

LFC Requester:

Noah Montano

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: February 27, 2025

Check all that apply:

Bill Number: HB 112

Original ☐ Correction ☐
Amendment ☐ Substitute ☒

Sponsor: Rep. Tara L. Lujan

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

Person Writing

Short Title: CANNABIS LICENSURE
CHANGES

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

None identified at this time.

Duplicates/Relates to Appropriation in the General Appropriation Act

None identified at this time.

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:

The substitute bill varies from the original bill in that in Section 3, the substitute bill removes the definitions for director, member and manager, officer, and partner from NMSA 1978, Section 26-2-3.1 Criminal History Background Checks -- Processes.

The substitute bill varies from the original bill in that in Section 3, the substitute bill uses the phrase *all controlling persons of an applicant* when referencing that information submitted by the applicant must be considered.

The substitute bill varies from the original bill in that in Section 4, the substitute bill adds the phrase *for any type of cannabis producer or cannabis producer microbusiness* where it references that there is a requirement as a condition of licensing that the applicant demonstrate that the applicant has a legal right to a commercial water supply, water rights or other source of water sufficient to meet the water needs.

Consistent with the original bill, Section 1 of the substitute bill adds definitions to the Cannabis Regulation Act, including the term applicant and the term licensee.

Consistent with the original bill, Section 2 of the substitute bill provides for the Cannabis Control Division of the Regulation Licensing Department to receive and maintain information and data relating to licensing disqualifications based on criminal history.

Consistent with the original bill, Section 3 of the substitute bill provides for state criminal history checks and national criminal history background checks as a condition of eligibility for licensure, it details a process for processing background checks and provides for confidentiality of the information.

Consistent with the original bill, Section 4 of the substitute bill deletes prior dates that are no longer necessary or relevant and adds language requiring an application for cannabis activity licensure be signed by the applicant and if the applicant is a corporation by an officer or legally

authorized person to sign for the corporation.

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

The substitute bill, in Section 3, varies from the original bill in that it uses the phrase *all controlling persons of an applicant* when referencing that information submitted by the applicant must be considered. However, in other parts of that same paragraph or subsection, the phrase *all controlling persons of an applicant* is not used, and applicant continues to be used. This appears to be inconsistent and unclear as to why not every reference to applicant is changed to *all controlling persons of an applicant* in that paragraph or subsection.

Section 3 of the substitute bill, just as in the original bill, makes note that background checks are to be completed to investigate the suitability of an applicant for the medical cannabis program or commercial cannabis activity. However, there is still no specific description for what is to be considered suitable for purposes of being licensed for these purposes. This may result in increased litigation to ascertain whether a determination of non-suitability was in compliance with the statute.

Section 3 of the substitute bill, just as in the original bill, provides that the Criminal History Information shall not be disclosed to anyone other than public employee directly involved in the decision affecting the applicant. Because of a potential ambiguity in the word directly, this language would be more difficult to implement than the other language in the same provision that provides that the Criminal History Information shall be restricted to the exclusive use of the Cannabis Control Division of the Regulation Licensing Department for evaluating an applicant's eligibility or disqualification for licensure.

Section 3 of the substitute bill, just as in the original bill, provides that Cannabis Control Division of the Regulation Licensing Department and the Department of Public Safety shall adopt rules to carry out the provisions of this section. However, the bill does not appear to clearly divide or assign which areas the Cannabis Control Division is responsible for in terms of promulgating a rule, or which the Department of Public Safety is responsible for, and ultimately which entity would reach a final determination.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

N/A

TECHNICAL ISSUES

Section 2 of the substitute bill, just as in the original bill, removes the word license applicants.

This appears to be intended as a non-substantive change. However, the term license applicants appears in another page in the bill.

Section 3 of the substitute bill, just as in the original bill, references that the criminal history information shall not be considered a public record pursuant to the Public Records Act. However, the proposed language is likely to be intended to be that the criminal history information shall not be considered a public record pursuant to the Inspection of Public Records Act or IPRA found at 14-2-1, NMSA, which differs from the Public Records Act, 14-3-1, NMSA.

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

N/A