

Date of Hearing: June 19, 2019

ASSEMBLY COMMITTEE ON EDUCATION

Patrick O'Donnell, Chair

SB 223 (Hill) – As Amended March 11, 2019

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

**SENATE VOTE:** 29-4

**SUBJECT:** Pupil health: administration of medicinal cannabis: schoolsites

**SUMMARY:** Authorizes the governing board of a school district, a county board of education, and the governing body of a charter school maintaining kindergarten or any of grades 1 to 12 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 other state law, the governing board of a school district, a county board of education, and 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 administering 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; and
  - 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 administering 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) States 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 administering 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 (USC), 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. Makes failure to comply with the Drug-Free Workplace Act 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 (HSC) 11362.5)
- 2) Defines terms under the Medical Marijuana Program, including "primary caregiver" as the individual designated by a qualified patient who has consistently assumed responsibility for the housing, health, or safety of that patient; and a "qualified patient" as a person who is entitled to the protections in (1) above, but who does not have an identification card issued. (HSC 11362.7)
- 3) 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)
- 4) Specifies that participation in the Medical Marijuana Program does 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; and
  - e) While operating a boat. (HSC 11362.79)
- 5) States 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. (HSC 11357)

**FISCAL EFFECT:** This bill has been keyed fiscal by the Office of Legislative Counsel.

**COMMENTS:**

***Need for the bill.*** According to the author, "SB 223 will help students with severe medical disabilities attend school. The only medication that works for some of these students is medical cannabis. This bill will allow a parent or guardian to come on campus to administer medical cannabis to them in non-smoking and non-vaping forms."

***Potential for medical benefits from medicinal cannabis.*** The federal government classifies cannabis as a Schedule I drug, as it 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. The federal government appears to be moving towards approving the use of marijuana derived prescription drugs for the treatment of certain health issues, as specified in a recent bulletin put out by the National Center for Complementary and Integrative Health, one of the National Institutes of Health:

On June 25, 2018, the U.S. Food and Drug Administration (FDA) approved Epidiolex (cannabidiol) oral solution for the treatment of seizures associated with two rare and severe forms of epilepsy, Lennox-Gastaut syndrome and Dravet syndrome, in patients two years of age and older. This is the first FDA-approved drug that contains cannabidiol, a purified drug substance derived from marijuana. It is also the first FDA approval of a drug for the treatment of patients with Dravet syndrome.

In April, the Peripheral and Central Nervous System Drugs Advisory Committee of the FDA unanimously recommended that the agency approve the new medicine after concluding that the results from three adequate and well-controlled trials involving 516 patients with either Lennox-Gastaut syndrome or Dravet syndrome provided substantial evidence of the effectiveness of cannabidiol for the treatment of seizures associated with these syndromes. Epidiolex, taken along with other medications, was shown to be effective in reducing the frequency of seizures when compared with a placebo.

***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 Legislatures, 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.

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; and
- 4) Students cannot be punished for marijuana use on school grounds.

Maine’s statute 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, like Colorado and New Jersey, prescribes some uniform conditions 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, U.S. Attorney General Sessions issued a Marijuana Enforcement Memorandum that allows federal prosecutors to decide how to prioritize enforcement of federal marijuana laws. Specifically, the 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.** The California School Boards Association states, “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 medical cannabis on campus at public schools, some school districts must pay for these students to go to private school, where it can be administered on campus. As the uses of medical cannabis have expanded, doctors are recommending its use to address a variety of issues. 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 dosage. This is disruptive to their learning. Every child is entitled to an uninterrupted education. This bill allows the medical needs of students to be addressed to ensure they receive an appropriate education.”

**Arguments in opposition.** The California Police Chiefs Association states, “One of law enforcements top priorities is to prevent any youth under the age of 21 from accessing all types of cannabis products. While we understand some parents may choose to treat their student’s illnesses with cannabis, we are opposed to allowing parents or guardians administer the drug to their student while on school grounds. We are concerned this exemption would be exploited

which could jeopardize the safety of the other students. For these reasons, we must oppose this measure.”

**Related legislation.** SB 1127 (Hill) of the 2017-18 Session was virtually identical to this bill. The bill was vetoed by the Governor, with the following message:

This bill permits local schools to adopt policies regarding the use of medical marijuana by students on school grounds. This bill is overly broad as it applies to all students instead of limited cases where a doctor recommends medical marijuana for a student in order to prevent or reduce the effects of a seizure. Generally, I remain concerned about the exposure of marijuana on youth and am dubious of its use for youth for all ailments. This bill goes too far -- further than some research has -- to allow use of medical marijuana for youth. I think we should pause before going much further down this path.

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 to administer the medication, 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.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

Americans For Safe Access  
California Cannabis Industry Association  
California Health Coalition Advocacy  
California School Boards Association  
Consortium Management Group  
Rincon Valley Union School District  
San Mateo County Office Of Education  
Southern California Coalition  
United Cannabis Business Association

### **Opposition**

California Police Chiefs Association

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