

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>HCPAC</u>	LAST UPDATED <u>2/5/24</u>	ORIGINAL DATE <u>2/4/24</u>
SHORT TITLE <u>Cannabis Licensure Background Checks</u>	BILL NUMBER <u>CS/House Bill 226/HCPACS</u>	
		ANALYST <u>Anderson</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
RLD Cannabis Control Division	No Fiscal Impact	\$188.0	\$564.0	Recurring	Other state funds
DPS Law Enforcement Records Bureau	\$342.7	\$342.7	\$1028.1	Recurring	General Fund
Total	\$342.0	\$530.7	\$1,592.1	Recurring	

Parentheses () indicate revenue increases.

*Amounts reflect most recent version of this legislation.

Relates to House Bill 128 and Senate Bills 6 and 274.

Sources of Information

LFC Files

Agency Analysis Received From
Regulation and Licensing Department (RLD)
Department of Public Safety (DPS)

SUMMARY

Synopsis of HCPAC Committee Substitute House Bill 226

The House Consumer and Public Affairs Committee substitute for House Bill 226 proposes to replace existing language in the Cannabis Regulation Act (CRA) on federal criminal history background checks that the FBI has deemed insufficient for granting the Regulation and Licensing Department (RLD) an originating agency identifier (ORI), which allows an entity to access the FBI’s criminal justice information system. The committee substitute also amends the definitions section and the section defining the powers and duties of the RLD as it relates to cannabis regulation. While the language and structure of the committee substitute is different from the original bill, the goal remains the same.

The bill requires an applicant for licensure who is submitting information for the purposes of a state criminal history and a national criminal history background check to do the following:

- Submit a full set of fingerprints as prescribed by rule of RLD;
- Allow the Cannabis Control Division to obtain state and national criminal history record information; and
- Pay reasonable costs incurred by RLD in obtaining the records.

The committee substitute for the bill outlines the requirement for an application for cannabis activity licensure be signed by the applicant. The act makes other conforming changes and expands industry definitions, including the definition of advertisements, which indicates outdoor displays, radio, television, and other broadcast and digital media.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns, or May 15, 2024, if enacted.

FISCAL IMPLICATIONS

This bill contains no appropriation and both RLD and the Department of Public Safety (DPS) estimate fiscal impacts for additional FTE to process background checks and licensing. If enacted, both RLD and DPS will play a role in processing background checks to the FBI.

In anticipation of running federal criminal history background checks, RLD responded existing staff will be able to absorb additional workload for its licensing team in FY25. RLD reports the Cannabis Control Division will require 3 FTE in FY26 to process a backlog in the licensing system and to conduct criminal history background checks of persons seeking initial licensure. RLD estimates midpoint salaries for licensing clerks to be \$62.5 thousand (including benefits) for each, a total of \$188 thousand annually.

DPS reports the Law Enforcement Records Bureau (LERB) would need to create a new Cannabis Licensure Unit comprising 4 FTE, a management analyst-supervisor and three management analysts. It estimates the cost to be \$342.7 thousand annually, beginning in FY25.

SIGNIFICANT ISSUES

According to DPS, the bill will increase the volume of background checks and needs statewide and responsibility would fall on LERB for criminal history, so it would dedicate a unit for the processing. According to LFC analysis, over the last few years, the agency has grown its responsibilities while funding has plateaued. Without additional funding for positions, the burden would fall on an already over-worked staff, a bureau staffed by 60 full-time employees who provide services in 30 distinct units to the general public, law enforcement, criminal justice, and state and civil agencies.

To date, RLD has approved a total of 2,868 cannabis licenses, which includes producer, micro producer, manufacturer, retailer, consumption area, courier, testing laboratory, and research laboratory. According to analysis from an identical bill introduced in 2023, HB331:

Because background checks will be paid for by applicants, there may be no costs impacting the Cannabis Control Division of RLD. For a medical cannabis background check, the cost is \$73.30 to the New Mexico Department of Health (DOH). HB331 does

not indicate the cost of a recreational cannabis background check, but revenue to RLD for the cost of processing background checks might be substantial. DOH has not yet provided information on their process for medical cannabis background check and the amount of cost or revenue from them, but a comparison could provide a standard of measure for RLD's program.

RLD responded it has no plan to collect fees for background checks, preferring any fees be paid directly by applicants to the FBI.

ADMINISTRATIVE IMPLICATIONS

Similar to medical cannabis, the CRA currently contains provisions requiring federal background checks of applicants for licensure. According to Section 26-2C-7(K) in the act concerning licensing, the division shall conduct national criminal history background checks and state criminal history checks on the following:

- If an applicant is a limited partnership, each partner of the limited partnership;
- If the applicant is a limited liability company, each member of the limited liability company;
- If the applicant is a corporation, each director and officer of the corporation; and
- Any controlling person of the applicant, meaning a person that controls a financial or voting interest of ten percent or more of, or an officer or board member of, a cannabis establishment; and does not include a bank or licensed lending institution.

If RLD runs federal criminal history background checks, RLD's licensing team will require additional staffing to process both the backlog of controlling persons listed in the RLD's licensing system, as well as process the influx of criminal history backgrounds of persons seeking initial licensure.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Both HB128, Cannabis Regulation Changes, and SB6, by the same bill name, relate to the committee substitute for HB226 in aspects of cannabis packaging requirements and the requirement for federal background checks. Regarding criminal background checks, both HB128 and SB6 add a new section to the Cannabis Regulation Act containing language that will allow for federal background checks on cannabis applicants using an applicant's fingerprints.

The committee substitute for HB226 duplicates the intent of the current Senate Judiciary Committee substitute for SB6, RLD's agency bill addressing this issue, and HB128, which has language on this issue identical to that in the SJC substitute for SB6. While all three bills have the same goal of providing CCD with the ability to obtain FBI criminal history background checks on applicants and licensees under the CRA, the proposed wording of the bills is substantially different. RLD stated the solution to the problem is better addressed by the wording within the agency bill, the SJC substitute for SB6. HB274 proposes a cannabis compliance bureau in the office of the RLD superintendent, which would report on CCD, offering the possibility of a new bureau that would take on or support FBI background checks at RLD.

TECHNICAL ISSUES

The bill does not specify a particular agency to process the additional workload for background checks at the state level. It is also not clear which license types require a federal background check.

Per the analysis for HB331 in 2023, DPS has no control over whether the FBI will approve a statutory authorization, and the FBI will not preapprove statutes in advance of enactment. DPS is concerned that entirely removing section (K) and the list of applicants to whom the background checks will apply, currently contained in §26-2C-7(J) (to which the FBI did not object), will not assist the Cannabis Control Division in obtaining an originating agency identifier (ORI) for federal background checks. In analysis put forth by the DPS for HB331 in 2023:

The Cannabis Control Division was denied an originating agency identifier required for federal background checks because the FBI deemed the Act overbroad in Section §26-2C-7(K). The FBI requires statutes authorizing background checks to be very specific and suggested that better definition of the individuals to whom those background checks would apply in section (K) would be required.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Without the enactment of this bill, the Cannabis Control Division of RLD will be unable to receive an ORI number from the FBI and as a result will continue to not be able to conduct federal criminal background checks on applicants for cannabis industry licenses issued under the CRA.

GA/hg