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**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

54th Legislature, 1st Session, 2019

Bill Number SB204/aSPAC/aSJC/aSFI/aHHHC/aHEC **Sponsor** Gould/Armstrong, G./Candelaria

Tracking Number .210935.5 **Committee Referrals** SPAC/SJC;
HHHC/HEC

Short Title Medical Marijuana in Schools

Analyst Force **Original Date** 1/27/19
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FOR THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

BILL SUMMARY

Synopsis of HEC Amendment

The House Education Committee Amendment to SB204 as four times amended (SB204/aSPAC/aSJC/aHHHC/aHEC) clarifies that a student may not be disciplined or denied eligibility to attend school as a result of the student's need for medical marijuana, whether it is the sole reason for the discipline or if there are other bases for the disciplinary action.

Synopsis of HHHC Amendment

The House Health and Human Services Committee Amendment to SB204 as thrice amended (SB204/aSPAC/aSJC/aSFI/aHHHC) makes a minor technical correction by striking an instance of a repeated word.

Synopsis of Senate Floor Amendment 1

Senate Floor Amendment 1 to SB204 as twice amended (SB204/aSPAC/aSJC/aSFI) clarifies that local school districts and charter schools are to adopt policies and procedures to authorize the possession, storage, and administration of medical marijuana in schools, rather than promulgate rules to do so.

Synopsis of SJC Amendment

The Senate Judiciary Committee Amendment to SB204 as amended by the Senate Public Affairs Committee (SB204/aSPAC/aSJC) makes technical corrections and removes the requirement that charter schools and school districts post on their websites a statement of their decision not to comply with the provisions of SB204/aSPAC/aSJC. Instead, the amendment grants parents the

right to appeal to the district court a school’s determination that it would lose federal funding as a consequence of its compliance with the provisions of the bill, noted in Subsection C of Section 1.

Synopsis of SPAC Amendment

The Senate Public Affairs Committee Amendment to SB204 (SB204/aSPAC) clarifies that school districts and public schools, including charter schools, shall not discipline a school employee who refuses to administer medical cannabis.

Synopsis of Original Bill

Senate Bill 204 (SB204) would create a new section of the Public School Code to permit the use, storage, and possession of medical cannabis in school settings under certain conditions. Students may not self-administer the medication, and parents, guardians, or school personnel may not administer the medication to students in a way disruptive to school. The bill provides an exception for school districts, traditional public schools, and charter schools that can reasonably demonstrate they would lose federal funding as a result of permitting medical marijuana in schools, although nonparticipants must post their decisions not to comply with the provisions of the bill in a conspicuous manner on their websites. SB204 would also amend the Lynn and Erin Compassionate Use Act to remove criminal and civil liability for the use of medical cannabis on school premises, buses, or other public vehicles.

FISCAL IMPACT

SB204/aSPAC/aSJC/aSFI/aHHHC/aHEC does not contain an appropriation.

The Public Education Department (PED) notes the administrative actions required by the bill, including the potential promulgation of rules, may have a fiscal impact on the department. Schools and school districts may be required to purchase suitable storage equipment for medical cannabis products and require legal advice to ensure compliance with relevant state and federal law.

SUBSTANTIVE ISSUES

Medical Marijuana and THC. While the medical use of marijuana to treat a limited array of serious medical conditions is legal in New Mexico, it remains largely illegal under federal law, which still lists marijuana as a Schedule I drug, the federal Controlled Substances Act’s (CSA) most serious category of illegal substances, or drugs “with no currently accepted medical use and a high potential for abuse.” Other similarly scheduled substances include heroin, LSD, and MDMA (“ecstasy”). Until very recently, this included both tetrahydrocannabinol (THC), the active substance responsible for getting recreational marijuana users “high,” and cannabidiol oil (CBD), usually derived from low-THC hemp plants and which does not cause intoxication. The enactment of the Farm Act in 2018 may permit the medicinal use of CBD, but does nothing to change the status of THC.

SB204/aSPAC/aSJC/aSFI/aHHHC/aHEC does not differentiate between THC and CBD, and would make appropriate medical use of both of these substances legal in New Mexico when used on school premises. Under current law, the use and possession of THC on school premises would incur criminal liability, as New Mexico’s Controlled Substances Act also includes marijuana as a Schedule I substance. Although New Mexico’s CSA offers exceptions from criminal liability for use under the Lynn and Erin Compassionate Use Act, they do not apply to federal law. While

SB204/aSPAC/aSJC/aSFI/aHHHC/aHEC would address the issue under state law, the inclusion of THC in the bill may still be problematic, however, as that substance remains completely illegal as a Schedule I substance under federal law, which does not recognize any medical use for THC. Further, possession and use of THC is still banned on school premises under federal drug-free school zone laws. Schools in contravention of the federal law may lose their federal funding, as implied by the bill's inclusion of an exemption to implementation for those schools that can reasonably demonstrate they would lose such funding.

Medical Marijuana and CBD. The issue of CBD, however, is less clear. When Congress passed and the president signed the federal Farm Act at the end of 2018, authorizing the agricultural and industrial uses of hemp, they set the stage for allowing states to decide whether they want to authorize the sale and use of CBD-derived products, as it redefines hemp to include hemp-derived products such as CBD, removing it from the federal CSA.

Many medical practitioners maintain CBD has beneficial health applications, especially in the treatment of particularly pernicious forms of epilepsy. A recent Consumer Reports survey indicated 15 percent of adult Americans had tried CBD, and 83 percent of that group reported it helped with the symptoms of the condition they were attempting to treat. Further, the federal Food and Drug Administration (FDA) recently approved a CBD-derived anti-seizure medication, Epidiolex, in 2018. However, from a regulatory standpoint, the commissioner of the FDA has stated the interstate commerce of foods and supplements that contain CBD is still banned, regardless of whether they are hemp-derived. This position has less to do with the inclusion of CBD in the federal CSA than it does the inclusion of CBD as an active ingredient in a prescription medication because FDA forbids the use of active prescription drug ingredients in foods or supplements. The commissioner also indicated, however, FDA intends to hold hearings on the regulation of CBD in the future, which could mean restrictive regulation as only a prescription drug, or more permissive regulation of CBD for use in food and supplements.

Medical Marijuana and State Law. New Mexico law does not permit even medical users of cannabis to possess or use it in a drug-free school zone, defined as a public school, parochial school, or private school or property that is used for school purposes, and the area within one thousand feet of the school property line, with the exception of postsecondary schools. SB204/aSPAC/aSJC/aSFI/aHHHC/aHEC would amend Section 26-2B-5 NMSA 1978 of the Lynn and Erin Compassionate Use Act, to relieve qualified patients and caregivers from civil and criminal liability for appropriate use of CBD in school vehicles and on school property. Prohibitions on nonmedical use, as well as accompanying sentencing enhancements for use in school zones, would be unaffected by the provisions of the bill, however.

PED notes the American Academy of Pediatrics opposes medical marijuana use outside of normal FDA procedures, although it acknowledges some exceptions should be made for compassionate use in children with debilitating or life-threatening diseases, which are not enumerated. A few cases have recently come to light where states have allowed the application of CBD to minor patients on school premises to relieve them of painful symptoms of particularly debilitating seizure disorders. One girl in California who suffers from Dravet's Syndrome, for example, experienced as many as 20 extremely violent seizures per month, each lasting an hour or more and causing irreparable brain and neurological damage. An administrative law judge eventually ruled she may use CBD on school premises, but limited the impact of the ruling to just her case.

A similar case arose in New Mexico, with a young girl who suffers from Dravet's Syndrome and who is currently attending kindergarten in Albuquerque Public Schools (APS). Medications

originally prescribed to the student were ineffective, had negative side effects, and the student quickly became highly tolerant of the medications, potentially requiring unsafe dosages to achieve the effect. After a doctor recommended trying CBD, and obtaining a medical marijuana card, the efficacy of CBD became quickly apparent. However, because medical marijuana, in any form or derivative is not permitted on school grounds, her access to the medication was very limited and required her leaving campus for administration, making regular attendance at public school difficult despite the beneficial effects of CBD. Her parents eventually requested a due process hearing under the Individuals with Disabilities Education Act, alleging that APS' restrictions on medical cannabis constituted discrimination against minors, as the Lynn and Erin Compassionate Use Act allows the medical use of cannabis for qualified patients in places other than schools. Unfortunately, federal law in the case was clear at the time, and all forms of medical marijuana were barred from use in schools. The provisions of SB204/aSPAC/aSJC/aSFI/aHHHC/aHEC may offer relief to the little girl, allowing her to attend public school fulltime, without having to interrupt her schooling several times a day for medication.

ADMINISTRATIVE IMPLICATIONS

PED indicates the department would be required to develop administrative rules, and school districts and schools would be required to develop policies and procedures for the administration of the provisions of the bill.

RELATED BILLS

HB356, would establish the Cannabis Regulation Act, the Cannabis Tax Act, the Cannabis Health and Safety Fund, the Cannabis Research Fund, and amend the Lynn and Erin Compassionate Use Act and other sections of law related to cannabis.

SB477, Medical Cannabis & Removal of Children, would amend several sections of law so that mere participation by a child or their parent in the state medical marijuana program shall not constitute grounds for removal of a child or other intervention for the family or child.

SOURCES OF INFORMATION

- LESC Files
- Legislative Finance Committee (LFC)
- Public Education Department (PED)

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