

LFC Requester:**Marty Daly**

**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

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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 **Amendment**
Correction **Substitute**

Date February 9, 2024

Bill No: HB128

Sponsor: Representative Andrea Romero
& Senator Katy Duhigg
Short Title: Cannabis Regulation Changes

Agency Name and Code Number: Regulation and Licensing
Department - 420
Person Writing: Robert Sachs
Phone: 5059488609 **Email:** Robert.Sachs@rld.nm.

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
N/A	N/A	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		
N/A	N/A	N/A	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	2,280	2,280	2,280	6,840	Recurring	Cannabis Regulation Fund

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: SJC. Sub. SB6; HB226 as amended.

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis of House Judiciary Committee Substitute for House Bill 128 (HJCSUBHB128):

On February 8, 2024, HJCSUBHB128 changed the original HB128 in the following ways:

HJCSUBHB128 removes the exception specifically listed in the Inspection of Public Records Act (“IPRA”), and instead only creates an IPRA exception listed in the Cannabis Regulation Act (See Section 14 of HJCSUBHB128). Rather than exempting all records collected during an investigation or an inspection, the proposed language creates a very limited exception only for protected personal identifier information of persons who make complaints to the Regulation and Licensing Department (“RLD”) concerning cannabis companies/suspected cannabis violations.

HJCSUBHB128 Section 2, removes the proposed increase in plant count for producer microbusiness licensees to 500 that had been in the original HB128, keeping the plant count at 200 as is currently law.

HJCSUBHB128 Section 3, removes language related to allowing existing cannabis businesses that were organized as non-profit entities prior to the enactment of the Cannabis Regulation Act to be able to legally convert over to being for-profit organizations. The removed language required a majority of board members for the conversion to take place, stated that all property held by the non-profit remains with the newly formed entity, and that any action pending against the non-profit organization will remain with the newly formed entity.

HJCSUBHB128 strikes language from the original bill that would have removed the maximum licensing fee of \$125,000 for any cannabis business. The result is that no matter how large a licensed cannabis business becomes, the maximum licensing fee the company may ever be charged under the Cannabis Regulation Act will remain at \$125,000 per year (as in current law).

HJCSUBHB128, Section 9 strikes the proposed language of the definition of “advertisement”, removing the exclusion of an editorial or material printed in a publication that is not paid for by a licensee licensed pursuant to the Cannabis Regulation Act.

HJCSUBHB128, Section 16 adds cannabis to the definition of contraband within the context of juvenile detention facilities.

Synopsis of the Original Bill:

IPRA Exception: This bill amends Section 1 of the Inspection of Public Records Act, 14-2-1 NMSA 1978 *et seq.*, “Right to Inspect Public Records – Exceptions ---,” as well as Section 36 of the Cannabis Regulation Act (“CRA”), 26-2C-1 *et seq.*, “Public Records and Open Meetings –.” The proposed change would create an IPRA exception for records developed or obtained by the RLD, Cannabis Control Division (“CCD”) during an enforcement investigation.

Changing Definitions: This bill amends Section 1 of the CRA, “Definitions.” The proposed changes to cannabis related definitions are summarized as follows:

- Removing “advertisement”: remove to add to the definition to section 26-2C-20 NMSA 1978, “Advertising and Marketing Restrictions”, which is specific to marketing and advertising.
- Amending “cannabis consumption area”: clarify a cannabis consumption area is a licensed premise.
- Amending “cannabis courier”: clarify definition using the proposed definition of “consumer.”
- Amending “cannabis establishment”: clarify that cannabis consumption area is a cannabis establishment.
- Amending “cannabis manufacturer” and “cannabis producer”: clarify definition by removing mention of testing of cannabis and cannabis product as that language is not necessary for the definitions of those license types.
- Amending “cannabis producer microbusiness”: increase the plant count limit for cannabis producer microbusinesses from 200 plants to 500 plants.
- Amending “cannabis retailer”: clarify definition using the proposed definition of “consumer.”
- Removing “cannabis server permit” and “cannabis server permit education provider”: remove definitions to add to section specific to cannabis server permits.
- Amending “cannabis testing laboratory”: clarify that a cannabis testing laboratory is a facility, not a person.
- Removing “cannabis training and education program”: remove to add to section 10, “Cannabis Training and Education Programs – Registration with Division –“. Section 10 is specific to cannabis training and education programs.
- Amending “commercial cannabis activity”: clarify definition by adding packaging to the definition, making it consistent with language throughout the statute. Also remove language around cannabis training and education programs for consistency with the proposed changes to those programs.
- Amending “consumer”: clarify that a qualified patient is also a consumer.
- Amending “facility”: clarify definition to add “storage” and “sale and consumption” as activities that take place on cannabis facilities. Also removes “possession” and “cannabis, cannabis extracts” due to duplicative language.
- Amending “homegrown” or “homemade”: clarify that homegrown or homemade cannabis is not meant for resale.
- Removing “household”: remove definition to be added to proposed definition of “residence” or “household”.
- Adding “illegal cannabis product”: create definition of illegal cannabis product.
- Amending “integrated cannabis microbusiness”: allow these licenses to engage in wholesale activity amongst the same license types.

- Amending “licensed premises”: clarify definition by removing duplicative language and specifying that the area around a cannabis consumption area are also considered a “licensed premise.”
- Amending “local jurisdiction”: clarify definition to align with legal structure of municipalities and home rule municipality.
- Amending “manufacture”: clarify definition to align language with other parts of statute.
- Amending “medical cannabis registry”: clarify definition to add “primary caregivers.”
- Amending “public space”: clarify definition by removing examples of what constitutes a public space.
- Adding “residence” or “household”: add language clarifying what constitutes a residence or household for the purposes of homegrown cannabis.
- Amending “retail establishment”: amend definition using the proposed definition of “consumer.”

Changes to Licensing: This bill amends Section 6 of the CRA, “Licensing Cannabis Activities – Limitations – Medical Cannabis Legacy Licensing – Cannabis Shortage for Medical Program – Conversion of Nonprofit Medical Cannabis Corporations.” The proposed changes are summarized as follows:

- Clarifying that the CCD shall follow the provisions of the Uniform Licensing Act, 61-1-1 *et seq.*, when carrying out its regulatory duties;
- Add language requiring licensees to notify the CCD when a licensee begins or ends operations;
- Add language to clarify that licenses shall not be subject to execution, attachment, a security transaction, liens or receivership, which was language originally found in Section 7 of the CRA;
- Clarifying that licensed liquor and licensed cannabis activity cannot happen on the same premise;
- Clarifying that a natural person may hold both a license issued by the CCD as well as a liquor license issued by the Alcohol Beverage Control (“ABC”), provided that the two licensed activities do not take place at the same premise; and
- Adding language to allow for non-profit organizations licensed under the Department of Health’s Medical Cannabis Program may convert their corporate structure to for-profit entities.

Changes to Disciplinary Action: This bill amends Section 7 of the CRA, “Cannabis Activity Licensing – Application – Issuance and Denial of a License – Suspension and Revocation.” The proposed changes are summarized as follows:

- Removing language that licenses shall not be subject to execution, attachment, a security transaction, liens or receivership and adding that language to Section 6 (see above);
- Adding language to allow the CCD to deny an application for licensure based on the following criteria: denial or revocation in another state; a tax lien; pending investigations or felony indictments involving fraud, deceit or embezzlement; pending investigations or felony indictments involving producing, manufacturing, distributing, selling or giving away illegal cannabis products; pending investigations or felony indictments involving employing a person younger than 18 years of age or involving trafficking, forced labor or other exploitation; repeated notice of noncompliance with state or local rules; and any other action that in the RLD’s determination makes the person unqualified to be licensed or involved in cannabis;
- Adding language providing that the production, manufacture, distribution, sale or

possession of illegal cannabis is grounds for denial, suspension, or revocation of a license; and

- Removing language related to criminal background checks to be added to a new section of the CRA (see below).

Adding Language to Allow for Federal Background Checks: This bill creates a new section of the CRA, “Criminal History Background Checks – Processes and Procedures.” This proposed change would remove language that has thus far prevented the RLD from getting an ORI number for cannabis applicants, which would allow for federal background checks. The proposed language would allow the RLD to once again submit a request to the FBI for an ORI number for cannabis applicants.

Removal of Licensing Fee Maximum: This bill amends Section 9 of the CRA, “Application and Licensing Fees --.” This proposed change would remove the \$125,000 licensing fee maximum, which currently allows the largest licensees to expand operations without any additional cost after hitting \$125,000 in annual fees.

Clarifying Role of CCD In Education: This bill amends Section 10 of the CRA, “Cannabis Training and Education Programs – Registration with Division --.” This proposed change would remove the requirement that colleges and universities become licensed with the CCD to teach courses on cannabis, and instead requires them to report course offerings to be posted on the CCD website.

Clarifying Packaging, and Labeling Requirements: This bill amends Section 17 of the CRA, “Cannabis Products – Packaging and Labeling – Division Rulemaking --.” The proposed changes are summarized as follows:

- Removing the requirement that packaging must be compostable and recyclable as packaging that is compostable, recyclable, resealable, and child-resistant is not readily available;
- Adding language that packaging and labeling shall non mimic the brand, design, logo or colorway of a non-consumer product marketed to children;
- Adding language that packaging and labeling shall not use cartoons or symbols or images, including images of celebrities or celebrity likenesses, that are commonly used to market to children; and
- Adding language that packaging containing edible cannabis products shall be opaque.

Testing Cannabis Products: This bill amends section 18 of the CRA, “Testing Cannabis Products – Health and Safety of Employees and Consumers --.” The proposed changes clarify that producers and manufacturers must have product tested prior to distribution to cannabis retailers.

Advertising and Marketing Restrictions: This bill amends Section 20 of the CRA, “Advertising and Marketing Restrictions --.” The proposed changes remove the definition of “advertising” from Section 2, “Definitions” and moves it to this section.

Cannabis Trafficking: This bill amends Section 28 of the CRA, “Trafficking Cannabis Products – Penalties --.” The proposed changes are summarized as follows:

- Clarifying that production, manufacturing, distribution, couriering, or selling of illegal cannabis products, or possession with the intention to manufacture, distribute, courier, or

sell illegal cannabis products are trafficking;

- Adding reference to the Delinquency Act, which provides additional penalties for juveniles found to illegally engaged in cannabis activity;
- Removing and replacing the criminal penalties for trafficking of cannabis, with an enhancements for repeated offenses.

Embargo and Seizure of Adulterated and Misbranded Cannabis: This bill adds three connected sections, “When Cannabis Product is Deemed Adulterated,” “When Cannabis Deemed Misbranded,” and “Enforcement – Embargo and Recall, Seizure and Condemnation – Procedures – Penalties --.” The first two sections define when cannabis and cannabis product is deemed to be adulterated or misbranded. The third section gives the CCD authority to place an administrative hold on cannabis product, embargo or seize cannabis product, and petition the district court for condemnation or for injunctive relief in the event such product is found the be adulterated or misbranded. The last section also provides a process by which cannabis products would be held, embargoed, or seized.

Criminal Penalties: This bill amends various criminal and delinquency provisions including: 30-22-14 NMSA 1978; 30-42-3 NMSA 1978; 32A-2-3 NMSA 1978. The proposed changes would: clarify that cannabis in prisons is considered cannabis, add cannabis trafficking to the definition of racketeering, and add cannabis trafficking to the definition of delinquency.

Adding the RLD’s Cannabis Control Division to the Uniform Licensing Act: This bill amends Section 2 of the Uniform Licensing Act, “Definitions,” 61-1-2 NMSA 1978. This proposed change would specify directly within the Uniform Licensing Act that the Cannabis Control Division is subject to the Uniform Licensing Act.

Repealing the Plant Count Repeal: This bill repeals Laws 2021 (1st S.S), Chapter 4, Section 73. This proposed change would repeal the delayed repeal of the plant count allowing the RLD to set a plant count in perpetuity. Currently, the RLD is able to set a maximum amount of plants that may be grown in New Mexico. This ability is currently set to expire December 31, 2025.

FISCAL IMPLICATIONS

Changes to Fiscal Implications of HJCSUBHB128 (as compared to original bill):

HJCSUBHB128 strikes the original bill’s proposed removal of the \$125,000 maximum licensing fee for cannabis companies. The RLD estimated removal of the licensing fee cap would result in the collection of an additional \$30,000 in licensing fees annually. Striking this provision means there would be no additional revenue obtained through the bill.

Fiscal Implications for Original HB128:

Of the amendments that will impact the RLD fiscally are the addition of the ability to run federal criminal background checks, and the ability to embargo and seize cannabis or cannabis products that are found to be adulterated or misbranded.

As it relates to the ability to run federal criminal background checks, the RLD’s licensing team

will require additional staffing to process both the backlog of controlling persons listed in the RLD's licensing system, as well as process the influx of criminal history backgrounds of persons seeking initial licensure. With this increase, the RLD expects an additional three licensing clerks, or Business Operations Specialists (Class Code: C11990 – Pay Band: 55). At midpoint this would be \$62,578 (including benefits) for each licensing specialist, for a total of \$187,734 on an annual basis.

Regarding the additional administrative powers of embargo and seizure of cannabis and cannabis product, the compliance team will need additional staffing to carry out these new powers. This will likely require an additional thirteen (13) compliance officers to carry out administrative holds, and in the event product is found to be adulterated or misbranded, which requires destruction, RLD staff would need to be present to supervise such operations. Compliance officers who conduct field work, such as operations considered in HB128, are classified as Compliance Officer A (Class Code: C1041A – Pay Band: 65). At midpoint this would be \$84,837 (including benefits) for each field compliance officer. However, each officer requires equipment to conduct their job including tablets for field inspections and vehicle leases. On average associated costs of a field officer work out to \$161,000 annually. This would bring the total additional compliance cost to \$2,093,000 on an annual basis.

Between the licensing and compliance staffing costs, the RLD would require an additional \$2,280,734 annually.

RLD revenue is expected to increase slightly through the removal of the \$125,000 licensing maximum. The RLD estimates the increased revenue through the removal of this licensing maximum to be approximately \$30,000 annually. This number could potentially increase year to year as the market matures and licensees grow in size. The CCD estimated that year-over-year increase in licensing revenue would be approximately \$10,000.

SIGNIFICANT ISSUES

PERFORMANCE IMPLICATIONS

The ability for the RLD to conduct Federal Criminal Background checks will require the licensing team of the RLD to change their processes to reflect this additional step. Federal criminal background reports may be complex, depending on the individual's criminal history. Coordination between the Federal Bureau of Investigations will also change the process of reviewing and approving an application for initial licensure as well as applications for amendments to a license, specifically adding a controlling person.

The compliance team of the RLD will also be affected by the increased authority to issue administrative holds and embargo cannabis products. This added authority will require the RLD to perform operations to identify cannabis products as being adulterated or misbranded. After having found that cannabis products are indeed adulterated or misbranded, the RLD will need to supervise the hold of such products, and in the event of a call for destruction of the product, the RLD will need to supervise the licensee in the destruction. Currently, the RLD does not conduct such operations.

ADMINISTRATIVE IMPLICATIONS

The RLD's administrative authority will expand to be able to issue administrative holds and embargo cannabis product as well as mandate the destruction of adulterated and misbranded product.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB128 has many similar proposed concepts and, in many places mirrors Senate Judiciary Committee Substitute for Senate Bill 6.

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The bill proposes several changes which will have the following consequences if not enacted:

- The RLD will not be able to conduct federal criminal background checks, as is currently the case;
- The RLD will not be able to embargo or seize adulterated and misbranded products, requiring the RLD to rely on the lengthy administrative process before being able to take action to prevent dangerous products from entering the market;
- The RLD's ability to set a plant count for licensees will expire, which will allow all licensees except microbusiness license types to grow an unlimited amount of cannabis plants beginning January 1, 2026;
- There will be an ambiguity around whether cannabis microbusinesses can wholesale products from other cannabis microbusinesses;
- Persons owning a liquor license issued pursuant to the Liquor Control Act will not be able to hold a cannabis license;
- Disqualifying conditions for licensure will remain solely based on a person's limited criminal history background check, and the RLD will not be able to deny a license based on disciplinary action by cannabis regulatory agencies in other states;
- Criminal penalties for trafficking will remain low, which thus far have not served as a deterrent for trafficking; and
- Ambiguities would remain in effect including ambiguities around: packaging, responsibility for training and educational programs, and at what point cannabis and cannabis product needs to be tested.

AMENDMENTS