

Mississippi Medical Cannabis Act Summary

On November 3, 2020, 69% of Mississippi voters cast their ballots in favor of enacting a medical cannabis program. On that same ballot, 74% voted for a broad program — Initiative 65 — while rejecting a far more restrictive alternative lawmakers had placed on the ballot, Initiative 65A. Subsequently, the state Supreme Court found that the state’s signature requirements for ballot measures could not be complied with and threw out not only Initiative 65, but also the entire state’s ballot initiative process.

On January 26, 2022, the Mississippi Legislature gave its final approval to the Mississippi Medical Cannabis Act (SB 2095), sponsored by Sen. Kevin Blackwell, to restore voters’ will by creating a medical cannabis program. Gov. Tate Reeves (R) signed the bill into law on February 2, 2022.

SB 2095 reflects an attempt to create a middle ground between the extremely restrictive approach some legislators and the governor favor and voters’ strong preference for a broad measure. The Senate passed SB 2095 in a 46-5 vote on January 13 and the House followed suit with a 104-14 vote on January 19, after making a few amendments. The two chambers formed a conference committee to reconcile the bills and signed off on the final versions in landslide votes of 103-13 in the House and 46-4 (with one abstention) in the Senate.

Unlike Initiative 65, SB 2095 would force pain patients to try opiates and other risky treatments before cannabis. It also includes extreme continuing medical education requirements for certifying practitioners, which will significantly depress participation, and other restrictive provisions. However, in some other important ways — including by allowing raw cannabis and not capping business licenses — SB 2095 is consistent with Initiative 65.

Here are key provisions of SB 2095.

Qualifying for the Program

To qualify, patients must have at least one qualifying medical condition and a written certification issued by a healthcare practitioner with whom they have a bona fide relationship. Patients must also apply to the health department (MDOH) for a registration card, which costs \$25 (or less in some cases).

The bill’s qualifying conditions are:

- Cancer, Parkinson's, Huntington's, muscular dystrophy, glaucoma, spastic quadriplegia, HIV, AIDS, hepatitis, amyotrophic lateral sclerosis (ALS), Crohn's, ulcerative colitis, sickle cell anemia, Alzheimer's, agitation of dementia, PTSD, autism, pain refractory to opioid management, diabetic/peripheral neuropathy, spinal cord disease, or severe injury;
- A chronic medical condition (or its treatment) that produces either cachexia or wasting, severe nausea, seizures, severe and persistent muscle spasms, or chronic pain — which is narrowly defined as, “a pain state in which the cause of the pain cannot be removed or otherwise treated, and which in the generally accepted course of medical practice, no relief or cure of the cause of the pain is possible, or none has been found after reasonable efforts by a practitioner;” and

- Conditions approved by the MDOH, after a petition process.
 - ID cards expire after one year unless practitioners specify an earlier date.
 - Patients between 18-23 generally must have written certifications from two different practitioners from separate medical practices to qualify. (There is an exception for those who registered before they were 18 and the homebound.)
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Certifying Practitioners

- Mississippi-licensed physicians, certified nurse practitioners, physician assistants, and optometrists may sign written certifications for conditions within their scope of practice for medical cannabis if they:
 - believe the patient “would likely receive medical or palliative benefit” from medical cannabis to treat their qualifying condition;
 - have performed an in-person assessment of the patient;
 - perform a follow-up within six months to evaluate the effectiveness; and
 - have completed eight hours of continuing medical education courses on medical cannabis, plus five hours every year thereafter.
 - Only MDs and DOs may sign written certifications for minors.
 - It appears the certifying practitioner must also diagnose the patient with the qualifying condition.
 - Written certifications must be issued on forms approved by MDOH.
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Possession and Purchase Limits

- Possession and purchase limits are calculated based on "Medical Cannabis Equivalency Units" (MCEUs) of 3.5 grams of flower, up to 100 mg of THC in infused products, and up to one gram of concentrate.
 - Patients may not purchase more than six MCEUs in a week (21 grams, which is less than 3/4 ounce).
 - Patients may not purchase more than 24 MCEUs in a month (84 grams, which is less than 3 ounces).
 - Patients may not possess more than 28 MCEUs at one time (98 grams, which is less than 3.5 ounces).
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Potency Caps

- Flower cannot exceed 30% THC.
 - Tinctures, oils, and concentrates may not exceed 60%.
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Other Limitations

- Patients could not smoke or vaporize cannabis in a motor vehicle or in public.

- Patients and caregivers are not allowed to grow their own cannabis.
 - Minors only qualify with their parent or guardian’s consent and control of cannabis administration and dosage.
 - Patients under 21 cannot enter a dispensary without their parent or guardian.
 - Patients may not drive, operate a boat, train, or aircraft, or undertake any task that would be negligent or entail professional malpractice while under the influence.
 - The bill does not require insurance or state plans to cover medical cannabis.
 - The bill does not require any employer to allow patients to use medical cannabis or prevent them from requiring drug testing.
 - The bill appears to allow landlords to ban tenants from using medical cannabis at home.
 - Cardholders and medical cannabis establishment staffers who divert cannabis can have their ID cards revoked, in addition to facing felony penalties.
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Regulatory Authority

- The MDOH will have primary regulatory authority, including for licensing all business types and for the registry ID program.
 - The MDOH will coordinate with the Department of Revenue (MDOR).
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Medical Cannabis Businesses

- The following types of medical cannabis businesses will be licensed: dispensaries, cultivation facilities, processing facilities, cannabis transportation entities, disposal entities, testing facilities, and research facilities.
 - There will be two tiers of micro-cultivator and additional tiers of cultivator, depending on size.
 - There is no numerical cap on business licenses.
 - No individual or business may have more than 10% ownership interest in more than the following: one cultivation license, one processing license, and up to four dispensaries.
 - Dispensaries may be located in areas zoned commercial. Cultivation and processing facilities may be located in areas zoned industrial, commercial, or agricultural.
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Regulations

- MDOH will create regulations, including for seed-to-sale tracking, recordkeeping, oversight, security, health and safety, transportation, employee training, capital requirements, standards for safe processing, and to ensure safe and accurate labeling and packaging. MDOH will also restrict advertising, signage, and displays.
- Cannabis products must have what the bill calls “a notice of harm” regarding the use of cannabis products.
- Edibles cannot be formed into images of cartoons, toys, or animals.
- Dispensary staff:
 - must complete at least eight hours of continuing education on medical cannabis, plus

- five additional hours every year;
 - must get a work permit, which costs \$25; and
 - must be at least 21 years old and cannot have certain felony convictions.
 - Medical cannabis businesses may not be located within 1,000 feet of the boundary of a school, church, or childcare facility, unless the facility grants approval to reduce the buffer. It must still be at least 500 feet from the entrance.
 - Dispensaries must be at least 1,500 feet from another dispensary's entrance.
 - Cultivation, harvesting, processing, and packaging must occur in the registered enclosed, locked, and secure facility.
 - Delivery and curbside pickup is prohibited. (However, rulemaking says MDOH rules will include, "Protocol development for the safe delivery of medical cannabis from dispensaries to cardholders.")
 - MDOH may fine, suspend, or revoke a license for violations of the law and regulations.
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Local Control and Bans

- Localities may regulate the time, place, and manner of medical cannabis businesses, but they may not ban them or "make their operation impracticable."
 - Cannabis businesses must be in compliance with local zoning requirements.
 - Cannabis businesses may be required to get local permits or licenses and to pay a reasonable fee that is consistent with other non-cannabis businesses.
 - Localities may opt out by a vote of the governing body within 90 days of the bill's passage. However, 20% or 1,500 voters (whichever is fewer) may then petition to put the question on the ballot. The election must be within 60 days.
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Legal Protections

- Patients could designate a caregiver to assist them with the medical use of cannabis, such as by picking up their cannabis from a dispensary.
 - Caregivers can assist no more than five patients, except that the limit does not apply when the caregiver works at a health facility or similar institution that provides care to patients.
 - Caregivers generally must be 21 (unless they are the parent or guardian of a patient) and cannot have certain prior felony convictions.
 - If a patient needs more than one caregiver, they must submit information documenting that more caregivers are needed due to the patient's age or medical condition.
- The bill provides that medical cannabis-related contracts related to activities that are legal under the law are enforceable.
- Registered patients are protected from discrimination in child custody disputes and in reference to gun rights.
- Non-Mississippi residents — and individuals who have been Mississippi residents for less than 45 days — could register with MDOH to use medical cannabis if they: 1) are certified to use medical cannabis in their home state; 2) have a practitioner statement attesting they have a condition that qualifies in Mississippi; and 3) submit any documentation required by MDOH.
 - They may only register for a total of two 15-day periods every year.

- Each registration costs \$75.
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Taxation and Fees

- Nonrefundable application fees for licenses range from \$1,500 for an up to 1,000 square foot canopy micro-cultivator to \$60,000 for a tier 6 cultivator with a canopy of at least 100,000 square feet.
 - Annual license fees range from \$2,000 for an up to 1,000 square foot canopy micro-cultivator to \$100,000 for a tier 6 cultivator.
 - Cannabis will be taxed at wholesale at 5% of the price, in addition to standard sales taxes. In cases of common ownership, the excise tax will be based on fair market value.
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Timeline

- 60 days after passage, MDOH will begin issuing registry ID cards (Sec. 12).
 - 120 days after passage date: MDOH begins accepting applications, registering practitioners, and issuing registry ID cards.
 - 120 days after passage: MDOH begins licensing medical cannabis businesses other than dispensaries, with licenses issued within 30 days of the date of application, whichever is later.
 - 150 days after passage: MDOH begins licensing dispensaries, with licenses issued within 30 days of the date of application, whichever is later.
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Advisory Committee

- Establishes a nine-member advisory committee, including agency staff, medical professionals, a patient, and several medical cannabis business operators. It will advise on issues including patients' ability to access high-quality cannabis statewide, the effectiveness of medical cannabis businesses at serving patients, and regulatory safeguards.
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