

LFC Requester:

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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: 1/31/2025

Check all that apply:

Bill Number: HB 230

Original Correction
Amendment Substitute

Sponsor: Rep. Reena Szczepanski,
Rep. Elizabeth "Liz"
Thomson

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

Person Writing

Short Title: CANNABIS TESTING
CERTAIN EMPLOYEES

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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:
 Duplicates/Relates to Appropriation in the General Appropriation Act

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 bill proposes changes to the Lynn and Erin Compassionate Use Act (“CUA”) (26-2B-1 through -10) NMSA 1978 (2019), limiting random testing for cannabis, limiting what can be used to determine “impairment.”

There is only one Section, Section 1, modifying 26-2B-9 (titled “EMPLOYMENT PROTECTIONS”) adds language to Paragraph (A): “An employee shall not be considered to be impaired by cannabis solely because of the presence of metabolites or components of cannabis.” It also adds a new language that prohibits random drug testing from including cannabis, providing an employer may require testing for cannabis if the employer has reasonable suspicion of impairment at work or after an accident.

HB230 adds two new paragraphs one providing that defining "cannabis impairment" is the responsibility of the employer. HB230 also adds a paragraph defining "employee" to mean an employee who is also a qualified patient pursuant to the Lynn and Erin Compassionate Use Act; and defining "employer" to include an agent of the employer."

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

This bill creates a high threshold for testing a “qualified patient” for cannabis—disallowing random testing entirely and specifying when testing is allowed. The clarification on “employer” (in new Paragraph E) avoids any ambiguity about the legality of having a contractor or similar perform drug testing.

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 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.

The complete removal of the “safety-sensitive position” exception changes for individuals such as police officers, firefighters, security officers, and similar positions. Removing this exception should be accompanied by removing the definition of “safety-sensitive position” in 26-2B-3(Q).

The requirement for a “medical review officer” is not a term defined by the bill nor in statute anywhere in the NMSA.

The “legitimate medical explanation” language may create a potential issue. For USDOT purposes, the drug testing requirement mandates that any employee with a positive test is removed from any safety-sensitive functions. However, under federal law, there is *no legal use* of marijuana, and the USDOT testing regulations do *not* allow an MRO to use this as a legitimate medical explanation.

The employer must define impairment under the new statute, but the departments of health and workforce solutions are also required to develop guidelines. It is unclear if these guidelines would presumptively invalidate employer definitions that do not follow the guidelines.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

Potential complex litigation and/or enforcement/defense actions.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

N/A

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo

AMENDMENTS

N/A