

Amendment No.

CHAMBER ACTION

Senate

House

.

Representative Learned offered the following:

Amendment (with title amendment)

Between lines 105 and 106, insert:

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

112.219 Medical Marijuana Public Employee Protection Act.—

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

(a) "Adverse personnel action" means the refusal to hire or employ a qualified patient; the discharge, suspension, transfer, or demotion of a qualified patient; the mandatory retirement of a qualified patient; or discrimination against a qualified patient with respect to compensation, terms,

363719

Approved For Filing: 3/7/2022 6:30:10 PM

Amendment No.

14 conditions, or privileges of employment.

15 (b) "Employee" has the same meaning as in s.
16 112.0455(5)(g).

17 (c) "Employer" means a state, regional, county, local, or
18 municipal government entity, whether executive, judicial, or
19 legislative; an official, an officer, a department, a division,
20 a bureau, a commission, an authority, or a political subdivision
21 therein; or a public school, community college, or state
22 university that employs individuals for salary, wages, or other
23 remuneration.

24 (d) "Job applicant" has the same meaning as in s.
25 112.0455(5)(f).

26 (e) "Law enforcement agency" has the same meaning as in s.
27 908.102.

28 (f) "Physician certification" has the same meaning as in
29 s. 381.986(1).

30 (g) "Qualified patient" has the same meaning as in s.
31 381.986(1).

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

- 35 1. The nature, cost, and duration of the accommodation.
36 2. The overall financial resources of the employer.
37 3. The overall size of the business of the employer with
38 respect to the number of employees and the number, type, and

363719

Approved For Filing: 3/7/2022 6:30:10 PM

Amendment No.

39 location of the employer's facilities.

40 4. The effect on expenses and resources or any other
41 impacts of such accommodation upon the operation of the
42 employer.

43 (2) An employer may not take adverse personnel action
44 against an employee or a job applicant who is a qualified
45 patient using medical marijuana consistent with s. 381.986.
46 However, an employer may take appropriate adverse personnel
47 action against any employee if the employer establishes by a
48 preponderance of the evidence that the lawful use of medical
49 marijuana is impairing the employee's ability to perform his or
50 her job responsibilities. For purposes of this subsection, an
51 employer may consider an employee's ability to perform his or
52 her job responsibilities to be impaired if the employee displays
53 specific articulable symptoms while working which decrease or
54 lessen the performance of his or her duties or tasks.

55 (3)(a) If an employer has a drug testing policy and an
56 employee or a job applicant tests positive for marijuana or its
57 metabolites, the employer must provide written notice within 5
58 business days after receipt of the positive test result to the
59 employee or job applicant of his or her right to provide an
60 explanation for the positive test result.

61 (b) Within 5 business days after receipt of the written
62 notice, the employee or job applicant may submit information to
63 an employer explaining or contesting the positive test result or

363719

Approved For Filing: 3/7/2022 6:30:10 PM

Amendment No.

64 may request a confirmation test, as defined in s.
65 112.0455(5)(d), at the expense of the employee or job applicant.

66 (c) An employee or a job applicant may submit a physician
67 certification for medical marijuana or a medical marijuana use
68 registry identification card as part of his or her explanation
69 for the positive test result.

70 (d) If an employee or a job applicant fails to provide a
71 satisfactory explanation for the positive test result, an
72 employer must verify the positive test result with a
73 confirmation test, at the expense of the employer, before the
74 employer may take adverse personnel action against the employee
75 or job applicant.

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

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

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

87 1. An injunction restraining continued violation of this
88 section.

363719

Approved For Filing: 3/7/2022 6:30:10 PM

Amendment No.

89 2. Reinstatement of the employee to the same position held
90 before the adverse personnel action, or to an equivalent
91 position.

92 3. Reinstatement of full fringe benefits and seniority
93 rights.

94 4. Compensation for lost wages, benefits, and other
95 remuneration.

96 5. Reasonable attorney fees and costs.

97 6. Any other compensatory damages allowable by general
98 law.

99 (5) This section does not:

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

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

109 (c) Require an employer to modify the job or working
110 conditions of a person who engages in the use of medical
111 marijuana based on the reasonable business purposes of the
112 employer. However, notwithstanding s. 381.986 and except as
113 provided in paragraph (d), the employer must attempt to make

363719

Approved For Filing: 3/7/2022 6:30:10 PM

Amendment No.

114 reasonable accommodations for the medical needs of an employee
 115 who engages in the use of medical marijuana if the employee
 116 holds a valid medical marijuana use identification card, unless
 117 the employer can demonstrate that the accommodation would pose a
 118 threat of harm or danger to persons or property, impose an undue
 119 hardship on the employer, or prohibit an employee from
 120 fulfilling his or her job responsibilities; or
 121 (d) Prohibit a law enforcement agency from adopting
 122 policies and procedures that preclude an employee from engaging
 123 in the use of medical marijuana.

124
 125 -----
 126 **T I T L E A M E N D M E N T**

127 Remove line 2 and insert:
 128 An act relating to the Department of Health; creating
 129 s. 112.219, F.S.; providing definitions; prohibiting
 130 an employer from taking adverse personnel action
 131 against an employee or a job applicant who is a
 132 qualified patient using medical marijuana; providing
 133 exceptions; requiring an employer to provide written
 134 notice of an employee or job applicant's right to
 135 explain a positive marijuana test result within a
 136 specified timeframe; providing procedures when an
 137 employee or job applicant tests positive for

363719

Approved For Filing: 3/7/2022 6:30:10 PM

Amendment No.

138 marijuana; providing a cause of action and damages;
139 providing construction; amending

363719

Approved For Filing: 3/7/2022 6:30:10 PM