

Date of Hearing: June 13, 2018

ASSEMBLY COMMITTEE ON EDUCATION

Patrick O'Donnell, Chair

SB 1127 (Hill) – As Amended May 15, 2018

[Note: This bill is doubled referred to the Assembly Judiciary Committee and will be heard by that Committee as it relates to issues under its jurisdiction.]

SENATE VOTE: 32-7

SUBJECT: Pupil health: administration of medicinal cannabis: schoolsites

SUMMARY: Authorizes the governing board of a school district, a county board of education, or the governing body of a charter school maintaining kindergarten or any of grades 1 to 12, inclusive, to adopt a policy that allows a parent or guardian to possess and administer non-smokeable and non-vapeable medicinal cannabis to an authorized pupil at a schoolsite.

Specifically, **this bill:**

- 1) Authorizes, notwithstanding state law, the governing board of a school district, a county board of education, or the governing body of a charter school maintaining kindergarten or any of grades 1 to 12, inclusive, to adopt, at a regularly scheduled meeting of the governing board or body, a policy that allows a parent or guardian to possess and administer medicinal cannabis to a pupil at a schoolsite, if the pupil is a qualified patient pursuant to the Medical Marijuana Program.
- 2) Requires the adopted policy to include, but not be limited to, all of the following elements:
 - a) Prohibits a parent or guardian from administering the medicinal cannabis in a manner that creates a disruption to the educational environment or causes exposure to other pupils.
 - b) Requires the parent or guardian to remove any remaining cannabis from the schoolsite after the parent or guardian administers the medicinal cannabis to the pupil.
 - c) Requires the parent or guardian to sign in at the schoolsite before administering the medicinal cannabis.
 - d) Requires the parent or guardian to provide, to an employee of the school, a valid written medical recommendation for medicinal cannabis for the pupil, and requires that the school keep the recommendation on file at the school.
 - e) Specifies that pupil records collected in accordance with a policy adopted pursuant to (1) above, are confidential and to be used only for the purpose of administration of medicinal cannabis to the pupil, and prohibits the disclosure of these pupil records for any reason, except as required by a state or federal court order.
 - f) Specifies that the right to access particular pupil records for legitimate education interests do not apply to pupil records collected for the purpose of administration of medicinal cannabis, and that such records must be removed from the pupil's records before any of the pupil's records are released for any reason under existing law.

- 3) Authorizes the governing board of a school district, a county board of education, or the governing body of a charter school to rescind the policy at a regularly scheduled meeting of the governing board or body for any reason, including, but not limited to, if the school district, county office of education, or charter school is at risk of, or has lost, federal funding as a result of the policy.
- 4) Specifies that none of the bill's provisions require the staff of a school district, county office of education, or charter school to administer medicinal cannabis.
- 5) Excludes medicinal cannabis in a smokeable or vapeable form from the provisions of this bill.
- 6) Expresses findings and declarations that, in order to protect the privacy of pupils, and parents and guardians of pupils who are administered medicinal cannabis, it is necessary that pupil records collected for the purpose of administration of medicinal cannabis be confidential.

EXISTING LAW:

Existing federal law:

- 1) Classifies "marihuana" as a Schedule I drug. Under federal law, all Schedule I drugs have the following properties:
 - a) The drug or other substance has a high potential for abuse.
 - b) The drug or other substance has no currently accepted medical use in treatment in the United States.
 - c) There is a lack of accepted safety for use of the drug or other substance under medical supervision. (Title 21, United States Code, § 812(b)(1))
- 2) Defines "marihuana" as "all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin. Such term does not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination." (21 USC § 802(16))
- 3) Requires recipients of federal grants to comply with the Drug-Free Workplace Act, which requires institutions receiving any federal grant to prohibit the manufacture, use and distribution of controlled substances in the workplace. Failure to comply with the Drug-Free Workplace Act is grounds for suspension or termination of the federal grant. (21 USC § 8103)

Existing state law:

- 1) Provides, through Proposition 215 of 1996, the Compassionate Use Act, that individuals have the right to obtain and use marijuana for medical purposes where medical use has been deemed appropriate and recommended by a physician because the person's health would benefit from the use of marijuana in treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief. (Health & Safety Code 11362.5)
- 2) Removes the criminal penalties for cultivation and possession of marijuana by qualified patients, who are persons with a physician's written or oral recommendation or approval to use marijuana for medical use, or by their primary caregivers, and protects physicians from punishment for recommending marijuana to a patient for medical purposes. (HSC 11362.5)
- 3) Specifies that participation in the Medical Marijuana Program shall not authorize a qualified patient to engage in the smoking of medical marijuana under any of the following circumstances:
 - a) In any place where smoking is prohibited by law.
 - b) In or within 1,000 feet of the grounds of a school, recreation center, or youth center, unless the medical use occurs within a residence.
 - c) On a school bus.
 - d) While in a motor vehicle that is being operated.
 - e) While operating a boat. (HSC 11362.79.)
- 4) Specifies that, except as authorized by law, a person 18 years of age or older who possesses not more than 28.5 grams of cannabis, or not more than eight grams of concentrated cannabis, upon the grounds of, or within, any school providing instruction in kindergarten or any of grades 1 to 12, inclusive, during hours the school is open for classes or school-related programs is guilty of a misdemeanor and shall be punished as follows:
 - a) A fine of not more than two hundred fifty dollars upon a finding that a first offense has been committed.
 - b) A fine of not more than five hundred dollars or by imprisonment in a county jail for a period of not more than 10 days, or both, upon a finding that a second or subsequent offense has been committed. (HSC 11357)
- 5) Specifies that person 18 years of age or over who:
 - a) Hires, employs, or uses a minor in unlawfully transporting, carrying, selling, giving away, preparing for sale, or peddling any cannabis, who unlawfully sells, or offers to sell, any cannabis to a minor, or who furnishes, administers, or gives, or offers to furnish, administer, or give any cannabis to a minor under 14 years of age, or who induces a

minor to use cannabis in violation of law shall be punished by imprisonment in the state prison for a period of three, five, or seven years.

- b) Furnishes, administers, or gives, or offers to furnish, administer, or give, any cannabis to a minor 14 years of age or older in violation of law shall be punished by imprisonment in the state prison for a period of three, four, or five years.

FISCAL EFFECT: The Office of Legislative Counsel has keyed this bill as non-fiscal.

COMMENTS: *Need for the bill.* According to the author:

“Some students need medical cannabis to be able to attend school and have normal childhood experiences. Currently, these students must be picked up by their parents and taken off campus in order to take their medicine. No form of cannabis is allowed on school campuses. This is disruptive to their learning. Every child is entitled to an uninterrupted education.

The Compassionate Use Act of 1996 (Proposition 215) allows minors to use medical cannabis with the consent of their parents and a recommendation from a doctor. Many of these minors need to take a dose of medical cannabis at regular intervals, which often includes during school hours. Current law does not allow any form of cannabis on school grounds.

Existing law allows schools to legally administer any pharmaceutical drug, including opioids, that a child has been prescribed. But there are medical conditions pharmaceuticals can't fix, and they often have debilitating side effects. Medical cannabis helps fill some of these gaps, and lessen these challenging side effects. Parents across the nation have had success treating their children with medical cannabis when no pharmaceutical would work. A randomized, double-blind, placebo-controlled trial found medical cannabis to be effective for treating seizures associated with Lennox-Gastaut syndrome, a type of epilepsy.

The mother of a student in my district with Lennox-Gastaut syndrome says her teenage son went from having 50 seizures a day that made him unable to attend school, to seldom having a seizure thanks to medical cannabis. He is now able to attend high school with other teens in his hometown and plans to graduate in June.

The Individuals with Disabilities Education Act (IDEA) requires schools to provide accommodations for all children to attend school. Since it's against the law for kids to take their medicine on campus at public schools, some school districts have to pay for these kids to go to private school, where the medicine can be administered on campus.”

Potential for medical benefits from medicinal cannabis. The federal government classifies cannabis as a Schedule I drug, as the federal government does not recognize any currently accepted medical use in treatment in the United States. However, at least one study indicates medicinal cannabis may be particularly effective in treating Lennox-Gastaut syndrome, a rare, severe form of epileptic encephalopathy.

On April 19, 2018, the Peripheral and Central Nervous System Drugs Advisory Committee of the U.S. Food and Drug Administration (FDA) unanimously recommended that the agency approve a new medicine derived from marijuana to treat seizures associated with two forms of

epilepsy in children—Lennox-Gastaut syndrome and Dravet syndrome. The drug Epidiolex, manufactured by GW Pharmaceuticals, contains cannabidiol which is a component of marijuana. The recommendations of the advisory panel are not binding, and the final decision from the FDA is pending.

Other states have recently approved similar measures. In 1996, California became the first state to approve medical marijuana. According to the National Conference of State Legislators, since then, an additional 29 states, the District of Columbia, Guam, and Puerto Rico have followed suit and now allow for comprehensive public medical marijuana programs. An additional 17 states allow the use of “low THC, high cannabidiol (CBD)” for medical reasons or as a legal defense.

More recently, five of the 29 states with comprehensive medical marijuana programs: Washington, Colorado, Florida, Maine, and New Jersey have enacted laws authorizing students to use medical cannabis on school campuses. According to the Education Commission of the States, both New Jersey and Colorado require that:

- 1) Students using medicinal marijuana products have a valid medical recommendation.
- 2) Only non-smokable marijuana products may be administered on school grounds.
- 3) Only parents, legal guardians or primary caregivers administer the substance.
- 4) Students cannot be punished for marijuana use on school grounds.

Maine’s differs from those states because policymakers worked from the state’s existing medical marijuana framework and simply expanded the locations in which medical marijuana use is permissible. Alternatively, Washington has taken a slightly different path and instead specifies that schools are not required to permit on-site use of medical marijuana, but are permitted to allow it if they choose. Conversely, Florida requires each district school board is required to adopt a policy and procedure.

This bill follows Washington’s opt-in approach for schools, but prescribes some uniform conditions like Colorado and New Jersey, such as only authorizing non-smokeable, non-vapeable products, authorizing only parents and legal guardians to administer the medicinal cannabis to the pupil at school, requiring the parent to furnish a written medical recommendation to the school, and to sign in upon entering the school, and provides for the privacy of the pupil records.

Possible federal funding risk. In January 2018, Attorney General Sessions issued a Marijuana Enforcement Memorandum that allows federal prosecutors to decide how to prioritize enforcement of federal marijuana laws. Specifically, the Sessions memorandum directs U.S. Attorneys to “weigh all relevant considerations, including federal law enforcement priorities set by the Attorney General, the seriousness of the crime, the deterrent effect of criminal prosecution, and the cumulative impact of particular crimes on the community.”

California receives federal funding for schools primarily in two ways: Title I funding for high poverty schools and funding for the National School Lunch Program and School Breakfast Program. Federal grants are subject to federal regulations implementing drug-free workplace requirements. Noncompliance with those requirements could result in the loss of federal

funding, as grantees and sub-grantees must make a “good faith effort” to maintain a drug-free workplace as a condition of the grant award. A drug-free workplace includes any location where the performance of work is done in connection with a specific award, which could include school buildings in Title I schools and schools that participate in federal school meal programs.

Federal agencies have discretion in determining whether a grantee or sub-grantee is in violation of the drug-free workplace requirements, and have a range of options to compel compliance. When the Colorado Legislative Council Staff analyzed this issue for their state, it assumed “that withholding federal funds is the last and most extreme action the federal government can take, and that any conflict between state laws and federal rules can be addressed without forfeit of federal grants and other distributions.” Moreover, this bill specifically allows for any local educational agency that has adopted a policy to allow parents or guardians to administer appropriate medicinal cannabis to rescind that policy for any reason, including the risk of losing funding.

Arguments in support. Supporters of the bill state that since it is against the law for schools to allow medical cannabis on a school campus, school districts are caught between offering a free and appropriate public education, as required by the Individuals with Disabilities Education Act (IDEA), or complying with tobacco-free/drug-free school requirements. Schools and districts could then be required to fund placement for students at private schools.

Supporters also note that this bill takes a first step at recognizing, for children who suffer from severe seizure disorders such as Lennox-Gestaut, a daily regimen of cannabidiol (CBD), an oil form of cannabis containing only trace amounts of THC, can significantly improve life quality and access to education. A CBD regimen requires evenly spaced doses, administered throughout the day, in order to control symptoms. Without the ability to administer CBD during the school day, the effects will wear off, resulting in the onset of seizures. Parents would be required to pick up their children from school and drive 1,000 feet away from the school to administer the dose, which is disruptive to the child’s education.

Finally, supporters state that this bill would allow school districts, county offices of education, or charter schools to opt-in to allowing medicinal cannabis on campus and permits them to opt out at any time, including if federal funding is in jeopardy.

Arguments in opposition. The Association of California School Administrators expresses concern that this bill would allow a federally illegal substance to be administered on a school campus in violation of the drug free school zone requirements. The California Police Chiefs Association notes that one of law enforcement’s top priorities has been preventing youth access to cannabis products. They express concern that this bill will be taken advantage of and potentially expose other students to a plethora of marijuana products.

Prior legislation. SB 1266 (Huff, Chapter 321, Statutes of 2014) requires school districts, county offices of education, and charter schools to provide emergency epinephrine auto-injectors to school nurses or trained personnel who have volunteered, as specified. Authorizes school nurses or trained personnel to use the epinephrine auto-injectors to provide emergency medical aid to persons suffering, or reasonably believed to be suffering, from an anaphylactic reaction.

Proposition 64, The Compassionate Use Act, November 5, 1996, legalized the use of medicinal marijuana.

SB 1051 (Huff) of the 2009-2010 Session, authorized a school district, until January 1, 2016, to provide non-licensed school employees with voluntary training for the provision of emergency medical assistance to a pupil suffering from an epileptic seizure, in the absence of licensed personnel. This bill was held in the Senate Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Cannabis Industry Association
California Chapter of the National Organization for the Reform of Marijuana Laws
California School Boards Association
CannaKids
CMG/Caliva
Rincon Valley Union School District
San Francisco Unified School District
San Mateo County Office of Education
Santa Clara County Office of Education
School Employers Association of California
Southern California Coalition
United Cannabis Business Association
Numerous individuals

Opposition

Association of California School Administrators
California Police Chiefs Association

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