

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the Legislature. LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

FISCAL IMPACT REPORT

SPONSOR <u>Thomson/Szczepanski</u>	LAST UPDATED <u>2/17/2025</u>	ORIGINAL DATE <u>2/11/2025</u>
SHORT TITLE <u>Cannabis Testing Certain Employees</u>	BILL NUMBER <u>House Bill 230/aHHHC</u>	ANALYST <u>Hanika-Ortiz</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*

(dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
WSD		\$50.0	\$50.0	\$100.0	Recurring	General Fund
DOH		Indeterminate but minimal	Indeterminate but minimal		Recurring	General Fund

Parentheses () indicate expenditure decreases.
 *Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Agency Analysis Received From
 New Mexico Attorney General (NMAG)
 State Personnel Office (SPO)
 Economic Development Department (EDD)
 Regulation and Licensing Department (RLD)
 Department of Health (DOH)
 Workforce Solutions Department (WSD)

SUMMARY

Synopsis of HHSCC Amendment to House Bill 230

The House Health & Human Services Committee amendments to House Bill 230 (HB230) inserts, in lieu of a physician reviewing a positive drug test for cannabis to determine if there is a medical explanation, the requirement that the employer follow cannabis impairment guidelines.

The HHHC Amendment addresses a technical issue noted by the New Mexico Attorney General (NMAG) that the requirement in the bill for a “medical review officer” (MRO) is a term not defined by the bill or statute.

Synopsis of House Bill 230

House Bill 230 amends Section 26 Article 2B, the Lynn and Erin Compassionate Use Act concerning the medical use of cannabis, to provide that an employee shall not be considered impaired by cannabis solely because of the presence of cannabis metabolites and to prohibit random drug testing for cannabis. An employer may only require a drug test for cannabis if there

is reasonable suspicion of impairment by cannabis at work, after an accident involving one other person, or after significant damage to property.

The bill describes “cannabis impairment” as the responsibility of the employer; “employee” as an employee who is also a qualified patient; and “employer” to include an agent of the employer.

The Department of Health (DOH) and Workforce Solutions Department (WSD) would be required to develop cannabis impairment guidelines, and WSD shall also provide employers information related to testing protocols for determining cannabis impairment. Lastly, DFA would disseminate the guidelines developed to state agencies and local governments.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

FISCAL IMPLICATIONS

The responsibility for developing cannabis impairment guidelines would fall on DOH, and disseminating information to employers on testing protocols would fall on WSD. The guidelines must be based on “the most reliable research- or evidence-based cannabis impairment indicators, including evaluation of physical symptoms, psychomotor function, and cognitive performance.”

DOH did not indicate that additional staff and resources would be needed to develop the guidelines in the bill. WSD estimates the need for a partial FTE and outreach at \$50 thousand on a recurring basis.

DOH notes health and other facilities must comply with state and federal; altering safety sensitive requirements may impact funding and regulatory compliance.

SIGNIFICANT ISSUES

WSD says this bill aims to create a more nuanced approach to determining impairment as technology advances. While the bill aims to balance workplace safety and employee rights, the Economic Development Department (EDD) identifies issues that may arise with implementation, specifically (a) lack of a standardized cannabis impairment test (unlike alcohol, cannabis impairment is harder to measure); and (b) reliance on “objective evidence” of impairment (without standardized criteria, enforcement is difficult).

As DOH explains,

Toxicology results (i.e., blood, urine) alone are not sufficient to determine impairment. Most notably, history of cannabis use (i.e. chronic vs. occasional) can largely affect toxicological and psychomotor test results. Studies have shown that delta-9-tetrahydrocannabinol (THC), the main psychoactive constituent of cannabis, can be detected in blood from chronic cannabis users for up to 30 days following last use. These same studies have shown residual psychomotor impairment in chronic users up to 21 days following last use compared to controls.

This bill creates a high threshold for testing a “qualified patient” for cannabis by prohibiting

random testing entirely and specifying when testing is allowed. WSD notes that post-accident and reasonable suspicion drug tests for cannabis would still be permitted under the bill. According to NMAG, the clarification on “employer” avoids any ambiguity about contractors or similar performing drug testing.

NMAG also explains that requiring reasonable suspicion of impairment by cannabis or of an accident involving cannabis impairment may be a slightly confusing standard:

“Reasonable suspicion” is not a common standard outside criminal law. The statute as it currently exists has only one reference to “reasonable suspicion” in Section 26-2B-7(G): “Possession of or application for a registry identification card shall not constitute probable cause or give rise to reasonable suspicion for a governmental agency to search the person or property of the person possessing or applying for the card.” (Id.) (emphasis added). That reference is explicitly in reference to the constitutional burden related to the exclusionary rule in the criminal law context. In this added provision, the definition of “reasonable suspicion” would be applying to private employers and not in a criminal context.”

PERFORMANCE IMPLICATIONS

EDD indicates, while there are potential risks to workplace safety and productivity, these can be mitigated through clear guidelines, employer training, and state agency oversight. If executed properly, the act could improve workplace protections while maintaining performance standards.

The state will need to ensure that guidelines align with evolving state and federal regulations.

ADMINISTRATIVE IMPLICATIONS

The State Personnel Office (SPO) explains its rules currently authorize random drug testing (including cannabis) of state employees in safety-sensitive positions in which performance while under the influence of intoxicants could constitute a threat of injury or death to that person or another, or as otherwise provided by state or federal law. See 1.7.8.7(M) NMAC. Safety-sensitive positions include correctional officers, probation officers, and healthcare providers. HB230 would require a change to those rules. Likewise, Section 9-7-18 NMSA 1978 requires random drug testing (including cannabis) for health providers in a state-licensed health facility.

TECHNICAL ISSUES

NMAG suggested policymakers consider removing the definition for “safety-sensitive position” in Section 26-2B-3(Q) because the bill deletes that phrase (page 2, lines 22 and 23).

OTHER SUBSTANTIVE ISSUES

DOH noted the National Institutes of Health has published guidance on the latest technology and research in determining actual impairment: <https://pmc.ncbi.nlm.nih.gov/articles/PMC9272752/>.