

Publications

Cannabis Legalization in Key States: New Mexico Legalizes Recreational Use and Lays Out New Licensing Framework

Alert | 04.27.2021

Alec Kraus, Stephan M. Wazny

New Mexico became the latest state to legalize recreational cannabis after Governor Michelle Lujan Grisham signed the Cannabis Regulation Act (CRA) in mid-April. The law legalizes use, possession, manufacture, production, and sale as of June 29, 2021, and kicks off retail sales by April 1, 2022.

The new law creates a regulatory body that will develop a licensing framework for cannabis businesses in New Mexico. It requires retailers to pay an excise tax for recreational sales and allows adults 21 years and older to purchase and possess up to two ounces of cannabis and cultivate up to six mature and six immature plants (a maximum of twelve mature plants per household) in their home. Here we take a closer look at the key regulations for cannabis businesses in New Mexico.

Licensing Rules and Fees

The law creates the Cannabis Control Division, a new regulatory body within the Regulation and Licensing Department, which will construct a licensing framework for cannabis businesses.

The law does not limit the number of licenses the division may issue and sets out twelve types of available business licenses for the following types of entities: (1) consumption areas, (2) couriers, (3) manufacturers, (4) producer microbusinesses, (5) producers, (6) research laboratories, (7) retailers, (8) servers, (9) testing laboratories, (10) training and education programs, (11) integrated microbusinesses, and (12) vertically integrated establishments.

A licensee may operate its cannabis business at multiple locations, except for microbusinesses, which must operate at a single location, and multiple licensees may operate at a single location.

The CRA requires the division to begin accepting applications for producers, producer microbusiness, and medical cannabis businesses by September 1, 2021. For all other license types, the division must begin accepting applications by January 1, 2022. The division must grant or deny a license within 90 days after it deems an application complete.

Although the law does not set out what an applicant must show to receive a license, it states that any qualified applicant may apply for a license so long as the applicant is not delinquent on taxes and has not been convicted of certain felony offenses, such as fraud, embezzlement, deceit, or offenses involving drug sales to a minor (other than those involving cannabis). The division is expected to develop rules setting out the required qualifications of license applicants.

The license fee varies by the type of license, ranging from up to \$35 for a three-year cannabis server permit to \$7,500 per year and an additional \$1,000 per each location for a vertically integrated establishment license. Cannabis producers other than microbusinesses are required pay up to \$50 per plant. However, businesses that sell medical cannabis must pay only one-half of the applicable license fee.

Cannabis Supply

The CRA also requires that all cannabis must originate in New Mexico until the federal government permits interstate commerce of cannabis. Producer microbusinesses may grow up to 200 mature plants at a time. To help smaller businesses enter the market, the division will cap the number of plants that other sellers can grow until December 31, 2025. However, the division will also have ongoing discretion to regulate recreational cannabis supply to meet demand and to ensure adequate medical supply.

Tax

Cannabis retailers must pay an excise tax on recreational sales. The tax begins at 12 percent until July 1, 2025, when it will begin to increase 1 percent per year until it caps at 18 percent in 2030. One-third of excise tax revenue will go to the municipality where the retail sale occurred, and one-third will go to the respective county. Future spending bills will allocate the remaining revenue and are expected to include funding for community reinvestment.

Additionally, cannabis businesses must pay a gross receipts tax, which is between 5 and 9 percent, depending on the locality. Medical sales are exempt from both the excise and gross receipts taxes.

Addressing Historic Inequalities

The CRA includes provisions aimed at addressing the historic inequalities of cannabis prohibition, though the law largely leaves it to the division to shape those efforts. The law requires the division to implement rules encouraging diversity in license applicants, licensees, and industry employees, and promoting participation in the cannabis industry by people who are members of communities disproportionately impacted by the war on drugs. The division will also produce annual reports on diversity in the industry.

Taking it one step further, Governor Grisham signed a companion bill on April 12 expunging criminal records and dismissing sentences for offenses that the CRA legalized or decriminalized. An estimated 150,000 New Mexicans have convictions that are eligible for expungement under the new law.

Next Steps Toward Licensing

With legalization going into effect in June and recreational sales beginning by April 2022, the division will issue additional regulations and implement its licensing and regulatory framework by January 2022. After the rules are in place, businesses may face sanctions for regulatory violations with fines up to \$10,000 per violation, and have their licenses suspended or revoked for repeated violations. The division will also determine when retail sales actually begin, but is required to allow those sales no later than April 1, 2022.

Businesses that are already selling medical cannabis may continue to operate under existing regulations until the division issues the new rules. Businesses interested in entering the recreational cannabis market should closely monitor the division's progress implementing its rules and licensing structure and should begin preparing their applications well before the process opens in September 2021 and January 2022.

Professionals

This publication has been prepared for the general information of clients and friends of the firm. It is not intended to provide legal advice with respect to any specific matter. Under rules applicable to the professional conduct of attorneys in various jurisdictions, it may be considered attorney advertising material. Prior results do not guarantee a similar outcome.