

LFC Requester:

**AGENCY BILL ANALYSIS
2020 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

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

Check all that apply:
Original **Amendment**
Correction **Substitute**

Date January 24, 2020
Bill No: HB 160-264

Sponsor: Javier Martinez, Antonio
Maestas
Short Title: Legalize recreational marijuana

Agency Name and Code Administrative Office of the District Attorneys
Number: _____
Person Writing Donald Gallegos
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY20	FY21		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY20	FY21	FY22		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY20	FY21	FY22	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

BILL SUMMARY

Synopsis:

SB 115 is a comprehensive bill whose purpose is to legalize the recreational use of marijuana. HB 115 sets up the regulatory structure to make this possible and also sets up tax and revenue procedures. The bill also sets civil penalties and amends the Controlled Substances Act so that use of and/or possession of marijuana are no longer criminal offenses, with exceptions.

Other matters are also addressed such as prevention of driving while impaired. Committees are outlined to be established to address some of the many issues that legalization may bring, and public service campaigns will be conducted regarding the many issues of legalization.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SIGNIFICANT ISSUES

- 1. No later than September 1, 2020, the division shall convene a Cannabis Regulatory Advisory Committee (CRAC). A district attorney shall be appointed by the New Mexico District Attorney’s Association to serve on this committee. The tasks to be performed by the CRAC are set forth in Paragraph E (page 15, lines 21 to 25, and page 16, lines 1 to 5).**
- 2. Beginning January 1, 2024, the CRAC is required to publish and report to the superintendent and legislature an annual report detailing its activities and recommendations during the preceding year. (page 17, line11 to page 18, line 4).**
- 3. At least once in each of calendar years 2023 to 2026, the division shall convene a meeting to review developments, etc. Meeting participants shall include members of the CRAC (district attorney). (page 18, lines 9 through 21).**

- 4. It seems that participation in the CRAC could take up considerable time and there is nothing in SB 115 that would provide for technical and administrative support to the committee or its members.**

- 5. Section 15 (page 45, line 11) Protection of underage persons-trafficking-penalties. Under this section, it is a misdemeanor if a person intentionally traffics a cannabis product to a person who is under 21 years of age. A second or subsequent offense is a fourth-degree felony. The rest of Section 15 provides civil penalties for licensees who sell or distribute cannabis products to persons under 21 years old.**

- 6. Section 32 A (pages 62, 63) makes it unlawful for a person without a license to intentionally traffic cannabis products. A person 18 years of age or older who traffics cannabis products in violation of this section is guilty of a misdemeanor. A person 18 years of age or older who traffics from a place or in a manner that would lead a reasonable person to believe that it is a legitimate operation, as allowed by law, is guilty of a fourth-degree felony.**

- 7. Section 32 E (page 63, lines 11 to 16) defines “traffic” for purposes of the Act.**

- 8. Section 36 (page 65) makes it a fourth-degree felony for a person to manufacture cannabis extracts without a license.**

- 9. Sections 35 to 38 (pages 65 to 69) provide for expungement of records related to any charge or conviction as provided in Sections 31 through 35 of the Act. These sections also establish procedures for expungement and also for recall and/or dismissal for those persons who are incarcerated within thirty days of the effective date of this Act. It is not clear whether these provisions impact the district attorney offices but may as the offices could have records relevant to expungement, etc., and there may be cases where the district attorney may object to expungement, etc.**

- 10. Section 45 (page 77 to 78) provides immunity from arrest or prosecution to a person who is engaged in research and who gets cannabis from a licensed person.**

- 11. Section 72 (pages 130 to 141) amends the Controlled Substances Act by removing Marijuana and anything associated with marijuana from the definitions, thereby decriminalizing it.**

- 12. Section 73 (pages 141 to 149) makes changes to Schedule I of the Controlled Substances Act by removing Marijuana and associated Marijuana items such as THC, hash, etc., from the Schedule.**

- 13. Section 74 (pages 149 to 153) removes Marijuana, THC, etc., from Schedule II of the Controlled Substances Act.**

- 14. Section 75 (page 153, 154) deletes Marijuana from the provisions of 30-31-21. Penalties for the distribution of marijuana to a minor will be covered in Section 32 A.**

- 15. Section 76 (page 154) deletes marijuana from provisions of 30-31-22. Penalties for illegal distribution (traffic) of marijuana will be covered in Section 32.**

16. Section 77 (pages 155 to 166) deletes marijuana from 30-31-23 which makes the possession of it legal, except as provided in this Act.

PERFORMANCE IMPLICATIONS

District Attorney offices will no longer be prosecuting cases involving the distribution or possession of marijuana except as provided in this Act (Section 32). This could result in less resources required by district attorney offices.

More time will be required by at least by one district attorney to serve on committees established by this Act.

There may be additional resources required depending on how the provisions related to expungement, recall and dismissal affect district attorney offices.

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

See SB 115 which is identical to this Act.

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

Distribution and possession of marijuana is still prohibited by federal law. A person can still be arrested and prosecuted under federal law.

Black market sales may still be a problem as has been experienced in Colorado. Resources will be needed to investigate and prosecute black market traffickers.

Birchfield - the US Supreme Court ruled that implied consent laws requiring blood draws are unconstitutional and that law enforcement needs to obtain a search warrant to get a blood sample. There is a statutory prohibition preventing law enforcement from seeking a warrant for blood on misdemeanor cases so we want to strike one line of the statute to fix it. 66-8-111 ("A. If a person under arrest for violation of an offense enumerated in the Motor Vehicle Code [[66-1-1](#) NMSA 1978] refuses upon request of a law enforcement officer to submit to chemical tests designated by the law enforcement agency as provided in Section [66-8-107](#) NMSA 1978, none shall be administered except when a municipal judge, magistrate or district judge issues a search warrant authorizing chemical tests as provided in Section [66-8-107](#) NMSA 1978 upon finding in a law enforcement officer's written affidavit that there is probable cause to believe that the person has driven a motor vehicle while under the influence of alcohol or a controlled substance and that chemical tests.)

A breath test will not detect drugs, only alcohol. A provision is needed in this bill for a search warrant for a blood draw for a misdemeanor DWI investigation.

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Possession and distribution of marijuana will continue to be illegal, except as provided by the Lynn and Erin Compassionate Use Act (medical marijuana).

AMENDMENTS