



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB3431

Introduced 2/22/2021, by Rep. Bob Morgan

SYNOPSIS AS INTRODUCED:

410 ILCS 130/50

820 ILCS 55/5

from Ch. 48, par. 2855

Amends the Compassionate Use of Medical Cannabis Program Act. Provides that employers are not prohibited from adopting specified policies concerning medical cannabis by registered qualifying patients, including drug testing policies for such patients working in safety sensitive positions. Unless specified circumstances are met, prohibits employers from taking adverse action against registered qualifying patients who work in non-safety sensitive positions solely due to a positive drug test for medicinal cannabis. Defines "safety sensitive position". Provides that nothing in the Act prohibits an employer from enforcing a preemployment drug testing policy, zero-tolerance drug testing policy, random drug testing policy, or a drug free workplace policy (rather than only a workplace drug policy) or disciplining a registered qualifying patient for violating such a policy, provided that an employer shall not take adverse action against a registered qualifying patient in a non-safety sensitive position solely due to a positive drug test for medical cannabis (rather than due to a positive drug test for cannabis) unless specified criteria are met. Provides that there is not a cause of action for any person against an employer for disciplining or terminating the employment of a registered qualifying patient when enforcing a compliant policy. Makes other changes. Amends the Right to Privacy in the Workplace Act. Provides that the amendatory Act's provisions are an exception to provisions prohibiting an employer from refusing to hire or to discharge or disadvantage any individual because the individual uses lawful products off the premises of the employer during nonworking and non-call hours. Effective immediately.

LRB102 11928 CPF 17264 b

1 AN ACT concerning health.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Compassionate Use of Medical Cannabis
5 Program Act is amended by changing Section 50 as follows:

6 (410 ILCS 130/50)

7 Sec. 50. Employment; employer liability.

8 (a) Nothing in this Act shall prohibit an employer from
9 adopting a reasonable policy ~~regulations~~ concerning drug
10 testing for, smoking, vaping, consuming, storing, or using
11 medical cannabis by registered ~~the consumption, storage, or~~
12 ~~timekeeping requirements for~~ qualifying patients related to
13 the use of medical cannabis.

14 (b) Nothing in this Act shall prohibit an employer from
15 enforcing a preemployment drug testing policy ~~concerning drug~~
16 ~~testing,~~ zero-tolerance drug testing policy, random drug
17 testing policy, or a drug free workplace provided the policy
18 is applied to registered qualifying patients working in safety
19 sensitive positions ~~in a nondiscriminatory manner.~~

20 For purposes of this Section, "safety sensitive position"
21 means any position designated in writing by the employer as a
22 safety sensitive position in which the person performing the
23 position, or duties required of the position, while under the

1 influence of cannabis, may constitute a threat to or endanger
2 the health or safety of themselves or others. "Safety
3 sensitive position" includes, but is not limited to, the
4 following:

5 (1) A position that requires any of the following:

6 (A) carrying a firearm;

7 (B) performing medical procedures,
8 life-threatening procedures, or emergency services;

9 (C) providing direct child care, direct patient
10 care, or the supervising of such care;

11 (D) direct responsibility for the safety or
12 security of people, children, animals, or property, or
13 the supervising of someone with that direct
14 responsibility;

15 (E) working with hazardous or flammable materials,
16 controlled substances, or pharmaceuticals;

17 (F) access to or control over cash, checks, credit
18 cards, credit card account information, or the
19 authority or ability to commit financial resources of
20 the business or organization, in an amount that is:

21 (i) set by the business or organization that
22 could detrimentally impact the business or
23 organization with a supporting written
24 explanation;

25 (ii) \$5,000 or more; or

26 (iii) required of the registered qualifying

1 patient as a standard fidelity bond or an
2 equivalent bond; or

3 (G) access to or responsibility for sensitive
4 personal identifying information of individuals,
5 including, but not limited to, social security numbers
6 or biometric information.

7 (2) A position in which a lapse of attention could
8 result in injury, illness, death, or damage to property,
9 including without limitation a position that includes, but
10 need not be limited to, operating, repairing, maintaining,
11 monitoring, or designing equipment, machinery, critical
12 services and infrastructure, aircraft, motorized
13 watercraft, or motor vehicles as part of the position's
14 job duties.

15 (3) A position wherein undertaking any task under the
16 influence of cannabis could constitute negligence,
17 professional malpractice, or professional misconduct.

18 (c) Nothing in this Act shall prohibit an employer from
19 enforcing a preemployment drug testing policy, zero-tolerance
20 drug testing policy, random drug testing policy, or a drug
21 free workplace policy or ~~limit an employer from~~ disciplining a
22 registered qualifying patient for violating such a ~~workplace~~
23 ~~drug~~ policy, provided that an employer shall not take adverse
24 action against a registered qualifying patient in a non-safety
25 sensitive position solely due to a positive drug test for
26 medical cannabis, unless: -

1 (1) the test result exceeds the limits set forth in
2 Section 11-501.2 of the Illinois Vehicle Code;

3 (2) the registered qualifying patient failed to
4 provide written notice under the employer's policy that:

5 (A) the registered qualifying patient was cleared
6 to work; or

7 (B) a restriction regarding notification of the
8 use of a prescription or nonprescription drug that
9 could affect the registered qualifying patient's job
10 performance applies to the registered qualifying
11 patient; or

12 (3) the registered qualifying patient failed to
13 certify to his or her employer or the employer's medical
14 review officer during a drug test that he or she is a
15 registered qualifying patient.

16 Notice under this subsection shall not require the
17 registered qualifying patient to provide the condition for
18 which he or she is using medical cannabis.

19 (d) Nothing in this Act shall limit an employer's ability
20 to discipline a registered qualifying patient ~~an employee~~ for
21 failing a drug test if failing to do so would put the employer
22 in violation of federal law or cause it to lose a federal
23 contract or funding.

24 (e) Nothing in this Act shall be construed to create a
25 defense for a third party who fails a drug test.

26 (f) An employer may consider a registered qualifying

1 patient to be impaired when he or she tests positive for
2 cannabis that exceeds the limits set forth in Section 11-501.2
3 of the Illinois Vehicle Code, or manifests specific,
4 articulable symptoms while working that decrease or lessen his
5 or her performance of the duties or tasks of the registered
6 qualifying patient's ~~employee's~~ job position, including
7 symptoms of the employee's speech, physical dexterity,
8 agility, coordination, demeanor, irrational or unusual
9 behavior, negligence or carelessness in operating equipment or
10 machinery, disregard for the safety of the registered
11 qualifying patient ~~employee~~ or others, or involvement in an
12 accident that results in serious damage to equipment or
13 property, disruption of a production or manufacturing process,
14 or carelessness that results in any injury to the registered
15 qualifying patient ~~employee~~ or others. If an employer elects
16 to discipline a registered qualifying patient under this
17 subsection, it must afford the registered qualifying patient
18 ~~employee~~ a reasonable opportunity to contest the basis of the
19 determination.

20 (g) Nothing in this Act shall be construed to create or
21 imply a cause of action for any person against an employer for:

- 22 (1) actions based on the employer's good faith belief that a
23 registered qualifying patient used or possessed cannabis while
24 on the employer's premises or during the hours of employment;
25 (2) actions based on the employer's good faith belief that a
26 registered qualifying patient was impaired while working on

1 the employer's premises during the hours of employment; (3)
2 disciplining or terminating the employment of a registered
3 qualifying patient when enforcing a drug policy in compliance
4 with this Section; or (4) ~~(3)~~ injury or loss to a third party
5 if the employer neither knew nor had reason to know that the
6 employee was impaired.

7 (h) Nothing in this Act shall be construed to interfere
8 with any federal restrictions on employment including but not
9 limited to the United States Department of Transportation
10 regulation 49 CFR 40.151(e).

11 (Source: P.A. 98-122, eff. 1-1-14.)

12 Section 10. The Right to Privacy in the Workplace Act is
13 amended by changing Section 5 as follows:

14 (820 ILCS 55/5) (from Ch. 48, par. 2855)

15 Sec. 5. Discrimination for use of lawful products
16 prohibited.

17 (a) Except as otherwise specifically provided by law,
18 including Section 10-50 of the Cannabis Regulation and Tax Act
19 and Section 50 of the Compassionate Use of Medical Cannabis
20 Program Act, and except as provided in subsections (b) and (c)
21 of this Section, it shall be unlawful for an employer to refuse
22 to hire or to discharge any individual, or otherwise
23 disadvantage any individual, with respect to compensation,
24 terms, conditions or privileges of employment because the

1 individual uses lawful products off the premises of the
2 employer during nonworking and non-call hours. As used in this
3 Section, "lawful products" means products that are legal under
4 state law. For purposes of this Section, an employee is deemed
5 on-call when the employee is scheduled with at least 24 hours'
6 notice by his or her employer to be on standby or otherwise
7 responsible for performing tasks related to his or her
8 employment either at the employer's premises or other
9 previously designated location by his or her employer or
10 supervisor to perform a work-related task.

11 (b) This Section does not apply to any employer that is a
12 non-profit organization that, as one of its primary purposes
13 or objectives, discourages the use of one or more lawful
14 products by the general public. This Section does not apply to
15 the use of those lawful products which impairs an employee's
16 ability to perform the employee's assigned duties.

17 (c) It is not a violation of this Section for an employer
18 to offer, impose or have in effect a health, disability or life
19 insurance policy that makes distinctions between employees for
20 the type of coverage or the price of coverage based upon the
21 employees' use of lawful products provided that:

22 (1) differential premium rates charged employees
23 reflect a differential cost to the employer; and

24 (2) employers provide employees with a statement
25 delineating the differential rates used by insurance
26 carriers.

1 (Source: P.A. 101-27, eff. 6-25-19.)

2 Section 99. Effective date. This Act takes effect upon
3 becoming law.