

New Mexico's most recent attempt to legalize recreational cannabis dies before it gets to the Senate What will that mean for businesses?

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NEW MEXICO — On February 12, 2020, the New Mexico Senate Judiciary Committee blocked the latest efforts to legalize recreational cannabis use in New Mexico. This bill, Senate Bill 115 (SB 115), would have had a significant impact across a broad range of New Mexico's economy and laws. A close reading of SB 115 can guide residents of New Mexico – as well as Colorado cannabis businesses – regarding what they can expect for future attempts to regulate recreational cannabis use in New Mexico.

What Would SB 115 Have Done?

Senate Bill 115 would have ended the prohibition on

recreational cannabis use in New Mexico. However, after the New Mexico Senate Public Affairs Committee transmitted the bill to the Senate Judiciary Committee, the Judiciary Committee tabled the bill on February 12, 2020. By tabling the bill, the New Mexico Senate Judiciary Committee effectively blocked it from going before the full Senate for a vote.

Implications of SB 115 for Businesses

Although SB 115 was not passed, the language within the bill provides insights for businesses that will be impacted when New Mexico legalizes recreational cannabis sales. As written by New Mexico State Senators Gerald Ortiz y Pino (D-12), Javier Martínez (D-11), and Jacob Candelaria (D-26), the bill would have led to the creation of a cannabis regulatory agency in charge of licensing for sale, growth, and transport of cannabis and cannabis products (such as edibles).

Protections Against Out-Of-State Businesses

Specifically, these recreational licensees, on an individual basis, would have been required to have two years of bona fide residency in New Mexico. For corporations and other entities, the State would have required that 60 percent of the entity's owners or principals have two years of bona fide

residency in New Mexico.

Criminal Penalties and Awareness of Biased Enforcement

SB 115 provided criminal penalties against those who gave minors (under 21) access to cannabis, except as provided for under the New Mexico Medical Marijuana statutes. It also provided for criminal penalties for those wishing to grow marijuana plants at home for recreational purposes. SB 115's drafters showed awareness of how prior cannabis laws led to racially-biased enforcement. As part of the criminal provisions of SB 115, the bill required that local law enforcement agencies provide demographic information regarding arrests they made for cannabis violations.

Complex Taxation Due to Involvement of Indian Nations, Tribes, and Pueblos

The taxation portion of SB 115 would have created a cannabis regulatory fund that could have provided grants for education, economic redevelopment, public health, and housing. This fund also could have supported grants to qualifying New Mexico non-profit entities. The bill carved out special taxation rules exempting tax collection from the gross profits of cannabis sales on Indian Nations, Tribes, and Pueblos, but noted that this exemption would be

subject to the approval of the US Secretary of the Interior. As the Federal government has not relaxed its criminal and financial regulations concerning cannabis sales, this could have led to significant disputes between local Tribal entities and the Bureau of Indian Affairs (BIA) and the Internal Revenue Service (IRS). With whatever cannabis legislation that may be developed in the future, it is worth watching how the State and Tribal governments address the issue of taxation and satisfying the BIA and the IRS.

The Implications of SB 115's Demise

New Mexico Governor Michelle Lujan indicated that she was confident that New Mexico would legalize recreational cannabis use and sales. However, the delay created by SB 115's demise may give Colorado cannabis businesses additional time to prepare for the economic impact of New Mexico's eventual legalization. Some companies are not that worried, though.

Speaking in the newly remodeled lobby of the Trinidad La Quinta by Wyndham, General Manager Cy Michaels said, "Marijuana is great money, and we appreciate it, but it's not what our city survives on. Our city survives based on good leadership." Las Animas County reported \$43.9M in recreational cannabis sales in 2017; loss of New Mexico and other out-of-state customers would decrease this amount,

although to what degree is unknown.

For New Mexico, the demise of SB 115 points to a long fight for the legalization of recreational cannabis. Legislators have expressed concern that this bill, at 173 pages, did not adequately address protections against youth consumption of cannabis, and appear to have additional issues to address concerning taxation and Tribal sales. For now, though, that means that recreational cannabis users will have to continue to travel over Raton Pass to make their purchases.



