

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. 112.0556, F.S.; defining terms;  
5 prohibiting a public employer from taking adverse  
6 personnel action against an employee or a job  
7 applicant for his or her use of medical marijuana if  
8 the employee or job applicant is a qualified patient;  
9 providing exceptions; requiring a public employer to  
10 provide written notice of an employee's or a job  
11 applicant's right to explain or contest a positive  
12 marijuana test result within a specified timeframe;  
13 providing procedures that apply when an employee or a  
14 job applicant tests positive for marijuana; providing  
15 a cause of action and damages; providing construction;  
16 providing an effective date.

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

19  
20 Section 1. Section 112.0556, Florida Statutes, is created  
21 to read:

22 112.0556 Medical Marijuana Public Employee Protection Act.-

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

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

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30 (b) "Job applicant" means a person who has applied for a  
31 position with a public employer and has been offered employment  
32 conditioned upon his or her passing a drug test.

33 (c) "Law enforcement agency" has the same meaning as in s.  
34 908.102.

35 (d) "Physician certification" has the same meaning as in s.  
36 381.986.

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

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

47 (g) "Qualified patient" has the same meaning as in s.  
48 381.986.

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

- 52 1. The nature, cost, and duration of the accommodation.
- 53 2. The overall financial resources of the public employer.
- 54 3. The overall size of the business of the public employer  
55 with respect to the number of employees and the number, type,  
56 and location of the public employer's facilities.
- 57 4. The effect on expenses and resources or any other  
58 impacts of such accommodation upon the operation of the public

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59 employer.

60 (2) (a) Except as provided in paragraph (b), a public  
61 employer may not take adverse personnel action against an  
62 employee or a job applicant for his or her use of medical  
63 marijuana if the employee or job applicant is a qualified  
64 patient under s. 381.986.

65 (b) A public employer may take appropriate adverse  
66 personnel action against an employee if the public employer  
67 establishes by a preponderance of the evidence that the lawful  
68 use of medical marijuana is impairing the employee's ability to  
69 perform his or her job duties or responsibilities.

70 (c) For purposes of this subsection, a public employer may  
71 consider an employee's ability to perform his or her job duties  
72 or responsibilities to be impaired if the employee displays  
73 specific, articulable symptoms while working which adversely  
74 affect the performance of his or her duties or responsibilities.

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

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

87 (c) An employee or a job applicant may submit a physician

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88 certification for medical marijuana use or a medical marijuana  
89 use registry identification card as part of his or her  
90 explanation for the positive test result.

91 (d) If an employee or a job applicant fails to provide a  
92 satisfactory explanation for the positive test result, his or  
93 her employer must verify the positive test result with a  
94 confirmation test, at the expense of the employer, before the  
95 employer may take adverse personnel action against the employee  
96 or job applicant.

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

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

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

108 1. An injunction restraining continued violation of this  
109 section.

110 2. Reinstatement of the public employee to the same  
111 position held before the adverse personnel action, or to an  
112 equivalent position.

113 3. Reinstatement of full fringe benefits and seniority  
114 rights.

115 4. Compensation for lost wages, benefits, and other  
116 remuneration.

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117 5. Reasonable attorney fees and costs.

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

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

120 (a) Prohibit a public employer from taking adverse  
121 personnel action against an employee for the possession or use  
122 of a controlled substance, as defined in s. 893.02, during  
123 normal business hours or require an employer to commit any act  
124 that would cause the employer to violate federal law or that  
125 would result in the loss of a federal contract or federal  
126 funding.

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

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

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

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