

By Senator Polsky

30-00019-24

2024166__

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. 112.23, F.S.; defining terms; prohibiting
5 a public employer from taking adverse personnel action
6 against an employee or a job applicant who is a
7 qualified patient for his or her use of medical
8 marijuana; providing exceptions; requiring a public
9 employer to provide written notice of an employee's or
10 a job applicant's right to explain or contest a
11 positive marijuana test result within a specified
12 timeframe; providing procedures that apply when an
13 employee or a job applicant tests positive for
14 marijuana; providing a cause of action and damages;
15 providing construction; providing an effective date.

16
17 Be It Enacted by the Legislature of the State of Florida:

18
19 Section 1. Section 112.23, Florida Statutes, is created to
20 read:

21 112.23 Medical Marijuana Public Employee Protection Act.-

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

23 (a) "Adverse personnel action" means the refusal to hire or
24 employ a qualified patient; the discharge, suspension, transfer,
25 or demotion of a qualified patient; the mandatory retirement of
26 a qualified patient; or the discrimination against a qualified
27 patient with respect to compensation, terms, conditions, or
28 privileges of employment.

29 (b) "Job applicant" means a person who has applied for a

30-00019-24

2024166__

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 s.
35 381.986.

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.

30-00019-24

2024166__

59 (2) (a) Except as provided in paragraph (b), a public
60 employer may not take adverse personnel action against an
61 employee or a job applicant who is a qualified patient for his
62 or her use of medical marijuana consistent with s. 381.986.

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

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

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

79 (b) Within 5 business days after receipt of the written
80 notice, the employee or job applicant may submit information to
81 his or her employer explaining or contesting the positive test
82 result or may request a confirmation test, as defined in s.
83 112.0455(5) (b), at the expense of the employee or job applicant.

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

30-00019-24

2024166__

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

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

99 (b) A public employee or a job applicant may not recover in
100 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:

30-00019-24

2024166__

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
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 must 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 registry identification
135 card, unless the employer can demonstrate that the accommodation
136 would pose a threat of harm or danger to persons or property,
137 impose an undue hardship on the employer, or prevent an employee
138 from fulfilling 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.