AN ACT

RELATING TO HEALTH CARE; ENACTING THE MEDICAL PSILOCYBIN ACT; ALLOWING THE USE OF PSILOCYBIN IN AN APPROVED SETTING TO TREAT QUALIFIED MEDICAL CONDITIONS; CREATING AN ADVISORY BOARD; PROVIDING POWERS AND DUTIES; AMENDING THE CONTROLLED SUBSTANCES ACT TO REMOVE PSILOCYBIN AND PSILOCIN FROM THE SCHEDULE FOR PURPOSES OF QUALIFIED MEDICAL TREATMENT; PROVIDING A GROSS RECEIPTS TAX DEDUCTION FOR MEDICAL PSILOCYBIN; PRESCRIBING A PENALTY.

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

SECTION 1. SHORT TITLE.--Sections 1 through 11 of this act may be cited as the "Medical Psilocybin Act".

SECTION 2. PURPOSE OF ACT.--The purpose of the Medical Psilocybin Act is to allow the beneficial use of psilocybin in a regulated system for alleviating qualified medical conditions.

SECTION 3. DEFINITIONS.--As used in the Medical Psilocybin Act:

A. "board" means the medical psilocybin advisory board;

B. "clinician" means an approved health care provider licensed in New Mexico who holds a permit from the department to provide medical services to qualified patients;

C. "department" means the department of health;

D. "medical services" means services provided to a patient in an approved setting before, during and after the ingestion of psilocybin and includes a preparation session, an administration session and an integration session;

E. "producer" means a person who has a permit from the department to grow and harvest or prepare psilocybin from psilocybin-producing mushrooms, including to compound, convert, process or manufacture psilocybin products directly or indirectly from psilocybin mushrooms and to package or repackage or label or relabel the products;

F. "program" means the medical use of psilocybin program;

G. "psilocybin" means the naturally occurring psychedelic compound 4-phosphoryloxy-N,N-dimethyltryptamine, also known as 4-PO-DMT, and its pharmacologically active metabolite psilocin, 4-hydroxy-N,N-dimethyltryptamine, found in certain mushrooms, but does not include synthetic or synthetic analogs of psilocybin;

H. "qualified patient" means a patient whose clinician has judged the patient to be a medically appropriate candidate for the use of medical psilocybin based on being diagnosed with a qualifying condition;

I. "qualifying condition" includes:

(1) major treatment-resistant depression;

(2) posttraumatic stress disorder;

(3) substance use disorders;

(4) end-of-life care; and

(5) other conditions approved by the department; and

J. "secretary" means the secretary of health.

SECTION 4. APPLICABILITY.--Federal food and drug administration-approved products that contain psilocybin shall be exempt from the Medical Psilocybin Act, with the exception that such products shall be authorized for use:

A. in any research conducted by state research universities or health care providers pursuant to grants awarded through the medical psilocybin research fund; and

B. by qualified patients whose treatments may be funded through the medical psilocybin treatment equity fund.

SECTION 5. EXEMPTION FROM CRIMINAL AND CIVIL PENALTIES FOR THE MEDICAL USE OF PSILOCYBIN.--

A. A producer, clinician or qualified patient shall not be subject to arrest, prosecution or penalty for participating in the program.

B. The following conduct is lawful and shall not constitute grounds for detention, search or arrest of a person or for a violation of probation or parole, and psilocybin that relates to the conduct is not contraband or subject to seizure or forfeiture pursuant to the Controlled Substances Act or the Forfeiture Act:

(1) a producer or clinician possessing or transporting not more than an adequate supply of psilocybin for medical purposes as defined by department rule; and

(2) a clinician administering or a qualified patient taking psilocybin in an approved setting in accordance with the Medical Psilocybin Act or rules promulgated in accordance with that act.

C. A clinician shall not be subject to arrest or prosecution or denied any right or privilege for recommending the program or providing medical services authorized in the Medical Psilocybin Act.

D. A person shall not be subject to arrest or prosecution for a psilocybin-related offense for simply being in the presence of the medical use of psilocybin as allowed under the provisions of the Medical Psilocybin Act.

E. The Medical Psilocybin Act does not apply to federal food and drug administration-approved clinical trials.

SECTION 6. PROHIBITIONS, RESTRICTIONS AND LIMITATIONS ON THE USE OF PSILOCYBIN--CRIMINAL PENALTIES.--

A. Participation in the program by a producer, clinician or qualified patient does not relieve the producer, clinician or qualified patient from:

(1) criminal prosecution or civil penalties for activities not authorized in the Medical Psilocybin Act;

or

(2) liability for damages or criminal prosecution arising out of the operation of a motor vehicle if driving while under the influence of psilocybin.

B. A person who makes a fraudulent representation to a law enforcement officer about the person's participation in the program to avoid arrest or prosecution for a psilocybin-related offense is guilty of a petty misdemeanor and shall be sentenced as provided in Section 31-19-1 NMSA 1978.

SECTION 7. DEPARTMENT--PROGRAM.--

A. The "medical use of psilocybin program" is created in the department. In developing the program, the department shall establish:

(1) appropriate qualifying conditions for qualified patients;

(2) necessary initial and ongoing training for producers and clinicians;

(3) treatment protocols, including patient selection criteria, medical service standards, dosage standards and approved settings for administration of psilocybin to patients;

(4) safety protocols for producing psilocybin from mushrooms, transporting, storing and handling psilocybin and treating patients;

(5) other best practices for producers and clinicians;

(6) requirements for data collection to evaluate the program and the use of best practices by producers and clinicians; and

(7) other requirements, restrictions and limitations promulgated by the department to ensure an efficacious program.

B. The department shall monitor producers and clinicians to ensure compliance with the Medical Psilocybin Act and rules promulgated in accordance with that act.

C. The department shall collaborate with the board, state higher education institutions and health care providers to collect and analyze data to develop best practices, including best settings for administration of psilocybin, and, by December 31, 2027, implement the program. When developing the program, the department shall engage in tribal consultation as provided in the State-Tribal Collaboration Act.

SECTION 8. ADVISORY BOARD CREATED--DUTIES.--

A. The secretary shall establish the "medical psilocybin advisory board", consisting of nine members who are knowledgeable about the medical use of psilocybin. At least one member shall be an enrolled member of an Indian nation, tribe or pueblo located wholly or partially in

New Mexico; one member shall be licensed to provide behavioral health care services in New Mexico; one member shall be a mental or behavioral health equity advocate; one member shall be a representative of the health care authority; and at least one member shall be a veteran of the United States armed forces. A majority of the members constitutes a quorum, and a quorum of the members present and a majority vote are needed to take any action.

B. The board shall:

(1) review and recommend to the department for approval medical conditions that may benefit from the medical use of psilocybin;

(2) accept and review petitions to add medical conditions to the list of medical conditions that qualify for the medical use of psilocybin;

(3) convene at least twice per year to conduct public hearings and to evaluate petitions, which shall be maintained as confidential personal health information;

(4) recommend patient qualifications;

(5) recommend formulation or preparation rules and dosage standards for psilocybin; and

(6) assist the department in establishing, monitoring and evaluating best practices for producers and clinicians.

SECTION 9. ASSESSMENT REPORTING.--The department shall promulgate rules for the collection of data from producers, clinicians and qualified patients as a means to evaluate the efficacy of the medical use of psilocybin and publish an annual assessment of the program. The assessment shall consider the needs of qualified patients who live in rural areas, federal subsidized housing or on reservations of New Mexico Indian nations, tribes or pueblos, as long as the qualified patient's place of residence is wholly within the exterior boundaries of the state. Data shall be reported in such a way that an individual qualified patient cannot be identified.

SECTION 10. PERSONS UNDER STATE SUPERVISION--PROTECTIONS.--A person who is serving a period of probation or parole or who is in the custody or under the supervision of the state or a local government pending trial as part of a community supervision program shall not be penalized for participation in the program.

SECTION 11. FUNDS--CREATED.--

A. The "medical psilocybin treatment equity fund" is created as a nonreverting fund in the state treasury. The fund consists of appropriations, gifts, grants and donations. The fund shall be used to fund treatments of qualified patients who meet income requirements determined by rule of the department. The department shall administer the fund,

and money in the fund is subject to appropriation by the legislature. Expenditures from the fund shall be by warrants signed by the secretary of finance and administration on vouchers signed by the secretary of health or the secretary's authorized representative.

B. The "medical psilocybin research fund" is created as a nonreverting fund in the state treasury. The fund consists of appropriations, gifts, grants and donations. The fund shall be used to provide grants to state research universities and health care providers that are studying any facet of the medical use of psilocybin. The department shall administer the fund, and money in the fund is subject to appropriation by the legislature. Expenditures from the fund shall be by warrants signed by the secretary of finance and administration on vouchers signed by the secretary of health or the secretary's authorized representative.

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

"7-9-73.2. DEDUCTION--GROSS RECEIPTS TAX AND GOVERNMENTAL GROSS RECEIPTS TAX--PRESCRIPTION DRUGS--OXYGEN--CANNABIS--PSILOCYBIN.--

A. Receipts from the sale of prescription drugs and oxygen and oxygen services provided by a licensed medicare durable medical equipment provider and cannabis

products that are sold in accordance with the Lynn and Erin Compassionate Use Act and psilocybin products and medical care that are sold in accordance with the Medical Psilocybin Act may be deducted from gross receipts and governmental gross receipts.

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

(1) dispensed by or under the supervision of a licensed pharmacist or by a physician or other person authorized under state law to do so;

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

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

SECTION 13. Section 30-31-6 NMSA 1978 (being Laws 1972, Chapter 84, Section 6, as amended) is amended to read:

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

A. any of the following opiates, including their isomers, esters, ethers, salts and salts of isomers, esters and ethers, unless specifically exempted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

(1) acetylmethadol;

(2) allylprodine;

(3) alphacetylmethadol;

(4) alphameprodine;

(5) alphamethadol;

(6) benzethidine;

(7) betacetylmethadol;

(8) betameprodine;

(9) betamethadol;

(10) betaprodine;

(11) clonitazene;

(12) dextromoramide;

(13) dextrorphan;

(14) diampromide;

(15) diethylthiambutene;

(16) dimenoxadol;

(17) dimepheptanol;

(18) dimethylthiambutene;

(19) dioxaphetyl butyrate;

(20) dipipanone;

(21) ethylmethylthiambutene;

(22) etonitazene;

(23) etoxeridine;

(24) furethidine;

(25) hydroxypethidine;

(26) ketobemidone;

(27) levomoramide;

(28) levophenacylmorphan;

(29) morpheridine;

(30) noracymethadol;

(31) norlevorphanol;

(32) normethadone;

(33) norpipanone;

(34) phenadoxone;

(35) phenampromide;

(36) phenomorphan;

(37) phenoperidine;

(38) piritramide;

(39) proheptazine;

(40) properidine;

(41) racemoramide; and

(42) trimeperidine;

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

(1) acetorphine;

(2) acetyldihydrocodeine;

(3) benzylmorphine;

(4) codeine methylbromide;

(5) codeine-N-oxide;

(6) cyprenorphine;

(7) desomorphine;

(8) dihydromorphine;

(9) etorphine;

(10) heroin;

(11) hydromorphinol;

(12) methyldesorphine;

(13) methyldihydromorphine;

(14) morphine methylbromide;

(15) morphine methylsulfonate;

(16) morphine-N-oxide;

(17) myrophine;

(18) nicocodeine;

(19) nicomorphine;

(20) normorphine;

(21) pholcodine; and

(22) thebacon;

C. any material, compound, mixture or preparation that contains any quantity of the following hallucinogenic substances, their salts, isomers and salts of isomers, unless specifically exempted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) 3,4-methylenedioxy amphetamine;

(2) 5-methoxy-3,4-methylenedioxy amphetamine;

(3) 3,4,5-trimethoxy amphetamine;

(4) bufotenine;

(5) diethyltryptamine;

(6) dimethyltryptamine;

(7) 4-methyl-2,5-dimethoxy amphetamine;

(8) ibogaine;

(9) lysergic acid diethylamide;

(10) mescaline;

(11) peyote, except as otherwise provided in the Controlled Substances Act;

(12) N-ethyl-3-piperidyl benzilate;

(13) N-methyl-3-piperidyl benzilate;

(14) psilocybin, except as provided otherwise in the Controlled Substances Act and the Medical Psilocybin Act;

(15) psilocin, except as provided otherwise in the Controlled Substances Act and the Medical Psilocybin Act;

(16) synthetic cannabinoids, including:

(a) 1-[2-(4-(morpholinyl)ethyl] -3-(1-naphthoyl)indole;

(b) 1-butyl-3-(1-napthoyl)indole;

(c) 1-hexyl-3-(1-naphthoyl)indole;

(d) 1-pentyl-3-(1-naphthoyl)indole;

(e) 1-pentyl-3-(2-methoxyphenylacetyl) indole;

(f) cannabicyclohexanol (CP 47, 497 and homologues: 5-(1,1-dimethylheptyl)-2-[(1R,3S) -3-hydroxycyclohexyl]-phenol (CP-47,497); and 5-(1, 1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol;

(g) 6aR,10aR)-9-(hydroxymethyl) -6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10, 10a-tetrahydrobenzo[c]chromen-1-ol);

(h) dexanabinol, (6aS,10aS) -9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl) -6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol;

(i) 1-pentyl-3-(4-chloro naphthoyl) indole;

(j) (2-methyl-1-propyl-1H-indol-3-yl) -1-naphthalenyl-methanone; and

(k) 5-(1,1-dimethylheptyl)-2-(3-hydroxy cyclohexyl)-phenol;

(17) 3,4-methylenedioxymethcathinone;

(18) 3,4-methylenedioxypyrovalerone;

(19) 4-methylmethcathinone;

(20) 4-methoxymethcathinone;

(21) 3-fluoromethcathinone; and

(22) 4-fluoromethcathinone;

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

E. the enumeration of psilocybin and psilocin in this schedule does not apply to their medical use as provided in the Medical Psilocybin Act;

F. the enumeration of Schedule I controlled substances does not apply to:

(1) hemp pursuant to rules promulgated by the board of regents of New Mexico state university on behalf of the New Mexico department of agriculture;

(2) cultivation of hemp by persons pursuant to rules promulgated by the board of regents of New Mexico state university on behalf of the New Mexico department of agriculture;

(3) tetrahydrocannabinols or chemical derivatives of tetrahydrocannabinols, including tetrahydrocannabinols or chemical derivatives of tetrahydrocannabinols with concentrations of up to five

percent as measured using a post-decarboxylation method and based on percentage dry weight, possessed by a person in connection with the cultivation, transportation, testing, researching, manufacturing or other processing of the plant Cannabis sativa L., or any part of the plant whether growing or not, if authorized pursuant to rules promulgated, pursuant to the Hemp Manufacturing Act, by the board of regents of New Mexico state university on behalf of the New Mexico department of agriculture or the department of environment; or

(4) tetrahydrocannabinols or chemical derivatives of tetrahydrocannabinols, including tetrahydrocannabinols or chemical derivatives of tetrahydrocannabinols in any concentration possessed by a person in connection with the extraction of tetrahydrocannabinols or chemical derivatives of tetrahydrocannabinols, if authorized pursuant to rules promulgated, pursuant to the Hemp Manufacturing Act, by the board of regents of New Mexico state university on behalf of the New Mexico department of agriculture or the department of environment; and

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