

FIFTY-FIFTH LEGISLATURE
FIRST SESSION, 2021

HB 12/a

March 9, 2021

Mr. President:

Your **TAX, BUSINESS AND TRANSPORTATION COMMITTEE**, to whom has been referred

**HOUSE TAXATION & REVENUE COMMITTEE SUBSTITUTE
FOR HOUSE HEALTH & HUMAN SERVICES COMMITTEE
SUBSTITUTE FOR HOUSE BILL 12, as amended**

has had it under consideration and reports same with recommendation that it **DO PASS**, amended as follows:

1. Strike all items of House Floor Amendment number 1.
2. On page 2, line 9, strike "47" and insert in lieu thereof "46".
3. On page 4, line 2, strike "within", strike lines 3 and 4 in their entirety and on line 5, strike "premises" and insert in lieu thereof "designated by the division".
4. On page 5, line 22, strike "produces, dispenses,".
5. On page 6, lines 6 and 7, strike "ninety-nine mature" and insert in lieu thereof "two hundred total".
6. On page 10, line 2, strike "ninety-nine mature" and insert in lieu thereof "two hundred total".
7. On page 12, line 24, strike "person" and insert in lieu thereof "resident of New Mexico".
8. On page 13, line 2, strike "as part of the medical cannabis program" and insert in lieu thereof "pursuant to the Lynn and Erin Compassionate Use Act".
9. On page 13, between lines 2 and 3, insert the following new subsection:

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

10. Reletter the succeeding subsections accordingly.

11. On page 13, line 8, before "plants", insert "cannabis".

12. On page 13, line 11, before "plants", insert "cannabis".

13. On page 13, line 15, before "plants", insert "cannabis".

14. On page 13, line 18, before "plants", insert "cannabis".

15. On page 13, between lines 21 and 22, insert the following new subsection:

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

16. Reletter the succeeding subsections accordingly.

17. On page 14, line 9, strike "; and", strike lines 10 and 11 in their entirety and insert in lieu thereof a period.

18. On page 14, line 20, strike "division" and insert in lieu thereof "director".

19. On page 14, line 21, after "rules", insert "pursuant to the State Rules Act that are".

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20. On page 15, line 23, after "patient", insert ", a reciprocal participant".

21. On page 16, strike lines 3 through 6 in their entirety and insert in lieu thereof "1) a consumer shall be".

22. Renumber the succeeding items accordingly.

23. On page 16, line 15, strike "shall not" and insert in lieu thereof "may".

24. On page 18, line 8, after "rules", insert "pursuant to the State Rules Act that are".

25. On page 18, line 13, after the semicolon, insert "and".

26. On page 18, line 17, strike "; and" and insert in lieu thereof a period.

27. On page 18, line 18, strike "(4) rules developed" and insert in lieu thereof the following new subsection:

"E. No later than January 1, 2022, the division shall promulgate rules pursuant to the State Rules Act".

28. On page 18, line 21, strike the subparagraph designation "(a)" and insert in lieu thereof the paragraph designation "(1)".

29. On page 18, line 22, strike the subparagraph designation "(b)" and insert in lieu thereof the paragraph designation "(2)".

30. On page 18, line 23, after "governing", insert "food and product safety, occupational health and safety,".

31. On page 19, between lines 1 and 2, insert the following new subsection:

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"F. No later than January 1, 2022, the division shall adopt rules pursuant to the State Rules Act in consultation with the department of health to establish standards and determinations on requirements for the reservation of cannabis products reserved for sale to qualified patients, primary caregivers and reciprocal participants."

32. Reletter the succeeding subsections accordingly.

33. On page 19, line 8, strike "division" and insert in lieu thereof "director".

34. On page 19, line 17, strike "An individual" and strike lines 18 through 20 in their entirety and insert in lieu thereof "The cannabis".

35. On page 21, line 2, strike "and" and between lines 2 and 3, insert the following subparagraphs:

"(l) who is a cannabis retailer;

(m) who is a cannabis producer;

(n) who is a cannabis manufacturer; and".

36. Reletter the succeeding subparagraph accordingly.

37. On page 21, between lines 4 and 5, insert the following new subsection:

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

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38. Reletter the succeeding subsections accordingly.

39. On page 21, line 22, after the semicolon, insert "and".

40. On page 21, strike lines 23 through 25 in their entirety and on page 22, strike lines 1 through 11 in their entirety and between lines 11 and 12, insert the following new paragraph:

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

41. On page 25, line 12, after "Act", insert ", and as otherwise provided by law".

42. On page 26, lines 1 through 3, strike Subsection B in its entirety.

43. Reletter the succeeding subsections accordingly.

44. On page 26, line 4, strike "sixty" and insert in lieu thereof "one hundred eighty".

45. On page 26, line 16, strike "division" and insert in lieu thereof "director".

46. On page 26, after line 25, insert the following new paragraph:

"(5) cannabis consumption areas;"

47. Renumber the succeeding paragraphs accordingly.

48. On page 27, between lines 10 and 11, insert the following new subsection:

"E. The division shall not license a cannabis retailer

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unless the cannabis retailer agrees as a condition of its license to accept cannabis products on consignment for resale from any manufacturer or producer licensed pursuant to the Cannabis Regulation Act."

49. Reletter the succeeding subsections accordingly.

50. On page 28, strike lines 4 through 7 in their entirety.

51. Reletter the succeeding subsections accordingly.

52. On page 28, line 8, strike "shall not" and insert in lieu thereof "may".

53. On page 28, line 10, after "Act", insert "; provided that, upon a finding and the recommendation of the cannabis regulatory advisory committee that market equilibrium is deficient and threatens the economic viability of the industry or adequate supply of cannabis, the division may impose temporary moratoria on new licensure and impose production limitations, issue new licenses or allow greater production by current licensees".

54. On page 29, lines 10 and 11, strike "the effective date of the Cannabis Regulation Act" and insert in lieu thereof "October 1, 2021".

55. On page 29, line 14, strike ", beginning on January 1, 2022" and insert in lieu thereof"; provided that retail sale of commercial cannabis shall not begin until March 1, 2022".

56. On page 30, line 2, after "patient", insert ", a reciprocal patient".

57. On page 30, line 6, after "to", insert "two ounces of cannabis flowers and".

58. On page 30, line 8, strike the colon, strike lines 9 and

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10 in their entirety and on line 11, strike "(2)".

59. On page 30, line 13, strike "or" and insert in lieu thereof "and".

60. On page 30, line 16, "strike "N" and insert in lieu thereof "M".

61. On page 33, before line 1, insert the following new paragraph:

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

62. Renumber the succeeding paragraphs accordingly.

63. On page 33, line 22, strike "five" and insert in lieu thereof "twenty-five".

64. On page 33, line 23, after "plants", insert "on a monthly basis".

65. On page 33, line 24, after the semicolon, insert "and"

66. On page 33, line 25 through page 34, line 3, strike Subparagraph (b) in its entirety.

67. Reletter the succeeding subparagraph accordingly.

68. On page 34, lines 4 through 7, strike Subparagraph (c) in its entirety and insert in lieu thereof:

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

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69. On page 34, line 10, strike "beginning on" and insert in lieu thereof "no later than".

70. On page 34, line 12, strike "beginning on" and insert in lieu thereof "no later than".

71. On page 34, lines 12 and 13, strike "issue licenses" and insert in lieu thereof "accept and begin processing license applications" and on line 13, strike "and" and insert in lieu thereof a comma.

72. On page 34, line 14, after "microbusinesses", insert ", cannabis producers and any person properly licensed and in good standing as a licensed cannabis producer pursuant to the Lynn and Erin Compassionate Use Act; provided that retail sale of commercial cannabis shall not begin until March 1, 2022".

73. On page 34, lines 15 and 16, strike "accept license applications for all licenses" and insert in lieu thereof "issue licenses for all license types".

74. On page 35, line 18, strike "January 1, 2022" and insert in lieu thereof "March 1, 2022".

75. On page 35, line 20, after "licensee", insert ", so long as a minimum of twenty-five percent of monthly cannabis sales are to qualified patients, primary caregivers and reciprocal participants or sold wholesale to other licensees who meet or exceed the twenty-five percent sales to qualified patients, primary caregivers and reciprocal participants until December 31, 2022".

76. On page 38, line 15, before "For", insert "The division shall assess and collect fees."

77. On page 38, between lines 20 and 21, insert the following new subsections:

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"C. A licensee cultivating cannabis plants shall be assessed an additional annual fee no greater than fifty dollars (\$50.00) per cannabis plant at the time of licensing or renewal, except for cannabis producer microbusinesses and integrated cannabis microbusinesses.

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

E."

78. On page 39, line 4, before "The", insert the subsection designation "F."

79. Reletter the succeeding subsections accordingly.

80. On page 41, line 1, after "permit", insert "and licenses for a cannabis consumption area".

81. On page 51, line 12, strike "and".

82. On page 51, line 15, strike the period and insert in lieu thereof a semicolon, and between lines 15 and 16, insert the following subparagraphs:

"(i) an expiration date; and

(j) other information as required by rules promulgated pursuant to the Cannabis Regulation Act and published pursuant to the State Rules Act."

83. On page 51, line 17, strike "--DEPARTMENT OF ENVIRONMENT".

84. On page 51, lines 21 and 22, strike "develop reasonable rules and procedures" and insert in lieu thereof "provide notice and

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adopt and file rules pursuant to the State Rules Act, in consultation with the department of environment and".

85. On page 52, strike line 24 in its entirety and on line 25, strike "to the division" and insert in lieu thereof "division shall identify, in consultation with the department of environment,".

86. On page 53, line 2, strike "inspect" and insert in lieu thereof "work cooperatively with the department of environment to implement the inspection of".

87. On page 53, line 21, strike "broadcast".

88. On page 55, line 17, after "patient", insert ", a reciprocal participant".

89. On page 59, line 9, before "plants", insert "cannabis".

90. On page 59, line 12, before "plants", insert "cannabis".

91. On page 64, line 23, after "patient", insert ", a reciprocal participant".

92. On page 75, line 15, strike "may enter into an agreement with another jurisdiction" and insert in lieu thereof "shall enter into agreements with other jurisdictions".

93. On page 75, line 16, after "within", insert "or outside of".

94. On page 75, line 18, strike "jurisdiction. Any such agreement" and insert in lieu thereof "jurisdictions. Such agreements".

95. On page 75, line 22, after "interstate", insert "or international".

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96. On page 76, line 12, after "States", insert "or internationally".

97. On page 76, line 16, after "interstate", insert "or international".

98. On page 76, line 20, after "interstate", insert "or international".

99. On page 77, line 18, strike "of health".

100. On page 77, line 20, strike "of health".

101. On page 78, line 2, strike "secretary of health or the secretary's" and insert in lieu thereof "superintendent or the superintendent's".

102. On page 78, line 4, strike "secretary of health" and insert in lieu thereof "superintendent".

103. On page 79, line 22, strike "and".

104. On page 79, line 25, strike the period and insert in lieu thereof "; and" and after line 25, insert:

"(8) funding tuition and fee expenses for department-approved higher education courses of study related to licenses issued pursuant to the Cannabis Regulation Act; provided that the tuition and fees shall only benefit people who have demonstrated financial need as determined by the higher education department."

105. On page 80, line 4, strike "of health".

106. On page 80, lines 21 and 22, strike ", in consultation with the division,".

107. On page 80, line 25, after "program", insert "no later

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than July 1, 2022".

108. On page 81, lines 6 through 10, strike Section 46 in its entirety.

109. On page 83, line 11, strike "50" and insert in lieu thereof "49".

110. On page 83, line 12, strike "57" and insert in lieu thereof "56".

111. On page 85, line 23, after "patient", insert "or a reciprocal participant".

112. On page 86, line 23, after "patient", insert "or a reciprocal participant".

113. On page 87, line 23, after "patient", insert "or a reciprocal participant".

114. On page 123, between lines 11 and 12, insert the following new section:

"SECTION 62. Section 7-9-73.2 NMSA 1978 (being Laws 1998, Chapter 95, Section 2 and Laws 1998, Chapter 99, Section 4, as amended) is amended to read:

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

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

B. For the purposes of this section, "prescription drugs"

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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."".

115. On page 123, between lines 24 and 25, insert the following new section:

SECTION 64. Section 9-16-6 NMSA 1978 (being Laws 1983, Chapter 297, Section 22, as amended) is amended to read:

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

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

B. To perform the superintendent's duties, the superintendent has every power expressly enumerated in the laws, whether granted to the superintendent or the department or any division of the department, except where authority conferred upon any division is explicitly exempted from the superintendent's authority by statute. In accordance with these provisions, the superintendent shall:

(1) except as otherwise provided in the Regulation and Licensing Department Act, exercise general supervisory and appointing authority over all department employees, subject to any

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applicable personnel laws and regulations;

(2) delegate authority to subordinates as the superintendent deems necessary and appropriate, clearly delineating such delegated authority and the limitations thereto;

(3) organize the department into those organizational units the superintendent deems will enable it to function most efficiently, subject to any provisions of law requiring or establishing specific organizational units;

(4) within the limitations of available appropriations and applicable laws, employ and fix the compensation of those persons necessary to discharge the superintendent's duties;

(5) take administrative action by issuing orders and instructions, not inconsistent with the law, to assure implementation of and compliance with the provisions of law for whose administration or execution the superintendent is responsible and to enforce those orders and instructions by appropriate administrative action or actions in the courts;

(6) conduct research and studies that will improve the operations of the department and the provision of services to the residents of the state;

(7) provide courses of instruction and practical training for employees of the department and other persons involved in the administration of programs, with the objective of improving the operations and efficiency of administration;

(8) prepare an annual budget of the department;

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

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

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

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

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

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

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

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

D. The superintendent may make and adopt such reasonable and procedural rules ~~[and regulations]~~ as may be necessary to carry out the duties of the department and its divisions; provided that where a licensing entity requires submission of fingerprints as part

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of the initial license application, and a licensee has provided fingerprints and the license has been issued, the licensing entity shall not require a licensee to submit fingerprints again to renew the license, but a licensee shall submit to a background investigation if required; and provided further that the prohibition against requiring additional fingerprints shall not apply to the financial institutions division of the department when utilizing the nationwide multistate licensing system and registry.

E. No rule [~~or regulation~~] promulgated by the director of any division in carrying out the functions and duties of the department or a division shall be effective until approved by the superintendent, unless otherwise provided by statute. Unless otherwise provided by statute, [~~no regulation affecting any person or agency outside the department shall be adopted, amended or repealed without a public hearing on the proposed action before the superintendent or a hearing officer designated by the superintendent. The public hearing shall be held in Santa Fe unless otherwise permitted by statute. Notice of the subject matter of the regulation, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views and the method by which copies of the proposed regulation, proposed amendment or repeal of an existing regulation may be obtained shall be published once at least thirty days prior to the hearing date in a newspaper of general circulation and mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice of hearing. All rules and regulations shall be~~] all rules adopted, amended or repealed by the superintendent or the director of any division shall have notice provided and be conducted and filed in accordance with the State Rules Act."

116. On page 125, strike lines 15 and 16 in their entirety and insert in lieu thereof "pursuant to the Cannabis Regulation Act."

117. On page 126, lines 10 through 15, strike Section 66 in its entirety.

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118. On page 133, strike lines 15 through 18 in their entirety and insert in lieu thereof:

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

119. On page 146, line 19, strike "three" and insert in lieu thereof "two".

120. On page 165, line 24, after the semicolon, strike "and".

121. On page 165, line 25 through page 167, line 9, remove the bracket and line-through and on page 167, line 9, after the semicolon, insert "and".

122. On page 166, line 23, after the semicolon, insert "or".

123. On page 167, line 10, before "(5)", insert an opening bracket.

124. Reletter the succeeding subsection accordingly.

125. Renumber sections to correspond to these amendments.,

and thence referred to the **JUDICIARY COMMITTEE**.

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Respectfully submitted,

BENNY SHENDO JR., CHAIRMAN

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 7 For 4 Against
Yes: 7
No: Brandt, Griggs, Kernan, Sanchez
Excused: None
Absent: None

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