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## FISCAL IMPACT REPORT

<b>SPONSOR</b> <u>SJC</u>	<b>LAST UPDATED</b> <u>2/13/24</u> <b>ORIGINAL DATE</b> <u>1/31/24</u>
<b>SHORT TITLE</b> <u>Cannabis Regulation Changes</u>	<b>BILL NUMBER</b> <u>CS/Senate Bill 6/SJCS/aSfI#1/aSfI#2/aHJC</u>
	<b>ANALYST</b> <u>Daly</u>

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\* (dollars in thousands)

Agency/Program	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
		No fiscal impact	No fiscal impact	No fiscal impact		

Parentheses ( ) indicate expenditure decreases.  
 \*Amounts reflect most recent analysis of this legislation.

Conflicts with CS/HB128; Relates to HB63, HB64, HB65, HB66, and SB99.

### Sources of Information

LFC Files

Agency Analysis Received From  
 Regulation and Licensing Department (RLD)\*  
 Department of Health (DOH)\*  
 New Mexico Attorney General (NMAG)\*  
 Secretary of State (SOS)\*

\*On previous versions of bill

### Synopsis of HJC Amendment to Senate Bill 6

The House Judiciary Committee amendment to CS/SB6 as amended, in addition to making minor clarifying amendments to language in the bill:

- Strikes the SF1#1 amendment and other language in the bill which addressed an exception to IPRA and replaces it with new language that provides limited confidentiality to a source who reports an alleged violation of CRA, as well as information developed or obtained by CCD during an enforcement investigation or inspection related to a CRA violation. That confidentiality expires upon 30 days;
- Expands the definition of contraband brought into a juvenile detention or correctional facility to include cannabis;
- Leaves the licensing fee cap for initial licensing and renewals for vertically integrated cannabis establishments in place; and
- Leaves intact the prohibition barring legislators in office as of June 29, 2021 (the effective date of the CRA) from being licensed for any commercial cannabis activity prior to July 1, 2026.

According to RLD, keeping in place the licensing fee cap on vertically integrated businesses will allow the largest operators to expand operations at a reduced fee, while small operators will have to pay for each additional premise or any additional plants until they reach the fee cap.

### **Synopsis of SFI#2 Amendment to Senate Bill 6**

The Senate Floor amendment #2 strikes the provision that prohibits drive-up windows at cannabis retail establishments.

### **Synopsis of SFI#1 Amendment to Senate Bill 6**

The Senate Floor amendment #1 (SFI#1) expands a new exception in the Inspection of Public Records Act (IPRA) for information developed or obtained by the Cannabis Control Division (CCD) as a result of an enforcement investigation to also exempt information CCD develops or obtains during an investigation relating to violations of the Cannabis Regulation Act (CRA). The SFI#1 amendment also limits the exception to the time during which such investigation or inspection is pending. These amendments also amend the CRA to reference this new exception in IPRA.

### **Synopsis of SJC Substitute for Senate Bill 6**

The Senate Judiciary Committee substitute for Senate Bill 6 (CS/SB6) amends the Cannabis Regulation Act (CRA).

*Definitions.* In addition to reorganizing, clarifying, and stylistic changes, definitions are amended to:

- Create an exception to the Inspection of Public Records Act (IPRA) for information developed or obtained by RLD’s Cannabis Control Division (CCD) during an enforcement investigation;
- Revise definition of “homegrown” or “homemade” cannabis to emphasize it is not for resale;
- Provide a new definition of “illegal cannabis product,” meaning a product from outside the state or otherwise not in compliance with the Act; and
- Add a new definition of “residence” or “household” for the purposes of homegrown cannabis.

*Licensing:* Substantive amendments to the CRA licensing provisions include:

- Clarifying the CCD must follow the provisions of the Uniform Licensing Act when conducting its regulatory duties;
- Requiring a licensee to notify the CCD when the licensee begins or ends operations under its license;
- Clarifying that licenses are not subject to execution, attachment, a security transaction, liens, or receivership;
- Prohibiting licensed liquor and licensed cannabis activities on the same premises;
- Authorizing a person to hold both a cannabis license issued by CCD and a liquor license issued by the Alcohol Beverage Control Division (ABC), subject to the same premises restriction;
- Allowing non-profit organizations licensed under the Department of Health’s Medical

Cannabis Program to convert their corporate structures to for-profit legal entities upon compliance with existing laws governing that process;

- Clarifying that the condition of licensing requiring legal right to sufficient water only applies to cannabis producers and cannabis producer microbusinesses; and
- Removing the prohibition barring legislators in office as of June 29, 2021 from being licensed for any commercial cannabis activity prior to July 1, 2026.

*Denial of License/Other Disciplinary Action.* Substantive amendments allowing for licensing denials and disciplinary actions, including suspension and revocation of a license, when:

- A tax lien is pending;
- A license has been denied, suspended, or revoked in another state;
- Failure to comply after notice of noncompliance with applicable requirements, rules or laws;
- Any other governmental action pending or taken against an applicant or licensee that in CCD’s determination renders that person unqualified to be licensed;
- Pending investigations or felony indictment or conviction involving:
  - Fraud, deceit, or embezzlement;
  - Producing, manufacturing, distributing, selling, or giving away illegal cannabis products; or
  - Employing or using a person younger than 18 years of age or anyone who is a victim of trafficking, forced labor, or other exploitation; or
- Engaging in the production, manufacture, distribution, sale, or possession of illegal cannabis.

*Criminal Background Checks.* A new section is added to allow for federal background checks on cannabis applicants using an applicant’s fingerprints. This section contains an IPRA exception.

*Licensing Fee Maximum and Cannabis Education.* The existing \$125 thousand maximum for both an initial application fee and a renewal is removed. The requirement that colleges and universities become licensed by CCD to teach courses on cannabis is removed and replaced with a requirement that course offerings be posted on CCD’s website.

*Packaging and Labelling Cannabis Products/Testing.* Existing language requiring packaging to be compostable, and recyclable is removed, while language restricting packaging and labelling designed to appeal to children is strengthened. Language clarifying that producers and manufacturers must have products tested prior to distribution to cannabis retailers is clarified.

*Trafficking Cannabis Products/Criminal Offenses and Penalties.* The crime of trafficking cannabis products is clarified, and a first offense by a person 21 years of age or older remains a fourth degree felony. New language makes a second and any subsequent offense a third degree felony. A person between the ages of 18 and 21 who intentionally traffics cannabis products is still guilty of a misdemeanor. Other changes clarify that cannabis in prisons is contraband, adds cannabis trafficking as an offense under the Racketeering Act, and amends the definition of “delinquent act” in the Delinquency Act to include cannabis trafficking.

*Plant Count.* The delayed repeal on December 31, 2025, of RLD’s authority to set a maximum cannabis plant count that governs cannabis producers may possess at any time is repealed, so that RLD can continue to set a maximum cannabis plant count in perpetuity.

The effective date of this bill is July 1, 2024.

## **FISCAL IMPLICATIONS**

*Costs.* RLD reports that CCD will be able to carry out the additional administrative responsibilities arising from criminal background checks without the need for additional staff positions and foresees no other operational costs under CS/SB6.

## **SIGNIFICANT ISSUES**

RLD reports that existing language in the CRA concerning federal criminal history background checks has prevented it from participating in the federal program. The replacement language in Section 7 is designed to correct this problem.

Department of Health (DOH) in its analysis of the original bill discussed the new requirements for packaging cannabis products. DOH noted that, even though there are provisions that require opaque packaging, and prohibit packaging that mimics non-cannabis consumer products and use of images that appeal to children, there are no requirements packaging be plain and a single uniform color or prohibiting the use of bright colors. Additionally, DOH pointed out that there are no specific prohibitions addressing the use of toys, animals, or phrases that appeal to children. Further, it noted that also requiring edibles be packaged in individually wrapped doses would add an extra layer of protection for both children and adults.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

*Conflict:* This substitute conflicts with CS/HB128, which authorizes CCD to conduct enforcement actions involving embargo, recall, seizure, and condemnation.

Numerous bills introduced in the 2024 session relate to cannabis in some way, including SB274, which establishes a compliance bureau at RLD, which is authorized to issue administrative holds and take enforcement actions involving embargo, recall, seizure, and condemnation.

## **OTHER SUBSTANTIVE ISSUES**

SOS reported in its earlier analysis that Section 4's provisions governing conversion of nonprofit medical cannabis corporations will be impacted by a comprehensive upgrade of its online business filings system in the summer and fall of 2024. It advised that until at least January 1, 2025, the process involved in such conversions will be manual and will require more time than other filings.

DOH reported that nationally, adult use cannabis, particularly edibles, has led to growing concerns of exposure among children. In New Mexico, cannabis-related calls to the Poison Control Center have increased over time: from 84 cases in 2015 to 216 calls in 2022. Fifty percent of the 2022 calls were for patients 10 years of age or younger.