HOUSE BILL 356

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

INTRODUCED BY

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AN ACT

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

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

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

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through 45 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 intended to induce the sale of an item 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 published by or at the direction of a licensee;

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

C. "cannabis":

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(1) means all parts of the plant Cannabis sativa Linnaeus 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;

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

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

F. "cannabis establishment" means:

(1) a cannabis courier;
(2) a cannabis testing laboratory;
(3) a cannabis manufacturer;
(4) a cannabis microbusiness;
(5) a cannabis producer; or
(6) a cannabis retailer;

G. "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;

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

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

(1) manufacture cannabis products;
(2) package, transport or courier cannabis
products;
(3) have cannabis products tested by a
cannabis testing laboratory; and
(4) sell and transport cannabis products to
other cannabis establishments;

J. "cannabis microbusiness" means a person that
employs fewer than nine people, collects no more than two
million dollars ($2,000,000) in annual revenue and is licensed
by the division to:
   (1) produce up to ninety-nine mature cannabis
   plants;
   (2) manufacture cannabis extracts using
   nonvolatile solvents or no solvents;
   (3) be a cannabis retailer;
   (4) sell, transport or courier the cannabis
   products to other cannabis establishments and to consumers; or
   (5) engage in any other activity authorized by
   the division;
K. "cannabis producer" means a person that is
licensed by the division to:
   (1) produce cannabis;
   (2) package cannabis products;
   (3) have cannabis products tested by a
cannabis testing laboratory; and
   (4) sell and transport cannabis products to
other cannabis establishments;
L. "cannabis product":
   (1) means a product that contains cannabis or
   cannabis extracts, including edible or topical products that
   may also contain other ingredients; and
   (2) does not include the weight of any other
ingredient combined with cannabis or cannabis extracts to
prepare topical or oral administrations, food, drink or another
product;

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

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

O. "commercial cannabis activity":
   (1) means the cultivation, production,
   possession, manufacture, storage, testing, labeling,
   transportation, couriering and sale of cannabis and cannabis
   products; and
   (2) does not include activities related only
to the medical cannabis program or personal production;

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

Q. "controlling person":
   (1) means an officer or board member in a
cannabis establishment; and
   (2) does not include a bank or licensed
lending institution;
R. "department" means the regulation and licensing department;

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

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

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

V. "financial consideration":

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

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

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

X. "household" means a housing unit and includes any place in or around the housing unit at which an occupant of the housing unit produces, manufactures, keeps or stores homegrown cannabis or homemade cannabis products;
Y. "housing unit" means a house, an apartment, a mobile home, a group of rooms or a single room that is occupied as separate living quarters in which an occupant lives and eats separately from any other person in the building who does not occupy the same housing unit and which unit includes direct access from the outside of the building or through a common hall;

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

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

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

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

   (3) with respect to a location that the department has 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;

BB. "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;

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

DD. "manufacture":
  (1) means to compound, blend, extract, infuse
or otherwise prepare a cannabis product; and
  (2) does not include producing the cannabis
contained in a cannabis product;

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

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

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

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

II. "medical cannabis registry" means the system by
which the department of health, pursuant to the Lynn and Erin
Compassionate Use Act, receives applications for registry
identification cards; approves and denies applications; issues
and renews registry identification cards; and maintains files
related to applicants for and recipients of registry
identification cards;

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

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

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

MM. "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;

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

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

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

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

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

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

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

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

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

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

C. Not later than July 1, 2020, the division shall
promulgate rules necessary for the division to carry out its
duties provided in the Cannabis Regulation Act, and those rules
shall include:

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

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

(3) security requirements for a cannabis
establishment;

(4) requirements related to:

   (a) inspection and monitoring of a
cannabis establishment;

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

   (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 related to potential adverse effects;

(5) a provision regarding whether a licensee
who sells cannabis products may sell any other products;
(6) rules on a licensee's advertisement and marketing of cannabis products and 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 the enforcement of cannabis prohibitions in law and policy, including harms from disproportionate rates of related interactions with law enforcement officers, arrests, incarceration and collateral consequences;

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

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

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

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

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

(9) rules developed in consultation with the New Mexico department of agriculture and the department of
environment to establish:

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

(b) environmental protections that apply to all licensees;

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

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

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

E. Not later than September 1, 2019, the division shall convene an advisory committee to advise the division on the development of rules pursuant to the Cannabis Regulation Act, including best practices and guidelines that protect 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. The advisory
committee members shall be appointed by the director with the
approval of the superintendent for two-year terms and shall
include a representative:

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

F. Beginning January 1, 2021, the advisory
committee shall publish and provide to the legislature an
annual report detailing its activities and recommendations made
to the division during the preceding year and noting whether
the division implemented the recommendations. The report shall
include a recommendation on whether the legislature should
adjust the cannabis excise tax based on the following
considerations:
(1) demand for cannabis products;
(2) undercutting the illicit cannabis market;
(3) preventing the cannabis market from undercutting the medical cannabis market;
(4) preventing cannabis use by a person younger than twenty-one years of age; and
(5) preventing cannabis use disorder.

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

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

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

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

(2) promulgate rules to govern the medical
cannabis subsidy program.

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

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

D. Beginning December 1, 2020, 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 for adult use. The report shall include the following elements relating to cannabis use:

1. child access;
2. road safety and driving while impaired;
3. workplace safety;
4. percentage of emergency room visits and outcomes;
5. educational needs for children and adults;
(6) consumer and product safety; and

(7) percentage of poison control center calls.

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

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

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: (1) the total number of arrests and citations for cannabis-related violations broken down by: (a) category and penalty level; and (b) race, ethnicity, age and gender; and (2) the number of motor vehicle accidents in which the driver of one of the vehicles tested positive for cannabis.

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

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 law 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's website.

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

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

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

(1) cannabis couriers;

(2) cannabis testing laboratories;

(3) cannabis manufacturers;

(4) cannabis microbusinesses;

(5) cannabis producers;

(6) cannabis retailers; and

(7) personal producers.

C. The division shall include a clear designation
on all licenses that indicates whether the license is for personal production, commercial cannabis activity, medical cannabis activity or for both medical and commercial cannabis activity.

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

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

(1) the size of a business; or
(2) for cannabis producers, whether the cannabis is produced indoors, outdoors or in a setting that combines natural light with other light sources.

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

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

H. The division shall allow only a cannabis
retailer or a cannabis microbusiness to operate a cannabis consumption area.

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

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

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

SECTION 7. [NEW MATERIAL] LICENSEES--INTERMEDIATE
SANCTIONS--CIVIL PENALTY.--

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

1. impose any intermediate sanction established by rule;
2. impose a directed plan of correction; or
3. assess a civil monetary penalty established by rule; provided that a civil monetary penalty shall not exceed a total of one thousand dollars ($1,000) per violation, and 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 general fund.

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

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

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

A. Beginning no later than January 1, 2020, the division shall issue a temporary license to conduct commercial cannabis activity to a currently licensed medical cannabis
business that has applied for a license pursuant to Subsection B of this section; provided that the medical cannabis business shall meet requirements established by the division. The requirements shall include consideration of whether the medical cannabis business has the financial and operational ability to engage in commercial cannabis activities. A medical cannabis business operating under a temporary license shall continue to operate under rules promulgated for the medical cannabis program until the division promulgates rules for commercial cannabis activity. A temporary license to conduct commercial cannabis activity issued to a medical cannabis business shall expire on the date that a license is issued or denied to the medical cannabis business pursuant to Subsection B of this section.

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

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

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

(3) no later than September 1, 2020, develop a plan to encourage racial, ethnic, gender and geographic diversity among licensees; and
(4) require as a condition of licensing that the licensee use fifty percent captured, active, passive or natural solar energy or recycled water to produce cannabis or otherwise in the business licensed.

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

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

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

(3) the applicant or a controlling person in the applicant's entity has been convicted of an offense that is substantially related to the qualifications, functions or duties of the applicant entity's business; provided that if the division determines that the controlling person and the applicant entity are otherwise qualified for a license and issuing a license to the applicant entity 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 controlling person's rehabilitation following the conviction, and based on that review, determine whether the applicant entity should be issued a license; or
(4) the applicant or a controlling person in the applicant's entity has had a license issued pursuant to the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act revoked by the division in the three years immediately preceding the date on which the application was filed.

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

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

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

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

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

(2) a conviction for which the related sentence, 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 a controlled substance is not considered.
substantially related to the qualifications, functions or
duties of a business seeking a license and shall not be the
sole ground on which an application is denied.

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

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

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

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

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

C. A person may obtain no more than one personal
production license, which license may be issued for production
to occur either indoors or outdoors in no more than one single
location, which shall be either the person's primary residence or other property owned or leased by the person.

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

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

   (1) a nonrefundable application fee;
   (2) a description of the single indoor or outdoor location that shall be used in the production of cannabis;
   (3) a written plan that ensures that the cannabis production shall not be visible from the street or other public areas;
   (4) a written acknowledgment that the applicant will ensure that all cannabis, cannabis products and paraphernalia are accessible only by the applicant and kept secure and out of reach of children; and
   (5) a description of any device or series of devices that shall be used to provide security and proof of the secure grounds.

F. The division may deny an application for an initial personal production license or renewal, or may grant a
license subject to reasonable conditions as determined by the division, if:

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

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

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

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

(1) authorized employees or agents of the division as necessary to perform the duties of the division pursuant to the provisions of the Cannabis Regulation Act; and
(2) authorized employees of state or local law
enforcement agencies, but only for the purpose of verifying
that a person is lawfully in possession of the personal
production license or as otherwise expressly permitted in the
Cannabis Regulation Act.

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

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

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

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

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

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

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A. A local jurisdiction may:

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

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

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

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

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

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

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

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

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

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

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

B. The registered qualified electors of the municipality or county may petition the governing body by filing one or more petitions in the appropriate office to hold
an election for the purpose of determining whether to overturn an ordinance or resolution allowing for the operations of a cannabis retailer or a cannabis microbusiness that sells cannabis products in the municipality or county. If the aggregate of the signatures of such electors on all the petitions equals or exceeds five percent of the number of registered qualified electors of the municipality or county, the governing body shall call an election as provided in Subsection C of this section. The date of the filing of the petition shall be the date of the filing of the last petition that brings the number of signatures up to the required five percent; provided, however, that the governing body shall refuse to recognize the petition if more than three months have elapsed between the date of the first signature and the filing of the last petition necessary to bring the number of signatures on the petition up to five percent.

C. The election may be held in conjunction with a regular election of the governing body, a general election or a regular local or special election held pursuant to the Local Election Act or Special Election Act. The election shall be called, conducted, counted and canvassed in substantially the same manner as provided for general elections in the county under the Election Code or for regular local or special elections in a municipality under the Local Election Act or Special Election Act.
D. If the majority of all of the votes cast at the
election are cast in favor of the prohibition of the operations
of a cannabis retailer or a cannabis microbusiness that sells
cannabis products in the county or municipality, the chair of
the governing body shall declare by order entered upon the
records of the county or municipality that the county or
municipality has approved the prohibition and shall notify the
department of the election results.

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

F. If an election is held pursuant to this section
in a county that contains within its limits a municipality of
more than five thousand persons according to the most recent
federal decennial census, it is not necessary for the
registered qualified electors in the municipality to file a
separate petition asking for a separate or different vote on
the question of whether to allow the operations of a cannabis
retailer or a cannabis microbusiness that sells cannabis
products. The election in the county shall be conducted so as
to separate the votes in the municipality from those in the
remaining parts of the county. If the majority of the voters
in the county, including the voters in the municipality, vote
to prohibit the operations of a cannabis retailer or a cannabis
microbusiness that sells cannabis products, the county shall
not allow the prohibited operations; but if the majority of the
takes in the municipality are in favor of allowing the
operations of a cannabis retailer or a cannabis microbusiness
that sells cannabis products, the municipality shall allow the
approved operations in the municipality. Nothing contained in
this subsection shall prevent any municipality from having a
separate election under the terms of this section.

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

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

A. Conduct by a licensee or a licensee
representative that is allowed pursuant to a license and
conduct by a person who 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 government shall not impose
a criminal, civil or administrative penalty on a licensee or a
licensee representative or on a person who 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--TRAFFICKING--PENALTIES.--

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

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

C. Except as allowed in the Cannabis Regulation Act
or the Lynn and Erin Compassionate Use Act, a licensee shall
not sell a cannabis product to a person younger than twenty-one
years of age. 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 any licensee or the licensee's employee or agent knowingly
has sold, served or given any cannabis product to a minor on
two separate occasions within any twelve-month period.

D. The establishment of all of the following facts
by a licensee prosecuted for a violation of Subsection C of
this section 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
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.

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

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

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

SECTION 15. [NEW MATERIAL] DISTRIBUTION AND TRANSPORT.--
The Cannabis Regulation Act shall not be construed to authorize
a licensee to transport or distribute, or cause to be
transported or distributed, cannabis products outside the
state, unless authorized by federal law.

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

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

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

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

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

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

C. Labels shall include:

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

   (2) 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;

   (3) a list of pharmacologically active ingredients;

   (4) for cannabis products, 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;

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

   (6) a warning of possible adverse effects of

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

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

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

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

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

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

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

1) "cannabis manufacturing level 1" for a site that manufactures cannabis extracts using nonvolatile solvents or no solvents;
(2) "cannabis manufacturing level 2" for a site that manufactures cannabis extracts using volatile solvents; and

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

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

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

   (a) tetrahydrocannabinol;
   (b) tetrahydrocannabinolic acid;
   (c) cannabidiol;
   (d) cannabidiolic acid;
   (e) terpenes;
   (f) cannabigerol; and
   (g) cannabinoil; and

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

   (a) residual solvents or chemicals, including explosive gases such as butane, propane and hydrogen,
and poisons, toxins or carcinogens such as methanol, methylene chloride, acetone, benzene, toluene and trichloroethylene;

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

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

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

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

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

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

A. A cannabis testing laboratory's testing of cannabis products shall comply with the requirements set forth in applicable law and rules.
B. The division shall develop rules and procedures to:

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

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

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

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

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

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

A. The division shall promulgate rules that explicitly:

(1) prohibit the advertisement and marketing of cannabis products:
(a) on a billboard, radio, television or other broadcast media;

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

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

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

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

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

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

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

(2) require:

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

(b) print and digital communications advertisements 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.

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

SECTION 22. [NEW MATERIAL] CONTRACTS.--A contract related
to operation of a license is enforceable, and a contract
entered into by a licensee or a licensee representative for
conduct allowed pursuant to a 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 23. [NEW MATERIAL] PROVISION OF PROFESSIONAL
SERVICES.--An attorney, accountant, insurance agent, real
estate agent, security guard or other person engaged in a
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 24. [NEW MATERIAL] MEDICAL CANNABIS PROVISIONS
UNAFFECTED.--Nothing in the Cannabis Regulation Act shall be construed to:

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

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

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

SECTION 25. [NEW MATERIAL] PROTECTIONS FOR THE USE OF CANNABIS.--A person or a licensee shall not be subject to arrest, prosecution, penalty, civil liability or disciplinary action by a business or professional licensing entity and shall not be denied any right or privilege solely for conduct allowed pursuant to the Cannabis Regulation Act. Except by court order, state and local law enforcement agencies shall not
cooperate with or provide assistance to the United States
government, or any federal agency thereof, in enforcing the
federal Controlled Substances Act solely for conduct that
complies with the Cannabis Regulation Act or the Lynn and Erin
Compassionate Use Act. The New Mexico supreme court and any
disciplinary or character and fitness committees established by
that court are considered business or professional licensing
entities for the purposes of this section.

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

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

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

C. Notwithstanding Subsection B of this section, a
person may prohibit or restrict any of the actions or conduct
otherwise allowed under Sections 29 and 30 of the Cannabis
Regulation Act and may prohibit any activity for which a license is required pursuant to the Cannabis Regulation Act on that person's privately owned property.

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

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

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

A. It shall be unlawful to take an adverse employment action against an employee who is not acting in a safety-sensitive position based on conduct allowed under the
Lynn and Erin Compassionate Use Act.

B. Nothing in this section shall:

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

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

C. 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.

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

SECTION 28. [NEW MATERIAL] PROTECTIONS FOR A PERSON UNDER STATE SUPERVISION.--A person who is serving a period of probation or parole or who is under the supervision of the
state or a local government pending trial or as part of a community supervision program shall not be penalized for conduct allowed under Sections 29 and 30 of the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act.

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

A. Notwithstanding any other provision of law, 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 for a violation of probation or parole, 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 than two ounces of cannabis or sixteen grams of cannabis extracts;

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

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

(4) if the person holds a valid personal
production license, making, manufacturing with non-volatile substances, keeping, storing or transferring without remuneration to a person who is twenty-one years of age or older homemade cannabis extract or cannabis products containing not more than two ounces of cannabis or sixteen grams of cannabis extracts;

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

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

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

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

(9) 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 (8) of this subsection.

B. Paragraphs (8) and (9) of Subsection A of this section are 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. Except as provided in Subsection D of this section, none of the following shall, individually or in combination with each other, constitute reasonable articulable suspicion of a crime:

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

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

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

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

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

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

D. Subsection C of this section shall not apply when a law enforcement officer is investigating whether a person is operating or in physical control of a vehicle or watercraft while intoxicated, 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 30. [NEW MATERIAL] PERSONAL CULTIVATION OF CANNABIS.--

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

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

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

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

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visible by normal unaided vision from a public place; and

(4) not more than six mature plants and six
immature plants may be produced per person; provided, however,
that no more than twelve mature plants may be present in one
household.

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

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

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

(1) allow a person to:

   (a) smoke cannabis or cannabis products
in a public place, except in a cannabis consumption area; or
   (b) produce cannabis in public view; or

(2) restrict the ability of an individual or
private entity to prohibit conduct otherwise allowed in
Sections 29 and 30 of the Cannabis Regulation Act on the
individual's or private entity's privately owned property.

B. A person who violates:

(1) Subparagraph (a) of Paragraph (1) of
Subsection A of this section shall be subject to a civil
penalty of fifty dollars ($50.00); and

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

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

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

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

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

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

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

(1) a fine of one hundred dollars ($100); (2) attendance at a four-hour evidence-based drug education program;

(3) four hours of community service; or (4) restorative justice mediation.

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

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

SECTION 33. [NEW MATERIAL] CANNABIS WITHIN RESTRICTED AREA--PENALTY.--Except as 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 within three hundred feet of any school, church or daycare center unless the person is a qualified patient or is in or upon the grounds of a private residence, as an invitee or resident, or a cannabis consumption area. A person who violates this section is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

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

A. a person eighteen years of age or older and younger than twenty-one years of age shall not possess cannabis products. A person who violates this subsection shall be subject to:
(1) a fine of seventy-five dollars ($75.00);
(2) attendance at a four-hour evidence-based drug education program;
(3) four hours of community service; or
(4) restorative justice mediation;

B. a person younger than eighteen years of age shall not possess cannabis products. A person who violates this subsection shall be subject to:
(1) a fine of fifty dollars ($50.00);
(2) attendance at a four-hour evidence-based drug education program;
(3) four hours of community service; or
(4) restorative justice mediation; and

C. or as allowed in the Cannabis Regulation Act, a person twenty-one years of age or older shall not possess more than two ounces of cannabis outside a private residence or more than sixteen grams of cannabis extracts outside a private residence. A person who violates this subsection with respect to:
(1) between two and eight ounces of cannabis or between sixteen and sixty-four grams of cannabis extracts 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 or more than sixty-four grams of cannabis extracts is guilty of a
fourth degree felony and shall be sentenced pursuant to the

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

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

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

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

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

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

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

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

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

A. Records held by a court, an agency of the state or a local jurisdiction that relate to a person's arrest or conviction for trafficking cannabis in violation of Section 30-31-20 NMSA 1978, distribution of cannabis, possession with
intent to distribute cannabis in violation of Section 30-31-22 NMSA 1978 or possession of cannabis in violation of Section 30-31-23 NMSA 1978 shall not be kept beyond two years from the date of the person's conviction or from the date of the person's arrest if there was no conviction. If the person was a juvenile at the time of the arrest or conviction, the records shall be retained until the offender is eighteen years of age and shall then be destroyed. The records shall also be removed from any statewide criminal databases.

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

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

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

A. Within thirty days following the effective date of the Cannabis Regulation Act, a corrections facility, a county jail or a juvenile corrections facility in which a
person is currently incarcerated for an offense that is no
longer a crime pursuant to the provisions of the Cannabis
Regulation Act, or that would have resulted in a lesser offense
if that act had been in effect at the time of the offense,
shall notify the court that the convicted person's case should
be reopened to consider possible recall or dismissal of the
person's sentence.

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

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

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

E. A person who has completed the person's sentence
for a conviction, whether by trial or negotiated plea, who
would not have been guilty of an offense or who would have been
guilty of a lesser offense if the Cannabis Regulation Act had
been in effect at the time of the offense may notify the court
in writing to have the conviction dismissed and sealed because
the prior conviction is now legally invalid or redesignated as
an infraction. The court shall redesignate the conviction as
an infraction or dismiss and seal the conviction as legally
invalid because of the enactment of the Cannabis Regulation Act
unless the court makes a finding that the conviction is not
legally invalid or was not redesignated as an infraction
pursuant to that act.

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

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

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

I. No fee or cost of any kind shall be imposed
against a person whose sentence is reviewed pursuant to this
section.
SECTION 40. [NEW MATERIAL] WRIT OF MANDAMUS.--Any person may commence a legal action for a writ of mandamus to compel the division to perform its duties pursuant to the Cannabis Regulation Act.

SECTION 41. [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 any fiscal year shall revert to the general fund.

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

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

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

A. The "community grants reinvestment fund" is created in the state treasury. The fund consists of
appropriations, other money deposited in the fund and money otherwise accruing to the fund. The department of health shall administer the fund, and money in the fund is subject to appropriation to the department of health for the community grants reinvestment program as described in this section. Any unexpended or unencumbered balance remaining at the end of any fiscal year shall not revert to the general fund. Money in the fund shall be disbursed on warrants signed by the secretary of finance and administration pursuant to vouchers signed by the secretary of health or the secretary's authorized representative.

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

(1) prevention, early intervention and outreach services; risk surveys; and education for youth,
families, caregivers, schools, primary care health providers, behavioral health and substance use disorder service providers, community and faith-based organizations, foster care providers, juvenile and family courts and others working to recognize and reduce risks related to substance use and the early signs of problematic use and of substance use disorders;

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

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

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

(5) youth-focused substance use disorder treatment programs that are culturally and gender competent, trauma-informed, based on principles of harm reduction and
evidence-based and that provide a continuum of care that includes screening and assessment for substance use disorder as well as mental health care, early intervention, active treatment, family involvement, case management, overdose prevention, prevention of communicable diseases related to substance use, relapse management for substance use and other co-occurring behavioral health disorders, vocational services, literacy services, parenting classes, family therapy and counseling services, medication-assisted treatments, psychiatric medication, psychotherapy and other related services;

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

(7) programs to assist individuals, as well as families and friends of young people who use drugs, to reduce the stigma associated with substance use, including being diagnosed with a substance use disorder or seeking substance use disorder services. This includes peer-run outreach and education to reduce stigma, anti-stigma campaigns and community recovery networks;
(8) workforce training and wage structures that increase the hiring pool of behavioral health staff with substance use disorder prevention and treatment expertise, provide ongoing education and coaching that increase substance use treatment providers' core competencies and train providers on promising and evidenced-based practices;

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

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

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

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

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

A. The "cannabis health and safety fund" is created in the state treasury. The fund consists of appropriations, other money deposited in the fund and money otherwise accruing to the fund. The department of health shall administer the
fund, and money in the fund is subject to appropriation to the department of health for the community grants reinvestment program as provided in Subsection B of Section 42 of the Cannabis Regulation Act. Any unexpended or unencumbered balance remaining at the end of any fiscal year shall not revert to the general fund. Money in the fund shall be disbursed on warrants signed by the secretary of finance and administration pursuant to vouchers signed by the secretary of health or the secretary's authorized representative.

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

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

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

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

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

(c) encourages responsible use by adults.

SECTION 44. [NEW MATERIAL] CANNABIS RESEARCH FUND.--
A. The "cannabis research fund" is created in the state treasury. The fund consists of money transferred from the cannabis excise tax, appropriations, income from investment of the fund and money otherwise accruing to the fund. Money in the fund is appropriated to the board of regents of the university of New Mexico for the university of New Mexico health sciences center for the purpose of research related to medical and recreational cannabis use and substance use disorder treatment. Money in the fund shall be disbursed on warrants signed by the secretary of finance and administration pursuant to vouchers signed by the chancellor for health sciences of the university of New Mexico or the chancellor's authorized representative.

B. The chancellor shall:

(1) oversee and keep a record of any research and how the research relates to the use, effects or efficacy of medical and recreational cannabis; impacts on public health, health costs associated with cannabis use and whether cannabis use is associated with an increase or decrease in the use of alcohol or other drugs; the impact of treatment for maladaptive cannabis use and the effectiveness of different treatment programs; public safety issues related to cannabis use; the effectiveness of the packaging and labeling requirements and advertising and marketing restrictions on the prevention of underage access to and use of cannabis products; cannabis use
rates, maladaptive use rates for adults and youth and diagnosis
rates of cannabis-related substance use disorders;
environmental issues related to cannabis production and the
criminal prohibition of cannabis production; and supervised
injectable opioid treatment by medical practitioners under
strict controls in a clinical setting to select heroin-
dependent persons;

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

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

(4) prepare and submit:
(a) an annual report to the legislative
finance committee that describes expenditures from the cannabis
research fund and research conducted pursuant to the Lynn and
Erin Compassionate Use Act and the Cannabis Regulation Act
during the fiscal year preceding the submission of the report;
and
(b) by November 1, 2020, and every three
years thereafter, a report to the legislative health and human
services committee that describes the research conducted and
any findings, reports or publications that resulted from the
research.

SECTION 45. [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 from a
person licensed pursuant to the Lynn and Erin Compassionate Use
Act or the Cannabis Regulation Act if the person produced,
possessed, distributed, dispensed or purchased the cannabis
solely for the purpose of research conducted pursuant to the
Lynn and Erin Compassionate Use Act or the Cannabis Regulation
Act.

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

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

A. "cannabis":

(1) means all parts of the plant Cannabis
sativa Linnaeus 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":

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the cannabis research fund in an amount
equal to two percent of the net receipts attributable to the cannabis excise tax.

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

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

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

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

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

B. A transfer pursuant to Section 7-1-6.1 NMSA 1978
shall be made to each county for which the department is collecting a county cannabis tax imposed by that county in an amount, subject to any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal to the net receipts attributable to the county cannabis tax, less any deduction for administrative costs determined and made by the department pursuant to the Cannabis Tax Act."

SECTION 56. Section 7-1-2 NMSA 1978 (being Laws 1965, Chapter 248, Section 2, as amended) 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) Venture Capital Investment Act;
(4) Gross Receipts and Compensating Tax Act and any state gross receipts tax;
(5) Liquor Excise Tax Act;
(6) Local Liquor Excise Tax Act;
(7) any municipal local option gross receipts tax;
(8) any county local option gross receipts 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; [and]
(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 Cannabis Tax Act;
B. the administration and enforcement of the
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 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 57. 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:

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"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 or municipal
cannabis tax imposed by that municipality;
(3) any transfer to a county with respect to
any local option gross receipts tax or county cannabis 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;
(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.

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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 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;

(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
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
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
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
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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 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 

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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."

SECTION 58. 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--MEDICAL
CANNABIS.--

A. Receipts from the sale of prescription drugs
[and], oxygen [and], oxygen services provided by a licensed
medicare durable medical equipment provider and medical
cannabis that is purchased 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 59. Section 9-16-4 NMSA 1978 (being Laws 1983, Chapter 297, Section 20, as amended) is amended to read:

"9-16-4. DEPARTMENT ESTABLISHED.--[There is created in the executive branch] 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 [six] the following divisions [as follows]:

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 alcohol and gaming division; and
G. the cannabis control division."

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

"11-6A-3. LOCAL DWI GRANT PROGRAM--FUND.--
A. The division shall establish a local DWI grant program to make grants to municipalities or counties for:

   (1) new, innovative or model programs, services or activities to prevent or reduce the incidence of DWI, alcoholism, alcohol abuse, drug addiction or drug abuse;

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

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

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

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

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

C. The "local DWI grant fund" is created in the state treasury and shall be administered by the division. Two million five hundred thousand dollars ($2,500,000) of liquor excise tax revenues distributed to the fund and all other money
in the fund, other than money appropriated for distribution pursuant to Subsections D and E of this section and money appropriated for DWI program distributions, are appropriated to the division to make grants to municipalities and counties upon council approval in accordance with the program established under the Local DWI Grant Program Act and to evaluate DWI grantees and the local DWI grant program. Money in the fund may be used for drug courts. An amount equal to the liquor excise tax revenues distributed annually to the fund, less five million six hundred thousand dollars ($5,600,000), is appropriated to the division to make DWI program distributions to counties upon council approval of programs in accordance with the provisions of the Local DWI Grant Program Act. No more than six hundred thousand dollars ($600,000) of liquor excise tax revenues distributed to the fund in any fiscal year shall be expended for administration of the grant program. Balances in the fund at the end of any fiscal year shall not revert to the general fund.

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

(1) one million seven hundred thousand dollars ($1,700,000) to class A counties with a population of over .211644.4
three hundred thousand persons according to the 1990 federal
decennial census;

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

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

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

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

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

F. In awarding DWI grants to local communities, the
council:
(1) may fund new or existing innovative or model programs, services or activities designed to prevent or reduce the incidence of DWI, alcoholism or alcohol abuse;

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

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

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

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

(6) shall make grants only to counties or municipalities in counties that have established a DWI planning council and adopted a county DWI plan or are parties to a multicounty DWI plan that has been approved by the council and approved pursuant to Chapter 43, Article 3 NMSA 1978 and only for programs, services or activities consistent with that plan. A DWI plan shall also comply with local DWI grant program rules.
and guidelines.

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

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

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

SECTION 62. Section 26-2B-3 NMSA 1978 (being Laws 2007, Chapter 210, Section 3) 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. "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) 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; or
(8) any other medical condition, medical treatment or disease as approved by the department;

C. "department" means the department of health;

D. "licensed producer" means any person or association of persons within New Mexico [that the department determines to be qualified] licensed by the cannabis control division of the regulation and licensing department to produce, possess, distribute and dispense cannabis pursuant to the Lynn and Erin Compassionate Use Act [and that is licensed by the department];

E. "practitioner" means a person licensed in New Mexico to prescribe and administer drugs that are subject to the Controlled Substances Act;
F. "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;

G. "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 issued pursuant to the Lynn and Erin Compassionate Use Act; and

H. "written certification" means a statement in a patient's medical records or a statement signed by a patient's practitioner that, in the practitioner's professional opinion, 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. A written certification is not valid for more than one year from the date of issuance."

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

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

A. No later than October 1, 2007, and 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 producers and cannabis production facilities and set forth procedures to obtain licenses;

6. develop a distribution system for medical cannabis that provides for:
(a) cannabis production facilities
within New Mexico housed on secured grounds and operated by
licensed producers; and
(b) distribution of medical 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;

[7) ] (5) determine additional duties and
responsibilities of the advisory board; and

[(8)] (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
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 one year after the date of issuance. A registry identification card shall contain:

(1) the name, address 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.

E. A person who possesses a registry identification card shall notify the department of any change in the person's name, address, 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.

F. 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.

G. The department shall maintain a confidential
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) as provided in the federal Health
Insurance Portability and Accountability Act of 1996."

SECTION 64. 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 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
recognize 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.] L. "manufacture" means the production,
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;

[N. "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
ineffective 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;

\[ \Theta_r \] M. "narcotic drug" means any of the following,
whether produced directly or indirectly by extraction from
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;

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

"Opiate" does include its racemic and levorotatory forms;

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

[R.] "practitioner" means a physician, certified advanced practice chiropractic physician, doctor of oriental medicine, dentist, physician assistant, certified nurse 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;

[S.] "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;

[T.] "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;

[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;

[V.] "drug paraphernalia" means 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,
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, mannate, 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) blenders, bowls, containers, spoons and mixing devices used, intended for use or designed for use in compounding controlled substances or controlled substance analogs;

(9) 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) containers and other objects used, intended for use or designed for use in storing or concealing controlled substances or controlled substance analogs;

(11) 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) 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) miniature cocaine spoons and cocaine vials;

(g) chamber pipes;
(h) carburetor pipes;
(i) electric pipes;
(j) air-driven pipes;
(k) chilams;
(l) bongs; or
(m) ice pipes or chillers; and

(13) 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;

W. T. "controlled substance analog":

(1) 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 V. Examples of chemical classes in which controlled substance analogs are found 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;

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

(2) does not include 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;

[X.] U. "human consumption" includes application,

injection, inhalation, ingestion or any other manner of

introduction;

[Y.] V. "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

[Z.] W. "valid practitioner-patient relationship"

means a professional relationship, as defined by the

practitioner's licensing board, between the practitioner and

the patient."

SECTION 65. Section 30-31-6 NMSA 1978 (being Laws 1972,
Chapter 84, Section 6, as amended by Laws 2017, Chapter 139,
Section 2, by Laws 2017, Chapter 140, Section 3 and by Laws
2018, Chapter 41, Section 1) 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

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possible within the specific chemical designation:

(1) acetylmethadol;
(2) allylprodine;
(3) alphacetylmethadol;
(4) alphameprodine;
(5) alphamethadol;
(6) benzethidine;
(7) betacetylmethadol;
(8) betameprodine;
(9) betamethadol;
(10) betaprodine;
(11) clonitazene;
(12) dextromoramide;
(13) dextrorphan;
(14) diampromide;
(15) diethylthiambutene;
(16) dimenoxadol;
(17) dimpeheptanol;
(18) dimethylthiambutene;
(19) dioxaphetyl butyrate;
(20) dipipanone;
(21) ethylmethylothiambutene;
(22) etonitazene;
(23) etoxeridine;
(24) furethidine;
(25) hydroxypethidine;
(26) ketobemidone;
(27) levomoramide;
(28) levophenacylmorphan;
(29) morpheridine;
(30) noracymethadol;
(31) norlevorphanol;
(32) normethadone;
(33) norpipanone;
(34) phenadoxone;
(35) phenampromide;
(36) phenomorphan;
(37) phenoperidine;
(38) piritramide;
(39) proheptazine;
(40) properidine;
(41) racemoramide; and
(42) trimeperidine;

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

(1) acetorphine;
(2) acetyldihydrocodeine;

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

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) mescaline;]
[(12) peyote, except as otherwise provided in the Controlled Substances Act;]
[(13) N-ethyl-3-piperidyl benzilate;]
[(14) N-methyl-3-piperidyl benzilate;]
[(15) psilocybin;]
[(16) psilocyn;]
[(17) tetrahydrocannabinols;]
[(18) hashish;]
[(19) 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) dexamabinol, (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;
[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; and

[E. The enumeration of marijuana, tetrahydrocannabinols or chemical derivatives of tetrahydrocannabinol as Schedule I controlled substances does not apply to:

1. industrial 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 industrial hemp by qualified entities pursuant to rules adopted by the New Mexico department of agriculture;

3. 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

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(4) 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-] E. controlled substances added to Schedule I by rule adopted by the board pursuant to Section 30-31-3 NMSA 1978."

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

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

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 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

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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, l-diphenyl-propane-carboxylic acid;
(p) oxycodone;
(q) pethidine;
(r) pethidine--intermediate--A,
4-cyano-1-methyl-4-phenylpiperidine;
(s) pethidine--intermediate--B,
ethyl-4-phenyl-piperidine-4-carboxylate;
(t) pethidine--intermediate--C,
1-methyl-4-phenylpiperidine-4-carboxylic acid;

    (u) phenazocine;
    (v) piminodine;
    (w) racemethorphan; and
    (x) racemorphan;

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

    (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
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 67. 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

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(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:

[(4)] 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

[(2)] 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."

SECTION 68. Section 30-31-22 NMSA 1978 (being Laws 1972,
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 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 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] or

(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 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;
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 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 69. 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) one ounce or less of [marijuana or] 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, 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 [marijuana or] 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 [marijuana or]
synthetic cannabinoids is guilty of a fourth degree felony and
shall be sentenced pursuant to the provisions of Section

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 punished by a fine not
to exceed one hundred dollars ($100) or 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)] (17) through [(25)] (22) of Subsection C of Section
30-31-6 NMSA 1978; or

(3) a substance added to Schedule I by a rule of
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the board adopted on or after [the effective date of this] March 31, 2011 [act] 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.

D. Except for those substances listed in Subsection 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 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.

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; 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.

F. Except for a minor [as defined in Subsection 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:

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(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 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.

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

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

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

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

B. Upon violation of a condition of the probation,
the court may enter an adjudication of guilt and proceed as
otherwise provided. The court may, in its discretion, dismiss
the proceedings against the person and discharge [him] the
person from probation before the expiration of the maximum
period prescribed from the person's probation.

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

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

dismissed and the proceedings against [him] the person
discharged and that [he] the person was not over eighteen years
of age at the time of the offense, it shall enter the order.

The effect of the order shall be to restore the person, in the
contemplation of the law, to the status [he] the person
occupied before the arrest or indictment or information. No
person in whose behalf an order has been entered shall be held
thereafter under any provision of any law to be guilty of
perjury or otherwise giving a false statement by reason of
[his] the person's failures to recite or acknowledge such
arrest, or indictment or information or trial in response to
any inquiry made of [him] the person for any purpose."

SECTION 71. 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 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 72. [NEW MATERIAL] COOPERATION OF AGENCIES.--All state agencies shall cooperate with the cannabis control division of the regulation and licensing department in carrying out the provisions of the Cannabis Regulation Act.

SECTION 73. TEMPORARY PROVISION--TRANSFER.--On the effective date of this act, any unexpended or unencumbered balance in the medical cannabis fund is transferred to the cannabis regulation fund.

SECTION 74. REPEAL.--Sections 9-7-17.1 and 30-31-25.1 NMSA 1978 (being Laws 2012, Chapter 42, Section 1 and Laws 1981, Chapter 31, Section 2, as amended) are repealed.

SECTION 75. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2019.

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