

1 SENATE BILL 363

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

3 INTRODUCED BY

4 Jacob R. Candelaria

5
6
7
8
9
10 AN ACT

11 RELATING TO CANNABIS; ENACTING THE CANNABIS REGULATION ACT;
12 ENACTING THE CANNABIS TAX ACT; CREATING THE CANNABIS CONTROL
13 DIVISION IN THE REGULATION AND LICENSING DEPARTMENT; PROVIDING
14 DUTIES; CREATING THE CANNABIS REGULATORY ADVISORY COMMITTEE;
15 CREATING THE PUBLIC HEALTH AND SAFETY ADVISORY COMMITTEE;
16 REVISING LAW ENFORCEMENT REPORTING REQUIREMENTS; REVISING
17 SECTIONS OF LAW RELATED TO CANNABIS; CREATING A PUBLIC
18 EDUCATION CAMPAIGN; CREATING THE CANNABIS EXCISE TAX; CREATING
19 THE COUNTY CANNABIS TAX; CREATING THE MUNICIPAL CANNABIS TAX;
20 PROVIDING FOR DISTRIBUTIONS FROM CANNABIS EXCISE TAX REVENUE;
21 AMENDING THE LYNN AND ERIN COMPASSIONATE USE ACT; PROVIDING AND
22 REVISING PENALTIES; AMENDING, REPEALING AND ENACTING SECTIONS
23 OF THE NMSA 1978; MAKING APPROPRIATIONS.

24
25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

.219735.2

underscoring material = new
[bracketed material] = delete

underscoring material = new
[bracketed material] = delete

1 SECTION 1. ~~[NEW MATERIAL]~~ SHORT TITLE.--Sections 1
2 through 38 of this act may be cited as the "Cannabis Regulation
3 Act".

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

6 A. "advertisement":

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

12 (2) does not include:

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

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

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

25 B. "advertising" means the publication or

.219735.2

underscoring material = new
~~[bracketed material] = delete~~

1 dissemination of an advertisement;

2 C. "cannabis":

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

10 (2) does not include:

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

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

20 D. "cannabis consumption area" means an area
21 designated by the division where cannabis products may be
22 consumed;

23 E. "cannabis courier" means a person that
24 transports cannabis products from a cannabis establishment to
25 any or all of the following:

.219735.2

- 1 (1) a qualified patient;
- 2 (2) a primary caregiver;
- 3 (3) another cannabis establishment; or
- 4 (4) directly to consumers;

5 F. "cannabis establishment" means:

- 6 (1) a cannabis courier;
- 7 (2) a cannabis testing laboratory;
- 8 (3) a cannabis manufacturer;
- 9 (4) a cannabis producer;
- 10 (5) a cannabis retailer;
- 11 (6) a cannabis research laboratory;
- 12 (7) a vertically integrated cannabis
- 13 establishment;
- 14 (8) a cannabis producer microbusiness;
- 15 (9) an integrated cannabis microbusiness; or
- 16 (10) a cannabis consumption area;

17 G. "cannabis extract":

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

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

25 H. "cannabis flowers" means only the flowers of a

underscoring material = new
~~[bracketed material] = delete~~

1 cannabis plant;

2 I. "cannabis manufacturer" means a person that:

3 (1) manufactures cannabis products;

4 (2) packages, transports or couriers cannabis
5 products;

6 (3) has cannabis products tested by a cannabis
7 testing laboratory;

8 (4) purchases, acquires, obtains, possesses,
9 sells or transports cannabis products to other cannabis
10 establishments; or

11 (5) prepares products for personal production
12 license holders pursuant to the Lynn and Erin Compassionate Use
13 Act;

14 J. "cannabis producer" means a person that:

15 (1) possesses, produces, dispenses,
16 distributes and manufactures cannabis products;

17 (2) cultivates cannabis plants;

18 (3) has unprocessed cannabis products tested
19 by a cannabis testing laboratory; or

20 (4) sells cannabis products wholesale;

21 K. "cannabis producer microbusiness" means a person
22 that is licensed by the division to:

23 (1) produce cannabis products; provided that
24 the person shall not possess at any one time more than ninety-
25 nine mature cannabis plants;

.219735.2

1 (2) have unprocessed cannabis products tested
2 by a cannabis testing laboratory; and

3 (3) sell and transport unprocessed cannabis
4 products only to other cannabis establishments;

5 L. "cannabis product":

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

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

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

17 N. "cannabis retailer" means a person that sells or
18 couriers cannabis products to a consumer in this state;

19 O. "cannabis server permit" means an authorization
20 issued by the director to allow a person to directly offer,
21 sell or serve cannabis or cannabis products as part of
22 commercial cannabis activity in a cannabis consumption area;

23 P. "cannabis server permit education provider"
24 means a person or a public or private school that is licensed
25 by the division to provide cannabis server education courses

.219735.2

1 and examinations;

2 Q. "cannabis testing laboratory" means a person
3 authorized by the division to sample, collect or test cannabis
4 products and to transport cannabis products for the purpose of
5 testing;

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

10 S. "commercial cannabis activity":

11 (1) means the cultivation, production,
12 possession, manufacture, storage, testing, researching,
13 labeling, transportation, couriering, purchase and sale of
14 cannabis products; and

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

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

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

24 V. "controlling person":

25 (1) means a person that controls ten percent

1 or more of, or an officer or board member of, a cannabis
2 establishment; and

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

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

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

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

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

19 AA. "evidence-based drug education program" means a
20 research-based and scientific-evidence-based education program
21 that has been thoroughly tested and has been shown to
22 significantly reduce problematic use of substances such as
23 nicotine, alcohol or drugs or reduce student suspensions or
24 expulsions related to alcohol or drug use;

25 BB. "facility" means any building, space or grounds

.219735.2

1 licensed for the production, possession, testing, manufacturing
2 or distribution of cannabis, concentrates or cannabis products;

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

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

9 EE. "household" means a housing unit and includes
10 any place in or around the housing unit at which an occupant of
11 the housing unit produces, manufactures, keeps or stores
12 homegrown cannabis or homemade cannabis products;

13 FF. "immature cannabis plant" means a cannabis
14 plant that has no observable flowers or buds;

15 GG. "industry standards" means the prevailing
16 customary standards of business practice in the cannabis
17 industry in jurisdictions within the United States;

18 HH. "integrated cannabis microbusiness" means a
19 person that is licensed by the division to:

20 (1) produce cannabis; provided that the person
21 shall not possess at any one time more than ninety-nine mature
22 cannabis plants;

23 (2) manufacture cannabis extracts using
24 nonvolatile solvents, alcohol or carbon dioxide or no solvents;

25 (3) sell and transport only cannabis products

1 manufactured by the person to other cannabis establishments and
2 courier those products to consumers;

3 (4) operate only one retail establishment; and

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

6 II. "licensed premises" means a location that is
7 designated by the division to engage in commercial cannabis
8 activity pursuant to the Cannabis Regulation Act and includes:

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

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

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

22 JJ. "licensee" means a person issued a license
23 pursuant to the Cannabis Regulation Act;

24 KK. "licensee representative" means an owner,
25 director, officer, manager, employee, agent or other

1 representative of a licensee, to the extent that person acts in
2 a representative capacity;

3 LL. "local jurisdiction" means a municipality, home
4 rule municipality or county;

5 MM. "manufacture" means to prepare a cannabis
6 product;

7 NN. "marketing" means the act of promoting or
8 selling a cannabis product or a cannabis-related product or
9 service;

10 OO. "mature cannabis plant" means a cannabis plant
11 that is not an immature cannabis plant;

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

15 QQ. "medical cannabis program" means licensed
16 activity as authorized by the Lynn and Erin Compassionate Use
17 Act;

18 RR. "medical cannabis registry" means the system by
19 which the division, pursuant to the Lynn and Erin Compassionate
20 Use Act, receives applications for registry identification
21 cards; approves and denies applications; issues and renews
22 registry identification cards; and maintains files related to
23 applicants for and recipients of registry identification cards;

24 SS. "primary caregiver" means a resident of New
25 Mexico who is at least eighteen years of age and who has been

.219735.2

1 designated by the qualified patient's practitioner as being
2 necessary to take responsibility for managing the well-being of
3 a qualified patient with respect to the medical use of cannabis
4 pursuant to the provisions of the Lynn and Erin Compassionate
5 Use Act;

6 TT. "produce" or "production" means any activity
7 involving the cultivation of cannabis or performing any action
8 intended to result in making cannabis products available to
9 consumers;

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

17 VV. "qualified patient" means a person who has been
18 diagnosed by a practitioner as having a debilitating medical
19 condition and has received written certification and a registry
20 identification card as part of the medical cannabis program;

21 WW. "retail establishment" means a single location,
22 not to exceed ten thousand square feet in total area, operated
23 by an integrated cannabis microbusiness for the purpose of
24 performing all licensed activities;

25 XX. "shortage of cannabis supply in the medical

underscoring material = new
~~[bracketed material] = delete~~

1 program" means that the average number of plants in production
2 in the medical cannabis program per qualified patient after the
3 effective date of the Cannabis Regulation Act is substantially
4 less than the average number of plants in production in the
5 medical cannabis program per qualified patient as of the
6 effective date of the Cannabis Regulation Act, where:

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

10 (2) the average number of plants in production
11 as of the effective date of the Cannabis Regulation Act is
12 measured over a period of three consecutive months immediately
13 preceding the effective date of the Cannabis Regulation Act;

14 YY. "vertically integrated cannabis establishment"
15 means a licensee that is authorized under a vertically
16 integrated cannabis establishment license issued by the
17 division to act, without additional licensure and in the
18 licensee's discretion, as any of the following:

- 19 (1) a cannabis courier;
20 (2) a cannabis testing laboratory;
21 (3) a cannabis manufacturer;
22 (4) a cannabis producer;
23 (5) a cannabis retailer;
24 (6) a cannabis research laboratory; or
25 (7) a person that engages in any other

.219735.2

underscored material = new
[bracketed material] = delete

1 activity authorized by the division; and

2 ZZ. "superintendent" means the superintendent of
3 regulation and licensing.

4 SECTION 3. [NEW MATERIAL] DIVISION--DUTIES--RULEMAKING.--

5 A. The "cannabis control division" is created in
6 the department.

7 B. The division shall execute the provisions
8 delegated to it under this 2021 act and administer and enforce
9 the provisions of rules adopted under the Cannabis Regulation
10 Act.

11 C. No later than January 1, 2022, the division
12 shall promulgate reasonable rules consistent with industry
13 standards necessary for the division to carry out its duties as
14 provided in the Cannabis Regulation Act as follows:

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

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

20 (3) security requirements for a cannabis
21 establishment;

22 (4) requirements related to:

23 (a) inspection and monitoring of a
24 cannabis establishment;

25 (b) a cannabis establishment's

.219735.2

1 recordkeeping and tracking of cannabis from seed until sale;

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

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

7 (e) home grown cannabis by persons over
8 the age of twenty-one; and

9 (f) language for labels of cannabis
10 products regarding potential adverse effects;

11 (5) rules providing that:

12 (a) any adult who is twenty-one years
13 old or older shall be permitted to purchase at least two ounces
14 of cannabis flowers and at least sixteen grams of cannabis
15 extract each day;

16 (b) a qualified patient, a reciprocal
17 patient or a primary caregiver shall not be limited in the
18 amount of cannabis flowers or cannabis extract purchased and
19 obtained pursuant to the medical cannabis program; and

20 (c) as to commercial cannabis activity:
21 1) except for limits set in place in statute for an integrated
22 cannabis microbusiness or a cannabis producer microbusiness,
23 the division shall not limit the number of plants the licensee
24 may possess, cultivate or manufacture; 2) a consumer shall be
25 permitted to possess at least two ounces of cannabis flowers

.219735.2

1 and at least sixteen grams of cannabis extract purchased and
2 obtained pursuant to the commercial cannabis activity
3 authorized by the Cannabis Regulation Act outside of the
4 consumer's private residence; 3) any cannabis flower in excess
5 of two ounces of cannabis flowers or cannabis extract in excess
6 of sixteen grams of cannabis extract shall be stored in the
7 person's residence; and 4) the division shall not limit the
8 amount of tetrahydrocannabinol concentration in a cannabis
9 product;

10 (6) rules on advertising and marketing of
11 cannabis products;

12 (7) rules on how a licensee may display
13 cannabis products for sale;

14 (8) procedures that promote and encourage full
15 participation in the cannabis industry governed by the Cannabis
16 Regulation Act by representatives of communities that have been
17 disproportionately harmed by rates of arrest through the
18 enforcement of cannabis prohibitions in law and policy;

19 (9) procedures that encourage racial, ethnic,
20 gender and geographic diversity among license applicants,
21 licensees and cannabis industry employees;

22 (10) development of a certification to
23 identify products for consumers from licensees that are
24 integrated cannabis microbusinesses or cannabis producer
25 microbusinesses or owned by representatives of communities that

.219735.2

underscoring material = new
~~[bracketed material] = delete~~

1 have been disproportionately harmed by rates of arrest through
2 the enforcement of cannabis prohibitions in law and policy;

3 (11) rules developed in consultation with the
4 department of environment to establish:

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

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

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

13 (12) rules developed in consultation with the
14 New Mexico department of agriculture and the department of
15 environment to establish standards for quality control,
16 inspection and testing of cannabis products for potency and
17 contaminants, except for cannabis produced or harvested for
18 research purposes and not for ingestion; provided that all such
19 rules and standards must be consistent with the rules and
20 standards for testing of medical cannabis products.

21 D. No later than January 1, 2022, the division
22 shall promulgate reasonable rules consistent with industry
23 standards relating to cannabis training and education programs,
24 including:

25 (1) procedures for the issuance, renewal,

.219735.2

1 suspension and revocation of a license;

2 (2) qualifications for licensure;

3 (3) physical security, cybersecurity and, if
4 applicable, security of information collected under the federal
5 Health Insurance Portability and Accountability Act of 1996
6 requirements; and

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

10 (a) environmental protections; and

11 (b) protocols to ensure licensees'
12 compliance with state and local laws and ordinances governing
13 environmental impacts, natural resource protection, water
14 quality, water supply, hazardous materials, pesticide use and
15 wastewater discharge.

16 E. The division shall collect and publish annually
17 on the division's website, and present to the appropriate
18 interim committee of the legislature, a report describing
19 demographic data on license applicants, controlling persons and
20 employees of cannabis establishments, including race,
21 ethnicity, gender and age.

22 F. No later than September 1, 2021, the division
23 shall convene a "cannabis regulatory advisory committee" to
24 advise the division on the development of rules pursuant to the
25 Cannabis Regulation Act, including best practices and

.219735.2

underscoring material = new
~~[bracketed material] = delete~~

1 guidelines that promote economic and cultural diversity in
2 licensing and employment opportunities and protect public
3 health and safety while ensuring a regulated environment for
4 commercial cannabis activity that does not impose unreasonable
5 barriers that would perpetuate, rather than reduce and
6 eliminate, the illicit market for cannabis. An individual
7 appointed to the cannabis regulatory advisory committee shall
8 not hold any ownership interest or investment in a licensed
9 entity pursuant to the Cannabis Regulation Act. The cannabis
10 regulatory advisory committee shall consist of the following
11 individuals or their designees:

12 (1) the chief public defender;

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

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

18 (4) members appointed by the director with the
19 approval of the superintendent for four-year terms, including a
20 representative:

21 (a) of a cannabis policy advocacy
22 organization;

23 (b) of a labor organization;

24 (c) who is a qualified patient;

25 (d) from a state or local agency with

.219735.2

1 relevant expertise as the director and the superintendent deem
2 appropriate;

3 (e) with expertise in public health;

4 (f) with expertise in regulating
5 commercial activity for adult-use intoxicating substances;

6 (g) from a community disproportionately
7 affected by past federal and state drug policies;

8 (h) with expertise and experience in
9 cannabis laboratory science;

10 (i) with expertise in environmental
11 science;

12 (j) from an Indian nation, tribe or
13 pueblo with relevant expertise as the director and the
14 superintendent deem appropriate; and

15 (k) with expertise in other relevant
16 areas as the director and the superintendent deem appropriate.

17 G. Public members of the cannabis regulatory
18 advisory committee shall not be paid but are entitled to
19 receive per diem and mileage as provided for non-salaried
20 public officers in the Per Diem and Mileage Act.

21 H. The division shall monitor the supply and demand
22 of cannabis products produced in New Mexico by licensees and
23 present annually to the appropriate interim committee of the
24 legislature on the impacts of supply on illicit cannabis
25 products markets and adequate supply of cannabis products for

.219735.2

underscored material = new
[bracketed material] = delete

1 qualified patients.

2 SECTION 4. [NEW MATERIAL] DEPARTMENT OF HEALTH--DUTIES.--

3 The power, duty and authority of the department of health
4 related to commercial cannabis activity and the Lynn and Erin
5 Compassionate Use Act shall be transferred to the division.

6 SECTION 5. [NEW MATERIAL] LICENSING CANNABIS ACTIVITIES--
7 LIMITATIONS--MEDICAL CANNABIS LEGACY LICENSING.--

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

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

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

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

16 B. The division shall begin issuing licenses in
17 accordance with the rules promulgated by the division for
18 commercial cannabis activities no later than January 1, 2022.

19 C. Within sixty days of the effective date of the
20 Cannabis Regulation Act, the division shall adopt procedures
21 to:

22 (1) promote and encourage full participation
23 in the cannabis industry by representatives of communities that
24 have been disproportionately harmed by rates of arrest through
25 the enforcement of cannabis prohibitions in law; and

.219735.2

underscoring material = new
~~[bracketed material] = delete~~

1 (2) encourage racial, ethnic, gender and
2 geographic diversity among license applicants, licensees and
3 cannabis industry employees.

4 D. The division shall administer a licensing
5 program in accordance with the rules promulgated by the
6 division for commercial cannabis activities provided for in the
7 Cannabis Regulation Act, the medical cannabis program provided
8 for in the Lynn and Erin Compassionate Use Act and cannabis
9 training and education programs that shall include licenses
10 for:

- 11 (1) vertically integrated cannabis
12 establishments;
- 13 (2) cannabis testing laboratories;
- 14 (3) cannabis couriers;
- 15 (4) cannabis producers;
- 16 (5) cannabis manufacturers;
- 17 (6) integrated cannabis microbusinesses;
- 18 (7) cannabis producer microbusinesses;
- 19 (8) cannabis training and education programs;
- 20 (9) cannabis retailers;
- 21 (10) cannabis research laboratories; and
- 22 (11) cannabis consumption areas.

23 E. The division shall include a clear designation
24 on all licenses that indicates whether the license is for
25 medical cannabis activity, both medical and commercial cannabis

underscoring material = new
~~[bracketed material]~~ = delete

1 activity or cannabis training and education programs.

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

7 G. The division shall not limit the type or number
8 of licenses that a licensee may be issued pursuant to the
9 Cannabis Regulation Act.

10 H. Except for verification of age, the division
11 shall not require licensees to request information from
12 consumers or impose any residency requirement upon consumers
13 for the purchase of cannabis products pursuant to the
14 commercial cannabis activity authorized by the Cannabis
15 Regulation Act or the medical cannabis program.

16 I. Except as otherwise provided in the Cannabis
17 Regulation Act, the division shall not limit the number of
18 licensed premises a licensee may occupy or operate under a
19 license. Multiple licensees may occupy a single licensed
20 premises, and the division shall not place any restriction or
21 prohibition on the number of licensees occupying a single
22 licensed premises or on the number of licensed premises of a
23 cannabis establishment except as otherwise specifically
24 provided for by the Cannabis Regulation Act. A licensee may
25 conduct any lawful activity or any combination of lawful

.219735.2

underscoring material = new
~~[bracketed material] = delete~~

1 activities at a licensed premises.

2 J. Licensees pursuant to the Cannabis Regulation
3 Act are not prohibited from engaging in activities pursuant to
4 the Hemp Manufacturing Act.

5 K. Any person properly licensed and in good
6 standing as a cannabis producer pursuant to the Lynn and Erin
7 Compassionate Use Act on the effective date of the Cannabis
8 Regulation Act shall be issued a license by the division
9 allowing the licensee to conduct commercial cannabis activity
10 and medical cannabis activity as a vertically integrated
11 cannabis establishment within thirty days of the effective date
12 of the Cannabis Regulation Act. Any other person properly
13 licensed and in good standing pursuant to the Lynn and Erin
14 Compassionate Use Act on the effective date of the Cannabis
15 Regulation Act shall be issued a license of comparable class
16 and privileges to conduct commercial cannabis activity under
17 the Cannabis Regulation Act. Any facility of such a licensee,
18 upon issuance of the cannabis establishment license, shall
19 constitute licensed premises of the licensee, and the licensee
20 shall be entitled to continued and uninterrupted operations of
21 the licensed premises. As to activity under the medical
22 cannabis program, the licensee shall continue to operate under
23 rules promulgated for the medical cannabis program until the
24 division promulgates rules for medical cannabis activity,
25 except that a qualified patient, a reciprocal patient and a

.219735.2

1 primary caregiver shall not be prohibited from purchasing and
2 obtaining cannabis products pursuant to the medical cannabis
3 program, nor shall such a person be prohibited from purchasing
4 up to sixteen grams of cannabis extract purchased and obtained
5 pursuant to the medical cannabis program. The division shall
6 not limit:

7 (1) the number of plants the licensee shall be
8 permitted to possess, cultivate or manufacture; or

9 (2) a consumer from purchasing and obtaining
10 pursuant to the commercial cannabis activity authorized by the
11 Cannabis Regulation Act up to two ounces of cannabis flowers or
12 sixteen grams of cannabis extract each day.

13 L. Any nonprofit corporation issued a license under
14 Subsection K of this section shall be converted into a
15 corporation by the secretary of state upon the filing of
16 articles of organization by the nonprofit corporation, which
17 shall be approved pursuant to an agreement of conversion in the
18 manner provided for the conversion of a limited liability
19 company in Section 53-19-60.1 NMSA 1978. To be valid, the
20 agreement of conversion must be approved by all directors of
21 the nonprofit corporation. Upon conversion, all property owned
22 by the converting entity remains in the newly converted entity.
23 All obligations of the converting entity continue as
24 obligations of the newly converted entity. Any action or
25 proceeding pending against the converting entity may be

.219735.2

underscoring material = new
[bracketed material] = delete

1 continued as if the conversion had not occurred.

2 SECTION 6. [NEW MATERIAL] LICENSEES--SANCTIONS--CIVIL
3 PENALTY.--

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

7 B. The division may:

- 8 (1) suspend or revoke a license;
- 9 (2) impose any intermediate sanction
10 established by rule;
- 11 (3) impose a directed plan of correction; or
- 12 (4) assess a civil monetary penalty
13 established by rule; provided that a civil monetary penalty
14 shall not exceed ten thousand dollars (\$10,000) per violation;
15 and further provided that penalties and interest recovered
16 pursuant to the Cannabis Regulation Act on behalf of the state
17 shall be remitted to the state treasurer for deposit in the
18 general fund.

19 C. The division shall adopt and promulgate
20 reasonable rules consistent with industry standards specifying
21 the criteria for imposition of any sanction and civil monetary
22 penalty.

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

.219735.2

underscoring material = new
~~[bracketed material] = delete~~

1 E. A person aggrieved by an action taken by the
2 division pursuant to this section may request and receive a
3 hearing with the division for the purpose of reviewing the
4 action. To obtain a hearing with the division, the aggrieved
5 person shall file a request for a hearing with the director
6 within thirty days after the date the action is taken. The
7 division hearings shall be conducted in accordance with the
8 provisions of the Uniform Licensing Act.

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

11 A. A license issued pursuant to the Cannabis
12 Regulation Act is not private property, is not transferable and
13 shall not be subject to execution, attachment, a security
14 transaction, liens or receivership.

15 B. The division shall not limit the number of
16 licenses of any kind, the scope of licenses or the activities a
17 licensee is authorized to conduct under the Cannabis Regulation
18 Act; provided that to address a shortage of cannabis supply in
19 the medical cannabis program, the division may:

20 (1) initially take reasonable measures to
21 expeditiously incentivize increased production of cannabis
22 plants to remedy a shortage of cannabis supply in the medical
23 cannabis program;

24 (2) after having first exhausted measures to
25 increase production of cannabis plants to address the shortage

1 of cannabis supply in the medical cannabis program, exclude
2 commercial cannabis activity from the scope of new licenses
3 issued to initial applicants for a vertically integrated
4 cannabis establishment, cannabis producer, integrated cannabis
5 microbusiness, cannabis producer microbusinesses or cannabis
6 manufacturer license, which limitation shall be in force for a
7 period of at least six months; and

8 (3) after having exhausted reasonable efforts
9 to increase production of cannabis plants, including expediting
10 applications for additional licensed premises, the division may
11 then require licensees who are licensed to produce cannabis to
12 produce a specified quota of mature cannabis plants to be
13 designated for use in the medical cannabis program; provided
14 that:

15 (a) the division may require a licensee
16 to devote no more than five percent of the licensee's
17 cultivated cannabis plants for use in the medical cannabis
18 program;

19 (b) the total number of plants to be
20 produced from such a quota shall not exceed the number
21 necessary to eliminate the shortage of cannabis supply in the
22 medical cannabis program; and

23 (c) the division shall not require
24 specific tracking of produced particular plants, but shall
25 instead permit a licensee to produce any sufficient number of

1 plants to meet a quota imposed under this subsection.

2 C. In carrying out its commercial cannabis activity
3 licensing duties, the division shall:

4 (1) beginning on September 1, 2021, accept and
5 begin processing license applications for cannabis producers;

6 (2) beginning October 1, 2021, issue licenses
7 for integrated cannabis microbusinesses and cannabis producer
8 microbusinesses under the medical cannabis program;

9 (3) beginning on July 1, 2022, accept license
10 applications for all licenses; provided that for any license
11 issued for an application submitted on or after July 1, 2022,
12 the licensee shall be licensed for activities exclusively under
13 the medical cannabis program for a minimum of six months from
14 the date of licensure;

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

19 (5) no later than January 1, 2022, in
20 consultation with the cannabis regulatory advisory committee,
21 develop a plan to encourage racial, ethnic, gender and
22 geographic diversity among licensees;

23 (6) require as a condition of licensing
24 pursuant to the Cannabis Regulation Act that the applicant
25 demonstrate that the applicant has a legal right to a

.219735.2

underscoring material = new
~~[bracketed material] = delete~~

1 commercial water supply, water rights or another source of
2 water sufficient to meet the water needs related to the
3 license, and, if an applicant applies for a cannabis producer
4 license or a cannabis manufacturer license, submit a plan to
5 utilize, or demonstrate to the division that the applicant
6 cannot feasibly utilize, energy and water reduction
7 opportunities, including:

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

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

12 (c) renewable energy generation; and

13 (7) permit retail sales under the commercial
14 cannabis activity authorized by the Cannabis Regulation Act by
15 any licensee whose license allows such activity no later than
16 October 1, 2021 and otherwise permit any activity authorized by
17 the Cannabis Regulation Act or the medical cannabis program as
18 of the time of licensure of a licensee.

19 D. The division shall deny an application for an
20 initial license or renewal if:

21 (1) the application does not include
22 significant information required by the division;

23 (2) the applicant or a controlling person in
24 the applicant's entity has been convicted of an offense that is
25 substantially related to the qualifications, functions or

.219735.2

underscoring material = new
~~[bracketed material]~~ = delete

1 duties of the applicant entity's business; provided that if the
2 division determines that the controlling person and the
3 applicant entity are otherwise qualified for a license and that
4 issuing a license to the applicant entity would not compromise
5 public safety, the division shall conduct a thorough review of
6 the conviction, including the nature of the offense,
7 surrounding circumstances and any evidence of the controlling
8 person's rehabilitation following the conviction, and based on
9 that review, determine whether the applicant entity should be
10 issued a license; or

11 (3) the applicant or a controlling person in
12 the applicant's entity has had a license issued pursuant to the
13 Cannabis Regulation Act or the Lynn and Erin Compassionate Use
14 Act revoked by the division or the department of health in the
15 three years immediately preceding the date on which the
16 application was filed.

17 E. The division shall deny an application for
18 renewal of a license pursuant to the Cannabis Regulation Act if
19 the licensee fails to regularly and consistently operate for a
20 minimum of thirty-two hours per week, on average, for the
21 duration of its licensure on or after July 1, 2021.

22 F. For purposes of Subsection D of this section,
23 the following are considered substantially related to the
24 qualifications, functions or duties of a business seeking a
25 license:

.219735.2

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

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

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

8 (b) sell, give away or offer to sell a
9 controlled substance to any person.

10 G. A conviction for which the related sentence,
11 including any term of probation or parole, is completed for the
12 possession, use, manufacture, distribution, dispensing or the
13 possession with the intent to manufacture, distribute or
14 dispense a controlled substance is not considered substantially
15 related to the qualifications, functions or duties of a
16 business seeking a license and is not a basis for denying an
17 application.

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

22 I. Unless otherwise provided in the Cannabis
23 Regulation Act, a person whose license has been revoked may
24 reapply for a license after a period of three years. The
25 division may consider all of the circumstances resulting in the

.219735.2

underscoring material = new
~~[bracketed material] = delete~~

1 revocation in determining whether to issue a new license.

2 SECTION 8. [NEW MATERIAL] APPLICATION AND LICENSING
3 FEES.--

4 A. The division shall establish application and
5 licensing fees applicable to licenses for commercial cannabis
6 activity and activity related to medical cannabis consistent
7 with the provisions of this section.

8 B. For fees assessed through January 1, 2026, the
9 fees shall consist of a base annual fee of two thousand five
10 hundred dollars (\$2,500) per year, an additional fee of one
11 thousand dollars (\$1,000) for each licensed premises of the
12 licensee and for a vertically integrated cannabis establishment
13 licensee, an initial application fee and an annual renewal fee.
14 The initial application fee and the annual renewal fee for a
15 vertically integrated cannabis establishment license shall not
16 exceed one hundred twenty-five thousand dollars (\$125,000) for
17 a license for both medical cannabis activity and commercial
18 cannabis activity. The initial application fee and the annual
19 renewal fee for a license or renewal of a license that
20 authorizes only medical cannabis activity shall be one-half the
21 fee applicable to a license authorizing both medical cannabis
22 activity and commercial cannabis activity. The division shall
23 charge five percent of the maximum fee assessed for a
24 vertically integrated cannabis establishment licensee as the
25 licensing fee for a cannabis producer microbusiness or an

.219735.2

underscored material = new
[bracketed material] = delete

1 integrated cannabis microbusiness; provided that if a cannabis
2 producer microbusiness or an integrated cannabis microbusiness
3 enters into any business arrangement with another such entity
4 with the purpose or having the effect of evading the
5 limitations of the licensee's license, such licensee shall not
6 be eligible for the lower fee prescribed for by this
7 subsection.

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

11 D. For fees assessed on or after July 1, 2022, the
12 division shall annually adjust the fees set by this section by
13 multiplying the prior year's fees by the percentage, if any, by
14 which the average of the monthly consumer price indices for the
15 twelve months ending on December 31 of the prior fiscal year
16 exceeds the average monthly consumer price indices for the
17 twelve months ending on December 31 of the fiscal year
18 preceding the prior fiscal year.

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

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

24 SECTION 9. [NEW MATERIAL] CANNABIS TRAINING AND EDUCATION
25 PROGRAM LICENSING--SANCTIONS.--

.219735.2

underscoring material = new
[bracketed material] = delete

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

3 B. The division shall administer a licensing
4 program for cannabis training and education programs.

5 C. A violation of a provision of the Cannabis
6 Regulation Act is grounds for suspension or revocation of a
7 license issued pursuant to Subsection B of this section. The
8 division may also suspend a license for repeated violations of
9 the same, serious and substantial rule promulgated pursuant to
10 the Cannabis Regulation Act pertaining to public health and
11 safety.

12 SECTION 10. [NEW MATERIAL] CANNABIS INDUSTRY MANDATORY
13 EDUCATION--APPLICATIONS--PERMIT REQUIRED--EDUCATION PROGRAM
14 APPROVAL REQUIRED--ISSUANCE OR DENIAL OF A PERMIT OR APPROVAL--
15 DEFINITIONS--PENALTIES.--

16 A. No later than January 1, 2022, the division
17 shall promulgate reasonable rules consistent with this section
18 and industry standards for issuance of a cannabis server permit
19 and licenses for a cannabis consumption area; provided that a
20 cannabis research laboratory or an employee of the laboratory
21 is not required to obtain or possess a cannabis server permit
22 while performing activities authorized pursuant to a cannabis
23 research laboratory.

24 B. The program curriculum shall include the
25 following subjects:

.219735.2

underscoring material = new
~~[bracketed material] = delete~~

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

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

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

11 (4) methods of recognizing problem cannabis
12 products users and techniques for intervening with problem
13 cannabis products users; and

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

19 C. Beginning no later than July 1, 2022, the
20 division shall issue cannabis server permits to persons twenty-
21 one years of age or older who satisfy the requirements of this
22 section and the rules promulgated by the division. Cannabis
23 server permits shall not be issued to graduates of programs
24 that are not approved by the division.

25 D. No person shall be employed as a server on a

.219735.2

underscored material = new
~~[bracketed material] = delete~~

1 licensed premises unless that person obtains a cannabis server
2 permit pursuant to the provisions of this section within thirty
3 days of employment.

4 E. A cannabis server permit is the property of the
5 state and shall be immediately returned to the division upon
6 termination of employment or upon revocation or termination of
7 a permit holder's permit or license.

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

14 G. In addition to any other penalties provided by
15 law, the following penalties may be imposed for sales to a
16 person under twenty-one years of age in violation of the
17 provisions of the Cannabis Regulation Act or rules of the
18 division:

19 (1) the director may suspend a cannabis server
20 permit for a period of thirty days or fine the server in an
21 amount not to exceed five hundred dollars (\$500), or both, if
22 the director finds that the server is guilty of a first offense
23 of selling, serving or dispensing a cannabis product to a
24 person under twenty-one years of age;

25 (2) the director shall suspend a cannabis

.219735.2

underscored material = new
[bracketed material] = delete

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

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

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

19 H. As used in this section, "program" means a
20 cannabis server education course and examination approved by
21 the director to be administered by cannabis server permit
22 education providers.

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

24 A. A local jurisdiction may:

25 (1) adopt reasonable time, place and manner

underscored material = new
~~[bracketed material] = delete~~

1 rules that do not conflict with the Cannabis Regulation Act or
2 the Dee Johnson Clean Indoor Air Act, including rules that
3 reasonably limit density of licenses and operating times
4 consistent with neighborhood uses; and

5 (2) allow for the smoking, vaporizing and
6 ingesting of cannabis products within an indoor or outdoor
7 cannabis consumption area on the licensed premises of a
8 cannabis establishment or integrated cannabis microbusiness if:

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

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

20 B. A local jurisdiction shall not:

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

24 (2) completely prohibit the operation of a
25 licensee;

.219735.2

underscored material = new
~~[bracketed material] = delete~~

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

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

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

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

12 SECTION 12. [NEW MATERIAL] LICENSEE PROTECTIONS.--

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

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

.219735.2

1 SECTION 13. [NEW MATERIAL] PROTECTION OF UNDERAGE

2 PERSONS--TRAFFICKING--PENALTIES.--

3 A. Except as allowed in the Cannabis Regulation Act
4 or the Lynn and Erin Compassionate Use Act, a person who is not
5 a licensee and who is eighteen years of age or older shall not
6 intentionally traffic a cannabis product to a person who is
7 under twenty-one years of age and who is two or more years
8 younger than the trafficker. A person who traffics a cannabis
9 product in violation of this subsection is, for the first
10 offense, guilty of a misdemeanor and shall be sentenced
11 pursuant to Section 31-19-1 NMSA 1978 and, for second and
12 subsequent offenses, guilty of a fourth degree felony and shall
13 be sentenced pursuant to Section 31-18-15 NMSA 1978.

14 B. Except as provided in the Lynn and Erin
15 Compassionate Use Act, a licensee shall not employ a person
16 younger than twenty-one years of age to engage in a commercial
17 cannabis activity.

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

.219735.2

1 under twenty-one years of age on two separate occasions within
2 any twelve-month period.

3 D. The establishment of all of the following facts
4 by a licensee prosecuted for a violation of Subsection C of
5 this section shall constitute a defense:

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

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

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

24 E. Nothing in this section shall be construed or
25 interpreted to prevent:

.219735.2

underscoring material = new
~~[bracketed material]~~ = delete

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

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

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

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

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

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

14 SECTION 14. [NEW MATERIAL] TRANSPORT VIA COURIER.--

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

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

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

.219735.2

1 SECTION 15. ~~[NEW MATERIAL]~~ PACKAGING AND LABELING.--

2 Before sale or transport via cannabis courier of a cannabis
3 product, the cannabis product shall be labeled and packaged as
4 provided in Section 16 of the Cannabis Regulation Act.

5 SECTION 16. ~~[NEW MATERIAL]~~ CANNABIS PRODUCTS--PACKAGING
6 AND LABELING--DEPARTMENT RULEMAKING.--

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

11 B. The department shall adopt and promulgate
12 reasonable rules consistent with industry standards for
13 cannabis products that establish labeling and packaging
14 requirements, including that:

15 (1) packages shall be resealable,
16 child-resistant, compostable and recyclable or made from
17 recycled materials;

18 (2) packages and labels shall not be designed
19 to be appealing to a child; and

20 (3) labels shall include:

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

24 (b) identification of the licensee or
25 licensees that produced or manufactured the cannabis product,

.219735.2

underscored material = new
[bracketed material] = delete

1 the date on which the cannabis was harvested, the type of
2 cannabis product and the date on which the cannabis product was
3 manufactured and packaged;

4 (c) potency and pesticide use;

5 (d) a list of pharmacologically active
6 ingredients;

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

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

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

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

22 SECTION 17. [NEW MATERIAL] TESTING CANNABIS PRODUCTS--
23 DEPARTMENT OF ENVIRONMENT.--

24 A. A cannabis testing laboratory's testing of
25 cannabis products shall comply with the requirements set forth

.219735.2

underscored material = new
~~[bracketed material]~~ = delete

1 in applicable law and rules.

2 B. The division shall develop reasonable rules and
3 procedures consistent with industry standards to:

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

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

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

11 (4) provide for recordkeeping;

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

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

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

21 (8) require destruction of a tested batch of
22 cannabis or of cannabis products if the testing samples from
23 the tested batch or items indicate noncompliance with
24 applicable health and safety standards promulgated by the
25 division, unless remedial measures can bring the cannabis or

.219735.2

underscoring material = new
[bracketed material] = delete

1 cannabis products into compliance with the standards or the
2 cannabis or cannabis products can be used for research
3 purposes.

4 C. Beginning no later than April 1, 2022, the
5 department of environment shall identify and annually provide
6 to the division a set of updated certified reference materials
7 for laboratory testing to be measured against.

8 SECTION 18. [NEW MATERIAL] RESEARCHING CANNABIS--
9 RULEMAKING.--

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

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

17 SECTION 19. [NEW MATERIAL] ADVERTISING AND MARKETING
18 RESTRICTIONS.--The division shall promulgate reasonable rules
19 consistent with industry standards that:

20 A. prohibit the advertisement and marketing of
21 cannabis products:

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

.219735.2

underscoring material = new
[bracketed material] = delete

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

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

6 (2) that depicts consumption by children or
7 other persons who appear to be younger than twenty-one years of
8 age; or

9 (3) that is designed using cartoon characters
10 or to mimic any other product brand; and

11 B. require:

12 (1) all advertisements and marketing to
13 accurately and legibly identify the licensee responsible for
14 its content; and

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

19 SECTION 20. [NEW MATERIAL] CONTRACTS.--A contract related
20 to the operation of a license is enforceable, and a contract
21 entered into by a licensee or a licensee representative for
22 conduct allowed pursuant to a license or entered into by a
23 person who allows property to be used by a licensee or a
24 licensee representative for conduct allowed pursuant to a
25 license shall not be deemed unenforceable on the basis that the

.219735.2

underscoring material = new
[bracketed material] = delete

1 conduct allowed pursuant to the license is prohibited by
2 federal law.

3 SECTION 21. [NEW MATERIAL] PROVISION OF PROFESSIONAL
4 SERVICES.--An attorney, accountant, insurance agent, real
5 estate agent, security guard or other person engaged in a
6 profession subject to state licensure shall not be subject to
7 disciplinary action by a professional association, a state
8 professional board or a state licensing entity because the
9 professional provides professional services or assistance to
10 prospective or licensed cannabis establishments or another
11 person in connection with activity that the professional
12 reasonably believes complies with the Cannabis Regulation Act
13 and rules promulgated pursuant to that act.

14 SECTION 22. [NEW MATERIAL] MEDICAL CANNABIS PROVISIONS
15 UNAFFECTED.--Nothing in the Cannabis Regulation Act shall be
16 construed to limit a privilege or right of a qualified patient,
17 a reciprocal patient or a primary caregiver participating in
18 the medical cannabis program or the use, dispensing,
19 possession, prescribing, storage or transport of a prescription
20 drug containing cannabis that is approved pursuant to the
21 Federal Food, Drug, and Cosmetic Act.

22 SECTION 23. [NEW MATERIAL] PROTECTIONS FOR THE USE OF
23 CANNABIS.--

24 A. Conduct allowed pursuant to the Cannabis
25 Regulation Act shall not in itself constitute grounds for a
.219735.2

1 holder of a professional or occupational license to be subject
2 to professional discipline for providing advice or services
3 related to cannabis establishments or applications to operate
4 cannabis establishments on the basis that cannabis is illegal
5 under federal law.

6 B. An applicant for a professional or occupational
7 license shall not be denied a license based on previous
8 employment related to cannabis establishments may not refuse to
9 employ or discipline an employee solely for conduct that is
10 lawful pursuant to the Cannabis Regulation Act unless the
11 person used, possessed or was impaired by cannabis products on
12 the premises of the place of employment or during the hours of
13 employment or unless failing to do so would put the employer in
14 violation of federal law or cause it to lose a federal contract
15 or funding.

16 C. A person shall not be denied parental rights or
17 custody of or visitation with a minor child by the state or
18 local government based solely on conduct that is permitted by
19 the Cannabis Regulation Act unless the person's behavior is
20 such that it creates an unreasonable danger to the minor child
21 that can be established by clear and convincing evidence.

22 D. A person currently under parole, probation or
23 other state supervision or released awaiting trial or other
24 hearing shall not be punished or otherwise penalized based
25 solely on conduct that is permitted by the Cannabis Regulation

.219735.2

underscored material = new
~~[bracketed material]~~ = delete

1 Act.

2 E. A person shall not be denied eligibility in
3 public assistance programs based solely on conduct that is
4 permitted by the Cannabis Regulation Act unless required by
5 federal law.

6 SECTION 24. [NEW MATERIAL] PERSONAL USE OF CANNABIS.--

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

14 (1) possessing, using, being under the
15 influence of, displaying, purchasing, obtaining or transporting
16 not more than two ounces of cannabis flowers or not more than
17 sixteen grams of cannabis extract purchased and obtained
18 pursuant to the commercial cannabis activity authorized by the
19 Cannabis Regulation Act or the medical cannabis program;

20 (2) possession in excess of two ounces of
21 cannabis flowers or sixteen grams of cannabis extract; provided
22 that such excess is stored in the person's private residence;

23 (3) transferring, without financial
24 consideration, to a person who is twenty-one years of age or
25 older not more than two ounces of cannabis flowers or not more

.219735.2

underscoring material = new
~~[bracketed material]~~ = delete

1 than sixteen grams of cannabis extract purchased and obtained
2 pursuant to the commercial cannabis activity authorized by the
3 Cannabis Regulation Act or the medical cannabis program;

4 (4) ingesting or otherwise consuming cannabis
5 or cannabis products purchased and obtained pursuant to the
6 commercial cannabis activity authorized by the Cannabis
7 Regulation Act or the medical cannabis program;

8 (5) possessing, using, displaying, purchasing,
9 obtaining, manufacturing cannabis extracts using nonvolatile
10 solvents, alcohol or carbon dioxide or no solvents,
11 transporting or giving away to a person twenty-one years of age
12 or older cannabis paraphernalia purchased and obtained pursuant
13 to the commercial cannabis activity authorized by the Cannabis
14 Regulation Act or the medical cannabis program;

15 (6) in a single day, purchasing and obtaining
16 pursuant to the commercial cannabis activity authorized by the
17 Cannabis Regulation Act or the medical cannabis program up to
18 two ounces of cannabis flowers and up to sixteen grams of
19 cannabis extract;

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

24 (8) smoking cannabis or cannabis products in
25 an area authorized pursuant to the Cannabis Regulation Act or a

.219735.2

1 local jurisdiction;

2 (9) possessing, planting, cultivating,
3 harvesting, drying, manufacturing cannabis extracts using
4 nonvolatile solvents, alcohol or carbon dioxide or no solvents
5 or transporting not more than six mature cannabis plants per
6 person and a maximum of twelve per household and six immature
7 plants per household and possessing the cannabis produced by
8 the plants; and

9 (10) transporting homegrown cannabis or mature
10 or immature cannabis plants when the person is moving the
11 person's residence to another location or for purposes of
12 testing or manufacturing.

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

18 C. Except as provided in Subsection D of this
19 section, none of the following shall, individually or in
20 combination with each other, constitute reasonable articulable
21 suspicion of a crime and is not a basis to stop, detain or
22 search a person:

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

25 (2) the possession of or the suspicion of

underscored material = new
[bracketed material] = delete

1 possession of cannabis without evidence of quantity in excess
2 of two ounces of cannabis flowers or sixteen grams of cannabis
3 extract;

4 (3) the possession of multiple containers of
5 cannabis without evidence of quantity in excess of two ounces
6 of cannabis flowers or sixteen grams of cannabis extract;

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

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

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

18 D. Subsection C of this section shall not apply
19 when a law enforcement officer is investigating whether a
20 person is operating a vehicle or watercraft while intoxicated
21 or under the influence of or impaired by alcohol or a drug or
22 any combination thereof in violation of Section 66-8-102 or
23 66-13-3 NMSA 1978.

24 SECTION 25. [NEW MATERIAL] LIMITS ON PERSONAL USE--
25 PENALTIES.--

.219735.2

underscored material = new
[bracketed material] = delete

1 A. Nothing in Section 24 of the Cannabis Regulation
2 Act shall be construed to:

3 (1) allow a person to smoke cannabis products
4 in a public place, except in a cannabis consumption area; or

5 (2) restrict the ability of an individual or
6 private entity to prohibit conduct otherwise allowed in the
7 Cannabis Regulation Act on the individual's or private entity's
8 privately owned property.

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

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

17 SECTION 26. [NEW MATERIAL] PERSONAL PRODUCTION OF
18 CANNABIS PROHIBITED--PENALTIES.--

19 A. Except as provided in the Lynn and Erin
20 Compassionate Use Act and the Cannabis Regulation Act, it is
21 unlawful for a person intentionally to produce cannabis
22 products.

23 B. Notwithstanding the provisions of Subsection A
24 of this section, a person eighteen years of age or older who
25 intentionally produces:

.219735.2

underscored material = new
[bracketed material] = delete

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

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

9 C. A person who is less than eighteen years of age
10 who intentionally produces:

11 (1) up to six mature cannabis plants shall be
12 issued a penalty assessment pursuant to Section 31-19A-1 NMSA
13 1978 and is subject to a fine of fifty dollars (\$50.00); and

14 (2) more than three mature cannabis plants or
15 more than six immature cannabis plants shall be punished
16 pursuant to the provisions of Section 32A-2-19 NMSA 1978.

17 SECTION 27. [NEW MATERIAL] UNLICENSED SALES OF CANNABIS--
18 PENALTIES.--

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

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

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

.219735.2

underscored material = new
[bracketed material] = delete

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

3 (3) four hours of community service; or

4 (4) restorative justice mediation.

5 C. Except as otherwise provided in Section 13 of
6 the Cannabis Regulation Act, a person eighteen years of age or
7 older who violates Subsection A of this section is guilty of a
8 misdemeanor and shall be sentenced pursuant to the provisions
9 of Section 31-19-1 NMSA 1978.

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

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

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

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

23 SECTION 28. [NEW MATERIAL] CANNABIS WITHIN RESTRICTED
24 AREA--PENALTY.--Except as allowed in the Cannabis Regulation
25 Act and the Lynn and Erin Compassionate Use Act, a person shall
.219735.2

underscoring material = new
~~[bracketed material] = delete~~

1 not possess or intentionally distribute any amount of a
2 cannabis product on the premises of a school or daycare center
3 unless the person is a qualified patient, a reciprocal patient
4 or a qualified patient's primary caregiver; provided that this
5 section shall not apply to a person who possesses a cannabis
6 product for authorized purposes on the premises of a licensed
7 cannabis training and education program. A person who violates
8 this section is guilty of a misdemeanor and shall be sentenced
9 pursuant to the provisions of Section 31-19-1 NMSA 1978.

10 SECTION 29. [NEW MATERIAL] UNLAWFUL POSSESSION OF
11 CANNABIS--PENALTIES.--Except as allowed in the Cannabis
12 Regulation Act and the Lynn and Erin Compassionate Use Act:

13 A. a person eighteen years of age or older and
14 younger than twenty-one years of age shall not possess cannabis
15 products. A person who violates this subsection shall be
16 subject to:

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

22 B. a person under eighteen years of age shall not
23 possess cannabis products. A person who violates this
24 subsection shall be subject to:

- 25 (1) a fine of fifty dollars (\$50.00);

underscoring material = new
~~[bracketed material] = delete~~

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

3 (3) four hours of community service; or

4 (4) restorative justice mediation; and

5 C. a person twenty-one years of age or older shall
6 not possess more than two ounces of cannabis flowers or more
7 than sixteen grams of cannabis extracts. A person who violates
8 this subsection is guilty of a misdemeanor and shall be
9 sentenced pursuant to the provisions of Section 31-19-1 NMSA
10 1978.

11 SECTION 30. [NEW MATERIAL] UNLICENSED MANUFACTURING OF
12 CANNABIS EXTRACTS--PENALTY.--It is unlawful for a person to
13 manufacture cannabis extracts without a license issued pursuant
14 to the Cannabis Regulation Act or the Lynn and Erin
15 Compassionate Use Act. A person who violates this section is
16 guilty of a fourth degree felony and shall be sentenced
17 pursuant to the provisions of Section 31-18-15 NMSA 1978.

18 SECTION 31. [NEW MATERIAL] EXPUNGEMENT OF ARREST AND
19 CONVICTION RECORDS--PROCEDURE.--

20 A. If a person is charged with any offense provided
21 in Sections 26 through 30 of the Cannabis Regulation Act,
22 whether or not the person is convicted, all records held by a
23 court, an agency of the state or a local jurisdiction that
24 relate to the person's arrest or conviction shall be
25 automatically expunged. The records shall also be removed from

.219735.2

underscoring material = new
~~[bracketed material] = delete~~

1 any statewide criminal databases.

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

9 SECTION 32. [NEW MATERIAL] RECALL OR DISMISSAL OF
10 SENTENCES--INCARCERATED PERSONS.--

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

21 B. A court shall reopen a case pursuant to
22 Subsection A of this section and recall the person's sentence
23 or dismiss the person's sentence because it is legally invalid.

24 C. A person who is resentenced pursuant to this
25 section shall be given credit against the person's new sentence

.219735.2

underscoring material = new
~~[bracketed material]~~ = delete

1 for time already served.

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

7 E. A person who has completed the person's sentence
8 for a conviction, whether by trial or negotiated plea, who
9 would not have been guilty of an offense or who would have been
10 guilty of a lesser offense if the Cannabis Regulation Act had
11 been in effect at the time of the offense is entitled to have
12 the conviction dismissed and sealed because the prior
13 conviction is now legally invalid or redesignated as a penalty
14 assessment citation. The court shall redesignate the
15 conviction as a penalty assessment citation or dismiss and seal
16 the conviction as legally invalid because of the enactment of
17 the Cannabis Regulation Act, unless the court makes a finding
18 that the conviction is not legally invalid or was not
19 redesignated as a penalty assessment citation pursuant to that
20 act.

21 F. On or before January 1, 2022, the department of
22 public safety shall review the records in the state criminal
23 history databases and shall identify all past convictions that
24 are potentially eligible for recall or dismissal of sentence,
25 dismissal and sealing or redesignation pursuant to the Cannabis

.219735.2

1 Regulation Act. The department shall notify the prosecutors of
2 all cases that are eligible for recall or dismissal of
3 sentence, dismissal and sealing or redesignation.

4 G. The prosecutor of the case shall have until July
5 1, 2022, to review all cases and determine whether to challenge
6 the recall or dismissal of sentence, dismissal and sealing or
7 redesignation.

8 H. The prosecutor of the case may challenge the
9 resentencing of a person pursuant to this section when the
10 person does not meet the criteria established under the
11 Cannabis Regulation Act.

12 I. On or before July 1, 2022, the prosecutor of the
13 case shall inform the court and the public defender's office in
14 the prosecutor's county when the prosecutor of the case is
15 challenging a particular recall or dismissal of sentence,
16 dismissal and sealing or redesignation. The prosecutor of the
17 case shall inform the court when the prosecutor of the case is
18 not challenging a particular recall or dismissal of sentence,
19 dismissal and sealing or redesignation.

20 J. The public defender's office, upon receiving
21 notice from the prosecutor of the case, shall make a reasonable
22 effort to notify the person whose resentencing or dismissal is
23 being challenged.

24 K. If the prosecutor of the case does not challenge
25 the recall or dismissal of sentence, dismissal and sealing or

.219735.2

underscored material = new
[bracketed material] = delete

1 redesignation by July 1, 2022, the court shall notify the
2 department of public safety that a case has been dismissed.
3 Upon notice, the department of public safety shall erase the
4 arrest record pertaining to the offense; provided that if the
5 arrest included multiple charges, only the related charge shall
6 be expunged.

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

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

15 N. No fee or cost of any kind shall be imposed upon
16 a person whose sentence is reviewed pursuant to this section.

17 SECTION 33. [NEW MATERIAL] EXEMPTION FROM CRIMINAL AND
18 CIVIL PENALTIES--RESEARCHERS.--A person shall not be subject to
19 arrest or prosecution, penalized in any manner or denied any
20 right or privilege solely because the person produced,
21 possessed, distributed, dispensed or purchased cannabis
22 products from a person licensed pursuant to the Lynn and Erin
23 Compassionate Use Act or the Cannabis Regulation Act if the
24 person produced, possessed, distributed, dispensed or purchased
25 the cannabis products solely for the purpose of research

.219735.2

underscoring material = new
~~[bracketed material] = delete~~

1 conducted pursuant to the Lynn and Erin Compassionate Use Act
2 or the Cannabis Regulation Act.

3 SECTION 34. [NEW MATERIAL] REPORTING REQUIREMENTS FOR
4 CANNABIS-RELATED VIOLATIONS.--

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

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

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

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

22 D. For purposes of this section, "cannabis-related
23 violation" means a violation of any of Sections 26 through 30
24 of the Cannabis Regulation Act or a violation of Section
25 66-8-102 or 66-13-3 NMSA 1978 if the basis for the arrest or
.219735.2

underscoring material = new
[bracketed material] = delete

1 citation is impairment due to the use of cannabis products.

2 SECTION 35. [NEW MATERIAL] EMPLOYER PROTECTIONS.--

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

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

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

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

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

underscored material = new
[bracketed material] = delete

1 employment.

2 SECTION 36. [NEW MATERIAL] INTRASTATE SOURCE.--Except as
3 provided in Section 37 of the Cannabis Regulation Act, all
4 cannabis products pursuant to the commercial cannabis activity
5 authorized by the Cannabis Regulation Act or the medical
6 cannabis program shall be derived from a source originating
7 within New Mexico.

8 SECTION 37. [NEW MATERIAL] IMPORTS AND EXPORTS.--

9 A. Notwithstanding the provisions of Section 36 of
10 the Cannabis Regulation Act or any other provision of law, the
11 governor shall enter into agreements with another jurisdiction
12 within or outside of the United States for the purposes of
13 cross-jurisdictional delivery of cannabis products between this
14 state and the other jurisdiction. Such agreements shall:

15 (1) ensure enforceable public health and
16 safety standards;

17 (2) include a system to regulate and track the
18 interstate or international delivery of cannabis products; and

19 (3) ensure that any cannabis products
20 delivered into this state, prior to sale to a consumer, are
21 tested, packaged and labeled pursuant to New Mexico statutes
22 and rules.

23 B. Notwithstanding any other provision of law and
24 in accordance with an agreement described in Subsection A of
25 this section:

.219735.2

underscoring material = new
[bracketed material] = delete

1 (1) a licensee permitted to courier cannabis
2 products may deliver cannabis products to a person located in,
3 and authorized to receive cannabis products by, another
4 jurisdiction in the United States or internationally; and

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

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

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

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

18 SECTION 38. [NEW MATERIAL] CANNABIS REGULATION FUND.--The
19 "cannabis regulation fund" is created in the state treasury.
20 The fund consists of appropriations, gifts, grants, donations
21 and fees collected by the division pursuant to the Cannabis
22 Regulation Act and the medical cannabis program administered by
23 the division. Any unexpended or unencumbered balance remaining
24 at the end of a fiscal year shall revert to the general fund.

25 SECTION 39. A new section of the Public School Code is
.219735.2

underscoring material = new
[bracketed material] = delete

1 enacted to read:

2 "[NEW MATERIAL] SUBSTANCE ABUSE EDUCATION.--The department
3 shall require that by January 1, 2023 all public schools
4 annually provide to students in eighth through twelfth grades
5 evidence-based drug education programs that are based on
6 principles of harm reduction and are designed to prevent and
7 reduce substance use and improve school retention and
8 performance."

9 SECTION 40. [NEW MATERIAL] COOPERATION OF AGENCIES.--All
10 state agencies shall cooperate with the cannabis control
11 division of the regulation and licensing department in carrying
12 out the provisions of the Cannabis Regulation Act.

13 SECTION 41. [NEW MATERIAL] SHORT TITLE.--Sections 41
14 through 48 of this act may be cited as the "Cannabis Tax Act".

15 SECTION 42. [NEW MATERIAL] DEFINITIONS.--As used in the
16 Cannabis Tax Act:

17 A. "cannabis":

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

25 (2) does not include:

.219735.2

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

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

10 B. "cannabis extract":

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

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

18 C. "cannabis product":

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

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

.219735.2

underscoring material = new
[bracketed material] = delete

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

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

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

11 G. "dry weight basis", in the context of taxation
12 of commercial cannabis activity, means a process by which
13 delta-tetrahydrocannabinol concentration is measured relative
14 to the aggregate weight of all parts of the plant genus
15 Cannabis, whether growing or not, including the leaves of the
16 plant, the flowers and buds of the plant, the seeds of the
17 plant, the resin of the plant and the stalks of the plant at
18 the point of harvest by a licensee and with no moisture added
19 to the harvested plant; and

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

22 SECTION 43. [NEW MATERIAL] CANNABIS EXCISE TAX.--

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

.219735.2

underscored material = new
[bracketed material] = delete

1 B. The rate of the cannabis excise tax is nine
2 percent and shall be applied to the price paid for a cannabis
3 product. If the price paid does not represent the value of the
4 cannabis product, the tax rate shall be applied to the
5 reasonable value of the cannabis product at the time the
6 product was purchased.

7 C. The cannabis excise tax shall not apply to:
8 (1) retail sales of medical cannabis products
9 sold to a qualified patient, reciprocal patient or primary
10 caregiver who presents a registry identification card issued
11 pursuant to the Lynn and Erin Compassionate Use Act at the time
12 of the sale; or

13 (2) receipts of cannabis producers from
14 selling cannabis products wholesale.

15 SECTION 44. [NEW MATERIAL] MUNICIPAL CANNABIS TAX.--

16 A. A majority of the members of the governing body
17 of a municipality may enact an ordinance imposing an excise tax
18 on a cannabis retailer that sells cannabis products in the
19 municipality. The tax imposed pursuant to this section may be
20 referred to as the "municipal cannabis tax".

21 B. The rate of the municipal cannabis tax shall be
22 no more than three percent, which may be imposed in any number
23 of one-sixteenth percent increments, and shall be applied to
24 the price of the cannabis product. If the price of the
25 cannabis product does not represent the value of the cannabis

.219735.2

underscored material = new
[bracketed material] = delete

1 product, the tax rate shall be applied to the reasonable value
2 of the cannabis product at the time the cannabis product was
3 purchased.

4 C. The governing body of a municipality, at the
5 time of enacting an ordinance imposing a municipal cannabis
6 tax, may dedicate the revenue for any municipal purpose. The
7 imposition of an increment of the municipal cannabis tax shall
8 not be subject to referendum.

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

11 E. The municipal cannabis tax shall not apply to:

12 (1) retail sales of medical cannabis products
13 sold to a qualified patient, reciprocal patient or primary
14 caregiver who presents a registry identification card issued
15 pursuant to the Lynn and Erin Compassionate Use Act at the time
16 of the sale; or

17 (2) receipts of cannabis producers from
18 selling cannabis products wholesale.

19 SECTION 45. [NEW MATERIAL] COUNTY CANNABIS TAX.--

20 A. The majority of the members of the governing
21 body of a county may enact an ordinance imposing an excise tax
22 on a cannabis retailer that sells cannabis products in the
23 county area. The tax imposed pursuant to this section may be
24 referred to as the "county cannabis tax".

25 B. The rate of the county cannabis tax shall be no

.219735.2

underscored material = new
[bracketed material] = delete

1 more than three percent, which may be imposed in any number of
2 one-sixteenth percent increments and is applied to the price of
3 the cannabis product. If the price of the cannabis product
4 does not represent the value of the cannabis product, the tax
5 rate shall be applied to the reasonable value of the cannabis
6 product at the time the cannabis product was purchased.

7 C. The governing body of a county, at the time of
8 enacting an ordinance imposing a county cannabis tax, may
9 dedicate the revenue for any county purpose. The imposition of
10 an increment of the county cannabis tax shall not be subject to
11 referendum.

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

14 E. The county cannabis tax shall not apply to any
15 of the following:

16 (1) retail sales of medical cannabis products
17 sold to a qualified patient, reciprocal patient or primary
18 caregiver who presents a registry identification card issued
19 pursuant to the Lynn and Erin Compassionate Use Act at the time
20 of the sale; or

21 (2) receipts of cannabis producers from
22 selling cannabis products wholesale.

23 SECTION 46. [NEW MATERIAL] DATE PAYMENT DUE.--The taxes
24 imposed pursuant to the Cannabis Tax Act are to be paid on or
25 before the twenty-fifth day of the month following the month in
.219735.2

underscoring material = new
[bracketed material] = delete

1 which the taxable event occurs.

2 SECTION 47. [NEW MATERIAL] ADMINISTRATIVE CHARGE.--The
3 department may deduct an amount not to exceed three percent of
4 the proceeds of the municipal cannabis tax and county cannabis
5 tax for the reasonable costs for administering those taxes.

6 SECTION 48. [NEW MATERIAL] INTERPRETATION OF THE CANNABIS
7 TAX ACT--ADMINISTRATION AND ENFORCEMENT OF TAX.--The department
8 shall administer and enforce the collection of the cannabis
9 excise tax, municipal cannabis tax and county cannabis tax
10 pursuant to the Tax Administration Act.

11 SECTION 49. A new section of the Tax Administration Act
12 is enacted to read:

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

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

23 B. A transfer pursuant to Section 7-1-6.1 NMSA 1978
24 shall be made to each county for which the department collects
25 a county cannabis tax imposed by that county in the county area

.219735.2

underscored material = new
[bracketed material] = delete

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

6 SECTION 50. Section 7-1-2 NMSA 1978 (being Laws 1965,
7 Chapter 248, Section 2, as amended by Laws 2019, Chapter 47,
8 Section 1 and by Laws 2019, Chapter 53, Section 10 and also by
9 Laws 2019, Chapter 270, Section 1) is amended to read:

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

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

- 15 (1) Income Tax Act;
16 (2) Withholding Tax Act;
17 (3) Oil and Gas Proceeds and Pass-Through
18 Entity Withholding Tax Act;
19 (4) Gross Receipts and Compensating Tax Act,
20 Interstate Telecommunications Gross Receipts Tax Act and Leased
21 Vehicle Gross Receipts Tax Act;
22 (5) Liquor Excise Tax Act;
23 (6) Local Liquor Excise Tax Act;
24 (7) any municipal local option gross receipts
25 tax or municipal compensating tax;

.219735.2

underscoring material = new
~~[bracketed material] = delete~~

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

3 (9) Special Fuels Supplier Tax Act;

4 (10) Gasoline Tax Act;

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

8 (12) Alternative Fuel Tax Act;

9 (13) Cigarette Tax Act;

10 (14) Estate Tax Act;

11 (15) Railroad Car Company Tax Act;

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

17 (17) Corporate Income and Franchise Tax Act;

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

20 (19) Multistate Tax Compact;

21 (20) Tobacco Products Tax Act;

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

.219735.2

underscored material = new
[bracketed material] = delete

- 1 (22) the Insurance Premium Tax Act;
2 (23) the Health Care Quality Surcharge Act;

3 and

- 4 (24) the Cannabis Tax Act;

5 B. the administration and enforcement of the
6 following taxes, surtaxes, advanced payments or tax acts as
7 they now exist or may hereafter be amended:

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

17 Valorem Tax Act;

- 18 (10) Copper Production Ad Valorem Tax Act;

19 (11) any advance payment required to be made
20 by any act specified in this subsection, which advance payment
21 shall be considered a tax for the purposes of the Tax

22 Administration Act;

- 23 (12) Enhanced Oil Recovery Act;

24 (13) Natural Gas and Crude Oil Production

25 Incentive Act; and

.219735.2

underscoring material = new
~~[bracketed material] = delete~~

1 (14) intergovernmental production tax credit
2 and intergovernmental production equipment tax credit;

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

6 (1) Weight Distance Tax Act;

7 (2) the workers' compensation fee authorized
8 by Section 52-5-19 NMSA 1978, which fee shall be considered a
9 tax for purposes of the Tax Administration Act;

10 (3) Uniform Unclaimed Property Act (1995);

11 (4) 911 emergency surcharge and the network
12 and database surcharge, which surcharges shall be considered
13 taxes for purposes of the Tax Administration Act;

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

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

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

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

.219735.2

underscored material = new
[bracketed material] = delete

1 Tax Administration Act."

2 SECTION 51. Section 7-1-6.15 NMSA 1978 (being Laws 1983,
3 Chapter 211, Section 20, as amended by Laws 2015, Chapter 89,
4 Section 1 and by Laws 2015, Chapter 100, Section 1) is amended
5 to read:

6 "7-1-6.15. ADJUSTMENTS OF DISTRIBUTIONS OR TRANSFERS TO
7 MUNICIPALITIES OR COUNTIES.--

8 A. The provisions of this section apply to:

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

11 (2) any transfer to a municipality with
12 respect to any local option gross receipts tax or municipal
13 cannabis tax imposed by that municipality;

14 (3) any transfer to a county with respect to
15 any local option gross receipts tax or county cannabis tax
16 imposed by that county;

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

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

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

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

.219735.2

underscored material = new
~~[bracketed material] = delete~~

1 1978;

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

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

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

20 (1) all negative amounts relating to any
21 period prior to the three calendar years preceding the year of
22 the current month, net of any positive amounts in that same
23 time period for the same taxpayers to which the negative
24 amounts pertain, shall be excluded from the total relating to
25 prior periods. Except as provided in Paragraph (2) of this

.219735.2

underscoring material = new
~~[bracketed material] = delete~~

1 subsection, the net receipts to be distributed or transferred
2 to the municipality or county shall be adjusted to equal the
3 amount for the current month plus the revised total for prior
4 periods; and

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

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

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

24 (1) that the department has made such an
25 adjustment, that the department has determined that a specified

.219735.2

underscoring material = new
~~[bracketed material] = delete~~

1 amount is recoverable from the municipality or county and that
2 the department intends to recover that amount from future
3 distributions or transfers to the municipality or county;

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

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

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

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

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

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

.219735.2

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

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

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

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

19 (3) if, after application of a refund claim,
20 audit adjustment, correction of a mistake by the department or
21 other adjustment of a prior period, but prior to any recovery
22 of the department pursuant to this section, the total net
23 receipts of a municipality or county for the twelve-month
24 period beginning with the current month are reduced or are
25 projected to be reduced to less than fifty percent of the

underscoring material = new
~~[bracketed material]~~ = delete

1 average distribution or transfer of net receipts, the secretary
2 may waive recovery of any portion of the recoverable amount,
3 subject to approval by the state board of finance.

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

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

17 H. The secretary is authorized to decrease a
18 distribution or transfer to a municipality or county upon being
19 directed to do so by the secretary of finance and
20 administration pursuant to the State Aid Intercept Act or to
21 redirect a distribution or transfer to the New Mexico finance
22 authority pursuant to an ordinance or a resolution passed by
23 the county or municipality and a written agreement of the
24 municipality or county and the New Mexico finance authority.

25 Upon direction to decrease a distribution or transfer or notice
.219735.2

underscored material = new
~~[bracketed material]~~ = delete

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

20 (1) prior to an adjustment of a distribution
21 or transfer of net receipts creating a recoverable amount owed
22 to the department takes precedence over any collection of any
23 recoverable amount pursuant to Paragraph (2) of Subsection B of
24 this section, which may be made only from the net amount of the
25 distribution or transfer remaining after application of the

.219735.2

underscored material = new
~~[bracketed material]~~ = delete

1 decrease or redirection pursuant to this subsection; and

2 (2) after an adjustment of a distribution or
3 transfer of net receipts creating a recoverable amount owed to
4 the department shall be subordinate to any collection of any
5 recoverable amount pursuant to Paragraph (2) of Subsection B of
6 this section.

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

.219735.2

underscoring material = new
~~[bracketed material] = delete~~

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

.219735.2

underscored material = new
[bracketed material] = delete

1 preceding the current month; or

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

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

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

17 SECTION 52. Section 7-2-2 NMSA 1978 (being Laws 1986,
18 Chapter 20, Section 26, as amended) is amended to read:

19 "7-2-2. DEFINITIONS.--For the purpose of the Income Tax
20 Act and unless the context requires otherwise:

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

24 B. "base income":

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

.219735.2

underscoring material = new
~~[bracketed material] = delete~~

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

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

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

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

.219735.2

underscored material = new
[bracketed material] = delete

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

5 (b) a distribution or refund is made for
6 any reason other than: 1) to pay for qualified higher
7 education expenses, as defined pursuant to Section 529 of the
8 Internal Revenue Code; or 2) upon the beneficiary's death,
9 disability or receipt of a scholarship; and

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

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

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

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

.219735.2

underscoring material = new
~~[bracketed material] = delete~~

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

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

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

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

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

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

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

25 (1) compensation;

.219735.2

- 1 (2) net profit from business;
- 2 (3) gains from dealings in property;
- 3 (4) interest;
- 4 (5) net rents;
- 5 (6) royalties;
- 6 (7) dividends;
- 7 (8) alimony and separate maintenance payments;
- 8 (9) annuities;
- 9 (10) income from life insurance and endowment
- 10 contracts;
- 11 (11) pensions;
- 12 (12) discharge of indebtedness;
- 13 (13) distributive share of partnership income;
- 14 (14) income in respect of a decedent;
- 15 (15) income from an interest in an estate or a
- 16 trust;
- 17 (16) social security benefits;
- 18 (17) unemployment compensation benefits;
- 19 (18) workers' compensation benefits;
- 20 (19) public assistance and welfare benefits;
- 21 (20) cost-of-living allowances; and
- 22 (21) gifts;
- 23 M. "modified gross income" excludes:
- 24 (1) payments for hospital, dental, medical or
- 25 drug expenses to or on behalf of the taxpayer;

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

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

9 (4) payments for credits and rebates pursuant
10 to the Income Tax Act and made for a credit pursuant to Section
11 7-3-9 NMSA 1978;

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

17 (1) an amount equal to the standard deduction
18 allowed the taxpayer for the taxpayer's taxable year by Section
19 63 of the Internal Revenue Code, as that section may be amended
20 or renumbered;

21 (2) an amount equal to the itemized deductions
22 defined in Section 63 of the Internal Revenue Code, as that
23 section may be amended or renumbered, allowed the taxpayer for
24 the taxpayer's taxable year less the amount excluded pursuant
25 to Paragraph (1) of this subsection and less the amount of

.219735.2

1 state and local income and sales taxes included in the
2 taxpayer's itemized deductions;

3 (3) an amount equal to the product of the
4 exemption amount allowed for the taxpayer's taxable year by
5 Section 151 of the Internal Revenue Code, as that section may
6 be amended or renumbered, multiplied by the number of personal
7 exemptions allowed for federal income tax purposes;

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

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

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

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

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

21 (7) for taxable years beginning on or after
22 January 1, 1991 and prior to January 1, 2013, an amount equal
23 to the sum of any net operating loss carryover deductions to
24 that year claimed and allowed, provided that the amount of any
25 net operating loss carryover from a taxable year beginning on

.219735.2

1 or after January 1, 1991 and prior to January 1, 2013 may be
2 excluded only as follows:

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

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

10 (c) in either case, if the net operating
11 loss carryover exceeds the amount of net income exclusive of
12 the net operating loss carryover for the taxable year to which
13 the exclusion first applies, in the next four succeeding
14 taxable years in turn until the net operating loss carryover is
15 exhausted for any net operating loss carryover from a taxable
16 year prior to January 1, 2013; in no event shall a net
17 operating loss carryover from a taxable year beginning prior to
18 January 1, 2013 be excluded in any taxable year after the
19 fourth taxable year beginning after the taxable year to which
20 the exclusion first applies;

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

.219735.2

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

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

8 (c) in either case, if the net operating
9 loss carryover exceeds the amount of net income exclusive of
10 the net operating loss carryover for the taxable year to which
11 the exclusion first applies, in the next nineteen succeeding
12 taxable years in turn until the net operating loss carryover is
13 exhausted for any net operating loss carryover from a taxable
14 year beginning on or after January 1, 2013; in no event shall a
15 net operating loss carryover from a taxable year beginning: 1)
16 prior to January 1, 2013 be excluded in any taxable year after
17 the fourth taxable year beginning after the taxable year to
18 which the exclusion first applies; and 2) on or after January
19 1, 2013 be excluded in any taxable year after the nineteenth
20 taxable year beginning after the taxable year to which the
21 exclusion first applies; and

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

.219735.2

underscoring material = new
~~[bracketed material] = delete~~

1 purposes in taxable years beginning on or after January 1,
2 2010;

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

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

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

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

22 S. "resident" means an individual who is domiciled
23 in this state during any part of the taxable year or an
24 individual who is physically present in this state for one
25 hundred eighty-five days or more during the taxable year; but

.219735.2

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

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

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

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

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

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

25 Y. "taxable year" means the calendar year or fiscal

underscored material = new
~~[bracketed material] = delete~~

1 year upon the basis of which the net income is computed under
2 the Income Tax Act and includes, in the case of the return made
3 for a fractional part of a year under the provisions of the
4 Income Tax Act, the period for which the return is made; and

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

7 SECTION 53. Section 7-2A-2 NMSA 1978 (being Laws 1986,
8 Chapter 20, Section 33, as amended) is amended to read:

9 "7-2A-2. DEFINITIONS.--For the purpose of the Corporate
10 Income and Franchise Tax Act and unless the context requires
11 otherwise:

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

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

21 C. "base income" means the federal taxable income
22 or the federal net operating loss of a corporation for the
23 taxable year calculated pursuant to the Internal Revenue Code,
24 after special deductions provided in Sections 241 through 249
25 of the Internal Revenue Code but without any deduction for net

.219735.2

1 operating losses, as if the corporation filed a federal tax
2 return as a separate domestic entity, modified as follows:

3 (1) adding to that income:

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

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

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

14 (2) subtracting from that income:

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

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

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

25 (d) an amount equal to one hundred

.219735.2

underscored material = new
[bracketed material] = delete

1 percent of the income of the corporation under Section 951A of
2 the Internal Revenue Code, after allowing the deduction
3 provided in Section 250 of the Internal Revenue Code; ~~and~~

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

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

15 D. "captive real estate investment trust" means a
16 corporation, trust or association taxed as a real estate
17 investment trust pursuant to Section 857 of the Internal
18 Revenue Code, the shares or beneficial interests of which are
19 not regularly traded on an established securities market;
20 provided that more than fifty percent of any class of
21 beneficial interests or shares of the real estate investment
22 trust are owned directly, indirectly or constructively by the
23 taxpayer during all or a part of the taxpayer's taxable year;

24 E. "common ownership" means the direct or indirect
25 control or ownership of more than fifty percent of the

.219735.2

1 outstanding voting stock, ownership of which is determined
2 pursuant to Section 1563 of the Internal Revenue Code, as that
3 section may be amended or renumbered, of:

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

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

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

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

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

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

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

.219735.2

1 H. "department" means the taxation and revenue
2 department, the secretary of taxation and revenue or any
3 employee of the department exercising authority lawfully
4 delegated to that employee by the secretary;

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

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

11 K. "grandfathered net operating loss carryover"
12 means:

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

21 (2) reduced by:

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

.219735.2

1 such related corporations; and

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

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

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

12 M. "net income" means:

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

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

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

25 (1) plus:

.219735.2

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

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

11 (2) minus:

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

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

20 0. "net operating loss deduction" means the portion
21 of the net operating loss carryover that may be deducted from
22 the taxpayer's apportioned net income under the Internal
23 Revenue Code as of January 1, 2018 for the taxable year in
24 which the deduction is taken, including the eighty percent
25 limitation of Section 172(a) of the Internal Revenue Code as of

.219735.2

underscoring material = new
~~[bracketed material] = delete~~

1 January 1, 2018 calculated on the basis of the taxpayer's
2 apportioned net income;

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

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

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

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

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

.219735.2

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

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

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

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

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

underscoring material = new
~~[bracketed material] = delete~~

1 Z. "taxpayer" means any corporation or group of
2 corporations filing a return pursuant to Section 7-2A-8.3 NMSA
3 1978 subject to the taxes imposed by the Corporate Income and
4 Franchise Tax Act;

5 AA. "unitary group" means a group of two or more
6 corporations, including a captive real estate investment trust,
7 but not including an S corporation, an insurance company
8 subject to the provisions of the New Mexico Insurance Code, an
9 insurance company that would be subject to the New Mexico
10 Insurance Code if the insurance company engaged in business in
11 this state or a real estate investment trust that is not a
12 captive real estate investment trust, that are:

13 (1) related through common ownership; and

14 (2) economically interdependent with one
15 another as demonstrated by the following factors:

16 (a) centralized management;

17 (b) functional integration; and

18 (c) economies of scale;

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

21 (1) corporations that are exempt from
22 corporate income tax pursuant to Section 7-2A-4 NMSA 1978; and

23 (2) corporations wherever organized or
24 incorporated that have less than twenty percent of their
25 property, payroll and sales sourced to locations within the

.219735.2

underscored material = new
[bracketed material] = delete

1 United States, following the sourcing rules of the Uniform
2 Division of Income for Tax Purposes Act; and

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

8 SECTION 54. [NEW MATERIAL] EXEMPTION--GROSS RECEIPTS
9 TAX--CANNABIS PRODUCTS.--The receipts of cannabis producers
10 from selling cannabis products wholesale pursuant to the
11 Cannabis Regulation Act are exempt from the gross receipts tax.

12 SECTION 55. Section 7-9-73.2 NMSA 1978 (being Laws 1998,
13 Chapter 95, Section 2 and Laws 1998, Chapter 99, Section 4, as
14 amended) is amended to read:

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

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

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

25 (1) dispensed by or under the supervision of a

.219735.2

underscored material = new
[bracketed material] = delete

1 licensed pharmacist or by a physician or other person
2 authorized under state law to do so;

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

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

8 SECTION 56. Section 9-16-4 NMSA 1978 (being Laws 1983,
9 Chapter 297, Section 20, as amended) is amended to read:

10 "9-16-4. DEPARTMENT ESTABLISHED.--The "regulation and
11 licensing department" is created in the executive branch. The
12 department shall not be a cabinet department. The department
13 shall consist of but not be limited to the following divisions:

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

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

23 "24-16-12. SMOKING-PERMITTED AREAS.--Notwithstanding any
24 other provision of the Dee Johnson Clean Indoor Air Act,
25 smoking-permitted areas include the following:

.219735.2

underscored material = new
[bracketed material] = delete

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

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

8 C. a cigar bar; provided that, for a cigar bar
9 established on or after [~~the effective date of this~~] June 14,
10 2019 [~~act~~], the bar shall be located in a standalone building;

11 D. the facilities of a tobacco manufacturing
12 company licensed by the United States to manufacture tobacco
13 products that are operated by the company in its own name and
14 that are used exclusively by the company in its business of
15 manufacturing, marketing or distributing its tobacco products;
16 provided that secondhand smoke does not infiltrate other indoor
17 workplaces or other indoor public places where smoking is
18 otherwise prohibited under the Dee Johnson Clean Indoor Air
19 Act;

20 E. a state-licensed gaming facility, casino or
21 bingo parlor;

22 F. designated outdoor smoking areas;

23 G. private clubs;

24 H. hotel and motel rooms that are rented to guests
25 and are designated as smoking-permitted rooms; provided that

.219735.2

underscored material = new
~~[bracketed material] = delete~~

1 not more than ten percent of rooms rented to guests in a hotel
2 or motel may be so designated;

3 I. a site that is being used in connection with the
4 practice of cultural or ceremonial activities by Native
5 Americans and that is in accordance with the federal American
6 Indian Religious Freedom Act, 42 U.S.C. 1996 and 1996a; ~~[and]~~

7 J. a theatrical stage or a motion picture or
8 television production set when it is necessary for performers
9 to smoke as part of the production; and

10 K. an indoor or outdoor cannabis consumption area."

11 SECTION 58. A new section of the Dee Johnson Clean Indoor
12 Air Act is enacted to read:

13 "[NEW MATERIAL] LIABILITY FOR ALLOWING THE SMOKING,
14 VAPORIZING OR INGESTING OF CANNABIS PRODUCTS.--

15 A. A person who allows another person to smoke,
16 vaporize or otherwise use, ingest or consume cannabis or
17 cannabis products is not liable in a civil action for any
18 damages caused by the person that smokes, vaporizes or
19 otherwise uses, ingests or consumes cannabis products as a
20 result of the use, ingestion or consumption of the cannabis or
21 cannabis products unless a cannabis server or licensee allows a
22 person to smoke, vaporize or otherwise use, ingest or consume
23 cannabis or cannabis products in a cannabis consumption area
24 when the cannabis server or licensee has actual knowledge that
25 the other person is under the age of twenty-one.

.219735.2

underscored material = new
[bracketed material] = delete

1 B. A plaintiff who prevails in an action brought
2 pursuant to Subsection A of this section is limited to recovery
3 of the plaintiff's actual damages."

4 **SECTION 59.** Section 26-2B-3 NMSA 1978 (being Laws 2007,
5 Chapter 210, Section 3, as amended) is amended to read:

6 "26-2B-3. DEFINITIONS.--As used in the Lynn and Erin
7 Compassionate Use Act:

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

16 B. "cannabis":

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

24 (2) does not include the mature stalks of the
25 plant; fiber produced from the stalks; oil or cake made from

1 the seeds of the plant; any other compound, manufacture, salt,
2 derivative, mixture or preparation of the mature stalks, fiber,
3 oil or cake; the sterilized seed of the plant that is incapable
4 of germination; the weight of any other ingredient combined
5 with cannabis to prepare topical or oral administrations, food,
6 drink or another product; or hemp;

7 ~~[G. "cannabis consumption area" means an area~~
8 ~~within a licensed premises approved by the department where~~
9 ~~cannabis may be consumed that complies with rule as established~~
10 ~~by the department;~~

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

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

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

- 19 ~~(1) a licensed cannabis courier;~~
20 ~~(2) a licensed cannabis testing facility;~~
21 ~~(3) a licensed cannabis manufacturer;~~
22 ~~(4) a licensed cannabis producer; or~~
23 ~~(5) such other person that the department may~~
24 ~~by rule approve for participation in the medical cannabis~~
25 ~~program;~~

underscored material = new
[bracketed material] = delete

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

3 (1) ~~manufacture cannabis products;~~

4 (2) ~~package, transport or courier cannabis~~
5 ~~products;~~

6 (3) ~~have cannabis products tested by a~~
7 ~~cannabis testing facility;~~

8 (4) ~~purchase, obtain, sell and transport~~
9 ~~cannabis products to other cannabis establishments; and~~

10 (5) ~~prepare products for personal production~~
11 ~~license holders;~~

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

17 C. "cannabis extract":

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

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

25 D. "cannabis flowers" means only the flowers of a

.219735.2

underscored material = new
[bracketed material] = delete

1 cannabis plant;

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

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

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

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

15 ~~J.~~ F. "debilitating medical condition" means:

16 (1) cancer;
17 (2) glaucoma;
18 (3) multiple sclerosis;
19 (4) damage to the nervous tissue of the spinal
20 cord, with objective neurological indication of intractable
21 spasticity;

22 (5) seizure disorder, including epilepsy;
23 (6) positive status for human immunodeficiency
24 virus or acquired immune deficiency syndrome;

25 (7) admitted into hospice care in accordance

underscoring material = new
[bracketed material] = delete

1 with rules promulgated by the department;

2 (8) amyotrophic lateral sclerosis;

3 (9) Crohn's disease;

4 (10) hepatitis C infection;

5 (11) Huntington's disease;

6 (12) inclusion body myositis;

7 (13) inflammatory autoimmune-mediated

8 arthritis;

9 (14) intractable nausea or vomiting;

10 (15) obstructive sleep apnea;

11 (16) painful peripheral neuropathy;

12 (17) Parkinson's disease;

13 (18) posttraumatic stress disorder;

14 (19) severe chronic pain;

15 (20) severe anorexia or cachexia;

16 (21) spasmodic torticollis;

17 (22) ulcerative colitis; ~~[or]~~

18 (23) opiate abuse disorder; or

19 ~~[(23)]~~ (24) any other medical condition,

20 medical treatment or disease as approved by the ~~[department]~~

21 division;

22 ~~[K. "department" means the department of health;]~~

23 G. "division" means the cannabis control division

24 of the regulation and licensing department;

25 H. "dry weight basis" means a process by which

underscoring material = new
[bracketed material] = delete

1 delta-tetrahydrocannabinol concentration is measured relative
2 to the aggregate weight of all parts of the plant genus
3 Cannabis, whether growing or not, including the leaves of the
4 plant, the flowers and buds of the plant, the seeds of the
5 plant, the resin of the plant and the stalks of the plant, at
6 the point of harvest by a licensee and with no moisture added
7 to the harvested plant;

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

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

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

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

19 P.] J. "manufacture" means to prepare a cannabis
20 product for a qualified patient's or a reciprocal participant's
21 use;

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

.219735.2

underscoring material = new
~~[bracketed material]~~ = delete

1 [R.] L. "personal production license" means a
2 license issued to a qualified patient or to a qualified
3 patient's primary caregiver participating in the medical
4 cannabis program to permit the qualified patient or the
5 qualified patient's primary caregiver to produce or manufacture
6 cannabis for the qualified patient's use at an address approved
7 by the [~~department~~] division;

8 [S.] M. "practitioner" means a person licensed in
9 New Mexico to prescribe and administer drugs that are subject
10 to the Controlled Substances Act;

11 [F.] N. "primary caregiver" means a resident of New
12 Mexico who is at least eighteen years of age and who has been
13 designated by the patient's practitioner as being necessary to
14 take responsibility for managing the well-being of a qualified
15 patient with respect to the medical use of cannabis pursuant to
16 the provisions of the Lynn and Erin Compassionate Use Act;

17 [U.] O. "produce" means to engage in any activity
18 related to the planting or cultivation of cannabis;

19 [V.] P. "qualified patient" means a resident of New
20 Mexico who has been diagnosed by a practitioner as having a
21 debilitating medical condition and has received written
22 certification and a registry identification card pursuant to
23 the Lynn and Erin Compassionate Use Act on the basis of having
24 been diagnosed, in person or via telemedicine, by a
25 practitioner as having a debilitating medical condition;

.219735.2

underscoring material = new
[bracketed material] = delete

1 ~~[provided that a practitioner may only issue a written~~
2 ~~certification on the basis of an evaluation conducted via~~
3 ~~telemedicine if the practitioner has previously examined the~~
4 ~~patient in person;~~

5 ~~W.]~~ Q. "reciprocal participant" means an individual
6 who holds proof of authorization to participate in the medical
7 cannabis program of another state of the United States, the
8 District of Columbia, a territory or commonwealth of the United
9 States or a New Mexico Indian nation, tribe or pueblo;

10 ~~[X.]~~ R. "registry identification card" means a
11 document that the ~~[department]~~ division issues:

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

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

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

25 ~~[Z.] "telemedicine" means the use of~~

.219735.2

underscoring material = new
~~[bracketed material] = delete~~

1 ~~telecommunications and information technology to provide~~
2 ~~clinical health care from a site apart from the site where the~~
3 ~~patient is located, in real time or asynchronously, including~~
4 ~~the use of interactive simultaneous audio and video or store-~~
5 ~~and-forward technology, or off-site patient monitoring and~~
6 ~~telecommunications in order to deliver health care services;~~

7 ~~AA.]~~ T. "THC" means delta-9-tetrahydrocannabinol, a
8 substance that is the primary psychoactive ingredient in
9 cannabis; and

10 ~~BB.]~~ U. "written certification" means a statement
11 made on a ~~[department-approved]~~ division-approved form and
12 signed by a patient's practitioner that indicates, in the
13 practitioner's professional opinion, that the patient has a
14 debilitating medical condition and the practitioner believes
15 that the potential health benefits of the medical use of
16 cannabis would likely outweigh the health risks for the
17 patient."

18 SECTION 60. Section 26-2B-4 NMSA 1978 (being Laws 2007,
19 Chapter 210, Section 4, as amended) is amended to read:

20 "26-2B-4. EXEMPTION FROM CRIMINAL AND CIVIL PENALTIES FOR
21 THE MEDICAL USE OF CANNABIS.--

22 A. A qualified patient, a reciprocal participant or
23 a qualified patient's primary caregiver shall not be subject to
24 arrest, prosecution or penalty in any manner for the possession
25 of or the medical use of cannabis if the quantity of cannabis

.219735.2

underscoring material = new
[bracketed material] = delete

1 does not exceed an adequate supply; provided that a qualified
2 patient or the qualified patient's primary caregiver may
3 possess that qualified patient's harvest of cannabis; and
4 further provided that a qualified patient or the qualified
5 patient's primary caregiver may possess at least two ounces of
6 cannabis flowers and at least sixteen grams of cannabis extract
7 purchased and obtained pursuant to the Lynn and Erin
8 Compassionate Use Act.

9 B. A reciprocal participant shall not be subject to
10 arrest, prosecution or penalty in any manner for the possession
11 of or the medical use of cannabis if the quantity of cannabis
12 ~~[does not exceed the limit identified by department rule]~~ is
13 not more than two ounces of cannabis flowers or more than
14 sixteen grams of cannabis extract purchased and obtained
15 pursuant to the Lynn and Erin Compassionate Use Act.

16 ~~[G. The following conduct is lawful and shall not~~
17 ~~constitute grounds for detention, search or arrest of a person~~
18 ~~or for a violation of probation or parole, and cannabis~~
19 ~~products that relate to the conduct are not contraband or~~
20 ~~subject to seizure or forfeiture pursuant to the Controlled~~
21 ~~Substances Act or the Forfeiture Act:~~

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

.219735.2

underscoring material = new
[bracketed material] = delete

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

6 ~~(3) a qualified patient using or being under~~
7 ~~the influence of cannabis; provided that the qualified patient~~
8 ~~is acting consistent with law;~~

9 ~~(4) a qualified patient or primary caregiver~~
10 ~~transferring, without financial consideration, to a qualified~~
11 ~~patient or primary caregiver not more than two ounces of~~
12 ~~cannabis; or~~

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

25 ~~D. Subsection A of this section shall not apply to~~

.219735.2

1 ~~a qualified patient under the age of eighteen years, unless:~~

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

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

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

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

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

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

23 ~~F. A practitioner shall not be subject to arrest or~~
24 ~~prosecution, penalized in any manner or denied any right or~~
25 ~~privilege for recommending the medical use of cannabis or~~

underscoring material = new
[bracketed material] = delete

1 ~~providing written certification for the medical use of cannabis~~
2 ~~pursuant to the Lynn and Erin Compassionate Use Act.~~

3 ~~G. A licensee or licensee representative shall not~~
4 ~~be subject to arrest, prosecution or penalty, in any manner,~~
5 ~~for the production, possession, manufacture, distribution,~~
6 ~~dispensing or testing of cannabis pursuant to the Lynn and Erin~~
7 ~~Compassionate Use Act. Conduct by a licensee or a licensee~~
8 ~~representative that is allowed pursuant to a license and~~
9 ~~conduct by a person that allows property to be used by a~~
10 ~~licensee or a licensee representative for conduct allowed~~
11 ~~pursuant to a license is lawful, is not a violation of state or~~
12 ~~local law and is not a basis for seizure or forfeiture of~~
13 ~~property or assets under state or local law.~~

14 ~~H. Any property interest that is possessed, owned~~
15 ~~or used in connection with the medical use of cannabis, or acts~~
16 ~~incidental to such use, shall not be harmed, neglected, injured~~
17 ~~or destroyed while in the possession of state or local law~~
18 ~~enforcement officials. Any such property interest shall not be~~
19 ~~forfeited under any state or local law providing for the~~
20 ~~forfeiture of property except as provided in the Forfeiture~~
21 ~~Act. Cannabis, paraphernalia or other property seized from a~~
22 ~~qualified patient or primary caregiver in connection with the~~
23 ~~claimed medical use of cannabis shall be returned immediately~~
24 ~~upon the determination by a court or prosecutor that the~~
25 ~~qualified patient or primary caregiver is entitled to the~~

.219735.2

underscoring material = new
[bracketed material] = delete

1 ~~protections of the provisions of the Lynn and Erin~~
2 ~~Compassionate Use Act, as may be evidenced by a failure to~~
3 ~~actively investigate the case, a decision not to prosecute, the~~
4 ~~dismissal of charges or acquittal.~~

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

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

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

17 "26-2B-6.1. PROGRAM REGULATION AND ADMINISTRATION--FEES--
18 LIMITATIONS [RULEMAKING]--LICENSURE--ISSUANCE--REPORTING.--

19 A. The [department] division shall:

20 (1) regulate and administer the medical
21 cannabis program; [and]

22 (2) collect fees from licensees; provided that
23 the [department] division shall not charge a fee relating to
24 the medical cannabis registry; and

25 (3) establish an application and licensing fee

.219735.2

underscored material = new
[bracketed material] = delete

1 for personal production licenses.

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

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

11 ~~D. The department shall administer licensure for~~
12 ~~medical cannabis program activity provided for in the Lynn and~~
13 ~~Erin Compassionate Use Act, which shall include personal~~
14 ~~production licenses and licenses for:~~

- 15 ~~(1) cannabis couriers;~~
- 16 ~~(2) cannabis manufacturers;~~
- 17 ~~(3) cannabis producers;~~
- 18 ~~(4) cannabis testing facilities; and~~
- 19 ~~(5) any other activity or person as deemed~~
20 ~~necessary by the department.~~

21 ~~E.] B. The [department] division shall [not issue~~
22 ~~any other license provided for in this section to a cannabis~~
23 ~~testing facility licensee] administer personal production~~
24 ~~licenses.~~

25 ~~[F.] C. In consultation with qualified patients and~~

underscoring material = new
[bracketed material] = delete

1 primary caregivers, the ~~[department]~~ division shall produce an
2 assessment report annually, which shall be published to the
3 public and that includes at a minimum an evaluation of:

4 (1) the affordability of and accessibility to
5 medical cannabis pursuant to the Lynn and Erin Compassionate
6 Use Act; and

7 (2) the needs of low-income qualified
8 patients, including those who live in rural areas, federal
9 subsidized housing or New Mexico Indian nations, tribes or
10 pueblos.

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

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

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

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

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

24 "26-2B-7. REGISTRY IDENTIFICATION CARDS--~~[DEPARTMENT]~~
25 DIVISION RULES--DUTIES--RECIPROCITY.--

.219735.2

underscoring material = new
[bracketed material] = delete

1 A. After consultation with the advisory board, the
2 ~~[department]~~ division shall promulgate rules in accordance with
3 the State Rules Act to implement the purpose of the Lynn and
4 Erin Compassionate Use Act. The rules shall:

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

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

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

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

22 (5) identify requirements for the licensure of
23 ~~[cannabis producers and cannabis production facilities,~~
24 ~~cannabis couriers, cannabis manufacturers, cannabis testing~~
25 ~~facilities and any other cannabis establishments that the~~

.219735.2

underscored material = new
[bracketed material] = delete

1 ~~department may license~~ qualified patients to produce cannabis
2 for personal medical use and set forth procedures to obtain
3 licenses;

4 ~~[(6) develop a distribution system for the~~
5 ~~medical cannabis program that provides for:~~

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

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

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

22 ~~(8)] (6)~~ determine additional duties and
23 responsibilities of the advisory board; and

24 ~~(9)] (7)~~ be revised and updated as necessary.

25 B. The ~~[department]~~ division shall issue registry

.219735.2

underscoring material = new
[bracketed material] = delete

1 identification cards to a patient and to the primary caregiver
2 for that patient, if any, who submit the following, in
3 accordance with the [~~department's~~] division's rules:

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

11 C. The [~~department~~] division shall verify the
12 information contained in an application submitted pursuant to
13 Subsection B of this section and shall approve or deny an
14 application within thirty days of receipt. The [~~department~~]
15 division may deny an application only if the applicant did not
16 provide the information required pursuant to Subsection B of
17 this section or if the [~~department~~] division determines that
18 the information provided is false. A person whose application
19 has been denied shall not reapply for six months from the date
20 of the denial unless otherwise authorized by the [~~department~~]
21 division.

22 D. The [~~department~~] division shall issue a registry
23 identification card within five days of approving an
24 application, and a card shall expire three years after the date
25 of issuance.

.219735.2

underscored material = new
[bracketed material] = delete

1 E. A registry identification card shall contain:

2 (1) the name and date of birth of the
3 qualified patient and primary caregiver, if any;

4 (2) the date of issuance and expiration date
5 of the registry identification card; and

6 (3) other information that the [~~department~~]
7 division may require by rule.

8 F. A person who possesses a registry identification
9 card shall notify the [~~department~~] division of any change in
10 the person's name, qualified patient's practitioner, qualified
11 patient's primary caregiver or change in status of the
12 qualified patient's debilitating medical condition within ten
13 days of the change.

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

19 H. The [~~department~~] division shall maintain a
20 confidential file containing the names and addresses of the
21 persons who have either applied for or received a registry
22 identification card. Individual names on the list shall be
23 confidential and not subject to disclosure, except:

24 (1) to authorized employees or agents of the
25 [~~department~~] division as necessary to perform the duties of the

.219735.2

underscored material = new
[bracketed material] = delete

1 [department] division pursuant to the provisions of the Lynn
2 and Erin Compassionate Use Act;

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

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

9 I. By ~~[March 1, 2020]~~ January 1, 2022, the
10 ~~[secretary of health]~~ division shall adopt and promulgate rules
11 relating to medical cannabis program reciprocity. ~~[The~~
12 ~~department may identify requirements for the granting of~~
13 ~~reciprocity, including provisions limiting the period of time~~
14 ~~in which a reciprocal participant may participate in the~~
15 ~~medical cannabis program.]~~

16 J. A reciprocal participant:

17 (1) may participate in the medical cannabis
18 program in accordance with [department] division rules;

19 (2) shall not be required to comply with the
20 registry identification card application and renewal
21 requirements established pursuant to this section and
22 [department] division rules;

23 (3) shall at all times possess proof of
24 authorization to participate in the medical cannabis program of
25 another state, the District of Columbia, a territory or

.219735.2

underscored material = new
~~[bracketed material] = delete~~

1 commonwealth of the United States or a New Mexico Indian
2 nation, tribe or pueblo and shall present proof of that
3 authorization when purchasing cannabis from a ~~[licensee]~~ person
4 licensed pursuant to the Cannabis Regulation Act; and

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

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

12 "30-31-2. DEFINITIONS.--As used in the Controlled
13 Substances Act:

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

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

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

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

25 E. "controlled substance" means a drug or substance

.219735.2

1 listed in Schedules I through V of the Controlled Substances
2 Act or rules adopted thereto;

3 F. "counterfeit substance" means a controlled
4 substance that bears the unauthorized trademark, trade name,
5 imprint, number, device or other identifying mark or likeness
6 of a manufacturer, distributor or dispenser other than the
7 person who in fact manufactured, distributed or dispensed the
8 controlled substance;

9 G. "deliver" means the actual, constructive or
10 attempted transfer from one person to another of a controlled
11 substance or controlled substance analog, whether or not there
12 is an agency relationship;

13 H. "dispense" means to deliver a controlled
14 substance to an ultimate user or research subject pursuant to
15 the lawful order of a practitioner, including the
16 administering, prescribing, packaging, labeling or compounding
17 necessary to prepare the controlled substance for that
18 delivery;

19 I. "dispenser" means a practitioner who dispenses
20 and includes hospitals, pharmacies and clinics where controlled
21 substances are dispensed;

22 J. "distribute" means to deliver other than by
23 administering or dispensing a controlled substance or
24 controlled substance analog;

25 K. "drug" or "substance" means substances

underscored material = new
[bracketed material] = delete

1 recognized as drugs in the official United States
2 pharmacopoeia, official homeopathic pharmacopoeia of the United
3 States or official national formulary or any respective
4 supplement to those publications. It does not include devices
5 or their components, parts or accessories;

6 ~~[L. "hashish" means the resin extracted from any
7 part of marijuana, whether growing or not, and every compound,
8 manufacture, salt, derivative, mixture or preparation of such
9 resins;~~

10 ~~M. "hemp" means the plant Cannabis sativa L. and
11 any part of that plant, including seeds and all derivatives,
12 extracts, cannabinoids, isomers, acids, salts and salts of
13 isomers, whether growing or not, with a delta-9-
14 tetrahydrocannabinol concentration of not more than three-
15 tenths percent on a dry weight basis;~~

16 ~~N.] L. "manufacture" means the production,
17 preparation, compounding, conversion or processing of a
18 controlled substance or controlled substance analog by
19 extraction from substances of natural origin or independently
20 by means of chemical synthesis or by a combination of
21 extraction and chemical synthesis and includes any packaging or
22 repackaging of the substance or labeling or relabeling of its
23 container, except that this term does not include the
24 preparation or compounding of a controlled substance:~~

25 (1) by a practitioner as an incident to

.219735.2

underscoring material = new
~~[bracketed material] = delete~~

1 administering or dispensing a controlled substance in the
2 course of the practitioner's professional practice; or

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

7 ~~[0. "marijuana" means all parts of the plant
8 cannabis, including any and all varieties, species and
9 subspecies of the genus Cannabis, whether growing or not, the
10 seeds thereof and every compound, manufacture, salt,
11 derivative, mixture or preparation of the plant or its seeds.
12 It does not include the mature stalks of the plant, hashish,
13 tetrahydrocannabinols extracted or isolated from marijuana,
14 fiber produced from the stalks, oil or cake made from the seeds
15 of the plant, any other compound, manufacture, salt,
16 derivative, mixture or preparation of the mature stalks, fiber,
17 oil or cake, or the sterilized seed of the plant that is
18 incapable of germination; or the plant Cannabis sativa L. and
19 any part of the plant, whether growing or not, containing a
20 delta-9-tetrahydrocannabinol concentration of no more than
21 three-tenths percent on a dry weight basis;~~

22 P.] M. "narcotic drug" means any of the following,
23 whether produced directly or indirectly by extraction from
24 substances of vegetable origin or independently by means of
25 chemical synthesis or by a combination of extraction and

.219735.2

underscoring material = new
~~[bracketed material] = delete~~

1 chemical synthesis:

2 (1) opium and opiate and any salt, compound,
3 derivative or preparation of opium or opiate;

4 (2) any salt, compound, isomer, derivative or
5 preparation that is a chemical equivalent of any of the
6 substances referred to in Paragraph (1) of this subsection,
7 except the isoquinoline alkaloids of opium;

8 (3) opium poppy and poppy straw, including all
9 parts of the plant of the species *Papaver somniferum* L. except
10 its seeds; or

11 (4) coca leaves and any salt, compound,
12 derivative or preparation of coca leaves, any salt, compound,
13 isomer, derivative or preparation that is a chemical equivalent
14 of any of these substances except decocainized coca leaves or
15 extractions of coca leaves that do not contain cocaine or
16 ecgonine;

17 [Q-] N. "opiate" means any substance having an
18 addiction-forming or addiction-sustaining liability similar to
19 morphine or being capable of conversion into a drug having
20 addiction-forming or addiction-sustaining liability. "Opiate"
21 does not include, unless specifically designated as controlled
22 under Section 30-31-5 NMSA 1978, the dextrorotatory isomer of
23 3-methoxy-n-methylmorphinan and its salts, dextromethorphan.
24 "Opiate" does include its racemic and levorotatory forms;

25 [R-] O. "person" means an individual, partnership,

.219735.2

underscoring material = new
~~[bracketed material] = delete~~

1 corporation, association, institution, political subdivision,
2 government agency or other legal entity;

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

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

22 ~~[U-]~~ R. "scientific investigator" means a person
23 registered to conduct research with controlled substances in
24 the course of the person's professional practice or research
25 and includes analytical laboratories;

.219735.2

underscored material = new
[bracketed material] = delete

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

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

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

21 ~~(2) kits used, intended for use or designed~~
22 ~~for use in manufacturing, compounding, converting, producing,~~
23 ~~processing or preparing controlled substances or controlled~~
24 ~~substance analogs;~~

25 ~~(3) isomerization devices used, intended for~~

.219735.2

underscored material = new
[bracketed material] = delete

1 ~~use or designed for use in increasing the potency of any~~
2 ~~species of plant that is a controlled substance;~~

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

7 ~~(5) scales or balances used, intended for use~~
8 ~~or designed for use in weighing or measuring controlled~~
9 ~~substances or controlled substance analogs;~~

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

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

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

21 ~~(9) capsules, balloons, envelopes and other~~
22 ~~containers used, intended for use or designed for use in~~
23 ~~packaging small quantities of controlled substances or~~
24 ~~controlled substance analogs;~~

25 ~~(10) containers and other objects used,~~

.219735.2

underscoring material = new
[bracketed material] = delete

1 ~~intended for use or designed for use in storing or concealing~~
2 ~~controlled substances or controlled substance analogs;~~

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

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

11 ~~(a) metal, wooden, acrylic, glass,~~
12 ~~stone, plastic or ceramic pipes, with or without screens,~~
13 ~~permanent screens, hashish heads or punctured metal bowls;~~

14 ~~(b) water pipes;~~

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

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

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

20 ~~(f) miniature cocaine spoons and cocaine~~
21 ~~vials;~~

22 ~~(g) chamber pipes;~~

23 ~~(h) carburetor pipes;~~

24 ~~(i) electric pipes;~~

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

.219735.2

underscoring material = new
[bracketed material] = delete

1 ~~X.]~~ T. "controlled substance analog" means a
2 substance other than a controlled substance that has a chemical
3 structure substantially similar to that of a controlled
4 substance in Schedule I, II, III, IV or V or that was
5 specifically designed to produce effects substantially similar
6 to that of controlled substances in Schedule I, II, III, IV or
7 V. Examples of chemical classes in which controlled substance
8 analogs are found:

9 (1) include ~~[the following]:~~

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

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

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

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

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

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

16 ~~[(7)]~~ (g) arylcycloalkylamines; and

17 [~~Specifically excluded from the definition of "controlled~~
18 ~~substance analog" are]~~

19 (2) do not include those substances that are
20 generally recognized as safe and effective within the meaning
21 of the Federal Food, Drug, and Cosmetic Act or have been
22 manufactured, distributed or possessed in conformance with the
23 provisions of an approved new drug application or an exemption
24 for investigational use within the meaning of Section 505 of
25 the Federal Food, Drug, and Cosmetic Act;

.219735.2

underscoring material = new
[bracketed material] = delete

1 ~~[Y.]~~ U. "human consumption" includes application,
2 injection, inhalation, ingestion or any other manner of
3 introduction;

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

9 ~~[AA.]~~ W. "valid practitioner-patient relationship"
10 means a professional relationship, as defined by the
11 practitioner's licensing board, between the practitioner and
12 the patient."

13 SECTION 64. Section 30-31-6 NMSA 1978 (being Laws 1972,
14 Chapter 84, Section 6, as amended) is amended to read:

15 "30-31-6. SCHEDULE I.--The following controlled
16 substances are included in Schedule I:

17 A. any of the following opiates, including their
18 isomers, esters, ethers, salts, and salts of isomers, esters
19 and ethers, unless specifically exempted, whenever the
20 existence of these isomers, esters, ethers and salts is
21 possible within the specific chemical designation:

- 22 (1) acetylmethadol;
- 23 (2) allylprodine;
- 24 (3) alphacetylmethadol;
- 25 (4) alphameprodine;

underscoring material = new
~~[bracketed material] = delete~~

- 1 (5) alphamethadol;
- 2 (6) benzethidine;
- 3 (7) betacetylmethadol;
- 4 (8) betameprodine;
- 5 (9) betamethadol;
- 6 (10) betaprodine;
- 7 (11) clonitazene;
- 8 (12) dextromoramide;
- 9 (13) dextrorphan;
- 10 (14) diampromide;
- 11 (15) diethylthiambutene;
- 12 (16) dimenoxadol;
- 13 (17) dimepheptanol;
- 14 (18) dimethylthiambutene;
- 15 (19) dioxaphetyl butyrate;
- 16 (20) dipipanone;
- 17 (21) ethylmethylthiambutene;
- 18 (22) etonitazene;
- 19 (23) etoxeridine;
- 20 (24) furethidine;
- 21 (25) hydroxypethidine;
- 22 (26) ketobemidone;
- 23 (27) levomoramide;
- 24 (28) levophenacylmorphane;
- 25 (29) morpheridine;

- 1 (30) noracymethadol;
- 2 (31) norlevorphanol;
- 3 (32) normethadone;
- 4 (33) norpipanone;
- 5 (34) phenadoxone;
- 6 (35) phenampromide;
- 7 (36) phenomorphan;
- 8 (37) phenoperidine;
- 9 (38) piritramide;
- 10 (39) proheptazine;
- 11 (40) properidine;
- 12 (41) racemoramide; and
- 13 (42) trimeperidine;

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

- 19 (1) acetorphine;
- 20 (2) acetyldihydrocodeine;
- 21 (3) benzylmorphine;
- 22 (4) codeine methylbromide;
- 23 (5) codeine-N-oxide;
- 24 (6) cyprenorphine;
- 25 (7) desomorphine;

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

16 C. any material, compound, mixture or preparation
17 that contains any quantity of the following hallucinogenic
18 substances, their salts, isomers and salts of isomers, unless
19 specifically exempted, whenever the existence of these salts,
20 isomers and salts of isomers is possible within the specific
21 chemical designation:

- 22 (1) 3,4-methylenedioxy amphetamine;
- 23 (2) 5-methoxy-3,4-methylenedioxy amphetamine;
- 24 (3) 3,4,5-trimethoxy amphetamine;
- 25 (4) bufotenine;

- 1 (5) diethyltryptamine;
2 (6) dimethyltryptamine;
3 (7) 4-methyl-2,5-dimethoxy amphetamine;
4 (8) ibogaine;
5 (9) lysergic acid diethylamide;
6 [~~(10)~~] marijuana;
7 [~~(11)~~] (10) mescaline;
8 [~~(12)~~] (11) peyote, except as otherwise
9 provided in the Controlled Substances Act;
10 [~~(13)~~] (12) N-ethyl-3-piperidyl benzilate;
11 [~~(14)~~] (13) N-methyl-3-piperidyl benzilate;
12 [~~(15)~~] (14) psilocybin;
13 [~~(16)~~] (15) psilocyn;
14 [~~(17)~~] tetrahydrocannabinols;
15 [~~(18)~~] hashish;
16 [~~(19)~~] (16) synthetic cannabinoids, including:
17 (a) 1-[2-(4-(morpholinyl)ethyl)
18 -3-(1-naphthoyl)indole;
19 (b) 1-butyl-3-(1-naphthoyl)indole;
20 (c) 1-hexyl-3-(1-naphthoyl)indole;
21 (d) 1-pentyl-3-(1-naphthoyl)indole;
22 (e) 1-pentyl-3-(2-methoxyphenylacetyl)
23 indole;
24 (f) cannabicyclohexanol (CP 47, 497 and
25 homologues: 5-(1,1-dimethylheptyl)-2-[(1R,3S)

.219735.2

1 -3-hydroxycyclohexyl]-phenol (CP-47,497); and 5-(1,
2 1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol;

3 (g) 6aR,10aR)-9-(hydroxymethyl)
4 -6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,
5 10a-tetrahydrobenzo[c]chromen-1-ol);

6 (h) dexanabinol, (6aS,10aS)
7 -9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)
8 -6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol;

9 (i) 1-pentyl-3-(4-chloro naphthoyl)
10 indole;

11 (j) (2-methyl-1-propyl-1H-indol-3-yl)
12 -1-naphthalenyl-methanone; and

13 (k) 5-(1,1-dimethylheptyl)-2-(3-hydroxy
14 cyclohexyl)-phenol;

15 ~~(17)~~ (17) 3,4-methylenedioxymethcathinone;

16 ~~(18)~~ (18) 3,4-methylenedioxyprovalerone;

17 ~~(19)~~ (19) 4-methylmethcathinone;

18 ~~(20)~~ (20) 4-methoxymethcathinone;

19 ~~(21)~~ (21) 3-fluoromethcathinone; and

20 ~~(22)~~ (22) 4-fluoromethcathinone;

21 D. the enumeration of peyote as a controlled
22 substance does not apply to the use of peyote in bona fide
23 religious ceremonies by a bona fide religious organization, and
24 members of the organization so using peyote are exempt from
25 registration. Any person who manufactures peyote for or

underscoring material = new
[bracketed material] = delete

1 distributes peyote to the organization or its members shall
2 comply with the federal Comprehensive Drug Abuse Prevention and
3 Control Act of 1970 and all other requirements of law; and

4 ~~[E.—The enumeration of marijuana,~~
5 ~~tetrahydrocannabinols or chemical derivatives of~~
6 ~~tetrahydrocannabinol as Schedule I controlled substances does~~
7 ~~not apply to:~~

8 ~~(1) hemp pursuant to rules promulgated by the~~
9 ~~board of regents of New Mexico state university on behalf of~~
10 ~~the New Mexico department of agriculture;~~

11 ~~(2) cultivation of hemp by persons pursuant to~~
12 ~~rules promulgated by the board of regents of New Mexico state~~
13 ~~university on behalf of the New Mexico department of~~
14 ~~agriculture;~~

15 ~~(3) tetrahydrocannabinols or chemical~~
16 ~~derivatives of tetrahydrocannabinols, including~~
17 ~~tetrahydrocannabinols or chemical derivatives of~~
18 ~~tetrahydrocannabinols with concentrations of up to five percent~~
19 ~~as measured using a post-decarboxylation method and based on~~
20 ~~percentage dry weight, possessed by a person in connection with~~
21 ~~the cultivation, transportation, testing, researching,~~
22 ~~manufacturing or other processing of the plant Cannabis sativa~~
23 ~~L., or any part of the plant whether growing or not, if~~
24 ~~authorized pursuant to rules promulgated, pursuant to the Hemp~~
25 ~~Manufacturing Act, by the board of regents of New Mexico state~~

.219735.2

underscoring material = new
[bracketed material] = delete

1 ~~university on behalf of the New Mexico department of~~
2 ~~agriculture or the department of environment;~~

3 ~~(4) tetrahydrocannabinols or chemical~~
4 ~~derivatives of tetrahydrocannabinols, including~~
5 ~~tetrahydrocannabinols or chemical derivatives of~~
6 ~~tetrahydrocannabinols in any concentration possessed by a~~
7 ~~person in connection with the extraction of~~
8 ~~tetrahydrocannabinols or chemical derivatives of~~
9 ~~tetrahydrocannabinols, if authorized pursuant to rules~~
10 ~~promulgated, pursuant to the Hemp Manufacturing Act, by the~~
11 ~~board of regents of New Mexico state university on behalf of~~
12 ~~the New Mexico department of agriculture or the department of~~
13 ~~environment;~~

14 ~~(5) the use of marijuana,~~
15 ~~tetrahydrocannabinols or chemical derivatives of~~
16 ~~tetrahydrocannabinol by certified patients pursuant to the~~
17 ~~Controlled Substances Therapeutic Research Act or by qualified~~
18 ~~patients pursuant to the provisions of the Lynn and Erin~~
19 ~~Compassionate Use Act; or~~

20 ~~(6) the use, dispensing, possession,~~
21 ~~prescribing, storage or transport of a prescription drug that~~
22 ~~the United States food and drug administration has approved and~~
23 ~~that contains marijuana, a tetrahydrocannabinol derivative or a~~
24 ~~chemical derivative of tetrahydrocannabinol; and~~

25 F.] E. controlled substances added to Schedule I by

.219735.2

underscored material = new
[bracketed material] = delete

1 rule adopted by the board pursuant to Section 30-31-3 NMSA
2 1978."

3 SECTION 65. Section 30-31-7 NMSA 1978 (being Laws 1972,
4 Chapter 84, Section 7, as amended) is amended to read:

5 "30-31-7. SCHEDULE II.--

6 A. The following controlled substances are included
7 in Schedule II:

8 (1) any of the following substances, except
9 those narcotic drugs listed in other schedules, whether
10 produced directly or indirectly by extraction from substances
11 of vegetable origin, or independently by means of chemical
12 synthesis, or by combination of extraction and chemical
13 synthesis:

14 (a) opium and opiate, and any salt,
15 compound, derivative or preparation of opium or opiate;

16 (b) any salt, compound, isomer,
17 derivative or preparation thereof that is chemically equivalent
18 or identical with any of the substances referred to in
19 Subparagraph (a) of this paragraph, but not including the
20 isoquinoline alkaloids of opium;

21 (c) opium poppy and poppy straw; and

22 (d) coca leaves and any salt, compound,
23 derivative or preparation of coca leaves, and any salt,
24 compound, derivative or preparation thereof that is chemically
25 equivalent or identical with any of these substances, but not

.219735.2

underscoring material = new
~~[bracketed material] = delete~~

1 including decocainized coca leaves or extractions that do not
2 contain cocaine or ecgonine;

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

7 ~~(f) tetrahydrocannabinols or chemical~~
8 ~~derivatives of tetrahydrocannabinol, but only for the use by~~
9 ~~certified patients pursuant to the Controlled Substances~~
10 ~~Therapeutic Research Act or by qualified patients pursuant to~~
11 ~~the provisions of the Lynn and Erin Compassionate Use Act.~~

12 ~~Marijuana, tetrahydrocannabinols or chemical derivatives of~~
13 ~~tetrahydrocannabinol shall be considered Schedule II controlled~~
14 ~~substances only for the purposes enumerated in the Controlled~~
15 ~~Substances Therapeutic Research Act or the Lynn and Erin~~
16 ~~Compassionate Use Act;]~~

17 (2) any of the following opiates, including
18 their isomers, esters, ethers, salts and salts of isomers,
19 whenever the existence of these isomers, esters, ethers and
20 salts is possible within the specific chemical designation:

- 21 (a) alphaprodine;
22 (b) anileridine;
23 (c) bezitramide;
24 (d) dihydrocodeine;
25 (e) diphenoxylate;

- 1 (f) fentanyl;
- 2 (g) hydromorphone;
- 3 (h) isomethadone;
- 4 (i) levomethorphan;
- 5 (j) levorphanol;
- 6 (k) meperidine;
- 7 (l) metazocine;
- 8 (m) methadone;
- 9 (n) methadone--intermediate,
- 10 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
- 11 (o) moramide--intermediate,
- 12 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid;
- 13 (p) oxycodone;
- 14 (q) pethidine;
- 15 (r) pethidine--intermediate--A,
- 16 4-cyano-1-methyl-4-phenylpiperidine;
- 17 (s) pethidine--intermediate--B,
- 18 ethyl-4-phenyl-piperidine-4-carboxylate;
- 19 (t) pethidine--intermediate--C,
- 20 1-methyl-4-phenylpiperidine-4-carboxylic acid;
- 21 (u) phenazocine;
- 22 (v) piminodine;
- 23 (w) racemethorphan; and
- 24 (x) racemorphan;
- 25 (3) unless listed in another schedule, any

underscoring material = new
~~[bracketed material]~~ = delete

1 material, compound, mixture or preparation that contains any
2 quantity of the following substances having a potential for
3 abuse associated with a stimulant effect on the central nervous
4 system:

5 (a) amphetamine, its salts, optical
6 isomers and salts of its optical isomers;

7 (b) phenmetrazine and its salts;

8 (c) methamphetamine, its salts, isomers
9 and salts of isomers; and

10 (d) methylphenidate; and

11 (4) controlled substances added to Schedule II
12 by rule adopted by the board pursuant to Section 30-31-3 NMSA
13 1978.

14 B. Where methadone is prescribed, administered or
15 dispensed by a practitioner of a drug abuse rehabilitation
16 program while acting in the course of the practitioner's
17 professional practice, or otherwise lawfully obtained or
18 possessed by a person, such person shall not possess such
19 methadone beyond the date stamped or typed on the label of the
20 container of the methadone, nor shall any person possess
21 methadone except in the container in which it was originally
22 administered or dispensed to such person, and such container
23 shall include a label showing the name of the prescribing
24 physician or practitioner, the identity of methadone, the name
25 of the ultimate user, the date when the methadone is to be

.219735.2

underscoring material = new
~~[bracketed material] = delete~~

1 administered to or used or consumed by the named ultimate user
2 shown on the label and a warning on the label of the methadone
3 container that the ultimate user must use, consume or
4 administer to the ultimate user the methadone in such
5 container. Any person who violates this subsection is guilty
6 of a felony and shall be punished by imprisonment for not less
7 than one year nor more than five years, or by a fine of up to
8 five thousand dollars (\$5,000), or both."

9 SECTION 66. Section 30-31-22 NMSA 1978 (being Laws 1972,
10 Chapter 84, Section 22, as amended) is amended to read:

11 "30-31-22. CONTROLLED OR COUNTERFEIT SUBSTANCES--
12 DISTRIBUTION PROHIBITED.--

13 A. Except as authorized by the Controlled
14 Substances Act, it is unlawful for a person to intentionally
15 distribute or possess with intent to distribute a controlled
16 substance or a controlled substance analog except a substance
17 enumerated in Schedule I or II that is a narcotic drug, a
18 controlled substance analog of a controlled substance
19 enumerated in Schedule I or II that is a narcotic drug or
20 methamphetamine, its salts, isomers and salts of isomers. A
21 person who violates this subsection with respect to:

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

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

.219735.2

underscoring material = new
~~[bracketed material] = delete~~

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

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

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

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

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

.219735.2

underscoring material = new
~~[bracketed material]~~ = delete

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

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

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

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

24 (2) for the second and subsequent offenses,
25 guilty of a second degree felony and shall be sentenced

.219735.2

underscoring material = new
~~[bracketed material] = delete~~

1 pursuant to the provisions of Section 31-18-15 NMSA 1978.

2 C. Except as authorized by the Controlled Substances
3 Act, it is unlawful for a person to intentionally create or
4 deliver, or possess with intent to deliver, a counterfeit
5 substance. A person who violates this subsection with respect
6 to:

7 (1) a counterfeit substance enumerated in
8 Schedule I, II, III or IV is guilty of a fourth degree felony
9 and shall be sentenced pursuant to the provisions of Section
10 31-18-15 NMSA 1978; and

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

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

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

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

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

.219735.2

underscoring material = new
~~[bracketed material] = delete~~

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

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

11 (2) any other controlled substance enumerated in
12 Schedule I, II, III or IV or a controlled substance analog of a
13 controlled substance enumerated in Schedule I, II, III or IV
14 except a substance enumerated in Schedule I or II that is a
15 narcotic drug, a controlled substance analog of a controlled
16 substance enumerated in Schedule I or II that is a narcotic
17 drug or methamphetamine, its salts, isomers and salts of
18 isomers, is:

19 (a) for the first offense, guilty of a
20 second degree felony and shall be sentenced pursuant to the
21 provisions of Section 31-18-15 NMSA 1978; and

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

25 (3) a controlled substance enumerated in

underscoring material = new
~~[bracketed material] = delete~~

1 Schedule V or a controlled substance analog of a controlled
2 substance enumerated in Schedule V is guilty of a fourth degree
3 felony and shall be sentenced pursuant to the provisions of
4 Section 31-18-15 NMSA 1978; and

5 (4) the intentional creation, delivery or
6 possession with the intent to deliver:

7 (a) a counterfeit substance enumerated in
8 Schedule I, II, III or IV is guilty of a third degree felony
9 and shall be sentenced pursuant to the provisions of Section
10 31-18-15 NMSA 1978; and

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

17 E. Notwithstanding the provisions of Subsection A of
18 this section, distribution of a small amount of [~~marijuana or~~]
19 synthetic cannabinoids for no remuneration shall be treated as
20 provided in Paragraph (1) of Subsection B of Section 30-31-23
21 NMSA 1978."

22 SECTION 67. Section 30-31-23 NMSA 1978 (being Laws 1972,
23 Chapter 84, Section 23, as amended) is amended to read:

24 "30-31-23. CONTROLLED SUBSTANCES--POSSESSION
25 PROHIBITED.--

.219735.2

underscored material = new
[bracketed material] = delete

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

8 ~~[B. A person who violates this section with respect~~
9 ~~to:~~

10 ~~(1) up to one-half ounce of marijuana shall be~~
11 ~~issued a penalty assessment, pursuant to Section 3 of this 2019~~
12 ~~act and is subject to a fine of fifty dollars (\$50.00);~~

13 ~~(2) more than one-half ounce but up to and~~
14 ~~including one ounce of marijuana is, for the first offense,~~
15 ~~guilty of a petty misdemeanor and shall be punished by a fine~~
16 ~~of not less than fifty dollars (\$50.00) or more than one~~
17 ~~hundred dollars (\$100) and by imprisonment for not more than~~
18 ~~fifteen days, and, for a second or subsequent offense, is~~
19 ~~guilty of a misdemeanor and shall be punished by a fine of not~~
20 ~~less than one hundred dollars (\$100) or more than one thousand~~
21 ~~dollars (\$1,000) or by imprisonment for a definite term of less~~
22 ~~than one year, or both;~~

23 ~~(3) more than one ounce but less than eight~~
24 ~~ounces of marijuana is guilty of a misdemeanor and shall be~~
25 ~~punished by a fine of not less than one hundred dollars (\$100)~~

.219735.2

underscored material = new
[bracketed material] = delete

1 ~~or more than one thousand dollars (\$1,000) or by imprisonment~~
2 ~~for a definite term of less than one year, or both; or~~

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

6 G.] B. A person who violates this section with
7 respect to:

8 (1) one ounce or less of synthetic cannabinoids
9 is, for the first offense, guilty of a petty misdemeanor and
10 shall be punished by a fine of not less than fifty dollars
11 (\$50.00) or more than one hundred dollars (\$100) and by
12 imprisonment for not more than fifteen days, and, for the
13 second and subsequent offenses, is guilty of a misdemeanor and
14 shall be punished by a fine of not less than one hundred
15 dollars (\$100) or more than one thousand dollars (\$1,000) or by
16 imprisonment for a definite term less than one year, or both;

17 (2) more than one ounce and less than eight
18 ounces of synthetic cannabinoids is guilty of a misdemeanor and
19 shall be punished by a fine of not less than one hundred
20 dollars (\$100) or more than one thousand dollars (\$1,000) or by
21 imprisonment for a definite term less than one year, or both;
22 or

23 (3) eight ounces or more of synthetic
24 cannabinoids is guilty of a fourth degree felony and shall be
25 sentenced pursuant to the provisions of Section 31-18-15 NMSA

.219735.2

underscoring material = new
[bracketed material] = delete

1 1978.

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

- 14 (1) synthetic cannabinoids;
- 15 (2) any of the substances listed in Paragraphs
16 [~~(20) through (25)~~] (17) through (22) of Subsection C of
17 Section 30-31-6 NMSA 1978; or
- 18 (3) a substance added to Schedule I by a rule of
19 the board adopted on or after March 31, 2011 if the board
20 determines that the pharmacological effect of the substance,
21 the risk to the public health by abuse of the substance and the
22 potential of the substance to produce psychic or physiological
23 dependence liability is similar to the substances described in
24 Paragraph (1) or (2) of this subsection.

25 ~~[E.]~~ D. Except as provided in Subsections B, C and
.219735.2

underscoring material = new
[bracketed material] = delete

1 [G] E of this section, [~~and for those substances listed in~~
2 ~~Subsection F of this section~~] a person who violates this
3 section with respect to any amount of any controlled substance
4 enumerated in Schedule I, II, III or IV or a controlled
5 substance analog of a substance enumerated in Schedule I, II,
6 III or IV is guilty of a misdemeanor and shall be punished by a
7 fine of not less than five hundred dollars (\$500) or more than
8 one thousand dollars (\$1,000) or by imprisonment for a definite
9 term less than one year, or both.

10 [~~F. A person who violates this section with respect~~
11 ~~to phencyclidine as enumerated in Schedule III or a controlled~~
12 ~~substance analog of phencyclidine; methamphetamine, its salts,~~
13 ~~isomers or salts of isomers as enumerated in Schedule II or a~~
14 ~~controlled substance analog of methamphetamine, its salts,~~
15 ~~isomers or salts of isomers; flunitrazepam, its salts, isomers~~
16 ~~or salts of isomers as enumerated in Schedule I or a controlled~~
17 ~~substance analog of flunitrazepam, including naturally~~
18 ~~occurring metabolites, its salts, isomers or salts of isomers;~~
19 ~~gamma hydroxybutyric acid and any chemical compound that is~~
20 ~~metabolically converted to gamma hydroxybutyric acid, its~~
21 ~~salts, isomers or salts of isomers as enumerated in Schedule I~~
22 ~~or a controlled substance analog of gamma hydroxybutyric acid,~~
23 ~~its salts, isomers or salts of isomers; gamma butyrolactone and~~
24 ~~any chemical compound that is metabolically converted to gamma~~
25 ~~hydroxybutyric acid, its salts, isomers or salts of isomers as~~

.219735.2

underscored material = new
[bracketed material] = delete

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

12 G.] E. Except for a minor as defined in Subsection
13 [D] C of this section, a person who violates Subsection A of
14 this section while within a posted drug-free school zone,
15 excluding private property residentially zoned or used
16 primarily as a residence and excluding a person in or on a
17 motor vehicle in transit through the posted drug-free school
18 zone, with respect to:

19 (1) one ounce or less of [~~marijuana or~~]
20 synthetic cannabinoids is, for the first offense, guilty of a
21 misdemeanor and shall be punished by a fine of not less than
22 one hundred dollars (\$100) or more than one thousand dollars
23 (\$1,000) or by imprisonment for a definite term less than one
24 year, or both, and for the second or subsequent offense, is
25 guilty of a fourth degree felony and shall be sentenced

.219735.2

underscoring material = new
~~[bracketed material] = delete~~

1 pursuant to the provisions of Section 31-18-15 NMSA 1978;

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

6 (3) eight ounces or more of [~~marijuana or~~]
7 synthetic cannabinoids is guilty of a third degree felony and
8 shall be sentenced pursuant to the provisions of Section
9 31-18-15 NMSA 1978;

10 (4) any amount of any other controlled substance
11 enumerated in Schedule I, II, III or IV or a controlled
12 substance analog of a substance enumerated in Schedule I, II,
13 III or IV, except phencyclidine as enumerated in Schedule III,
14 a narcotic drug enumerated in Schedule I or II or a controlled
15 substance analog of a narcotic drug enumerated in Schedule I or
16 II, is guilty of a fourth degree felony and shall be sentenced
17 pursuant to the provisions of Section 31-18-15 NMSA 1978; and

18 (5) phencyclidine as enumerated in Schedule III,
19 a narcotic drug enumerated in Schedule I or II, a controlled
20 substance analog of phencyclidine or a controlled substance
21 analog of a narcotic drug enumerated in Schedule I or II is
22 guilty of a third degree felony and shall be sentenced pursuant
23 to the provisions of Section 31-18-15 NMSA 1978."

24 **SECTION 68.** Section 30-31-34 NMSA 1978 (being Laws 1972,
25 Chapter 84, Section 33, as amended) is amended to read:

.219735.2

underscored material = new
[bracketed material] = delete

1 "30-31-34. FORFEITURES--PROPERTY SUBJECT.--The following
2 are subject to forfeiture pursuant to the provisions of the
3 Forfeiture Act:

4 A. all raw materials, products and equipment of any
5 kind, including firearms that are used or intended for use in
6 manufacturing, compounding, processing, delivering, importing
7 or exporting any controlled substance or controlled substance
8 analog in violation of the Controlled Substances Act;

9 B. all property that is used or intended for use as a
10 container for property described in Subsection A of this
11 section;

12 C. all conveyances, including aircraft, vehicles or
13 vessels that are used or intended for use to transport or in
14 any manner to facilitate the transportation for the purpose of
15 sale of property described in Subsection A of this section;

16 D. all books, records and research products and
17 materials, including formulas, microfilm, tapes and data that
18 are used or intended for use in violation of the Controlled
19 Substances Act;

20 E. narcotics paraphernalia or money that is a fruit
21 or instrumentality of the crime; and

22 F. notwithstanding Subsection C of this section and
23 the provisions of the Forfeiture Act:

24 (1) a conveyance used by a person as a common
25 carrier in the transaction of business as a common carrier

.219735.2

underscoring material = new
[bracketed material] = delete

1 shall not be subject to forfeiture pursuant to this section
2 unless it appears that the owner or other person in charge of
3 the conveyance is a consenting party or privy to a violation of
4 the Controlled Substances Act;

5 (2) a conveyance shall not be subject to
6 forfeiture pursuant to this section by reason of an act or
7 omission established for the owner to have been committed or
8 omitted without the owner's knowledge or consent;

9 (3) a conveyance is not subject to forfeiture
10 for a violation of law the penalty for which is a misdemeanor;
11 and

12 (4) a forfeiture of a conveyance encumbered by a
13 bona fide security interest shall be subject to the interest of
14 a secured party if the secured party neither had knowledge of
15 nor consented to the act or omission [~~and~~

16 ~~G. all drug paraphernalia as defined by Subsection V~~
17 ~~of Section 30-31-2 NMSA 1978]."~~

18 SECTION 69. TEMPORARY PROVISION--TRANSFER.--

19 A. On July 1, 2021, any unexpended or unencumbered
20 balance in the medical cannabis fund is transferred to the
21 cannabis regulation fund.

22 B. Except to the extent any administrative rules are
23 inconsistent with the provisions of this act, any
24 administrative rules adopted by an officer, agency or other
25 entity whose responsibilities have been transferred pursuant to

.219735.2

underscoring material = new
~~[bracketed material] = delete~~

1 the provisions of this act to another officer, agency or other
2 entity remain in force until amended by the officer, agency or
3 other entity to which the responsibility for the adoption of
4 the rules has been transferred. To the extent any
5 administrative rules are inconsistent with the provisions of
6 this act, such rules are null and void.

7 SECTION 70. REPEAL.--Section 9-7-17.1 NMSA 1978 (being
8 Laws 2012, Chapter 42, Section 1) is repealed.

9 SECTION 71. EFFECTIVE DATE.--The effective date of the
10 provisions of this act is July 1, 2021.