

SB 423 Monitoring: Montana Marijuana Act *Developments through Mid-November 2015*

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Background

Senate Bill 423 in 2011 repealed the voter-passed Medical Marijuana Act and replaced it with new requirements for cultivation, manufacture, and possession of marijuana for use by people with debilitating medical conditions. SB 423 also required the Children, Families, Health, and Human Services Interim Committee to monitor the new law and draft legislation if members decide changes are needed.

This briefing paper summarizes developments related to SB 423 since August 2015.

Montana Cannabis Industry Association v. State of Montana

The legal challenge to SB 423 that was filed in May 2011 is in its final stages. The Montana Supreme Court heard oral arguments on Nov. 4 in the state's appeal of a district court ruling and the plaintiffs' cross appeal.

The ruling by District Judge Jim Reynolds in January 2015 permanently stopped from going into effect elements of the law that would have:

- prevented providers from receiving compensation for marijuana;
- limited the number of patients for whom a provider may grow or manufacture marijuana or marijuana-infused products;
- banned advertising of marijuana and related products by providers or cardholders; and
- required the Department of Public Health and Human Services (DPHHS) to report to the Board of Medical Examiners the names of doctors who provide written certification for more than 25 patients in a 12-month period, so the board may review their practices.

Reynolds concluded that those provisions weren't rationally related to the legislative goal of limiting the scope of the medical marijuana program. He also said the limit on the number of patients and the ban on payment violated the equal protection provisions of the state and federal constitutions because some patients may not be able to grow their own marijuana.

The state appealed those portions of the ruling. Meanwhile, the Montana Cannabis Industry Association appealed two other aspects the law that were upheld — the ban on use of marijuana by probationers and parolees and the ability of DPHHS and law enforcement to conduct unannounced inspections of provider premises.

Key issues during the Supreme Court arguments included the relevance of marijuana's illegality under federal law, the changing landscape related to marijuana use in the states, and whether the SB 423 limitations were rationally related to a legitimate state interest or went too far.

Ballot Measures

Two marijuana-related initiatives proposed for the November 2016 ballot have been approved for signature gathering, while others remain in the review stages.

Backers can currently gather signatures for:

- Constitutional Initiative 115, which would amend the Montana Constitution to legalize marijuana use by adults and allow the Legislature or a ballot initiative to set an age other than 18 for use of marijuana; and
- Initiative 176, which would require that all drugs that are illegal under federal law be illegal under state law, including marijuana. The measure also would repeal the Montana Marijuana Act.

CI-115 would change the constitution, so backers must gather signatures from 48,349 registered voters to put the measure on the ballot. Those must include signatures from at least 10 percent of the voters in each of 40 House districts. Because I-176 would only change state law, backers need to gather only 24,175 signatures. Those must include signatures from at least 5 percent of the voters in each of 34 House districts.

The signatures must be turned in by June 17, 2016.

Other initiatives still in the review process would:

- make numerous changes to the current medical marijuana law; and
- legalize recreational sales of marijuana to adults 21 years of age or older.

Registry Statistics

The number of Montanans who hold a card to use marijuana for their medical conditions has continued to increase during 2015. As of Oct. 30, a total of 12,975 people had obtained cards — up from the 10,565 people registered in January 2015 but below the 31,522 cardholders at the time SB 423 went into effect in 2011.

About 63 percent of the cardholders in October listed severe and chronic pain as their debilitating medical condition. That compares to 73 percent of cardholders who listed severe or chronic pain as their sole reason for a card before SB 423 went into effect.

The vast majority of the 221 doctors who had provided written certification for the current cardholders had each done so for 10 or fewer patients. Nine of the doctors had provided certification for 300 or more patients each. Of those, one provided certification for 3,521 to 3,530 patients, while another provided certification for 4,121 to 4,130 patients.