

By Senator Polsky

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

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

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

21 112.219 Medical Marijuana Public Employee Protection Act.-

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

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

29 (b) "Job applicant" means a person who has applied for a

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30 position with a public employer and has been offered employment
31 conditioned upon his or her passing a drug test.

32 (c) "Law enforcement agency" has the same meaning as in s.
33 908.102.

34 (d) "Physician certification" has the same meaning as in s.
35 381.986.

36 (e) "Public employee" or "employee" means an employee of a
37 public employer.

38 (f) "Public employer" or "employer" means a state,
39 regional, county, local, or municipal governmental entity,
40 whether executive, judicial, or legislative; an official, an
41 officer, a department, a division, a bureau, a commission, an
42 authority, or a political subdivision of such entity; or a
43 public school, a Florida College System institution, or a state
44 university that employs individuals for salary, wages, or other
45 remuneration.

46 (g) "Qualified patient" has the same meaning as in s.
47 381.986.

48 (h) "Undue hardship" means an action requiring significant
49 difficulty or expense, when considered in light of all of the
50 following factors:

51 1. The nature, cost, and duration of the accommodation.
52 2. The overall financial resources of the public employer.
53 3. The overall size of the business of the public employer
54 with respect to the number of employees and the number, type,
55 and location of the public employer's facilities.

56 4. The effect on expenses and resources or any other
57 impacts of such accommodation upon the operation of the public
58 employer.

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

72 (3) (a) If a public employer has a drug testing policy and
73 an employee or a job applicant tests positive for marijuana or
74 its metabolites, the employer must provide written notice within
75 5 business days after receipt of the positive test result to the
76 employee or job applicant of his or her right to provide an
77 explanation for the positive test result.

78 (b) Within 5 business days after receipt of the written
79 notice, the employee or job applicant may submit information to
80 his or her employer explaining or contesting the positive test
81 result or may request a confirmation test, as defined in s.
82 112.0455(5) (d), at the expense of the employee or job applicant.

83 (c) An employee or a job applicant may submit a physician
84 certification for medical marijuana or a medical marijuana use
85 registry identification card as part of his or her explanation
86 for the positive test result.

87 (d) If an employee or a job applicant fails to provide a

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88 satisfactory explanation for the positive test result, his or
89 her employer must verify the positive test result with a
90 confirmation test, at the expense of the employer, before the
91 employer may take adverse personnel action against the employee
92 or job applicant.

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

98 (b) A public employee or a job applicant may not recover in
99 any action brought under this subsection if the adverse
100 personnel action was predicated upon a ground other than his or
101 her exercise of a right protected by this section.

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

104 1. An injunction restraining continued violation of this
105 section.

106 2. Reinstatement of the public employee to the same
107 position held before the adverse personnel action, or to an
108 equivalent position.

109 3. Reinstatement of full fringe benefits and seniority
110 rights.

111 4. Compensation for lost wages, benefits, and other
112 remuneration.

113 5. Reasonable attorney fees and costs.

114 6. Any other compensatory damages allowed by general law.

115 (5) This section does not do any of the following:

116 (a) Prohibit a public employer from taking adverse

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117 personnel action against an employee for the possession or use
118 of a controlled substance, as defined in s. 893.02, during
119 normal business hours or require an employer to commit any act
120 that would cause the employer to violate federal law or that
121 would result in the loss of a federal contract or federal
122 funding.

123 (b) Require a governmental medical assistance program or
124 private health insurer to reimburse a person for costs
125 associated with his or her use of medical marijuana.

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

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

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