

LFC Requestor: Anderson, Ginger

2024 LEGISLATIVE SESSION
AGENCY BILL ANALYSIS

Section I: General

Chamber: House

Category: Bill

Number: 128

Type: Introduced

Date (of THIS analysis): 1/24/2024

Sponsor(s): Andrea Romero, Katy Duhigg

Short Title: Cannabis Regulation Changes

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Section II: Fiscal Impact

APPROPRIATION (dollars in thousands)

Appropriation Contained		Recurring or Nonrecurring	Fund Affected
FY 24	FY 25		
\$0	\$0	NA	NA

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY 24	FY 25	FY 26		
\$0	\$0	\$0	NA	NA

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY 24	FY 25	FY 26	3 Year Total Cost	Recurring or Non-recurring	Fund Affected
Total	\$0	\$0	\$0	\$0	NA	NA

Section III: Relationship to other legislation

Duplicates: none

Conflicts with: none

Companion to: none

Relates to: SB 6, SB 99, HB 63, HB 64, HB 65, HB 66

Duplicates/Relates to an Appropriation in the General Appropriation Act: none

Section IV: Narrative

1. BILL SUMMARY

a) Synopsis

House Bill 128 (HB 128) proposes to amend Section 14-2-1 NMSA 1978 Chapter 130 Section 1 so that information obtained during an enforcement investigation by the Cannabis Control Division (CCD) of the Regulation and Licensing Department is not subject to the public records inspection requests (Page 3).

HB 128 changes the definition of a cannabis producer microbusiness to increase their mature cannabis plant total from two hundred plants to five hundred plants (Page 7). HB 128 also adds a definition of illegal cannabis products to include products produced or manufactured outside of New Mexico, products from unlicensed entities or persons, and products from an entity or person acting outside the limits of their license (Page 11).

HB 128 requires licensees to notify CCD when the licensee begins or ends operations pursuant to their license (Page 17).

HB 128 clarifies language in the Cannabis Regulation Act to prohibit cannabis licensees from occupying premises that also have a license under the Liquor Control Act so that no cannabis licensee may operate where alcohol is sold or consumed (Page 19). HB 128 removes the prohibition against a person owning both a cannabis license and a license under the Liquor Control Act (Page 20).

HB 128 allows for medical cannabis legacy nonprofit corporations to convert to for-profit corporations (Page 23).

HB 128 provides more power and oversight for CCD in their licensing and enforcement activities (Page 24). HB 128 also creates procedures for conducting criminal history background checks for licensure applicants (Page 31).

HB 128 allows post-secondary educational institutions to create curriculum to prepare students for participation in the cannabis industry (Page 37). The institution shall register their program with CCD and include information about the program on their website.

HB 128 expands packaging and labeling requirements so that cannabis edible packaging must be opaque (Page 38). Packaging and labels shall not mimic brands of non-cannabis consumer products marketed to children and shall not use cartoons, symbols, or images that are commonly used to market to children.

HB 128 establishes criminal charges for person 21 years or older who traffic cannabis products (Page 45). It also adds trafficking cannabis to the Racketeering Act (Page 56) and the Delinquency Act (Page 58). HB 128 also adds cannabis to the list of contraband substances in prison with the exception of medical cannabis (Page 52).

HB 128 establishes when a cannabis product may be deemed adulterated or misbranded and provides procedures for enforcement of these violations (Page 45 and 47).

HB 128 has an effective date of July 1, 2024 (Page 64).

Is this an amendment or substitution? Yes No

Is there an emergency clause? Yes No

b) Significant Issues

In the US, adult use cannabis legalization has led to growing concerns of exposure among children, particularly due to edible products. One study found that calls to national poison control centers related to cannabis exposures increased from 2017-2019 with edibles having the highest proportion of calls for children 10 years old or younger (Dilley et al., 2021. <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2780068>). Another study found a 1375% increase in cannabis-related calls for children less than 6 years of age from 2017 (207 cases) to 2021 (3,054 cases) (Tweet et al., 2023. <https://publications.aap.org/pediatrics/article/151/2/e2022057761/190427/Pediatric-Edible-Cannabis-Exposures-and-Acute?autologincheck=redirected>). 22.7% of those cases were admitted to the hospital.

Cannabis-related emergency department visits among children have also increased in recent years (CDC, 2021. <https://www.cdc.gov/marijuana/what-we-know.html>, Roehler et al., 2023. <https://www.cdc.gov/mmwr/volumes/72/wr/mm7228a1.htm>).

In New Mexico, cannabis-related calls to the New Mexico Poison Control Center have increased over time with the number of calls increasing from 84 cases in 2015 to 216 calls in 2022 (Data obtained from New Mexico Poison and Drug Information Center and analyzed by NMDOH Substance Use Epidemiology Section). Of the 216 cannabis-related calls in New Mexico in 2022, 50% of calls were for patients age 10 years or younger.

States with adult use legalization have had varied approaches to cannabis packaging regulations (Network for Public Health Law, 2022. <https://www.networkforphl.org/wp-content/uploads/2022/11/Packaging-Regulation.pdf>). Creating stricter rules for packaging, labeling, and advertising has been recommended to reduce potential harms. Currently, three states require plain packaging which generally requires packaging be a single uniform color and not use bright colors. Nine states require opaque packaging. Every state requires child-resistant packaging and some measure of prohibiting packaging and labeling that appeals to children. Three states require tamper-evident packaging where the package will show visible signs of being tampered with. Fourteen states specifically prohibit packaging that resembles commercially available foods such as popular brands of candy, cookies, and snacks. Thirteen states ban specific images or words

on packaging that would appeal to children such as images of cartoons, toys, animals, or characters or phrases that are often used to advertise to children. Four states require the poison control center number on cannabis product packaging. In this analysis, it was determined that New Mexico does not currently require plain and opaque packaging, does not require tamper-evident packaging, and does not prohibit packaging that resembles commercially available food.

House Bill 128 would add the requirements of opaque packaging and would add rules to prohibit packaging that mimics non-cannabis consumer products and to prohibit the use of images that appeal to children. However, the bill does not include rules to require packaging to be plain and a single uniform color or to prohibit the use of bright colors, so a product like the “Joybombs cannabis candy”

(<https://darkmatterabq.wm.store/menu/joy-bombs-sour-5fc78139-404f-4c04-b846-3e58c2e1696c?filter%5BanyCategories%5D%5B%5D=edibles&page=4>), the “Crumble Brookie Bars” (<https://oasiscannabisjt.wm.store/menu/crumble-brookie-bars-50mg-thc?filter%5BanyCategories%5D%5B%5D=edibles>), and the “Ganja Gummies” (<https://oasiscannabisjt.wm.store/menu/ganja-gummies-hi-c-100mg-thc-a676f917-857b-426c-af01-66debc671a17?filter%5BanyCategories%5D%5B%5D=edibles&page=9>) would likely still be allowed to be sold in their current forms. HB 128 also does not specifically prohibit the use of images of toys, animals, or phrases that appeal to children which may also make the rules stronger to protect public health. Furthermore, requiring edibles to be packaged as individually wrapped doses within their larger packaging would add extra boundaries to encourage adults to pause before consuming additional doses and would add an extra layer of protection for a small child who may come across open packaging.

HB 128 prohibits cannabis and alcoholic beverages from being sold or consumed on the same premises. This is important, as cannabis and alcohol are both intoxicating substances that can impair a person’s ability to drive. Co-use of alcohol and cannabis increases the risk of motor vehicle crashes (CDC MMWR, 2015 <https://www.cdc.gov/mmwr/preview/mmwrhtml/mm6448a1.htm>; Colorado Department of Public Health and Environment, 2022 [Reports and Summaries | Monitoring Health Concerns Related to Marijuana \(colorado.gov\)](#)).

2. PERFORMANCE IMPLICATIONS

- Does this bill impact the current delivery of NMDOH services or operations?
 Yes No
- Is this proposal related to the NMDOH Strategic Plan? Yes No
 - Goal 1:** We expand equitable access to services for all New Mexicans
 - Goal 2:** We ensure safety in New Mexico healthcare environments
 - Goal 3:** We improve health status for all New Mexicans
 - Goal 4:** We support each other by promoting an environment of mutual respect, trust, open communication, and needed resources for staff to serve New Mexicans and to grow and reach their professional goals

This bill may improve the health status of New Mexicans, and is in line with the FY24-26 SHIP for improving behavioral health outcomes.

3. FISCAL IMPLICATIONS

- If there is an appropriation, is it included in the Executive Budget Request?
 Yes No N/A
- If there is an appropriation, is it included in the LFC Budget Request?
 Yes No N/A
- Does this bill have a fiscal impact on NMDOH? Yes No

4. ADMINISTRATIVE IMPLICATIONS

Will this bill have an administrative impact on NMDOH? Yes No

5. DUPLICATION, CONFLICT, COMPANIONSHIP OR RELATIONSHIP

HB 128 is closely related to SB 6. SB 6 does not include a definition change of cannabis producer microbusiness to allow for an increased mature cannabis plant limit but is otherwise similar to HB 128.

HB 128 is related to HB 63 which would require the Department of Health to establish a cannabis prevention resource program for public schools.

HB 128 is related to HB 64 which adds packaging requirements for cannabis products.

HB 128 relates to HB 65 which would remove limitations on what may constitute reasonable suspicion of a crime involving cannabis.

HB 128 relates to HB 66 which amends definitions in the Delinquent Act to include cannabis use, possession, and production.

HB 128 is related to SB 99 which removes the incremental annual tax increases of cannabis excise taxes keeping the excise tax rate at 12%.

6. TECHNICAL ISSUES

Are there technical issues with the bill? Yes No

7. LEGAL/REGULATORY ISSUES (OTHER SUBSTANTIVE ISSUES)

- Will administrative rules need to be updated or new rules written? Yes No
- Have there been changes in federal/state/local laws and regulations that make this legislation necessary (or unnecessary)? Yes No
- Does this bill conflict with federal grant requirements or associated regulations?
 Yes No
- Are there any legal problems or conflicts with existing laws, regulations, policies, or programs? Yes No

Nationally, cannabis remains a schedule I drug, and possession, distribution, and use are illegal under Federal law. The conflict between state and Federal law may lead to a variety of unintended consequences.

8. DISPARITIES ISSUES

In New Mexico, cannabis-related calls to the New Mexico Poison Control Center have increased over time with the number of calls increasing from 84 cases in 2015 to 216 calls in 2022 (Data obtained from New Mexico Poison and Drug Information Center and analyzed by NMDOH Substance Use Epidemiology Section). Of the 216 cannabis-related calls in New Mexico in 2022, 50% of calls were for patients age 10 years or younger. Enacting stricter packaging rules may reduce the number of accidental exposures among young children in New Mexico.

9. HEALTH IMPACT(S)

Stricter packaging and labeling requirements as written in HB 128 may reduce accidental exposures in young children and may reduce overconsumption of edibles by adults. In New Mexico, cannabis-related calls to the New Mexico Poison Control Center have increased over time with the number of calls increasing from 84 cases in 2015 to 216 calls in 2022 (Data obtained from New Mexico Poison and Drug Information Center and analyzed by NMDOH Substance Use Epidemiology Section). Of the 216 cannabis-related calls in New Mexico in 2022, 50% of calls were for patients age 10 years or younger.

The provision in HB 128 that cannabis and alcoholic beverages may not be sold or consumed on the same premises is a positive change for public safety. The simultaneous use of cannabis and alcohol increases the likelihood of motor vehicle crashes and injuries (CDC MMWR, 2015 <https://www.cdc.gov/mmwr/preview/mmwrhtml/mm6448a1.htm>; Colorado Department of Public Health and Environment, 2022 [Reports and Summaries | Monitoring Health Concerns Related to Marijuana \(colorado.gov\)](#)). By prohibiting their consumption at the same licensed location, the co-use of these substances may be decreased among persons consuming these substances at an establishment.

10. ALTERNATIVES

None.

11. WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

If HB 128 is not enacted, changes to the Cannabis Regulation Act will not occur including increasing the enforcement and licensing power of CCD, packaging and labeling requirement changes, and clarifying language to ensure cannabis and alcohol sales cannot be co-located.

12. AMENDMENTS

None.