

## Executive Summary

### HB 356 2019 Cannabis Regulation Act and Cannabis Tax Act

Legislative Sponsor: Rep. Javier Martínez

Co-sponsors: Rep. A. Maestas, Rep. D. Ely, Rep. D. Armstrong, and Rep. A. Rubio

#### 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 possess up to two ounces cannabis, and up to 16 grams cannabis extract outside a private residence.
  - Adults 21 & older can be licensed to cultivate up to six mature plants & six immature plants.
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#### State and local control

Establishes the Cannabis Control Division within the Department of Regulation & Licensing.

Local jurisdictions may:

- Vote to prohibit retail sales of cannabis (A municipality within a county that has voted to ban sales may vote to allow sales within the municipal boundaries);
- Add up to three percent (3%) local tax on sales of cannabis that is approved by the governing body;
- Enact reasonable zoning, land use & business licensing requirements;
- Decide to permit cannabis consumptions (smoking, vaporizing, & licensing) on the grounds of a licensed retailer or microbusiness.

Local jurisdictions *may not*:

- Prohibit consumption or cultivation of cannabis in a private residence;
  - Prohibit medical cannabis-only retail;
  - Prohibit the transport & delivery of cannabis items within their jurisdiction;
  - Prohibit commercial cultivation or manufacturing of cannabis or cannabis items;
  - Schools may not refuse to enroll or otherwise penalize someone use of commercial or medical cannabis.
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#### Licensing Structure

The Cannabis Control Division is responsible for issuing licenses. Beginning January 1, 2020 the division shall issue **temporary licenses** for commercial cannabis activity to a currently licensed medical cannabis business. **The business must apply for licensure and meet requirements established by the division, including demonstrating the financial and operational ability to engage in commercial cannabis activities.** Temporary licensees will continue to operate under Department of Health rules and regulations until the division promulgates rules.

**A medical cannabis licensee is granted a license for commercial cannabis activity is required to maintain 33% of units sold as medical cannabis items.**

By September 1, 2020 the division shall begin processing licensing applications. A temporary license shall expire on the date a regular license is issued or denied to the medical cannabis business. The division shall license producers, retailers, manufacturers, couriers, microbusinesses, and testing laboratories. All licensees must sell medical cannabis. Licenses will be designated for medical cannabis activity only or for both medical and commercial cannabis activity.

**Ensures that current medical cannabis businesses are allowed continue to their medical cannabis only activities, and shall be allowed to apply for commercial licensure.**

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### **Tax Structure**

Medical cannabis will be exempt from GRT and the cannabis surtax.

**Gross Receipts Tax and local taxes apply to the value of the purchase.** An additional surtax is created:

- 9% tax on the value of items sold directly to a customer; and,
- Municipal surtax: 0% to 3%, increased in 1/16 cent increments.\*
- County surtax: 0% to 3%, increased in 1/16 cent increments.\*

\*The governing body of a municipality or county *may* adopt an additional surtax tax. If both a municipality and county have added tax, then county taxation applies where the municipal tax is not applied. County and municipal surtax are not added on top of one another

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### **Revenue Distribution**

**Net receipts attributable to the Gross Receipts Tax (GRT) from cannabis sales go to the General Fund.**

The surtax tax is distributed as follows:

- 20% to the Community Reinvestment Fund for the purposes of job placement, mental health treatment, substance use disorder treatment, legal services to address barriers faced by formerly incarcerated persons, linkages to medical care, and prevention, early intervention and outreach services, and education for youth;
- 6% to the Cannabis Health and Safety Fund to support low-income patients in the medical cannabis program and to develop a comprehensive public education campaign;
- 2% to the Cannabis Research Fund for research on the effects and efficacy of medical and recreational cannabis, impacts on public health and safety, use rates, and cannabis and opioid use disorder treatment;

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- 6% to the Local DWI Grant Program to establish protocols to determine driver impairment, to fund drug recognition expert field certification training and to purchase roadside tests validated for testing cannabis impairment;
- The remaining revenue (66%) goes to the General Fund.

Note: Licensing fees are intended to fund the administration and enforcement of the Act. The Cannabis Control Division, housed in the Dept. of Regulation and Licensing is directed to create fees to meet budgetary need. The estimated budget to administer and enforce the Act is four million dollars (\$4,000,000) per year (35 full time employees).

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### **Protecting our Youth and Public Safety & Health**

Requires the Dept. of Health to monitor cannabis use patterns for both youth and adults, broken down by county and race / ethnicity, and to monitor emerging scientific and medical information relevant to the health effects associated with cannabis use. The department is also charged with convening the Public Health and Safety Advisory Committee. Members will be appointed by the Sec. of Health and will have expertise in public health, epidemiology, medicine, medical toxicology, poison control, road safety, occupational safety, environmental safety, and emergency medicine. The committee will report to the legislature annually on the health effects of legalizing cannabis for adult use. **Annual reporting from Dept. of Health to 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.**

**The Department of Health will have a mandate and be in charge of the Cannabis Health and Safety Fund. The fund will receive six percent (6%) of the cannabis surtax tax revenue to develop and execute a comprehensive and sustained public education program based in harm reduction that promote road safety and discourage driving while impaired; promotes abstinence for people under 21; that encourages responsible use by adults; that provides support for low-income medical cannabis patients.**

**Requires that products shall not be designed to be appealing to children or easily confused with commercially sold candy or foods that do not contain cannabis.**

Products must be labeled & placed in re-sealable, child resistant packaging. Packaging must be compostable, recyclable, or made of recycled material.

Labeling requirements include a warning of the potential of adverse effects, and the NM poison control hotline number.

**The Dept. of Environment is directed to establish rules for serving size, pesticide use, ingredients, potency and pesticide use.**

Advertising and marketing is prohibited on TV, radio, on billboards, public transit. Advertising shall not use cartoon characters or be designed to mimic any other product brand and must be placed more than 300 feet from a school, day care center, or church.

Provides for the State to promulgate regulations to prevent the sale or diversion of cannabis and cannabis products to persons under the age of 21.

A community reinvestment fund is created. Grants may be used to fund programs supporting public education, a public health and drug misuse prevention focused on youth, and evidenced-based substance misuse programs for youth.

**Licensees may not operate within 300 feet of a school, day care center, or church. And, it is unlawful for an individual to possess or advertise any amount of cannabis within 300 feet of a school, day care, or school.**

Only adults over the age of 21 may be employed by licensees.

Penalties for possession of cannabis for personal use for persons under 21 become a fine. This will deter cannabis use by youth while preventing youth from entering the criminal justice system for simply possessing cannabis. Early criminal justice involvement often leads to future offending behavior.

It is UNLAWFUL to: drive while under the influence of cannabis; smoke or ingest cannabis in a public place (unless permitted in a cannabis establishment licensed under the Act); cultivate cannabis in public view; or, possess, smoke or ingest cannabis or products on school property.

Protection for youth whose parents lawfully use cannabis: youth cannot be separated from their parents for use of cannabis or medical cannabis in compliance with the law.

It is not lawful for a person without a license to intentionally distribute cannabis or cannabis products.

It is unlawful for any person to use volatile solvents to manufacture cannabis extracts without a license.

Six percent (6%) of the cannabis surtax tax revenue is allocated to the local DWI grant fund to determine driver impairment, to fund drug recognition expert field certification training and to purchase roadside tests validated for testing cannabis impairment.

Two percent (2%) of the cannabis surtax tax revenue is allocated to the Cannabis Research Fund administered by the UNM Health and Sciences Chancellor to research and evaluate the implementation of legalization and its effects on New Mexico, and on the efficacy of medical cannabis. The Chancellor is required to publish a report annually on the impacts on public health and health costs associated with an increase or decrease in the use of alcohol and other drugs;

impact of problematic cannabis use, public safety issues and effectiveness of efforts to prevent underage access to and use of cannabis items.

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### **Supporting a Local & Sustainable Industry that Protects our Environment**

Applicants for industry licenses must prove continuous residency in New Mexico for two years prior to the application submission. If the licensee is an entity this applies to all controlling persons of the entity, but allows for capital investment from outside New Mexico.

Creates a “cannabis microbusiness” license type. A microbusiness can collect up to two million dollars (\$2,000,000) in revenue. A microbusiness can grow no more than 99 plants, can manufacture cannabis products (using non-volatile solvents only), can package, transport cannabis products, sell or courier cannabis products to other cannabis establishments or consumers, can have cannabis items tested by licensed labs, or can operate a retail facility.

**Requires licensing fees be scaled based on the size of the business to promote ability of small businesses to thrive.** This requirement aims to ensure that the cost of licensing isn’t prohibitive for people without large amounts of investment capital. Medical cannabis only licenses shall not exceed more than 50% of the cost cannabis licensing for combined commercial and medical cannabis.

Requires licensees use 50% captured, active, passive or natural solar energy or recycled water to produce cannabis or otherwise in the business licensed.

The regulatory agency must work with the Department of Agriculture and the Department of Environment to establish rules governing pesticide use, environmental impacts, natural resource protections, water quality, water supply, hazardous material, and wastewater discharge.

**Rules for occupational health and safety standards for cannabis industry employees are required to be established.**

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### **Repairing the Harms of the War on Drugs**

Creates a community reinvestment program and provides that 20% of net receipts from tax revenue shall be dispersed to the fund to establish and run the community reinvestment grants program, which will receive applications and make grants. The Department of Health shall administer the fund. Funds are specifically to be granted to community-based nonprofit organizations or governmental agencies for the purpose of reinvesting in communities disproportionately affected by past federal and state drug policies. **Funds shall be used to support job placement, mental health treatment, substance use disorder treatment, system navigation services, legal services to address barriers to reentry, and linkages to medical care and women’s health services. Grants may also be issued for drug use prevention and**

**outreach services, behavioral health programs, evidence based treatment services, among other things.**

The State is required to promulgate procedures and policies that promote and encourage full participation in the regulated market by people from communities disproportionately harmed by cannabis prohibition and enforcement.

In evaluating license applications, the State is required to consider how to achieve racial, ethnic, gender, and geographic diversity among licensees.

Persons who have been convicted of cannabis-related offenses may have their records expunged and if they are currently serving time for cannabis-related offense, their sentences shall be considered for recall or dismissal. This will start to repair the historical unequal enforcement of cannabis against people of color.

Provides that a prior controlled substance conviction shall not be the sole basis for denial of licenses. People of color have been disproportionately targeted by drug law enforcement and should not be excluded from the market just because they have been involved in the criminal justice system for a cannabis law offense.

The State is tasked with encouraging low-income applicants (defined as someone whose household income is 200% or less than federal poverty guidelines) and approving these applicants on a priority basis.

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**Protecting the Medical Cannabis Patient & Program (see also next section)**

Keeps the medical cannabis patient registry at the Department of Health.

**Prevents local jurisdictions from banning *medical cannabis only* sales.**

Exempts medical cannabis sales from the gross receipts tax (GRT), making it like other medications. Ensures that medical cannabis will not be subject to surtax tax charged on adult use cannabis.

Creates a medical cannabis subsidy program to help support the needs of patients who cannot afford their medicine – Six percent (6%) of funds from revenue go to the Cannabis Health and Safety Fund, administered by the Dept. of Health to support medical cannabis access for low-income and indigent patients and to fund a cannabis public education campaign.

Requires all retailers that sell cannabis for adult use to also sell medical cannabis. Requires retailers that serve the adult use consumers and medical cannabis patients maintain annual sales of at least 33% medical cannabis items.

Establishes that youth cannot be separated from their parents for use of medical cannabis in compliance with the law.

Creates employment protections, and protections for people under state supervision who use medical cannabis.

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**Establishes Employment Protections for Medical Cannabis Patients**

Provides employment protections for the medical use of cannabis. It establishes that, unless established “by a preponderance of evidence that an employee’s lawful use of medical cannabis has impaired the ability to perform the employee’s job” that it is unlawful to take adverse employment action against an employee for conduct that is lawful, or for the employee’s positive drug test for cannabis.

Provides that an employer may consider an employee’s ability to perform the job responsibilities when the employee “manifests articulable symptoms while working that decrease or lessen the employee’s performance, duties, or the tasks of an employee’s job.”

**Safety sensitive positions are exempted from these protections.** Safety sensitive positions are defined in the statute as jobs in which performance by a person under the influence of drugs or alcohol would constitute an immediate and direct threat of injury or death to that person or to another.

Does not require an employer to commit any act that would cause the employer to be in violation of federal law or that would result in the loss of a federal contract.

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