FLORIDA HOUSE OF REPRESENTATIVES
BILL ANALYSIS

This bill analysis was prepared by nonpartisan committee staff and does not constitute an official statement of legislative intent.

BILL #: CS/HB 689	**COMPANION BILL:** SB 1702 (Martin)
TITLE: Employer Immunity from Civil Liability	**LINKED BILLS:** None
SPONSOR(S): Oliver	**RELATED BILLS:** None

Committee References

Civil Justice & Claims
11 Y, 3 N, As CS

SUMMARY

Effect of the Bill:
CS/HB 689 amends s. 381.986, F.S., pertaining to the medical use of marijuana, to limit an employer's civil liability where such employer takes adverse personnel action against an employee or job applicant based on such person's possession or use of medical marijuana if:

- The possession or use occurred on a workplace site;
- The use impairs an employee's ability to perform his or her employment duties or responsibilities; or
- The employee or job applicant refuses to test or tests positive for marijuana with respect to any of the specified types of drug tests.

Fiscal or Economic Impact:
The bill may have an indeterminate fiscal impact on state and local governments and an indeterminate economic impact on the private sector.

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ANALYSIS

EFFECT OF THE BILL:

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- The possession or use occurred on a workplace site;
- The use impairs an employee's ability to perform his or her employment duties or responsibilities; or
- The employee or job applicant refuses to test or tests positive for marijuana with respect to any of the following types of drug tests, as long as the requirements of Florida's Drug-Free Workplace Act ("DFWA") or Florida's Workers' Compensation Law, as applicable, are met:
  - Job applicant testing.
  - Reasonable suspicion testing.
  - Follow-up testing. (Section 1)

Under the bill:

- "Adverse personnel action" means the:
  - Refusal to hire a job applicant;
  - Discharge, suspension, transfer or demotion of an employee; or
  - Withholding of bonuses, the reduction in salary or benefits, or any other adverse action taken against an employee or job applicant within the terms and conditions of employment held or offered.
- "Confirmed drug test," "drug test," "employee assistance program," "job applicant," and "reasonable suspicion drug test" have the same meaning as in the DFWA. (Section 1)

The bill provides an effective date of July 1, 2026. (Section 2)

FISCAL OR ECONOMIC IMPACT:

STATE GOVERNMENT:

The bill may have a positive indeterminate fiscal impact on state government to the extent that it shields a state government employer from civil liability for taking action against a current or prospective employee based on the employee's possession or use of medical marijuana.

LOCAL GOVERNMENT:

The bill may have a positive indeterminate fiscal impact on local government to the extent that it shields a local government employer from civil liability for taking action against a current or prospective employee based on the employee's possession or use of medical marijuana.

PRIVATE SECTOR:

The bill may have a positive economic impact on private employers to the extent that it shields a private employer from civil liability for taking action against a current or prospective employee based on the employee's possession or use of medical marijuana. However, the bill may have a negative fiscal impact on both private and government employees to the extent that it prevents such employees from seeking damages and injunctive relief after facing adverse personnel actions based on their possession or use of medical marijuana where such damages or injunctive relief may have otherwise been available.

RELEVANT INFORMATION

SUBJECT OVERVIEW:

Medical Marijuana

Florida Classification

Article X, s. 29 of the State Constitution provides that the medical use[1] of marijuana[2] by a qualifying patient[3] or caregiver[4] in compliance with the terms of that section is not subject to criminal or civil liability or sanctions under Florida law. However, this section explicitly states that nothing therein shall:

- Require any accommodation of any on-site medical use of marijuana in any correctional institution, detention facility, place of education, or place of employment, or of smoking medical marijuana in any public place; or
- Limit the legislature from enacting laws consistent with that section.[5]

[1] "Medical use" means the acquisition, possession, use, delivery, transfer, or administration of an amount of marijuana not in conflict with Department of Health rules, or of related supplies by a qualifying patient or caregiver for use by the caregiver's designated qualifying patient for the treatment of a debilitating medical condition. Art. X, s. 29, Fla. Const.

[2] "Marijuana" includes "cannabis," defined as all parts of any plant of the genus *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin. The term also includes "Low-THC cannabis," defined as a plant of the genus *Cannabis*, the dried flowers of which contain 0.8 percent or less of tetrahydrocannabinol and more than 10 percent of cannabidiol weight for weight; the seeds thereof; the resin extracted from any part of such plant; or any compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seeds or resin that is dispensed from a medical marijuana treatment center. *Id.*; ss. 381.986, and 893.02, F.S.

[3] "Qualifying patient" means a person who has been diagnosed to have a debilitating medical condition, who has a physician certification and a valid qualifying patient identification card. "Debilitating medical condition," in turn, means cancer, epilepsy, glaucoma, positive status for HIV, AIDS, PTSD, ALS, Crohn's disease, Parkinson's disease, multiple sclerosis, or other debilitating medical conditions of the same kind or class as or comparable to those enumerated, and for which a physician believes that the medical use of marijuana would likely outweigh the potential health risks for a patient. Art. X, s. 29, Fla. Const.

[4] "Caregiver" means a person who is at least 21 years old who has agreed to assist with a qualifying patient's medical use of marijuana and has qualified for and obtained a caregiver identification card issued by the Florida Department of Health. A caregiver is prohibited from consuming marijuana obtained for medical use by the qualifying patient. *Id.*

[5] *Id.*

In 2017, the Legislature adopted s. 381.986, F.S., to provide a unified regulatory structure within which to implement Article X, s. 29 of the State Constitution.[6] Therein, the Legislature:

- Defined "qualifying medical conditions," a diagnosis of at least one of which qualifies the patient to receive medical marijuana.[7]
- Established "caregiver" requirements.[8]
- Established requirements for the licensing of those "qualified physicians" who may issue "physician certifications" to patients and established criteria for such issuances.[9]
- Directed the creation of an online medical marijuana use registry for physicians, patients, and caregivers and established criteria for the issuance of registry identification cards to patients and caregivers.[10]
- Directed the licensing of medical marijuana treatment centers for the cultivation, processing, transporting, and dispensing of medical marijuana.[11]
- Established background screening criteria for caregivers and others.[12]
- Generally preempted to the State the regulation of the cultivation, processing, and delivery of marijuana by medical marijuana treatment centers, with certain exceptions.[13]
- Established criminal and administrative penalties for statutory violations, including unlicensed activity.[14]

Significantly, the Legislature also provided that s. 381.986, F.S., on its own, does not:

- Limit an employer's ability to establish, continue, or enforce a drug-free workplace program or policy;
- Require an employer to accommodate the medical use of marijuana in any workplace or any employee working while under the influence of marijuana; or
- Create a cause of action against an employer for wrongful discharge or discrimination.[15]

Federal Classification

Under the federal Controlled Substances Act ("CSA"), marijuana is a Schedule I drug – that is, a drug deemed to have "no medicinal purpose for treatment in the United States, [to] have a high potential for abuse, and [to] lack acceptable safety measures even when used under proper medical supervision."[16] Thus, under the CSA, marijuana cannot be validly prescribed, and mere possession of marijuana is a felony under federal law.[17]

Drug-Free Workplace Initiatives

State Agency Employers

Florida's Drug-Free Workplace Act ("DFWA"), codified in s. 112.0455, F.S., establishes a voluntary program for state agency employers[18] to promote the goal of drug-free[19] workplaces within government through fair and reasonable drug-testing methods and encourage employers to provide employees[20] who have drug use problems

[6] Ch. 2017-232, Laws of Fla.
[7] These conditions are: cancer; epilepsy; glaucoma; positive status for HIV; AIDS; PTSD; ALS; Crohn's disease; Parkinson's disease; multiple sclerosis; medication of the same kind or class as those already enumerated in this list; a terminal condition diagnoses by a physician other than a qualified physician issuing the physician certification; and chronic malignant pain. S. 381.986(2), F.S.
[8] S. 381.986(6), F.S.
[9] S. 381.986(3) and (4), F.S.
[10] S. 381.986(5) and (7), F.S.
[11] S. 381.986(8), F.S.
[12] S. 381.986(9), F.S.
[13] S. 381.986(11), F.S.
[14] S. 381.986(12) and (13), F.S.
[15] S. 381.986(15), F.S.
[16] 21 U.S.C. § 812.
[17] *Gonzalez v. Raich*, 545 U.S. 1 (2005).
[18] "Employer" means an agency within state government, that employes individuals for salary, wages, or other remuneration.
[19] "Drug" means alcohol, including distilled spirits, wine, malt beverages, and intoxicating liquors; amphetamines; cannabinoids; cocaine; PCP; hallucinogens; methaqualone; opiates; barbiturates; benzodiazepines; synthetic narcotics; designer drugs; or a metabolite of any such substances.
[20] "Employee" means a person who works for salary, wages, or other remuneration for an employer.

with an opportunity to participate in an employee assistance program[21] or an alcohol and drug rehabilitation program. An employer choosing to implement such a program must, generally speaking:

- Maintain a written drug-free workplace policy meeting specified conditions, which policy must include procedures for job applicants[22] and employees to confidentially report the use of prescription or nonprescription medications both before and after being tested.
- Provide notice of the employer's participation in the program and of relevant policies to all employees and job applicants at specified times.
- Use certified laboratories for and follow specified protocols relating to specimen collection and drug analysis.
- Provide appropriate employee education and supervisor training.

Further, while the DFWA does not impose upon employers a legal duty to request that a job applicant or employee undergo drug testing, where an employer chooses to make such a request, the DFWA authorizes an employer to conduct any of the following types of drug tests,[23] within specified parameters:

- Job applicant testing, after which an employer may use a refusal to submit to a drug test or a positive confirmed drug test[24] as a basis for refusal to hire the job applicant.
- Reasonable suspicion testing, where an employer requires an employee to submit to a reasonable suspicion drug test which:
    - Must be based on a belief that an employee is using or has used drugs in violation of the employer's policy drawn from specific objective and articulable facts and reasonable inferences drawn from those facts in light of experience.
    - May not be required except upon the recommendation of a supervisor who is at least one level of supervision higher than the immediate supervisor of the employee in question.
- Random testing once every three months, if the random sample of employees chosen for testing is computer-generated by an independent third party and does not constitute more than ten percent of the total employee population.
- Routine fitness for duty testing as party of a routinely scheduled employee fitness-for-duty medical examination that is party of the employer's established polity or that is scheduled routinely for all members of an employment classification or group.
- Follow-up testing, which may occur quarterly, semiannually, or annually for up to two years after an employee in the course of employment enters an employee assistance program for drug-related problems, or an alcohol and drug rehabilitation program.

Regardless of the testing method employed, within five working days after receiving notice of a positive confirmed test result, the job applicant or employee may submit information to an employer explaining or contesting the test results, and explaining why the job applicant or employee believes the results do not violate the employer's policy.

Local Government and Private Sector Employers

Florida's Workers' Compensation Law, codified in Ch. 440, F.S., establishes a voluntary state program to encourage private-sector and local government employers[25] to implement drug-free[26] workplace policies in exchange for

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[21] "Employee assistance program" means an established program for employee assessment, counseling and possible referral to an alcohol and drug rehabilitation program.
[22] "Job applicant" means a person who has applied for a position with an employer and has been offered employment conditioned upon successfully passing a drug test.
[23] "Drug test" means any chemical, biological, or physical instrumental analysis administered for the purpose of determining the presence or absence of a drug or its metabolites.
[24] "Confirmed drug test" means a second analytical procedure used to identify the presence of a specific drug or metabolite in a specimen. The confirmation test must be different in scientific principle from that of the initial test procedure, and the confirmation method must be capable of providing requisite specificity, sensitivity, and quantitative accuracy.
[25] "Employer" means a person or entity that employs a person and is covered by the Workers' Compensation Law. S. 440.102, F.S.
[26] "Drug" means alcohol, including a distilled spirit, wine, a malt beverage, or an intoxicating liquor; an amphetamine; a cannabinoid; cocaine; PCP; a hallucinogen; methaqualone; an opiate; a barbiturate; a benzodiazepine; a synthetic narcotic; a designer drug; or a metabolite of any of the listed substances. *Id.*

potentially receiving up to a five percent premium discount on their workers' compensation insurance.[27] Generally speaking, the drug-free workplace program requirements under the Florida Workers' Compensation Law align with the drug-free workplace program requirements under the DFWA, with a significant distinction: under the Florida Workers' Compensation Law, in order to qualify for the premium discount, an employer must conduct job applicant, reasonable suspicion, routine fitness-for-duty, and follow-up drug testing at specified intervals.[28]

Florida Civil Rights Act

The Florida Civil Rights Act ("FCRA"), consisting of Part I of Ch. 760, F.S., and s. 509.092, F.S., secures for all individuals within the state freedom from discrimination because of his or membership in a "protected class" – that is, because of his or her race, color, religion, sex, pregnancy, national origin, age, disability,[29] or marital status.[30] Generally speaking, the FCRA provides discrimination protection in the areas of housing, public accommodation, and employment and requires, in many cases, reasonable accommodation in these areas for disabled persons.

Employment Discrimination

Under the FCRA, it is generally[31] an unlawful employment practice for an employer to:

- Discharge or to fail or refuse to hire any individual, or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's membership in a protected class, including disability; or
- Limit, segregate, or classify employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities, or adversely affect any individual's status as an employee, because of such individual's membership in a protected class, again including disability.[32]

Courts analyze employment disability discrimination claims under the FCRA using the same framework as claims under the federal Americans with Disabilities Act ("ADA"); thus, under the FCRA, to establish a prima facie employment discrimination case, an aggrieved person must show that he or she:

- Is disabled;
- Is a "qualified individual"; and
- Was subjected to unlawful employment discrimination because of his or her disability.[33]

A "qualified individual" is an individual who, with or without a "reasonable accommodation," can perform the essential functions of the position he or she holds or desires.[34] A "reasonable accommodation," in turn, means "modifications or adjustments to the work environment, or the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the

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[27] *Id.*; S. 440.101, F.S.
[28] S. 440.102, F.S.
[29] The FCRA uses the term "handicap" rather than "disability," but, because "handicap" is undefined in the FCRA, courts interpret the phrase to have the same meaning as the term "disability" under the federal Americans with Disabilities Act. *Byrd v. BT Foods, Inc.*, 948 So. 2d 921 (Fla. 4th DCA 2007).
[30] S. 760.01, F.S.
[31] It is not an unlawful employment practice for an employer to take or fail to take any action on the basis of religion, sex, pregnancy, national origin, age, disability, or marital status in those certain instances in which religion, sex, condition of pregnancy, national origin, age, absence of a disability, or marital status is a bona fide occupational qualification reasonably necessary for the performance of the particular employment to which such action or inaction is related.[31] Further, the unlawful employment practice provisions do not:
- Apply to any religious corporation, association, educational institution, or society which conditions employment or public accommodation opportunities to members of that religious corporation, association, educational institution, or society or to persons who subscribe to its tenets or beliefs.
- Prohibit a religious corporation, association, educational institution, or society from giving preference in employment to individuals of a particular religion to perform work connected with the carrying on by such corporations, associations, educational institutions, or societies of its various activities.

[32] S. 760.10, F.S.
[33] *Holly v. Clairson Industries, L.L.C.*, 492 F. 3d 1247 (11th Cir. 2007).
[34] *Id.*

essential functions of that position…"[35] Finally, "essential functions" are those functions that are "the fundamental job duties of a position that an individual with a disability is actually required to perform"; whether a function is "essential" is evaluated on a case-by-case basis by examining numerous factors.[36] Taking all of these terms together, under both the ADA and the FCRA, if an individual is unable to perform an essential function of his or her held or desired position, even with a reasonable accommodation, he or she is, by definition, not a "qualified individual" and, therefore, not covered under either law.[37]

Recent Legislation

In 2024, a Florida circuit court held, in *Giambrone v. Hillsborough County*, that the State Constitution and the FCRA required Hillsborough County to accommodate the off-site medical use of marijuana by an emergency medical technician ("EMT") employed by the Hillsborough County Fire Department, irrespective of the status of marijuana under federal law.[38] In reaching this conclusion, the court noted that the EMT tested positive for marijuana during a routine random drug screening and presented in his defense a valid, state-issued medical marijuana card, issued to the EMT by a qualified physician to treat the EMT's anxiety and insomnia, all protected disabilities under the FCRA; however, the County subsequently placed the EMT on unpaid administrative leave, citing its drug-free workplace policy and federal law, under which marijuana use is illegal.[39] The court further noted that the sole reason for the EMT's suspension was the positive random drug test; indeed, found the court, the County never alleged that the EMT used marijuana while working, possessed marijuana on work premises or during work hours, or reported to work while impaired.[40] This, found the court, violated the EMT's rights under Article X, s. 29 of the State Constitution, which the court held generally requires employers to accommodate the offsite use of medical marijuana, and consequently violated his rights under the FCRA.[41]

The *Giambrone* court also distinguished the case from a 2023 case cited by the County in its defense, *Ortiz v. Florida Department of Corrections*.[42] In *Ortiz*, the court held that the State Constitution did not require the Florida Department of Corrections ("Department") to accommodate a correctional officer's offsite medical use of marijuana to treat post-traumatic stress disorder because such use directly conflicted with a federal firearm possession law, making the correctional officer's possession of a firearm a federal felony in every instance; however, noted the *Ortiz* court, possessing a firearm in certain circumstances was a condition of the correctional officer's employment, and it was for this reason that the Department ultimately terminated the correctional officer's employment.[43] Further, noted the *Ortiz* court, Florida law requires correctional officers to possess good moral character in order to maintain their correctional officer certifications, and specifies that, to possess good moral character, a correctional officer cannot engage in any activity that could give rise to a felony conviction. Thus, held the *Ortiz* court, the correctional officer could not use medical marijuana and maintain his certification or employment as a correctional officer,[44] and so his termination was lawful.[45] The Florida Supreme Court later denied the correctional officer's petition for review on jurisdictional grounds.[46]

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[35] *Id.*
[36] *Id.*
[37] *Id.*
[38] Case No. 20-CA-479 (Fla. 13th Cir. Ct., Dec. 10, 2024).
[39] The County also reported the EMT to the state EMT licensing board, which board later declined to take action against the EMT's license after confirming his medical marijuana cardholder status. *Id.*
[40] *Id.*
[41] In reaching this decision, the court pointed to a provision in art. X, s. 29 of the State Constitution that reads "nothing in this section shall require any accommodation of any on-site medical use of marijuana in any place of education or employment, or of smoking medical marijuana in any public place." The court then reasoned that, under the *expressio unius est exclusion alterius* canon of statutory construction – that is, the canon holding that the express mention of one or more things of a class necessarily excludes unmentioned things of the same class – the State Constitution generally requires employers to accommodate the offsite medical use of marijuana. *Id.*
[42] 368 So. 3d 33 (Fla. 1st DCA 2023).
[43] The law in question makes it a felony for certain "prohibited persons" to possess a firearm. Under this law, the unlawful use of a controlled substance under the CSA, including marijuana, qualifies someone as a "prohibited person."
[44] The court noted that the Department gave the correctional officer the option of returning to work after he abstained from using medical marijuana for 30 days and obtained a note from his treating physician stating that he was no longer under the influence of medical marijuana. The correctional officer rejected this offer.

However, in the *Giambrone* case, the court noted that the state issued and regulated the EMT's license entirely under state law, which law his medical use of marijuana had not violated, and that his collective bargaining agreement allowed employees to report the use of prescription medications authorized under both federal and state law upon a positive drug test. The court ultimately awarded the EMT back pay, compensatory damages, and attorney fees and costs, and prohibited the County from discriminating against and failing to provide an accommodation for an employee who presents a valid, state-issued medical marijuana card after testing positive for marijuana so long as there is no evidence that the employee used medical marijuana while at work or reported to work while under the influence of medical marijuana. The County in the *Giambrone* case ultimately appealed the decision, which appeal remains pending before the Second District Court of Appeal as of the date of this analysis.[47]

Access to Courts

The State Constitution broadly protects the right to access the courts, which "shall be open to every person for redress of any injury…"[48] However, this constitutional right is not unlimited.

In *Kluger v. White*,[49] the Florida Supreme Court evaluated the extent to which the Legislature may alter or eliminate an existing civil cause of action, stating in doing so that it would not completely prohibit the Legislature from altering a cause of action, but neither would it allow the Legislature "to destroy a traditional and long-standing cause of action upon mere legislative whim…" The takeaway from *Kluger* and other relevant case law is that the Legislature may, generally speaking:

- Limit the right to bring a cause of action as long as such right is not entirely abolished.[50]
- Abolish a cause of action that is not "traditional and long-standing" – that is, a cause of action that did not exist at common law, and that did not exist in statute before the adoption of the State Constitution's Declaration of Rights.[51]
- Abolish a cause of action if the Legislature either:
    - Provides a reasonable commensurate benefit in exchange;[52] or

Shows an "overpowering public necessity for the abolishment of such right, and no alternative method of meeting such public necessity can be shown."[53]

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[45] The *Ortiz* court did not decide the question of whether art. X, s. 29 of the State Constitution requires employers to accommodate the offsite use of medical marijuana in the first place.
[46] *Ortiz v. Florida Department of Corrections*, 2024 WL 277862 (Fla. 2024).
[47] *Hillsborough County v. Giambrone*, Case No. 2D2025-0115 (Fla. 2d DCA 2025).
[48] Art. I, s. 21, Fla. Const.
[49] *Kluger*, 281 So. 2d 1.
[50] *See Achord v. Osceola Farms Co.*, 52 So. 3d 699 (Fla. 2010).
[51] *See Anderson v. Gannett Comp.*, 994 So. 2d 1048 (Fla. 2008) (false light was not actionable under the common law); *McPhail v. Jenkins*, 382 So. 2d 1329 (Fla. 1980) (wrongful death was not actionable under the common law); *see also Kluger*, 281 So. 2d at 4 ("We hold, therefore, that where a right of access to the courts for redress for a particular injury has been provided by statutory law predating the adoption of the Declaration of Rights of the Constitution of the State of Florida, or where such right has become a part of the common law of the State . . . the Legislature is without power to abolish such a right without providing a reasonable alternative…unless the Legislature can show an overpowering public necessity…").
[52] *Kluger*, 281 So. 2d at 4; *see Univ. of Miami v. Echarte*, 618 So. 2d 189 (Fla. 1993) (upholding a statutory cap on medical malpractice damages because the Legislature provided arbitration, which is a "commensurate benefit" for a claimant); *accord Lasky v. State Farm Ins. Co.*, 296 So. 2d 9 (Fla. 1974); *but see Smith v. Dept. of Ins.*, 507 So. 2d 1080 (Fla. 1992) (striking down a noneconomic cap on damages, which, while not wholly abolishing a cause of action, did not provide a commensurate benefit).
[53] *Kluger*, 281 So. 2d at 4-5 (noting that in 1945, the Legislature abolished the right to sue for several causes of action, but successfully demonstrated "the public necessity required for the total abolition of a right to sue") (citing *Rotwein v. Gersten*, 36 So. 2d 419 (Fla. 1948); *see Echarte*, 618 So. 2d at 195 ("Even if the medical malpractice arbitration statutes at issue did not provide a commensurate benefit, we would find that the statutes satisfy the second prong of *Kluger* which requires a legislative finding that an 'overpowering public necessity' exists, and further that 'no alternative method of meeting such public necessity can be shown'").

BILL HISTORY

COMMITTEE REFERENCE	ACTION	DATE	STAFF DIRECTOR/ POLICY CHIEF	ANALYSIS PREPARED BY
Civil Justice & Claims Subcommittee	11 Y, 3 N, As CS	2/11/2026	Jones	Mawn
THE CHANGES ADOPTED BY THE COMMITTEE:	• Clarified that the type of action from which an employer is shielded from civil liability under the bill is "adverse personnel action." • Narrowed the types of drug tests which an employer may conduct and still receive the benefit of immunity from civil liability under the bill. • Provided definitions. • Made technical changes.			

THIS BILL ANALYSIS HAS BEEN UPDATED TO INCORPORATE ALL OF THE CHANGES DESCRIBED ABOVE.
