

HOUSE HEALTH AND HUMAN SERVICES COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 527

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

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; ALLOWING  
EMPLOYER OR INSURER PAYMENT FOR THE REASONABLE USE OF MEDICAL  
CANNABIS PURSUANT TO THE WORKERS' COMPENSATION ACT; DECLARING  
AN EMERGENCY.

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

.207296.3

underscoring material = new  
[bracketed material] = delete

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

3           "24-6B-11. PERSONS THAT MAY RECEIVE ANATOMICAL GIFT--  
4 PURPOSE OF ANATOMICAL GIFT.--

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

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

11                   (2) subject to the provisions of Subsection B  
12 of this section, an individual designated by the person making  
13 the anatomical gift if the individual is the recipient of the  
14 part; and

15                   (3) an eye bank or tissue bank.

16           B. If an anatomical gift to an individual pursuant  
17 to Paragraph (2) of Subsection A of this section cannot be  
18 transplanted into the individual, the part passes in accordance  
19 with Subsection G of this section in the absence of an express,  
20 contrary indication by the person making the anatomical gift.

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

.207296.3

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

4 (2) if the part is tissue and the gift is for  
5 the purpose of transplantation or therapy, the gift passes to  
6 the appropriate tissue bank;

7 (3) if the part is an organ and the gift is  
8 for the purpose of transplantation or therapy, the gift passes  
9 to the appropriate organ procurement organization as custodian  
10 of the organ; and

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

14 D. For the purpose of Subsection C of this section,  
15 if there is more than one purpose of an anatomical gift set  
16 forth in the document of gift but the purposes are not set  
17 forth in any priority, the gift shall be used for  
18 transplantation or therapy, if suitable. If the gift cannot be  
19 used for transplantation or therapy, the gift may be used for  
20 research or education.

21 E. If an anatomical gift of one or more specific  
22 parts is made in a document of gift that does not name a person  
23 described in Subsection A of this section and does not identify  
24 the purpose of the gift, the gift may be used only for  
25 transplantation or therapy, and the gift passes in accordance

.207296.3

1 with Subsection G of this section.

2 F. If a document of gift specifies only a general  
3 intent to make an anatomical gift by words such as "donor",  
4 "organ donor" or "body donor", or by a symbol or statement of  
5 similar import, the gift may be used only for transplantation  
6 or therapy and the gift passes in accordance with Subsection G  
7 of this section.

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

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

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

14 (3) if the part is an organ, the gift passes  
15 to the appropriate organ procurement organization as custodian  
16 of the organ.

17 H. An anatomical gift of an organ for  
18 transplantation or therapy, other than an anatomical gift  
19 pursuant to Paragraph (2) of Subsection A of this section,  
20 passes to the organ procurement organization as custodian of  
21 the organ.

22 I. If an anatomical gift does not pass pursuant to  
23 Subsections A through H of this section or the decedent's body  
24 or part is not used for transplantation, therapy, research or  
25 education, custody of the body or part passes to the person

.207296.3

1 under obligation to dispose of the body or part.

2 J. A person may not accept an anatomical gift if  
 3 the person knows that the gift was not effectively made  
 4 pursuant to Section [~~5 or 10 of the Jonathan Spradling Revised~~  
 5 ~~Uniform Anatomical Gift Act~~] 24-6B-5 or 24-6B-10 NMSA 1978 or  
 6 if the person knows that the decedent made a refusal pursuant  
 7 to Section [~~7 of that act~~] 24-6B-7 NMSA 1978 that was not  
 8 revoked. For purposes of this subsection, if a person knows  
 9 that an anatomical gift was made on a document of gift, the  
 10 person is deemed to know of any amendment or revocation of the  
 11 gift or any refusal to make an anatomical gift on the same  
 12 document of gift.

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

17 L. An individual's participation in the state's  
 18 medical cannabis program established pursuant to the Lynn and  
 19 Erin Compassionate Use Act shall not in itself constitute  
 20 grounds for refusing to allow that individual to receive an  
 21 anatomical gift."

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

24 "26-2B-1. SHORT TITLE.--~~[Sections 1 through 7 of this~~  
 25 ~~act]~~ Chapter 26, Article 2B NMSA 1978 may be cited as the "Lynn

.207296.3

1 and Erin Compassionate Use Act" in honor of Lynn Pierson and  
2 Erin Armstrong."

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

5 "26-2B-3. DEFINITIONS.--As used in the Lynn and Erin  
6 Compassionate Use Act:

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

15 B. "approved entity" means a courier, laboratory,  
16 manufacturer or other entity that the department has approved  
17 for participation in the medical cannabis program;

18 C. "approved laboratory" means a laboratory that  
19 has been approved by the department specifically for the  
20 testing of cannabis, concentrates and cannabis-derived  
21 products;

22 D. "approved manufacturer" means a business entity  
23 that has been approved by the department to manufacture  
24 cannabis-derived products;

25 E. "cannabis" means all parts of the plants

1 Cannabis sativa and Cannabis indica, whether growing or not,  
2 and the resin extracted from any part of the plant;

3 F. "cannabis-derived product" means a product,  
4 other than cannabis itself, that contains or is derived from  
5 cannabis, not including hemp;

6 G. "contractor" means a person that contracts to  
7 provide services or supplies and that:

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

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

14 H. "courier" means a person or entity that  
15 transports usable cannabis within the state from a nonprofit  
16 licensed producer to a qualified patient or primary caregiver,  
17 to another nonprofit licensed producer, to an approved  
18 laboratory or to an approved manufacturer;

19 ~~[B.]~~ I. "debilitating medical condition" means:

- 20 (1) cancer;
- 21 (2) glaucoma;
- 22 (3) multiple sclerosis;
- 23 (4) damage to the nervous tissue of the spinal
- 24 cord, with objective neurological indication of intractable
- 25 spasticity;

.207296.3

- 1 (5) epilepsy;
- 2 (6) positive status for human immunodeficiency
- 3 virus or acquired immune deficiency syndrome;
- 4 (7) admitted into hospice care in accordance
- 5 with rules promulgated by the department; [~~8~~]
- 6 (8) amyotrophic lateral sclerosis;
- 7 (9) Crohn's disease;
- 8 (10) hepatitis C infection, for which the
- 9 applicant or qualified patient provides proof that the
- 10 applicant or patient is currently receiving antiviral
- 11 treatment;
- 12 (11) Huntington's disease;
- 13 (12) inclusion body myositis;
- 14 (13) inflammatory autoimmune-mediated
- 15 arthritis;
- 16 (14) intractable nausea or vomiting;
- 17 (15) painful peripheral neuropathy;
- 18 (16) Parkinson's disease;
- 19 (17) posttraumatic stress disorder;
- 20 (18) severe chronic pain;
- 21 (19) severe anorexia or cachexia;
- 22 (20) spasmodic torticollis;
- 23 (21) ulcerative colitis; or
- 24 [~~8~~] (22) any other medical condition,
- 25 medical treatment or disease as approved by the department;



1           ~~[G.]~~ J. "department" means the department of  
2 health;

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

5           ~~[D.]~~ L. "licensed producer" means any person or  
6 association of persons within New Mexico that the department  
7 determines to be qualified to produce, possess, distribute and  
8 dispense cannabis pursuant to the Lynn and Erin Compassionate  
9 Use Act and that is licensed by the department;

10           M. "nonprofit licensed producer" means a nonprofit  
11 organization that is licensed by the department to produce,  
12 possess, distribute and dispense cannabis in any form in  
13 accordance with department rule;

14           N. "person" means an individual, corporation,  
15 business trust, estate, trust partnership, limited liability  
16 company, association, joint venture or any legal or commercial  
17 entity;

18           ~~[E.]~~ O. "practitioner" means a person licensed in  
19 New Mexico to prescribe and administer drugs that are subject  
20 to the Controlled Substances Act;

21           ~~[F.]~~ P. "primary caregiver" means a resident of New  
22 Mexico who is at least eighteen years of age and who has been  
23 designated by the patient's practitioner as being necessary to  
24 take responsibility for managing the well-being of a qualified  
25 patient with respect to the medical use of cannabis pursuant to

.207296.3

1 the provisions of the Lynn and Erin Compassionate Use Act;

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

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

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

17 "26-2B-4. EXEMPTION FROM CRIMINAL AND CIVIL PENALTIES FOR  
18 THE MEDICAL USE OF CANNABIS.--

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

23 B. A qualified patient's primary caregiver shall  
24 not be subject to arrest, prosecution or penalty in any manner  
25 for the possession of cannabis for medical use by the qualified

1 patient if the quantity of cannabis does not exceed an adequate  
2 supply.

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

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

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

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

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

15 (c) control the dosage and the frequency  
16 of the medical use of cannabis by the qualified patient.

17 D. A qualified patient or a primary caregiver shall  
18 be granted the full legal protections provided in this section  
19 if the patient or caregiver is in possession of a registry  
20 identification card. If the qualified patient or primary  
21 caregiver is not in possession of a registry identification  
22 card, the patient or caregiver shall be given an opportunity to  
23 produce the registry identification card before any arrest or  
24 criminal charges or other penalties are initiated.

25 E. A practitioner shall not be subject to arrest or

.207296.3

1 prosecution, penalized in any manner or denied any right or  
2 privilege for recommending the medical use of cannabis or  
3 providing written certification for the medical use of cannabis  
4 pursuant to the Lynn and Erin Compassionate Use Act.

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

9 G. An approved entity, or a department employee or  
10 agent, shall not be subject to arrest, prosecution or penalty,  
11 in any manner, for the possession of cannabis, or for such  
12 other activity, as may be permitted by department rule pursuant  
13 to the Lynn and Erin Compassionate Use Act.

14 [~~G.~~] H. Any property interest that is possessed,  
15 owned or used in connection with the medical use of cannabis,  
16 or acts incidental to such use, shall not be harmed, neglected,  
17 injured or destroyed while in the possession of state or local  
18 law enforcement officials. Any such property interest shall  
19 not be forfeited under any state or local law providing for the  
20 forfeiture of property except as provided in the Forfeiture  
21 Act. Cannabis, paraphernalia or other property seized from a  
22 qualified patient or primary caregiver in connection with the  
23 claimed medical use of cannabis shall be returned immediately  
24 upon the determination by a court or prosecutor that the  
25 qualified patient or primary caregiver is entitled to the

.207296.3

1 protections of the provisions of the Lynn and Erin  
 2 Compassionate Use Act, as may be evidenced by a failure to  
 3 actively investigate the case, a decision not to prosecute, the  
 4 dismissal of charges or acquittal.

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

9 **SECTION 5.** Section 26-2B-7 NMSA 1978 (being Laws 2007,  
 10 Chapter 210, Section 7) is amended to read:

11 "26-2B-7. REGISTRY IDENTIFICATION CARDS--DEPARTMENT  
 12 RULES--DUTIES--NONRESIDENT RECIPROCITY--CENSUS POSTING.--

13 A. ~~[No later than October 1, 2007, and]~~ After  
 14 consultation with the advisory board, the department shall  
 15 promulgate rules in accordance with the State Rules Act to  
 16 implement the purpose of the Lynn and Erin Compassionate Use  
 17 Act. The rules shall:

18 (1) govern the manner in which the department  
 19 will consider applications for registry identification cards  
 20 and for the renewal of identification cards for qualified  
 21 patients and primary caregivers;

22 (2) define the amount of cannabis that is  
 23 necessary to constitute an adequate supply, including amounts  
 24 for topical treatments;

25 (3) identify criteria and set forth procedures

.207296.3

1 for including additional medical conditions, medical treatments  
2 or diseases to the list of debilitating medical conditions that  
3 qualify for the medical use of cannabis. Procedures shall  
4 include a petition process and shall allow for public comment  
5 and public hearings before the advisory board;

6 (4) set forth additional medical conditions,  
7 medical treatments or diseases to the list of debilitating  
8 medical conditions that qualify for the medical use of cannabis  
9 as recommended by the advisory board;

10 (5) identify requirements for the licensure of  
11 producers and cannabis production facilities and set forth  
12 procedures to obtain licenses;

13 (6) develop a distribution system for medical  
14 cannabis that provides for:

15 (a) cannabis production facilities  
16 within New Mexico housed on secured grounds and operated by  
17 licensed producers; and

18 (b) distribution of medical cannabis to  
19 qualified patients or their primary caregivers to take place at  
20 locations that are designated by the department and that are  
21 not within three hundred feet of any school, church or daycare  
22 center;

23 (7) determine additional duties and  
24 responsibilities of the advisory board; and

25 (8) be revised and updated as necessary.

1           B. The department shall issue registry  
2 identification cards to a patient and to the primary caregiver  
3 for that patient, if any, who submit the following, in  
4 accordance with the department's rules:

- 5                   (1) a written certification;  
6                   (2) the name, address and date of birth of the  
7 patient;  
8                   (3) the name, address and telephone number of  
9 the patient's practitioner; and  
10                   (4) the name, address and date of birth of the  
11 patient's primary caregiver, if any.

12           C. The department [~~shall~~] may verify the  
13 information contained in an application submitted pursuant to  
14 Subsection B of this section and shall approve or deny an  
15 application within thirty days of receipt. The department may  
16 extend the enrollment of a qualified patient or primary  
17 caregiver if the department believes that the individual's  
18 enrollment might otherwise lapse as a result of a delay in the  
19 processing of the enrollment application. The department may  
20 deny an application only if the applicant did not provide the  
21 information required pursuant to Subsection B of this section  
22 or if the department determines that the information provided  
23 is false. A person whose application has been denied shall not  
24 reapply for six months from the date of the denial unless  
25 otherwise authorized by the department.

.207296.3

1           D. The department shall issue a registry  
2 identification card within five days of approving an  
3 application, and a card shall expire [~~one year~~] two years after  
4 the date of issuance. A registry identification card shall  
5 contain:

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

8                   (2) the date of issuance and expiration date  
9 of the registry identification card; and

10                  (3) other information that the department may  
11 require by rule.

12           E. A person who possesses a registry identification  
13 card shall notify the department of any change in the person's  
14 name, address, qualified patient's practitioner, qualified  
15 patient's primary caregiver or change in status of the  
16 qualified patient's debilitating medical condition within ten  
17 days of the change.

18           F. Possession of or application for a registry  
19 identification card shall not constitute probable cause or give  
20 rise to reasonable suspicion for a governmental agency to  
21 search the person or property of the person possessing or  
22 applying for the card.

23           G. The department shall maintain a confidential  
24 file containing the names and addresses of the persons who have  
25 either applied for or received a registry identification card.



1 Individual names on the list shall be confidential and not  
2 subject to disclosure, except:

3 (1) to authorized employees or agents of the  
4 department as necessary to perform the duties of the department  
5 pursuant to the provisions of the Lynn and Erin Compassionate  
6 Use Act;

7 (2) to authorized employees of state or local  
8 law enforcement agencies, but only for the purpose of verifying  
9 that a person is lawfully in possession of a registry  
10 identification card; or

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

13 H. The secretary of health shall adopt and  
14 promulgate rules to provide for reciprocity that enables  
15 nonresidents to participate in the medical cannabis program  
16 established pursuant to the Lynn and Erin Compassionate Use Act  
17 for nonresidents who provide proof of registration with other  
18 jurisdictions' medical cannabis programs, which entitles those  
19 nonresidents to be exempt in those jurisdictions from criminal  
20 prosecution for using medical cannabis in accordance with those  
21 jurisdictions' laws.

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

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

.207296.3

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

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

5                   "[NEW MATERIAL] ISSUANCE OF PRODUCER LICENSE--NOTICE TO  
6                   LOCALITIES.--

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

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

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

15                  (3) the address of the entity to which the  
16                  license is to be issued.

17                  B. As used in this section "locality" means the  
18                  municipality in which an entity is headquartered or, if the  
19                  entity is not headquartered in a municipality, the county in  
20                  which the entity is headquartered."

21                  SECTION 7. [NEW MATERIAL] MEDICAL CANNABIS PROGRAM--  
22                  REMOVAL OF CHILDREN--FAMILY SERVICES INTERVENTION.--An  
23                  individual's participation in the state's medical cannabis  
24                  program established pursuant to the Lynn and Erin Compassionate  
25                  Use Act shall not in itself constitute grounds for:

.207296.3

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

4           B. the provision of state prevention, diversion or  
5 intervention services to that individual's family pursuant to  
6 the Family Services Act.

7           **SECTION 8.** A new section of the Workers' Compensation Act  
8 is enacted to read:

9           "[NEW MATERIAL] WORKERS' COMPENSATION PAYMENT FOR MEDICAL  
10 CANNABIS.--An employer or insurer shall pay for medical  
11 cannabis for a worker when:

12           A. an authorized health care provider determines  
13 that the use of medical cannabis is reasonable and necessary  
14 health care for the worker's injury;

15           B. the authorized health care provider is  
16 authorized by law to prescribe and administer drugs that are  
17 subject to the Controlled Substances Act;

18           C. the treatment or services being provided to the  
19 worker by the health care provider are within the health care  
20 provider's scope of practice as determined by the health care  
21 provider's license; and

22           D. the worker has a valid registry identification  
23 card issued by the department of health pursuant to the Lynn  
24 and Erin Compassionate Use Act."

25           **SECTION 9.** EMERGENCY.--It is necessary for the public

.207296.3

underscored material = new  
[bracketed material] = delete

1 peace, health and safety that this act take effect immediately.

2 - 20 -

underscored material = new  
[bracketed material] = delete

3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25