HOUSE BILL 155

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

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AN ACT

RELATING TO CANNABIS; AMENDING SECTIONS OF THE LYNN AND ERIN
COMPASSIONATE USE ACT AND THE DEPARTMENT OF HEALTH ACT TO
PROVIDE FOR MEDICAL CANNABIS RESEARCH; CREATING THE CANNABIS
RESEARCH ADVISORY COUNCIL; CREATING THE CANNABIS RESEARCH FUND;
LIMITING LIABILITY FOR RESEARCHERS; MAKING AN APPROPRIATION.

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

SECTION 1. Section 9-7-17.1 NMSA 1978 (being Laws 2012,
Chapter 42, Section 1) is amended to read:

"9-7-17.1. MEDICAL CANNABIS FUND--REPORTING.--

A. The "medical cannabis fund" is created in the
state treasury. The fund consists of fees collected by the
department [of health] pursuant to the medical cannabis program
that the department [of health] administers, income from
investment of the fund and income otherwise accruing to the
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fund. Any unexpended or unencumbered balance remaining at the
eend of any fiscal year shall revert to the general fund.

B. The department [of health] shall administer the
fund, and money in the fund is appropriated to the department
[of health] to support the [department of health's]
department's administration of the medical cannabis program;
provided that none of the money from the fund shall be used for
capital expenditures.

C. Money in the fund shall be disbursed on warrants
signed by the secretary of finance and administration pursuant
to vouchers signed by the secretary of health or the secretary
of health's authorized representative.

D. The department [of health] shall report annually
to the legislative finance committee on medical cannabis fund
income and expenditures.

E. At the end of each month, ten percent of the
fees collected by the department pursuant to the medical
cannabis program during the previous thirty days shall be
transferred to the cannabis research fund."

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

"26-2B-1. SHORT TITLE.--[Sections 1 through 7 of this
act] Chapter 26, Article 2B NMSA 1978 may be cited as the "Lynn
and Erin Compassionate Use Act" in honor of Lynn Pierson and
Erin Armstrong."
SECTION 3. Section 26-2B-2 NMSA 1978 (being Laws 2007, Chapter 210, Section 2) is amended to read:

"26-2B-2. PURPOSE OF ACT.--The purposes of the Lynn and Erin Compassionate Use Act are to allow the beneficial use of medical cannabis in a regulated system for alleviating symptoms caused by debilitating medical conditions and their medical treatments and to provide for research into the production, uses, effects and efficacy of medical cannabis."

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

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

A. "adequate supply" means an amount of cannabis, in any form approved by the department, possessed by a qualified patient or collectively possessed by a qualified patient and the qualified patient's primary caregiver that is determined by rule of the department to be no more than reasonably necessary to ensure the uninterrupted availability of cannabis for a period of three months and that is derived solely from an intrastate source;

B. "chancellor" means the chancellor for health sciences of the university of New Mexico;

C. "council" means the cannabis research advisory council;
D. "debilitating medical condition" means:

(1) cancer;
(2) glaucoma;
(3) multiple sclerosis;
(4) damage to the nervous tissue of the spinal cord, with objective neurological indication of intractable spasticity;
(5) epilepsy;
(6) positive status for human immunodeficiency virus or acquired immune deficiency syndrome;
(7) admitted into hospice care in accordance with rules promulgated by the department; or
(8) any other medical condition, medical treatment or disease as approved by the department;

E. "department" means the department of health;

F. "health sciences center" means the health sciences center at the university of New Mexico;

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

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

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

[G. ] J. "qualified patient" means a resident of New Mexico who has been diagnosed by a practitioner as having a debilitating medical condition and has received written certification and a registry identification card issued pursuant to the Lynn and Erin Compassionate Use Act; [and]

K. "researcher" means a person who is conducting or assisting with research pursuant to the Lynn and Erin Compassionate Use Act; and

[H. ] L. "written certification" means a statement in a patient's medical records or a statement signed by a patient's practitioner that, in the practitioner's professional opinion, the patient has a debilitating medical condition and the practitioner believes that the potential health benefits of the medical use of cannabis would likely outweigh the health risks for the patient. A written certification is not valid for more than one year from the date of issuance."

SECTION 5. Section 26-2B-4 NMSA 1978 (being Laws 2007, Chapter 210, Section 4) is amended to read:
"26-2B-4. EXEMPTION FROM CRIMINAL AND CIVIL PENALTIES
[FOR--THE]--MEDICAL USE OF CANNABIS--RESEARCHERS.--

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

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

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

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

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

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

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

         (c) control the dosage and the frequency
of the medical use of cannabis by the qualified patient.
D. A qualified patient or a primary caregiver shall be granted the full legal protections provided in this section if the patient or caregiver is in possession of a registry identification card. If the qualified patient or primary caregiver is not in possession of a registry identification card, the patient or caregiver shall be given an opportunity to produce the registry identification card before any arrest or criminal charges or other penalties are initiated.

E. A researcher shall not be subject to arrest or prosecution, penalized in any manner or denied any right or privilege for the production, possession, distribution or dispensing of cannabis, or purchase of cannabis from a licensed producer, if the researcher's production, possession, distribution, dispensing or purchase of cannabis is solely for the purpose of research conducted pursuant to the Lynn and Erin Compassionate Use Act.

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

G. A licensed producer shall not be subject to arrest, prosecution or penalty, in any manner, for the production, possession, distribution or dispensing of cannabis pursuant to the Lynn and Erin Compassionate Use Act.
Any property interest that is possessed, owned or used in connection with the medical use of cannabis, or acts incidental to such use, shall not be harmed, neglected, injured or destroyed while in the possession of state or local law enforcement officials. Any such property interest shall not be forfeited under any state or local law providing for the forfeiture of property except as provided in the Forfeiture Act. Cannabis, paraphernalia or other property seized from a qualified patient or primary caregiver in connection with the claimed medical use of cannabis shall be returned immediately upon the determination by a court or prosecutor that the qualified patient or primary caregiver is entitled to the protections of the provisions of the Lynn and Erin Compassionate Use Act, as may be evidenced by a failure to actively investigate the case, a decision not to prosecute, the dismissal of charges or acquittal.

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

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

"[NEW MATERIAL] CANNABIS RESEARCH FUND CREATED--ADMINISTRATION--OVERSIGHT--REPORTING.--

A. The "cannabis research fund" is created in the
state treasury. The fund consists of money transferred from
the medical cannabis fund, appropriations, income from
investment of the fund and money otherwise accruing to the
fund. Money in the fund is appropriated to the health sciences
center for the purpose of research related to medical cannabis
and provided for in the Lynn and Erin Compassionate Use Act.
Money in the fund shall be disbursed on warrants signed by the
secretary of finance and administration pursuant to vouchers
signed by the chancellor or the chancellor's authorized
representative. Any balance remaining in the fund at the end
of a fiscal year shall not revert to the general fund.

B. The chancellor shall:

(1) oversee and keep a record of any research
contemplated pursuant to the Lynn and Erin Compassionate Use Act
and how the research relates to the production, use, effects or
efficacy of medical cannabis;

(2) oversee distribution documentation to each
researcher conducting research pursuant to the Lynn and Erin
Compassionate Use Act that identifies the researcher and states
that the researcher is conducting research pursuant to the Lynn
and Erin Compassionate Use Act;

(3) ensure that research conducted pursuant to
the Lynn and Erin Compassionate Use Act is conducted in
accordance with institutional and federal requirements relating
to the protection of human subjects and is approved by an
in institutional review board; and

(4) prepare and submit:

(a) an annual report to the legislative finance committee that describes expenditures from the cannabis research fund and research conducted pursuant to the Lynn and Erin Compassionate Use Act during the fiscal year preceding the submission of the report; and

(b) by November 1, 2019 and every three years thereafter, a report to the legislative health and human services committee that describes the research conducted pursuant to the Lynn and Erin Compassionate Use Act and any findings, reports or publications that resulted from the research."

SECTION 7. A new section of the Lynn and Erin Compassionate Use Act is enacted to read:

"[NEW MATERIAL] CANNABIS RESEARCH ADVISORY COUNCIL--MEMBERSHIP--DUTIES.--

A. The "cannabis research advisory council" is created at the health sciences center to advise the health sciences center on research relating to cannabis. The chancellor shall appoint members of the council as follows:

(1) one qualified patient;

(2) one licensed producer;

(3) one practitioner;

(4) one representative from a laboratory
licensed in the state to test medical cannabis;

(5) one representative of the department; and

(6) any other individual whom the chancellor
deems appropriate to advise the health sciences center in
matters relating to cannabis research.

B. Members of the council shall serve five-year
terms; provided that at the time of initial appointment, the
chancellor shall appoint members to abbreviated terms to allow
for the terms of subsequent members to be staggered. The
chancellor shall fill any vacancy on the council.

C. Members of the council shall be reimbursed
pursuant to the Per Diem and Mileage Act and shall receive no
other compensation, perquisite or allowance for their service
on the council.

D. The council shall:

(1) keep a record of council meetings;

(2) recommend research projects; and

(3) discuss the outcomes of and advise the
chancellor on applications for research that is conducted
pursuant to the Lynn and Erin Compassionate Use Act and that is
overseen by the chancellor."

SECTION 8. EFFECTIVE DATE.--The effective date of the
provisions of this act is July 1, 2017.