Introduced by Wishart, 27; Craighead, 6; Ebke, 32; Hansen, 26; Kolowski, 31; Krist, 10; Morfeld, 46; Pansing Brooks, 28; Vargas, 7; Wayne, 13.

Read first time January 18, 2017

Committee: Judiciary

A BILL FOR AN ACT relating to cannabis; to amend sections 28-416, 28-439, 77-2701.48, 77-2704.09, and 77-4303, Reissue Revised Statutes of Nebraska, and sections 77-27,132 and 77-27,237, Revised Statutes Cumulative Supplement, 2016; to adopt the Medical Cannabis Act; to change provisions relating to controlled substances and taxation; to harmonize provisions; to provide operative dates; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,
Section 1. Sections 1 to 54 of this act shall be known and may be cited as the Medical Cannabis Act.

Sec. 2. For purposes of the Medical Cannabis Act, the definitions found in sections 3 to 17 of this act apply.

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

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

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

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

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

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

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

(2) Pill form; or

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

Smoking shall not be an approved method of delivery.

Sec. 9. Medical cannabis product means any delivery device or related supplies and educational materials used in the administration of medical cannabis for a patient with a qualifying medical condition enrolled in the registry program.
Sec. 10. Medical records means a health care practitioner's record of a patient's health history and treatment rendered.

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

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

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

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

(1) Cancer if the underlying condition or treatment produces one or more of the following:
   (a) Severe or chronic pain;
   (b) Nausea or severe vomiting; or
   (c) Cachexia or severe wasting;
(2) Glaucoma;
(3) Human immunodeficiency virus or acquired immune deficiency syndrome;
(4) Tourette's syndrome;
(5) Amyotrophic lateral sclerosis;
(6) Seizures, including those characteristic of epilepsy;
(7) Severe and persistent muscle spasms, including those characteristic of multiple sclerosis;
(8) Crohn's disease;
Terminal illness, with a probable life expectancy of under one year, if the illness or its treatment produces one or more of the following:

(a) Severe or chronic pain;
(b) Nausea or severe vomiting; or
(c) Cachexia or severe wasting;
(10) Hepatitis C;
(11) Huntington's disease;
(12) Lupus;
(13) Parkinson's disease;
(14) Lyme disease;
(15) Spinal cord injury or disease;
(16) Opioid addiction;
(17) Epilepsy;
(18) Post-traumatic stress disorder;
(19) Anxiety; or
(20) Any other illness for which medical cannabis provides relief as determined by the participating health care practitioner.

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

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

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

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

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

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

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

(i) On a school bus or van;

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

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

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

(c) Vaporizing medical cannabis:

(i) On any form of public transportation;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) A copy of the certification from the patient's participating health care practitioner which certifies that the patient has a bona fide
relationship with the participating health care practitioner that existed prior to submitting the application, that the patient has been diagnosed with a qualifying medical condition, and, if applicable, that, in the medical opinion of the participating health care practitioner, the patient has a developmental disability or physical disability and, as a result of that disability, the patient is unable to self-administer medication or acquire medical cannabis from a compassion center and dispensary; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Does not provide the information required under the Medical Cannabis Act;
(d) Has previously been removed from the registry program for a violation of section 20, 40, 41, or 42 of this act; or

(e) Provides false information under the act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Provide explanatory information from the department to patients with qualifying medical conditions, including disclosure to all patients about the experimental nature of therapeutic use of medical cannabis; the possible risks, benefits, and side effects of the proposed treatment; and the application and other materials from the department; and
(d) Agree to continue treatment of the patient's qualifying medical condition.

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

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

Sec. 28. (1) The department shall:

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

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

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

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

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

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

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

Sec. 30. (1) Except as otherwise provided in section 36 of this act, the department shall register one manufacturer in each congressional district in Nebraska for the production of all medical cannabis within Nebraska by July 1, 2018, unless the Medical Cannabis Board extends the deadline under section 34 of this act. The department shall register manufacturers which comply with subsection (2) of this section based on the factors in subsection (3) of this section. The registration shall be valid until July 1 of the calendar year following the date of registration and shall be renewed by July 1 of each year thereafter upon application and payment of the annual fee established pursuant to section 44 of this act to the department and compliance with the Medical Cannabis Act and the rules and regulations adopted and promulgated under the act. The department shall renew registrations based on the factors in subsection (3) of this section. The department shall continue to accept applications for registration after July 1, 2018, for any congressional district which does not have a registered manufacturer by such date.

(2)(a) As a condition for registration prior to July 1, 2018, a manufacturer shall agree to:

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

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

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

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

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

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

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

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

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

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

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

(2) The cultivation, harvesting, manufacturing, packaging, and
processing of medical cannabis must occur at the physical address of the
manufacturer provided to the department on the registration application.

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

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

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

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

Sec. 33. (1) Except as otherwise provided in section 36 of this act, the department shall register up to four compassion center and dispensaries in each congressional district in Nebraska for the dispensing and sale of all medical cannabis to patients within Nebraska by July 1, 2018, unless the Medical Cannabis Board extends the deadline.
The department shall register a compassion center and dispensary which complies with subsection (2) of this section based on the factors in subsection (3) of this section. The registration shall be valid until July 1 of the calendar year following the date of registration and shall be renewed by July 1 of each year thereafter upon application and payment of the annual fee established pursuant to section 44 of this act to the department and compliance with the Medical Cannabis Act and the rules and regulations adopted and promulgated under the act. The department shall renew registrations based on the factors in subsection (3) of this section. The department shall continue to accept applications for registration after July 1, 2018, for any congressional district which does not have four compassion center and dispensaries by such date.

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

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

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

(b) As a condition for registration on and after July 1, 2018, a compassion center and dispensary shall agree to supply medical cannabis to patients in compliance with the Medical Cannabis Act and otherwise be in compliance with the act and the rules and regulations adopted and promulgated under the act.

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

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

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

(c) The long-term financial stability of the compassion center and dispensary; and
(d) The ability to provide appropriate security measures on the premises of the compassion center and dispensary.

Sec. 34. (1) The department shall adopt and promulgate rules and regulations necessary for a compassion center and dispensary to begin dispensing medical cannabis to patients enrolled in the registry program by July 1, 2018, and publish notice of the proposed rules and regulations prior to November 1, 2017.

(2) The department shall, by May 1, 2018, advise the public and the Medical Cannabis Board if the department is unable to register three manufacturers by July 1, 2018. The department shall provide a written statement as to the reason or reasons the deadline will not be met. Upon request of the department, the board shall extend the deadline by six months but may not extend the deadline more than once.

(3) If notified by a manufacturer that distribution to compassion center and dispensaries may not begin by January 1, 2019, the department shall advise the public and the board. Upon notification by the department, the board shall extend the deadline by six months but may not extend the deadline more than once.

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

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

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

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

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

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

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

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

(iii) The patient registry number;

(iv) The chemical composition of the medical cannabis;

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

(vi) The date the certification is issued;

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

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

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

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

Sec. 36. (1) Each manufacturer and each compassion center and dispensary shall disclose its proposed location to the department during the registration process. A county, city, or village governing body may adopt a resolution or ordinance prohibiting the operation of a manufacturer or compassion center and dispensary or both within its jurisdiction and may adopt zoning regulations that reasonably limit a
manufacturer or compassion center and dispensary to certain areas within its jurisdiction. If all jurisdictions within a congressional district adopt a prohibition on the operation of manufacturers, the department may register an additional manufacturer in another congressional district. If all jurisdictions within a congressional district adopt a prohibition on the operation of a compassion center and dispensary, the department may register up to four additional compassion center and dispensaries in another congressional district or up to two additional compassion center and dispensaries in each of the other congressional districts.

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

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

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

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

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

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

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

(b) Procedures for the implementation of appropriate security measures to deter and prevent the theft of medical cannabis and unauthorized entrance into areas containing medical cannabis.
(5) Each manufacturer and each compassion center and dispensary shall implement security requirements, including requirements for protection of its location by a fully operational security alarm system, facility access controls, perimeter intrusion detection systems, and a personnel identification system.

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

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

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

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

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

(c) The national criminal history record information check shall include information concerning the employee from federal repositories of such information and repositories of such information in other states if authorized by federal law for use by the department.
(d) The Nebraska State Patrol shall undertake a search for Nebraska
criminal history record information concerning the employee. The Nebraska
State Patrol shall issue a report to the department which contains the
results of the criminal history record information check conducted by the
Nebraska State Patrol.

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

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

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

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

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

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

(c) Possession of medical cannabis or medical cannabis products by
any person while carrying out the duties required under the Medical
Cannabis Act.
(2) Medical cannabis obtained and distributed pursuant to the Medical Cannabis Act and associated property is not subject to forfeiture under section 28-431.

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

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

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

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

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

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

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

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

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

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

(2) In addition to any other applicable penalty, a manufacturer or
an agent of a manufacturer who intentionally dispenses medical cannabis
to a person other than a registered manufacturer or a registered
Sec. 40. In addition to any other applicable penalty provided by law, a patient, a registered designated caregiver, or, if listed on the registry verification, a parent or legal guardian of a patient who intentionally sells or otherwise transfers medical cannabis to a person other than a patient, a registered designated caregiver, or, if listed on the registry verification, a parent or legal guardian of a patient, is guilty of a Class IV felony.

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

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

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

Sec. 44. (1) The department shall collect an application fee of twenty-five thousand dollars from each entity submitting an application
for registration as a manufacturer or a compassion center and dispensary.

The department shall remit the fees to the State Treasurer for credit to
the Medical Cannabis Regulation Fund.

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

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

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

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

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

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

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

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

Sec. 49. The Governor shall appoint the initial appointed members of the Medical Cannabis Board for terms of one year, two years, three years, four years, and five years. Appointments made for the succeeding members shall be for terms of five years. The term of office of each member of the board shall expire on August 1 of the appropriate year. If a vacancy occurs prior to the expiration of a term, the Governor shall appoint a successor with similar qualifications for the remainder of the
unexpired term. No appointed member of the board shall serve more than
two consecutive, full terms. If the Legislature is not in session when an
appointment is made by the Governor, the member shall take office and act
as a recess appointee until the Legislature convenes.

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

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

Sec. 52. The Medical Cannabis Board shall meet at least once each
quarter and at such other times as it deems necessary. Special meetings
may be held upon the call of the chairperson or pursuant to a call signed
by five other members of which the chairperson and the other members of
the board shall have at least three days' notice. All regular meetings
shall be held in suitable offices to be provided in the state office
building described in section 81-1108.37 or elsewhere. A majority of the
members of the board shall constitute a quorum for the transaction of
business. Every act of a majority of the members of the board shall be
deemed to be the act of the board. All meetings shall be open to the
public. The minutes of the meetings shall show the action of the board on
matters presented and shall be open to public inspection.
Sec. 53. The Medical Cannabis Board shall advise the department regarding:

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

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

Sec. 55. Section 28-416, Reissue Revised Statutes of Nebraska, is amended to read:

28-416 (1) Except as authorized by the Medical Cannabis Act or the Uniform Controlled Substances Act, it shall be unlawful for any person knowingly or intentionally: (a) To manufacture, distribute, deliver, dispense, or possess with intent to manufacture, distribute, deliver, or dispense a controlled substance; or (b) to create, distribute, or possess with intent to distribute a counterfeit controlled substance.
(2) Except as provided in subsections (4), (5), (7), (8), (9), and (10) of this section, any person who violates subsection (1) of this section with respect to: (a) A controlled substance classified in Schedule I, II, or III of section 28-405 which is an exceptionally hazardous drug shall be guilty of a Class II felony; (b) any other controlled substance classified in Schedule I, II, or III of section 28-405 shall be guilty of a Class IIA felony; or (c) a controlled...
substance classified in Schedule IV or V of section 28-405 shall be guilty of a Class IIIA felony.

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

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

(b) For purposes of this subsection:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose, used, intended for use, or designed for use in cutting controlled substances;
(2) Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;

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

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

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

(b) Water pipes;

(c) Carburetion tubes and devices;

(d) Smoking and carburetion masks;

(e) Roach clips, meaning objects used to hold burning material, such as a marijuana cigarette, which has become too small or too short to be held in the hand;

(f) Miniature cocaine spoons, and cocaine vials;

(g) Chamber pipes;

(h) Carburetor pipes;

(i) Electric pipes;

(j) Air-driven pipes;

(k) Chillums;

(l) Bongs; and

(m) Ice pipes or chillers.

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

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

(2) Distinct and identifiable products do not include:

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

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

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

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

(4) A transaction that otherwise meets the definition of a bundled transaction is not a bundled transaction if it is (a) the retail sale of tangible personal property and a service where the tangible personal property is essential to the use of the service, and is provided exclusively in connection with the service, and the true object of the transaction is the service, (b) the retail sale of services when one service is provided that is essential to the use or receipt of a second
service and the first service is provided exclusively in connection with
the second service and the true object of the transaction is the second
service, or (c) a transaction that includes taxable products and
nontaxable products and the purchase price or sales price of the taxable
products is de minimus. De minimus means the seller's purchase price or
sales price of the taxable products is ten percent or less of the total
purchase price or sales price of the bundled products. Sellers shall use
either the purchase price or the sales price of the products to determine
if the taxable products are de minimus. Sellers may not use a combination
of the purchase price and sales price of the products to determine if the
taxable products are de minimus. Sellers shall use the full term of a
service contract to determine if the taxable products are de minimus.

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

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

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

(2) For purposes of this section:

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

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

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

(C) Intended to affect the structure or any function of the
body; and

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

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

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

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

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

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

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

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

Sec. 59. Section 77-27,132, Revised Statutes Cumulative Supplement,
2016, is amended to read:

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

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

(a) For transactions occurring on or after October 1, 2014, and before October 1, 2019, credit to the Game and Parks Commission Capital Maintenance Fund all of the proceeds of the sales and use taxes imposed pursuant to section 77-2703 on the sale or lease of motorboats as defined in section 37-1204, personal watercraft as defined in section 37-1204.01, all-terrain vehicles as defined in section 60-103, and utility-type vehicles as defined in section 60-135.01;

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

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

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

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

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

Sec. 60. Section 77-27,237, Revised Statutes Cumulative Supplement,
2016, is amended to read:

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

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

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

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

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

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

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

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

Sec. 62. Sections 57, 58, 59, 60, 61, and 64 of this act become operative on October 1, 2017. The other sections of this act become operative on their effective date.

Sec. 63. Original sections 28-416 and 28-439, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 64. Original sections 77-2701.48, 77-2704.09, and 77-4303, Reissue Revised Statutes of Nebraska, and sections 77-27,132 and 77-27,237, Revised Statutes Cumulative Supplement, 2016, are repealed.