

**LFC Requester:**

**Marty Daly**

**AGENCY BILL ANALYSIS  
2024 REGULAR SESSION**

**SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

*Check all that apply:*

**Original**      X      **Amendment**    \_\_\_\_\_  
**Correction**    \_\_\_\_\_    **Substitute**    \_\_\_\_\_

**Date Prepared:**    January 25, 2024

**Bill No:**    HB 128

**Sponsor:**    Andrea Romero, Katy M. Duhigg  
**Short Title:**    Relating to Cannabis; Changing Cannabis Regulation Act and Related Statutes

**Agency Name and Code Number:**    305 – New Mexico Department of Justice  
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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		

(Parenthesis ( ) Indicate Expenditure Decreases)

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

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
 Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE**

*This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.*

**BILL SUMMARY**

Synopsis:

HB 128 proposed changes to §14-2-1, Right to Inspect Public Records, by adding “information developed or obtained by the cannabis control division of the regulation and licensing department during an enforcement investigation” as an exemption to a public records request.

HB 128 has structural changes to Chapter 26, Article 2C (Drugs and Cosmetics – Cannabis Regulation Act), including moving the definition to more appropriate locations within the Act, making clarifying changes to the existing definitions and language, and removing unnecessary definitions. In proposed §26-2C-2(I) the number of plants in the definition of “cannabis producer microbusiness” is changed from two hundred plants to five hundred plants. It also adds proposed §26-2C-2(Z), which provides definitions for illegal cannabis products.

HB 128 proposes an addition to §26-2C-6(J) that specifically prohibits a cannabis licensee to occupy a premise that also houses and business selling alcoholic beverages. It also proposes language in proposed §26-2C-6(Q) that allows for the conversion of a medical cannabis legacy nonprofit to a corporation, limited liability company, limited partnership, or partnership.

HB 128 proposes removing §26-2C-7(A) which would allow for a license to be subject to execution, attachment, a security transaction, liens or a receivership. It also makes structural and clarifying changes in this section. There are a significant number of changes allowing for greater regulation of licenses during pending investigations, in cases of noncompliance, and production, manufacture, distribution, sale or possession of illegal cannabis products. There also structural changes to this section, requiring in proposed §26-2C-7(G) that the Uniform Licensing Act and Criminal Offender Employment Act shall govern consideration of criminal records required or permitted and the removal of current §26-2C-7(J) which requires the division adopt rules for fingerprinting and background checks.

HB 128 proposes a new section in the Cannabis Control Act governing criminal history background checks for licensees, which are currently found in §26-2C-7(J).

HB 128 repeals current §26-2C-10 which requires that the division license cannabis training and education programs and replaces it with language allowing for New Mexico post-secondary educational institutions to register practical or academic curriculum that can be registered with the division.

HB 128 amends §26-2C-17 by adding language expanding on the prohibition of packaging that are designed to appeal to children.

HB 128 amends §26-2C-18 and requires that the division require all cannabis producers and manufacturers to test their products prior to distribution.

HB 128 amends §26-2C-28 by renaming the section “Trafficking Cannabis Products” in lieu of the current “Unlicensed Sales of Cannabis.” It clarifies the definitions of trafficking and includes a new reference the delinquency act to §26-2C-28(C). HB 128 amends Chapter 32A of the Children’s Code (Delinquency) by adding “trafficking cannabis” as a delinquent act. It also changes penalties in §26-2C-28(E) for trafficking cannabis by adding graduated penalties for subsequent cannabis trafficking offenses: a third degree penalty for a second offense, and a second degree penalty for a third or greater offense. Newly proposed §26-2C-28(E) allows for forfeiture, seizure or disposal of items in cases of cannabis trafficking.

HB 128 proposes a new section dealing with adulterated cannabis products (When Cannabis Product Deemed Adulterated). This newly proposed section allows for the seizure, disposal and other remedies dealing with adulterated products.

HB 128 proposes a new section dealing with misbranded cannabis products (When Cannabis Deemed Misbranded). This newly proposed section allows for remedies including repackaging and seizure.

HB 128 includes a newly proposed section that creates an expanded enforcement section (Enforcement – Embargo and Recall, Seizure and Condemnation – Procedures – Penalties). This section allows the regulation division to carry out unannounced inspections, issue holds on products that are under investigation, seize products suspected of being illegal, adulterated or misbranded, and petition the district court for condemnation or other relief. This section sets out processes for notice to licensees and a process for a licensee to request an administrative hearing. This section allows for petitions to the district court requesting condemnation of products and allowing for destruction of product after a court order is issued. It also includes language in (J) requiring law enforcement, the department of agriculture, department of environment and other state agencies with “relevant expertise” to cooperate with the division at the division’s request. Proposed section (K) creates a fourth degree felony for the removal, concealing, destruction or disposal of cannabis products subject to a hold or embargo.

HB 128 makes changes to §26-2C-36 (Public Records and Open Meetings) by exempting information developed or obtained by the division during an enforcement investigation.

HB 128 amends §30-22-14 (Bringing Contraband into Places of Imprisonment) by adding non-medical cannabis as a prohibited substance.

HB 128 amends §30-42-3 (Racketeering) by adding “trafficking cannabis products” to the list of possible predicate crimes.

HB 128 adds the cannabis control division as a “board” as defined in §61-1-2 (Uniform Licensing Act)

## **FISCAL IMPLICATIONS**

The requirement in the newly created enforcement section of the Cannabis Control Act that states that law enforcement or other state agencies with “relevant expertise” *shall* cooperate with the cannabis control division at the division’s request could have fiscal implications if this agency were called upon in its law enforcement capacity or other capacity to assist with cannabis enforcement operations.

## **SIGNIFICANT ISSUES**

The requirement in the newly created enforcement section of the Cannabis Control Act that states that law enforcement or other state agencies with “relevant expertise” *shall* cooperate with the cannabis control division at the division’s request could be clearer. This section is dealing with embargo and seizure of product, which could include a large-scale operation like a cannabis farm. It does not provide any definition for “cooperate.”

The enforcement section also calls for destruction of condemned products “at the licensee’s expense” but this could be clarified as to what exactly those expenses include and how and if any recovered money will be distributed to any “cooperating” agencies.

## **PERFORMANCE IMPLICATIONS**

N/A

## **ADMINISTRATIVE IMPLICATIONS**

N/A

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

SB 6 - Cannabis Regulation Changes (identical language)  
HB 63 - Cannabis School Use Prevention Resource Act  
HB 64 - Cannabis Packaging Requirements  
HB 65 - Cannabis Crime Reasonable Suspicion  
HB 66 - Cannabis in Delinquency

## **TECHNICAL ISSUES**

N/A

## **OTHER SUBSTANTIVE ISSUES**

N/A

## **ALTERNATIVES**

N/A

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status Quo

## **AMENDMENTS**

A definition for “cooperation” is needed to clarify the scope of other agencies responsibilities in the Cannabis Control Acts newly created Enforcement section.

Clarification on “licensee’s expense” to include agency costs, equipment costs, etc. would be useful and an explanation of how agencies or if cooperating agencies will be reimbursed upon collection.