

LFC Requester: Ginder Anderson

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 4 JAN 2024

Bill No: HB 226s

Sponsor: Tara L. Lujan, William Rehm,
Pamelya Herndon, Andrea Reeb
Short Title: Cannabis Licensure
Background Checks

Agency Name and Code 790-Department of Public Safety

Number:

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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	\$95.4	\$85.9	\$181.3	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

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

SECTION III: NARRATIVE

BILL SUMMARY

House Consumer and Public Affairs Committee substitute for HB226 makes minor changes to the original bill without altering its intent. It specifies a slightly different procedure for criminal history and background checks (detailed below). It strikes all references to costs or fees charged for a search. It requires an application for licensure to be signed by the applicant or, if the applicant is a legal entity, by an officer or other person with legal authority to sign documents for the legal entity. Finally, it requires the Cannabis Control Division to receive and maintain information from the Department of Public Safety (DPS) and the Federal Bureau of Investigation (FBI) relating to licensing disqualification based on criminal history.

In its substituted form, HB226s requires state and national criminal history and background checks and the submission of fingerprints for any individual submitting an application to the state to work in the cannabis industry.

The Cannabis Control Division is granted access to criminal history records information furnished by the DPS and FBI, subject to any restrictions imposed by federal law. The Division shall also consider information provided by the applicant about any criminal history record, including evidence of rehabilitation, character references, and educational achievement.

Using the applicant’s fingerprints, DPS shall conduct a check of state records and forward the fingerprints to the FBI to determine the existence and content of a record of convictions and arrests in New Mexico or other jurisdictions and to generate a criminal history records check.

If an applicant has twice submitted to a fingerprint-based record check and the fingerprints are unclassifiable, then DPS may acquire a name-based criminal history check.

DPS is to review all information and provide it to the Division, which will in turn determine whether an applicant is qualified to hold a cannabis license.

Criminal history information obtained through this process that is not already a matter of public record is confidential, restricted to the exclusive use of the Division for evaluation purposes, not a public record pursuant to the Public Records Act, and may not be disclosed to anyone other than public employees directly involved in the decision affecting the applicant. (The original allowed disclosure of this information with the written consent of the applicant or by court order.)

Confidentiality: Background checks would be confidential and not subject to disclosure under

IPRA. They would also not be used for any purpose other than determining eligibility for employment or volunteering, would not be released to any other person except with a court order or with written consent of the person who is the subject of the records. Releasing information in violation of the confidentiality provisions of the bill would be a misdemeanor under Sec. 31-19-1.

The act would take effect immediately upon being signed by the Governor.

Definitions

“applicant” means a person seeking licensure.

"licensee" means the person that is licensed.

FISCAL IMPLICATIONS

The Law Enforcement Records Bureau’s (LERB) will require one (1) Management Analyst-Advanced dedicated to managing RLD’s Originating Agency Identify (ORI) as discussed in Significant Issues below. The FY 2025 initial cost will be \$95,400 and recurring annual cost of \$85,900 starting in FY 2026.

SIGNIFICANT ISSUES

The Regulation and Licensing Department (RLD), Cannabis Control Division is applying for a non-criminal justice Originating Agency Identifier (ORI), commonly referred to as a civil agency ORI. The ORI is a number assigned by the DOJ to identify agencies/users authorized to access otherwise confidential criminal history record information in databases maintained by the FBI. Each agency must have an assigned ORI before submitting applicants for Live Scan Service fingerprints.

This proposed legislation authorizes the Regulation and Licensing Department (RLD), Cannabis Control Division to conduct a national fingerprint-based background (state and federal Next Generation Identification (NGI)) to determine the eligibility of specified individuals, as listed in the definitions. If the legislation is passed, the New Mexico Department of Public Safety will submit the new law to the Federal Bureau of Investigation (FBI) Criminal Justice Information Law Unit (CJILU). The CJILU will analyze the law and determine if it meets their standards for approval, and if the law meets the requirements of Public Law 92-544. In making this determination, the FBI considers: a) whether the authorization is a legislative enactment as opposed to an administrative rule; the statute must exist b) whether the statute requires the fingerprinting of applicants who are to be subjected to a national criminal history background check; c) whether the statute expressly ("submit to the FBI") or by implication ("submit for a national check"), authorizes the use of FBI records for the screening of applicants; d) whether the statute identifies the specific category(ies) of licensees/employees falling within its purview, thereby avoiding overbreadth; e) that the statute is not contrary to public policy; and f) that the statute does not authorize receipt of the CHRI by a private entity. Additionally, FBI policy requires that fingerprints be initially submitted to the state identification bureau, NMDPS (for a check of state records} and after that forwarded to the FBI for a national criminal history check.

If any definitions are considered too broad, the request for an Originating Agency Identify (ORI) will be denied. Historically, the Criminal Justice Information Law Unit (CJILU) will grant a partial approval of the request, or they will reject the entire request, and ask for changes in the legislation. Criminal Justice Agencies use the National Crime Information Center (NCIC).

When approved by the FBI, following Public Law 92-544, DPS will produce a state rap sheet from the NM Criminal History Repository along with an FBI rap sheet, which the Regulation and Licensing Department may access directly from the Civil Adjudication Response Solution (CARES) portal on the license applicant or prospective cannabis worker.

Upon request by the Regulation and Licensing Department (RLD), every license applicant or, in the case of a business entity, every cooperative member or director, manager, and general partner of the business entity, for a cannabis business license, or in the case of a business entity, every cooperative member or director, manager, and general partner of the business entity, and prospective cannabis worker must submit a completed criminal history records must be completed to include, a full set of classifiable fingerprints, and the required fees to the office. Upon receipt of this information, the New Mexico Department of Public Safety (NMDPS) will submit the completed fingerprints through the selected vendor NMDPS has contracted with to obtain the criminal history records check of the license applicant or prospective cannabis worker.

NMDPS may exchange a license applicant's or prospective cannabis worker's fingerprints with the Federal Bureau of Investigation to obtain the license applicant's or prospective cannabis worker's national criminal history record information. NMDPS must return the results of the New Mexico and federal criminal history records checks to RLD to determine if the license applicant or prospective cannabis worker is disqualified under specific rules if adopted.

RLD and not DPS will need to determine whether any felony convictions and what other convictions shall disqualify a person from holding or receiving a cannabis business license issued under this chapter or working for a cannabis business, and the length of any such disqualification.

PERFORMANCE IMPLICATIONS

None identified.

ADMINISTRATIVE IMPLICATIONS

None identified.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None identified.

TECHNICAL ISSUES

None identified.

OTHER SUBSTANTIVE ISSUES

None identified.

ALTERNATIVES

The Federal Bureau of Investigations (FBI) provides the authority to collect and exchange criminal history information (CHRI) and is generally predicated upon 28 U.S.C. 534. The FBI with the assistance of the United States Department of Justice, has determined the criteria to include: a) The statute must exist as a result of a legislative enactment; b) it must require the fingerprinting of applicants who are to be subjected to a national criminal history background check; c) it must, expressly ("submit to the FBI") or by implication ("submit for a national check"), authorize the use of FBI records for the screening of applicants; d) it must identify the specific category(ies) of licensees/employees falling within its purview, thereby avoiding overbreadth; e) it must not be against public policy; and f) it may not authorize receipt of the CHRI by a private entity. Additionally, FBI policy requires that fingerprints be initially submitted to the state identification bureau (for a check of state records) and thereafter forwarded to the FBI for a national criminal history check.

Regulation and Licensing Department (RLD) will need to apply for their own Originating Agency Identifier (ORI) through the Criminal Justice Information Law Unit (CJILU). The CJILU makes the final determination if the language suffices under Public Law 92-544 to grant the agency an ORI.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The status quo will remain. New Mexico Department of Public Safety will be able to only run state background checks through the NM Criminal History repository, a name-based record check. With the continued submission of a notarized Release of Authorization.

AMENDMENTS

None proposed.