

Summary of Passed Legislation: House Bill 2 (Cannabis Regulation Act) & Senate Bill 2 (Expungement and Resentencing Bill)

TIMELINE

- Act becomes effective 90-days after the Governor signs the bill
- Home cultivation and possession becomes legal on the effective date of the Act
- Production begins Fall '21
- Retail sales to the general public begins no later than April 1, 2022

WHAT IS THE AGE & LEGAL AMOUNT TO POSSESS?

- A person must be 21 years or older to possess, grow, and cultivate cannabis for recreational use.
- Adults 21 & older may purchase up to 2 ounces of cannabis flower, and up to 16 grams of extracts and 800 milligrams of edibles.
- Allows for the growing not more than six mature cannabis plants per person (maximum of 12 per household) and six immature plants per household for adult use cannabis and cannabis products at home. Personal production continues to be allowed for medical cannabis patients.

STATE & LOCAL CONTROL

- Establishes a new division called the Cannabis Control Division within the State Department of Regulation & Licensing.
- Local jurisdictions have some control as well. Jurisdictions may:
 - Enact reasonable zoning, land use & business licensing requirements
 - Prohibit supervised consumption areas
- Local jurisdictions may not:
 - Prohibit local licensed sales, manufacturing, or cultivation of cannabis or cannabis items
 - Prohibit consumption of cannabis in a private residence
 - Prohibit the transport & delivery of cannabis items within their jurisdiction
 - Prohibit personal home grow of cannabis

TAX STRUCTURE

- Gross Receipts Tax and local taxes apply to the value of the adult use purchase.
- An additional 12% excise tax is applied to the sale of the product with 33.33% of the net receipts attributable to the cannabis tax from cannabis retailers within the local jurisdiction.
- Medical cannabis is exempt from GRT and excise tax.

REVENUE DISTRIBUTION

- 100% excise tax goes to the General Fund.

ECONOMIC IMPACT

- A New Mexico economist (Kelly O'Donnell) projects that sales of recreational cannabis could be as much as \$318 million in the first year alone, creating over 11,000 new jobs.

*O'Donnell, K. (2019)

LICENSING STRUCTURE

License/Permit	Fees
Cannabis Consumption Areas	Up to \$2,500/year
Cannabis Couriers	\$1,500/year; \$1,000/year for each additional licensed premises
Cannabis Manufacturers	\$2,500/year; \$1,000/year for each additional licensed premises
Cannabis Producers	\$2,500/year; \$1,000/year for each additional licensed premises
Cannabis Producer Microbusinesses	\$1,000/year
Cannabis Research Laboratories	\$2,500/year; \$1,000/year for each additional licensed premises
Cannabis Retailers	\$2,500/year; \$1,000/year for each additional licensed premises
Cannabis Servers	\$35 max. for a 3-year permit
Cannabis Testing Laboratories	\$2,500/year; \$1,000/year for each additional licensed premises
Cannabis Training and Education Programs	Will be permitted
Integrated Cannabis Microbusinesses	\$2,500/year; \$500/year for each additional licensed premises
Vertically Integrated Cannabis Establishment	\$7,500/year; \$1,000/year for each licensed premises; Not to exceed \$125,000

* An additional annual fee no greater than \$50.00/cannabis plant will be assessed to any licensee cultivating cannabis plants, except for cannabis producer microbusinesses and integrated cannabis microbusinesses

PROTECTING OUR YOUTH AND PUBLIC SAFETY & HEALTH

- A Public Health Advisory Board is created to monitor cannabis use patterns and emerging data relevant to the health effects associated with legalizing cannabis. Annual reporting from Dept. of Health is required and must include information about youth access to cannabis; road safety and driving while impaired; workplace safety; percentage of emergency room visits and outcomes involving cannabis use; educational needs for youth and adults; consumer and product safety; and the percentage of poison control center calls involving cannabis use.
- Advertising and marketing is prohibited on TV, radio, on public transit except to adult subscribers of subscription-based radio, television, or other broadcast media and adults who have solicited the advertising and marketing.
- Advertising shall not be false, deceptive or misleading including making health benefit claims not supported by the published results of research recognized by the FDA.
- Banning advertising that uses predatory marketing and practices targeting minors.
- Advertising shall not use cartoon characters or be designed to mimic any other product brand or depict consumption by children or other persons who appear to be younger than 21 years of age.
- All items must be labeled & placed in re-sealable, child resistant packaging that shall not be designed to be appealing to children. A logo distinctive in design, color, size and location must be placed on the

packaging notifying that the package contains cannabis. Packaging shall also include a warning of possible adverse effects of consumption and the NM poison and drug information center phone number.

- Cannabis retailers or integrated cannabis microbusinesses shall be located at a minimum distance as determined by the local jurisdiction, but which distance shall not be any more than 300 feet or more from a school, church or daycare center that was in existence at the time the retailer or microbusiness was licensed.
- It is UNLAWFUL to: drive while under the influence of cannabis; smoke, vape or ingest cannabis in a public place (unless when permitted in an establishment under the Act); or, possess, smoke, or ingest cannabis or products on school property (exceptions for medical cannabis patients and caregivers).
- Licensees that knowingly sells cannabis products to a person younger than 21 years of age on two separate occasions within a 12-month period shall have their license suspended or revoked and may be fined in an amount up to \$10,000.

PROTECTING THE MEDICAL CANNABIS PATIENT & PROGRAM

- Keeps the medical cannabis patient registry at the Department of Health.
- Exempts medical cannabis sales from the gross receipts tax (GRT), making it like other medications. Ensures that medical cannabis will not be subject to the excise tax charged on adult use cannabis.
- Requires all retailers that sell cannabis for adult use to also sell medical cannabis.
- Requires the Division to take reasonable measures to ensure there is enough cannabis supply in the medical program.

PROTECTING THE ENVIRONMENT

- The regulatory agency must work with the Department of Agriculture, the Department of Environment and the State Engineer to establish rules governing pesticide use, environmental impacts, natural resource protections, water quality, water supply, hazardous material, and wastewater discharge.
- Requires licensees to:
 - Submit a plan to utilize energy and water reduction opportunities, including: drip irrigation and water collection; natural lighting and energy efficiency measures; and renewable energy generation.
 - Demonstrate the legal right to a commercial water supply, water rights or another source of water sufficient to meet the water needs related to the license.

SUPPORTING NEW MEXICO BUSINESSES AND WORKERS

- Creates a licensed cannabis training and education program and mandatory education for any person who is hired to serve cannabis or cannabis products.
- Allowing for “microbusiness” licenses that will help small family farms and entrepreneurs enter the market with lower capital costs.

REPAIRING THE HARMS OF PROHIBITION

- Automatically expunges public records, two years after the arrest or conviction, held by a court or state or local jurisdiction relating to offenses involving cannabis that are no longer a crime on the effective date of the Cannabis Regulation Act, or would have resulted in a lesser offense.
- Requires correctional facilities and jails in which persons are currently incarcerated or who have been incarcerated in the past for offenses that are no longer a crime under the CRA, or would have resulted in a lesser offense, to notify the court that those persons’ cases may be reopened to consider dismissal of their sentences or to have their cases expunged.

- Amends the Criminal Offender Employment Act to include in the list of criminal records that may not be used or disseminated in connection with applications for public employment or licenses convictions that have been sealed, dismissed, expunged or pardoned; juvenile adjudications; and convictions for a crime that is not job-related for the position sought and consistent with business necessity
- Removes misdemeanor convictions involving moral turpitude from the permissible causes for denying, revoking or suspending public employment or a license to engage in a trade, business or profession and removes an agency's authority to deny public employment or a professional license for convictions that do not relate to a particular employment position if the agency determines the convicted person is not sufficiently rehabilitated to warrant the public trust.
- Prohibits a professional licensing board from excluding from licensure an otherwise qualified person solely because the person had been arrested for or convicted of a crime, unless the person has a "disqualifying criminal conviction."
- Allows individuals with prior cannabis convictions to work in the new cannabis industry and to apply and receive a license.
- Authorizes the Executive to enter into intergovernmental agreements with Indian Nations, Tribes, Pueblos regarding the implementation and compliance in connection with legalization.
- Creates two microbusiness licenses that would create an opportunity for small businesses to enter the marketplace and allow the producer micro to start at the same time as existing medical cannabis licensees; requires licensing fees to be scaled on the size of the business
- Requires procedures that promote and encourage full participation in the cannabis industry 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;
- Requires procedures that promote and encourage racial, ethnic, gender and geographic diversity and New Mexico residency among license applicants, licensees and cannabis industry employees;
- Requires a certification to identify products for consumers from licensees that are 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;
- Requires the development of a technical assistance/resource guide for rural New Mexico residents who are seeking to establish a cannabis business.
- Requires the Division to 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 location where the cannabis products are produced are located in an underserved rural community, including tribal, acequia, land grant-merced or other rural historic communities.
- Decriminalizes and eliminates all fines and fees for minors who violate the Act.
- Allows for personal grow.
- Creates a standalone cannabis consumption area license type
- Removes license requirement for medical personal grow
- Creates protections for the use of cannabis:
 - Prohibiting police from stopping and searching an individual or vehicle based on the smell of cannabis alone.

- No denial of public benefits or health care based on cannabis use or a positive cannabis drug test.
- Prohibiting prior cannabis convictions to bar anyone from licensure or employment of any kind.
- Child welfare: 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.
- 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.

Penalties

	HB-2
Licensees – Sanctions – Civil Penalty	The division may: suspend or revoke a license; impose intermediate sanctions; impose a directed plan of correction; assess \$10,000/per violation of the CRA; or suspend or revoke the license.
Protection of Underage Persons – Providing Products to Minors - Penalties	<p>It is a violation to sell, serve, give, buy, deliver to a person under 21, or assist a person under twenty-one to buy, procure or be served cannabis products.</p> <p>Division shall suspend or revoke the license and may fine the licensee in an amount not to exceed \$10,000, or both.</p> <p>A person can be charged with “delinquency of a minor” - 4th degree felony.</p>
Cannabis Industry Mandatory Education--Applications--Permit Required--Education Program Approval Required--Issuance or Denial of a Permit or Approval--Penalties..	For sales, service, or dispensing a cannabis product to a person under 21, the division may suspend a permit for 30 days on first offense, for 1 year on second offense, or permanently on third offense.
Limits on Personal Use – Penalties	Smoking in public = Civil penalty of \$50
Personal Production -- Cannabis	<p>21+</p> <ul style="list-style-type: none"> • > 6 plants and up to 12 mature or immature plants = penalty assessment & fine of \$50 • >12 mature or immature plants = 4th degree felony <p>18+ but less than 21:</p> <ul style="list-style-type: none"> • Up to 6 mature cannabis plants = penalty assessment & fine of \$50 • >6 mature or immature plants and up to 12 mature/immature = misdemeanor • >12 mature/immature = 4th degree felony

	<p>Under 18:</p> <ul style="list-style-type: none"> Any amount = attendance at a four-hour evidence-based drug education and legal rights program at no cost to the minor; or four hours of community service
Unlicensed Sales - Penalties	<p>Under 18:</p> <p>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</p> <p>18+: misdemeanor</p> <p>Unlicensed sales from a building, room or other area open to the public: 4th degree felony</p>
Restricted Areas – Penalties	<p>Shall not possess or distribute in schools or daycare except per the Lynn and Erin Compassionate Use Act.</p> <p>Penalty = misdemeanor</p>
Unlawful Possession	<p>Under 21:</p> <ul style="list-style-type: none"> Attendance at a four-hour evidence-based drug education and legal rights program at no cost to the minor; or four hours of community service <p>21+:</p> <ul style="list-style-type: none"> More than 2 and up to 8 ounces of flower or more than 16 grams of extract, and more than 800 mg of edible cannabis = misdemeanor More than 8 ounces flower= 4th degree felony
Unlicensed Manufacture of Extracts	4 th degree felony

Lessons Learned About Local Cannabis Revenue Allocation and Management:

✓ Transparency & Reporting Matters – Local jurisdictions should track where the revenue is going and publicly report use of cannabis tax revenues.

✓ Involve community members, cannabis businesses, and others affected by past city cannabis policies in the overall budget decisions,

Call out: “Four years after the legalization of the adult-use market, City Council continues to vote on the Recreational Cannabis Tax Fund allocations as part of the overall city budget, with insufficient community and stakeholder involvement in program and policy development and decision-making.” <https://www.portlandoregon.gov/civic/article/780184>

✓ Make all cannabis-related policy recommendations through a total equity-building lens.

✓ Consider broad scope of economic benefits.

✓ Consider how cannabis fits into the municipality’s overall economic vision.

✓ Be cautious with revenue estimates.

There are many decision points, considerations, and updates local jurisdictions need to address. Below is a sample table with a few of the significant decision points.

Relevant Policy for City	Decision Points	Proposed Timeline
Local Control	<p>An update to relevant local policies (e.g. land use, zoning, fire codes, and related regulations), such as places where cannabis licensees should not be located (e.g. next to an elementary school). These updates should keep in mind equity considerations for residents and neighborhoods.</p> <p>1) adopt reasonable time, place and manner rules that do not conflict with the Cannabis Regulation Act or the Dee Johnson Clean Indoor Air Act, including rules that reasonably limit density of licenses and operating times consistent with neighborhood uses</p> <p>2) Decide if the local jurisdiction will allow supervised consumption areas</p>	<p>August 1, 2021</p> <p>(Production licenses can start no later than Sept. 1, 2021. All other licensed activity will be licensed no later than Jan. 1, 2022)</p>
Policing	<p>Updating City ordinances and police policies.</p> <ul style="list-style-type: none"> • See penalty table in above section. • Police are now prohibited from stopping and searching an individual or vehicle based on the smell of cannabis alone. • Home grow is allowed; up to 6 mature/6 immature plants. If more than one adult in the household no more than 12 mature/12 immature. • 	<p>Home grow and possession will be legal June 29, 2021</p>
Municipal Cannabis Tax	<p>Develop a plan for local expenditures and revenues. See best practices above.</p>	<p>Sales will start no later than April 1, 2022 – Regulation and Licensing Dept. can move that date up if they are ready).</p>
Employer/Employee Protections	<p>Evaluate whether Employee policies need to be updated. See section 34 of the Act.</p> <p>Recommendation: Consider aligning city employee off-hours cannabis use with the existing off-hours alcohol use</p>	<p>Home grow and possession will be legal June 29, 2021</p> <p>Sales will start no</p>

	policies	later than April 1, 2022
Cannabis User Protections	<p>Review city ordinances/policies/procedures to ensure:</p> <ul style="list-style-type: none"> • No denial of public benefits or health care based on cannabis use or a positive cannabis drug test. • Prior cannabis convictions cannot bar anyone from licensure or employment of any kind. • Child welfare: conduct allowed under the new law shall not in itself constitute grounds for intervention, removal or placement into state custody of a child; provision of state prevention, diversion or intervention services to the individual's family pursuant to the Family Services Act; denial of custody or visitation; and, presumption of neglect of child endangerment. • 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. • Removes misdemeanor convictions involving moral turpitude from the permissible causes for denying, revoking or suspending public employment or a license to engage in a trade, business or profession and removes an agency's authority to deny public employment or a professional license for convictions that do not relate to a particular employment position if the agency determines the convicted person is not sufficiently rehabilitated to warrant the public trust. • Amends the Criminal Offender Employment Act to include in the list of criminal records that may not be used or disseminated in connection with applications for public employment or licenses convictions that have been sealed, dismissed, expunged or pardoned; juvenile adjudications; and convictions for a crime that is not job-related for the position sought and consistent with business necessity 	<p>Home grow and possession will be legal June 29, 2021</p> <p>Sales will start no later than April 1, 2022</p>

Automatic Expungement and Consideration for Release	Automatically expunges public records, two years after the arrest or conviction, held by a court or state or local jurisdiction relating to offenses involving cannabis that are no longer a crime on the effective date of the Cannabis Regulation Act, or would have resulted in a lesser offense.	<p>On or before January 1, 2022, the department of public safety shall review the public records in the state criminal history databases and shall identify all past convictions that are potentially eligible for dismissal and expungement or redesignation pursuant to the Cannabis Regulation Act.</p> <p>The prosecutor of the case shall have until July 1, 2022 to review all cases and determine whether to challenge the dismissal and expungement or redesignation.</p>
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