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FISCAL IMPACT REPORT

ORIGINAL DATE 2/22/19
SPONSOR Pirtle/Moores/Brandt **LAST UPDATED** 3/02/19 **HB** _____

SHORT TITLE Cannabis Regulation Act **SB** 577/aSPAC

ANALYST Daly

REVENUE (dollars in thousands)

Estimated Revenue*				Recurring or Nonrecurring	Fund Affected
FY20	FY21	FY22	FY23		
Unknown	\$170.0	\$260.0	\$300.0	Recurring	Local DWI Grant Fund
Unknown	\$8,330.0	\$12,840.0	\$14,800.0	Recurring	General Fund
Unknown	\$8,500.0	\$13,100.0	\$15,100.0	Recurring	TOTAL STATE FUNDS
Unknown	\$16,490.0 max	\$25,410.0 max	\$29,290.0 max	Recurring	Counties and Municipalities, combined
Unknown	\$510.0	\$790.0	\$910.0	Recurring	TRD Operating Funds
\$25.0	\$200.0	\$400.0	\$400.0	Recurring	Cannabis Regulation Fund (NMED)

(Parenthesis () Indicate Revenue Decreases)

*See Fiscal Implications.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total			\$222.7	\$222.7	Recurring	General Fund (AHO)
	\$144.0	\$1,100.0	\$1,800	\$3,044.0	Recurring	Food Service Sanitation Fund (NMED)
	Unknown	Unknown	Unknown	Unknown	Recurring	General Fund (NMSU/ NMDA) DPS)

	Unknown	Unknown	Unknown	Unknown	Recurring	General Fund (DOH)
	\$300.0	\$700.0	\$700.0	\$1,700.0	Recurring	TRD Audit and Compliance Division
		\$5,300.0		\$5,300.0	Nonrecurring	TRD Information Technology Division
			\$440.0	\$440.0	Recurring	TRD Information Technology Division

(Parenthesis () Indicate Expenditure Decreases)

Conflict with HB356, HB581

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Department of Health (DOH)
- New Mexico Department of Agriculture (NMDA)
- Environment Department (NMED)
- Administrative Hearings Office (AHO)
- Human Services Department (HSD)
- Department of Public Safety (DPS)
- New Mexico Attorney General (NMAG)
- Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of SPAC amendment

The Senate Public Affairs Committee amendment to SB577 amends Section 48(D)(4), which adds a new category to the definition of what constitutes child abuse to include placing a child in a situation that allows the child access to a cannabis item. The amendment strikes the exemption for a child who is a qualified patient in accordance with the medical cannabis program operated by DOH.

Synopsis of Original Bill

Senate Bill 577 enacts the Cannabis Regulation Act (CRA), which decriminalizes the possession and ingestion of cannabis in various forms for non-medical (recreational) purposes by a person who is 21 or older. It establishes the Cannabis Control Commission, composed of: the secretaries, or the secretaries’ designees, of the Departments of Environment and Health, and the director of NMDA or the director’s designee all acting in advisory capacities, along with five public members appointed by the governor with the consent of the senate. These public members include a commercial cultivator of a non-cannabis crop, a certified law enforcement officer and a licensed physician. The commission is charged with promulgating regulations by December 31,

2019 to govern the activities authorized in the Act, including licenses issued by the commission, NMED and DOH. Not later than June 1, 2020, the Commission shall offer cannabis items for retail sale to the public (in locations subject to certain restrictions) through state stores, whose employees are subject to the state Personnel Act. A municipality or county may prohibit a state store or otherwise limit the location of a state store or cannabis testing laboratory or producer. SB 577 creates the Cannabis Regulation Fund, and money in the fund is appropriated to the commission to support its duties under the Act.

NMED is charged with regulating and licensing cannabis producers and testing laboratories pursuant to commission rules and must begin issuing licenses for medical cannabis producers currently producing and testing laboratories to dispensers licensed under the Lynn and Erin Compassionate Use Act (LECUA) beginning in January, 2020, and to others beginning January, 2021. Within that same time frame, the commission shall regulate and license on-site consumption of cannabis items in lounges operating under cannabis producer licenses. DOH must regulate and license commercial, medical and on-site consumption of cannabis items under LECUA and pursuant to commission rules. The board of regents of New Mexico State University, through NMDA, must regulate and license commercial and medical cannabis cultivation under CRA, and the Commission may propose rules to the board for adoption.

SB577 also enacts the Cannabis Tax Act which established a four percent cannabis excise tax. It authorizes municipalities and counties to enact their own cannabis taxes, each not to exceed four percent, the revenue from which may be dedicated to general purposes of the local political subdivision. The bill revises the local DWI grant program to include research, implementing law enforcement best practices and funding law enforcement training and purchase of roadside impairment tests, all relating to impairment due to use of cannabis. It directs distribution of two percent of the net receipts from the state cannabis excise tax to this fund to be used for these three purposes.

The bill also amends the Controlled Substances Act and the LECUA in a manner consistent with CRA. In addition, it adds the act of placing a child in a situation that allows the child access to a cannabis item (unless pursuant to LECUA) to the definition of abuse of a child.

SB577 is effective July 1, 2019, except for the changes to LECUA, which have a delayed effective date of December 1, 2019.

FISCAL IMPLICATIONS

Section 30 of SB577 creates the Cannabis Regulation Fund. Fees collected under CRA are credited to the fund, and any unexpended or unencumbered balance in the medical cannabis fund is transferred to this fund on this bill's effective date. Money in the fund is appropriated to the Commission to support its duties under CRA. Any unexpended or unencumbered balance remaining at the end of any fiscal year reverts to the general fund.

Continuing Appropriations

This bill creates a new fund and provides for continuing appropriations. The 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.

Revenues

Noting that although cannabis has been legalized in several states, TRD reports it has rarely been sold in a government-run operation. It advises that estimates of revenue impact are not currently possible, as operating and maintaining a series of retail outlets is something with which the state has little experience. Compared to privately run outlets, TRD states there are many more variables involved; leading to a strong possibility of either much greater financial gain or even financial loss by the state.

On the other hand, in an effort to provide some sense of impact, particularly in comparison to HB356, the other bill legalizing cannabis through private retailers, LFC staff prepared the numbers that appear in this table, starting with the revenue estimates submitted by TRD for HB 356. HB 356, which also authorizes sales of recreational cannabis, sets a state cannabis excise tax of 9 percent, and a municipal and county excise taxes on cannabis of no more than three percent each. Those figures were then adjusted to reflect the excise tax rates set in this bill: 4 percent state excise tax, and authorizes municipal and county cannabis excise taxes not to exceed 4 percent each. TRD's figures were then adjusted to reflect the excise tax rates set in this bill: 4 percent state excise tax and municipal and county rates not to exceed 4 percent each. Because the two bills set different dates by which licenses must first be issued to different holders, LFC staff is unable to calculate the impact in FY 20, and that column is shown as unknown in the revenue table. By the start of FY 21, however, both bills authorize retail sales, and LFC staff is able to calculate anticipated revenues for that fiscal year and those following. The figures shown in the revenue table use expected gross sales figures of \$213,333,300 for FY 21, \$327,777,800 for FY 22, and \$376,666,700 for FY 23 (which are based on TRD's analysis in HB 356). The revenue in the table reflects only the taxes that would be collected using those sales figures; it assumes no profit and all sale proceeds being expended on costs of operation.

Additionally, although the bill does not establish a maximum permitting fee for cannabis producers and testing laboratories, NMED estimates a permit fee of \$500 (which it believes could reasonably cover administrative costs, although those fees are to be deposited in the cannabis regulation fund to cover the Commission's expenses). NMED estimates zero permits issued in FY19 as the program will be in development. As reflected in the revenue table, NMED estimates a minimum of 50 permits being issued in FY20, 400 permits in FY21, and growth to over 800 permits beyond FY21.

Operating Budget Impact

NMED notes that SB 577 requires it begin work immediately and would require \$144 thousand in FY19 for the hiring of staff; operational costs associated with hiring new staff; development of regulations, policies, and forms, training; IT database upgrades; and outreach. Costs are estimated to rise to \$1.1 million in FY20. Recurring cost are estimated to be approximately \$1.8 million per year for permitting, inspections, and training of industry and hiring, operating costs, and training of staff. Again, since licensing fees are directed to the Cannabis Regulation Fund to support the Commission's duties under CRA, they are not a funding source to offset NMED's continuing administrative obligations under CRA.

AHO anticipates an increase in the number of tax protests given the new excise tax, as well as additional hearings under the Implied Consent Act due to increased DWI arrests upon the decriminalization of marijuana. The number appearing in the operating budget table above reflects AHO's estimated costs for the two additional full-time hearing officers it believes will be needed to handle this increased work load.

NMDA expresses concern that funding provided under a nominal fee-based program will be insufficient to cover program costs, but provides no estimate of budget impact. Again, any fees generated under CRA are not available to offset NMDA costs. DPS calls attention to the distribution to the Local DWI Grant Program Act which provides funding to local governments for law enforcement training, purchases and research related to driving under the influence of cannabis, which funding source is not available to the New Mexico State Police. Further, it can be anticipated that there will be more DWI arrests, however, DPS provides no information concerning any anticipated impact to its operating budget. These unquantified impacts are reflected in the operating budget impact table as unknown.

DOH reports that, if required by SB 577 to continue licensing producers in the medical cannabis program, the requirement in Section 5(B) to deposit the producer licensing fees into the cannabis regulation fund would defund the state's medical cannabis program. That program is not funded by general fund monies, but is instead sustained by producer licensing fees. DOH provides no estimate of its costs in licensing producers under LECUA, or the fees it collects. If DOH loses its current funding source, it will not be able to fund either 1) any continued licensing operations that may be required under this bill, or 2) the patient services operations of this program. Alternatively, it will need funding from the general fund in an amount that DOH did not estimate and so is shown in the Operating Impact table as unknown.

TRD explains that the impact of SB577 on the TRD Information Technology Division is very high, requiring significant additional assets to complete and maintain. The impact on the TRD Audit and Compliance Division will likewise be extensive and require new methodologies be developed and training done. An additional 7 FTE will be required for this division. Implementation is possible by the latest allowed start of taxable activities, June 1, 2020, as given in section 3(H). TRD advises implementation is not feasible before then. (In contrast, Section 4(B) requires licensure of on-site consumption lounges by January 31, 2020.)

SIGNIFICANT ISSUES

Conflict with Federal Law. NMAG advises, as do several other agencies, that SB 577 conflicts with federal law. It explains:

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 Controlled Substances Act, marijuana is classified as a Schedule I drug, which means that the federal government views marijuana as highly addictive and having no medicinal value.

In addition, federal law criminalizes a number of activities that would be permitted under New Mexico law pursuant to SB 577. For example, federal law 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 warns 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 CRA 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.

TRD raises similar concerns with respect to New Mexico tribes. First, it notes there is no language in the bill to deal with the separate taxation which typically occurs on tribal lands, such as with cigarettes. It reports that although other states where recreational cannabis is legal have not yet had a problem with untaxed or unregulated tribal production and sales, such possibilities should be considered in the bill. Secondly, since cannabis is still illegal under federal law, federal officers such as those with the Bureau of Indian Affairs can charge those in possession with a crime, regardless of the possession and transport allowed in Section 22(A).

Further, Section 19 of the CRA provides that “state and local law enforcement agencies shall not cooperate with or provide assistance to the United States government, or any federal agency thereof, in enforcing the federal Controlled Substances Act solely for conduct that complies with the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act[,]” except by court order. NMAG advises this provision may have consequences with respect to the prosecution of crimes created in multiple jurisdictions. TRD suggests this provision may violate the distribution of powers provision in the New Mexico Constitution and the full faith and credit and privileges and immunities sections of the United States Constitution.

Implementation and Regulation. NMED reports the Environmental Improvement Board (EIB) currently has occupational health and safety rules in place that cover persons employed in the cannabis industry. The agency’s Occupational Health and Safety Bureau (OHSB) enforces occupational health and safety within the industry under the New Mexico OHS Act and federal OSHA standards incorporated under 11.5.1 through 11.5.6 NMAC. As the state agency designated by the OHS Act for all purposes under federal legislation relating to occupational health and safety, NMED/OHSB must enforce rules that are at least as effective as federal OSHA rules. The SB 577 provisions for the development of occupational health and safety standards do not include language that will ensure rules developed by the Commission will be at least as stringent as those currently enforced by OHSB. Section 3(G)(7)(d). In addition, SB 577 does not contain language preserving the authority of NMED to enforce occupational health and safety rules for persons working in the cannabis industry.

Further, NMED points to language in SB 577 requiring it to promulgate regulations (or work with others to do so), license, and regulate cannabis producers, cannabis testing laboratories, and lounges. It suggests the regulation of cannabis testing laboratories more appropriately belongs under DOH as DOH possesses the expertise necessary and currently operates the State Laboratory Division. DOH also currently regulates cannabis testing for the medical cannabis program.

DOH notes that “cannabis extract” is defined in Section 2 to exclude the weight of non-cannabis ingredients contained in topical or oral administrations containing cannabis. However, the labeling requirements of the bill do not require that the weight of cannabis ingredients be identified on the label of a cannabis product. SB577 requires that a person ordinarily not possess more than four grams of cannabis extract, and imposes penalties for exceeding that threshold and other, greater thresholds. However, unless cannabis products are labeled to identify the quantity

of cannabis that is contained in the product, it could be difficult for law enforcement and others to determine whether an individual is in compliance with or in violation of the law, and if in violation, to what extent.

DOH also questions whether the provisions of Section 21 allowing zero tolerance policies by employers regarding the use of cannabis by employees is intended to apply to those enrolled under the medical cannabis program as well.

DOH also calls attention to the deadlines for the development of rules and regulations, which shall be completed by December 31, 2019, with sales of product to commence by June 1, 2020. Based on current requirements of rules hearings and allowing for public comment, it can take eight to ten months to promulgate rules. It advises that many states have struggled with tight deadlines like the ones proposed in SB577, and they have led to delays in implementation. (<https://www.cannalawblog.com/california-marijuana-licensing-new-doubts-on-meeting-2018-deadline/>) (<https://mjbizdaily.com/ohio-medical-marijuana-businesses-unlikely-meet-opening-deadline/>) (<https://michigan-marijuana-lawyer.com/lara-extends-june-15th-deadline-for-medical-marijuana-license-applicants/>) . The deadlines do not only impact development of rules, but the timelines would impact the ability of producers to grow and cure product. It can take six months to grow, harvest and properly cure cannabis for sale. TRD raises a similar concern in terms of implementation by its Information Technology and Audit and Compliance Divisions.

Further, TRD advises the bill adheres to the tax policy principle of revenue adequacy by developing a comprehensive system for regulating the production and sale of cannabis. It brings an underground economy that exists in New Mexico into a legalized tax structure. TRD reports in 4 and one half years of retail operation, Colorado has realized over \$600 million in total revenue from retail cannabis via licensed private companies. Growth has been moderating in recent years, and was most recently about 10 percent.

Medical Cannabis

DOH first comments generally that SB577 appears to create a bifurcated system where there are producers that grow product and consign that product to state stores for sale and then entities producing for medical cannabis patient use. It reports that other states have attempted to create this type of system and it has ultimately led to shortages in product for medical use as producers may forfeit their medical cannabis licenses to seek out the more profitable recreational sale permits. This bifurcated system has created confusion in other states for patients enrolled in a medical cannabis program as patients are often unclear where they can purchase product to ensure they are charged appropriately for their purchases. When Colorado began commercial sales, there were times that medical patients did not have access to product due to the run on the system.

DOH then questions the interplay of the licensing and regulation system set up in SB 577 and that currently in existence under LECUA. One question it raises is the continued existence of “personal production licenses” (PPL) under SB 577. Currently, DOH explains, these license holders are qualified patients enrolled in the medical cannabis program who are licensed to cultivate a limited number of plants to produce cannabis for their own consumption. “Cannabis producer” as defined in SB 577 includes a person who, in part, sells or consigns cannabis. PPL holders cannot sell or consign. However, Section 27, which addresses unlicensed production of

cannabis, does exempt production as allowed under LECUA. Further, Section 4(A) assigns the licensing of cannabis producers to NMED, while subsection (D) provides that NMSU regents through NMDA license and regulate commercial and medical cannabis cultivation

Additionally, DOH comments on Section 4(E)'s provisions for licensing and regulation of "cannabis collectives," consisting of up to five qualified patients enrolled in the medical cannabis program. Although these "collectives" would be made up of medical cannabis patients enrolled by DOH, they would be licensed and regulated by NMSU/NMDA. Licensed cannabis collectives would be able to sell cannabis to producers and would be permitted to possess up to a combined total of the "adequate supply" limit for each member (currently, 230 grams of dried cannabis product per person for three months, or a total of 1,150 grams for five people). However, LECUA does not permit qualified patients to transfer cannabis to others, and these provisions of the bill are inconsistent with the "adequate supply" definition in the LECUA (at Section 26-2B-3). DOH notes that qualified patients are enrolled in the medical cannabis program to enable them to lawfully consume cannabis to alleviate symptoms of serious debilitating conditions, not to enable them to sell cannabis, and this would represent a significant conflict with LECUA.

Similarly, DOH points to Section 4(A), which requires NMED begin issuing licenses for cannabis producers currently producing and maintaining a crop of no less than four hundred fifty cannabis plants exclusively for medical use no sooner than December 31, 2019, and licensing other producers and cannabis testing laboratories between January 1, 2021 and January 31, 2021. DOH reports that of the 35 currently licensed producers in the medical cannabis program, six have elected to not have the maximum number of plants, which is 450. This decision is based on their business operations and being aware of whether they can support a 450 plant grow. DOH questions why only current producers with a minimum of 450 plants for the purposes described would be prioritized over current producers with fewer than 450 plants.

Law Enforcement; Penalties. DPS also calls attention to the provisions in CRA regarding cannabis collectives. DPS is concerned that this activity will be extremely hard to control and to prevent black market activity. Also, there are no controls over how cannabis produced by a collective is grown and whether it is produced safely.

DPS also expresses concern that under SB577, a person convicted of "possession, use, manufacture, distribution or dispensing" or the "possession with the intent to manufacture, distribute or dispense" any "controlled substance" who has completed his or her sentence, including probation or parole, may apply for a license and that prior conviction is not considered substantially related to the qualifications, functions or duties of a business seeking a license. Section 4(I)(2). Further, it shall not be the sole ground on which an application is denied (unless the offense involved the distribution of alcohol or a controlled substance to a minor.). DPS believes limiting consideration of prior convictions of manufacture, distribution or dispensing, of, for example, fentanyl, heroin and methamphetamine in deciding whether to license an individual poses a threat to public safety.

DPS comments on the absence of any per se limit for cannabis impairment. Such a limit is critical, it contends, in the enforcement of DWI laws. It reports that several states which have legalized marijuana have per se limits to address this public safety issue, and recommends that limit be two nanograms per milliliter. However, Section 22(A)(1) allows a person to be under the influence of not more than one-half ounce of cannabis or 4 grams of cannabis extract.

Both DPS and DOH call attention to Section 22, which creates various possession limits which appear to be contradictory. It cites as an example Subsection (A)(1), which authorizes possession of up to one half ounce of cannabis; but then Subsection (A)(3) allows a person to possess up to one ounce of cannabis if it is outside of the person’s private residence.

As to CRA’s penalty provisions, DOH notes that Section 10’s prohibition against trafficking does not exempt activities authorized by CRA. Further, DPS believes the penalties for trafficking are so low that they may undermine the legal market. (Fine only for less than half an ounce of cannabis or four grams of extract; fine only petty misdemeanor for half an ounce to one pound or four grams to 128 grams of extract; more than one pound or 128 grams of extract is a fourth degree felony). These minor penalties may encourage individuals that it is worth the risk to operate illegally and thereby avoid taxation. Similarly, in Section 25, distribution of cannabis in a school zone is only a misdemeanor; DPS believes this penalty is too low to discourage sales in this location, and recommends this violation be made a felony. Further, unlicensed manufacture of extracts with butane is only punishable by a civil penalty of \$450. DPS notes that states that have legalized marijuana report that labs using butane are a major illicit market and constitute a public safety issue. DPS recommends the penalty for unlicensed manufacture of cannabis extracts should be the same as for illegal operation of a methamphetamine lab, given the danger to persons present and the surrounding neighborhood. Further, DPS reads SB 577 as repealing the criminal statute for drug paraphernalia. While revisions may be necessary, it contends that drug paraphernalia is involved with all manner of controlled substances and the criminal charge is necessary in the enforcement of the Controlled Substances Act.

NMAG calls attention to other penalty provisions that are unclear. Section 24 provides for unlicensed cannabis sales penalties. Subsection C provides that a person eighteen years or older who violates subsection A is guilty of a misdemeanor pursuant to NMSA 1978, 31-19-1. Similarly, subsection D provides that a person eighteen years or older who violates subsection A **and conducts unlicensed cannabis sales** is guilty of a fourth degree penalty. (Emphasis added) As drafted, NMAG notes, it is unclear how an act committed under subsections C and D can be distinguished. Under subsection A distribution of cannabis items is prohibited. Is not the sale of cannabis the same as distribution? If not, it should be made clear in this section what the differences are since the penalty of a felony conviction is much harsher and has far reaching effects on a person’s life, than a misdemeanor conviction. *See* NMSA 1978, § 30-31-21 (defining “trafficking” to include the distribution, sale, barter, or giving away of a controlled substance.)

PERFORMANCE IMPLICATIONS

NMED notes that without additional staffing the duties assigned to the agency under the bill would prohibit NMED from maintaining conformance with federal requirements for current federal funding of current programs. This may significantly direct staff and NMED resources away from existing regulatory oversight areas such as food safety and liquid waste permitting.

DOH reports that this bill relates to its strategic plan:

Result 1: Improved Health Status for New Mexicans

Result 2: An Engaged, Empowered, and High-performing Workforce that Supports Health Status Improvement

Result 3: Simple and Effective Administrative Processes that Support Health Status Improvement

CONFLICT

Conflicts with HB 356, which also authorizes non-medical cannabis use and sales, which among other provisions authorizes sale by private retailers, and imposes a nine percent cannabis excise tax.

Conflicts with HB 581, providing regulation of hemp harvesters, breeders and manufacturers, particularly as to cannabis that is greater than .3 percent and less than .5 percent THC.

TECHNICAL ISSUES

HSD suggests inclusion of behavioral health treatment facilities to the list contained in Section 3(J) prohibiting state stores from being within 300 feet from the perimeter of schools and other public settings.

DOH points out that although Sections 45 and 46 change LECUA's use of the term "licensed producer" to "licensed dispenser", the term "producer" still appears in Section 26-2B-7(A(5)) on that act.

In addition, DOH notes that the term "safety sensitive position" is defined in Section 2, but that term does not appear elsewhere in SB577.

OTHER SUBSTANTIVE ISSUES

TRD suggests that having the state take the role of the retailer could be beneficial from a societal health viewpoint. Research¹ into state control of liquor stores shows that 'control' states show lower per-capita consumption, lower usage by under-age customers, lower excessive consumption and better enforcement. However, the allowance for private lounges may mitigate these positive effects.

On the other hand, HSD advises the Colorado Retail Marijuana Public Health Advisory Committee has been tasked with studying and reporting on population health effects of marijuana use. The Committee released a report in 2016 that indicated the following mixed results (Monitoring Health Concerns Related to Marijuana in Colorado, Retail Marijuana Public Health Advisory Committee, 2016):

- For adults and adolescents, past month marijuana use has not changed since legalization either in terms of the number of people using or the frequency of use among users.
- Marijuana use among Colorado adolescents is nearly identical to the national average.
- No new disparities in marijuana use by age, gender, race, ethnicity or sexual orientation have been identified since legalization; however, disparities that existed before

¹ *Preventing Excessive Alcohol Consumption: Privatization of Retail Alcohol Sales*. Community Preventive Services Task Force, appointed by the U.S. Centers for Disease Control, July 2014
<https://www.thecommunityguide.org/sites/default/files/assets/Alcohol-Privatization-of-Retail-Alcohol-Sales.pdf>

legalization continue.

- More than 1-in-3 adolescents who use marijuana first use it by age 14, supporting prevention efforts aimed at children before they enter ninth grade.
- Weekly marijuana use by adolescents is associated with impaired learning, failure to graduate from high school. Adolescents and young adults who use marijuana are more likely to experience psychotic symptoms as adults.
- Evidence shows that marijuana users can become addicted to marijuana and that treatment for marijuana addiction can decrease use and dependence.
- Marijuana exposure calls to the poison center continue to be higher after medical marijuana commercialization than in previous years, including calls about children 0-8 with unintentional marijuana exposure, although calls have been decreasing since 2015.
- The risk of a motor vehicle crash increases among drivers with recent marijuana use, and alcohol and marijuana together increase impairment and the risk of crash more than using either substance alone.

Further, HSD provides this research concerning adolescent use, noting that adolescence is a period when many developmental changes are occurring. It is a time when a young person's intellectual capacities expand and their friends and peers become increasingly influential.

- Adolescent use of marijuana has been linked to a range of developmental and social problems. A 2012 study of over 1,000 individuals followed from birth through midlife found that persistent cannabis use was associated with neuropsychological decline across numerous domains, including cognitive and memory problems and declining IQ. Further, cessation of marijuana use did NOT fully restore neuropsychological functioning among adolescent-onset cannabis users (Meier et al, 2012²).
- In a study (McCaffrey DF et al, 2010³), using marijuana at an early age is independently associated with:
 - Poorer school performance;
 - Increased absences from school;
 - Increasing the risk of dropping out without graduating.
- Marijuana use has been linked to a range of mental health problems such as psychosis, depression or anxiety. Using marijuana from an early age places the person at risk of:
 - Impaired emotional development;
 - Increased risk of becoming more dissatisfied with life;
 - Increased likelihood to suffer from depression, anxiety, psychosis, or other mental illness.

As to the provisions of CRA, HSD points out that it contains elements to deter youths from cannabis use: packaging guidance to avoid packaging that appeals to kids; a prohibition on hiring persons under age 21 by cannabis licensees; and penalties, community service, restorative justice mediation and drug education for youth violations. HSD notes, however, that the bill lacks an education prevention effort targeted toward youths.

NMED advises that food containing cannabis material cannot be distributed in interstate

² Meier MH, Caspi A, Ambler A, et al. Persistent cannabis users show neuropsychological decline from childhood to midlife. *Proc Natl Acad Sci USA* 2012;109:E2657-64

³ •McCaffrey DF, Pacula RL, et al. Marijuana use and high school dropout: The influence of observables. *Health Econ* 2010; 19(11): 1281-1299.

commerce under section 301(II) of the federal Food, Drug and Cosmetics Act.

TRD notes that Sections 17 and 19 may violate the distribution of powers articulated by N.M. Const., Art. III, between the judicial and the legislative branches when it attempts to exempt attorneys from repercussions to their licensure for providing professional services or assistance to businesses “reasonably believe[d]” to be in compliance with the Cannabis Regulation Act and associated rules. Rule 17-102 NMRA specifically delegates the “power and duty” to “investigate the conduct of any attorney” for purposes of determining whether that attorney’s conduct is consistent with the rules (of professional conduct and discipline) applicable to the practice of law as promulgated by the Supreme Court. Rule 17-201 NMRA continues that any New Mexico licensed attorney is subject to “...the exclusive disciplinary jurisdiction of the Supreme Court and the Disciplinary Board...” for events occurring during the practice of law in New Mexico. Rule 17-205 NMRA holds attorneys responsible “personally and professionally” for conduct “in conformity with” standards imposed by the aforementioned rules of professional conduct and discipline promulgated by the Supreme Court.

MD/al