

## AMENDMENTS TO SENATE BILL NO. 749

Sponsor: SENATOR MENSCH

Printer's No. 893

1 Amend Bill, page 1, lines 1 through 17, by striking out all  
2 of said lines and inserting

3 Amending the act of April 17, 2016 (P.L.84, No.16), entitled "An  
4 act establishing a medical marijuana program; providing for  
5 patient and caregiver certification and for medical marijuana  
6 organization registration; imposing duties on the Department  
7 of Health; providing for a tax on medical marijuana  
8 organization gross receipts; establishing the Medical  
9 Marijuana Program Fund; establishing the Medical Marijuana  
10 Advisory Board; establishing a medical marijuana research  
11 program; imposing duties on the Department of Corrections,  
12 the Department of Education and the Department of Human  
13 Services; and providing for academic clinical research  
14 centers and for penalties and enforcement," in preliminary  
15 provisions, further providing for definitions; in patients,  
16 further providing for prohibitions; and, in miscellaneous  
17 provisions, further providing for protections for patients  
18 and caregivers.

19 Amend Bill, page 1, lines 20 through 25; pages 2 through 7,  
20 lines 1 through 30; page 8, lines 1 through 9; by striking out  
21 all of said lines on said pages and inserting

22 Section 1. Section 103 of the act of April 17, 2016 (P.L.84,  
23 No.16), known as the Medical Marijuana Act, is amended by adding  
24 definitions to read:

25 Section 103. Definitions.

26 The following words and phrases when used in this act shall  
27 have the meanings given to them in this section unless the  
28 context clearly indicates otherwise:

29 \* \* \*

30 "Essential functions." The fundamental, not marginal, duties  
31 of a position.

32 \* \* \*

33 "Impairment." As follows:

34 (1) Symptoms of being under the influence of marijuana  
35 that may decrease or lessen an employee's performance of

1 essential duties or tasks that an employer, in good faith,  
2 believes will result in carelessness, negligence or disregard  
3 for the safety of themselves or others and disrupt business  
4 operations.

5 (2) Observable symptoms of impairment from medical  
6 marijuana may include, but are not limited to, the employee's  
7 speech, mobility, physical dexterity, agility, coordination,  
8 demeanor, appearance, odor or irrational or unusual behavior.

9 \* \* \*

10 "Safety-sensitive position." A position that requires any  
11 activity that an employer reasonably believes presents a  
12 potential risk of harm to the health or safety of an employee or  
13 others while under the influence of medical marijuana,  
14 including, but not limited to:

15 (1) Duties performed at heights or in confined spaces,  
16 including, but not limited to, mining.

17 (2) The operation of a motor vehicle, other vehicle,  
18 equipment, machinery or power tools.

19 (3) Repairing, maintaining or monitoring the performance  
20 or operation of any equipment, machinery or manufacturing  
21 process, the malfunction or disruption of which could result  
22 in injury or property damage.

23 (4) Performing firefighting duties.

24 (5) The operation, maintenance or oversight of critical  
25 services and infrastructure, including, but not limited to,  
26 electric, gas and water utilities, power generation or  
27 distribution.

28 (6) The extraction, compression, processing,  
29 manufacturing, handling, packaging, storage, disposal,  
30 treatment or transport of potentially volatile, flammable,  
31 combustible materials, elements, chemicals or other highly  
32 regulated component.

33 (7) Dispensing pharmaceuticals.

34 (8) A position that requires the employee to carry a  
35 firearm.

36 (9) Direct patient care or direct child care.

37 \* \* \*

38 "Under the influence." A drug test pursuant to which it is  
39 determined that an employee or job applicant tests positive for  
40 marijuana at a level of tetrahydrocannabinolic acid in urine  
41 equal to or greater than 15 nanograms per milliliter or fails to  
42 submit to a marijuana test.

43 Section 2. Section 510 of the act is amended to read:

44 Section 510. Prohibitions.

45 The following prohibitions shall apply:

46 (1) A patient may not operate or be in physical control  
47 of any of the following while under the influence of medical  
48 marijuana with a blood content of more than 10 nanograms of  
49 active tetrahydrocannabis per milliliter of blood in serum:

50 (i) Chemicals which require a permit issued by the  
51 Federal Government or a state government or an agency of

1 the Federal Government or a state government.

2 (ii) High-voltage electricity or any other public  
3 utility.

4 [(2) A patient may not perform any employment duties at  
5 heights or in confined spaces, including, but not limited to,  
6 mining while under the influence of medical marijuana.

7 (3) A patient may be prohibited by an employer from  
8 performing any task which the employer deems life-  
9 threatening, to either the employee or any of the employees  
10 of the employer, while under the influence of medical  
11 marijuana. The prohibition shall not be deemed an adverse  
12 employment decision even if the prohibition results in  
13 financial harm for the patient.

14 (4) A patient may be prohibited by an employer from  
15 performing any duty which could result in a public health or  
16 safety risk while under the influence of medical marijuana.  
17 The prohibition shall not be deemed an adverse employment  
18 decision even if the prohibition results in financial harm  
19 for the patient.]

20 (5) A patient may not perform any employment duties of a  
21 safety-sensitive position while impaired.

22 Section 3. Section 2103(b) (3) of the act is amended and the  
23 subsection is amended by adding paragraphs to read:

24 Section 2103. Protections for patients and caregivers.

25 \* \* \*

26 (b) Employment.--

27 \* \* \*

28 (3) Nothing in this act shall require an employer to  
29 commit any act that would put the employer or any person  
30 acting on its behalf in violation of Federal or State law.

31 (4) An employer or entity that provides employment  
32 services or information may indicate that a job position's  
33 application process or the job requires a marijuana test.

34 (5) An employee or job applicant that tests positive for  
35 marijuana may disclose and produce a valid identification  
36 card as provided under this act to the employer as  
37 documentation for testing positive or lawfully being under  
38 the influence of medical marijuana.

39 (6) An employer may require an employee or job applicant  
40 who has received a conditional offer of employment for a  
41 safety-sensitive position to submit to a test for marijuana.  
42 An employer may make an adverse employment decision against  
43 an employee or job applicant, and not be in violation of  
44 paragraph (1), if an employee or job applicant:

45 (i) Provided an adulterated or substituted testing  
46 sample or has refused to submit to a marijuana test  
47 required by an employer.

48 (ii) Fails to disclose and produce a valid  
49 identification card as provided under this act.

50 (iii) Discloses and produces a valid identification  
51 card, and is impaired, if the employee's position is a

safety-sensitive position.

(7) Nothing in this act shall be construed to create or imply a cause of action for an employee or job applicant for a safety-sensitive position based on an employer's good faith belief that the employee or job applicant violated the employer's lawful workplace drug policy, as follows:

(i) Any claim that arises following an employee's or job applicant's noncompliance with this section and which may have been prevented had the employee or job applicant complied.

(ii) Actions taken pursuant to an employer's lawful workplace drug policy, including subjecting an employee or job applicant to a marijuana test.

(iii) Actions based on the employer's good faith belief that an employee used or possessed medical marijuana in the employer's workplace or while performing the employee's essential functions of a safety-sensitive position.

(iv) Any claim that arises as a result of an employee's impairment while at the employer's workplace.

(8) Nothing in this section shall be construed to invalidate or void any rights, benefits or procedures afforded to an employee pursuant to an existing collective bargaining agreement.

Section 4. This act shall take effect in 60 days.