

**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:*

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

**Date Prepared:**    02/01/2024

**Bill No:**    SB 274

**Sponsor:**    Sen. K. M. Duhigg

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

**Person Writing Analysis:**    Blaine N. Moffatt

**Short Title:**    CANNABIS  
COMPLIANCE BUREAU

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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
	\$325,000	Nonrecurring	General Fund

(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:

Senate Bill 274 (“SB274”) proposes creating the Compliance Bureau (the “Bureau”) in the office of the superintendent of regulation and licensing. SB274 describes the powers, duties, provides for enforcement of the Cannabis Regulation Act, including embargo, seizure and destruction of illegal, adulterated or dangerously or fraudulently misbranded cannabis. Additionally, SB274 proposes and appropriation of funds from the general fund to create the Compliance Bureau.

SB274 creates inspectors who shall be certified law enforcement officers to report to the superintendent or other person in charge of the Bureau. Inspectors shall have the same powers as law enforcement officers, shall investigate, and receive training.

SB274 creates an enforcement section that allows the Bureau to carry out announced or unannounced inspections, respond to allegations, issue administrative holds on cannabis product and licenses, embargo and seize cannabis product, petition the District Court for relief, issue recall orders, petition the District Court for condemnation of cannabis product, and cooperate with other state agencies.

SB274 also proposes to appropriate three hundred twenty-five thousand dollars (\$325,000) from the general fund to create and fund the Compliance Bureau during the 2025 Fiscal Year.

**FISCAL IMPLICATIONS**

The requirement of the newly created enforcement section that states that law enforcement or other state agencies shall cooperate with the newly created Cannabis Compliance Bureau and Cannabis Control Division. This request could have fiscal implications if this agency or bureau were called upon in its law enforcement capacity or other capacity to assist with cannabis enforcement operations.

As such, Section 3 of SB274 appropriates three hundred twenty-five thousand dollars (\$325,000) from the General Fund to create the compliance bureau, hire staff, create office space, and all equipment and supplies. This could potentially not be enough funds to create this type of

enforcement bureau.

## **SIGNIFICANT ISSUES**

SB274 proposes language 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.”

SB274 proposes language that 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.

SB274 proposes language that would allow the Bureau to put an administrative hold on cannabis products for “not ... longer than necessary to complete the division’s or the compliance bureau’s investigation.” This can create concerns in several different ways.

1. NMSA 1978, Section 61-1 Uniform Licensing Act (“ULA”) creates an avenue that if a licensee is in violation of any of the licensing requirements (as outlined in the Cannabis Regulation Act), that specific notice be given to the licensee. SB274 does have language of notice included, as well as the ability for the division to take disciplinary action. Under the ULA, every licensee or applicant shall be afforded notice and an opportunity to be heard before the board. There could be questions about whether this language is in accordance with the ULA as it is not cited in the proposed SB274.

SB274 proposes language that where a person intentionally, knowingly, or recklessly removes, conceals, destroys or disposes of a cannabis product subject to an administrative hold or embargo is guilty of a fourth (4<sup>th</sup>) degree felony. The Division and Bureau currently have under the ULA for violations of the Cannabis Regulation Act the ability to, when investigating complaints against licensees, applicants or unlicensed persons, a board may issue civil investigative subpoenas prior to the issuance of a notice of contemplated action as provided in this section. Creating criminal penalties within the proposed language could be outside the scope of the Division and Bureau and need to be addressed in criminal statute.

SB274 proposes that law enforcement officers be designated as investigators and that the division can require additional training. There is no reference to the selection process for these investigators, the training that would be required, disciplinary actions against the investigators for unlawful conduct, or authority of the division to create rules governing any of these issues. It could be beneficial to outline additional powers for the division or the bureau to have the ability to create rules governing the many different aspects of the investigators and their duties.

## **PERFORMANCE IMPLICATIONS**

None.

## **ADMINISTRATIVE IMPLICATIONS**

The Division taking on the time and expense with such a small appropriation to fund and deliver on the roles and duties expected of the investigators could be burdensome.

Should the requirement of Law Enforcement Officers remain in the bill to be investigators, the training requirements of the Law Enforcement Officers would likely need to be addressed by the New Mexico Law Enforcement Trainings and Standards Council for satisfactory completion.

Should the requirement of Law Enforcement Officers remain in the bill to be investigators, the enforcement of law enforcement standards may need to be taken up by the New Mexico Law Enforcement Academy.

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

HB 63 Cannabis School Use Prevention Resource Act  
HB 64 Cannabis Packaging Requirements  
HB 65 Cannabis Crime Reasonable Suspicion  
HB 66 Cannabis in Delinquency Act  
HB 128 Cannabis Regulation Changes  
HB 226 Cannabis Licensure Background Checks  
HB 239 Cannabis as Prison Contraband  
SB 6 Cannabis Regulation Changes

### **TECHNICAL ISSUES**

None.

### **OTHER SUBSTANTIVE ISSUES**

None.

### **ALTERNATIVES**

None.

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

Status Quo.

### **AMENDMENTS**

A definition for “cooperation” should be added to clarify the scope of other agencies’ responsibilities.

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.

Clarification and additional powers to create rules to govern the many aspects of the investigators.

Clarification and additional language to clarify that the administrative process of the ULA will be followed and adhered to.