

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1360 Session of 2020

INTRODUCED BY K. WARD, PITTMAN, J. WARD, STEFANO, MARTIN,
ARGALL, MENSCH, YAW AND ARNOLD, OCTOBER 30, 2020

REFERRED TO HEALTH AND HUMAN SERVICES, OCTOBER 30, 2020

AN ACT

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

18 The General Assembly of the Commonwealth of Pennsylvania
19 hereby enacts as follows:

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

23 Section 103. Definitions.

24 * * *

25 "Safety-sensitive position." A position that requires any

1 activity that an employer reasonably believes presents a
2 potential risk of harm to the health or safety of an employee or
3 others while under the influence of medical marijuana,
4 including, but not limited to:

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

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

9 (3) Repairing, maintaining or monitoring the performance
10 or operation of any equipment, machinery or manufacturing
11 process, the malfunction or disruption of which could result
12 in injury or property damage.

13 (4) Performing firefighting duties.

14 (5) The operation, maintenance or oversight of critical
15 services and infrastructure, including, but not limited to,
16 electric, gas and water utilities, power generation or
17 distribution.

18 (6) The extraction, compression, processing,
19 manufacturing, handling, packaging, storage, disposal,
20 treatment or transport of potentially volatile, flammable,
21 combustible materials, elements, chemicals or other highly
22 regulated component.

23 (7) Dispensing pharmaceuticals.

24 (8) A position that requires the employee to carry a
25 firearm.

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

27 * * *

28 "Under the influence." One or more of the following:

29 (1) A drug test pursuant to which it is determined that:

30 (i) the level of tetrahydrocannabinolic acid in an

1 employee's urine is equal to or greater than 15 nanograms
2 per milliliter; or

3 (ii) the employee has provided an adulterated or
4 substituted testing sample.

5 (2) An employer's good faith determination that an
6 employee is under the influence of marijuana based on
7 observable physical behavior or characteristics, provided
8 that the employee may rebut the determination by immediately
9 submitting to a drug test, the results of which demonstrate
10 that the level of tetrahydrocannabinolic acid in the
11 employee's urine is less than 15 nanograms per milliliter.

12 Section 2. Sections 510 and 2102 of the act are amended to
13 read:

14 Section 510. Prohibitions.

15 The following prohibitions shall apply:

16 (1) A patient may not operate or be in physical control
17 of any of the following while under the influence with a
18 blood content of more than 10 nanograms of active
19 tetrahydrocannabis per milliliter of blood in serum:

20 (i) Chemicals which require a permit issued by the
21 Federal Government or a state government or an agency of
22 the Federal Government or a state government.

23 (ii) High-voltage electricity or any other public
24 utility.

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

28 (3) A patient may be prohibited by an employer from
29 performing any task which the employer deems life-
30 threatening, to either the employee or any of the employees

1 of the employer, while under the influence of medical
2 marijuana. The prohibition shall not be deemed an adverse
3 employment decision even if the prohibition results in
4 financial harm for the patient.

5 (4) A patient may be prohibited by an employer from
6 performing any duty which could result in a public health or
7 safety risk while under the influence of medical marijuana.
8 The prohibition shall not be deemed an adverse employment
9 decision even if the prohibition results in financial harm
10 for the patient.] (Reserved).

11 Section 2102. Insurers.

12 Nothing in this act shall be construed to require an insurer
13 or a health plan, whether paid for by Commonwealth funds or
14 private funds, to provide coverage for medical marijuana.
15 Additionally, notwithstanding any other provision of law, no
16 workers' compensation carrier, self-insured employer or other
17 insurer shall be required to provide coverage for or otherwise
18 reimburse the cost of medical marijuana.

19 Section 3. Section 2103(b) (2) and (3) of the act are amended
20 and subsection (b) is amended by adding paragraphs to read:

21 Section 2103. Protections for patients and caregivers.

22 * * *

23 (b) Employment.--

24 * * *

25 (2) Nothing in this act shall require an employer to
26 make any accommodation of the use of medical marijuana on the
27 property or premises of any place of employment. [This act
28 shall in no way limit an employer's ability to discipline an
29 employee for being under the influence of medical marijuana
30 in the workplace or for working while under the influence of

1 medical marijuana when the employee's conduct falls below the
2 standard of care normally accepted for that position.] If an
3 employer makes an adverse employment decision against an
4 employee or job applicant under this act, the adverse
5 employment decision may not be challenged under any other
6 State or local law.

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

10 (4) An employer may require employees or job applicants
11 who have received a conditional offer of employment to submit
12 to a drug test, including a test for marijuana. An employer
13 may make an adverse employment decision against an employee
14 or job applicant who has provided an adulterated or
15 substituted testing sample or has refused to submit to a
16 lawful drug test required by an employer.

17 (5) An employer or entity that provides employment
18 services or information may indicate that a job position's
19 application process or the job requires a drug test.

20 (6) An employer may require an employee or job applicant
21 who has received a conditional employment offer to disclose
22 and produce a valid identification card if the employee's
23 position, or the position for which the job applicant is
24 applying, is a safety-sensitive position. An employer may
25 make an adverse employment decision against an employee or
26 job applicant who fails to disclose and produce a valid
27 identification card, and the employer shall not be in
28 violation of paragraph (1).

29 (7) An employer may make an adverse employment decision
30 against an employee or job applicant who discloses and

1 produces a valid identification card, or who uses medical
2 marijuana, if the employee's position, or the position for
3 which the job applicant is applying, is a safety-sensitive
4 position, and the employer shall not be in violation of
5 paragraph (1).

6 (8) An employer may make an adverse employment decision
7 against an employee if the employee's use of medical
8 marijuana decreases or lessens the employee's job performance
9 or ability to perform the employee's job duties, and the
10 employer shall not be in violation of paragraph (1).

11 (9) If an employee is under the influence at the time of
12 an otherwise work-related injury and is not certified to use
13 medical marijuana in accordance with this act, the injury
14 shall not be covered by the act of June 21, 1915 (P.L.736,
15 No.338), known as the Workers' Compensation Act.

16 (10) If an injured employee's employment is terminated
17 because the employee tests positive for marijuana and does
18 not produce a valid identification card and the employer
19 proves that work would have been available to the injured
20 employee but for employee's termination from employment, the
21 injured worker shall not be entitled to disability benefits
22 under the Workers' Compensation Act.

23 (11) An employer shall be granted relief from charges if
24 a former employee is granted unemployment compensation
25 benefits because the employer could not accommodate the
26 employee's lawful use of medical marijuana.

27 (12) For purposes of the act of December 5, 1936 (1937,
28 Sp.Sess. 2, P.L. 2897, No. 1), known as the Unemployment
29 Compensation Law, it shall constitute conclusive evidence of
30 willful misconduct if an employee's separation from

1 employment was caused by medical marijuana use that violated
2 a lawful workplace policy or refusal to submit to a drug test
3 under this section.

4 (13) Nothing in this act shall be construed to create or
5 imply a cause of action for an employee or job applicant
6 against an employer for:

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

11 (ii) Actions taken pursuant to an employer's
12 reasonable workplace drug policy, including, but not
13 limited to, subjecting an employee or job applicant to a
14 reasonable drug and alcohol test, reasonable and
15 nondiscriminatory random drug test and discipline,
16 termination of employment or withdrawal of a job offer
17 after a failure of a drug test.

18 (iii) Actions based on the employer's good faith
19 belief that an employee used or possessed medical
20 marijuana in the employer's workplace or while performing
21 the employee's job duties or while on call in violation
22 of the employer's employment policies.

23 (iv) Actions including discipline or termination of
24 employment based on the employer's good faith belief that
25 an employee was impaired as a result of the use of
26 medical marijuana, under the influence of medical
27 marijuana while at the employer's workplace, under the
28 influence while performing the employee's job duties or
29 under the influence while on call in violation of the
30 employer's workplace drug policy.

1 * * *

2 Section 4. The act is amended by adding a section to read:

3 Section 2109.1. Enforcement and civil actions.

4 (a) Regulations.--The Secretary of Labor and Industry shall
5 promulgate regulations to enforce section 2103(b).

6 (b) Civil action.--A complainant may only bring a civil
7 action after all administrative remedies are exhausted.

8 Section 5. This act shall take effect in 60 days.