

SENATE BILL 204

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

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Pursuant to House Rule 24-1, this document incorporates amendments that have been adopted prior to consideration of this measure by the House. It is a tool to show the amendments in context and is not to be used for the purpose of amendments.

FOR THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

AN ACT

RELATING TO HEALTH; ENACTING A SECTION OF THE PUBLIC SCHOOL CODE AND AMENDING A SECTION OF THE LYNN AND ERIN COMPASSIONATE USE ACT TO ALLOW THE POSSESSION, STORAGE AND ADMINISTRATION OF MEDICAL CANNABIS IN CERTAIN SCHOOL SETTINGS.

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

SECTION 1. A new section of the Public School Code is enacted to read:

"[NEW MATERIAL] MEDICAL CANNABIS--POSSESSION--STORAGE--ADMINISTRATION--RESTRICTION--EXEMPTIONS.--

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A. Except as provided pursuant to Subsection C of this section, local school boards and the governing bodies of charter schools shall Sfl→adopt policies and procedures to←Sfl authorize Sfl→by rule←Sfl the possession, storage and administration of medical cannabis by parents and legal guardians, or by designated school personnel, to qualified students for use in school settings; provided that:

(1) a student shall not possess, store or self-administer medical cannabis in a school setting;

(2) a parent, legal guardian or designated school personnel shall not administer medical cannabis in a manner that creates disruption to the educational environment or causes other students to be exposed to medical cannabis;

(3) a written treatment plan for the administration of the medical cannabis is agreed to and signed by the principal or the principal's designee of the qualified student's school and the qualified student's parent or legal guardian; and

(4) before the first administration of medical cannabis in a school setting, the qualified student's parent or legal guardian completes and submits documentation as required by local school board or charter school rules that includes a:

(a) copy of the qualified student's written certification for use of medical cannabis pursuant to the Lynn and Erin Compassionate Use Act; and

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(b) written statement from the qualified student's parent or legal guardian releasing the school and school personnel from liability, except in cases of willful or wanton misconduct or disregard of the qualified student's treatment plan.

B. A school board or the governing body of a charter school may adopt policies that:

(1) restrict the types of designated school personnel who may administer medical cannabis to qualified students;

(2) establish reasonable parameters regarding the administration and use of medical cannabis and the school settings in which administration and use are authorized; and

(3) ban student possession, use, distribution, sale or being under the influence of a cannabis product in a manner that is inconsistent with the provisions of this subsection.

C. The provisions of Subsection A of this section shall not apply to a SJC ~~public school~~ SJC charter school or school district if:

(1) the SJC ~~public school~~ SJC charter school or school district reasonably SJC ~~demonstrates~~ SJC SJC ~~determines~~ SJC that it would lose, or has lost, federal funding as a result of implementing the provisions of Subsection A of this section; and

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SJC→~~(2) the public school, charter school or school district posts on its website in a conspicuous manner a statement of its decision not to comply with the provisions of Subsection A of this section.~~←SJC

SJC→(2) the determination is appealable by any parent to the secretary, based on rules established by the department.←SJC

D. A public school, charter school or school district shall not:

(1) discipline a student who is a qualified student HEC→solely←HEC on the basis that the student requires medical cannabis as a reasonable accommodation necessary for the student to attend school; SPAC→or←SPAC

(2) deny eligibility to attend school to a qualified student HEC→solely←HEC on the basis that the qualified student requires medical cannabis as a reasonable accommodation necessary for the student to attend school or a school- sponsored activity SPAC→.←SPAC SPAC→; or←SPAC

SPAC→(3) discipline a school employee who refuses to administer medical cannabis.←SPAC

E. As used in this section:

(1) "certifying practitioner" means a health care practitioner who issues a written certification to a qualified student;

(2) "designated school personnel" means a

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school employee whom a public school, charter school or school district authorizes to possess, store and administer medical cannabis to a qualified student in accordance with the provisions of this section;

(3) "medical cannabis" means cannabis that is:

(a) authorized for use by qualified patients in accordance with the provisions of the Lynn and Erin Compassionate Use Act; and

(b) HHHC→is←HHHC in a form that is not an aerosol and cannot be smoked or inhaled in particulate form as a vapor or by burning;

(4) "qualified student" means a student who demonstrates evidence to the school district that the student is authorized as a qualified patient pursuant to the Lynn and Erin Compassionate Use Act to carry and use medical cannabis in accordance with the provisions of that act;

(5) "school" means a public school or a charter school;

(6) "school setting" means any of the following locations during a school day:

(a) a school building;

(b) a school bus used within the state during, in transit to or in transit from a school-sponsored activity;

(c) a public vehicle used within the

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state during, in transit to or in transit from a school-sponsored activity in the state; or

(d) a public site in the state where a school-sponsored activity takes place; and

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

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

"26-2B-5. PROHIBITIONS, RESTRICTIONS AND LIMITATIONS ON THE MEDICAL USE OF CANNABIS--CRIMINAL PENALTIES.--

A. Participation in a medical use of cannabis program by a qualified patient or primary caregiver does not relieve the qualified patient or primary caregiver from:

(1) criminal prosecution or civil penalties for activities not authorized in the Lynn and Erin Compassionate Use Act;

(2) liability for damages or criminal prosecution arising out of the operation of a vehicle while

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under the influence of cannabis; or

(3) criminal prosecution or civil penalty for possession or use of cannabis:

~~[(a) in a school bus or public vehicle;~~
~~(b) on school grounds or property;~~
~~(c)] (a) in the workplace of the qualified patient's or primary caregiver's employment; or
~~(d)] (b) at a public park, recreation center, youth center or other public place.~~~~

B. A person who makes a fraudulent representation to a law enforcement officer about the person's participation in a medical use of cannabis program to avoid arrest or prosecution for a cannabis-related offense is guilty of a petty misdemeanor and shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

C. If a licensed producer sells, distributes, dispenses or transfers cannabis to a person not approved by the department pursuant to the Lynn and Erin Compassionate Use Act or obtains or transports cannabis outside New Mexico in violation of federal law, the licensed producer shall be subject to arrest, prosecution and civil or criminal penalties pursuant to state law."