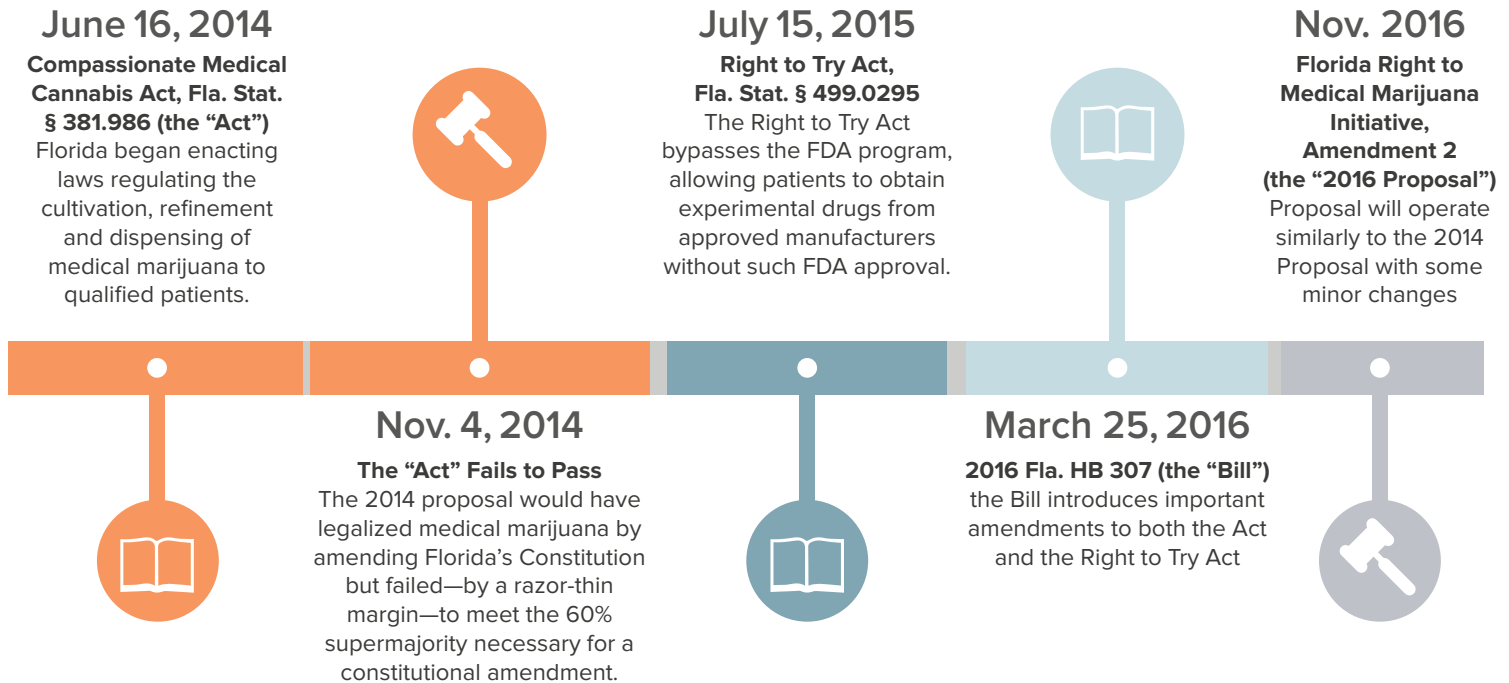


# Legalization of Medical Marijuana in Florida - Background

## HISTORY OF MEDICAL MARIJUANA IN FLORIDA



### Compassionate Medical Cannabis Act, Fla. Stat. § 381.986 (the “Act”)

Originally effective June 16, 2014, the Act governs most aspects of medical marijuana distribution, including standards for physician ordering and education, as well as authorization of the Department of Health (the “Department”) to license “dispensing organizations” to cultivate, process, transport, and dispense low-THC cannabis, medical cannabis, and cannabis delivery devices. The Act also authorized a narrow program permitting the limited use of marijuana strains which are high in cannabidiol (CBD), a non-psychoactive ingredient used to treat severe epilepsy and cancer. *Florida Right to Medical Marijuana Initiative, Amendment 2 (the “2014 Proposal”)*

### Right to Try Act, Fla. Stat. § 499.0295

Originally effective July 1, 2015, the Right to Try Act authorizes the prescribing and use of certain non-approved drugs under circumstances in which the patient is deemed to be extremely and terminally ill. The Federal Food, Drug, and Cosmetic Act prohibits general access to experimental drugs; however, it allows patients with serious or immediately life-threatening diseases to access experimental drugs with express FDA approval. The Right to Try Act bypasses the FDA program, allowing patients to obtain experimental drugs from approved manufacturers without such FDA approval.

### 2016 Fla. HB 307 (the “Bill”)

Effective March 25, 2016, the Bill introduces important amendments to both the Act and the Right to Try Act, as discussed below.

### Florida Right to Medical Marijuana Initiative, Amendment 2 (the “2016 Proposal”)

Effective March 25, 2016, the Bill introduces important amendments to both the Act and the Right to Try Act, as discussed below.

# Legalization of Medical Marijuana in Florida - Background (cont'd)

## WHAT DOES THE TERMINOLOGY MEAN?

### Low-THC Cannabis v. Medical Cannabis

Under the Act, a threshold requirement for meeting either definition is that the cannabis must be dispensed from an authorized “dispensing organization.” Beyond that, low-THC cannabis” means it has a Tetrahydrocannabinol (THC) concentration of at most 0.8%, making it non-euphoric. Thus, low-THC cannabis doesn’t produce a “high” that most associate with marijuana use. Low-THC cannabis and full-strength THC cannabis can both fall within the definition of “medical cannabis.” However, in order for full strength THC cannabis to be considered “medical cannabis”, it must be dispensed specifically for use by an “eligible patient,” as defined below.

### Qualified Patient v. Eligible Patient

A “qualified patient” is defined in the Act as an individual who has been added to the State registry by a duly authorized physician to receive at least one of the classifications of cannabis described above. It is a minimum threshold classification for anyone in Florida to legally obtain cannabis for medical use. An “eligible patient” is defined instead in subsection (2) of the Right to Try Act as someone who has been deemed to have a terminal condition and who has effectively exhausted any and all FDA-approved treatment options.

A key takeaway from these distinctions is that the majority of patients will be merely “qualified” and thus only permitted to receive low-THC cannabis for medical use. Any case in which a patient lawfully receives cannabis containing THC in excess of 0.8% will be atypical, as that patient will need to have met the stringent standards for becoming “eligible.”

## WHAT ARE THE MEDICAL MARIJUANA LAWS NOW?

At its inception in the summer of 2014, the Act sought primarily to benefit children suffering from severe epileptic conditions by authorizing the (non-smoking) use of specialized strains of low-THC/high-CBD cannabis. The Act directed the Department to award five licenses to the most qualified applicants to cultivate and dispense marijuana as official “dispensing organizations” within preordained exclusive territories throughout the state. The Act strictly limited eligibility for a license to registered nurseries that have operated in Florida continuously for at least the previous 30 years and are certified for high-volume cultivation. The original dispensing organizations approved by the Department include: Chestnut Hill Tree Farm, Trulieve (Hackney Nursery), Surterra Therapeutics (Alpha Foliage, Inc.), Modern Health Concepts (Costa Nursery Farms), and Knox Nursery, a client of Lowndes, Drosdick, Doster, Kantor & Reed, P.A.

A flood of litigation ensued as applicants fought to secure one of these lucrative licenses, producing severe delays in rolling out the Act’s benefits to eligible patients. In response, the Florida Legislature passed the Bill in late March of this year, which brought dramatic changes for both dispensaries and patients. The Bill amended the Act to increase the total number of potential “qualified patients,” increasing the market base and cash flow for authorized dispensaries. It also amended the Act to permit issuance of three additional licenses once the total number of registered patients in Florida reaches 250,000. This contemplated threshold of 250,000 registered patients exceeds the number of patients presently registered in any state, and this type of scheduled expansion shows that Florida lawmakers are accounting for medical marijuana being here for the long-haul.

The Bill also added a new provision that substantially undermines the competitive advantage associated with earning Department approval in the form of a license. Notwithstanding the strict vetting process and license availability otherwise mandated by the Act, dispensing organizations that meet certain conditions “must be granted” authorization to operate as if they had been originally licensed. Thus, if an organization receives an administrative or judicial determination that it was entitled to be authorized under the Act, such organization can also receive a license from the Department. Because of the Bill, for example, Grandiflora (San Felasco Nurseries) has been added to the list of nurseries authorized to grow medical marijuana in Florida.