

HOUSE CONSUMER AND PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
HOUSE BILL 226

56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024

AN ACT

RELATING TO CANNABIS REGULATION; PROVIDING FOR STATE CRIMINAL HISTORY CHECKS AND NATIONAL CRIMINAL HISTORY BACKGROUND CHECKS AS A CONDITION OF ELIGIBILITY FOR LICENSURE; REQUIRING THAT AN APPLICATION FOR CANNABIS ACTIVITY LICENSURE BE SIGNED BY THE APPLICANT.

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

SECTION 1. 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

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1 display or presented in a radio, television or other media
2 broadcast or in digital media; and

3 (2) does not include:

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

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

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

16 B. "applicant" means a person seeking licensure;

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

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

25 (2) does not include:

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1 (a) the mature stalks of the plant;
2 fiber produced from the stalks; oil or cake made from the seeds
3 of the plant; any other compound, manufacture, salt,
4 derivative, mixture or preparation of the mature stalks, fiber,
5 oil or cake; or the sterilized seed of the plant that is
6 incapable of germination; or

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

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

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

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

- 16 (1) a cannabis testing laboratory;
17 (2) a cannabis manufacturer;
18 (3) a cannabis producer;
19 (4) a cannabis retailer;
20 (5) a cannabis research laboratory;
21 (6) a vertically integrated cannabis
22 establishment;
23 (7) a cannabis producer microbusiness; or
24 (8) an integrated cannabis microbusiness;

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

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1 (1) means a product obtained by separating
2 resins, tetrahydrocannabinols or other substances from cannabis
3 by extraction methods approved by the division; and

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

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

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

11 (1) manufactures cannabis products;

12 (2) packages cannabis products;

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

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

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

18 (1) cultivates cannabis plants;

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

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

23 (4) sells cannabis products wholesale;

24 ~~[J.]~~ K. "cannabis producer microbusiness" means a
25 cannabis producer at a single licensed premises that possesses

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1 no more than two hundred total mature cannabis plants at any
2 one time;

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

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

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

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

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

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

23 ~~[Q.]~~ R. "cannabis training and education program"
24 means a practical or academic curriculum offered by a New
25 Mexico public post-secondary educational institution designed

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1 to prepare students for participation in the cannabis industry;

2 [R-] S. "commercial cannabis activity":

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

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

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

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

17 [U-] V. "controlling person":

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

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

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

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1 ~~[W.]~~ X. "department" means the regulation and
2 licensing department;

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

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

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

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

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

24 ~~[CC.]~~ DD. "homegrown" or "homemade" means grown or
25 made for purposes that are not dependent or conditioned upon

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1 the provision or receipt of financial consideration;

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

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

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

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

14 (1) production of cannabis at a single
15 licensed premises; provided that the person shall not possess
16 more than two hundred total mature cannabis plants at any one
17 time;

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

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

22 (4) operation of only one retail
23 establishment; and

24 (5) couriering of cannabis products to
25 qualified patients, primary caregivers or reciprocal

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1 participants or directly to consumers;

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

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

7 (2) all areas outside of a building that are
8 specifically included in the license for the production,
9 manufacturing, wholesale sale or retail sale of cannabis
10 products; and

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

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

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

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

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

25 ~~[LL-]~~ NN. "medical cannabis program" means the

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1 program created pursuant to the Lynn and Erin Compassionate Use
2 Act;

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

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

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

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

22 ~~[QQ-]~~ SS. "reciprocal participant" means a person
23 who is not a resident of New Mexico and who holds proof of
24 enrollment by a governmental regulatory authority to
25 participate in the medical cannabis program of another state of

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

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

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

12 ~~[FF-]~~ VV. "unprocessed" means unaltered from an
 13 original, raw or natural state; and

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

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

21 **SECTION 2.** Section 26-2C-3 NMSA 1978 (being Laws 2021
 22 (1st S.S.), Chapter 4, Section 3) is amended to read:

23 "26-2C-3. DIVISION--POWERS AND DUTIES--RULEMAKING--
 24 ADVISORY COMMITTEE CREATED--MEMBERSHIP--DUTIES.--

25 A. The "cannabis control division" is created in

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

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

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

14 (2) security requirements for a cannabis
15 establishment;

16 (3) requirements related to:

17 (a) inspection and monitoring of a
18 cannabis establishment;

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

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

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

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

3 (4) rules providing that:

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

8 (b) as to commercial cannabis activity:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (1) qualifications and procedures for
25 licensure; and

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

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

9 (1) environmental protections; and

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

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

21 F. The division shall collect and publish annually
22 on the division's website, and present to the appropriate
23 interim committee of the legislature, a report describing
24 demographic data on license applicants, controlling persons and
25 employees of cannabis establishments, including race,

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1 ethnicity, gender, age, residential status and whether the
2 applicants, persons, employees or the locations where the
3 cannabis products are produced, manufactured, sold, tested or
4 researched are located in an underserved rural community,
5 including tribal, acequia, land grant-merced or other rural
6 historic communities.

7 G. The "cannabis regulatory advisory committee"
8 shall be created no later than September 1, 2021. The
9 committee shall advise the division on the development of rules
10 pursuant to the Cannabis Regulation Act, including best
11 practices and the promotion of economic and cultural diversity
12 in licensing and employment opportunities and protection of
13 public health and safety while ensuring a regulated environment
14 for commercial cannabis activity that does not impose
15 unreasonable barriers that would perpetuate, rather than reduce
16 and eliminate, the illicit market for cannabis. A person
17 appointed to the cannabis regulatory advisory committee shall
18 not hold any ownership interest or investment in a licensed
19 person pursuant to the Cannabis Regulation Act; provided that
20 the superintendent may appoint a person who holds an ownership
21 interest in a licensed person as a nonvoting member. The
22 committee shall consist of the following members:

23 (1) the chief public defender or the chief
24 public defender's designee;

25 (2) a district attorney appointed by the New

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1 Mexico district attorney association;

2 (3) a municipal police chief appointed by the
3 New Mexico association of chiefs of police;

4 (4) a county sheriff appointed by the
5 executive director of the New Mexico association of counties;
6 and

7 (5) one member for each of the following
8 groups or professional qualifications, appointed by the
9 superintendent:

10 (a) a cannabis policy advocacy
11 organization;

12 (b) a labor organization;

13 (c) a qualified patient;

14 (d) a state or local agency with
15 relevant expertise as the director and the superintendent deem
16 appropriate;

17 (e) an Indian nation, tribe or pueblo
18 with relevant expertise as the director and the superintendent
19 deem appropriate;

20 (f) expertise in public health;

21 (g) expertise in regulating commercial
22 activity for adult-use intoxicating substances;

23 (h) expertise and experience in cannabis
24 laboratory science;

25 (i) expertise in environmental science;

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- 1 (j) expertise in small business
- 2 development;
- 3 (k) expertise in water resources;
- 4 (l) expertise in other relevant areas as
- 5 the director and the superintendent deem appropriate; and
- 6 (m) previous experience as a cannabis
- 7 retailer, cannabis producer or cannabis manufacturer and who is
- 8 a nonvoting member.

9 H. The cannabis regulatory advisory committee shall
10 elect from among its members a chair and such other officers as
11 it deems necessary. The committee shall meet at the call of
12 the chair, the director or the superintendent. A majority of
13 members currently serving constitutes a quorum for the conduct
14 of business. Members shall serve at the pleasure of the
15 superintendent.

16 I. Public voting members of the cannabis regulatory
17 advisory committee are entitled to receive per diem and mileage
18 as provided for state employees pursuant to the Per Diem and
19 Mileage Act and shall receive no other compensation, perquisite
20 or allowance.

21 J. The division shall:

- 22 (1) monitor the supply and demand of cannabis
- 23 products produced in New Mexico by licensees and present
- 24 annually to the appropriate interim committee of the
- 25 legislature the impacts of supply on illicit cannabis products

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1 markets and adequate supply of cannabis products for qualified
2 patients and reciprocal participants;

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

6 (3) undertake studies and conduct courses of
7 instruction for division employees that will improve the
8 operations of the division and advance its purposes; and

9 (4) receive and maintain information and data
10 from the department of public safety and the federal bureau of
11 investigation relating to licensing disqualifications based on
12 criminal history."

13 SECTION 3. Section 26-2C-7 NMSA 1978 (being Laws 2021
14 (1st S.S.), Chapter 4, Section 7) is amended to read:

15 "26-2C-7. COMMERCIAL CANNABIS ACTIVITY LICENSING--
16 APPLICATION--ISSUANCE AND DENIAL OF A LICENSE.--

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

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

22 (1) ~~[no later than September 1, 2021]~~ accept
23 and ~~[begin processing]~~ process license applications; ~~[for~~
24 ~~cannabis producers, cannabis producer microbusinesses and any~~
25 ~~person properly licensed and in good standing as a licensed~~

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1 ~~cannabis producer pursuant to the Lynn and Erin Compassionate~~
 2 ~~Use Act;~~

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

5 ~~(3)]~~ (2) require as a condition of licensing
 6 pursuant to the Cannabis Regulation Act that the applicant
 7 demonstrate that the applicant has a legal right to a
 8 commercial water supply, water rights or another source of
 9 water sufficient to meet the water needs as determined by the
 10 division related to the license as evidenced by documentation
 11 from the office of the state engineer of a valid water right or
 12 from a water provider that the use of water for cannabis
 13 production is compliant with that water provider's rules; and

14 ~~[(4)]~~ (3) if an applicant applies for a
 15 cannabis producer license, ~~[or a cannabis manufacturer license~~
 16 ~~in addition to the requirements in Paragraph (3) of this~~
 17 ~~subsection]~~ require that the applicant submit a plan to use, or
 18 demonstrate to the division that the applicant cannot feasibly
 19 use, energy and water reduction opportunities, including:

20 (a) ~~[for a cannabis producer]~~ drip
 21 irrigation and water collection;

22 (b) natural lighting and energy
 23 efficiency measures; and

24 (c) renewable energy generation. ~~[and~~

25 ~~(5) allow commercial cannabis activity retail~~

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~~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 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

1 otherwise qualified for a license and that issuing a license to
2 the applicant would not compromise public safety, the division
3 shall conduct a thorough review of the conviction, including
4 the nature of the offense, surrounding circumstances and any
5 evidence of the applicant's or controlling person's
6 rehabilitation following the conviction, and based on that
7 review, determine whether the applicant should be issued a
8 license.

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

13 (1) a felony conviction involving fraud,
14 deceit or embezzlement;

15 (2) a felony conviction for hiring, employing
16 or otherwise using a person younger than eighteen years of age
17 to:

18 (a) prepare for sale, transport or carry
19 a controlled substance; or

20 (b) sell, give away or offer to sell a
21 controlled substance to any person; and

22 (3) any other offense as determined by the
23 division.

24 F. A conviction for which the related sentence,
25 including any term of probation or parole, is completed for the

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1 possession, use, manufacture, distribution or dispensing or the
2 possession with the intent to manufacture, distribute or
3 dispense cannabis is not considered substantially related to
4 the qualifications, functions or duties of a person seeking a
5 license and shall not be the sole ground on which an
6 application is denied. The division shall comply with the
7 provisions of the Criminal Offender Employment Act.

8 G. The division shall deny an application if an
9 applicant, a controlling person or the premises for which a
10 license is sought does not qualify for licensure pursuant to
11 the Cannabis Regulation Act.

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

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

23 ~~[J. The division shall adopt rules providing for~~
24 ~~submission of an applicant's fingerprints to the federal bureau~~
25 ~~of investigation to conduct a national criminal history~~

1 ~~background check and to the department of public safety to~~
2 ~~conduct a state criminal history check for the following~~
3 ~~licensees:~~

4 ~~(1) cannabis manufacturer;~~

5 ~~(2) cannabis producer;~~

6 ~~(3) cannabis producer microbusiness;~~

7 ~~(4) cannabis research laboratory;~~

8 ~~(5) cannabis retailer;~~

9 ~~(6) cannabis testing laboratory;~~

10 ~~(7) integrated cannabis microbusiness; and~~

11 ~~(8) vertically integrated cannabis~~

12 ~~establishment.~~

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

16 ~~(1) if an applicant is a limited partnership,~~
17 ~~each partner of the limited partnership;~~

18 ~~(2) if the applicant is a limited liability~~
19 ~~company, each member of the limited liability company;~~

20 ~~(3) if the applicant is a corporation, each~~
21 ~~director and officer of the corporation; and~~

22 ~~(4) any controlling person of the applicant.~~

23 ~~L. Arrest record information received from the~~
24 ~~federal bureau of investigation and the department of public~~
25 ~~safety shall be confidential, shall not be considered a public~~

.227890.2

underscored material = new
[bracketed material] = delete

1 ~~record pursuant to the Public Records Act and shall not be~~
2 ~~disclosed to persons not directly involved in the decision~~
3 ~~affecting the applicant.]~~

4 J. To investigate the suitability of an applicant
5 for licensure for the medical cannabis program or commercial
6 cannabis activity, the division shall have access to criminal
7 history records information furnished by the department of
8 public safety and the federal bureau of investigation, subject
9 to any restrictions imposed by federal law. If the division
10 considers an applicant's criminal history record, the division
11 shall also consider information provided by the applicant about
12 the criminal history record, including evidence of
13 rehabilitation, character references and educational
14 achievements.

15 K. An applicant for a license to conduct commercial
16 cannabis activity shall undergo a state and federal criminal
17 history records check, and the applicant shall submit an
18 electronic set of fingerprints to the department of public
19 safety for that purpose. The department of public safety shall
20 conduct a check of state records and forward the fingerprints
21 to the federal bureau of investigation for a national criminal
22 history records check to determine the existence and content of
23 a record of convictions and arrests in this state or other law
24 enforcement jurisdictions and to generate a criminal history
25 records check in accordance with rules of the department of

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1 public safety and regulations of the federal bureau of
2 investigation. The department may acquire a name-based
3 criminal history record check for an applicant or a licensee
4 who has twice submitted to a fingerprint-based criminal history
5 record check and whose fingerprints are unclassifiable. The
6 department of public safety shall review the information
7 obtained from the criminal history records check and shall
8 compile and provide that information to the division. The
9 division shall use the information resulting from the
10 fingerprint-based criminal history records check to investigate
11 and determine whether an applicant is qualified to hold a
12 cannabis license.

13 L. Criminal history information received from the
14 department of public safety or the federal bureau of
15 investigation that is not already a matter of public record
16 shall:

17 (1) be confidential;

18 (2) be restricted to the exclusive use of the
19 division for evaluating the applicant's eligibility or
20 disqualification for licensure;

21 (3) not be considered a public record pursuant
22 to the Public Records Act; and

23 (4) not be disclosed to anyone other than
24 public employees directly involved in the decision affecting
25 the applicant."

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