

LFC Requester:

Ginger Anderson

**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:

Date Prepared: 02/04/2024

Original	<input type="checkbox"/>	Amendment	<input type="checkbox"/>
Correction	<input type="checkbox"/>	Substitute	<input checked="" type="checkbox"/>

Bill No: HB 226

Sponsor: Rep. T. L. Lujan
Rep. W. R. Rehm
Rep. P. Herndon
Rep. A. Reeb

Agency Name and Code Number: 305 – New Mexico
Department of Justice

Short Title: CANNABIS LICENSURE
BACKGROUND
CHECKS

Person Writing Analysis: Blaine N. Moffatt, AAG
Phone: 505-537-7676
Email: legisfir@nmag.gov

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
Total						

(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:

House Bill 226 House Consumer and Public Affairs Committee Substitute (“HB226CS”) amends several sections and adds new language to proposed House Bill 226 (“HB226”). HB226CS adds definitions for “Applicant” and “Licensee” in Section 26-2C-2 NMSA 1978. HB226CS further adds in Section 26-2C-3 NMSA 1978 that the Division maintains information and data from the Department of Public Safety (“DPS”) and the Federal Bureau of Investigation (“FBI”) based on licensing disqualifications.

HB226CS adds additional language under Section 26-2C-7 NMSA 1978 to clarify signature of the applicant (including whether the applicant is a corporation), investigation of the applicant’s criminal history as provided by DPS and/or FBI as well as other considerations, and would require federal background checks by fingerprint and other documentation. The search would be national and help determine the viability of a Commercial Cannabis Activity License. The criminal background check would remain confidential if not public record.

HB226 proposes amendments Section 7 of the Cannabis Regulation Act (“CRA”), “Commercial Cannabis Activity Licensing – Application – Issuance and Denial of a License.” This proposed change would remove language that has thus far prevented the RLD from getting an originating agency identifier (“ORI”) number for cannabis applicants, which would allow for federal background checks. The bill then proposes new language that would ideally be sufficient for the Federal Bureau of Investigations (“FBI”) to issue an ORI number for cannabis applicants.

FISCAL IMPLICATIONS

None to this office.

SIGNIFICANT ISSUES

The FBI’s main authority for obtaining and sharing information is Title 28, United States Code (U.S.C.), Section 534. 28 U.S.C. § 534. The regulations that implement this statutory provision are located in Title 28 Code of Federal Regulations (C.F.R.), Part 20. Specifically, 28 C.F.R. §

20.33 authorizes records and information from National Crime Information Center and the Interstate Identification System to be made available to criminal justice agencies performing the administration of criminal justice. When construing the regulations, the definitions of a ‘criminal justice agency’ in 28 C.F.R. § 20.3(g) and the administration of criminal justice in §20.3(b) are considered together.

When evaluating an agency’s request for access to FBI CJIS Division systems pursuant to 28 C.F.R. § 20, the agency or a criminal justice subunit must fulfill the definition of a criminal justice agency performing the administration of criminal justice as a primary function. More than 50% of the budget, time, functions and resources of the agency or a criminal justice/law enforcement subunit must be allocated to the investigation of a criminal offense or a criminal offender. Civil or administrative investigations without a nexus to specific or alleged criminal activity is not to be considered in review for access to CJIS Division systems.

The bill would require DPS to provide RLD with criminal history record information for the purpose of determining suitability and eligibility for licensure approval, therefore illegally disseminating information to an unauthorized agency.

PERFORMANCE IMPLICATIONS

None to this office.

ADMINISTRATIVE IMPLICATIONS

There could be administrative implications to the New Mexico the Regulation and Licensing Department (“RLD”) with fulfilling the requests in a timely manner.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB0226 duplicates the intent of SB06 and HB128 as it relates to language authorizing the RLD to conduct federal criminal history background checks for cannabis applicants for licensure.

TECHNICAL ISSUES

None.

OTHER SUBSTANTIVE ISSUES

None.

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo.

AMENDMENTS

None.