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SENATE BILL 204

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

INTRODUCED BY

Candace Gould and Gail Armstrong and Jacob R. Candelaria

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.--

A. Except as provided pursuant to Subsection C of
this section, local school boards and the governing bodies of
charter schools shall authorize by rule the possession, storage
and administration of medical cannabis by parents and legal
guardians, or by designated school personnel, to qualified

1 students for use in school settings; provided that:

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

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

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

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

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

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

25 B. A school board or the governing body of a

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1 charter school may adopt policies that:

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

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

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

12 C. The provisions of Subsection A of this section
13 shall not apply to a public school, charter school or school
14 district if:

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

19 (2) the public school, charter school or
20 school district posts on its website in a conspicuous manner a
21 statement of its decision not to comply with the provisions of
22 Subsection A of this section.

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

25 (1) discipline a student who is a qualified

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1 student solely on the basis that the student requires medical
2 cannabis as a reasonable accommodation necessary for the
3 student to attend school; or

4 (2) deny eligibility to attend school to a
5 qualified student solely on the basis that the qualified
6 student requires medical cannabis as a reasonable accommodation
7 necessary for the student to attend school or a school-
8 sponsored activity.

9 E. As used in this section:

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

13 (2) "designated school personnel" means a
14 school employee whom a public school, charter school or school
15 district authorizes to possess, store and administer medical
16 cannabis to a qualified student in accordance with the
17 provisions of this section;

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

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

22 (b) is in a form that is not an aerosol
23 and cannot be smoked or inhaled in particulate form as a vapor
24 or by burning;

25 (4) "qualified student" means a student who

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

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

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

9 (a) a school building;

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

13 (c) a public vehicle used within the
14 state during, in transit to or in transit from a school-
15 sponsored activity in the state; or

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

18 (7) "written certification" means a statement
19 in a qualified student's medical records or a statement signed
20 by a qualified student's certifying practitioner that, in the
21 certifying practitioner's professional opinion, the qualified
22 student has a debilitating medical condition and the certifying
23 practitioner believes that the potential health benefits of the
24 medical use of cannabis would likely outweigh the health risks
25 for the qualified student. A written certification is not

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1 valid for more than one year from the date of issuance."

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

4 "26-2B-5. PROHIBITIONS, RESTRICTIONS AND LIMITATIONS ON
5 THE MEDICAL USE OF CANNABIS--CRIMINAL PENALTIES.--

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

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

12 (2) liability for damages or criminal
13 prosecution arising out of the operation of a vehicle while
14 under the influence of cannabis; or

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

17 [~~(a)~~ in a school bus or public vehicle;

18 ~~(b)~~ on school grounds or property;

19 ~~(c)~~] (a) in the workplace of the
20 qualified patient's or primary caregiver's employment; or

21 [~~(d)~~] (b) at a public park, recreation
22 center, youth center or other public place.

23 B. A person who makes a fraudulent representation
24 to a law enforcement officer about the person's participation
25 in a medical use of cannabis program to avoid arrest or

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1 prosecution for a cannabis-related offense is guilty of a petty
2 misdemeanor and shall be sentenced in accordance with the
3 provisions of Section 31-19-1 NMSA 1978.

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