

SB 423 Monitoring: Montana Marijuana Act Developments from June 2011 through August 2011

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for the Children, Families, Health, and Human Services Interim Committee
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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Senate Bill 423 repealed Montana's Medical Marijuana Act on July 1, 2011, and replaced it with new requirements for the cultivation, manufacture, and possession of marijuana for use by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 the Committee last met in June.

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

On May 13, 2011, the Montana Cannabis Industry Association, several individuals, and a doctor filed a legal action to prevent SB 423 from going into effect as scheduled on July 1. They argued that provisions of the bill violated both the state and U.S. constitutions.

On June 30, Helena District Judge James Reynolds let most provisions of the law go into effect but halted several key elements until a full trial is held on the merits. The Attorney General's Office appealed the ruling to the Montana Supreme Court on August 9. The plaintiffs filed a cross-appeal on August 17. Briefs in the case will be filed beginning in late October. The final briefs should be filed by late January 2012, if no extensions are requested.

After the Supreme Court rules on the appeals, the case will return to District Court for further hearing within whatever guidelines the high court may set. The current lower court decision remains in effect pending the outcome of the appeals.

The order by Judge Reynolds prevented the following provisions from going into effect:

- the limit of three patients per provider (formerly known as a caregiver);
- the prohibition on providers being paid for marijuana or related products;
- the prohibition on advertising of marijuana and related products by registered cardholders or providers;

- the ability of DPHHS and local law enforcement to conduct unannounced inspections of the locations where providers indicate they will grow marijuana; and
- the requirement that DPHHS report to the Board of Medical Examiners the names of physicians who provide written certification for more than 25 patients in a 12-month period, so the Board may review the physician's practices.

The ruling allowed many businesses that were growing and providing marijuana to persons with debilitating medical conditions to keep operating until a final ruling is issued.

However, the rest of the law went into effect as scheduled on July 1, including the repeal of all sections of the Medical Marijuana Act. The new law is known as the "Montana Marijuana Act." It continues to protect from prosecution certain people who grow, manufacture, or possess a limited amount of marijuana. However, it does contain stricter provisions than the law it replaced.

Some of the key requirements that went into effect on July 1 include:

- cardholders and providers must be Montana residents;
- people with severe chronic pain must provide supporting proof of the condition;
- two physicians must certify that a minor will benefit from the use of marijuana; and
- providers must submit fingerprints for a criminal history background check to ensure they don't have a felony conviction.

The law also prohibits:

- people on probation or parole or under the supervision of a youth court from being a registered cardholder or provider;
- doctors from using telemedicine for written certifications, accepting anything of value from a provider, or examining people where marijuana is grown or manufactured; and
- the use of marijuana in public and certain other specified locations or situations.

In addition, local governments may regulate providers and prohibit storefront businesses.

Initiative Referendum

Just days after the 2011 Legislature ended, SB 423 opponents announced they would launch an initiative effort to place the law on the November 2012 ballot to see if voters would reject it. They also hoped to gain enough signatures to suspend the law until a vote is held.

The Secretary of State's Office approved Initiative Referendum 124 for signature gathering on June 28.

I-124 backers have formed a ballot committee called Patients For Reform Not Repeal. To place the measure on the ballot, the group must gather at least 24,337 verified signatures that must represent 5% of the voters in each of at least 34 House districts. They must gather anywhere from 31,238 to 43,247 signatures to suspend the law, depending on the House districts in which signatures are gathered. The signatures must represent 15% of the voters in at least 51 House districts.

The group has until September 30 to turn in signatures for verification by county election officials. The Secretary of State's Office will conduct a final review before the measure is certified for the ballot.

Registry Statistics

From the time voters passed the Medical Marijuana Act in November 2004 until June 2011, the number of people registered as patients increased each month. Most of the growth in registrations occurred in 2009 and subsequent years.

DPHHS statistics for June 2011 showed a drop in the number of patients for the first time since January 2005. Meanwhile, the number of caregivers decreased for the second month in a row.

Statistics provided by DPHHS showed that 27,225 individuals were registered cardholders as of July 31, down from 30,036 in June and 31,522 in May. SB 423 required DPHHS to stop issuing cards under the old law on May 13. The agency began registering cardholders under the new requirements on June 1.

At the end of July, DPHHS had registered 61 providers and estimated that about 350 provider applications were pending. In the previous month, 4,438 people were registered as caregivers.

Probationers and Parolees

SB 423 prohibits people on probation or parole or under the supervision of a youth court from being a registered cardholder or provider. However, the Department of Corrections has become aware of instances in which probationers have obtained registry identification cards. In those instances, the Department of Corrections has asked DPHHS to revoke the cards.

Currently, DPHHS is asking people to verify on the application form that they are not under the supervision of the Department of Corrections — and thus on probation or parole — or under the supervision of a youth court. The agency is not actively checking a person's probation, parole, or youth court status.

The Children and Families Committee may want to consider whether DPHHS should actively check the probation, parole, and youth court status of applicants. If so, the Committee may want to introduce legislation to clarify the language in SB 423.

Local Ordinances

SB 423 specifically gives local governments the ability to regulate providers, including prohibiting storefront businesses. So far under that authority:

- Billings passed an emergency ordinance on July 1 banning storefront operations. Four providers have since filed suit contending that an emergency situation did not exist. The suit maintains that the city used its authority to adopt emergency rules in an effort to shorten the time period for public comment. It argues that providers and Billings citizens were denied their right to due process by adoption of the emergency ordinance. It also contends that the ordinance violates the finding by Judge Reynolds in the challenge to SB 423 that the operation of a lawful business is a fundamental constitutional right under the Montana Constitution.

District Judge Greg Todd issued a temporary restraining order that prevented the ordinance from going into effect until a full hearing on the merits of the suit is held.

- Yellowstone County passed a resolution on August 16 to regulate the sale of medical marijuana in the county, including a prohibition on storefront businesses. The resolution also prevents providers from operating within 1,000 feet of schools or school-leased property, daycare centers, public recreation centers or parks, places of worship, and youth centers. In addition, businesses may not have business signs on their property. The resolution notes that the commission determined the restrictions were needed "to protect and preserve the public peace, health, safety and welfare."

Court Rulings on Caregiver-to-Caregiver Sales

District Court judges in Flathead and Missoula counties have both ruled in recent months that the former Medical Marijuana Act did not allow caregivers to transfer or sell marijuana to other caregivers. Lawsuits in those two counties had challenged positions taken by the respective county attorneys, who maintained that caregiver-to-caregiver transactions were illegal.

Both District Judge John Larson of Missoula and Judge Stewart Stadler of Kalispell said the law clearly limited caregivers to providing marijuana to people with qualifying medical conditions and did not allow them to provide it to other caregivers. The caregiver who filed suit in Missoula has appealed Judge Larson's ruling to the Montana Supreme Court and must file a brief by September 16.

If the attempt to suspend SB 423 before the November 2012 election succeeds, the former Medical Marijuana Act would be back in effect. Unless the Supreme Court overturns Judge Larson's ruling, the district court decisions would clarify for both caregivers and law enforcement how the law will be interpreted regarding marijuana transactions between caregivers.