

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website (www.nmlegis.gov).

FISCAL IMPACT REPORT

ORIGINAL DATE 2/12/21

SPONSOR Lujan/Montoya, R.E. **LAST UPDATED** 2/14/21 **HB** 17

SHORT TITLE Cannabis Regulation Act **SB** _____

ANALYST Glenn/Torres

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY22	FY23	FY24		
\$15,878.7	\$32,529.3	\$46,534.1	Recurring	Cannabis Excise -State GF
\$8,550.1	\$17,515.8	\$25,056.8	Recurring	Cannabis Excise -Local
\$5,252.2	\$10,759.7	\$15,392.0	Recurring	GRT – State GF
\$3,285.7	\$6,731.1	\$9,629.0	Recurring	GRT - Local
\$(9,675.0)	\$(11,600.0)	\$(13,900.0)	Recurring	Medical Cannabis Deduction – State GF
\$(6,052.5)	\$(7,300.0)	\$(8,800.0)	Recurring	Medical Cannabis Deduction - Local
\$11,455.9	\$31,689.0	\$48,026.1	Recurring	TOTAL GENERAL FUND
\$5,783.2	\$16,946.9	\$25,885.8	Recurring	TOTAL LOCAL

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	\$0	\$4,450.0	\$5,325.0	\$9,775.0	Recurring	Cannabis Regulation Fund/General Fund (DOH)
	\$0	\$1,282.0	\$1,282.0	\$2,564.0	Recurring	Cannabis Regulation Fund/General Fund

						(NMED)
	\$0	\$350.0	\$0	\$350.0	Nonrecurring	Cannabis Regulation Fund/General Fund (NMED)
Total	\$0	\$262.0	\$262.0	\$524.0	Recurring	Cannabis Regulation Fund/General Fund (NMDA)
	\$0	\$150.0	\$0	\$150	Nonrecurring	Cannabis Regulation Fund/General Fund (NMDA)
	\$0	\$1,257.9	\$1257.9	\$2,515.8	Recurring	Cannabis Regulation Fund/General Fund (DPS)

(Parenthesis () Indicate Expenditure Decreases)

Relates to
HB12, SB288, SB363

Duplicates
SB13

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Taxation and Revenue Department (TRD)
- Department of Agriculture (NMDA)
- Environment Department (NMED)
- Department of Health (DOH)
- Department of Public Safety (DPS)
- Economic Development Department (EDD)
- Law Offices of the Public Defender (LOPD)
- Administrative Office of the District Attorneys (AODA)
- Administrative Hearings Office (AHO)
- Administrative Office of the Courts (AOC)
- New Mexico Attorney General (NMAG)
- Public Education Department (PED)

No Response Received

- Regulation and Licensing Department (RLD)
- Taxation and Revenue Department (TRD)

SUMMARY

House Bill 17 decriminalizes the possession, use, production, transportation, and sale of

commercial cannabis for nonmedical adult use and creates a regulatory and taxation structure. The bill enacts the Cannabis Regulation Act (CRA), a comprehensive plan for regulation and licensing of commercial cannabis production and distribution and sale and consumption of cannabis by people age 21 or older. A new Cannabis Regulation Division (CRD) created in RLD is charged with regulating and administering a licensing program for commercial cannabis activities and the medical cannabis program provided in the Lynn and Erin Compassionate Use Act (LECU Act) and cannabis education and training programs.

As of the effective date of the act, CRD must convene the Cannabis Policy and Regulatory Advisory Committee (CPRAC) to advise on rules and best practices, including best practices that promote diversity in licensing and employment and protect public safety, and to publish an annual report detailing its activities. CRD is required to develop rules in consultation with CPRAC, NMED, and NMDA. NMED also must adopt rules establishing labeling and packaging requirements for cannabis products and proposed occupational health and safety rules for persons working in the cannabis industry. The bill requires rulemaking by CRD as necessary to carry out its duties under the CRA by July 1, 2022.

No later than July 1, 2021, CRD must begin issuing transitional licenses to persons licensed under LECU Act to allow those licensees to conduct medical and commercial cannabis activities. Each license will designate whether it is solely for medical cannabis activity or for both medical and commercial cannabis activity. CRD will accept and begin processing transitional and regular license applications no later than the act's effective date. CRD's licensing program encompasses a variety of commercial and medical cannabis activities, including licenses for manufacturers, testing and research laboratories, couriers, integrated businesses and microbusinesses, producers, and retailers. CRD also will issue cannabis occupational licenses, which allow a person to offer, sell, serve, dispense, cultivate, manufacture, test, or transport cannabis products. Licenses shall be valid for two years, unless suspended or revoked for cause. Violations of the CRA may result in license suspension or revocation, sanctions, correction plans, or penalties.

Under the CRA, adults age 21 and older are allowed to purchase, possess, and transport not more than 2 ounces of cannabis flowers and 16 grams of extract. Except as provided in the LECU Act, it is unlawful for an unlicensed person to produce cannabis, defined as any activity involving the cultivation of cannabis. This effectively precludes consumers of nonmedical cannabis products from possessing cannabis plants.

The bill creates the cannabis regulation fund. The fund consists of appropriations, grants, gifts, donations, and fees collected by CRD under the CRA and the medical cannabis program. Money in the fund is subject to appropriation to fund CRD, DOH, NMED, NMDA, TRD, and DPS for the purposes of carrying out the CRA and LECU Act.

DOH must establish a medical cannabis assistance program to make distributions to provide medical cannabis or financial assistance to qualified patients who are sick and low-income and higher use patients who need assistance in obtaining medical cannabis. DOH is charged with administering the nonreverting "low-income medical patient assistance fund," created for the purpose of assisting qualified patients participating in the medical assistance programs created under the LECU Act and the CRA. DOH also must prepare an annual report evaluating the affordability and accessibility of medical cannabis and the needs of qualified patients in rural areas.

HB17 enacts the Cannabis Tax Act (CTA), which imposes a cannabis sales tax of 20 percent on cannabis retailers and is applied to the price paid for a cannabis product. The 20 percent rate appears to be composed of a state rate of 13 percent and a local government (municipality or county) rate of 7 percent. The tax does not apply to retail sales of medical cannabis sold to qualified patients or caregivers pursuant to the LECU Act, and receipts from retail sales of medical cannabis are not subject to gross receipts tax. The bill adds provisions to the Tax Administration Act requiring that 35 percent of county or municipal tax revenue from retail sales of cannabis products within a county or a municipality be distributed to that county or municipality.

HB17 makes amendments to the LECU Act to make it consistent with the CRA and similarly amends the Controlled Substances Act, including amending or repealing criminal laws governing cannabis offenses. The bill adds new civil and criminal penalties related to regulated cannabis activities, including unlicensed trafficking, intentionally producing cannabis, and possessing or distributing a cannabis product at a school or daycare center. DPS is required to compile an annual report on the total number of arrests, citations, and penalty assessments for cannabis-related violations.

There is no effective date of this bill. It is assumed the effective date is 90 days following adjournment of the Legislature.

FISCAL IMPLICATIONS

Continuing Appropriations

Section 3(I)-(J) provides for the “cannabis regulation fund.” Money in the fund is subject to appropriation to fund the activities of CRD and other specified agencies required by the CRA. Balances in the fund do not revert but may be reappropriated to cannabis-related programs.

Section 25 provides for the “low-income medical patient assistance fund.” Money in the fund is subject to appropriation to DOH for the purpose of assisting qualified patients participating in medical cannabis programs. Balances in the fund do not revert to the general fund.

The funds created in Sections 3 and 25 provide for continuing appropriations. LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds because earmarking reduces the ability of the Legislature to establish spending priorities.

Revenues

The fiscal impact estimate uses confidential, proprietary industry data to determine the fiscal impact of this bill. LFC staff made independent adjustments to various assumptions to produce the estimate in this report. Assumptions affecting the revenue model include expected cross-border sales, tourism consumption, survey response underreporting, and industry growth. Different assumptions in these areas result in cannabis excise revenue estimates that are higher or lower than what is provided in this impact table. The model considers estimated consumer usage by using survey data on usage frequency and takes into account survey bias in self-reporting and underreporting.

Exempting medical sales of cannabis is expected to reduce state GRT revenues by \$9.7 million and local GRT revenues by \$6 million, in the first year. Estimates include the latest data on medical

sales in New Mexico and modest growth rates; however, the cost of this exemption could increase significantly if sales grow more quickly than assumed.

Revenues generated from the excise tax are distributed by percentage, with 65 percent of the total reaching the general fund. The revenue tables reflect expected distributions to the state and localities based on LFC modeling. This estimate applies both GRT and excise tax rates to the assumed retail sales base; however, it is unclear if GRT would apply to the total of the retail sale plus the excise tax.

LFC estimates assume widespread retail sales of recreational cannabis begin in 2022. Faster promulgations of rules and widespread transitional licensing could increase FY22 fiscal estimates.

The imposition and distribution of taxes are unclear and could imply distributions to localities from state GRT rates, alterations to distributions of local GRT, or both because of vague language and differing definitions of what belongs to localities. The estimate included in this report is based on a 20 percent cannabis excise tax. Furthermore, the estimate includes a 35 percent distribution to localities of the 20 percent cannabis excise tax. State and local GRT collections are also included, though they are assumed to be unaffected by the provisions of this bill; however, significant tax administration issues remain. See “Technical Issues” below for additional detail and suggestions.

Finally, wholesale distributors would be subject to GRT according to HB17. This will have significant tax pyramiding effects for retailers who purchase from wholesalers. Though many retailers will be vertically integrated and avoid tax pyramiding from wholesale purchases of products, significant impacts may result from the inclusion of wholesalers in the GRT. For the purpose of this analyses, GRT from wholesale transactions were not included in the fiscal impact tables.

Operating Budget Impact

DOH states that 20 medical cannabis program FTE currently administer the medical cannabis patient services. The budget for those positions is approximately \$1.86 million currently. Contract services, facilities, supplies, vehicles, and other costs associated with the administration of the medical patient registry currently total approximately \$2 million. DOH projects administering the patient services section of the medical cannabis program with the current projected continued growth will require an additional 11 staff members to be added to the program staff in FY22 for a total of 31 staff and 10 additional staff, for a total of 41 staff in FY23 with a total salary and benefit cost of \$2.05 million and \$2.725 million, respectively. DOH also projects it will require an additional \$2.4 million in FY22 and \$2.6 million in FY23 to cover the costs of supplies, contracts, facilities, vehicles, and the registry database and to conduct and produce the annual assessment report on the affordability and accessibility of medical cannabis required in the LECU Act. DOH also notes if, as a result of the bill’s enactment, the 8 FTE currently in the licensing and compliance section of DOH’s medical cannabis program are transferred to CRD, it would represent a reduction in costs for DOH of \$540 thousand for FTE and \$900 thousand for operations.

NMED believes HB17 would necessitate 5 additional FTE to staff the cannabis program in the Environment Department, 6 additional dedicated technical FTE to develop, train, and implement occupational health and safety rules specific to the cannabis industry, and contract funding (for technical experts and attorneys) in FY22 to aid in rule development prior to the effective date of the bill. These additional costs are reflected in the budget impact table.

NMDA expects a 20 percent increase in services required by the cannabis industry for compliance-based scale inspections and certifications. This would result in a need for 2 additional FTE to monitor scale compliance with state law, 1 FTE for the state metrology lab to address anticipated increased demand for metrology laboratory services, and a one-time cost for the purchase of additional equipment related to specialized weight kit calibrations. NMDA also anticipates the need for 1 additional FTE due to additional inspection time to address potential mixing of hemp and cannabis in existing hemp-licensed greenhouses. These additional costs are reflected in the budget impact table.

DPS states the bill has the following anticipated fiscal impacts:

- The bill would require replacement of all of DPS' drug sniffing dogs. According to DPS, it currently has nine narcotics detection canines that have been trained to detect the odors of several controlled substances, including cannabis. If marijuana is legalized and the odor of marijuana can no longer be used for probable cause, the dogs will have to be replaced because they cannot be retrained to not alert for the odor of marijuana. DPS estimates the price of nine new dogs to be \$162 thousand, and the cost for training the new dogs, including instruction and per diem for those attending the trainings, to be \$30.6 thousand for FY22 into FY23.
- Based on the experience of other states, DPS anticipates that arrests related to black market marijuana sales and production will increase in New Mexico, including illegal THC extraction labs and growing operations. This will require additional, as yet undetermined, resources for training, and additional investigators to handle an increase in illegal THC extraction and growing operations. DPS estimates it would require \$915,312 for 10 agents throughout the state to investigate those illegal operations.
- DPS estimates it will require \$150 thousand for enforcement of the bill's prohibitions against underage access to marijuana, which would be similar to DPS's current compliance operations for underage access to tobacco and alcohol.
- DPS expects that it will incur additional, undetermined costs for training related to anticipated increases in marijuana-related DWIs, including certification of drug recognition experts.

AHO states the tax program added by HB17 may increase tax protest hearings. Although the significance of the increase is difficult to predict, AHO's prior experience demonstrates that new tax programs generally result in an initial increase in protests. Nevertheless, because the volume of tax protests over the last few years has stabilized, AHO is optimistic that any increase in tax protest volume can be absorbed by its current resources.

AHO also notes that Implied Consent Act hearings may increase if DWI arrests go up once cannabis possession and use is decriminalized. If hearings increase, AHO may need funding for additional hearing officers, office space and travel expenses. Based on the experience of other states, AHO anticipates that requests for Implied Consent Act hearings will increase, and estimates a range of 250-500 additional hearings. Based on the current historic lows in the number of implied consent hearings, AHO is cautiously optimistic that any increase in case volume can be absorbed by its current resources, unless the increase in hearings reaches the high end of its projected range.

LOPD believes that, in the longer term, HB 17 may slightly reduce LOPD’s fiscal burden. The bill would eliminate several crimes, which would reduce the need for defending not only those offenses but also later prosecutions based on those crimes (for example, charges of felon in possession of a firearm or habitual offender enhancements that complicate later prosecutions).

AOC states there will be a minimal administrative cost for statewide update, distribution, and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions, and appeals from convictions. To the extent, however, that HB17 reduces or eliminates penalties for cannabis-related offenses and activities, the demand for court time and resources may diminish. New laws, amendments to existing laws, and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

SIGNIFICANT ISSUES

Implementation and Regulation Generally

NMDA reads the act, including language in Section 3(C)(10), as transferring pesticide review and registration authority, currently under NMDA (Pesticide Control Act (Sections 76-4-2 through 76-4-39 NMSA 1978)), to CRD for pesticide use in cannabis. This transfer of authority may result in conflicting pesticide registrations between cannabis, hemp, and medical marijuana.

NMED points out that certain duties assigned to it are not within its areas of expertise. Section 3(C)(10) requires its participation (along with CRD and NMDA) in establishing standards for pesticides and developing training and education related to their use, which it believes is better left to NMDA. Similarly, Section 3(C)(8) requires NMED participate in rulemaking related to establishing standards for testing cannabis products, while Section 16(C) requires the agency to provide on an annual basis certified reference materials for laboratory testing. Neither of these subject areas are within the agency’s expertise. Instead, NMED suggests NMDA and DOH Scientific Laboratory Division (DOH/SLD) be assigned these tasks because both have direct expertise in laboratory research and testing. NMED also notes some of the bill’s protocols are also regulated by the Environmental Improvement Board or Water Quality Control Commission. For example, anyone discharging effluent or leachate so that it may move directly or indirectly into groundwater must do so pursuant to discharge permit issued by NMED. Additional environmental requirements from CRD may cause regulatory confusion or conflict with existing environmental statutes and regulations.

NMAG notes the act refers to licenses to conduct a “commercial cannabis activity” (Section 8(B)) and occupational licenses (Section 10). Section 8(A) states there is “no vested property right” in a license, without differentiating between a commercial cannabis activity license and an occupational license. NMAG believes this may be problematic. Although such a provision may apply to a commercial cannabis activity license, which is similar to a liquor license (*see, e.g.*, NMSA 1978, § 60-6A-19 (holders of licenses issued under the Liquor Control Act have no vested property right in the licenses)), it does not apply to an occupational license. Courts have expressly held that an occupational license, or a state-issued license to practice one’s profession, is a property right (*see, e.g., Varoz v. New Mexico Bd. of Podiatry*, 1986-NMSC-051, ¶ 12).

DPS notes Section 5 requires DPS, in conjunction with AOC, to compile an annual report on the total number of arrests, citations, and penalty assessments for cannabis-related violations broken

down by category and penalty level, race, ethnicity, age, gender, and jurisdiction. According to DPS, it is able to compile fingerprint-based arrest data from its automated fingerprint identification system (AFIS). DPS is not the repository for citation data, so DPS will only be able to gather data on those issued by State Police officers and those issued through the TRACS system for a limited number of law enforcement agencies. DPS further notes neither AFIS nor the TRACS system currently track ethnicity.

DPS also believes that, based on its broad perspective as the state’s largest statewide law enforcement agency, a representative of DPS’s State Police division (NMSP) should be specifically included in the membership of the cannabis policy and regulatory advisory committee created under Section 3(E).

Medical Cannabis Program

DOH notes that HB17 creates the low-income medical cannabis assistance fund and the medical cannabis assistance program for medical cannabis patients. Based on current self-reporting, 30 percent of the medical cannabis program’s patients state they earn less than 200 percent of the poverty level, which suggests that many people would qualify for and use money from the fund and leave many other eligible individuals without access to the funds.

DOH also notes the definition of “qualified patient in the CRA does not include a residency requirement. The definition conflicts with the definition of “qualified patient” in the LECU Act, which refers to a “resident of New Mexico” who has received a registry identification card. To avoid any confusion regarding the application of the CRA, DOH suggests changing the definition of “qualified patient” in the CRA so that it is the same as the definition in the LECU Act.

New Job Creation

EDD estimates an additional 1,593 jobs could be created through additional employment in dispensaries to meet the new demand for commercial cannabis products. The dispensary jobs estimate was determined by taking the adult population (21+) for each county and multiplying the number by 25 percent (estimate of adults who would participate) and then subtracting the medical users from that total to arrive at an estimated number of new consumers. That number was then used to estimate the number of new dispensaries and number of full-time employees needed to run the dispensaries. EDD’s analysis of HB17 contains a detailed account of the methodology EDD used to calculate its estimates and a breakdown of estimated job creation by county.

Conflict with Federal Law

NMAG and AODA advise that cannabis is still a federally controlled substance. The federal government regulates marijuana through the Controlled Substances Act, 21 U.S.C. § 811 *et seq.* Under current federal law, marijuana is treated like every other controlled substance, such as cocaine and heroin. The federal government places every controlled substance in a schedule, in principle according to the relative potential for abuse and medicinal value of that controlled substance. Under the federal Controlled Substances Act, marijuana is classified as a schedule I drug, which means the federal government views marijuana as highly addictive and having no medical value.

In addition, NMAG advises that federal law criminalizes a number of activities that would be permitted under New Mexico law. For example, it prohibits the distribution, possession with intent to distribute, and manufacture of marijuana or its derivatives (21 U.S.C. §§ 841, 960, 962); simple possession of marijuana (21 U.S.C. § 844); and the establishment of manufacturing operations, i.e., opening, maintaining, financing or making available a place for unlawful manufacture, distribution or use of controlled substances (21 U.S.C. § 856). In New Mexico a person may cross many different jurisdictions when traveling throughout the state, including federal lands. While the possession of cannabis under state law may be lawful within the state, the possession of the same cannabis would be unlawful on federal property, creating a patchwork of regulation (state and federal) with consequences that vary significantly.

Enforcement

LOPD states that, under current law, it is generally illegal to possess “marijuana,” with no distinction between cannabis flowers and extracts. HB17 would legalize possession of some amounts of marijuana products but would retain penalties for possession in excess of the allowed amounts. The bill also distinguishes between the allowable weight of cannabis flowers and the allowable weight of cannabis extracts. In some cases, this distinction would actually **increase** penalties relative to current law. A person who possesses 65 grams (or about 2.3 ounces) of cannabis extract is guilty of a misdemeanor under current law. Under this bill, possession of more than 64 grams of extract would become a fourth-degree felony.

AODA refers to the Birchfield decision, where the U.S. Supreme Court ruled implied consent laws requiring blood draws are unconstitutional and that a search warrant is necessary to get a blood sample. In New Mexico, there is a statutory limitation preventing law enforcement from seeking a warrant for blood on misdemeanor cases. (See Section 66-8-111(A).) Because a breath test detects only alcohol, not drug usage, AODA suggests existing law be amended to allow for a search warrant for a blood draw in misdemeanor DWI investigations. AODA also reports that, as experienced in Colorado, black market sales may still be a problem even after legalization of cannabis.

DPS raises concerns that Section 18(C)’s list of factors that may be considered “reasonable articulable suspicion” of a crime may conflict with judicial interpretation of the Fourth Amendment and the New Mexico constitutional provision against unreasonable searches and seizures. See, e.g., The Effect of Legislation on Fourth Amendment Protection, 115 Michigan L. Rev. 1117 (2017).

Imposition of Taxes and Related Issues

There are three main ways state and local governments tax marijuana. First is by a **percentage-of-price**. This is the tax set in this bill and are similar to a general sales tax in that the consumer pays a tax on the purchase price and the retailer remits it to the state. However, like other excise taxes, the tax rate is typically higher than the state's general sales tax rate. A few states (including Colorado) levy their percentage of price tax on the wholesale transaction, not the retail transaction, but it is assumed this cost is then passed on to the consumer in the final purchase price.

Second, a **weight-based** tax could be imposed. These taxes are similar to cigarette taxes, except instead of taxing per pack of cigarettes the tax is based on the weight of the marijuana product. This tax is levied on the wholesale transaction. States with this type of tax also typically set

different rates for different marijuana products. For example, California levies a \$9.65 per ounce tax on marijuana flowers, a \$2.87 per ounce tax on marijuana leaves, and a \$1.35 per ounce tax on fresh plant material. As with other wholesale taxes, it is assumed most of this cost is passed on to the consumer in the final purchase price.

Finally, a **potency-based** tax could be imposed. These taxes are similar to alcohol taxes, except instead of taxing drinks with a higher percentage of alcohol at higher rates (i.e., liquor is taxed at a higher rate than beer), the tax is based on the THC level of the marijuana product. Illinois is currently the only state with a THC-based tax. It taxes products with a THC content of 35 percent or less at 10 percent of retail price and those with more than 35 percent at 25 percent of retail price. All marijuana-infused products (e.g., edibles) are taxed at 20 percent of retail price.

Some states use more than one of these taxes. Additionally, some states and localities levy their general sales tax on the purchase of marijuana in addition to their excise taxes. HB12 would include gross receipts taxes.

HB17 would impose an excise tax of 20 percent in addition to GRT. Both Colorado and Arizona impose an excise tax of 15 percent and 16 percent, respectively, in addition to sales taxes. In Arizona, the combined rate is 21.6 percent while the combined Colorado rate could be as high as 26.2 percent. New Mexico's combined maximum rate under HB17 would be 29.437 percent.

The combined maximum tax rate under this bill would be more than surrounding states. Tax rates could significantly impact the ability to convert illicit market activities to the regulated market. The ability to entice illicit activity into the regulated market depends on the relative prices of the state's recreational cannabis, including the tax rate. However, with industry maturation and efficiency, significant declines in prices could eventually crowd out illicit activity even with higher tax rates.

TECHNICAL ISSUES

NMDA points to the definition of cannabis in Section 2(C), which refers to “delta-9 tetrahydrocannabinol” (THC) only. Absent the use of the qualifier “measured post-decarboxylation,” the definition may lead to some confusion by law enforcement and the industry as to what is measured (i.e., delta measured pre- or post-decarboxylation). The 2018 federal Farm Bill added post-decarboxylation as a qualifier to clarify what was being measured. Post-decarboxylation was also included in the Hemp Manufacturing Act to clarify the basis for measurement. Including the phrase “measured post-decarboxylation” in the CRA's definition of cannabis would harmonize it with the definition in the Hemp Manufacturing Act, as well as federal definitions related to hemp and cannabis. NMDA suggests this might be accomplished by amending the first part of CRA's definition of “cannabis” to state: “all parts of the plant genus cannabis containing a delta-9 tetrahydrocannabinol concentration of more than three-tenths percent measured using a post-decarboxylation method and on a dry weight basis”

HB17 defines “division” in Section (U) as “the cannabis control division,” rather than the “cannabis regulation division.”

HB17 requires “35 percent of tax revenue from the retail sales of commercial cannabis” be transferred to a municipality or county, depending on the location of the sale. Because it does not specify the distribution is to be made from only the cannabis excise tax, it is unclear if this

distribution would also apply to GRT collections. This could have significant tax implications on state and local GRT revenues from cannabis sales.

NMAG points out the bill contains the following contradictory provisions:

- Section 3 states RLD has until July 1, 2022, to develop rules necessary to carry out its duties, but Section 6 states licensing must begin no later than July 1, 2021, which would be impossible without the rules to govern it.
- Section 3 requires CPRAC to be formed on the date the legislation becomes effective but also to consist of both current medical and recreational cannabis licensees. It is unclear whether any recreational licensees would exist at the time of the bill's effective date.

LOPD notes the bill would impose low-level penalties for juveniles who sold cannabis and for people under 21 who possessed cannabis. Section 21, at p. 40; Section 23, at p. 42. The bill does not, however, say whether these are considered special petty misdemeanors, penalty assessments, or civil penalties.

OTHER SUBSTANTIVE ISSUES

NMAG points out that, while HB17 combines medical and commercial cannabis activities and adds new requirements for medical cannabis dispensaries and licensees, it does not amend the current statutes applicable to medical cannabis (NMSA 1978, § 26-2B-1 *et seq.*). Consequently, the bill's provisions purporting to regulate cannabis for medical use may conflict with current law.

LOPD notes the bill does not appear to repeal language in other criminal laws relating to marijuana, including the penalties in Sections 30-31-23 (penalizing possession), 30-31-22 (penalizing distribution), and 30-31-21 (penalizing distribution to a minor). It is not clear whether these laws would continue to have any effect because some of the provisions of the bill directly contradict and would seem to supersede these sections, and the bill would remove marijuana from Schedules I and II and therefore from the definition of "controlled substances." However, for the sake of clarity, it would be useful for the bill to remove all references to marijuana from the criminal code.

LOPD also observes the bill legalizes the possession of "cannabis paraphernalia" and removes the definition of "drug paraphernalia" from the Controlled Substances Act. However, the bill does not repeal the paraphernalia crimes associated with other drugs, nor the crimes for delivery and manufacture of cannabis paraphernalia. *See* NMSA 1978, § 30-31-25.1 (2019). It is not clear how Section 30-31-25.1 would function without a definition of drug paraphernalia.

DPS notes Section 18 provides that personal use of marijuana by a person 21 years or older may not constitute grounds for "detention, search or arrest ... or for a violation of probation or parole." According to DPS, the practical result of this provision may be that judges setting conditions of release following an arrest will be able to prohibit the use of alcohol, but not marijuana. DPS suggests marijuana and alcohol should be on an equal footing in this regard.

DOH notes HB17 would authorize CRD to deny a license application if the applicant or a controlling person in the applicant's entity has had a license issued pursuant to the CRA or the Lynn and Erin Compassionate Use Act revoked in the three years immediately preceding the date

on which the application was filed. DOH believes this is an arbitrary standard and would allow entities whose licenses had been revoked to reapply for licensure regardless of the seriousness of the conduct that led to the revocation.

Additionally, DOH notes states like Colorado and Washington with commercial cannabis programs have monitored the number of emergency department visits by children who accidentally consumed THC products. Colorado also monitors cannabis-related exposures reported to the Poison Control Center for children age 8 and under (<https://www.colorado.gov/pacific/marijuana-health-info/poison-center-data>). DOH suggests these issues be monitored in New Mexico. DOH also suggests HB17 include provisions requiring consultation with the State Fire Marshal's Office with regard to health and safety.

BG/IT/al/sb