

1 A bill to be entitled
2 An act relating to the regulation of the medical use
3 of marijuana; creating s. 112.219, F.S.; providing
4 definitions; prohibiting an employer from taking
5 adverse personnel action against an employee or a job
6 applicant who is a qualified patient using medical
7 marijuana; providing exceptions; requiring an employer
8 to provide written notice of an employee or job
9 applicant's right to explain a positive marijuana test
10 result within a specified timeframe; providing
11 procedures when an employee or job applicant tests
12 positive for marijuana; providing a cause of action
13 and damages; providing construction; amending s.
14 381.986, F.S.; revising a requirement for the issuance
15 of a physician certification to a qualified patient
16 for the medical use of marijuana; prohibiting the
17 Department of Health from charging a fee for the
18 issuance, replacement, or renewal of an identification
19 card for the medical use of marijuana for a service-
20 disabled veteran or his or her caregiver if a
21 specified form is included with the identification
22 card application; creating the Medical Marijuana
23 Testing Advisory Council adjunct to the department;
24 providing a purpose; requiring the department to
25 provide staff and administrative support for the

26 | advisory council; providing for membership and
27 | meetings of the advisory council; requiring that
28 | members of the advisory council serve without
29 | compensation; providing that members are not entitled
30 | to reimbursement for per diem or travel expenses;
31 | requiring the advisory council to submit an annual
32 | report to the Governor and Legislature; requiring that
33 | such report be posted on the department's website;
34 | requiring the department to issue clinical research
35 | licenses to certain entities for specified purposes;
36 | requiring the department to determine the licensure
37 | requirements and application procedures for issuance
38 | of such licenses; requiring the department to adopt
39 | rules; authorizing certain third-party entities to
40 | engage in specified activities for research purposes;
41 | creating s. 381.9865, F.S.; providing that a qualified
42 | patient identification card or a caregiver
43 | identification card, or either's equivalent, issued by
44 | another state, by a United States territory, or by the
45 | District of Columbia, has the same force and effect as
46 | a medical marijuana use registry identification card
47 | issued by the department under certain circumstances;
48 | requiring the department to enter a certain out-of-
49 | state physician certification, or its equivalent, into
50 | the medical marijuana use registry for the nonresident

51 qualified patient or caregiver; requiring the
 52 department to adopt rules by a specified date;
 53 amending s. 456.47, F.S.; authorizing the use of
 54 telehealth to treat a qualified patient for the
 55 medical use of marijuana; providing an effective date.

56
 57 Be It Enacted by the Legislature of the State of Florida:

58
 59 Section 1. Section 112.219, Florida Statutes, is created
 60 to read:

61 112.219 Medical Marijuana Public Employee Protection Act.—

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

63 (a) "Adverse personnel action" means the refusal to hire
 64 or employ a qualified patient; the discharge, suspension,
 65 transfer, or demotion of a qualified patient; the mandatory
 66 retirement of a qualified patient; or discrimination against a
 67 qualified patient with respect to compensation, terms,
 68 conditions, or privileges of employment.

69 (b) "Employee" has the same meaning as in s.
 70 112.0455(5)(g).

71 (c) "Employer" means a state, regional, county, local, or
 72 municipal government entity, whether executive, judicial, or
 73 legislative; an official, an officer, a department, a division,
 74 a bureau, a commission, an authority, or a political subdivision
 75 therein; or a public school, community college, or state

76 university that employs individuals for salary, wages, or other
77 remuneration.

78 (d) "Job applicant" has the same meaning as in s.
79 112.0455(5)(f).

80 (e) "Law enforcement agency" has the same meaning as in s.
81 908.102.

82 (f) "Physician certification" has the same meaning as in
83 s. 381.986(1)(k).

84 (g) "Qualified patient" has the same meaning as in s.
85 381.986(1)(l).

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

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

90 2. The overall financial resources of the employer.

91 3. The overall size of the business of the employer with
92 respect to the number of employees and the number, type, and
93 location of the employer's facilities.

94 4. The effect on expenses and resources or any other
95 impacts of such accommodation upon the operation of the
96 employer.

97 (2) An employer may not take adverse personnel action
98 against an employee or a job applicant who is a qualified
99 patient using medical marijuana consistent with s. 381.986.

100 However, an employer may take appropriate adverse personnel

101 action against any employee if the employer establishes by a
102 preponderance of the evidence that the lawful use of medical
103 marijuana is impairing the employee's ability to perform his or
104 her job responsibilities. For purposes of this subsection, an
105 employer may consider an employee's ability to perform his or
106 her job responsibilities to be impaired if the employee displays
107 specific articulable symptoms while working which decrease or
108 lessen the performance of his or her duties or tasks.

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

115 (b) Within 5 business days after receipt of the written
116 notice, the employee or job applicant may submit information to
117 an employer explaining or contesting the positive test result or
118 may request a confirmation test, as defined in s.
119 112.0455(5) (d), at the expense of the employee or job applicant.

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

124 (d) If an employee or a job applicant fails to provide a
125 satisfactory explanation for the positive test result, an

126 employer must verify the positive test result with a
127 confirmation test, at the expense of the employer, before the
128 employer may take adverse personnel action against the employee
129 or job applicant.

130 (4) (a) Notwithstanding s. 381.986(17), an employee or a
131 job applicant who has been the subject of an adverse personnel
132 action in violation of this section may institute a civil action
133 in a court of competent jurisdiction for relief as set forth in
134 paragraph (c) within 180 days after the alleged violation.

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

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

141 1. An injunction restraining continued violation of this
142 section.

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

146 3. Reinstatement of full fringe benefits and seniority
147 rights.

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

150 5. Reasonable attorney fees and costs.

151 6. Any other compensatory damages allowable by general
152 law.

153 (5) This section does not:

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

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

163 (c) Require an employer to modify the job or working
164 conditions of a person who engages in the use of medical
165 marijuana based on the reasonable business purposes of the
166 employer. However, notwithstanding s. 381.986(17) and except as
167 provided in paragraph (d), the employer must attempt to make
168 reasonable accommodations for the medical needs of an employee
169 who engages in the use of medical marijuana if the employee
170 holds a valid medical marijuana use identification card, unless
171 the employer can demonstrate that the accommodation would pose a
172 threat of harm or danger to persons or property, impose an undue
173 hardship on the employer, or prohibit an employee from
174 fulfilling his or her job responsibilities; or

175 (d) Prohibit a law enforcement agency from adopting

176 policies and procedures that preclude an employee from engaging
 177 in the use of medical marijuana.

178 Section 2. Subsections (14) through (17) of section
 179 381.986, Florida Statutes, are renumbered as subsections (16)
 180 through (19), respectively, paragraph (a) of subsection (4),
 181 paragraph (d) of subsection (7), and paragraph (h) of present
 182 subsection (14) are amended, and new subsections (14) and (15)
 183 are added to that section, to read:

184 381.986 Medical use of marijuana.—

185 (4) PHYSICIAN CERTIFICATION.—

186 (a) A qualified physician may issue a physician
 187 certification only if the qualified physician:

188 1. Conducted an ~~a physical~~ examination of ~~while physically~~
 189 ~~present in the same room as~~ the patient and a full assessment of
 190 the medical history of the patient.

191 2. Diagnosed the patient with at least one qualifying
 192 medical condition.

193 3. Determined that the medical use of marijuana would
 194 likely outweigh the potential health risks for the patient, and
 195 such determination must be documented in the patient's medical
 196 record. If a patient is younger than 18 years of age, a second
 197 physician must concur with this determination, and such
 198 concurrence must be documented in the patient's medical record.

199 4. Determined whether the patient is pregnant and
 200 documented such determination in the patient's medical record. A

201 physician may not issue a physician certification, except for
202 low-THC cannabis, to a patient who is pregnant.

203 5. Reviewed the patient's controlled drug prescription
204 history in the prescription drug monitoring program database
205 established pursuant to s. 893.055.

206 6. Reviews the medical marijuana use registry and
207 confirmed that the patient does not have an active physician
208 certification from another qualified physician.

209 7. Registers as the issuer of the physician certification
210 for the named qualified patient on the medical marijuana use
211 registry in an electronic manner determined by the department,
212 and:

213 a. Enters into the registry the contents of the physician
214 certification, including the patient's qualifying condition and
215 the dosage not to exceed the daily dose amount determined by the
216 department, the amount and forms of marijuana authorized for the
217 patient, and any types of marijuana delivery devices needed by
218 the patient for the medical use of marijuana.

219 b. Updates the registry within 7 days after any change is
220 made to the original physician certification to reflect such
221 change.

222 c. Deactivates the registration of the qualified patient
223 and the patient's caregiver when the physician no longer
224 recommends the medical use of marijuana for the patient.

225 8. Obtains the voluntary and informed written consent of

226 | the patient for medical use of marijuana each time the qualified
227 | physician issues a physician certification for the patient,
228 | which shall be maintained in the patient's medical record. The
229 | patient, or the patient's parent or legal guardian if the
230 | patient is a minor, must sign the informed consent acknowledging
231 | that the qualified physician has sufficiently explained its
232 | content. The qualified physician must use a standardized
233 | informed consent form adopted in rule by the Board of Medicine
234 | and the Board of Osteopathic Medicine, which must include, at a
235 | minimum, information related to:

236 | a. The Federal Government's classification of marijuana as
237 | a Schedule I controlled substance.

238 | b. The approval and oversight status of marijuana by the
239 | Food and Drug Administration.

240 | c. The current state of research on the efficacy of
241 | marijuana to treat the qualifying conditions set forth in this
242 | section.

243 | d. The potential for addiction.

244 | e. The potential effect that marijuana may have on a
245 | patient's coordination, motor skills, and cognition, including a
246 | warning against operating heavy machinery, operating a motor
247 | vehicle, or engaging in activities that require a person to be
248 | alert or respond quickly.

249 | f. The potential side effects of marijuana use, including
250 | the negative health risks associated with smoking marijuana.

251 g. The risks, benefits, and drug interactions of
 252 marijuana.

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

256 (7) IDENTIFICATION CARDS.—

257 (d) Applications for identification cards must be
 258 submitted on a form prescribed by the department. The department
 259 may charge a reasonable fee associated with the issuance,
 260 replacement, and renewal of identification cards. The department
 261 shall allocate \$10 of the identification card fee to the
 262 Division of Research at Florida Agricultural and Mechanical
 263 University for the purpose of educating minorities about
 264 marijuana for medical use and the impact of the unlawful use of
 265 marijuana on minority communities. The department may not charge
 266 a fee for the issuance, replacement, or renewal of an
 267 identification card for a service-disabled veteran, as defined
 268 in s. 295.187(3)(b), or his or her caregiver if the veteran's
 269 DD-214 form is included with the application for the
 270 identification card. The department shall contract with a third-
 271 party vendor to issue identification cards. The vendor selected
 272 by the department must have experience performing similar
 273 functions for other state agencies.

274 (14) MEDICAL MARIJUANA TESTING ADVISORY COUNCIL.—

275 (a) The Medical Marijuana Testing Advisory Council, an

276 advisory council as defined in s. 20.03(7), is created adjunct
277 to the department for the purpose of providing advice and
278 expertise regarding the adoption and evaluation of policies and
279 standards applicable to marijuana testing. Except as otherwise
280 provided in this section, the advisory council shall operate in
281 a manner consistent with s. 20.052.

282 (b) The department shall provide staff and administrative
283 support for the advisory council to carry out of it duties and
284 responsibilities under this section.

285 (c) The advisory council is composed of the following
286 members:

287 1. Two members appointed by the Governor.

288 2. Two members appointed by the Commissioner of
289 Agriculture.

290 3. Two members appointed by the President of the Senate.

291 4. Two members appointed by the Speaker of the House of
292 Representatives.

293 5. The dean for research at the Institute of Food and
294 Agricultural Sciences of the University of Florida, or his or
295 her designee.

296 6. The president of Florida Agricultural and Mechanical
297 University, or his or her designee.

298 7. The president or executive director of a statewide
299 cannabis testing association, appointed by the Governor.

300 8. The president or executive director of a medical

301 marijuana trade association that does not primarily consist of
302 dispensaries or cannabis laboratory testing facility owners,
303 appointed by the Governor.

304 9. A board member of a medical marijuana dispensary based
305 in the state, appointed by the Governor.

306 10. An owner of a cannabis testing laboratory based in the
307 state, appointed by the Governor.

308 11. A laboratory scientist who holds a doctorate and who
309 has at least 3 years of experience in cannabis laboratory
310 testing, appointed by the Governor.

311 12. A registered qualifying patient who resides in the
312 state, appointed by the Governor.

313 (d) The advisory council shall elect from its membership
314 one member to serve as chair of the council by a two-thirds vote
315 of the members.

316 (e) A majority of the members of the advisory council
317 constitutes a quorum.

318 (f) The advisory council shall meet at least three times
319 annually at the call of the chair.

320 (g) Advisory council members shall serve without
321 compensation and are not entitled to reimbursement for per diem
322 or travel expenses.

323 (h) Beginning July 1, 2022, and each July 1 thereafter,
324 the advisory council shall submit a report to the Governor, the
325 President of the Senate, and the Speaker of the House of

326 Representatives which describes the activities of the advisory
 327 council during the previous year and includes its findings and
 328 recommendations regarding the policies and standards applicable
 329 to marijuana testing in the state. Additionally, the report must
 330 be posted on the department's website.

331 (15) CLINICAL RESEARCH LICENSES.—The department shall
 332 issue clinical research licenses to licensed medical marijuana
 333 treatment centers, hospitals, clinics, and any other eligible
 334 private entities to allow such entities to partner with members
 335 of the Consortium for Medical Marijuana Clinical Outcomes
 336 Research established under s. 1004.4351 and share data and
 337 research between the members of the consortium and entities that
 338 hold clinical research licenses issued by the department under
 339 this subsection. The department shall determine the requirements
 340 for licensure and the application procedures for prospective
 341 licensees. An applicant for licensure under this subsection
 342 shall apply to the department on a form prescribed by the
 343 department and adopted in rule. The department shall adopt rules
 344 pursuant to ss. 120.536(1) and 120.54 establishing a procedure
 345 for the issuance and renewal of licenses under this subsection.

346 (16) ~~(14)~~ EXCEPTIONS TO OTHER LAWS.—

347 (h) Notwithstanding s. 893.13, s. 893.135, s. 893.147, or
 348 any other provision of law, but subject to the requirements of
 349 this section, a research institute established by a public
 350 postsecondary educational institution, such as the H. Lee

351 Moffitt Cancer Center and Research Institute, Inc., established
352 under s. 1004.43, ~~or~~ a state university that has achieved the
353 preeminent state research university designation under s.
354 1001.7065, or a third-party entity licensed by the federal Drug
355 Enforcement Administration and under contract with such a
356 research institute or state university may grow, possess, test,
357 transport, and lawfully dispose of marijuana for research
358 purposes as provided by this section.

359 Section 3. Section 381.9865, Florida Statutes, is created
360 to read:

361 381.9865 Reciprocity for nonresident qualified patients
362 and caregivers.—

363 (1) Notwithstanding any law to the contrary, a qualified
364 patient identification card or a caregiver identification card,
365 or the equivalent of either, issued under the laws of another
366 state, of any United States territory, or of the District of
367 Columbia to allow a nonresident patient or caregiver to receive
368 marijuana or a marijuana delivery device for medical use by the
369 nonresident patient with a qualifying medical condition, or to
370 allow a person to assist with the medical use of marijuana by
371 the nonresident patient, may have the same force and effect as a
372 medical marijuana use registry identification card issued under
373 s. 381.986 if the nonresident patient is otherwise eligible for
374 such medical marijuana use registry identification card.

375 (2) For each nonresident qualified patient or caregiver,

376 | the department shall enter into the medical marijuana use
 377 | registry a physician certification, or its equivalent issued
 378 | under the laws of another state, submitted by a physician who
 379 | has examined the patient and is licensed to practice in the
 380 | jurisdiction in which the patient resides, which specifies the
 381 | amount and the type of marijuana or marijuana delivery device
 382 | recommended for medical use by such nonresident patient.

383 | (3) By January 1, 2022, the Department of Health shall
 384 | adopt rules to implement this section.

385 | Section 4. Paragraph (c) of subsection (2) of section
 386 | 456.47, Florida Statutes, is amended to read:

387 | 456.47 Use of telehealth to provide services.—

388 | (2) PRACTICE STANDARDS.—

389 | (c) A telehealth provider may not use telehealth to
 390 | prescribe a controlled substance unless the controlled substance
 391 | is prescribed for the following:

392 | 1. The treatment of a psychiatric disorder;

393 | 2. Inpatient treatment at a hospital licensed under
 394 | chapter 395;

395 | 3. The treatment of a patient receiving hospice services
 396 | as defined in s. 400.601; ~~or~~

397 | 4. The treatment of a resident of a nursing home facility
 398 | as defined in s. 400.021; or

399 | 5. The treatment of a qualified patient for the medical
 400 | use of marijuana under s. 381.986.

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