



# Update on New Mexico's Cannabis Industry

Economic and Rural Development and Policy Committee

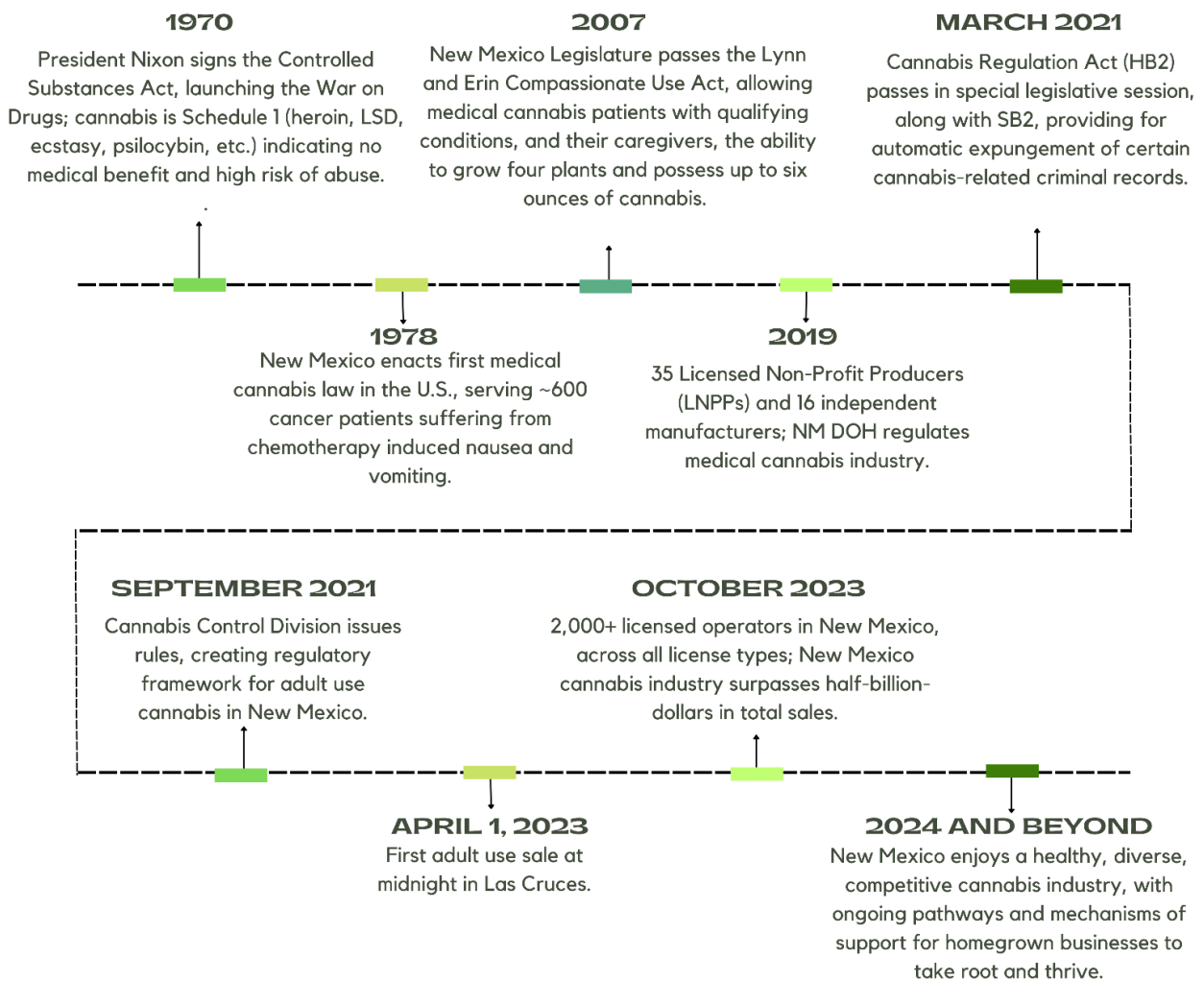
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Bataan Hall

Taos, New Mexico

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## Timeline of Cannabis in NM



## I. Industry Snapshot - August 2023

- Total adult use sales of cannabis has “basically” continued to increase, month-over-month (Data Heard Presentation)
  - The average cart size and average monthly revenue per licensed retailer continues to decrease, at an increasingly higher rate
- New Mexico is very likely over-producing cannabis, growing and manufacturing more supply than there is demand (*New Mexico Cannabis Demand Modeling, 2022*)
  - As of January, the top ten highest producing cultivation licensees accounted for half of the estimated total supply needed for New Mexico
  - This presence of illicit and gray market cannabis continues to greatly exacerbate oversupply
- As of August, 2023, there are 1,021 cannabis retailers. Colorado, a state of 5.8 million (almost 3x New Mexico’s population - adjust for proximity to Texas) has 1,048 licensed retailers
  - 603 reported sales that month, 40% reported sales of less than \$25,000 (average of \$11,660), representing 8% of total adult use market
  - 40% of operating storefronts are “mom & pop”, with an average monthly revenue of \$23,000 (under \$25k “survival threshold”, Data Heard Presentation); there is no bankruptcy protection for cannabis operators
    - The “survival threshold” was updated last month to \$50,000 monthly
- \*As of September, 2023, there are 1,013 licensed retailers (-8), 653 reported sales to CCD
  - Total sales decreased 2.1% (6.86% medical cannabis sales);
  - Dark Matter in Sunland Park reported \$1,078,000 in sales (3.1% of total adult use sales). \*Updated data from [Bill Sluben](https://www.linkedin.com/in/billsluben/) (linkedin.com/in/billsluben/)
- While 60.7% of New Mexicans who use cannabis indicated that it is easy or very easy to access illicit products, a total of 63% was report to be obtained from regulated, legal sources (*New Mexico Cannabis Demand Modeling, 2022*)

## II. 2024 Legislative Priorities

- Enhance ability for CCD to sufficiently regulate industry
  - Remove sunset of plant count limits
    - Section 40 of the CRA, which grants CCD the ability to set production limits via rulemaking, is set to repeal December 31, 2025.
  - Re-insert Language re: ability of RLD to manage production
    - From 2021 HB12, SJC amendments:

*The division may limit the type or number of licenses that a licensee may be issued pursuant to the Cannabis Regulation Act; provided that upon a finding and the recommendation of the cannabis regulatory advisory committee that market equilibrium is deficient and threatens the economic viability of the cannabis industry or adequate supply of cannabis, the superintendent may impose temporary moratoria on new licensure, issue new licenses or allow greater production by current licensees. The decision to impose temporary moratoria on new licensure, issue new licenses or allow greater production by current licensees shall be made with input from the university of New Mexico bureau of business and economic research and the director of the New Mexico department of agriculture.*

- Enhance ability for RLD to sufficiently enforce rules and compliance
  - Strengthen enforcement abilities for CCD
  - Authorize destruction of illegal products (Missouri story)
- Remove plant count limit from statute, index to 10% of highest commercial production limit
- Nonprofit conversion language
- Picnic License
- Remove annual escalation of cannabis excise tax
- Fixes to CRA
  - Federal background check
  - Micro-to-micro wholesale
  - Liquor license fix

### **III. Future Policy Considerations**

- Delta 8,10; THC-O
  - Federal 2018 Farm Bill legalized hemp-derived THC, making it possible for national hemp businesses to create intoxicating products that can ship across state lines and have virtually no regulation or testing
  - A growing number of states, 15 so far, have altogether banned hemp-derived THC, with varying levels of success while other states have incorporated hemp-derived cannabinoids into their state cannabis programs
  - Right now, untested products are available in gas stations across the state
- Support for small and medium-sized cannabis businesses (funding, accelerator)
  - Based on what has worked best in other markets, any participation in an accelerator program should include a grant for participants
- Interstate cannabis commerce

- California, Oregon, and Washington have all passed laws allowing officials to enter into agreements with other legal states for cross-border trade agreements. Crossing state lines with a Schedule 1 drug is currently illegal, and the laws in Washington and Oregon require federal reform or guidance to proceed while California is likely to proceed without

#### **IV. Federal Snapshot**

- SAFER Banking
  - The SAFER Banking Act passed a U.S. Senate committee, Senate Banking, for the first time on September 27, 2023, after previous versions had passed out the House seven times before
  - SAFER provides a safe harbor for state-legal cannabis businesses to access federally regulated banks and credit unions. While a major step in the right direction, current versions lack parity in terms of specific policies regarding access to loans, mortgages, etc., compared to hemp businesses
- Rescheduling
  - On August 30, 2023, it was leaked that Health and Human Services issued a non-binding letter to the Drug Enforcement Agency recommending moving cannabis from Schedule 1 (heroin, LSD, MDMA, psilocybin) to Schedule 3 (Ketamine, Tylenol with Codeine).
  - IRS tax code 280e does NOT apply to Schedule 3 substances, but there remain LOTS of unknowns. NMCCC currently does not yet have a formal position on rescheduling cannabis

## References

- [New Mexico Cannabis Demand Modeling. 2022](#); Prepared for New Mexico Regulation and Licensing Department, March 2023
- [The Data Heard Presentation. Bill Sluben](#); NMCCC Membership Meeting, August 2023
- [New Mexico Legalization & Cultivation Capacity Analysis](#); Prepared for Ultra Health, June 2021
- [New Mexico's Legal Cannabis Market Grapples with Oversaturation, Oversupply, and Illicit Products](#). Cannabis Benchmarks Magazine, October 3, 2023
- [Oregon has too much cannabis. Two laws may help the state manage its surplus](#). Los Angeles Times, June 24, 2019
  - [Oregon Senate Bill 218](#) - Relating to cannabis, and declaring an emergency, 2019 Regular Session
  - [Oregon House Bill 4016](#) (renewal of SB 2018) - Relating to cannabis, and declaring an emergency, 2022 Regular Session
- [New Mexico Cannabis Online Reporting Portal \(CROP\)](#)
- ['Quite a journey': Cannabis banking bill clears Senate committee](#); The Hill, September 27, 2023
- Non Profit Conversion language, from [2023 HB 313, SGEIC amendments](#):

*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 into a for-profit corporation pursuant to the Business Corporation Act. 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: (1) all liabilities and obligations of the corporation shall be paid and discharged or adequate provision shall be made for payment and discharge; (2) assets held by the corporation on condition requiring return, transfer or conveyance, which condition occurs by reason of the conversion, shall be returned, transferred or conveyed in accordance with the requirements; (3) assets received and held by the corporation subject to limitations permitting their use only for eleemosynary, religious, benevolent, educational or similar purposes, but not held on a condition requiring return, transfer or conveyance by reason of the conversion, 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 converting corporation, pursuant to a plan of distribution adopted as provided in the Nonprofit Corporation Act; and(4) 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.*

## **NEW MEXICO'S LEGAL CANNABIS MARKET GRAPPLES WITH OVERSATURATION, OVERSUPPLY, & ILLICIT MARKET**



Image: Yuval Zukerman/Unsplash

October 3, 2023

New Mexico is no stranger to cannabis and cannabis legalization. The state passed the [nation's first medical cannabis law back](#) in 1978, allowing limited use of the drug for some cancer patients. Cannabis was legalized for adult use in 2021 and the first licensed sales of recreational cannabis began in New Mexico on April 1, 2022.

In this article, an industry insider details some of the challenges that have sprung up in the last 18 months; namely, New Mexico's legal cannabis market is grappling with an oversaturation of licensed businesses, while also seeing prices driven down by oversupply and illicit product from out-of-state making its way into the supply chain.

## **Low Barriers to Entry Lead to Hyper-Competitive Market**

Looking at sales numbers, the first year-and-a-half of New Mexico's adult use cannabis industry could be considered a success story for a relatively low-population state. In

August, according to [data from the state's Regulation and Licensing Department \(NMRLD\)](#), total cannabis sales in New Mexico – medical and adult use – reached a record \$48.2 million, compared to \$40.8 million in sales in August 2022.

For Ben Lewinger, however, the data tells only part of the story. Lewinger is Executive Director of the New Mexico Cannabis Chamber of Commerce. He noted that several factors are creating serious challenges for New Mexico's cannabis sector.

One issue is the way the state established its adult use cannabis market, specifically the licensing process. "New Mexico took a very forward approach in the way that we legalized, in that we had very few barriers to entry for licensure," Lewinger told Cannabis Benchmarks. "Instead of having a social equity program or social equity quota, social equity was built into the DNA of how our regulatory framework was designed. It was very easy for anybody who wanted a license to get a license. And the result is we have over 2,000 licensed operators in New Mexico, across cultivation, manufacturing, retail, and testing facilities."

That relative ease in obtaining a cannabis license means there are currently [over 1,000 approved dispensary licenses](#) in the state. A NMRLD spokesperson told Cannabis Benchmarks that 610 of those retail licenses are active. In comparison, Colorado, with a population nearly three times as large as New Mexico's, had 679 active adult use retailer licenses as of the beginning of September.

The oversaturation of retailers means that individual stores are capturing smaller slices of the overall pie in a state with a population of only 2.1 million. Lewinger described New Mexico as currently having a burgeoning, but, for the moment, unstable market where licensed businesses are seeing decreasing revenue. "There are a ton of retailers who [are bringing in] less than \$25,000 in revenue a month," he said. "We are starting to see those businesses close, left and right." Additionally, according to Lewinger, New Mexico is currently producing more cannabis and cannabis products than there is demand in the state.

## Illegal Cannabis in New Mexico Drives Down Legal Market Prices

Another challenge, Lewinger noted, is the “huge amount of illicit cannabis product” coming into New Mexico from California, Oklahoma, and other states that are also experiencing cannabis surpluses due to their own overproduction.

One of the state’s top cannabis companies recently told Lewinger that wholesale outdoor-grown flower is currently selling for anywhere from \$1,000 to \$1,200 per pound. At the same time, he said, “you can get pounds of Grade A flower for \$300 that are coming in from Oklahoma, and you can put those into our state traceability software through loopholes. That has really driven the price of properly regulated, New Mexico-licensed cannabis into the ground.”

The flood of out-of-state, illicit cannabis also impacts prices of other cannabis products in the state. “When you have truckloads of flower and trim coming in from other states and introduced into the state traceability software illegally,” Lewinger pointed out, “some of that is turned into distillate and finished products, forcing the price for manufactured products to depress as well.” A manufacturer told Lewinger that the wholesale price for distillate in New Mexico was \$9,000 a liter last year. Currently it’s \$4,200 to \$4,600 per liter of distillate.

## New Mexico Cannabis Regulators Working to Weed Out Bad Actors

That said, Lewinger noted that the New Mexico Cannabis Control Division has dramatically tightened up its enforcement over the past several months. An [NMRLD press release from July](#), for example, announced that the department had revoked the license of a cannabis retailer in Albuquerque for selling out-of-state cannabis products. According to the release, among the violations found at the dispensary in question were



“possessing, receiving, and selling cannabis products that were not native to New Mexico and were marked with California stampings.”

“I firmly believe that the way our state legalized was the right way to do it,” Lewinger said. “But the side effect of that is you have a bunch of operators [who] have very little intention of ever participating in the true legal market. I’m thinking of two dispensaries that were closed for selling California product, and neither of them even came to their hearing. Which makes me think that was their plan all along; to set up shop, make it as long as they can selling California product so they had higher margins on what they were selling.”

The priority now, Lewinger believes, is for the state’s cannabis sector to stabilize and undercut the illicit market. “Creating supports and funding for small and medium-sized operators,” he said, “so it’s not only MSOs” – large, multi-state operators – who are left standing as the industry matures and consolidates.

## Medical Cannabis in New Mexico After Recreational Legalization

As in other states that have legalized cannabis for adult use, the medical cannabis market in New Mexico has softened considerably since the opening of recreational sales. NMRLD reported medical cannabis sales of \$13.5 million in August 2023, compared to \$16.5 million for August last year.

For his part, Lewinger believes the medical cannabis sector will survive in New Mexico. “Like every other state we’ve seen enrollment in our medical cannabis program nosedive,” he acknowledged. “But I like to think that’s more of a correction. For medical cannabis here, you have higher THC limits on products, which I think is very appealing, especially for patients struggling with chronic pain or cancer treatment.”

He also noted that medical cannabis sales in New Mexico are tax-exempt. “We have a[n adult use] cannabis excise tax that’s 12%, and then everywhere in New Mexico has a gross receipts tax of 6% to 10%,” he said. “The total tax on [adult use] cannabis is anywhere from 18% to 22%, depending on where you live in the state, but medical cannabis patients don’t have to pay any tax. I do think that is enough for people, especially for folks that really believe in cannabis as plant medicine, to continue to renew their [patient] licenses.”

## As Famous as New Mexico Green Chile?

Lewinger believes that, with the financial resources needed for cannabis regulation and compliance now coming into the state coffers via tax revenue from the industry, that the legal market in New Mexico has turned a corner.

“Our state had a very aggressive timeline from when the governor signed the cannabis regulation act to our first adult use sale,” he said. “It took less than 12 months to create a brand new division to regulate legal cannabis and staff it up. So it’s only now, a year-and-a-half into the legal industry, that the state has revenue and our regulators are able to have sufficient compliance and enforcement activities across the state. Huge kudos to them, because they are doing a really good job of cracking down on those bad operators. And I think that is what’s going to make the biggest difference in regulating our industry.”

Lewinger also expects New Mexico cannabis to come into its own as a brand, as its quality becomes better known. “I would put New Mexico cannabis up against the best cannabis grown in Humboldt County [in northern California] and British Columbia any day of the week,” he said. “Especially with our outdoor, sun-kissed flower and living soil. I would put it up against cannabis anywhere in the world. I look forward to a day when we have interstate commerce, and we’re exporting our green cannabis and cannabis

products alongside [New Mexico's famous] green chile. I hope that in five years' time there's a pathway for new operators to enter and thrive in the state's industry."