

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

Current and previously issued FIRs are available on the NM Legislative Website ([www.nmlegis.gov](http://www.nmlegis.gov)).

## FISCAL IMPACT REPORT

**SPONSOR** Ortiz y Pino/ Martinez, J.      **ORIGINAL DATE** 1/28/2020  
**LAST UPDATED** 2/11/2020      **HB** \_\_\_\_\_  
**SHORT TITLE** Cannabis Regulation Act      **SB** 115  
**ANALYST** Daly/Torres

### REVENUES (dollars in thousands)\*

Estimated Revenue					Recurring or Nonrecurring	Fund(s) Affected
FY2020	FY2021	FY2022	FY2023	FY2024		
\$0	Unknown	Unknown	Unknown	Unknown	Recurring	Cannabis Regulation Fund
\$0	\$1,905.9	\$5,207.1	\$7,342.4	\$8,585.3	Recurring	Community Grants Reinvestment Fund
\$0	\$1,114.8	\$2,975.5	\$4,195.6	\$4,905.9	Recurring	Low-Income Medical Patient Subsidy Fund
\$0	\$167.2	\$446.3	\$629.3	\$735.9	Recurring	Cannabis Workforce Training Fund
\$0	\$334.4	\$892.6	\$1,258.7	\$1,471.8	Recurring	Cannabis Industry Equitable Opportunity Investment Fund
\$0	\$919.7	\$2,454.8	\$3,461.4	\$4,047.4	Recurring	Law Enforcement Protection Fund
\$0	\$83.6	\$223.2	\$314.7	\$367.9	Recurring	Impaired Driving Education Fund
\$0	\$1,003.3	\$2,677.9	\$3,776.1	\$4,415.3	Recurring	Statewide Substance Use Disorder Treatment (HSD)
\$0	\$609.0	\$4,909.2	\$7,730.2	\$9,370.6	Recurring	General Fund (GRT)
\$0	\$6,182.9	\$19,786.5	\$28,707.4	\$33,900.0	Recurring	TOTAL State funds
\$0	\$2,477.3	\$6,612.1	\$9,323.7	\$10,902.0	Recurring	Municipality/County (Excise-4% max)
\$0	\$427.4	\$3,445.9	\$5,425.3	\$6,577.4	Recurring	Municipality/County (GRT)

(Parentheses ( ) indicate Revenue Decreases).

\*Estimated revenue as projected by Taxation and Revenue Department. See Fiscal Implications.

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	<b>FY20</b>	<b>FY21</b>	<b>FY22</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
	\$0	\$0	\$200.0	\$200.0	Recurring	Cannabis Industry Equitable Opportunity Investment Fund (EDD)
	\$0	\$3,000.0	\$0	\$3,000.0	Nonrecurring	Cannabis Regulation Fund/General Fund (RLD)
	\$0	\$6,820.0	\$6,820.0	\$13,640.0	Recurring	Cannabis Regulation Fund/General Fund (RLD)
	\$0	\$1,220.0	\$1,220.0	\$2,517.0	Recurring	Cannabis Regulation Fund/General Fund (NMED)
	\$0	\$136.4	\$136.4	\$343.6	Recurring	Cannabis Regulation Fund/General Fund (AHO)
		\$1,000.0	\$1,000.0	\$2,000.0	Recurring	General Fund (AOC)
	\$0	\$150.0	\$150.0	\$300.0	Recurring	General Fund (NMSU/NMDA)
	NFI	150.0	\$0	\$150.0	Nonrecurring	General Fund (NMSU/NMDA)
	\$0	\$1,104.0	\$1,344.0	\$2,448.0	Recurring	Cannabis Workforce Training Fund (WSD)
		Indeterminate	Indeterminate	Indeterminate	Indeterminate	General Fund (PED)

(Parentheses ( ) Indicate Expenditure Decreases)

Conflicts with SB139  
 Duplicates HB160

**SOURCES OF INFORMATION**

LFC Files

Responses Received From

- Regulation and Licensing Department (RLD)
- Administrative Hearings Office (AHO)
- Administrative Office of the Courts (AOC)
- Administrative Office of the District Attorneys (AODA)
- Aging and Long Term Services Department (ALTSO)
- Department of Health (DOH)
- Economic Development Department (EDD)
- New Mexico Attorney General (NMAG)
- New Mexico Department of Agriculture (NMDA)

New Mexico Environment Department (NMED)  
Law Offices of the Public Defender (LOPD)  
Public Education Department (PED)  
Workforce Solutions Department (WSD)

No Response Received

Taxation and Revenue Department (TRD)

**SUMMARY**

Synopsis of Bill

Senate Bill 115 enacts the Cannabis Regulation Act (CRA), a comprehensive plan for regulation and licensing of commercial cannabis production and distribution, and sale and consumption (of up to 2 ounces of flowers or 16 grams of extract) by people age 21 or older. It creates a new Cannabis Control Division (CCD) in RLD, charged with promulgating rules and policies related to licensing and regulating the activities authorized by the act. Unrestricted commercial sales begin January 1, 2022, but existing medical cannabis licenses can begin selling to other nonmedical consumers beginning January 1, 2021, subject to a DOH determination of adequate supply for the medical cannabis program.

SB115 also enacts the Cannabis Tax Act, which imposes a cannabis excise tax of 9 percent applied to the price paid for cannabis. That tax does not apply to retail sales of medical cannabis pursuant to the Lynn and Erin Compassionate Use Act (LECUA). It also allows for the adoption of ordinances by both municipalities and counties of an excise tax on cannabis of no more than four percent, which may be imposed in any number of 1/16 percent increments applied to the price of cannabis product; as drafted, the provisions governing these local body excise taxes do not appear to exempt medical cannabis.

Revenues from the excise tax is distributed as follows:

- 6 percent to the cannabis industry equitable opportunity investment fund, a new fund administered by EDD created to provide financial assistance to starting and existing cannabis industry businesses owned by members of communities disproportionately affected by past federal and state drug policies;
- 20 percent to the low-income medical patient subsidy fund, a new fund administered by DOH to support resident qualified patients under LECUA who are sick and indigent or higher use patients who need assistance in obtaining medical cannabis;
- 35 percent to the community grants reinvestment fund, a new fund administered by DOH for the purpose of a) drug education, including promoting cannabis abstinence for persons under 21; b) reinvesting in communities disproportionately affected by past federal and state drug polices, including supporting job placement, mental health treatment, and substance use disorder treatment; and c) funding research on substance use and abuse and other related programs, including funding housing for those using or in treatment for substance abuse;
- 3 percent to the cannabis workforce training fund, a new fund administered by WSD to prepare persons to engage in any medical or commercial cannabis activity, including supporting higher education cannabis training and education programs and other programs that train or educate persons to participate in these activities;

- 16.5 percent to the law enforcement protection fund;
- 1.5 percent to the impaired driving education fund; and
- 18 percent to HSD for statewide substance use disorder treatment.

As these distributions allocate 100 percent of excise tax revenues, there will be no distribution of these revenues to the general fund. There will, however, be gross receipts tax distributions to that fund.

SB115 also amends existing law to provide a gross receipts tax deduction for medical cannabis, as well as updating LECUA in a manner consistent with CRA. It allows local governments to adopt certain reasonable time, place and manner rules for activities authorized under CRA (but not those that completely prohibit the operation of any category of license issued under CRA). It provides for expungement of arrest and conviction records relating to cannabis offenses, as well as providing mechanisms for possible recall or dismissal of sentences for such offenses. Similarly, it amends the Controlled Substances Act, including amending or repealing criminal laws governing cannabis offenses.

The effective date of SB115 is July 1, 2020.

## **FISCAL IMPLICATIONS**

### Continuing Appropriations

Section 43 creates the new cannabis workforce training fund and Section 44 creates the new cannabis industry equitable opportunity investment fund, and each section provides for continuing appropriations to each fund. LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds, as earmarking reduces the ability of the legislature to establish spending priorities.

Additionally, Section 41 creates the new community grants reinvestment fund and Section 42 creates the low-income medical patient subsidy fund, both of which are subject to appropriation but any balance in each fund at the end of a fiscal year does not revert to the general fund. Section 40 creates a fifth new fund, the cannabis regulation fund, subject to appropriation and unexpended or unencumbered balances remaining at the end of each fiscal year revert to the general fund.

### Revenues

LFC has received no response or agency analysis from TRD. To provide some sense of the fiscal impact of SB115, LFC staff prepared the numbers that appear in this table, starting with the revenue estimates submitted by TRD for HB356, 2019 session, as originally introduced. That bill, which also authorized sales of recreational cannabis, set a state cannabis excise tax of 9 percent, and a municipal and county excise taxes on cannabis of no more than 3 percent each. Those figures were then adjusted to reflect the excise tax rates set in this bill: 9 percent state excise tax, and municipal and county cannabis excise taxes of no more than 4 percent each. Because this bill allows existing medical cannabis retailers to begin sales to commercial cannabis consumers beginning January 1, 2021, under specified circumstances, LFC staff calculated the impact of both excise taxes and gross receipts tax revenues in FY21, as shown in the column for that year. By the start of FY22, unrestricted commercial retail sales are authorized, and LFC

staff has calculated anticipated revenues for that fiscal year and those following. The figures shown in the revenue table use TRD's expected gross sales figures for fiscal years 21, 22, 23, and 24 (based on TRD's analysis of the original HB356, 2019 session). The revenue in the table reflects the excise and gross receipt taxes that would be collected using those sales figures, and includes a per municipality or county amount, assuming a local public body's imposition of the full 4 percent authorized in SB115.

#### Operating Budget Impacts

RLD reports that to set up the CCD, the chief regulator of both medical and commercial cannabis activities, the department will need initial start-up funding to obtain space and purchase vehicles and equipment (computer hardware and software, telephones and copiers) and other office equipment, furniture and infrastructure. Additionally, it will need to set up processes necessary to fulfill its role under the act, including licensee outreach to promote and ensure compliance with the new regulations, because this industry has not, to date, been a regulated industry. It estimates, based on information provided by DOH as to the existing medical cannabis program and that provided by other states in which recreational marijuana is legal, this initial set-up cost would be a one-time, nonrecurring cost in FY21 of \$3 million, as indicated in the budget impact table. It estimates staffing increase of 51 new FTE and other recurring costs for a total of \$6.8 million, also reflected in the budget impact table. SB115 creates the cannabis regulation fund, a new fund consisting in part of fees collected by CCD which is subject to appropriation, and that fund is identified in the budget impact table as the fund affected by SB115's fiscal impact on RLD, along with the general fund.

EDD reports it will require additional staff to administer the cannabis industry equitable opportunity investment fund, including developing and implementing the plan to provide financial assistance to certain start-up businesses and others, and estimates the annual cost to be \$200 thousand, as shown in the budget impact table.

NMDA expects a 20 percent increase in services required by the cannabis industry for compliance-based inspections of weigh scales, resulting in a need for 2 additional FTE and the one-time cost for purchase of additional methodology equipment. It also anticipates the need for 1 additional FTE due to additional inspection time to address potential mixing of hemp and cannabis in existing hemp-licensed greenhouses. Those additional costs are reflected in the budget impact table.

NMED believes SB115 will necessitate 5 additional FTE to staff the cannabis program in its Environmental Health Bureau, 6 additional FTE to develop, train, and implement occupational health and safety rules specific to the cannabis industry in its Occupational Health and Safety Bureau, and funding to house these FTE, the costs for which are shown in the budget impact table.

AHO anticipates an increase in tax protest hearings and Implied Consent Act hearings, which would merit at least one additional hearing officer, as shown in the budget impact table above, plus a one-time nonrecurring expense of \$2.6 thousand for initial office set-up.

LOPD anticipates a reduction in cannabis-related cases, which would allow it to reallocate funding for those cases to more serious cases, resulting in no reduction in fiscal impact. Similar adjustments may be true for district attorneys, while Department of Corrections may see a drop

in incarcerations, and a corresponding decrease in budget needs.

AOC reports SB115’s provisions regarding reopening of cases for people currently incarcerated for an offense no longer a crime under this bill or that would have resulted in a lesser sentence may create a significant burden on the courts, requiring additional personnel and resources. It also points to Section 36, which requires automatic expungement of records relating to arrests or convictions related to certain charges, the automatic nature of which will create an administrative burden on the courts. However, the agency provides no estimates as to the fiscal impact on the courts’ operating budgets, so LFC staff has used the figures submitted by the agency in its analysis of a similar bill in the 2019 session (HB356, as originally introduced) the budget impact table.

It is unclear if the excise tax revenue distributed to the community grants reinvestment fund is available to fund the annual substance abuse education that PED must require all public and charter schools provide to students in eighth through 12<sup>th</sup> grade, or whether that is a charge to the general fund. In light of that confusion, it appears as an indeterminate cost to the general fund in the operating budget impact table above.

Below is an estimate of costs provided by WSD associated with the workforce training component, to be funded from the cannabis workforce training fund. WSD will allocate 0.25 level of effort among six staff to conduct business outreach. Similarly, six staff will conduct eligibility determinations at 0.25 level of effort. Training figures are consistent with current statewide averages for training and wage reimbursements. Finally, facility rentals ensure use of federally funded facilities are not utilized for trainings. Additional IT technical support and application development will be needed as shown below.

<b>FY21</b>		
<b>Staff</b>	<b>FTE</b>	<b>Total</b>
Outreach Staff	1.5	\$81,000.00
Eligibility Determinations	1.5	\$77,000.00
		<b>\$158,000.00</b>

<b>Training</b>	
Individualized Training Accounts	\$260,000.00
On-the-Job-Training	\$520,000.00

<b>IT Support with benefits</b>	\$160,000.00
<b>Facility Rentals</b>	\$6,000

<b>Grand Total FY21</b>		<b>\$1,104,000.00</b>
-------------------------	--	-----------------------

FY22		
Staff	FTE	Total
Outreach Staff	1.5	\$81,000.00
Eligibility Determinations	1.5	\$77,000.00
		<b>\$158,000.00</b>

Training	
Individualized Training Accounts	\$340,000.00
On-the-Job-Training	\$680,000.00

<b>IT Support with benefits</b>	\$160,000.00
<b>Facility Rentals</b>	\$6,000

<b>Grand Total FY21</b>		<b>\$1,344,000.00</b>
-------------------------	--	-----------------------

## SIGNIFICANT ISSUES

Implementation and Regulation Generally. While SB115 provides CCD broad authority to regulate and administratively sanction cannabis activity licensees, RLD notes language granting explicit enforcement authority would be useful in ensuring compliance. In particular, it recommends the addition of explicit enforcement authority for inspections tracking the cannabis supply and obtaining sales information via automatic monthly reports submitted to the CCD by the licensed producers, manufacturers, and retailers or on request of a compliance officer. With statutorily provided explicit enforcement authority, CCD can adopt rules for further compliance. RLD also suggests the CCD director have subpoena power similar to the subpoena powers delegated to the director of the Alcoholic Beverage Control Division under the Liquor Control Act. These subpoena powers are useful tools in ensuring compliance.

RLD also suggests adding similar language found in other states’ cannabis control laws that would designate as “contraband” cannabis products produced by unattended or unlicensed grow operations, along with statutory language allowing CCD to implement mechanisms to destroy such contraband in an efficient and safe manner – typically by incineration.

The “substantially related offense” bar to licensure established in Section 8 is another concern raised by RLD. The department understands the intent of this section is to allow people with prior convictions, particularly past drug convictions, to avail themselves of the economic opportunities this new regulated cannabis industry offers. Including this language in the bill means RLD would have to promulgate a rule on “substantially related” offenses and will probably necessitate conducting a background check which, unavoidably, lengthens the timeline for licensure. The department suggests it may be more efficient to rework this provision to include a self-reporting disclosure form on past convictions that the CCD director can approve or disapprove upon a showing of rehabilitation or one-time application assessment similar to the comparable provision in the Liquor Control Act.

An additional issue relating to licensure requirements is the two-year residency requirement imposed in Section 6(H). RLD expresses concern this requirement may be an unconstitutional burden on interstate commerce. [*Tennessee Wine and Spirits Retailers v. Thomas (2019).*]

However, it notes several adult-use cannabis states, Colorado in particular, continue to impose a two-year residency requirement that has not been challenged in court. RLD comments a residency requirement may play a role in cannabis supply. Oregon, the one state that did not impose a two-year residency requirement, saw a massive influx of cannabis producers, particularly large out-of-state growing conglomerates. The result was an initial overproduction and over-supply in the state; it continues to have as many as three times the number of producers than the other adult-use cannabis states.

NMED points out that certain duties assigned to it are not within its areas of expertise. Section 3(C)(12) requires its participation (along with CCD and NMDA) in establishing standards for pesticides and developing training and education related to their use, which it believes is better left to NMDA. Similarly, Section 21(A) requires NMED participate in rulemaking related to cannabis research and testing laboratories, while Section 22(C) requires the agency to provide on an annual basis certified reference materials for laboratory testing. Neither of these subject area are within the agency's expertise. Instead, it suggests NMDA and DOH Scientific Laboratory Division (DOH/SLD) be assigned these tasks, as both have direct expertise in laboratory research and testing.

NMDA reads the act, including language in Section 3(C)(12), as transferring pesticide review and registration authority, currently under NMDA (Pesticide Control Act (Sections 76-4-2 through 76-4-39, NMSA 1978), to CCD for pesticide use in cannabis. This transfer of authority may result in conflicting pesticide registrations between cannabis, hemp, and medical marijuana. Additionally, enforcement of federal Environmental Protection Agency's (EPA) worker protection standards is not transferred from NMDA to the division. This is an area of concern regarding enforcement of EPA worker protection requirements related to pesticides that are approved by CCD for use on cannabis under the act, which may not meet EPA requirements or NMDA review requirements. Although not a current issue with pesticide registration, primacy agreements between NMDA and EPA will become an issue when marijuana is federally recognized by EPA.

Expungement of Arrest and Conviction Records. LOPD comments the expungement provisions help prevent individuals convicted of certain offenses under SB115 law or prior laws from having to face long-term discrimination in employment, housing, or obtaining student loans. The expungement and legalization provisions free otherwise law-abiding citizen from the long-term stigma associated with arrest and conviction.

Medical Cannabis Program. RLD recommends a statutory category of integrated medical licenses, including growing, manufacturing, producing extracts, sales and courier services. While this might be permissible through rule alone, a statutory category would ensure the current medical cannabis program category remains available going forward. Further, RLD suggests more flexibility in approving qualifying conditions within the medical cannabis program and allowing other health care professionals (chiropractic, acupuncture, and oriental medicine practitioners) to prescribe could help strengthen the medical cannabis program.

New Job Creation. EDD estimates the creation of this new commercial cannabis industry will in turn create 1,531 new jobs, based on 25 percent of the adult (21 and older) population of each county (representing participating adults), reduced by existing medical cannabis patients, and using that number to reflect the increase in customers to determine the need for new dispensaries and retailers, which in turn would create these new jobs.

Conflict with Federal Law. Both AODA and NMAG advise that cannabis is still a federally controlled substance. In its analyses of HB356, 2019 session, which sought to authorize commercial cannabis activities, it advised the federal government regulates marijuana through the Controlled Substances Act, 21 U.S.C. § 811 *et seq.* Under current federal law, marijuana is treated like every other controlled substance, such as cocaine and heroin. The federal government places every controlled substance in a schedule, in principle according to the relative potential for abuse and medicinal value of that controlled substance. Under the federal Controlled Substances Act, marijuana is classified as a schedule I drug, which means the federal government views marijuana as highly addictive and having no medical value.

In addition, NMAG advised federal law criminalizes a number of activities that would be permitted under New Mexico law pursuant to 2019's HB356. For example, it prohibits the distribution, possession with intent to distribute and manufacture of marijuana or its derivatives (21 U.S.C. §§ 841, 960, 962); simple possession of marijuana (21 U.S.C. § 844); and establishing manufacturing operations, i.e., opening, maintaining, financing or making available a place for unlawful manufacture, distribution or use of controlled substances (21 U.S.C. § 856). NMAG also warned that in New Mexico a person may cross many different jurisdictions when traveling throughout the state, including federal lands. While the possession of cannabis under state law may be lawful within the state, the possession of the same cannabis would be unlawful on federal property, creating a patchwork of regulation (state and federal) with consequences that vary significantly.

WSD provides this update as to federal enforcement of its laws criminalizing cannabis activities. In August 2013, the U.S. Attorney General's Office issued a memorandum, otherwise known as the Cole Memorandum. In short, it identifies federal agency priorities as it relates to the use of marijuana. The memo further acknowledges that states have enacted laws allowing for the production, sale and distribution of marijuana. It directs that, so long that these states provide for strong regulatory enforcement systems that do not pose threats to public health, public safety and other law enforcement interests, federal authorities shall retain focus on the priorities contained in the memo. On January 4, 2018, U.S. Attorney General Sessions issued a memorandum to all U.S. Attorneys reiterating the fact that marijuana is illegal under federal law, rescinding the Cole Memorandum and instructing U.S. Attorneys to use their judgment in deciding whether to prosecute marijuana related crimes under 21 USC Sec. 801 *et seq.* More recently, during his confirmation hearing for U.S. Attorney General, William Barr testified he would be more inclined to follow the guidance for U.S. Attorneys as set out in the Cole Memorandum, although he has not issued a memorandum rescinding the Sessions memorandum.

### Enforcement

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

## PERFORMANCE IMPLICATIONS

WSD will be required to develop a plan to assist in preparing persons to engage in commercial cannabis activity or any activity related to the medical cannabis program. These activities will be supported by distributions to the cannabis workforce training fund. WSD will be required to prepare an annual evaluation of the plan and the success of its participants. ALTSD anticipates receiving numerous inquiries from seniors following enactment and during implementation, requiring coordination with RLD.

## CONFLICT/DUPLICATION

SB115 conflicts with SB139, which limits the definition of qualified patient to New Mexico residents, while SB115 does not.

SB115 duplicates HB160.

## TECHNICAL ISSUES

In Section 51, SB115 clearly exempts medical cannabis retail sales from the cannabis excise tax (page 82, lines 20-24), but Sections 52 and 53 do not include or otherwise address such an exemption as to a municipal or county excise tax that a local public body is authorized to impose. The intent of the bill is not clear as to applicability of these local excise taxes to this category of retail sales. Additionally, in all three of those sections, the intent of the phrase “on which the tax imposed by this section has not been paid” (page 82, lines 11-12; page 83, 4-5; page 84, lines 1-2) is not clear

NMED calls attention to the phrase “health and safety standards,” which appears in Section 3. It suggest that, if Subsections (C) and (I) of SB115 are intended to apply to public health and safety, then the word “public” should be added prior to “health and safety” in (C) (10)(a) (page 14, line 3) and (I)(5) (page 19, line 12). If these provisions are intended to apply to occupational health and safety, then Subsections (C) (10) (a) and (I) should be deleted to resolve the conflict with Section 20 of SB115 and Section 50-9-4 of the existing Occupational Health and Safety Act (which recognizes the department as the state occupational health and safety agency for all purposes under federal legislation).

NMDA points to the definition of cannabis in Section 2(C), which refers to delta-9 tetrahydrocannabinol (THC) only. Absent the use of the qualifier “measured post-decarboxylation,” the definition has led and could lead to some confusion by law enforcement and the industry as to what is measured (i.e., delta-9 measured pre-or measured post-decarboxylation). The 2018 Farm Bill added post-decarboxylation as a qualifier to clarify what was being measured. Post-decarboxylation was also included in the Hemp Manufacturing Act to clarify the basis for measurement. The addition of the phrase “measured post-decarboxylation” to this definition harmonizes it with that in the Hemp Manufacturing Act, as well as federal definitions related to hemp and cannabis.

Section 15 prohibit a licensee from employing a person younger than 18 to engage in commercial cannabis activities, but as AOC notes, that section provides no penalty for violation of that prohibition.

DOH suggests the word “person” in the definition of “qualified patient” on page 11, line 13 be replaced with the phrase “resident of New Mexico,” to make this definition with that in SB139, and which was the definition prior to 2019.

Attachment 1 contains a timeline of deadlines set out in SB115 and notes in four instances where no deadlines have been set.

## **OTHER SUBSTANTIVE ISSUES**

NMAG notes that Section 13(A)(2)(c) allows local public bodies to limit cannabis consumption areas to require the cannabis retailer or integrated microbusiness be at least 300 feet from “a school, church or daycare center,” while HB23 requires an e-cigarette retailer to be 300 feet from “a church or other religious building or school.” It warns the different location restrictions could lead to an equal protection challenge, because legislation aimed at protecting the public health is subject to rational basis review when distinguishing between similarly situated groups. Similarly, the penalties contained in Section 15 for sales to people under age 21 are significantly lower than those provided in HB23, for example, which regulates e-cigarettes. NMAG warns these discrepancies could also lead to equal protection challenges because e-cigarettes are arguably less harmful than cannabis (still a federally controlled substance and much more regulated in this bill in all other respects), but violations result in higher penalties.

In addition, NMAG calls attention to Section 26, which bars disciplinary actions against state-licensed professionals when providing professional services or assistance in connection with any activity deemed legal under the Act. In New Mexico, attorneys are regulated exclusively by the state Supreme Court; This provision when read to apply to attorneys may violate the separation of powers clause of the state constitution. (See Article 3, Section 1 of the New Mexico Constitution.)

LOPD suggests that, based on the experience of other states, there is reason to believe passage of the bill will increase public safety by funding drug prevention and rehabilitation programs as well as by regulating an industry currently without oversight. In Colorado, for instance, fewer young people use marijuana than used it prior to legalization.

WSD notes the need to completely isolate its involvement with the cannabis training program from any federally funded programs and federal grants. Cannabis remains a schedule I drug under the federal Controlled Substance Act and is an illegal drug under federal law. WSD will need to structure its program accordingly. The U.S. Department of Labor, the principal funder of WSD programs may look at how the department handles its duties under this bill to confirm funding segregation.

ALTSD advises that as the population of older Americans grows rapidly, easy access to cannabis for seniors would be beneficial. It reports:

- Senior Education: Colorado has partnered with different private producers to conduct “cannabis 101” to seniors. Adults aged 50 and older are a rapidly growing group of pot users, according to a study published in 2016 by the Society for the Study of Addiction, which shows that pot consumption among those between the ages of 50 and 64 increased 57.8 percent from 2006-07 to 2012-13 — and that was before recreational sales even began in Colorado.

- Colorado has also reported that many seniors and their families are interested in what the benefits of marijuana use could be with respect to
  - o Pain management
  - o Macular degeneration
  - o Chronic fatigue
  - o Depression
  - o Arthritis
  - o Sleep disorders
  - o Increased appetite
  
- In 2019 CNBC reported that marijuana use among baby boomers has risen tenfold since 2007 and many older American are having trouble accessing medical marijuana due to physician’s lack of education on its benefits as well as not asking about it due to stigma.

PED reports that, according to the Centers for Disease Control and Prevention, “long-term cannabis use can have permanent effects on the developing brains of adolescents and young adults.” PED advises it will continue to work with school districts and charter schools on professional development and technical assistance supporting evidence-based drug prevention programs regarding the potential detrimental effects of alcohol, tobacco, and drug-use on adolescents and young adults. In the school setting, the legalization of cannabis and cannabis products in the state will be treated similarly to the legal use of alcohol, cigarettes, and vaping products for adults age 21 years and older in New Mexico. Schools will continue to provide health promotion and disease prevention health education inclusive of alcohol, tobacco, and drug-use prevention and will continue to report discipline infractions and dispositions for students in violation of drug-free school zones and local education agency policy.

## AMENDMENTS

RLD recommends a clarifying amendment to Section 8’s application process so the 90-day turnaround time for CCD to approve or deny a license begins to runs on receipt of a “complete” application. Otherwise, if an applicant submits an incomplete application and fails to timely submit any deficient information or documentation, CCD would have to deny the applicant based solely on an incomplete application, resulting in the applicant being required to reapply. Consistent with many of the RLD administered licensing acts, one simple fix is to insert language stating that the 90-day application processing window starts once an application is “complete,” instead of on “submittal” (Page 30, line 5).

AODA proposes an amendment to Section 66-8-111(A), NMSA 1978, to allow for a search warrant for a blood draw for misdemeanor DWI investigations.

In light of its lack of subject matter expertise in these areas, NMED recommends in Subsections 21(A) and 22(C), it be replaced with NMDA and DOH/SLD.

NMDA proposes amending SB115 to include new provisions and exceptions relating to activities involving hemp being conducted under the existing Hemp Manufacturing Act (HMA). These include adding a new definition for hemp and excluding it from the definition of cannabis; amending the definition of cannabis testing laboratory to allow this type of laboratory to also conduct activities as a separately licensed hemp testing laboratory, excluding hemp activities

under the HMA from the definition of commercial cannabis activity; and adding new definitions for hemp testing laboratory, and hemp breeder.

MD/al/sb

**ATTACHMENT 1**

**SB 115 TIMELINE**

July 1, 2020	Effective date of bill
	Medical cannabis no longer subject to gross receipts tax
	Existing medical cannabis licensees issued new licenses to continue medical cannabis activity
	County and municipal excise taxes on medical cannabis begin?
July 31, 2020	Process for recall or dismissal of sentences of persons currently incarcerated for offenses that are no longer criminal or now constitute a lesser offense must begin
September 1, 2020	CCD must convene Cannabis Regulatory Advisory Committee (CRAC) to advise CCD on development of rules
	DOH secretary must appoint public health and safety advisory committee (PHSAC)
October 1, 2020	DPS must establish one year pilot project regarding roadside testing and report results within 90 days
January 1, 2021	Cannabis Control Division (CCD) must promulgate rules to carry out duties under Act
	DOH must establish medical cannabis subsidy program
	CCD must begin issuing temporary licenses to conduct commercial cannabis activity to existing medical cannabis licensees, subject to DOH approval re sale of medical cannabis to other consumers
	CCD must begin accepting and processing commercial cannabis licenses
?	CCD must begin reporting annually demographic data on license applicants, controlling persons and cannabis establishment employees
?	DOH must begin producing annual assessment of affordability and accessibility of medical cannabis, including needs of identified populations

?	DOT/Travel Safety Bureau must develop and execute multilingual public education campaign promoting road safety and discouraging driving while impaired by cannabis
?	NMED must promulgate rules imposing labeling and packaging requirements for cannabis products
April 1, 2021	CCD must promulgate rules for cannabis training and education programs  CCD must begin issuing commercial (non-medical) cannabis licenses for commercial cannabis activities, but no courier or sales activities until January 1, 2022  NMED must identify and annually update certified reference materials to be used in laboratory testing
July 1, 2021	CCD deadline to develop diversity plan in consultation with CRAC  CCD must begin licensing cannabis training and education programs
December 1, 2021	CCD must begin issuing cannabis server permits  EDD must propose legislative changes to support its duties regarding the Cannabis Industry Equitable Opportunity Fund
January 1, 2022	Start date for unrestricted commercial cannabis sales and courier activities; cannabis server permits required for all commercial cannabis activity (exception for research labs and employees)  All public and charter schools must annually provide drug education programs to students in eighth through twelfth grades
December 1, 2022	PHSAC must begin annual reporting on health effects of legalizing cannabis for adult use
January 1, 2024	CRAC must begin annual report of activities, recommendations to and implementation by CCD in preceding year, including demographics and geographic diversity of cannabis workforce and recommendations to legislature concerning rate of cannabis excise tax
Calendar years 2023-2026	Annual CCD meeting with CRAC and specified others to

review developments and coordinate efforts re improving  
economic and social outcomes of Act