

Honorable Michelle Lujan Grisham
Governor, State of New Mexico
State Capitol Building
490 Old Santa Fe Trail, Suite 400
Santa Fe, NM 87501

June 27, 2023

Dear Governor Lujan Grisham,

In 2021 when the Legislature passed, and you signed into law, the Cannabis Regulation Act industry celebrated. Both existing operators and those hopeful to be part of the industry welcomed New Mexico's visionary move to address some of the inequity caused by the War on Drugs and to create opportunities for entrepreneurs who sought to enter the regulated cannabis marketplace.

Our shared goal to create a diverse set of owners/entrepreneurs by creating low barriers to enter the market has been met: According to CCD data, 35% of owners are non-white and 45% identify as other than male. Compared to national figures, this is the most diverse group of entrepreneurs who have entered the cannabis industry. This is an incredible accomplishment.

Despite these accomplishments, the regulated cannabis industry in New Mexico is currently experiencing extreme instability. Our industry is competing with a long-established illicit market which is flourishing due to a lack of resources for compliance, enforcement, and established consequences to deter individuals and organizations from participating in illegal cannabis activities. An unfortunate byproduct of the free-market approach that our state took for licensing new operators is a saturation of regulated and illegal cannabis products in New Mexico. These two factors combined are resulting in homegrown small and medium-sized cannabis businesses being forced to close their doors or lay off staff. Our local businesses simply cannot compete with the illicit market and the immense oversupply.

Regulated cannabis business owners operate without the benefit of bankruptcy protection and have a heavier financial burden due to banking restrictions and tax costs unique to cannabis, creating further challenges to economic prosperity. Already limited enforcement resources to address illegal market activities are stretched further as new licensees continue to enter an industry that is already experiencing an unsustainable economic environment for those following the rules.

New Mexico, and New Mexico-born cannabis businesses, cannot wait for natural market equilibrium to be established. The New Mexico Cannabis Chamber of Commerce stood in strong support of including a measure in the Cannabis Regulation Act to allow the Cannabis Control Division to restrict new licenses, especially for the first few years of a regulated marketplace. Lessons from [Oregon](#), [California](#), and [Colorado](#) - states where local businesses shuttered and

were legislatively forced to reduce production - cemented how important this mechanism would've been. Unfortunately, those important few sentences disappeared from the enabling legislation before the Legislature went into special session.

To tackle the illegal market and reduce the number of New Mexico businesses shuttering their doors, the undersigned have reflected on the current marketplace and have three policy suggestions that will provide effective tools to curtail illegal market sales:

- First, we believe the Cannabis Control Division should have a mechanism to both pause new cannabis licensees and provide regulators with a safety valve to turn the application acceptance process back on when the regulated market has stabilized and has proper resources to ensure compliance for all operators.
- Second, we believe the state should commission a market study to determine when the above-mentioned safety valve should be turned back on to ensure ongoing opportunity for entrepreneurs to access the cannabis industry.
- Finally, the State of New Mexico should dedicate significant resources to the compliance and enforcement of licensees and prosecution of illegal actors with the goal of reopening the safety valve.

As of May 2023, thirteen months after legal cannabis sales began, over 1,000 retail licenses have been issued by the Cannabis Control Division. The number of licenses issued has increased by 65% in just the last three months with only a 10% increase in sales within the same timeframe. This is not a sustainable competitive market for cannabis operators, businesses are closing or reducing employee count as a result. Others are selling their products into the illicit market to avoid paying taxes or incurring banking fees. Some are purchasing lower priced products from the illicit market in an effort to stay open. Financial opportunities from an easily accessible illicit market create unique pressure for the regulated cannabis industry. This pressure is exacerbated when supply and demand are unbalanced and will continue to grow if policy is not enacted to create market equilibrium.

TRD notes there are 485 filers registered as cannabis businesses and only 286 monthly filers as of April, a small percentage of licensed operators in New Mexico. This is another sign of desperation as cannabis business operators have a much higher tax liability than other types of businesses due to the IRS tax regulations relating to cannabis sales. The cannabis tax liability is often crippling, particularly in an oversaturated market when operating margins create a challenge in covering the basic day-to-day operating expenses of a cannabis business.

It's easy to suggest this is an opportunity for natural economic drivers to create equilibrium through supply and demand. However, New Mexico companies and entrepreneurs are already failing due to unsustainable market conditions combined with a lack of resources to hold both the legal and the illegal market accountable. Cannabis businesses are not eligible for any type of government support. New Mexico cannabis operators, unlike every other business, cannot cross state lines to sell their product. When a cannabis business shutter, everything is lost. The lack of bankruptcy protection, heavier financial burden, a long-established illicit market, and lack of

resources for compliance enforcement create a set of conditions that require immediate regulatory action. New Mexico does not have time to wait - the consequences are too high, especially for the new cannabis businesses that the CRA aimed to carve out space for.

We ask that you recognize the current market challenges of regulated cannabis and act now. Create safety valves to allow regulators to pause issuing licenses and focus on enforcement. Together, the industry and regulators will eradicate the illegal market and continue to build a diverse, regulated cannabis industry in New Mexico.

Sincerely,

The Undersigned

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Colin Hood, The Greenery Room



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