

SB 423 Monitoring: Montana Marijuana Act *Developments Through October 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Senate Bill 423 repealed Montana's Medical Marijuana Act on July 1, 2011, and replaced it with new requirements for the cultivation, manufacture, and possession of marijuana for use by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 September.

Initiative Referendum

Opponents of the law have succeeded in their effort to put SB 423 before the voters in November 2012, to see if Montanans will support or repeal the law.

Initiative Referendum 124 qualified for the ballot on Sept. 28. As of the end of October, the Secretary of State's Office had certified 36,369 signatures, representing at least 5% of the voters in 72 House districts. To qualify for the ballot, the measure needed at least 24,337 verified signatures representing 5% of the voters in each of at least 34 House districts.

If voters reject SB 423 in 2012, Montana's laws relating to the use of marijuana for debilitating medical conditions will revert to the provisions that were in effect before SB 423 became law on May 13. Thus a number of provisions that are not currently being challenged in court would no longer be in effect. They include:

- the requirement that both patients and providers be Montana residents;
- the ban on smoking marijuana in public and several other locations;
- the prohibition on physicians using telemedicine or electronic means for providing the written certification required for obtaining a card;

- prohibitions on physician affiliations with providers;
- the ability of local governments to regulate marijuana providers through ordinance or regulations;
- the changes made to the list of debilitating medical conditions, including the new requirements for obtaining a card for severe chronic pain; and
- the ability of law enforcement to obtain a search warrant and draw a blood sample from cardholders who are suspected of driving while impaired;

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 suit 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. However, he halted several key elements until a full trial is held on the merits, including:

- the limit of three patients per provider; and
- the prohibition on cardholders paying providers for their products or services.

Under that ruling and until the case is decided, medical marijuana businesses may continue to operate and grow marijuana for an unlimited number of patients.

The Attorney General's Office appealed the ruling to the Montana Supreme Court on Aug. 9. The plaintiffs filed a cross-appeal on Aug. 17.

In October, the Attorney General's Office received an extension of time for filing its initial brief, which will outline the issues the state will raise on appeal. The brief must be filed by Nov. 16. The respondents will file a brief that not only responds to the state's arguments but also spells out the issues the plaintiffs are raising on cross appeal. That brief is due 30 days after the state's brief is filed, unless the respondents ask for and receive an extension.

Registry Statistics

DPHHS statistics for the marijuana registry program showed a continued decline in the number of patients through September. Statistics for October were not available by Nov. 4.

The number of patients first started dropping in June, when DPHHS was required to begin issuing cards under the new requirements contained in SB 423. The number of patients

peaked at 31,522 in May 2011. At the end of September, 24,821 patients were on the registry, representing a 21% decline from May. People obtaining cards for chronic pain decreased from 73% of the patient total in May to 68% in September.

The number of providers increased between August and September, from 285 to 378. DPHHS had indicated earlier in the summer that it expected provider numbers to increase because the agency was still working on a backlog of applications submitted under provisions of the new law.

Local Government Action

Billings, Roundup, and Valley County have all taken action recently to limit marijuana-related businesses within their boundaries.

In October, the Billings City Council extended for another year an emergency ordinance that prohibits any new business that grows, sells, or distributes marijuana. It also started the process of enacting regulations for storefront marijuana businesses, as allowed under SB 423.

Because of the continuation of the moratorium until November 2012, only marijuana businesses that already had received licenses from the city will be able to operate within the city limits. In addition, those businesses must meet the conditions established in the new ordinance governing storefront businesses.

The new ordinance, which is subject to a final vote on Nov. 14, allows a provider to operate a business that allows access only to cardholders who are registered to the specific provider or, by appointment, to people who intend to establish a cardholder-provider relationship with the provider. These businesses may not display any marijuana or related products or any depictions of a marijuana plant or part.

The city had passed an emergency ordinance in early July to ban storefront businesses of any type, as allowed under SB 423. However, several providers sued the city on the grounds that an emergency situation did not exist and that use of the process denied citizens their right to due process. The attorney for those providers told the City Council in October that he was satisfied with the language of the new ordinance and would probably withdraw the suit.

Also in October, the Roundup City Council passed an ordinance that prohibits anyone except patients from possessing, growing, selling, or distributing marijuana within the city limits. The council based the ordinance on the fact that marijuana cultivation and distribution is illegal under federal law.

In mid-August, the Valley County Commission extended for another year a moratorium on new businesses that grow, sell, or distribute marijuana for medical conditions. The

commission also enacted a ban on storefront businesses, as allowed under SB 423. The ordinance allows the continued operation of businesses that were in existence before the original moratorium was passed. But it prevents them from expanding to new locations or operating storefront businesses. The prohibitions are in effect throughout the county, but do not affect Glasgow, Opheim, Nashua or Fort Peck.

The ordinance also requires the county's Planning Board, Sheriff's Department, and County Attorney's Office to study the effect of medical marijuana businesses on the county and to make recommendations for new zoning ordinances.

Issues for Committee Consideration

As the committee continues its monitoring of the implementation of SB 423, members may want to consider the following questions and related issues:

- Should the committee begin identifying implementation issues raised during the interim about provisions of SB 423 and draft legislation to address those issues? Issues raised to date include:
 - ▶ the DPHHS practice of allowing people to attest to whether they are under the supervision of the Department of Corrections or a youth court; and
 - ▶ the requirement for providers to submit fingerprints may be reducing the number of potential providers because of their concern that the submission may alert federal authorities that they are growing marijuana and may subject them to federal investigation.
- Should the committee draft legislation to revise the former Medical Marijuana Act, in case voters reject SB 423 in 2012? The committee could draft legislation that would amend into the former Medical Marijuana Act some sections of SB 423 that were common to many of the medical marijuana bills introduced in the 2011 Legislature, such as:
 - ▶ the residency requirements;
 - ▶ prohibitions on physician use of telemedicine and affiliation with providers; and
 - ▶ the ban on public smoking of marijuana.