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

(3) an eye bank or tissue bank.

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

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

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

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

(3) if the part is an organ and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate organ procurement organization as custodian of the organ; and
(4) if the part is an organ, an eye or tissue and the gift is for the purpose of research or education, the gift passes to the appropriate procurement organization.

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

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

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

G. For purposes of Subsections B, E and F of this section the following rules apply:
(1) if the part is an eye, the gift passes to the appropriate eye bank;

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

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

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

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

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

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

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

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

"26-2B-1. SHORT TITLE.-- 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-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. "approved entity" means a laboratory, manufacturer or other entity that the department has approved for participation in the medical cannabis program;

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

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

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

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

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

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

   (1) works or is anticipated to work on a premises used for the production, manufacture or distribution of cannabis in any form; or
(2) may reasonably be anticipated to come
into contact with cannabis, in any form, in the performance
of the person's work;

I. "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;

(8) amyotrophic lateral sclerosis;

(9) Crohn's disease;

(10) hepatitis C infection, for which the
applicant or qualified patient provides proof that the
applicant or patient is currently receiving antiviral
treatment;

(11) Huntington's disease;

(12) inclusion body myositis;

(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) spasmotic torticollis;
9 (21) ulcerative colitis;
10 (22) opioid use disorder, for which the applicant or qualified patient is currently undergoing treatment for the applicant’s or qualified patient’s condition; or
11 (23) any other medical condition, medical treatment or disease as approved by the department;
12 J. "department" means the department of health;
13 K. "employ" means to permit to work, for compensation or on a volunteer basis;
14 L. "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;
15 M. "person" means an individual, corporation, business trust, estate, trust partnership, limited liability
company, association, joint venture or any legal or
commercial entity;

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

O. "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;

P. "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

Q. "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 two years from the
SECTION 4. 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.--

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 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.

F. 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.

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

H. 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.

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

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

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

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

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

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

(4) set forth additional medical conditions, medical treatments or diseases to the list of debilitating medical conditions that qualify for the medical use of cannabis as recommended by the advisory board;
(5) identify requirements for the licensure of producers and cannabis production facilities and set forth procedures to obtain licenses;

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

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

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

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

(8) be revised and updated as necessary.

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

(1) a written certification;

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

(3) the name, address and telephone number of the patient's practitioner; and
the patient's primary caregiver, if any.

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

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

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

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

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

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

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

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

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

(2) to authorized employees of state or local law enforcement agencies, but only for the purpose of verifying that a person is lawfully in possession of a registry identification card; or
(3) as provided in the federal Health Insurance Portability and Accountability Act of 1996.

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

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

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

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

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

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

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

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

(2) the name of the entity to which the department is issuing the new producer license; and
(3) the address of the entity to which the license is to be issued.

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

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

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

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

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