

Practice Update

Florida's Amendment 2 Did Not Pass – What's Next?

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By Jonathan S. Robbins

On November 4th, voters *did not* approve an Amendment to Florida's Constitution, which would have allowed the use of marijuana for certain medical conditions.

Is any form of medical marijuana legal in the State of Florida?

Yes – In June 2014, Governor Scott signed into law The Compassionate Medical Cannabis Act, known as the Charlotte's Web law. Unlike Amendment 2, the Charlotte's Web Law allows the medical use of only a specific strain of cannabis which is high in CBD (a substance that helps alleviate seizures), and low in THC (the chemical that produces a euphoric effect or "high").

Also, unlike Amendment 2, Charlotte's Web may only be used by patients with certain specified medical conditions, such as epilepsy, ALS, and cancer, and the Act limits the number of treatment facilities located throughout the state to five.

There also exists in Florida a recognized defense to criminal charges for cultivating or possessing marijuana known as the "medical necessary defense." However, individuals must first be charged criminally and those Defendants must establish that

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they “did not intentionally bring about the circumstance which precipitated the unlawful act,” such as shooting themselves in the foot; that they “could not accomplish the same objective using a less offensive alternative available,” like medication; and “that the evil sought to be avoided was more heinous than the unlawful act perpetrated to avoid it.”

Are there still opportunities for Florida entrepreneurs who wish to become involved in the medical marijuana industry?

Opportunities for those interested in cultivating medical marijuana or opening treatment centers under Charlotte’s Web will likely be extremely limited. In order to do so, you will have to enter into a joint business venture with one of the five lucky existing nurseries in Florida that will be permitted to grow and distribute medical marijuana in the state.

Nevertheless, there are unlimited opportunities for those entrepreneurs interested in other aspects of the medical marijuana industry that do not involve the actual cultivation or distribution of cannabis. Many successful businesses already operate in Florida, but do not actually “touch” medical marijuana, such as tracking software developers, those developing growing technology, packaging companies, and one company currently working to produce a functioning marijuana Breathalyzer. Indeed these companies are not straddled with the burdens carried by growers and distributors, such as the inability to maintain banking relationships or operate across state lines.

Given that Amendment 2 failed, will there ever be medical marijuana in Florida, other than what is permitted under the Compassionate Medical Cannabis Act?

It is extremely likely. Given that 23 states and the District of Columbia have passed legislation supporting medical marijuana, the fact that

Amendment 2 failed by a small margin, signaling the support of Florida voters and, of course, the millions of dollars of tax revenue, creation of jobs, and desire to get medical help to those in need, we anticipate that medical cannabis beyond Charlotte's Web is inevitable.

This will either occur on the state level, by way of additional legislation or possibly the expansion of Charlotte's Web, or at the federal level, if and when cannabis is removed as a Schedule I substance under the Controlled Substances Act.

Akerman Partners Jonathan Robbins and Eric Gordon address the future of medical marijuana in Florida and next steps for employers and other interested parties.

What's Next for Medical Marijuana in Florida?

Jonathan Robbins

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Medical Marijuana - Implications for Employers

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