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SENATE BILL 516

**52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

INTRODUCED BY

Gerald Ortiz y Pino

AN ACT

RELATING TO MEDICAL CANNABIS; REVISING THE LYNN AND ERIN  
COMPASSIONATE USE ACT TO PROVIDE FOR MEDICAL CANNABIS RESEARCH;  
CREATING THE CANNABIS RESEARCH BOARD; 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. A new section of the Lynn and Erin  
22 Compassionate Use Act is enacted to read:

23 "[NEW MATERIAL] CANNABIS RESEARCH FUND CREATED.--The  
24 "cannabis research fund" is created in the state treasury. The  
25 fund consists of money transferred from the medical cannabis

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

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

13 "[NEW MATERIAL] CANNABIS RESEARCH BOARD CREATED--  
14 MEMBERSHIP--DUTIES.--

15 A. The "cannabis research board" is created. The  
16 board is administratively attached to the department and  
17 consists of three members who are peer-reviewed, qualified  
18 research scientists and clinicians affiliated with a research  
19 institution and who are appointed by the secretary of health.  
20 Members shall serve five-year terms; provided that at the time  
21 of initial appointment, the secretary shall appoint members to  
22 abbreviated terms to allow for the terms of subsequent  
23 appointments to be staggered. Vacancies shall be filled in the  
24 manner of the original appointment.

25 B. Of the three members of the cannabis research

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1 board:

2 (1) one member shall have a doctoral or  
3 terminal degree in social or behavioral science;

4 (2) one member shall have a doctoral or  
5 terminal degree in biomedical science; and

6 (3) one member shall be a practitioner.

7 C. The secretary of health shall name the chair of  
8 the cannabis research board.

9 D. Members of the cannabis research board shall be  
10 reimbursed pursuant to the Per Diem and Mileage Act and shall  
11 receive no other compensation, perquisite or allowance for  
12 their service on the board.

13 E. The cannabis research board shall:

14 (1) keep a record of board meetings;

15 (2) keep a record that identifies researchers  
16 who are conducting research pursuant to the Lynn and Erin  
17 Compassionate Use Act and whose research is overseen by the  
18 board;

19 (3) distribute documentation to each  
20 researcher that identifies the researcher and that states that  
21 the researcher is conducting research pursuant to the Lynn and  
22 Erin Compassionate Use Act;

23 (4) ensure that research conducted pursuant to  
24 the Lynn and Erin Compassionate Use Act is conducted in  
25 accordance with institutional and federal requirements relating

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1 to the protection of human subjects and is approved by an  
2 institutional review board;

3 (5) oversee research conducted pursuant to the  
4 Lynn and Erin Compassionate Use Act into the use, effects and  
5 efficacy of medical cannabis; and

6 (6) prepare and submit:

7 (a) an annual report to the legislative  
8 finance committee that describes expenditures from the cannabis  
9 research fund and research conducted pursuant to the Lynn and  
10 Erin Compassionate Use Act during the year preceding the  
11 submission of the report; and

12 (b) beginning in 2018 and every three  
13 years thereafter, a report to the legislative health and human  
14 services committee that describes the research conducted  
15 pursuant to the Lynn and Erin Compassionate Use Act, and any  
16 findings, reports or publications that resulted from the  
17 research."

18 SECTION 4. Section 26-2B-1 NMSA 1978 (being Laws 2007,  
19 Chapter 210, Section 1) is amended to read:

20 "26-2B-1. SHORT TITLE.--~~[Sections 1 through 7 of this~~  
21 ~~act]~~ Chapter 26, Article 2B NMSA 1978 may be cited as the "Lynn  
22 and Erin Compassionate Use Act" in honor of Lynn Pierson and  
23 Erin Armstrong."

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

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1           "26-2B-2. PURPOSE OF ACT.--The purpose of the Lynn and  
2 Erin Compassionate Use Act is to allow the beneficial use of  
3 medical cannabis in a regulated system for alleviating symptoms  
4 caused by debilitating medical conditions and their medical  
5 treatments and to provide for research into the uses, effects  
6 and efficacy of medical cannabis."

7           **SECTION 6.** Section 26-2B-3 NMSA 1978 (being Laws 2007,  
8 Chapter 210, Section 3) is amended to read:

9           "26-2B-3. DEFINITIONS.--As used in the Lynn and Erin  
10 Compassionate Use Act:

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

19           B. "debilitating medical condition" means:  
20                   (1) cancer;  
21                   (2) glaucoma;  
22                   (3) multiple sclerosis;  
23                   (4) damage to the nervous tissue of the spinal  
24 cord, with objective neurological indication of intractable  
25 spasticity;

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- 1 (5) epilepsy;
- 2 (6) positive status for human immunodeficiency  
3 virus or acquired immune deficiency syndrome;
- 4 (7) admitted into hospice care in accordance  
5 with rules promulgated by the department; or
- 6 (8) any other medical condition, medical  
7 treatment or disease as approved by the department;
- 8 C. "department" means the department of health;
- 9 D. "licensed producer" means any person or  
10 association of persons within New Mexico that the department  
11 determines to be qualified to produce, possess, distribute and  
12 dispense cannabis pursuant to the Lynn and Erin Compassionate  
13 Use Act and that is licensed by the department;
- 14 E. "practitioner" means a person licensed in New  
15 Mexico to prescribe and administer drugs that are subject to  
16 the Controlled Substances Act;
- 17 F. "primary caregiver" means a resident of New  
18 Mexico who is at least eighteen years of age and who has been  
19 designated by the patient's practitioner as being necessary to  
20 take responsibility for managing the well-being of a qualified  
21 patient with respect to the medical use of cannabis pursuant to  
22 the provisions of the Lynn and Erin Compassionate Use Act;
- 23 G. "qualified patient" means a resident of New  
24 Mexico who has been diagnosed by a practitioner as having a  
25 debilitating medical condition and has received written

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1 certification and a registry identification card issued  
2 pursuant to the Lynn and Erin Compassionate Use Act; ~~and~~

3 H. "researcher" means a member of the cannabis  
4 research board and any person who is conducting or assisting  
5 with research pursuant to the Lynn and Erin Compassionate Use  
6 Act; and

7 ~~[H.]~~ I. "written certification" means a statement  
8 in a patient's medical records or a statement signed by a  
9 patient's practitioner that, in the practitioner's professional  
10 opinion, the patient has a debilitating medical condition and  
11 the practitioner believes that the potential health benefits of  
12 the medical use of cannabis would likely outweigh the health  
13 risks for the patient. A written certification is not valid  
14 for more than one year from the date of issuance."

15 SECTION 7. Section 26-2B-4 NMSA 1978 (being Laws 2007,  
16 Chapter 210, Section 4) is amended to read:

17 "26-2B-4. EXEMPTION FROM CRIMINAL AND CIVIL PENALTIES  
18 ~~[FOR THE]~~--MEDICAL USE OF CANNABIS--RESEARCHERS.--

19 A. A qualified patient shall not be subject to  
20 arrest, prosecution or penalty in any manner for the possession  
21 of or the medical use of cannabis if the quantity of cannabis  
22 does not exceed an adequate supply.

23 B. A qualified patient's primary caregiver shall  
24 not be subject to arrest, prosecution or penalty in any manner  
25 for the possession of cannabis for medical use by the qualified

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1 patient if the quantity of cannabis does not exceed an adequate  
2 supply.

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

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

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

11 (a) allow the qualified patient's  
12 medical use of cannabis;

13 (b) serve as the qualified patient's  
14 primary caregiver; and

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

17 D. A qualified patient or a primary caregiver shall  
18 be granted the full legal protections provided in this section  
19 if the patient or caregiver is in possession of a registry  
20 identification card. If the qualified patient or primary  
21 caregiver is not in possession of a registry identification  
22 card, the patient or caregiver shall be given an opportunity to  
23 produce the registry identification card before any arrest or  
24 criminal charges or other penalties are initiated.

25 E. A researcher shall not be subject to arrest or

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1 prosecution, penalized in any manner or denied any right or  
2 privilege for the production, possession, distribution or  
3 dispensing of cannabis if the researcher's production,  
4 possession, distribution or dispensing is solely for the  
5 purpose of research conducted pursuant to the Lynn and Erin  
6 Compassionate Use Act.

7 ~~[E-]~~ F. A practitioner shall not be subject to  
8 arrest or prosecution, penalized in any manner or denied any  
9 right or privilege for recommending the medical use of cannabis  
10 or providing written certification for the medical use of  
11 cannabis pursuant to the Lynn and Erin Compassionate Use Act.

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

16 ~~[G-]~~ H. Any property interest that is possessed,  
17 owned or used in connection with the medical use of cannabis,  
18 or acts incidental to such use, shall not be harmed, neglected,  
19 injured or destroyed while in the possession of state or local  
20 law enforcement officials. Any such property interest shall  
21 not be forfeited under any state or local law providing for the  
22 forfeiture of property except as provided in the Forfeiture  
23 Act. Cannabis, paraphernalia or other property seized from a  
24 qualified patient or primary caregiver in connection with the  
25 claimed medical use of cannabis shall be returned immediately

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1 upon the determination by a court or prosecutor that the  
2 qualified patient or primary caregiver is entitled to the  
3 protections of the provisions of the Lynn and Erin  
4 Compassionate Use Act, as may be evidenced by a failure to  
5 actively investigate the case, a decision not to prosecute, the  
6 dismissal of charges or acquittal.

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

11 **SECTION 8. EFFECTIVE DATE.**--The effective date of the  
12 provisions of this act is July 1, 2015.