

LFC Requester:

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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 January 31, 2024

Bill No: SJC Sub. SB6

Sponsor: Senator Katy Duhigg
Short Title: Cannabis Regulation Changes

Agency Name and Code: Regulation and Licensing Department - 420
Number:

Person Writing: Kevin Graham & Robert Sachs

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
N/A	N/A	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		
30	40	50	Recurring	General Fund

(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	None	None	None	None		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: HB128

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis of Senate Judiciary Committee Substitute for SB6 (SJCSUBSB6):

As compared to the original SB6, SJCSUBSB6 makes the following additions, deletions and changes:

Title: Adds: "PROHIBITING DRIVE-UP WINDOWS AT CANNABIS RETAIL ESTABLISHMENTS"; and
Deletes: "PROVIDING FOR SEIZURE AND DESTRUCTION OF ILLEGAL, ADULTERATED OR MISBRANDED CANNABIS PRODUCTS"

Section 1: Unchanged from original bill.

Section 2: Unchanged from original bill.

Section 3: Unchanged from original bill.

Section 4:

1. The language of §26-2C-6 (N) NMSA 1978 (which was re-numbered as subsection (P) of the statute in the original SB6) is struck by SJCSUBSB6. [~~N. A person who is a member of the New Mexico senate or the New Mexico house of representatives on the effective date of the Cannabis Regulation Act shall not apply for or be granted a license to engage in any commercial cannabis activity prior to July 1, 2026.~~] Following subsections of §26-2C-6 NMSA 1978 are re-numbered.
2. Language from the original SB6 adds a new subsection (O) to §26-2C-6 NMSA 1978. That new subsection is amended by SJCSUBSB6 which strikes the last two sentences of the new language. [~~. . . To be valid, the agreement of conversion shall be approved by a majority of the members of the board of directors of the nonprofit corporation. Upon conversion, all property owned by the converting entity remains in the newly converted entity. Any action or proceeding pending against the converting entity may be continued as if the conversion had not occurred.~~]

Section 5: Unchanged from original bill.

NEW Section 6 of SJCSUBSB6: Adds a new section to the Cannabis Regulation Act [as well as

to the original SB6] stating: “No cannabis retail establishment shall sell any cannabis product from a drive-up window.”

Section 7 [Compare to Section 6 of the original SB6]: Unchanged from original bill.

Section 8 [Compare to Section 7 of the original SB6]: Unchanged from original bill.

Section 9 [Compare to Section 8 of the original SB6]: Unchanged from original bill.

Section 10 [Compare to Section 9 of the original SB6]: Unchanged from original bill.

Section 11 [Compare to Section 10 of the original SB6]: Unchanged from original bill.

Section 12 [Compare to Section 11 of the original SB6]: Unchanged from original bill.

Section 13 [Compare to Section 12 of the original SB6]:

1. Makes changes to the language of the original bill amending §26-2C-28 NMSA 1978 regarding “trafficking cannabis products.”
2. Adds a new subsection B (and re-numbers the following subsections) which sets threshold amounts of cannabis products that must be possessed by an individual for the crime of “trafficking cannabis products” to apply. [“Trafficking cannabis products applies only to quantities of more than fifteen ounces of cannabis flower, one hundred twenty grams of concentrate or six grams of edibles.”]
3. Amends the penalty provision for persons twenty-one years or older [now subsection F] to specify a fourth degree felony for a first offense and a third degree felony for a second or subsequent offense. [Removing the provision for a second degree felony for a third or subsequent offense that had been in the original SB6.]
4. Adds a new subsection G to §26-2C-28 NMSA 1978 stating: “The provisions of the Forfeiture Act apply to the seizure, forfeiture and disposal of such property.”

Section 14 [Compare to Section 13 of the original SB6]: Unchanged from original bill.

Section 15 [Compare to Section 14 of the original SB6]: Unchanged from original bill.

DELETION OF SECTION:

The language which had been Section 15 of the original SB6 – “ENFORCEMENT--EMBARGO AND RECALL, SEIZURE AND CONDEMNATION--PROCEDURES—PENALTIES” was stricken in its entirety by SJCSUBSB6.

Sections 16 through 19: Unchanged from original bill.

Synopsis of ORIGINAL SB6:

Senate Bill 6 (SB6) is a state agency bill requested by the New Mexico Regulation and Licensing Department (RLD) in the furtherance of the duties and responsibilities of the Department’s Cannabis Control Division (CCD).

IPRA Exception: This bill amends Section 1 of the Inspection of Public Records Act, 14-2-1 NMSA 1978 *et seq.*, “Right to Inspect Public Records – Exceptions ---,” as well as Section 36

of the Cannabis Regulation Act (“CRA”), 26-2C-1 *et seq.*, “Public Records and Open Meetings –.” The proposed change would create an IPRA exception for records developed or obtained by the RLD’s CCD during an enforcement investigation.

Changing Definitions: This bill amends Section 1 of the CRA, “Definitions.” The proposed changes to cannabis related definitions are summarized as follows:

- Removing “advertisement”: this definition is removed and new language added to the definition at section 26-2C-20 NMSA 1978 for “Advertising and Marketing Restrictions,” which is specific to marketing and advertising.
- Amending “cannabis consumption area”: definition is clarified to specify that a cannabis consumption area is a licensed premise.
- Amending “cannabis courier”: definition clarified by using the proposed definition of “consumer.”
- Amending “cannabis establishment”: definition clarified that a cannabis consumption area is a cannabis establishment.
- Amending “cannabis manufacturer” and “cannabis producer”: definitions are clarified by removing mention of testing of cannabis and cannabis product as that language is not necessary for the definitions of these license types.
- Amending “cannabis retailer”: definition is clarified by using the proposed definition of “consumer.”
- Removing “cannabis server permit” and “cannabis server permit education provider”: these definitions are removed and language added to the section specific to cannabis server permits.
- Amending “cannabis testing laboratory”: the definition is clarified that a cannabis testing laboratory is a facility, not a person.
- Removing “cannabis training and education program”: the definition is removed and language added to section 10, “Cannabis Training and Education Programs – Registration with Division –”. Section 10 is specific to cannabis training and education programs.
- Amending “commercial cannabis activity”: definition is clarified by adding packaging to the definition, making it consistent with language throughout the statute. Also language around cannabis training and education programs is removed for consistency with the proposed changes to those programs.
- Amending “consumer”: definition is clarified that a qualified patient is also a consumer.
- Amending “facility”: definition clarified by adding “storage” and “sale and consumption” as activities that take place on cannabis facilities. Also “possession” and “cannabis, cannabis extracts” are removed due to duplicative language.
- Amending “homegrown” or “homemade”: definition clarified that homegrown or homemade cannabis is not meant for resale.
- Removing “household”: definition is removed and language added to the proposed definition of “residence” or “household”.
- Adding “illegal cannabis product”: creates the definition of illegal cannabis product.
- Amending “integrated cannabis microbusiness”: definition is amended to clarify that these licenses may engage in wholesale activity amongst the same license types.
- Amending “licensed premises”: definition clarified by removing duplicative language and specifying that the area around a cannabis consumption area is also considered a “licensed premise.”
- Amending “local jurisdiction”: definition clarified to align with legal structure of municipalities and home rule municipality.
- Amending “manufacture”: definition clarified to align language with other parts of statute.

- Amending “medical cannabis registry”: definition clarified to add “primary caregivers.”
- Amending “public space”: definition clarified by removing examples of what constitutes a public space.
- Adding “residence” or “household”: language added clarifying what constitutes a residence or household for the purposes of homegrown cannabis.
- Amending “retail establishment”: definition is amended using the proposed definition of “consumer.”

Changes to Licensing: This bill amends Section 6 of the CRA, “Licensing Cannabis Activities – Limitations – Medical Cannabis Legacy Licensing – Cannabis Shortage for Medical Program – Conversion of Nonprofit Medical Cannabis Corporations.” The proposed changes are summarized as follows:

- Clarifying that the CCD shall follow the provisions of the Uniform Licensing Act, 61-1-1 *et seq.*, when carrying out its regulatory duties;
- Adds language requiring licensees to notify the CCD when a licensee begins or ends operations;
- Adds language to clarify that licenses shall not be subject to execution, attachment, a security transaction, liens or receivership, which was language originally found in Section 7 of the CRA;
- Clarifying that licensed liquor and licensed cannabis activity cannot happen on the same premises;
- Clarifying that a natural person may hold both a license issued by the CCD as well as a liquor license issued by the Alcohol Beverage Control (ABC), provided that the two licensed activities do not take place at the same premises; and
- Adding language to allow for non-profit organizations licensed under the Department of Health’s Medical Cannabis Program to convert their corporate structure to for-profit legal entities.

Changes to Disciplinary Action: SB6 amends Section 7 of the CRA, “Cannabis Activity Licensing – Application – Issuance and Denial of a License – Suspension and Revocation.” The proposed changes are summarized as follows:

- Removing language that licenses shall not be subject to execution, attachment, a security transaction, liens or receivership and adding that language to Section 6 (see above);
- Adding language to allow the CCD to deny an application for licensure based on the following criteria:
 - o licensure denial or revocation in another state;
 - o a tax lien;
 - o pending investigations or felony indictments involving fraud, deceit or embezzlement;
 - o pending investigations or felony indictments involving producing, manufacturing, distributing, selling or giving away illegal cannabis products;
 - o pending investigations or felony indictments involving employing a person younger than 18 years of age or involving trafficking, forced labor or other exploitation;
 - o repeated notice of noncompliance with state or local rules; and
 - o any other action that in the RLD’s determination makes the person unqualified to be licensed or involved in a cannabis business;
- Adding language providing that the production, manufacture, distribution, sale or possession of illegal cannabis is grounds for denial, suspension, or revocation of a license;

and

- Removing language related to criminal background checks (language on this subject added to a new section of the CRA, see below).

Adding Language to Allow for Federal Background Checks: This bill creates a new section of the CRA, “Criminal History Background Checks – Processes and Procedures.” This proposed change would remove language that has thus far prevented the RLD from being allowed an Originating Case Identifier (ORI) number issued by the Federal Bureau of Investigation (FBI). The CCD must have an ORI number for the CCD to obtain federal criminal history background checks on cannabis applicants utilizing an applicant’s fingerprints. The proposed language would allow the RLD to once again submit a request to the FBI for an ORI number to be issued to the CCD so that the CCD will be able to run federal background checks on cannabis license applicants.

Removal of Licensing Fee Maximum: SB6 amends Section 9 of the CRA, “Application and Licensing Fees --” to remove the \$125,000 licensing fee maximum, which currently allows the largest licensees to expand operations without any additional cost after hitting \$125,000 in annual fees.

Clarifying Role of CCD In Education: Section 10 of the CRA, “Cannabis Training and Education Programs – Registration with Division --” is amended to remove the requirement that colleges and universities become licensed with the CCD to teach courses on cannabis, and instead requires them to report course offerings to be posted on the CCD website.

Clarifying Packaging, and Labeling Requirements: Section 17 of the CRA, “Cannabis Products – Packaging and Labeling – Division Rulemaking --” is amended as follows:

- Removing the requirement that packaging must be compostable and recyclable as packaging that is compostable, recyclable, resealable, and child-resistant is not readily available;
- Adding language that packaging and labeling shall not mimic the brand, design, logo or colorway of a non-consumer product marketed to children;
- Adding language that packaging and labeling shall not use cartoons or symbols or images, including images of celebrities or celebrity likenesses, that are commonly used to market to children; and
- Adding language that packaging containing edible cannabis products shall be opaque.

Testing Cannabis Products: SB6 amends section 18 of the CRA, “Testing Cannabis Products – Health and Safety of Employees and Consumers --” to clarify that producers and manufacturers must have cannabis products tested prior to distribution to cannabis retailers.

Advertising and Marketing Restrictions: Section 20 of the CRA, “Advertising and Marketing Restrictions --” is amended to remove the definition of “advertising” from Section 2, “Definitions” and moves it to this section.

Cannabis Trafficking: SB6 amends Section 28 of the CRA, “Trafficking Cannabis Products – Penalties --.” The proposed changes are summarized as follows:

- Clarifying that production, manufacturing, distribution, couriering, or selling of illegal cannabis products, or possession with the intention to manufacture, distribute, courier, or sell illegal cannabis products constitute trafficking;

- Adding reference to the Delinquency Act, which provides additional penalties for juveniles found to illegally engaged in cannabis activity; and
- Removing and replacing the current criminal penalties for trafficking of cannabis, with enhancements for repeated offenses.

Embargo and Seizure of Adulterated and Misbranded Cannabis: This bill adds three connected sections, “When Cannabis Product is Deemed Adulterated,” “When Cannabis Deemed Misbranded,” and “Enforcement – Embargo and Recall, Seizure and Condemnation – Procedures – Penalties --.” The first two sections define when cannabis and cannabis product is deemed to be adulterated or misbranded. The third section gives the CCD authority to place an administrative hold on cannabis product, embargo or seize cannabis product, and petition the district court for condemnation or for injunctive relief in the event such product is found to be adulterated or misbranded. The last section also provides a process by which cannabis products would be held, embargoed, or seized.

Criminal Penalties: SB6 amends various criminal and delinquency provisions including: sections 30-22-14 NMSA 1978; 30-42-3 NMSA 1978; and 32A-2-3 NMSA 1978. The proposed changes would: clarify that cannabis in prisons is considered cannabis, add cannabis trafficking to the definition of racketeering, and add cannabis trafficking to the definition of delinquency.

Adding the RLD’s Cannabis Control Division to the Uniform Licensing Act: This bill amends Section 2 of the Uniform Licensing Act, “Definitions,” section 61-1-2 NMSA 1978. This proposed change would specify directly within the Uniform Licensing Act that the Cannabis Control Division is subject to the Uniform Licensing Act.

Repealing the Plant Count Repeal: This bill repeals Laws 2021 (1st S.S), Chapter 4, Section 73. This change would remove the provision currently in the CRA that provides for a delayed repeal of the RLD’s authority to set a maximum cannabis plant count that licensees engaged in cannabis production may possess in New Mexico at a given time. This change would allow the RLD to continue to set a maximum cannabis plant count in New Mexico for licensees engaged in cannabis production in perpetuity. The RLD’s authority to set this maximum cannabis plant count is currently set to expire December 31, 2025.

FISCAL IMPLICATIONS

Fiscal Impact on the RLD for SJCSUBSB6:

- In light of all other changes made by SJCSUBSB6 to the requirements of the original bill, the RLD surmises that the CCD will be able to carry out the additional administrative responsibilities concerning federal background checks of licensees without the need for additional staff positions. There is therefore no longer an anticipated fiscal impact for the RLD from the background investigations provision of the bill.
- SJCSUBSB6’s deletion of what had been Section 15 of the original SB6 [regarding Enforcement-Embargo and Recall, Seizure and Condemnation-Procedures] removes both the authority and responsibility for carrying out the functions and duties that would have been assigned to the CCD under the original bill. Thus, any fiscal impact that would have resulted from the former section of the original bill is not applicable to SJCSUBSB6.

Fiscal Impact on the RLD for Original SB6:

Changes made by SB6 that are anticipated to impact the RLD fiscally are: (1) the addition of the ability to run federal criminal background checks; and (2) the ability to embargo and seize cannabis or cannabis products that are found to be adulterated or misbranded.

Upon the CCD receiving an ORI number, as contemplated by the bill, in order to run the federal criminal background checks required by the CRA, the CCD will require additional staffing for its Licensing Team to process both the backlog of current “controlling persons” for CRA licensees as well as to process the influx of new criminal history background checks that will be performed for applicants seeking initial CRA licensure. This change to the law will result in an increased workload for the CCD’s Licensing Team which the RLD expects will necessitate hiring an additional three (3) licensing clerks, which are officially designated as Business Operations Specialists (Class Code: C11990 – Pay Band: 55). If hired at pay band midpoint, the addition of these employees would run \$62,578 (including benefits) per employee, for a total of \$187,734 on an annual basis. [Note: The RLD believes these additional employees could be accommodated within the existing office space allocated to the CCD, so no additional funds for rent/facilities maintenance have been included in this cost calculation.]

Regarding the additional administrative powers of embargo and seizure of cannabis and cannabis product, the CCD’s Compliance Team will require additional staffing to carry out these new responsibilities. The RLD believes an additional thirteen (13) compliance officers will be necessary to perform the activities involved in the issuance and execution of administrative holds. In the event cannabis product is found to be adulterated or misbranded (requiring destruction of that product), RLD staff would need to be present to supervise such operations. Compliance officers who conduct field work, such as operations considered in SB6, are classified as Compliance Officer A (Class Code: C1041A – Pay Band: 65). At midpoint this would be \$84,837 (including benefits) for each field compliance officer. However, each officer will also require essential equipment to carry out their job responsibilities, which include tablet computers for field inspections, vehicles for travel to licensed premises located throughout the state, and necessary personal protective equipment (PPE). On average associated costs of a field officer work out to \$161,000 annually. This would bring the total additional compliance cost to \$2,093,000 on an annual basis.

In total, including both the licensing and compliance staffing and required equipment and vehicles, the RLD would require an additional \$2,280,734 annually to effectively carry out the additional duties and responsibilities required of the CCD by SB6.

RLD revenue is expected to increase slightly through the removal of the \$125,000 licensing maximum. The RLD estimates the increased revenue through the removal of this licensing maximum to be approximately \$30,000 annually. This number could potentially increase year to year as the New Mexico cannabis market matures and licensees engaged in cannabis production grow in size. The CCD has estimated that year-over-year increase in licensing revenue brought in under the CRA will be approximately \$10,000 each year.

SIGNIFICANT ISSUES

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SJCSubSB6 contains much of the same language as HB128, sponsored by Representative Andrea Romero and Senator Katy Duhigg. In addition to the changes between the original SB6 and SJCSubSB6, there only difference between the bills is the provision in HB128 which would increase the plant count limitation for a “cannabis producer microbusiness” from the current limit of 200 plants to a new limit of 500 plants.

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL (SJCSubSB6)

- The CCD will continue to lack the ability to obtain federal criminal background checks on applicants for new CRA licenses as well as the controlling persons of current CRA licensees;
- The RLD’s ability to set a plant count limit for licensees engaged in the production of cannabis in New Mexico will expire, allowing all such licensees (except microbusiness license types) to grow an unlimited amount of cannabis plants beginning January 1, 2026;
- Ambiguity concerning the legality of cannabis microbusinesses engaging in wholesale transactions with other cannabis microbusinesses will continue;
- Persons owning a liquor license issued pursuant to the Liquor Control Act will continue to not be able to hold a cannabis license;
- All legacy cannabis businesses that were initially licensed pursuant to the Lynn and Erin Compassionate Use Act administered by the Department of Health (“DOH”) will continue to be required to be non-profit entities;
- Disqualifying conditions for licensure will remain solely based on a person’s limited criminal history background check, and the CCD will not be able to deny a license based on disciplinary action by cannabis regulatory agencies in other states;
- Licensing fees for the largest cannabis business licensees will remain at a maximum of \$125,000 which will allow those largest operators to expand operations at a reduced fee, while small operators will have to pay for each additional premise or additional plants (until reaching the \$125,000 fee cap);
- Criminal penalties for trafficking will remain low, which thus far have not served as a deterrent for those committing trafficking crimes; and
- Ambiguities will remain concerning cannabis packaging, responsibility for training and educational programs, and at what point cannabis and cannabis product must to be tested.

AMENDMENTS