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## FISCAL IMPACT REPORT

**SPONSOR** Pacheco **ORIGINAL DATE** 03/03/15  
**LAST UPDATED** 03/09/15 **HB** 527/aHJC

**SHORT TITLE** Medical Cannabis Employee Background Checks **SB** \_\_\_\_\_

**ANALYST** Daly

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		
Likely Minimal	Likely Minimal	Likely Minimal	Recurring	Fingerprint fee revenue

(Parenthesis ( ) Indicate Revenue Decreases)

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

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	Likely Minimal	Likely Minimal	Likely Minimal	Likely Minimal	Recurring	Fingerprint fee revenue

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files  
Responses Received From

Department of Health (DOH)  
 Department of Public Safety (DPS)

### SUMMARY

#### Synopsis of HJC Amendment

The House Judiciary Amendment to House Bill 527 clarifies the type and number of convictions under a federal statute or that of another jurisdiction that is equivalent to a particular section of New Mexico’s Controlled Substances Act (CSA) that will permanently disqualify an individual from becoming enrolled as a primary caregiver or being employed by or contracting with a nonprofit licensed provider or approved entity: a single felony conviction for trafficking or distributing a controlled substance or distributing a controlled substance to a minor under such other jurisdiction’s equivalent statute; or felony convictions for two or more violations of such jurisdiction’s statute that is equivalent to any other section of the CSA.

Given the reorganization of Section 1(C), it appears the word “or” should be inserted following

the semicolon at the end of subsection (1) on page 2, which semicolon follows the language being added by amendment 1 beginning on line 19.

Synopsis of Original Bill

House Bill 527 enacts a new section of law to authorize criminal background checks of primary caregivers, employees and certain contractors of licensed nonprofit producers and approved entities (manufacturers, couriers and laboratories) that provide or have applied to provide certain goods and services related to DOH's medical cannabis program. Costs of these background checks are borne by the individual. DOH is authorized, by exchange of fingerprint data directly with DPS, to use the Federal National Crime Information Center (NCIC) criminal history database maintained by the Federal Bureau of Investigation (FBI) for this purpose.

Only those contractors who reasonably may be anticipated to work on premises used for the production, manufacture, or distribution of cannabis or who reasonably may be anticipated to come into contact with cannabis in the performance of their work are subject to background checks.

The following convictions shall permanently disqualify an individual from being employed or otherwise contracting with a nonprofit licensed producer or approved entity or becoming enrolled as a primary caregiver:

- Trafficking a controlled substance;
- Distributing a controlled substance;
- Distributing a controlled substance to a minor;
- Two or more violations of any other section of the Controlled Substances Act (CSA); or
- Any equivalent conviction under federal or another jurisdiction's law.

An individual who is convicted of only one violation of a section of the CSA or a federal or another jurisdiction's equivalent statute other than for trafficking or distribution is prohibited from working for a nonprofit producer or approved entity, and from being enrolled as a primary caregiver, for five years following the date of the conviction.

DOH must promulgate rules consistent with the provisions of the bill, including an individual's right to review any information obtained from NCIC, and to appeal a DOH decision to deny, suspend or revoke any license or approval or prohibit participation in the medical cannabis program on the basis of a criminal background check.

This bill contains an emergency clause.

**FISCAL IMPLICATIONS**

DPS reports there is a \$44.00 fee DPS/FBI charges to process all fingerprint background checks. The revenue goes into a reverting revenue fund. The fiscal impact is unknown due to the unknown number of persons that provide medial cannabis goods and services.

**SIGNIFICANT ISSUES**

DPS provides this explanation of the need for this legislation:

DOH has required criminal history screening of primary caregivers and employees and contractors of nonprofit producers since the inception of the Medical Cannabis Program, and has applied identical disqualifying conviction criteria as that identified in HB 527. Because it has, to date, been unable to utilize NCIC, it has relied upon web-based criminal information-aggregating websites, which collect criminal history information from various sources. Such services are less reliable and more likely to omit information than NCIC.

NCIC is a nationwide, fingerprint-based criminal history database that is maintained by the FBI, which may be utilized for licensing/certification and employment purposes by state agencies. However, federal law requires that a state statute authorize the particular purpose by a particular agency before that agency may utilize the NCIC system.

Due to the conflict between state and federal laws regarding the use of cannabis, it was believed that DOH could not use NCIC for purposes related to the Medical Cannabis Program. However, the FBI has confirmed that NCIC can be used for the purposes of administering a medical cannabis program, and approximately two other states are known to use NCIC for this purpose. The FBI has also approved the text of HB 527, and has confirmed that the bill, if adopted, would allow DOH to use NCIC for this purpose.

DPS confirms that both it and the FBI have approved the language of this bill, which is necessary in order to obtain the ORI (originating agency identifier) that will enable New Mexico to submit fingerprints for a criminal history background check.

**PERFORMANCE IMPLICATIONS**

DOH reports that this bill relates to DOH FY 16 Strategic Plan, Result 2: Improved quality, accessibility and utilization of health care services.

MD/je/aml/je