~business locations attributable to the municipality multiplied~~  
17 ~~by the sum of the combined rate of all municipal local option~~  
18 ~~gross receipts taxes in effect in the municipality on January~~  
19 ~~1, 2007 plus one and two hundred twenty-five thousandths~~  
20 ~~percent in the following percentages:~~

21 ~~(a) prior to July 1, 2015, one hundred~~  
22 ~~percent;~~

23 ~~(b) on or after July 1, 2015 and prior~~  
24 ~~to July 1, 2016, ninety-four percent;~~

25 ~~(c) on or after July 1, 2016 and prior~~

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1 ~~to July 1, 2017, eighty-eight percent;~~

2 ~~(d) on or after July 1, 2017 and prior~~  
3 ~~to July 1, 2018, eighty-two percent;~~

4 ~~(e) on or after July 1, 2018 and prior~~  
5 ~~to July 1, 2019, seventy-six percent;~~

6 ~~(f) on or after July 1, 2019 and prior~~  
7 ~~to July 1, 2020, seventy percent;~~

8 ~~(g) on or after July 1, 2020 and prior~~  
9 ~~to July 1, 2021, sixty-three percent;~~

10 ~~(h) on or after July 1, 2021 and prior~~  
11 ~~to July 1, 2022, fifty-six percent;~~

12 ~~(i) on or after July 1, 2022 and prior~~  
13 ~~to July 1, 2023, forty-nine percent;~~

14 ~~(j) on or after July 1, 2023 and prior~~  
15 ~~to July 1, 2024, forty-two percent;~~

16 ~~(k) on or after July 1, 2024 and prior~~  
17 ~~to July 1, 2025, thirty-five percent;~~

18 ~~(l) on or after July 1, 2025 and prior~~  
19 ~~to July 1, 2026, twenty-eight percent;~~

20 ~~(m) on or after July 1, 2026 and prior~~  
21 ~~to July 1, 2027, twenty-one percent;~~

22 ~~(n) on or after July 1, 2027 and prior~~  
23 ~~to July 1, 2028, fourteen percent; and~~

24 ~~(o) on or after July 1, 2028 and prior~~  
25 ~~to July 1, 2029, seven percent; and~~

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1                   ~~(2) the total deductions claimed pursuant to~~  
2 ~~Section 7-9-93 NMSA 1978 for the month by taxpayers from~~  
3 ~~business locations attributable to the municipality multiplied~~  
4 ~~by the sum of the combined rate of all municipal local option~~  
5 ~~gross receipts taxes in effect in the municipality on January~~  
6 ~~1, 2007 plus one and two hundred twenty-five thousandths~~  
7 ~~percent in] applicable maximum distribution for the~~  
8 municipality multiplied by the following percentages:

9                   ~~[(a) prior to July 1, 2015, one hundred~~  
10 ~~percent;~~

11                   ~~(b) on or after July 1, 2015 and prior~~  
12 ~~to July 1, 2016, ninety-four percent;~~

13                   ~~(c) on or after July 1, 2016 and prior~~  
14 ~~to July 1, 2017, eighty-eight percent;~~

15                   ~~(d) on or after July 1, 2017 and prior~~  
16 ~~to July 1, 2018, eighty-two percent;~~

17                   ~~(e)]~~ (1) on or after ~~[July 1, 2018]~~ January 1,  
18 2017 and prior to July 1, ~~[2019]~~ 2018, seventy-six percent;

19                   ~~[(f)]~~ (2) on or after July 1, ~~[2019]~~ 2018 and  
20 prior to July 1, ~~[2020]~~ 2019, seventy percent;

21                   ~~[(g)]~~ (3) on or after July 1, ~~[2020]~~ 2019 and  
22 prior to July 1, ~~[2021]~~ 2020, sixty-three percent;

23                   ~~[(h)]~~ (4) on or after July 1, ~~[2021]~~ 2020 and  
24 prior to July 1, ~~[2022]~~ 2021, fifty-six percent;

25                   ~~[(i)]~~ (5) on or after July 1, ~~[2022]~~ 2021 and

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1 prior to July 1, ~~[2023]~~ 2022, forty-nine percent;  
2 ~~[(j)]~~ (6) on or after July 1, ~~[2023]~~ 2022 and  
3 prior to July 1, ~~[2024]~~ 2023, forty-two percent;  
4 ~~[(k)]~~ (7) on or after July 1, ~~[2024]~~ 2023 and  
5 prior to July 1, ~~[2025]~~ 2024, thirty-five percent;  
6 ~~[(l)]~~ (8) on or after July 1, ~~[2025]~~ 2024 and  
7 prior to July 1, ~~[2026]~~ 2025, twenty-eight percent;  
8 ~~[(m)]~~ (9) on or after July 1, ~~[2026]~~ 2025 and  
9 prior to July 1, ~~[2027]~~ 2026, twenty-one percent;  
10 ~~[(n)]~~ (10) on or after July 1, ~~[2027]~~ 2026 and  
11 prior to July 1, ~~[2028]~~ 2027, fourteen percent; ~~and~~  
12 ~~[(o)]~~ (11) on or after July 1, ~~[2028]~~ 2027 and  
13 prior to July 1, ~~[2029]~~ 2028, seven percent; and  
14 (12) on and after July 1, 2028, zero percent.

15 C. ~~[The]~~ A distribution pursuant to ~~[Subsections A~~  
16 ~~and B of]~~ this section is in lieu of revenue that would have  
17 been received by the municipality but for the deductions  
18 provided by Sections 7-9-92 and 7-9-93 NMSA 1978. The  
19 distribution shall be considered gross receipts tax revenue and  
20 shall be used by the municipality in the same manner as gross  
21 receipts tax revenue, including payment of gross receipts tax  
22 revenue bonds. ~~[A distribution pursuant to this section to a~~  
23 ~~municipality not described in Subsection A of this section or~~  
24 ~~to a municipality that has imposed a gross receipts tax through~~  
25 ~~an ordinance that does not provide a deduction contained in the~~

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1 ~~Gross Receipts and Compensating Tax Act shall not be made on or~~  
2 ~~after July 1, 2029.]~~

3 D. If the reductions made by this [2013] 2016 act  
4 to the distributions made pursuant to [~~Subsections A and B of~~]  
5 this section impair the ability of a municipality to meet its  
6 principal or interest payment obligations for revenue bonds  
7 that are outstanding prior to [~~July 1, 2013~~] the effective date  
8 of this 2016 act and that are secured by the pledge of all or  
9 part of the municipality's revenue from the distribution made  
10 pursuant to this section, then the amount distributed pursuant  
11 to this section to that municipality shall be increased by an  
12 amount sufficient to meet the required payment; provided that  
13 the total amount distributed to that municipality pursuant to  
14 this section does not exceed the amount that would have been  
15 due that municipality pursuant to this section as it was in  
16 effect on [~~June 30, 2013~~] the day prior to the effective date  
17 of this 2016 act.

18 E. For the purposes of this section:

19 (1) "business locations attributable to the  
20 municipality" means business locations:

21 [~~(1)~~] (a) within the municipality;

22 [~~(2)~~] (b) on land owned by the state,  
23 commonly known as the "state fairgrounds", within the exterior  
24 boundaries of the municipality;

25 [~~(3)~~] (c) outside the boundaries of the

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1 to Sections 7-9-92 and 7-9-93 NMSA 1978 for the month by  
2 taxpayers from business locations attributable to the  
3 municipality multiplied by the sum of the combined rate of all  
4 municipal local option gross receipts taxes in effect in the  
5 municipality on January 1, 2007 plus one and two hundred  
6 twenty-five thousandths percent.

7 F. A distribution pursuant to this section may be  
8 adjusted for a distribution made to a tax increment development  
9 district with respect to a portion of a gross receipts tax  
10 increment dedicated by a municipality pursuant to the Tax  
11 Increment for Development Act."

12 SECTION 2. Section 7-1-6.47 NMSA 1978 (being Laws 2004,  
13 Chapter 116, Section 2, as amended) is amended to read:

14 "7-1-6.47. DISTRIBUTION TO COUNTIES--OFFSET FOR FOOD  
15 DEDUCTION AND HEALTH CARE PRACTITIONER SERVICES DEDUCTION.--

16 A. For a county that [~~has not elected to impose~~]  
17 does not have in effect a county hold harmless gross receipts  
18 tax through an ordinance and that has a population of less than  
19 forty-eight thousand according to the most recent federal  
20 decennial census, a distribution pursuant to Section 7-1-6.1  
21 NMSA 1978 shall be made to [~~æ~~] the county in an amount, subject  
22 to any increase or decrease made pursuant to Section 7-1-6.15  
23 NMSA 1978, equal to the [~~sum of:~~

24 (~~1) the total deductions claimed pursuant to~~  
25 ~~Section 7-9-92 NMSA 1978 for the month by taxpayers from~~

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1 ~~business locations within a municipality in the county~~  
2 ~~multiplied by the combined rate of all county local option~~  
3 ~~gross receipts taxes in effect for the month that are imposed~~  
4 ~~throughout the county;~~

5 ~~(2) the total deductions claimed pursuant to~~  
6 ~~Section 7-9-92 NMSA 1978 for the month by taxpayers from~~  
7 ~~business locations in the county but not within a municipality~~  
8 ~~multiplied by the combined rate of all county local option~~  
9 ~~gross receipts taxes in effect for the month that are imposed~~  
10 ~~in the county area not within a municipality;~~

11 ~~(3) the total deductions claimed pursuant to~~  
12 ~~Section 7-9-93 NMSA 1978 for the month by taxpayers from~~  
13 ~~business locations within a municipality in the county~~  
14 ~~multiplied by the combined rate of all county local option~~  
15 ~~gross receipts taxes in effect for the month that are imposed~~  
16 ~~throughout the county; and~~

17 ~~(4) the total deductions claimed pursuant to~~  
18 ~~Section 7-9-93 NMSA 1978 for the month by taxpayers from~~  
19 ~~business locations in the county but not within a municipality~~  
20 ~~multiplied by the combined rate of all county local option~~  
21 ~~gross receipts taxes in effect for the month that are imposed~~  
22 ~~in the county area not within a municipality] applicable~~  
23 ~~maximum distribution for the county.~~

24 B. For a county not described in Subsection A of  
25 this section, a distribution pursuant to Section 7-1-6.1 NMSA  
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1 1978 shall be made to the county in an amount, subject to any  
2 increase or decrease made pursuant to Section 7-1-6.15 NMSA  
3 1978, equal to the ~~[sum of:~~

4 ~~(1) the total deductions claimed pursuant to~~  
5 ~~Section 7-9-92 NMSA 1978 for the month by taxpayers from~~  
6 ~~business locations within a municipality in the county~~  
7 ~~multiplied by the combined rate of all county local option~~  
8 ~~gross receipts taxes in effect on January 1, 2007 that are~~  
9 ~~imposed throughout the county in the following percentages:~~

10 ~~(a) prior to July 1, 2015, one hundred~~  
11 ~~percent;~~

12 ~~(b) on or after July 1, 2015 and prior~~  
13 ~~to July 1, 2016, ninety-four percent;~~

14 ~~(c) on or after July 1, 2016 and prior~~  
15 ~~to July 1, 2017, eighty-eight percent;~~

16 ~~(d) on or after July 1, 2017 and prior~~  
17 ~~to July 1, 2018, eighty-two percent;~~

18 ~~(e) on or after July 1, 2018 and prior~~  
19 ~~to July 1, 2019, seventy-six percent;~~

20 ~~(f) on or after July 1, 2019 and prior~~  
21 ~~to July 1, 2020, seventy percent;~~

22 ~~(g) on or after July 1, 2020 and prior~~  
23 ~~to July 1, 2021, sixty-three percent;~~

24 ~~(h) on or after July 1, 2021 and prior~~  
25 ~~to July 1, 2022, fifty-six percent;~~

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1 ~~(i) on or after July 1, 2022 and prior~~  
2 ~~to July 1, 2023, forty-nine percent;~~

3 ~~(j) on or after July 1, 2023 and prior~~  
4 ~~to July 1, 2024, forty-two percent;~~

5 ~~(k) on or after July 1, 2024 and prior~~  
6 ~~to July 1, 2025, thirty-five percent;~~

7 ~~(l) on or after July 1, 2025 and prior~~  
8 ~~to July 1, 2026, twenty-eight percent;~~

9 ~~(m) on or after July 1, 2026 and prior~~  
10 ~~to July 1, 2027, twenty-one percent;~~

11 ~~(n) on or after July 1, 2027 and prior~~  
12 ~~to July 1, 2028, fourteen percent; and~~

13 ~~(o) on or after July 1, 2028 and prior~~  
14 ~~to July 1, 2029, seven percent;~~

15 ~~(2) the total deductions claimed pursuant to~~  
16 ~~Section 7-9-92 NMSA 1978 for the month by taxpayers from~~  
17 ~~business locations in the county but not within a municipality~~  
18 ~~multiplied by the combined rate of all county local option~~  
19 ~~gross receipts taxes in effect on January 1, 2007 that are~~  
20 ~~imposed in the county area not within a municipality in the~~  
21 ~~following percentages:~~

22 ~~(a) prior to July 1, 2015, one hundred~~  
23 ~~percent;~~

24 ~~(b) on or after July 1, 2015 and prior~~  
25 ~~to July 1, 2016, ninety-four percent;~~

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1 ~~(c) on or after July 1, 2016 and prior~~  
2 ~~to July 1, 2017, eighty-eight percent;~~

3 ~~(d) on or after July 1, 2017 and prior~~  
4 ~~to July 1, 2018, eighty-two percent;~~

5 ~~(e) on or after July 1, 2018 and prior~~  
6 ~~to July 1, 2019, seventy-six percent;~~

7 ~~(f) on or after July 1, 2019 and prior~~  
8 ~~to July 1, 2020, seventy percent;~~

9 ~~(g) on or after July 1, 2020 and prior~~  
10 ~~to July 1, 2021, sixty-three percent;~~

11 ~~(h) on or after July 1, 2021 and prior~~  
12 ~~to July 1, 2022, fifty-six percent;~~

13 ~~(i) on or after July 1, 2022 and prior~~  
14 ~~to July 1, 2023, forty-nine percent;~~

15 ~~(j) on or after July 1, 2023 and prior~~  
16 ~~to July 1, 2024, forty-two percent;~~

17 ~~(k) on or after July 1, 2024 and prior~~  
18 ~~to July 1, 2025, thirty-five percent;~~

19 ~~(l) on or after July 1, 2025 and prior~~  
20 ~~to July 1, 2026, twenty-eight percent;~~

21 ~~(m) on or after July 1, 2026 and prior~~  
22 ~~to July 1, 2027, twenty-one percent;~~

23 ~~(n) on or after July 1, 2027 and prior~~  
24 ~~to July 1, 2028, fourteen percent; and~~

25 ~~(o) on or after July 1, 2028 and prior~~

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1 to July 1, 2029, seven percent;

2 ~~(3) the total deductions claimed pursuant to~~  
3 ~~Section 7-9-93 NMSA 1978 for the month by taxpayers from~~  
4 ~~business locations within a municipality in the county~~  
5 ~~multiplied by the combined rate of all county local option~~  
6 ~~gross receipts taxes in effect on January 1, 2007 that are~~  
7 ~~imposed throughout the county in the following percentages:~~

8 ~~(a) prior to July 1, 2015, one hundred~~  
9 ~~percent;~~

10 ~~(b) on or after July 1, 2015 and prior~~  
11 ~~to July 1, 2016, ninety-four percent;~~

12 ~~(c) on or after July 1, 2016 and prior~~  
13 ~~to July 1, 2017, eighty-eight percent;~~

14 ~~(d) on or after July 1, 2017 and prior~~  
15 ~~to July 1, 2018, eighty-two percent;~~

16 ~~(e) on or after July 1, 2018 and prior~~  
17 ~~to July 1, 2019, seventy-six percent;~~

18 ~~(f) on or after July 1, 2019 and prior~~  
19 ~~to July 1, 2020, seventy percent;~~

20 ~~(g) on or after July 1, 2020 and prior~~  
21 ~~to July 1, 2021, sixty-three percent;~~

22 ~~(h) on or after July 1, 2021 and prior~~  
23 ~~to July 1, 2022, fifty-six percent;~~

24 ~~(i) on or after July 1, 2022 and prior~~  
25 ~~to July 1, 2023, forty-nine percent;~~

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1 ~~to July 1, 2017, eighty-eight percent;~~

2 ~~(d) on or after July 1, 2017 and prior~~  
3 ~~to July 1, 2018, eighty-two percent;~~

4 (e) (1) on or after [~~July 1, 2018~~] January 1,  
5 2017 and prior to July 1, [~~2019~~] 2018, seventy-six percent;

6 [(f)] (2) on or after July 1, [~~2019~~] 2018 and  
7 prior to July 1, [~~2020~~] 2019, seventy percent;

8 [(g)] (3) on or after July 1, [~~2020~~] 2019 and  
9 prior to July 1, [~~2021~~] 2020, sixty-three percent;

10 [(h)] (4) on or after July 1, [~~2021~~] 2020 and  
11 prior to July 1, [~~2022~~] 2021, fifty-six percent;

12 [(i)] (5) on or after July 1, [~~2022~~] 2021 and  
13 prior to July 1, [~~2023~~] 2022, forty-nine percent;

14 [(j)] (6) on or after July 1, [~~2023~~] 2022 and  
15 prior to July 1, [~~2024~~] 2023, forty-two percent;

16 [(k)] (7) on or after July 1, [~~2024~~] 2023 and  
17 prior to July 1, [~~2025~~] 2024, thirty-five percent;

18 [(l)] (8) on or after July 1, [~~2025~~] 2024 and  
19 prior to July 1, [~~2026~~] 2025, twenty-eight percent;

20 [(m)] (9) on or after July 1, [~~2026~~] 2025 and  
21 prior to July 1, [~~2027~~] 2026, twenty-one percent;

22 [(n)] (10) on or after July 1, [~~2027~~] 2026 and  
23 prior to July 1, [~~2028~~] 2027, fourteen percent; ~~and~~

24 (o) (11) on or after July 1, [~~2028~~] 2027 and  
25 prior to July 1, [~~2029~~] 2028, seven percent; and

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1 that county pursuant to this section as it was in effect on  
2 [~~June 30, 2013~~] the day prior to the effective date of this  
3 2016 act.

4 E. A distribution pursuant to this section may be  
5 adjusted for a distribution made to a tax increment development  
6 district with respect to a portion of a gross receipts tax  
7 increment dedicated by a county pursuant to the Tax Increment  
8 for Development Act.

9 F. For purposes of this section, "maximum  
10 distribution" means:

11 (1) for counties that have a population of  
12 less than forty-eight thousand according to the most recent  
13 federal decennial census, the sum of:

14 (a) the total deductions claimed  
15 pursuant to Sections 7-9-92 and 7-9-93 NMSA 1978 for the month  
16 by taxpayers from business locations within a municipality in  
17 the county multiplied by the combined rate of all county local  
18 option gross receipts taxes in effect for the month that are  
19 imposed throughout the county; and

20 (b) the total deductions claimed  
21 pursuant to Sections 7-9-92 and 7-9-93 NMSA 1978 for the month  
22 by taxpayers from business locations in the county but not  
23 within a municipality multiplied by the combined rate of all  
24 county local option gross receipts taxes in effect for the  
25 month that are imposed in the county area not within a

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1 municipality; and

2 (2) for counties that have a population of  
3 forty-eight thousand or more according to the most recent  
4 federal decennial census, the sum of:

5 (a) the total deductions claimed  
6 pursuant to Sections 7-9-92 and 7-9-93 NMSA 1978 for the month  
7 by taxpayers from business locations within a municipality in  
8 the county multiplied by the combined rate of all county local  
9 option gross receipts taxes in effect on January 1, 2007 that  
10 are imposed throughout the county; and

11 (b) the total deductions claimed  
12 pursuant to Sections 7-9-92 and 7-9-93 NMSA 1978 for the month  
13 by taxpayers from business locations in the county but not  
14 within a municipality multiplied by the combined rate of all  
15 county local option gross receipts taxes in effect on January  
16 1, 2007 that are imposed in the county area not within a  
17 municipality."

18 SECTION 3. Section 7-1-68 NMSA 1978 (being Laws 1965,  
19 Chapter 248, Section 69, as amended) is amended to read:

20 "7-1-68. INTEREST ON OVERPAYMENTS.--

21 A. As provided in this section, interest shall be  
22 allowed and paid on the amount of tax overpaid by a person that  
23 is subsequently refunded or credited to that person.

24 B. Interest on overpayments of tax shall accrue and  
25 be paid at the underpayment rate established pursuant to

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1 Section 6621 of the Internal Revenue Code, computed on a daily  
2 basis; provided that if a different rate is specified by a  
3 compact or other interstate agreement to which New Mexico is a  
4 party, that rate shall apply to amounts due under the compact  
5 or other agreement.

6 C. Unless otherwise provided by this section,  
7 interest on an overpayment not arising from an assessment by  
8 the department shall be paid from the date of the claim for  
9 refund until a date preceding by not more than thirty days the  
10 date of the credit or refund to any person; and interest on an  
11 overpayment arising from an assessment by the department shall  
12 be paid from the date of overpayment until a date preceding by  
13 not more than thirty days the date of the credit or refund to  
14 any person.

15 D. No interest shall be allowed or paid with  
16 respect to an amount credited or refunded if:

17 (1) the amount of interest due is less than  
18 one dollar (\$1.00);

19 (2) the credit or refund is made within:

20 (a) fifty-five days of the date of the  
21 claim for refund of income tax, pursuant to either the Income  
22 Tax Act or the Corporate Income and Franchise Tax Act for the  
23 tax year immediately preceding the tax year in which the claim  
24 is made;

25 (b) sixty days of the date of the claim

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1 for refund of any tax not provided for in this paragraph;

2 (c) seventy-five days of the date of the  
3 claim for refund of gasoline tax to users of gasoline off the  
4 highways;

5 (d) one hundred twenty days of the date  
6 of the claim for refund of tax imposed pursuant to the  
7 Resources Excise Tax Act, the Severance Tax Act, the Oil and  
8 Gas Severance Tax Act, the Oil and Gas Conservation Tax Act,  
9 the Oil and Gas Emergency School Tax Act, the Oil and Gas Ad  
10 Valorem Production Tax Act, the Natural Gas Processors Tax Act  
11 or the Oil and Gas Production Equipment Ad Valorem Tax Act; or

12 (e) one hundred twenty days of the date  
13 of the claim for refund of income tax, pursuant to the Income  
14 Tax Act or the Corporate Income and Franchise Tax Act, for any  
15 tax year more than one year prior to the year in which the  
16 claim is made;

17 (3) Sections 6611(f) and 6611(g) of the  
18 Internal Revenue Code, as those sections may be amended or  
19 renumbered, prohibit payment of interest for federal income tax  
20 purposes;

21 (4) the credit results from overpayments found  
22 in an audit of multiple reporting periods and applied to  
23 underpayments found in that audit or refunded as a net  
24 overpayment to the taxpayer pursuant to Section 7-1-29 NMSA  
25 1978;

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1 (5) the department applies the credit or  
2 refund to an intercept program, to the taxpayer's estimated  
3 payment prior to the due date for the estimated payment or to  
4 offset prior liabilities of the taxpayer pursuant to Subsection  
5 E of Section 7-1-29 NMSA 1978;

6 (6) the credit or refund results from  
7 overpayments the department finds pursuant to Subsection F of  
8 Section 7-1-29 NMSA 1978 that exceed the refund claimed by the  
9 taxpayer on the return; or

10 (7) the refund results from a [~~film~~  
11 ~~production~~] tax credit pursuant to [~~Section 7-2F-1 NMSA 1978~~]  
12 the Film Production Tax Credit Act or a high-wage jobs tax  
13 credit.

14 E. Nothing in this section shall be construed to  
15 require the payment of interest upon interest."

16 SECTION 4. A new section of the Tax Administration Act is  
17 enacted to read:

18 "[NEW MATERIAL] CIVIL PENALTY FOR FAILURE TO CORRECTLY  
19 FILE CERTAIN DEDUCTIONS.--In the case of a taxpayer that  
20 deducts gross receipts pursuant to Section 7-9-92 or 7-9-93  
21 NMSA 1978 instead of deducting or exempting gross receipts  
22 pursuant to another applicable provision of the Gross Receipts  
23 and Compensating Tax Act as required by those sections, there  
24 shall be assessed a penalty on the taxpayer in an amount equal  
25 to twenty percent of the value of the hold harmless

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1 distribution resulting from the incorrect deduction."

2 SECTION 5. Section 7-9-3.3 NMSA 1978 (being Laws 2003,  
3 Chapter 272, Section 4) is amended to read:

4 "7-9-3.3. DEFINITION--ENGAGING IN BUSINESS.--As used in  
5 the Gross Receipts and Compensating Tax Act, "engaging in  
6 business" means carrying on or causing to be carried on any  
7 activity with the purpose of direct or indirect benefit,  
8 without regard to having physical presence, including the  
9 presence of a representative acting on behalf of the person, in  
10 the state, except that:

11 A. "engaging in business" does not include having a  
12 worldwide [~~web site~~] website as a third-party content provider  
13 on a computer physically located in New Mexico but owned by  
14 another nonaffiliated person; [~~and~~]

15 B. "engaging in business" does not include using a  
16 nonaffiliated third-party call center to accept and process  
17 telephone or electronic orders of tangible personal property or  
18 licenses primarily from non-New Mexico buyers, which orders are  
19 forwarded to a location outside New Mexico for filling, or to  
20 provide services primarily to non-New Mexico customers; and

21 C. "engaging in business" does not include the  
22 activities of a person without physical presence in this state  
23 if the person and the person's affiliates have less than one  
24 hundred thousand dollars (\$100,000) of gross receipts in the  
25 state, based on receipts during the prior calendar year. As

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1 used in this subsection, "affiliate" means a business entity  
2 that directly or indirectly through one or more intermediaries  
3 controls, is controlled by or is under common control with  
4 another business entity."

5 SECTION 6. Section 7-9-7.1 NMSA 1978 (being Laws 1993,  
6 Chapter 45, Section 1, as amended) is amended to read:

7 "7-9-7.1. DEPARTMENT BARRED FROM TAKING COLLECTION  
8 ACTIONS WITH RESPECT TO CERTAIN COMPENSATING AND GROSS RECEIPTS  
9 TAX LIABILITIES.--

10 A. The department shall take no action to enforce  
11 collection of compensating tax due on purchases made by an  
12 individual if:

13 (1) the property is used only for nonbusiness  
14 purposes;

15 (2) the property is not a manufactured home;  
16 and

17 (3) the individual is not an agent for  
18 collection of compensating tax pursuant to Section 7-9-10 NMSA  
19 1978.

20 B. The department shall take no action to enforce  
21 collection of gross receipts tax for a tax period prior to  
22 April 1, 2017 on persons engaging in business if, for those tax  
23 periods, those persons:

24 (1) lacked physical presence in the state; and

25 (2) did not report taxable gross receipts.

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1           [B-] C. The prohibition in Subsection A of this  
2 section does not prevent the department from enforcing  
3 collection of compensating tax on purchases from persons who  
4 are not individuals, who are agents for collection pursuant to  
5 Section 7-9-10 NMSA 1978 or who use the property in the course  
6 of engaging in business in New Mexico or from enforcing  
7 collection of compensating tax due on purchase of manufactured  
8 homes."

9           SECTION 7. Section 7-9-77.1 NMSA 1978 (being Laws 1998,  
10 Chapter 96, Section 1, as amended) is amended to read:

11           "7-9-77.1. DEDUCTION--GROSS RECEIPTS TAX--CERTAIN MEDICAL  
12 AND HEALTH CARE SERVICES.--

13           A. Receipts of a health care practitioner from  
14 payments by the United States government or any agency thereof  
15 for provision of medical and other health services by [~~medical~~  
16 ~~doctors, osteopathic physicians, doctors of oriental medicine,~~  
17 ~~athletic trainers, chiropractic physicians, counselor and~~  
18 ~~therapist practitioners, dentists, massage therapists,~~  
19 ~~naprapaths, nurses, nutritionists, dietitians, occupational~~  
20 ~~therapists, optometrists, pharmacists, physical therapists,~~  
21 ~~psychologists, radiologic technologists, respiratory care~~  
22 ~~practitioners, audiologists, speech-language pathologists,~~  
23 ~~social workers and podiatrists] a health care practitioner or  
24 of medical or other health and palliative services by hospices  
25 or nursing homes to medicare beneficiaries pursuant to the~~

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1 provisions of Title 18 of the federal Social Security Act may  
2 be deducted from gross receipts.

3 B. Receipts of a health care practitioner from  
4 payments by a third-party administrator of the federal TRICARE  
5 program for provision of medical and other health services by  
6 medical doctors and osteopathic physicians to covered  
7 beneficiaries may be deducted from gross receipts.

8 C. Receipts of a health care practitioner from  
9 payments by or on behalf of the Indian health service of the  
10 United States department of health and human services for  
11 provision of medical and other health services by medical  
12 doctors and osteopathic physicians to covered beneficiaries may  
13 be deducted from gross receipts.

14 D. Receipts of a clinical laboratory from payments  
15 by the United States government or any agency thereof for  
16 medical services provided by [~~a~~] the clinical laboratory to  
17 medicare beneficiaries pursuant to the provisions of Title 18  
18 of the federal Social Security Act may be deducted from gross  
19 receipts.

20 E. Receipts of a home health agency from payments  
21 by the United States government or any agency thereof for  
22 medical, other health and palliative services provided by [~~a~~]  
23 the home health agency to medicare beneficiaries pursuant to  
24 the provisions of Title 18 of the federal Social Security Act  
25 may be deducted from gross receipts.

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1 F. Prior to July 1, 2024, receipts of a dialysis  
2 facility from payments by the United States government or any  
3 agency thereof for medical and other health services provided  
4 by [a] the dialysis facility to medicare beneficiaries pursuant  
5 to the provisions of Title 18 of the federal Social Security  
6 Act may be deducted from gross receipts [~~according to the~~  
7 ~~following schedule:~~

8 ~~(1) from July 1, 2014 through June 30, 2015,~~  
9 ~~thirty-three and one-third percent of the receipts may be~~  
10 ~~deducted;~~

11 ~~(2) from July 1, 2015 through June 30, 2016,~~  
12 ~~sixty-six and two-thirds percent of the receipts may be~~  
13 ~~deducted; and~~

14 ~~(3) after June 30, 2016, one hundred percent~~  
15 ~~of the receipts may be deducted].~~

16 G. A taxpayer allowed a deduction pursuant to this  
17 section shall report the amount of the deduction separately in  
18 a manner required by the department. A taxpayer who has  
19 receipts that are deductible pursuant to this section and  
20 Section 7-9-93 NMSA 1978 shall deduct the receipts under this  
21 section prior to calculating the receipts that may be deducted  
22 pursuant to Section 7-9-93 NMSA 1978.

23 H. The department shall compile an annual report on  
24 the deductions created pursuant to this section that shall  
25 include the number of taxpayers approved by the department to

.204850.2

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1 receive each deduction, the aggregate amount of deductions  
2 approved and any other information necessary to evaluate the  
3 effectiveness of the deductions. [~~Beginning in 2020 and every~~  
4 ~~five years thereafter that this section is in effect~~] The  
5 department shall compile and present the annual reports to the  
6 revenue stabilization and tax policy committee and the  
7 legislative finance committee with an analysis of the  
8 effectiveness and cost of the deductions and whether the  
9 deductions are providing a benefit to the state.

10 I. For the purposes of this section:

11 [~~(1) "athletic trainer" means a person~~  
12 ~~licensed as an athletic trainer pursuant to the provisions of~~  
13 ~~Chapter 61, Article 14D NMSA 1978;~~

14 ~~(2) "chiropractic physician" means a person~~  
15 ~~who practices chiropractic as defined in the Chiropractic~~  
16 ~~Physician Practice Act;~~

17 ~~(3)]~~ (1) "clinical laboratory" means a  
18 laboratory accredited pursuant to 42 USCA 263a;

19 [~~(4) "counselor and therapist practitioner"~~  
20 ~~means a person licensed to practice as a counselor or therapist~~  
21 ~~pursuant to the provisions of Chapter 61, Article 9A NMSA 1978;~~

22 ~~(5) "dentist" means a person licensed to~~  
23 ~~practice as a dentist pursuant to the provisions of Chapter 61,~~  
24 ~~Article 5A NMSA 1978;~~

25 ~~(6)]~~ (2) "dialysis facility" means an end-

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1 stage renal disease facility as defined pursuant to 42 C.F.R.  
2 405.2102;

3 [~~(7) "doctor of oriental medicine" means a~~  
4 ~~person licensed as a physician to practice acupuncture or~~  
5 ~~oriental medicine pursuant to the provisions of Chapter 61,~~  
6 ~~Article 14A NMSA 1978;~~]

7 (3) "health care practitioner" means:

8 (a) an athletic trainer licensed  
9 pursuant to the Athletic Trainer Practice Act;

10 (b) an audiologist licensed pursuant to  
11 the Speech-Language Pathology, Audiology and Hearing Aid  
12 Dispensing Practices Act;

13 (c) a chiropractic physician licensed  
14 pursuant to the Chiropractic Physician Practice Act;

15 (d) a counselor or therapist  
16 practitioner licensed pursuant to the Counseling and Therapy  
17 Practice Act;

18 (e) a dentist licensed pursuant to the  
19 Dental Health Care Act;

20 (f) a doctor of oriental medicine  
21 licensed pursuant to the Acupuncture and Oriental Medicine  
22 Practice Act;

23 (g) an independent social worker  
24 licensed pursuant to the Social Work Practice Act;

25 (h) a massage therapist licensed

.204850.2

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1 pursuant to the Massage Therapy Practice Act;

2 (i) a naprapath licensed pursuant to the  
3 Naprapathic Practice Act;

4 (j) a nutritionist or dietitian licensed  
5 pursuant to the Nutrition and Dietetics Practice Act;

6 (k) an occupational therapist licensed  
7 pursuant to the Occupational Therapy Act;

8 (l) an optometrist licensed pursuant to  
9 the Optometry Act;

10 (m) an osteopathic physician licensed  
11 pursuant to the Osteopathic Medicine Act;

12 (n) a pharmacist licensed pursuant to  
13 the Pharmacy Act;

14 (o) a physical therapist licensed  
15 pursuant to Physical Therapy Act;

16 (p) a physician licensed pursuant to the  
17 Medical Practice Act;

18 (q) a podiatrist licensed pursuant to  
19 the Podiatry Act;

20 (r) a psychologist licensed pursuant to  
21 the Professional Psychologist Act;

22 (s) a radiologic technologist licensed  
23 pursuant to the Medical Imaging and Radiation Therapy Health  
24 and Safety Act;

25 (t) a registered nurse licensed pursuant

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1 to the Nursing Practice Act;

2 (u) a respiratory care practitioner  
3 licensed pursuant to the Respiratory Care Act; and

4 (v) a speech-language pathologist  
5 licensed pursuant to the Speech-Language Pathology, Audiology  
6 and Hearing Aid Dispensing Practices Act;

7 [~~(8)~~] (4) "home health agency" means a for-  
8 profit entity that is licensed by the department of health and  
9 certified by the federal centers for medicare and medicaid  
10 services as a home health agency and certified to provide  
11 medicare services;

12 [~~(9)~~] (5) "hospice" means a for-profit entity  
13 licensed by the department of health as a hospice and certified  
14 to provide medicare services;

15 [~~(10)~~] "~~message therapist~~" means a person  
16 ~~licensed to practice massage therapy pursuant to the provisions~~  
17 ~~of Chapter 61, Article 12C NMSA 1978;~~

18 [~~(11)~~] "~~medical doctor~~" means a person licensed  
19 ~~as a physician to practice medicine pursuant to the provisions~~  
20 ~~of the Medical Practice Act;~~

21 [~~(12)~~] "~~naprapath~~" means a person licensed as a  
22 ~~naprapath pursuant to the provisions of Chapter 61, Article 12F~~  
23 ~~NMSA 1978;~~

24 [~~(13)~~] "~~nurse~~" means a person licensed as a  
25 ~~registered nurse pursuant to the provisions of Chapter 61,~~

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1 ~~Article 3 NMSA 1978;~~

2 ~~(14)]~~ (6) "nursing home" means a for-profit  
3 entity licensed by the department of health as a nursing home  
4 and certified to provide medicare services; and

5 [~~(15) "nutritionist" or "dietitian" means a~~  
6 ~~person licensed as a nutritionist or dietitian pursuant to the~~  
7 ~~provisions of Chapter 61, Article 7A NMSA 1978;~~

8 ~~(16) "occupational therapist" means a person~~  
9 ~~licensed as an occupational therapist pursuant to the~~  
10 ~~provisions of Chapter 61, Article 12A NMSA 1978;~~

11 ~~(17) "osteopathic physician" means a person~~  
12 ~~licensed as an osteopathic physician pursuant to the provisions~~  
13 ~~of Chapter 61, Article 10 NMSA 1978;~~

14 ~~(18) "optometrist" means a person licensed to~~  
15 ~~practice optometry pursuant to the provisions of Chapter 61,~~  
16 ~~Article 2 NMSA 1978;~~

17 ~~(19) "pharmacist" means a person licensed as a~~  
18 ~~pharmacist pursuant to the provisions of Chapter 61, Article 11~~  
19 ~~NMSA 1978;~~

20 ~~(20) "physical therapist" means a person~~  
21 ~~licensed as a physical therapist pursuant to the provisions of~~  
22 ~~Chapter 61, Article 12D NMSA 1978;~~

23 ~~(21) "podiatrist" means a person licensed as a~~  
24 ~~podiatrist pursuant to the provisions of the Podiatry Act;~~

25 ~~(22) "psychologist" means a person licensed as~~

.204850.2

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1 a psychologist pursuant to the provisions of Chapter 61,  
2 Article 9 NMSA 1978;

3 (23) ~~"radiologic technologist" means a person~~  
4 ~~licensed as a radiologic technologist pursuant to the~~  
5 ~~provisions of Chapter 61, Article 14E NMSA 1978;~~

6 (24) ~~"respiratory care practitioner" means a~~  
7 ~~person licensed as a respiratory care practitioner pursuant to~~  
8 ~~the provisions of Chapter 61, Article 12B NMSA 1978;~~

9 (25) ~~"social worker" means a person licensed~~  
10 ~~as an independent social worker pursuant to the provisions of~~  
11 ~~Chapter 61, Article 31 NMSA 1978;~~

12 (26) ~~"speech-language pathologist" means a~~  
13 ~~person licensed as a speech-language pathologist pursuant to~~  
14 ~~the provisions of Chapter 61, Article 14B NMSA 1978; and~~

15 (27)] (7) "TRICARE program" means the program  
16 defined in 10 U.S.C. 1072(7)."

17 SECTION 8. Section 7-9-93 NMSA 1978 (being Laws 2004,  
18 Chapter 116, Section 6, as amended) is amended to read:

19 "7-9-93. DEDUCTION--GROSS RECEIPTS--CERTAIN RECEIPTS FOR  
20 SERVICES PROVIDED BY HEALTH CARE PRACTITIONER.--

21 A. Receipts [~~from payments by a managed health care~~  
22 ~~provider or health care insurer]~~ of a health care practitioner  
23 for commercial contract services or medicare part C services  
24 [~~provided by a health care practitioner that are not otherwise~~  
25 ~~deductible pursuant to another provision of the Gross Receipts~~

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1 ~~and Compensating Tax Act]~~ paid by a managed health care  
2 provider or health care insurer may be deducted from gross  
3 receipts [~~provided that~~] if the services are within the scope  
4 of practice of the [~~person~~] health care practitioner providing  
5 the service. Receipts from fee-for-service payments by a  
6 health care insurer may not be deducted from gross receipts.

7 B. The deduction provided by this section shall be  
8 applied only to gross receipts remaining after all other  
9 allowable deductions available under the Gross Receipts and  
10 Compensating Tax Act have been taken and shall be separately  
11 stated by the taxpayer.

12 [~~B.~~] C. For the purposes of this section:

13 (1) "commercial contract services" means  
14 health care services performed by a health care practitioner  
15 pursuant to a contract with a managed health care provider or  
16 health care insurer other than those health care services  
17 provided for medicare patients pursuant to Title 18 of the  
18 federal Social Security Act or for medicaid patients pursuant  
19 to Title 19 or Title 21 of the federal Social Security Act;

20 (2) "health care insurer" means a person that:

21 (a) has a valid certificate of authority  
22 in good standing pursuant to the New Mexico Insurance Code to  
23 act as an insurer, health maintenance organization or nonprofit  
24 health care plan or prepaid dental plan; and

25 (b) contracts to reimburse licensed

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1 health care practitioners for providing basic health services  
2 to enrollees at negotiated fee rates;

3 (3) "health care practitioner" means:

4 (a) a chiropractic physician licensed  
5 pursuant to the provisions of the Chiropractic Physician  
6 Practice Act;

7 (b) a dentist or dental hygienist  
8 licensed pursuant to the Dental Health Care Act;

9 (c) a doctor of oriental medicine  
10 licensed pursuant to the provisions of the Acupuncture and  
11 Oriental Medicine Practice Act;

12 (d) an optometrist licensed pursuant to  
13 the provisions of the Optometry Act;

14 (e) an osteopathic physician [~~licensed~~  
15 ~~pursuant to the provisions of Chapter 61, Article 10 NMSA 1978]~~  
16 or an osteopathic physician's assistant licensed pursuant to  
17 the provisions of the Osteopathic [~~Physicians' Assistants~~  
18 Medicine Act];

19 (f) a physical therapist licensed  
20 pursuant to the provisions of the Physical Therapy Act;

21 (g) a physician or physician assistant  
22 licensed pursuant to the provisions of [~~Chapter 61, Article 6~~  
23 ~~NMSA 1978]~~ the Medical Practice Act;

24 (h) a podiatrist licensed pursuant to  
25 the provisions of the Podiatry Act;

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1 (i) a psychologist licensed pursuant to  
2 the provisions of the Professional Psychologist Act;

3 (j) a registered lay midwife registered  
4 by the department of health;

5 (k) a registered nurse or licensed  
6 practical nurse licensed pursuant to the provisions of the  
7 Nursing Practice Act;

8 (l) a registered occupational therapist  
9 licensed pursuant to the provisions of the Occupational Therapy  
10 Act;

11 (m) a respiratory care practitioner  
12 licensed pursuant to the provisions of the Respiratory Care  
13 Act;

14 (n) a speech-language pathologist or  
15 audiologist licensed pursuant to the Speech-Language Pathology,  
16 Audiology and Hearing Aid Dispensing Practices Act;

17 (o) a professional clinical mental  
18 health counselor, marriage and family therapist or professional  
19 art therapist licensed pursuant to the provisions of the  
20 Counseling and Therapy Practice Act who has obtained a master's  
21 degree or a doctorate;

22 (p) an independent social worker  
23 licensed pursuant to the provisions of the Social Work Practice  
24 Act; and

25 (q) a clinical laboratory that is

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1 accredited pursuant to 42 U.S.C. Section 263a but that is not a  
2 laboratory in a physician's office or in a hospital defined  
3 pursuant to 42 U.S.C. Section 1395x;

4 (4) "managed health care provider" means a  
5 person that provides for the delivery of comprehensive basic  
6 health care services and medically necessary services to  
7 individuals enrolled in a plan through its own employed health  
8 care providers or by contracting with selected or participating  
9 health care providers. "Managed health care provider" includes  
10 only those persons that provide comprehensive basic health care  
11 services to enrollees on a contract basis, including the  
12 following:

- 13 (a) health maintenance organizations;
- 14 (b) preferred provider organizations;
- 15 (c) individual practice associations;
- 16 (d) competitive medical plans;
- 17 (e) exclusive provider organizations;
- 18 (f) integrated delivery systems;
- 19 (g) independent physician-provider  
20 organizations;
- 21 (h) physician hospital-provider  
22 organizations; and
- 23 (i) managed care services organizations;
- 24 and

25 (5) "medicare part C services" means services

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1 performed pursuant to a contract with a managed health care  
2 provider for medicare patients pursuant to Title 18 of the  
3 federal Social Security Act."

4 SECTION 9. Section 7-9G-1 NMSA 1978 (being Laws 2004,  
5 Chapter 15, Section 1, as amended) is amended to read:

6 "7-9G-1. HIGH-WAGE JOBS TAX CREDIT--QUALIFYING  
7 HIGH-WAGE JOBS.--

8 A. A taxpayer who is an eligible employer may apply  
9 for, and the [~~taxation and revenue~~] department may allow, a tax  
10 credit for each new high-wage economic-based job. The credit  
11 provided in this section may be referred to as the "high-wage  
12 jobs tax credit".

13 B. The purpose of the high-wage jobs tax credit is  
14 to provide an incentive for urban and rural businesses to  
15 create and fill new high-wage economic-based jobs in New  
16 Mexico.

17 C. Subject to the limitation pursuant to Section  
18 7-9G-1.1 NMSA 1978, the high-wage jobs tax credit may be  
19 claimed and allowed in an amount equal to ten percent of the  
20 wages [~~and benefits~~] distributed to an eligible employee in a  
21 new high-wage economic-based job, but shall not exceed twelve  
22 thousand dollars (\$12,000) per job per qualifying period. [~~D.~~]  
23 The high-wage jobs tax credit may be claimed by an eligible  
24 employer for each new high-wage economic-based job performed  
25 for the year in which the new high-wage economic-based job is

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1 created and for the three consecutive qualifying periods [A  
2 ~~taxpayer shall apply for approval of the credit after the close~~  
3 ~~of a qualifying period, but not later than twelve months~~  
4 ~~following the end of the calendar year in which the taxpayer's~~  
5 ~~final qualifying period closes] as provided in this section.~~

6 D. To receive a high-wage jobs tax credit, a  
7 taxpayer shall file an application for approval of the credit  
8 with the department once per calendar year on forms and in the  
9 manner prescribed by the department. The annual application  
10 shall contain the certification required by Subsection K of  
11 this section and shall contain all qualifying periods that  
12 closed during the calendar year for which the application is  
13 made. Any qualifying period that did not close in the calendar  
14 year for which the application is made shall be denied by the  
15 department. The application for a calendar year shall be filed  
16 no later than December 31 of the following calendar year. If a  
17 taxpayer fails to file the annual application within the time  
18 limits provided in this section, the application shall be  
19 denied by the department. The department shall make a  
20 determination on the application within one hundred eighty days  
21 of the date on which the application was filed; provided that  
22 the one-hundred-eighty-day period shall not begin until the  
23 application is complete, as determined by the department.

24 E. A new high-wage economic-based job shall not be  
25 eligible for a credit pursuant to this section for the initial

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1 qualifying period unless the eligible employer's total number  
2 of employees with [~~high-wage economic-based~~] threshold jobs on  
3 the last day of the initial qualifying period at the location  
4 at which the job is performed or based is at least one more  
5 than the number of threshold jobs on the day prior to the date  
6 the new high-wage economic-based job was created. A new  
7 high-wage economic-based job shall not be eligible for a credit  
8 pursuant to this section for a consecutive qualifying period  
9 unless the total number of threshold jobs at a location at  
10 which the job is performed or based on the last day of that  
11 qualifying period is greater than or equal to the number of  
12 threshold jobs at that same location on the last day of the  
13 initial qualifying period for the new high-wage economic-based  
14 job.

15 F. Any consecutive qualifying period for a new  
16 high-wage economic-based job shall not be eligible for a credit  
17 pursuant to this section unless the wage, the forty-eight-week  
18 occupancy and the residency requirements for a new high-wage  
19 economic-based job are met for each consecutive qualifying  
20 period. If any consecutive qualifying period for a new  
21 high-wage economic-based job does not meet the wage, the forty-  
22 eight-week occupancy and the residency requirements, all  
23 subsequent qualifying periods are ineligible.

24 [F.] G. Except as provided in Subsection H of this  
25 section, a new high-wage economic-based job shall not be

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1 eligible for a credit pursuant to this section if:

2 (1) the new high-wage economic-based job is  
3 created due to a business merger or acquisition or other change  
4 in business organization;

5 (2) the eligible employee was terminated from  
6 employment in New Mexico by another employer involved in the  
7 business merger or acquisition or other change in business  
8 organization with the taxpayer; and

9 (3) the new high-wage economic-based job is  
10 performed by:

11 (a) the person who performed the job or  
12 its functional equivalent prior to the business merger or  
13 acquisition or other change in business organization; or

14 (b) a person replacing the person who  
15 performed the job or its functional equivalent prior to a  
16 business merger or acquisition or other change in business  
17 organization.

18 [~~G. Notwithstanding the provisions of Subsection F~~  
19 ~~of this section]~~ H. A new high-wage economic-based job that  
20 was created by another employer and for which an application  
21 for the high-wage jobs tax credit was received and is under  
22 review by the [~~taxation and revenue~~] department prior to the  
23 time of the business merger or acquisition or other change in  
24 business organization shall remain eligible for the high-wage  
25 jobs tax credit for the balance of the consecutive qualifying

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1 periods. The new employer that results from a business merger  
2 or acquisition or other change in business organization may  
3 only claim the high-wage jobs tax credit for the balance of the  
4 consecutive qualifying ~~[period]~~ periods for which the  
5 ~~[qualifying]~~ new high-wage economic-based job is otherwise  
6 eligible.

7 ~~[H.]~~ I. A new high-wage economic-based job shall  
8 not be eligible for a credit pursuant to this section if the  
9 job is created due to an eligible employer entering into a  
10 contract or becoming a subcontractor to a contract with a  
11 governmental entity that replaces one or more entities  
12 performing functionally equivalent services for the  
13 governmental entity unless the job is a new high-wage economic-  
14 based job that was not being performed by an employee of the  
15 replaced entity.

16 J. A new high-wage economic-based job shall not be  
17 eligible for a credit pursuant to this section if the eligible  
18 employer has more than one business location in New Mexico from  
19 which it conducts business and the requirements of Subsection E  
20 of this section are satisfied solely by moving the job from one  
21 business location of the eligible employer in New Mexico to  
22 another business location of the eligible employer in New  
23 Mexico.

24 ~~[I.]~~ K. With respect to each ~~[new high-wage~~  
25 ~~economic-based job for which an eligible employer seeks the]~~

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1 annual application for a high-wage jobs tax credit, the  
2 employer shall certify and include:

3 (1) the amount of wages [~~and benefits~~] paid to  
4 each eligible employee in a new high-wage economic-based job  
5 during [~~each~~] the qualifying period;

6 (2) the number of weeks [~~the~~] each position  
7 was occupied during the qualifying period;

8 (3) whether the new high-wage economic-based  
9 job was in a municipality with a population of sixty thousand  
10 or more or with a population of less than sixty thousand  
11 according to the most recent federal decennial census and  
12 whether the job was in the unincorporated area of a county;  
13 [~~and~~]

14 (4) whether the application pertains to the  
15 first, second, third or fourth qualifying period for each  
16 eligible employee;

17 [~~(4)~~] (5) the total number of employees  
18 employed by the employer at the job location on the day prior  
19 to the qualifying period and on the last day of the qualifying  
20 period;

21 [~~J. To receive a high-wage jobs tax credit with~~  
22 ~~respect to any qualifying period, an eligible employer shall~~  
23 ~~apply to the taxation and revenue department on forms and in~~  
24 ~~the manner prescribed by the department. The application shall~~  
25 ~~include a certification made pursuant to Subsection I of this~~

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1 section]

2 (6) the total number of threshold jobs  
3 performed or based at the eligible employer's location on the  
4 day prior to the qualifying period and on the last day of the  
5 qualifying period;

6 (7) for an eligible employer that has more  
7 than one business location in New Mexico from which it conducts  
8 business, the total number of threshold jobs performed or based  
9 at each business location of the eligible employer in New  
10 Mexico on the day prior to the qualifying period and on the  
11 last day of the qualifying period;

12 (8) whether the eligible employer is receiving  
13 or is eligible to receive development training program  
14 assistance pursuant to Section 21-19-7 NMSA 1978;

15 (9) whether the eligible employer has ceased  
16 business operations at any of its business locations in New  
17 Mexico; and

18 (10) whether the application is precluded by  
19 Subsection O of this section.

20 L. Any person who willfully submits a false,  
21 incorrect or fraudulent certification required pursuant to  
22 Subsection K of this section shall be subject to all applicable  
23 penalties under the Tax Administration Act, except that the  
24 amount on which the penalty is based shall be the total amount  
25 of credit requested on the application for approval.

.204850.2

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1           ~~[K. The credit provided in this section may be~~  
2 ~~deducted from the]~~ M. Except as provided in Subsection N of  
3 this section, an approved high-wage jobs tax credit shall be  
4 claimed against the taxpayer's modified combined tax liability  
5 [of a taxpayer] and shall be filed with the return due  
6 immediately following the date of the credit approval. If the  
7 credit exceeds the taxpayer's modified combined tax liability  
8 [of the taxpayer], the excess shall be refunded to the  
9 taxpayer.

10           N. If the taxpayer ceases business operations in  
11 New Mexico while an application for credit approval is pending  
12 or after an application for credit has been approved for any  
13 qualifying period for a new high-wage economic-based job, the  
14 department shall not grant an additional high-wage jobs tax  
15 credit to that taxpayer, except as provided in Subsection O of  
16 this section, and shall extinguish any amount of credit  
17 approved for that taxpayer that has not already been claimed  
18 against the taxpayer's modified combined tax liability.

19           O. A taxpayer that has received a high-wage jobs  
20 tax credit shall not submit a new application for a credit for  
21 a minimum of five calendar years from the closing date of the  
22 last qualifying period for which the taxpayer received the  
23 credit if the taxpayer:

24                   (1) lost eligibility to claim a tax credit  
25 from a previous application pursuant to Subsection E or N of

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1 this section; or

2 (2) reduces its total full-time employees in  
3 New Mexico by more than five percent after the date on which  
4 the last qualifying period on the taxpayer's previous  
5 application ends.

6 ~~[E.]~~ P. The economic development department and the  
7 taxation and revenue department shall report to the appropriate  
8 interim legislative committee ~~[before November 1 of]~~ each year  
9 the cost of this tax credit to the state and its impact on  
10 company recruitment and job creation.

11 ~~[M.]~~ Q. As used in this section:

12 (1) "benefits" means all remuneration for work  
13 performed that is provided to an employee in whole or in part  
14 by the employer, other than wages, including the employer's  
15 contributions to insurance programs, health care, medical,  
16 dental and vision plans, life insurance, employer contributions  
17 to pensions, such as a 401(k), and employer-provided services,  
18 such as child care, offered by an employer to the employee.

19 ~~["Benefits" does not include the employer's share of payroll~~  
20 ~~taxes, social security or medicare contributions, federal or~~  
21 ~~state unemployment insurance contributions or workers'~~  
22 ~~compensation];~~

23 (2) "consecutive qualifying periods" means the  
24 three qualifying periods successively following the qualifying  
25 period in which the new high-wage economic-based job was

.204850.2

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1 created;

2 (3) "department" means the taxation and  
3 revenue department;

4 (4) "domicile" means the sole place where an  
5 individual has a true, fixed, permanent home. It is the place  
6 where the individual has a voluntary, fixed habitation of self  
7 and family with the intention of making a permanent home;

8 [~~2~~] (5) "eligible employee" means an  
9 individual who is employed in New Mexico by an eligible  
10 employer and who is a resident of New Mexico; "eligible  
11 employee" does not include an individual who:

12 (a) bears any of the relationships  
13 described in Paragraphs (1) through (8) of 26 U.S.C. Section  
14 152(a) to the employer or, if the employer is a corporation, to  
15 an individual who owns, directly or indirectly, more than fifty  
16 percent in value of the outstanding stock of the corporation  
17 or, if the employer is an entity other than a corporation, to  
18 an individual who owns, directly or indirectly, more than fifty  
19 percent of the capital and profits interest in the entity;

20 (b) if the employer is an estate or  
21 trust, is a grantor, beneficiary or fiduciary of the estate or  
22 trust or is an individual who bears any of the relationships  
23 described in Paragraphs (1) through (8) of 26 U.S.C. Section  
24 152(a) to a grantor, beneficiary or fiduciary of the estate or  
25 trust;

.204850.2

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1 (c) is a dependent, as that term is  
2 described in 26 U.S.C. Section 152(a)(9), of the employer or,  
3 if the taxpayer is a corporation, of an individual who owns,  
4 directly or indirectly, more than fifty percent in value of the  
5 outstanding stock of the corporation or, if the employer is an  
6 entity other than a corporation, of an individual who owns,  
7 directly or indirectly, more than fifty percent of the capital  
8 and profits interest in the entity or, if the employer is an  
9 estate or trust, of a grantor, beneficiary or fiduciary of the  
10 estate or trust; or

11 (d) is working or has worked as an  
12 employee or as an independent contractor for an entity that,  
13 directly or indirectly, owns stock in a corporation of the  
14 eligible employer or other interest of the eligible employer  
15 that represents fifty percent or more of the total voting power  
16 of that entity or has a value equal to fifty percent or more of  
17 the capital and profits interest in the entity;

18 [~~(3)~~] (6) "eligible employer" means an  
19 employer that:

20 (a) [~~made~~] sold and delivered more than  
21 fifty percent of its [~~sales of~~] goods produced in New Mexico or  
22 non-retail services [~~produced~~] performed in New Mexico to  
23 persons outside New Mexico for use or resale outside New Mexico  
24 during the applicable qualifying period; [~~or~~] provided that the  
25 fifty percent of those goods or services is measured by the

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1 eligible employer's gross receipts;

2 (b) is [~~certified by the economic~~  
3 ~~development department to be~~] receiving or is eligible [for] to  
4 receive development training program assistance pursuant to  
5 Section 21-19-7 NMSA 1978 during the applicable qualifying  
6 period; and

7 (c) whose principal business activities  
8 at the location in New Mexico for which the high-wage jobs tax  
9 credit is being claimed consist of manufacturing or performing  
10 non-retail services during the applicable qualifying period;

11 (7) "for use or resale outside New Mexico"  
12 means that the person who purchases the eligible employer's  
13 goods or services uses or resells the goods or services outside  
14 New Mexico or makes initial use of the goods or services  
15 outside New Mexico. If the purchaser conducts business in  
16 multiple states, goods and services are deemed for use or  
17 resale outside New Mexico, unless New Mexico is the primary  
18 market for the purchaser's goods or services;

19 (8) "full-time employee" means an employee who  
20 works for the same employer an average of at least thirty-two  
21 hours per week for at least forty-eight weeks per year;

22 (9) "manufacturing" means "manufacturing" as  
23 that term is used in Section 7-9A-3 NMSA 1978;

24 [~~4~~] (10) "modified combined tax liability"  
25 means the total liability for the reporting period for the

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1 gross receipts tax imposed by Section 7-9-4 NMSA 1978 together  
2 with any tax collected at the same time and in the same manner  
3 as the gross receipts tax, such as the compensating tax, the  
4 withholding tax, the interstate telecommunications gross  
5 receipts tax, the surcharges imposed by Section 63-9D-5 NMSA  
6 1978 and the surcharge imposed by Section 63-9F-11 NMSA 1978,  
7 minus the amount of any credit other than the high-wage jobs  
8 tax credit applied against any or all of these taxes or  
9 surcharges; but "modified combined tax liability" excludes all  
10 amounts collected with respect to local option gross receipts  
11 taxes;

12 [~~5~~] (11) "new high-wage economic-based job"  
13 means a new job created in New Mexico by an eligible employer  
14 on or after July 1, 2004 and prior to July 1, 2020 that is  
15 occupied for at least forty-eight weeks of a qualifying period  
16 by an eligible employee who is paid wages calculated for the  
17 qualifying period to be at least:

18 (a) for a new high-wage economic-based  
19 job created prior to July 1, 2015: 1) forty thousand dollars  
20 (\$40,000) if the job is performed or based in or within ten  
21 miles of the external boundaries of a municipality with a  
22 population of sixty thousand or more according to the most  
23 recent federal decennial census or in a class H county; and 2)  
24 twenty-eight thousand dollars (\$28,000) if the job is performed  
25 or based in a municipality with a population of less than sixty

.204850.2

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1 thousand according to the most recent federal decennial census  
2 or in the unincorporated area, that is not within ten miles of  
3 the external boundaries of a municipality with a population of  
4 sixty thousand or more, of a county other than a class H  
5 county; and

6 (b) for a new high-wage economic-based  
7 job created on or after July 1, 2015: 1) sixty thousand  
8 dollars (\$60,000) if the job is performed or based in or within  
9 ten miles of the external boundaries of a municipality with a  
10 population of sixty thousand or more according to the most  
11 recent federal decennial census or in a class H county; and 2)  
12 forty thousand dollars (\$40,000) if the job is performed or  
13 based in a municipality with a population of less than sixty  
14 thousand according to the most recent federal decennial census  
15 or in the unincorporated area, that is not within ten miles of  
16 the external boundaries of a municipality with a population of  
17 sixty thousand or more, of a county other than a class H  
18 county;

19 (12) "non-retail service" means a specialized  
20 service, excluding a construction service of any type, that is  
21 sold to another business or business entity and is used by the  
22 business or business entity to develop products for or deliver  
23 services to its customers. "Non-retail service" is not  
24 provided by direct individual-to-individual interaction and is  
25 not offered to the general public by the business or business

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1 entity. "Non-retail service" includes:

2 (a) research, development, engineering  
3 and testing services performed for a manufacturer that uses the  
4 product of the service to develop new or improve existing  
5 products;

6 (b) software and software application  
7 development services performed for a business;

8 (c) data processing and hosting services  
9 performed for a business that uses the service to deliver  
10 products or service to its own customers;

11 (d) digital film production services and  
12 post-film production services performed for a business that  
13 will market the digital product or film;

14 (e) customer or call center services  
15 performed for a business, if those services do not support  
16 retail activities of the eligible employer; and

17 (f) professional services, such as  
18 accounting, engineering, legal and information technology  
19 services, if the eligible employer does not offer those  
20 services for sale to the general public;

21 (13) "performed in New Mexico" means that the  
22 labor, activities, property and equipment necessary to  
23 complete, but not to deliver, a service all occur or are  
24 utilized within New Mexico;

25 (14) "produced in New Mexico" means the

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1 creation, bringing into existence or making available a good or  
2 product for commercial sale through the expense of labor or  
3 capital, or both, within New Mexico;

4 [~~(6)~~] (15) "qualifying period" means the  
5 period of twelve months beginning on the day an eligible  
6 employee begins working in a new high-wage economic-based job  
7 or the period of twelve months beginning on the anniversary of  
8 the day an eligible employee began working in a new high-wage  
9 economic-based job; [~~and~~]

10 (16) "resident" means a natural person whose  
11 domicile is in New Mexico at the time of hire or within one  
12 hundred eighty days of the date of hire;

13 (17) "threshold job" means a job that is  
14 occupied for at least forty-eight weeks of a calendar year by  
15 an eligible employee and that meets the wage requirements for a  
16 "new high-wage economic-based job"; and

17 [~~(7)~~] (18) "wages" means all compensation paid  
18 by an eligible employer to an eligible employee through the  
19 employer's payroll system, including those wages that the  
20 employee elects to defer or redirect or the employee's  
21 contribution to a 401(k) or cafeteria plan program, but "wages"  
22 does not include benefits or the employer's share of payroll  
23 taxes, social security or medicare contributions, federal or  
24 state unemployment insurance contributions or workers'  
25 compensation."

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1           SECTION 10. A new Section 7-9G-1.1 NMSA 1978 is enacted  
2 to read:

3           "7-9G-1.1. [NEW MATERIAL] HIGH-WAGE JOBS TAX CREDIT--  
4 AGGREGATE AMOUNT OF CLAIMS ALLOWED PER FISCAL YEAR.--The  
5 aggregate amount of high-wage jobs tax credits that may be  
6 approved for payment in a fiscal year is twenty-four million  
7 dollars (\$24,000,000). A taxpayer that files an application  
8 for a high-wage jobs tax credit that is unable to receive the  
9 credit because the claims for the fiscal year exceed the  
10 limitation in this section shall be placed for the subsequent  
11 fiscal year at the front of a queue of credit claimants  
12 submitting applications in the subsequent fiscal year in the  
13 order of the date on which the credit was approved for  
14 payment."

15           SECTION 11. APPLICABILITY.--

16           A. The provisions of Section 9 of this act apply to  
17 applications for a high-wage jobs tax credit for a new high-  
18 wage economic-based job filed with the taxation and revenue  
19 department on or after January 1, 2017.

20           B. The provisions of Section 10 of this act apply  
21 to all applications for a high-wage jobs tax credit filed with  
22 the taxation and revenue department on or after the effective  
23 date of this act.

24           SECTION 12. EFFECTIVE DATE.--

25           A. If this act takes effect on or before October 1,

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1 2016, the effective date of the provisions of Sections 4, 7 and  
2 8 of this act is October 1, 2016.

3 B. If this act takes effect after October 1, 2016,  
4 the effective date of the provisions of Sections 4, 7 and 8 of  
5 this act is the first day of the month following the date this  
6 act takes effect.

7 C. The effective date of the provisions of Sections  
8 5 and 6 of this act is January 1, 2017.

9 SECTION 13. EMERGENCY.--It is necessary for the public  
10 peace, health and safety that this act take effect immediately.