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AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
AMENDING THE LYNN AND ERIN COMPASSIONATE USE ACT; EXEMPTING
CERTAIN APPROVED ENTITIES AND EMPLOYEES AND AGENTS FROM
CRIMINAL AND CIVIL LIABILITY; ALLOWING THE DEPARTMENT OF
HEALTH TO EXTEND THE ENROLLMENT OF A QUALIFIED PARTICIPANT;
PROVIDING FOR NOTICE TO LOCALITIES OF NEW PRODUCER LICENSING;
AMENDING A SECTION OF THE JONATHAN SPRADLING REVISED UNIFORM
ANATOMICAL GIFT ACT; ENACTING A NEW SECTION OF THE NMSA 1978
TO REMOVE PARTICIPATION IN THE STATE'S MEDICAL CANNABIS
PROGRAM AS GROUNDS FOR CHILD PROTECTIVE SERVICES
INTERVENTION; DECLARING AN EMERGENCY.

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

SECTION 1. Section 24-6B-11 NMSA 1978 (being Laws 2007,
Chapter 323, Section 11) is amended to read:

"24-6B-11. PERSONS THAT MAY RECEIVE ANATOMICAL GIFT--
PURPOSE OF ANATOMICAL GIFT.--

A. An anatomical gift may be made to the following
persons named in the document of gift:

(1) a hospital; accredited medical school,
dental school, college or university; organ procurement
organization; or other appropriate person, for research or
education;

(2) subject to the provisions of Subsection

1 B of this section, an individual designated by the person
2 making the anatomical gift if the individual is the recipient
3 of the part; and

4 (3) an eye bank or tissue bank.

5 B. If an anatomical gift to an individual pursuant
6 to Paragraph (2) of Subsection A of this section cannot be
7 transplanted into the individual, the part passes in
8 accordance with Subsection G of this section in the absence
9 of an express, contrary indication by the person making the
10 anatomical gift.

11 C. If an anatomical gift of one or more specific
12 parts or of all parts is made in a document of gift that does
13 not name a person described in Subsection A of this section
14 but identifies the purpose for which an anatomical gift may
15 be used, the following rules apply:

16 (1) if the part is an eye and the gift is
17 for the purpose of transplantation or therapy, the gift
18 passes to the appropriate eye bank;

19 (2) if the part is tissue and the gift is
20 for the purpose of transplantation or therapy, the gift
21 passes to the appropriate tissue bank;

22 (3) if the part is an organ and the gift is
23 for the purpose of transplantation or therapy, the gift
24 passes to the appropriate organ procurement organization as
25 custodian of the organ; and

1 (4) if the part is an organ, an eye or
2 tissue and the gift is for the purpose of research or
3 education, the gift passes to the appropriate procurement
4 organization.

5 D. For the purpose of Subsection C of this
6 section, if there is more than one purpose of an anatomical
7 gift set forth in the document of gift but the purposes are
8 not set forth in any priority, the gift shall be used for
9 transplantation or therapy, if suitable. If the gift cannot
10 be used for transplantation or therapy, the gift may be used
11 for research or education.

12 E. If an anatomical gift of one or more specific
13 parts is made in a document of gift that does not name a
14 person described in Subsection A of this section and does not
15 identify the purpose of the gift, the gift may be used only
16 for transplantation or therapy, and the gift passes in
17 accordance with Subsection G of this section.

18 F. If a document of gift specifies only a general
19 intent to make an anatomical gift by words such as "donor",
20 "organ donor" or "body donor", or by a symbol or statement of
21 similar import, the gift may be used only for transplantation
22 or therapy and the gift passes in accordance with Subsection
23 G of this section.

24 G. For purposes of Subsections B, E and F of this
25 section the following rules apply:

1 (1) if the part is an eye, the gift passes
2 to the appropriate eye bank;

3 (2) if the part is tissue, the gift passes
4 to the appropriate tissue bank; and

5 (3) if the part is an organ, the gift passes
6 to the appropriate organ procurement organization as
7 custodian of the organ.

8 H. An anatomical gift of an organ for
9 transplantation or therapy, other than an anatomical gift
10 pursuant to Paragraph (2) of Subsection A of this section,
11 passes to the organ procurement organization as custodian of
12 the organ.

13 I. If an anatomical gift does not pass pursuant to
14 Subsections A through H of this section or the decedent's
15 body or part is not used for transplantation, therapy,
16 research or education, custody of the body or part passes to
17 the person under obligation to dispose of the body or part.

18 J. A person may not accept an anatomical gift if
19 the person knows that the gift was not effectively made
20 pursuant to Section 24-6B-5 or 24-6B-10 NMSA 1978 or if the
21 person knows that the decedent made a refusal pursuant to
22 Section 24-6B-7 NMSA 1978 that was not revoked. For purposes
23 of this subsection, if a person knows that an anatomical gift
24 was made on a document of gift, the person is deemed to know
25 of any amendment or revocation of the gift or any refusal to

1 make an anatomical gift on the same document of gift.

2 K. Except as otherwise provided in Paragraph (2)
3 of Subsection A of this section, nothing in the Jonathan
4 Spradling Revised Uniform Anatomical Gift Act affects the
5 allocation of organs for transplantation or therapy.

6 L. An individual's participation in the state's
7 medical cannabis program established pursuant to the Lynn and
8 Erin Compassionate Use Act shall not in itself constitute
9 grounds for refusing to allow that individual to receive an
10 anatomical gift."

11 **SECTION 2.** Section 26-2B-1 NMSA 1978 (being Laws 2007,
12 Chapter 210, Section 1) is amended to read:

13 "26-2B-1. SHORT TITLE.-- Chapter 26, Article 2B NMSA
14 1978 may be cited as the "Lynn and Erin Compassionate Use
15 Act" in honor of Lynn Pierson and Erin Armstrong."

16 **SECTION 3.** Section 26-2B-3 NMSA 1978 (being Laws 2007,
17 Chapter 210, Section 3) is amended to read:

18 "26-2B-3. DEFINITIONS.--As used in the Lynn and Erin
19 Compassionate Use Act:

20 A. "adequate supply" means an amount of cannabis,
21 in any form approved by the department, possessed by a
22 qualified patient or collectively possessed by a qualified
23 patient and the qualified patient's primary caregiver that is
24 determined by rule of the department to be no more than
25 reasonably necessary to ensure the uninterrupted availability

1 of cannabis for a period of three months and that is derived
2 solely from an intrastate source;

3 B. "approved entity" means a laboratory,
4 manufacturer or other entity that the department has approved
5 for participation in the medical cannabis program;

6 C. "approved laboratory" means a laboratory that
7 has been approved by the department specifically for the
8 testing of cannabis, concentrates and cannabis-derived
9 products;

10 D. "approved manufacturer" means a business entity
11 that has been approved by the department to manufacture
12 cannabis-derived products;

13 E. "cannabis" means all parts of the plants
14 Cannabis sativa and Cannabis indica, whether growing or not,
15 and the resin extracted from any part of the plant;

16 F. "cannabis-derived product" means a product,
17 other than cannabis itself, that contains or is derived from
18 cannabis, not including hemp;

19 G. "census" means a total number of currently
20 enrolled qualified patients;

21 H. "contractor" means a person that contracts to
22 provide services or supplies and that:

23 (1) works or is anticipated to work on a
24 premises used for the production, manufacture or distribution
25 of cannabis in any form; or

1 (2) may reasonably be anticipated to come
2 into contact with cannabis, in any form, in the performance
3 of the person's work;

4 I. "debilitating medical condition" means:

- 5 (1) cancer;
- 6 (2) glaucoma;
- 7 (3) multiple sclerosis;
- 8 (4) damage to the nervous tissue of the
9 spinal cord, with objective neurological indication of
10 intractable spasticity;
- 11 (5) epilepsy;
- 12 (6) positive status for human
13 immunodeficiency virus or acquired immune deficiency
14 syndrome;
- 15 (7) admitted into hospice care in accordance
16 with rules promulgated by the department;
- 17 (8) amyotrophic lateral sclerosis;
- 18 (9) Crohn's disease;
- 19 (10) hepatitis C infection, for which the
20 applicant or qualified patient provides proof that the
21 applicant or patient is currently receiving antiviral
22 treatment;
- 23 (11) Huntington's disease;
- 24 (12) inclusion body myositis;
- 25 (13) inflammatory autoimmune-mediated

1 arthritis;

2 (14) intractable nausea or vomiting;

3 (15) painful peripheral neuropathy;

4 (16) Parkinson's disease;

5 (17) posttraumatic stress disorder;

6 (18) severe chronic pain;

7 (19) severe anorexia or cachexia;

8 (20) spasmodic torticollis;

9 (21) ulcerative colitis;

10 (22) opioid use disorder, for which the
11 applicant or qualified patient is currently undergoing
12 treatment for the applicant's or qualified patient's
13 condition; or

14 (23) any other medical condition, medical
15 treatment or disease as approved by the department;

16 J. "department" means the department of health;

17 K. "employ" means to permit to work, for
18 compensation or on a volunteer basis;

19 L. "licensed producer" means any person or
20 association of persons within New Mexico that the department
21 determines to be qualified to produce, possess, distribute
22 and dispense cannabis pursuant to the Lynn and Erin
23 Compassionate Use Act and that is licensed by the department;

24 M. "person" means an individual, corporation,
25 business trust, estate, trust partnership, limited liability

1 company, association, joint venture or any legal or
2 commercial entity;

3 N. "practitioner" means a person licensed in New
4 Mexico to prescribe and administer drugs that are subject to
5 the Controlled Substances Act;

6 O. "primary caregiver" means a resident of New
7 Mexico who is at least eighteen years of age and who has been
8 designated by the patient's practitioner as being necessary
9 to take responsibility for managing the well-being of a
10 qualified patient with respect to the medical use of cannabis
11 pursuant to the provisions of the Lynn and Erin Compassionate
12 Use Act;

13 P. "qualified patient" means a resident of New
14 Mexico who has been diagnosed by a practitioner as having a
15 debilitating medical condition and has received written
16 certification and a registry identification card issued
17 pursuant to the Lynn and Erin Compassionate Use Act; and

18 Q. "written certification" means a statement in a
19 patient's medical records or a statement signed by a
20 patient's practitioner that, in the practitioner's
21 professional opinion, the patient has a debilitating medical
22 condition and the practitioner believes that the potential
23 health benefits of the medical use of cannabis would likely
24 outweigh the health risks for the patient. A written
25 certification is not valid for more than two years from the

1 date of issuance."

2 SECTION 4. Section 26-2B-4 NMSA 1978 (being Laws 2007,
3 Chapter 210, Section 4) is amended to read:

4 "26-2B-4. EXEMPTION FROM CRIMINAL AND CIVIL PENALTIES
5 FOR THE MEDICAL USE OF CANNABIS.--

6 A. A qualified patient shall not be subject to
7 arrest, prosecution or penalty in any manner for the
8 possession of or the medical use of cannabis if the quantity
9 of cannabis does not exceed an adequate supply.

10 B. A qualified patient's primary caregiver shall
11 not be subject to arrest, prosecution or penalty in any
12 manner for the possession of cannabis for medical use by the
13 qualified patient if the quantity of cannabis does not exceed
14 an adequate supply.

15 C. Subsection A of this section shall not apply to
16 a qualified patient under the age of eighteen years, unless:

17 (1) the qualified patient's practitioner has
18 explained the potential risks and benefits of the medical use
19 of cannabis to the qualified patient and to a parent,
20 guardian or person having legal custody of the qualified
21 patient; and

22 (2) a parent, guardian or person having
23 legal custody consents in writing to:

24 (a) allow the qualified patient's
25 medical use of cannabis;

1 (b) serve as the qualified patient's
2 primary caregiver; and

3 (c) control the dosage and the
4 frequency of the medical use of cannabis by the qualified
5 patient.

6 D. A qualified patient or a primary caregiver
7 shall be granted the full legal protections provided in this
8 section if the patient or caregiver is in possession of a
9 registry identification card. If the qualified patient or
10 primary caregiver is not in possession of a registry
11 identification card, the patient or caregiver shall be given
12 an opportunity to produce the registry identification card
13 before any arrest or criminal charges or other penalties are
14 initiated.

15 E. A practitioner shall not be subject to arrest
16 or prosecution, penalized in any manner or denied any right
17 or privilege for recommending the medical use of cannabis or
18 providing written certification for the medical use of
19 cannabis pursuant to the Lynn and Erin Compassionate Use Act.

20 F. A licensed producer shall not be subject to
21 arrest, prosecution or penalty, in any manner, for the
22 production, possession, distribution or dispensing of
23 cannabis pursuant to the Lynn and Erin Compassionate Use Act.

24 G. An approved entity, or a department employee or
25 agent, shall not be subject to arrest, prosecution or

1 penalty, in any manner, for the possession of cannabis, or
2 for such other activity, as may be permitted by department
3 rule pursuant to the Lynn and Erin Compassionate Use Act.

4 H. Any property interest that is possessed, owned
5 or used in connection with the medical use of cannabis, or
6 acts incidental to such use, shall not be harmed, neglected,
7 injured or destroyed while in the possession of state or
8 local law enforcement officials. Any such property interest
9 shall not be forfeited under any state or local law providing
10 for the forfeiture of property except as provided in the
11 Forfeiture Act. Cannabis, paraphernalia or other property
12 seized from a qualified patient or primary caregiver in
13 connection with the claimed medical use of cannabis shall be
14 returned immediately upon the determination by a court or
15 prosecutor that the qualified patient or primary caregiver is
16 entitled to the protections of the provisions of the Lynn and
17 Erin Compassionate Use Act, as may be evidenced by a failure
18 to actively investigate the case, a decision not to
19 prosecute, the dismissal of charges or acquittal.

20 I. A person shall not be subject to arrest or
21 prosecution for a cannabis-related offense for simply being
22 in the presence of the medical use of cannabis as permitted
23 under the provisions of the Lynn and Erin Compassionate Use
24 Act."

25 SECTION 5. Section 26-2B-7 NMSA 1978 (being Laws 2007,

1 Chapter 210, Section 7) is amended to read:

2 "26-2B-7. REGISTRY IDENTIFICATION CARDS--DEPARTMENT
3 RULES--DUTIES--NONRESIDENT RECIPROCITY--CENSUS POSTING.--

4 A. After consultation with the advisory board, the
5 department shall promulgate rules in accordance with the
6 State Rules Act to implement the purpose of the Lynn and Erin
7 Compassionate Use Act. The rules shall:

8 (1) govern the manner in which the
9 department will consider applications for registry
10 identification cards and for the renewal of identification
11 cards for qualified patients and primary caregivers;

12 (2) define the amount of cannabis that is
13 necessary to constitute an adequate supply, including amounts
14 for topical treatments;

15 (3) identify criteria and set forth
16 procedures for including additional medical conditions,
17 medical treatments or diseases to the list of debilitating
18 medical conditions that qualify for the medical use of
19 cannabis. Procedures shall include a petition process and
20 shall allow for public comment and public hearings before the
21 advisory board;

22 (4) set forth additional medical conditions,
23 medical treatments or diseases to the list of debilitating
24 medical conditions that qualify for the medical use of
25 cannabis as recommended by the advisory board;

1 (5) identify requirements for the licensure
2 of producers and cannabis production facilities and set forth
3 procedures to obtain licenses;

4 (6) develop a distribution system for
5 medical cannabis that provides for:

6 (a) cannabis production facilities
7 within New Mexico housed on secured grounds and operated by
8 licensed producers; and

9 (b) distribution of medical cannabis to
10 qualified patients or their primary caregivers to take place
11 at locations that are designated by the department and that
12 are not within three hundred feet of any school, church or
13 daycare center;

14 (7) determine additional duties and
15 responsibilities of the advisory board; and

16 (8) be revised and updated as necessary.

17 B. The department shall issue registry
18 identification cards to a patient and to the primary
19 caregiver for that patient, if any, who submit the following,
20 in accordance with the department's rules:

21 (1) a written certification;

22 (2) the name, address and date of birth of
23 the patient;

24 (3) the name, address and telephone number
25 of the patient's practitioner; and

1 (4) the name, address and date of birth of
2 the patient's primary caregiver, if any.

3 C. The department may verify the information
4 contained in an application submitted pursuant to Subsection
5 B of this section and shall approve or deny an application
6 within thirty days of receipt. The department may extend the
7 enrollment of a qualified patient or primary caregiver if the
8 department believes that the individual's enrollment might
9 otherwise lapse as a result of a delay in the processing of
10 the enrollment application. The department may deny an
11 application only if the applicant did not provide the
12 information required pursuant to Subsection B of this section
13 or if the department determines that the information provided
14 is false. A person whose application has been denied shall
15 not reapply for six months from the date of the denial unless
16 otherwise authorized by the department.

17 D. The department shall issue a registry
18 identification card within five days of approving an
19 application, and a card shall expire two years after the date
20 of issuance. A registry identification card shall contain:

21 (1) the name, address and date of birth of
22 the qualified patient and primary caregiver, if any;

23 (2) the date of issuance and expiration date
24 of the registry identification card; and

25 (3) other information that the department

1 may require by rule.

2 E. A person who possesses a registry
3 identification card shall notify the department of any change
4 in the person's name, address, qualified patient's
5 practitioner, qualified patient's primary caregiver or
6 change in status of the qualified patient's debilitating
7 medical condition within ten days of the change.

8 F. Possession of or application for a registry
9 identification card shall not constitute probable cause or
10 give rise to reasonable suspicion for a governmental agency
11 to search the person or property of the person possessing or
12 applying for the card.

13 G. The department shall maintain a confidential
14 file containing the names and addresses of the persons who
15 have either applied for or received a registry identification
16 card. Individual names on the list shall be confidential and
17 not subject to disclosure, except:

18 (1) to authorized employees or agents of the
19 department as necessary to perform the duties of the
20 department pursuant to the provisions of the Lynn and Erin
21 Compassionate Use Act;

22 (2) to authorized employees of state or
23 local law enforcement agencies, but only for the purpose of
24 verifying that a person is lawfully in possession of a
25 registry identification card; or

1 (3) as provided in the federal Health
2 Insurance Portability and Accountability Act of 1996.

3 H. The department shall promulgate rules to
4 provide for reciprocity to enable nonresidents who qualify as
5 medical cannabis patients in another state to participate in
6 the medical cannabis program established pursuant to the Lynn
7 and Erin Compassionate Use Act.

8 I. By July 1, 2017, January 1, 2018 and each
9 January 1 thereafter, the department shall:

10 (1) publish on its website in a publicly
11 accessible manner a current census of qualified patients; and

12 (2) notify all licensed producers of the
13 current census of qualified patients."

14 **SECTION 6.** A new section of the Lynn and Erin
15 Compassionate Use Act is enacted to read:

16 " ISSUANCE OF PRODUCER LICENSE--NOTICE TO LOCALITIES.--

17 A. Beginning July 1, 2017, before issuing any new
18 producer license, the secretary of health shall notify by
19 certified mail the governing body of any locality in which an
20 entity to be issued a new producer license is headquartered
21 of:

22 (1) the secretary's intent to approve the
23 issuance of the new producer license;

24 (2) the name of the entity to which the
25 department is issuing the new producer license; and

1 (3) the address of the entity to which the
2 license is to be issued.

3 B. As used in this section "locality" means the
4 municipality in which an entity is headquartered or, if the
5 entity is not headquartered in a municipality, the county in
6 which the entity is headquartered."

7 **SECTION 7. MEDICAL CANNABIS PROGRAM--REMOVAL OF**
8 **CHILDREN--FAMILY SERVICES INTERVENTION.--**An individual's
9 participation in the state's medical cannabis program
10 established pursuant to the Lynn and Erin Compassionate Use
11 Act shall not in itself constitute grounds for:

12 A. removal and placement into state custody of a
13 child in that individual's care pursuant to the Abuse and
14 Neglect Act; or

15 B. the provision of state prevention, diversion or
16 intervention services to that individual's family pursuant to
17 the Family Services Act.

18 **SECTION 8. EMERGENCY.--**It is necessary for the public
19 peace, health and safety that this act take effect
20 immediately. _____

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