



Montana's medical marijuana laws and history

Montana's rocky medical marijuana history

State voters adopted Montana's first medical marijuana law in 2004 through an MPP-backed voter initiative. From then until early 2009, growth in the patient population had been modest. But by the end of that year, businesses — which until then had not been a visible presence — were becoming more common as federal policies relaxed. At the time, businesses lacked clear legal protections and state regulations.

By 2011, there was broad agreement that it was time to overhaul the program, but not on how to do so. While patients and businesses asked for legal protections and reasonable regulations for medical marijuana providers, lawmakers instead tried to repeal the law and stop the medical marijuana program entirely. Fortunately for patients, then Gov. Brian Schweitzer vetoed the repeal effort. But in the immediate aftermath, lawmakers rushed through a bill that was as close to repeal as they could make it.

That 2011 law, referred to by its bill name SB 423, was designed to make reasonable access to medical marijuana impossible for most patients. Cultivators could not assist more than three patients, and could not receive any compensation from them. The state medical board was required to audit any doctor who recommended medical marijuana for more than 25 patients a year. Testing medical marijuana for safety and potency was illegal, and law enforcement officers could enter any provider's location, even in private homes, to conduct a warrantless search. Most troubling, the law contained many serious defects, leaving medical marijuana providers vulnerable to criminal prosecution under even the best of circumstances.

Before SB 423 went into effect, it was challenged in state court, and most of the worst provisions were blocked, setting off years of litigation. After a five-year battle, the Montana Supreme Court ultimately ruled in favor of the restrictive law in February 2016, and imposed nearly all the burdensome provisions. By August, over 93% of the state's 12,400 patients had lost their access to a medical marijuana provider.

Fortunately, voters again took matters into their own hands, this time during the general election on November 8, 2016. Fifty-seven percent of voters approved I-182 — which revised Montana's medical marijuana law to remove the most harmful provisions — and established a basic regulatory structure for businesses that serve patients, which had been absent from the law until then.

How do patients get into the medical marijuana program?

Residents may register with the program after obtaining a recommendation from a licensed physician. The recommendation — along with an application and a \$5.00 fee — is submitted to the state's regulatory agency, the Department Public Health and Human Services. The registration must be renewed every 12 months.

Which medical conditions qualify?

Cancer, glaucoma, positive status for HIV/AIDS, cachexia or wasting syndrome, intractable nausea or vomiting, epilepsy or an intractable seizure disorder, multiple sclerosis, Crohn's disease, painful peripheral neuropathy, a central nervous system disorder resulting in chronic, painful spasticity or muscle spasms, admittance into hospice care, or any other medical condition or treatment for a medical condition approved by the legislature. Severe chronic pain is also included, and requires either proof in the form of lab tests or imaging, or a second opinion by another physician. Post-traumatic stress disorder was added in the 2016 voter initiative, I-182.

How do patients obtain medical marijuana?

Patients may either grow their own medical marijuana, or obtain it through a provider. Patients designate their preference when they apply to be in the registry.

How much medical marijuana can a patient have?

Patients may possess up to 1 ounce of usable marijuana. State courts have interpreted “usable marijuana” to be limited to raw cannabis plant material. Extracts and concentrates, and the food items made from them, are not protected under current law.

How many plants can a patient or provider grow?

A patient who has authorization to grow may have up to 12 “seedlings,” and up to 4 mature plants. A seedling is defined as a marijuana plant that is less than 12 inches tall or wide. A “mature” plant is any plant that is larger than that. Providers may have up to 12 seedlings and up to 4 mature plants for each patient they serve.

Does Montana have reciprocity?

No. Only patients who are registered in the state program are legally protected under the medical marijuana laws.

What changed under I-182, the 2016 voter initiative?

- Under the previous law, providers could serve a maximum of three patients. The voter initiative removed that limitation, although questions remain about when the change goes into effect.
- Post-traumatic stress disorder was added as a qualifying medical condition.
- The state medical board is no longer required to investigate doctors who recommend medical marijuana to 25 patients or more.
- Medical marijuana may be tested for potency and for the presence of contaminants.
- Businesses must be licensed and inspected by the state.
- Businesses no longer need to be owned by residents to be licensed.
- Employees working for providers are protected from criminal possession laws.