

**MINUTES OF THE SAN MIGUEL COUNTY PLANNING & ZONING COMMISSION
HELD WEDNESDAY, OCTOBER 2, 2019**

CALL TO ORDER AND ROLL CALL

Chairman Ramon Lucero called the meeting to order at 1:15 P.M., at the Commission Chambers on the 2nd floor of the San Miguel County Courthouse. Upon a call of the roll, the following Planning & Zoning Commissioners were present, and a quorum was duly established and noted as follows: Chairman Ramon Lucero, Commissioner Kenny Lujan and Commissioner Phillip Warfield.

PLEDGE OF ALLEGIANCE AND SALUTATION TO NEW MEXICO STATE FLAG

Joined by staff and all in attendance, the Planning & Zoning Commissioners pledged to the United States Flag.

APPROVAL OF AGENDA

Commissioner Kenny Lujan moved and Commissioner Phillip Warfield second approval of the agenda. All in favor. Motion carried.

CU-0262 – COW CREEK RANCH CLUB LLC, BY ALEX TAFOYA, PLANNING & ZONING DIVISION SUPERVISOR

Applicant proposes to continue Cow Creek Ranch Club, LLC as a Guest Ranch and Recreational Resort. Property is located north of the Village of Pecos within T17N, R12E, Sections 23, 24, 25 and formerly known as the Martin Ranch.

All state and county requirements for notice of public hearing have been met. Zone designation for particular use is R-H Rural Holding Zone.

Former guest ranch was established in the 1930's and is currently idle.

All requirements as per Ordinance 86-2 Land Development Standards have been met. Property has been used as a Guest Ranch since the 1930's. New ownership of property wishes to continue as a Guest Ranch.

AGENCY REVIEWS:

Office of the State Engineer – pending
Department of Transportation – no comment
Environment Department – systems permitted
San Miguel County Fire Chief – no comment
San Miguel County Public Works – no concerns
San Miguel County Assessor – Assess as business – needed recorded deeds
Mora-San Miguel Electric – no concerns

JAMES SIEBERT – APPLICANT – COW CREEK RANCH CLUB, LLC

Property was formerly that of the Martin family. There are nine cabins, one lodge and ranch land headquarters. There will be no structural changes will continue as a guest ranch. There are two wells for fire protection. Ponds are spread in the property. Continued use will keep employment.

Commissioners discuss fire property, accessible ponds from which to draw water and domestic use and water densities.

With no further discussion Commissioner Kenny Lujan motions to approve. Commissioner Phillip Warfield seconds that motion. Motion carried.

Motion to adjourn by Commissioner Kenny Lujan. Commissioner Phillip Warfield.

Meeting adjourned at 1:42 P.M.

APPROVED BY:



Planning and Zoning Division

REQUIREMENTS FOR CONDITIONAL USE PERMIT APPLICATION

Applicants are required to submit the following items with application:

1. **Site Plan:** A drawing that shows location on the property of all buildings and uses or activities; distances of those from all property lines; entrances, streets; direction of storm water run-off; location and type of landscaping; location of wells or other water sources; location of sewer or septic system; location of rivers, lakes, arroyos on property; and any grading or fill work to be done. Also show location of road into the property and the location of the nearest public road, county road or state highway. Also show fences, natural or man-made buffers.
2. **Written Statement:** A brief letter describing the number of acres for each proposed use; the character and density of dwelling, structures or uses on each portion of the property; a phasing schedule for all improvements. (For Planned Development submit a map showing the development and the property within a one-half mile radius).
3. **Legal Description:** A copy of the deed or survey of the property. It is best to provide both if available. These will not be returned.
4. **New Mexico Tax ID Number and San Miguel County Business License.**
5. **Application Fee:** Two Hundred Dollars (\$200.00)

Publication Notification Fee: One Hundred Twenty-Four Dollars (\$124.00)

Fees are payable to San Miguel County and are Non-Refundable. Personal Checks are Not Accepted.

Pictures of the property if available. These will not be returned.

The presence of the applicant or a representative is requested at the Planning and Zoning Commission meeting and at any subsequent County Commission meeting that might be held. The commission may have questions for you on your application.

Please note that you will receive notice of meeting.

APPLICATION FOR CONDITIONAL USE PERMIT

**PLANNING & ZONING DIVISION
SAN MIGUEL COUNTY ADMINISTRATION COMPLEX
500 W. NATIONAL, SUITE 203
LAS VEGAS, NEW MEXICO 87701
(505) 454-1074 Fax: (505) 454-9728
Email: pandz@co.sanmiguel.nm.us**

Application File No. _____ Date Submitted: _____

Name of Applicant: _____

Address: _____

Telephone Number: _____

Property Interest of Applicant: _____

Name of Property Owner: _____

Location of Property: _____

Legal Description of Property: _____

Copy of Deed or Survey Attached: Yes _____ No _____

Present Use and Character of Property: _____

Intended Use of Property: _____

New Mexico Tax ID Number: _____

Applicant San Miguel County Business License: Yes _____ No _____

Use of Existing Structure. Date Established: _____

Applicant Signature: _____

Date: _____

Property Owner Signature: _____

Date: _____

FOR COUNTY USE ONLY

Application File No. _____

Date Set for P&Z Hearing: _____ Date Hearing Held: _____

Date of Publication: _____

Date letters Sent to Adjacent Property Owners: _____

Fee Amount Paid: _____ Receipt No: _____

Action P&Z: _____

Appeal to Commission: _____

Appeal to Court: _____

Proposed Use: _____

Date Site Plan Submitted: _____

Specific Use Limitations Applicable: _____

Zone Designation: _____

Conditional Use or Similar Use Listed in Ordinance: _____

Building Location: _____

Buffer of Screening: _____

Setbacks: _____

Proposed Street: _____

Landscaping: _____

Drainage: _____

Sewer: _____

Water Availability: _____

Grading: _____

Assets and Constraints: _____

Any Item Waived: _____

Number of Acres in Each Use: _____

Floor Area for Use: _____

Floor Plan Submitted: _____

Character and Density of Dwelling, Structures: _____

Number of Mobile Homes (for Mobile Home Parks): _____

Schedule for Development: _____

Agency Review: _____ Date Sent: _____

Agency Review: _____ Date Sent: _____

GENERAL LIMITATIONS AND REQUIREMENTS:

COMPLIES

Height: _____ Yes _____ No _____

Lot Width: _____ Yes _____ No _____

Street Access: _____ Yes _____ No _____

Accessory Buildings: _____ Yes _____ No _____

Fire Vehicle Access: _____ Yes _____ No _____

Signs: _____ Yes _____ No _____

Flood Plain: _____ Yes _____ No _____

Steep Slope: _____ Yes _____ No _____

Erosion Hazard Area: _____ Yes _____ No _____

Woodlands: _____ Yes _____ No _____

Storm Water Runoff: _____ Yes _____ No _____

Environment Requirements: _____ Yes _____ No _____

EID Standards Liquid Waste: _____ Yes _____ No _____

EID Standards Solid Waste: _____ Yes _____ No _____

EID Standards Water Supply: _____ Yes _____ No _____

Regard to Preservation of Cultural, Historical, or Archaeological Significance: _____

Encroachment on Utility Easement: _____ Yes _____ No _____

RESOLUTION NO. 08102021-P&Z

A RESOLUTION IMPLEMENTING REGULATION OF HEMP PRODUCTION;
RECREATIONAL AND MEDICAL CANNABIS PRODUCTION;
RECREATIONAL PERSONAL USE IN SAN MIGUEL COUNTY

WHEREAS, enacted by the legislature and signed into law by Governor Michelle Lujan Grisham in April 2021, New Mexico's HB 2, the Cannabis Regulation Act (CRA), Laws 2021 (1st S.S.), Chapter 4, legalizes recreational cannabis for adults twenty-one (21) years and older, including outdoor commercial production, personal production for recreational use, and cannabis consumption areas.

WHEREAS, the Cannabis Regulation Act (CRA) states the Cannabis Control Division will no later than September 1, 2021 begin accepting and processing license applications for cannabis producers, cannabis producer microbusinesses and persons properly licensed and in good standing as a licensed cannabis producer for medical use, pursuant to the Lynn and Erin Compassionate Use Act, legalizing production for medical use of cannabis; and

WHEREAS, that it's necessary that regulation of medical and recreational cannabis growth, production and personal use be implemented for the public health, safety and welfare of San Miguel County and its citizens; and

WHEREAS, per Land Development Standards Ordinance 86-2, Section 3520- Rules for Interpretation of District Regulations:

"If a particular use or structure is not specifically listed as a permitted principal use or a permitted accessory use or a conditional use within the regulations for a particular zoning district, the Planning and zoning Director or his designee is empowered to interpret the intent of the Ordinance and to treat such an unlisted use or structure in the same manner as a similar use or structure which is listed. If no similar use or structure is listed for a particular zoning district, the presumption shall be that the unlisted use or structure is prohibited. The Planning and Zoning Director or his designee is also empowered to make interpretations of other provisions of the Ordinance which may need greater clarity for application to particular cases;" and

WHEREAS, and all persons processing medical cannabis production applications or recreational license applications with the Cannabis Control Division for cannabis producers, cannabis producer microbusinesses, including all persons currently properly licensed as a cannabis producer for medical use, pursuant to the Lynn and Erin Compassionate Use Act, *must submit a conditional use application* to the San Miguel County Planning & Zoning Division, pay the non-refundable processing fee of two hundred dollars (\$200.00) and provide a copy of the approved cannabis production license from the Cannabis Control Division for consideration of recreational cannabis production in San Miguel County; submittal of an application does not guarantee approval; and

WHEREAS, currently licensed hemp producers in good standing with the New Mexico Environment Department and currently licensed medical cannabis producers in good

standing with the New Mexico Department of Health and the Cannabis Control Division seeking dual licensure for recreational cannabis production, must also submit a conditional use application to the San Miguel County Planning & Zoning Division.

WHEREAS, each producer will be required to pay for a county business license annually per calendar year (\$36.00) including the additional fee for the appropriate license acquired by the Cannabis Control Division (CDD) which will be implemented as such:

- **Courier - \$50.00 first year / \$25.00 annually**
(CCD: \$250.00 first year / \$100.00 annually)
- **Testing Laboratory - \$250.00 first year / \$100.00 annually**
(CDD: \$2,500.00 first year / \$1,000.00 annually)
- **Manufacturer - \$250.00 first year / \$100.00 annually**
(CDD: \$2,500.00 first year / \$1,000.00 annually)
- **Producer - \$250.00 first year / \$100.00 annually**
(CDD: \$2,500.00 first year / \$1,000.00 annually)
- **Retailer - \$250.00 first year / \$100.00 annually**
(CDD: \$2,500.00 first year / \$1,000.00 annually)
- **Research Laboratory - \$250.00 first year/ \$100.00 annually**
(CDD: \$2,500.00 first year / \$1,000.00 annually)
- **Vertically Integrated Cannabis Establishment - \$750.00 first year / \$100.00 annually**
(CDD: \$7,500.00 first year / \$1,000.00 annually)
- **Cannabis Producer Microbusiness- \$50.00 for one hundred (100) plants or less; \$100.00 for one hundred and one (101) plants to two hundred and fifty (250) plants**
(CDD: \$500.00 00 for one hundred (100) plants or less /\$1000.00 for one hundred and one (101) plants to two hundred and fifty (250) plants)
- **Integrated Cannabis Microbusiness- Activity Based: \$250.00 first year/\$100.00 per year after first year**
(CDD: \$1000 - \$2500 / activity based)
- **Cannabis Consumption Area- \$250.00 annually**
(CDD: \$2500.00)

but are not limited to; San Miguel County can incorporate any additional fees not mentioned in the above list at a minimum of 10% the original fees incorporated by the Cannabis Control Division for medical or recreational cannabis producers or the fees for hemp production incorporated by the New Mexico Environment Department; and

WHEREAS, a cannabis establishment must maintain a minimum separation distance of at least 300 feet from any school or daycare center that was in existence at the time the cannabis establishment was issued a license by the state; and

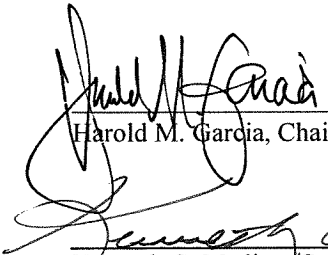
WHEREAS, San Miguel County cannot require any cannabis establishment that is licensed by the Cannabis Control Division at a licensed establishment prior to this resolution taking effect to relocate, and

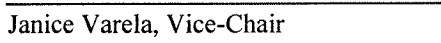
WHEREAS, the County of San Miguel recognizes and adopts state regulations of adult use of recreational cannabis for personal use as per HB 2, Cannabis Regulation Act, Section 27, and will continue to follow state issued guidelines and amendments to Section 27 unless regulation is required for the public health, safety and welfare of San Miguel County and its citizens; and

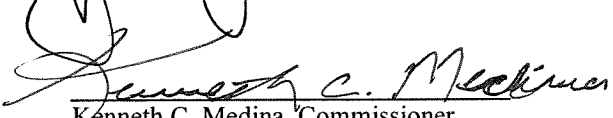
NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of San Miguel County that:

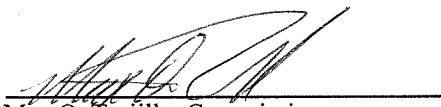
1. The County of San Miguel has adopted Resolution No. 08102021-P&Z, and the resolution will remain in effect until an ordinance regulating hemp, medical cannabis and recreational cannabis is adopted.
2. It is intended that an official adopted ordinance will precede this document, no later than January 1, 2022, which will include additional regulations for manufacturing and for retail of cannabis, following additional feedback from the citizens of San Miguel County and the evolving guidelines from the Cannabis Control Division and the State of New Mexico.

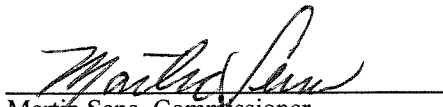
PASSED, APPROVED AND ADOPTED by the Board of County Commissioners of San Miguel County, New Mexico, on this 8th day of Aug, 2021.


Harold M. Garcia, Chair


Janice Varela, Vice-Chair



Kenneth C. Medina, Commissioner

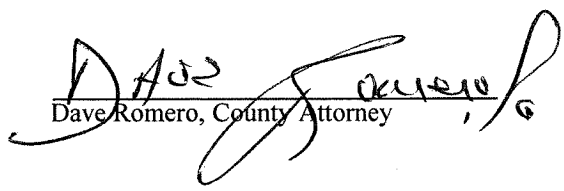

Max O. Trujillo, Commissioner


Martin Sena, Commissioner


Joy Ansley, County Manager

ATTEST:


Geraldine E. Gutiérrez, SMC Clerk


Dave Romero, County Attorney

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 8 COMMERCIAL AND MEDICAL CANNABIS
PART 2 LICENSING AND OPERATIONAL REQUIREMENTS FOR CANNABIS
ESTABLISHMENTS

16.8.2.1 ISSUING AGENCY: New Mexico Regulation and Licensing Department, Cannabis Control Division.
[16.8.2.1 NMAC - N, 08/24/2021]

16.8.2.2 SCOPE: This rule applies to all licensees and applicant for licensure pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules.
[16.8.2.2 NMAC - N, 08/24/2021]

16.8.2.3 STATUTORY AUTHORITY: The requirements set forth herein are promulgated by the cannabis control division pursuant to the authority granted under the Cannabis Regulation Act and the licensing provisions of the Lynn and Erin Compassionate Use Act.
[16.8.2.3 NMAC - N, 08/24/2021]

16.8.2.4 DURATION: Permanent.
[16.8.2.4 NMAC - N, 08/24/2021]

16.8.2.5 EFFECTIVE DATE: August 24, 2021, unless a later date is cited at the end of a section.
[16.8.2.5 NMAC - N, 08/24/2021]

16.8.2.6 OBJECTIVE: The objective of Part 2 is to ensure the safe production, testing, sale, and consumption of commercial and medical cannabis. Part 2 is not applicable to personal use of cannabis pursuant to the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act.
[16.8.2.6 NMAC - N, 08/24/2021]

16.8.2.7 DEFINITIONS: Unless otherwise defined below, terms used in Title 16, Chapter 8, Part 1, have the same meanings as set for in 16.8.1 NMAC, the Cannabis Regulation Act, and the Lynn and Erin Compassionate Use Act.
[16.8.2.7 NMAC - N, 08/24/2021]

16.8.2.8 GENERAL OPERATIONAL REQUIREMENTS FOR CANNABIS ESTABLISHMENTS:

A. State and local laws: Pursuant to the Cannabis Regulation Act, applicants and licensees shall comply with all applicable state and local laws that do not conflict with the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act, including laws governing food and product safety, occupational health and safety, environmental impacts, natural resource protection, construction and building codes, operation of a cannabis establishment, employment, zoning, building and fire codes, water use and quality, water supply, hazardous materials, pesticide use, wastewater discharge, and business or professional licensing.

B. Licensure on federally recognized Indian Nation, Tribe or Pueblo: The division shall not approve an application for licensure to operate within the exterior boundaries of a federally recognized Indian nation, tribe or pueblo located wholly or partially in the state, unless the tribal government and the department have entered an intergovernmental agreement to coordinate the cross-jurisdictional administration of the laws of New Mexico and the laws of a tribal government relating to the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act.

C. Age requirements: All applicants for licensure, including controlling persons of applicants, must be at least twenty-one years of age. All employees of a commercial cannabis establishment must be at least twenty-one years of age.

D. Consumption prohibited: Licensees shall prohibit the consumption of cannabis or cannabis products on or within the licensed premises unless a cannabis consumption area has been approved by the division.

E. Illegal sale or distribution: Licensees shall not knowingly and intentionally sell, deliver, or

transport cannabis or cannabis products to any person that is not authorized to possess and receive the cannabis or cannabis products pursuant to state law or division rules.

F. Sales of alcoholic beverages prohibited: Licensees are allowed to conduct other licensed activities, including activities pursuant to the Hemp Manufacturing Act, Section 76-24-3 *et seq.*, NMSA 1978, except for sales of alcoholic beverages.

G. No guarantee of licensure: An applicant may not exercise any of the privileges of licensure until the division approves the license application and issues a license. The submission of an application is in no way a guarantee that the application will be accepted as complete. A license shall be granted or denied within 90 days upon acceptance of a completed application. Information provided by the applicant and used by the division for the licensing process shall be accurate and truthful. The division may initiate action to deny licensure, or other administrative action against an applicant or licensee, pursuant to the Uniform Licensing Act.

I. Computation of time: The word “days” as used in this rule means calendar days unless otherwise noted.

J. Display of license: A division license shall be displayed in a conspicuous place on the licensed premises and must be made available upon request by state and local agencies. If the licensed premises is open to the public, the license shall be displayed in an area that is within plain sight of the public.

K. Inventory and sales equipment: The division shall require licensees to utilize division approved track and trace equipment, software, and services.

L. Limitation of licensed premises: Licensees shall conduct cannabis establishment operations solely on licensed premises approved by the division.

M. Multiple licensee premises: Multiple licensees may occupy a single licensed premises, provided each is individually licensed by the division.

N. Reporting of theft or security incident to division: Licensees shall submit to the division written notification of any attempted theft, theft, assault of employees or patrons, robbery or attempted robbery, break-in, or security breach that occurs on the licensee’s premises, no later than 24 hours after the licensee first becomes aware of the event. The description shall include a description of any property that was stolen or destroyed, and the quantity of any cannabis plants, cannabis and cannabis products that were stolen. The licensee must provide a copy of the police report, video footage and any other supporting evidence requested by the division. The premises must be secured prior to continuing operations, including the replacement of locks, doors, windows, repair of damaged structures or access points with comparable or more secure replacement material.

O. Non-transferable or assignable license: A license shall not be transferred by assignment or otherwise to other persons or locations. Unless the licensee applies for and receives an amended license, the license shall be void and returned to the division when any one of the following situations occurs:

- (1) location of the licensed premises changes;
- (2) the discontinuance of operation at a licensed premises; or
- (3) suspension or revocation of the license by the division.

P. Online application: All applications for initial licensure, amended licensure, additional premises, and renewal must be completed using the online application portal available on the division website. Applicants shall first register for a user account.

Q. Complete application and fees required: Applicants must submit a completed application to the division before it will be accepted by the division as complete and considered for approval or denial. License and additional premises application or renewal fees must be paid at the time of application submission. Annual plant fees must be paid upon the division’s approval of the initial application or renewal application and approval of the number of cannabis plants that a licensee may produce.

R. Process for incomplete application: In the event that an application for licensure is determined by the division to be incomplete, the division shall notify the applicant by email and specify the information or materials that remain to be submitted. If the applicant does not submit the required information or materials within 90 days of receiving notice of the deficiency, the application shall be closed as incomplete and the applicant will be required to submit a new application in order to resume the application process. All licensing or renewal fees are non-refundable and must be paid for each new application.

S. Provisional license with contingencies: Upon written request of the applicant, the division may issue a provisional license letter with defined contingencies that the applicant must obtain documents that may be pending approval of a cannabis establishment license or must be obtained from other state agencies or local jurisdictions for the application to be considered complete. The provisional license letter shall list the remaining items necessary for the application to be complete and shall expire six-months from the date the provisional license letter was issued to the applicant. Upon written request of the applicant, the division may extend a provisional

license letter for an additional six-months. Final approval or denial of a license shall be stated on the provisional license letter as contingent on the applicant submitting all remaining items. Such a provisional license letter shall not authorize an applicant to begin licensed cannabis activity.

T. Request for clarifying information: Upon request of the division, an applicant shall provide additional information required to process and fully review the application. If the requested information is not received by the division within 90 days from the date the application was deemed to be complete, the division shall initiate action to deny licensure pursuant to the Uniform Licensing Act.

U. Physical and email address: Applicants and licensees must provide a physical mailing address and an email address. General correspondence from the division will be sent to the applicant or licensee's email address of record. Legal notice and determinations regarding an application, renewal or an administrative action, including an action taken by the division to deny, suspend, or revoke a license or impose a sanction and civil monetary penalty, shall be sent to the last mailing address and to the last email address furnished to the division. Licensees must inform the division in writing of any change to its physical mailing address or email address within 10 days of the change. If applicable, such changes may be submitted via the online licensing portal. An applicant or licensee's failure to notify the division of a change in physical or email address does not relieve the applicant or licensee from the obligation of responding to a division communication.

V. Electronic signature: The division will accept an electronic signature that complies with the Uniform Electronic Transactions Act, Section 14-16-1 *et seq.*, NMSA 1978, or the Revised Uniform Law on Notarial Acts, or rules promulgated pursuant thereto, on any documents required to be submitted to the division and that are submitted electronically.

W. Withdrawal of Application: An applicant may withdraw an application at any time prior to the division's issuance of a license or denial of a license. Requests to withdraw an application must be submitted to the division in writing, dated, and signed by the applicant. Withdrawal of an application shall not, unless the division has consented in writing to such withdrawal, deprive the division of its authority to institute or continue a proceeding against the applicant for the denial of the license upon any ground provided by law or to enter an order denying the license upon any such ground. The division shall not refund application fees for a withdrawn application. An applicant may reapply at any time following the withdrawal of an application and shall be required to submit a new application and fee.

X. Closure of a licensed cannabis establishment: A licensee that anticipates permanently ceasing its business operations shall notify the division no later than 30 days prior to closure. The licensee shall post public notice of the anticipated closure at all licensed premises that are accessible to the public at least 14 days prior to the closure. Any cannabis or cannabis products that are held by a licensee on behalf of the licensee ceasing its business operations shall be returned to the licensee ceasing business operations. Any cannabis or cannabis products that are held by the licensee ceasing its business operations on behalf of another licensee shall be returned to the originating licensee. Cannabis or cannabis products that are otherwise held by a licensee shall, prior to the licensee's closure, be surrendered to either state or local law enforcement, destroyed by the licensee in accordance with the wastage standards of this rule, or donated to patients via a licensed cannabis establishment, provided that the donation has been approved in writing by the division and that the licensee has submitted documentation of the donation to the division. State and local law enforcement are authorized to remove and destroy any cannabis or cannabis products that are held by a person who has ceased to be licensed by the division.

Y. Persons licensed pursuant to the medical cannabis program: In order to be entitled to continue operating as a cannabis establishment, a person properly licensed and in good standing pursuant to the Lynn and Erin Compassionate Use Act on June 29, 2021, must submit a completed renewal application for a cannabis establishment license, along with required fees, within 30 days of the effective date of this rule. In the event the person does not apply for such a license renewal within the required timeframe, the person shall cease all production operations immediately. Upon approval, the licensee shall operate pursuant to the Cannabis Regulation Act and rules adopted by the division pursuant thereto, provided that the licensee shall continue to operate pursuant to rules promulgated by the department of health for activities authorized by virtue of the licensee's medical program license to the extent they do not conflict with rules adopted by the division pursuant to the Cannabis Regulation Act.

Z. Application for variance:

(1) Any applicant or licensee may seek a variance from division rule(s) and shall do so by filing a written petition with the division. The petitioner may submit with the petition any relevant documents or material, which the petitioner believes would support the petition.

(2) Petitions shall:

- (a) state the petitioner's name and address;
- (b) state the date of the petition;

- (c) describe the facility or activity for which the variance is sought;
- (d) state the address or description of the premises upon which the cannabis establishment or activity is located;
- (e) identify the rule(s) from which the variance is sought;
- (f) state in detail the extent to which the petitioner wishes to vary from the rule(s) and how the petitioner will ensure public health and safety is not negatively impacted;
- (g) state why the petitioner believes that compliance with the regulation will impose an unreasonable regulatory burden upon the cannabis establishment or activity; and
- (h) state the period of time for which the variance is desired, including all reasons, data, reports and any other information demonstrating that such time period is justified and reasonable.

(3) At the discretion of the division, the adjudicatory procedures of the Uniform Licensing Act may be used for guidance and shall not be construed to limit, extend, or otherwise modify the authority and jurisdiction of the division.

(4) Prior to a final decision, the division will hold a public hearing pursuant to the Open Meetings Act, Section 10-15-1 *et seq.*, NMSA 1978. The purpose of the hearing is to provide interested persons a reasonable opportunity to submit data, views or arguments orally or in writing on the proposed variance. The division, at its sole discretion, may determine whether to hold more than one hearing. The division may act as the hearing officer or designate an individual hearing officer to preside over the hearing. The hearing officer may ask questions and provide comments for clarification purposes. The hearing officer shall identify and mark all written comments submitted during the hearing. The public comments should be labeled as exhibits for reference, but do not require formal admission into the hearing record. Individuals wishing to provide public comment or submit information at the hearing must state their name and any relevant affiliation for the record and be recognized before presenting. Public comment shall not be taken under oath. Any individual who provides public comment at the hearing may be questioned by the hearing officer. The hearing shall be conducted in a fair and equitable manner. The hearing officer may determine the format in which the hearing is conducted, but the hearing should be conducted in a simple and organized manner that facilitates public comment. The rules of evidence shall not apply and the hearing officer may, in the interest of efficiency, exclude or limit comment or questions deemed irrelevant, redundant, or unduly repetitious.

(5) The division may grant the requested variance, in whole or in part, subject to conditions, if the variance is not contrary to the Cannabis Regulation Act, or public interest, does not have a negative environmental impact, and is not detrimental to public health and safety, or the division may deny the variance. If the variance is granted in whole or in part, or subject to conditions, the division shall specify the length of time that the variance shall be in place. A permanent variance may be granted. If a permanent variance is not granted, a petitioner may reapply for a variance once the time period expires.

(6) The division shall set forth in the final order the reasons for its actions and shall not be subject to review.

AA. Application for additional licensed premises: Licensees must apply for the specific cannabis establishment license type intended for each additional licensed premises as defined in the Cannabis Regulation Act.

BB. Vertically integrated cannabis establishment and integrated cannabis establishment microbusiness:

(1) Applicants for a vertically integrated cannabis establishment or integrated cannabis establishment microbusiness must meet all qualifications for each type of cannabis establishment that is authorized pursuant to the Cannabis Regulation Act.

(2) An initial applicant for an integrated cannabis microbusiness or a vertically integrated cannabis establishment license, must submit an application for authorization to conduct one or more of the following:

- (a) production of cannabis;
- (b) manufacturing of cannabis products;
- (c) retail establishment; or
- (d) courier of cannabis products.

(3) Applicants or licensees shall request authority to add or remove a cannabis establishment activity by submitting an amended application, and any required additional fees.

(4) If a vertically integrated cannabis establishment applicant or licensee will not conduct all cannabis establishment activity on a single premises, each additional premises shall require an additional premises fee.

(5) An applicant or licensee shall not conduct any activity for which additional authority is required until it has received written approval from the division.
[16.8.2.8 NMAC - N, 08/24/2021]

16.8.2.9 CRIMINAL HISTORY SCREENING REQUIREMENTS:

A. Initial licensure: Applicants for initial licensure shall consent to and undergo a national criminal history background check and department of public safety (DPS) statewide criminal history screening background check no more than ninety days prior to submitting an application. For purposes of this rule, background checks shall be required for:

- (1) each partner of a limited partnership;
- (2) each member of a limited liability company;
- (3) each director, officer, or trustee of a corporation or trust; and
- (4) any controlling person of the applicant.

B. Authorized change: If there is a change in membership of any of the above listed person(s), an amended application and background check documentation shall be submitted, and each new member must be approved by the division prior to a person assuming any duties or responsibilities for a licensee.

C. Procedure for applicants:

(1) an applicant shall submit a request to the federal bureau of investigation, the New Mexico department of public safety, or a designee vendor for a current criminal history report through the national crime information center (NCIC);

(2) the division shall provide applicants the division's originating agency identification (ORI) number;

(3) an applicant shall provide to the department of public safety, or its designated vendor, a criminal background screening request, fingerprints, and supporting documentation, including an authorization for release of information to the division in accordance with the procedures of the department of public safety or its designated vendor;

(4) the department of public safety or its designated vendor will review state records and shall transmit the fingerprints to the federal bureau of investigation for a national screening; and

(5) the results of the screening will be made available to the division for review.

D. Fees: All applicable fees associated with the national criminal history background check and New Mexico department of public safety statewide criminal history background checks shall be paid by the applicant or licensee.

E. Substantially related convictions: The division shall review felony convictions pursuant to the Cannabis Regulation Act and the Criminal Offender Employment Act. The following are considered substantially related to the qualifications, functions, or duties of an applicant or person:

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

(2) a felony conviction for hiring, employing, or otherwise using a person younger than eighteen years of age to:

(a) prepare for sale, transport or carry a controlled substance; or

(b) sell, give away or offer to sell a controlled substance to any person; and

(3) a felony offense for the possession, use, manufacture, distribution or dispensing or possession with the intent to manufacture, distribute or dispense a controlled substance. For purposes of this rule, a controlled substance shall not include cannabis.

F. Duty to report potentially disqualifying event: Applicants and licensees must notify the division in writing within seven days of any change of fact that would potentially result in the applicant or licensee, including any of the persons listed in subsection A of this section, being disqualified from holding a license pursuant to the Cannabis Regulation Act or division rules, including a conviction for any crime specified in this section. Failure to make required notification to the division may be grounds for administrative disciplinary action. If the division has determined that the person's conviction does not disqualify the licensee from licensure, the division shall notify the licensee in writing. The division may also initiate administrative disciplinary action pursuant to the Uniform Licensing Act.

[16.8.2.9 NMAC - N, 08/24/2021]

16.8.2.10 SECURITY AND LIMITED-ACCESS AREA: All phases where cannabis or cannabis products are cultivated, stored or held, weighed, packaged, manufactured, disposed or wasted, all point-of-sale areas, and any room or area storing a digital video surveillance system storage device shall take place in a designated limited-access area where cannabis and cannabis products are not visible from a public place without the use of binoculars,

aircraft, or other optical aids. For purposes of this rule, cannabis or cannabis products are not visible if it cannot be reasonably identified. Licensees shall comply with the security requirements set out in this rule to ensure that licensed premises and limited-access areas, including a vault, are secure.

A. Security alarm system: Licensees shall install and maintain at each premises an operational security alarm system. The security alarm system must be continuously monitored, whether electronically, by a monitoring company, or other means determined to be adequate by the division, and provide an alert to designated employees of the licensee and, if necessary, law enforcement within 5 minutes after a notification of an alarm or a security alarm system failure, either by telephone, email, or text message. Monitored sensors are required on all perimeter entry points and perimeter windows, if applicable. The system must include an audible alarm, which must be capable of being disarmed remotely by the designated employee or the security company. Licensees shall maintain, and make available to the division upon request, a description of the location and operation of the security system, including the location of the central control, a schematic of the security zones, and the name of the security alarm company and monitoring company, if applicable.

B. Security alarm system maintenance and failure: Licensees shall conduct a monthly maintenance inspection and make all necessary repairs to ensure the proper operation of the security alarm system. In the event of a security alarm system failure due to a loss of electrical power or mechanical malfunction that is expected to exceed an eight-hour period, the licensee shall immediately notify the division within 48 hours following the discovery of the failure, and provide alternative security that may include closure of the premises. All security system equipment shall be maintained in a secure location so as to prevent theft, loss, destruction and alterations.

C. Inspection of security alarm system records: Licensees shall maintain documentation for a period of at least 12 months of all maintenance inspections, servicing, alterations, and upgrades performed on the security alarm system. All documentation must be available during a division inspection.

D. Digital video surveillance: Licensees shall provide and maintain at each premises a digital video surveillance system with a minimum camera resolution of 1280 x 720 pixels. The digital video surveillance system shall further comply with the following requirements:

- (1) the digital video surveillance system shall at all times be able to effectively and clearly record images of the area under surveillance;
- (2) each camera shall be permanently mounted and in a fixed location;
- (3) cameras shall be placed in a location that allows the camera to clearly record activity occurring on the licensed premises that digital video surveillance is required under subsection E of this section, and shall provide a clear and certain identification of any person and activities in those areas.

E. Areas of digital video surveillance: Areas that shall be recorded on the digital video surveillance system include the following:

- (1) areas where cannabis and cannabis products are cultivated, produced, manufactured, weighed, packed, stored, loaded, and unloaded for transportation, prepared, or moved within the licensed premises;
- (2) limited-access areas;
- (3) areas storing a digital video surveillance-system storage device;
- (4) entrances and exits to the licensed premises; and
- (5) all point of sale (POS) locations to capture sale transactions.

F. Digital Video Surveillance Recording: Licensees shall comply with the following digital video surveillance recording requirements:

- (1) cameras shall record continuously 24 hours per day, or may be motion activated, and at a minimum of 15 frames per second (FPS);
- (2) the physical media or storage device on which digital video surveillance recordings are stored shall be secured in a manner to protect the recording from tampering or theft;
- (3) digital video surveillance recordings shall be kept for a minimum of 30 days and recordings of theft or security incidents as set forth in Subsection N of 16.8.2.8 NMAC shall be kept for a minimum of 12 months;
- (4) digital video surveillance recordings are subject to inspection by the division, and shall be kept in a manner that allows the division to view and obtain copies of the recordings at the licensed premises immediately upon request;
- (5) upon request, licensees shall send or otherwise provide copies of the recordings to the division within 48 hours;
- (6) recorded images shall clearly and accurately display the time and date of the recording; and
- (7) time shall be measured in accordance with the United States national institute standards

and technology standards.

G. Failure notification: A digital video surveillance system shall be equipped with a failure notification system that provides notification to the licensee of any interruption or failure of the digital video surveillance system or digital video surveillance-system storage device. A digital video surveillance system failure shall be reported to the division immediately and operations shall cease as soon as safely possible until the system is again operational.

H. Multiple licensees premises: If multiple applicants or licensees seek to operate, or operate, within the same premises, a single security system and digital video surveillance system covering the entire premises may be used by all of the licensees under the following conditions:

(1) each applicant or licensee shall disclose on their premises diagram where the security alarm system and the digital video surveillance cameras are located and where digital video surveillance recordings are stored;

(2) each applicant or licensee shall include in their application a certification that all licensees shall be individually responsible for the operation, maintenance, and record keeping requirements of the security alarm system, and that all licensees shall have access to live monitoring of the digital video surveillance system;

(3) each applicant or licensee shall include in their application an explanation of how the security alarm system and digital video surveillance system will be shared with the division and authorities, as well as who is responsible for maintenance of the security alarm system and the digital video surveillance system, who is authorized to monitor the video footage and who is responsible for storing any digital video surveillance recordings;

(4) each applicant or licensee shall have immediate access to the digital video surveillance recordings to produce them pursuant to subsection F of this section; and

(5) each applicant or licensee shall be held responsible for any violations of the security system or digital video surveillance requirements.

I. Locks: Licensees shall ensure that limited-access areas can be securely locked using commercial-grade locks that meet applicable building and fire codes. Licensees shall also use commercial-grade locks that meet applicable building and fire codes on all points of entry and exit to the licensed premises and access points to areas where cannabis and cannabis products are stored.

J. Limited-access areas: A limited access area shall only be accessible to a licensee and its authorized employees, authorized vendors, contractors or other individuals conducting business that requires access to a limited-access area, division staff or authorized designees, state and local law enforcement authorities acting within their lawful jurisdictions, fire departments and emergency medical services acting in the course of their official capacity, or volunteers specifically permitted by the licensed cannabis establishment. Licensees shall ensure:

(1) only authorized employees of the licensee and other authorized individuals have access to the limited-access areas of the licensed premises;

(2) a daily record log, which may be a sign-in and sign-out sheet at the entrance of a premises, of all authorized employees and authorized individuals that are not employees of the licensee who enter the limited-access areas is maintained;

(3) limited-access record logs are kept for a minimum of 90 days, or 12 months if a theft or security incident occurs, and must be made available to the division within 48 hours upon request;

(4) entrances to all limited-access areas have a solid door, or if appropriate, a gate adequate to block access, and a lock meeting the requirements set forth in subsection I of this section, and unless prohibited by building or fire codes, the entrance shall remain locked when not in use during regular business hours;

(5) all limited-access areas are identified by the posting of a sign that shall be a minimum of 12" x 12" and which states: "Do Not Enter - Limited Access Area - Access Limited to Authorized Personnel Only" in lettering no smaller than one inch in height;

(6) authorized employees of the licensee visibly display an employee identification badge at all times while present within a limited-access area;

(7) other authorized individuals obtain a visitor identification badge prior to entering a limited-access area, the visitor identification badge shall be visibly displayed at all times while the visitor is in any limited access area, and all visitor identification badges shall be returned to the cannabis establishment on exit.

K. Licensee identification badge requirement: Licensees shall issue a laminated or plastic-coated identification badge to all agents, officers, or other persons acting for or employed by a licensee, which shall, at a minimum, include the licensee's "doing business as" name and license number, the individual's first name, an employee number exclusively assigned to that employee for identification purposes, and a color photograph of the

employee that clearly shows the full front of the employee's face and that is at least 1 inch in width and 1.5 inches in height.

L. Lighting: Any perimeter entry point of a cannabis establishment must have lighting sufficient for observers to see, and cameras to record, any activity within 20 feet of the gate or entry; and a motion detection lighting system may be employed to light required areas in low-light conditions.

M. Doors and windows: All external entrances to indoor facilities on the licensed premises must be able to be locked and all perimeter doors and windows of indoor facilities must be in good condition and lockable.

N. Fencing requirements for outdoor areas or greenhouses: Any licensed premises that is an outdoor area or greenhouse shall also implement security measures to ensure that the outdoor area or greenhouse is not assessable to unauthorized individuals and is secure to prevent and detect diversion, theft, or loss of cannabis, which shall at a minimum include:

(1) a perimeter security fence designed to prevent unauthorized entry to any cannabis cultivation areas and signs that shall be a minimum of 12" x 12" and which states: "Do Not Enter - Limited Access Area - Access Limited to Authorized Personnel Only" in lettering no smaller than one inch in height; and

(2) a cover that obscures cannabis cultivation areas from being readily viewed from outside of the fenced area.

O. Security guards: Security guards are permitted but not required. Contract security guards must be licensed under the Private Investigations Act, Section 61-27B-1 *et seq.*, NMSA 1978. Security guards must not consume cannabis or cannabis products or be intoxicated while performing any duties for a licensee. Security guards must comply with all laws related to firearms and other weapons.

P. Vault: Licensees may store all non-growing cannabis, cannabis products, or cash not being actively handled for purposes of cultivating, packaging, processing, transporting, or selling within an adequately sized vault.

[16.8.2.10 NMAC - N, 08/24/2021]

16.8.2.11 RECALL OF CANNABIS:

A. Written procedures: Licensees shall establish and implement written procedures for recalling cannabis and cannabis products that have been sold or otherwise distributed to the public or other cannabis establishments. Recall procedures shall be made available for the division's inspection upon request.

B. Recall procedures: The recall procedures shall identify:

(1) the circumstances in which a recall will be conducted, including the circumstances involving the mislabeling or contamination of products;

(2) personnel responsible for implementing the recall procedures;

(3) procedures for notification of all customers who have, or reasonably could have, obtained an affected product, including communication and outreach via broadcast media, as appropriate;

(4) procedures for notification of any other cannabis establishment that supplied or received the recalled product;

(5) instructions to be provided to customers or other cannabis establishments for the return or destruction of the recalled product; and

(6) procedures for the collection and wastage (as may be required by the division) of any recalled product.

C. Destruction of recalled product: All recalled products that are intended to be destroyed shall be wasted in accordance with the wastage requirements of the division.

D. Division notification: The licensee shall notify the division of any recall within 24 hours of initiating the recall.

E. Division recall order: The division may order the immediate recall of cannabis or cannabis products if it deems such action necessary to protect public health and safety.

[16.8.2.11 NMAC - N, 08/24/2021]

16.8.2.12 CHAIN OF CUSTODY:

A. Licensees shall adopt, maintain, and enforce chain of custody procedures and documentation requirements to ensure appropriate tracking and tracing of cannabis and cannabis products. Licensees shall use a paper-based or electronic chain of custody form that documents the possession of cannabis or cannabis products, and includes the following:

(1) the originating location of the cannabis or cannabis products;

(2) the time and date of transfer of the cannabis or cannabis products;

- (3) the size, number of boxes, and number of pieces of cannabis or cannabis products;
- (4) the internal batch or lot numbers, and if different, the track and trace batch or lot numbers;
- (5) a dated signature of the person receiving the cannabis or cannabis products; and
- (6) for cannabis samples, in addition to the above, the types of containers, mode of collection, the authorized individual who collected the sample, the date and time of collection, preservation, and requested analyses of the sample.

B. Licensees shall also adopt, maintain, and enforce security requirements to ensure security and the safety of cannabis and cannabis products and transport personnel.
[16.8.2.12 NMAC - N, 08/24/2021]

16.8.2.13 REQUIREMENTS FOR THE TRANSPORTATION OF CANNABIS:

A. General requirements: The following requirements apply when disposing of wasted cannabis or cannabis plants or transporting cannabis or cannabis products between licensees or licensed premises:

- (1) transportation of cannabis or cannabis products shall only be conducted by persons holding a cannabis establishment license under the Cannabis Regulation Act or designated employees, or contractors, of a licensee;
- (2) prior to transporting any cannabis or cannabis products to another licensee, the licensee shall have a completed transfer or sales invoice or receipt and a chain of custody form, the licensee shall only transport cannabis or cannabis products listed on the invoice or receipt and chain of custody form, and the invoice or receipt and chain of custody form may not be altered or changed once transport begins;
- (3) transportation of cannabis or cannabis products by means of a human powered vehicle or unmanned vehicle is prohibited;
- (4) cannabis or cannabis products shall only be transported inside of a motor vehicle or trailer in reasonable operating condition and shall not be visible or identifiable from outside of the vehicle or trailer;
- (5) cannabis or cannabis products shall be locked in a box, container, or cage that is secured within the inside of the vehicle or trailer, including when such a box, container, or cage is located inside of the trunk;
- (6) vehicles and trailers shall be locked and secured while left unattended;
- (7) licensees shall not leave a vehicle or trailer containing cannabis or cannabis products unattended in a residential area;
- (8) vehicles shall have a vehicle alarm system ;
- (9) packages or containers holding cannabis or cannabis products shall not be tampered with, or opened, during transport;
- (10) when engaged in the transportation of cannabis or cannabis products, a licensee shall only travel between licensees shipping or receiving cannabis or cannabis products and its own licensed premises;
- (11) licensees may transport multiple shipments of cannabis or cannabis products at one time in accordance with applicable laws;
- (12) licensees shall not deviate from the travel requirements described in this section, except for necessary rest, fuel, or vehicle repair stops;
- (13) under no circumstances may alcoholic beverages be transported with cannabis or cannabis products;
- (14) vehicles and trailers transporting cannabis or cannabis products are subject to inspection by the division at any licensed premises or during transport at any time;
- (15) notwithstanding subsection A of this section, cannabis or cannabis products may be transported by foot, hand truck, forklift, or other similar means if it is not operationally feasible to transport cannabis products inside of a vehicle or trailer because the licensed premises that the cannabis products will be transported from and the licensed premises that will be receiving the cannabis products are located within the same building or on the same premises;
- (16) storage and transportation of cannabis and cannabis products shall be under conditions that will maintain and protect the cannabis or cannabis products against physical, chemical, and microbial contamination as well as against deterioration of the cannabis or cannabis products and the container;
- (17) the vehicle must be properly registered with the New Mexico motor vehicle division; and
- (18) the driver of the vehicle must be prepared to show proper identification, including a licensee employee badge, driver's license, vehicle registration and proof of insurance, and the appropriate shipping manifest and chain of custody form to law enforcement and the division when requested.

B. Shipping manifest: Prior to transporting cannabis or cannabis products, a licensee shall generate a shipping manifest through the track and trace system for the following activities:

- (1) testing and sampling of cannabis or cannabis products;
- (2) sale of cannabis or cannabis products to a licensee;
- (3) destruction, wastage, or disposal of cannabis or cannabis products; and
- (4) any other activity, as required by the division or any other government authority.

C. Transmittal of manifest: Licensees shall transmit the shipping manifest to the division and (if applicable) the licensee that will receive the cannabis or cannabis products via the online track and trace portal prior to transporting the cannabis or cannabis products.

D. Verification of manifest: Licensees shall ensure and verify that the cannabis or cannabis products being taken into possession for transport at the originating licensed premises are described and accurately reflected in the shipping manifest. For purposes of this section, the licensee may verify that the cannabis or cannabis products are accurately reflected in the shipping manifest by confirming that the number of boxes of cannabis or cannabis products, type of cannabis or cannabis products, or the units of cannabis or cannabis products matches the label on the boxes containing the cannabis or cannabis products.

E. Rejection of shipment: Licensees shall not take into possession or transport:

- (1) Any cannabis or cannabis products that are not on the shipping manifest; or
- (2) Any cannabis or cannabis products that are less than or greater than the amount reflected on the shipping manifest, with the exception of marginal weight difference due to curing during transport.

F. Responsibility for discrepancy: The licensee transporting the cannabis or cannabis product is responsible for any discrepancies between the shipping manifest and the cannabis or cannabis products in its possession during transport, and subject to any enforcement or disciplinary action related to such discrepancy.

G. Void or change prohibited: Licensees shall not void or change a shipping manifest after departing from the originating licensed premises.

H. Documentation of all transport: A shipping manifest and chain of custody form shall accompany every transport of cannabis products.

I. Alternative notice of shipment: Notwithstanding any provision of this section to the contrary, if a transporting licensee cannot obtain access to the track and trace system, the licensee shall complete the shipping manifest outside of the track and trace system and promptly transmit it to the division and the licensee receiving the shipment by electronic mail. If the transporting licensee has access to the track and trace system and the licensee receiving the shipment does not have access to the track and trace system, the transporting licensee shall complete the shipping manifest in the track and trace system, transmit it to the division, and send a copy to the licensee receiving the shipment by electronic mail.

[16.8.2.13 NMAC - N, 08/24/2021]

16.8.2.14 LICENSURE PERIOD, EXPIRATION AND RENEWAL:

A. License period: The licensure period of a license shall be from the date of approval of the license application for a period of 12 months.

B. Automatic expiration of license: Unless otherwise renewed, suspended, or revoked, a license shall expire at 11:59 p.m. on the day indicated on the license as the expiration date or other written notification by the division.

C. License renewal: To timely renew a license, a completed license renewal application and annual license fee set forth in 16.8.11 NMAC shall be received by the division from the licensee no earlier than 60 calendar days before the expiration of the license and no later than 30 days before the expiration of the license through the division's electronic licensing portal. Failure to receive a notice for license renewal from the division does not relieve a licensee of the obligation to renew all licenses as required. In the event a license renewal application is not submitted and approved prior to the license expiration date, the licensee must not sell, transfer, transport, manufacture, test, or distribute any medical or commercial cannabis or cannabis products until the license is renewed. Upon the nonrenewal of a license, the division may initiate disciplinary action pursuant to the Uniform Licensing Act, Section 61-1-1 *et seq.*, NMSA 1978.

[16.8.2.14 NMAC - N, 08/24/2021]

16.8.2.15 WASTAGE OF CANNABIS OR CANNABIS PRODUCTS; PERMITTED METHODS:

Licensees that waste cannabis or cannabis products shall do so by rendering the cannabis or cannabis products unusable and unrecognizable prior to removal from licensed premises. The wastage of cannabis or cannabis products shall be documented, tracked by batch, and recorded in an electronic track and trace system specified by the

division. Wastage of cannabis or cannabis products shall occur only within the licensee's ordinary business hours. Licensees shall dispose of wasted cannabis or cannabis products and shall not attempt to incorporate wasted cannabis or cannabis plants into any product intended for human consumption.

A. Permitted methods of wastage: Wastage of cannabis or cannabis plants shall be accomplished by grinding and incorporating the cannabis into other ground material, such as soil, compost material, or leaf and yard waste, so that the resulting mixture is at least fifty percent non-cannabis material by volume;

B. Disposal of wasted cannabis: Disposal of wasted cannabis or cannabis plants shall be conducted in accordance with all applicable waste disposal laws, including hazardous waste disposal laws.

C. Holding time: Cannabis or cannabis products that a licensee intends to waste shall be held in a secured designated holding area for a minimum of 72-hours prior to being wasted. Licensees shall affix to each batch that is held for wasting documents that record information concerning the batch, including batch number or code, plant number, and weight. The batch to be wasted shall not be handled, moved, or wasted during the 72-hour period, unless by specific instruction of the division. Cannabis or cannabis products that are intended to be wasted may be subject to inspection by the division.

D. Documentation of wastage; retention: Licensees shall record the wastage of cannabis or cannabis products, including batch number, weight, plant number, the name of the receiving solid waste facility, dates of wastage and disposal, and any test results associated with a wasted batch, using an electronic system specified by the division, and shall deduct any wasted usable cannabis or cannabis plants from the licensee's inventory. The electronic record shall be retained for no less than two years following the disposal. Licensees shall additionally document the wastage of any cannabis using a video recording and shall retain the video recording of the destruction for no less than 120 days. Licensees shall make the video recording of the destruction available for the division's inspection and copying upon the division's request.

E. Notice to division: Licensees shall notify the division of the wastage of cannabis within five business days of the wastage.

[16.8.2.15 NMAC - N, 08/24/2021]

16.8.2.16 QUALITY ASSURANCE TESTING; COMPLAINT PROCEDURE:

A. Quality assurance testing by the division: The division or its representative may conduct quality assurance sampling and testing of cannabis or cannabis products, and may require a licensee to provide samples of cannabis or cannabis products for this purpose. The division may additionally adopt and enforce a randomized testing schedule for the sampling and testing of cannabis or cannabis products. The division may prohibit the sale or transfer of cannabis or cannabis products that are determined by the division to contain prohibited levels of contaminants, or that is found to have been improperly tested, or may require remediation of such cannabis that is consistent with the remediation standards of the division.

B. Complaints: If the division receives a verified complaint regarding the presence of mold, bacteria, or another contaminant in cannabis or cannabis products, or if the division has reason to believe that the presence of mold, bacteria, or another contaminant may jeopardize public health and safety, the division or its representative may conduct an inspection and may require a licensee to provide samples of cannabis or cannabis products for testing by the division. Licensees shall allow the division or its representative access to a facility or to collect cannabis or cannabis product samples. To be considered verified, a complaint must be made on a form provided by the division that at a minimum identifies:

- (1) date the complaint is filed;
- (2) location of the cannabis or cannabis product;
- (3) any identifiable features of the cannabis or cannabis product at issue, including the type and amount;
- (4) the nature of the complaint;
- (5) name and contact information of the complainant; and
- (6) complaint must be emailed to the licensee within 5 business days of the division receiving the complaint.

C. Division sampling and testing requirements: Division employees may possess cannabis samples for the sole purposes of establishing compliance with the Cannabis Regulation Act or division rules. The division shall comply with the following testing requirements:

- (1) the division shall maintain chain of custody documentation for any cannabis or cannabis product samples taken;
- (2) a written receipt shall be given to the licensee for all testing samples;
- (3) all testing samples shall be placed into a sealed container and clearly labeled;

(4) all testing samples shall be tested by the division or a designated testing facility; and
(5) the quantity of cannabis or cannabis products that is gathered by the division from a licensee for testing purposes shall not exceed the applicable sample sizes required by division rules.

D. Cost of testing: The licensee shall bear the cost of any testing required by the division.
[16.8.2.16 NMAC - N, 08/24/2021]

16.8.2.17 FIRE SAFETY LAWS: Licensees shall ensure all licensed premises are compliant with Article 52 of the New Mexico Statutes Annotated and any associated rules, including rules governing: posting of address, exit signs, emergency lighting, egress paths, evaluation plan, electrical wiring and lighting, exits and exit access, doors, egress hardware, aisle width, chemical storage, fire extinguishers, fire alarm, sprinkler system and fire suppression system, firewalls, combustible waste and housekeeping, storage, access from the exterior, and weeds, grass, vines or other growth capable of igniting.
[16.8.2.17 NMAC - N, 08/24/2021]

16.8.2.18 CONSTRUCTION OR ALTERATION OF CANNABIS ESTABLISHMENT BUILDINGS: If applicable, licensees shall ensure that all licensed premises are in compliance with the Construction Industries Licensing Act, Section 60-13-1 *et seq.*, NMSA 1978 and the LPG and CNG Act, Section 70-5-1 *et seq.*, NMSA 1978, including associated rules, as well as applicable codes, standards, zoning laws, licensing laws, and fire codes. If applicable, licensees shall further ensure that each structure, including manufactured homes used pursuant to Section 60-14-4(S), NMSA 1978, obtains a Certificate of Occupancy pursuant to 14.5.3.13 NMAC prior to occupancy and use of the structure.
[16.8.2.18 NMAC - N, 08/24/2021]

16.8.2.19 OCCUPATIONAL SAFETY: Licensees shall comply with the Occupational Health and Safety Act, Section 50-9-1 *et seq.*, NMSA 1978 and any associated rules.
[16.8.2.19 NMAC - N, 08/24/2021]

16.8.2.20 MONITORING OF LICENSEE:

A. Monitoring: The division may perform on-site assessments of an applicant or licensee during normal business hours to determine compliance with the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules.

B. Record access and review: The division may review any and all records related to the operations of the licensee and may require and conduct interviews with such persons or entities and persons affiliated with such entities, for the purpose of determining compliance with division rules or applicable laws. The division shall have access to the financial records of a licensee, including sales records and data from point-of-sale systems, and shall be granted immediate access to inspect or copy those records upon request.

C. Access to premises: Licensees shall provide the division timely access to any material and information necessary for determining compliance with division rules or applicable laws. Failure by a licensee to provide the division access to the premises or materials may result in disciplinary action.

D. Monitoring documents: Any failure to adhere to division rules or applicable laws documented by the division during monitoring may result in disciplinary action.

E. Report to law enforcement: The division shall refer suspected criminal activity or complaints alleging criminal activity that are made against a licensee to appropriate federal, state, or local law enforcement authorities.

F. Financial records: Licensees shall maintain detailed sales records in a manner and format approved by the division, inform the division of the location where such records are kept, and promptly update the division if the records are removed.

G. Audit: Licensees shall submit the results of a biennial audit to the division. The audit shall be conducted by an independent certified public accountant; the costs of which shall be borne by the licensee. Results of the audit shall be forwarded to the division. The division may extend, in writing, a licensee's audit requirement to three years following the timely submission of two biennial unqualified audits or two biennial unqualified reports.

H. Producer reports: A cannabis producer licensee shall submit reports on an annual basis, or as otherwise reasonably requested, and in the format specified by the division. The annual report shall include:

- (1) number of cannabis plants and cannabis inventory;
- (2) revenue from the wholesale of cannabis;
- (3) total number of transactions;

- (4) number of units provided without charge;
- (5) number of cannabis plants in production, including mature and immature plants;
- (6) number of cannabis plants harvested;
- (7) total yield of usable cannabis harvested from cannabis plants (in grams);
- (8) average yield per plant (in grams);
- (9) amount of cannabis (in grams) sold by wholesale;
- (10) amount of cannabis (in grams) purchased by wholesale;
- (11) number of live cannabis plants (including clones) and cannabis seeds sold;
- (12) amount of dried cannabis leaves and flowers in stock;
- (13) average price per gram of dried cannabis leaves and flowers;
- (14) total amount of dried cannabis leaves and flowers sold (in units);
- (15) total sales of dried cannabis leaves and flowers (in dollars and units);
- (16) actual water and energy use in the preceding 12 months;
- (17) demographic information required pursuant to the Cannabis Regulation Act, including data as defined by the applicant's social and economic equity plan, and the divisions published social and economic equity plan; and
- (18) all quality testing reports, to be included as attachments.

[16.8.2.20 NMAC - N, 08/24/2021]

16.8.2.21 CANNABIS PRODUCER LICENSURE; GENERAL PROVISIONS:

- A. License types:** The division may license two classes of producers:
 - (1) A cannabis producer; and
 - (2) A cannabis producer microbusiness.
- B. Division application forms:** All applications for licensure authorized pursuant to the Cannabis Regulation Act shall be made upon current forms prescribed by the division using the online application portal.
- C. License required:** Unless licensed pursuant to the Cannabis Regulation Act or division rules, a person shall not cultivate cannabis, including planting, growing, and harvesting cannabis, except for personal use as provided by the Cannabis Regulation Act and the Lynn and Erin Compassionate Use Act.
- D. Other activities prohibited:** Except as provided in subsection BB of 16.8.2.8 NMAC, no cannabis producer establishment licensee may manufacture cannabis products, courier cannabis or cannabis products, or engage in the retail sale of cannabis or cannabis products unless the licensee has properly applied for, and the division has approved, the applicable license type required for those activities.
- E. Vertically integrated cannabis establishment and integrated cannabis establishment microbusiness:** Applicants for a vertically integrated cannabis establishment or integrated cannabis establishment microbusiness must meet all qualifications for a cannabis producer or cannabis producer microbusiness to be approved for, and authorized to conduct, cannabis producer activities.

[16.8.2.21 NMAC - N, 08/24/2021]

16.8.2.22 APPLICATION REQUIREMENTS FOR CANNABIS PRODUCER LICENSE:

- A.** An initial application or renewal for cannabis producer licensure shall include the following:
 - (1) Contact information for the applicant and the cannabis establishment, to include:
 - (a) applicant's full legal name;
 - (b) applicant's date of birth, if applicable;
 - (c) applicant's mailing address;
 - (d) applicant's contact telephone number;
 - (e) applicant's contact email address;
 - (f) applicant's business physical address and mailing address, if different;
 - (g) applicant's business legal name, including a DBA name if applicable;
 - (h) applicant's business web address, if applicable;
 - (i) applicant's business hours of operation;
 - (j) name and contact information for each controlling person; and
 - (k) demographic data pursuant to the Cannabis Regulation Act;
 - (2) proof the applicant or each controlling person is at least 21 years of age, which shall include identification issued by a federal or state government that includes the name, date of birth, and picture of the applicant or controlling person;
 - (3) legible and accurate diagram and description of the location of the land or facility to be used

for the cannabis establishment and the method(s) to be used to produce cannabis in a portable document format (.pdf), and if requested by the division, digital photographic photos;

(4) fully executed and dated documentation of the applicant's ownership or legal authority to use the property, buildings, or other facilities, establishing the applicant is, or will be, entitled to possession of the premises for which the application is made;

(5) demonstration of a legal right to use the quantity of water that the division determines is needed for cannabis production, as evidenced by either:

(a) documentation from a water provider that the applicant has the right to use water from the provider and that the use of water from cannabis production is compliant with provider's rules, or

(b) documentation from the office of the state engineer showing that the applicant has a valid and existing water right, or a permit to develop a water right, for irrigation purposes for outdoor cultivation, or a commercial purpose for indoor cultivation at the proposed place of use of the cannabis establishment. The documentation may include any of the following:

(i) a state engineer permit or license in good standing, but not including a permit issued pursuant to Sections 72-12-1, -1.1, -1.2, or -1.3, NMSA 1978;

(ii) a subfile order or decree issued by a water rights adjudication court;

(iii) the findings of an office of the state engineer hydrographic survey; or

(iv) other documentation the office of the state engineer has deemed in writing as acceptable to the office of the state engineer under this rule.

(6) a plan to use, or certification that the applicant cannot feasibly use, energy and water reduction opportunities, including:

(a) drip irrigation and water collection;

(b) natural lighting and energy efficiency measures;

(c) renewable energy generation; and

(d) estimated water and energy use related to the applicants cultivation plan;

(7) a copy of a current business license, fire inspection report, and zoning approval;

(8) if applicable, certification the applicant is in good standing with the New Mexico secretary of state, including all documents filed with the New Mexico secretary of state;

(9) a list of all controlling persons, a list of other current or prior licensed cannabis businesses, documentation of the applicant's or a controlling person legal name change, and criminal history screening documents as set forth in 16.8.2.9 NMAC and the Cannabis Regulation Act;

(10) a detailed description of any criminal convictions of the applicant and any controlling person, including the date of each conviction, dates of incarceration, probation or parole, if applicable, description of the offense, and statement of rehabilitation of each conviction;

(11) if applicable, a description and legible electronic image of the labeling and packaging of the cannabis or cannabis products that the producer shall utilize, which satisfies the labeling requirements of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, division rules, and other state or federal rules applicable to labeling and packaging;

(12) if applicable, a sample of the record form(s), which shall identify (among other items) the name of the wholesale purchaser, the date of the sale, the quantity, and price of medical or commercial cannabis sold;

(13) the initial number of mature cannabis plants, and immature cannabis plants, the applicant proposes for production and the amount of water the applicant plans to use on a monthly basis for a twelve month period;

(14) a summary of the proposed operations, including a list of cannabis or cannabis products produced at the location;

(15) certification the applicant will adhere to production requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules, including creating and maintaining a cultivation plan, and cannabis waste procedures for cannabis or cannabis products;

(16) certification the applicant will adhere to cannabis transport requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules, including the transport of unprocessed cannabis or cannabis products to other cannabis establishments;

(17) certification the applicant will adhere to New Mexico department of agriculture (NMDA) pesticide registration, licensing, and use requirements to ensure a safe product and environment;

(18) certification the applicant will adhere to security requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules, including requirements relating to safety and security procedures, security devices to be used, placement of security devices, personal safety, and crime

prevention techniques;

(19) certification the applicant will adhere to quality assurance requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules, including requirements relating to routine testing by a licensed testing laboratory, division inspection of licensed premises during normal business hours, and testing of cannabis;

(20) certification the applicant will adhere to applicable federal, state and local laws governing the protection of public health and the environment, including occupational health and safety, food safety, environmental impacts, natural resource protections, air quality, solid and hazardous waste management, and wastewater discharge;

(21) certification the applicant has never been denied a license or had a license suspended or revoked by the division or any other state cannabis licensing authority or a detailed description of any administrative orders, civil judgements, denial or suspension of a cannabis license, revocation of a cannabis license, or sanctions for unlicensed medical or commercial cannabis activity by any state licensing authority, against the applicant, controlling person, or a business entity in which the applicant or controlling person was a controlling person within the three years immediately preceding the date of the application;

(22) applicant's social and economic equity plan to encourage economic and social diversity in employment, including race, ethnicity, gender, age, and residential status of licensee, controlling persons and employees of applicant and whether the applicant, controlling persons, employees or the locations where the cannabis products are produced are located in an underserved rural community, including tribal, acequia, land grant-merced, federally designated opportunity zone, or other rural historic communities;

(23) an attestation of the following statement: Under penalty of perjury, I hereby declare that the information contained within and submitted with the application is complete, true and accurate. I understand that a misrepresentation of fact or violation of these rules may result in denial of the license application or revocation of a license issued; and

(24) payment of any required application or licensure fees as set forth in 16.8.11 NMAC. Cannabis plant fees, if applicable, shall be accessed by the division upon approval of an initial application, additional premises application or renewal application. The division must receive payment of cannabis plant fee prior to cultivation of cannabis plants or, if applicable, at the time of renewal.

B. Verification of information: The division may verify information contained in each application and accompanying documentation, including:

- (1) contacting the applicant or controlling person by telephone, mail, or electronic mail;
 - (2) conducting an on-site visit;
 - (3) requiring a face-to-face or virtual meeting and the production of additional documentation;
- or
- (4) consulting with state or local governments.

[16.8.2.22 NMAC - N, 08/24/2021]

16.8.2.23 SUBMITTAL OF APPLICATION FOR AMENDED CANNABIS PRODUCER LICENSE:

A. Application: A licensed producer shall submit to the division an application form for an amended license, pay the required fee, and must obtain approval from the division, prior to implementing any of the following:

- (1) material or substantial change of the size or location of the premises;
- (2) change of licensee's legal or business name;
- (3) change in water source, or licensees water and energy conservation plan, including, the reuse of water and disposal of effluent;
- (4) increase in plant count beyond which licensee is currently licensed to produce;
- (5) addition of a controlling person;
- (6) material or substantial change to a license's security system;
- (7) material or substantial modification of the premises; or
- (8) engaging in an activity which requires an addition or change of a license type.

B. Amended license not required: Changes to standard operating policies and procedures may be made without providing notification to the division, provided that licensees shall maintain at each licensed premises a copy of all current and prior operating policies and procedures.

C. Requirements and processing of application for amended license: The application for amended license must comply with all requirements applicable to initial applications, except that the application shall be clearly designated as one for an amended license. The division shall prorate required fees to align with the expiration date of the licensee's original license, which shall be the expiration date of the licensee's amended license, if

approved. The division shall approve or deny an application for amended license within 90 days of receiving a completed application. Denial of an application for amendment shall be pursuant to the Uniform Licensing Act.

D. Material or substantial change: Material or substantial changes requiring approval include:

- (1) increase or decrease in the size of the premises, including the sale of property used for the cannabis establishment, the purchase of additional property for the use of the cannabis establishment, or a change in the location of the cannabis establishment;
- (2) a change in the licensee's access to the water source submitted with an application for initial, amended, or renewal licensure or a 10 percent, or more, increase in the licensee's water usage;
- (3) change to a licensee's security system, including relocation or security points or installation of a new security system; or
- (4) modification of the premises to relocate cannabis activities.

[16.8.2.23 NMAC - N, 08/24/2021]

16.8.2.24 PRODUCER PREMISES DIAGRAM:

A. An applicant must submit to the division, with the application, a complete and detailed diagram of the proposed premises. The diagram shall be used by the division to determine whether the premises meets the requirements of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules. The division shall deny an application if the premises does not qualify for licensure pursuant to federal, state or local laws.

B. The diagram shall show the boundaries of the property and the proposed premises to be licensed, the dimensions of each area that cannabis plants will be cultivated, the location(s) and the dimensions of other areas where other horticulture will be cultivated, if applicable. The diagram shall also include, as applicable, any equipment to be used, entrances and exits, interior partitions, location of lights in the cannabis plant cultivation area(s) and the maximum wattage or wattage equivalent, walls, rooms, windows, and doorways. The diagram shall include a brief statement or description of the principal activity to be conducted in each area on the premises.

C. The diagram shall show where all cameras are located and assign a number to each camera for identification purposes.

D. The diagram shall be to scale.

E. The diagram shall not contain any highlighting and the markings on the diagram shall be in black-and-white print.

F. If the proposed premises consists of only a portion of a property, the diagram must be labeled indicating which part of the property is the proposed premises and what the remaining property is used for.

G. If the proposed premises consists of only a portion of a property that will contain two or more licensed premises, then the diagram shall be supplemented with a description of how two or more licensed premises will be managed on the property.

H. If a proposed premise is located on only a portion of a property that also includes a residence, the diagram shall clearly show the designated buildings for the premises and the residence.

[16.8.2.24 NMAC - N, 08/24/2021]

16.8.2.25 PHYSICAL MODIFICATION OF PRODUCER PREMISES

A. Licensees shall not, without the prior written approval of the division, make a physical change, alteration, or modification of the licensed premises that materially or substantially alters the licensed premises or the use of the licensed premises from the premises diagram filed with the division.

B. Licensees whose licensed premises is to be materially or substantially changed, modified, or altered is responsible for filing a request for premises modification with the division.

C. Material or substantial changes, alterations, or modifications requiring approval include:

- (1) when a building or structure will be erected, constructed, enlarged, altered, repaired, moved, improved, removed, converted or demolished, as defined and described in the applicable building codes, which require a permit from the construction industries division or the appropriate local jurisdiction;
- (2) when electrical wiring, plumbing or mechanical work and LP gas work, as defined and described in the applicable construction codes for those trades, is to be installed, repaired or maintained in or on such building or structure, which require a permit from the construction industries division or the appropriate local jurisdiction;
- (3) re-roofing and application of roof coatings that requires a building permit and inspections; or
- (4) changing the occupancy activities conducted in or the use of an area identified in the last

premises diagram provided to the division that requires a new certificate of occupancy or fire inspection.

D. Licensees shall request approval of a material or substantial physical change, alteration, or modification in writing, and the request shall include:

- (1) a new premises diagram that conforms to requirements set forth in 16.8.2.18 NMAC;
- (2) a copy of the applicable building permit; and
- (3) a new certificate of occupancy, if applicable.

E. Licensees shall immediately notify the division within 24 hours if a federal or state authority requires a change to the premises;

F. Licensees shall promptly provide additional documentation requested by the division to evaluate the licensee's request to modify the licensed premises; and

G. The division shall notify the licensee, in writing, of approval or denial of a request for physical modification no later than 10 days after receiving a request.

[16.8.2.25 NMAC - N, 08/24/2021]

16.8.2.26 CANNABIS PRODUCER POLICIES AND PROCEDURES:

A. Minimum policy and procedure requirements: A producer shall develop, implement, and maintain on the licensed premises, standard policies and procedures, which shall include the following:

(1) cannabis testing criteria and procedures, which shall be consistent with the testing requirements of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules, and shall include at a minimum, the following topics:

- (a) employee health and safety training materials;
 - (b) training requirements for the proper use of health and safety measures and controls;
 - (c) representative sampling and analytical testing of cannabis or cannabis products for contaminants prior to wholesale or transfer to another cannabis establishment;
 - (d) recordkeeping and chain of custody protocols for transportation of cannabis or cannabis product samples to a cannabis testing laboratory;
 - (e) recordkeeping and chain of custody protocols for transportation of cannabis or cannabis products to another cannabis establishment for any purpose;
 - (f) protocols to ensure that cannabis or cannabis products, including any samples of cannabis or cannabis products, are transported and stored in a manner that prevents degradation, contamination, tampering, or diversion;
 - (g) protocols for testing sample collection that ensures accurate test results; and
 - (h) procedures for remedial measures to bring cannabis or cannabis products into compliance with division standards or destruction of a tested batch of cannabis or cannabis products if the testing samples from the tested batch indicate noncompliance with applicable health and safety standards;
- (2) employee policies and procedures to address the following minimum requirements:
- (a) adherence to state and federal laws;
 - (b) responding to an emergency, including robbery or a serious accident;
 - (c) alcohol and drug-free workplace policies and procedures;
 - (d) safety and security procedures;
 - (e) occupational safety;
 - (f) crime prevention techniques; and
 - (g) if applicable, confidentiality laws, including the Health Insurance Portability and Accountability Act of 1996; and

(3) training documentation prepared for each employee and statements signed by employees indicating the topics discussed, names and titles of presenters, and the date, time, and place the employee received said training.

B. Retention of training documentation: Licensees shall maintain documentation of an employee's training for a period of five years for current employees and at least six months after the termination of an employee's employment.

[16.8.2.26 NMAC - N, 08/24/2021]

16.8.2.27 MINIMUM REQUIREMENTS FOR THE PRODUCTION OF CANNABIS:

A. General requirements: Licensees shall ensure the following:

- (1) all production activities are done on premises that are in compliance with state and local

laws that do not conflict with the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Acts;

(2) the licensee's right to use the quantity of water sufficient to meet the production facility's needs remains in good standing;

(3) plumbing shall be of adequate size and design, adequately installed, and maintained to carry sufficient quantities of water to required locations throughout the facility, including sufficient quantities of water to properly convey sewage and liquid disposable waste from the facility; and

(4) all weighting or measuring devices that are used in the wholesale of cannabis be appropriately documented as having undergone certified registration and calibration that is in accordance with applicable requirements of the New Mexico department of agriculture.

B. Cultivation plan: Licensees shall create and maintain a cultivation plan, which shall include all of the following:

(1) a detailed premises diagram showing all cultivation activity areas, boundaries, and dimensions in feet.

(2) square foot measurement of mature cannabis plant cultivation area(s), including aggregate square footage if the mature cannabis plant cultivation areas are noncontiguous;

(3) area(s) outside of the mature cannabis plant cultivation areas where only immature plants shall be maintained, if applicable;

(4) designated pesticide and other agricultural chemical storage area(s);

(5) designated processing area(s) if the licensee will process on site;

(6) designated packaging area(s) if the licensee will package products on site;

(7) designated composting area(s) if the licensee will compost plant or cannabis waste on site;

(8) designated secured area(s) for cannabis waste if different than composting area(s);

(9) designated area(s) for harvested cannabis storage;

(10) designated seed production area(s) which may contain mature plants for nursery purposes only.

C. Lighting: For indoor and mixed-light cultivation, a licensee shall create and maintain a lighting diagram, which shall include the following:

(1) location of all lights in the cannabis plant cultivation area(s); and

(2) maximum wattage, or wattage equivalent, of each light.

D. Pest management: Licensees shall create and maintain a pest management plan, which shall include product name and active ingredient(s) of all pesticides to be applied to cannabis during any stage of plant growth. Licensees are encouraged to create and implement integrated pest management protocols, including chemical, biological, and cultural methods to control or prevent the introduction of pests on the cultivation site.

E. Cannabis waste: Licensees shall create and maintain cannabis waste procedures meeting the requirements set forth in 16.8.2.22 NMAC.

F. Safety and health requirements: Licensees shall ensure the following:

(1) all equipment, implements, and fixtures that are used for the production of cannabis shall be used exclusively for the production of cannabis and meet sanitation and safety standards required by the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, division rules, and any other state or federal laws;

(2) production is conducted in a manner that does not allow cross-contamination from chemical or biological hazards;

(3) any person who, by medical examination or supervisory observation, is shown to have, or appears to have, an illness, open lesion, including a boil, sore, or infected wound, or any other abnormal source of microbial contamination for whom there is a reasonable possibility of contact with preparation surfaces for cannabis, shall be excluded from any operations which may be anticipated to result in such contamination until the condition is corrected;

(4) hand-washing facilities are provided that are adequate, accessible, furnished with running water at a suitable temperature, conveniently located in indoor production facilities, in restrooms, and wherever good sanitary practices require employees to wash or sanitize their hands, and stocked with effective hand-cleaning and sanitizing preparations, and sanitary towel service or suitable drying devices;

(5) all persons involved in preparing or handling cannabis conform to hygienic practices while on duty, including:

(a) maintaining adequate personal cleanliness;

(b) wearing gloves while handling processed cannabis or unpackaged but processed cannabis products;

- (c) possessing a valid New Mexico environment department food handler card if handling processed cannabis or unpackaged but processed cannabis products; and
 - (d) washing hands thoroughly in an adequate hand-washing facility before starting work, at any other time when the hands may have become soiled or contaminated, and both before putting gloves on and after removal of gloves, if the person is handling processed cannabis or unpackaged but processed cannabis products;
 - (6) operating systems for waste disposal are maintained in an adequate manner so that they do not constitute a source of contamination in areas where cannabis is exposed;
 - (7) water damage is properly and timely treated to protect health and safety of employees and the public, and that fiberglass and other insulation material is not exposed;
 - (8) adequate safety-type lighting in all areas where cannabis is produced or stored, if applicable, and where equipment is cleaned;
 - (9) rubbish is disposed of so as to minimize the development of odor, minimize the potential for the waste becoming an attractant and harborage, or breeding place for pests;
 - (10) premises, fixtures, and physical facilities where cannabis or cannabis products are produced are maintained to ensure the health and safety of employee and the public;
 - (11) contact surfaces, including utensils and equipment used for preparation of cannabis or cannabis products, are cleaned and sanitized as frequently as necessary to protect against contamination;
 - (12) only environmental protection agency (EPA) registered sanitizing agents are used in production operations and that they are used in accordance with labeled instructions;
 - (13) toxic cleaning compounds, sanitizing agents, and pesticide chemicals shall be identified, held, and stored in a manner that protects against contamination of cannabis or cannabis products and that otherwise satisfies the requirements of this rule;
 - (14) storage and transportation of cannabis and cannabis products is accomplished under conditions that will maintain security and protect the cannabis or cannabis products against physical, chemical, and microbial contamination, as well as against deterioration of the cannabis or cannabis products and the container; and
 - (15) that there is sufficient space for placement of equipment and storage of material as is necessary for the maintenance of sanitary operations for production of cannabis.
- [16.8.2.27 NMAC - N, 08/24/2021]

16.8.2.28 USE OF PESTICIDES BY LICENSED PRODUCERS: The use of any pesticide by a licensed producer in the growth of cannabis shall be in accordance with the New Mexico Pesticide Control Act, Section 76-4-1 *et seq.*, NMSA 1978, and any associated rules.
[16.8.2.28 NMAC - N, 08/24/2021]

16.8.2.29 SEVERABILITY: If any part or application of this rule is held to be invalid, the remainder or its application to other situations or persons shall not be affected. Any section of this rule legally severed shall not interfere with the remaining protections and duties provided by this rule.
[16.8.2.29 NMAC - N, 08/24/2021]

History of 16.8.2 NMAC: [RESERVED]

Section 2: Application Process

All persons processing hemp, medical cannabis or recreational cannabis applications or recreational license applications with the Cannabis Control Division for cannabis producers, cannabis producer microbusinesses, including all persons currently properly licensed as a cannabis producer for medical use, pursuant to the Lynn and Erin Compassionate Use Act, must submit an application for a hemp/cannabis business permit with all the following required documentation to the San Miguel County Planning & Zoning Division:

The Planning and Zoning Director shall require the following information from the applicant:

- Completely filled out application as provided by the San Miguel County Planning and Zoning Division
- Proof of compliance with all requirements set forth under state law and as required under by New Mexico's Regulation and Licensing Department (RLD) to obtain a license under the Cannabis Regulation Act. (Refer to Licensing, Exhibit A)
- Driver's License of applicant and any other property owners/business partners
- Certification from the New Mexico Secretary of State Office reflecting the business and/or corporate structure, LLC, if any, of the cannabis producer and/or retailer.
- NM Tax and Revenue CRS Registration Card
- Most recent survey of the property and warranty deed
- A site map which identifies the location of the production site and/or retail
- If not owner of the property, must have a fully executed lease giving legal authority for the use of buildings, property, water rights and allowing any alteration to the property
- Certificate of occupancy from CID for any construction/building which will include approval for electrical, plumbing. Shipping containers, barndominiums, pre-made sheds over 200 square feet etc. or any other building not already in county ordinance will also require CID approval
- Fire inspection by the NM State Fire Marshal's Office and/or San Miguel County Fire Chief (certificate of occupancy will be needed prior to scheduling)
- Approved Water Plan
 - Approved water rights for irrigation, commercial or agriculture by the Office of the State Engineer
 - Notarized statement from any board of any Mutual Domestic Water Association if the applicant has water rights, approving usage for cannabis production
 - Plan for water savings which included drip irrigation and water collection.
- Approve Septic Plan from the NM Environment Department

*****Other items can be included as this is working document and the process is constantly evolving.**

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 8 COMMERCIAL AND MEDICAL CANNABIS
PART 11 FEES

16.8.11.1 ISSUING AGENCY: New Mexico Regulation and Licensing Department, Cannabis Control Division.
[16.8.11.1 NMAC - N, 08/24/2021]

16.8.11.2 SCOPE: This rule applies to all applicants and licensees applying for licensure and renewal of licensure under all license types as set forth in the Cannabis Regulation Act and the Lynn and Erin Compassionate Use Act.
[16.8.11.2 NMAC - N, 08/24/2021]

16.8.11.3 STATUTORY AUTHORITY: The requirements set forth herein are promulgated by the cannabis control division pursuant to the authority granted under the Cannabis Regulation Act and the licensing provisions of the Lynn and Erin Compassionate Use Act.
[16.8.11.3 NMAC - N, 08/24/2021]

16.8.11.4 DURATION: Permanent.
[16.8.11.4 NMAC - N, 08/24/2021]

16.8.11.5 EFFECTIVE DATE: August 24, 2021, unless a later date is cited at the end of a section.
[16.8.11.5 NMAC - N, 08/24/2021]

16.8.11.6 OBJECTIVE: The objective of Part 11 is to establish a uniform schedule of fees applicable to licenses issued under the Cannabis Regulation Act.
[16.8.11.6 NMAC - N, 08/24/2021]

16.8.11.7 DEFINITIONS: Unless otherwise defined below, terms used in Title 16, Chapter 8, Part 1, have the same meanings as set forth in 16.8.1 NMAC, the Cannabis Regulation Act, and the Lynn and Erin Compassionate Use Act.
[16.8.11.7 NMAC - N, 08/24/2021]

16.8.11.8 GENERAL PROVISIONS FOR FEES: [RESERVED]
[16.8.11.8 NMAC - N, 08/24/2021]

16.8.11.9 ANNUAL LICENSING FEES: Every application for the issuance or renewal of the following licenses shall be accompanied by an annual licensing fee in the following specified amounts:

- | | |
|--|--|
| A. Cannabis courier license: | \$250 annually |
| Each additional licensed premises of the licensee: | \$100 annually |
| B. Cannabis testing laboratory license: | \$2,500 annually |
| Each additional licensed premises of the licensee: | \$1,000 annually |
| C. Cannabis manufacturer license: | \$2,500 annually |
| Each additional licensed premises of the licensee: | \$1,000 annually |
| D. Cannabis producer license: | \$2,500 annually |
| Each additional licensed premises of the licensee: | \$1,000 annually |
| E. Cannabis retailer license: | \$2,500 annually |
| Each additional licensed premises of the licensee: | \$1,000 annually |
| F. Cannabis research laboratory license: | \$2,500 annually |
| Each additional licensed premises of the licensee: | \$1,000 annually |
| G. Vertically integrated cannabis establishment license: | \$7,500 annually |
| Each additional licensed premises of the licensee: | \$1,000 annually |
| H. Cannabis producer microbusiness license: | License fees for cannabis producer microbusinesses |

shall be determined by the number of plants growing under each license.

- | | | |
|-----|--|------------------|
| (1) | Licensees growing 100 plants or less: | \$500 annually |
| (2) | Licensees growing 101 to 200 plants: | \$1,000 annually |

I. Integrated cannabis microbusiness license: License fees for integrated cannabis microbusinesses shall be determined by the number of activities conducted under each license. Activities considered are defined by the Cannabis Regulation Act and entail:

- (1) production of cannabis at a single licensed premises, provided that the person shall not possess more than two hundred total mature cannabis plants at any one time;
- (2) manufacture of cannabis products at a single licensed premises;
- (3) sale and transportation of only cannabis products produced or manufactured by that person;
- (4) operation of only one retail establishment; or
- (5) couriering of cannabis products to qualified patients, primary caregivers or reciprocal participants or directly to consumers.

- | | | |
|-----|-------------------|------------------|
| (a) | Two activities: | \$1,000 annually |
| (b) | Three activities: | \$1,500 annually |
| (c) | Four activities: | \$2,000 annually |
| (d) | Five activities: | \$2,500 annually |

J. Cannabis consumption area: \$2,500 annually
[16.8.11.9 NMAC - N, 08/24/2021]

16.8.11.10 ANNUAL LICENSING FEE PRORATION: Licensees submitting an amended application to add or change a license type shall only be required to pay the difference between the fee for the original license type and the fee for the amended license type, provided that the division will not issue any refunds. The division shall prorate the fee to align with the expiration date of the licensee's original license.
[16.8.11.10 NMAC - N, 08/24/2021]

16.8.11.11 ANNUAL PER PLANT FEE:

A. Commercial cannabis plants: Except for cannabis producer microbusinesses and integrated cannabis microbusinesses, a licensee cultivating commercial cannabis plants shall be assessed an additional annual fee per mature cannabis plant at the time of licensing, incremental increase as set forth in 16.8.8.10 NMAC, and licensure renewal as set forth in 16.8.2.17 NMAC. Plant fee shall be assessed based on the plant limit license designation as set forth in subparagraph A in 16.8.8.9 NMAC, as follows:

- | | | |
|-----|--------------------|--|
| (1) | Level 1: | \$10.00 per mature cannabis plant; |
| (2) | Level 2: | \$10.00 per mature cannabis plant; |
| (3) | Level 3: | \$10.00 per mature cannabis plant; and |
| (4) | Level 4 and above: | \$10.00 per mature cannabis plant. |

B. Medical cannabis plants: Except for cannabis producer microbusinesses and integrated cannabis microbusinesses, a licensee cultivating solely medical cannabis plants shall be assessed an additional annual fee per mature cannabis plant at the time of licensing, incremental increase as set forth in 16.8.8.10 NMAC, and licensure renewal as set forth in 16.8.2.17 NMAC. Plant fees shall be assessed based on the plant limit license designation as set forth in subparagraph A in 16.8.8.9 NMAC, as follows:

- | | | |
|-----|--------------------|---------------------------------------|
| (1) | Level 1: | \$5.00 per mature cannabis plant; |
| (2) | Level 2: | \$5.00 per mature cannabis plant; |
| (3) | Level 3: | \$5.00 per mature cannabis plant; and |
| (4) | Level 4 and above: | \$5.00 per mature cannabis plant. |

[16.8.11.11 NMAC - N, 08/24/2021]

16.8.11.12 FEE LIMITATIONS: Application, license, premises and plant fees, or license renewal, premises renewal and annual plant fees shall not exceed \$125,000 for a vertically integrated cannabis establishment license for both medical cannabis activity and commercial cannabis activity. License fees or renewal fees for a license that authorizes only medical cannabis activity shall be one-half the fee applicable to a license authorizing both medical cannabis activity and commercial cannabis activity.
[16.8.11.12 NMAC - N, 08/24/2021]

16.8.11.13 PROHIBITED ACTIVITY AND IMPACTS ON FEES: Cannabis producer microbusiness or

integrated cannabis microbusinesses entering into a business arrangement with another licensee with the purpose or having the effect of evading the limitations of the licensee's license shall not be eligible for the lower fee prescribed in Subsections H and I of 16.8.11.9 NMAC. Upon entering into such an arrangement, the licensees shall immediately pay the per-plant fee as set forth in 16.8.11.11 NMAC and the applicable fee for a producer license or vertically integrated cannabis establishment license as set forth in 16.8.11.9 NMAC.
[16.8.11.13 NMAC - N, 08/24/2021]

16.8.11.14 FEE PAYMENT TYPES ACCEPTED: The division shall accept payment for annual licensing fees and annual per plant fees from sources including credit cards, debit cards, electronic checks, electronic bank transfers, automated clearing house payments, or cashier's checks. Other forms of payment, including cash, shall not be accepted.
[16.8.11.14 NMAC - N, 08/24/2021]

16.8.11.15 RENEWAL FEE COLLECTION TIMING: The division shall collect all renewal fees, including annual per plant fees, at the time of renewal of a license.
[16.8.11.15 NMAC - N, 08/24/2021]

16.8.11.16 SEVERABILITY: If any part or application of this rule is held to be invalid, the remainder or its application to other situations or persons shall not be affected. Any section of this rule legally severed shall not interfere with the remaining protections and duties provided by this rule.
[16.8.11.16 NMAC - N, 08/24/2021]

History of 16.8.11 NMAC: [RESERVED]



RECEIVED
21 APR 12 PM 1:46
OFFICE OF
SECRETARY OF STATE

State of New Mexico

Michelle Lujan Grisham
Governor

April 12, 2021

HOUSE EXECUTIVE MESSAGE NO. 3

The Honorable Brian Egolf, Jr., Speaker of the House and
Members of the House of Representatives
State Capitol Building
Santa Fe, NM 87501

Honorable Speaker Egolf and Members of the House:

I have this day SIGNED:


HOUSE BILL 2, as amended with certificate of correction
enacted by the Fifty-Fifth Legislature, First Special Session, 2021.

Respectfully yours,

Michelle Lujan Grisham
Governor

RECEIVED FROM THE OFFICE OF THE GOVERNOR

Time: 4:45 a.m. p.m.
Date: April 12 2021

By 
Secretary of State

Time: _____ a.m. p.m.
Date: _____ 2021

By _____
Chief Clerk of the House



The Legislature of the State of New Mexico

55th **Legislature,** 1st Special **Session**

LAWS 2021

CHAPTER 4

HOUSE BILL 2, as amended

with certificate of correction

Introduced by

REPRESENTATIVE JAVIER I. MARTINEZ
REPRESENTATIVE ANDREA D. ROMERO
REPRESENTATIVE DEBORAH A. ARMSTRONG
SENATOR KATY M. DUHIGG
SENATOR LINDA M. LOPEZ



State of New Mexico
House of Representatives
OFFICE of the CHIEF CLERK
Santa Fe

LISA M. ORTIZ McCUTCHEON
Chief Clerk

State Capitol, Room 100
Santa Fe, NM 87501
Business Phone: (505) 986-4751
Email: lisa.ortiz@nmlegis.gov

FIFTY-FIFTH LEGISLATURE
FIRST SPECIAL SESSION, 2021

April 2, 2021

CERTIFICATE OF CORRECTION

I certify that the following errors were found in

HOUSE BILL 2, as amended

and have been corrected in enrolling and engrossing:

1. On page 3, line 23, of the original bill, delete the comma after "caregivers" and insert "or". Correction is on page 3, line 14, of the enrolled and engrossed bill.
2. On page 5, line 20, of the original bill, delete the comma after "caregivers" and insert "or". Correction is on page 5, lines 11 and 12 of the enrolled and engrossed bill.
3. On page 9, line 7 of the original bill, delete the comma after "caregivers" and insert "or". Correction is on page 8, line 24, of the enrolled and engrossed bill.
4. On page 11, line 13, of the original bill delete the comma after "caregivers" and insert "and". Correction is on page 11, line 6, of the enrolled and engrossed bill.
5. On page 57, line 17, of the original bill insert "of" after "years". Correction is on page 58, line 22, of the enrolled and engrossed bill.
6. On page 59, line 1, of the original bill insert "a" after "of". Correction is on page 60, line 7, of the enrolled and engrossed bill.
7. On page 145, line 21, of the original bill, insert a comma

State of New Mexico
House of Representatives
OFFICE of the CHIEF CLERK
Santa Fe

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after "means". Correction is on page 140, line 11 of the enrolled and engrossed bill.

8. On page 163, line 7, delete the colon after "respect to".
Correction is on page 156, line 11, of the enrolled and engrossed bill.

Respectfully submitted,


LISA M. ORTIZ McCUTCHEON, CHIEF CLERK
HOUSE OF REPRESENTATIVES

CHAPTER 4

AN ACT

RELATING TO CANNABIS; ENACTING THE CANNABIS REGULATION ACT;
CREATING THE CANNABIS CONTROL DIVISION OF THE REGULATION AND
LICENSING DEPARTMENT; PROVIDING POWERS AND DUTIES; SETTING
LIMITATIONS ON SALES AND PURCHASES OF CANNABIS; PROVIDING FOR
LICENSURE AND PERMITTING; TRANSFERRING LICENSING AUTHORITY
UNDER THE LYNN AND ERIN COMPASSIONATE USE ACT TO THE CANNABIS
CONTROL DIVISION; CREATING THE CANNABIS REGULATORY ADVISORY
COMMITTEE; CREATING A FUND; AUTHORIZING THE REGULATION AND
LICENSING DEPARTMENT TO ENTER INTO INTERGOVERNMENTAL
AGREEMENTS WITH INDIAN NATIONS, TRIBES AND PUEBLOS; REQUIRING
TRAINING FOR PERMITTEES; ENACTING THE CANNABIS TAX ACT;
DISTRIBUTING A PORTION OF THE CANNABIS EXCISE TAX TO
MUNICIPALITIES AND COUNTIES; REQUIRING REPORTING; PRESCRIBING
PENALTIES; AMENDING, REPEALING AND ENACTING SECTIONS OF THE
NMSA 1978.

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

SECTION 1. SHORT TITLE.--Sections 1 through 42 of this
act may be cited as the "Cannabis Regulation Act".

SECTION 2. DEFINITIONS.--As used in the Cannabis
Regulation Act:

A. "advertisement":

(1) means a statement or a depiction that is
intended to induce the purchase of cannabis products and that

1 is displayed in printed material or on a sign or other
2 outdoor display or presented in a radio, television or other
3 media broadcast or in digital media; and

4 (2) does not include:

5 (a) a sign or outdoor display or other
6 statement permanently affixed to a licensed premises that is
7 intended to induce the sale of a cannabis product produced or
8 sold on the premises;

9 (b) a label affixed to a cannabis
10 product or the covering, wrapper or container of a cannabis
11 product; or

12 (c) an editorial or other material
13 printed in a publication when the publication of the
14 editorial or material was not paid for by a licensee and was
15 not intended to promote the sale of cannabis products by a
16 particular brand or company;

17 B. "cannabis":

18 (1) means all parts of the plant genus
19 Cannabis containing a delta-9-tetrahydrocannabinol
20 concentration of more than three-tenths percent on a dry
21 weight basis, whether growing or not; the seeds of the plant;
22 the resin extracted from any part of the plant; and every
23 compound, manufacture, salt, derivative, mixture or
24 preparation of the plant, its seeds or its resin; and

25 (2) does not include:

1 (a) the mature stalks of the plant;
2 fiber produced from the stalks; oil or cake made from the
3 seeds of the plant; any other compound, manufacture, salt,
4 derivative, mixture or preparation of the mature stalks,
5 fiber, oil or cake; or the sterilized seed of the plant that
6 is incapable of germination; or

7 (b) the weight of any other ingredient
8 combined with cannabis products to prepare topical or oral
9 administrations, food, drink or another product;

10 C. "cannabis consumption area" means an area where
11 cannabis products may be served and consumed;

12 D. "cannabis courier" means a person that
13 transports cannabis products to qualified patients, primary
14 caregivers or reciprocal participants or directly to
15 consumers;

16 E. "cannabis establishment" means:

- 17 (1) a cannabis testing laboratory;
18 (2) a cannabis manufacturer;
19 (3) a cannabis producer;
20 (4) a cannabis retailer;
21 (5) a cannabis research laboratory;
22 (6) a vertically integrated cannabis
23 establishment;
24 (7) a cannabis producer microbusiness; or
25 (8) an integrated cannabis microbusiness;

1 F. "cannabis extract":

2 (1) means a product obtained by separating
3 resins, tetrahydrocannabinols or other substances from
4 cannabis by extraction methods approved by the division; and

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

8 G. "cannabis flowers" means only the flowers of a
9 cannabis plant;

10 H. "cannabis manufacturer" means a person that:

- 11 (1) manufactures cannabis products;
12 (2) packages cannabis products;
13 (3) has cannabis products tested by a
14 cannabis testing laboratory; or
15 (4) purchases, acquires, sells or transports
16 wholesale cannabis products to other cannabis establishments;

17 I. "cannabis producer" means a person that:

- 18 (1) cultivates cannabis plants;
19 (2) has unprocessed cannabis products tested
20 by a cannabis testing laboratory;
21 (3) transports unprocessed cannabis products
22 only to other cannabis establishments; or
23 (4) sells cannabis products wholesale;

24 J. "cannabis producer microbusiness" means a
25 cannabis producer at a single licensed premises that

1 possesses no more than two hundred total mature cannabis
2 plants at any one time;

3 K. "cannabis product" means a product that is or
4 that contains cannabis or cannabis extract, including edible
5 or topical products that may also contain other ingredients;

6 L. "cannabis research laboratory" means a facility
7 that produces or possesses cannabis products and all parts of
8 the plant genus Cannabis for the purpose of studying cannabis
9 cultivation, characteristics or uses;

10 M. "cannabis retailer" means a person that sells
11 cannabis products to qualified patients, primary caregivers
12 or reciprocal participants or directly to consumers;

13 N. "cannabis server permit" means an authorization
14 that allows a person to directly offer, sell or serve
15 cannabis or cannabis products as part of commercial cannabis
16 activity in a cannabis consumption area;

17 O. "cannabis server permit education provider"
18 means a person that provides cannabis server education
19 courses and examinations;

20 P. "cannabis testing laboratory" means a person
21 that samples, collects and tests cannabis products and
22 transports cannabis products for the purpose of testing;

23 Q. "cannabis training and education program" means
24 a practical or academic curriculum offered by a New Mexico
25 public post-secondary educational institution designed to

1 prepare students for participation in the cannabis industry;

2 R. "commercial cannabis activity":

3 (1) means the cultivation, production,
4 possession, manufacture, storage, testing, researching,
5 labeling, transportation, couriering, purchase for resale,
6 sale or consignment of cannabis products; and

7 (2) does not include activities related only
8 to the medical cannabis program, to cannabis training and
9 education programs or to the personal cultivation or use of
10 cannabis;

11 S. "consumer" means a person twenty-one years of
12 age or older who purchases, acquires, owns, possesses or uses
13 a cannabis product for a purpose other than resale;

14 T. "contaminant" means pesticides and other
15 foreign material, such as hair, insects or other similar
16 adulterants, in harvested cannabis;

17 U. "controlling person":

18 (1) means a person that controls a financial
19 or voting interest of ten percent or more of, or an officer
20 or board member of, a cannabis establishment; and

21 (2) does not include a bank or licensed
22 lending institution;

23 V. "cultivation" means any activity involving the
24 planting, growing, harvesting, drying, curing, grading or
25 trimming of cannabis;

1 W. "department" means the regulation and licensing
2 department;

3 X. "director" means the director of the division;

4 Y. "division" means the cannabis control division
5 of the department;

6 Z. "dry weight basis", when used in the context of
7 regulation of commercial cannabis activity, means a process
8 by which delta-9-tetrahydrocannabinol concentration is
9 measured relative to the aggregate weight of all parts of the
10 plant genus Cannabis, whether growing or not, including the
11 leaves of the plant, the flowers and buds of the plant, the
12 seeds of the plant, the resin of the plant and the stalks of
13 the plant at the point of harvest by a licensee and with no
14 moisture added to the harvested plant;

15 AA. "facility" means a building, space or grounds
16 licensed for the production, possession, testing,
17 manufacturing or distribution of cannabis, cannabis extracts
18 or cannabis products;

19 BB. "financial consideration" means value that is
20 given or received, directly or indirectly, through sales,
21 barter, trade, fees, charges, dues, contributions or
22 donations;

23 CC. "homegrown" or "homemade" means grown or made
24 for purposes that are not dependent or conditioned upon the
25 provision or receipt of financial consideration;

1 DD. "household" means a housing unit and includes
2 any place in or around the housing unit at which an occupant
3 of the housing unit produces, manufactures, keeps or stores
4 homegrown cannabis or homemade cannabis products;

5 EE. "immature cannabis plant" means a cannabis
6 plant that has no observable flowers or buds;

7 FF. "industry standards" means the prevailing
8 customary standards of business practice in the cannabis
9 industry in jurisdictions within the United States;

10 GG. "integrated cannabis microbusiness" means a
11 person that is authorized to conduct one or more of the
12 following:

13 (1) production of cannabis at a single
14 licensed premises; provided that the person shall not possess
15 more than two hundred total mature cannabis plants at any one
16 time;

17 (2) manufacture of cannabis products at a
18 single licensed premises;

19 (3) sales and transportation of only
20 cannabis products produced or manufactured by that person;

21 (4) operation of only one retail
22 establishment; and

23 (5) couriering of cannabis products to
24 qualified patients, primary caregivers or reciprocal
25 participants or directly to consumers;

1 HH. "licensed premises" means a location that
2 includes:

3 (1) all enclosed public and private areas at
4 the location that are used in the business and includes
5 offices, kitchens, restrooms and storerooms;

6 (2) all areas outside of a building that are
7 specifically included in the license for the production,
8 manufacturing, wholesale sale or retail sale of cannabis
9 products; and

10 (3) with respect to a location that is
11 specifically licensed for the production of cannabis outside
12 of a building, the entire unit of land that is created by
13 subsection or partition of land that the licensee owns,
14 leases or has a right to occupy;

15 II. "local jurisdiction" means a municipality,
16 home rule municipality or county;

17 JJ. "manufacture" means to compound, blend,
18 extract, infuse, package or otherwise prepare a cannabis
19 product;

20 KK. "medical cannabis" means cannabis products
21 used by a qualified patient or reciprocal participant in
22 accordance with the Lynn and Erin Compassionate Use Act;

23 LL. "medical cannabis program" means the program
24 created pursuant to the Lynn and Erin Compassionate Use Act;

25 MM. "medical cannabis registry" means the system

1 by which the department of health approves or denies
2 applications and issues and renews registry identification
3 cards for qualified patients;

4 NN. "primary caregiver" means a resident of New
5 Mexico who is at least eighteen years of age and who is
6 responsible for managing the well-being of a qualified
7 patient with respect to the medical use of cannabis pursuant
8 to the Lynn and Erin Compassionate Use Act;

9 OO. "public place" means a place to which the
10 general public has access and includes hallways, lobbies and
11 other parts of apartment houses and hotels that do not
12 constitute rooms or apartments designed for actual residence;
13 highways; streets; schools; places of amusement; parks;
14 playgrounds; and places used in connection with public
15 passenger transportation;

16 PP. "qualified patient" means a resident of New
17 Mexico who holds a registry identification card pursuant to
18 the Lynn and Erin Compassionate Use Act;

19 QQ. "reciprocal participant" means a person who is
20 not a resident of New Mexico and who holds proof of
21 enrollment by a governmental regulatory authority to
22 participate in the medical cannabis program of another state
23 of the United States, the District of Columbia or a territory
24 or commonwealth of the United States in which the person
25 resides or a person who holds proof of enrollment by a

1 governmental regulatory authority of a New Mexico Indian
2 nation, tribe or pueblo to participate in its medical
3 cannabis program;

4 RR. "retail establishment" means a location at
5 which cannabis products are sold to qualified patients,
6 primary caregivers and reciprocal participants and directly
7 to consumers;

8 SS. "superintendent" means the superintendent of
9 regulation and licensing;

10 TT. "unprocessed" means unaltered from an
11 original, raw or natural state; and

12 UU. "vertically integrated cannabis establishment"
13 means a person that is authorized to act as any of the
14 following:

- 15 (1) a cannabis courier;
- 16 (2) a cannabis manufacturer;
- 17 (3) a cannabis producer; and
- 18 (4) a cannabis retailer.

19 SECTION 3. DIVISION--POWERS AND DUTIES--RULEMAKING--
20 ADVISORY COMMITTEE CREATED--MEMBERSHIP--DUTIES.--

21 A. The "cannabis control division" is created in
22 the department to administer the Cannabis Regulation Act and
23 the licensing provisions of the Lynn and Erin Compassionate
24 Use Act and rules promulgated in accordance with those acts.
25 Rules shall be adopted and promulgated as provided in the

1 State Rules Act.

2 B. No later than January 1, 2022, the division
3 shall promulgate rules that are consistent with industry
4 standards necessary for the division to carry out its duties
5 pursuant to the Cannabis Regulation Act as follows:

6 (1) qualifications and procedures for
7 licensure; provided that qualifications shall be directly and
8 demonstrably related to the operation of the applicable
9 cannabis establishment;

10 (2) security requirements for a cannabis
11 establishment;

12 (3) requirements related to:

13 (a) inspection and monitoring of a
14 cannabis establishment;

15 (b) a cannabis establishment's
16 recordkeeping and tracking of cannabis from seed until sale;

17 (c) prevention of the sale or diversion
18 of cannabis products in commercial cannabis activity to a
19 person under the age of twenty-one;

20 (d) labeling of cannabis products
21 packaged, sold or distributed by a cannabis establishment;
22 and

23 (e) language for labels of cannabis
24 products regarding potential adverse effects;

25 (4) rules providing that:

1 (a) a person who is twenty-one years
2 old or older shall not purchase more than two ounces of
3 cannabis, sixteen grams of cannabis extract and eight hundred
4 milligrams of edible cannabis at one time; and

5 (b) as to commercial cannabis activity:

6 1) a consumer shall not possess more than two ounces of
7 cannabis, sixteen grams of cannabis extract and eight hundred
8 milligrams of edible cannabis outside the consumer's private
9 residence; 2) any cannabis in excess of the amounts described
10 in Item 1) of this subparagraph shall be stored in the
11 person's residence and shall not be visible from a public
12 place; and 3) the division shall not limit the amount of
13 tetrahydrocannabinol concentration in a cannabis product;
14 provided that the division may adopt requirements for
15 apportionment and packaging of cannabis products;

16 (5) rules on advertising and marketing of
17 cannabis products;

18 (6) rules on how a licensee may display
19 cannabis products for sale;

20 (7) procedures that promote and encourage
21 full participation in the cannabis industry governed by the
22 Cannabis Regulation Act by representatives of communities
23 that have been disproportionately harmed by rates of arrest
24 through the enforcement of cannabis prohibitions in law and
25 policy, rural communities likely to be impacted by cannabis

1 production and agricultural producers from economically
2 disadvantaged communities;

3 (8) procedures that promote and encourage
4 racial, ethnic, gender and geographic diversity and New
5 Mexico residency among license applicants, licensees and
6 cannabis industry employees;

7 (9) rules for a certification process to
8 identify cannabis products for consumers from integrated
9 cannabis microbusinesses or cannabis producer microbusinesses
10 or owned by representatives of communities that have been
11 disproportionately harmed by rates of arrest through the
12 enforcement of cannabis prohibitions in law and policy and
13 underserved communities that include tribal, acequia, land
14 grant-merced and other rural historic communities;

15 (10) in consultation with the economic
16 development department, development of a technical assistance
17 resource guide for rural New Mexico residents who are seeking
18 to establish vertically integrated cannabis establishments,
19 cannabis producer microbusinesses or integrated cannabis
20 microbusinesses;

21 (11) in consultation with the department of
22 environment, rules to establish:

23 (a) health and safety standards
24 applicable to the research, production and manufacture of
25 cannabis products;

1 (b) standards for food and product
2 safety applicable to cannabis products; and

3 (c) which additives are approved for
4 and prohibited from inclusion in cannabis products; provided
5 that nicotine shall be prohibited;

6 (12) in consultation with the New Mexico
7 department of agriculture and the department of environment,
8 rules to establish standards for quality control, inspection
9 and testing of cannabis products for potency and
10 contaminants, except for cannabis produced or harvested for
11 research purposes and not for ingestion; provided that all
12 such rules and standards shall be consistent with the rules
13 and standards for testing of medical cannabis products; and

14 (13) in consultation with the state fire
15 marshal's office of the homeland security and emergency
16 management department, rules with regard to health and
17 safety.

18 C. No later than January 1, 2022, the division
19 shall promulgate rules that are consistent with industry
20 standards relating to cannabis training and education
21 programs, including:

22 (1) qualifications and procedures for
23 licensure; and

24 (2) physical security, cybersecurity and, if
25 applicable, security of information collected under the

1 federal Health Insurance Portability and Accountability Act
2 of 1996 requirements.

3 D. No later than January 1, 2022, the division
4 shall promulgate rules in consultation with the New Mexico
5 department of agriculture, the department of environment and
6 the office of the state engineer to establish:

7 (1) environmental protections; and

8 (2) protocols to ensure licensees'
9 compliance with state and local laws and ordinances governing
10 food and product safety, occupational health and safety,
11 environmental impacts, natural resource protection, water use
12 and quality, water supply, hazardous materials, pesticide use
13 and wastewater discharge.

14 E. No later than January 1, 2022, the division
15 shall adopt rules in consultation with the department of
16 health to establish standards and determinations on
17 requirements for reserving cannabis products for sale to
18 qualified patients, primary caregivers and reciprocal
19 participants.

20 F. The division shall collect and publish annually
21 on the division's website, and present to the appropriate
22 interim committee of the legislature, a report describing
23 demographic data on license applicants, controlling persons
24 and employees of cannabis establishments, including race,
25 ethnicity, gender, age, residential status and whether the

1 applicants, persons, employees or the locations where the
2 cannabis products are produced, manufactured, sold, tested or
3 researched are located in an underserved rural community,
4 including tribal, acequia, land grant-merced or other rural
5 historic communities.

6 G. The "cannabis regulatory advisory committee"
7 shall be created no later than September 1, 2021. The
8 committee shall advise the division on the development of
9 rules pursuant to the Cannabis Regulation Act, including best
10 practices and the promotion of economic and cultural
11 diversity in licensing and employment opportunities and
12 protection of public health and safety while ensuring a
13 regulated environment for commercial cannabis activity that
14 does not impose unreasonable barriers that would perpetuate,
15 rather than reduce and eliminate, the illicit market for
16 cannabis. A person appointed to the cannabis regulatory
17 advisory committee shall not hold any ownership interest or
18 investment in a licensed person pursuant to the Cannabis
19 Regulation Act; provided that the superintendent may appoint
20 a person who holds an ownership interest in a licensed person
21 as a nonvoting member. The committee shall consist of the
22 following members:

23 (1) the chief public defender or the chief
24 public defender's designee;

25 (2) a district attorney appointed by the New
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1 Mexico district attorney association;

2 (3) a municipal police chief appointed by
3 the New Mexico association of chiefs of police;

4 (4) a county sheriff appointed by the
5 executive director of the New Mexico association of counties;
6 and

7 (5) one member for each of the following
8 groups or professional qualifications, appointed by the
9 superintendent:

10 (a) a cannabis policy advocacy
11 organization;

12 (b) a labor organization;

13 (c) a qualified patient;

14 (d) a state or local agency with
15 relevant expertise as the director and the superintendent
16 deem appropriate;

17 (e) an Indian nation, tribe or pueblo
18 with relevant expertise as the director and the
19 superintendent deem appropriate;

20 (f) expertise in public health;

21 (g) expertise in regulating commercial
22 activity for adult-use intoxicating substances;

23 (h) expertise and experience in
24 cannabis laboratory science;

25 (i) expertise in environmental science; HB 2/a
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1 (j) expertise in small business
2 development;
3 (k) expertise in water resources;
4 (l) expertise in other relevant areas
5 as the director and the superintendent deem appropriate; and
6 (m) previous experience as a cannabis
7 retailer, cannabis producer or cannabis manufacturer and who
8 is a nonvoting member.

9 H. The cannabis regulatory advisory committee
10 shall elect from among its members a chair and such other
11 officers as it deems necessary. The committee shall meet at
12 the call of the chair, the director or the superintendent. A
13 majority of members currently serving constitutes a quorum
14 for the conduct of business. Members shall serve at the
15 pleasure of the superintendent.

16 I. Public voting members of the cannabis
17 regulatory advisory committee are entitled to receive per
18 diem and mileage as provided for state employees pursuant to
19 the Per Diem and Mileage Act and shall receive no other
20 compensation, perquisite or allowance.

21 J. The division shall:

22 (1) monitor the supply and demand of
23 cannabis products produced in New Mexico by licensees and
24 present annually to the appropriate interim committee of the
25 legislature the impacts of supply on illicit cannabis

1 products markets and adequate supply of cannabis products for
2 qualified patients and reciprocal participants;

3 (2) request the department of public safety
4 to enforce the provisions of the Cannabis Regulation Act as
5 deemed necessary; and

6 (3) undertake studies and conduct courses of
7 instruction for division employees that will improve the
8 operations of the division and advance its purposes.

9 SECTION 4. DEPARTMENT OF HEALTH--DUTIES--PUBLIC HEALTH
10 AND SAFETY ADVISORY COMMITTEE.--

11 A. The department of health shall monitor emerging
12 scientific and medical information relevant to the health
13 effects associated with the use of cannabis products and
14 shall monitor changes in cannabis product use, opioid use and
15 alcohol use patterns for children and adults within the
16 state, broken down by county, race and ethnicity.

17 B. No later than September 1, 2021, the secretary
18 of health shall appoint a "public health and safety advisory
19 committee" composed of no more than fifteen professionals
20 with expertise related to cannabis products through work,
21 training or research in public health, epidemiology,
22 medicine, medical toxicology, poison control, road safety,
23 occupational safety, environmental safety and emergency
24 medicine.

25 C. Beginning December 1, 2024, the public health

1 and safety advisory committee shall provide to the
2 legislature, and the department of health shall publish on
3 its website, an annual report on the health effects of
4 legalizing cannabis products for adult use. The report shall
5 include the following elements relating to cannabis product
6 use and, as applicable, the demographics of persons who are
7 the subject of an element:

- 8 (1) child access;
- 9 (2) road safety and driving while impaired;
- 10 (3) workplace safety;
- 11 (4) the percentage of emergency room visits
12 and outcomes;
- 13 (5) educational needs for children and
14 adults;
- 15 (6) consumer and product safety;
- 16 (7) the percentage of poison control center
17 calls; and
- 18 (8) the impact of cannabis use on rates of
19 alcohol, opioid and other substance abuse.

20 D. In consultation with qualified patients and
21 primary caregivers, the department of health shall publish an
22 annual assessment report that shall include at a minimum an
23 evaluation of the affordability and accessibility of medical
24 cannabis.

25 E. Public members of the public health and safety

1 advisory committee are entitled to per diem and mileage as
2 provided for state employees pursuant to the Per Diem and
3 Mileage Act and shall receive no other compensation,
4 perquisite or allowance.

5 SECTION 5. DEPARTMENT OF HEALTH--DUTIES--TRANSFER OF
6 LICENSING DUTIES.--Except for administration of the medical
7 cannabis registry, the power, duty and authority of the
8 department of health related to the medical cannabis program
9 shall be transferred to the division on the effective date of
10 the Cannabis Regulation Act.

11 SECTION 6. LICENSING CANNABIS ACTIVITIES--
12 LIMITATIONS--MEDICAL CANNABIS LEGACY LICENSING--CANNABIS
13 SHORTAGE FOR MEDICAL PROGRAM.--

14 A. The division shall regulate and administer and
15 may collect fees in connection with the administration of:

16 (1) commercial cannabis activity and
17 licensing related to commercial cannabis activity;

18 (2) the medical cannabis program, except for
19 the medical cannabis registry; and

20 (3) all aspects of cannabis relating to
21 cannabis training and education programs.

22 B. The division shall follow the provisions of the
23 Uniform Licensing Act when licensing or permitting the
24 following:

25 (1) cannabis consumption areas;

1 (2) cannabis couriers;
2 (3) cannabis manufacturers;
3 (4) cannabis producer microbusinesses;
4 (5) cannabis producers;
5 (6) cannabis research laboratories;
6 (7) cannabis retailers;
7 (8) cannabis servers;
8 (9) cannabis testing laboratories;
9 (10) cannabis training and education
10 programs;
11 (11) integrated cannabis microbusinesses;
12 and
13 (12) vertically integrated cannabis
14 establishments.

15 C. The division shall include a clear designation
16 on all licenses and permits that indicates whether the
17 license or permit is for medical cannabis activity,
18 commercial cannabis activity or both or for cannabis training
19 and education programs.

20 D. The division shall issue a license to a
21 cannabis retailer applicant at a discount if the applicant
22 provides documentation of an agreement to accept cannabis
23 products on consignment from a cannabis producer
24 microbusiness or an integrated cannabis microbusiness
25 licensed pursuant the Cannabis Regulation Act.

1 E. A license is valid for twelve months from the
2 date the license is issued and may be renewed annually,
3 except that a license issued for a cannabis training and
4 education program is valid until terminated by the licensee
5 or suspended or revoked by the division.

6 F. The director shall not renew a license issued
7 pursuant to the provisions of the Cannabis Regulation Act
8 until the director receives notification from the secretary
9 of taxation and revenue or the secretary's designee that on a
10 certain date:

11 (1) the licensee is not a delinquent
12 taxpayer; and

13 (2) there are no unfiled tax returns due
14 from engaging in business authorized by the license.

15 G. No license shall be transferable or assignable
16 from a licensee to another person. The division shall not
17 allow a person that is licensed as any type of cannabis
18 establishment other than a cannabis research laboratory to
19 hold, directly or indirectly, a cannabis testing laboratory
20 license.

21 H. Except for verification of age, the division
22 shall not require licensees to request information from
23 consumers or impose any residency requirement upon consumers
24 for the purchase of cannabis products pursuant to the
25 commercial cannabis activity authorized by the Cannabis

1 Regulation Act. The division may require licensees to
2 request information from consumers for the purchase of
3 cannabis products pursuant to the medical cannabis program,
4 which may include the presentation of legal identification
5 issued by an authorized governmental entity or other
6 documents as required by the medical cannabis program.

7 I. Except as otherwise provided in the Cannabis
8 Regulation Act, the division shall not limit the number of
9 licensed premises a licensee may occupy or operate under a
10 license. Multiple licensees may occupy a single licensed
11 premises, and the division shall not place any restriction or
12 prohibition on the number of licensees occupying a single
13 licensed premises or on the number of licensed premises of a
14 cannabis establishment except as otherwise specifically
15 provided for by the Cannabis Regulation Act. A licensee may
16 conduct any lawful activity or any combination of lawful
17 activities at a licensed premises; provided that the licensee
18 is not a licensee pursuant to the Liquor Control Act.

19 Smoking in a cannabis consumption area on a licensed premises
20 shall be allowed only if the cannabis consumption area is in
21 a designated smoking area or in a standalone building from
22 which smoke does not infiltrate other indoor workplaces or
23 other indoor public places where smoking is otherwise
24 prohibited pursuant to the Dee Johnson Clean Indoor Air Act.

25 J. Licensees are specifically allowed to conduct

1 other licensed activities, including activities pursuant to
2 the Hemp Manufacturing Act, except for sales of alcoholic
3 beverages.

4 K. A person properly licensed and in good standing
5 pursuant to the Lynn and Erin Compassionate Use Act on the
6 effective date of the Cannabis Regulation Act may continue to
7 operate under that license for medical cannabis until
8 comparable licenses for commercial cannabis activity are
9 available. The division shall determine when retail sales of
10 commercial cannabis products begin, but no later than April
11 1, 2022. A facility of such a licensee, upon issuance of the
12 applicable cannabis establishment license, shall constitute
13 licensed premises of the licensee and the licensee shall be
14 entitled to continued and uninterrupted operations of the
15 licensed premises. As to activity under the medical cannabis
16 program, the licensee shall continue to operate under rules
17 promulgated for the medical cannabis program until the
18 division promulgates rules for medical cannabis activity,
19 except that a qualified patient, a primary caregiver and a
20 reciprocal participant shall not be prohibited from
21 purchasing and obtaining cannabis products pursuant to the
22 medical cannabis program.

23 L. To address a shortage of cannabis supply in the
24 medical cannabis program, the division may:

25 (1) require all cannabis establishment

1 licensees to ensure that at least ten percent of their
2 cannabis in stock on a monthly basis is designated for sale
3 to qualified patients, primary caregivers and reciprocal
4 participants;

5 (2) initially take reasonable measures to
6 expeditiously incentivize increased production of cannabis
7 plants to remedy a shortage of cannabis supply in the medical
8 cannabis program;

9 (3) after having first exhausted measures to
10 increase production of cannabis plants to address the
11 shortage of cannabis supply in the medical cannabis program,
12 exclude commercial cannabis activity from the scope of new
13 licenses issued to initial applicants for a vertically
14 integrated cannabis establishment, cannabis producer,
15 integrated cannabis microbusiness, cannabis producer
16 microbusiness or cannabis manufacturer license, which
17 limitation shall be in force for a period of at least six
18 months; and

19 (4) require licensees who are licensed to
20 produce cannabis to produce a specified quota of mature
21 cannabis plants to be designated for use in the medical
22 cannabis program; provided that:

23 (a) the division may require a licensee
24 to devote no more than twenty-five percent of the licensee's
25 cultivated cannabis plants on a monthly basis for use in the

1 medical cannabis program; and

2 (b) the division may require specific
3 tracking of cannabis plants.

4 M. As used in this section, "shortage of cannabis
5 supply in the medical cannabis program" means that the
6 average number of cannabis plants in production in the
7 medical cannabis program per qualified patient after the
8 effective date of the Cannabis Regulation Act is
9 substantially less than the average number of cannabis plants
10 in production in the medical cannabis program per qualified
11 patient as of the effective date of the Cannabis Regulation
12 Act, where:

13 (1) the average number of cannabis plants in
14 production after the effective date of the Cannabis
15 Regulation Act is measured over a period of three consecutive
16 months; and

17 (2) the average number of cannabis plants in
18 production as of the effective date of the Cannabis
19 Regulation Act is measured over a period of three consecutive
20 months immediately preceding the effective date of the
21 Cannabis Regulation Act.

22 N. A person who is a member of the New Mexico
23 senate or the New Mexico house of representatives on the
24 effective date of the Cannabis Regulation Act shall not apply
25 for or be granted a license to engage in any commercial

1 cannabis activity prior to July 1, 2026.

2 SECTION 7. COMMERCIAL CANNABIS ACTIVITY

3 LICENSING--APPLICATION--ISSUANCE AND DENIAL OF A LICENSE.--

4 A. A license issued pursuant to the Cannabis
5 Regulation Act shall not be subject to execution, attachment,
6 a security transaction, liens or receivership.

7 B. In carrying out its commercial cannabis
8 activity licensing duties, the division shall:

9 (1) no later than September 1, 2021, accept
10 and begin processing license applications for cannabis
11 producers, cannabis producer microbusinesses and any person
12 properly licensed and in good standing as a licensed cannabis
13 producer pursuant to the Lynn and Erin Compassionate Use Act;

14 (2) no later than January 1, 2022, accept
15 and begin processing license applications for all license
16 types;

17 (3) require as a condition of licensing
18 pursuant to the Cannabis Regulation Act that the applicant
19 demonstrate that the applicant has a legal right to a
20 commercial water supply, water rights or another source of
21 water sufficient to meet the water needs as determined by the
22 division related to the license as evidenced by documentation
23 from the office of the state engineer of a valid water right
24 or from a water provider that the use of water for cannabis
25 production is compliant with that water provider's rules;

1 (4) if an applicant applies for a cannabis
2 producer license or a cannabis manufacturer license, in
3 addition to the requirements in Paragraph (3) of this
4 subsection, require that the applicant submit a plan to use,
5 or demonstrate to the division that the applicant cannot
6 feasibly use, energy and water reduction opportunities,
7 including:

8 (a) for a cannabis producer, drip
9 irrigation and water collection;

10 (b) natural lighting and energy
11 efficiency measures; and

12 (c) renewable energy generation; and

13 (5) allow commercial cannabis activity
14 retail sales no later than April 1, 2022 and otherwise allow
15 activities authorized by the Cannabis Regulation Act or the
16 medical cannabis program as of the time of licensure of a
17 licensee, so long as a minimum of twenty-five percent of
18 monthly cannabis sales are to qualified patients, primary
19 caregivers and reciprocal participants or sold wholesale to
20 other licensees that meet or exceed the twenty-five percent
21 sales to qualified patients, primary caregivers and
22 reciprocal participants until December 31, 2022.

23 C. Once the division deems an application
24 complete, the division has ninety days to issue or deny a
25 license application.

1 D. The division shall deny an application for an
2 initial license or renewal if:

3 (1) the application does not include
4 information required by the division; or

5 (2) the applicant or a controlling person of
6 the applicant has been convicted of an offense that is
7 substantially related to the qualifications, functions or
8 duties of the applicant's business; provided that if the
9 division determines that the applicant or controlling person
10 is otherwise qualified for a license and that issuing a
11 license to the applicant would not compromise public safety,
12 the division shall conduct a thorough review of the
13 conviction, including the nature of the offense, surrounding
14 circumstances and any evidence of the applicant's or
15 controlling person's rehabilitation following the conviction,
16 and based on that review, determine whether the applicant
17 should be issued a license.

18 E. For purposes of Subsection D of this section,
19 the following are considered substantially related to the
20 qualifications, functions or duties of a person seeking a
21 license:

22 (1) a felony conviction involving fraud,
23 deceit or embezzlement;

24 (2) a felony conviction for hiring,
25 employing or otherwise using a person younger than eighteen

1 years of age to:

2 (a) prepare for sale, transport or
3 carry a controlled substance; or

4 (b) sell, give away or offer to sell a
5 controlled substance to any person; and

6 (3) any other offense as determined by the
7 division.

8 F. A conviction for which the related sentence,
9 including any term of probation or parole, is completed for
10 the possession, use, manufacture, distribution or dispensing
11 or the possession with the intent to manufacture, distribute
12 or dispense cannabis is not considered substantially related
13 to the qualifications, functions or duties of a person
14 seeking a license and shall not be the sole ground on which
15 an application is denied. The division shall comply with the
16 provisions of the Criminal Offender Employment Act.

17 G. The division shall deny an application if an
18 applicant, a controlling person or the premises for which a
19 license is sought does not qualify for licensure pursuant to
20 the Cannabis Regulation Act.

21 H. The division shall not license a person who has
22 had a license that was issued pursuant to the Cannabis
23 Regulation Act or the Lynn and Erin Compassionate Use Act
24 revoked by the division or the department of health in the
25 three years immediately preceding the date on which the

1 person filed a new application.

2 I. Unless otherwise provided in the Cannabis
3 Regulation Act, a person whose license has been revoked may
4 reapply for a license after a period of three years. The
5 division may consider all of the circumstances resulting in
6 the revocation in determining whether to issue a new license.

7 J. The division shall adopt rules providing for
8 submission of an applicant's fingerprints to the federal
9 bureau of investigation to conduct a national criminal
10 history background check and to the department of public
11 safety to conduct a state criminal history check for the
12 following licensees:

- 13 (1) cannabis manufacturer;
- 14 (2) cannabis producer;
- 15 (3) cannabis producer microbusiness;
- 16 (4) cannabis research laboratory;
- 17 (5) cannabis retailer;
- 18 (6) cannabis testing laboratory;
- 19 (7) integrated cannabis microbusiness; and
- 20 (8) vertically integrated cannabis
21 establishment.

22 K. The division shall conduct national criminal
23 history background checks and state criminal history checks
24 on the following:

- 25 (1) if an applicant is a limited

1 partnership, each partner of the limited partnership;

2 (2) if the applicant is a limited liability
3 company, each member of the limited liability company;

4 (3) if the applicant is a corporation, each
5 director and officer of the corporation; and

6 (4) any controlling person of the applicant.

7 L. Arrest record information received from the
8 federal bureau of investigation and the department of public
9 safety shall be confidential, shall not be considered a
10 public record pursuant to the Public Records Act and shall
11 not be disclosed to persons not directly involved in the
12 decision affecting the applicant.

13 M. Electronic live fingerprint scans may be used
14 when conducting criminal history background checks.

15 SECTION 8. LICENSEES--DISCIPLINARY ACTIONS--SANCTIONS--
16 CIVIL PENALTY.--

17 A. A violation of the provisions of the Cannabis
18 Regulation Act by a licensee is grounds for disciplinary
19 action.

20 B. The division may:

21 (1) impose an intermediate sanction
22 established by rule;

23 (2) impose a directed plan of correction;

24 (3) assess a civil monetary penalty
25 established by rule; provided that a civil monetary penalty

1 shall not exceed ten thousand dollars (\$10,000) per
2 violation; and provided further that penalties and interest
3 recovered pursuant to the Cannabis Regulation Act on behalf
4 of the state shall be remitted to the state treasurer for
5 deposit in the current school fund; or

6 (4) suspend or revoke the license.

7 C. The division shall promulgate rules specifying
8 the criteria for imposition of sanctions and civil monetary
9 penalties.

10 D. The provisions of this section do not apply to
11 occupational health and safety rules promulgated pursuant to
12 Section 3 of the Cannabis Regulation Act.

13 E. A person aggrieved by an action taken by the
14 division pursuant to this section may request and receive a
15 hearing with the superintendent for the purpose of reviewing
16 the action in accordance with the Uniform Licensing Act.

17 **SECTION 9. APPLICATION AND LICENSING FEES.--**

18 A. Every application for the issuance or renewal
19 of the following licenses shall be accompanied by a license
20 fee in the following specified amounts:

21 (1) a cannabis courier license, up to one
22 thousand five hundred dollars (\$1,500) per year and an
23 additional fee of up to one thousand dollars (\$1,000) per
24 year for each additional licensed premises of the licensee;

25 (2) a cannabis testing laboratory license,

1 up to two thousand five hundred dollars (\$2,500) per year and
2 an additional fee of up to one thousand dollars (\$1,000) per
3 year for each additional licensed premises of the licensee;

4 (3) a cannabis manufacturer license, two
5 thousand five hundred dollars (\$2,500) per year and an
6 additional fee of one thousand dollars (\$1,000) per year for
7 each additional licensed premises of the licensee;

8 (4) a cannabis producer license, two
9 thousand five hundred dollars (\$2,500) per year and an
10 additional fee of one thousand dollars (\$1,000) per year for
11 each additional licensed premises of the licensee;

12 (5) a cannabis retailer license, two
13 thousand five hundred dollars (\$2,500) per year and an
14 additional fee of one thousand dollars (\$1,000) per year for
15 each additional licensed premises of the licensee;

16 (6) a cannabis research laboratory license,
17 two thousand five hundred dollars (\$2,500) per year and an
18 additional fee of one thousand dollars (\$1,000) per year for
19 each additional licensed premises of the licensee;

20 (7) a vertically integrated cannabis
21 establishment license, seven thousand five hundred dollars
22 (\$7,500) per year and an additional fee of one thousand
23 dollars (\$1,000) per year for each licensed premises of the
24 licensee;

25 (8) a cannabis producer microbusiness

1 license, up to one thousand dollars (\$1,000) per year;

2 (9) an integrated cannabis microbusiness
3 license, up to two thousand five hundred dollars (\$2,500) per
4 year and an additional fee of five hundred dollars (\$500) per
5 year for each licensed premises of the licensee; and

6 (10) a cannabis consumption area, up to two
7 thousand five hundred dollars (\$2,500) per year.

8 B. Except for cannabis producer microbusinesses
9 and integrated cannabis microbusinesses, a licensee
10 cultivating cannabis plants shall be assessed an additional
11 annual fee no greater than fifty dollars (\$50.00) per mature
12 cannabis plant at the time of licensing or renewal.

13 C. A licensee may increase the number of mature
14 plants licensed at the time of renewal and one other time per
15 year in increments of five hundred mature plants. Fees may
16 be prorated for the remainder of the licensing year.

17 D. The initial application fee and the annual
18 renewal fee for a vertically integrated cannabis
19 establishment license shall not exceed one hundred twenty-
20 five thousand dollars (\$125,000) for a license for both
21 medical cannabis activity and commercial cannabis activity.
22 The initial application fee and the annual renewal fee for a
23 license or renewal of a license that authorizes only medical
24 cannabis activity shall be one-half the fee applicable to a
25 license authorizing both medical cannabis activity and

1 commercial cannabis activity.

2 E. If a cannabis producer microbusiness or an
3 integrated cannabis microbusiness enters into a business
4 arrangement with another licensee with the purpose or having
5 the effect of evading the limitations of the licensee's
6 license, such licensee shall not be eligible for the lower
7 fee prescribed in Subsection A of this section and shall pay
8 the per-plant fee prescribed in Subsection B of this section.

9 F. The division shall collect all renewal fees,
10 including the renewal fees for all licensed premises, at the
11 time of renewal of a license.

12 G. The fee for the issuance of a cannabis server
13 permit shall not exceed thirty-five dollars (\$35.00).

14 H. The division shall deposit all fees collected
15 pursuant to the Cannabis Regulation Act in the cannabis
16 regulation fund.

17 **SECTION 10. CANNABIS TRAINING AND EDUCATION PROGRAM**
18 **LICENSING--SANCTIONS.--**

19 A. The division shall begin licensing cannabis
20 training and education programs no later than January 1,
21 2022.

22 B. The division may suspend a license for repeated
23 violations of the same serious and substantial rule
24 promulgated pursuant to the Cannabis Regulation Act
25 pertaining to public health and safety.

1 SECTION 11. CANNABIS SERVER PERMITS--CANNABIS
2 SERVERS--PERMIT REQUIRED--APPLICATIONS--EDUCATION PROGRAM
3 APPROVAL REQUIRED--ISSUANCE OR DENIAL OF A PERMIT OR
4 APPROVAL--PENALTIES.--

5 A. The division shall promulgate rules consistent
6 with this section and industry standards for issuance of a
7 cannabis server permit and licenses for a cannabis
8 consumption area. A cannabis research laboratory or an
9 employee of the laboratory is not required to obtain or
10 possess a cannabis server permit while performing activities
11 authorized pursuant to a cannabis research laboratory.

12 B. The division shall issue cannabis server
13 permits to persons twenty-one years of age or older who
14 satisfy the requirements of this section and rules
15 promulgated by the division. An applicant shall provide
16 proof of satisfactory completion of a program provided by a
17 cannabis server permit education provider approved by the
18 division. A person shall not be employed as a cannabis
19 server on a licensed premises unless that person obtains a
20 cannabis server permit within thirty days of employment.

21 C. The cannabis server education program
22 curriculum shall include the following subjects:

23 (1) the effect cannabis products have on the
24 body and behavior, including the effect on a person's ability
25 to operate a motor vehicle when under the influence of

1 cannabis products;

2 (2) the effect cannabis products have on a
3 person when used in combination with alcohol or legal or
4 illegal drugs;

5 (3) state laws concerning cannabis
6 licensure, cannabis liability issues and driving under the
7 influence of cannabis;

8 (4) methods of recognizing problem cannabis
9 product users and techniques for intervening with problem
10 cannabis product users;

11 (5) methods of identifying false driver's
12 licenses and other documents used as evidence of age and
13 identity to prevent the sale of cannabis products to a person
14 under twenty-one years of age pursuant to the Cannabis
15 Regulation Act; and

16 (6) harm reduction practices related to
17 cannabis use.

18 D. A cannabis server permit is the property of the
19 state and shall be immediately returned to the division upon
20 suspension or revocation or denial of renewal of a permit.

21 E. Cannabis server permits shall be valid for a
22 period of three years from the date the permit is issued and
23 may be renewed upon providing proof that the permit holder
24 has successfully completed up to four and one-half hours of
25 continuing education and an examination as determined by the

1 division.

2 F. In addition to any other penalties provided by
3 law, the following penalties may be imposed for sales,
4 service or dispensing a cannabis product to a person under
5 twenty-one years of age in violation of the provisions of the
6 Cannabis Regulation Act or rules of the division:

7 (1) the division may suspend a cannabis
8 server permit for a period of thirty days if the director
9 finds that the cannabis server is guilty of a first offense
10 of selling, serving or dispensing a cannabis product to a
11 person under twenty-one years of age;

12 (2) the division shall suspend a cannabis
13 server permit for a period of one year when the division
14 finds that the cannabis server is guilty of a second offense
15 of selling, serving or dispensing a cannabis product to a
16 person under twenty-one years of age in violation of the
17 Cannabis Regulation Act arising separately from the incident
18 giving rise to the cannabis server's first offense;

19 (3) the division shall permanently revoke a
20 cannabis server permit when it finds that the cannabis server
21 is guilty of a third offense of selling, serving or
22 dispensing a cannabis product to a person under twenty-one
23 years of age in violation of the Cannabis Regulation Act
24 arising separately from the incidents giving rise to the
25 cannabis server's first and second offenses; and

1 (4) no person whose cannabis server permit
2 is suspended pursuant to the provisions of this section shall
3 offer, sell, serve or dispense a cannabis product as part of
4 commercial cannabis activity in a cannabis consumption area
5 during the period of suspension.

6 SECTION 12. LOCAL CONTROL.--

7 A. A local jurisdiction may:

8 (1) adopt time, place and manner rules that
9 do not conflict with the Cannabis Regulation Act or the Dee
10 Johnson Clean Indoor Air Act, including rules that reasonably
11 limit density of licenses and operating times consistent with
12 neighborhood uses; and

13 (2) allow for the smoking, vaporizing and
14 ingesting of cannabis products within an indoor or outdoor
15 cannabis consumption area if:

16 (a) unless licensed pursuant to the
17 Lynn and Erin Compassionate Use Act, access to the cannabis
18 consumption area is restricted to persons twenty-one years of
19 age and older; and

20 (b) the cannabis establishment or
21 integrated cannabis microbusiness is located at a minimum
22 distance from a school or daycare center as determined by the
23 local jurisdiction, but which minimum distance shall not be
24 set at any more than three hundred feet from a school or
25 daycare center that was in existence at the time the

1 establishment or microbusiness was licensed.

2 B. A local jurisdiction shall not:

3 (1) prevent transportation of cannabis
4 products on public roads by a licensee that transports
5 cannabis products in compliance with the Cannabis Regulation
6 Act;

7 (2) completely prohibit the operation of a
8 licensee;

9 (3) prohibit or limit signage attached to or
10 located on licensed premises that identifies the premises as
11 a cannabis establishment;

12 (4) require a licensed premises or a
13 cannabis consumption area to be any more than three hundred
14 feet from a school or daycare center that was in existence at
15 the time the cannabis establishment or integrated cannabis
16 microbusiness was licensed;

17 (5) require an existing licensee at a
18 licensed premises to relocate; or

19 (6) prohibit a person from producing
20 homegrown cannabis as provided for in the Cannabis Regulation
21 Act.

22 SECTION 13. LICENSEE PROTECTIONS.--

23 A. Conduct by a licensee or a licensee
24 representative that is allowed pursuant to a license and
25 conduct by a person that allows property to be used by a

1 licensee or a licensee representative for conduct allowed
2 pursuant to a license is lawful, not a violation of state or
3 local law and is not a basis for seizure or forfeiture of any
4 property or assets under state or local law.

5 B. The state or a local jurisdiction shall not
6 impose a criminal, civil or administrative penalty on a
7 licensee, a licensee representative or a person that allows
8 property to be used by a licensee or a licensee
9 representative pursuant to a license, solely for conduct
10 allowed pursuant to a license.

11 **SECTION 14. PROTECTION OF UNDERAGE PERSONS--PROVIDING**
12 **CANNABIS PRODUCTS TO MINORS--PENALTIES.--**

13 A. Except as allowed pursuant to the Cannabis
14 Regulation Act, it is a violation of that act for a person,
15 including a person licensed pursuant to the provisions of
16 that act, or an employee, agent or lessee of that person, if
17 the person knows or has reason to know that the person is
18 violating the provisions of this section, to knowingly and
19 intentionally:

20 (1) sell, serve or give cannabis products to
21 a person under twenty-one years of age or allow a person
22 under twenty-one years of age to consume cannabis products on
23 the licensed premises;

24 (2) buy cannabis products for or procure the
25 sale or service of cannabis products to a person under

1 twenty-one years of age;

2 (3) deliver cannabis products to a person
3 under twenty-one years of age; or

4 (4) aid or assist a person under twenty-one
5 years of age to buy, otherwise procure or be served cannabis
6 products.

7 B. A licensee shall not employ a person younger
8 than twenty-one years of age to engage in a commercial
9 cannabis activity.

10 C. The division shall suspend or revoke the
11 license and may fine the licensee in an amount not to exceed
12 ten thousand dollars (\$10,000), or both, when the division
13 finds that a licensee or the licensee's employee or agent
14 knowingly has sold, served or given any cannabis product to a
15 person under twenty-one years of age.

16 D. The establishment of all of the following facts
17 by a licensee prosecuted for a violation of Subsection D of
18 this section and a cannabis server for a violation of
19 Subsection F of Section 11 of the Cannabis Regulation Act
20 shall constitute a defense:

21 (1) that the purchaser falsely represented
22 in writing; by producing a driver's license bearing the
23 purchaser's photograph; by producing a photographic
24 identification card issued by the motor vehicle division of
25 the taxation and revenue department; or by producing a

1 similar identification card issued pursuant to the laws of
2 this state, another state, the federal government or the
3 government of an Indian nation, tribe or pueblo that the
4 person was twenty-one years of age or older;

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

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

14 E. Nothing in this section shall be construed or
15 interpreted to prevent:

16 (1) the division from enforcing its rules
17 against a licensee;

18 (2) a state agency from enforcing a law or
19 rule that does not conflict with the Cannabis Regulation Act
20 or rules promulgated pursuant to that act; or

21 (3) a local jurisdiction from enforcing a
22 local ordinance that does not conflict with the Cannabis
23 Regulation Act or rules promulgated pursuant to that act.

24 **SECTION 15. TRANSPORT VIA COURIER.--**

25 A. A vertically integrated cannabis establishment, HB 2/a
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1 cannabis retailer or integrated cannabis microbusiness may
2 courier cannabis products.

3 B. A courier may accept payment for services using
4 any legal method of payment or payment on delivery.

5 SECTION 16. PACKAGING AND LABELING.--Before sale or
6 transport via cannabis courier of a cannabis product, the
7 cannabis product shall be labeled and packaged as provided in
8 Section 17 of the Cannabis Regulation Act.

9 SECTION 17. CANNABIS PRODUCTS--PACKAGING AND LABELING--
10 DIVISION RULEMAKING.--

11 A. Cannabis or cannabis extract included in a
12 cannabis product that is manufactured in compliance with
13 applicable law is not considered to be an adulterant under
14 state law.

15 B. The division shall promulgate rules consistent
16 with industry standards for cannabis products that establish
17 labeling and packaging requirements, including that:

18 (1) packages shall be resealable,
19 child-resistant, compostable and recyclable or made from
20 recycled materials;

21 (2) packages and labels shall not be
22 designed to be appealing to a child; and

23 (3) labels shall include:

24 (a) for a package containing only
25 cannabis leaf or flower, the net weight of cannabis in the

1 package;

2 (b) identification of the licensee or
3 licensees that produced or manufactured the cannabis product,
4 the date on which the cannabis was harvested, the type of
5 cannabis product and the date on which the cannabis product
6 was manufactured and packaged;

7 (c) potency and pesticide use;

8 (d) a list of pharmacologically active
9 ingredients;

10 (e) for cannabis products containing
11 non-cannabis ingredients, a list of all ingredients and a
12 disclosure of nutritional information for the product or
13 cannabis extract disclosed in the same manner required under
14 federal law for nutritional labeling for food for human
15 consumption;

16 (f) a warning if nuts or other known
17 allergens are used in the item or in its manufacture;

18 (g) a logo designed by the division
19 that is distinctive in design, color, size and location such
20 that the logo notifies a reasonable person that the package
21 contains cannabis;

22 (h) a warning of possible adverse
23 effects of consumption and the New Mexico poison and drug
24 information center phone number;

25 (i) an expiration date; and

1 (j) other information as required by
2 rules promulgated pursuant to the Cannabis Regulation Act.

3 SECTION 18. TESTING CANNABIS PRODUCTS--HEALTH AND
4 SAFETY OF EMPLOYEES.--

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

8 B. In consultation with the department of
9 environment and consistent with industry standards, the
10 division shall promulgate rules to:

11 (1) ensure that testing of cannabis products
12 occurs prior to distribution to cannabis retailers or sales
13 by integrated cannabis microbusinesses;

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

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

18 (4) provide for recordkeeping;

19 (5) establish chain of custody protocols for
20 testing sample transportation;

21 (6) ensure that testing samples are
22 transported and stored in a manner that prevents degradation,
23 contamination, tampering or diversion;

24 (7) specify protocols for testing sample
25 collection that ensure accurate test results, including

1 requiring that testing samples be collected by laboratory
2 staff trained in testing sample collection; and

3 (8) require destruction of a tested batch of
4 cannabis products if the testing samples from the tested
5 batch indicate noncompliance with applicable health and
6 safety standards promulgated by the division, unless remedial
7 measures can bring the cannabis products into compliance with
8 the standards or the cannabis products can be used for
9 research purposes.

10 C. Beginning no later than April 1, 2022, the
11 division shall identify, in consultation with the department
12 of environment, a set of updated certified reference
13 materials for laboratory testing to be measured against.

14 D. The division shall work cooperatively with the
15 department of environment to implement inspection of cannabis
16 establishments to ensure the health and safety of employees
17 in accordance with the Occupational Health and Safety Act and
18 to determine compliance with rules promulgated by the
19 environmental improvement board.

20 **SECTION 19. RESEARCHING CANNABIS--RECORDKEEPING.--**

21 A. A cannabis research laboratory's research of
22 cannabis shall comply with the requirements set forth in
23 applicable law and rules.

24 B. The division shall develop rules and procedures
25 consistent with industry standards to provide for

1 recordkeeping to ensure that cannabis products are not
2 removed from the cannabis research laboratory premises.

3 SECTION 20. ADVERTISING AND MARKETING RESTRICTIONS.--

4 The division shall promulgate rules consistent with industry
5 standards that:

6 A. prohibit the advertisement and marketing of
7 cannabis products:

8 (1) on radio, television or other broadcast
9 media, internet pop-ups and mass transit vehicles; provided
10 that the division shall not prohibit advertising and
11 marketing to:

12 (a) subscribers of subscription-based
13 radio, television or other broadcast media who are twenty-one
14 years of age or older; or

15 (b) persons twenty-one years of age or
16 older who have solicited the advertising or marketing;

17 (2) that are false, deceptive or misleading,
18 including making unproven health benefit claims;

19 (3) that are on billboards, posters,
20 handbills or other visual media that are located or can be
21 viewed within three hundred feet of a school, daycare center
22 or church;

23 (4) that depict consumption by children or
24 other persons who appear to be younger than twenty-one years
25 of age;

1 (5) that use predatory marketing and
2 advertising practices targeting minors; or

3 (6) that are designed using cartoon
4 characters or to mimic any other product brand; and

5 B. require:

6 (1) all advertisements and marketing to
7 accurately and legibly identify all persons responsible for
8 its content; and

9 (2) advertisements in print and digital
10 communications to be placed only where the audience is
11 reasonably expected to be twenty-one years of age or older as
12 determined by reliable, current audience composition data.

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

22 SECTION 22. PROVISION OF PROFESSIONAL SERVICES.--An
23 attorney, accountant, insurance agent, real estate agent,
24 security guard or other person engaged in a profession
25 subject to state licensure shall not be subject to

1 disciplinary action by a professional association, a state
2 professional board or a state licensing entity because the
3 professional provides professional services or assistance to
4 prospective or licensed cannabis establishments or another
5 person in connection with activity that the professional
6 reasonably believes complies with the Cannabis Regulation Act
7 and rules promulgated pursuant to that act.

8 **SECTION 23. MEDICAL CANNABIS PROVISIONS UNAFFECTED.--**

9 Nothing in the Cannabis Regulation Act shall be construed to
10 limit a privilege or right of a qualified patient, a primary
11 caregiver or a reciprocal participant participating in the
12 medical cannabis program or the use, dispensing, possession,
13 prescribing, storage or transport of a prescription drug
14 containing cannabis that is approved pursuant to the Federal
15 Food, Drug, and Cosmetic Act.

16 **SECTION 24. PROTECTIONS FOR THE USE OF CANNABIS.--**

17 A. Conduct allowed pursuant to the Cannabis
18 Regulation Act shall not in itself constitute grounds for a
19 holder of a professional or occupational license to be
20 subject to professional discipline for providing advice or
21 services related to cannabis establishments or applications
22 to operate cannabis establishments on the basis that cannabis
23 is illegal under federal law.

24 B. An applicant for a professional or occupational
25 license shall not be denied a license based solely on

1 previous employment related to cannabis establishments.

2 C. A person shall not be denied parental rights or
3 custody of or visitation with a minor child by the state or
4 local government based solely on conduct that is lawful
5 pursuant to the Cannabis Regulation Act. Nothing in this
6 subsection prevents law enforcement, the children, youth and
7 families department or the courts from acting in the best
8 interests of the minor child.

9 D. A person currently under parole, probation or
10 other state supervision or released awaiting trial or other
11 hearing shall not be punished or otherwise penalized based
12 solely on conduct that is lawful pursuant to the Cannabis
13 Regulation Act unless prohibition on the use or possession of
14 cannabis has been a specific condition of parole, probation
15 or other state supervision or release awaiting trial or other
16 hearing.

17 E. A person shall not be denied eligibility in
18 public assistance programs or denied health care based solely
19 on conduct that is lawful pursuant to the Cannabis Regulation
20 Act unless required by federal law.

21 SECTION 25. PERSONAL USE OF CANNABIS.--

22 A. The following conduct is lawful for a person
23 who is twenty-one years of age or older and shall not
24 constitute grounds for detention, search or arrest of a
25 person or search of property, and cannabis products that

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

4 (1) possessing, using, being under the
5 influence of, displaying, purchasing, obtaining or
6 transporting not more cannabis than authorized by the
7 Cannabis Regulation Act or the medical cannabis program;

8 (2) possessing in excess of two ounces of
9 cannabis, sixteen grams of cannabis extract and eight hundred
10 milligrams of edible cannabis if the excess is stored in the
11 person's private residence and not visible from a public
12 place;

13 (3) transferring, without financial
14 consideration, to a person who is twenty-one years of age or
15 older not more than the amount of cannabis lawfully purchased
16 and obtained pursuant to the Cannabis Regulation Act or the
17 medical cannabis program;

18 (4) ingesting or otherwise consuming
19 cannabis or cannabis products purchased and obtained pursuant
20 to the Cannabis Regulation Act or the medical cannabis
21 program;

22 (5) possessing, using, displaying,
23 purchasing, obtaining or manufacturing cannabis extract using
24 nonvolatile solvents, alcohol or carbon dioxide or no
25 solvents;

1 (6) manufacturing, transporting or giving
2 away to a person twenty-one years of age or older cannabis
3 paraphernalia;

4 (7) assisting another person who is twenty-
5 one years of age or older in, or allowing property to be used
6 in, any of the acts described in Paragraphs (1) through (6)
7 of this subsection;

8 (8) smoking cannabis or cannabis products in
9 an area authorized pursuant to the Cannabis Regulation Act or
10 a local jurisdiction;

11 (9) possessing, planting, cultivating,
12 harvesting, drying, manufacturing cannabis products using
13 nonvolatile solvents, alcohol or carbon dioxide or no
14 solvents or transporting not more than six mature cannabis
15 plants and six immature cannabis plants per person; provided
16 that despite a household having multiple residents, no more
17 than twelve mature cannabis plants may be present in one
18 household; and provided further that if the person does not
19 exceed the maximum number of cannabis plants, the person may
20 possess the cannabis produced by the cannabis plants
21 notwithstanding any weight limits; and

22 (10) transporting homegrown cannabis or
23 mature or immature cannabis plants when the person is moving
24 the person's residence to another location or for purposes of
25 testing or manufacturing.

1 B. Paragraph (6) of Subsection A of this section
2 is intended to meet the requirements of 21 U.S.C. Section
3 863(f) by authorizing under state law any person in
4 compliance with this section to manufacture, possess or
5 distribute cannabis paraphernalia.

6 C. None of the following shall, individually or in
7 combination with each other, constitute reasonable
8 articulable suspicion of a crime and is not a basis to stop,
9 detain or search a person:

10 (1) the odor of cannabis or cannabis extract
11 or of burnt cannabis or cannabis extract;

12 (2) the possession of or the suspicion of
13 possession of cannabis without evidence of quantity in excess
14 of two ounces of cannabis, sixteen grams of cannabis extract
15 or eight hundred milligrams of edible cannabis; or

16 (3) the possession of multiple containers of
17 cannabis without evidence of quantity in excess of two ounces
18 of cannabis, sixteen grams of cannabis extract or eight
19 hundred milligrams of edible cannabis.

20 D. Paragraph (1) of Subsection A and Subsection C
21 of this section shall not apply when a law enforcement
22 officer is investigating whether a person is operating a
23 vehicle or watercraft while intoxicated or under the
24 influence of or impaired by alcohol or a drug or any
25 combination thereof in violation of Section 66-8-102 or

1 66-13-3 NMSA 1978.

2 SECTION 26. LIMITS ON PERSONAL USE--PENALTIES.--

3 A. Nothing in Section 25 of the Cannabis
4 Regulation Act shall be construed to:

5 (1) allow a person to smoke cannabis
6 products in a public place, except in a cannabis consumption
7 area; or

8 (2) restrict the ability of a person to
9 prohibit conduct otherwise allowed in the Cannabis Regulation
10 Act on the person's privately owned property.

11 B. A person who violates Paragraph (1) of
12 Subsection A of this section shall be subject to a civil
13 penalty of fifty dollars (\$50.00).

14 C. As used in this section, "smoke" means to
15 inhale, exhale, burn or carry any lighted or heated device or
16 pipe or any other lighted or heated cannabis products
17 intended for inhalation, whether natural or synthetic, in any
18 manner or in any form.

19 D. A person less than eighteen years of age, the
20 family of a person less than eighteen years of age or a
21 person legally obligated to care for and support a person
22 less than eighteen years of age who is subject to the fines
23 pursuant to Subsection B of this section shall not be
24 required to pay any fees or fines pursuant to the Cannabis
25 Regulation Act.

1 SECTION 27. PERSONAL PRODUCTION OF CANNABIS--
2 PENALTIES.--

3 A. Unless otherwise provided in the Cannabis
4 Regulation Act, it is unlawful for a person without a license
5 to intentionally produce cannabis products except as provided
6 in this section.

7 B. A person twenty-one years of age or older who
8 intentionally produces:

9 (1) more than six and up to twelve mature or
10 immature cannabis plants shall be issued a penalty assessment
11 pursuant to Section 31-19A-1 NMSA 1978 and is subject to a
12 fine of fifty dollars (\$50.00); and

13 (2) more than twelve mature or immature
14 cannabis plants is guilty of a fourth degree felony and may
15 be sentenced as provided in Section 31-18-15 NMSA 1978.

16 C. A person who is eighteen years of age or older
17 but less than twenty-one years of age who intentionally
18 produces:

19 (1) up to six mature or immature cannabis
20 plants shall be issued a penalty assessment pursuant to
21 Section 31-19A-1 NMSA 1978 and is subject to a fine of fifty
22 dollars (\$50.00);

23 (2) more than six mature or immature
24 cannabis plants and up to twelve mature or immature cannabis
25 plants is guilty of a misdemeanor and shall be sentenced

1 pursuant to the provisions of Section 31-19-1 NMSA 1978; and

2 (3) more than twelve mature or immature
3 cannabis plants is guilty of a fourth degree felony and shall
4 be sentenced pursuant to the provisions of Section 31-18-15
5 NMSA 1978.

6 D. A person who is less than eighteen years of age
7 who intentionally produces cannabis products is guilty of a
8 civil violation and shall be subject to:

9 (1) attendance at a four-hour evidence-based
10 drug education and legal rights program at no cost to the
11 minor; or

12 (2) four hours of community service.

13 **SECTION 28. UNLICENSED SALES OF CANNABIS--PENALTIES.--**

14 A. As used in this section, "traffic" means the:

15 (1) distribution, sale, barter or giving
16 away of cannabis products; or

17 (2) possession with intent to distribute,
18 sell, barter or give away cannabis products.

19 B. Unless otherwise provided in the Cannabis
20 Regulation Act or the Lynn and Erin Compassionate Use Act, it
21 is unlawful for a person without a license to intentionally
22 traffic cannabis products.

23 C. A person under eighteen years of age who
24 violates Subsection B of this section shall be subject to:

25 (1) attendance at a four-hour evidence-based

1 drug education and legal rights program at no cost to the
2 person; or

3 (2) four hours of community service.

4 D. Except as otherwise provided in Section 14 of
5 the Cannabis Regulation Act, a person eighteen years of age
6 or older who violates Subsection B of this section is guilty
7 of a misdemeanor and shall be sentenced pursuant to the
8 provisions of Section 31-19-1 NMSA 1978.

9 E. A person eighteen years of age or older who
10 violates Subsection B of this section and who conducts
11 unlicensed cannabis product sales from a building, room or
12 other area open to the public in a manner that would lead a
13 reasonable person to believe that the area is a cannabis
14 establishment licensed pursuant to the Cannabis Regulation
15 Act is guilty of a fourth degree felony and shall be
16 sentenced pursuant to the provisions of Section 31-18-15 NMSA
17 1978.

18 SECTION 29. CANNABIS WITHIN RESTRICTED AREA--PENALTY.--
19 Unless otherwise allowed in the Cannabis Regulation Act or
20 the Lynn and Erin Compassionate Use Act, a person shall not
21 possess or intentionally distribute any amount of a cannabis
22 product on the premises of a school or daycare center unless
23 the person is a qualified patient, a primary caregiver or a
24 reciprocal participant; provided that this section shall not
25 apply to a person who possesses a cannabis product for

1 authorized purposes on the premises of a licensed cannabis
2 training and education program. A person who violates this
3 section is guilty of a misdemeanor and shall be sentenced
4 pursuant to the provisions of Section 31-19-1 NMSA 1978.

5 SECTION 30. UNLAWFUL POSSESSION OF CANNABIS--
6 PENALTIES.--Except as allowed in the Cannabis Regulation Act
7 and the Lynn and Erin Compassionate Use Act:

8 A. a person under twenty-one years of age shall
9 not possess cannabis products. A person who violates this
10 subsection is guilty of a civil violation and shall be
11 subject to:

12 (1) attendance at a four-hour evidence-based
13 drug education and legal rights program at no cost to the
14 person; or

15 (2) four hours of community service; and

16 B. a person twenty-one years of age or older shall
17 not possess more than two ounces of cannabis, sixteen grams
18 of cannabis extract and eight hundred milligrams of edible
19 cannabis in public. A person who violates this subsection
20 with respect to:

21 (1) more than two but not more than eight
22 ounces of cannabis, more than sixteen grams of cannabis
23 extract and more than eight hundred milligrams of edible
24 cannabis is guilty of a misdemeanor and shall be sentenced
25 pursuant to the provisions of Section 31-19-1 NMSA 1978; or

1 (2) more than eight ounces of cannabis,
2 sixty-four grams of cannabis extract or three thousand two
3 hundred milligrams of edible cannabis is guilty of a fourth
4 degree felony and shall be sentenced pursuant to the
5 provisions of Section 31-18-15 NMSA 1978.

6 SECTION 31. UNLICENSED MANUFACTURING OF CANNABIS
7 EXTRACT--PENALTY.--It is unlawful for a person to manufacture
8 cannabis extract without a license issued pursuant to the
9 Cannabis Regulation Act unless the person produces and
10 manufactures cannabis extract from homegrown cannabis using
11 nonvolatile solvents, alcohol or carbon dioxide or no
12 solvents. The use of any other solvent or process is
13 expressly prohibited unless it is approved by the division.
14 A person who violates this section is guilty of a fourth
15 degree felony and shall be sentenced pursuant to the
16 provisions of Section 31-18-15 NMSA 1978.

17 SECTION 32. EXEMPTION FROM CRIMINAL AND CIVIL
18 PENALTIES--RESEARCHERS.--A person shall not be subject to
19 arrest or prosecution, penalized in any manner or denied any
20 right or privilege solely because the person produced,
21 possessed, distributed, dispensed or purchased cannabis
22 products if the person produced, possessed, distributed,
23 dispensed or purchased the cannabis products solely for the
24 purpose of research conducted pursuant to the Lynn and Erin
25 Compassionate Use Act or the Cannabis Regulation Act.

1 **SECTION 33. REPORTING REQUIREMENTS FOR CANNABIS-RELATED**
2 **VIOLATIONS.--**

3 A. Within sixty days following the end of each
4 fiscal year, every police and sheriff's department shall
5 report on a form approved by the department of public safety
6 the total number of arrests, citations and penalty
7 assessments for cannabis-related violations broken down by:

8 (1) category and penalty level; and

9 (2) race, ethnicity, age and gender.

10 B. Each law enforcement agency shall submit its
11 annual report to the department of public safety.

12 C. The department of public safety shall compile
13 the reports submitted and shall issue by November 1 of each
14 year an annual report of all cannabis-related violations in
15 the state. The report shall aggregate the data for the state
16 and shall disaggregate the data by agency, race, ethnicity,
17 age and gender. The department of public safety shall make
18 all annual reports submitted for previous fiscal years
19 available on the department of public safety's website.

20 D. For purposes of this section, "cannabis-related
21 violation" means a violation of any of Sections 27 through 31
22 of the Cannabis Regulation Act or a violation of Section
23 66-8-102 or 66-13-3 NMSA 1978 if the basis for the arrest or
24 citation is impairment due to the use of cannabis products.

25 **SECTION 34. EMPLOYER PROTECTIONS--EXEMPTIONS.--**

1 A. Unless there is an agreement between the
2 employer and employee, nothing in the Cannabis Regulation Act
3 shall:

4 (1) restrict an employer's ability to
5 prohibit or take an adverse employment action against an
6 employee for impairment by or possession or use of
7 intoxicating substances at work or during work hours;

8 (2) require an employer to commit any act
9 that would cause the employer to be noncompliant with or in
10 violation of federal law or federal regulations or that would
11 result in the loss of a federal contract or federal funding;
12 or

13 (3) prevent or infringe upon the rights of
14 an employer to adopt and implement a written zero-tolerance
15 policy regarding the use of cannabis products. A
16 zero-tolerance policy may permit the discipline or
17 termination of an employee on the basis of a positive drug
18 test that indicates any amount of
19 delta-9-tetrahydrocannabinol or delta-9-tetrahydrocannabinol
20 metabolite.

21 B. The Cannabis Regulation Act does not apply to
22 an employee of an employer subject to the provisions of Title
23 2 of the federal Railway Labor Act.

24 C. Nothing in the Cannabis Regulation Act shall be
25 construed to invalidate, diminish or otherwise interfere with

1 any collective bargaining agreement nor shall it be construed
2 to invalidate, diminish or otherwise interfere with any
3 party's power to collectively bargain such an agreement, or
4 to an employer or employee.

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

11 SECTION 35. APPEAL OF RULES.--A person who is or may be
12 affected by a rule promulgated by the division or other state
13 agency pursuant to the Cannabis Regulation Act may appeal to
14 the district court.

15 SECTION 36. PUBLIC RECORDS AND OPEN MEETINGS.--Records
16 of the division are subject to the Inspection of Public
17 Records Act. Rulemaking and other hearings of the division
18 are subject to the Open Meetings Act.

19 SECTION 37. INTRASTATE SOURCE.--Except as provided in
20 Section 38 of the Cannabis Regulation Act, all cannabis
21 products shall be derived from a source originating within
22 New Mexico.

23 SECTION 38. IMPORTS AND EXPORTS.--

24 A. Notwithstanding the provisions of Section 37 of
25 the Cannabis Regulation Act or any other provision of law,

1 the governor shall enter into agreements with other
2 jurisdictions within or outside of the United States for the
3 purposes of cross-jurisdictional delivery of cannabis
4 products between this state and the other jurisdictions.

5 Such agreements shall:

6 (1) ensure enforceable public health and
7 safety standards;

8 (2) include a system to regulate and track
9 the interstate or international delivery of cannabis
10 products; and

11 (3) ensure that any cannabis products
12 delivered into this state, prior to sale to a consumer, are
13 tested, packaged and labeled pursuant to New Mexico laws and
14 rules.

15 B. Notwithstanding any other provision of law and
16 in accordance with an agreement described in Subsection A of
17 this section, a person licensed to:

18 (1) courier cannabis products may deliver
19 cannabis products to a person located in, and authorized to
20 receive cannabis products by, another jurisdiction in the
21 United States; and

22 (2) receive cannabis products may receive
23 cannabis products from a person located in, and authorized to
24 export cannabis products by, another jurisdiction in the
25 United States or internationally.

1 C. This section shall take effect on the earlier
2 date on which:

3 (1) federal law is amended to allow for the
4 interstate or international transfer of cannabis products
5 between authorized cannabis-related businesses; or

6 (2) the United States department of justice
7 issues an opinion or memorandum allowing or tolerating the
8 interstate or international transfer of cannabis products
9 between cannabis-related businesses as authorized by state
10 law.

11 SECTION 39. CANNABIS REGULATION FUND.--

12 A. The "cannabis regulation fund" is created in
13 the state treasury. The fund consists of appropriations,
14 gifts, grants, donations and fees collected by the division
15 pursuant to the Cannabis Regulation Act and the medical
16 cannabis program administered by the division. Any
17 unexpended or unencumbered balance remaining at the end of a
18 fiscal year shall revert to the general fund.

19 B. Money in the cannabis regulation fund is
20 subject to appropriation by the legislature to fund the
21 division, the department of health, the department of
22 environment, the New Mexico department of agriculture, the
23 taxation and revenue department and the department of public
24 safety for the purposes of carrying out the provisions of the
25 Cannabis Regulation Act and the Lynn and Erin Compassionate

1 Use Act.

2 SECTION 40. PLANT LIMIT.--No later than September 1,
3 2021, and each September 1 thereafter, the division shall by
4 rule limit, by plant count, canopy or square footage, the
5 number of cannabis plants that a licensee that is not an
6 integrated cannabis microbusiness or a cannabis producer
7 microbusiness may produce. The rule shall set the number of
8 allowed cannabis plants per licensee to meet an average
9 national market demand for cannabis products in states where
10 adult and medical cannabis are authorized during the
11 preceding year using a consumer base of no less than twenty
12 percent of the adult population of New Mexico.

13 SECTION 41. INDIAN NATIONS, TRIBES AND PUEBLOS--
14 INTERGOVERNMENTAL AGREEMENTS.--

15 A. The department may enter into one or more
16 intergovernmental agreements with any tribal government to
17 efficiently coordinate the cross-jurisdictional
18 administration of the laws of this state and the laws of
19 tribal governments relating to the use of cannabis products
20 set forth in the Cannabis Regulation Act and the Lynn and
21 Erin Compassionate Use Act. The agreements may include,
22 without limitation, provisions relating to:

- 23 (1) criminal and civil law enforcement;
24 (2) regulatory issues relating to the
25 possession, delivery, production, processing or use of

1 cannabis products;

2 (3) the administration of laws relating to
3 taxation;

4 (4) any immunity, preemption or conflict of
5 law relating to the possession, delivery, production,
6 processing or use of cannabis products; and

7 (5) the resolution of any disputes between a
8 tribal government and the state, which may include, without
9 limitation, the use of mediation or other nonjudicial
10 processes.

11 B. An agreement entered into pursuant to this
12 section shall:

13 (1) provide for the preservation of public
14 health and safety;

15 (2) ensure the security of cannabis
16 establishments and the corresponding facilities on tribal
17 land;

18 (3) establish provisions regulating business
19 involving cannabis that passes between tribal land and non-
20 tribal land in New Mexico; and

21 (4) be negotiated in good faith, which shall
22 respect and protect state and tribal sovereign immunity.

23 C. As used in this section, "tribal government"
24 means a federally recognized Indian nation, tribe or pueblo
25 located wholly or partially in the state.

1 SECTION 42. COOPERATION OF AGENCIES.--All state
2 agencies shall cooperate with the division in carrying out
3 the provisions of the Cannabis Regulation Act.

4 SECTION 43. A new section of Chapter 7 NMSA 1978 is
5 enacted to read:

6 "SHORT TITLE.--Sections 43 through 47 of this act may be
7 cited as the "Cannabis Tax Act"."

8 SECTION 44. A new section of Chapter 7 NMSA 1978 is
9 enacted to read:

10 "DEFINITIONS.--As used in the Cannabis Tax Act:

11 A. "cannabis":

12 (1) means all parts of the plant genus
13 Cannabis containing a delta-9-tetrahydrocannabinol
14 concentration of more than three-tenths percent on a dry
15 weight basis, whether growing or not; the seeds of the plant;
16 the resin extracted from any part of the plant; and every
17 compound, manufacture, salt, derivative, mixture or
18 preparation of the plant, its seeds or its resin; and

19 (2) does not include:

20 (a) the mature stalks of the plant;
21 fiber produced from the stalks; oil or cake made from the
22 seeds of the plant; any other compound, manufacture, salt,
23 derivative, mixture or preparation of the mature stalks,
24 fiber, oil or cake; or the sterilized seed of the plant that
25 is incapable of germination; or

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

4 B. "cannabis extract":

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

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

12 C. "cannabis product" means a product that is or
13 that contains cannabis or cannabis extracts, including edible
14 or topical products that may also contain other ingredients;
15 and

16 D. "cannabis retailer" means a person whose
17 license from the cannabis control division of the regulation
18 and licensing department allows the person to sell cannabis
19 products to a person who purchases, acquires, possesses or
20 uses the cannabis product for a purpose other than resale."

21 SECTION 45. A new section of Chapter 7 NMSA 1978 is
22 enacted to read:

23 "CANNABIS EXCISE TAX.--

24 A. An excise tax is imposed on a cannabis retailer
25 that sells cannabis products in this state. The tax imposed

1 by this section may be referred to as the "cannabis excise
2 tax".

3 B. The rate of the cannabis excise tax shall be at
4 the following rates and shall be applied to the price paid
5 for a cannabis product:

6 (1) prior to July 1, 2025, twelve percent;

7 (2) beginning July 1, 2025 and prior to July
8 1, 2026, thirteen percent;

9 (3) beginning July 1, 2026 and prior to July
10 1, 2027, fourteen percent;

11 (4) beginning July 1, 2027 and prior to July
12 1, 2028, fifteen percent;

13 (5) beginning July 1, 2028 and prior to July
14 1, 2029, sixteen percent;

15 (6) beginning July 1, 2029 and prior to July
16 1, 2030, seventeen percent; and

17 (7) beginning July 1, 2030, eighteen
18 percent.

19 C. The cannabis excise tax shall not apply to
20 retail sales of medical cannabis products sold to a qualified
21 patient or a primary caregiver who presents a registry
22 identification card issued pursuant to the Lynn and Erin
23 Compassionate Use Act or a reciprocal participant who
24 presents similar proof from another state, the District of
25 Columbia or a territory or commonwealth of the United States

1 at the time of the sale."

2 SECTION 46. A new section of Chapter 7 NMSA 1978 is
3 enacted to read:

4 "DATE PAYMENT DUE.--The cannabis excise tax is to be
5 paid on or before the twenty-fifth day of the month following
6 the month in which the taxable sale occurs."

7 SECTION 47. A new section of Chapter 7 NMSA 1978 is
8 enacted to read:

9 "INTERPRETATION OF THE CANNABIS TAX ACT--ADMINISTRATION
10 AND ENFORCEMENT OF TAX.--The department shall administer and
11 enforce the collection of the cannabis excise tax pursuant to
12 the Tax Administration Act."

13 SECTION 48. Section 7-1-2 NMSA 1978 (being Laws 1965,
14 Chapter 248, Section 2, as amended by Laws 2019, Chapter 47,
15 Section 1 and by Laws 2019, Chapter 53, Section 10 and also
16 by Laws 2019, Chapter 270, Section 1) is amended to read:

17 "7-1-2. APPLICABILITY.--The Tax Administration Act
18 applies to and governs:

19 A. the administration and enforcement of the
20 following taxes or tax acts as they now exist or may
21 hereafter be amended:

- 22 (1) Income Tax Act;
23 (2) Withholding Tax Act;
24 (3) Oil and Gas Proceeds and Pass-Through
25 Entity Withholding Tax Act;

1 (4) Gross Receipts and Compensating Tax Act,
2 Interstate Telecommunications Gross Receipts Tax Act and
3 Leased Vehicle Gross Receipts Tax Act;

4 (5) Liquor Excise Tax Act;

5 (6) Local Liquor Excise Tax Act;

6 (7) any municipal local option gross
7 receipts tax or municipal compensating tax;

8 (8) any county local option gross receipts
9 tax or county compensating tax;

10 (9) Special Fuels Supplier Tax Act;

11 (10) Gasoline Tax Act;

12 (11) petroleum products loading fee, which
13 fee shall be considered a tax for the purpose of the Tax
14 Administration Act;

15 (12) Alternative Fuel Tax Act;

16 (13) Cigarette Tax Act;

17 (14) Estate Tax Act;

18 (15) Railroad Car Company Tax Act;

19 (16) Investment Credit Act, rural job tax
20 credit, Laboratory Partnership with Small Business Tax Credit
21 Act, Technology Jobs and Research and Development Tax Credit
22 Act, Film Production Tax Credit Act, Affordable Housing Tax
23 Credit Act and high-wage jobs tax credit;

24 (17) Corporate Income and Franchise Tax Act;

25 (18) Uniform Division of Income for Tax

1 Purposes Act;

2 (19) Multistate Tax Compact;

3 (20) Tobacco Products Tax Act;

4 (21) the telecommunications relay service
5 surcharge imposed by Section 63-9F-11 NMSA 1978, which
6 surcharge shall be considered a tax for the purposes of the
7 Tax Administration Act;

8 (22) the Insurance Premium Tax Act;

9 (23) the Health Care Quality Surcharge Act;

10 and

11 (24) the Cannabis Tax Act;

12 B. the administration and enforcement of the
13 following taxes, surtaxes, advanced payments or tax acts as
14 they now exist or may hereafter be amended:

15 (1) Resources Excise Tax Act;

16 (2) Severance Tax Act;

17 (3) any severance surtax;

18 (4) Oil and Gas Severance Tax Act;

19 (5) Oil and Gas Conservation Tax Act;

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

21 (7) Oil and Gas Ad Valorem Production Tax

22 Act;

23 (8) Natural Gas Processors Tax Act;

24 (9) Oil and Gas Production Equipment Ad

25 Valorem Tax Act;

1 (10) Copper Production Ad Valorem Tax Act;
2 (11) any advance payment required to be made
3 by any act specified in this subsection, which advance
4 payment shall be considered a tax for the purposes of the Tax
5 Administration Act;

6 (12) Enhanced Oil Recovery Act;

7 (13) Natural Gas and Crude Oil Production
8 Incentive Act; and

9 (14) intergovernmental production tax credit
10 and intergovernmental production equipment tax credit;

11 C. the administration and enforcement of the
12 following taxes, surcharges, fees or acts as they now exist
13 or may hereafter be amended:

14 (1) Weight Distance Tax Act;

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

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

19 (4) 911 emergency surcharge and the network
20 and database surcharge, which surcharges shall be considered
21 taxes for purposes of the Tax Administration Act;

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

25 (6) the water conservation fee imposed by

1 Section 74-1-13 NMSA 1978, which fee shall be considered a
2 tax for the purposes of the Tax Administration Act; and

3 (7) the gaming tax imposed pursuant to the
4 Gaming Control Act; and

5 D. the administration and enforcement of all other
6 laws, with respect to which the department is charged with
7 responsibilities pursuant to the Tax Administration Act, but
8 only to the extent that the other laws do not conflict with
9 the Tax Administration Act."

10 SECTION 49. Section 7-1-6.15 NMSA 1978 (being Laws
11 1983, Chapter 211, Section 20, as amended by Laws 2015,
12 Chapter 89, Section 1 and by Laws 2015, Chapter 100, Section
13 1) is amended to read:

14 "7-1-6.15. ADJUSTMENTS OF DISTRIBUTIONS OR TRANSFERS TO
15 MUNICIPALITIES OR COUNTIES.--

16 A. The provisions of this section apply to:

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

19 (2) any transfer to a municipality with
20 respect to any local option gross receipts tax imposed by
21 that municipality;

22 (3) any transfer to a county with respect to
23 any local option gross receipts tax imposed by that county;

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

1 (5) any distribution to a municipality or a
2 county of gasoline taxes pursuant to Section 7-1-6.9 NMSA
3 1978;

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

7 (7) any distribution to a county from the
8 county government road fund pursuant to Section 7-1-6.26 NMSA
9 1978;

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

12 (9) any distribution to a municipality of
13 compensating taxes pursuant to Section 7-1-6.55 NMSA 1978;
14 and

15 (10) any distribution to a municipality or a
16 county of cannabis excise taxes pursuant to the Cannabis Tax
17 Act.

18 B. Before making a distribution or transfer
19 specified in Subsection A of this section to a municipality
20 or county for the month, amounts comprising the net receipts
21 shall be segregated into two mutually exclusive categories.
22 One category shall be for amounts relating to the current
23 month, and the other category shall be for amounts relating
24 to prior periods. The total of each category for a
25 municipality or county shall be reported each month to that

1 municipality or county. If the total of the amounts relating
2 to prior periods is less than zero and its absolute value
3 exceeds the greater of one hundred dollars (\$100) or an
4 amount equal to twenty percent of the average distribution or
5 transfer amount for that municipality or county, then the
6 following procedures shall be carried out:

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

17 (2) if the revised total for prior periods
18 determined pursuant to Paragraph (1) of this subsection is
19 negative and its absolute value exceeds the greater of one
20 hundred dollars (\$100) or an amount equal to twenty percent
21 of the average distribution or transfer amount for that
22 municipality or county, the revised total for prior periods
23 shall be excluded from the distribution or transfers and the
24 net receipts to be distributed or transferred to the
25 municipality or county shall be equal to the amount for the

1 current month.

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

6 D. Prior to or concurrently with the distribution
7 or transfer to the municipality or county of the adjusted net
8 receipts, the department shall notify the municipality or
9 county whose distribution or transfer has been adjusted
10 pursuant to Paragraph (2) of Subsection B of this section:

11 (1) that the department has made such an
12 adjustment, that the department has determined that a
13 specified amount is recoverable from the municipality or
14 county and that the department intends to recover that amount
15 from future distributions or transfers to the municipality or
16 county;

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

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

24 (4) that the municipality or county may
25 inspect, pursuant to Section 7-1-8.9 NMSA 1978, an

1 application for a claim for refund that gave rise to the
2 recoverable amount, exclusive of any amended returns that may
3 be attached to the application.

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

8 (1) the department may collect the
9 recoverable amount by:

10 (a) decreasing distributions or
11 transfers to the municipality or county in accordance with a
12 repayment agreement entered into with the municipality or
13 county; or

14 (b) except as provided in Paragraphs
15 (2) and (3) of this subsection, if the municipality or county
16 fails to act within the ninety days, decreasing the amount of
17 the next six distributions or transfers to the municipality
18 or county following expiration of the ninety-day period in
19 increments as nearly equal as practicable and sufficient to
20 recover the amount;

21 (2) if, pursuant to Subsection B of this
22 section, the secretary determines that the recoverable amount
23 is more than fifty percent of the average distribution or
24 transfer of net receipts for that municipality or county, the
25 secretary:

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

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

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

18 F. No later than ninety days from the date notice
19 pursuant to Subsection D of this section is given, the
20 department shall provide the municipality or county adequate
21 opportunity to review an application for a claim for refund
22 that gave rise to the recoverable amount, exclusive of any
23 amended returns that may be attached to the application,
24 pursuant to Section 7-1-8.9 NMSA 1978.

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

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

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

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

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

24 I. Upon the direction of the secretary of finance
25 and administration pursuant to Section 9-6-5.2 NMSA 1978, the

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

18 J. As used in this section:

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

25 (2) "amounts relating to prior periods"

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

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

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

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

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

25 (4) "current month" means the month for

1 which the distribution or transfer is being prepared; and

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

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

13 "DISTRIBUTION--CANNABIS EXCISE TAX--MUNICIPALITIES AND
14 COUNTIES.--

15 A. A distribution pursuant to Section 7-1-6.1 NMSA
16 1978 shall be made to each municipality, subject to any
17 increase or decrease made pursuant to Section 7-1-6.15 NMSA
18 1978, in an amount equal to thirty-three and thirty-three
19 hundredths percent of the net receipts attributable to the
20 cannabis excise tax from cannabis retailers within the
21 municipality.

22 B. A distribution pursuant to Section 7-1-6.1 NMSA
23 1978 shall be made to each county in an amount equal to
24 thirty-three and thirty-three hundredths percent of the net
25 receipts attributable to the cannabis excise tax from

1 cannabis retailers within the county area of the county.

2 C. The department may deduct an amount not to
3 exceed three percent of the distributions made pursuant to
4 this section for the reasonable costs for administering the
5 distributions.

6 D. As used in this section, "county area" means
7 that portion of a county located outside the boundaries of
8 any municipality."

9 SECTION 51. Section 7-2-2 NMSA 1978 (being Laws 1986,
10 Chapter 20, Section 26, as amended) is amended to read:

11 "7-2-2. DEFINITIONS.--For the purpose of the Income Tax
12 Act and unless the context requires otherwise:

13 A. "adjusted gross income" means adjusted gross
14 income as defined in Section 62 of the Internal Revenue Code,
15 as that section may be amended or renumbered;

16 B. "base income":

17 (1) means, for estates and trusts, that part
18 of the estate's or trust's income defined as taxable income
19 and upon which the federal income tax is calculated in the
20 Internal Revenue Code for income tax purposes plus, for
21 taxable years beginning on or after January 1, 1991, the
22 amount of the net operating loss deduction allowed by Section
23 172(a) of the Internal Revenue Code, as that section may be
24 amended or renumbered, and taken by the taxpayer for that
25 year;

1 (2) means, for taxpayers other than estates
2 or trusts, that part of the taxpayer's income defined as
3 adjusted gross income plus, for taxable years beginning on or
4 after January 1, 1991, the amount of the net operating loss
5 deduction allowed by Section 172(a) of the Internal Revenue
6 Code, as that section may be amended or renumbered, and taken
7 by the taxpayer for that year;

8 (3) includes, for all taxpayers, any other
9 income of the taxpayer not included in adjusted gross income
10 but upon which a federal tax is calculated pursuant to the
11 Internal Revenue Code for income tax purposes, except amounts
12 for which a calculation of tax is made pursuant to Section 55
13 of the Internal Revenue Code, as that section may be amended
14 or renumbered; "base income" also includes interest received
15 on a state or local bond;

16 (4) includes, for all taxpayers, an amount
17 deducted pursuant to Section 7-2-32 NMSA 1978 in a prior
18 taxable year if:

19 (a) such amount is transferred to
20 another qualified tuition program, as defined in Section 529
21 of the Internal Revenue Code, not authorized in the Education
22 Trust Act; or

23 (b) a distribution or refund is made
24 for any reason other than: 1) to pay for qualified higher
25 education expenses, as defined pursuant to Section 529 of the

1 Internal Revenue Code; or 2) upon the beneficiary's death,
2 disability or receipt of a scholarship; and

3 (5) excludes, for a taxpayer who conducts a
4 lawful business pursuant to the laws of the state, an amount
5 equal to any expenditure that is eligible to be claimed as a
6 federal income tax deduction but is disallowed by Section
7 280E of the Internal Revenue Code, as that section may be
8 amended or renumbered;

9 C. "compensation" means wages, salaries,
10 commissions and any other form of remuneration paid to
11 employees for personal services;

12 D. "department" means the taxation and revenue
13 department, the secretary or any employee of the department
14 exercising authority lawfully delegated to that employee by
15 the secretary;

16 E. "fiduciary" means a guardian, trustee,
17 executor, administrator, committee, conservator, receiver,
18 individual or corporation acting in any fiduciary capacity;

19 F. "filing status" means "married filing joint
20 returns", "married filing separate returns", "head of
21 household", "surviving spouse" and "single", as those terms
22 are generally defined for federal tax purposes;

23 G. "fiscal year" means any accounting period of
24 twelve months ending on the last day of any month other than
25 December;

1 H. "head of household" means "head of household"
2 as generally defined for federal income tax purposes;

3 I. "individual" means a natural person, an estate,
4 a trust or a fiduciary acting for a natural person, trust or
5 estate;

6 J. "Internal Revenue Code" means the United States
7 Internal Revenue Code of 1986, as amended;

8 K. "lump-sum amount" means, for the purpose of
9 determining liability for federal income tax, an amount that
10 was not included in adjusted gross income but upon which the
11 five-year-averaging or the ten-year-averaging method of tax
12 computation provided in Section 402 of the Internal Revenue
13 Code, as that section may be amended or renumbered, was
14 applied;

15 L. "modified gross income" means all income of the
16 taxpayer and, if any, the taxpayer's spouse and dependents,
17 undiminished by losses and from whatever source, including:

- 18 (1) compensation;
- 19 (2) net profit from business;
- 20 (3) gains from dealings in property;
- 21 (4) interest;
- 22 (5) net rents;
- 23 (6) royalties;
- 24 (7) dividends;
- 25 (8) alimony and separate maintenance

1 payments;

2 (9) annuities;

3 (10) income from life insurance and
4 endowment contracts;

5 (11) pensions;

6 (12) discharge of indebtedness;

7 (13) distributive share of partnership

8 income;

9 (14) income in respect of a decedent;

10 (15) income from an interest in an estate or
11 a trust;

12 (16) social security benefits;

13 (17) unemployment compensation benefits;

14 (18) workers' compensation benefits;

15 (19) public assistance and welfare benefits;

16 (20) cost-of-living allowances; and

17 (21) gifts;

18 M. "modified gross income" excludes:

19 (1) payments for hospital, dental, medical
20 or drug expenses to or on behalf of the taxpayer;

21 (2) the value of room and board provided by
22 federal, state or local governments or by private individuals
23 or agencies based upon financial need and not as a form of
24 compensation;

25 (3) payments pursuant to a federal, state or
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1 local government program directly or indirectly to a third
2 party on behalf of the taxpayer when identified to a
3 particular use or invoice by the payer; or

4 (4) payments for credits and rebates
5 pursuant to the Income Tax Act and made for a credit pursuant
6 to Section 7-3-9 NMSA 1978;

7 N. "net income" means, for estates and trusts,
8 base income adjusted to exclude amounts that the state is
9 prohibited from taxing because of the laws or constitution of
10 this state or the United States and means, for taxpayers
11 other than estates or trusts, base income adjusted to
12 exclude:

13 (1) an amount equal to the standard
14 deduction allowed the taxpayer for the taxpayer's taxable
15 year by Section 63 of the Internal Revenue Code, as that
16 section may be amended or renumbered;

17 (2) an amount equal to the itemized
18 deductions defined in Section 63 of the Internal Revenue
19 Code, as that section may be amended or renumbered, allowed
20 the taxpayer for the taxpayer's taxable year less the amount
21 excluded pursuant to Paragraph (1) of this subsection and
22 less the amount of state and local income and sales taxes
23 included in the taxpayer's itemized deductions;

24 (3) an amount equal to the product of the
25 exemption amount allowed for the taxpayer's taxable year by

1 Section 151 of the Internal Revenue Code, as that section may
2 be amended or renumbered, multiplied by the number of
3 personal exemptions allowed for federal income tax purposes;

4 (4) income from obligations of the United
5 States of America less expenses incurred to earn that income;

6 (5) other amounts that the state is
7 prohibited from taxing because of the laws or constitution of
8 this state or the United States;

9 (6) for taxable years that began prior to
10 January 1, 1991, an amount equal to the sum of:

11 (a) net operating loss carryback
12 deductions to that year from taxable years beginning prior to
13 January 1, 1991 claimed and allowed, as provided by the
14 Internal Revenue Code; and

15 (b) net operating loss carryover
16 deductions to that year claimed and allowed;

17 (7) for taxable years beginning on or after
18 January 1, 1991 and prior to January 1, 2013, an amount equal
19 to the sum of any net operating loss carryover deductions to
20 that year claimed and allowed, provided that the amount of
21 any net operating loss carryover from a taxable year
22 beginning on or after January 1, 1991 and prior to January 1,
23 2013 may be excluded only as follows:

24 (a) in the case of a timely filed
25 return, in the taxable year immediately following the taxable

1 year for which the return is filed; or

2 (b) in the case of amended returns or
3 original returns not timely filed, in the first taxable year
4 beginning after the date on which the return or amended
5 return establishing the net operating loss is filed; and

6 (c) in either case, if the net
7 operating loss carryover exceeds the amount of net income
8 exclusive of the net operating loss carryover for the taxable
9 year to which the exclusion first applies, in the next four
10 succeeding taxable years in turn until the net operating loss
11 carryover is exhausted for any net operating loss carryover
12 from a taxable year prior to January 1, 2013; in no event
13 shall a net operating loss carryover from a taxable year
14 beginning prior to January 1, 2013 be excluded in any taxable
15 year after the fourth taxable year beginning after the
16 taxable year to which the exclusion first applies;

17 (8) for taxable years beginning on or after
18 January 1, 2013, an amount equal to the sum of any net
19 operating loss carryover deductions to that year claimed and
20 allowed; provided that the amount of any net operating loss
21 carryover may be excluded only as follows:

22 (a) in the case of a timely filed
23 return, in the taxable year immediately following the taxable
24 year for which the return is filed; or

25 (b) in the case of amended returns or

1 original returns not timely filed, in the first taxable year
2 beginning after the date on which the return or amended
3 return establishing the net operating loss is filed; and

4 (c) in either case, if the net
5 operating loss carryover exceeds the amount of net income
6 exclusive of the net operating loss carryover for the taxable
7 year to which the exclusion first applies, in the next
8 nineteen succeeding taxable years in turn until the net
9 operating loss carryover is exhausted for any net operating
10 loss carryover from a taxable year beginning on or after
11 January 1, 2013; in no event shall a net operating loss
12 carryover from a taxable year beginning: 1) prior to January
13 1, 2013 be excluded in any taxable year after the fourth
14 taxable year beginning after the taxable year to which the
15 exclusion first applies; and 2) on or after January 1, 2013
16 be excluded in any taxable year after the nineteenth taxable
17 year beginning after the taxable year to which the exclusion
18 first applies; and

19 (9) for taxable years beginning on or after
20 January 1, 2011, an amount equal to the amount included in
21 adjusted gross income that represents a refund of state and
22 local income and sales taxes that were deducted for federal
23 tax purposes in taxable years beginning on or after January
24 1, 2010;

25 O. "net operating loss" means any net operating

1 loss, as defined by Section 172(c) of the Internal Revenue
2 Code, as that section may be amended or renumbered, for a
3 taxable year as further increased by the income, if any, from
4 obligations of the United States for that year less related
5 expenses;

6 P. "net operating loss carryover" means the
7 amount, or any portion of the amount, of a net operating loss
8 for any taxable year that, pursuant to Paragraph (6), (7) or
9 (8) of Subsection N of this section, may be excluded from
10 base income;

11 Q. "nonresident" means every individual not a
12 resident of this state;

13 R. "person" means any individual, estate, trust,
14 receiver, cooperative association, club, corporation,
15 company, firm, partnership, limited liability company, joint
16 venture, syndicate or other association; "person" also means,
17 to the extent permitted by law, any federal, state or other
18 governmental unit or subdivision or agency, department or
19 instrumentality thereof;

20 S. "resident" means an individual who is domiciled
21 in this state during any part of the taxable year or an
22 individual who is physically present in this state for one
23 hundred eighty-five days or more during the taxable year; but
24 any individual, other than someone who was physically present
25 in the state for one hundred eighty-five days or more during

1 the taxable year, who, on or before the last day of the
2 taxable year, changed the individual's place of abode to a
3 place without this state with the bona fide intention of
4 continuing actually to abide permanently without this state
5 is not a resident for the purposes of the Income Tax Act for
6 periods after that change of abode;

7 T. "secretary" means the secretary of taxation and
8 revenue or the secretary's delegate;

9 U. "state" means any state of the United States,
10 the District of Columbia, the commonwealth of Puerto Rico,
11 any territory or possession of the United States or any
12 political subdivision of a foreign country;

13 V. "state or local bond" means a bond issued by a
14 state other than New Mexico or by a local government other
15 than one of New Mexico's political subdivisions, the interest
16 from which is excluded from income for federal income tax
17 purposes under Section 103 of the Internal Revenue Code, as
18 that section may be amended or renumbered;

19 W. "surviving spouse" means "surviving spouse" as
20 generally defined for federal income tax purposes;

21 X. "taxable income" means net income less any
22 lump-sum amount;

23 Y. "taxable year" means the calendar year or
24 fiscal year upon the basis of which the net income is
25 computed under the Income Tax Act and includes, in the case

1 of the return made for a fractional part of a year under the
2 provisions of the Income Tax Act, the period for which the
3 return is made; and

4 Z. "taxpayer" means any individual subject to the
5 tax imposed by the Income Tax Act."

6 SECTION 52. Section 7-2A-2 NMSA 1978 (being Laws 1986,
7 Chapter 20, Section 33, as amended) is amended to read:

8 "7-2A-2. DEFINITIONS.--For the purpose of the Corporate
9 Income and Franchise Tax Act and unless the context requires
10 otherwise:

11 A. "bank" means any national bank, national
12 banking association, state bank or bank holding company;

13 B. "apportioned net income" or "apportioned net
14 loss" means net income allocated and apportioned to New
15 Mexico pursuant to the provisions of the Corporate Income and
16 Franchise Tax Act or the Uniform Division of Income for Tax
17 Purposes Act, but excluding from the sales factor any sales
18 that represent intercompany transactions between members of
19 the filing group;

20 C. "base income" means the federal taxable income
21 or the federal net operating loss of a corporation for the
22 taxable year calculated pursuant to the Internal Revenue
23 Code, after special deductions provided in Sections 241
24 through 249 of the Internal Revenue Code but without any
25 deduction for net operating losses, as if the corporation

1 filed a federal tax return as a separate domestic entity,
2 modified as follows:

3 (1) adding to that income:

4 (a) interest received on a state or
5 local bond exempt under the Internal Revenue Code;

6 (b) the amount of any deduction claimed
7 in calculating taxable income for all expenses and costs
8 directly or indirectly paid, accrued or incurred to a captive
9 real estate investment trust; and

10 (c) the amount of any deduction, other
11 than for premiums, for amounts paid directly or indirectly to
12 a commonly controlled entity that is exempt from corporate
13 income tax pursuant to Section 7-2A-4 NMSA 1978;

14 (2) subtracting from that income:

15 (a) income from obligations of the
16 United States net of expenses incurred to earn that income;

17 (b) other amounts that the state is
18 prohibited from taxing because of the laws or constitution of
19 this state or the United States net of any related expenses;

20 (c) an amount equal to one hundred
21 percent of the subpart F income, as that term is defined in
22 Section 952 of the Internal Revenue Code, as that section may
23 be amended or renumbered, included in the income of the
24 corporation; and

25 (d) an amount equal to one hundred

1 percent of the income of the corporation under Section 951A
2 of the Internal Revenue Code, after allowing the deduction
3 provided in Section 250 of the Internal Revenue Code;

4 (3) making other adjustments deemed
5 necessary to properly reflect income of the unitary group,
6 including attribution of income or expense related to unitary
7 assets held by related corporations that are not part of the
8 filing group; and

9 (4) for a taxpayer that conducts a lawful
10 business pursuant to the laws of this state, excludes an
11 amount equal to any expenditure that is eligible to be
12 claimed as a federal income tax deduction but is disallowed
13 pursuant to Section 280E of the Internal Revenue Code, as
14 that section may be amended or renumbered;

15 D. "captive real estate investment trust" means a
16 corporation, trust or association taxed as a real estate
17 investment trust pursuant to Section 857 of the Internal
18 Revenue Code, the shares or beneficial interests of which are
19 not regularly traded on an established securities market;
20 provided that more than fifty percent of any class of
21 beneficial interests or shares of the real estate investment
22 trust are owned directly, indirectly or constructively by the
23 taxpayer during all or a part of the taxpayer's taxable year;

24 E. "common ownership" means the direct or indirect
25 control or ownership of more than fifty percent of the

1 outstanding voting stock, ownership of which is determined
2 pursuant to Section 1563 of the Internal Revenue Code, as
3 that section may be amended or renumbered, of:

4 (1) a parent-subsidiary controlled group as
5 defined in Section 1563 of the Internal Revenue Code, except
6 that fifty percent shall be substituted for eighty percent;

7 (2) a brother-sister controlled group as
8 defined in Section 1563 of the Internal Revenue Code; or

9 (3) three or more corporations each of which
10 is a member of a group of corporations described in Paragraph
11 (1) or (2) of this subsection, and one of which is:

12 (a) a common parent corporation
13 included in a group of corporations described in Paragraph
14 (1) of this subsection; and

15 (b) included in a group of corporations
16 described in Paragraph (2) of this subsection;

17 F. "consolidated group" means the group of
18 entities properly filing a federal consolidated return under
19 the Internal Revenue Code for the taxable year;

20 G. "corporation" means corporations, joint stock
21 companies, real estate trusts organized and operated under
22 the Real Estate Trust Act, financial corporations and banks,
23 other business associations and, for corporate income tax
24 purposes, partnerships and limited liability companies taxed
25 as corporations under the Internal Revenue Code;

1 H. "department" means the taxation and revenue
2 department, the secretary of taxation and revenue or any
3 employee of the department exercising authority lawfully
4 delegated to that employee by the secretary;

5 I. "filing group" means a group of corporations
6 properly included in a return pursuant to Section 7-2A-8.3
7 NMSA 1978 for a particular taxable year;

8 J. "fiscal year" means any accounting period of
9 twelve months ending on the last day of any month other than
10 December;

11 K. "grandfathered net operating loss carryover"
12 means:

13 (1) the amount of net loss properly reported
14 to New Mexico for taxable years beginning January 1, 2013 and
15 prior to January 1, 2020 as part of a timely filed original
16 return, or an amended return for those taxable years filed
17 prior to January 1, 2020, to the extent such loss can be
18 attributed to one or more corporations that are properly
19 included in the taxpayer's return for the first taxable year
20 beginning on or after January 1, 2020;

21 (2) reduced by:

22 (a) adding back deductions that were
23 taken by the corporation or corporations for royalties or
24 interest paid to one or more related corporations, but only
25 to the extent that such adjustment would not create a net

1 loss for such related corporations; and

2 (b) the amount of net operating loss
3 deductions taken prior to January 1, 2020 that would be
4 charged against those losses consistent with the Internal
5 Revenue Code and provisions of the Corporate Income and
6 Franchise Tax Act applicable to the year of the deduction;
7 and

8 (3) apportioned to New Mexico using the
9 apportionment factors that can properly be attributed to the
10 corporation or corporations for the year of the net loss;

11 L. "Internal Revenue Code" means the United States
12 Internal Revenue Code of 1986, as amended;

13 M. "net income" means:

14 (1) the base income of a corporation
15 properly filing a tax return as a separate entity; or

16 (2) the combined base income and losses of
17 corporations that are part of a filing group that is computed
18 after eliminating intercompany income and expense in a manner
19 consistent with the consolidated filing requirements of the
20 Internal Revenue Code and the Corporate Income and Franchise
21 Tax Act;

22 N. "net operating loss carryover" means the
23 apportioned net loss properly reported on an original or
24 amended tax return for taxable years beginning on or after
25 January 1, 2020 by the taxpayer:

1 (1) plus:

2 (a) the portion of an apportioned net
3 loss properly reported to New Mexico for a taxable year
4 beginning on or after January 1, 2020, on a separate year
5 return, to the extent the taxpayer would have been entitled
6 to include the portion of such apportioned net loss in the
7 taxpayer's consolidated net operating loss carryforward under
8 the Internal Revenue Code if the taxpayer filed a
9 consolidated federal return; and

10 (b) the taxpayer's grandfathered net
11 operating loss carryover; and

12 (2) minus:

13 (a) the amount of the net operating
14 loss carryover attributed to an entity that has left the
15 filing group, computed in a manner consistent with the
16 consolidated filing requirements of the Internal Revenue Code
17 and applicable regulations, as if the taxpayer were filing a
18 consolidated return; and

19 (b) the amount of net operating loss
20 deductions properly taken by the taxpayer;

21 O. "net operating loss deduction" means the
22 portion of the net operating loss carryover that may be
23 deducted from the taxpayer's apportioned net income under the
24 Internal Revenue Code as of January 1, 2018 for the taxable
25 year in which the deduction is taken, including the eighty

1 percent limitation of Section 172(a) of the Internal Revenue
2 Code as of January 1, 2018 calculated on the basis of the
3 taxpayer's apportioned net income;

4 P. "person" means any individual, estate, trust,
5 receiver, cooperative association, club, corporation,
6 company, firm, partnership, limited liability company, joint
7 venture, syndicate or other association; "person" also means,
8 to the extent permitted by law, any federal, state or other
9 governmental unit or subdivision or agency, department or
10 instrumentality thereof;

11 Q. "real estate investment trust" has the meaning
12 ascribed to the term in Section 856 of the Internal Revenue
13 Code, as that section may be amended or renumbered;

14 R. "related corporation" means a corporation that
15 is under common ownership with one or more corporations but
16 that is not included in the same tax return;

17 S. "return" means any tax or information return,
18 including a water's-edge or worldwide combined return, a
19 consolidated return, a declaration of estimated tax or a
20 claim for refund, including any amendments or supplements to
21 the return, required or permitted pursuant to a law subject
22 to administration and enforcement pursuant to the Tax
23 Administration Act and filed with the department by or on
24 behalf of any person;

25 T. "secretary" means the secretary of taxation and
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1 revenue or the secretary's delegate;

2 U. "separate year return" means a properly filed
3 original or amended return for a taxable year beginning on or
4 after January 1, 2020 by a taxpayer reporting a loss, a
5 portion of which is claimed as part of the net operating loss
6 carryover by another taxpayer in a subsequent return period;

7 V. "state" means any state of the United States,
8 the District of Columbia, the commonwealth of Puerto Rico,
9 any territory or possession of the United States or political
10 subdivision thereof or any political subdivision of a foreign
11 country;

12 W. "state or local bond" means a bond issued by a
13 state other than New Mexico or by a local government other
14 than one of New Mexico's political subdivisions, the interest
15 from which is excluded from income for federal income tax
16 purposes under Section 103 of the Internal Revenue Code, as
17 that section may be amended or renumbered;

18 X. "taxable income" means a taxpayer's apportioned
19 net income minus the net operating loss deduction for the
20 taxable year;

21 Y. "taxable year" means the calendar year or
22 fiscal year upon the basis of which the net income is
23 computed under the Corporate Income and Franchise Tax Act and
24 includes, in the case of the return made for a fractional
25 part of a year under the provisions of that act, the period

1 for which the return is made;

2 Z. "taxpayer" means any corporation or group of
3 corporations filing a return pursuant to Section 7-2A-8.3
4 NMSA 1978 subject to the taxes imposed by the Corporate
5 Income and Franchise Tax Act;

6 AA. "unitary group" means a group of two or more
7 corporations, including a captive real estate investment
8 trust, but not including an S corporation, an insurance
9 company subject to the provisions of the New Mexico Insurance
10 Code, an insurance company that would be subject to the New
11 Mexico Insurance Code if the insurance company engaged in
12 business in this state or a real estate investment trust that
13 is not a captive real estate investment trust, that are:

14 (1) related through common ownership; and

15 (2) economically interdependent with one
16 another as demonstrated by the following factors:

17 (a) centralized management;

18 (b) functional integration; and

19 (c) economies of scale;

20 BB. "water's-edge group" means all corporations
21 that are part of a unitary group, except:

22 (1) corporations that are exempt from
23 corporate income tax pursuant to Section 7-2A-4 NMSA 1978;
24 and

25 (2) corporations wherever organized or

1 incorporated that have less than twenty percent of their
2 property, payroll and sales sourced to locations within the
3 United States, following the sourcing rules of the Uniform
4 Division of Income for Tax Purposes Act; and

5 CC. "worldwide combined group" means all members
6 of a unitary group, except members that are exempt from
7 corporate income tax pursuant to Section 7-2A-4 NMSA 1978,
8 irrespective of the country in which the corporations are
9 incorporated or conduct business activity."

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

13 "7-9-73.2. DEDUCTION--GROSS RECEIPTS TAX AND
14 GOVERNMENTAL GROSS RECEIPTS TAX--PRESCRIPTION DRUGS--
15 OXYGEN--CANNABIS.--

16 A. Receipts from the sale of prescription drugs
17 and oxygen and oxygen services provided by a licensed
18 medicare durable medical equipment provider and cannabis
19 products that are sold in accordance with the Lynn and Erin
20 Compassionate Use Act may be deducted from gross receipts and
21 governmental gross receipts.

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

24 (1) dispensed by or under the supervision of
25 a licensed pharmacist or by a physician or other person

1 authorized under state law to do so;

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

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

8 **SECTION 54.** Section 9-11-12.1 NMSA 1978 (being Laws
9 1997, Chapter 64, Section 1, as amended) is amended to read:

10 "9-11-12.1. TRIBAL COOPERATIVE AGREEMENTS.--

11 A. The secretary may enter into cooperative
12 agreements with the Pueblos of Acoma, Cochiti, Jemez, Isleta,
13 Laguna, Nambe, Picuris, Pojoaque, Sandia, San Felipe, San
14 Ildefonso, San Juan, Santa Ana, Santa Clara, Santo Domingo,
15 Taos, Tesuque, Zia and Zuni; the Jicarilla Apache Nation; the
16 Mescalero Apache Tribe; and the nineteen pueblos acting
17 collectively for the exchange of information and the
18 reciprocal, joint or common enforcement, administration,
19 collection, remittance and audit of gross receipts tax and
20 cannabis excise tax revenues of the party jurisdictions.

21 B. Money collected by the department on behalf of
22 a tribe in accordance with an agreement entered into pursuant
23 to this section is not money of this state and shall be
24 collected and disbursed in accordance with the terms of the
25 agreement, notwithstanding any other provision of law.

1 C. The secretary is empowered to promulgate such
2 rules and to establish such procedures as the secretary deems
3 appropriate for the collection and disbursement of funds due
4 a tribe and for the receipt of money collected by a tribe for
5 the account of this state under the terms of a cooperative
6 agreement entered into under the authority of this section,
7 including procedures for identification of taxpayers or
8 transactions that are subject only to the taxing authority of
9 the tribe, taxpayers or transactions that are subject only to
10 the taxing authority of this state and taxpayers or
11 transactions that are subject to the taxing authority of both
12 party jurisdictions.

13 D. Nothing in an agreement entered into pursuant
14 to this section shall be construed as authorizing this state
15 or a tribe to tax a person or transaction that federal law
16 prohibits that government from taxing, authorizing a state or
17 tribal court to assert jurisdiction over a person who is not
18 otherwise subject to that court's jurisdiction or affecting
19 any issue of the respective civil or criminal jurisdictions
20 of this state or the tribe. Nothing in an agreement entered
21 into pursuant to this section shall be construed as an
22 assertion or an admission by either this state or a tribe
23 that the taxes of one have precedence over the taxes of the
24 other when a person or transaction is subject to the taxing
25 authority of both governments. An agreement entered into

1 pursuant to this section shall be construed solely as an
2 agreement between the two party governments and shall not
3 alter or affect the government-to-government relations
4 between this state and any other tribe.

5 E. As used in this section:

6 (1) "tribal" means of or pertaining to a
7 tribe; and

8 (2) "tribe" means an Indian nation, tribe or
9 pueblo located entirely in New Mexico."

10 **SECTION 55.** Section 9-16-4 NMSA 1978 (being Laws 1983,
11 Chapter 297, Section 20, as amended) is amended to read:

12 "9-16-4. DEPARTMENT ESTABLISHED.--The "regulation and
13 licensing department" is created in the executive branch.
14 The department shall not be a cabinet department. The
15 department shall consist of but not be limited to the
16 following divisions:

- 17 A. the administrative services division;
- 18 B. the construction industries division;
- 19 C. the financial institutions division;
- 20 D. the securities division;
- 21 E. the manufactured housing division;
- 22 F. the alcoholic beverage control division; and
- 23 G. the cannabis control division."

24 **SECTION 56.** Section 9-16-6 NMSA 1978 (being Laws 1983,
25 Chapter 297, Section 22, as amended) is amended to read:

1 "9-16-6. SUPERINTENDENT--DUTIES AND GENERAL POWERS.--

2 A. The superintendent is responsible to the
3 governor for the operation of the department. It is the
4 superintendent's duty to manage all operations of the
5 department and to administer and enforce the laws with which
6 the superintendent, the department or a division of the
7 department is charged.

8 B. To perform the superintendent's duties, the
9 superintendent has every power expressly enumerated in the
10 laws, whether granted to the superintendent or the department
11 or any division of the department, except where authority
12 conferred upon any division is explicitly exempted from the
13 superintendent's authority by statute. In accordance with
14 these provisions, the superintendent shall:

15 (1) except as otherwise provided in the
16 Regulation and Licensing Department Act, exercise general
17 supervisory and appointing authority over all department
18 employees, subject to any applicable personnel laws and
19 regulations;

20 (2) delegate authority to subordinates as
21 the superintendent deems necessary and appropriate, clearly
22 delineating such delegated authority and the limitations
23 thereto;

24 (3) organize the department into those
25 organizational units the superintendent deems will enable it

1 to function most efficiently, subject to any provisions of
2 law requiring or establishing specific organizational units;

3 (4) within the limitations of available
4 appropriations and applicable laws, employ and fix the
5 compensation of those persons necessary to discharge the
6 superintendent's duties;

7 (5) take administrative action by issuing
8 orders and instructions, not inconsistent with the law, to
9 assure implementation of and compliance with the provisions
10 of law for whose administration or execution the
11 superintendent is responsible and to enforce those orders and
12 instructions by appropriate administrative action or actions
13 in the courts;

14 (6) conduct research and studies that will
15 improve the operations of the department and the provision of
16 services to the residents of the state;

17 (7) provide courses of instruction and
18 practical training for employees of the department and other
19 persons involved in the administration of programs, with the
20 objective of improving the operations and efficiency of
21 administration;

22 (8) prepare an annual budget of the
23 department;

24 (9) provide administratively attached
25 agencies assistance as necessary to:

1 (a) minimize or eliminate duplication
2 of services and jurisdictional conflicts;

3 (b) coordinate activities and resolve
4 problems of mutual concern; and

5 (c) provide implementation of licensure
6 processes, budgeting, recordkeeping, procurement,
7 contracting, hiring and supervision of staff and related
8 administrative and clerical assistance for administratively
9 attached agencies; and

10 (10) appoint, with the governor's consent, a
11 "director" for each division. These appointed positions are
12 exempt from the provisions of the Personnel Act. Persons
13 appointed to these positions shall serve at the pleasure of
14 the superintendent.

15 C. The superintendent may apply for and receive,
16 with the governor's approval, in the name of the department
17 any public or private funds, including United States
18 government funds, available to the department to carry out
19 its programs, duties or services.

20 D. The superintendent may make and adopt such
21 reasonable and procedural rules as may be necessary to carry
22 out the duties of the department and its divisions; provided
23 that where a licensing entity requires submission of
24 fingerprints as part of the initial license application, and
25 a licensee has provided fingerprints and the license has been

1 issued, the licensing entity shall not require a licensee to
2 submit fingerprints again to renew the license, but a
3 licensee shall submit to a background investigation if
4 required; and provided further that the prohibition against
5 requiring additional fingerprints shall not apply to the
6 financial institutions division of the department when
7 utilizing the nationwide multistate licensing system and
8 registry.

9 E. No rule promulgated by the director of any
10 division in carrying out the functions and duties of the
11 department or a division shall be effective until approved by
12 the superintendent, unless otherwise provided by statute.
13 Unless otherwise provided by statute, all rules adopted,
14 amended or repealed by the superintendent or the director of
15 any division shall have notice provided and be conducted and
16 filed in accordance with the State Rules Act."

17 SECTION 57. Section 24-16-12 NMSA 1978 (being Laws
18 2007, Chapter 20, Section 4, as amended) is amended to read:

19 "24-16-12. SMOKING-PERMITTED AREAS.--Notwithstanding
20 any other provision of the Dee Johnson Clean Indoor Air Act,
21 smoking-permitted areas include the following:

22 A. a private residence, unless it is used
23 commercially to provide child care, adult care or health care
24 or any combination of those activities;

25 B. a retail tobacco store; provided that, for a

1 retail tobacco store established on or after the effective
2 date of this 2019 act, the store shall be located in a
3 standalone building;

4 C. a cigar bar; provided that, for a cigar bar
5 established on or after June 14, 2019, the bar shall be
6 located in a standalone building;

7 D. the facilities of a tobacco manufacturing
8 company licensed by the United States to manufacture tobacco
9 products that are operated by the company in its own name and
10 that are used exclusively by the company in its business of
11 manufacturing, marketing or distributing its tobacco
12 products; provided that secondhand smoke does not infiltrate
13 other indoor workplaces or other indoor public places where
14 smoking is otherwise prohibited under the Dee Johnson Clean
15 Indoor Air Act;

16 E. a state-licensed gaming facility, casino or
17 bingo parlor;

18 F. designated outdoor smoking areas;

19 G. private clubs;

20 H. hotel and motel rooms that are rented to guests
21 and are designated as smoking-permitted rooms; provided that
22 not more than ten percent of rooms rented to guests in a
23 hotel or motel may be so designated;

24 I. a site that is being used in connection with
25 the practice of cultural or ceremonial activities by Native

1 Americans and that is in accordance with the federal American
2 Indian Religious Freedom Act, 42 U.S.C. 1996 and 1996a;

3 J. a theatrical stage or a motion picture or
4 television production set when it is necessary for performers
5 to smoke as part of the production; and

6 K. an indoor or outdoor cannabis consumption area
7 pursuant to the Cannabis Regulation Act."

8 SECTION 58. Section 26-2B-3 NMSA 1978 (being Laws 2007,
9 Chapter 210, Section 3, as amended) is amended to read:

10 "26-2B-3. DEFINITIONS.--As used in the Lynn and Erin
11 Compassionate Use Act:

12 A. "adequate supply" means an amount of cannabis,
13 in any form approved by the department, possessed by a
14 qualified patient or collectively possessed by a qualified
15 patient and the qualified patient's primary caregiver that is
16 determined by rule of the department to be no more than
17 reasonably necessary to ensure the uninterrupted availability
18 of cannabis for a period of three months and that is derived
19 solely from an intrastate source;

20 B. "cannabis":

21 (1) means all parts of the plant Cannabis
22 containing a delta-9-tetrahydrocannabinol concentration of
23 more than three-tenths percent on a dry weight basis, whether
24 growing or not; the seeds of the plant; the resin extracted
25 from any part of the plant; and every compound, manufacture,

1 salt, derivative, mixture or preparation of the plant, its
2 seeds or its resin; and

3 (2) does not include the mature stalks of
4 the plant; fiber produced from the stalks; oil or cake made
5 from the seeds of the plant; any other compound, manufacture,
6 salt, derivative, mixture or preparation of the mature
7 stalks, fiber, oil or cake; the sterilized seed of the plant
8 that is incapable of germination; the weight of any other
9 ingredient combined with cannabis to prepare topical or oral
10 administrations, food, drink or another product; or hemp;

11 C. "cannabis extract":

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

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

19 D. "cannabis flowers" means only the flowers of a
20 cannabis plant;

21 E. "cannabis product":

22 (1) means a product that contains cannabis,
23 including edible or topical products that may also contain
24 other ingredients; and

25 (2) does not include the weight of any other

1 ingredient combined with cannabis or cannabis extract to
2 prepare topical or oral administrations, food, drink or
3 another product;

4 F. "debilitating medical condition" means:

- 5 (1) cancer;
- 6 (2) glaucoma;
- 7 (3) multiple sclerosis;
- 8 (4) damage to the nervous tissue of the
9 spinal cord, with objective neurological indication of
10 intractable spasticity;
- 11 (5) seizure disorder, including epilepsy;
- 12 (6) positive status for human
13 immunodeficiency virus or acquired immune deficiency
14 syndrome;
- 15 (7) admitted into hospice care in accordance
16 with rules promulgated by the department;
- 17 (8) amyotrophic lateral sclerosis;
- 18 (9) Crohn's disease;
- 19 (10) hepatitis C infection;
- 20 (11) Huntington's disease;
- 21 (12) inclusion body myositis;
- 22 (13) inflammatory autoimmune-mediated
23 arthritis;
- 24 (14) intractable nausea or vomiting;
- 25 (15) obstructive sleep apnea;

1 (16) painful peripheral neuropathy;
2 (17) Parkinson's disease;
3 (18) posttraumatic stress disorder;
4 (19) severe chronic pain;
5 (20) severe anorexia or cachexia;
6 (21) spasmodic torticollis;
7 (22) ulcerative colitis; or
8 (23) any other medical condition, medical
9 treatment or disease as approved by the department;

10 G. "department" means the department of health;

11 H. "division" means the cannabis control division
12 of the regulation and licensing department;

13 I. "dry weight basis" means a process by which
14 delta-9-tetrahydrocannabinol concentration is measured
15 relative to the aggregate weight of all parts of the plant
16 genus Cannabis, whether growing or not, including the leaves
17 of the plant, the flowers and buds of the plant, the seeds of
18 the plant, the resin of the plant and the stalks of the
19 plant, at the point of harvest and with no moisture added to
20 the harvested plant;

21 J. "hemp" means the plant genus Cannabis and any
22 part of the plant, whether growing or not, containing a
23 delta-9-tetrahydrocannabinol concentration of no more than
24 three-tenths percent on a dry weight basis;

25 K. "medical cannabis program" means the program

1 established pursuant to the Lynn and Erin Compassionate Use
2 Act for authorization and regulation of the medical use of
3 cannabis in the state;

4 L. "practitioner" means a person licensed in New
5 Mexico to prescribe and administer drugs that are subject to
6 the Controlled Substances Act;

7 M. "primary caregiver" means a resident of New
8 Mexico who is at least eighteen years of age and who has been
9 designated by the patient's practitioner as being necessary
10 to take responsibility for managing the well-being of a
11 qualified patient with respect to the medical use of cannabis
12 pursuant to the provisions of the Lynn and Erin Compassionate
13 Use Act;

14 N. "qualified patient" means a resident of New
15 Mexico who has been diagnosed by a practitioner as having a
16 debilitating medical condition and has received written
17 certification and a registry identification card pursuant to
18 the Lynn and Erin Compassionate Use Act on the basis of
19 having been diagnosed, in person or via telemedicine, by a
20 practitioner as having a debilitating medical condition;

21 O. "reciprocal participant" means a person who is
22 not a resident of New Mexico and who holds proof of
23 enrollment by a governmental regulatory authority to
24 participate in the medical cannabis program of another state
25 of the United States, the District of Columbia or a territory

1 or commonwealth of the United States in which the person
2 resides or a person who holds proof of enrollment by a
3 governmental regulatory authority of a New Mexico Indian
4 nation, tribe or pueblo to participate in its medical
5 cannabis program;

6 P. "registry identification card" means a document
7 that the department issues:

8 (1) to a qualified patient that identifies
9 the bearer as a qualified patient and authorizes the
10 qualified patient to use cannabis for a debilitating medical
11 condition; or

12 (2) to a primary caregiver that identifies
13 the bearer as a primary caregiver authorized to engage in the
14 intrastate possession and administration of cannabis for the
15 sole use of a qualified patient who is identified on the
16 document;

17 Q. "safety-sensitive position" means a position in
18 which performance by a person under the influence of drugs or
19 alcohol would constitute an immediate or direct threat of
20 injury or death to that person or another;

21 R. "telemedicine" means the use of
22 telecommunications and information technology to provide
23 clinical health care from a site apart from the site where
24 the patient is located, in real time or asynchronously,
25 including the use of interactive simultaneous audio and video

1 or store-and-forward technology, or off-site patient
2 monitoring and telecommunications in order to deliver health
3 care services;

4 S. "THC" means delta-9-tetrahydrocannabinol, a
5 substance that is the primary psychoactive ingredient in
6 cannabis; and

7 T. "written certification" means a statement made
8 on a department-approved form and signed by a patient's
9 practitioner that indicates, in the practitioner's
10 professional opinion, that the patient has a debilitating
11 medical condition and the practitioner believes that the
12 potential health benefits of the medical use of cannabis
13 would likely outweigh the health risks for the patient."

14 SECTION 59. Section 26-2B-4 NMSA 1978 (being Laws 2007,
15 Chapter 210, Section 4, as amended) is amended to read:

16 "26-2B-4. EXEMPTION FROM CRIMINAL AND CIVIL PENALTIES
17 FOR THE MEDICAL USE OF CANNABIS.--

18 A. A qualified patient or a qualified patient's
19 primary caregiver shall not be subject to arrest, prosecution
20 or penalty in any manner for the possession of or the medical
21 use of cannabis if the quantity of cannabis does not exceed
22 an adequate supply; provided that a qualified patient or the
23 qualified patient's primary caregiver may possess that
24 qualified patient's harvest of cannabis.

25 B. A reciprocal participant shall not be subject

1 to arrest, prosecution or penalty in any manner for the
2 possession of or the medical use of cannabis if the quantity
3 of cannabis does not exceed the limit identified by
4 department rule.

5 C. The following conduct is lawful and shall not
6 constitute grounds for detention, search or arrest of a
7 person or for a violation of probation or parole, and
8 cannabis products that relate to the conduct are not
9 contraband or subject to seizure or forfeiture pursuant to
10 the Controlled Substances Act or the Forfeiture Act:

11 (1) a qualified patient or primary caregiver
12 possessing or transporting not more than an adequate supply
13 or a reciprocal participant possessing or transporting not
14 more than the limit identified by department rule;

15 (2) a qualified patient or primary caregiver
16 purchasing or obtaining not more than an adequate supply from
17 a lawful source or a reciprocal participant purchasing or
18 obtaining not more than the limit identified by department
19 rule;

20 (3) a qualified patient or reciprocal
21 participant using or being under the influence of cannabis;
22 provided that the qualified patient or reciprocal participant
23 is acting consistent with law; or

24 (4) a qualified patient, primary caregiver
25 or reciprocal participant transferring, without financial

1 consideration, to a qualified patient, primary caregiver or
2 reciprocal participant not more than two ounces of cannabis,
3 sixteen grams of cannabis extract and eight hundred
4 milligrams of edible cannabis.

5 D. Subsection A of this section shall not apply to
6 a qualified patient under the age of eighteen years, unless:

7 (1) the qualified patient's practitioner has
8 explained the potential risks and benefits of the medical use
9 of cannabis to the qualified patient and to a parent,
10 guardian or other person having legal custody of the
11 qualified patient; and

12 (2) a parent, guardian or other person
13 having legal custody consents in writing to:

14 (a) allow the qualified patient's
15 medical use of cannabis;

16 (b) serve as the qualified patient's
17 primary caregiver; and

18 (c) control the dosage and the
19 frequency of the medical use of cannabis by the qualified
20 patient.

21 E. A qualified patient or a primary caregiver
22 shall be granted the full legal protections provided in this
23 section if the qualified patient or primary caregiver is in
24 possession of a registry identification card. If the
25 qualified patient or primary caregiver is not in possession

1 of a registry identification card, the qualified patient or
2 primary caregiver shall be given an opportunity to produce
3 the registry identification card before any arrest or
4 criminal charges or other penalties are initiated.

5 F. A practitioner shall not be subject to arrest
6 or prosecution, penalized in any manner or denied any right
7 or privilege for recommending the medical use of cannabis or
8 providing written certification for the medical use of
9 cannabis pursuant to the Lynn and Erin Compassionate Use Act.

10 G. Any property interest that is possessed, owned
11 or used in connection with the medical use of cannabis, or
12 acts incidental to such use, shall not be harmed, neglected,
13 injured or destroyed while in the possession of state or
14 local law enforcement officials. Such property interest
15 shall not be forfeited under any state or local law providing
16 for the forfeiture of property except as provided in the
17 Forfeiture Act. Cannabis, paraphernalia or other property
18 seized from a qualified patient, primary caregiver or
19 reciprocal participant in connection with the claimed medical
20 use of cannabis shall be returned immediately upon the
21 determination by a court or prosecutor that the qualified
22 patient, primary caregiver or reciprocal participant is
23 entitled to the protections of the provisions of the Lynn and
24 Erin Compassionate Use Act, as may be evidenced by a failure
25 to actively investigate the case, a decision not to

1 prosecute, the dismissal of charges or acquittal.

2 H. A person shall not be subject to arrest or
3 prosecution for a cannabis-related offense for simply being
4 in the presence of the medical use of cannabis as allowed
5 under the provisions of the Lynn and Erin Compassionate Use
6 Act."

7 SECTION 60. Section 26-2B-5 NMSA 1978 (being Laws 2007,
8 Chapter 210, Section 5, as amended by Laws 2019, Chapter 247,
9 Section 5 and by Laws 2019, Chapter 261, Section 2) is
10 amended to read:

11 "26-2B-5. PROHIBITIONS, RESTRICTIONS AND LIMITATIONS ON
12 THE MEDICAL USE OF CANNABIS--CRIMINAL PENALTIES.--

13 A. Participation in a medical use of cannabis
14 program by a qualified patient, primary caregiver or
15 reciprocal participant does not relieve the qualified
16 patient, primary caregiver or reciprocal participant from:

17 (1) criminal prosecution or civil penalties
18 for activities not authorized in the Lynn and Erin
19 Compassionate Use Act;

20 (2) liability for damages or criminal
21 prosecution arising out of the operation of a vehicle while
22 under the influence of cannabis; or

23 (3) criminal prosecution or civil penalty
24 for possession or use of cannabis:

25 (a) in the workplace of the qualified

1 patient's, primary caregiver's or reciprocal participant's
2 employment; or

3 (b) at a public park, recreation
4 center, youth center or other public place.

5 B. A person who makes a fraudulent representation
6 to a law enforcement officer about the person's participation
7 in a medical use of cannabis program to avoid arrest or
8 prosecution for a cannabis-related offense is guilty of a
9 petty misdemeanor and shall be sentenced in accordance with
10 the provisions of Section 31-19-1 NMSA 1978."

11 **SECTION 61.** Section 26-2B-6.1 NMSA 1978 (being Laws
12 2019, Chapter 247, Section 8) is amended to read:

13 "26-2B-6.1. ASSESSMENT REPORTING.--In consultation with
14 qualified patients and primary caregivers, the department
15 shall produce an assessment report annually, which shall be
16 published to the public and that includes at a minimum an
17 evaluation of:

18 A. the affordability of and accessibility to
19 medical cannabis pursuant to the Lynn and Erin Compassionate
20 Use Act; and

21 B. the needs of qualified patients who live in
22 rural areas, federal subsidized housing or New Mexico Indian
23 nations, tribes or pueblos."

24 **SECTION 62.** Section 26-2B-7 NMSA 1978 (being Laws 2007,
25 Chapter 210, Section 7, as amended) is amended to read:

1 "26-2B-7. REGISTRY IDENTIFICATION CARDS--DEPARTMENT
2 RULES--DUTIES--RECIPROCITY.--

3 A. After consultation with the advisory board, the
4 department shall promulgate rules in accordance with the
5 State Rules Act to implement the purpose of the Lynn and Erin
6 Compassionate Use Act. The rules shall:

7 (1) govern the manner in which the
8 department will consider applications for registry
9 identification cards and for the renewal of identification
10 cards for qualified patients and primary caregivers;

11 (2) define the amount of cannabis that is
12 necessary to constitute an adequate supply, including amounts
13 for topical treatments;

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

21 (4) set forth additional medical conditions,
22 medical treatments or diseases to the list of debilitating
23 medical conditions that qualify for the medical use of
24 cannabis as recommended by the advisory board;

25 (5) determine additional duties and

1 responsibilities of the advisory board; and

2 (6) be revised and updated as necessary.

3 B. The department shall issue registry
4 identification cards to a patient and to the primary
5 caregiver for that patient, if any, who submit the following,
6 in accordance with the department's rules:

7 (1) a written certification;

8 (2) the name, address and date of birth of
9 the patient;

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

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

14 C. The department shall verify the information
15 contained in an application submitted pursuant to Subsection
16 B of this section and shall approve or deny an application
17 within thirty days of receipt. The department may deny an
18 application only if the applicant did not provide the
19 information required pursuant to Subsection B of this section
20 or if the department determines that the information provided
21 is false. A person whose application has been denied shall
22 not reapply for six months from the date of the denial unless
23 otherwise authorized by the department.

24 D. The department shall issue a registry
25 identification card within five days of approving an

1 application, and a card shall expire three years after the
2 date of issuance.

3 E. A registry identification card shall contain:

- 4 (1) the name and date of birth of the
5 qualified patient and primary caregiver, if any;
- 6 (2) the date of issuance and expiration date
7 of the registry identification card; and
- 8 (3) other information that the department
9 may require by rule.

10 F. A person who possesses a registry
11 identification card shall notify the department of any change
12 in the person's name, qualified patient's practitioner,
13 qualified patient's primary caregiver or change in status of
14 the qualified patient's debilitating medical condition within
15 ten days of the change.

16 G. Possession of or application for a registry
17 identification card shall not constitute probable cause or
18 give rise to reasonable suspicion for a governmental agency
19 to search the person or property of the person possessing or
20 applying for the card.

21 H. The department shall maintain a confidential
22 file containing the names and addresses of the persons who
23 have either applied for or received a registry identification
24 card. Individual names on the list shall be confidential and
25 not subject to disclosure, except:

1 (1) to authorized employees or agents of the
2 department as necessary to perform the duties of the
3 department pursuant to the provisions of the Lynn and Erin
4 Compassionate Use Act;

5 (2) to authorized employees of state or
6 local law enforcement agencies, but only for the purpose of
7 verifying that a person is lawfully in possession of a
8 registry identification card;

9 (3) to the division; or

10 (4) as provided in the federal Health
11 Insurance Portability and Accountability Act of 1996.

12 I. By March 1, 2020, the secretary of health shall
13 adopt and promulgate rules relating to medical cannabis
14 program reciprocity. The department may identify
15 requirements for the granting of reciprocity, including
16 provisions limiting the period of time in which a reciprocal
17 participant may participate in the medical cannabis program.

18 J. A reciprocal participant:

19 (1) may participate in the medical cannabis
20 program in accordance with department rules;

21 (2) shall not be required to comply with the
22 registry identification card application and renewal
23 requirements established pursuant to this section and
24 department rules;

25 (3) shall at all times possess proof of

1 authorization to participate in the medical cannabis program
2 of another state, the District of Columbia, a territory or
3 commonwealth of the United States or a New Mexico Indian
4 nation, tribe or pueblo and shall present proof of that
5 authorization when purchasing cannabis from a person licensed
6 pursuant to the Cannabis Regulation Act; and

7 (4) shall register with a person licensed
8 pursuant to the Cannabis Regulation Act for the purpose of
9 tracking sales to the reciprocal participant in an electronic
10 system that is accessible to the department."

11 SECTION 63. Section 30-31-2 NMSA 1978 (being Laws 1972,
12 Chapter 84, Section 2, as amended) is amended to read:

13 "30-31-2. DEFINITIONS.--As used in the Controlled
14 Substances Act:

15 A. "administer" means the direct application of a
16 controlled substance by any means to the body of a patient or
17 research subject by a practitioner or the practitioner's
18 agent;

19 B. "agent" includes an authorized person who acts
20 on behalf of a manufacturer, distributor or dispenser. It
21 does not include a common or contract carrier, public
22 warehouseperson or employee of the carrier or
23 warehouseperson;

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

25 D. "bureau" means the narcotic and dangerous drug

1 section of the criminal division of the United States
2 department of justice, or its successor agency;

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

6 F. "counterfeit substance" means a controlled
7 substance that bears the unauthorized trademark, trade name,
8 imprint, number, device or other identifying mark or likeness
9 of a manufacturer, distributor or dispenser other than the
10 person who in fact manufactured, distributed or dispensed the
11 controlled substance;

12 G. "deliver" means the actual, constructive or
13 attempted transfer from one person to another of a controlled
14 substance or controlled substance analog, whether or not
15 there is an agency relationship;

16 H. "dispense" means to deliver a controlled
17 substance to an ultimate user or research subject pursuant to
18 the lawful order of a practitioner, including the
19 administering, prescribing, packaging, labeling or
20 compounding necessary to prepare the controlled substance for
21 that delivery;

22 I. "dispenser" means a practitioner who dispenses
23 and includes hospitals, pharmacies and clinics where
24 controlled substances are dispensed;

25 J. "distribute" means to deliver other than by

1 administering or dispensing a controlled substance or
2 controlled substance analog;

3 K. "drug" or "substance" means substances
4 recognized as drugs in the official United States
5 pharmacopoeia, official homeopathic pharmacopoeia of the
6 United States or official national formulary or any
7 respective supplement to those publications. It does not
8 include devices or their components, parts or accessories;

9 L. "manufacture" means the production,
10 preparation, compounding, conversion or processing of a
11 controlled substance or controlled substance analog by
12 extraction from substances of natural origin or independently
13 by means of chemical synthesis or by a combination of
14 extraction and chemical synthesis and includes any packaging
15 or repackaging of the substance or labeling or relabeling of
16 its container, except that this term does not include the
17 preparation or compounding of a controlled substance:

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

21 (2) by a practitioner, or by the
22 practitioner's agent under the practitioner's supervision,
23 for the purpose of or as an incident to research, teaching or
24 chemical analysis and not for sale;

25 M. "narcotic drug" means any of the following,

1 whether produced directly or indirectly by extraction from
2 substances of vegetable origin or independently by means of
3 chemical synthesis or by a combination of extraction and
4 chemical synthesis:

5 (1) opium and opiate and any salt, compound,
6 derivative or preparation of opium or opiate;

7 (2) any salt, compound, isomer, derivative
8 or preparation that is a chemical equivalent of any of the
9 substances referred to in Paragraph (1) of this subsection,
10 except the isoquinoline alkaloids of opium;

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

14 (4) coca leaves and any salt, compound,
15 derivative or preparation of coca leaves, any salt, compound,
16 isomer, derivative or preparation that is a chemical
17 equivalent of any of these substances except decocainized
18 coca leaves or extractions of coca leaves that do not contain
19 cocaine or ecgonine;

20 N. "opiate" means any substance having an
21 addiction-forming or addiction-sustaining liability similar
22 to morphine or being capable of conversion into a drug having
23 addiction-forming or addiction-sustaining liability.

24 "Opiate" does not include, unless specifically designated as
25 controlled under Section 30-31-5 NMSA 1978, the

1 dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its
2 salts, dextromethorphan. "Opiate" does include its racemic
3 and levorotatory forms;

4 O. "person" means an individual, partnership,
5 corporation, association, institution, political subdivision,
6 government agency or other legal entity;

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

15 Q. "prescription" means an order given
16 individually for the person for whom is prescribed a
17 controlled substance, either directly from a licensed
18 practitioner or the practitioner's agent to the pharmacist,
19 including by means of electronic transmission, or indirectly
20 by means of a written order signed by the prescriber, bearing
21 the name and address of the prescriber, the prescriber's
22 license classification, the name and address of the patient,
23 the name and quantity of the drug prescribed, directions for
24 use and the date of issue and in accordance with the
25 Controlled Substances Act or rules adopted thereto;

1 R. "scientific investigator" means a person
2 registered to conduct research with controlled substances in
3 the course of the person's professional practice or research
4 and includes analytical laboratories;

5 S. "ultimate user" means a person who lawfully
6 possesses a controlled substance for the person's own use or
7 for the use of a member of the person's household or for
8 administering to an animal under the care, custody and
9 control of the person or by a member of the person's
10 household;

11 T. "drug paraphernalia" means, except as to use in
12 accordance with the Cannabis Regulation Act or the Lynn and
13 Erin Compassionate Use Act, all equipment, products and
14 materials of any kind that are used, intended for use or
15 designed for use in planting, propagating, cultivating,
16 growing, harvesting, manufacturing, compounding, converting,
17 producing, processing, preparing, testing, analyzing,
18 packaging, repackaging, storing, containing, concealing,
19 injecting, ingesting, inhaling or otherwise introducing into
20 the human body a controlled substance or controlled substance
21 analog in violation of the Controlled Substances Act. It
22 includes:

23 (1) kits used, intended for use or designed
24 for use in planting, propagating, cultivating, growing or
25 harvesting any species of plant that is a controlled

1 substance or controlled substance analog or from which a
2 controlled substance can be derived;

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

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

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

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

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

22 (7) blenders, bowls, containers, spoons and
23 mixing devices used, intended for use or designed for use in
24 compounding controlled substances or controlled substance
25 analogs;

1 (8) capsules, balloons, envelopes and other
2 containers used, intended for use or designed for use in
3 packaging small quantities of controlled substances or
4 controlled substance analogs;

5 (9) containers and other objects used,
6 intended for use or designed for use in storing or concealing
7 controlled substances or controlled substance analogs;

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

12 (11) objects used, intended for use or
13 designed for use in ingesting, inhaling or otherwise
14 introducing cocaine into the human body, such as:

15 (a) metal, wooden, acrylic, glass,
16 stone, plastic or ceramic pipes, with or without screens,
17 permanent screens, hashish heads or punctured metal bowls;

18 (b) water pipes;

19 (c) carburetion tubes and devices;

20 (d) smoking and carburetion masks;

21 (e) miniature cocaine spoons and
22 cocaine vials;

23 (f) chamber pipes;

24 (g) carburetor pipes;

25 (h) electric pipes;

1 (i) air-driven pipes;
2 (j) chilams;
3 (k) bongs; or
4 (l) ice pipes or chillers; and
5 (12) in determining whether an object is
6 drug paraphernalia, a court or other authority should
7 consider, in addition to all other logically relevant
8 factors, the following:
9 (a) statements by the owner or by
10 anyone in control of the object concerning its use;
11 (b) the proximity of the object, in
12 time and space, to a direct violation of the Controlled
13 Substances Act or any other law relating to controlled
14 substances or controlled substance analogs;
15 (c) the proximity of the object to
16 controlled substances or controlled substance analogs;
17 (d) the existence of any residue of a
18 controlled substance or controlled substance analog on the
19 object;
20 (e) instructions, written or oral,
21 provided with the object concerning its use;
22 (f) descriptive materials accompanying
23 the object that explain or depict its use;
24 (g) the manner in which the object is
25 displayed for sale; and

1 (h) expert testimony concerning its
2 use;

3 U. "controlled substance analog" means a substance
4 other than a controlled substance that has a chemical
5 structure substantially similar to that of a controlled
6 substance in Schedule I, II, III, IV or V or that was
7 specifically designed to produce effects substantially
8 similar to that of controlled substances in Schedule I, II,
9 III, IV or V. Examples of chemical classes in which
10 controlled substance analogs are found:

11 (1) include:

- 12 (a) phenethylamines;
- 13 (b) N-substituted piperidines;
- 14 (c) morphinans;
- 15 (d) ecgonines;
- 16 (e) quinazolinones;
- 17 (f) substituted indoles; and
- 18 (g) arylcycloalkylamines; and

19 (2) do not include those substances that are
20 generally recognized as safe and effective within the meaning
21 of the Federal Food, Drug, and Cosmetic Act or have been
22 manufactured, distributed or possessed in conformance with
23 the provisions of an approved new drug application or an
24 exemption for investigational use within the meaning of
25 Section 505 of the Federal Food, Drug, and Cosmetic Act;

1 V. "human consumption" includes application,
2 injection, inhalation, ingestion or any other manner of
3 introduction;

4 W. "drug-free school zone" means a public school,
5 parochial school or private school or property that is used
6 for a public, parochial or private school purpose and the
7 area within one thousand feet of the school property line,
8 but it does not mean any post-secondary school; and

9 X. "valid practitioner-patient relationship" means
10 a professional relationship, as defined by the practitioner's
11 licensing board, between the practitioner and the patient."

12 SECTION 64. Section 30-31-6 NMSA 1978 (being Laws 1972,
13 Chapter 84, Section 6, as amended) is amended to read:

14 "30-31-6. SCHEDULE I.--The following controlled
15 substances are included in Schedule I:

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

- 21 (1) acetylmethadol;
- 22 (2) allylprodine;
- 23 (3) alphacetylmethadol;
- 24 (4) alphameprodine;
- 25 (5) alphamethadol;

- 1 (6) benzethidine;
- 2 (7) betacetylmethadol;
- 3 (8) betameprodine;
- 4 (9) betamethadol;
- 5 (10) betaprodine;
- 6 (11) clonitazene;
- 7 (12) dextromoramide;
- 8 (13) dextrorphan;
- 9 (14) diampromide;
- 10 (15) diethylthiambutene;
- 11 (16) dimenoxadol;
- 12 (17) dimepheptanol;
- 13 (18) dimethylthiambutene;
- 14 (19) dioxaphetyl butyrate;
- 15 (20) dipipanone;
- 16 (21) ethylmethylthiambutene;
- 17 (22) etonitazene;
- 18 (23) etoxeridine;
- 19 (24) furethidine;
- 20 (25) hydroxypethidine;
- 21 (26) ketobemidone;
- 22 (27) levomoramide;
- 23 (28) levophenacylmorphane;
- 24 (29) morpheridine;
- 25 (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) hydromorphenol;
- (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;

1 (5) diethyltryptamine;
2 (6) dimethyltryptamine;
3 (7) 4-methyl-2,5-dimethoxy amphetamine;
4 (8) ibogaine;
5 (9) lysergic acid diethylamide;
6 (10) mescaline;
7 (11) peyote, except as otherwise provided in
8 the Controlled Substances Act;

9 (12) N-ethyl-3-piperidyl benzilate;
10 (13) N-methyl-3-piperidyl benzilate;
11 (14) psilocybin;
12 (15) psilocyn;
13 (16) synthetic cannabinoids, including:

14 (a) 1-[2-(4-(morpholinyl)ethyl]
15 -3-(1-naphthoyl)indole;
16 (b) 1-butyl-3-(1-naphthoyl)indole;
17 (c) 1-hexyl-3-(1-naphthoyl)indole;
18 (d) 1-pentyl-3-(1-naphthoyl)indole;
19 (e) 1-pentyl-3-(2-methoxyphenylacetyl)

20 indole;

21 (f) cannabicyclohexanol (CP 47, 497 and
22 homologues: 5-(1,1-dimethylheptyl)-2-[(1R,3S)
23 -3-hydroxycyclohexyl]-phenol (CP-47,497); and 5-(1,
24 1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol;

25 (g) 6aR,10aR)-9-(hydroxymethyl)

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

3 (h) dexanabinol, (6aS,10aS)
4 -9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)
5 -6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol;

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

8 (j) (2-methyl-1-propyl-1H-indol-3-yl)
9 -1-naphthalenyl-methanone; and

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

12 (17) 3,4-methylenedioxymethcathinone;

13 (18) 3,4-methylenedioxypyrovalerone;

14 (19) 4-methylmethcathinone;

15 (20) 4-methoxymethcathinone;

16 (21) 3-fluoromethcathinone; and

17 (22) 4-fluoromethcathinone;

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

1 E. the enumeration of Schedule I controlled
2 substances does not apply to:

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

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

10 (3) tetrahydrocannabinols or chemical
11 derivatives of tetrahydrocannabinols, including
12 tetrahydrocannabinols or chemical derivatives of
13 tetrahydrocannabinols with concentrations of up to five
14 percent as measured using a post-decarboxylation method and
15 based on percentage dry weight, possessed by a person in
16 connection with the cultivation, transportation, testing,
17 researching, manufacturing or other processing of the plant
18 *Cannabis sativa* L., or any part of the plant whether growing
19 or not, if authorized pursuant to rules promulgated, pursuant
20 to the Hemp Manufacturing Act, by the board of regents of New
21 Mexico state university on behalf of the New Mexico
22 department of agriculture or the department of environment;
23 or

24 (4) tetrahydrocannabinols or chemical
25 derivatives of tetrahydrocannabinols, including

1 tetrahydrocannabinols or chemical derivatives of
2 tetrahydrocannabinols in any concentration possessed by a
3 person in connection with the extraction of
4 tetrahydrocannabinols or chemical derivatives of
5 tetrahydrocannabinols, if authorized pursuant to rules
6 promulgated, pursuant to the Hemp Manufacturing Act, by the
7 board of regents of New Mexico state university on behalf of
8 the New Mexico department of agriculture or the department of
9 environment; and

10 F. controlled substances added to Schedule I by
11 rule adopted by the board pursuant to Section 30-31-3 NMSA
12 1978."

13 SECTION 65. Section 30-31-7 NMSA 1978 (being Laws 1972,
14 Chapter 84, Section 7, as amended) is amended to read:

15 "30-31-7. SCHEDULE II.--

16 A. The following controlled substances are
17 included in Schedule II:

18 (1) any of the following substances, except
19 those narcotic drugs listed in other schedules, whether
20 produced directly or indirectly by extraction from substances
21 of vegetable origin, or independently by means of chemical
22 synthesis, or by combination of extraction and chemical
23 synthesis:

24 (a) opium and opiate, and any salt,
25 compound, derivative or preparation of opium or opiate;

1 (b) any salt, compound, isomer,
2 derivative or preparation thereof that is chemically
3 equivalent or identical with any of the substances referred
4 to in Subparagraph (a) of this paragraph, but not including
5 the isoquinoline alkaloids of opium;

6 (c) opium poppy and poppy straw; and

7 (d) coca leaves and any salt, compound,
8 derivative or preparation of coca leaves, and any salt,
9 compound, derivative or preparation thereof that is
10 chemically equivalent or identical with any of these
11 substances, but not including decocainized coca leaves or
12 extractions that do not contain cocaine or ecgonine;

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;

(j) levorphanol;
(k) meperidine;
(l) metazocine;
(m) methadone;
(n) methadone--intermediate,
4-cyano-2-dimethylamino-4, 4-diphenyl butane;
(o) moramide--intermediate,
2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid;
(p) oxycodone;
(q) pethidine;
(r) pethidine--intermediate--A,
4-cyano-1-methyl-4-phenylpiperidine;
(s) pethidine--intermediate--B,
ethyl-4-phenyl-piperidine-4-carboxylate;
(t) pethidine--intermediate--C,
1-methyl-4-phenylpiperidine-4-carboxylic acid;
(u) phenazocine;
(v) piminodine;
(w) racemethorphan; and
(x) racemorphan;

(3) unless listed in another schedule, any material, compound, mixture or preparation that contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

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
8 II by rule adopted by the board pursuant to Section 30-31-3
9 NMSA 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
16 the 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
21 name of the ultimate user, the date when the methadone is to
22 be administered to or used or consumed by the named ultimate
23 user shown on the label and a warning on the label of the
24 methadone container that the ultimate user must use, consume
25 or administer to the ultimate user the methadone in such

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

5 SECTION 66. Section 30-31-21 NMSA 1978 (being Laws
6 1972, Chapter 84, Section 21, as amended) is amended to read:

7 "30-31-21. DISTRIBUTION TO A MINOR.--Except as
8 authorized by the Controlled Substances Act, no person who is
9 eighteen years of age or older shall intentionally distribute
10 a controlled substance to a person under the age of eighteen
11 years. Any person who violates this section with respect to
12 a controlled substance enumerated in Schedule I, II, III or
13 IV or a controlled substance analog of any controlled
14 substance enumerated in Schedule I, II, III or IV is:

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

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

21 SECTION 67. Section 30-31-22 NMSA 1978 (being Laws
22 1972, Chapter 84, Section 22, as amended) is amended to read:

23 "30-31-22. CONTROLLED OR COUNTERFEIT SUBSTANCES--
24 DISTRIBUTION PROHIBITED.--

25 A. Except as authorized by the Controlled

1 Substances Act, it is unlawful for a person to intentionally
2 distribute or possess with intent to distribute a controlled
3 substance or a controlled substance analog except a substance
4 enumerated in Schedule I or II that is a narcotic drug, a
5 controlled substance analog of a controlled substance
6 enumerated in Schedule I or II that is a narcotic drug or
7 methamphetamine, its salts, isomers and salts of isomers. A
8 person who violates this subsection with respect to:

9 (1) synthetic cannabinoids is:

10 (a) for the first offense, guilty of a
11 fourth degree felony and shall be sentenced pursuant to the
12 provisions of Section 31-18-15 NMSA 1978;

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

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

22 (d) for the second and subsequent
23 offenses, if more than one hundred pounds is possessed with
24 intent to distribute or distributed or both, guilty of a
25 second degree felony and shall be sentenced pursuant to the

1 provisions of Section 31-18-15 NMSA 1978;

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

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

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

17 (3) a controlled substance enumerated in
18 Schedule V or a controlled substance analog of a controlled
19 substance enumerated in Schedule V is guilty of a misdemeanor
20 and shall be punished by a fine of not less than one hundred
21 dollars (\$100) or more than five hundred dollars (\$500) or by
22 imprisonment for a definite term not less than one hundred
23 eighty days but less than one year, or both.

24 B. It is unlawful for a person to distribute gamma
25 hydroxybutyric acid or flunitrazepam to another person

1 without that person's knowledge and with intent to commit a
2 crime against that person, including criminal sexual
3 penetration. For the purposes of this subsection, "without
4 that person's knowledge" means the person is unaware that a
5 substance with the ability to alter that person's ability to
6 appraise conduct or to decline participation in or
7 communicate unwillingness to participate in conduct is being
8 distributed to that person. Any person who violates this
9 subsection is:

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

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

16 C. Except as authorized by the Controlled
17 Substances Act, it is unlawful for a person to intentionally
18 create or deliver, or possess with intent to deliver, a
19 counterfeit substance. A person who violates this subsection
20 with respect to:

21 (1) a counterfeit substance enumerated in
22 Schedule I, II, III or IV is guilty of a fourth degree felony
23 and shall be sentenced pursuant to the provisions of Section
24 31-18-15 NMSA 1978; and

25 (2) a counterfeit substance enumerated in

1 Schedule V is guilty of a petty misdemeanor and shall be
2 punished by a fine of not more than one hundred dollars
3 (\$100) or by imprisonment for a definite term not to exceed
4 six months, or both.

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

8 (1) synthetic cannabinoids is:

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

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

16 (c) for the first offense, if more than
17 one hundred pounds is possessed with intent to distribute or
18 distributed or both, guilty of a second degree felony and
19 shall be sentenced pursuant to the provisions of Section
20 31-18-15 NMSA 1978; and

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

1 (2) any other controlled substance
2 enumerated in Schedule I, II, III or IV or a controlled
3 substance analog of a controlled substance enumerated in
4 Schedule I, II, III or IV except a substance enumerated in
5 Schedule I or II that is a narcotic drug, a controlled
6 substance analog of a controlled substance enumerated in
7 Schedule I or II that is a narcotic drug or methamphetamine,
8 its salts, isomers and salts of isomers, is:

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

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

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

21 (4) the intentional creation, delivery or
22 possession with the intent to deliver:

23 (a) a counterfeit substance enumerated
24 in Schedule I, II, III or IV is guilty of a third degree
25 felony and shall be sentenced pursuant to the provisions of

1 Section 31-18-15 NMSA 1978; and

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

8 E. Notwithstanding the provisions of Subsection A
9 of this section, distribution of a small amount of synthetic
10 cannabinoids for no remuneration shall be treated as provided
11 in Paragraph (1) of Subsection B of Section 30-31-23 NMSA
12 1978."

13 **SECTION 68.** Section 30-31-23 NMSA 1978 (being Laws
14 1972, Chapter 84, Section 23, as amended) is amended to read:

15 "30-31-23. CONTROLLED SUBSTANCES--POSSESSION
16 PROHIBITED.--

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

24 B. A person who violates this section with respect
25 to:

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

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

17 (3) eight ounces or more of synthetic
18 cannabinoids is guilty of a fourth degree felony and shall be
19 sentenced pursuant to the provisions of Section 31-18-15 NMSA
20 1978.

21 C. A minor who violates this section with respect
22 to the substances listed in this subsection is guilty of a
23 petty misdemeanor and, notwithstanding the provisions of
24 Sections 32A-1-5 and 32A-2-19 NMSA 1978, shall be required to
25 perform no more than forty-eight hours of community service.

1 For the third or subsequent violation by a minor of this
2 section with respect to those substances, the provisions of
3 Section 32A-2-19 NMSA 1978 shall govern punishment of the
4 minor. As used in this subsection, "minor" means a person
5 who is less than eighteen years of age. The provisions of
6 this subsection apply to the following substances:

7 (1) synthetic cannabinoids;

8 (2) any of the substances listed in
9 Paragraphs (17) through (22) of Subsection C of Section
10 30-31-6 NMSA 1978; or

11 (3) a substance added to Schedule I by a
12 rule of the board adopted on or after March 31, 2011 if the
13 board determines that the pharmacological effect of the
14 substance, the risk to the public health by abuse of the
15 substance and the potential of the substance to produce
16 psychic or physiological dependence liability is similar to
17 the substances described in Paragraph (1) or (2) of this
18 subsection.

19 D. Except as provided in Subsections B and F of
20 this section, and for those substances listed in Subsection E
21 of this section, a person who violates this section with
22 respect to any amount of any controlled substance enumerated
23 in Schedule I, II, III or IV or a controlled substance analog
24 of a substance enumerated in Schedule I, II, III or IV is
25 guilty of a misdemeanor and shall be punished by a fine of

1 not less than five hundred dollars (\$500) or more than one
2 thousand dollars (\$1,000) or by imprisonment for a definite
3 term less than one year, or both.

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

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

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

14 (1) one ounce or less of synthetic
15 cannabinoids is, for the first offense, 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, and for the second or subsequent offense, is
20 guilty of a fourth degree felony and shall be sentenced
21 pursuant to the provisions of Section 31-18-15 NMSA 1978;

22 (2) more than one ounce and less than eight
23 ounces of synthetic cannabinoids is guilty of a fourth degree
24 felony and shall be sentenced pursuant to the provisions of
25 Section 31-18-15 NMSA 1978;

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

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

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

21 **SECTION 69.** Section 30-31-34 NMSA 1978 (being Laws
22 1972, Chapter 84, Section 33, as amended) is amended to read:

23 "30-31-34. FORFEITURES--PROPERTY SUBJECT.--The
24 following are subject to forfeiture pursuant to the
25 provisions of the Forfeiture Act:

1 A. all raw materials, products and equipment of
2 any kind, including firearms that are used or intended for
3 use in manufacturing, compounding, processing, delivering,
4 importing or exporting any controlled substance or controlled
5 substance analog in violation of the Controlled Substances
6 Act;

7 B. all property that is used or intended for use
8 as a container for property described in Subsection A of this
9 section;

10 C. all conveyances, including aircraft, vehicles
11 or vessels that are used or intended for use to transport or
12 in any manner to facilitate the transportation for the
13 purpose of sale of property described in Subsection A of this
14 section;

15 D. all books, records and research products and
16 materials, including formulas, microfilm, tapes and data that
17 are used or intended for use in violation of the Controlled
18 Substances Act;

19 E. narcotics paraphernalia or money that is a
20 fruit or instrumentality of the crime;

21 F. notwithstanding Subsection C of this section
22 and the provisions of the Forfeiture Act:

23 (1) a conveyance used by a person as a
24 common carrier in the transaction of business as a common
25 carrier shall not be subject to forfeiture pursuant to this

1 section unless it appears that the owner or other person in
2 charge of the conveyance is a consenting party or privy to a
3 violation of the Controlled Substances Act;

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

8 (3) a conveyance is not subject to
9 forfeiture for a violation of law the penalty for which is a
10 misdemeanor; and

11 (4) a forfeiture of a conveyance encumbered
12 by a bona fide security interest shall be subject to the
13 interest of a secured party if the secured party neither had
14 knowledge of nor consented to the act or omission; and

15 G. all drug paraphernalia as defined by Subsection
16 T of Section 30-31-2 NMSA 1978."

17 **SECTION 70. TEMPORARY PROVISION--TRANSFER--FUNCTIONS,**
18 **PERSONNEL, MONEY, PROPERTY, CONTRACTUAL OBLIGATIONS AND**
19 **STATUTORY REFERENCES--MEDICAL CANNABIS FUND--RULES.--**

20 A. On the effective date of this act, all
21 functions, personnel, money, appropriations, records,
22 furniture, equipment and other property of the department of
23 health's medical cannabis program that are not part of the
24 department's medical cannabis registry powers and duties
25 shall be transferred to the regulation and licensing

1 department.

2 B. On the effective date of this act, all
3 contractual obligations and other agreements of the
4 department of health as they pertain to the department's
5 medical cannabis program that are not part of the
6 department's medical cannabis registry powers and duties are
7 binding on the regulation and licensing department.

8 C. Statutory references to the department of
9 health that pertain to the department's medical cannabis
10 program that are not part of the department's medical
11 cannabis registry powers and duties shall be deemed to be
12 references to the cannabis control division of the regulation
13 and licensing department.

14 D. On the effective date of this act, any
15 unexpended or unencumbered balance in the medical cannabis
16 fund is transferred to the cannabis regulation fund.

17 E. Except to the extent any administrative rules
18 are inconsistent with the provisions of this act, any
19 administrative rules adopted by an officer, agency or other
20 entity whose responsibilities have been transferred pursuant
21 to the provisions of this act to another officer, agency or
22 other entity remain in force until amended by the officer,
23 agency or other entity to which the responsibility for the
24 adoption of the rules has been transferred. To the extent
25 any administrative rules are inconsistent with the provisions

1 of this act, such rules are null and void.

2 SECTION 71. TEMPORARY PROVISION--STUDY--REPORT.--

3 A. The legislative finance committee shall study
4 the fiscal and economic impacts of the Cannabis Regulation
5 Act for fiscal years 2023 through 2027 and provide a report
6 to the revenue stabilization and tax policy committee on or
7 before December 1, 2027.

8 B. The report shall include:

9 (1) the impacts on budgets and staffing of
10 the regulation and licensing department and the department of
11 health;

12 (2) the impacts on general fund revenue and
13 expenses;

14 (3) the impacts on potential funds created
15 by the Cannabis Regulation Act;

16 (4) the impacts on the medical cannabis
17 program;

18 (5) the impacts on local and state law
19 enforcement; and

20 (6) the economic impact on the state,
21 including:

22 (a) job creation;

23 (b) tourism; and

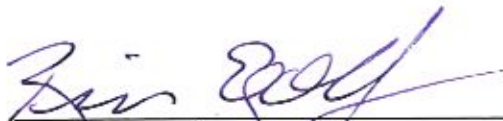
24 (c) other economic impacts.

25 SECTION 72. REPEAL.--Section 9-7-17.1 NMSA 1978 (being

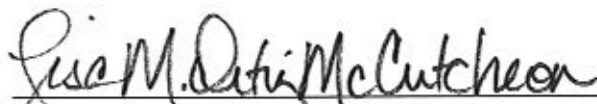
1 Laws 2012, Chapter 42, Section 1) is repealed.

2 SECTION 73. DELAYED REPEAL.--Section 40 of this act is
3 repealed effective December 31, 2025. _____

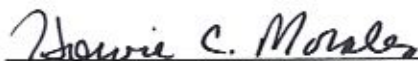
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Brian Egolf, Speaker
House of Representatives



Lisa M. Ortiz McCutcheon, Chief Clerk
House of Representatives

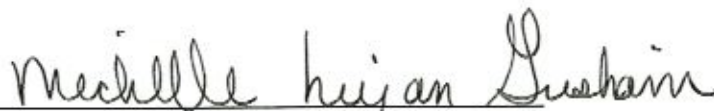


Howie C. Morales, President
Senate



Lenore M. Naranjo, Chief Clerk
Senate

Approved by me this 12th day of April, 2021



Michelle Lujan Grisham, Governor
State of New Mexico