

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 110

Introduced by Wishart, 27; Chambers, 11; Hansen, M., 26; Howard, 9; Hunt, 8; Kolowski, 31; McCollister, 20; Morfeld, 46; Pansing Brooks, 28; Quick, 35; Vargas, 7; Walz, 15; Wayne, 13.

Read first time January 10, 2019

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to cannabis; to amend sections 28-439,
- 2 77-2701.48, 77-2704.09, 77-27,132, 77-27,237, and 77-4303, Reissue
- 3 Revised Statutes of Nebraska, and section 28-416, Revised Statutes
- 4 Cumulative Supplement, 2018; to adopt the Medical Cannabis Act; to
- 5 change provisions relating to controlled substances and taxation; to
- 6 harmonize provisions; to provide operative dates; to repeal the
- 7 original sections; and to declare an emergency.
- 8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 62 of this act shall be known and may be
2 cited as the Medical Cannabis Act.

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

5 Sec. 3. Cannabis means any species of the cannabis plant, or any
6 mixture or preparation of any species of the cannabis plant, including
7 whole plant extracts and resins.

8 Sec. 4. Cannabis product means any delivery device or related
9 supplies and educational materials used in the administration of cannabis
10 for a patient with a qualifying medical condition enrolled in the
11 registry program.

12 Sec. 5. Dispensary means an entity registered by the division to
13 acquire, possess, or dispense cannabis or cannabis products.

14 Sec. 6. Division means the Marijuana Enforcement Division.

15 Sec. 7. Felony offense means a violation of a state or federal law
16 that is a felony under Nebraska law or would be a felony if committed in
17 Nebraska, regardless of the sentence imposed.

18 Sec. 8. Health care practitioner means a person licensed to
19 practice under the Medicine and Surgery Practice Act, but shall not
20 include an acupuncturist.

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

23 Sec. 10. Participating health care practitioner means a health care
24 practitioner who (1) is treating a patient and (2) complies with the
25 requirements of section 29 of this act.

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

31 Sec. 12. Patient registry number means a unique identification

1 number assigned by the division to a patient enrolled in the registry
2 program.

3 Sec. 13. (1) Process means to process harvested cannabis materials
4 into medically viable cannabis products.

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

6 Sec. 14. Processor means a person or entity registered by the
7 division to process cannabis in this state.

8 Sec. 15. (1) Produce means to manufacture, plant, cultivate, grow,
9 or harvest cannabis.

10 (2) Produce does not include:

11 (a) The drying of cannabis by a processor if the processor is not
12 otherwise producing cannabis; or

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

16 Sec. 16. Producer means a person or entity registered by the
17 division to produce cannabis in this state.

18 Sec. 17. Qualifying medical condition means a diagnosis of any of
19 the following conditions:

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

22 (a) Severe or chronic pain;

23 (b) Nausea or severe vomiting; or

24 (c) Cachexia or severe wasting;

25 (2) Glaucoma;

26 (3) Human immunodeficiency virus or acquired immune deficiency
27 syndrome;

28 (4) Tourette's syndrome;

29 (5) Amyotrophic lateral sclerosis;

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

31 (7) Severe and persistent muscle spasms, including those

- 1 characteristic of multiple sclerosis;
2 (8) Crohn's disease;
3 (9) Terminal illness, with a probable life expectancy of under one
4 year, if the illness or its treatment produces one or more of the
5 following:
6 (a) Severe or chronic pain;
7 (b) Nausea or severe vomiting; or
8 (c) Cachexia or severe wasting;
9 (10) Hepatitis C;
10 (11) Huntington's disease;
11 (12) Lupus;
12 (13) Parkinson's disease;
13 (14) Lyme disease;
14 (15) Spinal cord injury or disease;
15 (16) Opioid addiction;
16 (17) Epilepsy;
17 (18) Post-traumatic stress disorder;
18 (19) Anxiety; or
19 (20) Any other illness for which cannabis provides relief as
20 determined by the participating health care practitioner.

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

- 22 (1) Is at least twenty-one years of age;
23 (2) Does not have a conviction for a felony offense;
24 (3) Has been approved by the division to assist a patient who has
25 been identified by a participating health care practitioner as having a
26 developmental disability or physical disability and unable to self-
27 administer medication or acquire cannabis from a dispensary due to the
28 disability; and
29 (4) Is authorized by the division to assist the patient with the use
30 of medical cannabis.

31 Sec. 19. Registry program means the patient registry established

1 under the Medical Cannabis Act.

2 Sec. 20. Registry verification means the verification provided by
3 the division that a patient is enrolled in the registry program pursuant
4 to subsection (5) of section 25 of this act.

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

8 (a) Undertaking any task under the influence of cannabis that would
9 constitute negligence or professional malpractice;

10 (b) Possessing or engaging in the use of cannabis:

11 (i) On a school bus or van;

12 (ii) On the grounds of any preschool or primary or secondary school;

13 (iii) In any adult or juvenile correctional facility; or

14 (iv) On the grounds of any child care facility or home daycare;

15 (c) Vaporizing cannabis:

16 (i) On any form of public transportation;

17 (ii) Where the vapor or smoke would be inhaled by a nonpatient minor
18 child; or

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

22 (d) Operating, navigating, or being in actual physical control of
23 any motor vehicle, aircraft, train, or motorboat, or working on
24 transportation property, equipment, or facilities, while under the
25 influence of cannabis.

26 (2)(a) Nothing in the Medical Cannabis Act allows the medical
27 assistance program established pursuant to the Medical Assistance Act to
28 reimburse an enrollee or a provider under the medical assistance program
29 for costs associated with the medical use of cannabis. The medical
30 assistance program shall continue to provide coverage for all services
31 related to treatment of an enrollee's qualifying medical condition if the

1 service is covered under the medical assistance program.

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

7 Sec. 22. The division shall establish and maintain a registry
8 program for patients. The patient registry shall include the name,
9 address, and telephone number of patients enrolling in the registry
10 program and shall identify the participating health care practitioner for
11 the patient and the registered designated caregiver, if any.

12 Sec. 23. (1) A patient shall apply to the division for enrollment
13 in the registry program by submitting an application pursuant to section
14 24 of this act. The division shall ensure that the application and
15 related information are sealed to protect the privacy of the applicant.

16 (2) A person who is enrolled in the registry program may:

17 (a) Consume marijuana legally;

18 (b) Legally possess three ounces or less of marijuana on his or her
19 person;

20 (c) Legally possess six or fewer mature marijuana plants;

21 (d) Legally possess six or fewer seedling marijuana plants;

22 (e) Legally possess one ounce or less of concentrated marijuana;

23 (f) Legally possess seventy-two ounces or less of edible marijuana;

24 and

25 (g) Legally possess eight ounces or less of marijuana in his or her
26 residence.

27 Sec. 24. (1) The division shall develop an application for patient
28 enrollment in the registry program. The application shall be available to
29 the patient and given to participating health care practitioners in
30 Nebraska. The application shall include:

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

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

3 (c) The name, mailing address, and date of birth of the patient's
4 designated caregiver, if any, or the name and mailing address of the
5 patient's parent or legal guardian if the parent or legal guardian will
6 be acting as a caregiver;

7 (d) A copy of the certification under section 30 of this act from
8 the patient's participating health care practitioner which certifies that
9 the patient has been diagnosed with a qualifying medical condition, and,
10 if applicable, that, in the medical opinion of the participating health
11 care practitioner, the patient has a developmental disability or physical
12 disability and, as a result of that disability, the patient is unable to
13 self-administer medication or acquire cannabis from a dispensary; and

14 (e) All other signed affidavits and enrollment forms required by the
15 division under the Medical Cannabis Act, including, but not limited to,
16 the disclosure form required under subsection (3) of this section and
17 informed consent form as required under subsection (4) of this section.

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

22 (3) The division shall develop a disclosure form and require, as a
23 condition of enrollment, that the patient sign a copy of the disclosure
24 form. The disclosure form shall include:

25 (a) A statement that the division, or any employee of any state
26 agency, may not be held criminally liable for any injury, loss of
27 property, personal injury, or death caused by any act or omission while
28 acting within the respective scope of office or employment under the
29 Medical Cannabis Act; and

30 (b) The patient's acknowledgment that enrollment in the registry
31 program is conditional on the patient's agreement to comply with the

1 Medical Cannabis Act.

2 (4) The division shall require a patient to give written, informed
3 consent for the use of the cannabis. Written, informed consent shall
4 consist of a signed disclosure and consent form executed by an eligible
5 patient, or his or her parent or legal guardian if the eligible patient
6 is a minor, and attested to by the eligible patient's treating health
7 care practitioner, that:

8 (a) Contains a statement that the patient's health insurance carrier
9 is not obligated to pay for any care or treatments consequent to the use
10 of the cannabis; and

11 (b) Makes clear that the patient understands that he or she is
12 liable for all expenses consequent to the use of the cannabis.

13 Sec. 25. (1) Within thirty days after receipt of a patient's
14 application and signed disclosure and consent forms, the division shall
15 give notice of denial under subsection (2) of this section or enroll the
16 patient in the registry program and issue the patient and patient's
17 registered designated caregiver or parent or legal guardian, if
18 applicable, a registry verification. A patient's enrollment in the
19 registry program shall only be denied if the patient:

20 (a) Does not have certification from a participating health care
21 practitioner that the patient has been diagnosed with a qualifying
22 medical condition;

23 (b) Has not signed and returned to the division the disclosure and
24 consent forms required under subsections (3) and (4) of section 24 of
25 this act;

26 (c) Does not provide the information required under the Medical
27 Cannabis Act;

28 (d) Has previously been removed from the registry program for a
29 violation of section 23, 41, 42, or 43 of this act; or

30 (e) Provides false information under the act.

31 (2) The division shall give written notice to a patient of the

1 reason for denying enrollment in the registry program.

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

4 (4) A patient's enrollment in the registry program shall only be
5 revoked if a patient violates a requirement under section 23, 41, 42, or
6 43 of this act or upon the death of the patient.

7 (5) The division shall develop a registry verification to provide to
8 the patient, to the participating health care practitioner identified in
9 the patient's application, and to the dispensary. The registry
10 verification shall include:

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

12 (b) The patient registry number assigned to the patient; and

13 (c) The name, mailing address, and date of birth of the patient's
14 registered designated caregiver, if any, or the name and mailing address
15 of the patient's parent or legal guardian if the parent or legal guardian
16 will be acting as a caregiver.

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

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

28 (b) Agree to only possess cannabis for purposes of assisting the
29 patient; and

30 (c) Agree that if the application is approved, the person will not
31 be a registered designated caregiver for more than one patient unless

1 each of such patients reside in the same residence.

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

8 (b) The person shall file a complete set of his or her legible
9 fingerprints with the division. The division 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 division.

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 division 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. 27. (1) A parent or legal guardian of a patient may act as the
28 caregiver to the patient without having to register as a registered
29 designated caregiver. The parent or legal guardian shall follow all of
30 the requirements of parents and legal guardians in the Medical Cannabis
31 Act. Nothing in the act limits any legal authority a parent or legal

1 guardian may have for the patient under any other law.

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

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

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

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

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

26 Sec. 28. A patient or registered designated caregiver shall notify
27 the division of any address or name change within thirty days after the
28 change occurred. A registered designated caregiver shall notify the
29 division of the death of a patient for whom the caregiver provides
30 cannabis within thirty days after the death of the patient. A patient or
31 registered designated caregiver is subject to a one-hundred-dollar fine

1 for failure to notify the division as required under this section.

2 Sec. 29. (1) Prior to a patient's enrollment in the registry
3 program, a participating health care practitioner shall:

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

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

13 (2) Nothing in this section requires a health care practitioner (a)
14 to participate under the Medical Cannabis Act or (b) to provide
15 recommendations, limitations, or restrictions regarding dosage or the
16 form of cannabis on a patient's certification.

17 Sec. 30. The division shall:

18 (1) Create and provide a certification to be used by a participating
19 health care practitioner to certify whether a patient has been diagnosed
20 with a qualifying medical condition and include in the certification an
21 option for the participating health care practitioner to certify whether
22 the patient, in the medical opinion of the participating health care
23 practitioner, has a developmental disability or a physical disability
24 and, as a result of that disability, the patient is unable to self-
25 administer medication or acquire cannabis from a dispensary; and

26 (2) Give notice of the certification program created in subdivision
27 (1) of this section to health care practitioners in Nebraska who are
28 eligible to serve as participating health care practitioners and explain
29 the purposes and requirements of the Medical Cannabis Act.

30 Sec. 31. (1) Except as otherwise provided in section 37 of this
31 act, the division shall register up to ten producers and up to ten

1 processors in each congressional district in Nebraska for the production
2 and processing of all cannabis within Nebraska by November 1, 2020,
3 unless the Medical Cannabis Board extends the deadline under section 35
4 of this act. The division shall register producers which comply with
5 subdivisions (2)(a) and (b) of this section and shall register processors
6 which comply with subdivisions (3)(a) and (b) of this section based on
7 the factors in subdivision (3)(c) of this section. The division may
8 register an applicant as both a producer and a processor. The
9 registration shall be valid until November 1 of the calendar year
10 following the date of registration and shall be renewed by November 1 of
11 each year thereafter upon application and payment of the annual fee
12 established pursuant to section 45 of this act to the division and
13 compliance with the Medical Cannabis Act and the rules and regulations
14 adopted and promulgated under the act. The division shall renew
15 registrations of processors based on the factors in subsection (3) of
16 this section. The division shall continue to accept applications for
17 registration after November 1, 2020, for any congressional district which
18 does not have a registered producer or processor by such date.

19 (2)(a) As a condition for registration prior to November 1, 2020, a
20 producer shall agree to:

21 (i) Begin supplying cannabis to processors on or before May 1, 2021,
22 unless extended by the Medical Cannabis Board; and

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

25 (b) As a condition for registration on and after November 1, 2020, a
26 producer shall agree to supply cannabis to processors in compliance with
27 the Medical Cannabis Act and otherwise be in compliance with the act and
28 the rules and regulations adopted and promulgated under the act.

29 (3)(a) As a condition for registration prior to November 1, 2020, a
30 processor shall agree to:

31 (i) Begin supplying cannabis to dispensaries on or before May 1,

1 2021, unless extended by the Medical Cannabis Board; and

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

4 (b) As a condition for registration on and after November 1, 2020, a
5 processor shall agree to supply cannabis to dispensaries in compliance
6 with the Medical Cannabis Act and otherwise be in compliance with the act
7 and the rules and regulations adopted and promulgated under the act.

8 (c) The division shall consider the following factors when
9 determining whether to register a processor:

10 (i) The technical expertise of the processor in converting the
11 cannabis into an acceptable delivery method under the Medical Cannabis
12 Act;

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

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

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

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

19 (4) The division shall require each processor to contract with an
20 independent laboratory to test cannabis processed by the processor. A
21 laboratory chosen by a processor is subject to approval by the division
22 and is required to report testing results to the processor in a manner
23 determined by the division.

24 Sec. 32. (1) A producer or processor of cannabis shall provide a
25 reliable and ongoing supply of cannabis needed for the registry program.

26 (2) The cultivation, harvesting, manufacturing, packaging, or
27 processing of cannabis must occur at the physical address of the producer
28 or processor provided to the division on the registration application.

29 (3) A processor shall process and prepare any cannabis plant
30 material into a form allowable under the Medical Cannabis Act prior to
31 distribution of any cannabis.

1 (4) A processor shall contract with an independent laboratory,
2 subject to the division's approval of the laboratory and any additional
3 requirements set by the division, for purposes of testing cannabis
4 processed by the processor as to chemical composition, contamination, and
5 consistency.

6 (5) The processor shall consult with an independent laboratory under
7 contract with the processor or other experts in reporting the range of
8 recommended treatments for each qualifying medical condition, the range
9 of chemical compositions that will likely be medically beneficial, and
10 any risks of noncannabis drug interactions. The processor shall provide
11 this information to the division on an annual basis. The division shall
12 make these reports available to patients upon request.

13 Sec. 33. Each processor shall assign a tracking number to any
14 cannabis distributed by the processor. A processor shall require any
15 employee of the processor who is transporting cannabis or cannabis
16 products to carry identification showing that the person is an employee
17 of the processor. An employee of a processor shall not transport cannabis
18 or cannabis products outside the State of Nebraska.

19 Sec. 34. (1) Except as otherwise provided in section 37 of this
20 act, the division shall register up to ten dispensaries in each
21 congressional district in Nebraska for the dispensing and sale of all
22 cannabis to patients within Nebraska by November 1, 2020, unless the
23 Medical Cannabis Board extends the deadline under section 35 of this act.
24 The division shall register a dispensary which complies with subsection
25 (2) of this section based on the factors in subsection (3) of this
26 section. The registration shall be valid until November 1 of the calendar
27 year following the date of registration and shall be renewed by November
28 1 of each year thereafter upon application and payment of the annual fee
29 established pursuant to section 45 of this act to the division and
30 compliance with the Medical Cannabis Act and the rules and regulations
31 adopted and promulgated under the act. The division shall renew

1 registrations based on the factors in subsection (3) of this section. The
2 division shall continue to accept applications for registration after
3 November 1, 2020, for any congressional district which does not have ten
4 dispensaries by such date.

5 (2)(a) As a condition for registration prior to November 1, 2020, a
6 dispensary shall agree to:

7 (i) Begin supplying cannabis to patients on or before May 1, 2021;
8 and

9 (ii) Comply with the Medical Cannabis Act and rules and regulations
10 adopted and promulgated by the division under the act.

11 (b) As a condition for registration on and after November 1, 2020, a
12 dispensary shall agree to supply cannabis to patients in compliance with
13 the Medical Cannabis Act and otherwise be in compliance with the act and
14 the rules and regulations adopted and promulgated under the act.

15 (3) The division shall consider the following factors when
16 determining whether to register a dispensary:

17 (a) The technical expertise of the dispensary in distributing
18 cannabis to patients;

19 (b) The qualifications of the employees of the dispensary;

20 (c) The long-term financial stability of the dispensary; and

21 (d) The ability to provide appropriate security measures on the
22 premises of the dispensary.

23 Sec. 35. (1) The division shall adopt and promulgate rules and
24 regulations by November 1, 2020, necessary for a dispensary to begin
25 dispensing cannabis to patients enrolled in the registry program and
26 publish notice of the proposed rules and regulations prior to May 1,
27 2020.

28 (2) The division shall, by September 1, 2020, advise the public and
29 the Medical Cannabis Board if the division is unable to register
30 producers and processors by November 1, 2020. The division shall provide
31 a written statement as to the reason or reasons the deadline will not be

1 met. Upon request of the division, the board shall extend the deadline by
2 six months but may not extend the deadline more than once.

3 (3) If notified by a processor that distribution to dispensaries may
4 not begin by May 1, 2021, the division shall advise the public and the
5 board. Upon notification by the division, the board shall extend the
6 deadline by six months but may not extend the deadline more than once.

7 Sec. 36. (1) Prior to the dispensing of any cannabis, a dispensary
8 shall:

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

12 (b) Assign a tracking number to any cannabis dispensed from the
13 dispensary; and

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

19 (i) The patient's name;

20 (ii) The patient registry number;

21 (iii) The chemical composition of the cannabis;

22 (iv) The recommended dosage or quantity of the cannabis, if any;

23 (v) The date the cannabis is dispensed; and

24 (vi) The name and address of the dispensary dispensing the cannabis.

25 (3) A dispensary shall take back any unused cannabis and dispose of
26 it in accordance with rules and regulations adopted and promulgated by
27 the division.

28 Sec. 37. (1) Each producer, processor, and dispensary shall
29 disclose its proposed location to the division during the registration
30 process. A county, city, or village governing body may adopt a resolution
31 or ordinance prohibiting the operation of a producer, processor, or

1 dispensary or all three within its jurisdiction and may adopt zoning
2 regulations that reasonably limit a producer, processor, or dispensary to
3 certain areas within its jurisdiction. If all jurisdictions within a
4 congressional district adopt a prohibition on the operation of producers
5 or processors, the division may register an additional producer or
6 processor in another congressional district. If all jurisdictions within
7 a congressional district adopt a prohibition on the operation of a
8 dispensary, the division may register up to ten additional dispensaries
9 in another congressional district or up to two additional dispensaries in
10 each of the other congressional districts.

11 (2)(a) Any dispensary may distribute cannabis and cannabis products
12 but shall not distribute any cannabis in a form other than those forms
13 allowed under the Medical Cannabis Act. A dispensary shall not conduct
14 any cultivation, harvesting, manufacturing, packaging, or processing of
15 cannabis.

16 (b) The operating documents of a dispensary shall include:

17 (i) Procedures for the oversight of the dispensary and procedures to
18 ensure accurate record keeping; and

19 (ii) Procedures for the implementation of appropriate security
20 measures to deter and prevent the theft of cannabis and unauthorized
21 entrance into areas containing cannabis.

22 (3) The operating documents of a producer or processor shall
23 include:

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

26 (b) Procedures for the implementation of appropriate security
27 measures to deter and prevent the theft of cannabis and unauthorized
28 entrance into areas containing cannabis.

29 (4) Each producer, processor, and dispensary shall implement
30 security requirements, including requirements for protection of its
31 location by a fully operational security alarm system, facility access

1 controls, perimeter intrusion detection systems, and a personnel
2 identification system.

3 (5) Each producer, processor, and dispensary shall not share office
4 space with or refer patients to a participating health care practitioner.

5 (6) Each producer, processor, and dispensary shall not permit any
6 person to consume cannabis on the property of the producer, processor, or
7 dispensary.

8 (7) Each producer, processor, and dispensary is subject to
9 reasonable inspection by the division or its designee.

10 (8)(a) No producer, processor, or dispensary shall employ any person
11 who is under twenty-one years of age or who has been convicted of a
12 felony offense. Each employee of a producer, a processor, or a dispensary
13 shall submit to a completed criminal history record information check
14 before an employee may begin working with the producer, processor, or
15 dispensary.

16 (b) Each employee shall pay the costs of the criminal history record
17 information check and shall file a complete set of his or her legible
18 fingerprints with the division. The division shall transmit such
19 fingerprints to the Nebraska State Patrol which shall transmit a copy of
20 the applicant's fingerprints to the Identification Division of the
21 Federal Bureau of Investigation for a national criminal history record
22 information check.

23 (c) The national criminal history record information check shall
24 include information concerning the employee from federal repositories of
25 such information and repositories of such information in other states if
26 authorized by federal law for use by the division.

27 (d) The Nebraska State Patrol shall undertake a search for Nebraska
28 criminal history record information concerning the employee. The Nebraska
29 State Patrol shall issue a report to the division which contains the
30 results of the criminal history record information check conducted by the
31 Nebraska State Patrol.

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

4 (9) No producer, processor, or dispensary may operate in any
5 location within one thousand feet of a public or private school existing
6 before the date of the producer's, processor's, or dispensary's
7 registration with the division.

8 (10) Each producer, processor, and dispensary shall comply with
9 reasonable restrictions set by the division relating to signage,
10 marketing, display, and advertising of cannabis and shall comply with
11 local zoning regulations.

12 Sec. 38. (1) Subject to section 21 of this act, the following are
13 not violations under the Medical Cannabis Act:

14 (a) Use or possession of cannabis or cannabis products by a patient
15 enrolled in the registry program or possession of cannabis or cannabis
16 products by a registered designated caregiver or the parent or legal
17 guardian of a patient if the parent or legal guardian is listed on the
18 registry verification;

19 (b) Possession or sale of cannabis or cannabis products by a
20 producer, a processor, or a dispensary, employees of a producer, a
21 processor, or a dispensary, a laboratory conducting testing on cannabis,
22 or employees of the laboratory; and

23 (c) Possession of cannabis or cannabis products by any person while
24 carrying out the duties required under the Medical Cannabis Act.

25 (2) Cannabis obtained and distributed pursuant to the Medical
26 Cannabis Act and associated property is not subject to forfeiture under
27 section 28-431.

28 (3) The division, the division's staff, the division's agents or
29 contractors, and participating health care practitioners are not subject
30 to any civil or disciplinary penalties by any business, occupational, or
31 professional licensing board or entity, solely for participation in the

1 registry program under the Medical Cannabis Act. Nothing in this section
2 affects a professional licensing board from taking action in response to
3 violations of any other provision of law.

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

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

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

14 (7) An attorney shall not be subject to disciplinary action for
15 providing legal assistance to a prospective or registered producer,
16 processor, or dispensary or to others related to activity that is no
17 longer subject to criminal penalties under state law pursuant to the
18 Medical Cannabis Act.

19 (8) Possession of a registry verification or application for
20 enrollment in the registry program by a person entitled to possess or
21 apply for enrollment in the registry program does not constitute probable
22 cause or reasonable suspicion, nor shall it be used to support a search
23 of the person or property of the person possessing or applying for the
24 registry verification or otherwise subject the person or property of the
25 person to inspection by any governmental agency.

26 Sec. 39. (1) No school or landlord may refuse to enroll or lease to
27 and may not otherwise penalize a person solely for the person's status as
28 a patient enrolled in the registry program under the Medical Cannabis Act
29 unless failing to do so would violate federal law or regulations or cause
30 the school or landlord to lose a monetary or licensing-related benefit
31 under federal law or regulations.

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

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

9 Sec. 40. (1) In addition to any other applicable penalty, a
10 dispensary or an agent of a dispensary who intentionally transfers or
11 dispenses cannabis to a person other than a registered dispensary, a
12 patient, a registered designated caregiver, or, if listed on the registry
13 verification, a parent or legal guardian of a patient, is guilty of a
14 Class IV felony. A person convicted under this section shall not continue
15 to be affiliated with the dispensary and is disqualified from further
16 participation under the Medical Cannabis Act.

17 (2) In addition to any other applicable penalty, a producer, a
18 processor, or an agent of a producer or processor who intentionally
19 dispenses cannabis to a person other than a registered producer, a
20 registered processor, or a registered dispensary is guilty of a Class IV
21 felony. A person convicted under this section shall not continue to be
22 affiliated with the producer or processor and is disqualified from
23 further participation under the Medical Cannabis Act.

24 Sec. 41. In addition to any other applicable penalty provided by
25 law, a patient, a registered designated caregiver, or, if listed on the
26 registry verification, a parent or legal guardian of a patient who
27 intentionally sells or otherwise transfers cannabis to a person other
28 than a patient, a registered designated caregiver, or, if listed on the
29 registry verification, a parent or legal guardian of a patient, is guilty
30 of a Class IV felony.

31 Sec. 42. A person who intentionally makes a false statement to a

1 law enforcement official about any fact or circumstance relating to the
2 use of cannabis to avoid arrest or prosecution is guilty of a Class III
3 misdemeanor. The penalty is in addition to any other penalties that may
4 apply for making a false statement or for the possession, cultivation, or
5 sale of cannabis not protected by the Medical Cannabis Act. If a person
6 convicted of violating this section is a patient or a registered
7 designated caregiver, the person is disqualified from further
8 participation under the act.

9 Sec. 43. A person who knowingly submits false records or
10 documentation required by the division to register as a producer, a
11 processor, or a dispensary under the Medical Cannabis Act is guilty of a
12 Class IV felony.

13 Sec. 44. A producer, a processor, or a dispensary may be fined up
14 to one thousand dollars for any violation of the Medical Cannabis Act or
15 the rules and regulations adopted and promulgated pursuant to the act if
16 no penalty has been specified. This penalty is in addition to any other
17 applicable penalties in law.

18 Sec. 45. (1) The division shall collect an application fee of
19 twenty-five thousand dollars from each entity submitting an application
20 for registration as a producer, a processor, or a dispensary. The
21 division shall remit the fees to the State Treasurer for credit to the
22 Medical Cannabis Regulation Fund.

23 (2) The division shall establish and collect an annual fee not to
24 exceed (a) forty thousand dollars from a producer for the cost of
25 regulating and inspecting the producer in that year, (b) forty thousand
26 dollars from a processor for the cost of regulating and inspecting the
27 processor in that year, and (c) twenty-five thousand dollars from a
28 dispensary for the cost of regulating and inspecting the dispensary in
29 that year. The division shall remit the fees to the State Treasurer for
30 credit to the Medical Cannabis Regulation Fund.

31 Sec. 46. The Medical Cannabis Regulation Fund is created and shall

1 consist of funds from contracts, grants, gifts, or fees under the Medical
2 Cannabis Act. The fund shall be used for purposes of regulation of
3 cannabis and administration of the Medical Cannabis Act. Any money in the
4 Medical Cannabis Regulation Fund available for investment shall be
5 invested by the state investment officer pursuant to the Nebraska Capital
6 Expansion Act and the Nebraska State Funds Investment Act.

7 Sec. 47. (1) The division may examine and inspect or provide for
8 the examination and inspection of any producer, processor, or dispensary
9 in such manner and at such times as provided in rules and regulations
10 adopted and promulgated by the division. The division shall issue an
11 examination and inspection report and provide a copy of the report to the
12 producer, processor, or dispensary within ten working days after the
13 completion of an examination and inspection. The division shall then post
14 a copy of the report on its web site.

15 (2) When making an examination under this section, the division may
16 retain professionals and specialists as designees.

17 Sec. 48. (1) The division shall adopt and promulgate rules and
18 regulations to establish requirements for reporting incidents when
19 individuals who are not authorized to possess cannabis under the Medical
20 Cannabis Act are found in possession of cannabis. The rules and
21 regulations shall identify professionals required to report, the
22 information they are required to report, and actions the reporter must
23 take to secure the cannabis.

24 (2) The division shall adopt and promulgate rules and regulations to
25 establish requirements for law enforcement officials and health care
26 professionals to report incidents involving an overdose of cannabis to
27 the division.

28 (3) Rules and regulations shall include the method by which the
29 division will collect and tabulate reports of unauthorized possession.

30 Sec. 49. The Medical Cannabis Board is established. The board shall
31 consist of nine members. Seven members shall be appointed by the Governor

1 and approved by a majority of the members of the Legislature. Of the
2 appointed members, the board shall have at least one person from each
3 congressional district, at least one person who is employed by a law
4 enforcement agency, at least one person licensed to practice medicine and
5 surgery under the Medicine and Surgery Practice Act, and at least three
6 persons who are advocates for the use of cannabis. The chief medical
7 officer as designated in section 81-3115 or his or her designee and the
8 chairperson of the Health and Human Services Committee of the Legislature
9 or his or her designee shall be nonvoting, ex officio members.

10 Sec. 50. The Governor shall appoint three of the initial appointed
11 members of the Medical Cannabis Board for terms of five years and the
12 remainder of the initial appointed members of the board for terms of one
13 year, two years, three years, and four years. Appointments made for the
14 succeeding members shall be for terms of five years. The term of office
15 of each member of the board shall expire on September 1 of the
16 appropriate year. If a vacancy occurs prior to the expiration of a term,
17 the Governor shall appoint a successor with similar qualifications for
18 the remainder of the unexpired term. No appointed member of the board
19 shall serve more than two consecutive, full terms. If the Legislature is
20 not in session when an appointment is made by the Governor, the member
21 shall take office and act as a recess appointee until the Legislature
22 convenes.

23 Sec. 51. The members of the Medical Cannabis Board shall be
24 reimbursed for the actual and necessary expenses incurred in the
25 performance of their duties as provided in sections 81-1174 to 81-1177.

26 Sec. 52. Within thirty days after the initial appointment and in
27 the last calendar quarter of each subsequent year, the members of the
28 Medical Cannabis Board shall meet and elect a chairperson of the board
29 from the appointed members and such other officers, including a vice-
30 chairperson and a secretary, as the board deems necessary. In case of the
31 death, resignation, or other permanent absence of the chairperson of the

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

7 Sec. 53. The Medical Cannabis Board shall meet at least once each
8 quarter and at such other times as it deems necessary. Special meetings
9 may be held upon the call of the chairperson or pursuant to a call signed
10 by six other members of which the chairperson and the other members of
11 the board shall have at least three days' notice. All regular meetings
12 shall be held in suitable offices to be provided in the state office
13 building described in section 81-1108.37 or elsewhere. A majority of the
14 members of the board shall constitute a quorum for the transaction of
15 business. Every act of a majority of the members of the board shall be
16 deemed to be the act of the board. All meetings shall be open to the
17 public. The minutes of the meetings shall show the action of the board on
18 matters presented and shall be open to public inspection.

19 Sec. 54. The Medical Cannabis Board shall appoint a director for
20 the division and shall advise the division regarding:

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

25 Sec. 55. 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. 56. The division shall keep a record of all proceedings,
4 transactions, communications, and official acts of the Medical Cannabis
5 Board. The director of the division may appoint or employ such clerks and
6 other employees as may be necessary to carry out the Medical Cannabis Act
7 or to perform the duties and exercise the powers conferred by law upon
8 the board.

9 Sec. 57. Before entering upon the duties of his or her office, each
10 member of the Medical Cannabis Board shall be bonded or insured as
11 required by section 11-201. Employees of the division who are accountable
12 for public funds shall be bonded or insured as required by section 11-201
13 to secure the safety of such funds. The premium shall be paid by the
14 State of Nebraska out of the General Fund. Before entering upon the
15 duties of his or her office, the director of the division shall be bonded
16 or insured as required by section 11-201.

17 Sec. 58. (1) No person shall be appointed as a member of the
18 Medical Cannabis Board, the director of the division, or an employee of
19 the division who is not a citizen of the United States and who has not
20 resided within the State of Nebraska successively for two years next
21 preceding the date of his or her appointment.

22 (2) No person (a) convicted of or who has pleaded guilty to a felony
23 or any violation of any federal or state law concerning the manufacture
24 or sale of controlled substances prior or subsequent to the passage of
25 the Medical Cannabis Act, (b) who has paid a fine or penalty in
26 settlement of any prosecution against him or her for any violation of
27 such laws, or (c) who has forfeited his or her bond to appear in court to
28 answer charges for any such violation shall be appointed as a member of
29 the board.

30 (3)(a) Except as otherwise provided in subdivision (b) of this
31 subsection, no member of the board or employee of the division may,

1 directly or indirectly, individually, as a member of a partnership, as a
2 member of a limited liability company, or as a shareholder of a
3 corporation, have any interest whatsoever in the manufacture, sale, or
4 distribution of cannabis, receive any compensation or profit from such
5 manufacture, sale, or distribution, or have any interest whatsoever in
6 the purchases or sales made by the persons authorized by the act to
7 purchase or to sell cannabis.

8 (b) With the written approval of the director, an employee of the
9 division, other than the director, may accept part-time or seasonal
10 employment with a person licensed or regulated by the division. No such
11 employment shall be approved if the licensee receives more than fifty
12 percent of the licensee's gross revenue from the sale or dispensing of
13 cannabis.

14 (4) This section shall not prevent any member of the board, the
15 director, or any employee from purchasing and keeping in his or her
16 possession for the use of himself, herself, or members of his or her
17 family or guests any cannabis which may be purchased or kept by any
18 person pursuant to the act.

19 Sec. 59. A member of the Medical Cannabis Board, the director of
20 the division, or any person appointed or employed by the division shall
21 not solicit or accept any gift, gratuity, emolument, or employment from
22 any person subject to the Medical Cannabis Act or from any officer,
23 agent, or employee thereof or solicit, request from, or recommend,
24 directly or indirectly, to any such person or to any officer, agent, or
25 employee thereof the appointment of any person to any place or position.
26 Any such person and every officer, agent, or employee thereof may not
27 offer to any member of the board, the director, or any person appointed
28 or employed by the division any gift, gratuity, emolument, or employment.
29 If a member of the board, the director, or any person appointed or
30 employed by the division violates this section, he or she shall be
31 removed from his or her office or employment. Every person violating this

1 section shall be guilty of a Class II misdemeanor.

2 Sec. 60. The director of the division, and all employees of the
3 division shall be reimbursed for all actual and necessary traveling
4 expenses and disbursements incurred or made by them in the discharge of
5 their official duties under the Medical Cannabis Act as provided in
6 sections 81-1174 to 81-1177. The division may also incur necessary
7 expenses for office furniture and other incidental expenses. The director
8 or an employee of the division shall not request or be allowed mileage or
9 other traveling expenses unless such sections are strictly complied with.

10 Sec. 61. The office of the division shall be in Lincoln, but the
11 division may establish and maintain branch offices at places other than
12 the seat of government. The Medical Cannabis Board and the division may,
13 for authentication of records, process, and proceedings, adopt, keep, and
14 use a common seal, of which seal judicial notice shall be taken in all of
15 the courts of the state. Any process, notice, or other paper which the
16 board or division is authorized by law to issue shall be deemed
17 sufficient if signed by the chairperson and director of the division and
18 authenticated by such seal. All acts, orders, proceedings, rules,
19 regulations, entries, minutes, and other records of the division and all
20 reports and documents filed with the division may be proved in any court
21 of this state by copy thereof certified to by the director attached.

22 Sec. 62. The Attorney General shall designate an assistant attorney
23 general or assistant attorneys general, when requested by the Medical
24 Cannabis Board, and the services of such assistant attorney general or
25 assistant attorneys general shall be available to the board or division
26 whenever demanded. The compensation of such assistant attorney general or
27 assistant attorneys general as are assigned to the board or division
28 shall be paid by the office of the Attorney General.

29 Sec. 63. Section 28-416, Revised Statutes Cumulative Supplement,
30 2018, is amended to read:

31 28-416 (1) Except as authorized by the Medical Cannabis Act or the

1 Uniform Controlled Substances Act, it shall be unlawful for any person
2 knowingly or intentionally: (a) To manufacture, distribute, deliver,
3 dispense, or possess with intent to manufacture, distribute, deliver, or
4 dispense a controlled substance; or (b) to create, distribute, or possess
5 with intent to distribute a counterfeit controlled substance.

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

15 (3) A person knowingly or intentionally possessing a controlled
16 substance, except marijuana or any substance containing a quantifiable
17 amount of the substances, chemicals, or compounds described, defined, or
18 delineated in subdivision (c)(25) of Schedule I of section 28-405, unless
19 such substance was obtained directly or pursuant to a medical order
20 issued by a practitioner authorized to prescribe while acting in the
21 course of his or her professional practice, or except as otherwise
22 authorized by the act, shall be guilty of a Class IV felony. A person
23 shall not be in violation of this subsection if section 28-472 applies.

24 (4)(a) Except as authorized by the Uniform Controlled Substances
25 Act, any person eighteen years of age or older who knowingly or
26 intentionally manufactures, distributes, delivers, dispenses, or
27 possesses with intent to manufacture, distribute, deliver, or dispense a
28 controlled substance or a counterfeit controlled substance (i) to a
29 person under the age of eighteen years, (ii) in, on, or within one
30 thousand feet of the real property comprising a public or private
31 elementary, vocational, or secondary school, a community college, a

1 public or private college, junior college, or university, or a
2 playground, or (iii) within one hundred feet of a public or private youth
3 center, public swimming pool, or video arcade facility shall be punished
4 by the next higher penalty classification than the penalty prescribed in
5 subsection (2), (7), (8), (9), or (10) of this section, depending upon
6 the controlled substance involved, for the first violation and for a
7 second or subsequent violation shall be punished by the next higher
8 penalty classification than that prescribed for a first violation of this
9 subsection, but in no event shall such person be punished by a penalty
10 greater than a Class IB felony.

11 (b) For purposes of this subsection:

12 (i) Playground means any outdoor facility, including any parking lot
13 appurtenant to the facility, intended for recreation, open to the public,
14 and with any portion containing three or more apparatus intended for the
15 recreation of children, including sliding boards, swingsets, and
16 teeterboards;

17 (ii) Video arcade facility means any facility legally accessible to
18 persons under eighteen years of age, intended primarily for the use of
19 pinball and video machines for amusement, and containing a minimum of ten
20 pinball or video machines; and

21 (iii) Youth center means any recreational facility or gymnasium,
22 including any parking lot appurtenant to the facility or gymnasium,
23 intended primarily for use by persons under eighteen years of age which
24 regularly provides athletic, civic, or cultural activities.

25 (5)(a) Except as authorized by the Uniform Controlled Substances
26 Act, it shall be unlawful for any person eighteen years of age or older
27 to knowingly and intentionally employ, hire, use, cause, persuade, coax,
28 induce, entice, seduce, or coerce any person under the age of eighteen
29 years to manufacture, transport, distribute, carry, deliver, dispense,
30 prepare for delivery, offer for delivery, or possess with intent to do
31 the same a controlled substance or a counterfeit controlled substance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (10) Any person who violates subsection (1) of this section with
17 respect to amphetamine, its salts, optical isomers, and salts of its
18 isomers, or with respect to methamphetamine, its salts, optical isomers,
19 and salts of its isomers, in a quantity of:

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

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

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

26 (11) Except as otherwise provided in the Medical Cannabis Act, any
27 ~~Any~~ person knowingly or intentionally possessing marijuana weighing more
28 than one ounce but not more than one pound shall be guilty of a Class III
29 misdemeanor.

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

1 than one pound shall be guilty of a Class IV felony.

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

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

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

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

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

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

26 (16) Any person knowingly or intentionally possessing a firearm
27 while in violation of subsection (1) of this section shall be punished by
28 the next higher penalty classification than the penalty prescribed in
29 subsection (2), (7), (8), (9), or (10) of this section, but in no event
30 shall such person be punished by a penalty greater than a Class IB
31 felony.

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

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

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

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

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

25 (ii) For a second offense, the court may, as a part of the judgment
26 of conviction or adjudication, (A) impound any such licenses or permits
27 for ninety days and (B) require such person to complete no fewer than
28 twenty and no more than forty hours of community service and to attend a
29 drug education class; and

30 (iii) For a third or subsequent offense, the court may, as a part of
31 the judgment of conviction or adjudication, (A) impound any such licenses

1 or permits for twelve months and (B) require such person to complete no
2 fewer than sixty hours of community service, to attend a drug education
3 class, and to submit to a drug assessment by a licensed alcohol and drug
4 counselor; and

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

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

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

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

27 A copy of an abstract of the court's conviction or adjudication
28 shall be transmitted to the Director of Motor Vehicles pursuant to
29 sections 60-497.01 to 60-497.04 if a license or permit is impounded or a
30 juvenile is prohibited from obtaining a license or permit under this
31 subsection.

1 Sec. 64. Section 28-439, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 28-439 As used in sections 28-101, 28-431, and 28-439 to 28-444,
4 unless the context otherwise requires, drug paraphernalia shall mean all
5 equipment, products, and materials of any kind which are used, intended
6 for use, or designed for use, in manufacturing, injecting, ingesting,
7 inhaling, or otherwise introducing into the human body a controlled
8 substance in violation of sections 28-101, 28-431, and 28-439 to 28-444,
9 the Medical Cannabis Act, or the Uniform Controlled Substances Act. It
10 shall include, but not be limited to, the following:

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

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

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

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

24 (a) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes
25 with or without screens, permanent screens, hashish heads, or punctured
26 metal bowls;

27 (b) Water pipes;

28 (c) Carburetion tubes and devices;

29 (d) Smoking and carburetion masks;

30 (e) Roach clips, meaning objects used to hold burning material, such
31 as a marijuana cigarette, which has become too small or too short to be

- 1 held in the hand;
- 2 (f) Miniature cocaine spoons, and cocaine vials;
- 3 (g) Chamber pipes;
- 4 (h) Carburetor pipes;
- 5 (i) Electric pipes;
- 6 (j) Air-driven pipes;
- 7 (k) Chillums;
- 8 (l) Bongs; and
- 9 (m) Ice pipes or chillers.

10 Sec. 65. Section 77-2701.48, Reissue Revised Statutes of Nebraska,
11 is amended to read:

12 77-2701.48 (1) Bundled transaction means the retail sale of two or
13 more products, except real property and services to real property, when
14 (a) the products are otherwise distinct and identifiable and (b) the
15 products are sold for one non-itemized price. Bundled transaction does
16 not include the sale of any products in which the sales price varies, or
17 is negotiable, based on the selection by the purchaser of the products
18 included in the transaction.

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

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

26 (b) A product provided free of charge with the required purchase of
27 another product. A product is provided free of charge if the sales price
28 of the product purchased does not vary depending on the inclusion of the
29 product provided free of charge; and

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

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

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

26 (5) Bundled transaction does not include the retail sale of exempt
27 tangible personal property and taxable tangible personal property if (a)
28 the transaction includes food and food ingredients, drugs, durable
29 medical equipment, mobility enhancing equipment, over-the-counter drugs,
30 prosthetic devices, or medical supplies as such terms are defined in
31 section 77-2704.09 and (b) the seller's purchase price or sales price of

1 the taxable tangible personal property is fifty percent or less of the
2 total purchase price or sales price of the bundled tangible personal
3 property. Sellers may not use a combination of the purchase price and
4 sales price of the tangible personal property when making the fifty-
5 percent determination for a transaction.

6 Sec. 66. Section 77-2704.09, Reissue Revised Statutes of Nebraska,
7 is amended to read:

8 77-2704.09 (1) Sales and use taxes shall not be imposed on the gross
9 receipts from the sale, lease, or rental of and the storage, use, or
10 other consumption in this state of (a) insulin, (b) mobility enhancing
11 equipment and drugs, not including over-the-counter drugs, when sold for
12 a patient's use under a prescription, and (c) the following when sold for
13 a patient's use under a prescription and which are of the type eligible
14 for coverage under the medical assistance program established pursuant to
15 the Medical Assistance Act: Durable medical equipment; home medical
16 supplies; prosthetic devices; oxygen; and oxygen equipment.

17 (2) For purposes of this section:

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

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

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

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

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

30 (b) Durable medical equipment means equipment which can withstand
31 repeated use, is primarily and customarily used to serve a medical

1 purpose, generally is not useful to a person in the absence of illness or
2 injury, is appropriate for use in the home, and is not worn in or on the
3 body. Durable medical equipment includes repair and replacement parts for
4 such equipment;

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

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

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

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

29 (g) Prescription means an order, formula, or recipe issued in any
30 form of oral, written, electronic, or other means of transmission by a
31 duly licensed practitioner authorized under the Uniform Credentialing

1 Act; and

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

8 Sec. 67. Section 77-27,132, Reissue Revised Statutes of Nebraska, is
9 amended to read:

10 77-27,132 (1) There is hereby created a fund to be designated the
11 Revenue Distribution Fund which shall be set apart and maintained by the
12 Tax Commissioner. Revenue not required to be credited to the General Fund
13 or any other specified fund may be credited to the Revenue Distribution
14 Fund. Credits and refunds of such revenue shall be paid from the Revenue
15 Distribution Fund. The balance of the amount credited, after credits and
16 refunds, shall be allocated as provided by the statutes creating such
17 revenue.

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

23 (a) For transactions occurring on or after October 1, 2014, and
24 before October 1, 2022, credit to the Game and Parks Commission Capital
25 Maintenance Fund all of the proceeds of the sales and use taxes imposed
26 pursuant to section 77-2703 on the sale or lease of motorboats as defined
27 in section 37-1204, personal watercraft as defined in section 37-1204.01,
28 all-terrain vehicles as defined in section 60-103, and utility-type
29 vehicles as defined in section 60-135.01;

30 (b) Credit to the Highway Trust Fund all of the proceeds of the
31 sales and use taxes derived from the sale or lease for periods of more

1 than thirty-one days of motor vehicles, trailers, and semitrailers,
2 except that the proceeds equal to any sales tax rate provided for in
3 section 77-2701.02 that is in excess of five percent derived from the
4 sale or lease for periods of more than thirty-one days of motor vehicles,
5 trailers, and semitrailers shall be credited to the Highway Allocation
6 Fund;

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

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

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

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

24 Sec. 68. Section 77-27,237, Reissue Revised Statutes of Nebraska, is
25 amended to read:

26 77-27,237 If the federal government passes a law that expands the
27 state's authority to require out-of-state retailers to collect and remit
28 the tax imposed under section 77-2703 on purchases by Nebraska residents
29 and the state collects additional revenue under section 77-2703 as a
30 result of such federal law, then the Department of Revenue shall
31 determine the amount of such additional revenue collected during the

1 first twelve months following the date on which the state begins
2 collecting such additional revenue. The department shall certify such
3 amount to the Governor, the Legislature, and the State Treasurer, and the
4 certified amount shall be used for purposes of subdivision ~~(2)(e)~~ ~~(2)(d)~~
5 of section 77-27,132. This section terminates three years after August
6 30, 2015.

7 Sec. 69. Section 77-4303, Reissue Revised Statutes of Nebraska, is
8 amended to read:

9 77-4303 (1) A tax is hereby imposed on marijuana and controlled
10 substances at the following rates:

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

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

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

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

25 (3) The tax shall not be imposed upon a person registered or
26 otherwise lawfully in possession of marijuana or a controlled substance
27 pursuant to Chapter 28, article 4, or a person lawfully in possession of
28 cannabis under the Medical Cannabis Act.

29 Sec. 70. Sections 65, 66, 67, 68, 69, and 72 of this act become
30 operative on October 1, 2019. The other sections of this act become
31 operative on their effective date.

1 Sec. 71. Original section 28-439, Reissue Revised Statutes of
2 Nebraska, and section 28-416, Revised Statutes Cumulative Supplement,
3 2018, are repealed.

4 Sec. 72. Original sections 77-2701.48, 77-2704.09, 77-27,132,
5 77-27,237, and 77-4303, Reissue Revised Statutes of Nebraska, are
6 repealed.

7 Sec. 73. Since an emergency exists, this act takes effect when
8 passed and approved according to law.