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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 902 Session of 2021

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INTRODUCED BY RABB, N. NELSON, HILL-EVANS, MERSKI, KINSEY,  
BENHAM, MALAGARI, BURGOS, McNEILL, SANCHEZ, SCHLOSSBERG,  
KENYATTA, CIRESI, SIMS AND OTTEN, JUNE 23, 2021

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REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, JUNE 23, 2021

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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 miscellaneous  
13 provisions, further providing for protections for patients  
14 and caregivers.

15 The General Assembly of the Commonwealth of Pennsylvania  
16 hereby enacts as follows:

17 Section 1. Section 2103(b) of the act of April 17, 2016  
18 (P.L.84, No.16), known as the Medical Marijuana Act, is amended  
19 and the section is amended by adding a subsection to read:

20 Section 2103. Protections for patients and caregivers.

21 \* \* \*

22 (b) Employment.--

23 (1) No employer may discharge, threaten, refuse to hire

1 or otherwise discriminate or retaliate against an employee  
2 regarding an employee's compensation, terms, conditions,  
3 location or privileges solely on the basis of such employee's  
4 status as an individual who is certified to use medical  
5 marijuana.

6 (1.1) No employer may discharge, threaten, refuse to  
7 hire or otherwise discriminate or retaliate against an  
8 employee who is certified to use medical marijuana for  
9 testing positive for marijuana on a drug test unless the  
10 employee is applying for a job for which working while under  
11 the influence of medical marijuana creates an unreasonable  
12 safety risk or the employee's conduct falls below the  
13 standard of care normally accepted for that position.

14 (2) Nothing in this act shall require an employer to  
15 make any accommodation of the use of medical marijuana on the  
16 property or premises of any place of employment. This act  
17 shall in no way limit an employer's ability to discipline an  
18 employee for being under the influence of medical marijuana  
19 in the workplace or for working while under the influence of  
20 medical marijuana when the employee's conduct falls below the  
21 standard of care normally accepted for that position.

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

25 (b.1) Civil action.--

26 (1) A person who alleges a violation of subsection (b)  
27 may bring a civil action in a court of competent jurisdiction  
28 for appropriate injunctive relief or damages, or both, within  
29 180 days after the occurrence of the alleged violation.

30 (2) It shall be a defense to an action under this

1 subsection if the defendant proves by a preponderance of the  
2 evidence that the action by the employer occurred for  
3 separate and legitimate reasons which are not merely  
4 pretextual.

5 (3) A court, in rendering a judgment in an action  
6 brought under this subsection, may order, as the court  
7 considers appropriate, reinstatement of the employee, payment  
8 of back wages, full reinstatement of fringe benefits and  
9 seniority rights, actual damages or any combination of these  
10 remedies. A court may also award the plaintiff all or a  
11 portion of the costs of litigation, including reasonable  
12 attorney fees and witness fees, if the plaintiff prevails in  
13 the civil action.

14 \* \* \*

15 Section 2. This act shall take effect in 60 days.