

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, road or commercial construction,  
11          operating, repairing, maintaining, monitoring, or  
12          designing equipment, machinery, critical services and  
13          infrastructure, aircraft, motorized watercraft, or motor  
14          vehicles as part of the position's 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.