

# Medical marijuana special session: How did Utah get here?

 [deseretnews.com/article/900044796/medical-marijuana-special-session-how-did-utah-get-here.html](https://www.deseretnews.com/article/900044796/medical-marijuana-special-session-how-did-utah-get-here.html)

Ben Lockhart

December 2, 2018

SALT LAKE CITY — Legislative leaders will try Monday to make good on their promise to pass a comprehensive medical marijuana bill that strikes the right balance of adequately addressing patients' need for access and maintaining safeguards against abuse.

Scrutiny on the special session will be high, as the bill legislators will consider would in essence supersede Proposition 2, which was passed last month by 53 percent of voters and officially became the law of the land in Utah on Saturday.

Republican and Democratic caucuses in both the House and Senate are expected to meet first, then the bill will proceed to the House floor and later to the Senate floor, said Rep. Brad Daw, R-Orem, co-chairman of the Health and Human Services Interim Committee.

Gov. Gary Herbert formally called the special session Friday, close to two months after he first announced he would call one to get the bill passed regardless of how Utahns voted on Proposition 2.

Herbert's office has confirmed it expects the special session to last one day.

The comprehensive replacement bill, sponsored by Utah House Speaker Greg Hughes, R-Draper, is a compromise that multiple supporters and opponents of Proposition 2 have agreed to support.

With one comprehensive medical marijuana law already on the books, and another poised to potentially replace it, how did Utah politics arrive here, and what are the implications for patients who may benefit?

## Reaching compromise

In 2016, a far-reaching medical marijuana bill sponsored by then-Sen. Mark Madsen, R-Saratoga Springs, passed the Utah Senate but failed to make out of committee in the House. The issue of broad legalization never got that close at the Legislature the next year.

In June 2017, medical marijuana legalization advocates filed paperwork to begin gathering signatures to take the issue directly to voters. The ballot initiative gobbled up the most signatures in an initiative-heavy election cycle, gaining nearly 154,000.

However, the campaign soon attracted ardent opposition from influential medical, law enforcement and faith groups, which argued the bill made laws against recreational marijuana use too easy to evade.

In the spring, the campaigning for and against Proposition 2 took a contentious turn, as the Utah Patients Coalition petition campaign accused the Utah Medical Association of using deceitful tactics in a signature removal drive meant to defeat the measure before it got to the ballot box.

In turn, the Utah Medical Association filed a complaint with Utah elections officials, claiming a Utah Patients Coalition official had offered to buy completed signature removal forms in an effort to keep them from being turned in.

In light of those allegations and other contention, those same groups would later admit some surprise that they were able to come together and agree to support the contents of a compromise bill after dozens of hours of private talks with Hughes about what it ought to include – or leave out. That breakthrough was first reported by the Deseret News on Oct. 2.

The Utah Patients Coalition, the campaign that made the initiative a reality, and Libertas Institute, the campaign's biggest in-state financial supporter, agreed to back the compromise. So did prominent anti-Proposition 2 groups Utah Medical Association and The Church of Jesus Christ of Latter-day Saints.

Each of those groups praised the compromise as a smart solution that balances strong patient access with mitigating opportunities for abusing the medical marijuana program and better helping law enforcement monitor recreational use.

The Utah Patients Coalition has said the Legislature always has the power to "gut" the ballot initiative upon passing, and reaching a compromise was therefore safer for the long-term viability of Utah's medical marijuana program.

The Marijuana Policy Project, an advocacy group based in Washington, D.C., that helped write Proposition 2 and was its largest donor, has also lauded the compromise, calling it "undoubtedly a victory for Utah patients and their families."

### **Compromise critics**

However, some groups are not pleased with the compromise and the behind-closed-doors nature of the negotiations that led to it. That includes Together for Responsible Use and Cannabis Education or TRUCE, which has promised to pressure Utah legislators to respect the outcome of the Proposition 2 vote by only voting to approve minor changes to the measure.

The group's president, Christine Stenquist, says the compromise bill is an inappropriate usurpation of what Utah voters passed, and it significantly limits patient access.

TRUCE and the Epilepsy Association of Utah have, through attorney and former Salt Lake City Mayor Rocky Anderson, recently warned of potential legal action related to the negotiation process that produced the compromise bill.

"The voters of Utah decided that Proposition 2 was what they wanted," Doug Rice, interim president of the association, recently said. "We're supposed to bargain for what we won?"

Sen. Jim Dabakis, D-Salt Lake City, also criticized the private negotiations Friday, saying they indicate "a paternalistic contempt for Utah voters."

Walter Plumb, who put tens of thousands of dollars of his own money into campaigning against Proposition 2 earlier this year, also has concerns about the compromise – but for much different reasons than Stenquist, Rice or Dabakis.

Plumb, a real estate developer and president of the political issues committee Drug Safe Utah, has said one of his worries is whether the compromise does enough to guard against improper youth access to marijuana.

"We owe it as a state to protect these youth in every way to prevent them from the dangers of a psychoactive drug marijuana," Plumb told the Interim Health and Human Services Committee a week ago at the final public hearing on the compromise bill.

### **Session effective?**

The use of a special legislative session for the compromise bill has also come under fire from some who say the process is too rushed to enact a meaningful medical marijuana program without significant flaws.

Justin Arriola, board member and industry liaison for TRUCE, recently asked lawmakers, "Why can't we look at pushing back the dates to allow us to have further discussion?"

"This bill is so far from being ready to go. ... If the issue is truly that we need more voices, or we need people to have time to feel comfortable with this language, then let's give ourselves time. Let's not force a special session a month before we go into a regular session," Arriola told the Health and Human Services Interim Committee last week.

But Hughes believes moving quickly is of the essence, so that patients, state agencies and medical marijuana businesses don't have to spend significant time suspended in uncertainty over what version of Utah's medical marijuana program they will ultimately see.

"The longer you would have as a gap between what would pass and (the compromise bill passing) ... you would have in that time ... two competing laws," Hughes told his fellow legislators at that hearing.

### **Competing bills**

When Hughes' bill goes before the House and later the Senate, it is expected there will be multiple amendments to it proposed there. And a pair of Democrats in the Legislature have already indicated they will introduce substitute bills that they hope lawmakers will adopt rather than Hughes' legislation.

Dabakis said Friday he hopes to thwart Hughes' compromise bill via a pair of bills he will propose. One of them makes only "legislative-staff suggested technical changes in Prop. 2," he said, while the other would go beyond that with provisions "leaving it up to patients to decide

where to get their medical-help cannabis" upon qualifying for it.

The Utah House Democratic Caucus also recently announced plans by Rep. Rebecca Chavez-Houck, D-Salt Lake City, to introduce a bill that only makes "necessary technical changes to Proposition 2 to dovetail with current law" and does "not make any substantive changes to the proposition that Utah voters favorably passed."

### **Original compromise**

The compromise bill made several changes, compared to Proposition 2, affecting how Utahns would be able to legally qualify for, purchase and consume medical marijuana.

Some changes were made in the initial version of the compromise, while others were later added in a second draft version of the bill released Nov. 5 and a third one published Nov. 21. Those changes are as follows:

- Removes language permitting anyone with "an autoimmune disorder" to qualify for a medical cannabis card.
- Requires doctors and pharmacists to undergo four hours of "continuing education" on the topic before being authorized to qualify patients for a card or dispense medical marijuana.
- Modifies Proposition 2's "affirmative defense" that allows a person to fight marijuana possession charges before a certain date on the basis they would have been eligible for a card despite not having one. In such cases, the compromise bill says, the marijuana must be in "medicinal usage form" and the person must have "a pre-existing relationship" with a doctor who has indicated they could medically benefit from marijuana use.
- Requires businesses selling medical marijuana to employ a licensed pharmacist, changes the name from dispensaries to pharmacies, and allows fewer such businesses to operate in the state.
- Institutes a separate state central fill distribution system designed to have the capacity to mail patients' marijuana orders to local health departments.
- Removes a provision allowing patients living more than 100 miles from a medical marijuana dispensary to grow up to six of their own marijuana plants.
- Limits the authorized forms of medical marijuana consumption to a capsule, chewable or dissolvable gelatin cube, concentrated oil, liquid suspension, skin patch, sublingual pill, or in limited circumstances, a resin or wax.

### **Compromise update 1**

- Narrows the definition of which employers may not take adverse action against a worker for their status as a medical marijuana user, applying that standard to public state and local agencies only rather than all employers.

- Includes a severability clause specifying that if one part of the law were to be declared invalid, the other portions would remain in effect.
- Says police officers may not enforce any law that restricts a person's right to own a firearm based solely on their lawful use or possession of marijuana.

### **Compromise update 2**

- Removes a restriction on landlords prohibiting them from refusing to rent to a person on the sole basis that they are a medical cannabis cardholder.
- Readjusts the number of allowed medical marijuana pharmacies to seven, though that number is still significantly less than provided for in Proposition 2, and says if central fill distribution is not operational by 2021, that number may be increased to 10.
- Decreases the number of marijuana growing facility licenses allowed, and institutes size limits on those facilities.
- Requires patients under 21 to get secondary approval for a medical cannabis card from the state-appointed Compassionate Use Board, in addition to that of their doctor.

Hughes also told the Deseret News he was finalizing some 11th-hour changes to the bill Friday, improving how veterans with post-traumatic stress disorder can gain approval for a medical cannabis card and expanding card approval authority to advanced practice registered nurses.