

HOUSE BILL 356

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

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AN ACT

RELATING TO CANNABIS; ENACTING THE CANNABIS REGULATION ACT;
ENACTING THE CANNABIS TAX ACT; CREATING THE CANNABIS CONTROL
DIVISION IN THE REGULATION AND LICENSING DEPARTMENT AND
PROVIDING DUTIES; REVISING REPORTING REQUIREMENTS; REVISING THE
LYNN AND ERIN COMPASSIONATE USE ACT; REVISING SECTIONS OF LAW
RELATED TO CANNABIS; CREATING THE CANNABIS REGULATION FUND, THE
COMMUNITY GRANTS REINVESTMENT FUND AND THE COMMUNITY GRANTS
REINVESTMENT PROGRAM; CREATING THE CANNABIS HEALTH AND SAFETY
FUND; CREATING THE CANNABIS RESEARCH FUND; REVISING THE LOCAL
DWI GRANT PROGRAM; PROVIDING AND REVISING PENALTIES; AMENDING,
REPEALING AND ENACTING SECTIONS OF THE NMSA 1978; MAKING AN
APPROPRIATION.

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

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

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1 through 45 of this act may be cited as the "Cannabis Regulation
2 Act".

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

5 A. "advertisement":

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

11 (2) does not include:

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

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

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

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

25 C. "cannabis":

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1 (1) means all parts of the plant Cannabis
2 sativa Linnaeus containing a delta-9-tetrahydrocannabinol
3 concentration of more than three-tenths percent on a dry weight
4 basis, whether growing or not; the seeds of the plant; the
5 resin extracted from any part of the plant; and every compound,
6 manufacture, salt, derivative, mixture or preparation of the
7 plant, its seeds or its resin; and

8 (2) does not include:

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

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

18 D. "cannabis consumption area" means an area within
19 a cannabis retailer's licensed premises where cannabis products
20 may be consumed;

21 E. "cannabis courier" means a person who is
22 licensed by the division only to transport usable cannabis and
23 cannabis products directly to consumers;

24 F. "cannabis establishment" means:

25 (1) a cannabis courier;

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1 (2) a cannabis testing laboratory;

2 (3) a cannabis manufacturer;

3 (4) a cannabis microbusiness;

4 (5) a cannabis producer; or

5 (6) a cannabis retailer;

6 G. "cannabis extract":

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

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

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

16 I. "cannabis manufacturer" means a person that is
17 licensed by the division to:

18 (1) manufacture cannabis products;

19 (2) package, transport or courier cannabis
20 products;

21 (3) have cannabis products tested by a
22 cannabis testing laboratory; and

23 (4) sell and transport cannabis products to
24 other cannabis establishments;

25 J. "cannabis microbusiness" means a person that

1 employs fewer than nine people, collects no more than two
2 million dollars (\$2,000,000) in annual revenue and is licensed
3 by the division to:

4 (1) produce up to ninety-nine mature cannabis
5 plants;

6 (2) manufacture cannabis extracts using
7 nonvolatile solvents or no solvents;

8 (3) be a cannabis retailer;

9 (4) sell, transport or courier the cannabis
10 products to other cannabis establishments and to consumers; or

11 (5) engage in any other activity authorized by
12 the division;

13 K. "cannabis producer" means a person that is
14 licensed by the division to:

15 (1) produce cannabis;

16 (2) package cannabis products;

17 (3) have cannabis products tested by a
18 cannabis testing laboratory; and

19 (4) sell and transport cannabis products to
20 other cannabis establishments;

21 L. "cannabis product":

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

25 (2) does not include the weight of any other

1 ingredient combined with cannabis or cannabis extracts to
2 prepare topical or oral administrations, food, drink or another
3 product;

4 M. "cannabis retailer" means a person that is
5 licensed by the division to sell and courier cannabis products
6 to a consumer in this state;

7 N. "cannabis testing laboratory" means a facility
8 that is licensed by the division to collect, transport and test
9 cannabis products to analyze the strength or purity of the
10 products;

11 O. "commercial cannabis activity":

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

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

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

21 Q. "controlling person":

22 (1) means an officer or board member in a
23 cannabis establishment; and

24 (2) does not include a bank or licensed
25 lending institution;

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

3 S. "director" means the head of the division;

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

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

11 V. "financial consideration":

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

15 (2) does not mean the value in homegrown
16 cannabis produced or homemade cannabis products manufactured by
17 another person;

18 W. "homegrown" or "homemade" means grown or made by
19 a personal production licensee for purposes that are not
20 dependent or conditioned upon the provision or receipt of
21 financial consideration;

22 X. "household" means a housing unit and includes
23 any place in or around the housing unit at which an occupant of
24 the housing unit produces, manufactures, keeps or stores
25 homegrown cannabis or homemade cannabis products;

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

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

10 AA. "licensed premises" means a location that is
11 licensed pursuant to the Cannabis Regulation Act and includes:

12 (1) all enclosed public and private areas at
13 the location that are used in the business operated pursuant to
14 a license and includes offices, kitchens, restrooms and
15 storerooms;

16 (2) all areas outside of a building that the
17 department has specifically licensed for the production,
18 manufacturing, wholesale sale or retail sale of cannabis
19 products; and

20 (3) with respect to a location that the
21 department has specifically licensed for the production of
22 cannabis outside of a building, the entire unit of land that is
23 created by subsection or partition of land that the licensee
24 owns, leases or has a right to occupy;

25 BB. "licensee representative" means an owner,

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1 director, officer, manager, employee, agent or other
2 representative of a licensee, to the extent that person acts in
3 a representative capacity;

4 CC. "local jurisdiction" means a municipality, home
5 rule municipality or a county;

6 DD. "manufacture":

7 (1) means to compound, blend, extract, infuse
8 or otherwise prepare a cannabis product; and

9 (2) does not include producing the cannabis
10 contained in a cannabis product;

11 EE. "marketing" means the act of promoting or
12 selling a cannabis product or cannabis-related products or
13 services;

14 FF. "mature cannabis plant" means a cannabis plant
15 that is not an immature cannabis plant;

16 GG. "medical cannabis" means cannabis products used
17 by a qualified patient in accordance with the Lynn and Erin
18 Compassionate Use Act;

19 HH. "medical cannabis program" means the regulated
20 system allowing for the beneficial use of medical cannabis as
21 established in the Lynn and Erin Compassionate Use Act;

22 II. "medical cannabis registry" means the system by
23 which the department of health, pursuant to the Lynn and Erin
24 Compassionate Use Act, receives applications for registry
25 identification cards; approves and denies applications; issues

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1 and renews registry identification cards; and maintains files
2 related to applicants for and recipients of registry
3 identification cards;

4 JJ. "person" means an individual or a firm,
5 partnership, joint venture, association, corporation, limited
6 liability company, estate, trust, business trust, receiver or
7 any other legal or commercial entity;

8 KK. "personal production license" means a license
9 issued to a person that allows the person to produce cannabis
10 for the person's personal use, consistent with the requirements
11 of the Cannabis Regulation Act or a rule promulgated pursuant
12 to that act;

13 LL. "produce" means any activity involving the
14 cultivation of cannabis;

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

22 NN. "qualified patient" means a New Mexico resident
23 who has been diagnosed by a practitioner as having a
24 debilitating medical condition and has received written
25 certification and a registry identification card as part of the

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1 medical cannabis program;

2 00. "safety-sensitive position" means a position in
3 which performance by a person under the influence of drugs or
4 alcohol would constitute an immediate and direct threat of
5 injury or death to that person or to another;

6 PP. "superintendent" means the superintendent of
7 regulation and licensing;

8 QQ. "usable cannabis" means dried cannabis flowers
9 and dried cannabis leaves and any mixture or preparation of
10 those flowers or leaves; and

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

15 SECTION 3. [NEW MATERIAL] CANNABIS CONTROL DIVISION--
16 DUTIES--RULEMAKING--ADVISORY COMMITTEE.--

17 A. The "cannabis control division" is created in
18 the regulation and licensing department.

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

21 (1) commercial cannabis activity and licensing
22 related to the activity; and

23 (2) the medical cannabis program, except for
24 the medical cannabis registry.

25 C. Not later than July 1, 2020, the division shall

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1 promulgate rules necessary for the division to carry out its
2 duties provided in the Cannabis Regulation Act, and those rules
3 shall include:

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

6 (2) qualifications for licensure that are
7 directly and demonstrably related to the operation of a
8 cannabis establishment;

9 (3) security requirements for a cannabis
10 establishment;

11 (4) requirements related to:

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

14 (b) a cannabis establishment's
15 recordkeeping and tracking of cannabis from seed until it is
16 sold;

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; and

22 (e) language for labels of cannabis
23 products related to potential adverse effects;

24 (5) a provision regarding whether a licensee
25 who sells cannabis products may sell any other products;

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1 (6) rules on a licensee's advertisement and
2 marketing of cannabis products and on how a licensee may
3 display cannabis products for sale;

4 (7) procedures that promote and encourage full
5 participation in the cannabis industry governed by the Cannabis
6 Regulation Act by representatives of communities that have been
7 disproportionately harmed by the enforcement of cannabis
8 prohibitions in law and policy, including harms from
9 disproportionate rates of related interactions with law
10 enforcement officers, arrests, incarceration and collateral
11 consequences;

12 (8) rules developed in consultation with the
13 department of environment to establish:

14 (a) health and safety standards
15 applicable to the cultivation of cannabis and the manufacture
16 of cannabis products;

17 (b) standards for quality control,
18 inspection and testing of cannabis products;

19 (c) standards for food and product
20 safety applicable to cannabis products; and

21 (d) which additives and ingredients are
22 approved for and prohibited from inclusion in cannabis
23 products; and

24 (9) rules developed in consultation with the
25 New Mexico department of agriculture and the department of

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1 environment to establish:

2 (a) standards for the use of pesticides
3 in the manufacture of cannabis, including the maximum
4 allowances for pesticides and other foreign material such as
5 hair, insects or other similar adulterants, in harvested
6 cannabis;

7 (b) environmental protections that apply
8 to all licensees;

9 (c) protocols to ensure licensees'
10 compliance with state laws governing environmental impacts,
11 natural resource protection, water quality, water supply,
12 hazardous materials, pesticide use and wastewater discharge;
13 and

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

16 D. The division shall collect demographic data on
17 license applicants and employees of cannabis establishments,
18 including race, ethnicity, gender and age.

19 E. Not later than September 1, 2019, the division
20 shall convene an advisory committee to advise the division on
21 the development of rules pursuant to the Cannabis Regulation
22 Act, including best practices and guidelines that protect
23 public health and safety while ensuring a regulated environment
24 for commercial cannabis activity that does not impose
25 unreasonable barriers that would perpetuate, rather than reduce

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1 and eliminate, the illicit market for cannabis. The advisory
2 committee members shall be appointed by the director with the
3 approval of the superintendent for two-year terms and shall
4 include a representative:

- 5 (1) of the cannabis industry;
- 6 (2) of a cannabis policy advocacy
7 organization;
- 8 (3) of a labor organization;
- 9 (4) who is a medical cannabis patient;
- 10 (5) from a state or local agency with relevant
11 expertise as the director and the superintendent deem
12 appropriate;
- 13 (6) with expertise in public health;
- 14 (7) with expertise in regulating commercial
15 activity for adult-use intoxicating substances; and
- 16 (8) with expertise in other relevant areas as
17 the director and the superintendent deem appropriate.

18 F. Beginning January 1, 2021, the advisory
19 committee shall publish and provide to the legislature an
20 annual report detailing its activities and recommendations made
21 to the division during the preceding year and noting whether
22 the division implemented the recommendations. The report shall
23 include a recommendation on whether the legislature should
24 adjust the cannabis excise tax based on the following
25 considerations:

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- 1 (1) demand for cannabis products;
- 2 (2) undercutting the illicit cannabis market;
- 3 (3) preventing the cannabis market from
- 4 undercutting the medical cannabis market;
- 5 (4) preventing cannabis use by a person
- 6 younger than twenty-one years of age; and
- 7 (5) preventing cannabis use disorder.

8 G. Members of the advisory committee convened
9 pursuant to this section shall not be paid but are entitled to
10 receive per diem and mileage as provided for state employees in
11 the Per Diem and Mileage Act.

12 SECTION 4. [NEW MATERIAL] DEPARTMENT OF HEALTH--DUTIES--
13 PUBLIC HEALTH AND SAFETY ADVISORY COMMITTEE.--

14 A. Not later than January 1, 2020, the department
15 of health shall:

- 16 (1) establish a medical cannabis subsidy
- 17 program by which the department of health shall make
- 18 distributions of a portion of cannabis excise tax revenue to
- 19 provide medical cannabis to sick and indigent persons who are
- 20 residents of New Mexico and who have been diagnosed by a
- 21 practitioner as having a debilitating medical condition and
- 22 have received written certification and a registry
- 23 identification card issued pursuant to the Lynn and Erin
- 24 Compassionate Use Act; and

- 25 (2) promulgate rules to govern the medical

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1 cannabis subsidy program.

2 B. The department of health shall monitor emerging
3 scientific and medical information relevant to the health
4 effects associated with cannabis use and shall monitor changes
5 in cannabis use patterns for children and adults within the
6 state, broken down by county, race and ethnicity.

7 C. Not later than September 1, 2019, the secretary
8 of health shall appoint a "public health and safety advisory
9 committee" composed of professionals with expertise related to
10 cannabis through work, training or research in public health,
11 epidemiology, medicine, medical toxicology, poison control,
12 road safety, occupational safety, environmental safety and
13 emergency medicine.

14 D. Beginning December 1, 2020, the public health
15 and safety advisory committee shall provide to the legislature
16 and the department of health shall publish on its website an
17 annual report on the health effects of legalizing cannabis for
18 adult use. The report shall include the following elements
19 relating to cannabis use:

- 20 (1) child access;
- 21 (2) road safety and driving while impaired;
- 22 (3) workplace safety;
- 23 (4) percentage of emergency room visits and
24 outcomes;
- 25 (5) educational needs for children and adults;

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- 1 (6) consumer and product safety; and
- 2 (7) percentage of poison control center calls.

3 E. Public members of the committee are entitled to
4 per diem and mileage as provided for state employees in the Per
5 Diem and Mileage Act.

6 SECTION 5. [NEW MATERIAL] DEPARTMENT OF PUBLIC SAFETY--
7 REPORTING REQUIREMENTS.--

8 A. Within sixty days following the end of each
9 fiscal year, every police and sheriff's department shall report
10 on a form approved by the department of public safety:

11 (1) the total number of arrests and citations
12 for cannabis-related violations broken down by:

- 13 (a) category and penalty level; and
- 14 (b) race, ethnicity, age and gender; and

15 (2) the number of motor vehicle accidents in
16 which the driver of one of the vehicles tested positive for
17 cannabis.

18 B. Each law enforcement agency shall submit its
19 annual report to the department of public safety. A law
20 enforcement agency that does not issue a citation or make an
21 arrest for a cannabis law violation shall report that fact in
22 its annual report.

23 C. The department of public safety shall compile
24 the reports submitted and shall issue by November 1 of each
25 year an annual report of all cannabis law violations in the

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1 state. The report shall aggregate the data for the state and
2 shall disaggregate the data by agency, race, ethnicity, age and
3 gender. The department of public safety shall make all annual
4 reports submitted for previous fiscal years available on the
5 department's website.

6 SECTION 6. [NEW MATERIAL] LICENSING--LIMITATIONS--MEDICAL
7 CANNABIS GRANDFATHERED LICENSING.--

8 A. Except as otherwise provided in Subsection K of
9 this section, the division shall begin issuing licenses no
10 later than January 1, 2021; provided that until July 1, 2021,
11 and longer if the division deems it necessary, the division may
12 issue temporary licenses.

13 B. The department shall administer a licensing
14 program for commercial cannabis and personal production
15 activity provided for in the Cannabis Regulation Act and for
16 the medical cannabis program provided for in the Lynn and Erin
17 Compassionate Use Act, which shall include licenses for:

- 18 (1) cannabis couriers;
- 19 (2) cannabis testing laboratories;
- 20 (3) cannabis manufacturers;
- 21 (4) cannabis microbusinesses;
- 22 (5) cannabis producers;
- 23 (6) cannabis retailers; and
- 24 (7) personal producers.

25 C. The division shall include a clear designation

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1 on all licenses that indicates whether the license is for
2 personal production, commercial cannabis activity, medical
3 cannabis activity or for both medical and commercial cannabis
4 activity.

5 D. The division shall require all commercial
6 cannabis licensees to sell to both medical cannabis patients
7 and consumers; provided that if a cannabis establishment is
8 licensed for both commercial cannabis activity and medical
9 cannabis activity, the division shall condition renewal upon a
10 requirement that no less than thirty-three percent of units
11 sold from the preceding twelve months' operation of the
12 establishment was derived from the sale of medical cannabis
13 products.

14 E. The division may designate subcategories of
15 licenses based on:

16 (1) the size of a business; or

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

20 F. A license is valid for twelve months from the
21 date it is issued and may be renewed annually.

22 G. The division shall not issue any other license
23 provided for in this section to a cannabis testing laboratory
24 licensee.

25 H. The division shall allow only a cannabis

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1 retailer or a cannabis microbusiness to operate a cannabis
2 consumption area.

3 I. Except for a personal production license, the
4 division shall not issue a license to a natural person who
5 cannot demonstrate continuous residency in New Mexico for at
6 least two years prior to the date on which the person submits a
7 license application. If an applicant is an entity, all
8 controlling persons in the entity shall be required to
9 demonstrate continuous residency in New Mexico for two years
10 prior to the date on which the entity submits its license
11 application.

12 J. Except as provided in Subsection G of this
13 section and Section 8 of the Cannabis Regulation Act, the
14 division shall not limit the type or number of licenses that a
15 licensee may be issued under the Cannabis Regulation Act.

16 K. Any person properly licensed and in good
17 standing pursuant to the Lynn and Erin Compassionate Use Act on
18 the effective date of the enactment of the Cannabis Regulation
19 Act shall be issued a license under the provisions of the
20 Cannabis Regulation Act allowing the licensee to continue to
21 conduct medical cannabis activity only. The licensee shall
22 continue to operate under rules promulgated for the medical
23 cannabis program until the division promulgates rules for
24 medical cannabis activity.

25 SECTION 7. [NEW MATERIAL] LICENSEES--INTERMEDIATE

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1 SANCTIONS--CIVIL PENALTY.--

2 A. Any violation of a provision of the Cannabis
3 Regulation Act or a rule adopted by the division is grounds for
4 disciplinary action. The division may:

5 (1) impose any intermediate sanction
6 established by rule;

7 (2) impose a directed plan of correction; or

8 (3) assess a civil monetary penalty
9 established by rule; provided that a civil monetary penalty
10 shall not exceed a total of one thousand dollars (\$1,000) per
11 violation, and penalties and interest recovered pursuant to the
12 Cannabis Regulation Act on behalf of the state shall be
13 remitted to the state treasurer for deposit in the general
14 fund.

15 B. The division shall adopt and promulgate rules
16 specifying the criteria for imposition of any intermediate
17 sanction and civil monetary penalty.

18 C. A licensee is liable for the reasonable costs of
19 a directed plan of correction.

20 SECTION 8. [NEW MATERIAL] COMMERCIAL CANNABIS ACTIVITY
21 LICENSING--TEMPORARY LICENSING--LICENSING--APPLICATION--
22 ISSUANCE AND DENIAL OF A LICENSE.--

23 A. Beginning no later than January 1, 2020, the
24 division shall issue a temporary license to conduct commercial
25 cannabis activity to a currently licensed medical cannabis

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1 business that has applied for a license pursuant to Subsection
2 B of this section; provided that the medical cannabis business
3 shall meet requirements established by the division. The
4 requirements shall include consideration of whether the medical
5 cannabis business has the financial and operational ability to
6 engage in commercial cannabis activities. A medical cannabis
7 business operating under a temporary license shall continue to
8 operate under rules promulgated for the medical cannabis
9 program until the division promulgates rules for commercial
10 cannabis activity. A temporary license to conduct commercial
11 cannabis activity issued to a medical cannabis business shall
12 expire on the date that a license is issued or denied to the
13 medical cannabis business pursuant to Subsection B of this
14 section.

15 B. In carrying out its licensing duties, the
16 division shall:

17 (1) no later than September 1, 2020, accept
18 and begin processing license applications;

19 (2) issue a license, or a written notice
20 detailing why an application was denied, no later than ninety
21 days following the day on which the application was submitted
22 to the division;

23 (3) no later than September 1, 2020, develop a
24 plan to encourage racial, ethnic, gender and geographic
25 diversity among licensees; and

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1 (4) require as a condition of licensing that
2 the licensee use fifty percent captured, active, passive or
3 natural solar energy or recycled water to produce cannabis or
4 otherwise in the business licensed.

5 C. The division may deny an application for an
6 initial license or renewal if:

7 (1) the applicant's application does not
8 include all information required by the division;

9 (2) issuance of the license would lead to
10 monopolization of the cannabis or medical cannabis industry in
11 the state or would unreasonably restrain competition in those
12 industries;

13 (3) the applicant or a controlling person in
14 the applicant's entity has been convicted of an offense that is
15 substantially related to the qualifications, functions or
16 duties of the applicant entity's business; provided that if the
17 division determines that the controlling person and the
18 applicant entity are otherwise qualified for a license and
19 issuing a license to the applicant entity would not compromise
20 public safety, the division shall conduct a thorough review of
21 the conviction, including the nature of the offense,
22 surrounding circumstances and any evidence of the controlling
23 person's rehabilitation following the conviction, and based on
24 that review, determine whether the applicant entity should be
25 issued a license; or

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1 (4) the applicant or a controlling person in
2 the applicant's entity has had a license issued pursuant to the
3 Cannabis Regulation Act or the Lynn and Erin Compassionate Use
4 Act revoked by the division in the three years immediately
5 preceding the date on which the application was filed.

6 D. For the purposes of Subsection C of this
7 section:

8 (1) the following are considered substantially
9 related to the qualifications, functions or duties of a
10 business seeking a license:

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

13 (b) a felony conviction for hiring,
14 employing or otherwise using a person younger than eighteen
15 years of age to: 1) prepare for sale, transport or carry a
16 controlled substance; or 2) sell, give away or offer to sell a
17 controlled substance to any person; and

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

21 (2) a conviction for which the related
22 sentence, including any term of probation or parole, is
23 completed for the possession, use, manufacture, distribution or
24 dispensing or the possession with the intent to manufacture,
25 distribute or dispense a controlled substance is not considered

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1 substantially related to the qualifications, functions or
2 duties of a business seeking a license and shall not be the
3 sole ground on which an application is denied.

4 E. The division shall deny an application if an
5 applicant, a controlling person in an applicant's entity or the
6 premises for which a license is sought does not qualify for
7 licensure under the Cannabis Regulation Act.

8 F. If a currently licensed medical cannabis
9 business is temporarily licensed for commercial cannabis
10 activity, the division shall require that at least thirty-three
11 percent of the total value of the establishment's inventory is
12 composed of medical cannabis products.

13 SECTION 9. [NEW MATERIAL] PERSONAL PRODUCTION
14 LICENSING--APPLICATION--ISSUANCE AND DENIAL OF A LICENSE--
15 FEES--CONFIDENTIALITY.--

16 A. Beginning no later than September 1, 2020, a
17 person twenty-one years of age or older may apply for a
18 personal production license to produce cannabis pursuant to the
19 Cannabis Regulation Act.

20 B. A personal production license does not authorize
21 the licensee to exchange cannabis products for financial
22 consideration.

23 C. A person may obtain no more than one personal
24 production license, which license may be issued for production
25 to occur either indoors or outdoors in no more than one single

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1 location, which shall be either the person's primary residence
2 or other property owned or leased by the person.

3 D. No more than two personal production licenses
4 may be issued for a given location, with proof that a second
5 licensee currently resides at the location. Multiple personal
6 production licenses may not be issued for nonresidential
7 locations.

8 E. An applicant shall provide the following in
9 order to be considered for a personal production license:

10 (1) a nonrefundable application fee;

11 (2) a description of the single indoor or
12 outdoor location that shall be used in the production of
13 cannabis;

14 (3) a written plan that ensures that the
15 cannabis production shall not be visible from the street or
16 other public areas;

17 (4) a written acknowledgment that the
18 applicant will ensure that all cannabis, cannabis products and
19 paraphernalia are accessible only by the applicant and kept
20 secure and out of reach of children; and

21 (5) a description of any device or series of
22 devices that shall be used to provide security and proof of the
23 secure grounds.

24 F. The division may deny an application for an
25 initial personal production license or renewal, or may grant a

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1 license subject to reasonable conditions as determined by the
2 division, if:

3 (1) the applicant has violated any provision
4 of the Cannabis Regulation Act or a rule promulgated pursuant
5 to that act; or

6 (2) the application does not include all
7 information required by the division.

8 G. Every personal production license shall be
9 renewed each year on or before the last day of the month in
10 which the license was issued. If a licensee has not made
11 application for renewal of a license and paid the renewal fee
12 by the license renewal date, the license shall expire. The
13 division may require a person whose license has expired to
14 apply for a license as if the person had not been previously
15 licensed under the Cannabis Regulation Act.

16 H. The division shall maintain a confidential file
17 containing the names, addresses and telephone numbers of the
18 persons who have either applied for or received a personal
19 production license. The name, address and telephone number of
20 personal production licensees and personal production license
21 applicants shall be confidential and not subject to disclosure,
22 except to:

23 (1) authorized employees or agents of the
24 division as necessary to perform the duties of the division
25 pursuant to the provisions of the Cannabis Regulation Act; and

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1 (2) authorized employees of state or local law
2 enforcement agencies, but only for the purpose of verifying
3 that a person is lawfully in possession of the personal
4 production license or as otherwise expressly permitted in the
5 Cannabis Regulation Act.

6 SECTION 10. [NEW MATERIAL] LICENSING FEES.--

7 A. The division shall establish application and
8 licensing fees applicable to licenses for commercial cannabis
9 activity, personal production and activity related to medical
10 cannabis. The fees shall be reasonably calculated to cover the
11 cost of administering and enforcing the programs established in
12 the Cannabis Regulation Act and the Lynn and Erin Compassionate
13 Use Act, including the administration of the medical cannabis
14 registry by the department of health; provided that:

15 (1) the fee shall be scaled to reflect the
16 size of a business seeking or renewing a license; and

17 (2) for a license or renewal of a license that
18 authorizes only medical cannabis activity, the fee shall not
19 exceed one-half of the fee charged for a license or renewal of
20 a license for a similarly sized business that authorizes both
21 commercial and medical cannabis activities.

22 B. The division shall deposit all fees collected
23 pursuant to the Cannabis Regulation Act in the cannabis
24 regulation fund.

25 SECTION 11. [NEW MATERIAL] LOCAL CONTROL.--

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A. A local jurisdiction may:

(1) adopt reasonable time, place and manner rules that do not conflict with the Cannabis Regulation Act;

(2) adopt reasonable health- and safety-related rules on the production of homegrown cannabis; provided, however, that a violation of a rule shall constitute a civil offense;

(3) prohibit, in accordance with the Cannabis Regulation Act, the operation of a cannabis retailer or a cannabis microbusiness that sells cannabis products; and

(4) allow for the smoking, vaporizing and ingesting of cannabis products within an indoor or outdoor cannabis consumption area on the premises of a cannabis retailer or cannabis microbusiness if:

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

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

(c) the cannabis retailer or cannabis microbusiness is located at a minimum distance as determined by the local jurisdiction, but which distance shall be three hundred feet or more from a school, church or daycare center that was in existence at the time the retailer or microbusiness

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1 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 cannabis
5 products in compliance with the Cannabis Regulation Act;

6 (2) completely prohibit the operation of any
7 category of license other than a cannabis retailer or cannabis
8 microbusiness that sells cannabis products;

9 (3) prohibit the personal production of
10 cannabis or cannabis products made without the use of volatile
11 solvents for personal use provided for in the Cannabis
12 Regulation Act; or

13 (4) prohibit the operation of a medical-
14 cannabis-only retail business.

15 SECTION 12. [NEW MATERIAL] LOCAL OPTION ELECTION--EFFECT
16 OF LOCAL OPTION.--

17 A. The governing body of a municipality, whether or
18 not the county in which that municipality is situated has held
19 an election provided for in this section, or a board of county
20 commissioners of a county in the state may prohibit by
21 ordinance or resolution the operation of a cannabis retailer or
22 a cannabis microbusiness that sells cannabis products.

23 B. The registered qualified electors of the
24 municipality or county may petition the governing body by
25 filing one or more petitions in the appropriate office to hold

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1 an election for the purpose of determining whether to overturn
2 an ordinance or resolution allowing for the operations of a
3 cannabis retailer or a cannabis microbusiness that sells
4 cannabis products in the municipality or county. If the
5 aggregate of the signatures of such electors on all the
6 petitions equals or exceeds five percent of the number of
7 registered qualified electors of the municipality or county,
8 the governing body shall call an election as provided in
9 Subsection C of this section. The date of the filing of the
10 petition shall be the date of the filing of the last petition
11 that brings the number of signatures up to the required five
12 percent; provided, however, that the governing body shall
13 refuse to recognize the petition if more than three months have
14 elapsed between the date of the first signature and the filing
15 of the last petition necessary to bring the number of
16 signatures on the petition up to five percent.

17 C. The election may be held in conjunction with a
18 regular election of the governing body, a general election or a
19 regular local or special election held pursuant to the Local
20 Election Act or Special Election Act. The election shall be
21 called, conducted, counted and canvassed in substantially the
22 same manner as provided for general elections in the county
23 under the Election Code or for regular local or special
24 elections in a municipality under the Local Election Act or
25 Special Election Act.

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1 D. If the majority of all of the votes cast at the
2 election are cast in favor of the prohibition of the operations
3 of a cannabis retailer or a cannabis microbusiness that sells
4 cannabis products in the county or municipality, the chair of
5 the governing body shall declare by order entered upon the
6 records of the county or municipality that the county or
7 municipality has approved the prohibition and shall notify the
8 department of the election results.

9 E. No election held pursuant to this section shall
10 be held within seventy days before or after any primary,
11 general or regular local election.

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

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1 not allow the prohibited operations; but if the majority of the
2 votes in the municipality are in favor of allowing the
3 operations of a cannabis retailer or a cannabis microbusiness
4 that sells cannabis products, the municipality shall allow the
5 approved operations in the municipality. Nothing contained in
6 this subsection shall prevent any municipality from having a
7 separate election under the terms of this section.

8 G. Any county or municipality that has voted to
9 uphold the prohibition on the operations of a cannabis retailer
10 or a cannabis microbusiness that sells cannabis products may
11 vote to discontinue the prohibition and to allow the previously
12 prohibited operations in that county or municipality; provided
13 that the discontinuance shall become effective on the ninetieth
14 day after the local option election is held as provided for in
15 this subsection.

16 SECTION 13. [NEW MATERIAL] LICENSEE PROTECTIONS.--

17 A. Conduct by a licensee or a licensee
18 representative that is allowed pursuant to a license and
19 conduct by a person who allows property to be used by a
20 licensee or a licensee representative for conduct allowed
21 pursuant to a license is lawful, not a violation of state or
22 local law and is not a basis for seizure or forfeiture of any
23 property or assets under state or local law.

24 B. The state or a local government shall not impose
25 a criminal, civil or administrative penalty on a licensee or a

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1 licensee representative or on a person who allows property to
2 be used by a licensee or a licensee representative pursuant to
3 a license, solely for conduct allowed pursuant to a license.

4 SECTION 14. [NEW MATERIAL] PROTECTION OF UNDERAGE
5 PERSONS--TRAFFICKING--PENALTIES.--

6 A. A person who is not a licensee and who is
7 eighteen years of age or older shall not intentionally traffic
8 a cannabis product to a minor who is two or more years younger
9 than the person. A person who traffics a cannabis product in
10 violation of this subsection is guilty of a fourth degree
11 felony and shall be sentenced pursuant to Section 31-18-15 NMSA
12 1978.

13 B. A licensee shall not employ a person younger
14 than twenty-one years of age to engage in a commercial cannabis
15 activity.

16 C. Except as allowed in the Cannabis Regulation Act
17 or the Lynn and Erin Compassionate Use Act, a licensee shall
18 not sell a cannabis product to a person younger than twenty-one
19 years of age. The division shall suspend or revoke the license
20 and may fine the licensee in an amount not to exceed ten
21 thousand dollars (\$10,000), or both, when the division finds
22 that any licensee or the licensee's employee or agent knowingly
23 has sold, served or given any cannabis product to a minor on
24 two separate occasions within any twelve-month period.

25 D. The establishment of all of the following facts

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1 by a licensee prosecuted for a violation of Subsection C of
2 this section shall constitute a defense:

3 (1) that the purchaser falsely represented in
4 writing; by producing a driver's license bearing the
5 purchaser's photograph; by producing a photographic
6 identification card issued by the motor vehicle division of the
7 taxation and revenue department; or by producing a similar
8 identification card issued pursuant to the laws of this state,
9 another state, the federal government or the government of an
10 Indian nation, tribe or pueblo that the person was twenty-one
11 years of age or older;

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

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

21 E. Nothing in this section shall be construed or
22 interpreted to prevent:

23 (1) the division from enforcing its rules
24 against a licensee;

25 (2) a state agency from enforcing a law or

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1 rule that does not conflict with the Cannabis Regulation Act or
2 rules promulgated pursuant to that act; or

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

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

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

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

12 SECTION 15. [NEW MATERIAL] DISTRIBUTION AND TRANSPORT.--

13 The Cannabis Regulation Act shall not be construed to authorize
14 a licensee to transport or distribute, or cause to be
15 transported or distributed, cannabis products outside the
16 state, unless authorized by federal law.

17 SECTION 16. [NEW MATERIAL] TRANSPORT VIA COURIER.--

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

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

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1 SECTION 17. ~~[NEW MATERIAL]~~ PACKAGING AND LABELING.--

2 A. Before sale or transport via cannabis courier of
3 a cannabis product, the cannabis product shall be labeled and
4 placed in a resealable, child-resistant package that is
5 compostable, recyclable or made from recycled materials.

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

8 C. Labels shall include:

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

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

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

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

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

25 (6) a warning of possible adverse effects of

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1 consumption and the New Mexico poison and drug information
2 center phone number.

3 SECTION 18. [NEW MATERIAL] CANNABIS PRODUCTS--DEPARTMENT
4 OF ENVIRONMENT.--

5 A. Cannabis products shall be homogenized to ensure
6 uniform disbursement of cannabinoids throughout the product.

7 B. The department of environment shall adopt and
8 promulgate rules for cannabis products that establish packaging
9 requirements, including serving size, ingredient list,
10 labeling, including ingredients and adverse effects, and
11 testing, including potency and pesticide use, and that are not
12 designed to appeal to children.

13 C. Cannabis or cannabis extracts included in a
14 cannabis product that is manufactured in compliance with
15 applicable law are not considered to be an adulterant under
16 state law.

17 SECTION 19. [NEW MATERIAL] CANNABIS MANUFACTURERS AND
18 TESTING LABORATORIES--DEPARTMENT OF ENVIRONMENT--RULEMAKING.--

19 A. The division, with the assistance of the
20 department of environment, shall promulgate rules to govern the
21 licensing of a cannabis manufacturer and a cannabis testing
22 laboratory. The division shall issue licenses as follows:

23 (1) "cannabis manufacturing level 1" for a
24 site that manufactures cannabis extracts using nonvolatile
25 solvents or no solvents;

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1 (2) "cannabis manufacturing level 2" for a
2 site that manufactures cannabis extracts using volatile
3 solvents; and

4 (3) "cannabis testing laboratory" for a
5 licensee that tests cannabis products. An owner or person with
6 an ownership interest in a laboratory license shall not own or
7 have ownership interest in a non-laboratory facility licensed
8 pursuant to the Cannabis Regulation Act.

9 B. Except as otherwise provided by law, a cannabis
10 product shall not be sold by a licensee unless a representative
11 sample of the cannabis product has been tested by a cannabis
12 testing laboratory to determine:

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

- 15 (a) tetrahydrocannabinol;
- 16 (b) tetrahydrocannabinolic acid;
- 17 (c) cannabidiol;
- 18 (d) cannabidiolic acid;
- 19 (e) terpenes;
- 20 (f) cannabigerol; and
- 21 (g) cannabinol; and

22 (2) that the presence of the following
23 contaminants does not exceed harmful levels:

- 24 (a) residual solvents or chemicals,
25 including explosive gases such as butane, propane and hydrogen,

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1 and poisons, toxins or carcinogens such as methanol, methylene
2 chloride, acetone, benzene, toluene and trichloroethylene;

3 (b) foreign material, including hair,
4 insects or other similar adulterants; and

5 (c) microbiological impurity, including
6 total aerobic microbial count; total yeast mold count;
7 pseudomonas aeruginosa; aspergillus species; staphylococcus
8 aureus; aflatoxin B1, B2, G1 or G2; or ochratoxin A.

9 C. Residual levels of volatile organic compounds
10 shall not exceed harmful levels.

11 D. The testing required by this section shall be
12 performed in a manner consistent with general requirements for
13 the competence of testing and calibration activities, including
14 sampling, using standard methods to ensure conformity,
15 competence and impartiality to test cannabis products.

16 E. Any pre-sale inspection, testing transfer or
17 transportation of cannabis products pursuant to this section
18 shall conform to a chain of custody protocol and any other
19 requirements imposed by the division in accordance with the
20 Cannabis Regulation Act.

21 **SECTION 20. [NEW MATERIAL] TESTING CANNABIS PRODUCTS--**
22 **DEPARTMENT OF ENVIRONMENT.--**

23 A. A cannabis testing laboratory's testing of
24 cannabis products shall comply with the requirements set forth
25 in applicable law and rules.

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1 B. The division shall develop rules and procedures
2 to:

3 (1) ensure that testing of cannabis products
4 occurs prior to distribution to cannabis retailers or cannabis
5 microbusinesses;

6 (2) specify how often licensees shall test
7 cannabis products;

8 (3) specify which entities bear the cost of
9 testing cannabis and medical cannabis; and

10 (4) require destruction of a harvested batch
11 of cannabis or of cannabis products if the testing samples from
12 the batch or items indicate noncompliance with applicable
13 health and safety standards promulgated by the division, unless
14 remedial measures can bring the cannabis or cannabis products
15 into compliance with the standards.

16 C. Not later than January 1, 2020, the department
17 of environment shall establish and provide to the division a
18 set of certified reference materials for laboratory testing to
19 be measured against.

20 SECTION 21. [NEW MATERIAL] ADVERTISING AND MARKETING
21 RESTRICTIONS.--

22 A. The division shall promulgate rules that
23 explicitly:

24 (1) prohibit the advertisement and marketing
25 of cannabis products:

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1 (a) on a billboard, radio, television or
2 other broadcast media;

3 (b) that is false, deceptive or
4 misleading, including making unproven health benefit claims;

5 (c) that depicts consumption by children
6 or other persons younger than twenty-one years of age;

7 (d) that is designed using cartoon
8 characters or to mimic any other product brand;

9 (e) within three hundred feet of a
10 school, church or daycare center;

11 (f) that is in public transit vehicles
12 or stations;

13 (g) that is in the form of an
14 unsolicited internet pop-up; or

15 (h) that is on publicly owned or
16 operated property; and

17 (2) require:

18 (a) all advertisements and marketing to
19 accurately and legibly identify the licensee responsible for
20 its content; and

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

25 B. Upon a determination by the New Mexico attorney

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1 general that the use of cannabis, other than as provided for in
2 the Lynn and Erin Compassionate Use Act, is lawful in the state
3 under federal law, Subparagraph (a) of Paragraph (1) of
4 Subsection A of this section shall cease to be in effect.

5 SECTION 22. [NEW MATERIAL] CONTRACTS.--A contract related
6 to operation of a license is enforceable, and a contract
7 entered into by a licensee or a licensee representative for
8 conduct allowed pursuant to a license or entered into by a
9 person who allows property to be used by a licensee or a
10 licensee representative for conduct allowed pursuant to a
11 license, shall not be deemed unenforceable on the basis that
12 the conduct allowed pursuant to the license is prohibited by
13 federal law.

14 SECTION 23. [NEW MATERIAL] PROVISION OF PROFESSIONAL
15 SERVICES.--An attorney, accountant, insurance agent, real
16 estate agent, security guard or other person engaged in a
17 profession subject to state licensure shall not be subject to
18 disciplinary action by a professional association, a state
19 professional board or a state licensing entity because the
20 professional provides professional services or assistance to
21 prospective or licensed cannabis establishments or another
22 person in connection with activity that the professional
23 reasonably believes complies with the Cannabis Regulation Act
24 and rules promulgated pursuant to that act.

25 SECTION 24. [NEW MATERIAL] MEDICAL CANNABIS PROVISIONS

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1 UNAFFECTED.--Nothing in the Cannabis Regulation Act shall be
2 construed to:

3 A. limit a privilege or right of a qualified
4 patient or a primary caregiver participating in the medical
5 cannabis program or a person issued a permit to operate as a
6 medical cannabis licensed producer or to be a director, officer
7 or employee of a medical cannabis licensed producer;

8 B. allow a medical cannabis licensed producer to
9 distribute cannabis to a person who is not a qualified patient
10 without first obtaining a temporary license, a cannabis
11 retailer license or a cannabis microbusiness license from the
12 division; or

13 C. allow a medical cannabis licensed producer to
14 purchase cannabis products in a manner or from a source not
15 authorized under the Lynn and Erin Compassionate Use Act
16 without first obtaining a temporary license, a cannabis
17 retailer license or a cannabis microbusiness license from the
18 division.

19 SECTION 25. [NEW MATERIAL] PROTECTIONS FOR THE USE OF
20 CANNABIS.--A person or a licensee shall not be subject to
21 arrest, prosecution, penalty, civil liability or disciplinary
22 action by a business or professional licensing entity and shall
23 not be denied any right or privilege solely for conduct allowed
24 pursuant to the Cannabis Regulation Act. Except by court
25 order, state and local law enforcement agencies shall not

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1 cooperate with or provide assistance to the United States
2 government, or any federal agency thereof, in enforcing the
3 federal Controlled Substances Act solely for conduct that
4 complies with the Cannabis Regulation Act or the Lynn and Erin
5 Compassionate Use Act. The New Mexico supreme court and any
6 disciplinary or character and fitness committees established by
7 that court are considered business or professional licensing
8 entities for the purposes of this section.

9 SECTION 26. [NEW MATERIAL] PROTECTIONS FROM
10 DISCRIMINATION FOR THE USE OF CANNABIS OR MEDICAL CANNABIS.--

11 A. A school shall not refuse to enroll or otherwise
12 penalize a person solely for conduct allowed pursuant to the
13 Cannabis Regulation Act or the Lynn and Erin Compassionate Use
14 Act, unless failing to do so would cause the school to lose a
15 monetary or licensing-related benefit under federal law or
16 regulation.

17 B. A landlord shall not refuse to lease property to
18 or to otherwise penalize a person solely for conduct allowed
19 pursuant to the Cannabis Regulation Act or the Lynn and Erin
20 Compassionate Use Act, unless failing to do so would cause the
21 landlord to lose a monetary or licensing-related benefit under
22 federal law or regulation.

23 C. Notwithstanding Subsection B of this section, a
24 person may prohibit or restrict any of the actions or conduct
25 otherwise allowed under Sections 29 and 30 of the Cannabis

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1 Regulation Act and may prohibit any activity for which a
2 license is required pursuant to the Cannabis Regulation Act on
3 that person's privately owned property.

4 D. For the purposes of medical care, including
5 organ transplants, a qualified patient's use of medical
6 cannabis pursuant to the Lynn and Erin Compassionate Use Act
7 shall be considered the equivalent of the use of any other
8 medication under the direction of a physician and does not
9 constitute the use of an illicit substance or otherwise
10 disqualify a qualified patient from medical care.

11 E. A person shall not be denied custody of or
12 visitation or parenting time with a child, and there is no
13 presumption of neglect or child endangerment, for conduct
14 allowed under Sections 29 and 30 of the Cannabis Regulation Act
15 or under the Lynn and Erin Compassionate Use Act, unless the
16 person's behavior creates an immediate danger to the safety of
17 the child as established by clear and convincing evidence. For
18 the purposes of this subsection, a determination that behavior
19 creates an "immediate danger" shall not be based solely on
20 whether, when or how often a person uses cannabis or medical
21 cannabis.

22 SECTION 27. [NEW MATERIAL] EMPLOYMENT PROTECTIONS.--

23 A. It shall be unlawful to take an adverse
24 employment action against an employee who is not acting in a
25 safety-sensitive position based on conduct allowed under the

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1 Lynn and Erin Compassionate Use Act.

2 B. Nothing in this section shall:

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

7 (2) require an employer to commit any act that
8 would cause the employer to be in violation of federal law or
9 that would result in the loss of a federal contract or federal
10 funding.

11 C. As used in this section, "adverse employment
12 action" means refusing to hire or employ a person; barring or
13 discharging a person from employment; requiring a person to
14 retire from employment; or discriminating against an employee
15 in compensation or in terms, conditions or privileges of
16 employment.

17 D. Every workplace shall post signs warning of the
18 potential impairment effects of cannabis, any discipline or
19 penalty an employee may receive for using cannabis while at
20 work or for coming to work impaired and a statement that
21 possession or use of cannabis is prohibited pursuant to federal
22 law.

23 SECTION 28. [NEW MATERIAL] PROTECTIONS FOR A PERSON UNDER
24 STATE SUPERVISION.--A person who is serving a period of
25 probation or parole or who is under the supervision of the

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1 state or a local government pending trial or as part of a
2 community supervision program shall not be penalized for
3 conduct allowed under Sections 29 and 30 of the Cannabis
4 Regulation Act or the Lynn and Erin Compassionate Use Act.

5 SECTION 29. [NEW MATERIAL] PERSONAL USE OF CANNABIS.--

6 A. Notwithstanding any other provision of law, the
7 following conduct is lawful for a person who is twenty-one
8 years of age or older and shall not constitute grounds for
9 detention, search or arrest of a person or for a violation of
10 probation or parole, and cannabis products that relate to the
11 conduct are not contraband or subject to seizure or forfeiture
12 pursuant to the Controlled Substances Act or the Forfeiture
13 Act:

14 (1) possessing, using, being under the
15 influence of, displaying, purchasing, obtaining or transporting
16 not more than two ounces of cannabis or sixteen grams of
17 cannabis extracts;

18 (2) transferring, without financial
19 consideration, to a person who is twenty-one years of age or
20 older not more than two ounces of cannabis or sixteen grams of
21 cannabis extracts;

22 (3) possessing not more than two ounces of
23 cannabis and sixteen grams of cannabis extracts within the
24 person's private residence;

25 (4) if the person holds a valid personal

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1 production license, making, manufacturing with non-volatile
2 substances, keeping, storing or transferring without
3 remuneration to a person who is twenty-one years of age or
4 older homemade cannabis extract or cannabis products containing
5 not more than two ounces of cannabis or sixteen grams of
6 cannabis extracts;

7 (5) if the person holds a valid personal
8 production license, with respect to homegrown cannabis,
9 possessing, planting, cultivating, harvesting, drying,
10 manufacturing or transporting not more than six mature cannabis
11 plants and six immature cannabis plants and possessing the
12 cannabis produced by the plants;

13 (6) if the person holds a valid personal
14 production license, transporting homegrown cannabis, mature or
15 immature cannabis plants or cannabis products as described in
16 Paragraphs (2) and (4) of this subsection when the person is
17 moving the person's residence to another location or for
18 purposes of testing or manufacturing;

19 (7) smoking, ingesting or otherwise consuming
20 cannabis or cannabis products;

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

25 (9) assisting another person who is twenty-one

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1 years of age or older in, or allowing property to be used in,
2 any of the acts described in Paragraphs (1) through (8) of this
3 subsection.

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

9 C. Except as provided in Subsection D of this
10 section, none of the following shall, individually or in
11 combination with each other, constitute reasonable articulable
12 suspicion of a crime:

13 (1) the odor of cannabis or cannabis extracts
14 or of burnt cannabis or cannabis extracts;

15 (2) the possession of or the suspicion of
16 possession of cannabis without evidence of quantity in excess
17 of two ounces;

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

20 (4) the possession of or the suspicion of
21 possession of cannabis extracts without evidence of quantity in
22 excess of sixteen grams;

23 (5) the possession of multiple containers of
24 cannabis extracts without evidence of quantity in excess of
25 sixteen grams; or

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1 (6) the possession of cannabis or cannabis
2 extracts in proximity to any amount of cash or currency without
3 evidence of cannabis quantity in excess of two ounces or
4 cannabis extracts quantity in excess of sixteen grams.

5 D. Subsection C of this section shall not apply
6 when a law enforcement officer is investigating whether a
7 person is operating or in physical control of a vehicle or
8 watercraft while intoxicated, under the influence of or
9 impaired by alcohol or a drug or any combination thereof in
10 violation of Section 66-8-102 or 66-13-3 NMSA 1978.

11 SECTION 30. [NEW MATERIAL] PERSONAL CULTIVATION OF
12 CANNABIS.--

13 A. Personal cultivation of cannabis is subject to
14 the following restrictions:

15 (1) a person shall not plant, produce,
16 harvest, dry or manufacture cannabis plants unless the person
17 possesses a valid personal production license;

18 (2) a person shall plant, produce, harvest or
19 dry cannabis or manufacture cannabis products in accordance
20 with a local ordinance that does not conflict with the Cannabis
21 Regulation Act;

22 (3) the living plants and any cannabis
23 produced by the plants in excess of two ounces shall be kept
24 within the person's private residence, or upon the grounds of
25 that private residence, in a locked space and shall not be

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1 visible by normal unaided vision from a public place; and
2 (4) not more than six mature plants and six
3 immature plants may be produced per person; provided, however,
4 that no more than twelve mature plants may be present in one
5 household.

6 B. A local jurisdiction shall not prohibit a person
7 from producing homegrown cannabis as provided for in the
8 Cannabis Regulation Act.

9 SECTION 31. [NEW MATERIAL] LIMITS ON PERSONAL
10 CONSUMPTION--PENALTIES.--

11 A. Nothing in Section 29 or 30 of the Cannabis
12 Regulation Act shall be construed to:

- 13 (1) allow a person to:
14 (a) smoke cannabis or cannabis products
15 in a public place, except in a cannabis consumption area; or
16 (b) produce cannabis in public view; or
17 (2) restrict the ability of an individual or
18 private entity to prohibit conduct otherwise allowed in
19 Sections 29 and 30 of the Cannabis Regulation Act on the
20 individual's or private entity's privately owned property.

21 B. A person who violates:
22 (1) Subparagraph (a) of Paragraph (1) of
23 Subsection A of this section shall be subject to a civil
24 penalty of fifty dollars (\$50.00); and

25 (2) Subparagraph (b) of Paragraph (1) of

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

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

4 (1) means to inhale, exhale, burn or carry any
5 lighted or heated device or pipe, or any other lighted or
6 heated cannabis product intended for inhalation, whether
7 natural or synthetic, in any manner or in any form; and

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

10 SECTION 32. [NEW MATERIAL] UNLICENSED SALES OF CANNABIS--
11 PENALTIES.--

12 A. Except as allowed in the Cannabis Regulation Act
13 or the Lynn and Erin Compassionate Use Act, it is unlawful for
14 a person without a license to intentionally distribute cannabis
15 products.

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

18 (1) a fine of one hundred dollars (\$100);

19 (2) attendance at a four-hour evidence-based
20 drug education program;

21 (3) four hours of community service; or

22 (4) restorative justice mediation.

23 C. Except as otherwise provided in Section 14 of
24 the Cannabis Regulation Act, a person eighteen years of age or
25 older who violates Subsection A of this section is guilty of a

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1 misdemeanor and shall be sentenced pursuant to the provisions
2 of Section 31-19-1 NMSA 1978.

3 D. A person eighteen years of age or older who
4 violates Subsection A of this section and conducts unlicensed
5 cannabis sales from a storefront is guilty of a fourth degree
6 felony and shall be sentenced pursuant to the provisions of
7 Section 31-18-15 NMSA 1978.

8 SECTION 33. [NEW MATERIAL] CANNABIS WITHIN RESTRICTED
9 AREA--PENALTY.--Except as allowed in the Cannabis Regulation
10 Act or the Lynn and Erin Compassionate Use Act, a person shall
11 not possess or intentionally distribute any amount of a
12 cannabis product within three hundred feet of any school,
13 church or daycare center unless the person is a qualified
14 patient or is in or upon the grounds of a private residence, as
15 an invitee or resident, or a cannabis consumption area. A
16 person who violates this section is guilty of a misdemeanor and
17 shall be sentenced pursuant to the provisions of Section
18 31-19-1 NMSA 1978.

19 SECTION 34. [NEW MATERIAL] UNLAWFUL POSSESSION OF
20 CANNABIS--PENALTIES.--Except as allowed in the Lynn and Erin
21 Compassionate Use Act:

22 A. a person eighteen years of age or older and
23 younger than twenty-one years of age shall not possess cannabis
24 products. A person who violates this subsection shall be
25 subject to:

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- 1 (1) a fine of seventy-five dollars (\$75.00);
2 (2) attendance at a four-hour evidence-based
3 drug education program;
4 (3) four hours of community service; or
5 (4) restorative justice mediation;

6 B. a person younger than eighteen years of age
7 shall not possess cannabis products. A person who violates
8 this subsection shall be subject to:

- 9 (1) a fine of fifty dollars (\$50.00);
10 (2) attendance at a four-hour evidence-based
11 drug education program;
12 (3) four hours of community service; or
13 (4) restorative justice mediation; and

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

20 (1) between two and eight ounces of cannabis
21 or between sixteen and sixty-four grams of cannabis extracts is
22 guilty of a misdemeanor and shall be sentenced pursuant to the
23 provisions of Section 31-19-1 NMSA 1978; or

24 (2) more than eight ounces of cannabis or more
25 than sixty-four grams of cannabis extracts is guilty of a

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

3 SECTION 35. [NEW MATERIAL] UNLICENSED PRODUCTION OF
4 CANNABIS--PENALTIES.--Except as allowed in the Lynn and Erin
5 Compassionate Use Act:

6 A. a person younger than twenty-one years of age
7 shall not produce cannabis;

8 B. a person eighteen years of age or older and
9 younger than twenty-one years of age who violates Subsection A
10 of this section is guilty of a fourth degree felony; and

11 C. or as allowed in the Cannabis Regulation Act, a
12 person twenty-one years of age or older shall not possess more
13 than six mature cannabis plants and six immature cannabis
14 plants. A person who violates this subsection is guilty of a
15 fourth degree felony.

16 SECTION 36. [NEW MATERIAL] UNLICENSED MANUFACTURING OF
17 CANNABIS EXTRACTS--PENALTY.--Except as permitted by the Lynn
18 and Erin Compassionate Use Act, it is unlawful for any person
19 to use volatile solvents to manufacture cannabis extracts
20 without a license issued pursuant to the Cannabis Regulation
21 Act or the Lynn and Erin Compassionate Use Act. A person who
22 violates this section is guilty of a fourth degree felony.

23 SECTION 37. [NEW MATERIAL] DESTRUCTION OF ARREST AND
24 CONVICTION RECORDS--PROCEDURE.--

25 A. If a person is charged with any offense provided

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1 in Sections 32 through 36 of the Cannabis Regulation Act,
2 whether or not the person is convicted, all records held by a
3 court, or an agency of the state or a local jurisdiction that
4 relate to the person's arrest or conviction shall be
5 automatically destroyed two years after the date of the
6 person's conviction or the date of the person's arrest if there
7 was no conviction. If the person is or was a juvenile at the
8 time of the arrest or conviction, the records shall be retained
9 for two years or until the person is eighteen years of age,
10 whichever comes first, and shall then be destroyed. The
11 records shall also be removed from any statewide criminal
12 databases.

13 B. After destruction of records pursuant to
14 Subsection A of this section, a court, an agency of the state
15 or a local jurisdiction shall treat the case as if it never
16 occurred, and all index references to the case shall be
17 deleted. The court, agency or local jurisdiction shall respond
18 to an inquiry regarding the case that no record exists with
19 respect to the referenced person with respect to that case.

20 SECTION 38. [NEW MATERIAL] DESTRUCTION OF ARREST AND
21 CONVICTION RECORDS--PROCEDURE--RETROACTIVE.--

22 A. Records held by a court, an agency of the state
23 or a local jurisdiction that relate to a person's arrest or
24 conviction for trafficking cannabis in violation of Section
25 30-31-20 NMSA 1978, distribution of cannabis, possession with

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1 intent to distribute cannabis in violation of Section 30-31-22
2 NMSA 1978 or possession of cannabis in violation of Section
3 30-31-23 NMSA 1978 shall not be kept beyond two years from the
4 date of the person's conviction or from the date of the
5 person's arrest if there was no conviction. If the person was
6 a juvenile at the time of the arrest or conviction, the records
7 shall be retained until the offender is eighteen years of age
8 and shall then be destroyed. The records shall also be removed
9 from any statewide criminal databases.

10 B. If a person whose records would be subject to
11 destruction pursuant to Subsection A of this section is
12 incarcerated for an offense listed in that subsection at the
13 time the person's records would be destroyed, the two-year
14 record retention period shall begin upon the person's release
15 from incarceration.

16 C. For the purpose of this section, "records"
17 includes records of arrests resulting in a criminal proceeding
18 and records relating to other offenses charged in the
19 accusatory pleading, whether the defendant was acquitted,
20 convicted or the charges were dismissed.

21 SECTION 39. [NEW MATERIAL] RECALL OR DISMISSAL OF
22 SENTENCES--INCARCERATED PERSONS.--

23 A. Within thirty days following the effective date
24 of the Cannabis Regulation Act, a corrections facility, a
25 county jail or a juvenile corrections facility in which a

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1 person is currently incarcerated for an offense that is no
2 longer a crime pursuant to the provisions of the Cannabis
3 Regulation Act, or that would have resulted in a lesser offense
4 if that act had been in effect at the time of the offense,
5 shall notify the court that the convicted person's case should
6 be reopened to consider possible recall or dismissal of the
7 person's sentence.

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

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

16 D. A person who is resentenced pursuant to this
17 section shall not be sentenced to a term longer than the
18 person's original sentence and shall not have any charges
19 reinstated that were originally dismissed pursuant to a
20 negotiated plea agreement.

21 E. A person who has completed the person's sentence
22 for a conviction, whether by trial or negotiated plea, who
23 would not have been guilty of an offense or who would have been
24 guilty of a lesser offense if the Cannabis Regulation Act had
25 been in effect at the time of the offense may notify the court

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1 in writing to have the conviction dismissed and sealed because
2 the prior conviction is now legally invalid or redesignated as
3 an infraction. The court shall redesignate the conviction as
4 an infraction or dismiss and seal the conviction as legally
5 invalid because of the enactment of the Cannabis Regulation Act
6 unless the court makes a finding that the conviction is not
7 legally invalid or was not redesignated as an infraction
8 pursuant to that act.

9 F. The court clerk shall notify the department of
10 public safety that a case has been dismissed. Upon notice, the
11 department of public safety shall erase the arrest record
12 pertaining to the offense; provided that, if the arrest
13 included multiple charges, only the related charge shall be
14 erased.

15 G. Nothing in this section is intended to diminish
16 or abrogate any rights or remedies otherwise available to a
17 person who was convicted of or incarcerated for an offense.

18 H. The provisions of this section shall apply
19 equally to juvenile delinquency adjudications and convictions
20 of a juvenile person if the juvenile would not have been guilty
21 of an offense or would have been guilty of a lesser offense as
22 provided in the Cannabis Regulation Act.

23 I. No fee or cost of any kind shall be imposed
24 against a person whose sentence is reviewed pursuant to this
25 section.

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1 SECTION 40. ~~[NEW MATERIAL]~~ WRIT OF MANDAMUS.--Any person
2 may commence a legal action for a writ of mandamus to compel
3 the division to perform its duties pursuant to the Cannabis
4 Regulation Act.

5 SECTION 41. ~~[NEW MATERIAL]~~ CANNABIS REGULATION FUND.--

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

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

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

22 SECTION 42. ~~[NEW MATERIAL]~~ COMMUNITY GRANTS REINVESTMENT
23 FUND--COMMUNITY GRANTS REINVESTMENT PROGRAM.--

24 A. The "community grants reinvestment fund" is
25 created in the state treasury. The fund consists of

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

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

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

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

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

16 (3) programs for outreach, education and
17 treatment, based on principles of harm reduction, for homeless
18 youth and out-of-school youth with substance use disorders;

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

23 (5) youth-focused substance use disorder
24 treatment programs that are culturally and gender competent,
25 trauma-informed, based on principles of harm reduction and

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

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

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

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1 (8) workforce training and wage structures
2 that increase the hiring pool of behavioral health staff with
3 substance use disorder prevention and treatment expertise,
4 provide ongoing education and coaching that increase substance
5 use treatment providers' core competencies and train providers
6 on promising and evidenced-based practices;

7 (9) construction of community-based youth
8 treatment facilities;

9 (10) contracts with county behavioral health
10 programs for the provision of services described in this
11 subsection; and

12 (11) programs that provide equity resources,
13 including start-up funding, incubation, technical assistance,
14 training and educational opportunities, for people who want to
15 become part of the cannabis industry in New Mexico.

16 C. A qualified community-based nonprofit
17 organization or governmental entity may apply for a grant from
18 the community grants reinvestment fund. Applications shall be
19 reviewed by the department of health.

20 SECTION 43. [NEW MATERIAL] CANNABIS HEALTH AND SAFETY
21 FUND.--

22 A. The "cannabis health and safety fund" is created
23 in the state treasury. The fund consists of appropriations,
24 other money deposited in the fund and money otherwise accruing
25 to the fund. The department of health shall administer the

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1 fund, and money in the fund is subject to appropriation to the
2 department of health for the community grants reinvestment
3 program as provided in Subsection B of Section 42 of the
4 Cannabis Regulation Act. Any unexpended or unencumbered
5 balance remaining at the end of any fiscal year shall not
6 revert to the general fund. Money in the fund shall be
7 disbursed on warrants signed by the secretary of finance and
8 administration pursuant to vouchers signed by the secretary of
9 health or the secretary's authorized representative.

10 B. The cannabis health and safety fund is created
11 for the purpose of:

12 (1) supporting qualified patients
13 participating in the medical cannabis program in accordance
14 with the Lynn and Erin Compassionate Use Act who also
15 participate in the medical cannabis subsidy program; and

16 (2) developing and executing a comprehensive
17 and sustained public education campaign, based on principles of
18 harm reduction, that:

19 (a) promotes road safety and discourages
20 driving while impaired;

21 (b) promotes abstinence for persons
22 under twenty-one years of age; and

23 (c) encourages responsible use by
24 adults.

25 SECTION 44. [NEW MATERIAL] CANNABIS RESEARCH FUND.--

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1 A. The "cannabis research fund" is created in the
2 state treasury. The fund consists of money transferred from
3 the cannabis excise tax, appropriations, income from investment
4 of the fund and money otherwise accruing to the fund. Money in
5 the fund is appropriated to the board of regents of the
6 university of New Mexico for the university of New Mexico
7 health sciences center for the purpose of research related to
8 medical and recreational cannabis use and substance use
9 disorder treatment. Money in the fund shall be disbursed on
10 warrants signed by the secretary of finance and administration
11 pursuant to vouchers signed by the chancellor for health
12 sciences of the university of New Mexico or the chancellor's
13 authorized representative.

14 B. The chancellor shall:

15 (1) oversee and keep a record of any research
16 and how the research relates to the use, effects or efficacy of
17 medical and recreational cannabis; impacts on public health,
18 health costs associated with cannabis use and whether cannabis
19 use is associated with an increase or decrease in the use of
20 alcohol or other drugs; the impact of treatment for maladaptive
21 cannabis use and the effectiveness of different treatment
22 programs; public safety issues related to cannabis use; the
23 effectiveness of the packaging and labeling requirements and
24 advertising and marketing restrictions on the prevention of
25 underage access to and use of cannabis products; cannabis use

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1 rates, maladaptive use rates for adults and youth and diagnosis
2 rates of cannabis-related substance use disorders;
3 environmental issues related to cannabis production and the
4 criminal prohibition of cannabis production; and supervised
5 injectable opioid treatment by medical practitioners under
6 strict controls in a clinical setting to select heroin-
7 dependent persons;

8 (2) oversee distribution documentation to each
9 person conducting research that identifies the person
10 conducting the research and states that the person is
11 conducting research pursuant to the Lynn and Erin Compassionate
12 Use Act and the Cannabis Regulation Act;

13 (3) ensure that research conducted pursuant to
14 the Lynn and Erin Compassionate Use Act and the Cannabis
15 Regulation Act is conducted in accordance with institutional
16 and federal requirements relating to the protection of human
17 subjects and is approved by an institutional review board; and

18 (4) prepare and submit:

19 (a) an annual report to the legislative
20 finance committee that describes expenditures from the cannabis
21 research fund and research conducted pursuant to the Lynn and
22 Erin Compassionate Use Act and the Cannabis Regulation Act
23 during the fiscal year preceding the submission of the report;
24 and

25 (b) by November 1, 2020, and every three

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1 years thereafter, a report to the legislative health and human
2 services committee that describes the research conducted and
3 any findings, reports or publications that resulted from the
4 research.

5 SECTION 45. [NEW MATERIAL] EXEMPTION FROM CRIMINAL AND
6 CIVIL PENALTIES--RESEARCHERS.--A person shall not be subject to
7 arrest or prosecution, penalized in any manner or denied any
8 right or privilege solely because the person produced,
9 possessed, distributed, dispensed or purchased cannabis from a
10 person licensed pursuant to the Lynn and Erin Compassionate Use
11 Act or the Cannabis Regulation Act if the person produced,
12 possessed, distributed, dispensed or purchased the cannabis
13 solely for the purpose of research conducted pursuant to the
14 Lynn and Erin Compassionate Use Act or the Cannabis Regulation
15 Act.

16 SECTION 46. [NEW MATERIAL] SHORT TITLE.--Sections 46
17 through 53 of this act may be cited as the "Cannabis Tax Act".

18 SECTION 47. [NEW MATERIAL] DEFINITIONS.--As used in the
19 Cannabis Tax Act:

20 A. "cannabis":
21 (1) means all parts of the plant Cannabis
22 sativa Linnaeus containing a delta-9-tetrahydrocannabinol
23 concentration of more than three-tenths percent on a dry weight
24 basis, whether growing or not; the seeds of the plant; the
25 resin extracted from any part of the plant; and every compound,

1 manufacture, salt, derivative, mixture or preparation of the
2 plant, its seeds or its resin; and

3 (2) does not include:

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

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

13 B. "cannabis extract":

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

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

21 C. "cannabis product":

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

25 (2) does not include the weight of any other

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1 ingredient combined with cannabis or cannabis extracts to
2 prepare topical or oral administrations, food, drink or another
3 product;

4 D. "cannabis retailer" means a person that is
5 licensed by the cannabis control division of the regulation and
6 licensing department to sell and courier cannabis products to a
7 person who purchases, acquires, possesses or uses a cannabis
8 product for a purpose other than resale;

9 E. "county area" means that portion of a county
10 located outside the boundaries of any municipality, except that
11 for H class counties, "county area" means the entire county;

12 F. "department" means the taxation and revenue
13 department; and

14 G. "licensee" means a person who holds a license
15 issued pursuant to the Cannabis Regulation Act.

16 SECTION 48. [NEW MATERIAL] CANNABIS EXCISE TAX.--

17 A. An excise tax is imposed on a licensee that
18 sells cannabis products in this state on which the tax imposed
19 by this section has not been paid. The tax imposed by this
20 section may be referred to as the "cannabis excise tax". If
21 the price paid does not represent the value of the cannabis
22 product, the tax rate shall be applied to the reasonable value
23 of the cannabis product at the time the product was purchased.

24 B. The rate of the cannabis excise tax is nine
25 percent and is applied to the price paid for the cannabis

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1 product.

2 C. The cannabis excise tax shall not apply to
3 retail sales of medical cannabis products sold to a qualified
4 patient or to a primary caregiver who presents a registry
5 identification card issued pursuant to the Lynn and Erin
6 Compassionate Use Act at the time of the sale.

7 D. Cannabis sold wholesale from a licensee to
8 another shall not incur taxation.

9 SECTION 49. [NEW MATERIAL] MUNICIPAL CANNABIS TAX.--

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

16 B. The imposition of an increment of the municipal
17 cannabis tax shall not be subject to referendum.

18 C. The rate of the municipal cannabis tax shall be
19 no more than three percent, which may be imposed in any number
20 of one-sixteenth percent increments, and is applied to the
21 price of the cannabis product. If the price of the cannabis
22 product does not represent the value of the cannabis product,
23 the tax rate shall be applied to the reasonable value of the
24 cannabis product at the time that the cannabis product was
25 purchased.

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1 D. The governing body of a municipality, at the
2 time of enacting an ordinance imposing a municipal cannabis
3 tax, may dedicate the revenue for any municipal purpose.

4 E. An ordinance enacted pursuant to this section
5 shall include an effective date of July 1 or January 1.

6 **SECTION 50. [NEW MATERIAL] COUNTY CANNABIS TAX.--**

7 A. The majority of the members of the governing
8 body of a county may enact an ordinance imposing an excise tax
9 on a cannabis retailer that sells cannabis products in the
10 county area on which the tax imposed by this section has not
11 been paid. The tax imposed pursuant to this section may be
12 referred to as the "county cannabis tax".

13 B. The imposition of an increment of the county
14 cannabis tax shall not be subject to referendum.

15 C. The rate of the county cannabis tax shall be no
16 more than three percent, which may be imposed in any number of
17 one-sixteenth percent increments, and is applied to the price
18 of the cannabis product. If the price of the cannabis product
19 does not represent the value of the cannabis product, the tax
20 rate shall be applied to the reasonable value of the cannabis
21 product at the time that the cannabis product was purchased.

22 D. The governing body of a county, at the time of
23 enacting an ordinance imposing a county cannabis tax, may
24 dedicate the revenue for county general purposes.

25 E. An ordinance enacted pursuant to this section

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1 shall include an effective date of July 1 or January 1.

2 SECTION 51. [NEW MATERIAL] DATE PAYMENT DUE.--The taxes
3 imposed pursuant to the Cannabis Tax Act are to be paid on or
4 before the twenty-fifth day of the month following the month in
5 which the taxable event occurs.

6 SECTION 52. [NEW MATERIAL] ADMINISTRATIVE CHARGE.--The
7 department may deduct an amount not to exceed three percent of
8 the proceeds of the municipal cannabis tax and county cannabis
9 tax as a charge for the administrative costs of collection,
10 which amount shall be retained by the department for use in
11 administration of those taxes.

12 SECTION 53. [NEW MATERIAL] INTERPRETATION OF ACT--
13 ADMINISTRATION AND ENFORCEMENT OF TAX.--The department shall
14 administer and enforce the collection of the cannabis excise
15 tax, municipal cannabis tax and county cannabis tax pursuant to
16 the Tax Administration Act.

17 SECTION 54. A new section of the Tax Administration Act
18 is enacted to read:

19 "[NEW MATERIAL] DISTRIBUTION--CANNABIS EXCISE TAX.--

20 A. A distribution pursuant to Section 7-1-6.1 NMSA
21 1978 shall be made to the cannabis health and safety fund in an
22 amount equal to six percent of the net receipts attributable to
23 the cannabis excise tax.

24 B. A distribution pursuant to Section 7-1-6.1 NMSA
25 1978 shall be made to the cannabis research fund in an amount

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1 equal to two percent of the net receipts attributable to the
2 cannabis excise tax.

3 C. A distribution pursuant to Section 7-1-6.1 NMSA
4 1978 shall be made to the local DWI grant fund in an amount
5 equal to six percent of the net receipts attributable to the
6 cannabis excise tax; provided that the revenue is used for the
7 purposes described in Paragraphs (3) through (5) of Subsection
8 A of Section 11-6A-3 NMSA 1978.

9 D. A distribution pursuant to Section 7-1-6.1 NMSA
10 1978 shall be made to the community grants reinvestment fund in
11 an amount equal to twenty percent of the net receipts
12 attributable to the cannabis excise tax."

13 SECTION 55. A new section of the Tax Administration Act
14 is enacted to read:

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

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

25 B. A transfer pursuant to Section 7-1-6.1 NMSA 1978

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

8 SECTION 56. Section 7-1-2 NMSA 1978 (being Laws 1965,
9 Chapter 248, Section 2, as amended) is amended to read:

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

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

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

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

25 B. the administration and enforcement of the

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1 following taxes, surtaxes, advanced payments or tax acts as
2 they now exist or may hereafter be amended:

- 3 (1) Resources Excise Tax Act;
- 4 (2) Severance Tax Act;
- 5 (3) any severance surtax;
- 6 (4) Oil and Gas Severance Tax Act;
- 7 (5) Oil and Gas Conservation Tax Act;
- 8 (6) Oil and Gas Emergency School Tax Act;
- 9 (7) Oil and Gas Ad Valorem Production Tax Act;
- 10 (8) Natural Gas Processors Tax Act;
- 11 (9) Oil and Gas Production Equipment Ad

12 Valorem Tax Act;

- 13 (10) Copper Production Ad Valorem Tax Act;
- 14 (11) any advance payment required to be made
15 by any act specified in this subsection, which advance payment
16 shall be considered a tax for the purposes of the Tax

17 Administration Act;

- 18 (12) Enhanced Oil Recovery Act;
- 19 (13) Natural Gas and Crude Oil Production
20 Incentive Act; and

- 21 (14) intergovernmental production tax credit
22 and intergovernmental production equipment tax credit;

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

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- 1 (1) Weight Distance Tax Act;
- 2 (2) the workers' compensation fee authorized
- 3 by Section 52-5-19 NMSA 1978, which fee shall be considered a
- 4 tax for purposes of the Tax Administration Act;
- 5 (3) Uniform Unclaimed Property Act (1995);
- 6 (4) 911 emergency surcharge and the network
- 7 and database surcharge, which surcharges shall be considered
- 8 taxes for purposes of the Tax Administration Act;
- 9 (5) the solid waste assessment fee authorized
- 10 by the Solid Waste Act, which fee shall be considered a tax for
- 11 purposes of the Tax Administration Act;
- 12 (6) the water conservation fee imposed by
- 13 Section 74-1-13 NMSA 1978, which fee shall be considered a tax
- 14 for the purposes of the Tax Administration Act; and
- 15 (7) the gaming tax imposed pursuant to the
- 16 Gaming Control Act; and
- 17 D. the administration and enforcement of all other
- 18 laws, with respect to which the department is charged with
- 19 responsibilities pursuant to the Tax Administration Act, but
- 20 only to the extent that the other laws do not conflict with the
- 21 Tax Administration Act."

22 SECTION 57. Section 7-1-6.15 NMSA 1978 (being Laws 1983,
23 Chapter 211, Section 20, as amended by Laws 2015, Chapter 89,
24 Section 1 and by Laws 2015, Chapter 100, Section 1) is amended
25 to read:

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1 "7-1-6.15. ADJUSTMENTS OF DISTRIBUTIONS OR TRANSFERS TO
2 MUNICIPALITIES OR COUNTIES.--

3 A. The provisions of this section apply to:

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

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

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

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

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

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

19 (7) any distribution to a county from the
20 county government road fund pursuant to Section 7-1-6.26 NMSA
21 1978;

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

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

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

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

25 (2) if the revised total for prior periods

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

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

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

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

24 (2) that the municipality or county has ninety
25 days from the date notice is made to enter into a mutually

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1 agreeable repayment agreement with the department;

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

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

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

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

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

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

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1 increments as nearly equal as practicable and sufficient to
2 recover the amount;

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

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

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

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

24 F. No later than ninety days from the date notice
25 pursuant to Subsection D of this section is given, the

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

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

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

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

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

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

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1 this section.

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

21 J. As used in this section:

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

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1 relate to the current month or that otherwise relate to
2 obligations due for the current month;

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

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

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

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

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

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1 current month multiplied by twelve;

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

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

12 SECTION 58. Section 7-9-73.2 NMSA 1978 (being Laws 1998,
13 Chapter 95, Section 2 and Laws 1998, Chapter 99, Section 4, as
14 amended) is amended to read:

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

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

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

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

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

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

9 SECTION 59. Section 9-16-4 NMSA 1978 (being Laws 1983,
10 Chapter 297, Section 20, as amended) is amended to read:

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

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

23 SECTION 60. Section 11-6A-3 NMSA 1978 (being Laws 1993,
24 Chapter 65, Section 3, as amended) is amended to read:

25 "11-6A-3. LOCAL DWI GRANT PROGRAM--FUND.--

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1 A. The division shall establish a local DWI grant
2 program to make grants to municipalities or counties for:

3 (1) new, innovative or model programs,
4 services or activities to prevent or reduce the incidence of
5 DWI, alcoholism, alcohol abuse, drug addiction or drug abuse;
6 [~~and~~]

7 (2) programs, services or activities to
8 prevent or reduce the incidence of domestic abuse related to
9 DWI, alcoholism, alcohol abuse, drug addiction or drug abuse;

10 (3) research to determine whether a driver is
11 operating a vehicle while impaired, including impairment by the
12 use of cannabis products;

13 (4) implementing best practices in law
14 enforcement agencies regarding impairment by the use of
15 cannabis products; and

16 (5) funding drug recognition expert field
17 certification training for law enforcement officers and for
18 purchasing roadside impairment tests that are validated for
19 testing cannabis impairment.

20 B. Grants shall be awarded by the council pursuant
21 to the advice and recommendations of the division.

22 C. The "local DWI grant fund" is created in the
23 state treasury and shall be administered by the division. Two
24 million five hundred thousand dollars (\$2,500,000) of liquor
25 excise tax revenues distributed to the fund and all other money

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1 in the fund, other than money appropriated for distribution
2 pursuant to Subsections D and E of this section and money
3 appropriated for DWI program distributions, are appropriated to
4 the division to make grants to municipalities and counties upon
5 council approval in accordance with the program established
6 under the Local DWI Grant Program Act and to evaluate DWI
7 grantees and the local DWI grant program. Money in the fund
8 may be used for drug courts. An amount equal to the liquor
9 excise tax revenues distributed annually to the fund, less five
10 million six hundred thousand dollars (\$5,600,000), is
11 appropriated to the division to make DWI program distributions
12 to counties upon council approval of programs in accordance
13 with the provisions of the Local DWI Grant Program Act. No
14 more than six hundred thousand dollars (\$600,000) of liquor
15 excise tax revenues distributed to the fund in any fiscal year
16 shall be expended for administration of the grant program.
17 Balances in the fund at the end of any fiscal year shall not
18 revert to the general fund.

19 D. Two million eight hundred thousand dollars
20 (\$2,800,000) of the liquor excise tax revenues distributed to
21 the local DWI grant fund is appropriated to the division for
22 distribution to the following counties in the following amounts
23 for funding of alcohol detoxification and treatment facilities:

24 (1) one million seven hundred thousand dollars
25 (\$1,700,000) to class A counties with a population of over

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1 three hundred thousand persons according to the 1990 federal
2 decennial census;

3 (2) three hundred thousand dollars (\$300,000)
4 each to counties reclassified in 2002 as class A counties with
5 a population of more than ninety thousand but less than one
6 hundred thousand persons according to the 1990 federal
7 decennial census;

8 (3) two hundred thousand dollars (\$200,000) to
9 class B counties with a population of more than thirty thousand
10 but less than forty thousand persons according to the 1990
11 federal decennial census;

12 (4) one hundred fifty thousand dollars
13 (\$150,000) to class B counties with a population of more than
14 sixty-two thousand but less than sixty-five thousand persons
15 according to the 1990 federal decennial census; and

16 (5) one hundred fifty thousand dollars
17 (\$150,000) to class B counties with a population of more than
18 thirteen thousand but less than fifteen thousand persons
19 according to the 1990 federal decennial census.

20 E. Three hundred thousand dollars (\$300,000) of the
21 liquor excise tax revenues distributed to the local DWI grant
22 fund is appropriated to the division for the interlock device
23 fund.

24 F. In awarding DWI grants to local communities, the
25 council:

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1 (1) may fund new or existing innovative or
2 model programs, services or activities designed to prevent or
3 reduce the incidence of DWI, alcoholism or alcohol abuse;

4 (2) may fund existing community-based
5 programs, services or facilities for prevention, screening and
6 treatment of alcoholism and alcohol abuse;

7 (3) may fund new or existing innovative or
8 model programs, services or activities of any kind designed to
9 prevent or reduce the incidence of domestic abuse related to
10 DWI, alcoholism or alcohol abuse;

11 (4) may fund existing community-based
12 programs, services or facilities for prevention and treatment
13 of domestic abuse related to DWI, alcoholism or alcohol abuse;

14 (5) shall give consideration to a broad range
15 of approaches to prevention, education, screening, treatment or
16 alternative sentencing, including programs that combine
17 incarceration, treatment and aftercare, to address the problem
18 of DWI, alcoholism or alcohol abuse; and

19 (6) shall make grants only to counties or
20 municipalities in counties that have established a DWI planning
21 council and adopted a county DWI plan or are parties to a
22 multicounty DWI plan that has been approved by the council and
23 approved pursuant to Chapter 43, Article 3 NMSA 1978 and only
24 for programs, services or activities consistent with that plan.

25 A DWI plan shall also comply with local DWI grant program rules

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1 and guidelines.

2 G. The council shall use the criteria in Subsection
3 F of this section to approve DWI programs, services or
4 activities for funding through the county DWI program
5 distribution. Sixty-five percent of the DWI grants awarded to
6 local communities shall be used for alcohol-related treatment
7 and detoxification programs."

8 SECTION 61. Section 26-2B-1 NMSA 1978 (being Laws 2007,
9 Chapter 210, Section 1) is amended to read:

10 "26-2B-1. SHORT TITLE.--~~[Sections 1 through 7 of this~~
11 ~~act]~~ Chapter 26, Article 2B NMSA 1978 may be cited as the "Lynn
12 and Erin Compassionate Use Act" in honor of Lynn Pierson and
13 Erin Armstrong."

14 SECTION 62. Section 26-2B-3 NMSA 1978 (being Laws 2007,
15 Chapter 210, Section 3) is amended to read:

16 "26-2B-3. DEFINITIONS.--As used in the Lynn and Erin
17 Compassionate Use Act:

18 A. "adequate supply" means an amount of cannabis,
19 in any form approved by the department, possessed by a
20 qualified patient or collectively possessed by a qualified
21 patient and the qualified patient's primary caregiver that is
22 determined by rule of the department to be no more than
23 reasonably necessary to ensure the uninterrupted availability
24 of cannabis for a period of three months and that is derived
25 solely from an intrastate source;

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- 1 B. "debilitating medical condition" means:
- 2 (1) cancer;
- 3 (2) glaucoma;
- 4 (3) multiple sclerosis;
- 5 (4) damage to the nervous tissue of the spinal
- 6 cord, with objective neurological indication of intractable
- 7 spasticity;
- 8 (5) epilepsy;
- 9 (6) positive status for human immunodeficiency
- 10 virus or acquired immune deficiency syndrome;
- 11 (7) admitted into hospice care in accordance
- 12 with rules promulgated by the department; or
- 13 (8) any other medical condition, medical
- 14 treatment or disease as approved by the department;
- 15 C. "department" means the department of health;
- 16 D. "licensed producer" means any person or
- 17 association of persons within New Mexico [~~that the department~~
- 18 ~~determines to be qualified~~] licensed by the cannabis control
- 19 division of the regulation and licensing department to produce,
- 20 possess, distribute and dispense cannabis pursuant to the Lynn
- 21 and Erin Compassionate Use Act [~~and that is licensed by the~~
- 22 ~~department~~];
- 23 E. "practitioner" means a person licensed in New
- 24 Mexico to prescribe and administer drugs that are subject to
- 25 the Controlled Substances Act;

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1 F. "primary caregiver" means a resident of New
2 Mexico who is at least eighteen years of age and who has been
3 designated by the patient's practitioner as being necessary to
4 take responsibility for managing the well-being of a qualified
5 patient with respect to the medical use of cannabis pursuant to
6 the provisions of the Lynn and Erin Compassionate Use Act;

7 G. "qualified patient" means a resident of New
8 Mexico who has been diagnosed by a practitioner as having a
9 debilitating medical condition and has received written
10 certification and a registry identification card issued
11 pursuant to the Lynn and Erin Compassionate Use Act; and

12 H. "written certification" means a statement in a
13 patient's medical records or a statement signed by a patient's
14 practitioner that, in the practitioner's professional opinion,
15 the patient has a debilitating medical condition and the
16 practitioner believes that the potential health benefits of the
17 medical use of cannabis would likely outweigh the health risks
18 for the patient. A written certification is not valid for more
19 than one year from the date of issuance."

20 SECTION 63. Section 26-2B-7 NMSA 1978 (being Laws 2007,
21 Chapter 210, Section 7) is amended to read:

22 "26-2B-7. [~~REGISTRY IDENTIFICATION CARDS~~] DEPARTMENT
23 RULES--DUTIES--REGISTRY IDENTIFICATION CARDS.--

24 A. No later than October 1, 2007, and after
25 consultation with the advisory board, the department shall

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1 promulgate rules in accordance with the State Rules Act to
2 implement the purpose of the Lynn and Erin Compassionate Use
3 Act. The rules shall:

4 (1) govern the manner in which the department
5 will consider applications for registry identification cards
6 and for the renewal of identification cards for qualified
7 patients and primary caregivers;

8 (2) define the amount of cannabis that is
9 necessary to constitute an adequate supply, including amounts
10 for topical treatments;

11 (3) identify criteria and set forth procedures
12 for including additional medical conditions, medical treatments
13 or diseases to the list of debilitating medical conditions that
14 qualify for the medical use of cannabis. Procedures shall
15 include a petition process and shall allow for public comment
16 and public hearings before the advisory board;

17 (4) set forth additional medical conditions,
18 medical treatments or diseases to the list of debilitating
19 medical conditions that qualify for the medical use of cannabis
20 as recommended by the advisory board;

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

24 ~~(6) develop a distribution system for medical~~
25 ~~cannabis that provides for:~~

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1 ~~(a) cannabis production facilities~~
2 ~~within New Mexico housed on secured grounds and operated by~~
3 ~~licensed producers; and~~

4 ~~(b) distribution of medical cannabis to~~
5 ~~qualified patients or their primary caregivers to take place at~~
6 ~~locations that are designated by the department and that are~~
7 ~~not within three hundred feet of any school, church or daycare~~
8 ~~center;~~

9 ~~(7)]~~ (5) determine additional duties and
10 responsibilities of the advisory board; and

11 ~~[(8)]~~ (6) be revised and updated as necessary.

12 B. The department shall issue registry
13 identification cards to a patient and to the primary caregiver
14 for that patient, if any, who submit the following, in
15 accordance with the department's rules:

16 (1) a written certification;

17 (2) the name, address and date of birth of the
18 patient;

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

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

23 C. The department shall verify the information
24 contained in an application submitted pursuant to Subsection B
25 of this section and shall approve or deny an application within

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1 thirty days of receipt. The department may deny an application
2 only if the applicant did not provide the information required
3 pursuant to Subsection B of this section or if the department
4 determines that the information provided is false. A person
5 whose application has been denied shall not reapply for six
6 months from the date of the denial unless otherwise authorized
7 by the department.

8 D. The department shall issue a registry
9 identification card within five days of approving an
10 application, and a card shall expire one year after the date of
11 issuance. A registry identification card shall contain:

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

14 (2) the date of issuance and expiration date
15 of the registry identification card; and

16 (3) other information that the department may
17 require by rule.

18 E. A person who possesses a registry identification
19 card shall notify the department of any change in the person's
20 name, address, qualified patient's practitioner, qualified
21 patient's primary caregiver or change in status of the
22 qualified patient's debilitating medical condition within ten
23 days of the change.

24 F. Possession of or application for a registry
25 identification card shall not constitute probable cause or give

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1 rise to reasonable suspicion for a governmental agency to
2 search the person or property of the person possessing or
3 applying for the card.

4 G. The department shall maintain a confidential
5 file containing the names and addresses of the persons who have
6 either applied for or received a registry identification card.
7 Individual names on the list shall be confidential and not
8 subject to disclosure, except:

9 (1) to authorized employees or agents of the
10 department as necessary to perform the duties of the department
11 pursuant to the provisions of the Lynn and Erin Compassionate
12 Use Act;

13 (2) to authorized employees of state or local
14 law enforcement agencies, but only for the purpose of verifying
15 that a person is lawfully in possession of a registry
16 identification card; or

17 (3) as provided in the federal Health
18 Insurance Portability and Accountability Act of 1996."

19 **SECTION 64.** Section 30-31-2 NMSA 1978 (being Laws 1972,
20 Chapter 84, Section 2, as amended) is amended to read:

21 "30-31-2. DEFINITIONS.--As used in the Controlled
22 Substances Act:

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

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1 B. "agent" includes an authorized person who acts
2 on behalf of a manufacturer, distributor or dispenser. It does
3 not include a common or contract carrier, public
4 warehouseperson or employee of the carrier or warehouseperson;

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

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

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

12 F. "counterfeit substance" means a controlled
13 substance that bears the unauthorized trademark, trade name,
14 imprint, number, device or other identifying mark or likeness
15 of a manufacturer, distributor or dispenser other than the
16 person who in fact manufactured, distributed or dispensed the
17 controlled substance;

18 G. "deliver" means the actual, constructive or
19 attempted transfer from one person to another of a controlled
20 substance or controlled substance analog, whether or not there
21 is an agency relationship;

22 H. "dispense" means to deliver a controlled
23 substance to an ultimate user or research subject pursuant to
24 the lawful order of a practitioner, including the
25 administering, prescribing, packaging, labeling or compounding

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1 necessary to prepare the controlled substance for that
2 delivery;

3 I. "dispenser" means a practitioner who dispenses
4 and includes hospitals, pharmacies and clinics where controlled
5 substances are dispensed;

6 J. "distribute" means to deliver other than by
7 administering or dispensing a controlled substance or
8 controlled substance analog;

9 K. "drug" or "substance" means substances
10 recognized as drugs in the official United States
11 pharmacopoeia, official homeopathic pharmacopoeia of the United
12 States or official national formulary or any respective
13 supplement to those publications. It does not include devices
14 or their components, parts or accessories;

15 ~~L. "hashish" means the resin extracted from any~~
16 ~~part of marijuana, whether growing or not, and every compound,~~
17 ~~manufacture, salt, derivative, mixture or preparation of such~~
18 ~~resins;~~

19 M.] L. "manufacture" means the production,
20 preparation, compounding, conversion or processing of a
21 controlled substance or controlled substance analog by
22 extraction from substances of natural origin or independently
23 by means of chemical synthesis or by a combination of
24 extraction and chemical synthesis and includes any packaging or
25 repackaging of the substance or labeling or relabeling of its

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1 container, except that this term does not include the
2 preparation or compounding of a controlled substance:

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

6 (2) by a practitioner, or by the
7 practitioner's agent under the practitioner's supervision, for
8 the purpose of or as an incident to research, teaching or
9 chemical analysis and not for sale;

10 ~~[N. "marijuana" means all parts of the plant~~
11 ~~cannabis, including any and all varieties, species and~~
12 ~~subspecies of the genus Cannabis, whether growing or not, the~~
13 ~~seeds thereof and every compound, manufacture, salt,~~
14 ~~derivative, mixture or preparation of the plant or its seeds.~~
15 ~~It does not include the mature stalks of the plant, hashish,~~
16 ~~tetrahydrocannabinols extracted or isolated from marijuana,~~
17 ~~fiber produced from the stalks, oil or cake made from the seeds~~
18 ~~of the plant, any other compound, manufacture, salt,~~
19 ~~derivative, mixture or preparation of the mature stalks, fiber,~~
20 ~~oil or cake, or the sterilized seed of the plant that is~~
21 ~~incapable of germination; or the plant Cannabis sativa L. and~~
22 ~~any 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 ~~Θ.]~~ M. "narcotic drug" means any of the following,

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~~[bracketed material] = delete~~

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 or
8 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 all
12 parts of the plant of the species *Papaver somniferum* L. except
13 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 equivalent
17 of any of these substances except decocainized coca leaves or
18 extractions of coca leaves that do not contain cocaine or
19 ecgonine;

20 [P-] N. "opiate" means any substance having an
21 addiction-forming or addiction-sustaining liability similar to
22 morphine or being capable of conversion into a drug having
23 addiction-forming or addiction-sustaining liability. "Opiate"
24 does not include, unless specifically designated as controlled
25 under Section 30-31-5 NMSA 1978, the dextrorotatory isomer of

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1 3-methoxy-n-methylmorphinan and its salts, dextromethorphan.

2 "Opiate" does include its racemic and levorotatory forms;

3 [Q-] Q. "person" means an individual, partnership,
4 corporation, association, institution, political subdivision,
5 government agency or other legal entity;

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

14 [S-] Q. "prescription" means an order given
15 individually for the person for whom is prescribed a controlled
16 substance, either directly from a licensed practitioner or the
17 practitioner's agent to the pharmacist, including by means of
18 electronic transmission, or indirectly by means of a written
19 order signed by the prescriber, bearing the name and address of
20 the prescriber, the prescriber's license classification, the
21 name and address of the patient, the name and quantity of the
22 drug prescribed, directions for use and the date of issue and
23 in accordance with the Controlled Substances Act or rules
24 adopted thereto;

25 [T-] R. "scientific investigator" means a person

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1 registered to conduct research with controlled substances in
2 the course of the person's professional practice or research
3 and includes analytical laboratories;

4 [U.] S. "ultimate user" means a person who lawfully
5 possesses a controlled substance for the person's own use or
6 for the use of a member of the person's household or for
7 administering to an animal under the care, custody and control
8 of the person or by a member of the person's household;

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

19 ~~(1) kits used, intended for use or designed~~
20 ~~for use in planting, propagating, cultivating, growing or~~
21 ~~harvesting any species of plant that is a controlled substance~~
22 ~~or controlled substance analog or from which a controlled~~
23 ~~substance can be derived;~~

24 ~~(2) kits used, intended for use or designed~~
25 ~~for use in manufacturing, compounding, converting, producing,~~

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[bracketed material] = delete

1 ~~processing or preparing controlled substances or controlled~~
2 ~~substance analogs;~~

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

6 ~~(4) testing equipment used, intended for use~~
7 ~~or designed for use in identifying or in analyzing the~~
8 ~~strength, effectiveness or purity of controlled substances or~~
9 ~~controlled substance analogs;~~

10 ~~(5) scales or balances used, intended for use~~
11 ~~or designed for use in weighing or measuring controlled~~
12 ~~substances or controlled substance analogs;~~

13 ~~(6) diluents and adulterants, such as quinine~~
14 ~~hydrochloride, mannitol, mannite dextrose and lactose, used,~~
15 ~~intended for use or designed for use in cutting controlled~~
16 ~~substances or controlled substance analogs;~~

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

20 ~~(8) blenders, bowls, containers, spoons and~~
21 ~~mixing devices used, intended for use or designed for use in~~
22 ~~compounding controlled substances or controlled substance~~
23 ~~analog;~~

24 ~~(9) capsules, balloons, envelopes and other~~
25 ~~containers used, intended for use or designed for use in~~

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1 ~~packaging small quantities of controlled substances or~~
2 ~~controlled substance analogs;~~

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

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

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

14 ~~(a) metal, wooden, acrylic, glass,~~
15 ~~stone, plastic or ceramic pipes, with or without screens,~~
16 ~~permanent screens, hashish heads or punctured metal bowls;~~

17 ~~(b) water pipes;~~

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

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

20 ~~(e) roach clips, meaning objects used to~~
21 ~~hold burning material, such as a marijuana cigarette, that has~~
22 ~~become too small to hold in the hand;~~

23 ~~(f) miniature cocaine spoons and cocaine~~
24 ~~vials;~~

25 ~~(g) chamber pipes;~~

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1 ~~(h) carburetor pipes;~~

2 ~~(i) electric pipes;~~

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

4 ~~(k) chilams;~~

5 ~~(l) bongs; or~~

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

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

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

13 ~~(b) the proximity of the object, in time~~
14 ~~and space, to a direct violation of the Controlled Substances~~
15 ~~Act or any other law relating to controlled substances or~~
16 ~~controlled substance analogs;~~

17 ~~(c) the proximity of the object to~~
18 ~~controlled substances or controlled substance analogs;~~

19 ~~(d) the existence of any residue of a~~
20 ~~controlled substance or controlled substance analog on the~~
21 ~~object;~~

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

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

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1 ~~(g) the manner in which the object is~~
2 ~~displayed for sale; and~~

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

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

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

13 [~~(1)~~] (a) phenethylamines;

14 [~~(2)~~] (b) N-substituted piperidines;

15 [~~(3)~~] (c) morphinans;

16 [~~(4)~~] (d) ecgonines;

17 [~~(5)~~] (e) quinazolinones;

18 [~~(6)~~] (f) substituted indoles; and

19 [~~(7)~~] (g) arylcycloalkylamines;

20 ~~[Specifically excluded from the definition of "controlled~~
21 ~~substance analog" are those] and~~

22 (2) does not include substances that are
23 generally recognized as safe and effective within the meaning
24 of the Federal Food, Drug, and Cosmetic Act or have been
25 manufactured, distributed or possessed in conformance with the

underscored material = new
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1 provisions of an approved new drug application or an exemption
2 for investigational use within the meaning of Section 505 of
3 the Federal Food, Drug, and Cosmetic Act;

4 ~~[X.]~~ U. "human consumption" includes application,
5 injection, inhalation, ingestion or any other manner of
6 introduction;

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

12 ~~[Z.]~~ W. "valid practitioner-patient relationship"
13 means a professional relationship, as defined by the
14 practitioner's licensing board, between the practitioner and
15 the patient."

16 **SECTION 65.** Section 30-31-6 NMSA 1978 (being Laws 1972,
17 Chapter 84, Section 6, as amended by Laws 2017, Chapter 139,
18 Section 2, by Laws 2017, Chapter 140, Section 3 and by Laws
19 2018, Chapter 41, Section 1) is amended to read:

20 "30-31-6. SCHEDULE I.--The following controlled
21 substances are included in Schedule I:

22 A. any of the following opiates, including their
23 isomers, esters, ethers, salts, and salts of isomers, esters
24 and ethers, unless specifically exempted, whenever the
25 existence of these isomers, esters, ethers and salts is

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~~[bracketed material] = delete~~

1 possible within the specific chemical designation:

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

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

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

- 24 (1) acetorphine;
- 25 (2) acetyldihydrocodeine;

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~~[bracketed material] = delete~~

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

21 C. any material, compound, mixture or preparation
22 that contains any quantity of the following hallucinogenic
23 substances, their salts, isomers and salts of isomers, unless
24 specifically exempted, whenever the existence of these salts,
25 isomers and salts of isomers is possible within the specific

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1 chemical designation:

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

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

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

9 ~~[E.—The enumeration of marijuana,
10 tetrahydrocannabinols or chemical derivatives of
11 tetrahydrocannabinol as Schedule I controlled substances does
12 not apply to:~~

13 ~~(1)—industrial hemp, pursuant to rules
14 promulgated by the board of regents of New Mexico state
15 university on behalf of the New Mexico department of
16 agriculture;~~

17 ~~(2)—cultivation of industrial hemp by
18 qualified entities pursuant to rules adopted by the New Mexico
19 department of agriculture;~~

20 ~~(3)—the use of marijuana,
21 tetrahydrocannabinols or chemical derivatives of
22 tetrahydrocannabinol by certified patients pursuant to the
23 Controlled Substances Therapeutic Research Act or by qualified
24 patients pursuant to the provisions of the Lynn and Erin
25 Compassionate Use Act; or~~

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1 ~~(4) the use, dispensing, possession,~~
2 ~~prescribing, storage or transport of a prescription drug that~~
3 ~~the United States food and drug administration has approved and~~
4 ~~that contains marijuana, a tetrahydrocannabinol derivative or a~~
5 ~~chemical derivative of tetrahydrocannabinol; and~~

6 F.] E. controlled substances added to Schedule I by
7 rule adopted by the board pursuant to Section 30-31-3 NMSA
8 1978."

9 SECTION 66. Section 30-31-7 NMSA 1978 (being Laws 1972,
10 Chapter 84, Section 7, as amended) is amended to read:

11 "30-31-7. SCHEDULE II.--

12 A. The following controlled substances are included
13 in Schedule II:

14 (1) any of the following substances, except
15 those narcotic drugs listed in other schedules, whether
16 produced directly or indirectly by extraction from substances
17 of vegetable origin, or independently by means of chemical
18 synthesis, or by combination of extraction and chemical
19 synthesis:

20 (a) opium and opiate, and any salt,
21 compound, derivative or preparation of opium or opiate;

22 (b) any salt, compound, isomer,
23 derivative or preparation thereof that is chemically equivalent
24 or identical with any of the substances referred to in
25 Subparagraph (a) of this paragraph, but not including the

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1 isoquinoline alkaloids of opium;

2 (c) opium poppy and poppy straw; and

3 (d) coca leaves and any salt, compound,
4 derivative or preparation of coca leaves, and any salt,
5 compound, derivative or preparation thereof that is chemically
6 equivalent or identical with any of these substances, but not
7 including decocainized coca leaves or extractions that do not
8 contain cocaine or ecgonine;

9 ~~[(e) marijuana, but only for the use by
10 certified patients pursuant to the Controlled Substances
11 Therapeutic Research Act or by qualified patients pursuant to
12 the provisions of the Lynn and Erin Compassionate Use Act; and~~

13 ~~(f) tetrahydrocannabinols or chemical
14 derivatives of tetrahydrocannabinol, but only for the use by
15 certified patients pursuant to the Controlled Substances
16 Therapeutic Research Act or by qualified patients pursuant to
17 the provisions of the Lynn and Erin Compassionate Use Act.~~

18 ~~Marijuana, tetrahydrocannabinols or chemical derivatives
19 of tetrahydrocannabinol shall be considered Schedule II
20 controlled substances only for the purposes enumerated in the
21 Controlled Substances Therapeutic Research Act or the Lynn and
22 Erin Compassionate Use Act;]~~

23 (2) any of the following opiates, including
24 their isomers, esters, ethers, salts and salts of isomers,
25 whenever the existence of these isomers, esters, ethers and

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1 salts is possible within the specific chemical designation:

- 2 (a) alphaprodine;
- 3 (b) anileridine;
- 4 (c) bezitramide;
- 5 (d) dihydrocodeine;
- 6 (e) diphenoxylate;
- 7 (f) fentanyl;
- 8 (g) hydromorphone;
- 9 (h) isomethadone;
- 10 (i) levomethorphan;
- 11 (j) levorphanol;
- 12 (k) meperidine;
- 13 (l) metazocine;
- 14 (m) methadone;
- 15 (n) methadone--intermediate,
16 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
- 17 (o) moramide--intermediate,
18 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid;
- 19 (p) oxycodone;
- 20 (q) pethidine;
- 21 (r) pethidine--intermediate--A,
22 4-cyano-1-methyl-4-phenylpiperidine;
- 23 (s) pethidine--intermediate--B,
24 ethyl-4-phenyl-piperidine-4-carboxylate;
- 25 (t) pethidine--intermediate--C,

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1 1-methyl-4-phenylpiperidine-4-carboxylic acid;

2 (u) phenazocine;

3 (v) piminodine;

4 (w) racemethorphan; and

5 (x) racemorphan;

6 (3) unless listed in another schedule, any
7 material, compound, mixture or preparation that contains any
8 quantity of the following substances having a potential for
9 abuse associated with a stimulant effect on the central nervous
10 system:

11 (a) amphetamine, its salts, optical
12 isomers and salts of its optical isomers;

13 (b) phenmetrazine and its salts;

14 (c) methamphetamine, its salts, isomers
15 and salts of isomers; and

16 (d) methylphenidate; and

17 (4) controlled substances added to Schedule II
18 by rule adopted by the board pursuant to Section 30-31-3 NMSA
19 1978.

20 B. Where methadone is prescribed, administered or
21 dispensed by a practitioner of a drug abuse rehabilitation
22 program while acting in the course of the practitioner's
23 professional practice, or otherwise lawfully obtained or
24 possessed by a person, such person shall not possess such
25 methadone beyond the date stamped or typed on the label of the

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1 container of the methadone, nor shall any person possess
2 methadone except in the container in which it was originally
3 administered or dispensed to such person, and such container
4 shall include a label showing the name of the prescribing
5 physician or practitioner, the identity of methadone, the name
6 of the ultimate user, the date when the methadone is to be
7 administered to or used or consumed by the named ultimate user
8 shown on the label and a warning on the label of the methadone
9 container that the ultimate user must use, consume or
10 administer to the ultimate user the methadone in such
11 container. Any person who violates this subsection is guilty
12 of a felony and shall be punished by imprisonment for not less
13 than one year nor more than five years, or by a fine of up to
14 five thousand dollars (\$5,000), or both."

15 SECTION 67. Section 30-31-21 NMSA 1978 (being Laws 1972,
16 Chapter 84, Section 21, as amended) is amended to read:

17 "30-31-21. DISTRIBUTION TO A MINOR.--Except as authorized
18 by the Controlled Substances Act, no person who is eighteen
19 years of age or older shall intentionally distribute a
20 controlled substance to a person under the age of eighteen
21 years. Any person who violates this section with respect to

22 [~~A. marijuana is:~~

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

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

4 ~~B. any other]~~ a controlled substance enumerated in
5 [~~Schedules~~] Schedule I, II, III or IV or a controlled substance
6 analog of any controlled substance enumerated in Schedule I,
7 II, III or IV is:

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

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

14 **SECTION 68.** Section 30-31-22 NMSA 1978 (being Laws 1972,
15 Chapter 84, Section 22, as amended) is amended to read:

16 "30-31-22. CONTROLLED OR COUNTERFEIT SUBSTANCES--
17 DISTRIBUTION PROHIBITED.--

18 A. Except as authorized by the Controlled
19 Substances Act, it is unlawful for a person to intentionally
20 distribute or possess with intent to distribute a controlled
21 substance or a controlled substance analog except a substance
22 enumerated in Schedule I or II that is a narcotic drug, a
23 controlled substance analog of a controlled substance
24 enumerated in Schedule I or II that is a narcotic drug or
25 methamphetamine, its salts, isomers and salts of isomers. A

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1 person who violates this subsection with respect to:

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

3 (a) for the first offense, guilty of a
4 fourth degree felony and shall be sentenced pursuant to the
5 provisions of Section 31-18-15 NMSA 1978;

6 (b) for the second and subsequent
7 offenses, guilty of a third degree felony and shall be
8 sentenced pursuant to the provisions of Section 31-18-15 NMSA
9 1978;

10 (c) for the first offense, if more than
11 one hundred pounds is possessed with intent to distribute or
12 distributed or both, guilty of a third degree felony and shall
13 be sentenced pursuant to the provisions of Section 31-18-15
14 NMSA 1978; and

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

20 (2) any other controlled substance enumerated in
21 Schedule I, II, III or IV or a controlled substance analog of a
22 controlled substance enumerated in Schedule I, II, III or IV
23 except a substance enumerated in Schedule I or II that is a
24 narcotic drug, a controlled substance analog of a controlled
25 substance enumerated in Schedule I or II that is a narcotic

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1 drug or methamphetamine, its salts, isomers and salts of
2 isomers, is:

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

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

9 (3) a controlled substance enumerated in
10 Schedule V or a controlled substance analog of a controlled
11 substance enumerated in Schedule V is guilty of a misdemeanor
12 and shall be punished by a fine of not less than one hundred
13 dollars (\$100) or more than five hundred dollars (\$500) or by
14 imprisonment for a definite term not less than one hundred
15 eighty days but less than one year, or both.

16 B. It is unlawful for a person to distribute gamma
17 hydroxybutyric acid or flunitrazepam to another person without
18 that person's knowledge and with intent to commit a crime
19 against that person, including criminal sexual penetration.
20 For the purposes of this subsection, "without that person's
21 knowledge" means the person is unaware that a substance with
22 the ability to alter that person's ability to appraise conduct
23 or to decline participation in or communicate unwillingness to
24 participate in conduct is being distributed to that person.
25 Any person who violates this subsection is:

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

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

7 C. Except as authorized by the Controlled Substances
8 Act, it is unlawful for a person to intentionally create or
9 deliver, or possess with intent to deliver, a counterfeit
10 substance. A person who violates this subsection with respect
11 to:

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

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

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

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

25 (a) for the first offense, guilty of a third

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

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

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

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

16 (2) any other controlled substance enumerated in
17 Schedule I, II, III or IV or a controlled substance analog of a
18 controlled substance enumerated in Schedule I, II, III or IV
19 except a substance enumerated in Schedule I or II that is a
20 narcotic drug, a controlled substance analog of a controlled
21 substance enumerated in Schedule I or II that is a narcotic
22 drug or methamphetamine, its salts, isomers and salts of
23 isomers, is:

24 (a) for the first offense, guilty of a
25 second degree felony and shall be sentenced pursuant to the

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1 provisions of Section 31-18-15 NMSA 1978; and

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

5 (3) a controlled substance enumerated in
6 Schedule V or a controlled substance analog of a controlled
7 substance enumerated in Schedule V is guilty of a fourth degree
8 felony and shall be sentenced pursuant to the provisions of
9 Section 31-18-15 NMSA 1978; and

10 (4) the intentional creation, delivery or
11 possession with the intent to deliver:

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

16 (b) a counterfeit substance enumerated in
17 Schedule V is guilty of a misdemeanor and shall be punished by
18 a fine of not less than one hundred dollars (\$100) nor more
19 than five hundred dollars (\$500) or by imprisonment for a
20 definite term not less than one hundred eighty days but less
21 than one year, or both.

22 E. Notwithstanding the provisions of Subsection A of
23 this section, distribution of a small amount of [~~marijuana or~~]
24 synthetic cannabinoids for no remuneration shall be treated as
25 provided in Paragraph (1) of Subsection B of Section 30-31-23

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1 NMSA 1978."

2 SECTION 69. Section 30-31-23 NMSA 1978 (being Laws 1972,
3 Chapter 84, Section 23, as amended) is amended to read:

4 "30-31-23. CONTROLLED SUBSTANCES--POSSESSION
5 PROHIBITED.--

6 A. It is unlawful for a person intentionally to
7 possess a controlled substance unless the substance was
8 obtained pursuant to a valid prescription or order of a
9 practitioner while acting in the course of professional
10 practice or except as otherwise authorized by the Controlled
11 Substances Act. It is unlawful for a person intentionally to
12 possess a controlled substance analog.

13 B. A person who violates this section with respect
14 to:

15 (1) one ounce or less of [~~marijuana or~~]
16 synthetic cannabinoids is, for the first offense, guilty of a
17 petty misdemeanor and shall be punished by a fine of not less
18 than fifty dollars (\$50.00) or more than one hundred dollars
19 (\$100) and by imprisonment for not more than fifteen days, and,
20 for the second and subsequent offenses, guilty of a misdemeanor
21 and shall be punished by a fine of not less than one hundred
22 dollars (\$100) or more than one thousand dollars (\$1,000) or by
23 imprisonment for a definite term less than one year, or both;

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

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1 misdemeanor and shall be punished by a fine of not less than
2 one hundred dollars (\$100) or more than one thousand dollars
3 (\$1,000) or by imprisonment for a definite term less than one
4 year, or both; or

5 (3) eight ounces or more of [~~marijuana or~~
6 synthetic cannabinoids is guilty of a fourth degree felony and
7 shall be sentenced pursuant to the provisions of Section
8 31-18-15 NMSA 1978.

9 C. A minor who violates this section with respect to
10 the substances listed in this subsection is guilty of a petty
11 misdemeanor and, notwithstanding the provisions of Sections
12 32A-1-5 and 32A-2-19 NMSA 1978, shall be punished by a fine not
13 to exceed one hundred dollars (\$100) or forty-eight hours of
14 community service. For the third or subsequent violation [~~by a~~
15 ~~minor of this section~~] with respect to those substances, the
16 provisions of Section 32A-2-19 NMSA 1978 shall govern
17 punishment of the minor. [~~As used in this subsection, "minor"~~
18 ~~means a person who is less than eighteen years of age.~~] The
19 provisions of this subsection apply to the following
20 substances:

- 21 (1) synthetic cannabinoids;
22 (2) any of the substances listed in Paragraphs
23 [~~(20)~~] (17) through [~~(25)~~] (22) of Subsection C of Section
24 30-31-6 NMSA 1978; or
25 (3) a substance added to Schedule I by a rule of

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1 the board adopted on or after [~~the effective date of this~~
2 March 31, 2011 [~~act~~] if the board determines that the
3 pharmacological effect of the substance, the risk to the public
4 health by abuse of the substance and the potential of the
5 substance to produce psychic or physiological dependence
6 liability is similar to the substances described in Paragraph
7 (1) or (2) of this subsection.

8 D. Except for those substances listed in Subsection E
9 of this section, a person who violates this section with
10 respect to any amount of any controlled substance enumerated in
11 Schedule I, II, III or IV, or a controlled substance analog of
12 a substance enumerated in Schedule I, II, III or IV is guilty
13 of a misdemeanor and shall be punished by a fine of not less
14 than five hundred dollars (\$500) or more than one thousand
15 dollars (\$1,000) or by imprisonment for a definite term less
16 than one year, or both.

17 E. A person who violates this section with respect to
18 phencyclidine as enumerated in Schedule III or a controlled
19 substance analog of phencyclidine; methamphetamine, its salts,
20 isomers or salts of isomers as enumerated in Schedule II or a
21 controlled substance analog of methamphetamine, its salts,
22 isomers or salts of isomers; flunitrazepam, its salts, isomers
23 or salts of isomers as enumerated in Schedule I or a controlled
24 substance analog of flunitrazepam, including naturally
25 occurring metabolites, its salts, isomers or salts of isomers;

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1 gamma hydroxybutyric acid and any chemical compound that is
2 metabolically converted to gamma hydroxybutyric acid, its
3 salts, isomers or salts of isomers as enumerated in Schedule I
4 or a controlled substance analog of gamma hydroxybutyric acid,
5 its salts, isomers or salts of isomers; gamma butyrolactone and
6 any chemical compound that is metabolically converted to gamma
7 hydroxybutyric acid, its salts, isomers or salts of isomers as
8 enumerated in Schedule I or a controlled substance analog of
9 gamma butyrolactone, its salts, isomers or salts of isomers;
10 1-4 butane diol and any chemical compound that is metabolically
11 converted to gamma hydroxybutyric acid, its salts, isomers or
12 salts of isomers as enumerated in Schedule I or a controlled
13 substance analog of 1-4 butane diol, its salts, isomers or
14 salts of isomers; or a narcotic drug enumerated in Schedule I
15 or II or a controlled substance analog of a narcotic drug
16 enumerated in Schedule I or II is guilty of a fourth degree
17 felony and shall be sentenced pursuant to the provisions of
18 Section 31-18-15 NMSA 1978.

19 F. Except for a minor ~~[as defined in Subsection C of~~
20 ~~this section]~~, a person who violates Subsection A of this
21 section while within a posted drug-free school zone, excluding
22 private property residentially zoned or used primarily as a
23 residence and excluding a person in or on a motor vehicle in
24 transit through the posted drug-free school zone, with respect
25 to:

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1 (1) one ounce or less of [~~marijuana or~~]
2 synthetic cannabinoids is, for the first offense, guilty of a
3 misdemeanor and shall be punished by a fine of not less than
4 one hundred dollars (\$100) or more than one thousand dollars
5 (\$1,000) or by imprisonment for a definite term less than one
6 year, or both, and for the second or subsequent offense, is
7 guilty of a fourth degree felony and shall be sentenced
8 pursuant to the provisions of Section 31-18-15 NMSA 1978;

9 (2) more than one ounce and less than eight
10 ounces of [~~marijuana or~~] synthetic cannabinoids is guilty of a
11 fourth degree felony and shall be sentenced pursuant to the
12 provisions of Section 31-18-15 NMSA 1978;

13 (3) eight ounces or more of [~~marijuana or~~]
14 synthetic cannabinoids is guilty of a third degree felony and
15 shall be sentenced pursuant to the provisions of Section
16 31-18-15 NMSA 1978;

17 (4) any amount of any other controlled substance
18 enumerated in Schedule I, II, III or IV or a controlled
19 substance analog of a substance enumerated in Schedule I, II,
20 III or IV, except phencyclidine as enumerated in Schedule III,
21 a narcotic drug enumerated in Schedule I or II or a controlled
22 substance analog of a narcotic drug enumerated in Schedule I or
23 II, is guilty of a fourth degree felony and shall be sentenced
24 pursuant to the provisions of Section 31-18-15 NMSA 1978; and

25 (5) phencyclidine as enumerated in Schedule III,

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1 a narcotic drug enumerated in Schedule I or II, a controlled
2 substance analog of phencyclidine or a controlled substance
3 analog of a narcotic drug enumerated in Schedule I or II is
4 guilty of a third degree felony and shall be sentenced pursuant
5 to the provisions of Section 31-18-15 NMSA 1978.

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

8 SECTION 70. Section 30-31-28 NMSA 1978 (being Laws 1972,
9 Chapter 84, Section 28) is amended to read:

10 "30-31-28. CONDITIONAL DISCHARGE FOR POSSESSION AS FIRST
11 OFFENSE.--

12 A. If [~~any~~] a person, who has not previously been
13 convicted of violating the laws of [~~any~~] a state or [~~any~~] laws
14 of the United States relating to narcotic drugs, [~~marijuana~~]
15 hallucinogenic or depressant or stimulant substances, is found
16 guilty of a violation of Section [~~23~~] 30-31-23 NMSA 1978, after
17 trial or upon a plea of guilty, the court may, without entering
18 a judgment of guilty and with the consent of the person, defer
19 further proceedings and place [~~him~~] the person on probation
20 upon reasonable conditions and for a period, not to exceed one
21 year, as the court may prescribe.

22 B. Upon violation of a condition of the probation,
23 the court may enter an adjudication of guilt and proceed as
24 otherwise provided. The court may, in its discretion, dismiss
25 the proceedings against the person and discharge [~~him~~] the

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1 person from probation before the expiration of the maximum
2 period prescribed from the person's probation.

3 C. If during the period of [~~his~~] probation the person
4 does not violate [~~any of~~] the conditions of the probation, then
5 upon expiration of the period the court shall discharge such
6 person and dismiss the proceedings against [~~him~~] the person.
7 Discharge and dismissal under this section shall be without
8 court adjudication of guilt, but a nonpublic record shall be
9 retained by the attorney general solely for the purpose of use
10 by the courts in determining whether or not, in subsequent
11 proceedings, the person qualifies under this section. A
12 discharge or dismissal shall not be deemed a conviction for
13 purposes of disqualifications or disabilities imposed by law
14 upon conviction of a crime, including the penalties prescribed
15 under this section for second or subsequent convictions or for
16 any other purpose. Discharge and dismissal under this section
17 may occur only once with respect to [~~any~~] a person.

18 D. Upon the dismissal of a person and discharge of
19 the proceedings against [~~him~~] the person under this section, a
20 person, if [~~he was~~] not over eighteen years of age at the time
21 of the offense, may apply to the court for an order to expunge
22 from all official records all recordation relating to [~~his~~] the
23 arrest, indictment or information, trial, finding or plea of
24 guilty, and dismissal and discharge pursuant to this section
25 except nonpublic records filed with the attorney general. If

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1 the court determines, after hearing, that the person was
2 dismissed and the proceedings against [~~him~~] the person
3 discharged and that [~~he~~] the person was not over eighteen years
4 of age at the time of the offense, it shall enter the order.
5 The effect of the order shall be to restore the person, in the
6 contemplation of the law, to the status [~~he~~] the person
7 occupied before the arrest or indictment or information. No
8 person in whose behalf an order has been entered shall be held
9 thereafter under any provision of any law to be guilty of
10 perjury or otherwise giving a false statement by reason of
11 [~~his~~] the person's failures to recite or acknowledge such
12 arrest, or indictment or information or trial in response to
13 any inquiry made of [~~him~~] the person for any purpose."

14 SECTION 71. Section 30-31-34 NMSA 1978 (being Laws 1972,
15 Chapter 84, Section 33, as amended) is amended to read:

16 "30-31-34. FORFEITURES--PROPERTY SUBJECT.--The following
17 are subject to forfeiture pursuant to the provisions of the
18 Forfeiture Act:

19 A. all raw materials, products and equipment of any
20 kind, including firearms that are used or intended for use in
21 manufacturing, compounding, processing, delivering, importing
22 or exporting any controlled substance or controlled substance
23 analog in violation of the Controlled Substances Act;

24 B. all property that is used or intended for use as a
25 container for property described in Subsection A of this

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1 section;

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

6 D. all books, records and research products and
7 materials, including formulas, microfilm, tapes and data that
8 are used or intended for use in violation of the Controlled
9 Substances Act;

10 E. narcotics paraphernalia or money that is a fruit
11 or instrumentality of the crime; and

12 F. notwithstanding Subsection C of this section and
13 the provisions of the Forfeiture Act:

14 (1) a conveyance used by a person as a common
15 carrier in the transaction of business as a common carrier
16 shall not be subject to forfeiture pursuant to this section
17 unless it appears that the owner or other person in charge of
18 the conveyance is a consenting party or privy to a violation of
19 the Controlled Substances Act;

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

24 (3) a conveyance is not subject to forfeiture
25 for a violation of law the penalty for which is a misdemeanor;

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1 and

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

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

8 SECTION 72. [NEW MATERIAL] COOPERATION OF AGENCIES.--All
9 state agencies shall cooperate with the cannabis control
10 division of the regulation and licensing department in carrying
11 out the provisions of the Cannabis Regulation Act.

12 SECTION 73. TEMPORARY PROVISION--TRANSFER.--On the
13 effective date of this act, any unexpended or unencumbered
14 balance in the medical cannabis fund is transferred to the
15 cannabis regulation fund.

16 SECTION 74. REPEAL.--Sections 9-7-17.1 and 30-31-25.1
17 NMSA 1978 (being Laws 2012, Chapter 42, Section 1 and Laws
18 1981, Chapter 31, Section 2, as amended) are repealed.

19 SECTION 75. EFFECTIVE DATE.--The effective date of the
20 provisions of this act is July 1, 2019.

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