By Senator Berman

A bill to be entitled

An act relating to medical marijuana employee protection; creating ss. 112.219 and 448.111, F.S.; providing definitions; prohibiting an employer from taking adverse personnel action against an employee or job applicant who is a qualified patient using medical marijuana; providing exceptions; requiring an employer to provide written notice to an employee or job applicant who tests positive for marijuana of his or her right to explain the positive test result; providing procedures when an employee or job applicant tests positive for marijuana; providing a cause of action and damages; providing construction; providing an effective date.

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

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 the discrimination of a qualified patient with respect to compensation, terms, conditions, or privileges of employment.
(b) “Employee” has the same meaning as in s. 112.0455.
(c) “Employer” means a state, regional, county, local, or

CODING: Words stricken are deletions; words underlined are additions.
municipal government entity, whether executive, judicial, or legislative; an official, officer, department, division, bureau, commission, authority, or political subdivision therein; or a public school, community college, or state university that employs individuals for salary, wages, or other remuneration.

(d) “Job applicant” has the same meaning as in s. 112.0455.

(e) “Law enforcement agency” has the same meaning as in s. 908.102.

(f) “Physician certification” has the same meaning as in s. 381.986.

(g) “Qualified patient” has the same meaning as in s. 381.986.

(h) “Safety-sensitive” means tasks or duties of a job which the employer reasonably believes could affect the safety and health of the employee performing the tasks or duties or other persons, including, but not limited to, any of the following:

1. The handling, packaging, processing, storage, disposal, or transport of hazardous materials.
2. The operation of a motor vehicle, equipment, machinery, or power tools.
3. The repair, maintenance, or monitoring of any equipment, machinery, or manufacturing process, the malfunction or disruption of which could result in injury or property damage.
4. The performance of firefighting duties.
5. The operation, maintenance, or oversight of critical services and infrastructure, including, but not limited to, electric, gas, and water utilities or power generation or distribution.
6. The extraction, compression, processing, manufacturing,
handling, packaging, storage, disposal, treatment, or transport
of potentially volatile, flammable, combustible materials,
elements, chemicals, or any other highly regulated component.

7. The dispensing of pharmaceuticals.
8. The carrying of a firearm.
9. The direct care of a patient or child.

(i) “Undue hardship” means an action requiring significant
difficulty or expense, when considered in light of the following
factors:
1. The nature, cost, and duration of the accommodation.
2. The overall financial resources of the employer.
3. The overall size of the business of the employer with
respect to the number of employees and the number, type, and
location of the employer’s facilities.
4. The effect on expenses and resources or any other
impacts of such accommodation upon the operation of the
employer.

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

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

(b) Within 5 business days after receipt of the written notice, the employee or job applicant may submit information to an employer explaining or contesting the positive test result or may request a confirmation test, as defined in s. 112.0455, at the expense of the employee or job applicant.

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

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

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

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

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

1. An injunction restraining continued violation of this section.

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

3. Reinstatement of full fringe benefits and seniority rights.

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

5. Reasonable attorney fees and costs.

6. Any other compensatory damages allowable by general law.

(5) This section does not:

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

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

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

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

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

448.111 Medical Marijuana 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 the discrimination of a qualified patient with respect to compensation, terms, conditions, or privileges of employment.
(b) “Employee” has the same meaning as in s. 448.101.
(c) “Employer” means a private individual, firm, partnership, institution, corporation, or association that employs individuals for salary, wages, or other remuneration.
(d) “Job applicant” has the same meaning as in s. 440.102.
(e) “Law enforcement agency” has the same meaning as in s. 908.102.
(f) “Physician certification” has the same meaning as in s. 381.986.

(g) “Qualified patient” has the same meaning as in s. 381.986.

(h) “Safety-sensitive” means tasks or duties of a job which the employer reasonably believes could affect the safety and health of the employee performing the tasks or duties or other persons, including, but not limited to, any of the following:

1. The handling, packaging, processing, storage, disposal, or transport of hazardous materials.
2. The operation of a motor vehicle, equipment, machinery, or power tools.
3. The repair, maintenance, or monitoring of any equipment, machinery, or manufacturing process, the malfunction or disruption of which could result in injury or property damage.
4. The performance of firefighting duties.
5. The operation, maintenance, or oversight of critical services and infrastructure, including, but not limited to, electric, gas, and water utilities or power generation or distribution.
6. The extraction, compression, processing, manufacturing, handling, packaging, storage, disposal, treatment, or transport of potentially volatile, flammable, combustible materials, elements, chemicals, or any other highly regulated component.
7. The dispensing of pharmaceuticals.
8. The carrying of a firearm.
9. The direct care of a patient or child.

(i) “Undue hardship” means an action requiring significant difficulty or expense, when considered in light of the following
1. The nature, cost, and duration of the accommodation.
2. The overall financial resources of the employer.
3. The overall size of the business of the employer with respect to the number of employees and the number, type, and location of the employer’s facilities.
4. The effect on expenses and resources or any other impacts of such accommodation upon the operation of the employer.

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

(3) (a) If an employer has a drug testing policy and an employee or a job applicant tests positive for marijuana or its metabolites, the employer must provide written notice within 5 business days after receipt of the positive test result to the employee or job applicant of his or her right to provide an explanation for the positive test result.
(b) Within 5 business days after receipt of the written notice, the employee or job applicant may submit information to an employer explaining or contesting the positive test result or may request a confirmation test, as defined in s. 440.102, at the expense of the employee or job applicant.

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

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

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

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

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

1. An injunction restraining continued violation of this section.

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

  3. Reinstatement of full fringe benefits and seniority
rights.

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

  5. Reasonable attorney fees and costs.

  6. Any other compensatory damages allowable by general law.

(5) This section does not:

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

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

  (c) 1. Require an employer to modify the job or working
conditions of a person who engages in the use of medical
marijuana based on the reasonable business purposes of the
employer. However, notwithstanding s. 381.986(15) and except as
provided in subparagraph 2., the employer must attempt to make
reasonable accommodations for the medical needs of an employee
who engages in the use of medical marijuana if the employee
holds a valid medical marijuana use identification card, unless
the employer can demonstrate that the accommodation would pose a
threat of harm or danger to persons or property, impose an undue
hardship on the employer, or prohibit an employee from
291 fulfilling his or her job responsibilities.
292 2. Prohibit a law enforcement agency from adopting policies
293 and procedures that preclude an employee from engaging in the
294 use of medical marijuana.
295 Section 3. This act shall take effect upon becoming a law.