

By Senator Berman

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1 A bill to be entitled
2 An act relating to medical marijuana employee
3 protection; creating ss. 112.219 and 448.111, F.S.;
4 providing definitions; prohibiting an employer from
5 taking adverse personnel action against an employee or
6 job applicant who is a qualified patient using medical
7 marijuana; providing exceptions; requiring an employer
8 to provide written notice to an employee or job
9 applicant who tests positive for marijuana of his or
10 her right to explain the positive test result;
11 providing procedures when an employee or job applicant
12 tests positive for marijuana; providing a cause of
13 action and damages; providing construction; providing
14 an effective date.

15
16 Be It Enacted by the Legislature of the State of Florida:

17
18 Section 1. Section 112.219, Florida Statutes, is created to
19 read:

20 112.219 Medical Marijuana Public Employee Protection Act.-

21 (1) As used in this section, the term:

22 (a) "Adverse personnel action" means the refusal to hire or
23 employ a qualified patient; the discharge, suspension, transfer,
24 or demotion of a qualified patient; the mandatory retirement of
25 a qualified patient; or the discrimination of a qualified
26 patient with respect to compensation, terms, conditions, or
27 privileges of employment.

28 (b) "Employee" has the same meaning as in s. 112.0455.

29 (c) "Employer" means a state, regional, county, local, or

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30 municipal government entity, whether executive, judicial, or
31 legislative; an official, officer, department, division, bureau,
32 commission, authority, or political subdivision therein; or a
33 public school, community college, or state university that
34 employs individuals for salary, wages, or other remuneration.

35 (d) "Job applicant" has the same meaning as in s. 112.0455.

36 (e) "Law enforcement agency" has the same meaning as in s.
37 908.102.

38 (f) "Physician certification" has the same meaning as in s.
39 381.986.

40 (g) "Qualified patient" has the same meaning as in s.
41 381.986.

42 (h) "Safety-sensitive" means tasks or duties of a job which
43 the employer reasonably believes could affect the safety and
44 health of the employee performing the tasks or duties or other
45 persons, including, but not limited to, any of the following:

46 1. The handling, packaging, processing, storage, disposal,
47 or transport of hazardous materials.

48 2. The operation of a motor vehicle, equipment, machinery,
49 or power tools.

50 3. The repair, maintenance, or monitoring of any equipment,
51 machinery, or manufacturing process, the malfunction or
52 disruption of which could result in injury or property damage.

53 4. The performance of firefighting duties.

54 5. The operation, maintenance, or oversight of critical
55 services and infrastructure, including, but not limited to,
56 electric, gas, and water utilities or power generation or
57 distribution.

58 6. The extraction, compression, processing, manufacturing,

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59 handling, packaging, storage, disposal, treatment, or transport
60 of potentially volatile, flammable, combustible materials,
61 elements, chemicals, or any other highly regulated component.

62 7. The dispensing of pharmaceuticals.

63 8. The carrying of a firearm.

64 9. The direct care of a patient or child.

65 (i) "Undue hardship" means an action requiring significant
66 difficulty or expense, when considered in light of the following
67 factors:

68 1. The nature, cost, and duration of the accommodation.

69 2. The overall financial resources of the employer.

70 3. The overall size of the business of the employer with
71 respect to the number of employees and the number, type, and
72 location of the employer's facilities.

73 4. The effect on expenses and resources or any other
74 impacts of such accommodation upon the operation of the
75 employer.

76 (2) An employer may not take adverse personnel action
77 against an employee or job applicant who is a qualified patient
78 using medical marijuana consistent with s. 381.986, unless the
79 position held by the employee or sought by the job applicant is
80 one involving safety-sensitive job duties. However, an employer
81 may take appropriate adverse personnel action against any
82 employee if the employer establishes by a preponderance of the
83 evidence that the lawful use of medical marijuana is impairing
84 the employee's ability to perform his or her job
85 responsibilities. For purposes of this subsection, an employer
86 may consider an employee's ability to perform his or her job
87 responsibilities to be impaired if the employee displays

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88 specific articulable symptoms while working which decrease or
89 lessen the performance of his or her duties or tasks.

90 (3) (a) If an employer has a drug testing policy and an
91 employee or job applicant tests positive for marijuana or its
92 metabolites, the employer must provide written notice within 5
93 business days after receipt of the positive test result to the
94 employee or job applicant of his or her right to provide an
95 explanation for the positive test result.

96 (b) Within 5 business days after receipt of the written
97 notice, the employee or job applicant may submit information to
98 an employer explaining or contesting the positive test result or
99 may request a confirmation test, as defined in s. 112.0455, at
100 the expense of the employee or job applicant.

101 (c) An employee or a job applicant may submit a physician
102 certification for medical marijuana or a medical marijuana use
103 registry identification card as part of his or her explanation
104 for the positive test result.

105 (d) If an employee or a job applicant fails to provide a
106 satisfactory explanation for the positive test result, an
107 employer must verify the positive test result with a
108 confirmation test, at the expense of the employer, before the
109 employer may take adverse personnel action against the employee
110 or job applicant.

111 (4) (a) Notwithstanding s. 381.986(15), an employee or a job
112 applicant who has been the subject of an adverse personnel
113 action in violation of this section may institute a civil action
114 in a court of competent jurisdiction for relief as set forth in
115 paragraph (c) within 180 days after the alleged violation.

116 (b) An employee or a job applicant may not recover in any

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117 action brought under this subsection if the adverse personnel
118 action was predicated upon a ground other than the employee's or
119 job applicant's exercise of a right protected by this section.

120 (c) In any action brought under this subsection, the court
121 may order any of the following:

122 1. An injunction restraining continued violation of this
123 section.

124 2. Reinstatement of the employee to the same position held
125 before the adverse personnel action, or to an equivalent
126 position.

127 3. Reinstatement of full fringe benefits and seniority
128 rights.

129 4. Compensation for lost wages, benefits, and other
130 remuneration.

131 5. Reasonable attorney fees and costs.

132 6. Any other compensatory damages allowable by general law.

133 (5) This section does not:

134 (a) Prohibit an employer from taking adverse personnel
135 action against an employee for the possession or use of a
136 controlled substance, as defined in s. 893.02, during normal
137 business hours or require an employer to commit any act that
138 would cause the employer to violate federal law or that would
139 result in the loss of a federal contract or federal funding;

140 (b) Require a government medical assistance program or
141 private health insurer to reimburse a person for costs
142 associated with the use of medical marijuana; or

143 (c)1. Require an employer to modify the job or working
144 conditions of a person who engages in the use of medical
145 marijuana based on the reasonable business purposes of the

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146 employer. However, notwithstanding s. 381.986(15) and except as
147 provided in subparagraph 2., the employer must attempt to make
148 reasonable accommodations for the medical needs of an employee
149 who engages in the use of medical marijuana if the employee
150 holds a valid medical marijuana use identification card, unless
151 the employer can demonstrate that the accommodation would pose a
152 threat of harm or danger to persons or property, impose an undue
153 hardship on the employer, or prohibit an employee from
154 fulfilling his or her job responsibilities.

155 2. Prohibit a law enforcement agency from adopting policies
156 and procedures that preclude an employee from engaging in the
157 use of medical marijuana.

158 Section 2. Section 448.111, Florida Statutes, is created to
159 read:

160 448.111 Medical Marijuana Employee Protection Act.—

161 (1) As used in this section, the term:

162 (a) "Adverse personnel action" means the refusal to hire or
163 employ a qualified patient; the discharge, suspension, transfer,
164 or demotion of a qualified patient; the mandatory retirement of
165 a qualified patient; or the discrimination of a qualified
166 patient with respect to compensation, terms, conditions, or
167 privileges of employment.

168 (b) "Employee" has the same meaning as in s. 448.101.

169 (c) "Employer" means a private individual, firm,
170 partnership, institution, corporation, or association that
171 employs individuals for salary, wages, or other remuneration.

172 (d) "Job applicant" has the same meaning as in s. 440.102.

173 (e) "Law enforcement agency" has the same meaning as in s.
174 908.102.

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175 (f) "Physician certification" has the same meaning as in s.
176 381.986.

177 (g) "Qualified patient" has the same meaning as in s.
178 381.986.

179 (h) "Safety-sensitive" means tasks or duties of a job which
180 the employer reasonably believes could affect the safety and
181 health of the employee performing the tasks or duties or other
182 persons, including, but not limited to, any of the following:

183 1. The handling, packaging, processing, storage, disposal,
184 or transport of hazardous materials.

185 2. The operation of a motor vehicle, equipment, machinery,
186 or power tools.

187 3. The repair, maintenance, or monitoring of any equipment,
188 machinery, or manufacturing process, the malfunction or
189 disruption of which could result in injury or property damage.

190 4. The performance of firefighting duties.

191 5. The operation, maintenance, or oversight of critical
192 services and infrastructure, including, but not limited to,
193 electric, gas, and water utilities or power generation or
194 distribution.

195 6. The extraction, compression, processing, manufacturing,
196 handling, packaging, storage, disposal, treatment, or transport
197 of potentially volatile, flammable, combustible materials,
198 elements, chemicals, or any other highly regulated component.

199 7. The dispensing of pharmaceuticals.

200 8. The carrying of a firearm.

201 9. The direct care of a patient or child.

202 (i) "Undue hardship" means an action requiring significant
203 difficulty or expense, when considered in light of the following

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204 factors:

205 1. The nature, cost, and duration of the accommodation.

206 2. The overall financial resources of the employer.

207 3. The overall size of the business of the employer with
208 respect to the number of employees and the number, type, and
209 location of the employer's facilities.

210 4. The effect on expenses and resources or any other
211 impacts of such accommodation upon the operation of the
212 employer.

213 (2) An employer may not take adverse personnel action
214 against an employee or a job applicant who is a qualified
215 patient using medical marijuana consistent with s. 381.986,
216 unless the position held by the employee or sought by the job
217 applicant is one involving safety-sensitive job duties. However,
218 an employer may take appropriate adverse personnel action
219 against any employee if the employer establishes by a
220 preponderance of the evidence that the lawful use of medical
221 marijuana is impairing the employee's ability to perform his or
222 her job responsibilities. For purposes of this subsection, an
223 employer may consider an employee's ability to perform his or
224 her job responsibilities to be impaired if the employee displays
225 specific articulable symptoms while working which decrease or
226 lessen the performance of his or her duties or tasks.

227 (3) (a) If an employer has a drug testing policy and an
228 employee or a job applicant tests positive for marijuana or its
229 metabolites, the employer must provide written notice within 5
230 business days after receipt of the positive test result to the
231 employee or job applicant of his or her right to provide an
232 explanation for the positive test result.

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233 (b) Within 5 business days after receipt of the written
234 notice, the employee or job applicant may submit information to
235 an employer explaining or contesting the positive test result or
236 may request a confirmation test, as defined in s. 440.102, at
237 the expense of the employee or job applicant.

238 (c) An employee or a job applicant may submit a physician
239 certification for medical marijuana or a medical marijuana use
240 registry identification card as part of his or her explanation
241 for the positive test result.

242 (d) If an employee or a job applicant fails to provide a
243 satisfactory explanation for the positive test result, an
244 employer must verify the positive test result with a
245 confirmation test, at the expense of the employer, before the
246 employer may take adverse personnel action against the employee
247 or job applicant.

248 (4) (a) Notwithstanding s. 381.986(15), an employee or a job
249 applicant who has been the subject of an adverse personnel
250 action in violation of this section may institute a civil action
251 in a court of competent jurisdiction for relief as set forth in
252 paragraph (c) within 180 days after the alleged violation.

253 (b) An employee or a job applicant may not recover in any
254 action brought under this subsection if the adverse personnel
255 action was predicated upon a ground other than the employee's or
256 job applicant's exercise of a right protected by this section.

257 (c) In any action brought under this subsection, the court
258 may order any of the following:

259 1. An injunction restraining continued violation of this
260 section.

261 2. Reinstatement of the employee to the same position held

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263 position.

264 3. Reinstatement of full fringe benefits and seniority
265 rights.

266 4. Compensation for lost wages, benefits, and other
267 remuneration.

268 5. Reasonable attorney fees and costs.

269 6. Any other compensatory damages allowable by general law.

270 (5) This section does not:

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272 action against an employee for the possession or use of a
273 controlled substance, as defined in s. 893.02, during normal
274 business hours or require an employer to commit any act that
275 would cause the employer to violate federal law or that would
276 result in the loss of a federal contract or federal funding;

277 (b) Require a government medical assistance program or
278 private health insurer to reimburse a person for costs
279 associated with the use of medical marijuana; or

280 (c)1. Require an employer to modify the job or working
281 conditions of a person who engages in the use of medical
282 marijuana based on the reasonable business purposes of the
283 employer. However, notwithstanding s. 381.986(15) and except as
284 provided in subparagraph 2., the employer must attempt to make
285 reasonable accommodations for the medical needs of an employee
286 who engages in the use of medical marijuana if the employee
287 holds a valid medical marijuana use identification card, unless
288 the employer can demonstrate that the accommodation would pose a
289 threat of harm or danger to persons or property, impose an undue
290 hardship on the employer, or prohibit an employee from

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291 fulfilling his or her job responsibilities.

292 2. Prohibit a law enforcement agency from adopting policies
293 and procedures that preclude an employee from engaging in the
294 use of medical marijuana.

295 Section 3. This act shall take effect upon becoming a law.