

1 A bill to be entitled
 2 An act relating to protections for public employees
 3 who use medical marijuana as qualified patients;
 4 creating s. 112.0556, F.S.; defining terms;
 5 prohibiting a public employer from taking adverse
 6 personnel action against an employee or a job
 7 applicant for his or her use of medical marijuana if
 8 the employee or job applicant is a qualified patient;
 9 providing exceptions; requiring a public employer to
 10 provide written notice of an employee's or a job
 11 applicant's right to explain or contest a positive
 12 marijuana test result within a specified timeframe;
 13 providing procedures that apply when an employee or a
 14 job applicant tests positive for marijuana; providing
 15 a cause of action and damages; providing construction;
 16 providing an effective date.

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

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 20 **Section 1. Section 112.0556, Florida Statutes, is created**
 21 **to read:**

22 112.0556 Medical Marijuana Public Employee Protection
 23 Act.—

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

25 (a) "Adverse personnel action" means the refusal to hire

26 | or employ a qualified patient; the discharge, suspension,
 27 | transfer, or demotion of a qualified patient; the mandatory
 28 | retirement of a qualified patient; or the discrimination against
 29 | a qualified patient with respect to compensation, terms,
 30 | conditions, or privileges of employment.

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

34 | (c) "Law enforcement agency" has the same meaning as in s.
 35 | 908.102.

36 | (d) "Physician certification" has the same meaning as in
 37 | s. 381.986(1).

38 | (e) "Public employee" or "employee" means an employee of a
 39 | public employer.

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

48 | (g) "Qualified patient" has the same meaning as in s.
 49 | 381.986(1).

50 | (h) "Undue hardship" means an action requiring significant

51 difficulty or expense, when considered in light of all of the
52 following factors:

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

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

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

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

61 (2) (a) Except as provided in paragraph (b), a public
62 employer may not take adverse personnel action against an
63 employee or a job applicant for his or her use of medical
64 marijuana if the employee or job applicant is a qualified
65 patient under s. 381.986.

66 (b) A public employer may take appropriate adverse
67 personnel action against an employee if the public employer
68 establishes by a preponderance of the evidence that the lawful
69 use of medical marijuana is impairing the employee's ability to
70 perform his or her job duties or responsibilities.

71 (c) For purposes of this subsection, a public employer may
72 consider an employee's ability to perform his or her job duties
73 or responsibilities to be impaired if the employee displays
74 specific, articulable symptoms while working which adversely
75 affect the performance of his or her duties or responsibilities.

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

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

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

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

98 (4) (a) Notwithstanding s. 381.986(15), a public employee
99 or a job applicant who has been the subject of an adverse
100 personnel action in violation of this section may institute a

101 civil action in a court of competent jurisdiction for relief as
102 set forth in paragraph (c) within 180 days after the alleged
103 violation.

104 (b) A public employee or a job applicant may not recover
105 in any action brought under this subsection if the adverse
106 personnel action was predicated upon a ground other than his or
107 her exercise of a right protected by this section.

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

110 1. An injunction restraining continued violation of this
111 section.

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

115 3. Reinstatement of full fringe benefits and seniority
116 rights.

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

119 5. Reasonable attorney fees and costs.

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

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

122 (a) Prohibit a public employer from taking adverse
123 personnel action against an employee for the possession or use
124 of a controlled substance, as defined in s. 893.02(4), during
125 normal business hours or require an employer to commit any act

126 that would cause the employer to violate federal law or that
127 would result in the loss of a federal contract or federal
128 funding.

129 (b) Require a governmental medical assistance program or
130 private health insurer to reimburse a person for costs
131 associated with his or her use of medical marijuana.

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

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

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