

HOUSE BILL 331

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

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AN ACT

RELATING TO CANNABIS REGULATION; PROVIDING FOR STATE CRIMINAL HISTORY CHECKS AND NATIONAL CRIMINAL HISTORY BACKGROUND CHECKS AS A CONDITION OF ELIGIBILITY FOR LICENSURE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 26-2C-7 NMSA 1978 (being Laws 2021 (1st S.S.), Chapter 4, Section 7) is amended to read:

"26-2C-7. COMMERCIAL CANNABIS ACTIVITY LICENSING-- APPLICATION--ISSUANCE AND DENIAL OF A LICENSE.--

A. A license issued pursuant to the Cannabis Regulation Act shall not be subject to execution, attachment, a security transaction, liens or receivership.

B. In carrying out its commercial cannabis activity licensing duties, the division shall:

(1) [~~no later than September 1, 2021~~] accept

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1 and ~~[begin processing]~~ process license applications; ~~[for~~
2 ~~cannabis producers, cannabis producer microbusinesses and any~~
3 ~~person properly licensed and in good standing as a licensed~~
4 ~~cannabis producer pursuant to the Lynn and Erin Compassionate~~
5 ~~Use Act;~~

6 ~~(2) no later than January 1, 2022, accept and~~
7 ~~begin processing license applications for all license types;~~

8 ~~(3)]~~ (2) require as a condition of licensing
9 pursuant to the Cannabis Regulation Act that the applicant
10 demonstrate that the applicant has a legal right to a
11 commercial water supply, water rights or another source of
12 water sufficient to meet the water needs as determined by the
13 division related to the license as evidenced by documentation
14 from the office of the state engineer of a valid water right or
15 from a water provider that the use of water for cannabis
16 production is compliant with that water provider's rules; and

17 ~~[(4)]~~ (3) if an applicant applies for a
18 cannabis producer license, ~~[or a cannabis manufacturer license~~
19 ~~in addition to the requirements in Paragraph (3) of this~~
20 ~~subsection]~~ require that the applicant submit a plan to use, or
21 demonstrate to the division that the applicant cannot feasibly
22 use, energy and water reduction opportunities, including:

23 (a) ~~[for a cannabis producer]~~ drip
24 irrigation and water collection;

25 (b) natural lighting and energy

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1 efficiency measures; and

2 (c) renewable energy generation. [~~and~~

3 ~~(5) allow commercial cannabis activity retail~~
4 ~~sales no later than April 1, 2022 and otherwise allow~~
5 ~~activities authorized by the Cannabis Regulation Act or the~~
6 ~~medical cannabis program as of the time of licensure of a~~
7 ~~licensee, so long as a minimum of twenty-five percent of~~
8 ~~monthly cannabis sales are to qualified patients, primary~~
9 ~~caregivers and reciprocal participants or sold wholesale to~~
10 ~~other licensees that meet or exceed the twenty-five percent~~
11 ~~sales to qualified patients, primary caregivers and reciprocal~~
12 ~~participants until December 31, 2022.]~~

13 C. Once the division deems an application complete,
14 the division has ninety days to issue or deny a license
15 application.

16 D. The division shall deny an application for an
17 initial license or renewal if:

18 (1) the application does not include
19 information required by the division; or

20 (2) the applicant or a controlling person of
21 the applicant has been convicted of an offense that is
22 substantially related to the qualifications, functions or
23 duties of the applicant's business; provided that if the
24 division determines that the applicant or controlling person is
25 otherwise qualified for a license and that issuing a license to

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1 the applicant would not compromise public safety, the division
2 shall conduct a thorough review of the conviction, including
3 the nature of the offense, surrounding circumstances and any
4 evidence of the applicant's or controlling person's
5 rehabilitation following the conviction, and based on that
6 review, determine whether the applicant should be issued a
7 license.

8 E. For purposes of Subsection D of this section,
9 the following are considered substantially related to the
10 qualifications, functions or duties of a person seeking a
11 license:

12 (1) a felony conviction involving fraud,
13 deceit or embezzlement;

14 (2) a felony conviction for hiring, employing
15 or otherwise using a person younger than eighteen years of age
16 to:

17 (a) prepare for sale, transport or carry
18 a controlled substance; or

19 (b) sell, give away or offer to sell a
20 controlled substance to any person; and

21 (3) any other offense as determined by the
22 division.

23 F. A conviction for which the related sentence,
24 including any term of probation or parole, is completed for the
25 possession, use, manufacture, distribution or dispensing or the

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1 possession with the intent to manufacture, distribute or
2 dispense cannabis is not considered substantially related to
3 the qualifications, functions or duties of a person seeking a
4 license and shall not be the sole ground on which an
5 application is denied. The division shall comply with the
6 provisions of the Criminal Offender Employment Act.

7 G. The division shall deny an application if an
8 applicant, a controlling person or the premises for which a
9 license is sought does not qualify for licensure pursuant to
10 the Cannabis Regulation Act.

11 H. The division shall not license a person who has
12 had a license that was issued pursuant to the Cannabis
13 Regulation Act or the Lynn and Erin Compassionate Use Act
14 revoked by the division or the department of health in the
15 three years immediately preceding the date on which the person
16 filed a new application.

17 I. Unless otherwise provided in the Cannabis
18 Regulation Act, a person whose license has been revoked may
19 reapply for a license after a period of three years. The
20 division may consider all of the circumstances resulting in the
21 revocation in determining whether to issue a new license.

22 ~~[J. The division shall adopt rules providing for~~
23 ~~submission of an applicant's fingerprints to the federal bureau~~
24 ~~of investigation to conduct a national criminal history~~
25 ~~background check and to the department of public safety to~~

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1 ~~conduct a state criminal history check for the following~~
2 ~~licensees:~~

- 3 ~~(1) cannabis manufacturer;~~
- 4 ~~(2) cannabis producer;~~
- 5 ~~(3) cannabis producer microbusiness;~~
- 6 ~~(4) cannabis research laboratory;~~
- 7 ~~(5) cannabis retailer;~~
- 8 ~~(6) cannabis testing laboratory;~~
- 9 ~~(7) integrated cannabis microbusiness; and~~
- 10 ~~(8) vertically integrated cannabis~~

11 ~~establishment.~~

12 ~~K. The division shall conduct national criminal~~
13 ~~history background checks and state criminal history checks on~~
14 ~~the following:~~

- 15 ~~(1) if an applicant is a limited partnership,~~
16 ~~each partner of the limited partnership;~~
- 17 ~~(2) if the applicant is a limited liability~~
18 ~~company, each member of the limited liability company;~~
- 19 ~~(3) if the applicant is a corporation, each~~
20 ~~director and officer of the corporation; and~~
- 21 ~~(4) any controlling person of the applicant.~~

22 ~~L. Arrest record information received from the~~
23 ~~federal bureau of investigation and the department of public~~
24 ~~safety shall be confidential, shall not be considered a public~~
25 ~~record pursuant to the Public Records Act and shall not be~~

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1 ~~disclosed to persons not directly involved in the decision~~
2 ~~affecting the applicant.]~~

3 J. The division shall require as a condition of
4 eligibility for licensure that a person submitting information
5 for the purposes of conducting a state criminal history check
6 and a national criminal history background check shall:

7 (1) submit a full set of fingerprints in a
8 form and manner prescribed by rule of the division;

9 (2) allow the division to request and obtain
10 state and national criminal history record information on the
11 applicant; and

12 (3) pay the reasonable costs to be incurred by
13 the division in requesting and obtaining state and national
14 criminal history record information on the applicant.

15 K. In accordance with the provisions and procedures
16 provided in this section, the division shall request and obtain
17 state and national criminal history record information from the
18 department of public safety and the federal bureau of
19 investigation for an applicant for licensure whose fingerprints
20 the division has obtained pursuant to this section for the
21 purpose of determining the applicant's suitability and
22 eligibility for licensure.

23 L. Upon request by the division and upon submission
24 of an applicant's fingerprints and other identifying
25 information as may be required, the department of public safety

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1 shall survey the criminal history records and identification
2 files and make a simultaneous request of the federal bureau of
3 investigation for like information from other jurisdictions.
4 The department of public safety may charge the division a
5 reasonable processing fee for conducting and reporting on the
6 search.

7 M. Any and all state or national criminal history
8 record information obtained by the division from the department
9 of public safety or the federal bureau of investigation that is
10 not already a matter of public record shall be deemed nonpublic
11 and confidential information restricted to the exclusive use of
12 the division for evaluating the applicant's eligibility or
13 disqualification for licensure. No information or records
14 related to the criminal history record shall be released or
15 otherwise disclosed by the division to any other person unless
16 with the written consent of the applicant or by order of a
17 court of competent jurisdiction.

18 [M.] N. Electronic live fingerprint scans may be
19 used when conducting criminal history background checks.

20 O. As used in this section, "applicant" means a
21 person seeking licensure."