



Issue Brief: Medical Use of Marijuana

Background

A total of 45 states have some form of a law that allows for medical use of marijuana. In 2014, the Florida Legislature enacted the Compassionate Medical Cannabis Act ([section 381.986, F.S.](#)) which legalized limited access to certain marijuana products for medical use by patients suffering from a short list of specified medical conditions. In addition to Florida, 16 other states allow this type of extremely limited use of medical marijuana products.¹ However, in 2016, Florida voters approved an amendment to the Florida Constitution that expanded upon Florida's limited provisions. Among other things, this amendment (creating [Article X, Section 29](#) of the Florida Constitution) broadens access, authorizes the use of more types of marijuana products, and expands the list of qualifying medical conditions. With this amendment, Florida moves into a group with 28 other states, the District of Columbia, Guam, and Puerto Rico that permit this broader use of marijuana for medicinal purposes.²

Current Situation

In 2017, during Special Session 2017-A, the Florida Legislature passed [SB 8-A](#) to implement the provisions of Article X, Section 29. This bill significantly amends s. 381.986, F.S., to expand the existing Compassionate Medical Cannabis Act to align with the new, broader constitutional provisions. The bill provides for patient eligibility and access and a regulatory process for the cultivation, processing, and delivery of marijuana. In brief, this bill:

- Establishes standards and procedures for physicians to issue physician certifications to patients who have qualifying medical conditions.
- Ensures that qualified patients can receive low-THC cannabis as well as full-THC marijuana and have access to marijuana edibles and vaping, but prohibits the smoking of marijuana.
- Establishes requirements for patients to be issued a Medical Marijuana Use Registry ID Card.
- Grandfathers in existing patients from the Compassionate Medical Cannabis Act.
- Establishes qualifications to become a caregiver.
- Establishes qualifications, background screening, and licensure requirements for Medical Marijuana Treatment Centers (MMTCs) for dispensing marijuana.
- Authorizes local governments to ban MMTC dispensing facilities within their borders.
- Establishes administrative, disciplinary, or criminal penalties for prohibited acts by physicians, patients, caregivers, MMTCs, medical marijuana testing laboratories, and other persons.
- Requires the DOH and the Department of Highway Safety and Motor Vehicles to establish public educational campaigns related to the medical use of marijuana.
- Requires the Department of Law Enforcement to develop initial training and continuing education for law enforcement agencies.
- Creates the Coalition for Medicinal Cannabis Research and Education to conduct scientific research, provide education, disseminate research, and to guide policy development.
- Specifies that the implementation of the constitutional amendment does not limit the ability of an employer to establish, continue, or enforce a drug-free workplace program or policy; does not require an employer to accommodate the medical use of marijuana in any workplace or any employee working while under the influence of marijuana; or provide a cause of action against an employer for wrongful discharge or discrimination.
- Specifies that marijuana is not reimbursable under chapter 440, F.S., relating to workers' compensation.
- Requires each district school board to adopt a policy and procedure for allowing a student who is a qualified patient to use marijuana obtained pursuant to this law.

Concerns

It is important to keep in mind that, despite authorizations in Florida Statutes and in the Florida Constitution, marijuana is still illegal under the federal Controlled Substances Act (CSA) where it is listed as a Schedule I drug. Federal law provides no exceptions for medical uses, so possession, manufacture, and distribution of marijuana is a crime under federal law. Further, although a state's medical marijuana laws protect patients from prosecution for the legitimate use of marijuana under state law, neither Florida's state laws nor state constitutional provisions protect individuals from prosecution under federal law. This Schedule I status – particularly when coupled with state/local drug-free workplace policies, zero tolerance policies, insurance and liability issues, and other issues – gives rise to several concerns for school districts with many of these relating to school employees.

The language of the constitutional amendment does provide some limitations to address some of these concerns. For example, Article X, Section 29(c)(4) states: "Nothing in this section shall permit the operation of any vehicle, aircraft, train or boat while under the influence of marijuana." In addition Subsection (c)(6) states: "Nothing in this section requires any accommodation of any on-site medical marijuana used in any . . . place of education or employment, or of smoking medical marijuana in any public place." Furthermore, Florida's Drug Free Workplace Act – [s. 112.0455, F.S.](#) – demands a zero tolerance of illegal drug use and SB 8-A aligns with this. With these and other limitations, the use of medical marijuana in the school workplace will not be as widespread as some had expected. However, these limitations could clash with the qualified patient's right to use medical marijuana outside of the workplace and/or could create other areas of conflict. School districts should review existing policies relating to a drug free workplace and related employee rights to ensure that those policies are current and are consistent with the law and each other.

With regard to students, the bill amends [s. 1006.062, F.S.](#), relating to the administration of medication and provision of medical services by district school board personnel. The bill requires each district school board to adopt a policy and a procedure for allowing a student who is a qualified patient to use marijuana obtained pursuant to state law. Such policy and procedure must:

- Ensure access by the qualified patient;
- Identify how the marijuana will be received, accounted for, and stored; and
- Establish processes to prevent access by other students and school personnel.

Again, the limitations discussed above may apply to the development of this policy. School districts should review existing policies relating to medications and related student services to ensure that those policies are current and are consistent with the law and each other.

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- ¹ Limited use states: Alabama, Georgia, Iowa, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Utah, Virginia, Wisconsin, and Wyoming.
 - ² Broader use states: Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, Vermont, Washington, and West Virginia.

Sources:

[State Medical Marijuana Laws](#) – National Council of State Legislatures

[SB 8-A](#) – Medical Use of Marijuana by Senator Bradley

[Senate Summary of SB 8-A](#)

[Florida Employers: Here Comes Medical Marijuana – Are You Ready?](#) – Leonard Dietzen, III

[Legal "High"-lights in Medical and Recreational Marijuana Use by Students and Employees](#) – NSBA