

Florida Cannabis Laws

Florida

On November 8, 2016, Florida voters overwhelmingly approved Amendment 2, making Florida the 26th state with an effective medical marijuana law. Two additional states passed similar measures later in the evening, bringing the total number to 28.

Seriously ill Floridians will now be able to access medical marijuana in the form that works best for them.

The amendment will require the Department of Health to regulate medical marijuana treatment centers, which would cultivate and dispense cannabis to qualifying patients who have been diagnosed with a debilitating medical condition and have a physician's certification and a valid identification card.

This victory is not the end of the effort, however. Because the initiative was a constitutional amendment, there are many issues that will be resolved through the regulatory process. Continuing efforts will help ensure that patients get convenient and affordable access to the medicine they need as soon as possible.

History of Florida's medical marijuana law

Prior the passage of Amendment 2, Florida had a flawed law that allowed a limited group of patients to access marijuana that was low in THC (less than 0.8%) and high in CBD. The first dispensary of low-THC cannabis opened in Tallahassee on July 26, 2016. The legislature expanded this law in its 2016 session by passing HB 307, which would have allowed terminally ill patients to access other forms of medical cannabis.

Decriminalization spreads across Florida

Since June 2015, a new trend has taken root across Florida — several cities and counties have passed similar ordinances that give officers the discretion to replace arrests for possession of under 20 grams of marijuana with citations. These jurisdictions include Miami-Dade County, Tampa, Key West, and Orlando.

While this is a positive sign, in some jurisdictions, payment of the citation could still result in a criminal record, and some police departments have said that they will continue to arrest everyone in possession of marijuana, so caution should be exercised.

Voters approved Amendment 2 — Expand Medical Marijuana — in Florida. The amendment calls for legalizing medical marijuana for individuals with specific debilitating diseases or conditions as determined by a

licensed state physician. It is also designed to require the Department of Health to register and regulate marijuana production and distribution centers.

Initiative design

The legal language of Amendment 2 was written to explicitly allow medical marijuana to be provided as a treatment for patients with the following specific diseases:

- cancer
- epilepsy
- glaucoma
- positive status for human immunodeficiency virus (HIV)
- acquired immune deficiency syndrome (AIDS)
- post-traumatic stress disorder (PTSD)
- amyotrophic lateral sclerosis (ALS)
- Crohn's disease, Parkinson's disease
- multiple sclerosis
- or other debilitating medical conditions of the same kind or class as those mentioned above, and for which a physician believes that the medical use of marijuana would likely outweigh the potential health risks for a patient.

Amendment 2 was also designed to allow licensed physicians to certify patients for medical marijuana use after diagnosing them with some "other debilitating medical conditions of the same kind or class as or comparable to those enumerated."

Current status of Florida medical marijuana

The Florida government enacted the Compassionate Medical Cannabis Act of 2014 and it became effective on January 1, 2015. The program allowed for access to non-smoked, low-THC marijuana for qualified patients.

Defeat of Amendment 2 in 2014

Florida Right to Medical Marijuana Initiative, Amendment 2 (2014)

United for Care successfully placed a similar initiative, also named Amendment 2, on the November 4, 2014, ballot in Florida, but the measure was defeated on Election Day. Although a 57.62 percent majority voted in favor of the amendment, Florida's state constitution requires a 60 percent supermajority vote for an amendment to pass. Thus, the measure failed by a little over 139,000 votes, or 2.38 percent.

Following the defeat of 2014's Amendment 2, John Morgan, the central proponent of and largest donor to the defeated measure, started planning a re-run for 2016. United for Care, which supported the defeated Amendment 2 of 2014, supported the 2016 medical marijuana initiative. The group's director, Ben Pollara, said the new initiative contains explicit language clarifying issues about which some opponents of Amendment 2 were concerned in 2014.

Differences between 2014 and 2016 measures:

Although the 2014 measure and the 2016 measure were both designed to legalize medical marijuana, there were some differences between the two proposals.

The 2016 measure clarifies requirements for parental consent for the use of medical marijuana by minors and also further defined what is meant by "debilitating" illnesses that would qualify for marijuana as a treatment option.

The 2016 measure also addressed concerns regarding caregivers by making it clear that doctors would not be immune from malpractice claims for negligent prescribing of marijuana and by limiting how many patients a caregiver can treat with marijuana.

Financial impact statement

The financial impact statement for Amendment 2 was as follows:

Increased costs from this amendment to state and local governments cannot be determined.

There will be additional regulatory costs and enforcement activities associated with the production, sale, use and possession of medical marijuana.

Fees may offset some of the regulatory costs. Sales tax will likely apply to most purchases, resulting in a

substantial increase in state and local government revenues that cannot be determined precisely.

The impact on property tax revenues cannot be determined.

What are the Penalties for the Possession of Marijuana in Florida?

If you are arrested for charges relating to illegal possession of marijuana, the charges you face will depend on the amount of marijuana in your possession and your intended use. Those found with small amounts for personal use face lighter penalties than those with larger amounts and/or the intent to sell the marijuana. Penalties vary but can include incarceration, fines, and treatment for marijuana addiction. Just as adults can face jail or prison sentences, minors in possession of marijuana typically face time in a juvenile facility. Another noteworthy factor is that those possessing synthetic forms of marijuana will frequently face harsher penalties than those who possess normal marijuana.

You do not have to be caught in the act of selling marijuana to be charged with attempted distribution. Merely possessing a large amount of marijuana, measuring equipment, baggies, or other paraphernalia may be indicative of intent to distribute, and this evidence can be used against you in a charge of possession with intent to sell. Furthermore, under Florida law, there is a

presumption that you intend to sell marijuana when you have 25 plants or more. If you possess that many plants for personal use, you will have to prove during trial that the plants were for personal use and not distribution.

To get involved with the cannabis business in Florida, the website that is handling most of the issues is:

<http://www.floridahealth.gov/programs-and-services/office-of-compassionate-use/>

Before growers can put plants in the ground or dispensaries can open their doors, state health regulators face a July deadline of writing rules to govern an expanded medical marijuana program. And this spring, the Florida Legislature will undoubtedly consider a cannabis bill as well.

Complicating matters is an existing law that lets a limited number of patients use strains of marijuana low in THC, which causes a euphoric high, and the terminally ill use full-strength cannabis. Six nurseries are already growing, processing and dispensing cannabis under an existing program.

Amendment 2 is broader, allowing doctors to recommend full-strength marijuana as a treatment for a long list of conditions, including glaucoma, HIV/AIDS and cancer. It authorizes the Florida Department of Health to license

growers, labs for extracting chemical components from the marijuana and dispensaries that sell the drug.

Lawmakers have three options for what to do next:

- Create a new set of laws for a larger medical marijuana program with a number of licenses available for growers, dispensaries and others in the industry.
- Do little or no expansion of the existing program, allowing the six nurseries with marijuana licenses to maintain control of the market.
- Do nothing and allow two separate cannabis programs.

Sen. Jeff Brandes, R-St. Petersburg, who has advocated for medical marijuana in the Legislature for three years, said he is already working on a bill to regulate marijuana. He believes it will be the only major bill on the subject in the Senate.

In its current form, the bill would end the existing program, he said, noting it doesn't make sense to have two sets of rules. What's more, he wants to allow more people to grow, process and sell cannabis.

“I am not willing to compromise about opening up the market, period, full stop,” Brandes said. “We are going to have a free market system here in Florida.”

The Department of Health has not started to act yet on new regulations.

“The department will follow the will of the voters,” spokeswoman Mara Gambineri said Thursday. “The constitutional amendment goes into effect on Jan. 3, 2017. Until then current law stands.”

In a document outlining its intent, United for Care wrote last month that it wants to avoid “arbitrary or overly restrictive limits” on nurseries or dispensaries, which they say ought to be licensed separately.

That sentiment could be challenged by state lawmakers who this spring voted down proposals to have more growers in the state.

What’s more, prominent legislators are likely to support tough regulations on medical marijuana, including House Speaker-designate Richard Corcoran, R-Land O’Lakes, and incoming Senate Appropriations Chairman Jack Latvala, R-Clearwater, who both opposed Amendment 2.

The nurseries that have cannabis licenses, as well as businesses that hope to gain a foothold in the state, are lining up big-dollar lobbyists to advocate for them in Tallahassee.

But Brandes warns that attempts to derail a medical marijuana bill would end badly.

Amendment 2 essentially goes into effect even if the state does nothing to create regulations. That would set in motion a court battle.

“That would be the absolute worst-case scenario for everybody but especially the patients,” Brandes said.

After it was clear the amendment would pass, the “No on 2” campaign urged the Legislature to pass additional restrictions banning candy-like products, limiting THC levels and “tightly” regulating the medical conditions eligible for cannabis.

Already, local governments have started to act in response to the amendment’s passage. Miami Beach on Wednesday passed a four-month moratorium on dispensaries.

Lawyer Jonathan Robbins, who leads the regulated substances task force at the Akerman law firm, says very few things are clear about how Florida’s medical marijuana drama will play out.

Just one thing is certain, said Robbins: Unless you have permission under the existing cannabis program, no, you cannot start using medical marijuana yet. And it could be a while before patients have broader access.

“It’s certainly fair to say the Legislature’s been slow to act,

the DOH has had some trouble rolling out the 2014 [low-THC cannabis] program,” Robbins said. “I don’t know why this would be any different.”