

LFC Requester: Ginger Anderson

**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

Analysis.nmlegis.gov

{Analysis must be uploaded as a PDF}

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 26 JAN 2024

Bill No: HB 226

Sponsor: Tara L. Lujan, William "Bill"
R. Rehm, Pamela Herndon,
Andrea Reeb
Short Title: Cannabis Licensure
Background Checks

Agency Name and Code 790-Department of Public Safety
Number: _____
Person Writing Jackee Garcia
Phone: 505-609-5615 **Email** jackee.garcia@dps.nm.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
0.0	0.0		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		
0.0	0.0	0.0		

(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	0.0	380.7	342.7	723.4	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: 2024 HB-128 and HB-226
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

The bill proposes changes to the licensing act for commercial cannabis including making clear the requirement of state and national criminal background checks for prospective licensees along with fingerprinting and payment of costs associated with the records' checks.

The updated language outlines a more specific procedure for the Department of Public Safety related to criminal history checks whereupon request by the division and after an applicant submits fingerprints, DPS would survey the criminal history records and ID files and make a report to the FBI for similar information from other jurisdictions; however, the criminal records would only be used for evaluating an applicant's eligibility or disqualification for licensure, and that no records related to criminal history would be released to any other person without written consent from the applicant or by court order.

FISCAL IMPLICATIONS

The Law Enforcement Records Bureau (LERB) would need to create a new Cannabis Licensure Unit with staffing of one (1) Management Analyst-Supervisor, one (1) Management Analyst-A, one (1) Management Analyst-B, and one (1) Management Analyst-O for a total of four (4) additional FTE. This bill will increase the volume of background checks and needs statewide and, as the authorizing repository, responsibility would fall on LERB for criminal history. The unique requirements for cannabis licensure are best suited to a single dedicated unit.

Repeated legislation for new initiatives and added full-time positions heightens concerns, particularly given the current limitations on office space. This trend strains infrastructure and workspace, demanding a careful evaluation of resource and space constraints to ensure practical and sustainable solutions to legislative mandates.

SIGNIFICANT ISSUES

The National Crime Information Center (NCIC) is a computerized information system linking criminal justice agencies in the fifty states, the District of Columbia, United States territories, and Canada. Operating under a shared management concept between the FBI and federal/state users, the NCIC's principal function is servicing the criminal justice community. NCIC terminal access to criminal history record information (CHRI) and related information provides information to the criminal justice community to facilitate the apprehension of fugitives, the location of missing persons, the location and/or return of stolen property, or other similar criminal justice objectives.

The NCIC also serves as the telecommunications link to the Interstate Identification Index (III), through which automated criminal history records are available to criminal justice/law enforcement agencies which perform the administration of criminal justice.

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.

In HB 226, Subsection M. it states:

“Any and all state or national criminal history record information obtained by the division from the department of public safety or the federal bureau of investigation that is not already a matter of public record shall be deemed nonpublic and confidential information restricted to the exclusive use of the division for evaluating the applicant's eligibility or disqualification for licensure. No information or records related to the criminal history record shall be released or otherwise disclosed by the division to any other person unless with the written consent of the applicant or by order of a court of competent jurisdiction.”

DPS is concerned that the new provisions may lack sufficient specificity to meet the requirements of the FBI. 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 identified.

ADMINISTRATIVE IMPLICATIONS

Additionally, the bill outlines that DPS would need to process such individual applicant requests and survey all CHRI and identification files, such request would put an additional burden on DPS Law Enforcement Records Bureau by essentially creating a new unit to manage the volume of application requests, to include the Customer Service Support Unit. Therefore, given the direct impact this bill would have on DPS a request for 4 FTE's would be required.

- Management Analyst Supervisor
- Management Analyst (A)
- Management Analyst (B)

-Management Analyst (O)

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

2024 HB-226 Cannabis Background Checks.

2024 HB-128 Cannabis Regulation Changes

TECHNICAL ISSUES

None identified.

OTHER SUBSTANTIVE ISSUES

None identified.

ALTERNATIVES

None identified.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo will remain.

AMENDMENTS

None identified.