

## ARTICLE 2C Cannabis Regulation

### 26-2C-1. Short title.

Sections 1 through 42 [26-2C-1 to 26-2C-42 NMSA 1978] of this act may be cited as the "Cannabis Regulation Act".

**History:** Laws 2021 (1st S.S.), ch. 4, § 1.

#### ANNOTATIONS

**Effective dates.** — Laws 2021 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 29, 2021, 90 days after adjournment of the legislature.

#### Temporary provisions. —

Laws 2021 (1st S.S.), ch. 4, § 70 provided:

- A. On June 29, 2021, all functions, personnel, money, appropriations, records, furniture, equipment and other property of the department of health's medical cannabis program that are not part of the department's medical cannabis registry powers and duties shall be transferred to the regulation and licensing department.
- B. On June 29, 2021, all contractual obligations and other agreements of the department of health as they pertain to the department's medical cannabis program that are not part of the department's medical cannabis registry powers and duties are binding on the regulation and licensing department.
- C. Statutory references to the department of health that pertain to the department's medical cannabis program that are not part of the department's medical cannabis registry powers and duties shall be deemed to be references to the cannabis control division of the regulation and licensing department.
- D. On June 29, 2021, any unexpended or unencumbered balance in the medical cannabis fund is transferred to the cannabis regulation fund.
- E. Except to the extent any administrative rules are inconsistent with the provisions of this act, any administrative rules adopted by an officer, agency or other entity whose responsibilities have been transferred pursuant to the provisions of this act to another officer, agency or other entity remain in force until amended by the officer, agency or other entity to which the responsibility for the adoption of the rules has been transferred. To the extent any administrative rules are inconsistent with the provisions of this act, such rules are null and void.

Laws 2021 (1st S.S.), ch. 4, § 71 provided that:

- A. The legislative finance committee shall study the fiscal and economic impacts of the Cannabis Regulation Act for fiscal years 2023 through 2027 and provide a report to the revenue stabilization and tax policy committee on or before December 1, 2027.
- B. The report shall include:
  - (1) the impacts on budgets and staffing of the regulation and licensing department and the department of health;
  - (2) the impacts on general fund revenue and expenses;
  - (3) the impacts on potential funds created by the Cannabis Regulation Act;
  - (4) the impacts on the medical cannabis program;
  - (5) the impacts on local and state law enforcement; and
  - (6) the economic impact on the state, including:
    - (a) job creation;
    - (b) tourism; and
    - (c) other economic impacts.

### 26-2C-2. Definitions.

As used in the Cannabis Regulation Act:

- A. "advertisement":
  - (1) means a statement or a depiction that is intended to induce the purchase of cannabis products and that is displayed in printed material or on a sign or other outdoor display or presented in a radio, television or other media broadcast or in digital media; and
  - (2) does not include:
    - (a) a sign or outdoor display or other statement permanently affixed to a licensed premises that is intended to induce the sale of a cannabis product produced or sold on the premises;
    - (b) a label affixed to a cannabis product or the covering, wrapper or container of a cannabis product; or
    - (c) an editorial or other material printed in a publication when the publication of the editorial or material was not paid for by a licensee and was not intended to promote the sale of cannabis products by a particular brand or company;
- B. "cannabis":
  - (1) means all parts of the plant genus Cannabis containing a delta-9-tetrahydrocannabinol concentration of more than three-tenths percent on a dry weight basis, whether growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or its resin; and
  - (2) does not include:

ARTICLE 2C Cannabis Regulation | Chapter 26 - Drugs and Cosmetics

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

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

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

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

E. "cannabis establishment" means:

- (1) a cannabis testing laboratory;
- (2) a cannabis manufacturer;
- (3) a cannabis producer;
- (4) a cannabis retailer;
- (5) a cannabis research laboratory;
- (6) a vertically integrated cannabis establishment;
- (7) a cannabis producer microbusiness; or
- (8) an integrated cannabis microbusiness;

F. "cannabis extract":

(1) means a product obtained by separating resins, tetrahydrocannabinols or other substances from cannabis by extraction methods approved by the division; and

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

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

H. "cannabis manufacturer" means a person that:

- (1) manufactures cannabis products;
- (2) packages cannabis products;
- (3) has cannabis products tested by a cannabis testing laboratory; or
- (4) purchases, acquires, sells or transports wholesale cannabis products to other cannabis establishments;

I. "cannabis producer" means a person that:

- (1) cultivates cannabis plants;
- (2) has unprocessed cannabis products tested by a cannabis testing laboratory;
- (3) transports unprocessed cannabis products only to other cannabis establishments; or
- (4) sells cannabis products wholesale;

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

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

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

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

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

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

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

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

R. "commercial cannabis activity":

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

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

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

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

- U. "controlling person":
- (1) means a person that controls a financial or voting interest of ten percent or more of, or an officer or board member of, a cannabis establishment; and
  - (2) does not include a bank or licensed lending institution;
- V. "cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading or trimming of cannabis;
- W. "department" means the regulation and licensing department;
- X. "director" means the director of the division;
- Y. "division" means the cannabis control division of the department;
- Z. "dry weight basis", when used in the context of regulation of commercial cannabis activity, means a process by which delta-9-tetrahydrocannabinol concentration is measured relative to the aggregate weight of all parts of the plant genus Cannabis, whether growing or not, including the leaves of the plant, the flowers and buds of the plant, the seeds of the plant, the resin of the plant and the stalks of the plant at the point of harvest by a licensee and with no moisture added to the harvested plant;
- AA. "facility" means a building, space or grounds licensed for the production, possession, testing, manufacturing or distribution of cannabis, cannabis extracts or cannabis products;
- BB. "financial consideration" means value that is given or received, directly or indirectly, through sales, barter, trade, fees, charges, dues, contributions or donations;
- CC. "homegrown" or "homemade" means grown or made for purposes that are not dependent or conditioned upon the provision or receipt of financial consideration;
- DD. "household" means a housing unit and includes any place in or around the housing unit at which an occupant of the housing unit produces, manufactures, keeps or stores homegrown cannabis or homemade cannabis products;
- EE. "immature cannabis plant" means a cannabis plant that has no observable flowers or buds;
- FF. "industry standards" means the prevailing customary standards of business practice in the cannabis industry in jurisdictions within the United States;
- GG. "integrated cannabis microbusiness" means a person that is authorized to conduct one or more of the following:
- (1) production of cannabis at a single licensed premises; provided that the person shall not possess more than two hundred total mature cannabis plants at any one time;
  - (2) manufacture of cannabis products at a single licensed premises;
  - (3) sales and transportation of only cannabis products produced or manufactured by that person;
  - (4) operation of only one retail establishment; and
  - (5) couriers of cannabis products to qualified patients, primary caregivers or reciprocal participants or directly to consumers;
- HH. "licensed premises" means a location that includes:
- (1) all enclosed public and private areas at the location that are used in the business and includes offices, kitchens, restrooms and storerooms;
  - (2) all areas outside of a building that are specifically included in the license for the production, manufacturing, wholesale sale or retail sale of cannabis products; and
  - (3) with respect to a location that is specifically licensed for the production of cannabis outside of a building, the entire unit of land that is created by subsection or partition of land that the licensee owns, leases or has a right to occupy;
- II. "local jurisdiction" means a municipality, home rule municipality or county;
- JJ. "manufacture" means to compound, blend, extract, infuse, package or otherwise prepare a cannabis product;
- KK. "medical cannabis" means cannabis products used by a qualified patient or reciprocal participant in accordance with the Lynn and Erin Compassionate Use Act [Chapter 26, Article 2B NMSA 1978];
- LL. "medical cannabis program" means the program created pursuant to the Lynn and Erin Compassionate Use Act;
- MM. "medical cannabis registry" means the system by which the department of health approves or denies applications and issues and renews registry identification cards for qualified patients;
- NN. "primary caregiver" means a resident of New Mexico who is at least eighteen years of age and who is responsible for managing the well-being of a qualified patient with respect to the medical use of cannabis pursuant to the Lynn and Erin Compassionate Use Act;
- OO. "public place" means a place to which the general public has access and includes hallways, lobbies and other parts of apartment houses and hotels that do not constitute rooms or apartments designed for actual residence; highways; streets; schools; places of amusement; parks; playgrounds; and places used in connection with public passenger transportation;
- PP. "qualified patient" means a resident of New Mexico who holds a registry identification card pursuant to the Lynn and Erin Compassionate Use Act;
- QQ. "reciprocal participant" means a person who is not a resident of New Mexico and who holds proof of enrollment by a governmental regulatory authority to participate in the medical cannabis program of another state of the United States, the District of Columbia or a territory or commonwealth of the United States in which the person resides or a person who holds proof of enrollment by a governmental regulatory authority of a New Mexico Indian nation, tribe or pueblo to participate in its medical cannabis program;
- RR. "retail establishment" means a location at which cannabis products are sold to qualified patients, primary caregivers and reciprocal participants and directly to consumers;
- SS. "superintendent" means the superintendent of regulation and licensing;
- TT. "unprocessed" means unaltered from an original, raw or natural state; and

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

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

**History:** [Laws 2021 \(1st S.S.\), ch. 4, § 2.](#)

#### ANNOTATIONS

**Effective dates.** — Laws 2021 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to [N.M. Const., art. IV, § 23](#), was effective June 29, 2021, 90 days after adjournment of the legislature.

#### **26-2C-3. Division; powers and duties; rulemaking; advisory committee created; membership; duties.**

A. The "cannabis control division" is created in the department to administer the Cannabis Regulation Act and the licensing provisions of the Lynn and Erin Compassionate Use Act [Chapter 26, Article 2B NMSA 1978] and rules promulgated in accordance with those acts. Rules shall be adopted and promulgated as provided in the State Rules Act [Chapter 14, Article 4 NMSA 1978].

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

- (1) qualifications and procedures for licensure; provided that qualifications shall be directly and demonstrably related to the operation of the applicable cannabis establishment;
- (2) security requirements for a cannabis establishment;
- (3) requirements related to:
  - (a) inspection and monitoring of a cannabis establishment;
  - (b) a cannabis establishment's recordkeeping and tracking of cannabis from seed until sale;
  - (c) prevention of the sale or diversion of cannabis products in commercial cannabis activity to a person under the age of twenty-one;
  - (d) labeling of cannabis products packaged, sold or distributed by a cannabis establishment; and
  - (e) language for labels of cannabis products regarding potential adverse effects;
- (4) rules providing that:
  - (a) a person who is twenty-one years old or older shall not purchase more than two ounces of cannabis, sixteen grams of cannabis extract and eight hundred milligrams of edible cannabis at one time; and
    - (b) as to commercial cannabis activity: 1) a consumer shall not possess more than two ounces of cannabis, sixteen grams of cannabis extract and eight hundred milligrams of edible cannabis outside the consumer's private residence; 2) any cannabis in excess of the amounts described in Item 1) of this subparagraph shall be stored in the person's residence and shall not be visible from a public place; and 3) the division shall not limit the amount of tetrahydrocannabinol concentration in a cannabis product; provided that the division may adopt requirements for apportionment and packaging of cannabis products;
  - (5) rules on advertising and marketing of cannabis products;
  - (6) rules on how a licensee may display cannabis products for sale;
  - (7) procedures that promote and encourage full participation in the cannabis industry governed by the Cannabis Regulation Act by representatives of communities that have been disproportionately harmed by rates of arrest through the enforcement of cannabis prohibitions in law and policy, rural communities likely to be impacted by cannabis production and agricultural producers from economically disadvantaged communities;
  - (8) procedures that promote and encourage racial, ethnic, gender and geographic diversity and New Mexico residency among license applicants, licensees and cannabis industry employees;
  - (9) rules for a certification process to identify cannabis products for consumers from integrated cannabis microbusinesses or cannabis producer microbusinesses or owned by representatives of communities that have been disproportionately harmed by rates of arrest through the enforcement of cannabis prohibitions in law and policy and underserved communities that include tribal, acequia, land grant-merced and other rural historic communities;
  - (10) in consultation with the economic development department, development of a technical assistance resource guide for rural New Mexico residents who are seeking to establish vertically integrated cannabis establishments, cannabis producer microbusinesses or integrated cannabis microbusinesses;
  - (11) in consultation with the department of environment, rules to establish:
    - (a) health and safety standards applicable to the research, production and manufacture of cannabis products;
    - (b) standards for food and product safety applicable to cannabis products; and
    - (c) which additives are approved for and prohibited from inclusion in cannabis products; provided that nicotine shall be prohibited;
  - (12) in consultation with the New Mexico department of agriculture and the department of environment, rules to establish standards for quality control, inspection and testing of cannabis products for potency and contaminants, except for cannabis produced or harvested for research purposes and not for ingestion; provided that all such rules and standards shall be consistent with the rules and standards for testing of medical cannabis products; and
  - (13) in consultation with the state fire marshal's office of the homeland security and emergency management department, rules with regard to health and safety.

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

(1) qualifications and procedures for licensure; and

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

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

(1) environmental protections; and

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

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

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

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

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

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

(3) a municipal police chief appointed by the New Mexico association of chiefs of police;

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

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

(a) a cannabis policy advocacy organization;

(b) a labor organization;

(c) a qualified patient;

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

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

(f) expertise in public health;

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

(h) expertise and experience in cannabis laboratory science;

(i) expertise in environmental science;

(j) expertise in small business development;

(k) expertise in water resources;

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

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

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

I. Public voting members of the cannabis regulatory advisory committee are entitled to receive per diem and mileage as provided for state employees pursuant to the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

J. The division shall:

(1) monitor the supply and demand of cannabis products produced in New Mexico by licensees and present annually to the appropriate interim committee of the legislature the impacts of supply on illicit cannabis products markets and adequate supply of cannabis products for qualified patients and reciprocal participants;

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

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

**History:** Laws 2021 (1st S.S.), ch. 4, § 3.

**Effective dates.** — Laws 2021 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to [N.M. Const., art. IV, § 23](#), was effective June 29, 2021, 90 days after adjournment of the legislature.

**Temporary provisions.** — [Laws 2021 \(1st S.S.\), ch. 4, § 70](#) provided:

- A. On June 29, 2021, all functions, personnel, money, appropriations, records, furniture, equipment and other property of the department of health's medical cannabis program that are not part of the department's medical cannabis registry powers and duties shall be transferred to the regulation and licensing department.
- B. On June 29, 2021, all contractual obligations and other agreements of the department of health as they pertain to the department's medical cannabis program that are not part of the department's medical cannabis registry powers and duties are binding on the regulation and licensing department.
- C. Statutory references to the department of health that pertain to the department's medical cannabis program that are not part of the department's medical cannabis registry powers and duties shall be deemed to be references to the cannabis control division of the regulation and licensing department.
- D. On June 29, 2021, any unexpended or unencumbered balance in the medical cannabis fund is transferred to the cannabis regulation fund.
- E. Except to the extent any administrative rules are inconsistent with the provisions of this act, any administrative rules adopted by an officer, agency or other entity whose responsibilities have been transferred pursuant to the provisions of this act to another officer, agency or other entity remain in force until amended by the officer, agency or other entity to which the responsibility for the adoption of the rules has been transferred. To the extent any administrative rules are inconsistent with the provisions of this act, such rules are null and void.

**No provision of New Mexico law authorizes the secretary of state to convert a nonprofit corporation medical cannabis producer to a domestic profit corporation or a limited liability company.** — The Nonprofit Corporation Act (NCA), [53-8-1 to 53-8-99](#) NMSA 1978, provides that nonprofit corporations can undergo specific types of transformations, namely a merger or consolidation into another nonprofit corporation, and the Limited Liability Company Act (LLC Act), [53-19-1 to 53-19-74](#) NMSA 1978, contains specific references to conversions from one business entity type to another, namely a corporation, partnership or limited partnership may be converted to a limited liability company (LLC) or an LLC may be converted to a corporation, partnership or limited partnership, but no provision of the NCA, LLC Act, or other provision of New Mexico law provides for other types of entity transformations, such as a conversion of a nonprofit corporation to another type of business entity like a profit corporation or LLC. Accordingly, the secretary of state cannot convert previously licensed nonprofit corporation medical cannabis producers to domestic profit corporations or LLCs. *Conversion of Medical Cannabis Distributors Nonprofits* (8/27/21), [Att'y Gen. Adv. Ltr. 2021-10](#) [↗](#).

#### **26-2C-4. Department of health; duties; public health and safety advisory committee.**

- A. The department of health shall monitor emerging scientific and medical information relevant to the health effects associated with the use of cannabis products and shall monitor changes in cannabis product use, opioid use and alcohol use patterns for children and adults within the state, broken down by county, race and ethnicity.
- B. No later than September 1, 2021, the secretary of health shall appoint a "public health and safety advisory committee" composed of no more than fifteen professionals with expertise related to cannabis products through work, training or research in public health, epidemiology, medicine, medical toxicology, poison control, road safety, occupational safety, environmental safety and emergency medicine.
- C. Beginning December 1, 2024, the public health and safety advisory committee shall provide to the legislature, and the department of health shall publish on its website, an annual report on the health effects of legalizing cannabis products for adult use. The report shall include the following elements relating to cannabis product use and, as applicable, the demographics of persons who are the subject of an element:
- (1) child access;
  - (2) road safety and driving while impaired;
  - (3) workplace safety;
  - (4) the percentage of emergency room visits and outcomes;
  - (5) educational needs for children and adults;
  - (6) consumer and product safety;
  - (7) the percentage of poison control center calls; and
  - (8) the impact of cannabis use on rates of alcohol, opioid and other substance abuse.
- D. In consultation with qualified patients and primary caregivers, the department of health shall publish an annual assessment report that shall include at a minimum an evaluation of the affordability and accessibility of medical cannabis.
- E. Public members of the public health and safety advisory committee are entitled to per diem and mileage as provided for state employees pursuant to the Per Diem and Mileage Act [10-8-1 through [10-8-8](#) NMSA 1978] and shall receive no other compensation, perquisite or allowance.

**History:** [Laws 2021 \(1st S.S.\), ch. 4, § 4](#).

#### **ANNOTATIONS**

**Effective dates.** — Laws 2021 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to [N.M. Const., art. IV, § 23](#), was effective June 29, 2021, 90 days after adjournment of the legislature.

**Temporary provisions.** — [Laws 2021 \(1st S.S.\), ch. 4, § 70](#) provided:

- A. On June 29, 2021, all functions, personnel, money, appropriations, records, furniture, equipment and other property of the department of health's medical cannabis program that are not part of the department's medical cannabis registry powers and duties shall be transferred to the regulation and licensing department.
- B. On June 29, 2021, all contractual obligations and other agreements of the department of health as they pertain to the department's medical cannabis program that are not part of the department's medical cannabis registry powers and duties are binding on the regulation and licensing department.
- C. Statutory references to the department of health that pertain to the department's medical cannabis program that are not part of the department's medical cannabis registry powers and duties shall be deemed to be references to the cannabis control division of the

regulation and licensing department.

D. On June 29, 2021, any unexpended or unencumbered balance in the medical cannabis fund is transferred to the cannabis regulation fund.

E. Except to the extent any administrative rules are inconsistent with the provisions of this act, any administrative rules adopted by an officer, agency or other entity whose responsibilities have been transferred pursuant to the provisions of this act to another officer, agency or other entity remain in force until amended by the officer, agency or other entity to which the responsibility for the adoption of the rules has been transferred. To the extent any administrative rules are inconsistent with the provisions of this act, such rules are null and void.

#### **26-2C-5. Department of health; duties; transfer of licensing duties.**

Except for administration of the medical cannabis registry, the power, duty and authority of the department of health related to the medical cannabis program shall be transferred to the division on the effective date of the Cannabis Regulation Act.

**History:** [Laws 2021 \(1st S.S.\), ch. 4, § 5.](#)

#### **ANNOTATIONS**

**Effective dates.** — Laws 2021 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to [N.M. Const., art. IV, § 23](#), was effective June 29, 2021, 90 days after adjournment of the legislature.

**Temporary provisions.** — [Laws 2021 \(1st S.S.\), ch. 4, § 70](#) provided:

A. On June 29, 2021, all functions, personnel, money, appropriations, records, furniture, equipment and other property of the department of health's medical cannabis program that are not part of the department's medical cannabis registry powers and duties shall be transferred to the regulation and licensing department.

B. On June 29, 2021, all contractual obligations and other agreements of the department of health as they pertain to the department's medical cannabis program that are not part of the department's medical cannabis registry powers and duties are binding on the regulation and licensing department.

C. Statutory references to the department of health that pertain to the department's medical cannabis program that are not part of the department's medical cannabis registry powers and duties shall be deemed to be references to the cannabis control division of the regulation and licensing department.

D. On June 29, 2021, any unexpended or unencumbered balance in the medical cannabis fund is transferred to the cannabis regulation fund.

E. Except to the extent any administrative rules are inconsistent with the provisions of this act, any administrative rules adopted by an officer, agency or other entity whose responsibilities have been transferred pursuant to the provisions of this act to another officer, agency or other entity remain in force until amended by the officer, agency or other entity to which the responsibility for the adoption of the rules has been transferred. To the extent any administrative rules are inconsistent with the provisions of this act, such rules are null and void.

#### **26-2C-6. Licensing cannabis activities; limitations; medical cannabis legacy licensing; cannabis shortage for medical program.**

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

- (1) commercial cannabis activity and licensing related to commercial cannabis activity;
- (2) the medical cannabis program, except for the medical cannabis registry; and
- (3) all aspects of cannabis relating to cannabis training and education programs.

B. The division shall follow the provisions of the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978] when licensing or permitting the following:

- (1) cannabis consumption areas;
- (2) cannabis couriers;
- (3) cannabis manufacturers;
- (4) cannabis producer microbusinesses;
- (5) cannabis producers;
- (6) cannabis research laboratories;
- (7) cannabis retailers;
- (8) cannabis servers;
- (9) cannabis testing laboratories;
- (10) cannabis training and education programs;
- (11) integrated cannabis microbusinesses; and
- (12) vertically integrated cannabis establishments.

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

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

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

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

- (1) the licensee is not a delinquent taxpayer; and
- (2) there are no unfiled tax returns due from engaging in business authorized by the license.

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

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

I. Except as otherwise provided in the Cannabis Regulation Act, the division shall not limit the number of licensed premises a licensee may occupy or operate under a license. Multiple licensees may occupy a single licensed premises, and the division shall not place any restriction or prohibition on the number of licensees occupying a single licensed premises or on the number of licensed premises of a cannabis establishment except as otherwise specifically provided for by the Cannabis Regulation Act. A licensee may conduct any lawful activity or any combination of lawful activities at a licensed premises; provided that the licensee is not a licensee pursuant to the Liquor Control Act [60-3A-1 NMSA 1978]. Smoking in a cannabis consumption area on a licensed premises shall be allowed only if the cannabis consumption area is in a designated smoking area or in a standalone building from which smoke does not infiltrate other indoor workplaces or other indoor public places where smoking is otherwise prohibited pursuant to the Dee Johnson Clean Indoor Air Act [Chapter 24, Article 16 NMSA 1978].

J. Licensees are specifically allowed to conduct other licensed activities, including activities pursuant to the Hemp Manufacturing Act [Chapter 76, Article 24 NMSA 1978], except for sales of alcoholic beverages.

K. A person properly licensed and in good standing pursuant to the Lynn and Erin Compassionate Use Act [Chapter 26, Article 2B NMSA 1978] on the effective date of the Cannabis Regulation Act may continue to operate under that license for medical cannabis until comparable licenses for commercial cannabis activity are available. The division shall determine when retail sales of commercial cannabis products begin, but no later than April 1, 2022. A facility of such a licensee, upon issuance of the applicable cannabis establishment license, shall constitute licensed premises of the licensee and the licensee shall be entitled to continued and uninterrupted operations of the licensed premises. As to activity under the medical cannabis program, the licensee shall continue to operate under rules promulgated for the medical cannabis program until the division promulgates rules for medical cannabis activity, except that a qualified patient, a primary caregiver and a reciprocal participant shall not be prohibited from purchasing and obtaining cannabis products pursuant to the medical cannabis program.

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

- (1) require all cannabis establishment licensees to ensure that at least ten percent of their cannabis in stock on a monthly basis is designated for sale to qualified patients, primary caregivers and reciprocal participants;
- (2) initially take reasonable measures to expeditiously incentivize increased production of cannabis plants to remedy a shortage of cannabis supply in the medical cannabis program;
- (3) after having first exhausted measures to increase production of cannabis plants to address the shortage of cannabis supply in the medical cannabis program, exclude commercial cannabis activity from the scope of new licenses issued to initial applicants for a vertically integrated cannabis establishment, cannabis producer, integrated cannabis microbusiness, cannabis producer microbusiness or cannabis manufacturer license, which limitation shall be in force for a period of at least six months; and
- (4) require licensees who are licensed to produce cannabis to produce a specified quota of mature cannabis plants to be designated for use in the medical cannabis program; provided that:
  - (a) the division may require a licensee to devote no more than twenty-five percent of the licensee's cultivated cannabis plants on a monthly basis for use in the medical cannabis program; and
  - (b) the division may require specific tracking of cannabis plants.

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

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

N. A person who is a member of the New Mexico senate or the New Mexico house of representatives on the effective date of the Cannabis Regulation Act shall not apply for or be granted a license to engage in any commercial cannabis activity prior to July 1, 2026.

**History:** [Laws 2021 \(1st S.S.\), ch. 4, § 6.](#)

#### ANNOTATIONS

**Effective dates.** — Laws 2021 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to [N.M. Const., art. IV, § 23](#), was effective June 29, 2021, 90 days after adjournment of the legislature.

#### 26-2C-7. Commercial cannabis activity licensing; application; issuance and denial of a license.

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

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



(1) no later than September 1, 2021, accept and begin processing license applications for cannabis producers, cannabis producer microbusinesses and any person properly licensed and in good standing as a licensed cannabis producer pursuant to the Lynn and Erin Compassionate Use Act [Chapter 26, Article 2B NMSA 1978];

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

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

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

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

(b) natural lighting and energy efficiency measures; and

(c) renewable energy generation; and

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

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

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

(1) the application does not include information required by the division; or

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

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

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

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

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

(b) sell, give away or offer to sell a controlled substance to any person; and

(3) any other offense as determined by the division.

F. A conviction for which the related sentence, including any term of probation or parole, is completed for the possession, use, manufacture, distribution or dispensing or the possession with the intent to manufacture, distribute or dispense cannabis is not considered substantially related to the qualifications, functions or duties of a person seeking a license and shall not be the sole ground on which an application is denied. The division shall comply with the provisions of the Criminal Offender Employment Act [Chapter 28, Article 2 NMSA 1978].

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

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

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

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

(1) cannabis manufacturer;

(2) cannabis producer;

(3) cannabis producer microbusiness;

(4) cannabis research laboratory;

(5) cannabis retailer;

(6) cannabis testing laboratory;

(7) integrated cannabis microbusiness; and

(8) vertically integrated cannabis establishment.

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

(1) if an applicant is a limited partnership, each partner of the limited partnership;

(2) if the applicant is a limited liability company, each member of the limited liability company;

- (3) if the applicant is a corporation, each director and officer of the corporation; and
- (4) any controlling person of the applicant.

L. Arrest record information received from the federal bureau of investigation and the department of public safety shall be confidential, shall not be considered a public record pursuant to the Public Records Act [Chapter 14, Article 3 NMSA 1978] and shall not be disclosed to persons not directly involved in the decision affecting the applicant.

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

**History:** [Laws 2021 \(1st S.S.\), ch. 4, § 7.](#)

#### ANNOTATIONS

**Effective dates.** — Laws 2021 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to [N.M. Const., art. IV, § 23](#), was effective June 29, 2021, 90 days after adjournment of the legislature.

#### 26-2C-8. Licensees; disciplinary actions; sanctions; civil penalty.

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

B. The division may:

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

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

D. The provisions of this section do not apply to occupational health and safety rules promulgated pursuant to Section 3 [26-2C-3 NMSA 1978] of the Cannabis Regulation Act.

E. A person aggrieved by an action taken by the division pursuant to this section may request and receive a hearing with the superintendent for the purpose of reviewing the action in accordance with the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978].

**History:** [Laws 2021 \(1st S.S.\), ch. 4, § 8.](#)

#### ANNOTATIONS

**Effective dates.** — Laws 2021 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to [N.M. Const., art. IV, § 23](#), was effective June 29, 2021, 90 days after adjournment of the legislature.

#### 26-2C-9. Application and licensing fees.

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

- (1) a cannabis courier license, up to one thousand five hundred dollars (\$1,500) per year and an additional fee of up to one thousand dollars (\$1,000) per year for each additional licensed premises of the licensee;
- (2) a cannabis testing laboratory license, up to two thousand five hundred dollars (\$2,500) per year and an additional fee of up to one thousand dollars (\$1,000) per year for each additional licensed premises of the licensee;
- (3) a cannabis manufacturer license, two thousand five hundred dollars (\$2,500) per year and an additional fee of one thousand dollars (\$1,000) per year for each additional licensed premises of the licensee;
- (4) a cannabis producer license, two thousand five hundred dollars (\$2,500) per year and an additional fee of one thousand dollars (\$1,000) per year for each additional licensed premises of the licensee;
- (5) a cannabis retailer license, two thousand five hundred dollars (\$2,500) per year and an additional fee of one thousand dollars (\$1,000) per year for each additional licensed premises of the licensee;
- (6) a cannabis research laboratory license, two thousand five hundred dollars (\$2,500) per year and an additional fee of one thousand dollars (\$1,000) per year for each additional licensed premises of the licensee;
- (7) a vertically integrated cannabis establishment license, seven thousand five hundred dollars (\$7,500) per year and an additional fee of one thousand dollars (\$1,000) per year for each licensed premises of the licensee;
- (8) a cannabis producer microbusiness license, up to one thousand dollars (\$1,000) per year;
- (9) an integrated cannabis microbusiness license, up to two thousand five hundred dollars (\$2,500) per year and an additional fee of five hundred dollars (\$500) per year for each licensed premises of the licensee; and
- (10) a cannabis consumption area, up to two thousand five hundred dollars (\$2,500) per year.

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

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

D. The initial application fee and the annual renewal fee for a vertically integrated cannabis establishment license shall not exceed one hundred twenty-five thousand dollars (\$125,000) for a license for both medical cannabis activity and commercial cannabis activity. The initial

application fee and the annual renewal fee for a license or renewal of a license that authorizes only medical cannabis activity shall be one-half the fee applicable to a license authorizing both medical cannabis activity and commercial cannabis activity.

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

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

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

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

**History:** [Laws 2021 \(1st S.S.\), ch. 4, § 9.](#)

#### ANNOTATIONS

**Effective dates.** — Laws 2021 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to [N.M. Const., art. IV, § 23](#), was effective June 29, 2021, 90 days after adjournment of the legislature.

### 26-2C-10. Cannabis training and education program licensing; sanctions.

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

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

**History:** [Laws 2021 \(1st S.S.\), ch. 4, § 10.](#)

#### ANNOTATIONS

**Effective dates.** — Laws 2021 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to [N.M. Const., art. IV, § 23](#), was effective June 29, 2021, 90 days after adjournment of the legislature.

### 26-2C-11. Cannabis server permits; cannabis servers; permit required; applications; education program approval required; issuance or denial of a permit or approval; penalties.

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

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

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

- (1) the effect cannabis products have on the body and behavior, including the effect on a person's ability to operate a motor vehicle when under the influence of cannabis products;
- (2) the effect cannabis products have on a person when used in combination with alcohol or legal or illegal drugs;
- (3) state laws concerning cannabis licensure, cannabis liability issues and driving under the influence of cannabis;
- (4) methods of recognizing problem cannabis product users and techniques for intervening with problem cannabis product users;
- (5) methods of identifying false driver's licenses and other documents used as evidence of age and identity to prevent the sale of cannabis products to a person under twenty-one years of age pursuant to the Cannabis Regulation Act; and
- (6) harm reduction practices related to cannabis use.

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

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

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

- (1) the division may suspend a cannabis server permit for a period of thirty days if the director finds that the cannabis server is guilty of a first offense of selling, serving or dispensing a cannabis product to a person under twenty-one years of age;
- (2) the division shall suspend a cannabis server permit for a period of one year when the division finds that the cannabis server is guilty of a second offense of selling, serving or dispensing a cannabis product to a person under twenty-one years of age in violation of the Cannabis Regulation Act arising separately from the incident giving rise to the cannabis server's first offense;
- (3) the division shall permanently revoke a cannabis server permit when it finds that the cannabis server is guilty of a third offense of selling, serving or dispensing a cannabis product to a person under twenty-one years of age in violation of the Cannabis Regulation Act arising separately from the incidents giving rise to the cannabis server's first and second offenses; and
- (4) no person whose cannabis server permit is suspended pursuant to the provisions of this section shall offer, sell, serve or dispense a cannabis product as part of commercial cannabis activity in a cannabis consumption area during the period of suspension.

**History:** [Laws 2021 \(1st S.S.\), ch. 4, § 11.](#)

## ANNOTATIONS

**Effective dates.** — Laws 2021 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to [N.M. Const., art. IV, § 23](#), was effective June 29, 2021, 90 days after adjournment of the legislature.

**26-2C-12. Local control.**

A. A local jurisdiction may:

(1) adopt time, place and manner rules that do not conflict with the Cannabis Regulation Act or the Dee Johnson Clean Indoor Air Act [Chapter 24, Article 16 NMSA 1978], including rules that reasonably limit density of licenses and operating times consistent with neighborhood uses; and

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

(a) unless licensed pursuant to the Lynn and Erin Compassionate Use Act [Chapter 26, Article 2B NMSA 1978], access to the cannabis consumption area is restricted to persons twenty-one years of age and older; and

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

B. A local jurisdiction shall not:

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

(2) completely prohibit the operation of a licensee;

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

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

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

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

**History:** [Laws 2021 \(1st S.S.\), ch. 4, § 12.](#)

## ANNOTATIONS

**Effective dates.** — Laws 2021 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to [N.M. Const., art. IV, § 23](#), was effective June 29, 2021, 90 days after adjournment of the legislature.

**26-2C-13. Licensee protections.**

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

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

**History:** [Laws 2021 \(1st S.S.\), ch. 4, § 13.](#)

## ANNOTATIONS

**Effective dates.** — Laws 2021 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to [N.M. Const., art. IV, § 23](#), was effective June 29, 2021, 90 days after adjournment of the legislature.

**26-2C-14. Protection of underage persons; providing cannabis products to minors; penalties.**

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

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

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

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

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

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

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

D. The establishment of all of the following facts by a licensee prosecuted for a violation of Subsection D of this section and a cannabis server for a violation of Subsection F of Section 11 [26-2C-11 NMSA 1978] of the Cannabis Regulation Act shall constitute a defense:

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

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

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

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

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

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

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

**History:** [Laws 2021 \(1st S.S.\), ch. 4, § 14.](#)

#### ANNOTATIONS

**Effective dates.** — Laws 2021 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to [N.M. Const., art. IV, § 23](#), was effective June 29, 2021, 90 days after adjournment of the legislature.

#### 26-2C-15. Transport via courier.

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

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

**History:** [Laws 2021 \(1st S.S.\), ch. 4, § 15.](#)

#### ANNOTATIONS

**Effective dates.** — Laws 2021 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to [N.M. Const., art. IV, § 23](#), was effective June 29, 2021, 90 days after adjournment of the legislature.

#### 26-2C-16. Packaging and labeling.

Before sale or transport via cannabis courier of a cannabis product, the cannabis product shall be labeled and packaged as provided in Section 17 [26-2C-17 NMSA 1978] of the Cannabis Regulation Act.

**History:** [Laws 2021 \(1st S.S.\), ch. 4, § 16.](#)

#### ANNOTATIONS

**Effective dates.** — Laws 2021 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to [N.M. Const., art. IV, § 23](#), was effective June 29, 2021, 90 days after adjournment of the legislature.

#### 26-2C-17. Cannabis products; packaging and labeling; division rulemaking.

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

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

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

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

(3) labels shall include:

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

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

(c) potency and pesticide use;

(d) a list of pharmacologically active ingredients;

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

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

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

- (h) a warning of possible adverse effects of consumption and the New Mexico poison and drug information center phone number;
- (i) an expiration date; and
- (j) other information as required by rules promulgated pursuant to the Cannabis Regulation Act.

**History:** [Laws 2021 \(1st S.S.\), ch. 4, § 17.](#)

#### ANNOTATIONS

**Effective dates.** — Laws 2021 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to [N.M. Const., art. IV, § 23](#), was effective June 29, 2021, 90 days after adjournment of the legislature.

### 26-2C-18. Testing cannabis products; health and safety of employees.

- A. A cannabis testing laboratory's testing of cannabis products shall comply with the requirements set forth in applicable law and rules.
- B. In consultation with the department of environment and consistent with industry standards, the division shall promulgate rules to:
  - (1) ensure that testing of cannabis products occurs prior to distribution to cannabis retailers or sales by integrated cannabis microbusinesses;
  - (2) specify how often licensees shall test cannabis products;
  - (3) specify which persons bear the cost of testing cannabis products and medical cannabis;
  - (4) provide for recordkeeping;
  - (5) establish chain of custody protocols for testing sample transportation;
  - (6) ensure that testing samples are transported and stored in a manner that prevents degradation, contamination, tampering or diversion;
  - (7) specify protocols for testing sample collection that ensure accurate test results, including requiring that testing samples be collected by laboratory staff trained in testing sample collection; and
  - (8) require destruction of a tested batch of cannabis products if the testing samples from the tested batch indicate noncompliance with applicable health and safety standards promulgated by the division, unless remedial measures can bring the cannabis products into compliance with the standards or the cannabis products can be used for research purposes.
- C. Beginning no later than April 1, 2022, the division shall identify, in consultation with the department of environment, a set of updated certified reference materials for laboratory testing to be measured against.
- D. The division shall work cooperatively with the department of environment to implement inspection of cannabis establishments to ensure the health and safety of employees in accordance with the Occupational Health and Safety Act [[50-9-1](#) to [50-9-25](#) NMSA 1978] and to determine compliance with rules promulgated by the environmental improvement board.

**History:** [Laws 2021 \(1st S.S.\), ch. 4, § 18.](#)

#### ANNOTATIONS

**Effective dates.** — Laws 2021 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to [N.M. Const., art. IV, § 23](#), was effective June 29, 2021, 90 days after adjournment of the legislature.

### 26-2C-19. Researching cannabis; recordkeeping.

- A. A cannabis research laboratory's research of cannabis shall comply with the requirements set forth in applicable law and rules.
- B. The division shall develop rules and procedures consistent with industry standards to provide for recordkeeping to ensure that cannabis products are not removed from the cannabis research laboratory premises.

**History:** [Laws 2021 \(1st S.S.\), ch. 4, § 19.](#)

#### ANNOTATIONS

**Effective dates.** — Laws 2021 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to [N.M. Const., art. IV, § 23](#), was effective June 29, 2021, 90 days after adjournment of the legislature.

### 26-2C-20. Advertising and marketing restrictions.

The division shall promulgate rules consistent with industry standards that:

- A. prohibit the advertisement and marketing of cannabis products:
  - (1) on radio, television or other broadcast media, internet pop-ups and mass transit vehicles; provided that the division shall not prohibit advertising and marketing to:
    - (a) subscribers of subscription-based radio, television or other broadcast media who are twenty-one years of age or older; or
    - (b) persons twenty-one years of age or older who have solicited the advertising or marketing;
  - (2) that are false, deceptive or misleading, including making unproven health benefit claims;
  - (3) that are on billboards, posters, handbills or other visual media that are located or can be viewed within three hundred feet of a school, daycare center or church;

- (4) that depict consumption by children or other persons who appear to be younger than twenty-one years of age;
- (5) that use predatory marketing and advertising practices targeting minors; or
- (6) that are designed using cartoon characters or to mimic any other product brand; and

B. require:

- (1) all advertisements and marketing to accurately and legibly identify all persons responsible for its content; and
- (2) advertisements in print and digital communications to be placed only where the audience is reasonably expected to be twenty-one years of age or older as determined by reliable, current audience composition data.

**History:** [Laws 2021 \(1st S.S.\), ch. 4, § 20.](#)

#### ANNOTATIONS

**Effective dates.** — Laws 2021 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to [N.M. Const., art. IV, § 23](#), was effective June 29, 2021, 90 days after adjournment of the legislature.

#### 26-2C-21. Contracts.

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

**History:** [Laws 2021 \(1st S.S.\), ch. 4, § 21.](#)

#### ANNOTATIONS

**Effective dates.** — Laws 2021 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to [N.M. Const., art. IV, § 23](#), was effective June 29, 2021, 90 days after adjournment of the legislature.

#### 26-2C-22. Provision of professional services.

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

**History:** [Laws 2021 \(1st S.S.\), ch. 4, § 22.](#)

#### ANNOTATIONS

**Effective dates.** — Laws 2021 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to [N.M. Const., art. IV, § 23](#), was effective June 29, 2021, 90 days after adjournment of the legislature.

#### 26-2C-23. Medical cannabis provisions unaffected.

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

**History:** [Laws 2021 \(1st S.S.\), ch. 4, § 23.](#)

#### ANNOTATIONS

**Cross references.** — For the Federal Food, Drug and Cosmetic Act, see 21 U.S.C.S.

**Effective dates.** — Laws 2021 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to [N.M. Const., art. IV, § 23](#), was effective June 29, 2021, 90 days after adjournment of the legislature.

#### 26-2C-24. Protections for the use of cannabis.

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

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

C. A person shall not be denied parental rights or custody of or visitation with a minor child by the state or local government based solely on conduct that is lawful pursuant to the Cannabis Regulation Act. Nothing in this subsection prevents law enforcement, the children, youth and families department or the courts from acting in the best interests of the minor child.

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

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

**History:** [Laws 2021 \(1st S.S.\), ch. 4, § 24.](#)

#### ANNOTATIONS

**Effective dates.** — Laws 2021 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to [N.M. Const., art. IV, § 23](#), was effective June 29, 2021, 90 days after adjournment of the legislature.

#### 26-2C-25. Personal use of cannabis.

A. The following conduct is lawful for a person who is twenty-one years of age or older and shall not constitute grounds for detention, search or arrest of a person or search of property, and cannabis products that relate to the conduct are not contraband or subject to seizure or forfeiture pursuant to the Controlled Substances Act [Chapter 30, Article 31 NMSA 1978] or the Forfeiture Act [Chapter 31, Article 27 NMSA 1978]:

- (1) possessing, using, being under the influence of, displaying, purchasing, obtaining or transporting not more cannabis than authorized by the Cannabis Regulation Act or the medical cannabis program;
- (2) possessing in excess of two ounces of cannabis, sixteen grams of cannabis extract and eight hundred milligrams of edible cannabis if the excess is stored in the person's private residence and not visible from a public place;
- (3) transferring, without financial consideration, to a person who is twenty-one years of age or older not more than the amount of cannabis lawfully purchased and obtained pursuant to the Cannabis Regulation Act or the medical cannabis program;
- (4) ingesting or otherwise consuming cannabis or cannabis products purchased and obtained pursuant to the Cannabis Regulation Act or the medical cannabis program;
- (5) possessing, using, displaying, purchasing, obtaining or manufacturing cannabis extract using nonvolatile solvents, alcohol or carbon dioxide or no solvents;
- (6) manufacturing, transporting or giving away to a person twenty-one years of age or older cannabis paraphernalia;
- (7) assisting another person who is twenty-one years of age or older in, or allowing property to be used in, any of the acts described in Paragraphs (1) through (6) of this subsection;
- (8) smoking cannabis or cannabis products in an area authorized pursuant to the Cannabis Regulation Act or a local jurisdiction;
- (9) possessing, planting, cultivating, harvesting, drying, manufacturing cannabis products using nonvolatile solvents, alcohol or carbon dioxide or no solvents or transporting not more than six mature cannabis plants and six immature cannabis plants per person; provided that despite a household having multiple residents, no more than twelve mature cannabis plants may be present in one household; and provided further that if the person does not exceed the maximum number of cannabis plants, the person may possess the cannabis produced by the cannabis plants notwithstanding any weight limits; and
- (10) transporting homegrown cannabis or mature or immature cannabis plants when the person is moving the person's residence to another location or for purposes of testing or manufacturing.

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

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

- (1) the odor of cannabis or cannabis extract or of burnt cannabis or cannabis extract;
- (2) the possession of or the suspicion of possession of cannabis without evidence of quantity in excess of two ounces of cannabis, sixteen grams of cannabis extract or eight hundred milligrams of edible cannabis; or
- (3) the possession of multiple containers of cannabis without evidence of quantity in excess of two ounces of cannabis, sixteen grams of cannabis extract or eight hundred milligrams of edible cannabis.

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

**History:** [Laws 2021 \(1st S.S.\), ch. 4, § 25.](#)

#### ANNOTATIONS

**Effective dates.** — Laws 2021 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to [N.M. Const., art. IV, § 23](#), was effective June 29, 2021, 90 days after adjournment of the legislature.

#### 26-2C-26. Limits on personal use; penalties.

A. Nothing in Section 25 [[26-2C-25](#) NMSA 1978] of the Cannabis Regulation Act shall be construed to:

- (1) allow a person to smoke cannabis products in a public place, except in a cannabis consumption area; or
- (2) restrict the ability of a person to prohibit conduct otherwise allowed in the Cannabis Regulation Act on the person's privately owned property.

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

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



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

**History:** [Laws 2021 \(1st S.S.\), ch. 4, § 26.](#)

#### ANNOTATIONS

**Effective dates.** — Laws 2021 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to [N.M. Const., art. IV, § 23](#), was effective June 29, 2021, 90 days after adjournment of the legislature.

#### 26-2C-27. Personal production of cannabis; penalties.

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

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

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

(2) more than twelve mature or immature cannabis plants is guilty of a fourth degree felony and may be sentenced as provided in Section [31-18-15 NMSA 1978](#).

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

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

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

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

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

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

(2) four hours of community service.

**History:** [Laws 2021 \(1st S.S.\), ch. 4, § 27.](#)

#### ANNOTATIONS

**Effective dates.** — Laws 2021 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to [N.M. Const., art. IV, § 23](#), was effective June 29, 2021, 90 days after adjournment of the legislature.

#### 26-2C-28. Unlicensed sales of cannabis; penalties.

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

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

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

B. Unless otherwise provided in the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act [Chapter [26](#), Article [2B](#) NMSA 1978], it is unlawful for a person without a license to intentionally traffic cannabis products.

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

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

(2) four hours of community service.

D. Except as otherwise provided in Section 14 [[26-2C-14 NMSA 1978](#)] of the Cannabis Regulation Act, a person eighteen years of age or older who violates Subsection B of this section is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section [31-19-1 NMSA 1978](#).

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

**History:** [Laws 2021 \(1st S.S.\), ch. 4, § 28.](#)

#### ANNOTATIONS

**Effective dates.** — Laws 2021 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to [N.M. Const., art. IV, § 23](#), was effective June 29, 2021, 90 days after adjournment of the legislature.

#### 26-2C-29. Cannabis within restricted area; penalty.

Unless otherwise allowed in the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act [Chapter 26, Article 2B NMSA 1978], a person shall not possess or intentionally distribute any amount of a cannabis product on the premises of a school or daycare center unless the person is a qualified patient, a primary caregiver or a reciprocal participant; provided that this section shall not apply to a person who possesses a cannabis product for authorized purposes on the premises of a licensed cannabis training and education program. A person who violates this section is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

**History:** [Laws 2021 \(1st S.S.\), ch. 4, § 29.](#)

#### ANNOTATIONS

**Effective dates.** — Laws 2021 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to [N.M. Const., art. IV, § 23](#), was effective June 29, 2021, 90 days after adjournment of the legislature.

### 26-2C-30. Unlawful possession of cannabis; penalties.

Except as allowed in the Cannabis Regulation Act and the Lynn and Erin Compassionate Use Act [Chapter 26, Article 2B NMSA 1978]:

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

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

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

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

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

**History:** [Laws 2021 \(1st S.S.\), ch. 4, § 30.](#)

#### ANNOTATIONS

**Effective dates.** — Laws 2021 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to [N.M. Const., art. IV, § 23](#), was effective June 29, 2021, 90 days after adjournment of the legislature.

### 26-2C-31. Unlicensed manufacturing of cannabis extract; penalty.

It is unlawful for a person to manufacture cannabis extract without a license issued pursuant to the Cannabis Regulation Act unless the person produces and manufactures cannabis extract from homegrown cannabis using nonvolatile solvents, alcohol or carbon dioxide or no solvents. The use of any other solvent or process is expressly prohibited unless it is approved by the division. A person who violates this section is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

**History:** [Laws 2021 \(1st S.S.\), ch. 4, § 31.](#)

#### ANNOTATIONS

**Effective dates.** — Laws 2021 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to [N.M. Const., art. IV, § 23](#), was effective June 29, 2021, 90 days after adjournment of the legislature.

### 26-2C-32. Exemption from criminal and civil penalties; researchers.

A person shall not be subject to arrest or prosecution, penalized in any manner or denied any right or privilege solely because the person produced, possessed, distributed, dispensed or purchased cannabis products if the person produced, possessed, distributed, dispensed or purchased the cannabis products solely for the purpose of research conducted pursuant to the Lynn and Erin Compassionate Use Act [Chapter 26, Article 2B NMSA 1978] or the Cannabis Regulation Act.

**History:** [Laws 2021 \(1st S.S.\), ch. 4, § 32.](#)

#### ANNOTATIONS

**Effective dates.** — Laws 2021 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to [N.M. Const., art. IV, § 23](#), was effective June 29, 2021, 90 days after adjournment of the legislature.

### 26-2C-33. Reporting requirements for cannabis-related violations.

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

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

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

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

D. For purposes of this section, "cannabis-related violation" means a violation of any of Sections 27 through 31 [26-2C-27 to 26-2C-31 NMSA 1978] of the Cannabis Regulation Act or a violation of Section 66-8-102 or 66-13-3 NMSA 1978 if the basis for the arrest or citation is impairment due to the use of cannabis products.

**History:** Laws 2021 (1st S.S.), ch. 4, § 33.

#### ANNOTATIONS

**Effective dates.** — Laws 2021 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 29, 2021, 90 days after adjournment of the legislature.

### 26-2C-34. Employer protections; exemptions.

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

- (1) restrict an employer's ability to prohibit or take an adverse employment action against an employee for impairment by or possession or use of intoxicating substances at work or during work hours;
- (2) require an employer to commit any act that would cause the employer to be noncompliant with or in violation of federal law or federal regulations or that would result in the loss of a federal contract or federal funding; or
- (3) prevent or infringe upon the rights of an employer to adopt and implement a written zero-tolerance policy regarding the use of cannabis products. A zero-tolerance policy may permit the discipline or termination of an employee on the basis of a positive drug test that indicates any amount of delta-9-tetrahydrocannabinol or delta-9-tetrahydrocannabinol metabolite.

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

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

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

**History:** Laws 2021 (1st S.S.), ch. 4, § 34.

#### ANNOTATIONS

**Cross references.** — For the federal Railway Labor Act, see 15 U.S.C. §§ 21, 45; 18 U.S.C. § 373; 28 U.S.C. §§ 1291 to 1294 and 45 U.S.C. §§ 151 to 163, 181 to 188.

**Effective dates.** — Laws 2021 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 29, 2021, 90 days after adjournment of the legislature.

### 26-2C-35. Appeal of rules.

A person who is or may be affected by a rule promulgated by the division or other state agency pursuant to the Cannabis Regulation Act may appeal to the district court.

**History:** Laws 2021 (1st S.S.), ch. 4, § 35.

#### ANNOTATIONS

**Effective dates.** — Laws 2021 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 29, 2021, 90 days after adjournment of the legislature.

### 26-2C-36. Public records and open meetings.

Records of the division are subject to the Inspection of Public Records Act [Chapter 14, Article 3 NMSA 1978]. Rulemaking and other hearings of the division are subject to the Open Meetings Act [Chapter 10, Article 15 NMSA 1978].

**History:** Laws 2021 (1st S.S.), ch. 4, § 36.

#### ANNOTATIONS

**Effective dates.** — Laws 2021 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 29, 2021, 90 days after adjournment of the legislature.

### 26-2C-37. Intrastate source.

Except as provided in Section 38 [26-2C-38 NMSA 1978] of the Cannabis Regulation Act, all cannabis products shall be derived from a source originating within New Mexico.

**History:** Laws 2021 (1st S.S.), ch. 4, § 37.

## ANNOTATIONS

**Effective dates.** — Laws 2021 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to [N.M. Const., art. IV, § 23](#), was effective June 29, 2021, 90 days after adjournment of the legislature.

**26-2C-38. Imports and exports.**

A. Notwithstanding the provisions of Section 37 [26-2C-37 NMSA 1978] of the Cannabis Regulation Act or any other provision of law, the governor shall enter into agreements with other jurisdictions within or outside of the United States for the purposes of cross-jurisdictional delivery of cannabis products between this state and the other jurisdictions. Such agreements shall:

- (1) ensure enforceable public health and safety standards;
- (2) include a system to regulate and track the interstate or international delivery of cannabis products; and
- (3) ensure that any cannabis products delivered into this state, prior to sale to a consumer, are tested, packaged and labeled pursuant to New Mexico laws and rules.

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

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

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

- (1) federal law is amended to allow for the interstate or international transfer of cannabis products between authorized cannabis-related businesses; or
- (2) the United States department of justice issues an opinion or memorandum allowing or tolerating the interstate or international transfer of cannabis products between cannabis-related businesses as authorized by state law.

**History:** [Laws 2021 \(1st S.S.\), ch. 4, § 38](#).

## ANNOTATIONS

**Effective dates.** — Laws 2021 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to [N.M. Const., art. IV, § 23](#), was effective June 29, 2021, 90 days after adjournment of the legislature.

**26-2C-39. Cannabis regulation fund.**

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

B. Money in the cannabis regulation fund is subject to appropriation by the legislature to fund the division, the department of health, the department of environment, the New Mexico department of agriculture, the taxation and revenue department and the department of public safety for the purposes of carrying out the provisions of the Cannabis Regulation Act and the Lynn and Erin Compassionate Use Act [Chapter 26, Article 2B NMSA 1978].

**History:** [Laws 2021 \(1st S.S.\), ch. 4, § 39](#).

## ANNOTATIONS

**Effective dates.** — Laws 2021 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to [N.M. Const., art. IV, § 23](#), was effective June 29, 2021, 90 days after adjournment of the legislature.

**Temporary provisions.** — [Laws 2021 \(1st S.S.\), ch. 4, § 70](#) provided:

A. On June 29, 2021, all functions, personnel, money, appropriations, records, furniture, equipment and other property of the department of health's medical cannabis program that are not part of the department's medical cannabis registry powers and duties shall be transferred to the regulation and licensing department.

B. On June 29, 2021, all contractual obligations and other agreements of the department of health as they pertain to the department's medical cannabis program that are not part of the department's medical cannabis registry powers and duties are binding on the regulation and licensing department.

C. Statutory references to the department of health that pertain to the department's medical cannabis program that are not part of the department's medical cannabis registry powers and duties shall be deemed to be references to the cannabis control division of the regulation and licensing department.

D. On June 29, 2021, any unexpended or unencumbered balance in the medical cannabis fund is transferred to the cannabis regulation fund.

E. Except to the extent any administrative rules are inconsistent with the provisions of this act, any administrative rules adopted by an officer, agency or other entity whose responsibilities have been transferred pursuant to the provisions of this act to another officer, agency or other entity remain in force until amended by the officer, agency or other entity to which the responsibility for the adoption of the rules has been transferred. To the extent any administrative rules are inconsistent with the provisions of this act, such rules are null and void.

**26-2C-40. Plant limit. (Repealed effective December 31, 2025.)**

No later than September 1, 2021, and each September 1 thereafter, the division shall by rule limit, by plant count, canopy or square footage, the number of cannabis plants that a licensee that is not an integrated cannabis microbusiness or a cannabis producer

microbusiness may produce. The rule shall set the number of allowed cannabis plants per licensee to meet an average national market demand for cannabis products in states where adult and medical cannabis are authorized during the preceding year using a consumer base of no less than twenty percent of the adult population of New Mexico.

**History:** [Laws 2021 \(1st S.S.\), ch. 4, § 40.](#)

#### ANNOTATIONS

**Delayed repeals.** — [Laws 2021 \(1st S.S.\), ch. 4, § 73](#) repealed [26-2C-40](#) NMSA 1978, effective December 31, 2025.

**Effective dates.** — [Laws 2021 \(1st S.S.\), ch. 4](#) contained no effective date provision, but, pursuant to [N.M. Const., art. IV, § 23](#), was effective June 29, 2021, 90 days after adjournment of the legislature.

#### 26-2C-41. Indian nations, tribes and pueblos; intergovernmental agreements.

A. The department may enter into one or more intergovernmental agreements with any tribal government to efficiently coordinate the cross-jurisdictional administration of the laws of this state and the laws of tribal governments relating to the use of cannabis products set forth in the Cannabis Regulation Act and the Lynn and Erin Compassionate Use Act [Chapter [26](#), Article [2B](#) NMSA 1978]. The agreements may include, without limitation, provisions relating to:

- (1) criminal and civil law enforcement;
- (2) regulatory issues relating to the possession, delivery, production, processing or use of cannabis products;
- (3) the administration of laws relating to taxation;
- (4) any immunity, preemption or conflict of law relating to the possession, delivery, production, processing or use of cannabis products; and
- (5) the resolution of any disputes between a tribal government and the state, which may include, without limitation, the use of mediation or other nonjudicial processes.

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

- (1) provide for the preservation of public health and safety;
  - (2) ensure the security of cannabis establishments and the corresponding facilities on tribal land;
  - (3) establish provisions regulating business involving cannabis that passes between tribal land and non-tribal land in New Mexico;
- and
- (4) be negotiated in good faith, which shall respect and protect state and tribal sovereign immunity.

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

**History:** [Laws 2021 \(1st S.S.\), ch. 4, § 41.](#)

#### ANNOTATIONS

**Effective dates.** — [Laws 2021 \(1st S.S.\), ch. 4](#) contained no effective date provision, but, pursuant to [N.M. Const., art. IV, § 23](#), was effective June 29, 2021, 90 days after adjournment of the legislature.

#### 26-2C-42. Cooperation of agencies.

All state agencies shall cooperate with the division in carrying out the provisions of the Cannabis Regulation Act.

**History:** [Laws 2021 \(1st S.S.\), ch. 4, § 42.](#)

#### ANNOTATIONS

**Effective dates.** — [Laws 2021 \(1st S.S.\), ch. 4](#) contained no effective date provision, but, pursuant to [N.M. Const., art. IV, § 23](#), was effective June 29, 2021, 90 days after adjournment of the legislature.