

LFC Requester:	Rachel Mercer-Garcia
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AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO
AgencyAnalysis.nmlegis.gov and email to billanalysis@dfa.nm.gov
(Analysis must be uploaded as a PDF)

SECTION I: GENERAL INFORMATION

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

Date Prepared 1/31/25 *Check all that apply:*
Bill Number: HB0230 Original Correction
 Amendment Substitute

Sponsor: <u>Reena Szczepanski, Elizabeth "Liz" Thomson</u>	Agency Name and Code Number: <u>Dept. of Workforce Solutions-631</u>
Short Title: <u>Cannabis Testing Certain Employees</u>	Person Writing: <u>Sarita Nair</u>
	Phone: <u>505-263-3187</u> Email: <u>Evan.Sanchez@dws.nm.gov</u>

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY26	FY27		
0	0		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY26	FY27	FY28		
0	0	0		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY26	FY27	FY28	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$50.0	\$50.0	\$50.0	\$150.0	Recurring	General

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

This bill provides additional protection for certain employees using cannabis under the Lynn and Erin Compassionate Use Act (the “Act”).

Synopsis:

Currently, under NMSA 26-2B-9, employers may not take any adverse employment act against an employee who is a qualified patient of the Lynn and Erin Compassionate Use Act, unless a failure to do so would cause the employer to lose a monetary or licensing-related benefit under federal law or federal regulations. Exceptions currently exist to allow adverse employment action if (1) an employee uses or is impaired by medical cannabis on the premises of the place of employment or during the hours of employment; or (2) the employee works in a safety-sensitive position. The Act defines "safety-sensitive position" as “a position in which performance by a person under the influence of drugs or alcohol would constitute an immediate or direct threat of injury or death to that person or another.”

HB 230 clarifies that an employee would not be considered impaired if only metabolites or components of cannabis are present but below the threshold for impairment in a drug test. Each employer would need to determine its own definition for "cannabis impairment” based on medical research and including the evaluation of physical symptoms and psychomotor and cognitive performance (akin to a field sobriety test).

In addition, HB 230 would prohibit random drug tests that test for cannabis in all instances. Post-accident and reasonable suspicion drug tests for cannabis would still be permitted, but a medical officer would be required to review any positive results.

The Department of Workforce Solutions (DWS) would be responsible for working with the Department of Health to develop cannabis impairment guidelines “based on the most reliable research- or evidence-based cannabis impairment indicators.” DWS would also be required to inform private employers of the new standards and “to provide information related to the most recent advances in testing protocols for determining cannabis impairment.” The Department of Finance and Administration would be the agency responsible for implementing the law for state agencies.

The National Center for Biotechnology Information of the National Institutes of Health (NIH) notes:

Determining impairment risk has been a significant challenge for many clinicians. There is a lack of suitable testing metrics for determining cannabis impairment with a lack of established correlation between measurement of bodily fluids and level of impairment. Additionally, there is a lack of available well-rounded guidance or

consensus recommendations to assess a patient's impairment risk. An additional challenge is the lack of literature available specifically focused on medical cannabis-related impairment.

Because of this challenge, safety sensitive employees are effectively prohibited from using medical cannabis. First responders in particular have higher rates of post-traumatic stress disorder (<https://pmc.ncbi.nlm.nih.gov/articles/PMC8794069/>) and other conditions that would lend themselves to the use of medical cannabis, but are effectively prohibited because of the persistence of cannabis indicators in the body long after impairment.

This bill aims to create a more nuanced approach to determining impairment as technology advances. The NIH is among many organizations that have published guidance on the latest technology and research in determining actual impairment, for example: <https://pmc.ncbi.nlm.nih.gov/articles/PMC9272752/>.

FISCAL IMPLICATIONS

DWS does not currently play a role in enforcement or regulations pursuant to the Act. The Act does not provide a remedy for employees who experience a prohibited employment action under the Act. That said, protections under the New Mexico Human Rights Act may be available if an employee feels that an adverse action related to the Act constitutes discrimination, for example, on the basis of a serious medical condition or physical or mental disability.

DWS is not funded for the personnel or operational requirements of HB 230. DWS estimates the costs for a partial FTE and outreach at \$50,000 recurring. DWS notes that this expansion of duties follows other unfunded expansions of DWS's labor relations division responsibilities, most notably the recent expansion of the Human Rights Act to all public bodies. DWS is unaware of whether the Department of Health would also require additional funding.

SIGNIFICANT ISSUES

HB 230 expands DWS's role into employment drug policy regulation, which may require additional resources to ensure accurate employer guidance. DWS is positioned to take on this role because of its relationships with nearly all New Mexico employers through its Unemployment Insurance and Labor Rights Division work.

PERFORMANCE IMPLICATIONS

As stated above, DWS would want to ensure proper staffing and funding to carry out the mandates of HB 230.

ADMINISTRATIVE IMPLICATIONS

Following the development of guidelines along with the Department of Health, the Department of Workforce Solutions are tasked with informing private employers with the new section of legislation and provide updates on testing protocols to detect cannabis impairment.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None.

TECHNICAL ISSUES

None.

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

The New Mexico Environment Department could also administer the provisions of this bill, as the agency that enforces workplace safety standards under the New Mexico Occupational Health and Safety Act. The State Personnel Office could be the agency tasked with implementing the provisions of this bill for the state, rather than the Department of Finance and Administration.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Safety-sensitive employees and employees subject to random drug tests that include marijuana, and who are qualified patients of the Lynn and Erin Compassionate Use Act, may experience adverse employment action for testing positive due to their use of medical cannabis.

AMENDMENTS