SENATE BILL 204

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

INTRODUCED BY

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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 .210935.5
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

   (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 public school, charter school or school district if:

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

(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.

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

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

(2) deny eligibility to attend school to a
qualified student solely 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.

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
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) is 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
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 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 caregiver's employment; or
(d) 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."