

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, within a specified timeframe, written notice
11 of an employee's or a job applicant's right to explain
12 or contest a positive marijuana test result; providing
13 procedures that apply when an employee or a job
14 applicant tests positive for marijuana; providing a
15 cause of action and damages; providing construction;
16 providing an effective date.

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

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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), at the expense
86 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.