



26 retirement of a qualified patient; or discrimination against a  
27 qualified patient with respect to compensation, terms,  
28 conditions, or privileges of employment.

29 (b) "Job applicant" means a person who has applied for a  
30 position with a public employer and has been offered employment  
31 conditioned upon his or her passing a drug test.

32 (c) "Law enforcement agency" has the same meaning as in s.  
33 908.102.

34 (d) "Physician certification" has the same meaning as in  
35 s. 381.986.

36 (e) "Public employee" or "employee" means an employee of a  
37 public employer.

38 (f) "Public employer" or "employer" means a state,  
39 regional, county, local, or municipal governmental entity,  
40 whether executive, judicial, or legislative; an official, an  
41 officer, a department, a division, a bureau, a commission, an  
42 authority, or a political subdivision of such entity; or a  
43 public school, a Florida College System institution, or a state  
44 university that employs individuals for salary, wages, or other  
45 remuneration.

46 (g) "Qualified patient" has the same meaning as in s.  
47 381.986.

48 (h) "Undue hardship" means an action requiring significant  
49 difficulty or expense, when considered in light of all of the  
50 following factors:

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

52 2. The overall financial resources of the public employer.

53 3. The overall size of the business of the public employer  
54 with respect to the number of employees and the number, type,  
55 and location of the public employer's facilities.

56 4. The effect on expenses and resources or any other  
57 impacts of such accommodation upon the operation of the public  
58 employer.

59 (2) A public employer may not take adverse personnel  
60 action against an employee or a job applicant who is a qualified  
61 patient for his or her use of medical marijuana consistent with  
62 s. 381.986. However, a public employer may take appropriate  
63 adverse personnel action against an employee if the public  
64 employer establishes by a preponderance of the evidence that the  
65 lawful use of medical marijuana is impairing the employee's  
66 ability to perform his or her job duties or responsibilities.  
67 For purposes of this subsection, a public employer may consider  
68 an employee's ability to perform his or her job duties or  
69 responsibilities to be impaired if the employee displays  
70 specific articulable symptoms while working which adversely  
71 affect the performance of his or her duties or responsibilities.

72 (3)(a) If a public employer has a drug testing policy and  
73 an employee or a job applicant tests positive for marijuana or  
74 its metabolites, the employer must provide written notice within  
75 5 business days after receipt of the positive test result to the

76 employee or job applicant of his or her right to provide an  
77 explanation for the positive test result.

78 (b) Within 5 business days after receipt of the written  
79 notice, the employee or job applicant may submit information to  
80 his or her employer explaining or contesting the positive test  
81 result or may request a confirmation test, as defined in s.  
82 112.0455(5)(d), at the expense of the employee or job applicant.

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

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

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

99 (b) A public employee or a job applicant may not recover  
100 in any action brought under this subsection if the adverse

101 personnel action was predicated upon a ground other than his or  
102 her exercise of a right protected by this section.

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

105 1. An injunction restraining continued violation of this  
106 section.

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

110 3. Reinstatement of full fringe benefits and seniority  
111 rights.

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

114 5. Reasonable attorney fees and costs.

115 6. Any other compensatory damages allowed by general law.

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

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

124 (b) Require a governmental medical assistance program or  
125 private health insurer to reimburse a person for costs

HB 1065

2023

126 associated with his or her use of medical marijuana.

127 (c) Require a public employer to modify the job or working  
128 conditions of a person who engages in the use of medical  
129 marijuana based on the reasonable business purposes of the  
130 employer. However, notwithstanding s. 381.986(15) and except as  
131 provided in paragraph (d), such employer shall attempt to make  
132 reasonable accommodations for the medical needs of an employee  
133 who engages in the use of medical marijuana if the employee  
134 holds a valid medical marijuana use identification card, unless  
135 the employer can demonstrate that the accommodation would pose a  
136 threat of harm or danger to persons or property, impose an undue  
137 hardship on the employer, or prevent an employee from fulfilling  
138 his or her job responsibilities.

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

142 Section 2. This act shall take effect upon becoming a law.