

AMENDMENTS TO LB643

Introduced by Howard, 9.

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

3           Section 1. Sections 1 to 54 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 17 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 practice  
16 under the Medicine and Surgery Practice Act, but shall not include an  
17 acupuncturist.

18          Sec. 7. Manufacturer means an entity registered by the department  
19 to cultivate, acquire, manufacture, possess, prepare, transfer,  
20 transport, or supply medical cannabis or medical cannabis products.

21          Sec. 8. Medical cannabis means any species of the genus cannabis  
22 plant, or any mixture or preparation of any species of the genus cannabis  
23 plant, including whole plant extracts and resins, which is delivered in  
24 the form of:

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

26           (2) Pill form; or

27           (3) Vaporized delivery method with use of liquid or oil but which

1 does not require the use of dried leaves or plant form.

2 Smoking shall not be an approved method of delivery.

3 Sec. 9. Medical cannabis product means any delivery device or  
4 related supplies and educational materials used in the administration of  
5 medical cannabis for a patient with a qualifying medical condition  
6 enrolled in the registry program.

7 Sec. 10. Medical records means a health care practitioner's record  
8 of a patient's health history and treatment rendered.

9 Sec. 11. Participating health care practitioner means a health care  
10 practitioner who (1) has the primary responsibility for the care and  
11 treatment of the qualifying medical condition of a person diagnosed with  
12 a qualifying medical condition and (2) meets the requirements of section  
13 27 of this act.

14 Sec. 12. Patient means a Nebraska resident who has been diagnosed  
15 with a qualifying medical condition by a participating health care  
16 practitioner and who has otherwise met any other requirements for  
17 patients under the Medical Cannabis Act to participate in the registry  
18 program under the act.

19 Sec. 13. Patient registry number means a unique identification  
20 number assigned by the department to a patient enrolled in the registry  
21 program.

22 Sec. 14. Qualifying medical condition means a diagnosis of any of  
23 the following conditions:

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

26 (a) Severe or chronic pain;

27 (b) Nausea or severe vomiting; or

28 (c) Cachexia or severe wasting;

29 (2) Glaucoma;

30 (3) Human immunodeficiency virus or acquired immune deficiency  
31 syndrome;

- 1           (4) Tourette's syndrome;
- 2           (5) Amyotrophic lateral sclerosis;
- 3           (6) Seizures, including those characteristic of epilepsy;
- 4           (7) Severe and persistent muscle spasms, including those  
5 characteristic of multiple sclerosis;
- 6           (8) Crohn's disease;
- 7           (9) Terminal illness, with a probable life expectancy of under one  
8 year, if the illness or its treatment produces one or more of the  
9 following:
- 10           (a) Severe or chronic pain;
- 11           (b) Nausea or severe vomiting; or
- 12           (c) Cachexia or severe wasting;
- 13           (10) Hepatitis C;
- 14           (11) Huntington's disease;
- 15           (12) Lupus;
- 16           (13) Parkinson's disease;
- 17           (14) Lyme disease;
- 18           (15) Spinal cord injury or disease; or
- 19           (16) Opioid addiction.

20           Sec. 15. Registered designated caregiver means a person who:

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

30           Sec. 16. Registry program means the patient registry established  
31 under the Medical Cannabis Act.

1           Sec. 17. Registry verification means the verification provided by  
2 the department that a patient is enrolled in the registry program  
3 pursuant to subsection (5) of section 22 of this act.

4           Sec. 18. (1) Nothing in the Medical Cannabis Act permits any person  
5 to engage in and does not prevent the imposition of any civil, criminal,  
6 or other penalties for:

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

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

10           (i) On a school bus or van;

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

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

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

14           (c) Vaporizing medical cannabis:

15           (i) On any form of public transportation;

16           (ii) Where the vapor would be inhaled by a nonpatient minor child;

17           or

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

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

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

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

6       Sec. 19. The department shall establish and maintain a registry  
7 program for patients. The patient registry shall include the name,  
8 address, and telephone number of patients enrolling in the registry  
9 program and shall identify the participating health care practitioner for  
10 the patient and the registered designated caregiver, if any.

11       Sec. 20. (1) A patient shall apply to the department for enrollment  
12 in the registry program by submitting an application pursuant to section  
13 21 of this act.

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

15       (a) Continue to receive regularly scheduled treatment for his or her  
16 qualifying medical condition from his or her participating health care  
17 practitioner; and

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

20       Sec. 21. (1) The department shall develop an application for  
21 patient enrollment in the registry program. The application shall be  
22 available to the patient and given to participating health care  
23 practitioners in Nebraska. The application shall include:

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

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

27       (c) The name, mailing address, and date of birth of the patient's  
28 designated caregiver, if any, or the name and mailing address of the  
29 patient's parent or legal guardian if the parent or legal guardian will  
30 be acting as a caregiver;

31       (d) A copy of the certification from the patient's participating

1 health care practitioner which certifies that the patient has a bona fide  
2 relationship with the participating health care practitioner that existed  
3 prior to submitting the application, that the patient has been diagnosed  
4 with a qualifying medical condition, and, if applicable, that, in the  
5 medical opinion of the participating health care practitioner, the  
6 patient has a developmental disability or physical disability and, as a  
7 result of that disability, the patient is unable to self-administer  
8 medication or acquire medical cannabis from a compassion center and  
9 dispensary; and

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

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

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

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

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

29 (4) The department shall require a patient to give written, informed  
30 consent for the use of the medical cannabis. Written, informed consent  
31 shall consist of a signed disclosure and consent form executed by an

1 eligible patient, or his or her parent or legal guardian if the eligible  
2 patient is a minor, and attested to by the eligible patient's treating  
3 health care practitioner, that:

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

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

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

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

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

19 Sec. 22. (1) After receipt of a patient's application and signed  
20 disclosure and consent forms, the department shall enroll the patient in  
21 the registry program and issue the patient and patient's registered  
22 designated caregiver or parent or legal guardian, if applicable, a  
23 registry verification. A patient's enrollment in the registry program  
24 shall only be denied if the patient:

25 (a) Does not have certification from a participating health care  
26 practitioner that the patient has been diagnosed with a qualifying  
27 medical condition;

28 (b) Has not signed and returned to the department the disclosure and  
29 consent forms required under subsections (3) and (4) of section 21 of  
30 this act;

31 (c) Does not provide the information required under the Medical

1 Cannabis Act;

2 (d) Has previously been removed from the registry program for a  
3 violation of section 20, 40, 41, or 42 of this act; or

4 (e) Provides false information under the act.

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

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

9 (4) A patient's enrollment in the registry program shall only be  
10 revoked if a patient violates a requirement under section 20, 40, 41, or  
11 42 of this act or upon the death of the patient.

12 (5) The department shall develop a registry verification to provide  
13 to the patient, to the participating health care practitioner identified  
14 in the patient's application, and to the compassion center and  
15 dispensary. The registry verification shall include:

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

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

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

21 (d) The name, mailing address, and date of birth of the patient's  
22 registered designated caregiver, if any, or the name and mailing address  
23 of the patient's parent or legal guardian if the parent or legal guardian  
24 will be acting as a caregiver.

25 Sec. 23. (1) There is a presumption that a patient enrolled in the  
26 registry program under the Medical Cannabis Act is engaged in the  
27 authorized use of medical cannabis.

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



1           Sec. 24. (1) The department shall register a designated caregiver  
2 for a patient if the patient's participating health care practitioner has  
3 certified that the patient, in the medical opinion of the participating  
4 health care practitioner, has a developmental disability or a physical  
5 disability and, as a result of that disability, the patient is unable to  
6 self-administer medication or acquire medical cannabis from a compassion  
7 center and dispensary and the caregiver has agreed, in writing, to be the  
8 patient's registered designated caregiver. As a condition of registration  
9 as a registered designated caregiver, the department shall require the  
10 person to:

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

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

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

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

22           (b) The person shall file a complete set of his or her legible  
23 fingerprints with the department. The department shall transmit such  
24 fingerprints to the Nebraska State Patrol which shall transmit a copy of  
25 the applicant's fingerprints to the Identification Division of the  
26 Federal Bureau of Investigation for a national criminal history record  
27 information check.

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

1           (d) The Nebraska State Patrol shall undertake a search for Nebraska  
2 criminal history record information concerning the person. The Nebraska  
3 State Patrol shall issue a report to the department which contains the  
4 results of the criminal history record information check conducted by the  
5 Nebraska State Patrol.

6           (e) Criminal history record information subject to federal  
7 confidentiality requirements shall remain confidential and may be  
8 released only upon the written authorization of the subject of the  
9 information.

10           Sec. 25. (1) A parent or legal guardian of a patient may act as the  
11 caregiver to the patient without having to register as a registered  
12 designated caregiver. The parent or legal guardian shall follow all of  
13 the requirements of parents and legal guardians in the Medical Cannabis  
14 Act. Nothing in the act limits any legal authority a parent or legal  
15 guardian may have for the patient under any other law.

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

21           (b) The person shall file a complete set of his or her legible  
22 fingerprints with the department. The department shall transmit such  
23 fingerprints to the Nebraska State Patrol which shall transmit a copy of  
24 the applicant's fingerprints to the Identification Division of the  
25 Federal Bureau of Investigation for a national criminal history record  
26 information check.

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

31           (d) The Nebraska State Patrol shall undertake a search for Nebraska

1 criminal history record information concerning the person. The Nebraska  
2 State Patrol shall issue a report to the department which contains the  
3 results of the criminal history record information check conducted by the  
4 Nebraska State Patrol.

5 (e) Criminal history record information subject to federal  
6 confidentiality requirements shall remain confidential and may be  
7 released only upon the written authorization of the subject of the  
8 information.

9 Sec. 26. A patient or registered designated caregiver shall notify  
10 the department of any address or name change within thirty days after the  
11 change occurred. A registered designated caregiver shall notify the  
12 department of the death of a patient for whom the caregiver provides  
13 medical cannabis within thirty days after the death of the patient. A  
14 patient or registered designated caregiver is subject to a one-hundred-  
15 dollar fine for failure to notify the department as required under this  
16 section.

17 Sec. 27. (1) Prior to a patient's enrollment in the registry  
18 program, a participating health care practitioner shall:

19 (a) Determine, in the medical judgment of the participating health  
20 care practitioner, whether a patient suffers from a qualifying medical  
21 condition and, if so determined, provide the patient with a certification  
22 of that diagnosis;

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

28 (c) Provide explanatory information from the department to patients  
29 with qualifying medical conditions, including disclosure to all patients  
30 about the experimental nature of therapeutic use of medical cannabis; the  
31 possible risks, benefits, and side effects of the proposed treatment; and

1 the application and other materials from the department; and

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

4 (2) Upon notification from the department of the patient's  
5 enrollment in the registry program, the participating health care  
6 practitioner shall otherwise comply with all requirements developed by  
7 the department.

8 (3) Nothing in this section requires a health care practitioner (a)  
9 to participate under the Medical Cannabis Act or (b) to provide  
10 recommendations, limitations, or restrictions regarding dosage or the  
11 form of marijuana on a patient's certification.

12 Sec. 28. (1) The department shall:

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

22 (b) Give notice of the certification program created in subdivision  
23 (1)(a) of this section to health care practitioners in Nebraska who are  
24 eligible to serve as participating health care practitioners and explain  
25 the purposes and requirements of the Medical Cannabis Act;

26 (c) Provide explanatory information and assistance to each  
27 participating health care practitioner in understanding the nature of  
28 therapeutic use of medical cannabis within the requirements of the  
29 Medical Cannabis Act;

30 (d) Provide oversight of the participating health care practitioner  
31 in conducting patient treatment, and medical records reporting in a

1 manner that ensures stringent security and record-keeping requirements  
2 and that prevents the unauthorized release of private data; and

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

8 (2) A health care practitioner shall have a bona fide health care  
9 practitioner-patient relationship with each patient certified by the  
10 health care practitioner as having a qualifying medical condition.

11 Sec. 29. Data collected on patients by a participating health care  
12 practitioner are medical records and subject to sections 81-663 to  
13 81-675.

14 Sec. 30. (1) Except as otherwise provided in section 36 of this  
15 act, the department shall register one manufacturer in each congressional  
16 district in Nebraska for the production of all medical cannabis within  
17 Nebraska by July 1, 2017, unless the Medical Cannabis Board extends the  
18 deadline under section 34 of this act. The department shall register  
19 manufacturers which comply with subsection (2) of this section based on  
20 the factors in subsection (3) of this section. The registration shall be  
21 valid until July 1 of the calendar year following the date of  
22 registration and shall be renewed by July 1 of each year thereafter upon  
23 application and payment of the annual fee established pursuant to section  
24 44 of this act to the department and compliance with the Medical Cannabis  
25 Act and the rules and regulations adopted and promulgated under the act.  
26 The department shall renew registrations based on the factors in  
27 subsection (3) of this section. The department shall continue to accept  
28 applications for registration after July 1, 2017, for any congressional  
29 district which does not have a registered manufacturer by such date.

30 (2)(a) As a condition for registration prior to July 1, 2017, a  
31 manufacturer shall agree to:

1       (i) Begin supplying medical cannabis to compassion centers and  
2 dispensaries on or before January 1, 2018, unless extended by the Medical  
3 Cannabis Board; and

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

6       (b) As a condition for registration on and after July 1, 2017, a  
7 manufacturer shall agree to supply medical cannabis to compassion centers  
8 and dispensaries in compliance with the Medical Cannabis Act and  
9 otherwise be in compliance with the act and the rules and regulations  
10 adopted and promulgated under the act.

11       (3) The department shall consider the following factors when  
12 determining whether to register a manufacturer:

13       (a) The technical expertise of the manufacturer in cultivating  
14 medical cannabis and converting the medical cannabis into an acceptable  
15 delivery method under the Medical Cannabis Act;

16       (b) The qualifications of the manufacturer's employees;

17       (c) The long-term financial stability of the manufacturer;

18       (d) The ability to provide appropriate security measures on the  
19 premises of the manufacturer; and

20       (e) Whether the manufacturer has demonstrated the ability to meet  
21 the medical cannabis production needs required by the Medical Cannabis  
22 Act.

23       (4) The department shall require each manufacturer to contract with  
24 an independent laboratory to test medical cannabis produced by the  
25 manufacturer. A laboratory chosen by a manufacturer is subject to  
26 approval by the department and is required to report testing results to  
27 the manufacturer in a manner determined by the department.

28       Sec. 31. (1) A manufacturer of medical cannabis shall provide a  
29 reliable and ongoing supply of medical cannabis needed for the registry  
30 program.

31       (2) The cultivation, harvesting, manufacturing, packaging, and

1 processing of medical cannabis must occur at the physical address of the  
2 manufacturer provided to the department on the registration application.

3 (3) A manufacturer shall process and prepare any medical cannabis  
4 plant material into a form allowable under the Medical Cannabis Act prior  
5 to distribution of any medical cannabis.

6 (4) A manufacturer shall contract with an independent laboratory,  
7 subject to the department's approval of the laboratory and any additional  
8 requirements set by the department, for purposes of testing medical  
9 cannabis produced by the manufacturer as to chemical composition,  
10 contamination, and consistency.

11 (5) The manufacturer shall consult with an independent laboratory  
12 under contract with the manufacturer or other experts in reporting the  
13 range of recommended treatments for each qualifying medical condition,  
14 the range of chemical compositions that will likely be medically  
15 beneficial, and any risks of noncannabis drug interactions. The  
16 manufacturer shall provide this information to the department on an  
17 annual basis. The department shall compile and publish the contents of  
18 these reports and of the medical cannabis offered by each manufacturer on  
19 the department's web site. Compassion centers and dispensaries shall make  
20 these reports available to patients upon request.

21 Sec. 32. Each manufacturer shall assign a tracking number to any  
22 medical cannabis distributed by the manufacturer. A manufacturer shall  
23 require any employee of the manufacturer who is transporting medical  
24 cannabis or medical cannabis products to carry identification showing  
25 that the person is an employee of the manufacturer. An employee of a  
26 manufacturer shall not transport medical cannabis or medical cannabis  
27 products outside the State of Nebraska.

28 Sec. 33. (1) Except as otherwise provided in section 36 of this  
29 act, the department shall register up to four compassion center and  
30 dispensaries in each congressional district in Nebraska for the  
31 dispensing and sale of all medical cannabis to patients within Nebraska

1 by July 1, 2017, unless the Medical Cannabis Board extends the deadline.  
2 The department shall register a compassion center and dispensary which  
3 complies with subsection (2) of this section based on the factors in  
4 subsection (3) of this section. The registration shall be valid until  
5 July 1 of the calendar year following the date of registration and shall  
6 be renewed by July 1 of each year thereafter upon application and payment  
7 of the annual fee established pursuant to section 44 of this act to the  
8 department and compliance with the Medical Cannabis Act and the rules and  
9 regulations adopted and promulgated under the act. The department shall  
10 renew registrations based on the factors in subsection (3) of this  
11 section. The department shall continue to accept applications for  
12 registration after July 1, 2017, for any congressional district which  
13 does not have four compassion center and dispensaries by such date.

14 (2)(a) As a condition for registration prior to July 1, 2017, a  
15 compassion center and dispensary shall agree to:

16 (i) Begin supplying medical cannabis to patients on or before  
17 January 1, 2019; and

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

20 (b) As a condition for registration on and after July 1, 2017, a  
21 compassion center and dispensary shall agree to supply medical cannabis  
22 to patients in compliance with the Medical Cannabis Act and otherwise be  
23 in compliance with the act and the rules and regulations adopted and  
24 promulgated under the act.

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

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

29 (b) The qualifications of the pharmacists and other employees of the  
30 compassion center and dispensary;

31 (c) The long-term financial stability of the compassion center and



1 dispensary; and

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

4 Sec. 34. (1) The department shall adopt and promulgate rules and  
5 regulations necessary for a compassion center and dispensary to begin  
6 dispensing medical cannabis to patients enrolled in the registry program  
7 by July 1, 2017, and publish notice of the proposed rules and regulations  
8 prior to November 1, 2016.

9 (2) The department shall, by May 1, 2017, advise the public and the  
10 Medical Cannabis Board if the department is unable to register three  
11 manufacturers by July 1, 2017. The department shall provide a written  
12 statement as to the reason or reasons the deadline will not be met. Upon  
13 request of the department, the board shall extend the deadline by six  
14 months but may not extend the deadline more than once.

15 (3) If notified by a manufacturer that distribution to compassion  
16 center and dispensaries may not begin by January 1, 2018, the department  
17 shall advise the public and the board. Upon notification by the  
18 department, the board shall extend the deadline by six months but may not  
19 extend the deadline more than once.

20 Sec. 35. (1) A compassion center and dispensary shall require that  
21 medical cannabis be dispensed to a patient by a pharmacist licensed under  
22 the Pharmacy Practice Act.

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

25 (a) Verify that the compassion center and dispensary has received  
26 the registry verification from the department for that individual  
27 patient;

28 (b) Verify that the person requesting the distribution of medical  
29 cannabis is the patient, the patient's registered designated caregiver,  
30 or the patient's parent or legal guardian listed in the registry  
31 verification;

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

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

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

9           (ii) The name, mailing address, and date of birth of the patient's  
10 registered designated caregiver or, if listed on the registry  
11 verification, the name and mailing address of the patient's parent or  
12 legal guardian, if applicable;

13           (iii) The patient registry number;

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

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

17           (vi) The date the certification is issued;

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

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

21       (e) Ensure that the dispensed medical cannabis contains a maximum of  
22 a thirty-day supply of the recommended quantity, if any, determined for  
23 that patient.

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

27       Sec. 36. (1) Each manufacturer and each compassion center and  
28 dispensary shall disclose its proposed location to the department during  
29 the registration process. A county, city, or village governing body may  
30 adopt a resolution or ordinance prohibiting the operation of a  
31 manufacturer or compassion center and dispensary or both within its

1 jurisdiction and may adopt zoning regulations that reasonably limit a  
2 manufacturer or compassion center and dispensary to certain areas within  
3 its jurisdiction. If all jurisdictions within a congressional district  
4 adopt a prohibition on the operation of manufacturers, the department may  
5 register an additional manufacturer in another congressional district. If  
6 all jurisdictions within a congressional district adopt a prohibition on  
7 the operation of a compassion center and dispensary, the department may  
8 register up to four additional compassion center and dispensaries in  
9 another congressional district or up to two additional compassion center  
10 and dispensaries in each of the other congressional districts.

11 (2) A manufacturer shall operate only one location where all  
12 cultivation, harvesting, manufacturing, packaging, and processing shall  
13 be conducted.

14 (3)(a) Any compassion center and dispensary may distribute medical  
15 cannabis and medical cannabis products but shall not contain any medical  
16 cannabis in a form other than those forms allowed under the Medical  
17 Cannabis Act. A compassion center and dispensary shall not conduct any  
18 cultivation, harvesting, manufacturing, packaging, or processing of  
19 medical cannabis.

20 (b) The operating documents of a compassion center and dispensary  
21 shall include:

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

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

27 (4) The operating documents of a manufacturer shall include:

28 (a) Procedures for the oversight of the manufacturer and procedures  
29 to ensure accurate record keeping; and

30 (b) Procedures for the implementation of appropriate security  
31 measures to deter and prevent the theft of medical cannabis and

1 unauthorized entrance into areas containing medical cannabis.

2 (5) Each manufacturer and each compassion center and dispensary  
3 shall implement security requirements, including requirements for  
4 protection of its location by a fully operational security alarm system,  
5 facility access controls, perimeter intrusion detection systems, and a  
6 personnel identification system.

7 (6) Each manufacturer and each compassion center and dispensary  
8 shall not share office space with or refer patients to a participating  
9 health care practitioner.

10 (7) Each manufacturer and each compassion center and dispensary  
11 shall not permit any person to consume medical cannabis on the property  
12 of the manufacturer or compassion center and dispensary.

13 (8) Each manufacturer and each compassion center and dispensary are  
14 subject to reasonable inspection by the department or its designee.

15 (9)(a) A manufacturer and a compassion center and dispensary may not  
16 employ any person who is under twenty-one years of age or who has been  
17 convicted of a disqualifying felony offense. An employee of a  
18 manufacturer and a compassion center and dispensary shall submit to a  
19 completed criminal history record information check before an employee  
20 may begin working with the manufacturer or compassion center and  
21 dispensary.

22 (b) Each employee shall pay the costs of the criminal history record  
23 information check and shall file a complete set of his or her legible  
24 fingerprints with the department. The department shall transmit such  
25 fingerprints to the Nebraska State Patrol which shall transmit a copy of  
26 the applicant's fingerprints to the Identification Division of the  
27 Federal Bureau of Investigation for a national criminal history record  
28 information check.

29 (c) The national criminal history record information check shall  
30 include information concerning the employee from federal repositories of  
31 such information and repositories of such information in other states if

1 authorized by federal law for use by the department.

2 (d) The Nebraska State Patrol shall undertake a search for Nebraska  
3 criminal history record information concerning the employee. The Nebraska  
4 State Patrol shall issue a report to the department which contains the  
5 results of the criminal history record information check conducted by the  
6 Nebraska State Patrol.

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

10 (10) No manufacturer or compassion center and dispensary may operate  
11 in any location within one thousand feet of a public or private school  
12 existing before the date of the manufacturer's or compassion center and  
13 dispensary's registration with the department.

14 (11) Each manufacturer and each compassion center and dispensary  
15 shall comply with reasonable restrictions set by the department relating  
16 to signage, marketing, display, and advertising of medical cannabis and  
17 shall comply with local zoning regulations.

18 Sec. 37. (1) Subject to section 18 of this act, the following are  
19 not violations under the Medical Cannabis Act:

20 (a) Use or possession of medical cannabis or medical cannabis  
21 products by a patient enrolled in the registry program or possession of  
22 medical cannabis or medical cannabis products by a registered designated  
23 caregiver or the parent or legal guardian of a patient if the parent or  
24 legal guardian is listed on the registry verification;

25 (b) Possession or sale of medical cannabis or medical cannabis  
26 products by a manufacturer or a compassion center and dispensary,  
27 employees of a manufacturer or a compassion center and dispensary, a  
28 laboratory conducting testing on medical cannabis, or employees of the  
29 laboratory; and

30 (c) Possession of medical cannabis or medical cannabis products by  
31 any person while carrying out the duties required under the Medical

1 Cannabis Act.

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

5 (3) The department, the department's staff, the department's agents  
6 or contractors, and participating health care practitioners are not  
7 subject to any civil or disciplinary penalties by any business,  
8 occupational, or professional licensing board or entity, solely for  
9 participation in the registry program under the Medical Cannabis Act. A  
10 pharmacist licensed under the Pharmacy Practice Act is not subject to any  
11 civil or disciplinary penalties when acting in accordance with the  
12 Medical Cannabis Act. Nothing in this section affects a professional  
13 licensing board from taking action in response to violations of any other  
14 provision of law.

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

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

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

25 (7) An attorney shall not be subject to disciplinary action for  
26 providing legal assistance to a prospective or registered manufacturer or  
27 compassion center and dispensary or to others related to activity that is  
28 no longer subject to criminal penalties under state law pursuant to the  
29 Medical Cannabis Act.

30 (8) Possession of a registry verification or application for  
31 enrollment in the registry program by a person entitled to possess or

1 apply for enrollment in the registry program does not constitute probable  
2 cause or reasonable suspicion, nor shall it be used to support a search  
3 of the person or property of the person possessing or applying for the  
4 registry verification or otherwise subject the person or property of the  
5 person to inspection by any governmental agency.

6       Sec. 38. (1) No school or landlord may refuse to enroll or lease to  
7 and may not otherwise penalize a person solely for the person's status as  
8 a patient enrolled in the registry program under the Medical Cannabis Act  
9 unless failing to do so would violate federal law or regulations or cause  
10 the school or landlord to lose a monetary or licensing-related benefit  
11 under federal law or regulations.

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

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

21       Sec. 39. (1) In addition to any other applicable penalty, a  
22 compassion center and dispensary or an agent of a compassion center and  
23 dispensary who intentionally transfers or dispenses medical cannabis to a  
24 person other than a registered compassion center and dispensary, a  
25 patient, a registered designated caregiver, or, if listed on the registry  
26 verification, a parent or legal guardian of a patient, is guilty of a  
27 Class IV felony. A person convicted under this section shall not continue  
28 to be affiliated with the compassion center and dispensary and is  
29 disqualified from further participation under the Medical Cannabis Act.

30       (2) In addition to any other applicable penalty, a manufacturer or  
31 an agent of a manufacturer who intentionally dispenses medical cannabis

1 to a person other than a registered manufacturer or a registered  
2 compassion center and dispensary is guilty of a Class IV felony. A person  
3 convicted under this section shall not continue to be affiliated with the  
4 manufacturer and is disqualified from further participation under the  
5 Medical Cannabis Act.

6       Sec. 40. In addition to any other applicable penalty provided by  
7 law, a patient, a registered designated caregiver, or, if listed on the  
8 registry verification, a parent or legal guardian of a patient who  
9 intentionally sells or otherwise transfers medical cannabis to a person  
10 other than a patient, a registered designated caregiver, or, if listed on  
11 the registry verification, a parent or legal guardian of a patient, is  
12 guilty of a Class IV felony.

13       Sec. 41. A person who intentionally makes a false statement to a  
14 law enforcement official about any fact or circumstance relating to the  
15 use of medical cannabis to avoid arrest or prosecution is guilty of a  
16 Class III misdemeanor. The penalty is in addition to any other penalties  
17 that may apply for making a false statement or for the possession,  
18 cultivation, or sale of cannabis not protected by the Medical Cannabis  
19 Act. If a person convicted of violating this section is a patient or a  
20 registered designated caregiver, the person is disqualified from further  
21 participation under the act.

22       Sec. 42. A person who knowingly submits false records or  
23 documentation required by the department to register as a manufacturer or  
24 compassion center and dispensary under the Medical Cannabis Act is guilty  
25 of a Class IV felony.

26       Sec. 43. A manufacturer or a compassion center and dispensary may  
27 be fined up to one thousand dollars for any violation of the Medical  
28 Cannabis Act or the rules and regulations adopted and promulgated  
29 pursuant to the act if no penalty has been specified. This penalty is in  
30 addition to any other applicable penalties in law.

31       Sec. 44. (1) The department shall collect an application fee of



1 twenty-five thousand dollars from each entity submitting an application  
2 for registration as a manufacturer or a compassion center and dispensary.  
3 The department shall remit the fees to the State Treasurer for credit to  
4 the Medical Cannabis Regulation Fund.

5 (2) The department shall establish and collect an annual fee not to  
6 exceed (a) seventy-five thousand dollars from a manufacturer for the cost  
7 of regulating and inspecting the manufacturer in that year and (b)  
8 twenty-five thousand dollars from a compassion center and dispensary for  
9 the cost of regulating and inspecting the compassion center and  
10 dispensary in that year. The department shall remit the fees to the State  
11 Treasurer for credit to the Medical Cannabis Regulation Fund.

12 Sec. 45. The Medical Cannabis Regulation Fund is created and shall  
13 consist of funds from contracts, grants, gifts, or fees under the Medical  
14 Cannabis Act. The fund shall be used for purposes of regulation of  
15 medical cannabis. Transfers may be made from the fund to the General Fund  
16 at the direction of the Legislature. Any money in the Medical Cannabis  
17 Regulation Fund available for investment shall be invested by the state  
18 investment officer pursuant to the Nebraska Capital Expansion Act and the  
19 Nebraska State Funds Investment Act.

20 Sec. 46. (1) The department may examine and inspect or provide for  
21 the examination and inspection of any manufacturer or compassion center  
22 and dispensary in such manner and at such times as provided in rules and  
23 regulations adopted and promulgated by the department. The department  
24 shall issue an examination and inspection report and provide a copy of  
25 the report to the facility or service within ten working days after the  
26 completion of an examination and inspection. The department shall then  
27 post a copy of the report on its web site. The costs incurred by the  
28 department in conducting such an examination and inspection shall be paid  
29 for by the manufacturer or compassion center and dispensary.

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

1           Sec. 47. (1) The department shall adopt and promulgate rules and  
2 regulations to establish requirements for reporting incidents when  
3 individuals who are not authorized to possess cannabis under the Medical  
4 Cannabis Act are found in possession of medical cannabis. The rules and  
5 regulations shall identify professionals required to report, the  
6 information they are required to report, and actions the reporter must  
7 take to secure the medical cannabis.

8           (2) The department shall adopt and promulgate rules and regulations  
9 to establish requirements for law enforcement officials and health care  
10 professionals to report incidents involving an overdose of medical  
11 cannabis to the department.

12           (3) Rules and regulations shall include the method by which the  
13 department will collect and tabulate reports of unauthorized possession  
14 and overdose.

15           Sec. 48. The Medical Cannabis Board is established. The board shall  
16 consist of seven members. Five members shall be appointed by the Governor  
17 and approved by a majority of the members of the Legislature. Of the  
18 appointed members, the board shall have at least one person from each  
19 congressional district, at least one person licensed to practice pharmacy  
20 under the Pharmacy Practice Act, and at least one person licensed to  
21 practice medicine and surgery under the Medicine and Surgery Practice  
22 Act. The chief medical officer as designated in section 81-3115 or his or  
23 her designee and the Chairperson of the Health and Human Services  
24 Committee of the Legislature of his or her designee shall be nonvoting,  
25 ex officio members.

26           Sec. 49. The Governor shall appoint the initial appointed members  
27 of the Medical Cannabis Board for terms of one year, two years, three  
28 years, four years, and five years. Appointments made for the succeeding  
29 members shall be for terms of five years. The term of office of each  
30 member of the board shall expire on August 1 of the appropriate year. If  
31 a vacancy occurs prior to the expiration of a term, the Governor shall

1 appoint a successor with similar qualifications for the remainder of the  
2 unexpired term. No appointed member of the board shall serve more than  
3 two consecutive, full terms. If the Legislature is not in session when an  
4 appointment is made by the Governor, the member shall take office and act  
5 as a recess appointee until the Legislature convenes.

6       Sec. 50. The members of the Medical Cannabis Board shall be  
7 reimbursed for the necessary expenses incurred in the performance of  
8 their duties as provided in sections 81-1174 to 81-1177.

9       Sec. 51. Within thirty days after the initial appointment and in  
10 the last calendar quarter of each subsequent year, the members of the  
11 Medical Cannabis Board shall meet and elect a chairperson of the board  
12 from the appointed members and such other officers, including a vice-  
13 chairperson and a secretary, as the board deems necessary. In case of the  
14 death, resignation, or other permanent absence of the chairperson of the  
15 board, the vice-chairperson shall assume the office of chairperson and  
16 the members of the board at the next regular meeting of the board, or at  
17 a special meeting of the board pursuant to a call signed by all remaining  
18 members of which such members shall have at least three days' notice,  
19 shall elect a new chairperson of the board from the appointed members and  
20 such other new officers as the board deems necessary.

21       Sec. 52. The Medical Cannabis Board shall meet at least once each  
22 quarter and at such other times as it deems necessary. Special meetings  
23 may be held upon the call of the chairperson or pursuant to a call signed  
24 by five other members of which the chairperson and the other members of  
25 the board shall have at least three days' notice. All regular meetings  
26 shall be held in suitable offices to be provided in the state office  
27 building described in section 81-1108.37 or elsewhere. A majority of the  
28 members of the board shall constitute a quorum for the transaction of  
29 business. Every act of a majority of the members of the board shall be  
30 deemed to be the act of the board. All meetings shall be open to the  
31 public. The minutes of the meetings shall show the action of the board on

1 matters presented and shall be open to public inspection.

2       Sec. 53. The Medical Cannabis Board shall advise the department  
3 regarding:

4       (1) Rules and regulations for the regulation of medical cannabis;

5       (2) The policies of the department as they relate to medical  
6 cannabis; and

7       (3) Recommendations for legislative changes regarding regulation of  
8 medical cannabis.

9       Sec. 54. No member of the Medical Cannabis Board shall be  
10 personally liable in damages to any person for slander, libel, defamation  
11 of character, breach of any privileged communication, or otherwise for  
12 any action taken or recommendation made within the scope of the functions  
13 of such board while acting as an agent of the state if such board member  
14 acts without malice and in the reasonable belief that such action or  
15 recommendation is warranted by the facts known to him or her after a  
16 reasonable effort is made to obtain the facts on which such action is  
17 taken or recommendation is made.

18       Sec. 55. Section 28-416, Revised Statutes Supplement, 2015, is  
19 amended to read:

20       28-416 (1) Except as authorized by the Medical Cannabis Act or the  
21 Uniform Controlled Substances Act, it shall be unlawful for any person  
22 knowingly or intentionally: (a) To manufacture, distribute, deliver,  
23 dispense, or possess with intent to manufacture, distribute, deliver, or  
24 dispense a controlled substance; or (b) to create, distribute, or possess  
25 with intent to distribute a counterfeit controlled substance.

26       (2) Except as provided in subsections (4), (5), (7), (8), (9), and  
27 (10) of this section, any person who violates subsection (1) of this  
28 section with respect to: (a) A controlled substance classified in  
29 Schedule I, II, or III of section 28-405 which is an exceptionally  
30 hazardous drug shall be guilty of a Class II felony; (b) any other  
31 controlled substance classified in Schedule I, II, or III of section

1 28-405 shall be guilty of a Class IIA felony; or (c) a controlled  
2 substance classified in Schedule IV or V of section 28-405 shall be  
3 guilty of a Class IIIA felony.

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

12 (4)(a) Except as authorized by the Uniform Controlled Substances  
13 Act, any person eighteen years of age or older who knowingly or  
14 intentionally manufactures, distributes, delivers, dispenses, or  
15 possesses with intent to manufacture, distribute, deliver, or dispense a  
16 controlled substance or a counterfeit controlled substance (i) to a  
17 person under the age of eighteen years, (ii) in, on, or within one  
18 thousand feet of the real property comprising a public or private  
19 elementary, vocational, or secondary school, a community college, a  
20 public or private college, junior college, or university, or a  
21 playground, or (iii) within one hundred feet of a public or private youth  
22 center, public swimming pool, or video arcade facility shall be punished  
23 by the next higher penalty classification than the penalty prescribed in  
24 subsection (2), (7), (8), (9), or (10) of this section, depending upon  
25 the controlled substance involved, for the first violation and for a  
26 second or subsequent violation shall be punished by the next higher  
27 penalty classification than that prescribed for a first violation of this  
28 subsection, but in no event shall such person be punished by a penalty  
29 greater than a Class IB felony.

30 (b) For purposes of this subsection:

31 (i) Playground shall mean any outdoor facility, including any

1 parking lot appurtenant to the facility, intended for recreation, open to  
2 the public, and with any portion containing three or more apparatus  
3 intended for the recreation of children, including sliding boards,  
4 swingsets, and teeterboards;

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

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

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

20 (b) Except as authorized by the Uniform Controlled Substances Act,  
21 it shall be unlawful for any person eighteen years of age or older to  
22 knowingly and intentionally employ, hire, use, cause, persuade, coax,  
23 induce, entice, seduce, or coerce any person under the age of eighteen  
24 years to aid and abet any person in the manufacture, transportation,  
25 distribution, carrying, delivery, dispensing, preparation for delivery,  
26 offering for delivery, or possession with intent to do the same of a  
27 controlled substance or a counterfeit controlled substance.

28 (c) Any person who violates subdivision (a) or (b) of this  
29 subsection shall be punished by the next higher penalty classification  
30 than the penalty prescribed in subsection (2), (7), (8), (9), or (10) of  
31 this section, depending upon the controlled substance involved, for the

1 first violation and for a second or subsequent violation shall be  
2 punished by the next higher penalty classification than that prescribed  
3 for a first violation of this subsection, but in no event shall such  
4 person be punished by a penalty greater than a Class IB felony.

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

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

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

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

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

17 (8) Any person who violates subsection (1) of this section with  
18 respect to base cocaine (crack) or any mixture or substance containing a  
19 detectable amount of base cocaine 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 (9) Any person who violates subsection (1) of this section with  
27 respect to heroin or any mixture or substance containing a detectable  
28 amount of heroin in a quantity of:

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

31 (b) At least twenty-eight grams but less than one hundred forty

1 grams shall be guilty of a Class IC felony; or

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

4 (10) Any person who violates subsection (1) of this section with  
5 respect to amphetamine, its salts, optical isomers, and salts of its  
6 isomers, or with respect to methamphetamine, its salts, optical isomers,  
7 and salts of its isomers, in a quantity of:

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

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

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

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

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

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

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

31 (b) For the second offense, be guilty of a Class IV misdemeanor,



1 receive a citation, and be fined four hundred dollars and may be  
2 imprisoned not to exceed five days; and

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

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

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

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

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

23 (18) In addition to the penalties provided in this section:

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

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

31 (ii) For a second offense, the court may, as a part of the judgment

1 of conviction or adjudication, (A) impound any such licenses or permits  
2 for ninety days and (B) require such person to complete no fewer than  
3 twenty and no more than forty hours of community service and to attend a  
4 drug education class; and

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

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

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

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

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

1 submit to a drug assessment by a licensed alcohol and drug counselor.

2 A copy of an abstract of the court's conviction or adjudication  
3 shall be transmitted to the Director of Motor Vehicles pursuant to  
4 sections 60-497.01 to 60-497.04 if a license or permit is impounded or a  
5 juvenile is prohibited from obtaining a license or permit under this  
6 subsection.

7 Sec. 56. Section 28-439, Reissue Revised Statutes of Nebraska, is  
8 amended to read:

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

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

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

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

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

30 (a) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes  
31 with or without screens, permanent screens, hashish heads, or punctured

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

16 Sec. 57. Section 77-2701.48, Reissue Revised Statutes of Nebraska,  
17 is amended to read:

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

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

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

1 (b) A product provided free of charge with the required purchase of  
2 another product. A product is provided free of charge if the sales price  
3 of the product purchased does not vary depending on the inclusion of the  
4 product provided free of charge; and

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

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

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

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

12 Sec. 58. Section 77-2704.09, Reissue Revised Statutes of Nebraska,  
13 is amended to read:

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

23 (2) For purposes of this section:

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

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

30 (B ii) Intended for use in the diagnosis, cure, mitigation,  
31 treatment, or prevention of disease; or

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

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

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

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

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

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

29 (f) Oxygen equipment means oxygen cylinders, cylinder transport  
30 devices including sheaths and carts, cylinder studs and support devices,  
31 regulators, flowmeters, tank wrenches, oxygen concentrators, liquid

1 oxygen base dispensers, liquid oxygen portable dispensers, oxygen tubing,  
2 nasal cannulas, face masks, oxygen humidifiers, and oxygen fittings and  
3 accessories;

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

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

14 Sec. 59. Section 77-27,132, Revised Statutes Supplement, 2015, is  
15 amended to read:

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

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

29 (a) For transactions occurring on or after October 1, 2014, and  
30 before October 1, 2019, credit to the Game and Parks Commission Capital  
31 Maintenance Fund all of the proceeds of the sales and use taxes imposed



1 pursuant to section 77-2703 on the sale or lease of motorboats as defined  
2 in section 37-1204, personal watercraft as defined in section 37-1204.01,  
3 all-terrain vehicles as defined in section 60-103, and utility-type  
4 vehicles as defined in section 60-135.01;

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

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

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

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

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

30 Sec. 60. Section 77-27,237, Revised Statutes Supplement, 2015, is  
31 amended to read:

1           77-27,237 If the federal government passes a law that expands the  
2 state's authority to require out-of-state retailers to collect and remit  
3 the tax imposed under section 77-2703 on purchases by Nebraska residents  
4 and the state collects additional revenue under section 77-2703 as a  
5 result of such federal law, then the Department of Revenue shall  
6 determine the amount of such additional revenue collected during the  
7 first twelve months following the date on which the state begins  
8 collecting such additional revenue. The department shall certify such  
9 amount to the Governor, the Legislature, and the State Treasurer, and the  
10 certified amount shall be used for purposes of subdivision ~~(2)(e)~~ ~~(2)(d)~~  
11 of section 77-27,132. This section terminates three years after August  
12 30, 2015.

13           Sec. 61. Section 77-4303, Reissue Revised Statutes of Nebraska, is  
14 amended to read:

15           77-4303 (1) A tax is hereby imposed on marijuana and controlled  
16 substances at the following rates:

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

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

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

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

31           (3) The tax shall not be imposed upon a person registered or

1 otherwise lawfully in possession of marijuana or a controlled substance  
2 pursuant to Chapter 28, article 4, or a person lawfully in possession of  
3 cannabis under the Medical Cannabis Act.

4 Sec. 62. Sections 57, 58, 59, 60, 61, and 64 of this act become  
5 operative on October 1, 2016. The other sections of this act become  
6 operative on their effective date.

7 Sec. 63. Original section 28-439, Reissue Revised Statutes of  
8 Nebraska, and section 28-416, Revised Statutes Supplement, 2015, are  
9 repealed.

10 Sec. 64. Original sections 77-2701.48, 77-2704.09, and 77-4303,  
11 Reissue Revised Statutes of Nebraska, and sections 77-27,132 and  
12 77-27,237, Revised Statutes Supplement, 2015, are repealed.