

By Senator Polsky

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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.

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 discrimination against 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.  
29           112.0455(5)(g).

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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 s.  
42 381.986.

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.

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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

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88 or job applicant.

89 (4) (a) Notwithstanding s. 381.986(15), an employee or a job  
90 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 law.

111 (5) This section does not:

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

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117 result in the loss of a federal contract or federal funding;

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

121 (c) Require an employer to modify the job or working  
122 conditions of a person who engages in the use of medical  
123 marijuana based on the reasonable business purposes of the  
124 employer. However, notwithstanding s. 381.986(15) and except as  
125 provided in paragraph (d), the employer must attempt to make  
126 reasonable accommodations for the medical needs of an employee  
127 who engages in the use of medical marijuana if the employee  
128 holds a valid medical marijuana use identification card, unless  
129 the employer can demonstrate that the accommodation would pose a  
130 threat of harm or danger to persons or property, impose an undue  
131 hardship on the employer, or prohibit an employee from  
132 fulfilling his or her job responsibilities; or

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

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