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## FISCAL IMPACT REPORT

SPONSOR Sanchez ORIGINAL DATE 2/10/2016  
LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_  
SHORT TITLE Medical Cannabis Financial Transactions SB 235  
ANALYST Rogers

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	Indeterminate	Indeterminate	Indeterminate	Indeterminate	Indeterminate	Indeterminate

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General's Office (AGO)

Department of Health (DOH)

Department of Public Safety (DPS)

### SUMMARY

#### Synopsis of Bill

Senate Bill 235 enacts a new section and amends Section 26-2B-1 NMSA 1978. The bill states that the use of cash in connection with medical cannabis is detrimental to public safety and requires DPS to contract with a financial processing provider to process medical cannabis related financial transactions before September 1, 2016. It further specifies the qualifications of the financial processing provider.

SB 235 requires that once a contract with an appropriate financial processing provider as defined by the bill is in place and a date for performance is established, NMCD and DOH shall notify licensed producers, primary caregivers, and qualified patients that all financial transactions related to medical cannabis shall be made through the provider and shall not be made using cash.

SB 235 also requires DPS promulgate rules for financial transactions related to medical cannabis using cash or another method if the provider that contracted with the department is temporarily unable to process those transactions due to unforeseen circumstances.

## **FISCAL IMPLICATIONS**

DPS stated that an appropriation will be necessary to carry out the bill, as the duties fall outside the scope of the department's current responsibilities, resources, and expertise.

DPS states that SB 235 would add a new level of responsibility to DPS without providing funding to fulfill the new duties. It is unknown what the actual cost would be, as similar responsibilities are not located within the Department. However, it can easily be anticipated that the program would require additional employees to address ongoing communications and problems associated with such a program. In addition, there would be costs associated with hiring a financial provider to process the payments and likely a per-transaction cost charged by the provider. DPS currently pays \$2.00 per transaction for when individuals pay for fingerprinting charges. The number of transactions associated with medical cannabis payments is unknown, but likely significant.

Given the breadth of the expression "cannabis-related financial transactions," the payment of fees to DOH might be subject to the financial processing requirements of the bill. As such, the bill could potentially impact the DOH's receipt of licensing fees from licensed producers, as credit card processing companies typically take between seven and nine percent of the money exchanged in all of their transactions. It could also impact the receipt by DOH of replacement card fees from enrolled patients.

## **SIGNIFICANT ISSUES**

SB 235 places the authority and responsibility on DPS to contract with a provider to process financial transactions for medical cannabis related sales. The organizational units of the department and its powers and duties are included in Section 9-19-7 NMSA 1978, and are also generally discussed or defined in other related statutes. The task of contracting with a provider for these financial transactions expands beyond the scope of the department's responsibilities; DPS does not contain the expertise for the task as the bill currently provides.

The bill requires that DPS promulgate rules for transactions to be made using cash or another method if the contracting provider is temporarily unable to process those transactions due to unforeseen circumstances. This does not expressly grant authority nor does it appear to account for a situation where the provider is permanently unable to process those transactions due to unforeseen circumstances, or where contract litigation arises and the services are stalled for an extended, undefined period of time and with the possibility of reinstatement.

DOH stated that it is unclear that cash transactions in connection with medical cannabis present any undue public safety concerns. As such it is uncertain that DPS would be the appropriate entity to initiate and oversee a contract with a financial processing provider to process medical cannabis related transactions.

The Medical Cannabis Program (MCP) at DOH is required to adhere to federal Health Insurance Portability and Accountability Act (HIPPA) standards for privacy. Requiring patients and caregivers to submit electronic payments to an entity external to DOH could be construed as a violation of the person's confidentiality and status related to their enrollment.

DOH explains that in order for DPS to effectively manage the contract with the financial processing provider, they would likely require some access to MCP enrollee information. The proposed legislation does not clearly state what access or limited access DPS would have to the financial transactions. Currently, the only fees charged to enrollees are for Personal Production Licenses and replacement card fees. If DPS were to have access to the records, they could conceivably use those records to identify those enrolled in the program, and use that enrollment as an investigative tool. While DOH can confirm the status of an applicant for law enforcement it must be related to an ongoing investigation.

DOH also is concerned that the proposal to require primary caregivers and qualified patients to use a “payment card” may be discriminatory. Many MCP enrollees may not have experience with or access to payment cards and may rely on cash for all of their transactions.

SB 235 does not provide a mechanism for payment for the services rendered by the financial processing provider. Presumably an appropriation would be required, or a fee would be necessary. SB 235 does not prevent the financial processing provider from charging any fees to primary caregivers, qualified patients, and others who are would be required to exclusively use their services. Many MCP enrollees would find any additional fees burdensome.

SB 235 would require DOH to revise the New Mexico Administrative Code pertaining to MCP. This can be a long process and takes significant staff time.

According to DOH, federal banking laws may still impact the ability of a financial processing provider to process these financial transactions. It is unclear what relationship such a processing entity would have to banking institutions, and whether federal laws would prohibit their engagement in this activity. Federal banking laws will almost certainly continue to impact the ability of licensed non-profit medical cannabis producers to receive payments through any such financial processing provider, as producers would effectively be required to receive payments from their customers through a banking institution. Some producers have historically engaged in cash transactions (rather than credit or debit card or check transactions) due to federal banking restrictions that subject them to the potential forfeiture, due to the conflict of state law with the U.S. Controlled Substances Act (which identifies cannabis as a Schedule I drug).

DOH explained that due to the breadth of the expression “cannabis-related financial transactions,” other cannabis-related businesses, such as approved couriers, laboratories and manufacturers could also effectively be required to utilize banks for all financial transactions. The breadth of this expression may have other, unanticipated impacts on medical cannabis-related businesses.

DOH states that although SB 235 was apparently intended to limit the use of cash in cannabis-related financial transactions, it would also have the consequence of further preventing medical cannabis businesses from using business checks or other processing services through banking institutions that have agreed to work with the medical cannabis businesses. For example: a licensed medical cannabis producer that has a bank account would be prevented from paying for products or services by a business check or money order. This is because the bill requires that all medical cannabis-related financial transactions go through the DPS-contracted financial processing entity, rather than a producer’s chosen banking institution. Some producers of other cannabis-related businesses have been able to successfully open bank accounts in the state. In New Mexico as in other states that have medical cannabis programs, the banking institutions that

have been most willing to work with such businesses have tended to be local credit unions. Based on guidance from federal officials, those entities have in turn developed a practice of submitting “Suspicious Activity Reports” to federal banking regulators that identify the transactions as having been specific to medical cannabis. Federal authorities have indicated that, by “flagging” the medical cannabis transactions in this way, the banking institutions will have complied with their responsibilities under federal banking laws.

The expression “cannabis-related financial transactions” could be interpreted to extend to the payment of licensing fees by producers (“producers” meaning both non-profit producers, and patients seeking to become personal production license holders) to DOH. It could also impact the payment of replacement enrollment card fees by enrolled patients. It is unclear how much such a processing service would cost, and whether the payment of fees through such a processing service to DOH would require payment of a percentage of the licensing fees to the entity.

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