

SB 423 Monitoring: Montana Marijuana Act Developments Through April 2012

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Background

Senate Bill 423 repealed Montana's Medical Marijuana Act on July 1, 2011, and replaced it with new requirements for the cultivation, manufacture, and possession of marijuana for use by people with debilitating medical conditions.

SB 423 specifically requires the Children, Families, Health, and Human Services Interim Committee to:

- monitor how the Department of Public Health and Human Services (DPHHS) puts the new law into effect; and
- draft legislation for 2013 if members decide changes to the law are needed.

This briefing paper summarizes developments related to SB 423's implementation since March 2012, as well as other items that have had or may have an effect on the cultivation, possession, and use of marijuana for debilitating medical conditions.

Legal Challenge: Montana Cannabis Industry Association v. State of Montana

The Montana Supreme Court has delayed oral arguments in the ongoing legal challenge to SB 423. Arguments were scheduled for April 30 for the state's appeal of a lower court ruling and a cross-appeal by the plaintiffs. The oral argument will now be held May 30 in Helena.

The Montana Cannabis Industry Association challenged SB 423 as unconstitutional in May 2011. The group asked for an injunction to prevent the law from going into effect as scheduled on July 1, 2011. District Judge Jim Reynolds of Helena put five provisions of the law on hold until a trial could be held on the merits of the challenge. However, the state appealed two elements of his ruling to the Supreme Court. The association then cross-appealed on other issues.

The Supreme Court in April said it will limit oral arguments to two issues:

- the state's contention that Judge Reynolds was wrong in stopping the ban on compensation for marijuana products from going into effect, as well as the limit on the number of patients for whom a provider may grow or possess marijuana; and
- the association's contention that Judge Reynolds should have prevented the whole law from going into effect, rather than only the five provisions he separated from the overall bill.

The association also has appealed the lower court's decision to allow two other elements of the bill to go into effect:

- the prohibition on cards for probationers or parolees; and
- the standard of care that doctors must follow when certifying that a person has a debilitating medical condition and may benefit from the use of marijuana.

After the Supreme Court rules on the appeals, the case will go back to District Court for further action under the guidelines established by the ruling.

Federal Raids: Statistics and Lawsuit Status

The federal government continues to issue indictments stemming from raids of medical marijuana businesses last year. In addition, federal agents carried out another raid in April.

The U.S. Attorney's Office said in an April 13 statement that more than 25 people have been indicted on federal charges related to searches carried out last year in 13 Montana communities. Of those indicted, 12 have entered plea agreements and been sentenced. To date, no case has gone to trial.

Charges have ranged from manufacture and possession of marijuana with intent to distribute to money laundering and maintaining a drug-involved premises. Sentences have ranged from 6 months to 5 years in prison and included forfeitures of homes, vehicles, firearms, and cash. In some instances, individuals have agreed to pay judgments ranging from \$288,000 to \$454,000. The judgments reflect the amount of money prosecutors believe was attributable to the criminal activity.

In the April 13 statement, U.S. Attorney Michael Cotter said the office will continue to support investigation and prosecution of significant traffickers of illegal drugs, including marijuana. On April 20, federal agents raided a Billings provider.

Meanwhile, several individuals whose businesses were raided last year have appealed a federal court dismissal of their lawsuit. The suit alleged that the providers' constitutional rights were violated by the searches and related seizures of marijuana and other property. The plaintiffs also maintained that the state's former Medical Marijuana Act protected them from federal prosecution.

U.S. District Judge Donald Molloy dismissed the complaint in January 2012. He noted that the Supremacy Clause of the federal constitution "unambiguously provides that if there is any conflict between federal law and state law, federal law shall prevail." He said federal courts have consistently held that the federal government has the authority to enforce the federal Controlled Substances Act, which makes the cultivation and sale of marijuana illegal.

The plaintiffs appealed Judge Molloy's decision to the 9th U.S. Circuit Court of Appeals. They must file their opening brief in the case by May 21; the government must file its response by June 19.

Registry Statistics

The number of people registered to use marijuana for a debilitating medical condition has declined to 10,640 on April 30, 2012. That represents a decrease of 66% from the 31,522 patients who were registered in May 2011, the last month before SB 423 went into effect.

The April 2012 statistics also show:

- cardholders who are 21 to 30 years of age represented 18.5% of the cardholders, compared with 25% in May 2011;
- about 61% of the cardholders listed severe chronic pain as a condition for which they were using marijuana, compared with 73% in May 2011;
- only 26 out-of-state cardholders remain registered; and
- 12 physicians had certified the debilitating medical conditions of more than 100 patients. At a minimum, the 12 doctors had provided written certifications for at least 8,842 — or 83% — of the registered cardholders.

Registry Fee Increase Proposed

DPHHS in March proposed raising the fees for obtaining or renewing a card to use marijuana for a debilitating medical condition. As of June 1, the fee for a new or renewed card would be \$75. The current fees are \$25 for a new card and \$10 for a renewal.

DPHHS is proposing the fee increase to offset the decline in revenue that has occurred as the number of registered cardholders has decreased in the past year. Under both the former Medical Marijuana Act and the new Montana Marijuana Act, the cost of the registry program was to be paid for by fees charged to people who participate in the program.

In outlining its reasons for the administrative rule change, DPHHS noted that SB 423 created new requirements for the issuance of cards. For example, DPHHS must check an applicant's probation or parole status and provide laminated cards. Those changes have increased the costs of running the program. DPHHS said it needed more revenue from fees in order to make up for the combination of increased program costs and declining number of cardholders.

Regulation at the Local Level

The Whitefish City Council in April 2012 unanimously adopted an ordinance to ban storefront marijuana businesses, using the authority given to local governments under SB 423. The ordinance will replace temporary emergency moratoriums that the council had placed on dispensaries, beginning in 2009. The latest emergency ordinance was due to expire in June, prompting the council to adopt the new ordinance.

At least three other local governments took action last year to regulate the cultivation or sale of marijuana in their jurisdictions: the city of Billings, the town of Roundup, and Valley County.