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HOUSE BILL 281

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

Deborah A. Armstrong

AN ACT

RELATING TO CANNABIS; AMENDING SECTIONS OF THE LYNN AND ERIN
COMPASSIONATE USE ACT AND THE DEPARTMENT OF HEALTH ACT TO
PROVIDE FOR MEDICAL CANNABIS RESEARCH; CREATING THE CANNABIS
RESEARCH ADVISORY COUNCIL; CREATING THE CANNABIS RESEARCH FUND;
LIMITING LIABILITY FOR RESEARCHERS; MAKING AN APPROPRIATION.

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

SECTION 1. Section 9-7-17.1 NMSA 1978 (being Laws 2012,
Chapter 42, Section 1) is amended to read:

"9-7-17.1. MEDICAL CANNABIS FUND--REPORTING.--

A. The "medical cannabis fund" is created in the
state treasury. Notwithstanding the provisions of Subsection E
of this section, the fund consists of fees collected by the
department [~~of health~~] pursuant to the medical cannabis program
that the department [~~of health~~] administers, income from

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1 investment of the fund and income otherwise accruing to the
2 fund. Any unexpended or unencumbered balance remaining at the
3 end of any fiscal year shall revert to the general fund.

4 B. The department [~~of health~~] shall administer the
5 fund, and money in the fund is appropriated to the department
6 [~~of health~~] to support the [~~department of health's~~]
7 department's administration of the medical cannabis program;
8 provided that none of the money from the fund shall be used for
9 capital expenditures.

10 C. Money in the fund shall be disbursed on warrants
11 signed by the secretary of finance and administration pursuant
12 to vouchers signed by the secretary of health or the secretary
13 of health's authorized representative.

14 D. The department [~~of health~~] shall report annually
15 to the legislative finance committee on medical cannabis fund
16 income and expenditures.

17 E. At the end of each month, ten percent of the
18 fees collected by the department pursuant to the medical
19 cannabis program during the previous thirty days shall be
20 transferred to the cannabis research fund."

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

23 "26-2B-1. SHORT TITLE.--~~[Sections 1 through 7 of this~~
24 ~~act]~~ Chapter 26, Article 2B NMSA 1978 may be cited as the "Lynn
25 and Erin Compassionate Use Act" in honor of Lynn Pierson and

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1 Erin Armstrong."

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

4 "26-2B-2. PURPOSE OF ACT.--The [~~purpose~~] purposes of the
5 Lynn and Erin Compassionate Use Act [~~is~~] are to allow the
6 beneficial use of medical cannabis in a regulated system for
7 alleviating symptoms caused by debilitating medical conditions
8 and their medical treatments and to provide for research into
9 the uses, effects and efficacy of medical cannabis."

10 SECTION 4. Section 26-2B-3 NMSA 1978 (being Laws 2007,
11 Chapter 210, Section 3) is amended to read:

12 "26-2B-3. DEFINITIONS.--As used in the Lynn and Erin
13 Compassionate Use Act:

14 A. "adequate supply" means an amount of cannabis,
15 in any form approved by the department, possessed by a
16 qualified patient or collectively possessed by a qualified
17 patient and the qualified patient's primary caregiver that is
18 determined by rule of the department to be no more than
19 reasonably necessary to ensure the uninterrupted availability
20 of cannabis for a period of three months and that is derived
21 solely from an intrastate source;

22 B. "chancellor" means the chancellor for health
23 sciences of the university of New Mexico;

24 C. "council" means the cannabis research advisory
25 council;

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- 1 ~~[B.]~~ D. "debilitating medical condition" means:
- 2 (1) cancer;
- 3 (2) glaucoma;
- 4 (3) multiple sclerosis;
- 5 (4) damage to the nervous tissue of the spinal
- 6 cord, with objective neurological indication of intractable
- 7 spasticity;
- 8 (5) epilepsy;
- 9 (6) positive status for human immunodeficiency
- 10 virus or acquired immune deficiency syndrome;
- 11 (7) admitted into hospice care in accordance
- 12 with rules promulgated by the department; or
- 13 (8) any other medical condition, medical
- 14 treatment or disease as approved by the department;

15 ~~[G.]~~ E. "department" means the department of

16 health;

17 F. "health sciences center" means the health

18 sciences center at the university of New Mexico;

19 ~~[D.]~~ G. "licensed producer" means any person or

20 association of persons within New Mexico that the department

21 determines to be qualified to produce, possess, distribute and

22 dispense cannabis pursuant to the Lynn and Erin Compassionate

23 Use Act and that is licensed by the department;

24 ~~[E.]~~ H. "practitioner" means a person licensed in

25 New Mexico to prescribe and administer drugs that are subject

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1 to the Controlled Substances Act;

2 [F.] I. "primary caregiver" means a resident of New
3 Mexico who is at least eighteen years of age and who has been
4 designated by the patient's practitioner as being necessary to
5 take responsibility for managing the well-being of a qualified
6 patient with respect to the medical use of cannabis pursuant to
7 the provisions of the Lynn and Erin Compassionate Use Act;

8 [G.] J. "qualified patient" means a resident of New
9 Mexico who has been diagnosed by a practitioner as having a
10 debilitating medical condition and has received written
11 certification and a registry identification card issued
12 pursuant to the Lynn and Erin Compassionate Use Act; [and]

13 K. "researcher" means a person who is conducting or
14 assisting with research pursuant to the Lynn and Erin
15 Compassionate Use Act; and

16 [H.] L. "written certification" means a statement
17 in a patient's medical records or a statement signed by a
18 patient's practitioner that, in the practitioner's professional
19 opinion, the patient has a debilitating medical condition and
20 the practitioner believes that the potential health benefits of
21 the medical use of cannabis would likely outweigh the health
22 risks for the patient. A written certification is not valid
23 for more than one year from the date of issuance."

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

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1 "26-2B-4. EXEMPTION FROM CRIMINAL AND CIVIL PENALTIES
2 [~~FOR THE~~]-MEDICAL USE OF CANNABIS--RESEARCHERS---

3 A. A qualified patient shall not be subject to
4 arrest, prosecution or penalty in any manner for the possession
5 of or the medical use of cannabis if the quantity of cannabis
6 does not exceed an adequate supply.

7 B. A qualified patient's primary caregiver shall
8 not be subject to arrest, prosecution or penalty in any manner
9 for the possession of cannabis for medical use by the qualified
10 patient if the quantity of cannabis does not exceed an adequate
11 supply.

12 C. Subsection A of this section shall not apply to
13 a qualified patient under the age of eighteen years, unless:

14 (1) the qualified patient's practitioner has
15 explained the potential risks and benefits of the medical use
16 of cannabis to the qualified patient and to a parent, guardian
17 or person having legal custody of the qualified patient; and

18 (2) a parent, guardian or person having legal
19 custody consents in writing to:

20 (a) allow the qualified patient's
21 medical use of cannabis;

22 (b) serve as the qualified patient's
23 primary caregiver; and

24 (c) control the dosage and the frequency
25 of the medical use of cannabis by the qualified patient.

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1 D. A qualified patient or a primary caregiver shall
2 be granted the full legal protections provided in this section
3 if the patient or caregiver is in possession of a registry
4 identification card. If the qualified patient or primary
5 caregiver is not in possession of a registry identification
6 card, the patient or caregiver shall be given an opportunity to
7 produce the registry identification card before any arrest or
8 criminal charges or other penalties are initiated.

9 E. A researcher shall not be subject to arrest or
10 prosecution, penalized in any manner or denied any right or
11 privilege for the production, possession, distribution or
12 dispensing of cannabis, or purchase of cannabis from a licensed
13 producer, if the researcher's production, possession,
14 distribution, dispensing or purchase of cannabis is solely for
15 the purpose of research conducted pursuant to the Lynn and Erin
16 Compassionate Use Act.

17 [~~E.~~] F. A practitioner shall not be subject to
18 arrest or prosecution, penalized in any manner or denied any
19 right or privilege for recommending the medical use of cannabis
20 or providing written certification for the medical use of
21 cannabis pursuant to the Lynn and Erin Compassionate Use Act.

22 [~~F.~~] G. A licensed producer shall not be subject to
23 arrest, prosecution or penalty, in any manner, for the
24 production, possession, distribution or dispensing of cannabis
25 pursuant to the Lynn and Erin Compassionate Use Act.

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1 [~~G.~~] H. Any property interest that is possessed,
2 owned or used in connection with the medical use of cannabis,
3 or acts incidental to such use, shall not be harmed, neglected,
4 injured or destroyed while in the possession of state or local
5 law enforcement officials. Any such property interest shall
6 not be forfeited under any state or local law providing for the
7 forfeiture of property except as provided in the Forfeiture
8 Act. Cannabis, paraphernalia or other property seized from a
9 qualified patient or primary caregiver in connection with the
10 claimed medical use of cannabis shall be returned immediately
11 upon the determination by a court or prosecutor that the
12 qualified patient or primary caregiver is entitled to the
13 protections of the provisions of the Lynn and Erin
14 Compassionate Use Act, as may be evidenced by a failure to
15 actively investigate the case, a decision not to prosecute, the
16 dismissal of charges or acquittal.

17 [~~H.~~] I. A person shall not be subject to arrest or
18 prosecution for a cannabis-related offense for simply being in
19 the presence of the medical use of cannabis as permitted under
20 the provisions of the Lynn and Erin Compassionate Use Act."

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

23 "[NEW MATERIAL] CANNABIS RESEARCH FUND CREATED--
24 ADMINISTRATION--OVERSIGHT--REPORTING.--

25 A. The "cannabis research fund" is created in the

1 state treasury. The fund consists of money transferred from
2 the medical cannabis fund, appropriations, income from
3 investment of the fund and money otherwise accruing to the
4 fund. Money in the fund is appropriated to the health sciences
5 center for the purpose of research related to medical cannabis
6 and provided for in the Lynn and Erin Compassionate Use Act.
7 Money in the fund shall be disbursed on warrants signed by the
8 secretary of finance and administration pursuant to vouchers
9 signed by the chancellor or the chancellor's authorized
10 representative. Any balance remaining in the fund at the end
11 of a fiscal year shall not revert to the general fund.

12 B. The chancellor shall:

13 (1) oversee and keep a record of any research
14 conducted pursuant to the Lynn and Erin Compassionate Use Act
15 and how the research relates to the use, effects or efficacy of
16 medical cannabis;

17 (2) oversee distribution documentation to each
18 researcher conducting research pursuant to the Lynn and Erin
19 Compassionate Use Act that identifies the researcher and states
20 that the researcher is conducting research pursuant to the Lynn
21 and Erin Compassionate Use Act;

22 (3) ensure that research conducted pursuant to
23 the Lynn and Erin Compassionate Use Act is conducted in
24 accordance with institutional and federal requirements relating
25 to the protection of human subjects and is approved by an

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1 institutional review board; and

2 (4) prepare and submit:

3 (a) an annual report to the legislative
4 finance committee that describes expenditures from the cannabis
5 research fund and research conducted pursuant to the Lynn and
6 Erin Compassionate Use Act during the fiscal year preceding the
7 submission of the report; and

8 (b) by November 1, 2019 and every three
9 years thereafter, a report to the legislative health and human
10 services committee that describes the research conducted
11 pursuant to the Lynn and Erin Compassionate Use Act and any
12 findings, reports or publications that resulted from the
13 research."

14 SECTION 7. A new section of the Lynn and Erin
15 Compassionate Use Act is enacted to read:

16 "[NEW MATERIAL] CANNABIS RESEARCH ADVISORY COUNCIL--
17 MEMBERSHIP--DUTIES.--

18 A. The "cannabis research advisory council" is
19 created at the university of New Mexico health sciences center
20 to advise the health sciences center on research relating to
21 cannabis. The council consists of the following members:

- 22 (1) one qualified patient;
- 23 (2) one licensed producer;
- 24 (3) one practitioner;
- 25 (4) one representative from a laboratory

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1 licensed in the state to test medical cannabis;

2 (5) one representative of the department; and

3 (6) any other individual whom the chancellor
4 deems appropriate to advise the health sciences center in
5 matters relating to cannabis research.

6 B. Members of the council shall serve five-year
7 terms; provided that at the time of initial appointment, the
8 chancellor shall appoint members to abbreviated terms to allow
9 for the terms of subsequent members to be staggered. The
10 chancellor shall fill any vacancy on the council.

11 C. Members of the council shall be reimbursed
12 pursuant to the Per Diem and Mileage Act and shall receive no
13 other compensation, perquisite or allowance for their service
14 on the council.

15 D. The council shall:

16 (1) keep a record of council meetings; and

17 (2) recommend and discuss research that is
18 conducted pursuant to the Lynn and Erin Compassionate Use Act
19 and that is overseen by the chancellor."

20 SECTION 8. EFFECTIVE DATE.--The effective date of the
21 provisions of this act is July 1, 2016.

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