

By Senator Powell

30-01587A-21

20211820\_\_

1                                   A bill to be entitled  
2       An act relating to medical use of marijuana; creating  
3       s. 112.219, F.S.; defining terms; prohibiting an  
4       employer from taking adverse personnel action against  
5       an employee or a job applicant who is a qualified  
6       patient for his or her lawful use of medical  
7       marijuana; providing exceptions; requiring an employer  
8       to provide written notice of an employee's or job  
9       applicant's right to explain a positive marijuana test  
10      result within a specified timeframe; providing  
11      procedures for when an employee or job applicant tests  
12      positive for marijuana; providing for a cause of  
13      action and damages; providing construction; amending  
14      s. 381.986, F.S.; deleting a requirement that certain  
15      qualified physician examinations and assessments of a  
16      qualified patient be conducted while physically  
17      present in the same room as the qualified patient;  
18      authorizing certain research institutes and state  
19      universities to grow marijuana for research purposes;  
20      authorizing certain third-party entities to grow,  
21      possess, test, transport, and lawfully dispose of  
22      marijuana for research purposes; providing that  
23      certain nonresident qualified patient or caregiver  
24      identification cards have the same force and effect as  
25      those issued in this state; specifying requirements  
26      for a nonresident patient or caregiver to be  
27      registered in the medical marijuana use registry;  
28      requiring the Department of Health to immediately  
29      register a patient or caregiver in the registry if

30-01587A-21

20211820\_\_

30 they meet such requirements; requiring the department  
31 to revoke the registration under certain  
32 circumstances; requiring the department to adopt rules  
33 by a specified date; creating s. 381.9885, F.S.;  
34 establishing the Medical Marijuana Testing Advisory  
35 Council within the department for a specified purpose;  
36 providing for membership, meetings, and duties of the  
37 council; requiring the council to submit annual  
38 reports to the Governor and the Legislature by a  
39 specified date; amending s. 456.47, F.S.; authorizing  
40 telehealth providers to prescribe controlled  
41 substances to qualified patients through telehealth  
42 under certain circumstances; providing an effective  
43 date.

44  
45 Be It Enacted by the Legislature of the State of Florida:

46  
47 Section 1. Section 112.219, Florida Statutes, is created to  
48 read:

49 112.219 Medical Marijuana Public Employee Protection Act.-

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

51 (a) "Adverse personnel action" means the refusal to hire or  
52 employ a qualified patient; the discharge, suspension, transfer,  
53 or demotion of a qualified patient; the mandatory retirement of  
54 a qualified patient; or discrimination against a qualified  
55 patient with respect to compensation, terms, conditions, or  
56 privileges of employment.

57 (b) "Employee" has the same meaning as in s.  
58 112.0455(5)(g).

30-01587A-21

20211820\_\_

59       (c) "Employer" means a state, regional, county, local, or  
60 municipal government entity, whether executive, judicial, or  
61 legislative; an official, an officer, a department, a division,  
62 a bureau, a commission, an authority, or a political subdivision  
63 thereof; or a public school, community college, or state  
64 university that employs individuals for salary, wages, or other  
65 remuneration.

66       (d) "Job applicant" has the same meaning as in s.  
67 112.0455(5)(f).

68       (e) "Law enforcement agency" has the same meaning as in s.  
69 908.102.

70       (f) "Physician certification" has the same meaning as in s.  
71 381.986.

72       (g) "Qualified patient" has the same meaning as in s.  
73 381.986.

74       (h) "Undue hardship" means an action that involves  
75 significant difficulty or expense, when considered in light of  
76 the following factors:

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

78           2. The overall financial resources of the employer.

79           3. The overall size of the employer's business with respect  
80 to the number of employees and the number, type, and location of  
81 the employer's facilities.

82           4. The effect on expenses and resources or any other  
83 impacts of such accommodation upon the operation of the  
84 employer's business.

85       (2) An employer may not take adverse personnel action  
86 against an employee or a job applicant who is a qualified  
87 patient for his or her use of medical marijuana consistent with

30-01587A-21

20211820\_\_

88 s. 381.986. However, an employer may take appropriate adverse  
89 personnel action against an employee if the employer establishes  
90 by a preponderance of the evidence that the lawful use of  
91 medical marijuana is impairing the employee's ability to perform  
92 his or her job responsibilities. For purposes of this  
93 subsection, an employer may consider an employee's ability to  
94 perform his or her job responsibilities to be impaired if the  
95 employee displays specific articulable symptoms while working  
96 which decrease or lessen the performance of his or her duties or  
97 tasks.

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

104 (b) Within 5 business days after receipt of the written  
105 notice, the employee or job applicant may submit information to  
106 the employer explaining or contesting the positive test result  
107 or may request a confirmation test, as defined in s.  
108 112.0455(5) (d), at the expense of the employee or job applicant.

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

113 (d) If an employee or a job applicant fails to provide a  
114 satisfactory explanation for the positive test result, an  
115 employer must verify the positive test result with a  
116 confirmation test, at the expense of the employer, before the

30-01587A-21

20211820\_\_

117 employer may take adverse personnel action against the employee  
118 or job applicant.

119 (4) (a) Notwithstanding s. 381.986(16), an employee or a job  
120 applicant who has been the subject of an adverse personnel  
121 action in violation of this section may institute a civil action  
122 in a court of competent jurisdiction for relief as set forth in  
123 paragraph (c) within 180 days after the alleged violation.

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

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

131 1. An injunction against continued violation of this  
132 section.

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

136 3. Reinstatement of full fringe benefits and seniority  
137 rights.

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

140 5. Reasonable attorney fees and costs.

141 6. Any other compensatory damages allowable by general law.

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

143 (a) Prohibit an employer from taking adverse personnel  
144 action against an employee for the possession or use of a  
145 controlled substance, as defined in s. 893.02, during normal

30-01587A-21

20211820\_\_

146 business hours or require an employer to commit any act that  
147 would cause the employer to violate federal law or that would  
148 result in the loss of a federal contract or federal funding.

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

152 (c) Require an employer to modify the job or working  
153 conditions of a person who engages in the use of medical  
154 marijuana, based on the reasonable business purposes of the  
155 employer. However, notwithstanding s. 381.986(16) and except as  
156 provided in paragraph (d), the employer must attempt to make  
157 reasonable accommodations for the medical needs of an employee  
158 who engages in the use of medical marijuana if the employee  
159 holds a valid medical marijuana use identification card, unless  
160 the employer can demonstrate that the accommodation would pose a  
161 threat of harm or danger to persons or property, impose an undue  
162 hardship on the employer, or prohibit an employee from  
163 fulfilling his or her job responsibilities.

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

167 Section 2. Present subsections (15) through (17) of section  
168 381.986, Florida Statutes, are redesignated as subsections (16)  
169 through (18), respectively, a new subsection (15) is added to  
170 that section, and paragraph (a) of subsection (4) and paragraph  
171 (h) of subsection (14) of that section are amended, to read:

172 381.986 Medical use of marijuana.—

173 (4) PHYSICIAN CERTIFICATION.—

174 (a) A qualified physician may issue a physician

30-01587A-21

20211820\_\_

175 certification only if the qualified physician:

176 1. Conducted an ~~a physical~~ examination ~~while physically~~  
177 ~~present in the same room as the patient~~ and a full assessment of  
178 the medical history of the patient.

179 2. Diagnosed the patient with at least one qualifying  
180 medical condition.

181 3. Determined that the medical use of marijuana would  
182 likely outweigh the potential health risks for the patient, and  
183 such determination must be documented in the patient's medical  
184 record. If a patient is younger than 18 years of age, a second  
185 physician must concur with this determination, and such  
186 concurrence must be documented in the patient's medical record.

187 4. Determined whether the patient is pregnant and  
188 documented such determination in the patient's medical record. A  
189 physician may not issue a physician certification, except for  
190 low-THC cannabis, to a patient who is pregnant.

191 5. Reviewed the patient's controlled drug prescription  
192 history in the prescription drug monitoring program database  
193 established pursuant to s. 893.055.

194 6. Reviews the medical marijuana use registry and confirmed  
195 that the patient does not have an active physician certification  
196 from another qualified physician.

197 7. Registers as the issuer of the physician certification  
198 for the named qualified patient on the medical marijuana use  
199 registry in an electronic manner determined by the department,  
200 and:

201 a. Enters into the registry the contents of the physician  
202 certification, including the patient's qualifying condition and  
203 the dosage not to exceed the daily dose amount determined by the

30-01587A-21

20211820\_\_

204 department, the amount and forms of marijuana authorized for the  
205 patient, and any types of marijuana delivery devices needed by  
206 the patient for the medical use of marijuana.

207 b. Updates the registry within 7 days after any change is  
208 made to the original physician certification to reflect such  
209 change.

210 c. Deactivates the registration of the qualified patient  
211 and the patient's caregiver when the physician no longer  
212 recommends the medical use of marijuana for the patient.

213 8. Obtains the voluntary and informed written consent of  
214 the patient for medical use of marijuana each time the qualified  
215 physician issues a physician certification for the patient,  
216 which shall be maintained in the patient's medical record. The  
217 patient, or the patient's parent or legal guardian if the  
218 patient is a minor, must sign the informed consent acknowledging  
219 that the qualified physician has sufficiently explained its  
220 content. The qualified physician must use a standardized  
221 informed consent form adopted in rule by the Board of Medicine  
222 and the Board of Osteopathic Medicine, which must include, at a  
223 minimum, information related to:

224 a. The Federal Government's classification of marijuana as  
225 a Schedule I controlled substance.

226 b. The approval and oversight status of marijuana by the  
227 Food and Drug Administration.

228 c. The current state of research on the efficacy of  
229 marijuana to treat the qualifying conditions set forth in this  
230 section.

231 d. The potential for addiction.

232 e. The potential effect that marijuana may have on a



30-01587A-21

20211820\_\_

233 patient's coordination, motor skills, and cognition, including a  
234 warning against operating heavy machinery, operating a motor  
235 vehicle, or engaging in activities that require a person to be  
236 alert or respond quickly.

237 f. The potential side effects of marijuana use, including  
238 the negative health risks associated with smoking marijuana.

239 g. The risks, benefits, and drug interactions of marijuana.

240 h. That the patient's de-identified health information  
241 contained in the physician certification and medical marijuana  
242 use registry may be used for research purposes.

243 (14) EXCEPTIONS TO OTHER LAWS.—

244 (h) Notwithstanding s. 893.13, s. 893.135, s. 893.147, or  
245 any other provision of law, but subject to the requirements of  
246 this section, a research institute established by a public  
247 postsecondary educational institution, such as the H. Lee  
248 Moffitt Cancer Center and Research Institute, Inc., established  
249 under s. 1004.43; ~~or~~ a state university that has achieved the  
250 preeminent state research university designation under s.  
251 1001.7065; or a third-party entity that is licensed by the  
252 federal Drug Enforcement Administration and is under contract  
253 with such a research institute or state university may grow,  
254 possess, test, transport, and lawfully dispose of marijuana for  
255 research purposes as provided by this section.

256 (15) RECIPROCITY.—

257 (a) Notwithstanding any law to the contrary, but subject to  
258 the requirements of this subsection, a qualified patient  
259 identification card or a caregiver identification card, or the  
260 equivalent of either, issued under the laws of another state, a  
261 United States territory, or the District of Columbia which

30-01587A-21

20211820\_\_

262 authorizes a nonresident patient or caregiver to receive  
263 marijuana or a marijuana delivery device for medical use by the  
264 nonresident patient with a qualifying medical condition or which  
265 authorizes a person to assist with the medical use of marijuana  
266 by the nonresident patient has the same force and effect as a  
267 medical marijuana use registry identification card issued by the  
268 department under this section.

269 (b) To be registered in the medical marijuana use registry,  
270 a nonresident qualified patient or caregiver must provide to the  
271 department a physician certification or its equivalent issued  
272 under the laws of another state, a United States territory, or  
273 the District of Columbia which meets all of the following  
274 criteria:

275 1. The certification is issued by a physician who is  
276 licensed to practice medicine in the jurisdiction where the  
277 patient resides and who examined the patient and determined that  
278 the patient has a qualifying condition for the medical use of  
279 marijuana.

280 2. The certification specifies the amount and type of  
281 marijuana or the type of marijuana delivery device the patient  
282 is authorized to use.

283 (c) The department shall immediately register a nonresident  
284 patient or caregiver who meets the requirements of paragraph (b)  
285 in the medical marijuana use registry. The department shall  
286 revoke the registration of a nonresident patient or caregiver  
287 upon notification that the nonresident patient no longer has a  
288 physician certification that meets the criteria of paragraph  
289 (b).

290 (d) By January 1, 2022, the department shall adopt rules to

30-01587A-21

20211820\_\_

291 implement this section.

292 Section 3. Section 381.9885, Florida Statutes, is created  
293 to read:

294 381.9885 Medical Marijuana Testing Advisory Council.-

295 (1) The Medical Marijuana Testing Advisory Council, an  
296 advisory council as defined in s. 20.03(7), is established  
297 within the Department of Health to advise the department on its  
298 adoption and ongoing evaluations of marijuana testing policies  
299 and standards. The council is adjunct to the department for  
300 administrative purposes.

301 (2) (a) The council shall be composed of all of the  
302 following members:

303 1. The State Surgeon General or his or her designee.

304 2. Two members appointed by the Commissioner of  
305 Agriculture.

306 3. Two members appointed by the Governor.

307 4. Two members appointed by the President of the Senate.

308 5. Two members appointed by the Speaker of the House of  
309 Representatives.

310 6. The dean of research of the University of Florida  
311 Institute of Food and Agricultural Sciences or his or her  
312 designee.

313 7. The president of Florida Agricultural and Mechanical  
314 University or his or her designee.

315 8. The president or executive director of a statewide  
316 marijuana testing association or his or her designee.

317 9. The president or executive director of a medical  
318 marijuana trade association that does not primarily consist of  
319 owners of marijuana dispensaries or marijuana laboratory testing

30-01587A-21

20211820\_\_

320 facilities or his or her designee.

321 10. One board member of a medical marijuana treatment  
322 center licensed in this state.

323 11. One owner of a medical marijuana testing laboratory  
324 certified in this state.

325 12. One laboratory scientist who holds a doctoral degree in  
326 a related field and who has at least 3 years of experience in  
327 marijuana laboratory testing.

328 13. One qualified patient, as defined in s. 381.986,  
329 appointed by the Governor.

330 (b) The council shall annually elect by a two-thirds vote  
331 one of the members of the council to serve as the chair.

332 (c) Members shall serve without compensation but are  
333 entitled to reimbursement for per diem and travel expenses as  
334 provided in s. 112.061.

335 (3) (a) The council shall hold its first meeting by October  
336 1, 2021, and shall meet as often as necessary, but at least  
337 three times each calendar year, upon the call of the chair.

338 (b) The council meetings may be held via teleconference or  
339 other electronic means.

340 (c) A majority of the council members constitutes a quorum.

341 (4) The council shall make recommendations to the  
342 department for its rules relating to marijuana testing  
343 laboratories under s. 381.988(3), taking into consideration  
344 input from stakeholders and any technological and scientific  
345 advancements that, if implemented, would improve the safety and  
346 effectiveness of marijuana testing standards in this state.

347 (5) By January 1 of each year, the council shall submit a  
348 report of its findings and recommendations to the Governor, the

30-01587A-21

20211820\_\_

349 President of the Senate, and the Speaker of the House of  
350 Representatives.

351 Section 4. Paragraph (c) of subsection (2) of section  
352 456.47, Florida Statutes, is amended to read:

353 456.47 Use of telehealth to provide services.—

354 (2) PRACTICE STANDARDS.—

355 (c) A telehealth provider may not use telehealth to  
356 prescribe a controlled substance unless the controlled substance  
357 is prescribed for any of the following:

358 1. The treatment of a psychiatric disorder .†

359 2. Inpatient treatment at a hospital licensed under chapter  
360 395 .†

361 3. The treatment of a patient receiving hospice services as  
362 defined in s. 400.601 .† ~~or~~

363 4. The treatment of a resident of a nursing home facility  
364 as defined in s. 400.021.

365 5. The treatment of a qualified patient as defined in s.  
366 381.986.

367 Section 5. This act shall take effect upon becoming a law.