

# Legalization of Marijuana in Illinois: Considerations for Illinois School Districts

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Robbins Schwartz

*Cannabis  
Regulation and  
Tax Act*



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What Does the  
*Act* Permit?



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## What Does the Act Permit?

- Permits the personal, recreational use of cannabis by adult (21 and older) residents of Illinois, subject to restrictions.
- Allows adult residents to possess up to 30 grams (roughly one ounce) of cannabis flower, 5 grams of cannabis concentrate and 500 milligrams of THC contained in a cannabis-infused product, subject to restrictions.

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## What Does the *Act* Permit?

- Authorizes the State to issue a limited number of licenses for cultivators, processors and retail dispensaries, and to charge excise taxes on the retail sale of marijuana products.

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## What Does the *Act* Permit?

- Allows qualifying medical marijuana patients ages 21 and older to grow up to five cannabis plants in their home without a cultivation center or craft grower license, and to possess cannabis in greater amounts than other Illinois residents.



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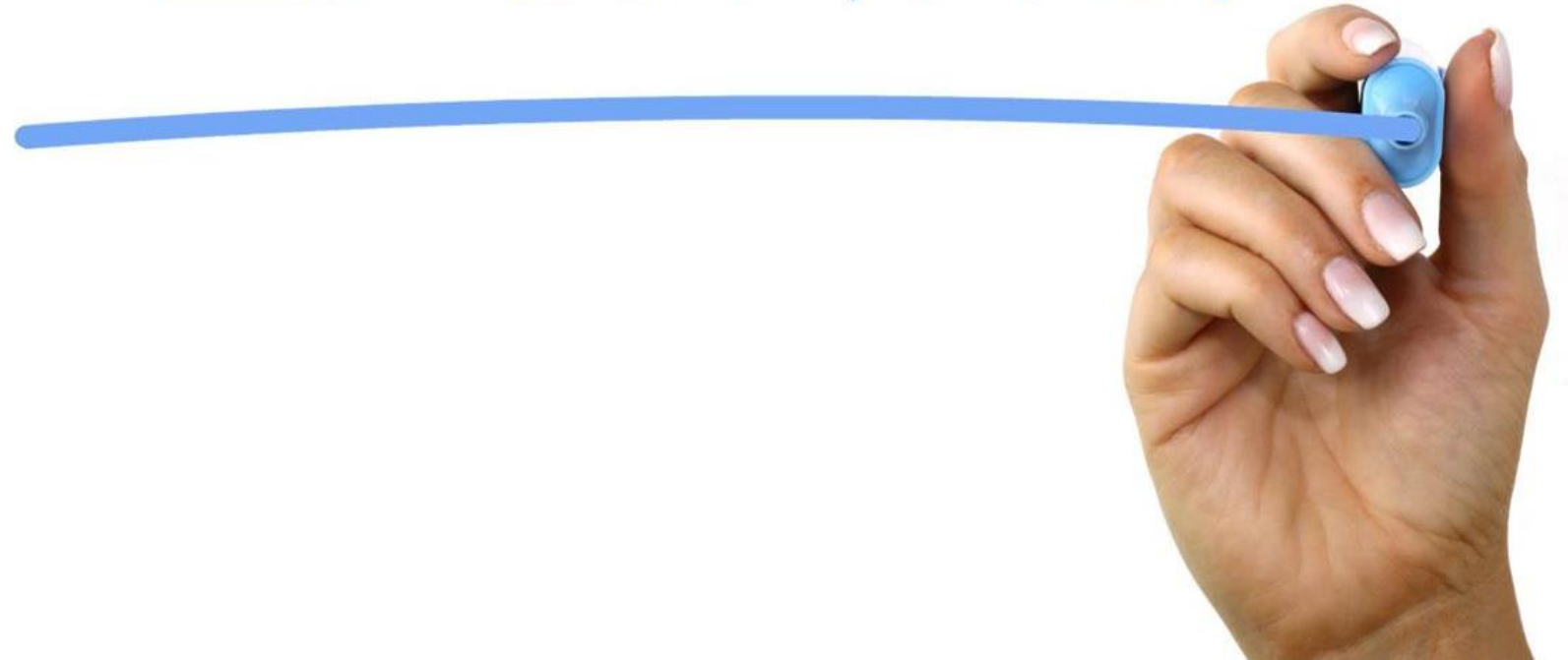
## What Does the Act Permit?

- Allows for expungement through the Governor's clemency process for prior convictions involving less than 30 grams of marijuana. For convictions involving amounts greater than 30 grams and up to 500 grams, permits individuals and State's Attorneys to petition a court to vacate the conviction.

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The *Act's*  
Limitations

LIMITATION



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## The Act's Limitations

- Limitations on Possession – Section 10-35
  - The Act does not permit any person to engage in, and does not prevent the imposition of any civil, criminal, or other penalties for possessing cannabis:
    - In a school bus, unless permitted for a qualifying patient or caregiver pursuant to the Compassionate Use of Medical Cannabis Pilot Program Act (“Ashley’s Law”);



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## The Act's Limitations



- Limitations on Use – Section 10-30(c)
  - Nothing in the Act may be construed to require any person or establishment in lawful possession of property to allow a guest, client, lessee, customer, or visitor to use cannabis on or in that property.

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## The Act's Limitations

- Limitations on Use – Section 10-35
  - The Act does not permit any person to engage in, and does not prevent the imposition of any civil, criminal, or other penalties for . . . undertaking any task under the influence of cannabis when doing so would constitute negligence, professional malpractice, or professional misconduct.

## The Act's Limitations

- Limitations on Use – Section 10-35
  - The Act does not permit any person to engage in, and does not prevent the imposition of any civil, criminal, or other penalties for using cannabis:
    - In a school bus, unless permitted for a qualifying patient or caregiver pursuant to Ashley's Law
    - On the grounds of any preschool or primary or secondary school, unless permitted for a qualifying patient or caregiver pursuant to Ashley's Law;

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## The Act's Limitations

- Limitations on Use – Section 10-35
  - The Act does not permit any person to engage in, and does not prevent the imposition of any civil, criminal, or other penalties for using cannabis:
    - In any motor vehicle;
    - In any public place; or
    - Knowingly in close physical proximity to anyone under 21 years of age who is not a registered medical cannabis patient under Ashley's Law.

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# Workplace Considerations



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## Workplace Considerations

- Cannabis possession and use remains illegal under federal law.
- Employer obligations under the U.S. Department of Transportation regulations are unchanged.
- The Act shall not be construed as interfering with or impacting an employer's compliance with federal or state law or cause it to lose federal or state funding.

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## Workplace Considerations

- The 552 page Act contains a section, Section 10-50, specifically addressing employment and employer liability.
- The workplace protections contained in the Act are considered to be stronger than any other state that has legalized marijuana use.

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## Workplace Considerations



- Workplace protections provided employers include:
  - Affirmation of an employer's right to adopt drug free workplace or employment policies concerning drug use as long as application of the policy is nondiscriminatory.

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## Workplace Considerations

- Allows employers to prohibit employees from being under the influence of cannabis in the workplace while performing the job or while on-call.
  - +On-call is defined as an employee scheduled to be on standby with at least 24 hours notice.

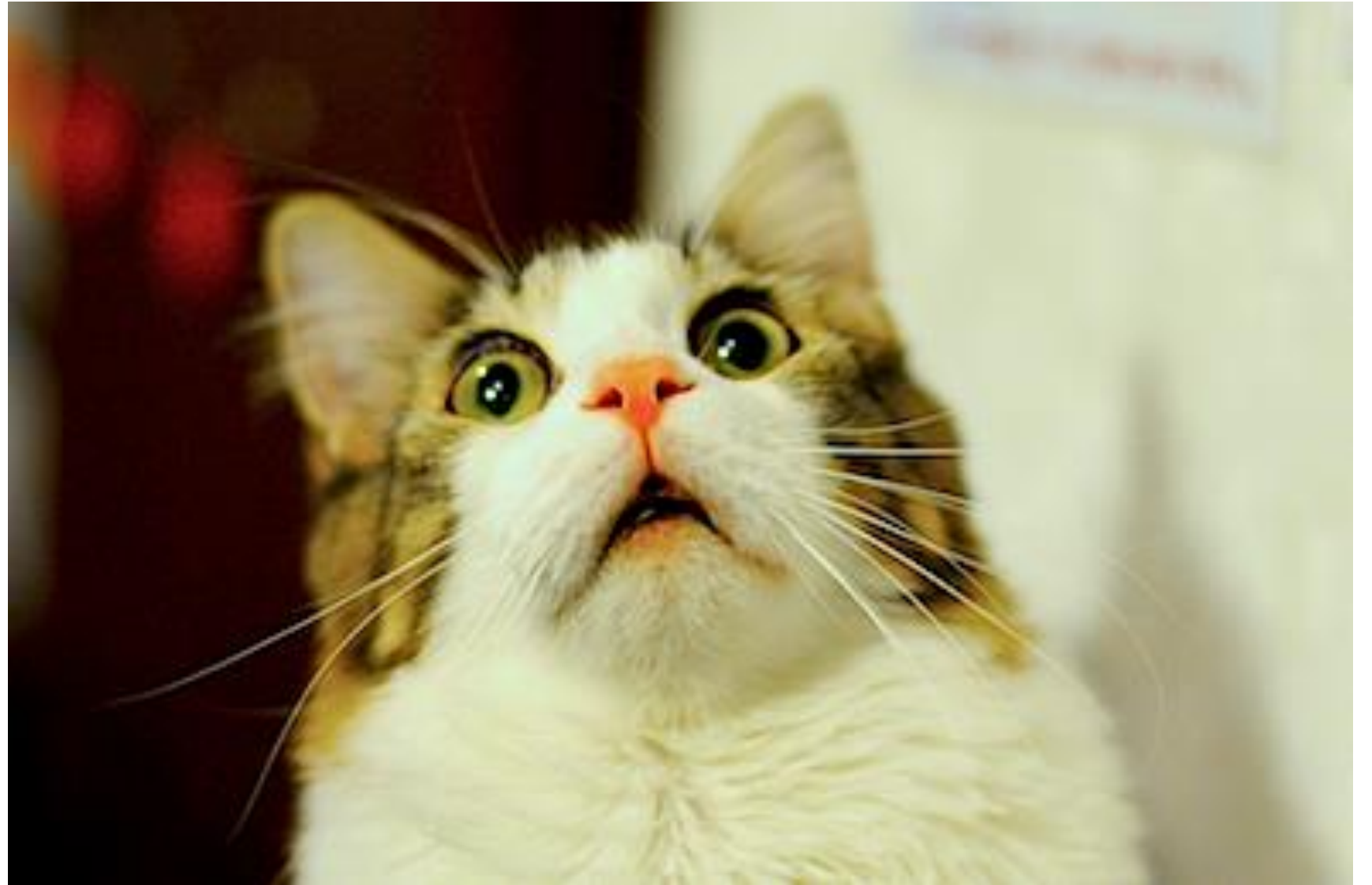
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## Workplace Considerations

- Affirms an employer's right to discipline an employee, including termination, for violation of its workplace drug policy.

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# Impairment In the Workplace



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## Impairment In the Workplace

- Impaired or Under the Influence of Cannabis
  - An employee may be considered impaired by cannabis if the employer has a good faith belief that the employee was under the influence of cannabis; and

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## Impairment In the Workplace

- Impaired or Under the Influence of Cannabis
  - The employee “manifests specific articulable symptoms while working that decrease or lessen the employee’s performance of the duties or tasks of his/her position.”

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# Impairment In the Workplace



- Specific Symptoms of Cannabis Impairment:
  - Employee's speech
  - Physical dexterity
  - Agility
  - Coordination
  - Demeanor
  - Irrational or unusual behavior

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# Impairment In the Workplace

- Specific Symptoms of Cannabis Impairment:
  - Negligence or carelessness in operating equipment
  - Disregard for safety or others
  - An accident that results in serious damage to property or equipment, disruption of production or carelessness that results in any injury.

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## Due Process Requirement

- The Act sets forth a requirement that an employer provide any employee subject to discipline for being impaired “due process”

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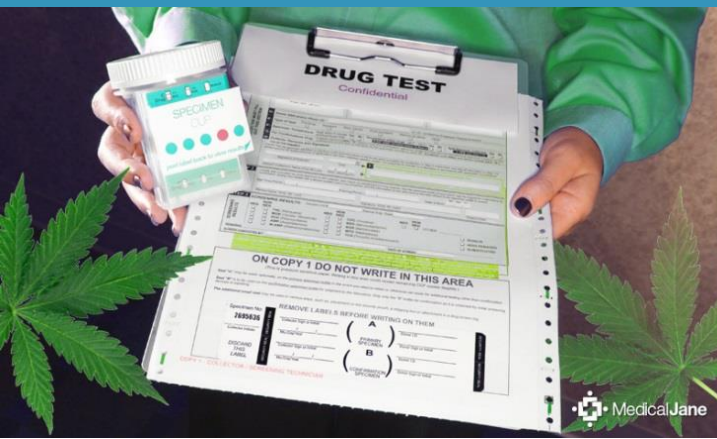
## Due Process Requirement

- Due process under the Act mandates that an employer afford the employee a reasonable opportunity to contest the basis of the determination of impairment or being under the influence.



# Drug Testing of Employees

- Employers should be wary of using drug test results alone as proof that an employee worked while under the influence of or impaired by marijuana.
- Drug tests results for cannabis may often reflect an employee's lawful off-duty use.



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## Drug Testing of Employees

- Reliance on the symptoms of impairments set forth above, by trained supervisors, is the recommended approach in making the determination that an employee is under the influence.

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## Employees Who May Not Lawfully Use or Possess Cannabis

- The Act sets forth several positions of employment that cannot ever lawfully use cannabis. In relevant part these positions include:
  - Individuals holding a school bus driver's permit or commercial driver's license.
  - Law Enforcement Personnel including, we believe, School Resource Officers.

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## Off-Duty Cannabis Use

- The Illinois Right to Privacy Act was amended by this Act to include language prohibiting employers from discriminating against individuals for their lawful off-duty use of cannabis.



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## Limitations on Employee's Right to File Suit

- The Act provides the following limitations on lawsuits against employers for the following actions:
  - Subjecting an employee or applicant to a reasonable drug or alcohol test under the employer's policy;
  - Trailer bill signed December 6, 2019, adding protection to employers for withdrawal of a job offer based upon a failed drug test.

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## Limitations on Employee's Right to File Suit

- The Act provides the following limitations on lawsuits against employers for the following actions:
  - Disciplining an employee based on the employer's good faith belief that the employee used, possessed, was impaired or was under the influence in the workplace;



## Limitations on Employee's Right to File Suit

- The Act provides the following limitations on lawsuits against employers for the following actions:
  - Any injury to a third-party if the employer neither knew or had reason to know that an employee was impaired.

Employer  
Recommendations



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## Recommendations for Compliance with the Act

- Review existing drug testing policies and procedures.
- Train supervisors and managers on the Act's requirements and how to recognize symptoms of impairment and/or under the influence of cannabis.

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## Recommendations for Compliance with the Act

- Develop procedures for implementing discipline for employees determined to be under the influence/impaired by cannabis in the workplace.
- Be aware of possible bargaining implications related to policy and/or procedural changes.

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## Ashley's Law

- In 2018, the bill called “Ashley’s Law” amended the *Illinois School Code* to permit parents, guardians and caregivers to administer medical cannabis to qualifying students on school premises and school buses.

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## Ashley's Law

- Under Ashley's Law:
  - A school district, public school, charter school or nonpublic school must authorize a parent, guardian, or any other individual registered with the Department of Public Health as a designated caregiver of a student who is a registered qualifying patient, to administer a medical cannabis infused product. 105 ILCS 5/22-33(b).

## Ashley's Law

- Under Ashley's Law:
  - "Qualifying patient" means a person who has been diagnosed by a physician as having a debilitating medical condition. 105 ILCS 5/22-33(a-5).
  - "Medical cannabis infused product" means food, oils, ointments, or other products containing usable cannabis that are not smoked. *Id.*



## Ashley's Law

- Under Ashley's Law:
  - Administration to the student on school premises or on the premises of a school bus is permitted, so long as both the student (as a registered qualifying patient) and the parent, guardian or other individual (as a registered designated caregiver) have been issued registry identification cards under the *Compassionate Use of Medical Cannabis Pilot Program Act*. 105 ILCS 5/22-33(b).

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## Ashley's Law

- Under Ashley's Law:
  - After administering the cannabis infused product, the parent, guardian or other individual must remove the product from school premises or from the school bus. 105 ILCS 5/22-33(b).

## Ashley's Law

- Ashley's Law further provides that:
  - The administration of cannabis must not create a disruption to the school's educational environment or expose the product to other students. 105 ILCS 5/22-33(c).
  - The school district may not discipline or deny from attending school a student who is administered a medical cannabis infused product by a parent, guardian or caretaker. 105 ILCS 5/22-33(d).

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## Ashley's Law

- Ashley's Law further provides that:
  - School districts may not authorize the use of a medical cannabis infused product if the school district would lose federal funding as a result of the authorization. 105 ILCS 5/22-33(f).
  - School staff are not required to administer a medical cannabis infused product to a qualifying student. 105 ILCS 5/22-33(e).

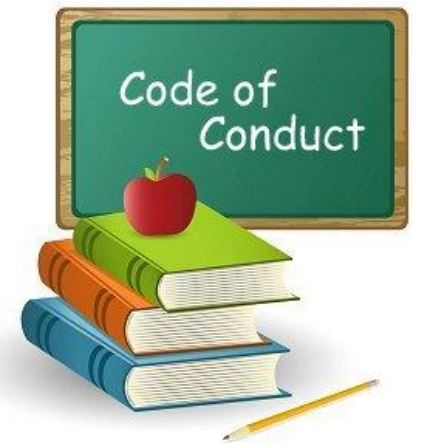
## Ashley's Law

- Ashley's Law further provides that:
  - School districts are required to adopt a policy to implement the Law's requirements. 105 ILCS 5/22-33(g).

# Public Act 101-370

- Signed into law on August 12, 2019
- Effective January 1, 2020
- Amends Ashley's Law by further amending Section 22-30 of the *School Code*.

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## Public Act 101-370

- Provides that a school district must allow a school nurse or school administrator to administer a medical cannabis infused product to a student who is a registered qualifying patient:
  - While on school premises;
  - While at a school-sponsored activity; or
  - Before or after normal school activities, including while the student is in before-school or after-school care on school-operated property or while being transported on a school bus.

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## Public Act 101-370

- Medical cannabis infused products that are to be administered must be stored with the school nurse at all times in a manner consistent with storage of other student medication at the school and may be accessible only by the school nurse or a school administrator.

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# Public Act 101-370



- Training

- Requires the Illinois State Board of Education, in consultation with the Department of Public Health, to develop a training curriculum for school administrators on the administration of medical cannabis infused products.
- Prior to the administration of a medical cannabis infused product, a school nurse or school administrator must annually complete a designated training curriculum and must submit to the school administration proof of completion of the training.

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# Public Act 101-370

- Limitations on Liability
  - Amends the *Compassionate Use of Medical Cannabis Pilot Program Act* to provide that school nurses and administrators are not subject to arrest, prosecution, or denial of any right or privilege for administering or assisting a student in self-administering a medical cannabis infused product in compliance with Ashley's Law.

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# Public Act 101- 370

- Student Self-Administration
  - A school district may authorize the self-administration of a medical cannabis infused product by a student who is a registered qualifying patient if the self-administration takes place under the direct supervision of a school nurse or school administrator.

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# Public Act 101-370



- Student Self-Administration

- Before allowing the administration or self-administration of a medical cannabis infused product, the parent/guardian of a student who is a registered qualifying patient must provide written authorization for its use, along with copies of the registry identification card of the student (as a registered qualifying patient) and the parent/guardian (as a registered designated caregiver).
- These documents must be kept on file in the office of the school nurse.

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# Public Act 101-370

- Student Discipline
  - A school district may not discipline a student who self-administers a medical cannabis infused product under the supervision of a school nurse or school administrator in compliance with Ashley's Law.

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## Policy and Procedure Recommendations

- Develop a mechanism for informing parents of (1) how to notify the school or school district of the need to administer medical cannabis to a student, and (2) the documentation required for the school district to authorize the administration of medical cannabis on school property.

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## Best Practices

- When a student need arises, establish parameters for administration through a student plan which includes the time and location that the administration will take place, and other relevant details to make certain that medical cannabis is safely and appropriately administered without disruption to other students.

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## Best Practices

- For students on long-term medication therapy, a new student medication authorization form should be submitted each school year.
- In the event of a medication dosage change, the parent/guardian must submit a new written order from the student's physician, and the order should be attached to and maintained with the medication authorization form.

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*Questions?*



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