

HOUSE BILL 2

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SPECIAL SESSION, 2021

INTRODUCED BY

Javier Martínez and Andrea Romero and Deborah A. Armstrong and
Katy Duhigg and Linda M. Lopez

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

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

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

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

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

A. "advertisement":

(1) means a statement or a depiction that is intended to induce the purchase of cannabis products and that is displayed in printed material or on a sign or other outdoor display or presented in a radio, television or other media broadcast or in digital media; and

(2) does not include:

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

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

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

B. "cannabis":

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

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plant, its seeds or its resin; and

(2) does not include:

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

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

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

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

E. "cannabis establishment" means:

(1) a cannabis testing laboratory;
(2) a cannabis manufacturer;
(3) a cannabis producer;
(4) a cannabis retailer;
(5) a cannabis research laboratory;
(6) a vertically integrated cannabis
establishment;

(7) a cannabis producer microbusiness; or
(8) an integrated cannabis microbusiness;

F. "cannabis extract":

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

(2) does not include the weight of any other

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ingredient combined with cannabis extract to prepare topical or oral administrations, food, drink or another product;

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

H. "cannabis manufacturer" means a person that:

(1) manufactures cannabis products;
(2) packages cannabis products;
(3) has cannabis products tested by a cannabis testing laboratory; or

(4) purchases, acquires, sells or transports wholesale cannabis products to other cannabis establishments;

I. "cannabis producer" means a person that:

(1) cultivates cannabis plants;
(2) has unprocessed cannabis products tested by a cannabis testing laboratory;

(3) transports unprocessed cannabis products only to other cannabis establishments; or

(4) sells cannabis products wholesale;

J. "cannabis producer microbusiness" means a cannabis producer at a single licensed premises that possesses no more than two hundred total mature cannabis plants at any one time;

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

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

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

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

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

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

Q. "cannabis training and education program" means a practical or academic curriculum offered by a New Mexico public post-secondary educational institution designed to prepare students for participation in the cannabis industry;

R. "commercial cannabis activity":

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

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

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

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

U. "controlling person":

(1) means a person that controls a financial or voting interest of ten percent or more of, or an officer or

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board member of, a cannabis establishment; and

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

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

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

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

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

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

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

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

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

DD. "household" means a housing unit and includes any place in or around the housing unit at which an occupant of

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the housing unit produces, manufactures, keeps or stores homegrown cannabis or homemade cannabis products;

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

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

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

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

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

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

(4) operation of only one retail establishment; and

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

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

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

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

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

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

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

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

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

MM. "medical cannabis registry" means the system by which the department of health approves or denies applications and issues and renews registry identification cards for qualified patients;

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

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

PP. "qualified patient" means a resident of New

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Mexico who holds a registry identification card pursuant to the Lynn and Erin Compassionate Use Act;

QQ. "reciprocal participant" means a person who is not a resident of New Mexico and who holds proof of enrollment by a governmental regulatory authority to participate in the medical cannabis program of another state of the United States, the District of Columbia or a territory or commonwealth of the United States in which the person resides or a person who holds proof of enrollment by a governmental regulatory authority of a New Mexico Indian nation, tribe or pueblo to participate in its medical cannabis program;

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

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

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

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

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

SECTION 3. [NEW MATERIAL] DIVISION--POWERS AND DUTIES--RULEMAKING--ADVISORY COMMITTEE CREATED--MEMBERSHIP--DUTIES.--

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

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

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

(2) security requirements for a cannabis establishment;

(3) requirements related to:

(a) inspection and monitoring of a cannabis establishment;

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

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

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

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

(4) rules providing that:

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

(b) as to commercial cannabis activity:
1) a consumer shall not possess more than two ounces of cannabis, sixteen grams of cannabis extract and eight hundred milligrams of edible cannabis outside the consumer's private

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residence; 2) any cannabis in excess of the amounts described in Item 1) of this subparagraph shall be stored in the person's residence and shall not be visible from a public place; and 3) the division shall not limit the amount of tetrahydrocannabinol concentration in a cannabis product; provided that the division may adopt requirements for apportionment and packaging of cannabis products;

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

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

(7) procedures that promote and encourage full participation in the cannabis industry governed by the Cannabis Regulation Act by representatives of communities that have been disproportionately harmed by rates of arrest through the enforcement of cannabis prohibitions in law and policy, rural communities likely to be impacted by cannabis production and agricultural producers from economically disadvantaged communities;

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

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

(10) in consultation with the economic

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development department, development of a technical assistance resource guide for rural New Mexico residents who are seeking to establish vertically integrated cannabis establishments, cannabis producer microbusinesses or integrated cannabis microbusinesses;

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

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

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

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

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

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

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

(1) qualifications and procedures for licensure; and

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(2) physical security, cybersecurity and, if applicable, security of information collected under the federal Health Insurance Portability and Accountability Act of 1996 requirements.

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

- (1) environmental protections; and
- (2) protocols to ensure licensees' compliance with state and local laws and ordinances governing food and product safety, occupational health and safety, environmental impacts, natural resource protection, water use and quality, water supply, hazardous materials, pesticide use and wastewater discharge.

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

F. The division shall collect and publish annually on the division's website, and present to the appropriate interim committee of the legislature, a report describing demographic data on license applicants, controlling persons and employees of cannabis establishments, including race, ethnicity, gender, age, residential status and whether the applicants, persons, employees or the locations where the cannabis products are produced, manufactured, sold, tested or researched are located in an underserved rural community, including tribal, acequia, land grant-merced or other rural historic communities.

G. The "cannabis regulatory advisory committee"

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

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

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

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

(4) one member for each of the following groups or professional qualifications, appointed by the superintendent:

(a) a cannabis policy advocacy organization;

(b) a labor organization;

(c) a qualified patient;

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

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

(f) expertise in public health;

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

(h) expertise and experience in cannabis laboratory science;

(i) expertise in environmental science;

(j) expertise in small business development;

(k) expertise in water resources;

(l) expertise in other relevant areas as the director and the superintendent deem appropriate; and

(m) previous experience as a cannabis retailer, cannabis producer or cannabis manufacturer and who is a nonvoting member.

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

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

J. The division shall:

(1) monitor the supply and demand of cannabis products produced in New Mexico by licensees and present

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annually to the appropriate interim committee of the legislature the impacts of supply on illicit cannabis products markets and adequate supply of cannabis products for qualified patients and reciprocal participants;

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

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

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

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

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

C. Beginning December 1, 2024, the public health and safety advisory committee shall provide to the legislature, and the department of health shall publish on its website, an annual report on the health effects of legalizing cannabis products for adult use. The report shall include the following elements relating to cannabis product use and, as applicable, the demographics of persons who are the subject of an element:

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

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

E. Public members of the public health and safety advisory committee are entitled to per diem and mileage as provided for state employees pursuant to the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance.

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

SECTION 6. [NEW MATERIAL] LICENSING CANNABIS ACTIVITIES--LIMITATIONS--MEDICAL CANNABIS LEGACY LICENSING--CANNABIS SHORTAGE FOR MEDICAL PROGRAM.--

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

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

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

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

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

(1) cannabis consumption areas;

(2) cannabis couriers;

(3) cannabis manufacturers;

(4) cannabis producer microbusinesses;

(5) cannabis producers;

(6) cannabis research laboratories;

(7) cannabis retailers;

(8) cannabis servers;

(9) cannabis testing laboratories;

(10) cannabis training and education programs;

(11) integrated cannabis microbusinesses; and

(12) vertically integrated cannabis

establishments.

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

D. The division shall issue a license to a cannabis retailer applicant at a discount if the applicant provides documentation of an agreement to accept cannabis products on consignment from a cannabis producer microbusiness or an integrated cannabis microbusiness licensed pursuant the

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Cannabis Regulation Act.

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

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

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

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

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

H. Except for verification of age, the division shall not require licensees to request information from consumers or impose any residency requirement upon consumers for the purchase of cannabis products pursuant to the commercial cannabis activity authorized by the Cannabis Regulation Act. The division may require licensees to request information from consumers for the purchase of cannabis products pursuant to the medical cannabis program, which may include the presentation of legal identification issued by an authorized governmental entity or other documents as required by the medical cannabis program.

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

J. Licensees are specifically allowed to conduct other licensed activities, including activities pursuant to the Hemp Manufacturing Act, except for sales of alcoholic beverages.

K. A person properly licensed and in good standing pursuant to the Lynn and Erin Compassionate Use Act on the effective date of the Cannabis Regulation Act may continue to operate under that license for medical cannabis until comparable licenses for commercial cannabis activity are available. The division shall determine when retail sales of commercial cannabis products begin, but no later than April 1, 2022. A facility of such a licensee, upon issuance of the applicable cannabis establishment license, shall constitute licensed premises of the licensee and the licensee shall be entitled to continued and uninterrupted operations of the licensed premises. As to activity under the medical cannabis program, the licensee shall continue to operate under rules promulgated for the medical cannabis program until the division promulgates rules for medical cannabis activity, except that a qualified patient, a primary caregiver and a reciprocal

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participant shall not be prohibited from purchasing and obtaining cannabis products pursuant to the medical cannabis program.

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

(1) require all cannabis establishment licensees to ensure that at least ten percent of their cannabis in stock on a monthly basis is designated for sale to qualified patients, primary caregivers and reciprocal participants;

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

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

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

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

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

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

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

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

SECTION 7. [NEW MATERIAL] COMMERCIAL CANNABIS ACTIVITY LICENSING--APPLICATION--ISSUANCE AND DENIAL OF A LICENSE.--

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

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

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

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

(3) require as a condition of licensing pursuant to the Cannabis Regulation Act that the applicant

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demonstrate that the applicant has a legal right to a commercial water supply, water rights or another source of water sufficient to meet the water needs as determined by the division related to the license as evidenced by documentation from the office of the state engineer of a valid water right or from a water provider that the use of water for cannabis production is compliant with that water provider's rules;

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

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

(b) natural lighting and energy efficiency measures; and

(c) renewable energy generation; and

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

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

D. The division shall deny an application for an

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initial license or renewal if:

- (1) the application does not include information required by the division; or
- (2) the applicant or a controlling person of the applicant has been convicted of an offense that is substantially related to the qualifications, functions or duties of the applicant's business; provided that if the division determines that the applicant or controlling person is otherwise qualified for a license and that issuing a license to the applicant would not compromise public safety, the division shall conduct a thorough review of the conviction, including the nature of the offense, surrounding circumstances and any evidence of the applicant's or controlling person's rehabilitation following the conviction, and based on that review, determine whether the applicant should be issued a license.

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

- (1) a felony conviction involving fraud, deceit or embezzlement;
- (2) a felony conviction for hiring, employing or otherwise using a person younger than eighteen years of age to:
 - (a) prepare for sale, transport or carry a controlled substance; or
 - (b) sell, give away or offer to sell a controlled substance to any person; and
- (3) any other offense as determined by the division.

F. A conviction for which the related sentence,

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

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

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

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

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

- (1) cannabis manufacturer;
- (2) cannabis producer;
- (3) cannabis producer microbusiness;

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- (4) cannabis research laboratory;
- (5) cannabis retailer;
- (6) cannabis testing laboratory;
- (7) integrated cannabis microbusiness; and
- (8) vertically integrated cannabis

establishment.

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

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

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

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

SECTION 8. [NEW MATERIAL] LICENSEES--DISCIPLINARY ACTIONS--SANCTIONS--CIVIL PENALTY.--

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

B. The division may:

- (1) impose an intermediate sanction established by rule;

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(2) impose a directed plan of correction;

(3) assess a civil monetary penalty

established by rule; provided that a civil monetary penalty shall not exceed ten thousand dollars (\$10,000) per violation; and provided further that penalties and interest recovered pursuant to the Cannabis Regulation Act on behalf of the state shall be remitted to the state treasurer for deposit in the current school fund; or

(4) suspend or revoke the license.

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

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

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

SECTION 9. [NEW MATERIAL] APPLICATION AND LICENSING FEES.--

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

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

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

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

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

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

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

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

(8) a cannabis producer microbusiness license, up to one thousand dollars (\$1,000) per year;

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

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

B. Except for cannabis producer microbusinesses and integrated cannabis microbusinesses, a licensee cultivating cannabis plants shall be assessed an additional annual fee no greater than fifty dollars (\$50.00) per mature cannabis plant

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at the time of licensing or renewal.

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

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

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

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

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

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

SECTION 10. [NEW MATERIAL] CANNABIS TRAINING AND EDUCATION PROGRAM LICENSING--SANCTIONS.--

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

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

SECTION 11. [NEW MATERIAL] CANNABIS SERVER PERMITS--
CANNABIS SERVERS--PERMIT REQUIRED--APPLICATIONS--EDUCATION
PROGRAM APPROVAL REQUIRED--ISSUANCE OR DENIAL OF A PERMIT OR
APPROVAL--PENALTIES.--

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

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

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

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

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

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

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

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

(6) harm reduction practices related to cannabis use.

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

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

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

(1) the division may suspend a cannabis server permit for a period of thirty days if the director finds that

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the cannabis server is guilty of a first offense of selling, serving or dispensing a cannabis product to a person under twenty-one years of age;

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

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

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

SECTION 12. [NEW MATERIAL] LOCAL CONTROL.--

A. A local jurisdiction may:

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

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

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

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

B. A local jurisdiction shall not:

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

(2) completely prohibit the operation of a licensee;

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

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

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

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

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

A. Conduct by a licensee or a licensee representative that is allowed pursuant to a license and

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conduct by a person that allows property to be used by a licensee or a licensee representative for conduct allowed pursuant to a license is lawful, not a violation of state or local law and is not a basis for seizure or forfeiture of any property or assets under state or local law.

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

SECTION 14. [NEW MATERIAL] PROTECTION OF UNDERAGE PERSONS--PROVIDING CANNABIS PRODUCTS TO MINORS--PENALTIES.--

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

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

(2) buy cannabis products for or procure the sale or service of cannabis products to a person under twenty-one years of age;

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

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

B. A licensee shall not employ a person younger

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than twenty-one years of age to engage in a commercial cannabis activity.

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

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

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

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

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

E. Nothing in this section shall be construed or

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interpreted to prevent:

- (1) the division from enforcing its rules against a licensee;
- (2) a state agency from enforcing a law or rule that does not conflict with the Cannabis Regulation Act or rules promulgated pursuant to that act; or
- (3) a local jurisdiction from enforcing a local ordinance that does not conflict with the Cannabis Regulation Act or rules promulgated pursuant to that act.

SECTION 15. [NEW MATERIAL] TRANSPORT VIA COURIER.--

A. A vertically integrated cannabis establishment, cannabis retailer or integrated cannabis microbusiness may courier cannabis products.

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

SECTION 16. [NEW MATERIAL] PACKAGING AND LABELING.--

Before sale or transport via cannabis courier of a cannabis product, the cannabis product shall be labeled and packaged as provided in Section 17 of the Cannabis Regulation Act.

SECTION 17. [NEW MATERIAL] CANNABIS PRODUCTS--PACKAGING AND LABELING--DIVISION RULEMAKING.--

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

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

- (1) packages shall be resealable, child-resistant, compostable and recyclable or made from recycled materials;
- (2) packages and labels shall not be designed

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to be appealing to a child; and

(3) labels shall include:

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

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

(c) potency and pesticide use;

(d) a list of pharmacologically active ingredients;

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

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

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

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

(i) an expiration date; and

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

SECTION 18. [NEW MATERIAL] TESTING CANNABIS PRODUCTS--

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HEALTH AND SAFETY OF EMPLOYEES.--

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

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

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

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

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

(4) provide for recordkeeping;

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

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

(7) specify protocols for testing sample collection that ensure accurate test results, including requiring that testing samples be collected by laboratory staff trained in testing sample collection; and

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

C. Beginning no later than April 1, 2022, the

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division shall identify, in consultation with the department of environment, a set of updated certified reference materials for laboratory testing to be measured against.

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

SECTION 19. [NEW MATERIAL] RESEARCHING CANNABIS--
RECORDKEEPING.--

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

B. The division shall develop rules and procedures consistent with industry standards to provide for recordkeeping to ensure that cannabis products are not removed from the cannabis research laboratory premises.

SECTION 20. [NEW MATERIAL] ADVERTISING AND MARKETING RESTRICTIONS.--The division shall promulgate rules consistent with industry standards that:

A. prohibit the advertisement and marketing of cannabis products:

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

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

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

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

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

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

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

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

B. require:

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

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

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

SECTION 22. [NEW MATERIAL] PROVISION OF PROFESSIONAL SERVICES.--An attorney, accountant, insurance agent, real estate agent, security guard or other person engaged in a

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profession subject to state licensure shall not be subject to disciplinary action by a professional association, a state professional board or a state licensing entity because the professional provides professional services or assistance to prospective or licensed cannabis establishments or another person in connection with activity that the professional reasonably believes complies with the Cannabis Regulation Act and rules promulgated pursuant to that act.

SECTION 23. [NEW MATERIAL] MEDICAL CANNABIS PROVISIONS UNAFFECTED.--Nothing in the Cannabis Regulation Act shall be construed to limit a privilege or right of a qualified patient, a primary caregiver or a reciprocal participant participating in the medical cannabis program or the use, dispensing, possession, prescribing, storage or transport of a prescription drug containing cannabis that is approved pursuant to the Federal Food, Drug, and Cosmetic Act.

SECTION 24. [NEW MATERIAL] PROTECTIONS FOR THE USE OF CANNABIS.--

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

B. An applicant for a professional or occupational license shall not be denied a license based solely on previous employment related to cannabis establishments.

C. A person shall not be denied parental rights or custody of or visitation with a minor child by the state or local government based solely on conduct that is lawful pursuant to the Cannabis Regulation Act unless the person's

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behavior is such that it creates an unreasonable danger to the minor child that can be established by clear and convincing evidence.

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

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

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

A. The following conduct is lawful for a person who is twenty-one years of age or older and shall not constitute grounds for detention, search or arrest of a person or search of property, and cannabis products that relate to the conduct are not contraband or subject to seizure or forfeiture pursuant to the Controlled Substances Act or the Forfeiture Act:

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

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

(3) transferring, without financial consideration, to a person who is twenty-one years of age or

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older not more than the amount of cannabis lawfully purchased and obtained pursuant to the Cannabis Regulation Act or the medical cannabis program;

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

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

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

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

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

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

(10) transporting homegrown cannabis or mature or immature cannabis plants when the person is moving the

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person's residence to another location or for purposes of testing or manufacturing.

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

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

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

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

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

D. Paragraph (1) of Subsection A and Subsection C of this section shall not apply when a law enforcement officer is investigating whether a person is operating a vehicle or watercraft while intoxicated or under the influence of or impaired by alcohol or a drug or any combination thereof in violation of Section 66-8-102 or 66-13-3 NMSA 1978.

SECTION 26. [NEW MATERIAL] LIMITS ON PERSONAL USE--
PENALTIES.--

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

(1) allow a person to smoke cannabis products

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in a public place, except in a cannabis consumption area; or

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

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

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

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

SECTION 27. [NEW MATERIAL] PERSONAL PRODUCTION OF CANNABIS--PENALTIES.--

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

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

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

(2) more than twelve mature or immature cannabis plants is guilty of a fourth degree felony and may be

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sentenced as provided in Section 31-18-15 NMSA 1978.

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

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

(2) more than six mature or immature cannabis plants and up to twelve mature or immature cannabis plants is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978; and

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

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

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

(2) four hours of community service.

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

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

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

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

B. Unless otherwise provided in the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act, it

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is unlawful for a person without a license to intentionally traffic cannabis products.

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

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

(2) four hours of community service.

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

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

SECTION 29. [NEW MATERIAL] CANNABIS WITHIN RESTRICTED AREA--PENALTY.--Unless otherwise allowed in the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act, a person shall not possess or intentionally distribute any amount of a cannabis product on the premises of a school or daycare center unless the person is a qualified patient, a primary caregiver or a reciprocal participant; provided that this section shall not apply to a person who possesses a cannabis product for authorized purposes on the premises of a licensed cannabis training and education program. A person who violates this section is guilty of a misdemeanor and shall be sentenced

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

SECTION 30. [NEW MATERIAL] UNLAWFUL POSSESSION OF CANNABIS--PENALTIES.--Except as allowed in the Cannabis Regulation Act and the Lynn and Erin Compassionate Use Act:

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

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

(2) four hours of community service; and

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

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

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

SECTION 31. [NEW MATERIAL] UNLICENSED MANUFACTURING OF CANNABIS EXTRACT--PENALTY.--It is unlawful for a person to manufacture cannabis extract without a license issued pursuant to the Cannabis Regulation Act unless the person produces and manufactures cannabis extract using nonvolatile solvents,

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alcohol or carbon dioxide or no solvents. A person who violates this section is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

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

SECTION 33. [NEW MATERIAL] REPORTING REQUIREMENTS FOR CANNABIS-RELATED VIOLATIONS.--

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

- (1) category and penalty level; and
- (2) race, ethnicity, age and gender.

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

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

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

SECTION 34. [NEW MATERIAL] EMPLOYER PROTECTIONS--
EXEMPTIONS.--

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

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

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

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

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

C. Nothing in the Cannabis Regulation Act shall be construed to invalidate, diminish or otherwise interfere with any collective bargaining agreement nor shall it be construed to invalidate, diminish or otherwise interfere with any party's

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power to collectively bargain such an agreement, or to an employer or employee.

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

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

SECTION 36. [NEW MATERIAL] PUBLIC RECORDS AND OPEN MEETINGS.--Records of the division are subject to the Inspection of Public Records Act. Rulemaking and other hearings of the division are subject to the Open Meetings Act.

SECTION 37. [NEW MATERIAL] INTRASTATE SOURCE.--Except as provided in Section 38 of the Cannabis Regulation Act, all cannabis products shall be derived from a source originating within New Mexico.

SECTION 38. [NEW MATERIAL] IMPORTS AND EXPORTS.--

A. Notwithstanding the provisions of Section 37 of the Cannabis Regulation Act or any other provision of law, the governor shall enter into agreements with other jurisdictions within or outside of the United States for the purposes of cross-jurisdictional delivery of cannabis products between this state and the other jurisdictions. Such agreements shall:

- (1) ensure enforceable public health and safety standards;
- (2) include a system to regulate and track the interstate or international delivery of cannabis products; and
- (3) ensure that any cannabis products

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delivered into this state, prior to sale to a consumer, are tested, packaged and labeled pursuant to New Mexico laws and rules.

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

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

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

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

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

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

SECTION 39. [NEW MATERIAL] CANNABIS REGULATION FUND.--

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

B. Money in the cannabis regulation fund is subject

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to appropriation by the legislature to fund the division, the department of health, the department of environment, the New Mexico department of agriculture, the taxation and revenue department and the department of public safety for the purposes of carrying out the provisions of the Cannabis Regulation Act and the Lynn and Erin Compassionate Use Act.

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

SECTION 41. [NEW MATERIAL] INDIAN NATIONS, TRIBES AND PUEBLOS--INTERGOVERNMENTAL AGREEMENTS.--

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

- (1) criminal and civil law enforcement;
- (2) regulatory issues relating to the possession, delivery, production, processing or use of cannabis products;
- (3) the administration of laws relating to

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taxation;

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

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

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

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

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

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

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

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

SECTION 42. [NEW MATERIAL] COOPERATION OF AGENCIES.--All state agencies shall cooperate with the division in carrying out the provisions of the Cannabis Regulation Act.

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

" [NEW MATERIAL] SHORT TITLE.--Sections 43 through 47 of this act may be cited as the "Cannabis Tax Act"."

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

" [NEW MATERIAL] DEFINITIONS.--As used in the Cannabis Tax

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Act:

A. "cannabis":

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

(2) does not include:

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

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

B. "cannabis extract":

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

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

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

D. "cannabis retailer" means a person whose license

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from the cannabis control division of the regulation and licensing department allows the person to sell cannabis products to a person who purchases, acquires, possesses or uses the cannabis product for a purpose other than resale."

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

"[NEW MATERIAL] CANNABIS EXCISE TAX.--

A. An excise tax is imposed on a cannabis retailer that sells cannabis products in this state. The tax imposed by this section may be referred to as the "cannabis excise tax".

B. The rate of the cannabis excise tax ~~HTRC~~ ~~is~~ ~~twelve percent~~ ~~HTRC~~ ~~HTRC~~ shall be at the following rates ~~HTRC~~ and shall be applied to the price paid for a cannabis product ~~HTRC~~ ~~.~~ ~~HTRC~~ ~~HTRC~~:

- (1) prior to July 1, 2025, twelve percent;
- (2) beginning July 1, 2025 and prior to July 1, 2026, thirteen percent;
- (3) beginning July 1, 2026 and prior to July 1, 2027, fourteen percent;
- (4) beginning July 1, 2027 and prior to July 1, 2028, fifteen percent;
- (5) beginning July 1, 2028 and prior to July 1, 2029, sixteen percent;
- (6) beginning July 1, 2029 and prior to July 1, 2030, seventeen percent; and
- (7) beginning July 1, 2030, eighteen percent. ~~HTRC~~

C. The cannabis excise tax shall not apply to retail sales of medical cannabis products sold to a qualified patient or a primary caregiver who presents a registry identification card issued pursuant to the Lynn and Erin Compassionate Use Act or a reciprocal participant who presents

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similar proof from another state, the District of Columbia or a territory or commonwealth of the United States at the time of the sale."

SECTION 46. A new section of Chapter 7 NMSA 1978 is enacted to read:

" [NEW MATERIAL] DATE PAYMENT DUE.--The cannabis excise tax is to be paid on or before the twenty-fifth day of the month following the month in which the taxable sale occurs."

SECTION 47. A new section of Chapter 7 NMSA 1978 is enacted to read:

" [NEW MATERIAL] INTERPRETATION OF THE CANNABIS TAX ACT--ADMINISTRATION AND ENFORCEMENT OF TAX.--The department shall administer and enforce the collection of the cannabis excise tax pursuant to the Tax Administration Act."

SECTION 48. Section 7-1-2 NMSA 1978 (being Laws 1965, Chapter 248, Section 2, as amended by Laws 2019, Chapter 47, Section 1 and by Laws 2019, Chapter 53, Section 10 and also by Laws 2019, Chapter 270, Section 1) is amended to read:

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

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

- (1) Income Tax Act;
- (2) Withholding Tax Act;
- (3) Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act;
- (4) Gross Receipts and Compensating Tax Act, Interstate Telecommunications Gross Receipts Tax Act and Leased Vehicle Gross Receipts Tax Act;
- (5) Liquor Excise Tax Act;
- (6) Local Liquor Excise Tax Act;

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(7) any municipal local option gross receipts tax or municipal compensating tax;

(8) any county local option gross receipts tax or county compensating tax;

(9) Special Fuels Supplier Tax Act;

(10) Gasoline Tax Act;

(11) petroleum products loading fee, which fee shall be considered a tax for the purpose of the Tax Administration Act;

(12) Alternative Fuel Tax Act;

(13) Cigarette Tax Act;

(14) Estate Tax Act;

(15) Railroad Car Company Tax Act;

(16) Investment Credit Act, rural job tax credit, Laboratory Partnership with Small Business Tax Credit Act, Technology Jobs and Research and Development Tax Credit Act, Film Production Tax Credit Act, Affordable Housing Tax Credit Act and high-wage jobs tax credit;

(17) Corporate Income and Franchise Tax Act;

(18) Uniform Division of Income for Tax Purposes Act;

(19) Multistate Tax Compact;

(20) Tobacco Products Tax Act;

(21) the telecommunications relay service surcharge imposed by Section 63-9F-11 NMSA 1978, which surcharge shall be considered a tax for the purposes of the Tax Administration Act; [and]

(22) the Insurance Premium Tax Act;

(23) the Health Care Quality Surcharge Act;

and

(24) the Cannabis Tax Act;

B. the administration and enforcement of the

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

- (1) Resources Excise Tax Act;
- (2) Severance Tax Act;
- (3) any severance surtax;
- (4) Oil and Gas Severance Tax Act;
- (5) Oil and Gas Conservation Tax Act;
- (6) Oil and Gas Emergency School Tax Act;
- (7) Oil and Gas Ad Valorem Production Tax Act;
- (8) Natural Gas Processors Tax Act;
- (9) Oil and Gas Production Equipment Ad Valorem Tax Act;
- (10) Copper Production Ad Valorem Tax Act;
- (11) any advance payment required to be made by any act specified in this subsection, which advance payment shall be considered a tax for the purposes of the Tax Administration Act;
- (12) Enhanced Oil Recovery Act;
- (13) Natural Gas and Crude Oil Production Incentive Act; and
- (14) intergovernmental production tax credit and intergovernmental production equipment tax credit;

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

- (1) Weight Distance Tax Act;
- (2) the workers' compensation fee authorized by Section 52-5-19 NMSA 1978, which fee shall be considered a tax for purposes of the Tax Administration Act;
- (3) Uniform Unclaimed Property Act (1995);
- (4) 911 emergency surcharge and the network and database surcharge, which surcharges shall be considered

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taxes for purposes of the Tax Administration Act;

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

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

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

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

SECTION 49. Section 7-1-6.15 NMSA 1978 (being Laws 1983, Chapter 211, Section 20, as amended by Laws 2015, Chapter 89, Section 1 and by Laws 2015, Chapter 100, Section 1) is amended to read:

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

A. The provisions of this section apply to:

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

(2) any transfer to a municipality with respect to any local option gross receipts tax imposed by that municipality;

(3) any transfer to a county with respect to any local option gross receipts tax imposed by that county;

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

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

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

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

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

(9) any distribution to a municipality of compensating taxes pursuant to Section 7-1-6.55 NMSA 1978; and

(10) any distribution to a municipality or a county of cannabis excise taxes pursuant to the Cannabis Tax Act.

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

(1) all negative amounts relating to any period prior to the three calendar years preceding the year of the current month, net of any positive amounts in that same time period for the same taxpayers to which the negative amounts pertain, shall be excluded from the total relating to

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prior periods. Except as provided in Paragraph (2) of this subsection, the net receipts to be distributed or transferred to the municipality or county shall be adjusted to equal the amount for the current month plus the revised total for prior periods; and

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

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

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

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

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

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

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

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

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

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

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

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

(a) shall recover only up to fifty

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percent of the average distribution or transfer of net receipts for that municipality or county; and

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

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

F. No later than ninety days from the date notice pursuant to Subsection D of this section is given, the department shall provide the municipality or county adequate opportunity to review an application for a claim for refund that gave rise to the recoverable amount, exclusive of any amended returns that may be attached to the application, pursuant to Section 7-1-8.9 NMSA 1978.

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

H. The secretary is authorized to decrease a distribution or transfer to a municipality or county upon being directed to do so by the secretary of finance and administration pursuant to the State Aid Intercept Act or to

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redirect a distribution or transfer to the New Mexico finance authority pursuant to an ordinance or a resolution passed by the county or municipality and a written agreement of the municipality or county and the New Mexico finance authority. Upon direction to decrease a distribution or transfer or notice to redirect a distribution or transfer to a municipality or county, the secretary shall decrease or redirect the next designated distribution or transfer, and succeeding distributions or transfers as necessary, by the amount of the state distributions intercept authorized by the secretary of finance and administration pursuant to the State Aid Intercept Act or by the amount of the state distribution intercept authorized pursuant to an ordinance or a resolution passed by the county or municipality and a written agreement with the New Mexico finance authority. The secretary shall transfer the state distributions intercept amount to the municipal or county treasurer or other person designated by the secretary of finance and administration or to the New Mexico finance authority pursuant to written agreement to pay the debt service to avoid default on qualified local revenue bonds or meet other local revenue bond, loan or other debt obligations of the municipality or county to the New Mexico finance authority. A decrease to or redirection of a distribution or transfer pursuant to this subsection that arose:

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

(2) after an adjustment of a distribution or

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transfer of net receipts creating a recoverable amount owed to the department shall be subordinate to any collection of any recoverable amount pursuant to Paragraph (2) of Subsection B of this section.

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

J. As used in this section:

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

(2) "amounts relating to prior periods" means any amounts processed during the current month that adjust

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amounts processed in a period or periods prior to the current month regardless of whether the adjustment is a correction of a department error or due to the filing of amended returns, payment of department-issued assessments, filing or approval of claims for refund, audit adjustments or other cause;

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

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

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

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

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

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

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

" [NEW MATERIAL] DISTRIBUTION--CANNABIS EXCISE TAX--
MUNICIPALITIES AND COUNTIES.--

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to each municipality, subject to any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978, in an amount equal to thirty-three and thirty-three hundredths percent of the net receipts attributable to the cannabis excise tax from cannabis retailers within the municipality.

B. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to each county in an amount equal to thirty-three and thirty-three hundredths percent of the net receipts attributable to the cannabis excise tax from cannabis retailers within the county area of the county.

C. The department may deduct an amount not to exceed three percent of the distributions made pursuant to this section for the reasonable costs for administering the distributions.

D. As used in this section, "county area" means that portion of a county located outside the boundaries of any municipality."

SECTION 51. Section 7-2-2 NMSA 1978 (being Laws 1986, Chapter 20, Section 26, as amended) is amended to read:

"7-2-2. DEFINITIONS.--For the purpose of the Income Tax Act and unless the context requires otherwise:

A. "adjusted gross income" means adjusted gross income as defined in Section 62 of the Internal Revenue Code, as that section may be amended or renumbered;

B. "base income":

(1) means, for estates and trusts, that part

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of the estate's or trust's income defined as taxable income and upon which the federal income tax is calculated in the Internal Revenue Code for income tax purposes plus, for taxable years beginning on or after January 1, 1991, the amount of the net operating loss deduction allowed by Section 172(a) of the Internal Revenue Code, as that section may be amended or renumbered, and taken by the taxpayer for that year;

(2) means, for taxpayers other than estates or trusts, that part of the taxpayer's income defined as adjusted gross income plus, for taxable years beginning on or after January 1, 1991, the amount of the net operating loss deduction allowed by Section 172(a) of the Internal Revenue Code, as that section may be amended or renumbered, and taken by the taxpayer for that year;

(3) includes, for all taxpayers, any other income of the taxpayer not included in adjusted gross income but upon which a federal tax is calculated pursuant to the Internal Revenue Code for income tax purposes, except amounts for which a calculation of tax is made pursuant to Section 55 of the Internal Revenue Code, as that section may be amended or renumbered; "base income" also includes interest received on a state or local bond; [and]

(4) includes, for all taxpayers, an amount deducted pursuant to Section 7-2-32 NMSA 1978 in a prior taxable year if:

(a) such amount is transferred to another qualified tuition program, as defined in Section 529 of the Internal Revenue Code, not authorized in the Education Trust Act; or

(b) a distribution or refund is made for any reason other than: 1) to pay for qualified higher education expenses, as defined pursuant to Section 529 of the

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Internal Revenue Code; or 2) upon the beneficiary's death, disability or receipt of a scholarship; and

(5) excludes, for a taxpayer who conducts a lawful business pursuant to the laws of the state, an amount equal to any expenditure that is eligible to be claimed as a federal income tax deduction but is disallowed by Section 280E of the Internal Revenue Code, as that section may be amended or renumbered;

C. "compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services;

D. "department" means the taxation and revenue department, the secretary or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

E. "fiduciary" means a guardian, trustee, executor, administrator, committee, conservator, receiver, individual or corporation acting in any fiduciary capacity;

F. "filing status" means "married filing joint returns", "married filing separate returns", "head of household", "surviving spouse" and "single", as those terms are generally defined for federal tax purposes;

G. "fiscal year" means any accounting period of twelve months ending on the last day of any month other than December;

H. "head of household" means "head of household" as generally defined for federal income tax purposes;

I. "individual" means a natural person, an estate, a trust or a fiduciary acting for a natural person, trust or estate;

J. "Internal Revenue Code" means the United States Internal Revenue Code of 1986, as amended;

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K. "lump-sum amount" means, for the purpose of determining liability for federal income tax, an amount that was not included in adjusted gross income but upon which the five-year-averaging or the ten-year-averaging method of tax computation provided in Section 402 of the Internal Revenue Code, as that section may be amended or renumbered, was applied;

L. "modified gross income" means all income of the taxpayer and, if any, the taxpayer's spouse and dependents, undiminished by losses and from whatever source, including:

- (1) compensation;
- (2) net profit from business;
- (3) gains from dealings in property;
- (4) interest;
- (5) net rents;
- (6) royalties;
- (7) dividends;
- (8) alimony and separate maintenance payments;
- (9) annuities;
- (10) income from life insurance and endowment contracts;
- (11) pensions;
- (12) discharge of indebtedness;
- (13) distributive share of partnership income;
- (14) income in respect of a decedent;
- (15) income from an interest in an estate or a trust;
- (16) social security benefits;
- (17) unemployment compensation benefits;
- (18) workers' compensation benefits;
- (19) public assistance and welfare benefits;
- (20) cost-of-living allowances; and

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(21) gifts;

M. "modified gross income" excludes:

(1) payments for hospital, dental, medical or drug expenses to or on behalf of the taxpayer;

(2) the value of room and board provided by federal, state or local governments or by private individuals or agencies based upon financial need and not as a form of compensation;

(3) payments pursuant to a federal, state or local government program directly or indirectly to a third party on behalf of the taxpayer when identified to a particular use or invoice by the payer; or

(4) payments for credits and rebates pursuant to the Income Tax Act and made for a credit pursuant to Section 7-3-9 NMSA 1978;

N. "net income" means, for estates and trusts, base income adjusted to exclude amounts that the state is prohibited from taxing because of the laws or constitution of this state or the United States and means, for taxpayers other than estates or trusts, base income adjusted to exclude:

(1) an amount equal to the standard deduction allowed the taxpayer for the taxpayer's taxable year by Section 63 of the Internal Revenue Code, as that section may be amended or renumbered;

(2) an amount equal to the itemized deductions defined in Section 63 of the Internal Revenue Code, as that section may be amended or renumbered, allowed the taxpayer for the taxpayer's taxable year less the amount excluded pursuant to Paragraph (1) of this subsection and less the amount of state and local income and sales taxes included in the taxpayer's itemized deductions;

(3) an amount equal to the product of the

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exemption amount allowed for the taxpayer's taxable year by Section 151 of the Internal Revenue Code, as that section may be amended or renumbered, multiplied by the number of personal exemptions allowed for federal income tax purposes;

(4) income from obligations of the United States of America less expenses incurred to earn that income;

(5) other amounts that the state is prohibited from taxing because of the laws or constitution of this state or the United States;

(6) for taxable years that began prior to January 1, 1991, an amount equal to the sum of:

(a) net operating loss carryback deductions to that year from taxable years beginning prior to January 1, 1991 claimed and allowed, as provided by the Internal Revenue Code; and

(b) net operating loss carryover deductions to that year claimed and allowed;

(7) for taxable years beginning on or after January 1, 1991 and prior to January 1, 2013, an amount equal to the sum of any net operating loss carryover deductions to that year claimed and allowed, provided that the amount of any net operating loss carryover from a taxable year beginning on or after January 1, 1991 and prior to January 1, 2013 may be excluded only as follows:

(a) in the case of a timely filed return, in the taxable year immediately following the taxable year for which the return is filed; or

(b) in the case of amended returns or original returns not timely filed, in the first taxable year beginning after the date on which the return or amended return establishing the net operating loss is filed; and

(c) in either case, if the net operating

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loss carryover exceeds the amount of net income exclusive of the net operating loss carryover for the taxable year to which the exclusion first applies, in the next four succeeding taxable years in turn until the net operating loss carryover is exhausted for any net operating loss carryover from a taxable year prior to January 1, 2013; in no event shall a net operating loss carryover from a taxable year beginning prior to January 1, 2013 be excluded in any taxable year after the fourth taxable year beginning after the taxable year to which the exclusion first applies;

(8) for taxable years beginning on or after January 1, 2013, an amount equal to the sum of any net operating loss carryover deductions to that year claimed and allowed; provided that the amount of any net operating loss carryover may be excluded only as follows:

(a) in the case of a timely filed return, in the taxable year immediately following the taxable year for which the return is filed; or

(b) in the case of amended returns or original returns not timely filed, in the first taxable year beginning after the date on which the return or amended return establishing the net operating loss is filed; and

(c) in either case, if the net operating loss carryover exceeds the amount of net income exclusive of the net operating loss carryover for the taxable year to which the exclusion first applies, in the next nineteen succeeding taxable years in turn until the net operating loss carryover is exhausted for any net operating loss carryover from a taxable year beginning on or after January 1, 2013; in no event shall a net operating loss carryover from a taxable year beginning: 1) prior to January 1, 2013 be excluded in any taxable year after the fourth taxable year beginning after the taxable year to

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which the exclusion first applies; and 2) on or after January 1, 2013 be excluded in any taxable year after the nineteenth taxable year beginning after the taxable year to which the exclusion first applies; and

(9) for taxable years beginning on or after January 1, 2011, an amount equal to the amount included in adjusted gross income that represents a refund of state and local income and sales taxes that were deducted for federal tax purposes in taxable years beginning on or after January 1, 2010;

O. "net operating loss" means any net operating loss, as defined by Section 172(c) of the Internal Revenue Code, as that section may be amended or renumbered, for a taxable year as further increased by the income, if any, from obligations of the United States for that year less related expenses;

P. "net operating loss carryover" means the amount, or any portion of the amount, of a net operating loss for any taxable year that, pursuant to Paragraph (6), (7) or (8) of Subsection N of this section, may be excluded from base income;

Q. "nonresident" means every individual not a resident of this state;

R. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, limited liability company, joint venture, syndicate or other association; "person" also means, to the extent permitted by law, any federal, state or other governmental unit or subdivision or agency, department or instrumentality thereof;

S. "resident" means an individual who is domiciled in this state during any part of the taxable year or an individual who is physically present in this state for one

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hundred eighty-five days or more during the taxable year; but any individual, other than someone who was physically present in the state for one hundred eighty-five days or more during the taxable year, who, on or before the last day of the taxable year, changed the individual's place of abode to a place without this state with the bona fide intention of continuing actually to abide permanently without this state is not a resident for the purposes of the Income Tax Act for periods after that change of abode;

T. "secretary" means the secretary of taxation and revenue or the secretary's delegate;

U. "state" means any state of the United States, the District of Columbia, the commonwealth of Puerto Rico, any territory or possession of the United States or any political subdivision of a foreign country;

V. "state or local bond" means a bond issued by a state other than New Mexico or by a local government other than one of New Mexico's political subdivisions, the interest from which is excluded from income for federal income tax purposes under Section 103 of the Internal Revenue Code, as that section may be amended or renumbered;

W. "surviving spouse" means "surviving spouse" as generally defined for federal income tax purposes;

X. "taxable income" means net income less any lump-sum amount;

Y. "taxable year" means the calendar year or fiscal year upon the basis of which the net income is computed under the Income Tax Act and includes, in the case of the return made for a fractional part of a year under the provisions of the Income Tax Act, the period for which the return is made; and

Z. "taxpayer" means any individual subject to the tax imposed by the Income Tax Act."

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SECTION 52. Section 7-2A-2 NMSA 1978 (being Laws 1986, Chapter 20, Section 33, as amended) is amended to read:

"7-2A-2. DEFINITIONS.--For the purpose of the Corporate Income and Franchise Tax Act and unless the context requires otherwise:

A. "bank" means any national bank, national banking association, state bank or bank holding company;

B. "apportioned net income" or "apportioned net loss" means net income allocated and apportioned to New Mexico pursuant to the provisions of the Corporate Income and Franchise Tax Act or the Uniform Division of Income for Tax Purposes Act, but excluding from the sales factor any sales that represent intercompany transactions between members of the filing group;

C. "base income" means the federal taxable income or the federal net operating loss of a corporation for the taxable year calculated pursuant to the Internal Revenue Code, after special deductions provided in Sections 241 through 249 of the Internal Revenue Code but without any deduction for net operating losses, as if the corporation filed a federal tax return as a separate domestic entity, modified as follows:

(1) adding to that income:

(a) interest received on a state or local bond exempt under the Internal Revenue Code;

(b) the amount of any deduction claimed in calculating taxable income for all expenses and costs directly or indirectly paid, accrued or incurred to a captive real estate investment trust; and

(c) the amount of any deduction, other than for premiums, for amounts paid directly or indirectly to a commonly controlled entity that is exempt from corporate income tax pursuant to Section 7-2A-4 NMSA 1978;

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(2) subtracting from that income:

(a) income from obligations of the United States net of expenses incurred to earn that income;

(b) other amounts that the state is prohibited from taxing because of the laws or constitution of this state or the United States net of any related expenses;

(c) an amount equal to one hundred percent of the subpart F income, as that term is defined in Section 952 of the Internal Revenue Code, as that section may be amended or renumbered, included in the income of the corporation; and

(d) an amount equal to one hundred percent of the income of the corporation under Section 951A of the Internal Revenue Code, after allowing the deduction provided in Section 250 of the Internal Revenue Code; [~~and~~]

(3) making other adjustments deemed necessary to properly reflect income of the unitary group, including attribution of income or expense related to unitary assets held by related corporations that are not part of the filing group; and

(4) for a taxpayer that conducts a lawful business pursuant to the laws of this state, excludes an amount equal to any expenditure that is eligible to be claimed as a federal income tax deduction but is disallowed pursuant to Section 280E of the Internal Revenue Code, as that section may be amended or renumbered;

D. "captive real estate investment trust" means a corporation, trust or association taxed as a real estate investment trust pursuant to Section 857 of the Internal Revenue Code, the shares or beneficial interests of which are not regularly traded on an established securities market; provided that more than fifty percent of any class of

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beneficial interests or shares of the real estate investment trust are owned directly, indirectly or constructively by the taxpayer during all or a part of the taxpayer's taxable year;

E. "common ownership" means the direct or indirect control or ownership of more than fifty percent of the outstanding voting stock, ownership of which is determined pursuant to Section 1563 of the Internal Revenue Code, as that section may be amended or renumbered, of:

(1) a parent-subsidiary controlled group as defined in Section 1563 of the Internal Revenue Code, except that fifty percent shall be substituted for eighty percent;

(2) a brother-sister controlled group as defined in Section 1563 of the Internal Revenue Code; or

(3) three or more corporations each of which is a member of a group of corporations described in Paragraph (1) or (2) of this subsection, and one of which is:

(a) a common parent corporation included in a group of corporations described in Paragraph (1) of this subsection; and

(b) included in a group of corporations described in Paragraph (2) of this subsection;

F. "consolidated group" means the group of entities properly filing a federal consolidated return under the Internal Revenue Code for the taxable year;

G. "corporation" means corporations, joint stock companies, real estate trusts organized and operated under the Real Estate Trust Act, financial corporations and banks, other business associations and, for corporate income tax purposes, partnerships and limited liability companies taxed as corporations under the Internal Revenue Code;

H. "department" means the taxation and revenue department, the secretary of taxation and revenue or any

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employee of the department exercising authority lawfully delegated to that employee by the secretary;

I. "filing group" means a group of corporations properly included in a return pursuant to Section 7-2A-8.3 NMSA 1978 for a particular taxable year;

J. "fiscal year" means any accounting period of twelve months ending on the last day of any month other than December;

K. "grandfathered net operating loss carryover" means:

(1) the amount of net loss properly reported to New Mexico for taxable years beginning January 1, 2013 and prior to January 1, 2020 as part of a timely filed original return, or an amended return for those taxable years filed prior to January 1, 2020, to the extent such loss can be attributed to one or more corporations that are properly included in the taxpayer's return for the first taxable year beginning on or after January 1, 2020;

(2) reduced by:

(a) adding back deductions that were taken by the corporation or corporations for royalties or interest paid to one or more related corporations, but only to the extent that such adjustment would not create a net loss for such related corporations; and

(b) the amount of net operating loss deductions taken prior to January 1, 2020 that would be charged against those losses consistent with the Internal Revenue Code and provisions of the Corporate Income and Franchise Tax Act applicable to the year of the deduction; and

(3) apportioned to New Mexico using the apportionment factors that can properly be attributed to the corporation or corporations for the year of the net loss;

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L. "Internal Revenue Code" means the United States Internal Revenue Code of 1986, as amended;

M. "net income" means:

(1) the base income of a corporation properly filing a tax return as a separate entity; or

(2) the combined base income and losses of corporations that are part of a filing group that is computed after eliminating intercompany income and expense in a manner consistent with the consolidated filing requirements of the Internal Revenue Code and the Corporate Income and Franchise Tax Act;

N. "net operating loss carryover" means the apportioned net loss properly reported on an original or amended tax return for taxable years beginning on or after January 1, 2020 by the taxpayer:

(1) plus:

(a) the portion of an apportioned net loss properly reported to New Mexico for a taxable year beginning on or after January 1, 2020, on a separate year return, to the extent the taxpayer would have been entitled to include the portion of such apportioned net loss in the taxpayer's consolidated net operating loss carryforward under the Internal Revenue Code if the taxpayer filed a consolidated federal return; and

(b) the taxpayer's grandfathered net operating loss carryover; and

(2) minus:

(a) the amount of the net operating loss carryover attributed to an entity that has left the filing group, computed in a manner consistent with the consolidated filing requirements of the Internal Revenue Code and applicable regulations, as if the taxpayer were filing a consolidated

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return; and

(b) the amount of net operating loss deductions properly taken by the taxpayer;

O. "net operating loss deduction" means the portion of the net operating loss carryover that may be deducted from the taxpayer's apportioned net income under the Internal Revenue Code as of January 1, 2018 for the taxable year in which the deduction is taken, including the eighty percent limitation of Section 172(a) of the Internal Revenue Code as of January 1, 2018 calculated on the basis of the taxpayer's apportioned net income;

P. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, limited liability company, joint venture, syndicate or other association; "person" also means, to the extent permitted by law, any federal, state or other governmental unit or subdivision or agency, department or instrumentality thereof;

Q. "real estate investment trust" has the meaning ascribed to the term in Section 856 of the Internal Revenue Code, as that section may be amended or renumbered;

R. "related corporation" means a corporation that is under common ownership with one or more corporations but that is not included in the same tax return;

S. "return" means any tax or information return, including a water's-edge or worldwide combined return, a consolidated return, a declaration of estimated tax or a claim for refund, including any amendments or supplements to the return, required or permitted pursuant to a law subject to administration and enforcement pursuant to the Tax Administration Act and filed with the department by or on behalf of any person;

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T. "secretary" means the secretary of taxation and revenue or the secretary's delegate;

U. "separate year return" means a properly filed original or amended return for a taxable year beginning on or after January 1, 2020 by a taxpayer reporting a loss, a portion of which is claimed as part of the net operating loss carryover by another taxpayer in a subsequent return period;

V. "state" means any state of the United States, the District of Columbia, the commonwealth of Puerto Rico, any territory or possession of the United States or political subdivision thereof or any political subdivision of a foreign country;

W. "state or local bond" means a bond issued by a state other than New Mexico or by a local government other than one of New Mexico's political subdivisions, the interest from which is excluded from income for federal income tax purposes under Section 103 of the Internal Revenue Code, as that section may be amended or renumbered;

X. "taxable income" means a taxpayer's apportioned net income minus the net operating loss deduction for the taxable year;

Y. "taxable year" means the calendar year or fiscal year upon the basis of which the net income is computed under the Corporate Income and Franchise Tax Act and includes, in the case of the return made for a fractional part of a year under the provisions of that act, the period for which the return is made;

Z. "taxpayer" means any corporation or group of corporations filing a return pursuant to Section 7-2A-8.3 NMSA 1978 subject to the taxes imposed by the Corporate Income and Franchise Tax Act;

AA. "unitary group" means a group of two or more

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corporations, including a captive real estate investment trust, but not including an S corporation, an insurance company subject to the provisions of the New Mexico Insurance Code, an insurance company that would be subject to the New Mexico Insurance Code if the insurance company engaged in business in this state or a real estate investment trust that is not a captive real estate investment trust, that are:

- (1) related through common ownership; and
- (2) economically interdependent with one another as demonstrated by the following factors:
 - (a) centralized management;
 - (b) functional integration; and
 - (c) economies of scale;

BB. "water's-edge group" means all corporations that are part of a unitary group, except:

- (1) corporations that are exempt from corporate income tax pursuant to Section 7-2A-4 NMSA 1978; and
- (2) corporations wherever organized or incorporated that have less than twenty percent of their property, payroll and sales sourced to locations within the United States, following the sourcing rules of the Uniform Division of Income for Tax Purposes Act; and

CC. "worldwide combined group" means all members of a unitary group, except members that are exempt from corporate income tax pursuant to Section 7-2A-4 NMSA 1978, irrespective of the country in which the corporations are incorporated or conduct business activity."

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

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

.221014.5GLGAIC March 30, 2021 (8:46pm)

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A. Receipts from the sale of prescription drugs and oxygen and oxygen services provided by a licensed medicare durable medical equipment provider and cannabis products that are sold in accordance with the Lynn and Erin Compassionate Use Act may be deducted from gross receipts and governmental gross receipts.

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

(1) dispensed by or under the supervision of a licensed pharmacist or by a physician or other person authorized

under state law to do so;

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

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

SECTION 54. Section 9-11-12.1 NMSA 1978 (being Laws 1997, Chapter 64, Section 1, as amended) is amended to read:

"9-11-12.1. TRIBAL COOPERATIVE AGREEMENTS.--

A. The secretary may enter into cooperative agreements with the Pueblos of Acoma, Cochiti, Jemez, Isleta, Laguna, Nambe, Picuris, Pojoaque, Sandia, San Felipe, San Ildefonso, San Juan, Santa Ana, Santa Clara, Santo Domingo, Taos, Tesuque, Zia and Zuni; the Jicarilla Apache Nation; the Mescalero Apache Tribe; and [with] the nineteen pueblos acting collectively for the exchange of information and the reciprocal, joint or common enforcement, administration, collection, remittance and audit of gross receipts tax and cannabis excise tax revenues of the party jurisdictions.

B. Money collected by the department on behalf of a tribe in accordance with an agreement entered into pursuant to

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this section is not money of this state and shall be collected and disbursed in accordance with the terms of the agreement, notwithstanding any other provision of law.

C. The secretary is empowered to promulgate such rules and to establish such procedures as the secretary deems appropriate for the collection and disbursement of funds due a tribe and for the receipt of money collected by a tribe for the account of this state under the terms of a cooperative agreement entered into under the authority of this section, including procedures for identification of taxpayers or transactions that are subject only to the taxing authority of the tribe, taxpayers or transactions that are subject only to the taxing authority of this state and taxpayers or transactions that are subject to the taxing authority of both party jurisdictions.

D. Nothing in an agreement entered into pursuant to this section shall be construed as authorizing this state or a tribe to tax ~~[persons]~~ a person or ~~[transactions]~~ transaction that federal law prohibits that government from taxing, ~~[or as]~~ authorizing a state or tribal court to assert jurisdiction over ~~[persons]~~ a person who ~~[are]~~ is not otherwise subject to that court's jurisdiction or ~~[as]~~ affecting any issue of the respective civil or criminal jurisdictions of this state or the tribe. Nothing in an agreement entered into pursuant to this section shall be construed as an assertion or an admission by either this state or a tribe that the taxes of one have precedence over the taxes of the other when ~~[the]~~ a person or transaction is subject to the taxing authority of both governments. An agreement entered into pursuant to this section shall be construed solely as an agreement between the two party governments and shall not alter or affect the government-to-government relations between this state and any

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other tribe.

E. As used in this section:

(1) "tribal" means of or pertaining to a tribe; and

(2) "tribe" means an Indian nation, tribe or pueblo located entirely in New Mexico."

SECTION 55. Section 9-16-4 NMSA 1978 (being Laws 1983, Chapter 297, Section 20, as amended) is amended to read:

"9-16-4. DEPARTMENT ESTABLISHED.--The "regulation and licensing department" is created in the executive branch. The department shall not be a cabinet department. The department shall consist of but not be limited to the following divisions:

- A. the administrative services division;
- B. the construction industries division;
- C. the financial institutions division;
- D. the securities division;
- E. the manufactured housing division; ~~and~~
- F. the alcoholic beverage control division; and
- G. the cannabis control division."

SECTION 56. Section 9-16-6 NMSA 1978 (being Laws 1983, Chapter 297, Section 22, as amended) is amended to read:

"9-16-6. SUPERINTENDENT--DUTIES AND GENERAL POWERS.--

A. The superintendent is responsible to the governor for the operation of the department. It is the superintendent's duty to manage all operations of the department and to administer and enforce the laws with which the superintendent ~~or~~, the department or a division of the department is charged.

B. To perform the superintendent's duties, the superintendent has every power expressly enumerated in the laws, whether granted to the superintendent or the department or any division of the department, except where authority

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conferred upon any division is explicitly exempted from the superintendent's authority by statute. In accordance with these provisions, the superintendent shall:

- (1) except as otherwise provided in the Regulation and Licensing Department Act, exercise general supervisory and appointing authority over all department employees, subject to any applicable personnel laws and regulations;
- (2) delegate authority to subordinates as the superintendent deems necessary and appropriate, clearly delineating such delegated authority and the limitations thereto;
- (3) organize the department into those organizational units the superintendent deems will enable it to function most efficiently, subject to any provisions of law requiring or establishing specific organizational units;
- (4) within the limitations of available appropriations and applicable laws, employ and fix the compensation of those persons necessary to discharge the superintendent's duties;
- (5) take administrative action by issuing orders and instructions, not inconsistent with the law, to assure implementation of and compliance with the provisions of law for whose administration or execution the superintendent is responsible and to enforce those orders and instructions by appropriate administrative action or actions in the courts;
- (6) conduct research and studies that will improve the operations of the department and the provision of services to the residents of the state;
- (7) provide courses of instruction and practical training for employees of the department and other persons involved in the administration of programs, with the

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objective of improving the operations and efficiency of administration;

(8) prepare an annual budget of the department;

(9) provide [~~cooperation, at the request of heads of~~] administratively attached agencies [~~in order~~] assistance as necessary to:

(a) minimize or eliminate duplication of services and jurisdictional conflicts;

(b) coordinate activities and resolve problems of mutual concern; and

(c) [~~resolve by agreement the manner and extent to which the department shall~~] provide implementation of licensure processes, budgeting, recordkeeping, procurement, contracting, hiring and supervision of staff and related administrative and clerical assistance [~~to~~] for administratively attached agencies; and

(10) appoint, with the governor's consent, a "director" for each division. These appointed positions are exempt from the provisions of the Personnel Act. Persons appointed to these positions shall serve at the pleasure of the superintendent.

~~[(11) give bond in the penal sum of twenty-five thousand dollars (\$25,000) and require directors to each give bond in the penal sum of ten thousand dollars (\$10,000) conditioned upon the faithful performance of duties, as provided in the Surety Bond Act. The department shall pay the costs of these bonds; and~~

~~(12) require performance bonds of such department employees and officers as the superintendent deems necessary, as provided in the Surety Bond Act. The department shall pay the costs of these bonds.]~~

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C. The superintendent may apply for and receive, with the governor's approval, in the name of the department any public or private funds, including United States government funds, available to the department to carry out its programs, duties or services.

D. The superintendent may make and adopt such reasonable and procedural rules [~~and regulations~~] as may be necessary to carry out the duties of the department and its divisions; provided that where a licensing entity requires submission of fingerprints as part of the initial license application, and a licensee has provided fingerprints and the license has been issued, the licensing entity shall not require a licensee to submit fingerprints again to renew the license, but a licensee shall submit to a background investigation if required; and provided further that the prohibition against requiring additional fingerprints shall not apply to the financial institutions division of the department when utilizing the nationwide multistate licensing system and registry.

E. No rule [~~or regulation~~] promulgated by the director of any division in carrying out the functions and duties of the department or a division shall be effective until approved by the superintendent, unless otherwise provided by statute. Unless otherwise provided by statute, [~~no regulation affecting any person or agency outside the department shall be adopted, amended or repealed without a public hearing on the proposed action before the superintendent or a hearing officer designated by the superintendent. The public hearing shall be held in Santa Fe unless otherwise permitted by statute. Notice of the subject matter of the regulation, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views and the method~~]

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~~by which copies of the proposed regulation, proposed amendment or repeal of an existing regulation may be obtained shall be published once at least thirty days prior to the hearing date in a newspaper of general circulation and mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice of hearing. All rules and regulations shall be]~~ all rules adopted, amended or repealed by the superintendent or the director of any division shall have notice provided and be conducted and filed in accordance with the State Rules Act."

SECTION 57. Section 24-16-12 NMSA 1978 (being Laws 2007, Chapter 20, Section 4, as amended) is amended to read:

"24-16-12. SMOKING-PERMITTED AREAS.--Notwithstanding any other provision of the Dee Johnson Clean Indoor Air Act, smoking-permitted areas include the following:

A. a private residence, unless it is used commercially to provide child care, adult care or health care or any combination of those activities;

B. a retail tobacco store; provided that, for a retail tobacco store established on or after the effective date of this 2019 act, the store shall be located in a standalone building;

C. a cigar bar; provided that, for a cigar bar established on or after [~~the effective date of this~~] June 14, 2019 [~~act~~], the bar shall be located in a standalone building;

D. the facilities of a tobacco manufacturing company licensed by the United States to manufacture tobacco products that are operated by the company in its own name and that are used exclusively by the company in its business of manufacturing, marketing or distributing its tobacco products; provided that secondhand smoke does not infiltrate other indoor workplaces or other indoor public places where smoking is

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otherwise prohibited under the Dee Johnson Clean Indoor Air Act;

- E. a state-licensed gaming facility, casino or bingo parlor;
- F. designated outdoor smoking areas;
- G. private clubs;
- H. hotel and motel rooms that are rented to guests and are designated as smoking-permitted rooms; provided that not more than ten percent of rooms rented to guests in a hotel or motel may be so designated;
- I. a site that is being used in connection with the practice of cultural or ceremonial activities by Native Americans and that is in accordance with the federal American Indian Religious Freedom Act, 42 U.S.C. 1996 and 1996a; ~~and~~
- J. a theatrical stage or a motion picture or television production set when it is necessary for performers to smoke as part of the production; and
- K. an indoor or outdoor cannabis consumption area pursuant to the Cannabis Regulation Act."

SECTION 58. Section 26-2B-3 NMSA 1978 (being Laws 2007, Chapter 210, Section 3, as amended) is amended to read:

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

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

B. "cannabis":

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

(2) does not include the mature stalks of the plant; fiber produced from the stalks; oil or cake made from the seeds of the plant; any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil or cake; the sterilized seed of the plant that is incapable of germination; the weight of any other ingredient combined with cannabis to prepare topical or oral administrations, food, drink or another product; or hemp;

~~C. "cannabis consumption area" means an area within a licensed premises approved by the department where cannabis may be consumed that complies with rule as established by the department;~~

~~D. "cannabis courier" means a person that is licensed by the department to transport usable cannabis and cannabis products within the state from a cannabis establishment to:~~

- ~~(1) a qualified patient;~~
- ~~(2) a primary caregiver; or~~
- ~~(3) another cannabis establishment;~~

~~E. "cannabis establishment" means:~~

- ~~(1) a licensed cannabis courier;~~
- ~~(2) a licensed cannabis testing facility;~~
- ~~(3) a licensed cannabis manufacturer;~~
- ~~(4) a licensed cannabis producer; or~~
- ~~(5) such other person that the department may~~

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~~by rule approve for participation in the medical cannabis program;~~

~~F. "cannabis manufacturer" means a person that is licensed by the department to:~~

- ~~(1) manufacture cannabis products;~~
- ~~(2) package, transport or courier cannabis products;~~
- ~~(3) have cannabis products tested by a cannabis testing facility;~~
- ~~(4) purchase, obtain, sell and transport cannabis products to other cannabis establishments; and~~
- ~~(5) prepare products for personal production license holders;~~

~~G. "cannabis producer" means a person that is licensed by the department to possess, produce, dispense, distribute and manufacture cannabis and cannabis products and sell wholesale or by direct sale to qualified patients and primary caregivers;]~~

C. "cannabis extract":

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

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

D. "cannabis flowers" means only the flowers of a cannabis plant;

~~[H.]~~ E. "cannabis product":

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

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

~~[F. "cannabis testing facility" means a person that is licensed by the department to perform tests of cannabis products to analyze the strength or purity of the items and to collect cannabis samples and transport cannabis products to the cannabis testing facility from cannabis establishments;~~

~~↵]~~ F. "debilitating medical condition" means:

- (1) cancer;
- (2) glaucoma;
- (3) multiple sclerosis;
- (4) damage to the nervous tissue of the spinal cord, with objective neurological indication of intractable spasticity;
- (5) seizure disorder, including epilepsy;
- (6) positive status for human immunodeficiency virus or acquired immune deficiency syndrome;
- (7) admitted into hospice care in accordance with rules promulgated by the department;
- (8) amyotrophic lateral sclerosis;
- (9) Crohn's disease;
- (10) hepatitis C infection;
- (11) Huntington's disease;
- (12) inclusion body myositis;
- (13) inflammatory autoimmune-mediated arthritis;
- (14) intractable nausea or vomiting;
- (15) obstructive sleep apnea;
- (16) painful peripheral neuropathy;
- (17) Parkinson's disease;

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(18) posttraumatic stress disorder;
(19) severe chronic pain;
(20) severe anorexia or cachexia;
(21) spasmodic torticollis;
(22) ulcerative colitis; or
(23) any other medical condition, medical treatment or disease as approved by the department;

[K.] G. "department" means the department of health;

H. "division" means the cannabis control division of the regulation and licensing department;

I. "dry weight basis" means a process by which delta-9-tetrahydrocannabinol concentration is measured relative to the aggregate weight of all parts of the plant genus Cannabis, whether growing or not, including the leaves of the plant, the flowers and buds of the plant, the seeds of the plant, the resin of the plant and the stalks of the plant, at the point of harvest and with no moisture added to the harvested plant;

[L.] J. "hemp" means the plant genus Cannabis [~~sativa L.~~] and any part of the plant, whether growing or not, containing a delta-9-tetrahydrocannabinol concentration of no more than three-tenths percent on a dry weight basis;

[M.] ~~"license" means a license issued pursuant to the Lynn and Erin Compassionate Use Act;~~

~~N. "licensee" means a person that holds a license;~~

~~O. "licensee representative" means an owner, director, officer, manager, employee, agent or other representative of a licensee, to the extent that person acts in a representative capacity;~~

~~P. "manufacture" means to prepare a cannabis product;~~

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~~Q.]~~ K. "medical cannabis program" means the program established pursuant to the Lynn and Erin Compassionate Use Act for authorization and regulation of the medical use of cannabis in the state;

~~[R.]~~ ~~"personal production license" means a license issued to a qualified patient or to a qualified patient's primary caregiver participating in the medical cannabis program to permit the qualified patient or the qualified patient's primary caregiver to produce cannabis for the qualified patient's use at an address approved by the department;~~

~~S.]~~ L. "practitioner" means a person licensed in New Mexico to prescribe and administer drugs that are subject to the Controlled Substances Act;

~~T.]~~ M. "primary caregiver" means a resident of New Mexico who is at least eighteen years of age and who has been designated by the patient's practitioner as being necessary to take responsibility for managing the well-being of a qualified patient with respect to the medical use of cannabis pursuant to the provisions of the Lynn and Erin Compassionate Use Act;

~~U.]~~ ~~"produce" means to engage in any activity related to the planting or cultivation of cannabis;~~

~~V.]~~ N. "qualified patient" means a resident of New Mexico who has been diagnosed by a practitioner as having a debilitating medical condition and has received written certification and a registry identification card pursuant to the Lynn and Erin Compassionate Use Act on the basis of having been diagnosed, in person or via telemedicine, by a practitioner as having a debilitating medical condition;
~~[provided that a practitioner may only issue a written certification on the basis of an evaluation conducted via telemedicine if the practitioner has previously examined the patient in person;~~

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~~W.]~~ Q. "reciprocal participant" means ~~[an individual who holds proof of authorization to participate in the medical cannabis program of another state of the United States, the District of Columbia, a territory or commonwealth of the United States or a New Mexico Indian nation, tribe or pueblo]~~ a person who is not a resident of New Mexico and who holds proof of enrollment by a governmental regulatory authority to participate in the medical cannabis program of another state of the United States, the District of Columbia or a territory or commonwealth of the United States in which the person resides or a person who holds proof of enrollment by a governmental regulatory authority of a New Mexico Indian nation, tribe or pueblo to participate in its medical cannabis program;

~~[X.]~~ P. "registry identification card" means a document that the department issues:

(1) to a qualified patient that identifies the bearer as a qualified patient and authorizes the qualified patient to use cannabis for a debilitating medical condition; or

(2) to a primary caregiver that identifies the bearer as a primary caregiver authorized to engage in the intrastate possession and administration of cannabis for the sole use of a qualified patient who is identified on the document;

~~[Y.]~~ Q. "safety-sensitive position" means a position in which performance by a person under the influence of drugs or alcohol would constitute an immediate or direct threat of injury or death to that person or another;

~~[Z.]~~ R. "telemedicine" means the use of telecommunications and information technology to provide clinical health care from a site apart from the site where the

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patient is located, in real time or asynchronously, including the use of interactive simultaneous audio and video or store-and-forward technology, or off-site patient monitoring and telecommunications in order to deliver health care services;

[AA-] S. "THC" means delta-9-tetrahydrocannabinol, a substance that is the primary psychoactive ingredient in cannabis; and

[BB-] T. "written certification" means a statement made on a department-approved form and signed by a patient's practitioner that indicates, in the practitioner's professional opinion, that the patient has a debilitating medical condition and the practitioner believes that the potential health benefits of the medical use of cannabis would likely outweigh the health risks for the patient."

SECTION 59. Section 26-2B-4 NMSA 1978 (being Laws 2007, Chapter 210, Section 4, as amended) is amended to read:

"26-2B-4. EXEMPTION FROM CRIMINAL AND CIVIL PENALTIES FOR THE MEDICAL USE OF CANNABIS.--

A. A qualified patient or a qualified patient's primary caregiver shall not be subject to arrest, prosecution or penalty in any manner for the possession of or the medical use of cannabis if the quantity of cannabis does not exceed an adequate supply; provided that a qualified patient or the qualified patient's primary caregiver may possess that qualified patient's harvest of cannabis.

B. A reciprocal participant shall not be subject to arrest, prosecution or penalty in any manner for the possession of or the medical use of cannabis if the quantity of cannabis does not exceed the limit identified by department rule.

C. The following conduct is lawful and shall not constitute grounds for detention, search or arrest of a person or for a violation of probation or parole, and cannabis

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products that relate to the conduct are not contraband or subject to seizure or forfeiture pursuant to the Controlled Substances Act or the Forfeiture Act:

(1) a qualified patient or primary caregiver possessing or transporting not more than an adequate supply or a reciprocal participant possessing or transporting not more than the limit identified by department rule;

(2) a qualified patient or primary caregiver purchasing or obtaining not more than an adequate supply from a lawful source or a reciprocal participant purchasing or obtaining not more than the limit identified by department rule;

(3) a qualified patient or reciprocal participant using or being under the influence of cannabis; provided that the qualified patient or reciprocal participant is acting consistent with law; or

(4) a qualified patient [~~or~~], primary caregiver or reciprocal participant transferring, without financial consideration, to a qualified patient [~~or~~], primary caregiver or reciprocal participant not more than two ounces of cannabis, sixteen grams of cannabis extract and eight hundred milligrams of edible cannabis [~~or~~

~~(5) with respect to cannabis cultivated under a personal production license, a qualified patient or primary caregiver possessing, planting, cultivating, harvesting, drying, manufacturing or transporting cannabis plants or cannabis products as allowed by department rule; provided that a qualified patient or primary caregiver who possesses a personal production license shall not manufacture cannabis products using an oil extractor solvent that is stored under pressure unless the qualified patient or primary caregiver holds a separate license from the department permitting the~~

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~~person to manufacture cannabis products using an oil extractor solvent that is under pressure].~~

D. Subsection A of this section shall not apply to a qualified patient under the age of eighteen years, unless:

(1) the qualified patient's practitioner has explained the potential risks and benefits of the medical use of cannabis to the qualified patient and to a parent, guardian or other person having legal custody of the qualified patient; and

(2) a parent, guardian or other person having legal custody consents in writing to:

(a) allow the qualified patient's medical use of cannabis;

(b) serve as the qualified patient's primary caregiver; and

(c) control the dosage and the frequency of the medical use of cannabis by the qualified patient.

E. A qualified patient or a primary caregiver shall be granted the full legal protections provided in this section if the qualified patient or primary caregiver is in possession of a registry identification card. If the qualified patient or primary caregiver is not in possession of a registry identification card, the qualified patient or primary caregiver shall be given an opportunity to produce the registry identification card before any arrest or criminal charges or other penalties are initiated.

F. A practitioner shall not be subject to arrest or prosecution, penalized in any manner or denied any right or privilege for recommending the medical use of cannabis or providing written certification for the medical use of cannabis pursuant to the Lynn and Erin Compassionate Use Act.

~~[G. A licensee or licensee representative shall not~~

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~~be subject to arrest, prosecution or penalty, in any manner, for the production, possession, manufacture, distribution, dispensing or testing of cannabis pursuant to the Lynn and Erin Compassionate Use Act. Conduct by a licensee or a licensee representative that is allowed pursuant to a license and conduct by a person that allows property to be used by a licensee or a licensee representative for conduct allowed pursuant to a license is lawful, is not a violation of state or local law and is not a basis for seizure or forfeiture of property or assets under state or local law.~~

H.] G. Any property interest that is possessed, owned or used in connection with the medical use of cannabis, or acts incidental to such use, shall not be harmed, neglected, injured or destroyed while in the possession of state or local law enforcement officials. ~~[Any]~~ Such property interest shall not be forfeited under any state or local law providing for the forfeiture of property except as provided in the Forfeiture Act. Cannabis, paraphernalia or other property seized from a qualified patient ~~[or]~~, primary caregiver or reciprocal participant in connection with the claimed medical use of cannabis shall be returned immediately upon the determination by a court or prosecutor that the qualified patient ~~[or]~~, primary caregiver or reciprocal participant is entitled to the protections of the provisions of the Lynn and Erin Compassionate Use Act, as may be evidenced by a failure to actively investigate the case, a decision not to prosecute, the dismissal of charges or acquittal.

~~[I. A state or local government shall not impose a criminal, civil or administrative penalty on a licensee or a licensee representative, or on a person that allows property to be used by a licensee or a licensee representative pursuant to a license, solely for conduct that is allowed pursuant to a~~

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~~license.~~

5.] H. A person shall not be subject to arrest or prosecution for a cannabis-related offense for simply being in the presence of the medical use of cannabis as ~~[permitted]~~ allowed under the provisions of the Lynn and Erin Compassionate Use Act."

SECTION 60. Section 26-2B-5 NMSA 1978 (being Laws 2007, Chapter 210, Section 5, as amended by Laws 2019, Chapter 247, Section 5 and by Laws 2019, Chapter 261, Section 2) is amended to read:

"26-2B-5. PROHIBITIONS, RESTRICTIONS AND LIMITATIONS ON THE MEDICAL USE OF CANNABIS--CRIMINAL PENALTIES.--

A. Participation in a medical use of cannabis program by a qualified patient [or], primary caregiver or reciprocal participant does not relieve the qualified patient [or], primary caregiver or reciprocal participant from:

(1) criminal prosecution or civil penalties for activities not authorized in the Lynn and Erin Compassionate Use Act;

(2) liability for damages or criminal prosecution arising out of the operation of a vehicle while under the influence of cannabis; or

(3) criminal prosecution or civil penalty for possession or use of cannabis:

(a) in the workplace of the qualified patient's [or], primary caregiver's or reciprocal participant's employment; or

(b) at a public park, recreation center, youth center or other public place.

B. A person who makes a fraudulent representation to a law enforcement officer about the person's participation in a medical use of cannabis program to avoid arrest or

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prosecution for a cannabis-related offense is guilty of a petty misdemeanor and shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

~~[C. If a licensee or the licensee's representative sells, distributes, dispenses or transfers cannabis to a person not approved by the department pursuant to the Lynn and Erin Compassionate Use Act or obtains or transports cannabis outside New Mexico, the licensee or the licensee's representative shall be subject to arrest, prosecution and civil or criminal penalties pursuant to state law.] "~~

SECTION 61. Section 26-2B-6.1 NMSA 1978 (being Laws 2019, Chapter 247, Section 8) is amended to read:

"26-2B-6.1. [~~PROGRAM REGULATION AND ADMINISTRATION-- FEES--LIMITATIONS RULEMAKING--LICENSURE--ISSUANCE~~] ASSESSMENT REPORTING. --

~~[A. The department shall:~~

~~(1) regulate and administer the medical cannabis program; and~~

~~(2) collect fees from licensees, provided that the department shall not charge a fee relating to the medical cannabis registry.~~

~~B. By December 20, 2019, the secretary of health shall adopt and promulgate rules to establish fees for licenses for cannabis producers, cannabis manufacturers, cannabis couriers, cannabis testing facilities or any other cannabis establishments whose operations are authorized pursuant to the Lynn and Erin Compassionate Use Act.~~

~~C. The department shall establish application and licensing fees applicable to licenses for activity related to the medical cannabis program.~~

~~D. The department shall administer licensure for medical cannabis program activity provided for in the Lynn and~~

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~~Erin Compassionate Use Act, which shall include personal
production licenses and licenses for:~~

- ~~(1) cannabis couriers;~~
- ~~(2) cannabis manufacturers;~~
- ~~(3) cannabis producers;~~
- ~~(4) cannabis testing facilities; and~~
- ~~(5) any other activity or person as deemed~~

~~necessary by the department.~~

~~E. The department shall not issue any other license
provided for in this section to a cannabis testing facility
licensee.~~

~~F.] In consultation with qualified patients and
primary caregivers, the department shall produce an assessment
report annually, which shall be published to the public and
that includes at a minimum an evaluation of:~~

~~[(1)] A. the affordability of and accessibility to
medical cannabis pursuant to the Lynn and Erin Compassionate
Use Act; and~~

~~[(2)] B. the needs of qualified patients who live
in rural areas, federal subsidized housing or New Mexico Indian
nations, tribes or pueblos.~~

~~[G. The department shall allow for the smoking,
vaporizing and ingesting of cannabis products within a cannabis
consumption area on the premises if:~~

~~(1) access is restricted to qualified patients
and their primary caregivers;~~

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

~~(3) qualified patients who consume cannabis on
the premises have a designated driver or other means of
transportation consistent with current law.] "~~

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SECTION 62. Section 26-2B-7 NMSA 1978 (being Laws 2007, Chapter 210, Section 7, as amended) is amended to read:

"26-2B-7. REGISTRY IDENTIFICATION CARDS--DEPARTMENT RULES--DUTIES--RECIPROCITY.--

A. After consultation with the advisory board, the department shall promulgate rules in accordance with the State Rules Act to implement the purpose of the Lynn and Erin Compassionate Use Act. The rules shall:

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

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

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

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

~~[(5) identify requirements for the licensure of cannabis producers and cannabis production facilities, cannabis couriers, cannabis manufacturers, cannabis testing facilities and any other cannabis establishments that the department may license and set forth procedures to obtain licenses;~~

~~(6) develop a distribution system for the~~

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~~medical cannabis program that provides for:~~

~~(a) cannabis production facilities within New Mexico housed on secured grounds and operated by licensees; and~~

~~(b) distribution of cannabis to qualified patients or their primary caregivers to take place at locations that are designated by the department and that are not within three hundred feet of any school, church or daycare center that were in existence in that location before the licensee distributing medical cannabis nearby was licensed; provided that this distance requirement shall not apply to distribution at the home of the qualified patient or primary caregiver;~~

~~(7) identify requirements for testing and labeling of cannabis and cannabis products for quality assurance. The department shall adopt and promulgate rules pursuant to this paragraph by December 20, 2019;~~

~~(8)] (5) determine additional duties and responsibilities of the advisory board; and~~

~~(9)] (6) be revised and updated as necessary.~~

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

- (1) a written certification;
- (2) the name, address and date of birth of the patient;
- (3) the name, address and telephone number of the patient's practitioner; and
- (4) the name, address and date of birth of the patient's primary caregiver, if any.

C. The department shall verify the information

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

D. The department shall issue a registry identification card within five days of approving an application, and a card shall expire three years after the date of issuance.

E. A registry identification card shall contain:

- (1) the name and date of birth of the qualified patient and primary caregiver, if any;
- (2) the date of issuance and expiration date of the registry identification card; and
- (3) other information that the department may require by rule.

F. A person who possesses a registry identification card shall notify the department of any change in the person's name, qualified patient's practitioner, qualified patient's primary caregiver or change in status of the qualified patient's debilitating medical condition within ten days of the change.

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

H. The department shall maintain a confidential

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file containing the names and addresses of the persons who have either applied for or received a registry identification card. Individual names on the list shall be confidential and not subject to disclosure, except:

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

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

(3) to the division; or

~~(3)~~ (4) as provided in the federal Health Insurance Portability and Accountability Act of 1996.

I. By March 1, 2020, the secretary of health shall adopt and promulgate rules relating to medical cannabis program reciprocity. The department may identify requirements for the granting of reciprocity, including provisions limiting the period of time in which a reciprocal participant may participate in the medical cannabis program.

J. A reciprocal participant:

(1) may participate in the medical cannabis program in accordance with department rules;

(2) shall not be required to comply with the registry identification card application and renewal requirements established pursuant to this section and department rules;

(3) shall at all times possess proof of authorization to participate in the medical cannabis program of another state, the District of Columbia, a territory or commonwealth of the United States or a New Mexico Indian

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nation, tribe or pueblo and shall present proof of that authorization when purchasing cannabis from a ~~[licensee]~~ person licensed pursuant to the Cannabis Regulation Act; and

(4) shall register with a ~~[licensee]~~ person licensed pursuant to the Cannabis Regulation Act for the purpose of tracking sales to the reciprocal participant in an electronic system that is accessible to the department."

SECTION 63. Section 30-31-2 NMSA 1978 (being Laws 1972, Chapter 84, Section 2, as amended) is amended to read:

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

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

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

C. "board" means the board of pharmacy;

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

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

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

G. "deliver" means the actual, constructive or

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attempted transfer from one person to another of a controlled substance or controlled substance analog, whether or not there is an agency relationship;

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

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

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

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

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

~~M. "hemp" means the plant Cannabis sativa L. and any part of that plant, including seeds and all derivatives, extracts, cannabinoids, isomers, acids, salts and salts of isomers, whether growing or not, with a delta-9-tetrahydrocannabinol concentration of not more than three-tenths percent on a dry weight basis;~~

~~N.]~~ L. "manufacture" means the production,

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preparation, compounding, conversion or processing of a controlled substance or controlled substance analog by extraction from substances of natural origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled substance:

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

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

~~0. "marijuana" means all parts of the plant cannabis, including any and all varieties, species and subspecies of the genus Cannabis, whether growing or not, the seeds thereof and every compound, manufacture, salt, derivative, mixture or preparation of the plant or its seeds. It does not include the mature stalks of the plant, hashish, tetrahydrocannabinols extracted or isolated from marijuana, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil or cake, or the sterilized seed of the plant that is incapable of germination; or the plant Cannabis sativa L. and any part of the plant, whether growing or not, containing a delta-9-tetrahydrocannabinol concentration of no more than three-tenths percent on a dry weight basis;~~

P.] M. "narcotic drug" means any of the following, whether produced directly or indirectly by extraction from

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substances of vegetable origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis:

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

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

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

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

~~[Q.]~~ N. "opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. "Opiate" does not include, unless specifically designated as controlled under Section 30-31-5 NMSA 1978, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts, dextromethorphan. "Opiate" does include its racemic and levorotatory forms;

~~[R.]~~ O. "person" means an individual, partnership, corporation, association, institution, political subdivision, government agency or other legal entity;

~~[S.]~~ P. "practitioner" means a physician, certified advanced practice chiropractic physician, doctor of oriental medicine, dentist, physician assistant, certified nurse

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practitioner, clinical nurse specialist, certified nurse-midwife, prescribing psychologist, veterinarian, euthanasia technician, pharmacist, pharmacist clinician or other person licensed or certified to prescribe and administer drugs that are subject to the Controlled Substances Act;

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

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

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

[I.] T. "drug paraphernalia" means except as to use in accordance with the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act, all equipment, products and materials of any kind that are used, intended for use or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing,

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packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance or controlled substance analog in violation of the Controlled Substances Act. It includes:

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

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

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

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

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

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

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

~~(8)]~~ (7) blenders, bowls, containers, spoons

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and mixing devices used, intended for use or designed for use in compounding controlled substances or controlled substance analogs;

~~[(9)]~~ (8) capsules, balloons, envelopes and other containers used, intended for use or designed for use in packaging small quantities of controlled substances or controlled substance analogs;

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

~~[(11)]~~ (10) hypodermic syringes, needles and other objects used, intended for use or designed for use in parenterally injecting controlled substances or controlled substance analogs into the human body;

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

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

(b) water pipes;

(c) carburetion tubes and devices;

(d) smoking and carburetion masks;

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

~~[(f)]~~ (e) miniature cocaine spoons and cocaine vials;

~~[(g)]~~ (f) chamber pipes;

~~[(h)]~~ (g) carburetor pipes;

~~[(i)]~~ (h) electric pipes;

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~~[(j)]~~ (i) air-driven pipes;
~~[(k)]~~ (j) chilams;
~~[(l)]~~ (k) bongs; or
~~[(m)]~~ (l) ice pipes or chillers; and
~~[(13)]~~ (12) in determining whether an object is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:

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

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

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

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

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

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

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

(h) expert testimony concerning its use;

~~[(x-)]~~ U. "controlled substance analog" means a substance other than a controlled substance that has a chemical structure substantially similar to that of a controlled substance in Schedule I, II, III, IV or V or that was specifically designed to produce effects substantially similar to that of controlled substances in Schedule I, II, III, IV or

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V. Examples of chemical classes in which controlled substance analogs are found:

(1) include ~~[the following]~~:

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

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

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

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

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

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

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

~~[Specifically excluded from the definition of "controlled substance analog" are]~~

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

~~[(Y-)]~~ V. "human consumption" includes application, injection, inhalation, ingestion or any other manner of introduction;

~~[(Z-)]~~ W. "drug-free school zone" means a public school, parochial school or private school or property that is used for a public, parochial or private school purpose and the area within one thousand feet of the school property line, but it does not mean any post-secondary school; and

~~[(AA-)]~~ X. "valid practitioner-patient relationship" means a professional relationship, as defined by the practitioner's licensing board, between the practitioner and the patient."

SECTION 64. Section 30-31-6 NMSA 1978 (being Laws 1972,

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Chapter 84, Section 6, as amended) is amended to read:

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

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

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

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- (25) hydroxypethidine;
- (26) ketobemidone;
- (27) levomoramide;
- (28) levophenacymorphan;
- (29) morpheridine;
- (30) noracymethadol;
- (31) norlevorphanol;
- (32) normethadone;
- (33) norpipanone;
- (34) phenadoxone;
- (35) phenampromide;
- (36) phenomorphan;
- (37) phenoperidine;
- (38) piritramide;
- (39) proheptazine;
- (40) properidine;
- (41) racemoramide; and
- (42) trimeperidine;

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

- (1) acetorphine;
- (2) acetyldihydrocodeine;
- (3) benzylmorphine;
- (4) codeine methylbromide;
- (5) codeine-N-oxide;
- (6) cyprenorphine;
- (7) desomorphine;
- (8) dihydromorphine;
- (9) etorphine;

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- (10) heroin;
- (11) hydromorphenol;
- (12) methyldesorphine;
- (13) methyldihydromorphine;
- (14) morphine methylbromide;
- (15) morphine methylsulfonate;
- (16) morphine-N-oxide;
- (17) myrophine;
- (18) nicocodeine;
- (19) nicomorphine;
- (20) normorphine;
- (21) pholcodine; and
- (22) thebacon;

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

- (1) 3,4-methylenedioxy amphetamine;
- (2) 5-methoxy-3,4-methylenedioxy amphetamine;
- (3) 3,4,5-trimethoxy amphetamine;
- (4) bufotenine;
- (5) diethyltryptamine;
- (6) dimethyltryptamine;
- (7) 4-methyl-2,5-dimethoxy amphetamine;
- (8) ibogaine;
- (9) lysergic acid diethylamide;
- ~~[(10)]~~ marijuana;
- ~~[(11)]~~ (10) mescaline;
- ~~[(12)]~~ (11) peyote, except as otherwise

provided in the Controlled Substances Act;

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- ~~[(13)]~~ (12) N-ethyl-3-piperidyl benzilate;
~~[(14)]~~ (13) N-methyl-3-piperidyl benzilate;
~~[(15)]~~ (14) psilocybin;
~~[(16)]~~ (15) psilocyn;
~~[(17)]~~ tetrahydrocannabinols;
~~(18)~~ hashish;
~~[(19)]~~ (16) synthetic cannabinoids, including:
- (a) 1-[2-(4-(morpholinyl)ethyl)]
-3-(1-naphthoyl)indole;
 - (b) 1-butyl-3-(1-naphthoyl)indole;
 - (c) 1-hexyl-3-(1-naphthoyl)indole;
 - (d) 1-pentyl-3-(1-naphthoyl)indole;
 - (e) 1-pentyl-3-(2-methoxyphenylacetyl)
indole;
 - (f) cannabicyclohexanol (CP 47, 497 and
homologues: 5-(1,1-dimethylheptyl)-2-[(1R,3S)
-3-hydroxycyclohexyl]-phenol (CP-47,497); and 5-(1,
1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol;
 - (g) 6aR,10aR)-9-(hydroxymethyl)
-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,
10a-tetrahydrobenzo[c]chromen-1-ol);
 - (h) dexanabinol, (6aS,10aS)
-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)
-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol;
 - (i) 1-pentyl-3-(4-chloro naphthoyl)
indole;
 - (j) (2-methyl-1-propyl-1H-indol-3-yl)
-1-naphthalenyl-methanone; and
 - (k) 5-(1,1-dimethylheptyl)-2-(3-hydroxy
cyclohexyl)-phenol;
- ~~[(20)]~~ (17) 3,4-methylenedioxymethcathinone;
~~[(21)]~~ (18) 3,4-methylenedioxypyrovalerone;

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- [~~(22)~~] (19) 4-methylmethcathinone;
- [~~(23)~~] (20) 4-methoxymethcathinone;
- [~~(24)~~] (21) 3-fluoromethcathinone; and
- [~~(25)~~] (22) 4-fluoromethcathinone;

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

E. the enumeration of [~~marijuana,~~
~~tetrahydrocannabinols or chemical derivatives of~~
~~tetrahydrocannabinol as~~] Schedule I controlled substances does not apply to:

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

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

(3) tetrahydrocannabinols or chemical derivatives of tetrahydrocannabinols, including tetrahydrocannabinols or chemical derivatives of tetrahydrocannabinols with concentrations of up to five percent as measured using a post-decarboxylation method and based on percentage dry weight, possessed by a person in connection with the cultivation, transportation, testing, researching, manufacturing or other processing of the plant Cannabis sativa L., or any part of the plant whether growing or not, if

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authorized pursuant to rules promulgated, pursuant to the Hemp Manufacturing Act, by the board of regents of New Mexico state university on behalf of the New Mexico department of agriculture or the department of environment; or

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

~~[(5) the use of marijuana, tetrahydrocannabinols or chemical derivatives of tetrahydrocannabinol by certified patients pursuant to the Controlled Substances Therapeutic Research Act or by qualified patients pursuant to the provisions of the Lynn and Erin Compassionate Use Act, or~~

~~(6) the use, dispensing, possession, prescribing, storage or transport of a prescription drug that the United States food and drug administration has approved and that contains marijuana, a tetrahydrocannabinol derivative or a chemical derivative of tetrahydrocannabinol; and]~~

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

SECTION 65. Section 30-31-7 NMSA 1978 (being Laws 1972, Chapter 84, Section 7, as amended) is amended to read:

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

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

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

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

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

(c) opium poppy and poppy straw; and

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

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

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

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~~tetrahydrocannabinol shall be considered Schedule II controlled substances only for the purposes enumerated in the Controlled Substances Therapeutic Research Act or the Lynn and Erin Compassionate Use Act;~~

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

- (a) alphaprodine;
- (b) anileridine;
- (c) bezitramide;
- (d) dihydrocodeine;
- (e) diphenoxylate;
- (f) fentanyl;
- (g) hydromorphone;
- (h) isomethadone;
- (i) levomethorphan;
- (j) levorphanol;
- (k) meperidine;
- (l) metazocine;
- (m) methadone;
- (n) methadone--intermediate,
4-cyano-2-dimethylamino-4, 4-diphenyl butane;
- (o) moramide--intermediate,
2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid;
- (p) oxycodone;
- (q) pethidine;
- (r) pethidine--intermediate--A,
4-cyano-1-methyl-4-phenylpiperidine;
- (s) pethidine--intermediate--B,
ethyl-4-phenyl-piperidine-4-carboxylate;
- (t) pethidine--intermediate--C,

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

- (u) phenazocine;
- (v) piminodine;
- (w) racemethorphan; and
- (x) racemorphan;

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

- (a) amphetamine, its salts, optical isomers and salts of its optical isomers;
- (b) phenmetrazine and its salts;
- (c) methamphetamine, its salts, isomers and salts of isomers; and
- (d) methylphenidate; and

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

B. Where methadone is prescribed, administered or dispensed by a practitioner of a drug abuse rehabilitation program while acting in the course of the practitioner's professional practice, or otherwise lawfully obtained or possessed by a person, such person shall not possess such methadone beyond the date stamped or typed on the label of the container of the methadone, nor shall any person possess methadone except in the container in which it was originally administered or dispensed to such person, and such container shall include a label showing the name of the prescribing physician or practitioner, the identity of methadone, the name of the ultimate user, the date when the methadone is to be administered to or used or consumed by the named ultimate user

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shown on the label and a warning on the label of the methadone container that the ultimate user must use, consume or administer to the ultimate user the methadone in such container. Any person who violates this subsection is guilty of a felony and shall be punished by imprisonment for not less than one year nor more than five years, or by a fine of up to five thousand dollars (\$5,000), or both."

SECTION 66. Section 30-31-21 NMSA 1978 (being Laws 1972, Chapter 84, Section 21, as amended) is amended to read:

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

~~A. marijuana is:~~

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

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

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

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

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

SECTION 67. Section 30-31-22 NMSA 1978 (being Laws 1972,

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Chapter 84, Section 22, as amended) is amended to read:

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

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

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

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

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

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

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

(2) any other controlled substance enumerated in Schedule I, II, III or IV or a controlled substance analog

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of a controlled substance enumerated in Schedule I, II, III or IV except a substance enumerated in Schedule I or II that is a narcotic drug, a controlled substance analog of a controlled substance enumerated in Schedule I or II that is a narcotic drug or methamphetamine, its salts, isomers and salts of isomers, is:

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

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

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

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

(1) for the first offense, guilty of a third degree felony and shall be sentenced pursuant to the provisions

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of Section 31-18-15 NMSA 1978; and

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

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

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

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

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

(1) [~~marijuana or~~] synthetic cannabinoids is:
(a) for the first offense, guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978;

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

(c) for the first offense, if more than one hundred pounds is possessed with intent to distribute or distributed or both, guilty of a second degree felony and shall

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be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and

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

(2) any other controlled substance enumerated in Schedule I, II, III or IV or a controlled substance analog of a controlled substance enumerated in Schedule I, II, III or IV except a substance enumerated in Schedule I or II that is a narcotic drug, a controlled substance analog of a controlled substance enumerated in Schedule I or II that is a narcotic drug or methamphetamine, its salts, isomers and salts of isomers, is:

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

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

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

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

(a) a counterfeit substance enumerated in Schedule I, II, III or IV is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section

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31-18-15 NMSA 1978; and

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

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

SECTION 68. Section 30-31-23 NMSA 1978 (being Laws 1972, Chapter 84, Section 23, as amended) is amended to read:

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

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

~~[B. A person who violates this section with respect to:~~

~~(1) up to one-half ounce of marijuana shall be issued a penalty assessment, pursuant to Section 31-19A-1 NMSA 1978 and is subject to a fine of fifty dollars (\$50.00);~~

~~(2) more than one-half ounce but up to and including one ounce of marijuana is, for the first offense, guilty of a petty misdemeanor and shall be punished by a fine of not less than fifty dollars (\$50.00) or more than one~~

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~~hundred dollars (\$100) and by imprisonment for not more than fifteen days, and, for a second or subsequent offense, is guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars (\$100) or more than one thousand dollars (\$1,000) or by imprisonment for a definite term of less than one year, or both;~~

~~(3) more than one ounce but less than eight ounces of marijuana is guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars (\$100) or more than one thousand dollars (\$1,000) or by imprisonment for a definite term of less than one year, or both; or~~

~~(4) eight ounces or more of marijuana is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.~~

~~€.]~~ B. A person who violates this section with respect to:

(1) one ounce or less of synthetic cannabinoids is, for the first offense, guilty of a petty misdemeanor and shall be punished by a fine of not less than fifty dollars (\$50.00) or more than one hundred dollars (\$100) and by imprisonment for not more than fifteen days, and, for the second and subsequent offenses, is guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars (\$100) or more than one thousand dollars (\$1,000) or by imprisonment for a definite term less than one year, or both;

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

(3) eight ounces or more of synthetic

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cannabinoids is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

~~[D-]~~ C. A minor who violates this section with respect to the substances listed in this subsection is guilty of a petty misdemeanor and, notwithstanding the provisions of Sections 32A-1-5 and 32A-2-19 NMSA 1978, shall be required to perform no more than forty-eight hours of community service. For the third or subsequent violation by a minor of this section with respect to those substances, the provisions of Section 32A-2-19 NMSA 1978 shall govern punishment of the minor. As used in this subsection, "minor" means a person who is less than eighteen years of age. The provisions of this subsection apply to the following substances:

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

~~[E-]~~ D. Except as provided in Subsections B ~~[E]~~ and ~~[G]~~ F of this section, and for those substances listed in Subsection ~~[F]~~ E of this section, a person who violates this section with respect to any amount of any controlled substance enumerated in Schedule I, II, III or IV or a controlled substance analog of a substance enumerated in Schedule I, II, III or IV is guilty of a misdemeanor and shall be punished by a

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fine of not less than five hundred dollars (\$500) or more than one thousand dollars (\$1,000) or by imprisonment for a definite term less than one year, or both.

[F-] E. A person who violates this section with respect to phencyclidine as enumerated in Schedule III or a controlled substance analog of phencyclidine; methamphetamine, its salts, isomers or salts of isomers as enumerated in Schedule II or a controlled substance analog of methamphetamine, its salts, isomers or salts of isomers; flunitrazepam, its salts, isomers or salts of isomers as enumerated in Schedule I or a controlled substance analog of flunitrazepam, including naturally occurring metabolites, its salts, isomers or salts of isomers; gamma hydroxybutyric acid and any chemical compound that is metabolically converted to gamma hydroxybutyric acid, its salts, isomers or salts of isomers as enumerated in Schedule I or a controlled substance analog of gamma hydroxybutyric acid, its salts, isomers or salts of isomers; gamma butyrolactone and any chemical compound that is metabolically converted to gamma hydroxybutyric acid, its salts, isomers or salts of isomers as enumerated in Schedule I or a controlled substance analog of gamma butyrolactone, its salts, isomers or salts of isomers; 1-4 butane diol and any chemical compound that is metabolically converted to gamma hydroxybutyric acid, its salts, isomers or salts of isomers as enumerated in Schedule I or a controlled substance analog of 1-4 butane diol, its salts, isomers or salts of isomers; or a narcotic drug enumerated in Schedule I or II or a controlled substance analog of a narcotic drug enumerated in Schedule I or II is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

[G-] F. Except for a minor as [defined] provided in

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Subsection [D] C of this section, a person who violates Subsection A of this section while within a posted drug-free school zone, excluding private property residentially zoned or used primarily as a residence and excluding a person in or on a motor vehicle in transit through the posted drug-free school zone, with respect to:

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

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

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

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

(5) phencyclidine as enumerated in Schedule

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

SECTION 69. Section 30-31-34 NMSA 1978 (being Laws 1972, Chapter 84, Section 33, as amended) is amended to read:

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

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

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

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

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

E. narcotics paraphernalia or money that is a fruit or instrumentality of the crime; and

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

(1) a conveyance used by a person as a common carrier in the transaction of business as a common carrier

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shall not be subject to forfeiture pursuant to this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of the Controlled Substances Act;

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

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

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

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

SECTION 70. TEMPORARY PROVISION--TRANSFER--FUNCTIONS, PERSONNEL, MONEY, PROPERTY, CONTRACTUAL OBLIGATIONS AND STATUTORY REFERENCES--MEDICAL CANNABIS FUND--RULES.--

A. On the effective date of this act, all functions, personnel, money, appropriations, records, furniture, equipment and other property of the department of health's medical cannabis program that are not part of the department's medical cannabis registry powers and duties shall be transferred to the regulation and licensing department.

B. On the effective date of this act, all contractual obligations and other agreements of the department of health as they pertain to the department's medical cannabis program that are not part of the department's medical cannabis registry powers and duties are binding on the regulation and licensing department.

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C. Statutory references to the department of health that pertain to the department's medical cannabis program that are not part of the department's medical cannabis registry powers and duties shall be deemed to be references to the cannabis control division of the regulation and licensing department.

D. On the effective date of this act, any unexpended or unencumbered balance in the medical cannabis fund is transferred to the cannabis regulation fund.

E. Except to the extent any administrative rules are inconsistent with the provisions of this act, any administrative rules adopted by an officer, agency or other entity whose responsibilities have been transferred pursuant to the provisions of this act to another officer, agency or other entity remain in force until amended by the officer, agency or other entity to which the responsibility for the adoption of the rules has been transferred. To the extent any administrative rules are inconsistent with the provisions of this act, such rules are null and void.

SECTION 71. REPEAL.--Section 9-7-17.1 NMSA 1978 (being Laws 2012, Chapter 42, Section 1) is repealed.

SECTION 72. DELAYED REPEAL.--Section 40 of this act is repealed effective December 31, 2025.