

# OVERVIEW OF THE 2021 CANNABIS REGULATION ACT

Section 26-2C-1 to 26-2C-42 NMSA 1978

- ▶ Legalized adult-use cannabis purchasing, possession and cultivation
- ▶ Created the Cannabis Control Division within the Regulation and Licensing Department
- ▶ Provided for state cannabis licensing, business requirements, and taxation and revenue distribution
- ▶ Automatic expungement of past cannabis convictions (companion bill)
- ▶ Removes cannabis from drug scheduling under state law.
- ▶ Allows cannabis research under state law.

## WHAT DID CRA DO?

- ▶ Adults who are 21 and older will be allowed to:
  - ▶ possess, purchase, and give other adults up to two ounces of cannabis, up to 16 grams of concentrated cannabis, and 800 milligrams of edible cannabis;
  - ▶ cultivate up to six mature and six immature cannabis plants, with a maximum of 12 mature plants per household;
  - ▶ create cannabis-infused foods at home or perform extracts that do not involve volatile solvents;
  - ▶ possess greater amounts of cannabis, if it is stored in a locked space at the person's residence that is not visible from public spaces; and
  - ▶ possess, manufacture, and give away paraphernalia.

## ADULT USE PROVISIONS

- ▶ Smoking cannabis in public is punishable by a \$50 fine
- ▶ Possession in public of more than two ounces but less than eight ounces of cannabis, 16-65 grams of concentrates, and 800 - 3,299 milligrams of edibles is a misdemeanor. Greater quantities are a fourth degree felony.
- ▶ Underage possession carries a penalty of four hours of community service or a four-hour drug education and legal rights program.

## PROHIBITED CONDUCT AND PENALTIES

- ▶ Created within the Regulation and Licensing Department to promulgate rules
- ▶ Promulgated rules regarding the qualifications and procedures for licensure, security requirements for cannabis establishments, requirements regarding inspections, recordkeeping, prevention of under age purchases, labeling, advertising and marketing, health and safety, environmental protections, equity rules regarding representation by communities that have been disproportionately harmed by rates of arrests through the enforcement of cannabis prohibitions in law and policy, etc.

## CANNABIS CONTROL DIVISION

- ▶ The division shall:
  - ▶ monitor the supply and demand of cannabis products produced in New Mexico by licensees and present annually to the appropriate interim committee of the legislature the impacts of supply on illicit cannabis products markets and adequate supply of cannabis products for qualified patients and reciprocal participants;
  - ▶ request the department of public safety to enforce the provisions of the Cannabis Regulation Act as deemed necessary; and
  - ▶ undertake studies and conduct courses of instruction for division employees that will improve the operations of the division and advance its purposes.
- ▶ Rules shall be adopted and promulgated as provided in the State Rules Act.

# CANNABIS CONTROL DIVISION

- ▶ The Cannabis Control Division was created within the Regulation and Licensing Department to license and regulate cannabis businesses.
- ▶ The Division licenses 10 types of cannabis businesses: couriers, producers (growers), manufacturers, retailers, microbusinesses, cannabis consumption areas, vertically integrated establishments, and integrated microbusinesses.
- ▶ Any qualified applicant can apply for a license. Within 90 days of deeming an application complete, the Division will grant or deny the license.
  - ▶ Applicants may not have prior convictions “substantially related to the qualifications, functions or duties.” This includes felony convictions involving fraud, embezzlement, or deceit, or involving a minor in drug sales. It does not include cannabis convictions. Multiple licensees may operate at one premises, and licensees may operate many premises.

# STATE CANNABIS LICENSING

- ▶ Consumption Area
  - ▶ A licensed premise where cannabis products may be served and consumed. Alcohol cannot be sold or consumed in a cannabis consumption area. Local jurisdictions may deny cannabis consumption area licenses.
- ▶ Courier
  - ▶ A person or business licensed to transport cannabis products to qualified patients, primary caregivers, or reciprocal participants, or directly to consumers.
- ▶ Manufacturer
  - ▶ A person or business licensed to processes and prepare cannabis into usable cannabis products; has cannabis products tested by a third-party cannabis testing lab and package cannabis products for retail use; or to purchase, acquire, sell, or transport wholesale cannabis products to other cannabis establishments.

## TYPES OF LICENSES

- ▶ Producer
  - ▶ A person or business licensed to cultivate cannabis plants; has unprocessed cannabis plants; has unprocessed cannabis products tested by a third-party cannabis testing lab; transport unprocessed products only to other cannabis establishments; or sell cannabis products wholesale.
- ▶ Producer Microbusiness
  - ▶ A person or business licensed to produce cannabis products at a single premise that possesses no more than two hundred (200) total mature cannabis plants at any one time.
- ▶ Research Laboratory
  - ▶ A licensed facility that produces or possesses cannabis products and all parts of the plant genus Cannabis for the purpose of studying cannabis cultivation, characteristics, or uses. A cannabis research laboratory does not test cannabis or cannabis products for wholesale or retail use.

TYPES OF LICENSES CONT.

## ▶ Retailer

- ▶ A person or business licensed to sell cannabis products to qualified patients; primary caregivers or reciprocal participants; or directly to consumers twenty-one (21) years of age and older with active, valid identification.

## ▶ Testing Laboratory

- ▶ A person or establishment that samples, collects, and tests cannabis products for wholesale or retail use only. A cannabis testing laboratory does not produce or possess plant genus *Cannabis* for the purpose of studying cannabis cultivation, characteristics, or uses.

## ▶ Integrated Cannabis Microbusiness

- ▶ A person or business authorized to conduct one or more the following: production of cannabis at a single licensed premises with no more than two hundred (200) total *mature* cannabis plants at any one time in their possession; manufacture of cannabis products at a single licensed premises; sales and transportation of only cannabis products produced or manufactured by that person or business; operation of only one (1) retail establishment; couriering of cannabis products to qualified patients, primary caregivers or reciprocal participants, or directly to consumers. A micro integrated cannabis business (MICB) may not have multiple sublicenses of each type under the mother MICB license, only one (1) of each function.

# TYPES OF LICENSES CONT.

- ▶ Vertically Integrated Cannabis Establishment

- ▶ A person or business authorized to act as any of the following: a cannabis courier, a cannabis manufacturer, a cannabis producer, or a cannabis retailer. A vertically integrated cannabis establishment may have multiple sublicenses of each type under the mother VICE license.

TYPES OF LICENSES CONT.

- ▶ The Cannabis Control Division will develop rules — which must be consistent with industry standards — on advertising, health and safety, testing, labeling and packaging, regarding additives (including banning nicotine), quality control, and environmental protections.
- ▶ Packaging cannot be designed to appeal to minors and must be child resistant. Warnings must be included on possible adverse events, along with the number for New Mexico's poison control.
- ▶ Advertising is banned on TV, radio, and mass transit, and other than to adults who opt in or who subscribe to subscription-based media. Advertising cannot use predatory marketing targeting minors, use cartoon characters, or mimic other brands
- ▶ If a cannabis business breaks the law, the Division may suspend or revoke licenses, issue a correction plan or intermediary sanctions, or issue fines of no more than \$10,000 per violation. The Division "may suspend a license for repeated violations of the same, serious and substantial rule promulgated pursuant to the Cannabis Regulation Act pertaining to public health and safety."
- ▶ Cannabis business employees must be 21 or older. Cannabis servers are required to get permits and take education courses.

# CANNABIS BUSINESS REQUIREMENTS AND REGULATIONS

- ▶ Local jurisdictions may not:
  - ▶ “completely prohibit the operation of a licensee;”
  - ▶ prohibit transportation of cannabis through the locality;
  - ▶ restrict signage at licensed cannabis businesses that identify them;  
or
  - ▶ prohibit home cultivation.
- ▶ Municipalities and counties may:
  - ▶ “adopt time, place and manner rules” including “rules that reasonably limit density of licenses and operating times consistent with neighborhood uses;” and
  - ▶ allow indoor and outdoor cannabis smoking and vaping in locations for those 21+ (unless they have a medical license).

## LOCAL CONTROL

- ▶ The Cannabis Control Division may enter into intergovernmental agreements with tribes and pueblos.
- ▶ All cannabis must originate in New Mexico, until either federal law changes or the U.S. government issues a memo or opinion tolerating interstate commerce.

## TRIBES AND PUEBLOS

- ▶ Rules must include “procedures that promote and encourage full participation in the cannabis industry governed by the Cannabis Regulation Act by representatives of communities that have been disproportionately harmed by rates of arrest through the enforcement of cannabis prohibitions, rural communities likely to be impacted by cannabis production and agricultural producers from economically disadvantaged communities.”
- ▶ Rules must include procedures to encourage diversity among applicants, licensees, and staff.
- ▶ The Division will produce annual reports on diversity in the industry.

## DIVERSITY AND INCLUSION IN THE CANNABIS INDUSTRY

- ▶ A Cannabis Regulatory Advisory Committee will be convened to advise on rules, including to protect public health and safety while avoiding unreasonable barriers that would perpetuate the illicit market. Recommendations would include best practices and guidelines to promote diversity.
- ▶ Advisory Committee members will include representatives of the chief public defender, a district attorney, a county sheriff, a police chief, a cannabis policy organization, a tribe or pueblo, a labor organization, a state or local agency, a medical cannabis patient, and someone with prior experience in the cannabis industry. It will also include experts in small business, water issues, public health, and environmental science.

# CANNABIS REGULATORY ADVISORY COMMITTEE

- ▶ Employers may continue to enforce written zero-tolerance policies, including those that allow discipline or termination for a positive test for THC or its metabolites.

## EMPLOYER RIGHTS

- ▶ A cannabis excise tax is levied on retail sales. It starts at 12% until July 1, 2025, and then increases by one percentage point per year, maxing out at 18% on July 1, 2030. The tax does not apply to any sales to registered patients, caregivers, or visiting patients from other states.
- ▶ One-third of the cannabis excise tax revenue will go to the municipality where the sales were made. Another third of the cannabis excise tax revenue will go to the county where the sales were made.
- ▶ Gross receipts taxes apply to adult-use but not medical cannabis.

## TAXATION, REVENUE DISTRIBUTION AND FEES

- ▶ The Department of Health will monitor information on cannabis use and monitor changes on use of cannabis products, opioid use, and alcohol use patterns.
- ▶ The health secretary will appoint a public health and safety advisory committee with experience on cannabis work or research related to health, epidemiology, occupational safety, emergency medicine, or similar fields. The committee will:
  - ▶ report on the health effects of legalization, including related to child access, workplace safety, road safety, consumer safety, and other issues, starting by December 1, 2024; and
  - ▶ report on the affordability and accessibility of medical cannabis.

PUBLIC HEALTH

- ▶ If a person was charged with an offense involving cannabis that is no longer a crime on June 29, 2021 all public records held by a court or an agency of the state or a local jurisdiction shall be automatically expunged two years after the date of the person's conviction or the date of the person's arrest if there was no conviction.
- ▶ Automatic expungement under this section applies to public records involving only cannabis and cannabis paraphernalia charges and requires destruction of the records.
- ▶ 2023 HB 314 - provided that automatic expungement applies to public records involving only cannabis and cannabis paraphernalia charges and that automatic expungement requires destruction of the records, required the administrative office of the courts to implement a procedure allowing persons charged with offenses eligible for automatic expungement to verify whether their charges have been expunged, provided that if an arrest or conviction involved cannabis and non-cannabis charges, a person may request expungement of eligible cannabis charges through an administrative process through the administrative office of the courts, and required that requests for automatic expungement remain confidential.

## EXPUNGEMENT (SECTION 29-3A-8 NMSA 1978)

- ▶ 2023 SB 147 - standardized various sections related to tax compliance checks for various types of license renewal including liquor licenses, cigarette distributor and manufacturer licenses, weight distance permits, and cannabis licenses; provides that receipts from the cannabis excise tax are excluded from gross receipts; provides for destination-based sourcing of cannabis excise tax to conform with the gross receipts tax

2023 REGULAR SESSION CANNABIS  
LEGISLATION – PASSED

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2023 REGULAR SESSION CANNABIS  
LEGISLATION – PASSED

- ▶ 2023 HB 154 - enhances the penalty for possession, purchase, production, distribution, or use of cannabis by a person under the age of 18 from a civil violation under the Cannabis Regulation Act to a delinquent act.
- ▶ 2023 HB 156 - would require DOH to establish a Cannabis School Use Prevention Resource Program to provide to each school board and charter school governing body by July 1, 2024.
- ▶ 2023 HB 157 - provides language concerning new requirements for allowable and prohibited types of cannabis product packaging and labeling
- ▶ 2023 HB 313 – adds new licenses; creates equity division within CCD; allows for forfeiture of seized cannabis, removed CCD from requirements under the Uniform Licensing Act

## 2023 REGULAR SESSION CANNABIS LEGISLATION – PROPOSED

- ▶ 2023 HB 315 - creates the community reinvestment grant fund and the substance use disorder prevention and treatment fund with revenue earmarks to both funds. HB315 diverts a total of 33 percent of cannabis excise tax revenue to the newly created funds
- ▶ 2023 HB 331 - proposes to amend the Cannabis Regulation Act at Section 26-2C-17 NMSA 1978 relating to criminal history and background checks as a condition of eligibility for licensure.
- ▶ 2023 HB 418 - prohibits the synthesis of Delta 8 THC, without prior approval from the CCD and accompanying scientific evidence showing it is safe for human consumption. The bill creates a section of the Cannabis Regulation Act requiring cannabis retail locations post signs warning consumers and qualified patients over potential risks in consuming cannabis.

## 2023 REGULAR SESSION CANNABIS LEGISLATION – PROPOSED

- ▶ 2023 HB 429 - expands the term “contraband” in existing law that prohibits bringing contraband into prisons and jails to include cannabis, except when it is prescribed by a healthcare provider.
- ▶ 2023 HB 493 - All cannabis, except that grown for personal use, and cannabis products to be tracked in a state-maintained system that tracks seed or immature plants until sale; requires CCD conduct at least two compliance checks at each cannabis retailer on an annual basis and at least one compliance check annually on all other cannabis establishments.

## 2023 REGULAR SESSION CANNABIS LEGISLATION – PROPOSED