

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

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

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 18 Section 1. Section 112.219, Florida Statutes, is created
 19 to 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
 23 or employ a qualified patient; the discharge, suspension,
 24 transfer, or demotion of a qualified patient; the mandatory
 25 retirement of a qualified patient; or discrimination against a

26 qualified patient with respect to compensation, terms,
 27 conditions, or privileges of employment.

28 (b) "Employee" has the same meaning as in s.
 29 112.0455(5)(g).

30 (c) "Employer" means a state, regional, county, local, or
 31 municipal government entity, whether executive, judicial, or
 32 legislative; an official, an officer, a department, a division,
 33 a bureau, a commission, an authority, or a political subdivision
 34 therein; or a public school, community college, or state
 35 university that employs individuals for salary, wages, or other
 36 remuneration.

37 (d) "Job applicant" has the same meaning as in s.
 38 112.0455(5)(f).

39 (e) "Law enforcement agency" has the same meaning as in s.
 40 908.102.

41 (f) "Physician certification" has the same meaning as in
 42 s. 381.986.

43 (g) "Qualified patient" has the same meaning as in s.
 44 381.986.

45 (h) "Undue hardship" means an action requiring significant
 46 difficulty or expense, when considered in light of the following
 47 factors:

- 48 1. The nature, cost, and duration of the accommodation.
- 49 2. The overall financial resources of the employer.
- 50 3. The overall size of the business of the employer with

51 respect to the number of employees and the number, type, and
52 location of the employer's facilities.

53 4. The effect on expenses and resources or any other
54 impacts of such accommodation upon the operation of the
55 employer.

56 (2) An employer may not take adverse personnel action
57 against an employee or a job applicant who is a qualified
58 patient using medical marijuana consistent with s. 381.986.
59 However, an employer may take appropriate adverse personnel
60 action against any employee if the employer establishes by a
61 preponderance of the evidence that the lawful use of medical
62 marijuana is impairing the employee's ability to perform his or
63 her job responsibilities. For purposes of this subsection, an
64 employer may consider an employee's ability to perform his or
65 her job responsibilities to be impaired if the employee displays
66 specific articulable symptoms while working which decrease or
67 lessen the performance of his or her duties or tasks.

68 (3) (a) If an employer has a drug testing policy and an
69 employee or a job applicant tests positive for marijuana or its
70 metabolites, the employer must provide written notice within 5
71 business days after receipt of the positive test result to the
72 employee or job applicant of his or her right to provide an
73 explanation for the positive test result.

74 (b) Within 5 business days after receipt of the written
75 notice, the employee or job applicant may submit information to

76 an employer explaining or contesting the positive test result or
77 may request a confirmation test, as defined in s.
78 112.0455(5)(d), at the expense of the employee or job applicant.

79 (c) An employee or a job applicant may submit a physician
80 certification for medical marijuana or a medical marijuana use
81 registry identification card as part of his or her explanation
82 for the positive test result.

83 (d) If an employee or a job applicant fails to provide a
84 satisfactory explanation for the positive test result, an
85 employer must verify the positive test result with a
86 confirmation test, at the expense of the employer, before the
87 employer may take adverse personnel action against the employee
88 or job applicant.

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

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

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

100 1. An injunction restraining continued violation of this

101 section.

102 2. Reinstatement of the employee to the same position held
103 before the adverse personnel action, or to an equivalent
104 position.

105 3. Reinstatement of full fringe benefits and seniority
106 rights.

107 4. Compensation for lost wages, benefits, and other
108 remuneration.

109 5. Reasonable attorney fees and costs.

110 6. Any other compensatory damages allowable by general
111 law.

112 (5) This section does not:

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

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

122 (c) Require an employer to modify the job or working
123 conditions of a person who engages in the use of medical
124 marijuana based on the reasonable business purposes of the
125 employer. However, notwithstanding s. 381.986(15) and except as

126 | provided in paragraph (d), the employer must attempt to make
127 | reasonable accommodations for the medical needs of an employee
128 | who engages in the use of medical marijuana if the employee
129 | holds a valid medical marijuana use identification card, unless
130 | the employer can demonstrate that the accommodation would pose a
131 | threat of harm or danger to persons or property, impose an undue
132 | hardship on the employer, or prohibit an employee from
133 | fulfilling his or her job responsibilities; or

134 | (d) Prohibit a law enforcement agency from adopting
135 | policies and procedures that preclude an employee from engaging
136 | in the use of medical marijuana.

137 | Section 2. This act shall take effect upon becoming a law.