

Bill Summary:

This legislation will allow reasonable accommodations for safe access to medical cannabis at school. Nothing in this bill requires any school personnel to administer medical cannabis. Schools can opt out of this policy if the school loses federal funding as a result of implementing this policy; and the school can reasonably demonstrate that lost federal funding was a result of implementing this policy. This bill will also protect parents and pediatric patients as 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 removal and placement into state custody of a child in that individual's care pursuant to the Abuse and Neglect Act; or the provision of state prevention, diversion or intervention services to that individual's family pursuant to the Family Services Act. This bill also exempts certain approved entities and employees and agents from criminal and civil liability involving medical cannabis.

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
AMENDING THE LYNN AND ERIN COMPASSIONATE USE ACT; TO PROVIDE
REASONABLE ACCOMMODATIONS FOR SCHOOL ATTENDANCE FOR SAFE ACCESS TO
MEDICAL CANNABIS FOR CERTIFIED PROGRAM PARTICIPANTS; REQUIRING THE
DEPARTMENT OF HEALTH AND PUBLIC EDUCATION DEPARTMENT TO PROMULGATE
RULES REGARDING THE USE OF MEDICAL CANNABIS IN SCHOOLS; 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; EXEMPTING CERTAIN APPROVED ENTITIES AND EMPLOYEES AND
AGENTS FROM CRIMINAL AND CIVIL LIABILITY; DECLARING AN EMERGENCY.

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

SECTION 1. A new section of the New Mexico Administrative Code ([6.12.1 NMAC](#)) , to be adopted by the New Mexico Public Education Department, is enacted to read:

“[NEW MATERIAL] SHORT TITLE.--Sections 1 through 3 of this act may be cited as the "Safe Access to Medical Cannabis in Schools Act"."

SECTION 2. A certified medical cannabis program participant who holds a written certification and registry identification card for the medical use of cannabis under the Lynn and Erin Compassionate Use Act, may not be denied eligibility to attend any school solely because the certified medical cannabis program participant requires medical cannabis in a non smokeable form as a reasonable accommodation necessary for the certified medical cannabis program participant to attend school.

SECTION 3. Policy for student possession and administration of prescription medication; [\(6.12.1 NMAC\)](#). [NEW MATERIAL TO BE INCLUDED]

“(I) Medical Cannabis in a non smokeable form shall not be administered at a school pursuant to this section until a written plan for the administration of medical cannabis in a non smokeable form is provided to the school principal or their designee by a parent or legal guardian.

(II) Prior to the administration of medical cannabis in a non smokeable form at school, the student’s parent or legal guardian shall complete and submit to the school the documentation required by the rule of the state Public Education Department, including but not limited to:

(A) A written medical cannabis recommendation that includes the signature of the recommending medical provider and the purpose, recommended dosage, frequency,

and length of time between each dose of the medical cannabis in a non smokeable form to be administered; and

(B) A written statement from the student's parent or legal guardian releasing the school, and employees and volunteers of the school, from liability, except in cases of willful or wanton conduct or disregard of the criteria of the treatment plan.

(III) (A) Subject to the requirement specified in these subsections and of this section, school personnel may possess, and administer to a student who hold a valid recommendation for medical cannabis, medical cannabis in a non smokeable form upon the grounds of the school in which the student is enrolled, or upon a school bus or at a school sponsored event. The school personnel shall not administer non smokeable medical cannabis in a manner that creates a disruption to the educational environment or causes exposure to other students. If a student who is subject to the provisions of this subsection takes a school trip outside of the state of New Mexico or participates in a school activity outside of the state of New Mexico, the provisions of this subsection do not apply for the time which the student is engaged in the trip or activity outside of the state of New Mexico.

(B) Nothing in this subsection requires any school personnel to administer medical cannabis. Administration of medical cannabis in a non smokeable form is at the discretion of the parent or legal guardian, the school principal or their designee, nurse or school nurse or the designated school personnel.

(C) It is an exception from the state's criminal laws for school personnel to possess and administer medical cannabis in a non smokeable form in compliance with this

subsection to a student who holds a valid recommendation for medical cannabis, except as otherwise provided in the Lynn and Erin Compassionate Use Act.

(IV) A school may adopt policies regarding who may act as school personnel pursuant to this subsection and the reasonable parameters of the administration and use of medical cannabis in a non smokeable form upon the grounds of the school in which the student is enrolled or upon a school bus or at a school-sponsored event.

(V) This policy does not apply to a school if:

(A) The school loses federal funding as a result of implementing this policy;

(B) The school can reasonably demonstrate that lost federal funding as a result of implementing this policy.

(VI) Student possession, use, distribution, or sale, or a being under the influence, of a cannabinoid product inconsistent with policy is not permitted.

(VII) The student's parent or legal guardian, or designee shall deliver the student's medical cannabis in a non smokeable form, in a container that contains clearly labeled instructions or the plan for administration must be clearly specified instructions for the dosing, timing, and delivery route instructions from one of the student's recommending medical providers, to the school by the parent or legal guardian or person designated by the school as the person who secures the medical cannabis before the student attends school for the school day. The person who secures medical cannabis in a non smokeable form shall place the medical cannabis in a locked storage compartment or locked container. After the school personnel administers the medical cannabis in a non smokeable form, the school personnel shall place the medical cannabis in a locked storage compartment or locked container

designated by the school in a secured and lock room. The person who secures the medical cannabis in a non smokeable form shall return any unused medical cannabis to the student's parent or guardian or designee at the end of each school day. The student shall not handle the medical cannabis in a non smokeable form on the grounds of the school, school bus or school-sponsored event.”

SECTION 4. 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."

“PURPOSE OF ACT.--The purpose of the Lynn and Erin Compassionate Use Act is to allow the beneficial use of medical cannabis in a regulated system for alleviating symptoms caused by debilitating medical conditions and their medical treatments.”

SECTION 5. 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."

J. [NEW MATERIAL--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:

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

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

K. 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.

SECTION 6. Section 26-2B-4 NMSA 1978 (being Laws 2007, Chapter 210, Section 5) is amended to read:

“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 Acts, except as provided in subsection 1-A;

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

of a vehicle while 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) in the workplace of the qualified patient's or primary caregivers

employment; or

(d) at a public park, recreation center, youth center or other public place.

SUBSECTION 1-A. [NEW MATERIAL] School exceptions:

Pursuant to the Lynn and Erin Compassionate Use Act, a primary caregiver, school principal or their designee, or nurse or the school nurse's designee, who may or may not be an employee of the school, to possess and administer cannabis in a non-smokeable form in a school bus and on the grounds or property of the school in which a minor qualifying patient is enrolled only if:

(1) A medical provider has provided the minor qualifying patient with a current written certification for the medical use of cannabis under the Lynn and Erin Compassionate Use Act; and

(2) Possession of medical cannabis in a non smokeable form is for the purpose of administering cannabis in a non smokeable form to the qualifying patient.

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.

Section 11. SEVERABILITY.

If any part or application of the Lynn and Erin Compassionate Use Act is held invalid, the remainder or its application to other situations or persons shall not be affected. Failure to promulgate rules or implement any provision of the Lynn and Erin Compassionate Use Act shall not interfere with the remaining protections provided by that act.

Section 12. EFFECTIVE DATE.

The effective date of the provisions of this act is July 1, 2007.

[Sections 3, 6, 7, 8, 9, and 10: Remain unchanged in this Act from the current LECUA, 2007]

SECTION 13. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

