

AMENDMENTS TO LB622

Introduced by Judiciary.

1 1. Strike the original sections and insert the following new
2 sections:

3 Section 1. Sections 1 to 57 of this act shall be known and may be
4 cited as the Medical Cannabis Act.

5 Sec. 2. For purposes of the Medical Cannabis Act, the definitions
6 found in sections 3 to 20 of this act apply.

7 Sec. 3. Compassion center and dispensary means an entity registered
8 by the department to acquire, possess, or dispense medical cannabis or
9 medical cannabis products.

10 Sec. 4. Department means the Division of Public Health of the
11 Department of Health and Human Services.

12 Sec. 5. Disqualifying felony offense means a violation of a state
13 or federal law that is a felony under Nebraska law or would be a felony
14 if committed in Nebraska, regardless of the sentence imposed.

15 Sec. 6. Health care practitioner means a person licensed to
16 practice under the Medicine and Surgery Practice Act, but shall not
17 include an acupuncturist.

18 Sec. 7. Medical cannabis means any species of the genus cannabis
19 plant, or any mixture or preparation of any species of the genus cannabis
20 plant, including whole plant extracts and resins, which is delivered in
21 the form of:

22 (1) Liquid, including, but not limited to, oil;

23 (2) Pill or capsule form;

24 (3) Vaporized delivery method with use of liquid or oil but which
25 does not require the use of dried leaves or plant form;

26 (4) Topical creams and lotions; and

27 (5) Suppositories.

1 Smoking shall not be an approved method of delivery.

2 Sec. 8. Medical cannabis product means any delivery device or
3 related supplies and educational materials used in the administration of
4 medical cannabis for a patient with a qualifying medical condition
5 enrolled in the registry program.

6 Sec. 9. Medical records means a health care practitioner's record
7 of a patient's health history and treatment rendered.

8 Sec. 10. Participating health care practitioner means a health care
9 practitioner who (1) has the primary responsibility for the care and
10 treatment of the qualifying medical condition of a person diagnosed with
11 a qualifying medical condition and (2) meets the requirements of section
12 30 of this act.

13 Sec. 11. Patient means a Nebraska resident who has been diagnosed
14 with a qualifying medical condition by a participating health care
15 practitioner and who has otherwise met any other requirements for
16 patients under the Medical Cannabis Act to participate in the registry
17 program under the act.

18 Sec. 12. Patient registry number means a unique identification
19 number assigned by the department to a patient enrolled in the registry
20 program.

21 Sec. 13. (1) Process means to process, compound, or convert medical
22 cannabis into cannabinoid products, cannabinoid concentrates, or
23 cannabinoid extracts.

24 (2) Process does not include packaging or labeling.

25 Sec. 14. Processor means a person or entity registered by the
26 department to process medical cannabis in this state.

27 Sec. 15. (1) Produce means to manufacture, plant, cultivate, grow,
28 or harvest medical cannabis.

29 (2) Produce does not include:

30 (a) The drying of medical cannabis by a processor if the processor
31 is not otherwise producing medical cannabis; or

1 (b) The cultivation and growing of an immature cannabis plant by a
2 processor if the processor purchased or otherwise received the plant from
3 a producer.

4 Sec. 16. Producer means a person or entity registered by the
5 department to produce medical cannabis in this state.

6 Sec. 17. Qualifying medical condition means a diagnosis of any of
7 the following conditions:

8 (1) Cancer if the underlying condition or treatment produces one or
9 more of the following:

10 (a) Severe or chronic pain;

11 (b) Nausea or severe vomiting; or

12 (c) Cachexia or severe wasting;

13 (2) Glaucoma;

14 (3) Human immunodeficiency virus or acquired immune deficiency
15 syndrome;

16 (4) Tourette's syndrome;

17 (5) Amyotrophic lateral sclerosis;

18 (6) Seizures, including those characteristic of epilepsy;

19 (7) Severe and persistent muscle spasms, including those
20 characteristic of multiple sclerosis;

21 (8) Crohn's disease;

22 (9) Terminal illness, with a probable life expectancy of under one
23 year, if the illness or its treatment produces one or more of the
24 following:

25 (a) Severe or chronic pain;

26 (b) Nausea or severe vomiting; or

27 (c) Cachexia or severe wasting;

28 (10) Hepatitis C;

29 (11) Huntington's disease;

30 (12) Lupus;

31 (13) Parkinson's disease;

- 1 (14) Lyme disease;
- 2 (15) Spinal cord injury or disease;
- 3 (16) Opioid addiction;
- 4 (17) Epilepsy;
- 5 (18) Post-traumatic stress disorder;
- 6 (19) Anxiety; or
- 7 (20) Any other illness for which medical cannabis provides relief as
8 determined by the participating health care practitioner.

9 Sec. 18. Registered designated caregiver means a person who:

- 10 (1) Is at least twenty-one years of age;
- 11 (2) Does not have a conviction for a disqualifying felony offense;
- 12 (3) Has been approved by the department to assist a patient who has
13 been identified by a participating health care practitioner as having a
14 developmental disability or physical disability and unable to self-
15 administer medication or acquire medical cannabis from a compassion
16 center and dispensary due to the disability; and
- 17 (4) Is authorized by the department to assist the patient with the
18 use of medical cannabis.

19 Sec. 19. Registry program means the patient registry established
20 under the Medical Cannabis Act.

21 Sec. 20. Registry verification means the verification provided by
22 the department that a patient is enrolled in the registry program
23 pursuant to subsection (5) of section 25 of this act.

24 Sec. 21. (1) Nothing in the Medical Cannabis Act permits any person
25 to engage in and does not prevent the imposition of any civil, criminal,
26 or other penalties for:

- 27 (a) Undertaking any task under the influence of medical cannabis
28 that would constitute negligence or professional malpractice;
- 29 (b) Possessing or engaging in the use of medical cannabis:
 - 30 (i) On a school bus or van;
 - 31 (ii) On the grounds of any preschool or primary or secondary school;

1 (iii) In any adult or juvenile correctional facility; or
2 (iv) On the grounds of any child care facility or home daycare;
3 (c) Vaporizing medical cannabis:

4 (i) On any form of public transportation;
5 (ii) Where the vapor would be inhaled by a nonpatient minor child;
6 or

7 (iii) In any public place, including any indoor or outdoor area used
8 by or open to the general public or a place of employment as defined in
9 section 71-5724; or

10 (d) Operating, navigating, or being in actual physical control of
11 any motor vehicle, aircraft, train, or motorboat, or working on
12 transportation property, equipment, or facilities, while under the
13 influence of medical cannabis.

14 (2)(a) Nothing in the Medical Cannabis Act allows the medical
15 assistance program established pursuant to the Medical Assistance Act to
16 reimburse an enrollee or a provider under the medical assistance program
17 for costs associated with the medical use of cannabis. The medical
18 assistance program shall continue to provide coverage for all services
19 related to treatment of an enrollee's qualifying medical condition if the
20 service is covered under the medical assistance program.

21 (b) Nothing in the Medical Cannabis Act requires a private insurer
22 to reimburse an insured or any other person for costs associated with the
23 medical use of cannabis. The private insurer shall continue to provide
24 coverage for all services related to treatment of an insured's qualifying
25 medical condition if the service is covered under the insurance policy.

26 Sec. 22. The department shall establish and maintain a registry
27 program for patients. The patient registry shall include the name,
28 address, and telephone number of patients enrolling in the registry
29 program and shall identify the participating health care practitioner for
30 the patient and the registered designated caregiver, if any.

31 Sec. 23. (1) A patient shall apply to the department for enrollment

1 in the registry program by submitting an application pursuant to section
2 24 of this act.

3 (2) As a condition of enrollment, a patient shall agree to:

4 (a) Continue to receive regularly scheduled treatment for his or her
5 qualifying medical condition from his or her participating health care
6 practitioner; and

7 (b) Report changes in his or her qualifying medical condition to his
8 or her participating health care practitioner.

9 Sec. 24. (1) The department shall develop an application for
10 patient enrollment in the registry program. The application shall be
11 available to the patient and given to participating health care
12 practitioners in Nebraska. The application shall include:

13 (a) The name, mailing address, and date of birth of the patient;

14 (b) The name, mailing address, and telephone number of the patient's
15 participating health care practitioner;

16 (c) The name, mailing address, and date of birth of the patient's
17 designated caregiver, if any, or the name and mailing address of the
18 patient's parent or legal guardian if the parent or legal guardian will
19 be acting as a caregiver;

20 (d) A copy of the certification from the patient's participating
21 health care practitioner which certifies that the patient has been
22 diagnosed with a qualifying medical condition, and, if applicable, that,
23 in the medical opinion of the participating health care practitioner, the
24 patient has a developmental disability or physical disability and, as a
25 result of that disability, the patient is unable to self-administer
26 medication or acquire medical cannabis from a compassion center and
27 dispensary; and

28 (e) All other signed affidavits and enrollment forms required by the
29 department under the Medical Cannabis Act, including, but not limited to,
30 the disclosure form required under subsection (3) of this section and
31 informed consent form as required under subsection (4) of this section.

1 (2) The department shall require a patient to resubmit a copy of the
2 certification from the patient's participating health care practitioner
3 on an annual basis and shall require that the recertification be dated
4 within ninety days prior to submission.

5 (3) The department shall develop a disclosure form and require, as a
6 condition of enrollment, that the patient sign a copy of the disclosure
7 form. The disclosure form shall include:

8 (a) A statement that the department, or any employee of any state
9 agency, may not be held criminally liable for any injury, loss of
10 property, personal injury, or death caused by any act or omission while
11 acting within the respective scope of office or employment under the
12 Medical Cannabis Act; and

13 (b) The patient's acknowledgment that enrollment in the registry
14 program is conditional on the patient's agreement to comply with the
15 Medical Cannabis Act.

16 (4) The department shall require a patient to give written, informed
17 consent for the use of the medical cannabis. Written, informed consent
18 shall consist of a signed disclosure and consent form executed by an
19 eligible patient, or his or her parent or legal guardian if the eligible
20 patient is a minor, and attested to by the eligible patient's treating
21 health care practitioner, that:

22 (a) Explains the approved products and treatments available at that
23 time for the disease or condition from which the patient suffers;

24 (b) Attests to the fact that the patient concurs with his or her
25 treating health care practitioner that no treatment then approved by the
26 United States Food and Drug Administration for the qualifying medical
27 condition of the patient would likely treat or improve the patient's
28 qualifying medical condition without significant risk to the patient;

29 (c) Describes the potential outcomes of using the medical cannabis.
30 The description shall include any possibility of worsening symptoms and
31 death hastened by the treatment;

1 (d) Contains a statement that the patient's health insurance carrier
2 is not obligated to pay for any care or treatments consequent to the use
3 of the medical cannabis; and

4 (e) Makes clear that the patient understands that he or she is
5 liable for all expenses consequent to the use of the medical cannabis.

6 Sec. 25. (1) After receipt of a patient's application and signed
7 disclosure and consent forms, the department shall enroll the patient in
8 the registry program and issue the patient and patient's registered
9 designated caregiver or parent or legal guardian, if applicable, a
10 registry verification. A patient's enrollment in the registry program
11 shall only be denied if the patient:

12 (a) Does not have certification from a participating health care
13 practitioner that the patient has been diagnosed with a qualifying
14 medical condition;

15 (b) Has not signed and returned to the department the disclosure and
16 consent forms required under subsections (3) and (4) of section 24 of
17 this act;

18 (c) Does not provide the information required under the Medical
19 Cannabis Act;

20 (d) Has previously been removed from the registry program for a
21 violation of section 23, 43, 44, or 45 of this act; or

22 (e) Provides false information under the act.

23 (2) The department shall give written notice to a patient of the
24 reason for denying enrollment in the registry program.

25 (3) Denial of enrollment in the registry program may be appealed.
26 The appeal shall be in accordance with the Administrative Procedure Act.

27 (4) A patient's enrollment in the registry program shall only be
28 revoked if a patient violates a requirement under section 23, 43, 44, or
29 45 of this act or upon the death of the patient.

30 (5) The department shall develop a registry verification to provide
31 to the patient, to the participating health care practitioner identified

1 in the patient's application, and to the compassion center and
2 dispensary. The registry verification shall include:

3 (a) The patient's name and date of birth;

4 (b) The patient registry number assigned to the patient;

5 (c) Confirmation that the patient has a qualifying medical condition
6 as provided by the patient's participating health care practitioner in
7 the certification; and

8 (d) The name, mailing address, and date of birth of the patient's
9 registered designated caregiver, if any, or the name and mailing address
10 of the patient's parent or legal guardian if the parent or legal guardian
11 will be acting as a caregiver.

12 Sec. 26. (1) There is a presumption that a patient enrolled in the
13 registry program under the Medical Cannabis Act is engaged in the
14 authorized use of medical cannabis.

15 (2) The presumption may be rebutted by evidence that conduct related
16 to use of medical cannabis was not for the purpose of treating or
17 alleviating the patient's qualifying medical condition or symptoms
18 associated with the patient's qualifying medical condition.

19 Sec. 27. (1) The department shall register a designated caregiver
20 for a patient if the patient's participating health care practitioner has
21 certified that the patient, in the medical opinion of the participating
22 health care practitioner, has a developmental disability or a physical
23 disability and, as a result of that disability, the patient is unable to
24 self-administer medication or acquire medical cannabis from a compassion
25 center and dispensary and the caregiver has agreed, in writing, to be the
26 patient's registered designated caregiver. As a condition of registration
27 as a registered designated caregiver, the department shall require the
28 person to:

29 (a) Be at least twenty-one years of age;

30 (b) Agree to only possess medical cannabis for purposes of assisting
31 the patient; and

1 (c) Agree that if the application is approved, the person will not
2 be a registered designated caregiver for more than one patient unless
3 each of such patients reside in the same residence.

4 (2)(a) The department shall conduct a criminal background check on
5 the designated caregiver prior to registration to ensure that the person
6 does not have a conviction for a disqualifying felony offense. Any cost
7 of the background check shall be paid by the person seeking registration
8 as a registered designated caregiver or his or her employer.

9 (b) The person shall file a complete set of his or her legible
10 fingerprints with the department. The department shall transmit such
11 fingerprints to the Nebraska State Patrol which shall transmit a copy of
12 the applicant's fingerprints to the Identification Division of the
13 Federal Bureau of Investigation for a national criminal history record
14 information check.

15 (c) The national criminal history record information check shall
16 include information concerning the person from federal repositories of
17 such information and repositories of such information in other states if
18 authorized by federal law for use by the department.

19 (d) The Nebraska State Patrol shall undertake a search for Nebraska
20 criminal history record information concerning the person. The Nebraska
21 State Patrol shall issue a report to the department which contains the
22 results of the criminal history record information check conducted by the
23 Nebraska State Patrol.

24 (e) Criminal history record information subject to federal
25 confidentiality requirements shall remain confidential and may be
26 released only upon the written authorization of the subject of the
27 information.

28 Sec. 28. (1) A parent or legal guardian of a patient may act as the
29 caregiver to the patient without having to register as a registered
30 designated caregiver. The parent or legal guardian shall follow all of
31 the requirements of parents and legal guardians in the Medical Cannabis

1 Act. Nothing in the act limits any legal authority a parent or legal
2 guardian may have for the patient under any other law.

3 (2)(a) The department shall conduct a criminal background check on
4 the parent or legal guardian acting as designated caregiver to ensure
5 that the person does not have a conviction for a disqualifying felony
6 offense. Any cost of the background check shall be paid by the parent or
7 legal guardian seeking to act as a designated caregiver.

8 (b) The person shall file a complete set of his or her legible
9 fingerprints with the department. The department shall transmit such
10 fingerprints to the Nebraska State Patrol which shall transmit a copy of
11 the applicant's fingerprints to the Identification Division of the
12 Federal Bureau of Investigation for a national criminal history record
13 information check.

14 (c) The national criminal history record information check shall
15 include information concerning the person from federal repositories of
16 such information and repositories of such information in other states if
17 authorized by federal law for use by the department.

18 (d) The Nebraska State Patrol shall undertake a search for Nebraska
19 criminal history record information concerning the person. The Nebraska
20 State Patrol shall issue a report to the department which contains the
21 results of the criminal history record information check conducted by the
22 Nebraska State Patrol.

23 (e) Criminal history record information subject to federal
24 confidentiality requirements shall remain confidential and may be
25 released only upon the written authorization of the subject of the
26 information.

27 Sec. 29. A patient or registered designated caregiver shall notify
28 the department of any address or name change within thirty days after the
29 change occurred. A registered designated caregiver shall notify the
30 department of the death of a patient for whom the caregiver provides
31 medical cannabis within thirty days after the death of the patient. A

1 patient or registered designated caregiver is subject to a one-hundred-
2 dollar fine for failure to notify the department as required under this
3 section.

4 Sec. 30. (1) Prior to a patient's enrollment in the registry
5 program, a participating health care practitioner shall:

6 (a) Determine, in the medical judgment of the participating health
7 care practitioner, whether a patient suffers from a qualifying medical
8 condition and, if so determined, provide the patient with a certification
9 of that diagnosis;

10 (b) Determine whether a patient has a developmental disability or
11 physical disability and, as a result of that disability, the patient is
12 unable to self-administer medication or acquire medical cannabis from a
13 compassion center and dispensary and, if so determined, include that
14 determination on the patient's certification of diagnosis;

15 (c) Provide explanatory information from the department to patients
16 with qualifying medical conditions, including disclosure to all patients
17 about the experimental nature of therapeutic use of medical cannabis; the
18 possible risks, benefits, and side effects of the proposed treatment; and
19 the application and other materials from the department; and

20 (d) Agree to continue treatment of the patient's qualifying medical
21 condition.

22 (2) Upon notification from the department of the patient's
23 enrollment in the registry program, the participating health care
24 practitioner shall otherwise comply with all requirements developed by
25 the department.

26 (3) Nothing in this section requires a health care practitioner (a)
27 to participate under the Medical Cannabis Act or (b) to provide
28 recommendations, limitations, or restrictions regarding dosage or the
29 form of medical cannabis on a patient's certification.

30 Sec. 31. The department shall:

31 (1) Create and provide a certification to be used by a participating

1 health care practitioner to certify whether a patient has been diagnosed
2 with a qualifying medical condition and include in the certification an
3 option for the participating health care practitioner to certify whether
4 the patient, in the medical opinion of the participating health care
5 practitioner, has a developmental disability or a physical disability
6 and, as a result of that disability, the patient is unable to self-
7 administer medication or acquire medical cannabis from a compassion
8 center and dispensary;

9 (2) Give notice of the certification program created in subdivision
10 (1) of this section to health care practitioners in Nebraska who are
11 eligible to serve as participating health care practitioners and explain
12 the purposes and requirements of the Medical Cannabis Act;

13 (3) Provide explanatory information and assistance to each
14 participating health care practitioner in understanding the nature of
15 therapeutic use of medical cannabis within the requirements of the
16 Medical Cannabis Act;

17 (4) Provide oversight of the participating health care practitioner
18 in conducting patient treatment and medical records reporting in a manner
19 that ensures stringent security and record-keeping requirements and that
20 prevents the unauthorized release of private data; and

21 (5) Develop safety criteria for patients with a qualifying medical
22 condition as a requirement of the patient's participation in the registry
23 program in order to prevent the patient from undertaking any task under
24 the influence of medical cannabis that would constitute negligence or
25 professional malpractice on the part of the patient.

26 Sec. 32. Data collected on patients by a participating health care
27 practitioner are medical records and subject to sections 81-663 to
28 81-675.

29 Sec. 33. (1) Except as otherwise provided in section 39 of this
30 act, the department shall register up to ten producers and up to ten
31 processors in each congressional district in Nebraska for the production

1 and processing of all medical cannabis within Nebraska by November 1,
2 2018, unless the Medical Cannabis Board extends the deadline under
3 section 37 of this act. The department shall register producers and
4 processors which comply with subdivisions (2)(a) and (b) and (3)(a) and
5 (b) of this section based on the factors in subdivisions (2)(c) and (3)
6 (c) of this section. The department may register an applicant as both a
7 producer and a processor. The registration shall be valid until November
8 1 of the calendar year following the date of registration and shall be
9 renewed by November 1 of each year thereafter upon application and
10 payment of the annual fee established pursuant to section 47 of this act
11 to the department and compliance with the Medical Cannabis Act and the
12 rules and regulations adopted and promulgated under the act. The
13 department shall renew registrations of processors based on the factors
14 in subsection (3) of this section. The department shall continue to
15 accept applications for registration after November 1, 2018, for any
16 congressional district which does not have a registered producer or
17 processor by such date.

18 (2)(a) As a condition for registration prior to November 1, 2018, a
19 producer shall agree to:

20 (i) Begin supplying medical cannabis to processors on or before May
21 1, 2019, unless extended by the Medical Cannabis Board; and

22 (ii) Comply with the Medical Cannabis Act and the rules and
23 regulations adopted and promulgated under the act.

24 (b) As a condition for registration on and after November 1, 2018, a
25 producer shall agree to supply medical cannabis to processors in
26 compliance with the Medical Cannabis Act and otherwise be in compliance
27 with the act and the rules and regulations adopted and promulgated under
28 the act.

29 (c) The department shall consider the following factors when
30 determining whether to register a producer:

31 (i) The technical expertise of the producer in cultivating medical

1 cannabis;

2 (ii) The qualifications of the producer's employees;

3 (iii) The long-term financial stability of the producer;

4 (iv) The ability to provide appropriate security measures on the
5 premises of the producer; and

6 (v) Whether the producer has demonstrated the ability to meet the
7 medical cannabis production needs required by the Medical Cannabis Act.

8 (3)(a) As a condition for registration prior to November 1, 2018, a
9 processor shall agree to:

10 (i) Begin supplying medical cannabis to compassion centers and
11 dispensaries on or before May 1, 2019, unless extended by the Medical
12 Cannabis Board; and

13 (ii) Comply with the Medical Cannabis Act and the rules and
14 regulations adopted and promulgated under the act.

15 (b) As a condition for registration on and after November 1, 2018, a
16 processor shall agree to supply medical cannabis to compassion centers
17 and dispensaries in compliance with the Medical Cannabis Act and
18 otherwise be in compliance with the act and the rules and regulations
19 adopted and promulgated under the act.

20 (c) The department shall consider the following factors when
21 determining whether to register a processor:

22 (i) The technical expertise of the processor in converting the
23 medical cannabis into an acceptable delivery method under the Medical
24 Cannabis Act;

25 (ii) The qualifications of the processor's employees;

26 (iii) The long-term financial stability of the processor;

27 (iv) The ability to provide appropriate security measures on the
28 premises of the processor; and

29 (v) Whether the processor has demonstrated the ability to meet the
30 medical cannabis processing needs required by the Medical Cannabis Act.

31 (4) The department shall require each processor to contract with an

1 independent laboratory to test medical cannabis processed by the
2 processor. A laboratory chosen by a processor is subject to approval by
3 the department and is required to report testing results to the processor
4 in a manner determined by the department.

5 Sec. 34. (1) A producer or processor of medical cannabis shall
6 provide a reliable and ongoing supply of medical cannabis needed for the
7 registry program.

8 (2) The cultivation, harvesting, manufacturing, packaging, or
9 processing of medical cannabis must occur at the physical address of the
10 producer or processor provided to the department on the registration
11 application.

12 (3) A processor shall process and prepare any medical cannabis plant
13 material into a form allowable under the Medical Cannabis Act prior to
14 distribution of any medical cannabis.

15 (4) A processor shall contract with an independent laboratory,
16 subject to the department's approval of the laboratory and any additional
17 requirements set by the department, for purposes of testing medical
18 cannabis processed by the processor as to chemical composition,
19 contamination, and consistency.

20 (5) The processor shall consult with an independent laboratory under
21 contract with the processor or other experts in reporting the range of
22 recommended treatments for each qualifying medical condition, the range
23 of chemical compositions that will likely be medically beneficial, and
24 any risks of noncannabis drug interactions. The processor shall provide
25 this information to the department on an annual basis. The department
26 shall compile and publish the contents of these reports and of the
27 medical cannabis offered by each processor on the department's web site.
28 Compassion centers and dispensaries shall make these reports available to
29 patients upon request.

30 Sec. 35. Each processor shall assign a tracking number to any
31 medical cannabis distributed by the processor. A processor shall require

1 any employee of the processor who is transporting medical cannabis or
2 medical cannabis products to carry identification showing that the person
3 is an employee of the processor. An employee of a processor shall not
4 transport medical cannabis or medical cannabis products outside the State
5 of Nebraska.

6 Sec. 36. (1) Except as otherwise provided in section 39 of this
7 act, the department shall register up to eight compassion center and
8 dispensaries in each congressional district in Nebraska for the
9 dispensing and sale of all medical cannabis to patients within Nebraska
10 by November 1, 2018, unless the Medical Cannabis Board extends the
11 deadline. The department shall register a compassion center and
12 dispensary which complies with subsection (2) of this section based on
13 the factors in subsection (3) of this section. The registration shall be
14 valid until November 1 of the calendar year following the date of
15 registration and shall be renewed by November 1 of each year thereafter
16 upon application and payment of the annual fee established pursuant to
17 section 47 of this act to the department and compliance with the Medical
18 Cannabis Act and the rules and regulations adopted and promulgated under
19 the act. The department shall renew registrations based on the factors in
20 subsection (3) of this section. The department shall continue to accept
21 applications for registration after November 1, 2018, for any
22 congressional district which does not have four compassion center and
23 dispensaries by such date.

24 (2)(a) As a condition for registration prior to November 1, 2018, a
25 compassion center and dispensary shall agree to:

26 (i) Begin supplying medical cannabis to patients on or before May 1,
27 2020; and

28 (ii) Comply with the Medical Cannabis Act and rules and regulations
29 adopted and promulgated by the department under the act.

30 (b) As a condition for registration on and after November 1, 2018, a
31 compassion center and dispensary shall agree to supply medical cannabis

1 to patients in compliance with the Medical Cannabis Act and otherwise be
2 in compliance with the act and the rules and regulations adopted and
3 promulgated under the act.

4 (3) The department shall consider the following factors when
5 determining whether to register a compassion center and dispensary:

6 (a) The technical expertise of the compassion center and dispensary
7 in distributing medical cannabis to patients;

8 (b) The qualifications of the pharmacists and other employees of the
9 compassion center and dispensary;

10 (c) The long-term financial stability of the compassion center and
11 dispensary; and

12 (d) The ability to provide appropriate security measures on the
13 premises of the compassion center and dispensary.

14 Sec. 37. (1) The department shall adopt and promulgate rules and
15 regulations by November 1, 2018, necessary for a compassion center and
16 dispensary to begin dispensing medical cannabis to patients enrolled in
17 the registry program and publish notice of the proposed rules and
18 regulations prior to May 1, 2018.

19 (2) The department shall, by September 1, 2018, advise the public
20 and the Medical Cannabis Board if the department is unable to register
21 producers and processors by November 1, 2018. The department shall
22 provide a written statement as to the reason or reasons the deadline will
23 not be met. Upon request of the department, the board shall extend the
24 deadline by six months but may not extend the deadline more than once.

25 (3) If notified by a processor that distribution to compassion
26 center and dispensaries may not begin by May 1, 2020, the department
27 shall advise the public and the board. Upon notification by the
28 department, the board shall extend the deadline by six months but may not
29 extend the deadline more than once.

30 Sec. 38. (1) A compassion center and dispensary shall require that
31 medical cannabis be dispensed to a patient by a pharmacist licensed under

1 the Pharmacy Practice Act.

2 (2) Prior to the dispensing of any medical cannabis, a compassion
3 center and dispensary shall:

4 (a) Verify that the compassion center and dispensary has received
5 the registry verification from the department for that individual
6 patient;

7 (b) Verify that the person requesting the distribution of medical
8 cannabis is the patient, the patient's registered designated caregiver,
9 or the patient's parent or legal guardian listed in the registry
10 verification;

11 (c) Assign a tracking number to any medical cannabis dispensed from
12 the compassion center and dispensary;

13 (d) Properly package medical cannabis in compliance with the federal
14 Poison Prevention Packaging Act of 1970, regarding child resistant
15 packaging and exemptions for packaging for elderly patients, and label
16 dispensed medical cannabis with a list of all active ingredients and
17 individually identifying information, including:

18 (i) The patient's name, mailing address, and date of birth;

19 (ii) The name, mailing address, and date of birth of the patient's
20 registered designated caregiver or, if listed on the registry
21 verification, the name and mailing address of the patient's parent or
22 legal guardian, if applicable;

23 (iii) The patient registry number;

24 (iv) The chemical composition of the medical cannabis;

25 (v) The recommended dosage or quantity of the medical cannabis, if
26 any;

27 (vi) The date the certification is issued;

28 (vii) The date the medical cannabis is dispensed; and

29 (viii) The name and address of the compassion center and dispensary
30 dispensing the medical cannabis; and

31 (e) Ensure that the dispensed medical cannabis contains a maximum of

1 a thirty-day supply of the recommended quantity, if any, determined for
2 that patient.

3 (3) A compassion center and dispensary shall take back any unused
4 medical cannabis and dispose of it in accordance with rules and
5 regulations adopted and promulgated by the department.

6 Sec. 39. (1) Each producer, processor, and compassion center and
7 dispensary shall disclose its proposed location to the department during
8 the registration process. A county, city, or village governing body may
9 adopt a resolution or ordinance prohibiting the operation of a producer,
10 processor, or compassion center and dispensary or all three within its
11 jurisdiction and may adopt zoning regulations that reasonably limit a
12 producer, processor, or compassion center and dispensary to certain areas
13 within its jurisdiction. If all jurisdictions within a congressional
14 district adopt a prohibition on the operation of producers or processors,
15 the department may register an additional producer or processor in
16 another congressional district. If all jurisdictions within a
17 congressional district adopt a prohibition on the operation of a
18 compassion center and dispensary, the department may register up to four
19 additional compassion center and dispensaries in another congressional
20 district or up to two additional compassion center and dispensaries in
21 each of the other congressional districts.

22 (2)(a) Any compassion center and dispensary may distribute medical
23 cannabis and medical cannabis products but shall not distribute any
24 medical cannabis in a form other than those forms allowed under the
25 Medical Cannabis Act. A compassion center and dispensary shall not
26 conduct any cultivation, harvesting, manufacturing, packaging, or
27 processing of medical cannabis.

28 (b) The operating documents of a compassion center and dispensary
29 shall include:

30 (i) Procedures for the oversight of the compassion center and
31 dispensary and procedures to ensure accurate record keeping; and

1 (ii) Procedures for the implementation of appropriate security
2 measures to deter and prevent the theft of medical cannabis and
3 unauthorized entrance into areas containing medical cannabis.

4 (3) The operating documents of a producer or processor shall
5 include:

6 (a) Procedures for the oversight of the producer or processor and
7 procedures to ensure accurate record keeping; and

8 (b) Procedures for the implementation of appropriate security
9 measures to deter and prevent the theft of medical cannabis and
10 unauthorized entrance into areas containing medical cannabis.

11 (4) Each producer, processor, and compassion center and dispensary
12 shall implement security requirements, including requirements for
13 protection of its location by a fully operational security alarm system,
14 facility access controls, perimeter intrusion detection systems, and a
15 personnel identification system.

16 (5) Each producer, processor, and compassion center and dispensary
17 shall not share office space with or refer patients to a participating
18 health care practitioner.

19 (6) Each producer, processor, and compassion center and dispensary
20 shall not permit any person to consume medical cannabis on the property
21 of the producer, processor, or compassion center and dispensary.

22 (7) Each producer, processor, and compassion center and dispensary
23 is subject to reasonable inspection by the department or its designee.

24 (8)(a) No producer, processor, or compassion center and dispensary
25 shall employ any person who is under twenty-one years of age or who has
26 been convicted of a disqualifying felony offense. Each employee of a
27 producer, a processor, or a compassion center and dispensary shall submit
28 to a completed criminal history record information check before an
29 employee may begin working with the producer, processor, or compassion
30 center and dispensary.

31 (b) Each employee shall pay the costs of the criminal history record

1 information check and shall file a complete set of his or her legible
2 fingerprints with the department. The department shall transmit such
3 fingerprints to the Nebraska State Patrol which shall transmit a copy of
4 the applicant's fingerprints to the Identification Division of the
5 Federal Bureau of Investigation for a national criminal history record
6 information check.

7 (c) The national criminal history record information check shall
8 include information concerning the employee from federal repositories of
9 such information and repositories of such information in other states if
10 authorized by federal law for use by the department.

11 (d) The Nebraska State Patrol shall undertake a search for Nebraska
12 criminal history record information concerning the employee. The Nebraska
13 State Patrol shall issue a report to the department which contains the
14 results of the criminal history record information check conducted by the
15 Nebraska State Patrol.

16 (e) Criminal history record information subject to federal
17 confidentiality requirements shall remain confidential and may be
18 released only upon the written authorization of the employee.

19 (9) No producer, processor, or compassion center and dispensary may
20 operate in any location within one thousand feet of a public or private
21 school existing before the date of the producer's, processor's, or
22 compassion center and dispensary's registration with the department.

23 (10) Each producer, processor, and compassion center and dispensary
24 shall comply with reasonable restrictions set by the department relating
25 to signage, marketing, display, and advertising of medical cannabis and
26 shall comply with local zoning regulations.

27 Sec. 40. (1) Subject to section 21 of this act, the following are
28 not violations under the Medical Cannabis Act:

29 (a) Use or possession of medical cannabis or medical cannabis
30 products by a patient enrolled in the registry program or possession of
31 medical cannabis or medical cannabis products by a registered designated

1 caregiver or the parent or legal guardian of a patient if the parent or
2 legal guardian is listed on the registry verification;

3 (b) Possession or sale of medical cannabis or medical cannabis
4 products by a producer, a processor, or a compassion center and
5 dispensary, employees of a producer, a processor, or a compassion center
6 and dispensary, a laboratory conducting testing on medical cannabis, or
7 employees of the laboratory; and

8 (c) Possession of medical cannabis or medical cannabis products by
9 any person while carrying out the duties required under the Medical
10 Cannabis Act.

11 (2) Medical cannabis obtained and distributed pursuant to the
12 Medical Cannabis Act and associated property is not subject to forfeiture
13 under section 28-431.

14 (3) The department, the department's staff, the department's agents
15 or contractors, and participating health care practitioners are not
16 subject to any civil or disciplinary penalties by any business,
17 occupational, or professional licensing board or entity, solely for
18 participation in the registry program under the Medical Cannabis Act. A
19 pharmacist licensed under the Pharmacy Practice Act is not subject to any
20 civil or disciplinary penalties when acting in accordance with the
21 Medical Cannabis Act. Nothing in this section affects a professional
22 licensing board from taking action in response to violations of any other
23 provision of law.

24 (4) Federal, state, and local law enforcement authorities are
25 prohibited from accessing the registry program under the Medical Cannabis
26 Act except (a) when acting pursuant to a search warrant or (b) to
27 determine the eligibility of the patient to possess medical cannabis.

28 (5) No information contained in a report, document, or registry or
29 obtained from a patient under the Medical Cannabis Act may be admitted as
30 evidence in a criminal proceeding unless independently obtained or in
31 connection with a proceeding involving a violation of the act.

1 (6) Any person who violates subsection (4) of this section is guilty
2 of a Class I misdemeanor.

3 (7) An attorney shall not be subject to disciplinary action for
4 providing legal assistance to a prospective or registered producer,
5 processor, or compassion center and dispensary or to others related to
6 activity that is no longer subject to criminal penalties under state law
7 pursuant to the Medical Cannabis Act.

8 (8) Possession of a registry verification or application for
9 enrollment in the registry program by a person entitled to possess or
10 apply for enrollment in the registry program does not constitute probable
11 cause or reasonable suspicion, nor shall it be used to support a search
12 of the person or property of the person possessing or applying for the
13 registry verification or otherwise subject the person or property of the
14 person to inspection by any governmental agency.

15 Sec. 41. (1) No school or landlord may refuse to enroll or lease to
16 and may not otherwise penalize a person solely for the person's status as
17 a patient enrolled in the registry program under the Medical Cannabis Act
18 unless failing to do so would violate federal law or regulations or cause
19 the school or landlord to lose a monetary or licensing-related benefit
20 under federal law or regulations.

21 (2) For purposes of medical care, including organ transplants, the
22 use of medical cannabis under the Medical Cannabis Act by a patient
23 enrolled in the registry program does not constitute the use of an
24 illicit substance or otherwise disqualify a patient from needed medical
25 care.

26 (3) A person shall not be denied custody of a minor child or
27 visitation rights or parenting time with a minor child solely based on
28 the person's status as a patient enrolled in the registry program under
29 the Medical Cannabis Act.

30 Sec. 42. (1) In addition to any other applicable penalty, a
31 compassion center and dispensary or an agent of a compassion center and

1 dispensary who intentionally transfers or dispenses medical cannabis to a
2 person other than a registered compassion center and dispensary, a
3 patient, a registered designated caregiver, or, if listed on the registry
4 verification, a parent or legal guardian of a patient, is guilty of a
5 Class IV felony. A person convicted under this section shall not continue
6 to be affiliated with the compassion center and dispensary and is
7 disqualified from further participation under the Medical Cannabis Act.

8 (2) In addition to any other applicable penalty, a producer, a
9 processor, or an agent of a producer or processor who intentionally
10 dispenses medical cannabis to a person other than a registered producer,
11 a registered processor, or a registered compassion center and dispensary
12 is guilty of a Class IV felony. A person convicted under this section
13 shall not continue to be affiliated with the producer or processor and is
14 disqualified from further participation under the Medical Cannabis Act.

15 Sec. 43. In addition to any other applicable penalty provided by
16 law, a patient, a registered designated caregiver, or, if listed on the
17 registry verification, a parent or legal guardian of a patient who
18 intentionally sells or otherwise transfers medical cannabis to a person
19 other than a patient, a registered designated caregiver, or, if listed on
20 the registry verification, a parent or legal guardian of a patient, is
21 guilty of a Class IV felony.

22 Sec. 44. A person who intentionally makes a false statement to a
23 law enforcement official about any fact or circumstance relating to the
24 use of medical cannabis to avoid arrest or prosecution is guilty of a
25 Class III misdemeanor. The penalty is in addition to any other penalties
26 that may apply for making a false statement or for the possession,
27 cultivation, or sale of cannabis not protected by the Medical Cannabis
28 Act. If a person convicted of violating this section is a patient or a
29 registered designated caregiver, the person is disqualified from further
30 participation under the act.

31 Sec. 45. A person who knowingly submits false records or

1 documentation required by the department to register as a producer, a
2 processor, or a compassion center and dispensary under the Medical
3 Cannabis Act is guilty of a Class IV felony.

4 Sec. 46. A producer, a processor, or a compassion center and
5 dispensary may be fined up to one thousand dollars for any violation of
6 the Medical Cannabis Act or the rules and regulations adopted and
7 promulgated pursuant to the act if no penalty has been specified. This
8 penalty is in addition to any other applicable penalties in law.

9 Sec. 47. (1) The department shall collect an application fee of
10 twenty-five thousand dollars from each entity submitting an application
11 for registration as a producer, a processor, or a compassion center and
12 dispensary. The department shall remit the fees to the State Treasurer
13 for credit to the Medical Cannabis Regulation Fund.

14 (2) The department shall establish and collect an annual fee not to
15 exceed (a) forty thousand dollars from a producer for the cost of
16 regulating and inspecting the producer in that year, (b) forty thousand
17 dollars from a processor for the cost of regulating and inspecting the
18 processor in that year, and (c) twenty-five thousand dollars from a
19 compassion center and dispensary for the cost of regulating and
20 inspecting the compassion center and dispensary in that year. The
21 department shall remit the fees to the State Treasurer for credit to the
22 Medical Cannabis Regulation Fund.

23 Sec. 48. The Medical Cannabis Regulation Fund is created and shall
24 consist of funds from contracts, grants, gifts, or fees under the Medical
25 Cannabis Act. The fund shall be used for purposes of regulation of
26 medical cannabis and administration of the Medical Cannabis Act.
27 Transfers may be made from the fund to the General Fund at the direction
28 of the Legislature. Any money in the Medical Cannabis Regulation Fund
29 available for investment shall be invested by the state investment
30 officer pursuant to the Nebraska Capital Expansion Act and the Nebraska
31 State Funds Investment Act.

1 Sec. 49. (1) The department may examine and inspect or provide for
2 the examination and inspection of any producer, processor, or compassion
3 center and dispensary in such manner and at such times as provided in
4 rules and regulations adopted and promulgated by the department. The
5 department shall issue an examination and inspection report and provide a
6 copy of the report to the producer, processor, or compassion center and
7 dispensary within ten working days after the completion of an examination
8 and inspection. The department shall then post a copy of the report on
9 its web site. The costs incurred by the department in conducting such an
10 examination and inspection shall be paid for by the producer, processor,
11 or compassion center and dispensary.

12 (2) When making an examination under this section, the department
13 may retain professionals and specialists as designees.

14 Sec. 50. (1) The department shall adopt and promulgate rules and
15 regulations to establish requirements for reporting incidents when
16 individuals who are not authorized to possess cannabis under the Medical
17 Cannabis Act are found in possession of medical cannabis. The rules and
18 regulations shall identify professionals required to report, the
19 information they are required to report, and actions the reporter must
20 take to secure the medical cannabis.

21 (2) The department shall adopt and promulgate rules and regulations
22 to establish requirements for law enforcement officials and health care
23 professionals to report incidents involving an overdose of medical
24 cannabis to the department.

25 (3) Rules and regulations shall include the method by which the
26 department will collect and tabulate reports of unauthorized possession
27 and overdose.

28 Sec. 51. The Medical Cannabis Board is established. The board shall
29 consist of nine members. Seven members shall be appointed by the Governor
30 and approved by a majority of the members of the Legislature. Of the
31 appointed members, the board shall have at least one person from each

1 congressional district, at least one person licensed to practice pharmacy
2 under the Pharmacy Practice Act, at least one person licensed to practice
3 medicine and surgery under the Medicine and Surgery Practice Act, and at
4 least three persons who are advocates for the use of medical cannabis.
5 The chief medical officer as designated in section 81-3115 or his or her
6 designee and the chairperson of the Health and Human Services Committee
7 of the Legislature or his or her designee shall be nonvoting, ex officio
8 members.

9 Sec. 52. The Governor shall appoint three of the initial appointed
10 members of the Medical Cannabis Board for terms of five years and the
11 remainder of the initial appointed members of the board for terms of one
12 year, two years, three years, and four years. Appointments made for the
13 succeeding members shall be for terms of five years. The term of office
14 of each member of the board shall expire on September 1 of the
15 appropriate year. If a vacancy occurs prior to the expiration of a term,
16 the Governor shall appoint a successor with similar qualifications for
17 the remainder of the unexpired term. No appointed member of the board
18 shall serve more than two consecutive, full terms. If the Legislature is
19 not in session when an appointment is made by the Governor, the member
20 shall take office and act as a recess appointee until the Legislature
21 convenes.

22 Sec. 53. The members of the Medical Cannabis Board shall be
23 reimbursed for the actual and necessary expenses incurred in the
24 performance of their duties as provided in sections 81-1174 to 81-1177.

25 Sec. 54. Within thirty days after the initial appointment and in
26 the last calendar quarter of each subsequent year, the members of the
27 Medical Cannabis Board shall meet and elect a chairperson of the board
28 from the appointed members and such other officers, including a vice-
29 chairperson and a secretary, as the board deems necessary. In case of the
30 death, resignation, or other permanent absence of the chairperson of the
31 board, the vice-chairperson shall assume the office of chairperson and

1 the members of the board at the next regular meeting of the board, or at
2 a special meeting of the board pursuant to a call signed by all remaining
3 members of which such members shall have at least three days' notice,
4 shall elect a new chairperson of the board from the appointed members and
5 such other new officers as the board deems necessary.

6 Sec. 55. The Medical Cannabis Board shall meet at least once each
7 quarter and at such other times as it deems necessary. Special meetings
8 may be held upon the call of the chairperson or pursuant to a call signed
9 by six other members of which the chairperson and the other members of
10 the board shall have at least three days' notice. All regular meetings
11 shall be held in suitable offices to be provided in the state office
12 building described in section 81-1108.37 or elsewhere. A majority of the
13 members of the board shall constitute a quorum for the transaction of
14 business. Every act of a majority of the members of the board shall be
15 deemed to be the act of the board. All meetings shall be open to the
16 public. The minutes of the meetings shall show the action of the board on
17 matters presented and shall be open to public inspection.

18 Sec. 56. The Medical Cannabis Board shall advise the department
19 regarding:

- 20 (1) Rules and regulations for the regulation of medical cannabis;
21 (2) The policies of the department as they relate to medical
22 cannabis; and
23 (3) Recommendations for legislative changes regarding regulation of
24 medical cannabis.

25 Sec. 57. No member of the Medical Cannabis Board shall be
26 personally liable in damages to any person for slander, libel, defamation
27 of character, breach of any privileged communication, or otherwise for
28 any action taken or recommendation made within the scope of the functions
29 of such board while acting as an agent of the state if such board member
30 acts without malice and in the reasonable belief that such action or
31 recommendation is warranted by the facts known to him or her after a

1 reasonable effort is made to obtain the facts on which such action is
2 taken or recommendation is made.

3 Sec. 58. Section 28-416, Reissue Revised Statutes of Nebraska, is
4 amended to read:

5 28-416 (1) Except as authorized by the Medical Cannabis Act or the
6 Uniform Controlled Substances Act, it shall be unlawful for any person
7 knowingly or intentionally: (a) To manufacture, distribute, deliver,
8 dispense, or possess with intent to manufacture, distribute, deliver, or
9 dispense a controlled substance; or (b) to create, distribute, or possess
10 with intent to distribute a counterfeit controlled substance.

11 (2) Except as provided in subsections (4), (5), (7), (8), (9), and
12 (10) of this section, any person who violates subsection (1) of this
13 section with respect to: (a) A controlled substance classified in
14 Schedule I, II, or III of section 28-405 which is an exceptionally
15 hazardous drug shall be guilty of a Class II felony; (b) any other
16 controlled substance classified in Schedule I, II, or III of section
17 28-405 shall be guilty of a Class IIA felony; or (c) a controlled
18 substance classified in Schedule IV or V of section 28-405 shall be
19 guilty of a Class IIIA felony.

20 (3) A person knowingly or intentionally possessing a controlled
21 substance, except marijuana or any substance containing a quantifiable
22 amount of the substances, chemicals, or compounds described, defined, or
23 delineated in subdivision (c)(25) of Schedule I of section 28-405, unless
24 such substance was obtained directly or pursuant to a medical order
25 issued by a practitioner authorized to prescribe while acting in the
26 course of his or her professional practice, or except as otherwise
27 authorized by the act, shall be guilty of a Class IV felony.

28 (4)(a) Except as authorized by the Uniform Controlled Substances
29 Act, any person eighteen years of age or older who knowingly or
30 intentionally manufactures, distributes, delivers, dispenses, or
31 possesses with intent to manufacture, distribute, deliver, or dispense a

1 controlled substance or a counterfeit controlled substance (i) to a
2 person under the age of eighteen years, (ii) in, on, or within one
3 thousand feet of the real property comprising a public or private
4 elementary, vocational, or secondary school, a community college, a
5 public or private college, junior college, or university, or a
6 playground, or (iii) within one hundred feet of a public or private youth
7 center, public swimming pool, or video arcade facility shall be punished
8 by the next higher penalty classification than the penalty prescribed in
9 subsection (2), (7), (8), (9), or (10) of this section, depending upon
10 the controlled substance involved, for the first violation and for a
11 second or subsequent violation shall be punished by the next higher
12 penalty classification than that prescribed for a first violation of this
13 subsection, but in no event shall such person be punished by a penalty
14 greater than a Class IB felony.

15 (b) For purposes of this subsection:

16 (i) Playground shall mean any outdoor facility, including any
17 parking lot appurtenant to the facility, intended for recreation, open to
18 the public, and with any portion containing three or more apparatus
19 intended for the recreation of children, including sliding boards,
20 swingsets, and teeterboards;

21 (ii) Video arcade facility shall mean any facility legally
22 accessible to persons under eighteen years of age, intended primarily for
23 the use of pinball and video machines for amusement, and containing a
24 minimum of ten pinball or video machines; and

25 (iii) Youth center shall mean any recreational facility or
26 gymnasium, including any parking lot appurtenant to the facility or
27 gymnasium, intended primarily for use by persons under eighteen years of
28 age which regularly provides athletic, civic, or cultural activities.

29 (5)(a) Except as authorized by the Uniform Controlled Substances
30 Act, it shall be unlawful for any person eighteen years of age or older
31 to knowingly and intentionally employ, hire, use, cause, persuade, coax,

1 induce, entice, seduce, or coerce any person under the age of eighteen
2 years to manufacture, transport, distribute, carry, deliver, dispense,
3 prepare for delivery, offer for delivery, or possess with intent to do
4 the same a controlled substance or a counterfeit controlled substance.

5 (b) Except as authorized by the Uniform Controlled Substances Act,
6 it shall be unlawful for any person eighteen years of age or older to
7 knowingly and intentionally employ, hire, use, cause, persuade, coax,
8 induce, entice, seduce, or coerce any person under the age of eighteen
9 years to aid and abet any person in the manufacture, transportation,
10 distribution, carrying, delivery, dispensing, preparation for delivery,
11 offering for delivery, or possession with intent to do the same of a
12 controlled substance or a counterfeit controlled substance.

13 (c) Any person who violates subdivision (a) or (b) of this
14 subsection shall be punished by the next higher penalty classification
15 than the penalty prescribed in subsection (2), (7), (8), (9), or (10) of
16 this section, depending upon the controlled substance involved, for the
17 first violation and for a second or subsequent violation shall be
18 punished by the next higher penalty classification than that prescribed
19 for a first violation of this subsection, but in no event shall such
20 person be punished by a penalty greater than a Class IB felony.

21 (6) It shall not be a defense to prosecution for violation of
22 subsection (4) or (5) of this section that the defendant did not know the
23 age of the person through whom the defendant violated such subsection.

24 (7) Any person who violates subsection (1) of this section with
25 respect to cocaine or any mixture or substance containing a detectable
26 amount of cocaine in a quantity of:

27 (a) One hundred forty grams or more shall be guilty of a Class IB
28 felony;

29 (b) At least twenty-eight grams but less than one hundred forty
30 grams shall be guilty of a Class IC felony; or

31 (c) At least ten grams but less than twenty-eight grams shall be

1 guilty of a Class ID felony.

2 (8) Any person who violates subsection (1) of this section with
3 respect to base cocaine (crack) or any mixture or substance containing a
4 detectable amount of base cocaine in a quantity of:

5 (a) One hundred forty grams or more shall be guilty of a Class IB
6 felony;

7 (b) At least twenty-eight grams but less than one hundred forty
8 grams shall be guilty of a Class IC felony; or

9 (c) At least ten grams but less than twenty-eight grams shall be
10 guilty of a Class ID felony.

11 (9) Any person who violates subsection (1) of this section with
12 respect to heroin or any mixture or substance containing a detectable
13 amount of heroin in a quantity of:

14 (a) One hundred forty grams or more shall be guilty of a Class IB
15 felony;

16 (b) At least twenty-eight grams but less than one hundred forty
17 grams shall be guilty of a Class IC felony; or

18 (c) At least ten grams but less than twenty-eight grams shall be
19 guilty of a Class ID felony.

20 (10) Any person who violates subsection (1) of this section with
21 respect to amphetamine, its salts, optical isomers, and salts of its
22 isomers, or with respect to methamphetamine, its salts, optical isomers,
23 and salts of its isomers, in a quantity of:

24 (a) One hundred forty grams or more shall be guilty of a Class IB
25 felony;

26 (b) At least twenty-eight grams but less than one hundred forty
27 grams shall be guilty of a Class IC felony; or

28 (c) At least ten grams but less than twenty-eight grams shall be
29 guilty of a Class ID felony.

30 (11) Except as otherwise provided in the Medical Cannabis Act, any
31 Any person knowingly or intentionally possessing marijuana weighing more

1 than one ounce but not more than one pound shall be guilty of a Class III
2 misdemeanor.

3 (12) Except as otherwise provided in the Medical Cannabis Act, any
4 ~~Any~~ person knowingly or intentionally possessing marijuana weighing more
5 than one pound shall be guilty of a Class IV felony.

6 (13) Except as otherwise provided in the Medical Cannabis Act, any
7 ~~Any~~ person knowingly or intentionally possessing marijuana weighing one
8 ounce or less or any substance containing a quantifiable amount of the
9 substances, chemicals, or compounds described, defined, or delineated in
10 subdivision (c)(25) of Schedule I of section 28-405 shall:

11 (a) For the first offense, be guilty of an infraction, receive a
12 citation, be fined three hundred dollars, and be assigned to attend a
13 course as prescribed in section 29-433 if the judge determines that
14 attending such course is in the best interest of the individual
15 defendant;

16 (b) For the second offense, be guilty of a Class IV misdemeanor,
17 receive a citation, and be fined four hundred dollars and may be
18 imprisoned not to exceed five days; and

19 (c) For the third and all subsequent offenses, be guilty of a Class
20 IIIA misdemeanor, receive a citation, be fined five hundred dollars, and
21 be imprisoned not to exceed seven days.

22 (14) Any person convicted of violating this section, if placed on
23 probation, shall, as a condition of probation, satisfactorily attend and
24 complete appropriate treatment and counseling on drug abuse provided by a
25 program authorized under the Nebraska Behavioral Health Services Act or
26 other licensed drug treatment facility.

27 (15) Any person convicted of violating this section, if sentenced to
28 the Department of Correctional Services, shall attend appropriate
29 treatment and counseling on drug abuse.

30 (16) Any person knowingly or intentionally possessing a firearm
31 while in violation of subsection (1) of this section shall be punished by

1 the next higher penalty classification than the penalty prescribed in
2 subsection (2), (7), (8), (9), or (10) of this section, but in no event
3 shall such person be punished by a penalty greater than a Class IB
4 felony.

5 (17) A person knowingly or intentionally in possession of money used
6 or intended to be used to facilitate a violation of subsection (1) of
7 this section shall be guilty of a Class IV felony.

8 (18) In addition to the existing penalties available for a violation
9 of subsection (1) of this section, including any criminal attempt or
10 conspiracy to violate subsection (1) of this section, a sentencing court
11 may order that any money, securities, negotiable instruments, firearms,
12 conveyances, or electronic communication devices as defined in section
13 28-833 or any equipment, components, peripherals, software, hardware, or
14 accessories related to electronic communication devices be forfeited as a
15 part of the sentence imposed if it finds by clear and convincing evidence
16 adduced at a separate hearing in the same prosecution, following
17 conviction for a violation of subsection (1) of this section, and
18 conducted pursuant to section 28-1601, that any or all such property was
19 derived from, used, or intended to be used to facilitate a violation of
20 subsection (1) of this section.

21 (19) In addition to the penalties provided in this section:

22 (a) If the person convicted or adjudicated of violating this section
23 is eighteen years of age or younger and has one or more licenses or
24 permits issued under the Motor Vehicle Operator's License Act:

25 (i) For the first offense, the court may, as a part of the judgment
26 of conviction or adjudication, (A) impound any such licenses or permits
27 for thirty days and (B) require such person to attend a drug education
28 class;

29 (ii) For a second offense, the court may, as a part of the judgment
30 of conviction or adjudication, (A) impound any such licenses or permits
31 for ninety days and (B) require such person to complete no fewer than

1 twenty and no more than forty hours of community service and to attend a
2 drug education class; and

3 (iii) For a third or subsequent offense, the court may, as a part of
4 the judgment of conviction or adjudication, (A) impound any such licenses
5 or permits for twelve months and (B) require such person to complete no
6 fewer than sixty hours of community service, to attend a drug education
7 class, and to submit to a drug assessment by a licensed alcohol and drug
8 counselor; and

9 (b) If the person convicted or adjudicated of violating this section
10 is eighteen years of age or younger and does not have a permit or license
11 issued under the Motor Vehicle Operator's License Act:

12 (i) For the first offense, the court may, as part of the judgment of
13 conviction or adjudication, (A) prohibit such person from obtaining any
14 permit or any license pursuant to the act for which such person would
15 otherwise be eligible until thirty days after the date of such order and
16 (B) require such person to attend a drug education class;

17 (ii) For a second offense, the court may, as part of the judgment of
18 conviction or adjudication, (A) prohibit such person from obtaining any
19 permit or any license pursuant to the act for which such person would
20 otherwise be eligible until ninety days after the date of such order and
21 (B) require such person to complete no fewer than twenty hours and no
22 more than forty hours of community service and to attend a drug education
23 class; and

24 (iii) For a third or subsequent offense, the court may, as part of
25 the judgment of conviction or adjudication, (A) prohibit such person from
26 obtaining any permit or any license pursuant to the act for which such
27 person would otherwise be eligible until twelve months after the date of
28 such order and (B) require such person to complete no fewer than sixty
29 hours of community service, to attend a drug education class, and to
30 submit to a drug assessment by a licensed alcohol and drug counselor.

31 A copy of an abstract of the court's conviction or adjudication

1 shall be transmitted to the Director of Motor Vehicles pursuant to
2 sections 60-497.01 to 60-497.04 if a license or permit is impounded or a
3 juvenile is prohibited from obtaining a license or permit under this
4 subsection.

5 Sec. 59. Section 28-439, Reissue Revised Statutes of Nebraska, is
6 amended to read:

7 28-439 As used in sections 28-101, 28-431, and 28-439 to 28-444,
8 unless the context otherwise requires, drug paraphernalia shall mean all
9 equipment, products, and materials of any kind which are used, intended
10 for use, or designed for use, in manufacturing, injecting, ingesting,
11 inhaling, or otherwise introducing into the human body a controlled
12 substance in violation of sections 28-101, 28-431, and 28-439 to 28-444,
13 the Medical Cannabis Act, or the Uniform Controlled Substances Act. It
14 shall include, but not be limited to, the following:

15 (1) Diluents and adulterants, such as quinine hydrochloride,
16 mannitol, mannite, dextrose, and lactose, used, intended for use, or
17 designed for use in cutting controlled substances;

18 (2) Separation gins and sifters used, intended for use, or designed
19 for use in removing twigs and seeds from, or in otherwise cleaning or
20 refining, marijuana;

21 (3) Hypodermic syringes, needles, and other objects used, intended
22 for use, and designed for use in parenterally injecting controlled
23 substances into the human body; and

24 (4) Objects used, intended for use, or designed for use in
25 ingesting, inhaling, or otherwise introducing marijuana, cocaine,
26 hashish, or hashish oil into the human body, which shall include but not
27 be limited to the following:

28 (a) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes
29 with or without screens, permanent screens, hashish heads, or punctured
30 metal bowls;

31 (b) Water pipes;

- 1 (c) Carburetion tubes and devices;
- 2 (d) Smoking and carburetion masks;
- 3 (e) Roach clips, meaning objects used to hold burning material, such
- 4 as a marijuana cigarette, which has become too small or too short to be
- 5 held in the hand;
- 6 (f) Miniature cocaine spoons, and cocaine vials;
- 7 (g) Chamber pipes;
- 8 (h) Carburetor pipes;
- 9 (i) Electric pipes;
- 10 (j) Air-driven pipes;
- 11 (k) Chillums;
- 12 (l) Bongs; and
- 13 (m) Ice pipes or chillers.

14 Sec. 60. Section 77-2701.48, Reissue Revised Statutes of Nebraska,
15 is amended to read:

16 77-2701.48 (1) Bundled transaction means the retail sale of two or
17 more products, except real property and services to real property, when
18 (a) the products are otherwise distinct and identifiable and (b) the
19 products are sold for one non-itemized price. Bundled transaction does
20 not include the sale of any products in which the sales price varies, or
21 is negotiable, based on the selection by the purchaser of the products
22 included in the transaction.

23 (2) Distinct and identifiable products do not include:

24 (a) Packaging, such as containers, boxes, sacks, bags, and bottles
25 or other materials such as wrapping, labels, tags, and instruction guides
26 that accompany the retail sale of the products and are incidental or
27 immaterial to the retail sale thereof. Examples of packaging that are
28 incidental or immaterial include grocery sacks, shoeboxes, dry cleaning
29 garment bags, and express delivery envelopes and boxes;

30 (b) A product provided free of charge with the required purchase of
31 another product. A product is provided free of charge if the sales price

1 of the product purchased does not vary depending on the inclusion of the
2 product provided free of charge; and

3 (c) Items included in the definition of sales price pursuant to
4 section 77-2701.35.

5 (3) One non-itemized price does not include a price that is
6 separately identified by product on binding sales or other supporting
7 sales-related documentation made available to the customer in paper or
8 electronic form, including, but not limited to, an invoice, bill of sale,
9 receipt, contract, service agreement, lease agreement, periodic notice of
10 rates and services, rate card, or price list.

11 (4) A transaction that otherwise meets the definition of a bundled
12 transaction is not a bundled transaction if it is (a) the retail sale of
13 tangible personal property and a service where the tangible personal
14 property is essential to the use of the service, and is provided
15 exclusively in connection with the service, and the true object of the
16 transaction is the service, (b) the retail sale of services when one
17 service is provided that is essential to the use or receipt of a second
18 service and the first service is provided exclusively in connection with
19 the second service and the true object of the transaction is the second
20 service, or (c) a transaction that includes taxable products and
21 nontaxable products and the purchase price or sales price of the taxable
22 products is de minimus. De minimus means the seller's purchase price or
23 sales price of the taxable products is ten percent or less of the total
24 purchase price or sales price of the bundled products. Sellers shall use
25 either the purchase price or the sales price of the products to determine
26 if the taxable products are de minimus. Sellers may not use a combination
27 of the purchase price and sales price of the products to determine if the
28 taxable products are de minimus. Sellers shall use the full term of a
29 service contract to determine if the taxable products are de minimus.

30 (5) Bundled transaction does not include the retail sale of exempt
31 tangible personal property and taxable tangible personal property if (a)

1 the transaction includes food and food ingredients, drugs, durable
2 medical equipment, mobility enhancing equipment, over-the-counter drugs,
3 prosthetic devices, or medical supplies, as such terms are defined in
4 section 77-2704.09, and (b) the seller's purchase price or sales price of
5 the taxable tangible personal property is fifty percent or less of the
6 total purchase price or sales price of the bundled tangible personal
7 property. Sellers may not use a combination of the purchase price and
8 sales price of the tangible personal property when making the fifty-
9 percent determination for a transaction.

10 Sec. 61. Section 77-2704.09, Reissue Revised Statutes of Nebraska,
11 is amended to read:

12 77-2704.09 (1) Sales and use taxes shall not be imposed on the gross
13 receipts from the sale, lease, or rental of and the storage, use, or
14 other consumption in this state of (a) insulin, (b) mobility enhancing
15 equipment and drugs, not including over-the-counter drugs, when sold for
16 a patient's use under a prescription, and (c) the following when sold for
17 a patient's use under a prescription and which are of the type eligible
18 for coverage under the medical assistance program established pursuant to
19 the Medical Assistance Act: Durable medical equipment; home medical
20 supplies; prosthetic devices; oxygen; and oxygen equipment.

21 (2) For purposes of this section:

22 (a)(i) ~~(a)~~ Drug means a compound, substance, preparation, and
23 component of a compound, substance, or preparation, other than food and
24 food ingredients, dietary supplements, or alcoholic beverages:

25 (A) ~~(i)~~ Recognized in the official United States Pharmacopoeia,
26 official Homeopathic Pharmacopoeia of the United States, or official
27 National Formulary, and any supplement to any of them;

28 (B) ~~(ii)~~ Intended for use in the diagnosis, cure, mitigation,
29 treatment, or prevention of disease; or

30 (C) ~~(iii)~~ Intended to affect the structure or any function of the
31 body; and

1 (ii) Drug does not include cannabis obtained pursuant to the Medical
2 Cannabis Act;

3 (b) Durable medical equipment means equipment which can withstand
4 repeated use, is primarily and customarily used to serve a medical
5 purpose, generally is not useful to a person in the absence of illness or
6 injury, is appropriate for use in the home, and is not worn in or on the
7 body. Durable medical equipment includes repair and replacement parts for
8 such equipment;

9 (c) Home medical supplies means supplies primarily and customarily
10 used to serve a medical purpose which are appropriate for use in the home
11 and are generally not useful to a person in the absence of illness or
12 injury;

13 (d) Mobility enhancing equipment means equipment which is primarily
14 and customarily used to provide or increase the ability to move from one
15 place to another, which is not generally used by persons with normal
16 mobility, and which is appropriate for use either in a home or a motor
17 vehicle. Mobility enhancing equipment includes repair and replacement
18 parts for such equipment. Mobility enhancing equipment does not include
19 any motor vehicle or equipment on a motor vehicle normally provided by a
20 motor vehicle manufacturer;

21 (e) Over-the-counter drug means a drug that contains a label that
22 identifies the product as a drug as required by 21 C.F.R. 201.66, as such
23 regulation existed on January 1, 2003. The over-the-counter drug label
24 includes a drug facts panel or a statement of the active ingredients with
25 a list of those ingredients contained in the compound, substance, or
26 preparation;

27 (f) Oxygen equipment means oxygen cylinders, cylinder transport
28 devices including sheaths and carts, cylinder studs and support devices,
29 regulators, flowmeters, tank wrenches, oxygen concentrators, liquid
30 oxygen base dispensers, liquid oxygen portable dispensers, oxygen tubing,
31 nasal cannulas, face masks, oxygen humidifiers, and oxygen fittings and

1 accessories;

2 (g) Prescription means an order, formula, or recipe issued in any
3 form of oral, written, electronic, or other means of transmission by a
4 duly licensed practitioner authorized under the Uniform Credentialing
5 Act; and

6 (h) Prosthetic devices means a replacement, corrective, or
7 supportive device worn on or in the body to artificially replace a
8 missing portion of the body, prevent or correct physical deformity or
9 malfunction, or support a weak or deformed portion of the body, and
10 includes any supplies used with such device and repair and replacement
11 parts.

12 Sec. 62. Section 77-27,132, Revised Statutes Cumulative Supplement,
13 2016, is amended to read:

14 77-27,132 (1) There is hereby created a fund to be designated the
15 Revenue Distribution Fund which shall be set apart and maintained by the
16 Tax Commissioner. Revenue not required to be credited to the General Fund
17 or any other specified fund may be credited to the Revenue Distribution
18 Fund. Credits and refunds of such revenue shall be paid from the Revenue
19 Distribution Fund. The balance of the amount credited, after credits and
20 refunds, shall be allocated as provided by the statutes creating such
21 revenue.

22 (2) The Tax Commissioner shall pay to a depository bank designated
23 by the State Treasurer all amounts collected under the Nebraska Revenue
24 Act of 1967. The Tax Commissioner shall present to the State Treasurer
25 bank receipts showing amounts so deposited in the bank, and of the
26 amounts so deposited the State Treasurer shall:

27 (a) For transactions occurring on or after October 1, 2014, and
28 before October 1, 2019, credit to the Game and Parks Commission Capital
29 Maintenance Fund all of the proceeds of the sales and use taxes imposed
30 pursuant to section 77-2703 on the sale or lease of motorboats as defined
31 in section 37-1204, personal watercraft as defined in section 37-1204.01,

1 all-terrain vehicles as defined in section 60-103, and utility-type
2 vehicles as defined in section 60-135.01;

3 (b) Credit to the Highway Trust Fund all of the proceeds of the
4 sales and use taxes derived from the sale or lease for periods of more
5 than thirty-one days of motor vehicles, trailers, and semitrailers,
6 except that the proceeds equal to any sales tax rate provided for in
7 section 77-2701.02 that is in excess of five percent derived from the
8 sale or lease for periods of more than thirty-one days of motor vehicles,
9 trailers, and semitrailers shall be credited to the Highway Allocation
10 Fund;

11 (c) For transactions occurring on or after July 1, 2013, and before
12 July 1, 2033, of the proceeds of the sales and use taxes derived from
13 transactions other than those listed in subdivisions (2)(a), ~~and (b)~~, and
14 (d) of this section from a sales tax rate of one-quarter of one percent,
15 credit monthly eighty-five percent to the State Highway Capital
16 Improvement Fund and fifteen percent to the Highway Allocation Fund; ~~and~~

17 (d) For transactions occurring on or after the operative date of
18 this section, credit to the Medical Cannabis Regulation Fund all of the
19 proceeds of the sales and use taxes imposed pursuant to section 77-2703
20 on the sale of medical cannabis pursuant to the Medical Cannabis Act; and

21 (e) ~~(d)~~ Of the proceeds of the sales and use taxes derived from
22 transactions other than those listed in subdivisions (2)(a), ~~and (b)~~, and
23 (d) of this section, credit to the Property Tax Credit Cash Fund the
24 amount certified under section 77-27,237, if any such certification is
25 made.

26 The balance of all amounts collected under the Nebraska Revenue Act
27 of 1967 shall be credited to the General Fund.

28 Sec. 63. Section 77-27,237, Revised Statutes Cumulative Supplement,
29 2016, is amended to read:

30 77-27,237 If the federal government passes a law that expands the
31 state's authority to require out-of-state retailers to collect and remit

1 the tax imposed under section 77-2703 on purchases by Nebraska residents
2 and the state collects additional revenue under section 77-2703 as a
3 result of such federal law, then the Department of Revenue shall
4 determine the amount of such additional revenue collected during the
5 first twelve months following the date on which the state begins
6 collecting such additional revenue. The department shall certify such
7 amount to the Governor, the Legislature, and the State Treasurer, and the
8 certified amount shall be used for purposes of subdivision (2)(e) ~~(2)(d)~~
9 of section 77-27,132. This section terminates three years after August
10 30, 2015.

11 Sec. 64. Section 77-4303, Reissue Revised Statutes of Nebraska, is
12 amended to read:

13 77-4303 (1) A tax is hereby imposed on marijuana and controlled
14 substances at the following rates:

15 (a) On each ounce of marijuana or each portion of an ounce, one
16 hundred dollars;

17 (b) On each gram or portion of a gram of a controlled substance that
18 is customarily sold by weight or volume, one hundred fifty dollars; or

19 (c) On each fifty dosage units or portion thereof of a controlled
20 substance that is not customarily sold by weight, five hundred dollars.

21 (2) For purposes of calculating the tax under this section,
22 marijuana or any controlled substance that is customarily sold by weight
23 or volume shall be measured by the weight of the substance in the
24 dealer's possession. The weight shall be the actual weight, if known, or
25 the estimated weight as determined by the Nebraska State Patrol or other
26 law enforcement agency. Such determination shall be presumed to be the
27 weight of such marijuana or controlled substances for purposes of
28 sections 77-4301 to 77-4316.

29 (3) The tax shall not be imposed upon a person registered or
30 otherwise lawfully in possession of marijuana or a controlled substance
31 pursuant to Chapter 28, article 4, or a person lawfully in possession of

1 cannabis under the Medical Cannabis Act.

2 Sec. 65. Sections 60, 61, 62, 63, 64, and 67 of this act become
3 operative on October 1, 2017. The other sections of this act become
4 operative on their effective date.

5 Sec. 66. Original sections 28-416 and 28-439, Reissue Revised
6 Statutes of Nebraska, are repealed.

7 Sec. 67. Original sections 77-2701.48, 77-2704.09, and 77-4303,
8 Reissue Revised Statutes of Nebraska, and sections 77-27,132 and
9 77-27,237, Revised Statutes Cumulative Supplement, 2016, are repealed.