



## 103RD GENERAL ASSEMBLY

### State of Illinois

2023 and 2024

HB3883

Introduced 2/17/2023, by Rep. Michael J. Kelly

#### SYNOPSIS AS INTRODUCED:

New Act  
20 ILCS 2610/12.5  
410 ILCS 130/30  
410 ILCS 705/10-35

Creates the First Responder Cannabis Testing Act. Provides that, before a first responder may be tested for any substance prohibited by the Cannabis Control Act, the person ordering the test must demonstrate there is cause for testing, such as an actual suspicion that the first responder is currently intoxicated with a substance prohibited under the Cannabis Control Act or there was vehicular crash or other accident at work that may have been caused by intoxication with a substance prohibited under the Cannabis Control Act. Provides that a test administered to detect any substance prohibited under the Cannabis Control Act shall be a saliva-based test and may not be a urine, blood, or hair follicle test. Provides that, if a first responder tests positive for any substance prohibited under the Cannabis Control Act, that first responder may be discharged only if there is evidence that the first responder was intoxicated with a substance prohibited under the Cannabis Control Act immediately prior to the start of or during the first responder's shift. Limits the concurrent exercise of home rule powers. Makes conforming changes in the Illinois State Police Act, the Compassionate Use of Medical Cannabis Program Act, and the Cannabis Regulation and Tax Act.

LRB103 30421 AWJ 56851 b

1 AN ACT concerning government.

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

4 Section 1. Short title. This Act may be cited as the First  
5 Responder Cannabis Testing Act.

6 Section 5. Definitions. As used in this Act:

7 "Emergency medical personnel" has the meaning given to  
8 that term in Section 3.5 of the Emergency Medical Services  
9 (EMS) Systems Act.

10 "First responder" means a law enforcement officer,  
11 firefighter, emergency medical services personnel, or public  
12 safety telecommunicator.

13 "Law enforcement officer" has the meaning given to that  
14 term in Section 5 of the Law Enforcement Officer Bulletproof  
15 Vest Act.

16 "Public safety telecommunicator" has the meaning given to  
17 that term in Section 2 of the Emergency Telephone Systems Act.

18 Section 10. Employee testing.

19 (a) Before a first responder may be tested for any  
20 substance prohibited under the Cannabis Control Act, the  
21 person ordering the test must demonstrate there is cause for  
22 testing, such as an actual suspicion that the first responder

1 is currently intoxicated with a substance prohibited by the  
2 Cannabis Control Act or there was an vehicular crash or other  
3 accident at work that may have been caused by intoxication  
4 with a substance prohibited under the Cannabis Control Act.

5 (b) A test administered to detect any substance prohibited  
6 under the Cannabis Control Act under this Section shall be a  
7 saliva-based test and may not be a urine, blood, or hair  
8 follicle test.

9 Section 15. Positive test. If a first responder tests  
10 positive for any substance prohibited under the Cannabis  
11 Control Act, that first responder may be discharged only if  
12 there is evidence that the first responder was intoxicated  
13 with a substance prohibited under the Cannabis Control Act  
14 immediately prior to the start of or during the first  
15 responder's shift.

16 Section 20. Conflict with other laws. To the extent this  
17 Act conflicts with any other provision of law, this Act  
18 controls.

19 Section 25. Home rule. A home rule unit may not regulate  
20 drug testing in a manner inconsistent with this Act. This Act  
21 is a limitation under subsection (i) of Section 6 of Article  
22 VII of the Illinois Constitution on the concurrent exercise by  
23 home rule units of powers and functions exercised by the

1 State.

2 Section 30. The Illinois State Police Act is amended by  
3 changing Section 12.5 as follows:

4 (20 ILCS 2610/12.5)

5 Sec. 12.5. Drug ~~Zero tolerance drug~~ policy. Any person  
6 employed by the Illinois State Police who tests positive in  
7 accordance with established Illinois State Police drug testing  
8 procedures for any substance prohibited by the Illinois  
9 Controlled Substances Act or the Methamphetamine Control and  
10 Community Protection Act shall be discharged from employment.  
11 Testing ~~Any person employed by the Illinois State Police who~~  
12 ~~tests positive in accordance with established Illinois State~~  
13 ~~Police drug testing procedures~~ for any substance prohibited by  
14 the Cannabis Control Act and disciplinary actions for a  
15 positive test must be conducted in accordance with the First  
16 Responder Cannabis Testing Act ~~may be discharged from~~  
17 ~~employment~~. Refusal to submit to a drug test, ordered in  
18 accordance with Illinois State Police procedures, by any  
19 person employed by the Illinois State Police shall be  
20 construed as a positive test, and the person shall be  
21 discharged from employment. The changes made in this Section  
22 by this amendatory Act of the 100th General Assembly shall  
23 apply to all pending and future incidents under this Section.  
24 (Source: P.A. 102-538, eff. 8-20-21.)

1 Section 35. The Compassionate Use of Medical Cannabis  
2 Program Act is amended by changing Section 30 as follows:

3 (410 ILCS 130/30)

4 Sec. 30. Limitations and penalties.

5 (a) This Act does not permit any person to engage in, and  
6 does not prevent the imposition of any civil, criminal, or  
7 other penalties for engaging in, the following conduct:

8 (1) Undertaking any task under the influence of  
9 cannabis, when doing so would constitute negligence,  
10 professional malpractice, or professional misconduct;

11 (2) Possessing cannabis:

12 (A) except as provided under Section 22-33 of the  
13 School Code, in a school bus;

14 (B) except as provided under Section 22-33 of the  
15 School Code, on the grounds of any preschool or  
16 primary or secondary school;

17 (C) in any correctional facility;

18 (D) in a vehicle under Section 11-502.1 of the  
19 Illinois Vehicle Code;

20 (E) in a vehicle not open to the public unless the  
21 medical cannabis is in a reasonably secured, sealed  
22 container and reasonably inaccessible while the  
23 vehicle is moving; or

24 (F) in a private residence that is used at any time

1 to provide licensed child care or other similar social  
2 service care on the premises;

3 (3) Using cannabis:

4 (A) except as provided under Section 22-33 of the  
5 School Code, in a school bus;

6 (B) except as provided under Section 22-33 of the  
7 School Code, on the grounds of any preschool or  
8 primary or secondary school;

9 (C) in any correctional facility;

10 (D) in any motor vehicle;

11 (E) in a private residence that is used at any time  
12 to provide licensed child care or other similar social  
13 service care on the premises;

14 (F) except as provided under Section 22-33 of the  
15 School Code and Section 31 of this Act, in any public  
16 place. "Public place" as used in this subsection means  
17 any place where an individual could reasonably be  
18 expected to be observed by others. A "public place"  
19 includes all parts of buildings owned in whole or in  
20 part, or leased, by the State or a local unit of  
21 government. A "public place" does not include a  
22 private residence unless the private residence is used  
23 to provide licensed child care, foster care, or other  
24 similar social service care on the premises. For  
25 purposes of this subsection, a "public place" does not  
26 include a health care facility. For purposes of this

1 Section, a "health care facility" includes, but is not  
2 limited to, hospitals, nursing homes, hospice care  
3 centers, and long-term care facilities;

4 (G) except as provided under Section 22-33 of the  
5 School Code and Section 31 of this Act, knowingly in  
6 close physical proximity to anyone under the age of 18  
7 years of age;

8 (4) Smoking medical cannabis in any public place where  
9 an individual could reasonably be expected to be observed  
10 by others, in a health care facility, or any other place  
11 where smoking is prohibited under the Smoke Free Illinois  
12 Act;

13 (5) Operating, navigating, or being in actual physical  
14 control of any motor vehicle, aircraft, or motorboat while  
15 using or under the influence of cannabis in violation of  
16 Sections 11-501 and 11-502.1 of the Illinois Vehicle Code;

17 (6) Using or possessing cannabis if that person does  
18 not have a debilitating medical condition and is not a  
19 registered qualifying patient or caregiver;

20 (7) Allowing any person who is not allowed to use  
21 cannabis under this Act to use cannabis that a cardholder  
22 is allowed to possess under this Act;

23 (8) Transferring cannabis to any person contrary to  
24 the provisions of this Act;

25 (9) The use of medical cannabis by an active duty law  
26 enforcement officer, correctional officer, correctional

1           probation officer, or firefighter, except as limited by  
2           the First Responder Cannabis Testing Act; or

3           (10) The use of medical cannabis by a person who has a  
4           school bus permit or a Commercial Driver's License.

5           (b) Nothing in this Act shall be construed to prevent the  
6           arrest or prosecution of a registered qualifying patient for  
7           reckless driving or driving under the influence of cannabis  
8           where probable cause exists.

9           (c) Notwithstanding any other criminal penalties related  
10          to the unlawful possession of cannabis, knowingly making a  
11          misrepresentation to a law enforcement official of any fact or  
12          circumstance relating to the medical use of cannabis to avoid  
13          arrest or prosecution is a petty offense punishable by a fine  
14          of up to \$1,000, which shall be in addition to any other  
15          penalties that may apply for making a false statement or for  
16          the use of cannabis other than use undertaken under this Act.

17          (d) Notwithstanding any other criminal penalties related  
18          to the unlawful possession of cannabis, any person who makes a  
19          misrepresentation of a medical condition to a certifying  
20          health care professional or fraudulently provides material  
21          misinformation to a certifying health care professional in  
22          order to obtain a written certification is guilty of a petty  
23          offense punishable by a fine of up to \$1,000.

24          (e) Any cardholder or registered caregiver who sells  
25          cannabis shall have his or her registry identification card  
26          revoked and is subject to other penalties for the unauthorized



1 sale of cannabis.

2 (f) Any registered qualifying patient who commits a  
3 violation of Section 11-502.1 of the Illinois Vehicle Code or  
4 refuses a properly requested test related to operating a motor  
5 vehicle while under the influence of cannabis shall have his  
6 or her registry identification card revoked.

7 (g) No registered qualifying patient or designated  
8 caregiver shall knowingly obtain, seek to obtain, or possess,  
9 individually or collectively, an amount of usable cannabis  
10 from a registered medical cannabis dispensing organization  
11 that would cause him or her to exceed the authorized adequate  
12 supply under subsection (a) of Section 10.

13 (h) Nothing in this Act shall prevent a private business  
14 from restricting or prohibiting the medical use of cannabis on  
15 its property.

16 (i) Nothing in this Act shall prevent a university,  
17 college, or other institution of post-secondary education from  
18 restricting or prohibiting the use of medical cannabis on its  
19 property.

20 (Source: P.A. 101-363, eff. 8-9-19; 102-67, eff. 7-9-21.)

21 Section 40. The Cannabis Regulation and Tax Act is amended  
22 by changing Section 10-35 as follows:

23 (410 ILCS 705/10-35)

24 Sec. 10-35. Limitations and penalties.

1 (a) This Act does not permit any person to engage in, and  
2 does not prevent the imposition of any civil, criminal, or  
3 other penalties for engaging in, any of the following conduct:

4 (1) undertaking any task under the influence of  
5 cannabis when doing so would constitute negligence,  
6 professional malpractice, or professional misconduct;

7 (2) possessing cannabis:

8 (A) in a school bus, unless permitted for a  
9 qualifying patient or caregiver pursuant to the  
10 Compassionate Use of Medical Cannabis Program Act;

11 (B) on the grounds of any preschool or primary or  
12 secondary school, unless permitted for a qualifying  
13 patient or caregiver pursuant to the Compassionate Use  
14 of Medical Cannabis Program Act;

15 (C) in any correctional facility;

16 (D) in a vehicle not open to the public unless the  
17 cannabis is in a reasonably secured, sealed or  
18 resealable container and reasonably inaccessible while  
19 the vehicle is moving; or

20 (E) in a private residence that is used at any time  
21 to provide licensed child care or other similar social  
22 service care on the premises;

23 (3) using cannabis:

24 (A) in a school bus, unless permitted for a  
25 qualifying patient or caregiver pursuant to the  
26 Compassionate Use of Medical Cannabis Program Act;

1 (B) on the grounds of any preschool or primary or  
2 secondary school, unless permitted for a qualifying  
3 patient or caregiver pursuant to the Compassionate Use  
4 of Medical Cannabis Program Act;

5 (C) in any correctional facility;

6 (D) in any motor vehicle;

7 (E) in a private residence that is used at any time  
8 to provide licensed child care or other similar social  
9 service care on the premises;

10 (F) in any public place; or

11 (G) knowingly in close physical proximity to  
12 anyone under 21 years of age who is not a registered  
13 medical cannabis patient under the Compassionate Use  
14 of Medical Cannabis Program Act;

15 (4) smoking cannabis in any place where smoking is  
16 prohibited under the Smoke Free Illinois Act;

17 (5) operating, navigating, or being in actual physical  
18 control of any motor vehicle, aircraft, watercraft, or  
19 snowmobile while using or under the influence of cannabis  
20 in violation of Section 11-501 or 11-502.1 of the Illinois  
21 Vehicle Code, Section 5-16 of the Boat Registration and  
22 Safety Act, or Section 5-7 of the Snowmobile Registration  
23 and Safety Act;

24 (6) facilitating the use of cannabis by any person who  
25 is not allowed to use cannabis under this Act or the  
26 Compassionate Use of Medical Cannabis Program Act;

1           (7) transferring cannabis to any person contrary to  
2 this Act or the Compassionate Use of Medical Cannabis  
3 Program Act;

4           (8) the use of cannabis by a law enforcement officer,  
5 corrections officer, probation officer, or firefighter  
6 while on duty; nothing in this Act prevents a public  
7 employer of law enforcement officers, corrections  
8 officers, probation officers, paramedics, or firefighters  
9 from prohibiting or taking disciplinary action for the  
10 consumption, possession, sales, purchase, or delivery of  
11 cannabis or cannabis-infused substances while on or off  
12 duty, unless provided for in the employer's policies and  
13 except as limited by the First Responder Cannabis Testing  
14 Act. However, an employer may not take adverse employment  
15 action against an employee based solely on the lawful  
16 possession or consumption of cannabis or cannabis-infused  
17 substances by members of the employee's household. To the  
18 extent that this Section conflicts with any applicable  
19 collective bargaining agreement, the provisions of the  
20 collective bargaining agreement shall prevail. Further,  
21 nothing in this Act shall be construed to limit in any way  
22 the right to collectively bargain over the subject matters  
23 contained in this Act; or

24           (9) the use of cannabis by a person who has a school  
25 bus permit or a Commercial Driver's License while on duty.  
26 As used in this Section, "public place" means any place

1 where a person could reasonably be expected to be observed by  
2 others. "Public place" includes all parts of buildings owned  
3 in whole or in part, or leased, by the State or a unit of local  
4 government. "Public place" includes all areas in a park,  
5 recreation area, wildlife area, or playground owned in whole  
6 or in part, leased, or managed by the State or a unit of local  
7 government. "Public place" does not include a private  
8 residence unless the private residence is used to provide  
9 licensed child care, foster care, or other similar social  
10 service care on the premises.

11 (b) Nothing in this Act shall be construed to prevent the  
12 arrest or prosecution of a person for reckless driving or  
13 driving under the influence of cannabis, operating a  
14 watercraft under the influence of cannabis, or operating a  
15 snowmobile under the influence of cannabis if probable cause  
16 exists.

17 (c) Nothing in this Act shall prevent a private business  
18 from restricting or prohibiting the use of cannabis on its  
19 property, including areas where motor vehicles are parked.

20 (d) Nothing in this Act shall require an individual or  
21 business entity to violate the provisions of federal law,  
22 including colleges or universities that must abide by the  
23 Drug-Free Schools and Communities Act Amendments of 1989, that  
24 require campuses to be drug free.

25 (Source: P.A. 101-27, eff. 6-25-19; 101-593, eff. 12-4-19;  
26 102-98, eff. 7-15-21.)