
SENATE COMMITTEE ON EDUCATION

Senator Connie Leyva, Chair

2019 - 2020 Regular

Bill No: SB 223 **Hearing Date:** March 20, 2019
Author: Hill
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Urgency: No **Fiscal:** No
Consultant: Brandon Darnell

Subject: Pupil health: administration of medicinal cannabis: schoolsites.

SUMMARY

This bill, known as Jojo's Act, 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 of a pupil to possess and administer non-smokeable and non-vapeable medicinal cannabis to the authorized pupil at a schoolsite.

BACKGROUND

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;" and
 - 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(b)(1)(A))
- 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(d) and (e))
- 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; or
 - 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 (\$250), upon a finding that a first offense has been committed.
 - b) A fine of not more than five hundred dollars (\$500), 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(c))
- 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.

ANALYSIS

This bill, known as Jojo's Act, 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 of a pupil to possess and administer non-smokeable and non-vapeable medicinal cannabis to the authorized pupil at a schoolsite. Specifically, this bill:

- 1) Authorizes, notwithstanding state law identified in (4) and (5) above, 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 of a pupil to possess and administer to the pupil who is a qualified patient pursuant to Medicinal Marijuana Program.
- 2) Requires the adopted policy to include at least all of the following elements:
 - a) A prohibition against a parent or guardian from administering medicinal cannabis in a manner that creates a disruption to the educational environment or causes exposure to other pupils.
 - b) A requirement for the parent or guardian to remove any remaining cannabis from the schoolsite after the parent or guardian administers the medicinal cannabis.
 - c) A requirement for the parent or guardian to sign in at the schoolsite before administering the medicinal cannabis.
 - d) A requirement that before administering the medicinal cannabis, the parent or guardian must provide to an employee of the school a valid written medical recommendation for medicinal cannabis for the pupil to be kept on file at the school.
- 3) Provides the following with regards to the pupil records collected in accordance with the adopted policy for the administration of medicinal cannabis to a pupil:
 - i) Specifies that the records are confidential.

- b) Requires the records be used only for the purpose of administration of medicinal cannabis to the pupil.
 - c) Prohibits the records from being open to the public for inspection or disclosed for any reason, except as required by a state or federal court order.
 - d) States Legislative findings and declarations that the provisions in (a) to (c) impose a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution, and that pursuant to that constitutional provision, that the Legislature finds, to demonstrate the interest protected by this limitation and the need for protecting that interest, 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.
- 4) 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.
 - 5) 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.
 - 6) Prohibits medicinal cannabis in a smokeable or vapeable form for purposes of the bill.

STAFF COMMENTS

- 1) ***Need for the bill.*** Accord 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. 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."
- 2) ***Potential for medical benefits from medicinal cannabis.*** The federal government classifies cannabis as a Schedule I drug, which indicates that 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. A randomized, double-blind, placebo-controlled trial published in *The Lancet* found that “add-on cannabidiol is efficacious for the treatment of patients with drop seizures associated with Lennox-Gastaut syndrome and is generally well tolerated.”

On July 25, 2018, The United States Food and Drug Administration (FDA) approved Epidiolex, the drug used in the trial published in *The Lancet*, as an 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. According to the FDA, “it is the first FDA-approved drug that contains 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 its announcement of the approval, the FDA stated that “Epidiolex’s effectiveness was studied in three randomized, double-blind, placebo-controlled clinical trials involving 516 patients with either Lennox-Gastaut syndrome or Dravet syndrome. Epidiolex, taken along with other medications, was shown to be effective in reducing the frequency of seizures when compared with placebo.”

- 3) ***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 28 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, “While it is too soon to identify specific trends in policies, both New Jersey and Colorado require that:

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

Maine’s law 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 to adopt a policy and procedure.

Additionally, New Mexico's legislature has introduced legislation this session, Senate Bill 204, to authorize students to receive medicinal marijuana on school campuses. As of March 11, 2019, the bill has passed both houses of the New Mexico legislature.

Here, this bill strikes an appropriate balance between these different approaches, mimicking Washington's opt-in approach but prescribing some uniform conditions like Colorado and New Jersey, such as only authorizing non-smokeable, non-vapeable products and only authorizing parents and legal guardians.

- 4) **Federal funding risk?** In 2018-19, California received approximately \$8.2 billion in federal funding for schools. 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 programs such as National School Lunch Program or School Breakfast Program. Importantly, 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.
- 5) **Previous legislation.** SB 1127 (Hill, 2018) was identical to this bill and was vetoed by Governor Brown, who stated:

"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."

This identical bill does not address the concerns raised by Governor Brown. While there is a new governor, the *committee may wish to consider* whether a new governor is a sufficient reason to pass recently vetoed 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.

SB 1051 (Huff, 2010) would have authorized a school district, until January 1, 2016, to provide nonlicensed 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. SB 1051 died in the Senate Appropriations Committee.

AB 1430 (Swanson, 2009) would have provided that only a credentialed school nurse may administer medication to pupils, but did specifically allow non-medical school personnel to administer epinephrine via auto-injector and insulin in cases of an emergency. AB 1430 was never heard.

SUPPORT

Americans for Safe Access
California Cannabis Industry Association
California NORML
California School Boards Association
CannaKids
Rincon Valley Union School District
Southern California Coalition
Numerous individuals

OPPOSITION

None received

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