



Florida Lawyer's Guide to Marijuana Laws

by Christopher B. Hopkins

Nearly 90% of Floridians support medical marijuana in advance of the November 2014 vote on Amendment 2, Use of Marijuana for Certain Medical Conditions. Even without the amendment, medical marijuana is already marginally permitted under the recently-enacted Compassionate Medical Cannabis Act of 2014. These state law changes lead to a number of regulatory, tax, insurance, tort, zoning, and other legal issues. This article provides a primer for lawyers on the relevant marijuana standards and laws.

Amendment 2: if passed by the voters, it will amend Article X, Section 29 of the state constitution to permit “the medical use of marijuana for individuals with debilitating diseases as determined by a licensed Florida physician.” The Department of Health will regulate the process. The full text is here: <http://bit.ly/11IKqN9>

Advisory Opinion: in January 2014, the Supreme Court of Florida reviewed and approved the proposed amendment, title, and summary. The Court rejected “the assertion that the amendment would allow far wider marijuana use than the ballot title and summary reveal[ed].” Instead, the majority confirmed that the intent of the amendment is “to allow marijuana use for a serious medical condition or disease rather than for any medical condition for which a physician personally believes that the benefits outweigh the health risks...”

Bongs & Chillums: any “drug paraphernalia” which is used or intended for growing, preparing, testing, and inhaling is “contraband subject to civil forfeiture” under F.S. 893.145. This includes smoking devices such as bongs and chillums (conical pipe). Subjectively, almost anything could be deemed “drug paraphernalia” depending upon thirteen grounds set forth in F.S. 893.146 as well as “other logically relevant factors.” Manufacturing, advertising, selling, possessing, or using “drug paraphernalia” is a crime under F.S. 893.147.

Cannabis: Cannabis is infamous for its tetrahydrocannabinol (THC) content. Two species of the plant, sativa and indica, reportedly create different psychoactive sensations (cerebral/creative vs. lethargic/stoned). Another compound, cannabidiol (CBD), is believed to have medicinal qualities and is responsible for the medical marijuana movement. While we commonly use the word *marijuana*, Florida Statute 893.02(3) refers to “all parts of the genus *Cannabis*” including its seeds and resin (hash) but distinguishes non-euphoric “low-THC cannabis” (Amendment 2 uses *marijuana* but relies upon the statutory definition of *cannabis*). Cannabis is a controlled substance under the Florida Comprehensive Drug Abuse Prevention and Control Act, Chapter 893.

Compassionate Medical Cannabis Act: in June 2014, Governor Scott signed into law F.S. 381.986 *et seq.* which permits “dispensing organizations” to cultivate, process, and dispense low-THC cannabis for medical use by a “qualified patient” (e.g., suffering from cancer, epilepsy, or conditions for which no other treatment options exist). Under the Act, however,

smoking is not permitted. A Compassionate Use registry will be created and doctors may write prescriptions in 2015. The Act also encourages and funds cannabis and epilepsy research.

Public Records Exception: F.S. 381.987 is a companion law which exempts from public record any personal identifying information in the Compassionate Use registry (exceptions are made for law enforcement and research).

Florida DOH Draft Rules: the Florida Department of Health has issued a Notice of Proposed Rule which was published in the Florida Administrative Register relative to the Compassionate Use Act. Highlights of the August 2014 Notice: \$150,000 application fee and \$5 million dollar performance bond for dispensing organizations; level-2 background check requirement; only five dispensing organizations divided by region; and a lottery if more than one license application is received per region. The next hearing will be held September 5, 2014, in Tallahassee.

Controlled Substances Act (CSA): under the CSA, 21 U.S.C. 801 *et seq.*, marijuana and THC are Schedule I substances (the most restrictive). There have been a number of lawsuits dating back to the mid-1970’s regarding the DEA’s refusal to re-schedule the drug but none have prevailed. A 2005 U.S. Supreme Court case confirmed that the CSA preempts state law. In short, even if legalized at the state level, cannabis is still illegal under federal law.

Cole Memos: in light of “limited prosecutorial resources” and state ballot initiatives, Deputy Attorney General Cole issued several memos updating the DOJ’s guidance to U.S. Attorneys regarding eight enforcement priorities. In very broad terms, the August 2013 memo suggested that marijuana businesses regulated under well-run state systems would not trigger the Cole Memo priorities. The February 2014 memo turned its attention to financial institutions and gave guidance about prosecuting anti-money laundering (AML) and Bank Secrecy Act (BSA) claims only when Cole Memo priorities were violated. The Cole Memos are policy guides but not law.

FinCEN Guidance: coinciding with the February 2014 Cole Memo, this Guidance sets out seven “due diligence” steps in order to clarify BSA requirements for financial institutions which provide banking services to marijuana-related businesses. While financial institutions are required to file Suspicious Activity Reports (SARs), they could file a “Marijuana Limited” SAR if the customer was regulated by state law and did not trigger Cole Memo priorities.

UF Research: in March 2014, outside counsel for the University of Florida wrote a 9-page report to the school’s president outlining that marijuana research by the school, even if legal under state law, would violate federal law and jeopardize “the University’s continued receipt of federal funds through research grants and contracts and student financial assistance programs.”

Christopher B. Hopkins is a partner with Akerman LLP. From insurance to zoning, litigation to taxes, send Amendment 2 comments to christopher.hopkins@akerman.com.