



The Legislature
of the
State of New Mexico

54th Legislature, 1st Session

LAWS 2019

CHAPTER 247

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR

SENATE BILL 406, as amended

Introduced by



CHAPTER 247

AN ACT

1
2 RELATING TO HEALTH; ENACTING A SECTION OF THE PUBLIC SCHOOL
3 CODE TO ALLOW THE POSSESSION, STORAGE AND ADMINISTRATION OF
4 MEDICAL CANNABIS IN CERTAIN SCHOOL SETTINGS; AMENDING AND
5 ENACTING SECTIONS OF THE LYNN AND ERIN COMPASSIONATE USE ACT
6 TO EXPAND ELIGIBILITY, TO PROVIDE FOR A THREE-YEAR REGISTRY
7 IDENTIFICATION CARD AND TO ESTABLISH NEW QUALIFYING MEDICAL
8 CONDITIONS, CIVIL PROTECTIONS AND INTERSTATE AND TRIBAL
9 RECIPROCITY; AMENDING PENALTIES; AMENDING A SECTION OF THE
10 JONATHAN SPRADLING REVISED UNIFORM ANATOMICAL GIFT ACT;
11 ENACTING A NEW SECTION OF THE FAMILY SERVICES ACT TO REMOVE
12 PARTICIPATION IN THE STATE'S MEDICAL CANNABIS PROGRAM AS
13 GROUNDS FOR CHILD PROTECTIVE SERVICES INTERVENTION.

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

16 SECTION 1. A new section of the Public School Code is
17 enacted to read:

18 "MEDICAL CANNABIS--POSSESSION--STORAGE--ADMINISTRATION--
19 RESTRICTION--EXEMPTIONS.--

20 A. Except as provided pursuant to Subsection C of
21 this section, local school boards and the governing bodies of
22 charter schools shall authorize by rule the possession,
23 storage and administration of medical cannabis by parents and
24 legal guardians, or by designated school personnel, to
25 qualified students for use in school settings; provided that:

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

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

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

12 (4) before the first administration of
13 medical cannabis in a school setting, the qualified student's
14 parent or legal guardian completes and submits documentation
15 as required by local school board or charter school rules
16 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
21 qualified student's parent or legal guardian releasing the
22 school and school personnel from liability, except in cases
23 of willful or wanton misconduct or disregard of the qualified
24 student's treatment plan.

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

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
6 regarding the administration and use of medical cannabis and
7 the school settings in which administration and use are
8 authorized; and

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

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

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

19 (2) the determination is appealable by any
20 parent to the secretary, based on rules established by the
21 department.

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

24 (1) discipline a student who is a qualified
25 student on the basis that the student requires medical

1 cannabis as a reasonable accommodation necessary for the
2 student to attend school;

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

8 (3) discipline a school employee who refuses
9 to administer medical cannabis.

10 E. As used in this section:

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

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

19 (3) "medical cannabis" means cannabis that
20 is:

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

24 (b) is in a form that is not an aerosol
25 and cannot be smoked or inhaled in particulate form as a

1 vapor or by burning;

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

7 (5) "school" means a public school or a
8 charter school;

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

11 (a) a school building;

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

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

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

20 (7) "written certification" means a
21 statement in a qualified student's medical records or a
22 statement signed by a qualified student's certifying
23 practitioner that, in the certifying practitioner's
24 professional opinion, the qualified student has a
25 debilitating medical condition and the certifying

1 practitioner believes that the potential health benefits of
2 the medical use of cannabis would likely outweigh the health
3 risks for the qualified student. A written certification is
4 not valid for more than one year from the date of issuance."

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

7 "26-2B-1. SHORT TITLE.--Chapter 26, Article 2B NMSA
8 1978 may be cited as the "Lynn and Erin Compassionate Use
9 Act" in honor of Lynn Pierson and Erin Armstrong."

10 SECTION 3. 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. "cannabis":

23 (1) means all parts of the plant *Cannabis*
24 *sativa* L. containing a delta-9-tetrahydrocannabinol
25 concentration of more than three-tenths percent on a dry

1 weight basis, whether growing or not; the seeds of the plant;
2 the resin extracted from any part of the plant; and every
3 compound, manufacture, salt, derivative, mixture or
4 preparation of the plant, its seeds or its resin; and

5 (2) does not include the mature stalks of
6 the plant; fiber produced from the stalks; oil or cake made
7 from the seeds of the plant; any other compound, manufacture,
8 salt, derivative, mixture or preparation of the mature
9 stalks, fiber, oil or cake; the sterilized seed of the plant
10 that is incapable of germination; the weight of any other
11 ingredient combined with cannabis to prepare topical or oral
12 administrations, food, drink or another product; or hemp;

13 C. "cannabis consumption area" means an area
14 within a licensed premises approved by the department where
15 cannabis may be consumed that complies with rule as
16 established by the department;

17 D. "cannabis courier" means a person that is
18 licensed by the department to transport usable cannabis and
19 cannabis products within the state from a cannabis
20 establishment to:

- 21 (1) a qualified patient;
- 22 (2) a primary caregiver; or
- 23 (3) another cannabis establishment;

24 E. "cannabis establishment" means:

- 25 (1) a licensed cannabis courier;

1 (2) a licensed cannabis testing facility;
2 (3) a licensed cannabis manufacturer;
3 (4) a licensed cannabis producer; or
4 (5) such other person that the department
5 may by rule approve for participation in the medical cannabis
6 program;

7 F. "cannabis manufacturer" means a person that is
8 licensed by the department to:

9 (1) manufacture cannabis products;
10 (2) package, transport or courier cannabis
11 products;
12 (3) have cannabis products tested by a
13 cannabis testing facility;
14 (4) purchase, obtain, sell and transport
15 cannabis products to other cannabis establishments; and
16 (5) prepare products for personal production
17 license holders;

18 G. "cannabis producer" means a person that is
19 licensed by the department to possess, produce, dispense,
20 distribute and manufacture cannabis and cannabis products and
21 sell wholesale or by direct sale to qualified patients and
22 primary caregivers;

23 H. "cannabis product":

24 (1) means a product that contains cannabis,
25 including edible or topical products that may also contain

1 other ingredients; and

2 (2) does not include the weight of any other
3 ingredient combined with cannabis or cannabis extract to
4 prepare topical or oral administrations, food, drink or
5 another product;

6 I. "cannabis testing facility" means a person that
7 is licensed by the department to perform tests of cannabis
8 products to analyze the strength or purity of the items and
9 to collect cannabis samples and transport cannabis products
10 to the cannabis testing facility from cannabis
11 establishments;

12 J. "debilitating medical condition" means:

- 13 (1) cancer;
- 14 (2) glaucoma;
- 15 (3) multiple sclerosis;
- 16 (4) damage to the nervous tissue of the
17 spinal cord, with objective neurological indication of
18 intractable spasticity;
- 19 (5) seizure disorder, including epilepsy;
- 20 (6) positive status for human
21 immunodeficiency virus or acquired immune deficiency
22 syndrome;
- 23 (7) admitted into hospice care in accordance
24 with rules promulgated by the department;
- 25 (8) amyotrophic lateral sclerosis;

1 (9) Crohn's disease;
2 (10) hepatitis C infection;
3 (11) Huntington's disease;
4 (12) inclusion body myositis;
5 (13) inflammatory autoimmune-mediated
6 arthritis;
7 (14) intractable nausea or vomiting;
8 (15) obstructive sleep apnea;
9 (16) painful peripheral neuropathy;
10 (17) Parkinson's disease;
11 (18) posttraumatic stress disorder;
12 (19) severe chronic pain;
13 (20) severe anorexia or cachexia;
14 (21) spasmodic torticollis;
15 (22) ulcerative colitis; or
16 (23) any other medical condition, medical
17 treatment or disease as approved by the department;

18 K. "department" means the department of health;

19 L. "hemp" means the plant *cannabis sativa* L. and
20 any part of the plant, whether growing or not, containing a
21 delta-9-tetrahydrocannabinol concentration of no more than
22 three-tenths percent on a dry weight basis;

23 M. "license" means a license issued pursuant to
24 the Lynn and Erin Compassionate Use Act;

25 N. "licensee" means a person that holds a license; SPAC/SB 406
Page 10

1 O. "licensee representative" means an owner,
2 director, officer, manager, employee, agent or other
3 representative of a licensee, to the extent that person acts
4 in a representative capacity;

5 P. "manufacture" means to prepare a cannabis
6 product;

7 Q. "medical cannabis program" means the program
8 established pursuant to the Lynn and Erin Compassionate Use
9 Act for authorization and regulation of the medical use of
10 cannabis in the state;

11 R. "personal production license" means a license
12 issued to a qualified patient or to a qualified patient's
13 primary caregiver participating in the medical cannabis
14 program to permit the qualified patient or the qualified
15 patient's primary caregiver to produce cannabis for the
16 qualified patient's use at an address approved by the
17 department;

18 S. "practitioner" means a person licensed in New
19 Mexico to prescribe and administer drugs that are subject to
20 the Controlled Substances Act;

21 T. "primary caregiver" means a resident of New
22 Mexico who is at least eighteen years of age and who has been
23 designated by the patient's practitioner as being necessary
24 to take responsibility for managing the well-being of a
25 qualified patient with respect to the medical use of cannabis

1 pursuant to the provisions of the Lynn and Erin Compassionate
2 Use Act;

3 U. "produce" means to engage in any activity
4 related to the planting or cultivation of cannabis;

5 V. "qualified patient" means a person who has been
6 diagnosed by a practitioner as having a debilitating medical
7 condition and has received written certification and a
8 registry identification card pursuant to the Lynn and Erin
9 Compassionate Use Act on the basis of having been diagnosed,
10 in person or via telemedicine, by a practitioner as having a
11 debilitating medical condition; provided that a practitioner
12 may only issue a written certification on the basis of an
13 evaluation conducted via telemedicine if the practitioner has
14 previously examined the patient in person;

15 W. "reciprocal participant" means an individual
16 who holds proof of authorization to participate in the
17 medical cannabis program of another state of the United
18 States, the District of Columbia, a territory or commonwealth
19 of the United States or a New Mexico Indian nation, tribe or
20 pueblo;

21 X. "registry identification card" means a document
22 that the department issues:

23 (1) to a qualified patient that identifies
24 the bearer as a qualified patient and authorizes the
25 qualified patient to use cannabis for a debilitating medical

1 condition; or

2 (2) to a primary caregiver that identifies
3 the bearer as a primary caregiver authorized to engage in the
4 intrastate possession and administration of cannabis for the
5 sole use of a qualified patient who is identified on the
6 document;

7 Y. "safety-sensitive position" means a position in
8 which performance by a person under the influence of drugs or
9 alcohol would constitute an immediate or direct threat of
10 injury or death to that person or another;

11 Z. "telemedicine" means the use of
12 telecommunications and information technology to provide
13 clinical health care from a site apart from the site where
14 the patient is located, in real time or asynchronously,
15 including the use of interactive simultaneous audio and video
16 or store-and-forward technology, or off-site patient
17 monitoring and telecommunications in order to deliver health
18 care services;

19 AA. "THC" means delta-9-tetrahydrocannabinol, a
20 substance that is the primary psychoactive ingredient in
21 cannabis; and

22 BB. "written certification" means a statement made
23 on a department-approved form and signed by a patient's
24 practitioner that indicates, in the practitioner's
25 professional opinion, that the patient has a debilitating

1 medical condition and the practitioner believes that the
2 potential health benefits of the medical use of cannabis
3 would likely outweigh the health risks for the patient."

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

6 "26-2B-4. EXEMPTION FROM CRIMINAL AND CIVIL PENALTIES
7 FOR THE MEDICAL USE OF CANNABIS.--

8 A. A qualified patient or a qualified patient's
9 primary caregiver shall not be subject to arrest, prosecution
10 or penalty in any manner for the possession of or the medical
11 use of cannabis if the quantity of cannabis does not exceed
12 an adequate supply; provided that a qualified patient or the
13 qualified patient's primary caregiver may possess that
14 qualified patient's harvest of cannabis.

15 B. A reciprocal participant shall not be subject
16 to arrest, prosecution or penalty in any manner for the
17 possession of or the medical use of cannabis if the quantity
18 of cannabis does not exceed the limit identified by
19 department rule.

20 C. The following conduct is lawful and shall not
21 constitute grounds for detention, search or arrest of a
22 person or for a violation of probation or parole, and
23 cannabis products that relate to the conduct are not
24 contraband or subject to seizure or forfeiture pursuant to
25 the Controlled Substances Act or the Forfeiture Act:

1 (1) a qualified patient or primary caregiver
2 possessing or transporting not more than an adequate supply
3 or a reciprocal participant possessing or transporting not
4 more than the limit identified by department rule;

5 (2) a qualified patient or primary caregiver
6 purchasing or obtaining not more than an adequate supply from
7 a lawful source or a reciprocal participant purchasing or
8 obtaining not more than the limit identified by department
9 rule;

10 (3) a qualified patient using or being under
11 the influence of cannabis; provided that the qualified
12 patient is acting consistent with law;

13 (4) a qualified patient or primary caregiver
14 transferring, without financial consideration, to a qualified
15 patient or primary caregiver not more than two ounces of
16 cannabis; or

17 (5) with respect to cannabis cultivated
18 under a personal production license, a qualified patient or
19 primary caregiver possessing, planting, cultivating,
20 harvesting, drying, manufacturing or transporting cannabis
21 plants or cannabis products as allowed by department rule;
22 provided that a qualified patient or primary caregiver who
23 possesses a personal production license shall not manufacture
24 cannabis products using an oil extractor solvent that is
25 stored under pressure unless the qualified patient or primary

1 caregiver holds a separate license from the department
2 permitting the person to manufacture cannabis products using
3 an oil extractor solvent that is under pressure.

4 D. Subsection A of this section shall not apply to
5 a qualified patient under the age of eighteen years, unless:

6 (1) the qualified patient's practitioner has
7 explained the potential risks and benefits of the medical use
8 of cannabis to the qualified patient and to a parent,
9 guardian or person having legal custody of the qualified
10 patient; and

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

13 (a) allow the qualified patient's
14 medical use of cannabis;

15 (b) serve as the qualified patient's
16 primary caregiver; and

17 (c) control the dosage and the
18 frequency of the medical use of cannabis by the qualified
19 patient.

20 E. A qualified patient or a primary caregiver
21 shall be granted the full legal protections provided in this
22 section if the qualified patient or primary caregiver is in
23 possession of a registry identification card. If the
24 qualified patient or primary caregiver is not in possession
25 of a registry identification card, the qualified patient or

1 primary caregiver shall be given an opportunity to produce
2 the registry identification card before any arrest or
3 criminal charges or other penalties are initiated.

4 F. A practitioner shall not be subject to arrest
5 or prosecution, penalized in any manner or denied any right
6 or privilege for recommending the medical use of cannabis or
7 providing written certification for the medical use of
8 cannabis pursuant to the Lynn and Erin Compassionate Use Act.

9 G. A licensee or licensee representative shall not
10 be subject to arrest, prosecution or penalty, in any manner,
11 for the production, possession, manufacture, distribution,
12 dispensing or testing of cannabis pursuant to the Lynn and
13 Erin Compassionate Use Act. Conduct by a licensee or a
14 licensee representative that is allowed pursuant to a license
15 and conduct by a person that allows property to be used by a
16 licensee or a licensee representative for conduct allowed
17 pursuant to a license is lawful, is not a violation of state
18 or local law and is not a basis for seizure or forfeiture of
19 property or assets under state or local law.

20 H. Any property interest that is possessed, owned
21 or used in connection with the medical use of cannabis, or
22 acts incidental to such use, shall not be harmed, neglected,
23 injured or destroyed while in the possession of state or
24 local law enforcement officials. Any such property interest
25 shall not be forfeited under any state or local law providing

1 for the forfeiture of property except as provided in the
2 Forfeiture Act. Cannabis, paraphernalia or other property
3 seized from a qualified patient or primary caregiver in
4 connection with the claimed medical use of cannabis shall be
5 returned immediately upon the determination by a court or
6 prosecutor that the qualified patient or primary caregiver is
7 entitled to the protections of the provisions of the Lynn and
8 Erin Compassionate Use Act, as may be evidenced by a failure
9 to actively investigate the case, a decision not to
10 prosecute, the dismissal of charges or acquittal.

11 I. A state or local government shall not impose a
12 criminal, civil or administrative penalty on a licensee or a
13 licensee representative, or on a person that allows property
14 to be used by a licensee or a licensee representative
15 pursuant to a license, solely for conduct that is allowed
16 pursuant to a license.

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

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

24 "26-2B-5. PROHIBITIONS, RESTRICTIONS AND LIMITATIONS ON
25 THE MEDICAL USE OF CANNABIS--CRIMINAL PENALTIES.--

1 A. Participation in a medical use of cannabis
2 program by a qualified patient or primary caregiver does not
3 relieve the qualified patient or primary caregiver from:

4 (1) criminal prosecution or civil penalties
5 for activities not authorized in the Lynn and Erin
6 Compassionate Use Act;

7 (2) liability for damages or criminal
8 prosecution arising out of the operation of a vehicle while
9 under the influence of cannabis; or

10 (3) criminal prosecution or civil penalty
11 for possession or use of cannabis:

12 (a) in the workplace of the qualified
13 patient's or primary caregiver's employment; or

14 (b) at a public park, recreation
15 center, youth center or other public
16 place.

17 B. A person who makes a fraudulent representation
18 to a law enforcement officer about the person's participation
19 in a medical use of cannabis program to avoid arrest or
20 prosecution for a cannabis-related offense is guilty of a
21 petty misdemeanor and shall be sentenced in accordance with
22 the provisions of Section 31-19-1 NMSA 1978.

23 C. If a licensee or the licensee's representative
24 sells, distributes, dispenses or transfers cannabis to a
25 person not approved by the department pursuant to the Lynn

1 and Erin Compassionate Use Act or obtains or transports
2 cannabis outside New Mexico, the licensee or the licensee's
3 representative shall be subject to arrest, prosecution and
4 civil or criminal penalties pursuant to state law."

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

7 "26-2B-6. ADVISORY BOARD CREATED--DUTIES.--The
8 secretary of health shall establish an advisory board
9 consisting of nine practitioners knowledgeable about the
10 medical use of cannabis. The members shall be chosen for
11 appointment by the secretary from a list proposed by the New
12 Mexico medical society, the New Mexico nurses association,
13 the New Mexico academy of family physicians, the New Mexico
14 academy of physician assistants, the New Mexico pharmacists
15 association or the New Mexico Hispanic medical association.
16 A quorum of the advisory board shall consist of five members.
17 The advisory board shall:

18 A. review and recommend to the department for
19 approval additional debilitating medical conditions that
20 would benefit from the medical use of cannabis;

21 B. accept and review petitions to add medical
22 conditions, medical treatments or diseases to the list of
23 debilitating medical conditions that qualify for the medical
24 use of cannabis;

25 C. convene at least twice per year to conduct

1 public hearings and to evaluate petitions, which shall be
2 maintained as confidential personal health information, to
3 add medical conditions, medical treatments or diseases to the
4 list of debilitating medical conditions that qualify for the
5 medical use of cannabis;

6 D. issue recommendations concerning rules to be
7 promulgated for the issuance of the registry identification
8 cards;

9 E. recommend quantities of cannabis that are
10 necessary to constitute an adequate supply for qualified
11 patients and primary caregivers;

12 F. recommend formulation or preparations of
13 cannabis or cannabis products; and

14 G. recommend quantities of cannabis that a
15 reciprocal participant may obtain and possess."

16 SECTION 7. Section 26-2B-7 NMSA 1978 (being Laws 2007,
17 Chapter 210, Section 7) is amended to read:

18 "26-2B-7. REGISTRY IDENTIFICATION CARDS--DEPARTMENT
19 RULES--DUTIES--RECIPROCITY.--

20 A. After consultation with the advisory board,
21 the department shall promulgate rules in accordance with the
22 State Rules Act to implement the purpose of the Lynn and Erin
23 Compassionate Use Act. The rules shall:

24 (1) govern the manner in which the
25 department will consider applications for registry

1 identification cards and for the renewal of identification
2 cards for qualified patients and primary caregivers;

3 (2) define the amount of cannabis that is
4 necessary to constitute an adequate supply, including amounts
5 for topical treatments;

6 (3) identify criteria and set forth
7 procedures for including additional medical conditions,
8 medical treatments or diseases to the list of debilitating
9 medical conditions that qualify for the medical use of
10 cannabis. Procedures shall include a petition process and
11 shall allow for public comment and public hearings before the
12 advisory board;

13 (4) set forth additional medical conditions,
14 medical treatments or diseases to the list of debilitating
15 medical conditions that qualify for the medical use of
16 cannabis as recommended by the advisory board;

17 (5) identify requirements for the licensure
18 of cannabis producers and cannabis production facilities,
19 cannabis couriers, cannabis manufacturers, cannabis testing
20 facilities and any other cannabis establishments that the
21 department may license and set forth procedures to obtain
22 licenses;

23 (6) develop a distribution system for the
24 medical cannabis program that provides for:

25 (a) cannabis production facilities

1 within New Mexico housed on secured grounds and operated by
2 licensees; and

3 (b) distribution of cannabis to
4 qualified patients or their primary caregivers to take place
5 at locations that are designated by the department and that
6 are not within three hundred feet of any school, church or
7 daycare center that were in existence in that location before
8 the licensee distributing medical cannabis nearby was
9 licensed; provided that this distance requirement shall not
10 apply to distribution at the home of the qualified patient or
11 primary caregiver;

12 (7) identify requirements for testing and
13 labeling of cannabis and cannabis products for quality
14 assurance. The department shall adopt and promulgate rules
15 pursuant to this paragraph by December 20, 2019;

16 (8) determine additional duties and
17 responsibilities of the advisory board; and

18 (9) be revised and updated as necessary.

19 B. The department shall issue registry
20 identification cards to a patient and to the primary
21 caregiver for that patient, if any, who submit the following,
22 in accordance with the department's rules:

23 (1) a written certification;

24 (2) the name, address and date of birth of
25 the patient;

1 (3) the name, address and telephone number
2 of the patient's practitioner; and

3 (4) the name, address and date of birth of
4 the patient's primary caregiver, if any.

5 C. The department shall verify the information
6 contained in an application submitted pursuant to Subsection
7 B of this section and shall approve or deny an application
8 within thirty days of receipt. The department may deny an
9 application only if the applicant did not provide the
10 information required pursuant to Subsection B of this section
11 or if the department determines that the information provided
12 is false. A person whose application has been denied shall
13 not reapply for six months from the date of the denial unless
14 otherwise authorized by the department.

15 D. The department shall issue a registry
16 identification card within five days of approving an
17 application, and a card shall expire three years after the
18 date of issuance.

19 E. A registry identification card shall contain:

20 (1) the name and date of birth of the
21 qualified patient and primary caregiver, if any;

22 (2) the date of issuance and expiration date
23 of the registry identification card; and

24 (3) other information that the department
25 may require by rule.

1 F. A person who possesses a registry
2 identification card shall notify the department of any change
3 in the person's name, qualified patient's practitioner,
4 qualified patient's primary caregiver or change in status of
5 the qualified patient's debilitating medical condition within
6 ten days of the change.

7 G. Possession of or application for a registry
8 identification card shall not constitute probable cause or
9 give rise to reasonable suspicion for a governmental agency
10 to search the person or property of the person possessing or
11 applying for the card.

12 H. The department shall maintain a confidential
13 file containing the names and addresses of the persons who
14 have either applied for or received a registry identification
15 card. Individual names on the list shall be confidential and
16 not subject to disclosure, except:

17 (1) to authorized employees or agents of the
18 department as necessary to perform the duties of the
19 department pursuant to the provisions of the Lynn and Erin
20 Compassionate Use Act;

21 (2) to authorized employees of state or
22 local law enforcement agencies, but only for the purpose of
23 verifying that a person is lawfully in possession of a
24 registry identification card; or

25 (3) as provided in the federal Health

1 Insurance Portability and Accountability Act of 1996.

2 I. By March 1, 2020, the secretary of health shall
3 adopt and promulgate rules relating to medical cannabis
4 program reciprocity. The department may identify
5 requirements for the granting of reciprocity, including
6 provisions limiting the period of time in which a reciprocal
7 participant may participate in the medical cannabis program.

8 J. A reciprocal participant:

9 (1) may participate in the medical cannabis
10 program in accordance with department rules;

11 (2) shall not be required to comply with the
12 registry identification card application and renewal
13 requirements established pursuant to this section and
14 department rules;

15 (3) shall at all times possess proof of
16 authorization to participate in the medical cannabis program
17 of another state, the District of Columbia, a territory or
18 commonwealth of the United States or a New Mexico Indian
19 nation, tribe or pueblo and shall present proof of that
20 authorization when purchasing cannabis from a licensee; and

21 (4) shall register with a licensee for the
22 purpose of tracking sales to the reciprocal participant in an
23 electronic system that is accessible to the department."

24 SECTION 8. A new section of the Lynn and Erin
25 Compassionate Use Act is enacted to read:

1 "PROGRAM REGULATION AND ADMINISTRATION--FEES--
2 LIMITATIONS--RULEMAKING--LICENSURE--ISSUANCE--REPORTING.--

3 A. The department shall:

4 (1) regulate and administer the medical
5 cannabis program; and

6 (2) collect fees from licensees; provided
7 that the department shall not charge a fee relating to the
8 medical cannabis registry.

9 B. By December 20, 2019, the secretary of health
10 shall adopt and promulgate rules to establish fees for
11 licenses for cannabis producers, cannabis manufacturers,
12 cannabis couriers, cannabis testing facilities or any other
13 cannabis establishments whose operations are authorized
14 pursuant to the Lynn and Erin Compassionate Use Act.

15 C. The department shall establish application and
16 licensing fees applicable to licenses for activity related to
17 the medical cannabis program.

18 D. The department shall administer licensure for
19 medical cannabis program activity provided for in the Lynn
20 and Erin Compassionate Use Act, which shall include personal
21 production licenses and licenses for:

- 22 (1) cannabis couriers;
23 (2) cannabis manufacturers;
24 (3) cannabis producers;
25 (4) cannabis testing facilities; and

1 (5) any other activity or person as deemed
2 necessary by the department.

3 E. The department shall not issue any other
4 license provided for in this section to a cannabis testing
5 facility licensee.

6 F. In consultation with qualified patients and
7 primary caregivers, the department shall produce an
8 assessment report annually, which shall be published to the
9 public and that includes at a minimum an evaluation of:

10 (1) the affordability of and accessibility
11 to medical cannabis pursuant to the Lynn and Erin
12 Compassionate Use Act; and

13 (2) the needs of qualified patients who live
14 in rural areas, federal subsidized housing or New Mexico
15 Indian nations, tribes or pueblos.

16 G. The department shall allow for the smoking,
17 vaporizing and ingesting of cannabis products within a
18 cannabis consumption area on the premises if:

19 (1) access is restricted to qualified
20 patients and their primary caregivers;

21 (2) cannabis consumption is not visible from
22 any public place or from outside the cannabis consumption
23 area; and

24 (3) qualified patients who consume cannabis
25 on the premises have a designated driver or other means of

1 transportation consistent with current law."

2 SECTION 9. A new section of the Lynn and Erin
3 Compassionate Use Act is enacted to read:

4 "REGISTRY IDENTIFICATION CARD--REGISTRATION--RENEWAL--
5 WRITTEN CERTIFICATION.--The department shall require a
6 qualified patient to reapply for a registry identification
7 card no sooner than two years and eleven months from the date
8 the patient's current registry identification card is issued;
9 provided that, in order to remain eligible for participation
10 in the medical cannabis program established pursuant to the
11 Lynn and Erin Compassionate Use Act, a qualified patient
12 shall submit annually to the department a statement from a
13 practitioner indicating that:

14 A. the practitioner has examined the qualified
15 patient during the preceding twelve months;

16 B. the qualified patient continues to have a
17 debilitating medical condition; and

18 C. the practitioner believes that the potential
19 health benefits of the medical use of cannabis would likely
20 outweigh the health risks for the qualified patient."

21 SECTION 10. A new section of the Lynn and Erin
22 Compassionate Use Act is enacted to read:

23 "THC CONTENT--NO LIMITATION.--The department shall not
24 limit the amount of THC concentration in a cannabis product;
25 provided that the department may by rule adopt requirements

1 for apportionment and packaging of cannabis products."

2 SECTION 11. A new section of the Lynn and Erin
3 Compassionate Use Act is enacted to read:

4 "EMPLOYMENT PROTECTIONS.--

5 A. Unless a failure to do so would cause the
6 employer to lose a monetary or licensing-related benefit
7 under federal law or federal regulations, it is unlawful to
8 take an adverse employment action against an applicant or an
9 employee based on conduct allowed under the Lynn and Erin
10 Compassionate Use Act.

11 B. Nothing in this section shall:

12 (1) restrict an employer's ability to
13 prohibit or take adverse employment action against an
14 employee for use of, or being impaired by, medical cannabis
15 on the premises of the place of employment or during the
16 hours of employment; or

17 (2) apply to an employee whose employer
18 deems that the employee works in a safety-sensitive
19 position."

20 SECTION 12. A new section of the Lynn and Erin
21 Compassionate Use Act is enacted to read:

22 "PERSONS UNDER STATE SUPERVISION--PROTECTIONS.--A person
23 who is serving a period of probation or parole or who is in
24 the custody or under the supervision of the state or a local
25 government pending trial as part of a community supervision

1 program shall not be penalized for conduct allowed under the
2 Lynn and Erin Compassionate Use Act."

3 SECTION 13. Section 24-6B-11 NMSA 1978 (being Laws
4 2007, Chapter 323, Section 11) is amended to read:

5 "24-6B-11. PERSONS THAT MAY RECEIVE ANATOMICAL GIFT--
6 PURPOSE OF ANATOMICAL GIFT.--

7 A. An anatomical gift may be made to the following
8 persons named in the document of gift:

9 (1) a hospital; accredited medical school,
10 dental school, college or university; organ procurement
11 organization; or other appropriate person, for research or
12 education;

13 (2) subject to the provisions of Subsection
14 B of this section, an individual designated by the person
15 making the anatomical gift if the individual is the recipient
16 of the part; and

17 (3) an eye bank or tissue bank.

18 B. If an anatomical gift to an individual pursuant
19 to Paragraph (2) of Subsection A of this section cannot be
20 transplanted into the individual, the part passes in
21 accordance with Subsection G of this section in the absence
22 of an express, contrary indication by the person making the
23 anatomical gift.

24 C. If an anatomical gift of one or more specific
25 parts or of all parts is made in a document of gift that does

1 not name a person described in Subsection A of this section
2 but identifies the purpose for which an anatomical gift may
3 be used, the following rules apply:

4 (1) if the part is an eye and the gift is
5 for the purpose of transplantation or therapy, the gift
6 passes to the appropriate eye bank;

7 (2) if the part is tissue and the gift is
8 for the purpose of transplantation or therapy, the gift
9 passes to the appropriate tissue bank;

10 (3) if the part is an organ and the gift is
11 for the purpose of transplantation or therapy, the gift
12 passes to the appropriate organ procurement organization as
13 custodian of the organ; and

14 (4) if the part is an organ, an eye or
15 tissue and the gift is for the purpose of research or
16 education, the gift passes to the appropriate procurement
17 organization.

18 D. For the purpose of Subsection C of this
19 section, if there is more than one purpose of an anatomical
20 gift set forth in the document of gift but the purposes are
21 not set forth in any priority, the gift shall be used for
22 transplantation or therapy, if suitable. If the gift cannot
23 be used for transplantation or therapy, the gift may be used
24 for research or education.

25 E. If an anatomical gift of one or more specific

1 parts is made in a document of gift that does not name a
2 person described in Subsection A of this section and does not
3 identify the purpose of the gift, the gift may be used only
4 for transplantation or therapy, and the gift passes in
5 accordance with Subsection G of this section.

6 F. If a document of gift specifies only a general
7 intent to make an anatomical gift by words such as "donor",
8 "organ donor" or "body donor", or by a symbol or statement of
9 similar import, the gift may be used only for transplantation
10 or therapy and the gift passes in accordance with Subsection
11 G of this section.

12 G. For purposes of Subsections B, E and F of this
13 section, the following rules apply:

14 (1) if the part is an eye, the gift passes
15 to the appropriate eye bank;

16 (2) if the part is tissue, the gift passes
17 to the appropriate tissue bank; and

18 (3) if the part is an organ, the gift passes
19 to the appropriate organ procurement organization as
20 custodian of the organ.

21 H. An anatomical gift of an organ for
22 transplantation or therapy, other than an anatomical gift
23 pursuant to Paragraph (2) of Subsection A of this section,
24 passes to the organ procurement organization as custodian of
25 the organ.

1 I. If an anatomical gift does not pass pursuant to
2 Subsections A through H of this section or the decedent's
3 body or part is not used for transplantation, therapy,
4 research or education, custody of the body or part passes to
5 the person under obligation to dispose of the body or part.

6 J. A person may not accept an anatomical gift if
7 the person knows that the gift was not effectively made
8 pursuant to Section 24-6B-5 or 24-6B-10 NMSA 1978 or if the
9 person knows that the decedent made a refusal pursuant to
10 Section 24-6B-7 NMSA 1978 that was not revoked. For purposes
11 of this subsection, if a person knows that an anatomical gift
12 was made on a document of gift, the person is deemed to know
13 of any amendment or revocation of the gift or any refusal to
14 make an anatomical gift on the same document of gift.

15 K. Except as otherwise provided in Paragraph (2)
16 of Subsection A of this section, nothing in the Jonathan
17 Spradling Revised Uniform Anatomical Gift Act affects the
18 allocation of organs for transplantation or therapy.

19 L. An individual's participation in the state's
20 medical cannabis program established pursuant to the Lynn and
21 Erin Compassionate Use Act shall not in itself constitute
22 grounds for refusing to allow that individual to receive an
23 anatomical gift."

24 SECTION 14. A new section of the Family Services Act is
25 enacted to read:

1 "MEDICAL CANNABIS PROGRAM--REMOVAL OF CHILDREN--FAMILY
2 SERVICES INTERVENTION--SCHOOL ENROLLMENT--MEDICAL CARE.--

3 A. An individual's participation in the state's
4 medical cannabis program established pursuant to the Lynn and
5 Erin Compassionate Use Act shall not in itself constitute
6 grounds for:

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

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

13 B. A person shall not be denied custody of or
14 visitation or parenting time with a child, and there is no
15 presumption of neglect or child endangerment, for conduct
16 allowed under the Lynn and Erin Compassionate Use Act.

17 C. A school shall not refuse to enroll or
18 otherwise penalize a person solely for conduct allowed
19 pursuant to the Lynn and Erin Compassionate Use Act, unless
20 failing to do so would cause the school to lose a monetary or
21 licensing-related benefit under federal law or regulation.

22 D. For the purposes of medical care, including an
23 organ transplant, a qualified patient's use of cannabis
24 pursuant to the Lynn and Erin Compassionate Use Act shall be
25 considered the equivalent of the use of any other medication

1 under the direction of a physician and shall not be
2 considered to constitute the use of an illicit substance or
3 otherwise disqualify a qualified patient from medical care."

4 SECTION 15. TEMPORARY PROVISION--LICENSED PRODUCERS.--

5 A licensed producer, as defined in the Lynn and Erin
6 Compassionate Use Act prior to the enactment of this 2019 act,
7 that is licensed as of the effective date of this 2019 act
8 shall be considered to be a cannabis producer, as defined by
9 this 2019 act.

SPAC/SB 406
Page 36

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Howie C. Morales

Howie C. Morales, President
Senate

Lenore M. Naranjo
Lenore M. Naranjo, Chief Clerk
Senate

Brian Egolf
Brian Egolf, Speaker
House of Representatives

Lisa M. Ortiz McCutcheon
Lisa M. Ortiz McCutcheon, Chief Clerk
House of Representatives

Approved by me this 4th day of April, 2019

Michelle Lujan Grisham
Governor Michelle Lujan Grisham
State of New Mexico