

CHAPTER 96

EDUCATION - PUBLIC SCHOOLS

SENATE BILL 21-056

BY SENATOR(S) Holbert and Gonzales, Bridges, Buckner, Coram, Ginal, Hansen, Jaquez Lewis, Kirkmeyer, Kolker, Moreno, Rodriguez, Simpson, Story, Winter;
also REPRESENTATIVE(S) Van Winkle and Gray, Bennett, Esgar, Herod, Hooton, Jodeh, Kipp, Lontine, McLachlan, Michaelson Jenet, Ricks, Roberts, Valdez A., Young.

AN ACT

CONCERNING EXPANSION OF THE OPPORTUNITIES TO ADMINISTER MEDICAL MARIJUANA AT SCHOOL TO A STUDENT WITH A VALID MEDICAL MARIJUANA RECOMMENDATION, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The general assembly finds and declares that:

(a) It is the policy of this state:

(I) To provide safe and fair public education to all its children;

(II) That students with disabilities have equal access to state education; and

(III) That students not be required to choose between state education and vital medication;

(b) Current law, enacted in 2018 in House Bill 18-1286, grants school principals the authority to approve or disapprove of a plan allowing for the administration of medical marijuana in a nonsmokeable form to a student by school personnel;

(c) Since the passage of this law, local school boards and the state board of education have refused to implement the law and have, in some cases, promulgated rules and policies contrary to current law; and

(d) In order to clarify and strengthen current law and effect its original purpose,

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

it is necessary and appropriate to:

(I) Provide for the administration of medical marijuana at school to any student with a valid recommendation for medical marijuana who is registered with the department of public health and environment;

(II) Remove the school principal's discretion whether to implement a plan allowing for the administration of medical marijuana in a nonsmokeable form to a student by designated school personnel;

(III) Require local school boards of education to adopt policies establishing procedures for the safe storage, possession, and administration of medical marijuana in a nonsmokeable form to students by school personnel; and

(IV) Protect school personnel, including school nurses, or volunteers from professional discipline or retaliation as a result of their choice to administer medical marijuana in a nonsmokeable form to students on school grounds pursuant to Colorado law.

SECTION 2. In Colorado Revised Statutes, 22-1-119.3, **amend** (1), (3)(a), (3)(d)(I), (3)(d)(IV) introductory portion, (3)(d)(IV)(A), (3)(d)(IV)(B), (3)(d.5)(I), (3)(d.5)(III)(B), (3)(d.5)(IV), (3)(d.5)(V)(A), (3)(d.5)(V)(B), (3)(d.5)(VII), and (3)(d.5)(IX); and **add** (3)(d.5)(III)(D), (6), (7), (8), (9), (10), and (11) as follows:

22-1-119.3. Policy for student possession and administration of prescription medication - rules - definitions. (1) A school district board of education ~~may~~ **SHALL** adopt and implement a policy whereby, except as described in subsection (3) of this section, a student enrolled in a school of the school district may possess and self-administer on school grounds, upon a school bus, or at any school-sponsored event any medication that is prescribed by a licensed health care practitioner to be used by the student **AND SHALL ADOPT AND IMPLEMENT A POLICY CONSISTENT WITH SUBSECTIONS (3)(c), (3)(d), AND (3)(d.5) OF THIS SECTION.**

(3) (a) A policy adopted by a school district board of education pursuant to subsection (1) of this section ~~shall~~ **MUST** include but need not be limited to:

(I) A process by which a school may restrict a student from possessing and self-administering on school grounds, on a school bus, or at a school-sponsored event a medication that is prescribed by a licensed health care practitioner to be used by the student. The process ~~shall~~ **MUST** require the school administration to make a determination as to whether a student's possession or self-administration of the medication poses a significant risk of harm to the student or to other students.

(II) A requirement that if a student has medication prescribed for a life-threatening condition, a sufficient supply of the medication is provided to the school by the student's parent or legal guardian, stored safely at the school, and kept readily available to be administered to the student in a timely fashion in the event of a health emergency; **AND**

(III) **PROCESSES FOR THE STORAGE, POSSESSION, AND ADMINISTRATION OF MEDICAL MARIJUANA IN A NONSMOKEABLE FORM TO A STUDENT WHO HOLDS A**

VALID RECOMMENDATION FOR MEDICAL MARIJUANA UPON THE GROUNDS OF THE PRESCHOOL OR PRIMARY OR SECONDARY SCHOOL IN WHICH THE STUDENT IS ENROLLED. FOR PURPOSES OF THIS SECTION, A PUBLIC SCHOOL SHALL TREAT A RECOMMENDATION FOR A NONSMOKEABLE FORM OF MEDICAL MARIJUANA FROM A LICENSED PHYSICIAN AS MEDICATION THAT IS PRESCRIBED BY A LICENSED HEALTH CARE PRACTITIONER.

(d) (I) ~~(A)~~ A primary caregiver may possess, and administer to a student who holds a valid recommendation for medical marijuana, medical marijuana in a nonsmokeable form upon the grounds of the preschool or primary or secondary school in which the student is enrolled, or upon a school bus or at a school-sponsored event. SCHOOL PERSONNEL MAY VOLUNTEER TO POSSESS, ADMINISTER, OR ASSIST IN THE ADMINISTRATION OF MEDICAL MARIJUANA IN A NONSMOKEABLE FORM TO ANY STUDENT WITH A VALID RECOMMENDATION FOR MEDICAL MARIJUANA. The primary caregiver OR VOLUNTEER shall not administer the nonsmokeable medical marijuana in a manner that creates disruption to the educational environment or causes exposure to other students.

~~(B) After the primary caregiver administers the medical marijuana in a nonsmokeable form, the primary caregiver shall remove any remaining medical marijuana in a nonsmokeable form from the grounds of the preschool or primary or secondary school, the school bus, or school-sponsored event.~~

(IV) This ~~paragraph (d)~~ SUBSECTION (3)(d) does not apply to a school district or charter school if:

(A) The school district or charter school loses OR WILL LOSE federal funding as a result of implementing this ~~paragraph (d)~~ SUBSECTION (3)(d);

(B) The school district or charter school can reasonably demonstrate that it A REASONABLE, DOCUMENTED EXPECTATION OF lost federal funding BASED ON FEDERAL GUIDANCE OR GRANT REQUIREMENTS DIRECTLY as a result of implementing this ~~paragraph (d)~~ SUBSECTION (3)(d); and

(d.5) (I) Medical marijuana in a nonsmokeable form shall ~~not~~ be administered at a school pursuant to this subsection (3)(d.5) ~~unless~~ ACCORDING TO a written plan for the administration of medical marijuana in a nonsmokeable form THAT is agreed to and signed by the school principal or his or her designee and a parent or legal guardian THAT IS CONSISTENT WITH THE SCHOOL BOARD'S ADOPTED POLICY REQUIRED BY SUBSECTION (3)(a)(III) OF THIS SECTION AND THE INSTRUCTIONS OR PLAN FOR ADMINISTRATION FROM ONE OF THE STUDENT'S RECOMMENDING PHYSICIANS, INCLUDING DOSING, TIMING, AND DELIVERY ROUTE INSTRUCTION.

(III) (B) Nothing in this subsection (3)(d.5) requires any school personnel to administer medical marijuana. ~~Administration of medical marijuana in a nonsmokeable form is at the discretion of the parent or legal guardian, the school principal or his or her designee, or the designated school personnel.~~

(D) A SCHOOL DISTRICT BOARD OF EDUCATION OR A SCHOOL ADMINISTRATION SHALL NOT DISCIPLINE OR RETALIATE AGAINST ANY SCHOOL PERSONNEL WHO VOLUNTEERS TO POSSESS, ADMINISTER, OR ASSIST IN THE ADMINISTRATION OF

MEDICAL MARIJUANA IN A NONSMOKEABLE FORM PURSUANT TO THE INSTRUCTIONS OR PLAN FOR ADMINISTRATION FROM ONE OF THE STUDENT'S RECOMMENDING PHYSICIANS, INCLUDING DOSING, TIMING, AND DELIVERY ROUTE INSTRUCTION.

(IV) A school may adopt policies regarding ~~who may act as school personnel pursuant to this subsection (3)(d.5)~~ and the reasonable parameters of the administration and use of medical marijuana in a nonsmokeable form upon the grounds of the preschool or primary or secondary school in which the student is enrolled, or upon a school bus or at a school-sponsored event.

(V) This subsection (3)(d.5) does not apply to a school if:

(A) The school loses OR WILL LOSE federal funding as a result of implementing this subsection (3)(d.5);

(B) The school can ~~reasonably demonstrate that it~~ A REASONABLE, DOCUMENTED EXPECTATION OF lost federal funding BASED ON FEDERAL GUIDANCE OR GRANT REQUIREMENTS DIRECTLY as a result of implementing this subsection (3)(d.5); and

(VII) The student's parent, guardian, or designee shall deliver the student's medical marijuana in a nonsmokeable form, in a container that contains clearly labeled instructions or the plan for administration must clearly specify instructions for the dosing, timing, and delivery route instructions from one of the student's recommending physicians, to the ~~person~~ VOLUNTEER OR SCHOOL PERSONNEL designated by the school as the person who secures the medical marijuana before the student attends school for the school day. THE VOLUNTEER OR SCHOOL PERSONNEL SHALL ADMINISTER THE MEDICAL MARIJUANA PURSUANT TO THE INSTRUCTIONS OR PLAN FOR ADMINISTRATION FROM ONE OF THE STUDENT'S RECOMMENDING PHYSICIANS, INCLUDING DOSING, TIMING, AND DELIVERY ROUTE INSTRUCTION. ~~The person~~ VOLUNTEER OR SCHOOL PERSONNEL who secures the medical marijuana in a nonsmokeable form shall place the medical marijuana in a locked storage container ~~After the school personnel administers the medical marijuana in a nonsmokeable form, the school personnel shall place the medical marijuana in a locked medical marijuana storage container designated by the school~~ THAT DOES NOT SIGNIFICANTLY DELAY ACCESS TO OR THE ADMINISTRATION OF THE MEDICAL MARIJUANA IN A NONSMOKEABLE FORM IN A MEDICAL EMERGENCY. The person who secures the medical marijuana in a nonsmokeable form ~~shall~~ MAY return any unused medical marijuana to the student's parent, guardian, or designee at the end of each school day, ~~The student shall not handle the medical marijuana in a nonsmokeable form on the grounds of the school, school bus, or school-sponsored event.~~ OR, IF ALLOWED BY THE TREATMENT PLAN, THE MEDICAL MARIJUANA IN A NONSMOKEABLE FORM MAY BE KEPT ON SCHOOL GROUNDS OVERNIGHT IN A LOCKED STORAGE CONTAINER.

(IX) For purposes of this subsection (3)(d.5), "school personnel" means school personnel designated by agreement between the principal or his or her designee and a parent or legal guardian, INCLUDING ANY SCHOOL PERSONNEL ACTING AS A VOLUNTEER PURSUANT TO SUBSECTION (3)(d)(1) OF THIS SECTION.

(6) FOR PURPOSES OF THIS SECTION, "MEDICATION" AND "MEDICAL MARIJUANA" DO NOT INCLUDE A PHYSICAL, BEHAVIORAL, PSYCHOLOGICAL, VERBAL, OR ANY

OTHER NONTANGIBLE THERAPY COURSE OF TREATMENT.

(7) NOTHING IN THIS SECTION REQUIRES SCHOOL PERSONNEL TO VOLUNTEER TO POSSESS, ADMINISTER, OR ASSIST IN THE ADMINISTRATION OF MEDICAL MARIJUANA IN A NONSMOKEABLE FORM TO ANY STUDENT WITH A VALID RECOMMENDATION FOR MEDICAL MARIJUANA. A SCHOOL MAY NOT REQUIRE SCHOOL PERSONNEL TO POSSESS, ADMINISTER, OR ASSIST IN THE ADMINISTRATION OF MEDICAL MARIJUANA IN A NONSMOKEABLE FORM AGAINST THEIR WILL, NOR MAY A SCHOOL DISCIPLINE SCHOOL PERSONNEL FOR REFUSING TO POSSESS, ADMINISTER, OR ASSIST IN THE ADMINISTRATION OF MEDICAL MARIJUANA UNDER THIS SECTION.

(8) THIS SECTION DOES NOT APPLY TO A PRIVATE OR NONPUBLIC SCHOOL.

(9) A SCHOOL LOCATED ON FEDERAL LAND IS EXEMPT FROM THE PROVISIONS OF THIS SECTION RELATED TO THE ADMINISTRATION OF MEDICAL MARIJUANA IF THE FEDERAL GOVERNMENT PROHIBITS THE ADMINISTRATION OF MEDICAL MARIJUANA AT A SCHOOL LOCATED ON FEDERAL LAND.

(10) THE DEPARTMENT OF EDUCATION SHALL NOT SUBJECT ANY PERSON LICENSED PURSUANT TO ARTICLE 60.5 OF TITLE 22 TO ANY DISCIPLINARY ACTION RELATED TO THE POSSESSION, ADMINISTRATION, OR ASSISTANCE IN THE ADMINISTRATION OF CANNABIS-BASED MEDICINE AS ALLOWED BY THIS SECTION.

(11) A SCHOOL, SCHOOL DISTRICT, SCHOOL DISTRICT DIRECTOR, SCHOOL OR SCHOOL DISTRICT EMPLOYEE, OR VOLUNTEER ACTING IN GOOD FAITH IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION IS IMMUNE FROM CRIMINAL PROSECUTION AND CIVIL SUIT FOR SUCH ACTIONS.

SECTION 3. In Colorado Revised Statutes, 12-255-120, **amend** (1)(p) and (1)(s) as follows:

12-255-120. Grounds for discipline - definitions. (1) "Grounds for discipline", as used in this part 1, means any action by any person who:

(p) Has prescribed, distributed, or given to himself or herself or a family member any controlled substance as defined in part 2 of article 18 of title 18 or as contained in schedule II of 21 U.S.C. sec. 812, EXCEPT FOR MEDICAL MARIJUANA LAWFULLY RECOMMENDED AND OBTAINED PURSUANT TO THE LAWS OF THE STATE OF COLORADO;

(s) Has administered, dispensed, or prescribed any habit-forming drug or any controlled substance, as defined in section 18-18-102 (5), other than in the course of legitimate professional practice, WHICH INCLUDES THE RECOMMENDATION, ADMINISTRATION, OR DISPENSATION OF MEDICAL MARIJUANA;

SECTION 4. In Colorado Revised Statutes, 12-255-127, **add** (1)(p) and (1)(q) as follows:

12-255-127. Exclusions. (1) This part 1 does not prohibit:

(p) THE ADMINISTRATION OF MEDICAL MARIJUANA IN A NONSMOKEABLE FORM BY

A LICENSEE IN A PUBLIC SCHOOL OR NONPUBLIC SCHOOL PURSUANT TO A POLICY ADOPTED PURSUANT TO SECTION 22-1-119.3 (3)(d.5);

(q) THE TRAINING BY A LICENSEE OF SCHOOL PERSONNEL OR VOLUNTEERS ON THE ADMINISTRATION OF MEDICAL MARIJUANA IN A NONSMOKEABLE FORM IN A PUBLIC SCHOOL OR NONPUBLIC SCHOOL TO A STUDENT WITH A VALID MEDICAL MARIJUANA RECOMMENDATION PURSUANT TO A POLICY ADOPTED PURSUANT TO SECTION 22-1-119.3 (3)(d.5).

SECTION 5. In Colorado Revised Statutes, **add** 12-30-116 as follows:

12-30-116. Protection for administering medical marijuana at school. A PERSON LICENSED PURSUANT TO THIS TITLE 12 IS NOT SUBJECT TO ANY DISCIPLINARY ACTION RELATED TO THE ADMINISTRATION OF MEDICAL MARIJUANA IN A NONSMOKEABLE FORM IN A SCHOOL TO A STUDENT WITH A VALID MEDICAL MARIJUANA RECOMMENDATION PURSUANT TO SECTION 22-1-119.3.

SECTION 6. Appropriation. (1) For the 2021-22 state fiscal year, \$15,419 is appropriated to the department of education. This appropriation is from the general fund. To implement this act, the department may use this appropriation for the purchase of legal services.

(2) For the 2021-22 state fiscal year, \$15,419 is appropriated to the department of law. This appropriation is from reappropriated funds received from the department of education under subsection (1) of this section and is based on an assumption that the department of law will require an additional 0.1 FTE. To implement this act, the department of law may use this appropriation to provide legal services for the department of education.

SECTION 7. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2022 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: May 5, 2021