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FISCAL IMPACT REPORT

SPONSOR <u>HJC</u>	LAST UPDATED <u>2/12/2024</u> ORIGINAL DATE <u>2/09/2024</u>
SHORT TITLE <u>Cannabis Regulation Changes</u>	BILL NUMBER <u>CS/House Bill 128/HJCS</u>
ANALYST <u>Daly</u>	

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*

(dollars in thousands)

Agency/Program	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
CCD		\$2,281.0	\$2,281.0	\$4,562.0	Recurring	Cannabis Regulation Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Conflicts with Senate Bill 6

Relates to House Bills 63, 64, 65 and 66 and Senate Bills 99 and 274.

Sources of Information

LFC Files

Agency Analysis Received From

Regulation and Licensing Department (RLD)

Department of Health (DOH)*

New Mexico Attorney General (NMAG)*

*On original bill

SUMMARY

Synopsis of HJC Substitute for House Bill 128

The House Judiciary Committee substitute for House Bill 128 (CS/HB128) amends the Cannabis Regulation Act (CRA).

Definitions. In addition to reorganizing, clarifying, and stylistic changes, definitions are amended to:

- Revise definition of “homegrown” or “homemade” cannabis to emphasize it is not for resale;
- Provide a new definition of “illegal cannabis product,” meaning a product from outside the state or otherwise not in compliance with the act, but not homegrown or homemade cannabis products; and
- Add a new definition of “residence” or “household” for the purposes of homegrown cannabis.

Licensing. Substantive amendments to the CRA licensing provisions include:

- Clarifying CCD must follow the provisions of the Uniform Licensing Act when conducting its regulatory duties;
- Requiring a licensee to notify CCD when the licensee begins or ends operations under its license;
- Clarifying that licenses are not subject to execution, attachment, a security transaction, liens, or receivership;
- Prohibiting licensed liquor and licensed cannabis activities on the same premises;
- Authorizing a person to hold both a cannabis license issued by CCD and a liquor license issued by the Alcohol Beverage Control Division (ABC), subject to the same premises restriction;
- Allowing nonprofit organizations licensed under the Department of Health’s Medical Cannabis Program to convert their corporate structures to for-profit legal entities on compliance with existing laws governing that process; and
- Clarifying that the condition of licensing requiring legal right to sufficient water only applies to cannabis producers and cannabis producer microbusinesses.
- In addition, the prohibition barring legislators in office as of June 29, 2021, from being licensed for any commercial cannabis activity prior to July 1, 2026, continues.

Denial of License/Other Disciplinary Action. Substantive amendments allowing for licensing denials and disciplinary actions, including suspension and revocation of a license, when:

- A tax lien is pending;
- A license has been denied, suspended, or revoked in another state;
- Failure to comply after notice of noncompliance with applicable requirements, rules, or laws;
- Any other governmental action pending or taken against an applicant or licensee that in CCD’s determination renders that person unqualified to be licensed;
- Pending investigations or felony indictment or conviction involving:
 - Fraud, deceit, or embezzlement;
 - Producing, manufacturing, distributing, selling, or giving away illegal cannabis products; or
 - Employing or using a person younger than 18 years of age or anyone who is a victim of trafficking, forced labor, or other exploitation;
- Engaging in the production, manufacture, distribution, sale, or possession of illegal cannabis.

Criminal Background Checks. A new section is added containing language that will allow for federal background checks on cannabis applicants using an applicant’s fingerprints. This section contains an IPRA exception.

Cannabis Education. The requirement that colleges and universities become licensed by CCD to teach courses on cannabis is removed and replaced with a requirement that course offerings regarding cannabis be registered with CCD, which will then post them on CCD’s website.

Packaging and Labelling Cannabis Products/Testing. Existing language requiring packaging to be compostable, and recyclable is removed, while language restricting packaging and labelling designed to appeal to children is strengthened. Language clarifying that producers and manufacturers must have products tested prior to distribution to cannabis retailers is added.

Advertising and Marketing Restrictions. New language clarifies that licensed premises can have signs or displays indicating the availability of cannabis products at a given location and can label products with product and business information.

Trafficking Cannabis Products/Criminal Offenses and Penalties. The crime of trafficking cannabis products is clarified, and a first offense by a person 21 years of age or older remains a fourth degree felony. New language makes a second offense a third degree felony, and a second degree felony for a third and subsequent offense. A person between the ages of 18 and 21 who intentionally traffics cannabis products is guilty of a misdemeanor. Other changes clarify that cannabis in prisons is contraband, adds cannabis trafficking as an offense under the Racketeering Act, and amends the definition of “delinquent act” in the Delinquency Act to include cannabis trafficking.

Adulteration and Misbranding of Cannabis Products. A definition of forms of adulteration and misbranding is provided.

IPRA Exception for Personal Identifier Information. A new exception to the Inspection of Public Records Act makes personal identifier information of a person who reports an alleged violation of CRA not part of the public record until an enforcement investigation is completed.

Embargo, Recall, Seizure, Condemnation. CS/HB128 provides new authority to CCD to issue administrative holds and embargo and seize a cannabis product suspected of being illegal, adulterated, or misbranded. An affected licensee may request and receive an administrative hearing, and dependent on the outcome of the hearing, and upon court order, the product may be condemned and destroyed. Additionally, this section creates a new fourth degree felony for intentional, knowing or reckless removal, concealment, destruction or disposition of a cannabis product subject to an administrative hold or embargo.

Cannabis in Correctional Settings. Cannabis, other than medical cannabis, is to be considered contraband within prisons and juvenile detention facilities.

Plant Count. The delayed repeal on December 31, 2025, of RLD’s authority to set a maximum cannabis plant count that cannabis producers (but not integrated cannabis microbusinesses or cannabis producer microbusinesses) may possess at any time is repealed, so that RLD can continue to set a maximum cannabis plant count in perpetuity.

The effective date of this bill is July 1, 2024.

FISCAL IMPLICATIONS

Costs. RLD reports that to conduct federal criminal background checks as required by CRA, CCD will require three licensing clerks at a cost of \$1,876,734 annually. RLD has not included any funds for rent or facilities maintenance in this number, as it intends to house these employees within CCD’s existing office space. In addition, the embargo and seizure provisions will require, in RLD’s estimation, an additional 13 field compliance officers, with an average associated cost per officer of \$161 thousand annually, including required equipment and vehicles, adding up to \$2.1 million annually. RLD estimates the total annual cost increase is \$2,280,734.

SIGNIFICANT ISSUES

Department of Health (DOH) discussed in an earlier analysis the new requirements for packaging cannabis products. CS/HB128 requires opaque packaging and prohibits packaging that mimics non-cannabis consumer products and images that appeal to children, and DOH raises concern there are no requirements packaging be plain and a single uniform color or prohibiting the use of bright colors. Additionally, DOH pointed out the bill does not specifically prohibit the use of toys, animals, or phrases that appeal to children. Further, also requiring edibles be packaged in individually wrapped doses would add an extra layer of protection for both children and adults.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

CS/HB128 is largely similar to Senate Judiciary Committee substitute for Senate Bill 6 (CS/SB6), although the new section authorizing embargo, recall, seizure, and condemnation of cannabis product, as well as the legislator licensing limitation that remains in CS/HB128, are not included in CS/SB6. Additionally, CS/SB6 removes the initial application and annual renewal fee cap for vertically integrated cannabis businesses. Numerous bills introduced in the 2024 session relate to cannabis in some way, including SB274, establishing a compliance bureau at RLD, which is authorized to issue administrative holds and exercise powers such as those found in Section 13 of CS/HB128.

OTHER SUBSTANTIVE ISSUES

RLD reported in its earlier analysis that the existing language in the CRA concerning federal criminal history background checks has prevented RLD from participating in the federal program. The replacement language in Section 6 is designed to correct the issue in the current language.

DOH reported in an earlier analysis that, nationally, adult use cannabis, particularly edibles, has led to growing concerns of exposure among children. In New Mexico, cannabis-related calls to the Poison Control Center have increased over time: from 84 cases in 2015 to 216 calls in 2022. Fifty percent of the 2022 calls were for patients 10 years of age or younger.

AMENDMENTS

NMAG in its earlier analysis suggested two amendments as to what is now Section 13, regarding administrative holds, seizures, and embargos:

- 1) Subsection J: A definition of “cooperation” that clarifies the scope of other agencies’ responsibilities; and
- 2) Subsection I: Clarification on the imposition of costs of destruction of a cannabis product to include costs of participating agencies, as well as equipment costs, and reimbursement to those agencies.