

1 A bill to be entitled
 2 An act relating to medical marijuana employee
 3 protection; creating ss. 112.219 and 448.111, F.S.;
 4 providing definitions; prohibiting an employer from
 5 taking adverse personnel action against an employee or
 6 job applicant who is a qualified patient using medical
 7 marijuana; providing exceptions; requiring an employer
 8 to provide written notice to an employee or job
 9 applicant who tests positive for marijuana of his or
 10 her right to explain the positive test result;
 11 providing procedures for if an employee or job
 12 applicant tests positive for marijuana; providing a
 13 cause of action and damages; providing applicability;
 14 providing construction; providing an effective date.

15
 16 Be It Enacted by the Legislature of the State of Florida:

17
 18 Section 1. Section 112.219, Florida Statutes, is created
 19 to read:

20 112.219 Medical Marijuana Public Employee Protection Act.-

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

22 (a) "Adverse personnel action" means the refusal to hire
 23 or employ a qualified patient; the discharge, suspension,
 24 transfer, or demotion of a qualified patient; the mandatory
 25 retirement of a qualified patient; or the discrimination of a

26 qualified patient with respect to compensation, terms,
 27 conditions, or privileges of employment.

28 (b) "Employee" has the same meaning as in s. 112.0455.

29 (c) "Employer" means a state, regional, county, local, or
 30 municipal government entity, whether executive, judicial, or
 31 legislative; an official, officer, department, division, bureau,
 32 commission, authority, or political subdivision therein; or a
 33 public school, community college, or state university that
 34 employs individuals for salary, wages, or other remuneration.

35 (d) "Job applicant" has the same meaning as in s.
 36 112.0455.

37 (e) "Law enforcement agency" has the same meaning as in s.
 38 908.102.

39 (f) "Physician certification" has the same meaning as in
 40 s. 381.986.

41 (g) "Qualified patient" has the same meaning as in s.
 42 381.986.

43 (h) "Safety-sensitive" means tasks or duties of a job that
 44 the employer reasonably believes could affect the safety and
 45 health of the employee performing the tasks or duties or other
 46 persons, including, but not limited to, any of the following:

47 1. The handling, packaging, processing, storage, disposal,
 48 or transport of hazardous materials.

49 2. The operation of a motor vehicle, equipment, machinery,
 50 or power tools.

51 3. The repair, maintenance, or monitoring of any
52 equipment, machinery, or manufacturing process, the malfunction
53 or disruption of which could result in injury or property
54 damage.

55 4. The performance of firefighting duties.

56 5. The operation, maintenance, or oversight of critical
57 services and infrastructure including, but not limited to,
58 electric, gas, and water utilities or power generation or
59 distribution.

60 6. The extraction, compression, processing, manufacturing,
61 handling, packaging, storage, disposal, treatment, or transport
62 of potentially volatile, flammable, combustible materials,
63 elements, chemicals, or any other highly regulated component.

64 7. The dispensing of pharmaceuticals.

65 8. The carrying of a firearm.

66 9. The direct care of a patient or child.

67 (i) "Undue hardship" means an action requiring significant
68 difficulty or expense, when considered in light of the following
69 factors:

70 1. The nature, cost, and duration of the accommodation.

71 2. The overall financial resources of the employer.

72 3. The overall size of the business of the employer with
73 respect to the number of employees and the number, type, and
74 location of the employer's facilities.

75 4. The effect on expenses and resources or any other

76 | impacts of such accommodation upon the operation of the
77 | employer.

78 | (2) An employer may not take adverse personnel action
79 | against an employee or job applicant who is a qualified patient
80 | using medical marijuana consistent with s. 381.986, unless the
81 | position held by the employee or sought by the job applicant is
82 | one involving safety-sensitive job duties. However, an employer
83 | may take appropriate adverse personnel action against any
84 | employee if the employer establishes by a preponderance of the
85 | evidence that the lawful use of medical marijuana is impairing
86 | the employee's ability to perform his or her job
87 | responsibilities. For purposes of this subsection, an employer
88 | may consider an employee's ability to perform his or her job
89 | responsibilities to be impaired if the employee displays
90 | specific articulable symptoms while working that decrease or
91 | lessen the performance of his or her duties or tasks.

92 | (3) (a) If an employer has a drug testing policy and an
93 | employee or job applicant tests positive for marijuana or its
94 | metabolites, the employer must provide written notice within 5
95 | business days after receipt of the positive test result to the
96 | employee or job applicant of his or her right to provide an
97 | explanation for the positive test result.

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

101 may request a confirmed test, as defined in s. 112.0455, at the
102 expense of the employee or job applicant.

103 (c) An employee or job applicant may submit a physician
104 certification for medical marijuana or a medical marijuana use
105 registry identification card as part of his or her explanation
106 for the positive test result.

107 (d) If an employee or job applicant fails to provide a
108 satisfactory explanation for the positive test result, an
109 employer must verify the positive test result with a
110 confirmation test, at the expense of the employer, before the
111 employer may take adverse personnel action against the employee
112 or job applicant.

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

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

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

124 1. An injunction restraining continued violation of this
125 section.

126 2. Reinstatement of the employee to the same position held
127 before the adverse personnel action, or to an equivalent
128 position.

129 3. Reinstatement of full fringe benefits and seniority
130 rights.

131 4. Compensation for lost wages, benefits, and other
132 remuneration.

133 5. Reasonable attorney fees and costs.

134 6. Any other compensatory damages allowable by general
135 law.

136 (5) This section does not:

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

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

146 (c)1. Require an employer to modify the job or working
147 conditions of a person who engages in the use of medical
148 marijuana based on the reasonable business purposes of the
149 employer. However, notwithstanding s. 381.986(15) and except as
150 provided in subparagraph 2., the employer must attempt to make

151 reasonable accommodations for the medical needs of an employee
152 who engages in the use of medical marijuana if the employee
153 holds a valid medical marijuana use identification card, unless
154 the employer can demonstrate that the accommodation would pose a
155 threat of harm or danger to persons or property, impose an undue
156 hardship on the employer, or prohibit an employee from
157 fulfilling his or her job responsibilities.

158 2. Prohibit a law enforcement agency from adopting
159 policies and procedures that preclude an employee from engaging
160 in the use of medical marijuana.

161 Section 2. Section 448.111, Florida Statutes, is created
162 to read:

163 448.111 Medical Marijuana Employee Protection Act.—

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

165 (a) "Adverse personnel action" means the refusal to hire
166 or employ a qualified patient; the discharge, suspension,
167 transfer, or demotion of qualified patient; the mandatory
168 retirement of a qualified patient; or the discrimination of a
169 qualified patient with respect to compensation, terms,
170 conditions, or privileges of employment.

171 (b) "Employee" has the same meaning as in s. 448.101.

172 (c) "Employer" means a private individual, firm,
173 partnership, institution, corporation, or association that
174 employs individuals for salary, wages, or other remuneration.

175 (d) "Job applicant" has the same meaning as in s. 440.102.

176 (e) "Law enforcement agency" has the same meaning as in s.
 177 908.102.

178 (f) "Physician certification" has the same meaning as in
 179 s. 381.986.

180 (g) "Qualified patient" has the same meaning as in s.
 181 381.986.

182 (h) "Safety-sensitive" means tasks or duties of a job that
 183 the employer reasonably believes could affect the safety and
 184 health of the employee performing the tasks or duties or other
 185 persons, including, but not limited to, any of the following:

186 1. The handling, packaging, processing, storage, disposal,
 187 or transport of hazardous materials.

188 2. The operation of a motor vehicle, equipment, machinery,
 189 or power tools.

190 3. The repair, maintenance, or monitoring of any
 191 equipment, machinery, or manufacturing process, the malfunction
 192 or disruption of which could result in injury or property
 193 damage.

194 4. The performance of firefighting duties.

195 5. The operation, maintenance, or oversight of critical
 196 services and infrastructure including, but not limited to,
 197 electric, gas, and water utilities or power generation or
 198 distribution.

199 6. The extraction, compression, processing, manufacturing,
 200 handling, packaging, storage, disposal, treatment, or transport

201 of potentially volatile, flammable, combustible materials,
202 elements, chemicals, or any other highly regulated component.

203 7. The dispensing of pharmaceuticals.

204 8. The carrying of a firearm.

205 9. The direct care of a patient or child.

206 (i) "Undue hardship" means an action requiring significant
207 difficulty or expense, when considered in light of the following
208 factors:

209 1. The nature, cost, and duration of the accommodation.

210 2. The overall financial resources of the employer.

211 3. The overall size of the business of the employer with
212 respect to the number of employees and the number, type, and
213 location of the employer's facilities.

214 4. The effect on expenses and resources or any other
215 impacts of such accommodation upon the operation of the
216 employer.

217 (2) An employer may not take adverse personnel action
218 against an employee or job applicant who is a qualified patient
219 using medical marijuana consistent with s. 381.986, unless the
220 position held by the employee or sought by the job applicant is
221 one involving safety-sensitive job duties. However, an employer
222 may take appropriate adverse personnel action against any
223 employee if the employer establishes by a preponderance of the
224 evidence that the lawful use of medical marijuana is impairing
225 the employee's ability to perform his or her job

226 responsibilities. For purposes of this subsection, an employer
227 may consider an employee's ability to perform his or her job
228 responsibilities to be impaired if the employee displays
229 specific articulable symptoms while working that decrease or
230 lessen the performance of his or her duties or tasks.

231 (3) (a) If an employer has a drug testing policy and an
232 employee or job applicant tests positive for marijuana or its
233 metabolites, the employer must provide written notice within 5
234 business days after receipt of the positive test result to the
235 employee or job applicant of his or her right to provide an
236 explanation for the positive test result.

237 (b) Within 5 business days after receipt of the written
238 notice, the employee or job applicant may submit information to
239 an employer explaining or contesting the positive test result or
240 may request a confirmed test, as defined in s. 440.102, at the
241 expense of the employee or job applicant.

242 (c) An employee or job applicant may submit a physician
243 certification for medical marijuana or a medical marijuana use
244 registry identification card as part of his or her explanation
245 for the positive test result.

246 (d) If an employee or job applicant fails to provide a
247 satisfactory explanation for the positive test result, an
248 employer must verify the positive test result with a
249 confirmation test, at the expense of the employer, before the
250 employer may take adverse personnel action against the employee

251 or job applicant.

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

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

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

263 1. An injunction restraining continued violation of this
 264 section.

265 2. Reinstatement of the employee to the same position held
 266 before the adverse personnel action, or to an equivalent
 267 position.

268 3. Reinstatement of full fringe benefits and seniority
 269 rights.

270 4. Compensation for lost wages, benefits, and other
 271 remuneration.

272 5. Reasonable attorney fees and costs.

273 6. Any other compensatory damages allowable by general
 274 law.

275 (5) This section does not:

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

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

285 (c)1. Require an employer to modify the job or working
286 conditions of a person who engages in the use of medical
287 marijuana based on the reasonable business purposes of the
288 employer. However, notwithstanding s. 381.986(15) and except as
289 provided in subparagraph 2., the employer must attempt to make
290 reasonable accommodations for the medical needs of an employee
291 who engages in the use of medical marijuana if the employee
292 holds a valid medical marijuana use identification card, unless
293 the employer can demonstrate that the accommodation would pose a
294 threat of harm or danger to persons or property, impose an undue
295 hardship on the employer, or prohibit an employee from
296 fulfilling his or her job responsibilities.

297 2. Prohibit a law enforcement agency from adopting
298 policies and procedures that preclude an employee from engaging
299 in the use of medical marijuana.

300 Section 3. This act shall take effect upon becoming a law.