



The Green Wave: Cannabis Legalization

New Mexico Becomes the 17th State to Legalize Recreational Cannabis

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On April 12, 2021, New Mexico Governor Michelle Lujan Grisham, signed House Bill 2, the Cannabis Regulation Act (the “Act”), which legalizes recreational cannabis in the state.

In addition to legalizing recreational cannabis, the Act sets out to expunge the marijuana-related criminal records of individuals previously convicted of marijuana possession offenses. Under the law, people over 21 will be permitted to possess up to two ounces of cannabis, and grow up to six plants in their homes, with a maximum of 12 per household. Sales are targeted to begin on or about April 1, 2022. Sales will be taxed at 12%, eventually rising to 18%, plus gross receipts taxes.

The New Regulatory Framework

The Act creates a Cannabis Control Division (“CCD”), which will administer both the Act and the licensing provisions of the Lynn and Erin Compassionate Use Act (New Mexico’s law governing medical cannabis, which has been legal in New Mexico since 2007). The CCD will have until January 1, 2022 to promulgate rules consistent with industry standards including rules regarding: qualifications and procedures for licensure; limits to consumer purchases and possession; advertising and marketing; and promotion of diversity among license applicants, holders, and cannabis industry employees.

Once the Act becomes effective, the New Mexico Department of Health will no longer administer the medical cannabis program. Responsibility for that program will fall to the CCD.

A Cannabis Regulatory Advisory Committee (the “CRAC”) will be formed by September 1, 2021 and will be responsible for advising the CCD on the development of rules pursuant to the Act, including best practices and the promotion of economic and cultural diversity in licensing and employment opportunities. Members of the CRAC will not be permitted to hold any ownership interest or investment in a licensee.

The Act also calls for the creation of a Public Health and Safety Advisory Committee (the “PHSAC”) by September 1, 2021. The PHSAC will be comprised of professionals with expertise related to cannabis products through work, training, or research in public health, epidemiology, medicine, medical toxicology, poison control, road safety, occupational safety, environmental safety, and emergency medicine. The PHSAC will be charged with the preparation of an annual report, starting in 2024, regarding the health effects of legalized adult-use of cannabis.

Licensing

Highlights of the Act include:

- No limit on the number of licenses that may be granted to any individual or entity.
- Permissible for multiple licensees to occupy a single licensed premise.

- Licenses will be valid for 12 months from the date of issue and will be renewable annually.
- Licenses will not be transferable or assignable.
- The CCD will issue a license to a cannabis retailer applicant at a discount if the applicant provides documentation of an agreement to accept cannabis products on consignment from a cannabis producer microbusiness or an integrated cannabis microbusiness licensed pursuant the Act.
- Alcoholic beverages may not be sold on premises of cannabis dispensaries, but cannabis may be consumed in designated areas, similar to employee designated smoking areas.
- Except for verification of age, information from consumers will not be required to purchase product (e.g., no residency requirement).
- Licensees in good standing operating under the Lynn and Erin Compassionate Use Act will be permitted to continue operations until the CCD provides additional guidance.

Application Requirements

- A fee must accompany the application for issuance or renewal of all licenses according to the following table (note that any license authorizing only medical cannabis will be one-half the fee applicable to a license authorizing both medical cannabis activity and commercial cannabis activity):

Type	Fees
Cannabis Courier License	Up to \$1,500 per year and an additional fee of up to \$1,000 per year per additional licensed premises
Cannabis Testing Laboratory License	Up to \$2,500 per year and an additional fee of up to \$1,000 per year per additional licensed premises
Cannabis Manufacturer License	Up to \$2,500 per year and an additional fee of up to \$1,000 per year per additional licensed premises

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Cannabis Producer License	Up to \$2,500 per year and an additional fee of up to \$1,000 per year per additional licensed premises
Cannabis Retailer License	\$2,500 per year and an additional fee of \$1,000 per year per additional licensed premises
Cannabis Research Laboratory License	\$2,500 per year and an additional fee of \$1,000 per year per additional licensed premises
Vertically Integrated Cannabis Establishment License	\$7,500 per year and an additional fee of \$1,000 per year per licensed premises (not to exceed \$125,000 for both medical cannabis activity and commercial cannabis activity)
Cannabis Producer Microbusiness License	Up to \$1,000 per year
Integrated Cannabis Microbusiness License	Up to \$2,500 per year and an additional fee of \$500 per year per licensed premises
Cannabis Consumption Area	Up to \$2,500 per year

- Applicants shall be required to demonstrate a legal right to a commercial water supply, water rights or other source of water sufficient to meet the water needs of the business.
- If applying for a cannabis producer license or a cannabis manufacturer license, the applicant will be required to submit a plan to use, or demonstrate to the CCD that the applicant cannot feasibly use, energy and water reduction opportunities (for a cannabis producer this includes drip irrigation and water collection, natural lighting and energy efficiency measures, and renewable energy generation).

Reasons for Denial of Licenses

- Missing information required by the CCD; or
- Applicant or a controlling person of the applicant has been convicted of an offense that is substantially related to the qualifications, functions, or duties of the applicant's business (though this can be waived at the CCD's discretion).

Key Dates

- By September 1, 2021, the CCD will accept and begin processing license applications for cannabis producers, cannabis producer microbusinesses, and anyone properly licensed and in good standing as a licensed cannabis producer pursuant to the Lynn and Erin Compassionate Use Act.
- By January 1, 2022, the CCD will accept and begin processing all types of license applications.
- By April 1, 2022, the CCD will allow commercial cannabis retail sales.

Additional Highlights/Considerations Include

- Vertically integrated cannabis establishments, cannabis retailers, and integrated cannabis microbusinesses can apply for a courier license to deliver cannabis and cannabis products directly to qualified patients, primary caregivers, reciprocal participants, and consumers.

- The CCD will promulgate rules consistent with industry standards for cannabis products that establish labeling and packaging requirements.
- Advertising cannabis to people under 21 — including the use of imagery likely to appeal to children and public advertisements within 300 feet of a school, daycare center, or church — will be prohibited.
- All products will require a state-approved warning label.

Criminal Justice Reform

Alongside the Act, the New Mexico state Senate passed a companion bill, Senate Bill 2 (“SB2”) that will wipe certain marijuana convictions from public records. SB2 includes the following highlights:

- Conviction for marijuana-related offenses will not be an automatic barrier to obtaining employment or licensure to participate in the legal cannabis industry.
- Certain criminal records will not be considered with an application for employment or licensure — these include records of arrest not followed by valid conviction; convictions that have been sealed, dismissed, expunged, or pardoned; and juvenile adjudications.

- The Criminal Record Expungement Act (the “Expungement Act”):
 - Public records pertaining to prior charges involving cannabis that are no longer crimes under the Act will be expunged.
 - The cannabis-related records of minors will be maintained for no more than two years or until the person turns 18 at which point the records will be expunged.
 - Within 30 days following the effective date of the Expungement Act, all those incarcerated for offenses no longer considered crimes under the Act, shall have the right to seek immediate dismissal of their cases and expungement of their records.
 - Those who have completed sentences for offenses that are no longer crimes under the Act will be entitled to have their convictions dismissed and expunged.

The CCD has a website containing further details about the Act.

Goodwin will provide updates on the regulatory process as it unfolds.

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