

SENATE TAX, BUSINESS AND TRANSPORTATION
COMMITTEE SUBSTITUTE FOR
SENATE BILL 100

55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO CANNABIS REGULATION; DEFINING TERMS; INCREASING THE NUMBER OF CANNABIS PLANTS FOR A CANNABIS PRODUCER MICROBUSINESS AND INTEGRATED CANNABIS MICROBUSINESS; SPECIFYING THE PROCESS OF CRIMINAL HISTORY RECORDS CHECKS; REQUIRING LICENSEES TO BE AT LEAST TWENTY-ONE YEARS OF AGE; PROVIDING AN EXCEPTION; PROVIDING MANDATORY MINIMUM TRAINING REQUIREMENTS FOR LICENSEES AND THEIR EMPLOYEES; PROHIBITING THE SALE OF CANNABIS AND

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ALCOHOLIC BEVERAGES ON THE SAME PREMISES; PROVIDING FOR A JOINT POWERS AGREEMENT BETWEEN THE REGULATION AND LICENSING DEPARTMENT AND THE DEPARTMENT OF ENVIRONMENT FOR INSPECTIONS OF CANNABIS FACILITIES THAT PRODUCE EDIBLE AND TOPICAL CANNABIS PRODUCTS; CLARIFYING BUSINESS LOCATION REPORTING FOR TAX PURPOSES; AUTHORIZING CERTAIN NONPROFIT MEDICAL CANNABIS PRODUCERS TO CONVERT THEIR NONPROFIT CORPORATION STATUS TO FOR-PROFIT CORPORATION STATUS AND TRANSFER ASSETS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 26-2C-1 NMSA 1978 (being Laws 2021 (1st S.S.), Chapter 4, Section 1) is amended to read:

"26-2C-1. SHORT TITLE.--~~[Sections 1 through 42 of this act]~~ Chapter 26, Article 2C NMSA 1978 may be cited as the "Cannabis Regulation Act"."

SECTION 2. Section 26-2C-2 NMSA 1978 (being Laws 2021 (1st S.S.), Chapter 4, Section 2) is amended to read:

"26-2C-2. DEFINITIONS.--As used in the Cannabis Regulation Act:

A. "advertisement":

(1) means a statement or a depiction that is intended to induce the purchase of cannabis products and that is displayed in printed material or on a sign or other outdoor display or presented in a radio, television or other media broadcast or in digital media; and

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(2) does not include:

(a) a sign or outdoor display or other statement permanently affixed to a licensed premises that is intended to induce the sale of a cannabis product produced or sold on the premises;

(b) a label affixed to a cannabis product or the covering, wrapper or container of a cannabis product; or

(c) an editorial or other material printed in a publication when the publication of the editorial or material was not paid for by a licensee and was not intended to promote the sale of cannabis products by a particular brand or company;

B. "applicant" means a person seeking licensure;

~~[B-]~~ C. "cannabis":

(1) means all parts of the plant genus Cannabis containing a delta-9-tetrahydrocannabinol concentration of more than three-tenths percent on a dry weight basis, whether growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or its resin; and

(2) does not include:

(a) the mature stalks of the plant; fiber produced from the stalks; oil or cake made from the seeds

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of the plant; any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil or cake; or the sterilized seed of the plant that is incapable of germination; or

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

~~[G.]~~ D. "cannabis consumption area" means an area where cannabis products may be served and consumed;

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

~~[E.]~~ F. "cannabis establishment" means:

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

- (7) a cannabis producer microbusiness; or
- (8) an integrated cannabis microbusiness;

~~[F.]~~ G. "cannabis extract":

(1) means a product obtained by separating resins, tetrahydrocannabinols or other substances from cannabis

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by extraction methods approved by the division; and

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

~~[G.]~~ H. "cannabis flowers" means only the flowers of a cannabis plant;

~~[H.]~~ I. "cannabis manufacturer" means a person that:

(1) manufactures cannabis products;

(2) packages cannabis products;

(3) has cannabis products tested by a cannabis testing laboratory; or

(4) purchases, acquires, sells or transports wholesale cannabis products to other cannabis establishments;

~~[I.]~~ J. "cannabis producer" means a person that:

(1) cultivates cannabis plants;

(2) has unprocessed cannabis products tested by a cannabis testing laboratory;

(3) transports unprocessed cannabis products only to other cannabis establishments; or

(4) sells cannabis products wholesale;

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

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

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

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

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

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

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

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

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[R.] S. "commercial cannabis activity:

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

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

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

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

[U.] V. "controlling person":

(1) means a person that controls a financial or voting interest of ten percent or more of, or an officer or board member of, a cannabis establishment; and

(2) does not include a bank or licensed lending institution;

[V.] W. "cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading or trimming of cannabis;

[W.] X. "department" means the regulation and

licensing department;

~~[X.]~~ Y. "director" means the director of the division;

~~[Y.]~~ Z. "division" means the cannabis control division of the department;

~~[Z.]~~ AA. "dry weight basis", when used in the context of regulation of commercial cannabis activity, means a process by which delta-9-tetrahydrocannabinol concentration is measured relative to the aggregate weight of all parts of the plant genus Cannabis, whether growing or not, including the leaves of the plant, the flowers and buds of the plant, the seeds of the plant, the resin of the plant and the stalks of the plant at the point of harvest by a licensee and with no moisture added to the harvested plant;

~~[AA.]~~ BB. "facility" means a building, space or grounds licensed for the production, possession, testing, manufacturing or distribution of cannabis, cannabis extracts or cannabis products;

~~[BB.]~~ CC. "financial consideration" means value that is given or received, directly or indirectly, through sales, barter, trade, fees, charges, dues, contributions or donations;

~~[CC.]~~ DD. "homegrown" or "homemade" means grown or made for purposes that are not dependent or conditioned upon the provision or receipt of financial consideration;

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~~[DD-]~~ EE. "household" means a housing unit and includes any place in or around the housing unit at which an occupant of the housing unit produces, manufactures, keeps or stores homegrown cannabis or homemade cannabis products;

~~[EE-]~~ FF. "immature cannabis plant" means a cannabis plant that has no observable flowers or buds;

~~[FF-]~~ GG. "industry standards" means the prevailing customary standards of business practice in the cannabis industry in jurisdictions within the United States;

~~[GG-]~~ HH. "integrated cannabis microbusiness" means a person that is authorized to conduct one or more of the following:

(1) production of cannabis at a single licensed premises; provided that the person shall not possess more than ~~[two hundred]~~ one thousand total mature cannabis plants at any one time;

(2) manufacture of cannabis products at a single licensed premises;

~~[(3) sales and transportation of only cannabis products produced or manufactured by that person;~~

~~(4)]~~ (3) operation of only one retail establishment; and

~~[(5)]~~ (4) couriering of cannabis products to qualified patients, primary caregivers or reciprocal participants or directly to consumers;

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~~[HH.]~~ II. "licensed premises" means a location that includes:

(1) all enclosed public and private areas at the location that are used in the business and includes offices, kitchens, restrooms and storerooms;

(2) all areas outside of a building that are specifically included in the license for the production, manufacturing, wholesale sale, ~~[øø]~~ retail sale or consumption of cannabis products; and

(3) with respect to a location that is specifically licensed for the production of cannabis outside of a building, the entire unit of land that is created by subsection or partition of land that the licensee owns, leases or has a right to occupy;

JJ. "licensee" means the person that is licensed;

~~[HH.]~~ KK. "local jurisdiction" means a municipality, home rule municipality or county;

~~[JJ.]~~ LL. "manufacture" means to compound, blend, extract, infuse, package or otherwise prepare a cannabis product;

~~[KK.]~~ MM. "medical cannabis" means cannabis products used by a qualified patient or reciprocal participant in accordance with the Lynn and Erin Compassionate Use Act;

~~[LL.]~~ NN. "medical cannabis program" means the program created pursuant to the Lynn and Erin Compassionate Use

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Act;

~~[MM.]~~ OO. "medical cannabis registry" means the system by which the department of health approves or denies applications and issues and renews registry identification cards for qualified patients;

~~[NN.]~~ PP. "primary caregiver" means a resident of New Mexico who is at least eighteen years of age and who is responsible for managing the well-being of a qualified patient with respect to the medical use of cannabis pursuant to the Lynn and Erin Compassionate Use Act;

~~[OO.]~~ QQ. "public place" means a place to which the general public has access and includes hallways, lobbies and other parts of hotels and apartment houses [~~and hotels~~] that do not constitute rooms or apartments designed for actual residence; highways; streets; schools; places of amusement; parks; playgrounds; and places used in connection with public passenger transportation;

~~[PP.]~~ RR. "qualified patient" means a resident of New Mexico who holds a registry identification card pursuant to the Lynn and Erin Compassionate Use Act;

~~[QQ.]~~ SS. "reciprocal participant" means a person who is not a resident of New Mexico and who holds proof of enrollment by a governmental regulatory authority to participate in the medical cannabis program of another state of the United States, the District of Columbia or a territory or

commonwealth of the United States in which the person resides or a person who holds proof of enrollment by a governmental regulatory authority of a New Mexico Indian nation, tribe or pueblo to participate in its medical cannabis program;

~~[RR.]~~ TT. "retail establishment" means a location at which cannabis products are sold to qualified patients, primary caregivers and reciprocal participants and directly to consumers;

~~[SS.]~~ UU. "superintendent" means the superintendent of regulation and licensing;

~~[TT.]~~ VV. "unprocessed" means unaltered from an original, raw or natural state; and

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

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

SECTION 3. Section 26-2C-3 NMSA 1978 (being Laws 2021 (1st S.S.), Chapter 4, Section 3) is amended to read:

"26-2C-3. DIVISION--POWERS AND DUTIES--RULEMAKING--JOINT POWERS AGREEMENT WITH DEPARTMENT OF ENVIRONMENT--ADVISORY COMMITTEE CREATED--MEMBERSHIP--DUTIES.--"

A. The "cannabis control division" is created in

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the department to administer the Cannabis Regulation Act and the licensing provisions of the Lynn and Erin Compassionate Use Act and rules promulgated in accordance with those acts. Rules shall be adopted and promulgated as provided in the State Rules Act.

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

(1) qualifications and procedures for licensure; provided that qualifications shall be directly and demonstrably related to the operation of the applicable cannabis establishment;

(2) security requirements for a cannabis establishment;

(3) requirements related to:

(a) inspection and monitoring of a cannabis establishment;

(b) a cannabis establishment's recordkeeping and tracking of cannabis from seed until sale;

(c) prevention of the sale or diversion of cannabis products in commercial cannabis activity to a person under the age of twenty-one;

(d) labeling of cannabis products packaged, sold or distributed by a cannabis establishment; and

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(e) language for labels of cannabis products regarding potential adverse effects;

(4) rules providing that:

(a) a person who is twenty-one years old or older shall not purchase more than two ounces of cannabis, sixteen grams of cannabis extract and eight hundred milligrams of edible cannabis at one time; and

(b) as to commercial cannabis activity:

1) a consumer shall not possess more than two ounces of cannabis, sixteen grams of cannabis extract and eight hundred milligrams of edible cannabis outside the consumer's private residence; 2) any cannabis in excess of the amounts described in Item 1) of this subparagraph shall be stored in the person's residence and shall not be visible from a public place; and 3) the division shall not limit the amount of tetrahydrocannabinol concentration in a cannabis product; provided that the division may adopt requirements for apportionment and packaging of cannabis products;

(5) rules on advertising and marketing of cannabis products;

(6) rules on how a licensee may display cannabis products for sale;

(7) procedures that promote and encourage full participation in the cannabis industry governed by the Cannabis Regulation Act by representatives of communities that have been

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disproportionately harmed by rates of arrest through the enforcement of cannabis prohibitions in law and policy, rural communities likely to be impacted by cannabis production and agricultural producers from economically disadvantaged communities;

(8) procedures that promote and encourage racial, ethnic, gender and geographic diversity and New Mexico residency among license applicants, licensees and cannabis industry employees;

(9) rules for a certification process to identify cannabis products for consumers from integrated cannabis microbusinesses or cannabis producer microbusinesses or owned by representatives of communities that have been disproportionately harmed by rates of arrest through the enforcement of cannabis prohibitions in law and policy and underserved communities that include tribal, acequia, land grant-merced and other rural historic communities;

(10) in consultation with the economic development department, development of a technical assistance resource guide for rural New Mexico residents who are seeking to establish vertically integrated cannabis establishments, cannabis producer microbusinesses or integrated cannabis microbusinesses;

(11) in consultation with the department of environment, rules to establish:

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(a) health and safety standards applicable to the research, production and manufacture of cannabis products;

(b) standards for food and product safety applicable to cannabis products; and

(c) which additives are approved for and prohibited from inclusion in cannabis products; provided that nicotine shall be prohibited;

(12) in consultation with the New Mexico department of agriculture and the department of environment, rules to establish standards for quality control, inspection and testing of cannabis products for potency and contaminants, except for cannabis produced or harvested for research purposes and not for ingestion; provided that all such rules and standards shall be consistent with the rules and standards for testing of medical cannabis products; and

(13) in consultation with the state fire marshal's office of the homeland security and emergency management department, rules with regard to health and safety of cannabis establishments.

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

(1) qualifications and procedures for

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licensure; and

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

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

(1) environmental protections; and

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

E. The department may enter into a joint powers agreement with the department of environment to ensure the health and safety of commercial facilities that produce edible or topical cannabis products.

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

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

H. The division shall receive and maintain information and data from the department of public safety and the federal bureau of investigation related to licensing disqualifications based on criminal history.

[G-] I. The "cannabis regulatory advisory committee" shall be created no later than September 1, 2021. The committee shall advise the division on the development of rules pursuant to the Cannabis Regulation Act, including best practices and the promotion of economic and cultural diversity in licensing and employment opportunities and protection of public health and safety while ensuring a regulated environment for commercial cannabis activity that does not impose unreasonable barriers that would perpetuate, rather than reduce and eliminate, the illicit market for cannabis. A person

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appointed to the cannabis regulatory advisory committee shall not hold any ownership interest or investment in a licensed person pursuant to the Cannabis Regulation Act; provided that the superintendent may appoint STBTC→~~a~~←STBTC STBTC→~~one~~←STBTC person who holds an ownership interest in a licensed STBTC→~~person~~←STBTC STBTC→~~cannabis establishment and another person who holds an ownership interest in a licensed cannabis microbusiness.~~←STBTC as STBTC→~~a~~←STBTC nonvoting STBTC→~~member~~←STBTC STBTC→~~members~~←STBTC. The committee shall consist of the following members:

- (1) the chief public defender or the chief public defender's designee;
- (2) a district attorney appointed by the New Mexico district attorney association;
- (3) a municipal police chief appointed by the New Mexico association of chiefs of police;
- (4) a county sheriff appointed by the executive director of the New Mexico association of counties; and
- (5) one member for each of the following groups or professional qualifications, appointed by the superintendent:
 - (a) a cannabis policy advocacy organization;
 - (b) a labor organization;

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- (c) a qualified patient;
- (d) a state or local agency with relevant expertise as the director and the superintendent deem appropriate;
- (e) an Indian nation, tribe or pueblo with relevant expertise as the director and the superintendent deem appropriate;
- (f) expertise in public health;
- (g) expertise in regulating commercial activity for adult-use intoxicating substances;
- (h) expertise and experience in cannabis laboratory science;
- (i) expertise in environmental science;
- (j) expertise in small business development;
- (k) expertise in water resources;
- (l) expertise in other relevant areas as the director and the superintendent deem appropriate; and
- (m) previous experience as a cannabis retailer, cannabis producer or cannabis manufacturer and who is a nonvoting member.

[H.] J. The cannabis regulatory advisory committee shall elect from among its members a chair and such other officers as it deems necessary. The committee shall meet at the call of the chair, the director or the superintendent. A

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majority of members currently serving constitutes a quorum for the conduct of business. Members shall serve at the pleasure of the superintendent.

[~~F~~] K. Public voting members of the cannabis regulatory advisory committee are entitled to receive per diem and mileage as provided for state employees pursuant to the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance.

[~~J~~] L. The division shall:

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

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

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

SECTION 4. Section 26-2C-5 NMSA 1978 (being Laws 2021 (1st S.S.), Chapter 4, Section 5) is amended to read:

"26-2C-5. DEPARTMENT OF HEALTH--DUTIES--TRANSFER OF LICENSING DUTIES.--Except for administration of the medical

cannabis registry, the power, duty and authority of the department of health related to the medical cannabis program shall be transferred to the division on [~~the effective date of the Cannabis Regulation Act~~] June 29, 2021."

SECTION 5. Section 26-2C-6 NMSA 1978 (being Laws 2021 (1st S.S.), Chapter 4, Section 6) is amended to read:

"26-2C-6. LICENSING CANNABIS ACTIVITIES--LIMITATIONS--MEDICAL CANNABIS LEGACY LICENSING--CANNABIS SHORTAGE FOR MEDICAL PROGRAM.--

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

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

B. The division shall follow the provisions of the Uniform Licensing Act when licensing or permitting the following:

- (1) cannabis consumption areas;
- (2) cannabis couriers;
- (3) cannabis manufacturers;
- (4) cannabis producer microbusinesses;
- (5) cannabis producers;

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- (6) cannabis research laboratories;
- (7) cannabis retailers;
- (8) cannabis servers;
- (9) cannabis testing laboratories;
- (10) cannabis training and education programs;
- (11) integrated cannabis microbusinesses; and
- (12) vertically integrated cannabis

establishments.

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

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

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

F. The director shall not renew a license issued

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pursuant to the provisions of the Cannabis Regulation Act until the director receives notification from the secretary of taxation and revenue or the secretary's designee that on a certain date:

(1) the licensee is not a delinquent taxpayer;
and

(2) there are no unfiled tax returns due from engaging in business authorized by the license.

G. No license shall be transferable or assignable from a licensee to another person, except that a nonprofit corporation that was incorporated in order to qualify for a license as a licensed nonprofit producer pursuant to department of health rules under the Lynn and Erin Compassionate Use Act may transfer its license in the following manner:

(1) the nonprofit corporation shall inform the division in writing of its desire to transfer its license to a for-profit corporation as provided in Section 12 of this 2022 act;

(2) the nonprofit corporation shall specify to the division in writing the intended recipient corporation of the license and all controlling persons of the recipient corporation;

(3) the controlling persons of the recipient corporation shall provide any information to the division that would otherwise be required of the controlling persons of a

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cannabis license applicant;

(4) upon receipt of the required information from the controlling persons of the recipient corporation, the division shall transfer the license by issuing new license certificates in the name of the recipient corporation;

(5) the division shall issue a statement to both the nonprofit corporation and the new licensee stating that the transfer has occurred;

(6) the transferred license shall remain in effect for the same period that the nonprofit corporation's license would have been effective; and

(7) the transferred license shall be eligible for renewal on the same date that the nonprofit corporation's license would have been eligible for renewal.

H. The division shall not allow a person that is licensed as any type of cannabis establishment other than a cannabis research laboratory to hold, directly or indirectly, a cannabis testing laboratory license.

~~[H.]~~ I. Except for verification of age, the division shall not require licensees to request information from consumers or impose any residency requirement upon consumers for the purchase of cannabis products pursuant to the commercial cannabis activity authorized by the Cannabis Regulation Act. The division may require licensees to request information from consumers for the purchase of cannabis

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products pursuant to the medical cannabis program, which may include the presentation of legal identification issued by an authorized governmental entity or other documents as required by the medical cannabis program.

[~~F~~] J. Except as otherwise provided in the Cannabis Regulation Act, the division shall not limit the number of licensed premises a licensee may occupy or operate under a license. Multiple licensees may occupy a single licensed premises, and the division shall not place any restriction or prohibition on the number of licensees occupying a single licensed premises or on the number of licensed premises of a cannabis establishment except as otherwise specifically provided for by the Cannabis Regulation Act. Except as otherwise provided in this subsection, a licensee may conduct any lawful activity or any combination of lawful activities at a licensed premises [~~provided that the licensee is not a licensee pursuant to the Liquor Control Act~~]. Cannabis and alcoholic beverages shall not be sold or consumed on the same premises.

K. Smoking in a cannabis consumption area on a licensed premises shall be allowed only if the cannabis consumption area is in a designated smoking area or in a standalone building from which smoke does not infiltrate other indoor workplaces or other indoor public places where smoking is otherwise prohibited pursuant to the Dee Johnson Clean

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[J-] L. Licensees are specifically allowed to conduct other licensed activities, including activities pursuant to the Hemp Manufacturing Act [~~except for sales of alcoholic beverages~~] and the Liquor Control Act, except that a licensee that also holds a license pursuant to the Liquor Control Act shall not co-locate any cannabis- and alcohol-related licensed activities.

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

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obtaining cannabis products pursuant to the medical cannabis program.

~~[E-]~~ N. To address a shortage of cannabis supply in the medical cannabis program, the division may:

(1) require all cannabis establishment licensees to ensure that at least ten percent of their cannabis in stock on a monthly basis is designated for sale to qualified patients, primary caregivers and reciprocal participants;

(2) initially take reasonable measures to expeditiously incentivize increased production of cannabis plants to remedy a shortage of cannabis supply in the medical cannabis program;

(3) after having first exhausted measures to increase production of cannabis plants to address the shortage of cannabis supply in the medical cannabis program, exclude commercial cannabis activity from the scope of new licenses issued to initial applicants for a vertically integrated cannabis establishment, cannabis producer, integrated cannabis microbusiness, cannabis producer microbusiness or cannabis manufacturer license, which limitation shall be in force for a period of at least six months; and

(4) require licensees who are licensed to produce cannabis to produce a specified quota of mature cannabis plants to be designated for use in the medical cannabis program; provided that:

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(a) the division may require a licensee to devote no more than twenty-five percent of the licensee's cultivated cannabis plants on a monthly basis for use in the medical cannabis program; and

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

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

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

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

~~[N-]~~ P. A person who is a member of the New Mexico senate or the New Mexico house of representatives on the effective date of the Cannabis Regulation Act shall not apply

for or be granted a license to engage in any commercial cannabis activity prior to July 1, 2026."

SECTION 6. Section 26-2C-7 NMSA 1978 (being Laws 2021 (1st S.S.), Chapter 4, Section 7) is amended to read:

"26-2C-7. COMMERCIAL CANNABIS ACTIVITY LICENSING-- APPLICATION--ISSUANCE AND DENIAL OF A LICENSE--CRIMINAL HISTORY RECORDS CHECKS.--

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

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

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

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

STBTC → ~~(3) require as a condition of licensing pursuant to the Cannabis Regulation Act that the applicant demonstrate that the applicant has a legal right to a commercial water supply, water rights or another source of water sufficient to meet the water needs as determined by the division related to the license as evidenced by documentation~~

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~~from the office of the state engineer of a valid water right or from a water provider that the use of water for cannabis production is compliant with that water provider's rules;~~ ←STBTC

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

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

(b) natural lighting and energy efficiency measures; and

(c) renewable energy generation; and

STBTC → (5) ←STBTC STBTC → (4) ←STBTC allow commercial cannabis activity retail sales no later than April 1, 2022 and otherwise allow activities authorized by the Cannabis Regulation Act or the medical cannabis program as of the time of licensure of a licensee, so long as a minimum of twenty-five percent of monthly cannabis sales are to qualified patients, primary caregivers and reciprocal participants or sold wholesale to other licensees that meet or exceed the twenty-five percent sales to qualified patients, primary

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caregivers and reciprocal participants until December 31, 2022.

C. An application for licensure shall be signed by the applicant or, if the applicant is a corporation or other legal entity, signed by an officer or other person with legal authority to sign documents for the corporation or other legal entity. Once the division deems an application complete, the division has ninety days to issue or deny a license application.

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

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

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

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

- (1) a felony conviction involving fraud, deceit or embezzlement;
- (2) a felony conviction for hiring, employing or otherwise using a person younger than eighteen years of age to:
 - (a) prepare for sale, transport or carry a controlled substance; or
 - (b) sell, give away or offer to sell a controlled substance to any person; and
- (3) any other offense as determined by the division.

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

G. The division shall deny an application if an

applicant, a controlling person or the premises for which a license is sought does not qualify for licensure pursuant to the Cannabis Regulation Act.

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

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

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

- ~~(1) cannabis manufacturer;~~
- ~~(2) cannabis producer;~~
- ~~(3) cannabis producer microbusiness;~~
- ~~(4) cannabis research laboratory;~~
- ~~(5) cannabis retailer;~~

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- ~~(6) cannabis testing laboratory;~~
- ~~(7) integrated cannabis microbusiness; and~~
- ~~(8) vertically integrated cannabis~~

~~establishment.~~

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

- ~~(1) if an applicant is a limited partnership, each partner of the limited partnership;~~
- ~~(2) if the applicant is a limited liability company, each member of the limited liability company;~~
- ~~(3) if the applicant is a corporation, each director and officer of the corporation; and~~
- ~~(4) any controlling person of the applicant.]~~

J. To investigate the suitability of an applicant for licensure for the medical cannabis program or commercial cannabis activity, the division shall have access to criminal history records information furnished by the department of public safety and the federal bureau of investigation, subject to any restrictions imposed by federal law.

K. An applicant for a license to conduct commercial cannabis activity shall undergo a state and federal criminal history records check, and the applicant shall submit an electronic set of fingerprints to the department of public safety for that purpose. The department of public safety shall

conduct a check of state records and forward the fingerprints to the federal bureau of investigation for a national criminal history records check to determine the existence and content of a record of convictions and arrests in this state or other law enforcement jurisdictions and to generate a criminal history records check in accordance with rules of the department of public safety and regulations of the federal bureau of investigation. The department of public safety shall review the information obtained from the criminal history records check and shall compile and provide that information to the division. The division shall use the information resulting from the fingerprint-based criminal history records check to investigate and determine whether an applicant is qualified to hold a cannabis license.

L. ~~[Arrest record]~~ Criminal history information received from the department of public safety or the federal bureau of investigation ~~[and the department of public safety]~~ shall be confidential, shall not be considered a public record pursuant to the Public Records Act and shall not be disclosed to ~~[persons not]~~ anyone other than public employees directly involved in the decision affecting the applicant.

Sf11→M. A license issued pursuant to the Cannabis Regulation Act is revocable if a licensee is using water to which the licensee does not have a legal right. The division and the office of the state engineer shall develop a guide for

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water providers and cannabis licensees on water rights and the legal use of water. ←Sf11

~~[M. Electronic live fingerprint scans may be used when conducting criminal history background checks.]~~"

SECTION 7. Section 26-2C-8 NMSA 1978 (being Laws 2021 (1st S.S.), Chapter 4, Section 8) is amended to read:

"26-2C-8. LICENSEES--DISCIPLINARY ACTIONS--SANCTIONS--CIVIL PENALTY.--

A. A violation of the provisions of the Cannabis Regulation Act or rules promulgated in accordance with that act by a licensee or permittee is grounds for disciplinary action.

B. The division may:

(1) impose an intermediate sanction established by rule;

(2) impose a directed plan of correction;

(3) assess a civil monetary penalty established by rule; provided that a civil monetary penalty shall not exceed ten thousand dollars (\$10,000) per violation; and provided further that penalties and interest recovered pursuant to the Cannabis Regulation Act on behalf of the state shall be remitted to the state treasurer for deposit in the current school fund; or

(4) suspend or revoke the license.

C. Repeated violations of serious and substantial rules pertaining to public health and safety may result in

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license suspension.

~~[G-]~~ D. The division shall promulgate rules specifying the criteria for imposition of sanctions and civil monetary penalties.

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

~~[E-]~~ F. A person aggrieved by an action taken by the division pursuant to this section may request and receive a hearing with the superintendent for the purpose of reviewing the action in accordance with the Uniform Licensing Act."

SECTION 8. Section 26-2C-10 NMSA 1978 (being Laws 2021 (1st S.S.), Chapter 4, Section 10) is amended to read:

"26-2C-10. CANNABIS TRAINING AND EDUCATION PROGRAM LICENSING ~~[SANCTIONS]~~--MANDATORY EDUCATION--PROVIDERS.--

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

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

B. The division may provide by rule for mandatory education for licensees and employees of licensees.

Certificates of completion of mandatory education shall be maintained by each licensee for employees and open to

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inspection by the division. The division may contract with a training and education program or other qualified training provider to provide mandatory education."

SECTION 9. Section 26-2C-14 NMSA 1978 (being Laws 2021 (1st S.S.), Chapter 4, Section 14) is amended to read:

"26-2C-14. PROTECTION OF UNDERAGE PERSONS--PROVIDING CANNABIS PRODUCTS TO MINORS--PENALTIES.--

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

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

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

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

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

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B. A licensee shall not employ a person younger than twenty-one years of age to engage in a medical or commercial cannabis activity except that if a licensee employed a person younger than twenty-one years of age, but not younger than eighteen years of age, before the effective date of this 2022 act, that person may continue employment in the same position with that licensee. A licensee that employs a person younger than twenty-one years of age who is not grandfathered as provided in this subsection is subject to disciplinary action by the division.

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

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

(1) that the purchaser falsely represented in writing; by producing a driver's license bearing the purchaser's photograph; by producing a photographic identification card issued by the motor vehicle division of the

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taxation and revenue department; or by producing a similar identification card issued pursuant to the laws of this state, another state, the federal government or the government of an Indian nation, tribe or pueblo that the person was twenty-one years of age or older;

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

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

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

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

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

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

SECTION 10. Section 7-1-6.68 NMSA 1978 (being Laws 2021

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(1st S.S.), Chapter 4, Section 50) is amended to read:

"7-1-6.68. 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, subject to any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978, 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~~] business locations within the municipality as reported pursuant to Section 7-42-4 NMSA 1978.

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~~] business locations within the county area of the county as reported pursuant to Section 7-42-4 NMSA 1978.

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."

SECTION 11. Section 7-42-4 NMSA 1978 (being Laws 2021

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(1st S.S.), Chapter 4, Section 46) is amended to read:

"7-42-4. DATE PAYMENT DUE--BUSINESS LOCATION REPORTING--

A. The cannabis excise tax is to be paid on or before the twenty-fifth day of the month following the month in which the taxable sale occurs.

B. A cannabis retailer that sells cannabis products in this state shall report the sale to the proper business location at the following locations:

(1) if the cannabis product is received by the purchaser at the New Mexico business location of the cannabis retailer, the location of the cannabis retailer;

(2) if the cannabis product is not received by the purchaser at a business location of the cannabis retailer, the location indicated by instructions for delivery to the purchaser, or the purchaser's donee, when known to the cannabis retailer;

(3) if Paragraphs (1) and (2) of this subsection do not apply, the location indicated by an address for the purchaser available from the business records of the cannabis retailer that are maintained in the ordinary course of business; provided that use of the address does not constitute bad faith;

(4) if Paragraphs (1) through (3) of this subsection do not apply, the location for the purchaser

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obtained during consummation of the sale, including the address of a purchaser's payment instrument if no other address is available; provided that use of this address does not constitute bad faith; or

(5) if Paragraphs (1) through (4) of this subsection do not apply, including a circumstance in which the cannabis retailer is without sufficient information to apply those standards, the location from which the cannabis product is shipped or transmitted."

SECTION 12. A new section of the Nonprofit Corporation Act is enacted to read:

"[NEW MATERIAL] CONVERSION OF MEDICAL CANNABIS NONPROFIT CORPORATIONS TO FOR-PROFIT STATUS--TIME LIMITATION.--

A. Until December 1, 2023, a nonprofit corporation that was incorporated in order to qualify for a license as a licensed nonprofit producer pursuant to department of health rules under the Lynn and Erin Compassionate Use Act may convert to a for-profit corporation as follows:

(1) the terms and conditions of the conversion from nonprofit to for-profit corporation shall be approved by all members of the board of directors of the nonprofit corporation;

(2) an agreement of conversion shall set forth the terms and conditions of any ownership interests in the for-profit corporation; and

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(3) the assets of the nonprofit corporation shall be applied and distributed as follows if the corporation did not have a federal tax exemption as a nonprofit corporation:

(a) all liabilities and obligations of the corporation shall be paid and discharged or adequate provision shall be made for payment and discharge;

(b) assets held by the corporation upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred or conveyed in accordance with such requirements;

(c) assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational or similar purposes, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution, shall be transferred or conveyed to one or more nonprofit domestic corporations, nonprofit societies or nonprofit organizations engaged in activities substantially similar to those of the dissolving corporation, pursuant to a plan of distribution adopted as provided in the Nonprofit Corporation Act; and

(d) any remaining assets shall be distributed to the new for-profit corporation according to a

plan of distribution adopted as provided in the Nonprofit Corporation Act.

B. After a conversion is approved by the board of directors, the nonprofit corporation shall file with the secretary of state new articles of incorporation and a statement containing the following:

- (1) a statement that the for-profit corporation was converted from a nonprofit corporation;
- (2) the former name of the nonprofit corporation;
- (3) a statement of the number of votes cast by the members of the board of directions of the nonprofit corporation; and
- (4) a statement that the articles of incorporation of the nonprofit corporation are to be canceled as of the date the conversion takes effect.

C. The filing of articles of incorporation for a for-profit corporation resulting from a conversion pursuant to this section cancels the articles of organization of the nonprofit corporation as of the date the conversion takes effect.

D. A conversion takes effect when the articles of incorporation of the converted corporation are filed with the secretary of state or at any later date specified in the filed document."

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