

FIFTY-FIFTH LEGISLATURE
FIRST SESSION, 2021

HB 12/a

March 17, 2021

Mr. President:

Your **JUDICIARY COMMITTEE**, to whom has been referred

**HOUSE TAXATION & REVENUE COMMITTEE SUBSTITUTE FOR
HOUSE HEALTH & HUMAN SERVICES COMMITTEE SUBSTITUTE
FOR HOUSE BILL 12, as amended**

has had it under consideration and reports same with recommendation that it **DO PASS**, amended as follows:

1. Strike Senate Tax, Business and Transportation Committee Amendments 2, 34 through 36, 53, 55, 66 through 74, 76 through 79, 108 through 110, 112 and 113.

2. On page 2, line 1, after the first semicolon, strike the remainder of the line, strike line 2 up to the semicolon and insert in lieu thereof "DISTRIBUTING A PORTION OF THE CANNABIS EXCISE TAX TO MUNICIPALITIES AND COUNTIES".

3. On page 2, line 3, before "PROVIDING" insert "AMENDING THE CRIMINAL RECORD EXPUNGEMENT ACT;".

4. On page 14, line 3, strike Paragraph (2) in its entirety.

5. Renumber the succeeding paragraphs accordingly.

6. On page 21, line 2, strike "and", and between lines 2 and 3, insert the following new subparagraph:

"(1) who has previous experience as a cannabis retailer, cannabis producer or cannabis manufacturer; and".

7. Reletter the succeeding subparagraph accordingly.

8. On page 28, line 10, after "Act", insert "; provided that upon a finding and the recommendation of the cannabis regulatory advisory committee that market equilibrium is deficient and

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threatens the economic viability of the cannabis industry or adequate supply of cannabis, the superintendent may impose temporary moratoria on new licensure, issue new licenses or allow greater production by current licensees. The decision to impose temporary moratoria on new licensure, issue new licenses or allow greater production by current licensees shall be made with input from the university of New Mexico bureau of business and economic research and the director of the New Mexico department of agriculture".

9. On page 28, between lines 10 and 11, insert "K. The division shall not allow a person that is licensed as any type of cannabis establishment other than a cannabis research laboratory to own, directly or indirectly, a cannabis testing laboratory license."

10. Reletter the succeeding paragraphs accordingly.

11. On page 28, line 16, strike "or the medical cannabis program" and insert in lieu thereof ". 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 division as required by the medical cannabis program".

12. On page 29, line 9, strike "as a licensed cannabis producer".

13. On page 29, line 12, after "licensee", insert "of comparable class and privileges".

14. On page 29, strike lines 13 through 19 in their entirety and insert in lieu thereof "activity under the Cannabis Regulation Act; provided that retail sale of commercial cannabis shall not begin until April 1, 2022."

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15. On page 32, line 21, strike "The" and insert in lieu thereof "Except as otherwise provided in the Cannabis Regulation Act, the".

16. On page 33, strike line 25 in its entirety and on page 34, strikes lines 1 through 7 in their entirety and insert in lieu thereof:

"(b) the division may require specific tracking of cannabis plants."

17. On page 34, strike lines 10 through 16 in their entirety and insert in lieu thereof:

"(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;

(2) no later than January 1, 2022, accept and begin processing license applications for all license types; provided that retail sale of commercial cannabis shall not begin until April 1, 2022;"

18. Renumber the succeeding paragraphs accordingly.

19. On page 35, line 18, strike "January 1, 2022" and insert in lieu thereof "April 1, 2022".

20. On page 36, line 15, strike "or".

21. On page 36, line 21, strike the period and insert in lieu thereof the following:

"; or

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(4) the applicant or a controlling person in the applicant's entity is a current licensee or an owner, director or officer of a current licensee."

22. On page 38, line 12, after "Act", strike the remainder of the line, strike lines 13 through 20 in their entirety and insert in lieu thereof a period and the following:

"B. 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, two thousand five hundred dollars (\$2,500) per year and an additional fee of one thousand dollars (\$1,000) per year for each licensed premises of the licensee;

(2) a cannabis testing 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 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 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 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 licensed premises of the licensee;

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(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 licensed premises of the licensee;

(7) a vertically integrated cannabis establishment license, two thousand five hundred dollars (\$2,500) 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, one thousand five hundred dollars (\$1,500) per year and an additional fee of five hundred dollars (\$500) per year for each licensed premises of the licensee; and

(9) an integrated cannabis microbusiness license, one thousand five hundred dollars (\$1,500) per year and an additional fee of five hundred dollars (\$500) per year for each licensed premises of the licensee.

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

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

E."

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23. On page 39, lines 4 through 8, strike "The division shall charge five percent of the maximum fee assessed for a vertically integrated cannabis establishment licensee as the licensing fee for a cannabis producer microbusiness or an integrated cannabis microbusiness; provided that if" and insert in lieu thereof:

"F. If".

24. Reletter the succeeding subsections accordingly.

25. On page 39, line 18, strike "2022" and insert in lieu thereof "2026".

26. On page 81, line 6, strike "NO PLANT LIMIT.--No state", strike lines 7 through 10 in their entirety and insert in lieu thereof the following:

"PLANT LIMIT.--No later than January 1, 2022, and each January 1 thereafter, the division shall promulgate rules that limit the number of cannabis plants that a licensee that is not an integrated cannabis microbusiness or a cannabis producer microbusiness may produce pursuant to the Cannabis Regulation Act. The rules shall set the number of permitted cannabis plants per licensee at a value that reflects the median number of cannabis plants produced nationwide by individuals or entities licensed to produce recreational cannabis in states other than New Mexico during the preceding year, adjusted by population."

27. On page 83, line 11, strike the second occurrence of "50" and insert in lieu thereof "49" and on line 12, strike "57" and insert in lieu thereof "53".

28. On page 84, strike lines 24 and 25 in their entirety and on page 85, strike line 1 in its entirety.

29. Reletter the succeeding subsections accordingly.

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30. On page 85, line 18, strike "eight" and insert in lieu thereof "twelve".

31. Strike pages 86 and 87 in their entirety.

32. On page 88, lines 1 and 2, strike "taxes imposed pursuant to the Cannabis Tax Act are" and insert in lieu thereof "cannabis excise tax is".

33. On page 88, strike lines 5 through 8 in their entirety.

34. On page 88, line 12, after the first occurrence of "tax", strike the remainder of the line.

35. On page 88, strike lines 14 through 25, and on page 89, strike lines 1 through 8 in their entirety.

36. On page 93, strike lines 5 through 25, strike pages 94 through 101 and on page 102, strike lines 1 through 20 and insert in lieu thereof the following new section:

"SECTION 55. A new section of the Tax Administration Act is enacted to read:

"[NEW MATERIAL] DISTRIBUTION--CANNABIS EXCISE TAX--
MUNICIPALITIES AND COUNTIES.--

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to each municipality in an amount equal to thirty-three and thirty-three hundredths percent of the net receipts attributable to the cannabis excise tax from cannabis retailers within the municipality.

B. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to each county in an amount equal to thirty-three and thirty-three hundredths percent of the net receipts attributable to the cannabis excise tax from cannabis retailers within the county

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area of the county.

C. The department may deduct an amount not to exceed three percent of the distributions made pursuant to this section for the reasonable costs for administering the distributions.

D. As used in this section, "county area" means that portion of a county located outside the boundaries of any municipality."".

37. Renumber sections to correspond with these amendments.

38. On page 186, between lines 13 and 14, insert the following new sections:

"SECTION 79. Section 29-3A-4 NMSA 1978 (being Laws 2019, Chapter 203, Section 4) is amended to read:

"29-3A-4. EXPUNGEMENT OF RECORDS UPON RELEASE WITHOUT CONVICTION.--

A. One year from the date of the final disposition in the case, a person released without conviction for a violation of a municipal ordinance, misdemeanor [~~or~~], felony, Motor Vehicle Code violations and penalty assessments may petition the district court in the district in which the charges against the person originated for an order to expunge arrest records and public records related to that case.

B. A petitioner shall provide notice by first-class United States mail of the filed petition to the following parties, which parties shall be given [~~an opportunity~~] thirty days in which to provide to the district court any objections to the petition:

- (1) the district attorney for that district; and
- (2) the department of public safety [~~and~~

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~~(3) the law enforcement agency that arrested the petitioner].~~

C. A single petition filed pursuant to Subsection A of this section may include a request to expunge multiple arrest records and public records that originated within the jurisdiction of a district. A petition shall be filed under seal or under pseudonym. Petitions brought pursuant to the Criminal Record Expungement Act and all records of proceedings thereunder shall be expunged upon the conclusion of proceedings. The petitioner shall attach to and file with the petition copies of the petitioner's record of arrest and prosecutions from the department of public safety dated no earlier than ninety days prior to the date the petition is filed.

D. A party that seeks to object to a petition on the basis of the contents of a petitioner's record of arrest and prosecutions from the federal bureau of investigation must provide a copy of that record to a petitioner at no charge within the deadline set forth in subsection C of this section.

[~~C.~~] E. After a hearing on the petition, the court shall issue an order within thirty days of the hearing requiring that all arrest records and public records related to the case be expunged if it finds that no other charge or proceeding is pending against the petitioner and if the petitioner was released without a conviction, including:

- (1) an acquittal or finding of not guilty;
- (2) a nolle prosequi, a no bill or other dismissal;
- (3) a referral to a preprosecution diversion program;
- (4) an order of conditional discharge pursuant to Section 31-20-13 NMSA 1978; or

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(5) the proceedings were otherwise discharged.

~~[D.]~~ F. The court shall cause a copy of the order to be delivered to all relevant law enforcement agencies and courts. The order shall prohibit all relevant law enforcement agencies and courts from releasing copies of the records to any person, except upon order of the court."

SECTION 80. Section 29-3A-5 NMSA 1978 (being Laws 2019, Chapter 203, Section 5) is amended to read:

"29-3A-5. EXPUNGEMENT OF RECORDS UPON CONVICTION.--

A. A person convicted of a violation of a municipal ordinance, misdemeanor or felony, following the completion of the person's sentence and the payment of any fines or fees owed to the state for the conviction, may petition the district court in which the person was convicted for an order to expunge arrest records and public records related to that conviction.

B. A petitioner shall provide notice by first-class United States mail of the filed petition to the following parties, which parties shall be given an opportunity to provide to the district court any objections to the petition:

- (1) the district attorney for that district; and
- (2) the department of public safety [~~and~~
- ~~(3) the law enforcement agency that arrested the petitioner].~~

C. After a hearing on a petition, the court shall issue an order within thirty days of the hearing requiring that all arrest records and public records related to the conviction be expunged if the court finds that:

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- (1) no other charge or proceeding is pending against the petitioner;
- (2) justice will be served by an order to expunge;
- (3) the petitioner has fulfilled any victim restitution ordered by the court in connection with the petitioner's conviction; and
- (4) no other criminal conviction of the petitioner has occurred for a period of:
 - (a) two years if the petition relates to a conviction for a violation of a municipal ordinance or a misdemeanor not otherwise provided in this paragraph;
 - (b) four years if the petition relates to a misdemeanor conviction for aggravated battery as provided in Subsection B of Section 30-3-5 NMSA 1978 or to a conviction for a fourth degree felony not otherwise provided in this paragraph;
 - (c) six years if the petition relates to a conviction for a third degree felony not otherwise provided in this paragraph;
 - (d) eight years if the petition relates to a conviction for a second degree felony not otherwise provided in this paragraph; or
 - (e) ten years if the petition relates to a conviction for a first degree felony or for any offense provided in the Crimes Against Household Members Act.

D. The court shall cause a copy of the order to be delivered to all relevant law enforcement agencies and courts. The order shall prohibit all relevant law enforcement agencies and courts from releasing copies of such records to any person, except

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upon order of the court.

E. To determine whether justice will be served by an order to expunge, the court shall consider:

(1) the nature and gravity of the offense or conduct that resulted in the petitioner's conviction;

(2) the petitioner's age, criminal history and employment history;

(3) the length of time that has passed since the offense was committed and the related sentence was completed;

(4) the specific adverse consequences the petitioner may be subject to if the petition is denied; and

(5) any reasons to deny expungement of the records submitted by the district attorney.

F. For the purposes of determining the time lapsed since a criminal conviction as required in Subsection C of this section, time shall be measured from the last date on which a person completed a sentence for a conviction in any jurisdiction.

G. The provisions of Subsection A of this section do not apply to an offense committed against a child, an offense that caused great bodily harm or death to another person, a sex offense as defined in Section 29-11A-3 NMSA 1978, embezzlement pursuant to Section 30-16-8 NMSA 1978 or an offense involving driving while under the influence of intoxicating liquor or drugs."".

39. Renumber the succeeding sections accordingly.

40. On page 187, between lines 4 and 5, insert the following new section:

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"SECTION 81. DELAYED REPEAL.--Section 46 of this act is repealed effective December 31, 2025."

41. Renumber sections to correspond to these and previous amendments.

Respectfully submitted,

Joseph Cervantes, Chairman

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 5 For 4 Against

Yes: 5

No: Baca, Cervantes, Moores, Pirtle

Excused: None

Absent: None

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