

AN ACT concerning medical marijuana

Nothing in this act shall be construed to require a government medical assistance program or private health insurer to reimburse a person for costs associated with the medical use of marijuana, or, except as provided in statute, or an employer to accommodate the medical use of marijuana in any workplace.

a. Unless an employer establishes by a preponderance of the evidence that the lawful use of medical marijuana has impaired the employee's ability to perform the employee's job responsibilities, it shall be unlawful to take any adverse employment action against an employee who is a qualified registered patient using medical marijuana consistent with the provisions of FL Statute 381.986 based on either: (1) the employee's status as a registry identification cardholder; or (2) the employee's positive drug test for marijuana components or metabolites. For the purposes of this section, an employer may consider an employee's ability to perform the employee's job responsibilities to be impaired when the employee manifests specific articulable symptoms while working that decrease or lessen the employee's performance of the duties or tasks of the employee's job position.

b. (1) If an employer has a drug testing policy and an employee or job applicant tests positive for marijuana, the employer shall offer the employee or job applicant an opportunity to present a legitimate medical explanation for the positive test result, and shall provide written notice of the right to explain to the employee or job applicant. (2) Within three working days after receiving notice pursuant to paragraph (1) of this subsection, the employee or job applicant may submit information to the employer to explain the positive test result, or may request a confirmatory retest of the original sample at the employee's or job applicant's own expense. As part of an employee's or job applicant's explanation for the positive test result, the employee or job applicant may present a doctor's recommendation for medical marijuana, a registry identification card, or both.

c. Nothing in this section shall restrict an employer's ability to prohibit or take adverse employment action for the possession or use of intoxicating substances during work hours, or require an employer to commit any act that would cause the employer to be in violation of federal law, or that would result in the loss of a federal contract or federal funding.

d. As used in this section, "adverse employment action" means refusing to hire or employ a qualified registered patient, barring or discharging a qualified registered patient from employment, requiring a qualified registered patient to retire from employment, or discriminating against a qualified registered patient in compensation or in terms, conditions, or privileges of employment.

This act shall take effect immediately.

STATEMENT OF INTENT

This bill would establish protections from adverse employment actions for registered patients using medical marijuana pursuant to the "Compassionate Use Medical Marijuana Act." Specifically, an employer would be prohibited from taking any adverse employment action against an employee based on the employee's status as a registry identification cardholder or based on a positive test for marijuana, unless the employer establishes by a preponderance of the evidence that the lawful use of medical marijuana has impaired the employee's ability to perform the employee's job responsibilities. The bill

provides that an employer may consider an employee's ability to perform the employee's job responsibilities to be impaired when the employee manifests specific articulable symptoms while working that decrease or lessen the employee's performance of the duties or tasks of the employee's job position. If an employer has a drug testing policy and an employee or job applicant tests positive for marijuana, the employee or job applicant is to be offered an opportunity to present a legitimate medical explanation for the positive test result, and is to be provided written notice of the right to explain. Within three working days after receiving notice, the employee or job applicant would be permitted to submit information to the employer to explain the positive test result, or request a confirmatory retest of the original sample at the employee's or job applicant's own expense. An employee or job applicant would be permitted to present a doctor's recommendation for medical marijuana, a registry identification card, or both, as part of the employee's or job applicant's explanation for the positive test. Nothing in the bill would restrict an employer's ability to prohibit or take adverse employment action for the possession or use of intoxicating substances during work hours, or require an employer to commit any act that would cause the employer to be in violation of federal law, or that would result in the loss of a federal contract or federal funding. The bill defines "adverse employment action" to mean refusing to hire or employ a qualified registered patient, barring or discharging a qualified registered patient from employment, requiring a qualified registered patient to retire from employment, or discriminating against a qualified registered patient in compensation or in terms, conditions, or privileges of employment.