

TOP TEN THINGS TO KNOW ABOUT FLORIDA'S AMENDMENT 2 "Use of Marijuana for Debilitating Medical Conditions" November 8, 2016, Florida Ballot

- The Basics:** Amendment 2 is a voter-initiated constitutional amendment legalizing medical marijuana possession and use. Amendment 2 establishes a caregiver-patient system for medical marijuana distribution. Caregivers must be 21 years of age, agree to assist with a patient's medical marijuana use, and receive a caregiver identification card by the Florida Department of Health (DOH). The measure establishes Medical Marijuana Treatment Centers (MMTC) that have the authority to acquire, cultivate, process, transport, and sell all marijuana products. The measure does not cap how many caregivers a patient may have or how many patients a caregiver may have. The measure does not cap or limit how much medical marijuana a patient may possess or purchase, nor does it regulate the number of MMTCs allowed to operate. There is no age limit on possession or use of medical marijuana under Amendment 2. Minors may use it with parental consent.
- State Regulation:** Amendment 2 requires the DOH to conduct rulemaking around Amendment 2 within six (6) months of passage, which is roughly a deadline of May 9, 2017. If the DOH fails to do so, any Florida citizen has standing to sue the State of Florida to compel compliance by DOH with Amendment 2. The state's legislative session begins on March 7, 2017. The Florida Legislature will likely have to pass an implementing bill for all issues related to Amendment 2 during their 60-day annual session, ending on May 5, 2017.
- Medical Qualifications:** Amendment 2 requires a "Debilitating Medical Condition" in order for a patient to qualify for medical marijuana, which includes cancer, epilepsy, glaucoma, positive status for HIV/AIDS, post-traumatic stress disorder, amyotrophic lateral sclerosis (ALS), Crohn's disease, Parkinson's disease and multiple sclerosis. The definition also allows for "other debilitating medical conditions of the same class as or comparable to those enumerated and for which a physician believes that the medical use of marijuana would likely outweigh the potential health risks for a patient." The word "comparable" is not defined. This is a large loophole and potential opportunity for abuse of an otherwise highly regulated system.
- Physicians:** Florida physicians may give a written medical marijuana "certification" to a patient with a qualifying medical condition. Amendment 2 requires the physician to conduct a physical examination of the patient along with a full assessment of the patient's medical history prior to giving the certification. Amendment 2 does not cap how much marijuana a physician may recommend or how many certifications a physician may give a patient at one time. Additionally, HIPAA privacy regulations are triggered as a result of the physician-patient relationship, so the Florida DOH may have difficulties enforcing any limits on the amount and frequency of physician recommended medical marijuana certifications.
- Local Government Authority:** Amendment 2 is silent as to local government regulation of medical marijuana. It does not give an "opt-out" to local governments who do not wish to have medical marijuana sales within their jurisdictions.
- Public Health and Safety:** Amendment 2 does not allow smoking of marijuana in public. However, the word "public" is not defined. Additionally, the measure is silent as to other forms of consumption beyond smoking including ingestion of edible marijuana food products, vaping, dabbing or the use of marijuana tinctures and oils. From a law enforcement perspective, the measure does not define a standard for "under the influence" of marijuana, so the state will have to address this issue, otherwise enforcement of DUI or DUID laws will be legally and practically very difficult.
- Employer Issues:** Amendment 2 does not require any employer to allow on-site medical marijuana use. However, the language is silent about off-premise use where an employee arrives to work under the influence of marijuana. Until Florida courts address this issue, it is unclear whether an employer may terminate or discipline an employee who uses marijuana off-premises.

8. **Student Issues:** The Federal Safe and Drug-Free Schools and Communities Act penalizes school districts for illegal drug activity in violation of the act regardless of state marijuana legalization. If a minor receives a certification from a physician for medical marijuana, there are a host of issues concerning how and when a student may consume marijuana and whether they can arrive at school under the influence of it.
9. **Financial Impact to the State and Local Governments:** Amendment 2 indicates there will be additional regulatory costs and enforcement activities associated with the production, sale, use and possession of medical marijuana. There is no sales or use tax included in the measure to offset costs to the state or local governments. And, Amendment 2 does not allocate funding of any kind to the state or local governments for medical marijuana regulation.
10. **Federal Law:** Regardless of the passage of Amendment 2, marijuana remains illegal under federal law. This means, at a minimum, that universities cannot conduct research on marijuana without fear of losing their federal funding, that banks cannot take money from marijuana proceeds without fear of federal seizure or enforcement action, and that interstate transportation of marijuana products or diversion to the “grey market” is subject to federal drug trafficking enforcement.

A few of many issues that Amendment 2 does not address:

- Potency and serving size limitations for marijuana products
- Investment/Ownership guidelines for MMTCs
- Rules around whether marijuana grow operations can be indoors or outdoors
- Water contamination and pesticide issues for grow operations
- Residency guidelines under which a physician may write a marijuana certification
- Transportation of marijuana products/trafficking/airport seizure guidelines
- The legality of marijuana social clubs and whether that is defined as “public use”

Communities and public and private entities are facing significant legal and practical challenges related to the use of cannabis, powdered alcohol, e-cigarettes and other new, but quickly expanding, industries that have high consumer demand. Brownstein Hyatt Farber Schreck’s Emerging Regulated Industries (ERI) practice group is made up of seasoned attorneys and policy advisors with extensive knowledge in this unique arena. ERI’s clients are not marijuana industry companies. Rather, our clients include hospitality companies such as theme parks, hotels, cruise lines, casinos and dining venues, as well as universities, hospitals, health care companies, pharmaceutical conglomerates, state and city governments and law enforcement agencies. We assist these entities when they are facing legal uncertainty about how marijuana-permissive laws apply to their operations, the rapid pace of changing laws and regulations at the state and federal level and implementing or complying with current regulations while still meeting strategic goals in an often contentious and time-sensitive environment.



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