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FISCAL IMPACT REPORT

LAST UPDATED 2/17/23

SPONSOR Lujan/Pirtle **ORIGINAL DATE** _____

BILL

SHORT TITLE Cannabis License Background Check **NUMBER** House Bill 331

ANALYST Anderson

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*

(dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No fiscal impact	No fiscal impact	No fiscal impact			RLD Cannabis Control Division will not be impacted

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

REVENUE*

(dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY23	FY24	FY25		
No fiscal impact	Indeterminate but substantial	Indeterminate but substantial	Recurring	RLD Cannabis Control Division

Parentheses () indicate revenue increases.
 *Amounts reflect most recent version of this legislation.

Sources of Information

LFC Files

Responses Received From
 Department of Public Safety (DPS)
 Regulation Licensing Department (RLD)

No Response Received
 Department of Health (DOH)

SUMMARY

Synopsis of House Bill 331

House Bill 331 proposes to amend the Cannabis Regulation Act at Section 26-2C-17 NMSA 1978 relating to criminal history and background checks as a condition of eligibility for licensure. The bill requires an applicant for licensure who is submitting information for the

purposes of a state criminal history and a national criminal history background check to do the following:

- Submit a full set of fingerprints as prescribed by rule of Regulation Licensing Department (RLD);
- Allow the Cannabis Control Division to obtain state and national criminal history record information; and
- Pay reasonable costs incurred by RLD in obtaining the records.

The act makes other conforming changes.

This bill does not contain an effective date, and as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed.

FISCAL IMPLICATIONS

Because background checks will be paid for by applicants, there may be no costs impacting the Cannabis Control Division of RLD. For a medical cannabis background check, the cost is \$73.30 to the New Mexico Department of Health (DOH). HB331 does not indicate the cost of a recreational cannabis background check, but revenue to RLD for the cost of processing background checks might be substantial. DOH has not yet provided information on their process for medical cannabis background check and the amount of cost or revenue from them, but a comparison could provide a standard of measure for RLD's program.

SIGNIFICANT ISSUES

Similar to medical cannabis, the Cannabis Regulation Act currently contains provisions requiring federal background checks of applicants for licensure. According to Section 26-2C-7(K) in the act, Commercial cannabis activity licensing; application; issuance and denial of a license:

“The division shall conduct national criminal history background checks and state criminal history checks on the following:

- If an applicant is a limited partnership, each partner of the limited partnership;
- If the applicant is a limited liability company, each member of the limited liability company;
- If the applicant is a corporation, each director and officer of the corporation; and
- Any controlling person of the applicant.”

The Department of Public Safety said:

The Cannabis Control Division (Division) was denied an originating agency identifier (ORI) required for federal background checks because the FBI deemed the Act overbroad in Section §26-2C-7(K). The FBI requires statutes authorizing background checks to be very specific, and suggested that better definition of the individuals to whom those background checks would apply in section (K) would be required.

The DPS has no control over whether the FBI will approve a statutory authorization, and the FBI will not preapprove statutes in advance of enactment. The DPS is concerned that entirely removing section (K) and the list of applicants to whom the background checks will apply, currently contained in §26-2C-7(J) (to which the FBI did not object) will not assist the Division in obtaining an ORI for federal background checks.

ADMINISTRATIVE IMPLICATIONS

Regulation Licensing Department responded:

Under the wording of the current law found at §26-2C-17 NMSA 1978 of the CRA, the CCD has been unable to obtain an Originating Agency Identifier (ORI) number from the Federal Bureau of Investigation (FBI). A state agency must obtain an ORI number from the FBI in order to conduct federal background checks through the FBI's criminal history and offender identification databases. The FBI has cited the current language in the CRA as insufficient for an ORI number to be issued to the CCD. HB331's proposed amendments/additions to §26-2C-17 NMSA 1978 (beginning at page 5, line 22) provide the legal authorization necessary for the FBI to issue an ORI number to the CCD, and, thereafter the CCD will be able to conduct federal background checks on persons making application for licenses issued under the CRA.

The Department of Public Safety Responded:

The Division is directed to request and obtain criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation.

DPS is directed to survey criminal history records and identification files and make a simultaneous request of the FBI for like information from other jurisdictions. DPS may charge the Division a reasonable fee for conducting and reporting on the search.

Criminal history record information obtained by the Division that is not already a matter of public record is deemed nonpublic and confidential, restricted to the exclusive use of the Division for evaluating eligibility for licensure, and may not be disclosed by the Division to any other person without written consent of the applicant or court order.

The changes noted above replace the current provisions relating to criminal history background checks in Sec. §26-2C-7(J) through (L).

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

RLD said without the enactment of this bill, the CCD will be unable to receive an ORI number from the FBI and as a result will continue to not be able to conduct federal criminal background checks on applicants for cannabis industry licenses issued under the CRA.