

Amendment No.

CHAMBER ACTION

Senate

House

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Representative Learned offered the following:

**Amendment to Amendment (816737) (with title amendment)**

Between lines 4 and 5, insert:

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 discrimination against a qualified patient with respect to compensation, terms,

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14 conditions, or privileges of employment.

15 (b) "Employee" has the same meaning as in s.  
16 112.0455(5)(g).

17 (c) "Employer" means a state, regional, county, local, or  
18 municipal government entity, whether executive, judicial, or  
19 legislative; an official, an officer, a department, a division,  
20 a bureau, a commission, an authority, or a political subdivision  
21 therein; or a public school, community college, or state  
22 university that employs individuals for salary, wages, or other  
23 remuneration.

24 (d) "Job applicant" has the same meaning as in s.  
25 112.0455(5)(f).

26 (e) "Law enforcement agency" has the same meaning as in s.  
27 908.102.

28 (f) "Physician certification" has the same meaning as in  
29 s. 381.986(1).

30 (g) "Qualified patient" has the same meaning as in s.  
31 381.986(1).

32 (h) "Undue hardship" means an action requiring significant  
33 difficulty or expense, when considered in light of the following  
34 factors:

- 35 1. The nature, cost, and duration of the accommodation.  
36 2. The overall financial resources of the employer.  
37 3. The overall size of the business of the employer with  
38 respect to the number of employees and the number, type, and

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39 location of the employer's facilities.

40 4. The effect on expenses and resources or any other  
41 impacts of such accommodation upon the operation of the  
42 employer.

43 (2) An employer may not take adverse personnel action  
44 against an employee or a job applicant who is a qualified  
45 patient using medical marijuana consistent with s. 381.986.  
46 However, an employer may take appropriate adverse personnel  
47 action against any employee if the employer establishes by a  
48 preponderance of the evidence that the lawful use of medical  
49 marijuana is impairing the employee's ability to perform his or  
50 her job responsibilities. For purposes of this subsection, an  
51 employer may consider an employee's ability to perform his or  
52 her job responsibilities to be impaired if the employee displays  
53 specific articulable symptoms while working which decrease or  
54 lessen the performance of his or her duties or tasks.

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

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

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64 may request a confirmation test, as defined in s.  
65 112.0455(5)(d), at the expense of the employee or job applicant.

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

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

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

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

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

87 1. An injunction restraining continued violation of this  
88 section.

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

92 3. Reinstatement of full fringe benefits and seniority  
93 rights.

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

96 5. Reasonable attorney fees and costs.

97 6. Any other compensatory damages allowable by general  
98 law.

99 (5) This section does not:

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

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

109 (c) Require an employer to modify the job or working  
110 conditions of a person who engages in the use of medical  
111 marijuana based on the reasonable business purposes of the  
112 employer. However, notwithstanding s. 381.986 and except as  
113 provided in paragraph (d), the employer must attempt to make

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114 reasonable accommodations for the medical needs of an employee  
 115 who engages in the use of medical marijuana if the employee  
 116 holds a valid medical marijuana use identification card, unless  
 117 the employer can demonstrate that the accommodation would pose a  
 118 threat of harm or danger to persons or property, impose an undue  
 119 hardship on the employer, or prohibit an employee from  
 120 fulfilling his or her job responsibilities; or  
 121 (d) Prohibit a law enforcement agency from adopting  
 122 policies and procedures that preclude an employee from engaging  
 123 in the use of medical marijuana.

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**T I T L E   A M E N D M E N T**

127 Remove line 1800 and insert:  
 128 An act relating to the Department of Health; creating  
 129 s. 112.219, F.S.; providing definitions; prohibiting  
 130 an employer from taking adverse personnel action  
 131 against an employee or a job applicant who is a  
 132 qualified patient using medical marijuana; providing  
 133 exceptions; requiring an employer to provide written  
 134 notice of an employee or job applicant's right to  
 135 explain a positive marijuana test result within a  
 136 specified timeframe; providing procedures when an  
 137 employee or job applicant tests positive for

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138 | marijuana; providing a cause of action and damages;  
139 | providing construction; amending

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