

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 749 Session of 2021

INTRODUCED BY MENSCH, ARGALL, BARTOLOTTA, MARTIN, PITTMAN, STEFANO, J. WARD, K. WARD, YAW AND YUDICHAK, JUNE 14, 2021

SENATOR BROOKS, HEALTH AND HUMAN SERVICES, AS AMENDED, APRIL 12, 2022

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 and civil actions.~~

18 AMENDING THE ACT OF APRIL 17, 2016 (P.L.84, NO.16), ENTITLED "AN <--
19 ACT ESTABLISHING A MEDICAL MARIJUANA PROGRAM; PROVIDING FOR
20 PATIENT AND CAREGIVER CERTIFICATION AND FOR MEDICAL MARIJUANA
21 ORGANIZATION REGISTRATION; IMPOSING DUTIES ON THE DEPARTMENT
22 OF HEALTH; PROVIDING FOR A TAX ON MEDICAL MARIJUANA
23 ORGANIZATION GROSS RECEIPTS; ESTABLISHING THE MEDICAL
24 MARIJUANA PROGRAM FUND; ESTABLISHING THE MEDICAL MARIJUANA
25 ADVISORY BOARD; ESTABLISHING A MEDICAL MARIJUANA RESEARCH
26 PROGRAM; IMPOSING DUTIES ON THE DEPARTMENT OF CORRECTIONS,
27 THE DEPARTMENT OF EDUCATION AND THE DEPARTMENT OF HUMAN
28 SERVICES; AND PROVIDING FOR ACADEMIC CLINICAL RESEARCH
29 CENTERS AND FOR PENALTIES AND ENFORCEMENT," IN PRELIMINARY
30 PROVISIONS, FURTHER PROVIDING FOR DEFINITIONS; IN PATIENTS,
31 FURTHER PROVIDING FOR PROHIBITIONS; AND, IN MISCELLANEOUS
32 PROVISIONS, FURTHER PROVIDING FOR PROTECTIONS FOR PATIENTS
33 AND CAREGIVERS.

1 The General Assembly of the Commonwealth of Pennsylvania

2 hereby enacts as follows:

3 ~~Section 1. Section 103 of the act of April 17, 2016 (P.L.84, <--~~
4 ~~No.16), known as the Medical Marijuana Act, is amended by adding~~
5 ~~definitions to read:~~

6 ~~Section 103. Definitions.~~

7 ~~The following words and phrases when used in this act shall~~
8 ~~have the meanings given to them in this section unless the~~
9 ~~context clearly indicates otherwise:~~

10 * * *

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

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

18 ~~(2) The operation of a motor vehicle, other vehicle,~~
19 ~~safety sensitive equipment, machinery or power tools.~~

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

24 ~~(4) Performing firefighting duties.~~

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

29 ~~(6) The extraction, compression, processing,~~
30 ~~manufacturing, handling, packaging, storage, disposal,~~

~~treatment or transport of potentially volatile, flammable, combustible materials, elements, chemicals or other highly regulated component.~~

~~(7) Dispensing pharmaceuticals.~~

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

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

~~* * *~~

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

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

~~(i) the level of tetrahydrocannabinolic acid in an employee's urine is equal to or greater than 15 nanograms per milliliter; or~~

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

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

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

~~Section 510. Prohibitions.~~

~~The following prohibitions shall apply:~~

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

1 ~~(i) Chemicals which require a permit issued by the~~
2 ~~Federal Government or a state government or an agency of~~
3 ~~the Federal Government or a state government.~~

4 ~~(ii) High voltage electricity or any other public~~
5 ~~utility.~~

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

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

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

22 Section 2102. ~~Insurers.~~

23 ~~Nothing in this act shall be construed to require an insurer-~~
24 ~~or a health plan, whether paid for by Commonwealth funds or~~
25 ~~private funds, to provide coverage for medical marijuana.-~~

26 ~~Additionally, notwithstanding any other provision of law, no~~
27 ~~workers' compensation carrier, self insured employer or other~~
28 ~~insurer shall be required to provide coverage for or otherwise~~
29 ~~reimburse the cost of medical marijuana.~~

30 ~~Section 3. Section 2103(b)(2) and (3) of the act are amended-~~

1 and subsection (b) is amended by adding paragraphs to read:

2 Section 2103. Protections for patients and caregivers.

3 * * *

4 (b) Employment.

5 * * *

6 (2) Nothing in this act shall require an employer to
7 make any accommodation of the use of medical marijuana on the
8 property or premises of any place of employment. [This act
9 shall in no way limit an employer's ability to discipline an
10 employee for being under the influence of medical marijuana
11 in the workplace or for working while under the influence of
12 medical marijuana when the employee's conduct falls below the
13 standard of care normally accepted for that position.]

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

17 (4) An employer may require employees or job applicants
18 who have received a conditional offer of employment to submit
19 to a drug test, including a test for marijuana. An employer
20 may make an adverse employment decision against an employee
21 or job applicant who has provided an adulterated or
22 substituted testing sample or has refused to submit to a
23 lawful drug test required by an employer.

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

27 (6) An employer may require an employee or job applicant
28 who has received a conditional employment offer to disclose
29 and produce a valid identification card if the employee's
30 position, or the position for which the job applicant is

1 ~~applying, is a safety sensitive position. An employer may~~
2 ~~make an adverse employment decision against an employee or~~
3 ~~job applicant who fails to disclose and produce a valid~~
4 ~~identification card as provided under this act, and the~~
5 ~~employer shall not be in violation of paragraph (1).~~

6 ~~(7) An employer may make an adverse employment decision~~
7 ~~against an employee or job applicant who discloses and~~
8 ~~produces a valid identification card, or who uses medical~~
9 ~~marijuana, if the employee's position, or the position for~~
10 ~~which the job applicant is applying, is a safety sensitive~~
11 ~~position, and the employer shall not be in violation of~~
12 ~~paragraph (1).~~

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

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

23 ~~(10) If an injured employee's employment is terminated~~
24 ~~pursuant to this act and the employer proves that work would~~
25 ~~have been available to the injured employee but for~~
26 ~~employee's termination from employment, the injured worker~~
27 ~~shall not be entitled to disability benefits under the~~
28 ~~Workers' Compensation Act.~~

29 ~~(11) An employer shall be granted relief from charges if~~
30 ~~a former employee is granted unemployment compensation~~

~~benefits because the employer could not accommodate the
employee's lawful use of medical marijuana.~~

~~(12) For purposes of the act of December 5, 1936 (1937,
Sp.Sess. 2, P.L.2897, No.1), known as the Unemployment
Compensation Law, it shall constitute conclusive evidence of
willful misconduct if an employee's separation from
employment was caused by medical marijuana use that violated
a lawful workplace policy or refusal to submit to a drug test
under this section.~~

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

~~(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, but not limited to,
subjecting an employee or job applicant to a lawful drug
and alcohol test, lawful and nondiscriminatory random
drug test and discipline, termination of employment or
withdrawal of a job offer after a failure of a drug 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 job duties or while on call in violation
of the employer's lawful employment policies.~~

~~(iv) Actions, including discipline or termination of
employment based on the employer's good faith belief that
an employee was impaired as a result of the use of~~

~~1 medical marijuana, under the influence of medical
2 marijuana while at the employer's workplace, under the
3 influence while performing the employee's job duties or
4 under the influence while on call in violation of the
5 employer's lawful workplace drug policy.~~

~~6 (14) If an employer makes an adverse employment decision
7 against an employee or job applicant under this act, the
8 adverse employment decision may not be challenged under any
9 other State or local law.~~

~~10 * * *~~

~~11 Section 4. The act is amended by adding a section to read:
12 Section 2109.1. Enforcement and civil actions.~~

~~13 (a) Regulations. The Secretary of Labor and Industry shall
14 promulgate regulations to enforce section 2103(b).~~

~~15 (b) Civil action. A complainant may only bring a civil
16 action after all administrative remedies are exhausted.~~

~~17 Section 5. This act shall take effect in 60 days.~~

18 SECTION 1. SECTION 103 OF THE ACT OF APRIL 17, 2016 (P.L.84, <--
19 NO.16), KNOWN AS THE MEDICAL MARIJUANA ACT, IS AMENDED BY ADDING
20 DEFINITIONS TO READ:

21 SECTION 103. DEFINITIONS.

22 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS ACT SHALL
23 HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE
24 CONTEXT CLEARLY INDICATES OTHERWISE:

25 * * *

26 "ESSENTIAL FUNCTIONS." THE FUNDAMENTAL, NOT MARGINAL, DUTIES
27 OF A POSITION.

28 * * *

29 "IMPAIRMENT." AS FOLLOWS:

30 (1) SYMPTOMS OF BEING UNDER THE INFLUENCE OF MARIJUANA

1 THAT MAY DECREASE OR LESSEN AN EMPLOYEE'S PERFORMANCE OF
2 ESSENTIAL DUTIES OR TASKS THAT AN EMPLOYER, IN GOOD FAITH,
3 BELIEVES WILL RESULT IN CARELESSNESS, NEGLIGENCE OR DISREGARD
4 FOR THE SAFETY OF THEMSELVES OR OTHERS AND DISRUPT BUSINESS
5 OPERATIONS.

6 (2) OBSERVABLE SYMPTOMS OF IMPAIRMENT FROM MEDICAL
7 MARIJUANA MAY INCLUDE, BUT ARE NOT LIMITED TO, THE EMPLOYEE'S
8 SPEECH, MOBILITY, PHYSICAL DEXTERITY, AGILITY, COORDINATION,
9 DEMEANOR, APPEARANCE, ODOR OR IRRATIONAL OR UNUSUAL BEHAVIOR.

10 * * *

11 "SAFETY-SENSITIVE POSITION." A POSITION THAT REQUIRES ANY
12 ACTIVITY THAT AN EMPLOYER REASONABLY BELIEVES PRESENTS A
13 POTENTIAL RISK OF HARM TO THE HEALTH OR SAFETY OF AN EMPLOYEE OR
14 OTHERS WHILE UNDER THE INFLUENCE OF MEDICAL MARIJUANA,
15 INCLUDING, BUT NOT LIMITED TO:

16 (1) DUTIES PERFORMED AT HEIGHTS OR IN CONFINED SPACES,
17 INCLUDING, BUT NOT LIMITED TO, MINING.

18 (2) THE OPERATION OF A MOTOR VEHICLE, OTHER VEHICLE,
19 EQUIPMENT, MACHINERY OR POWER TOOLS.

20 (3) REPAIRING, MAINTAINING OR MONITORING THE PERFORMANCE
21 OR OPERATION OF ANY EQUIPMENT, MACHINERY OR MANUFACTURING
22 PROCESS, THE MALFUNCTION OR DISRUPTION OF WHICH COULD RESULT
23 IN INJURY OR PROPERTY DAMAGE.

24 (4) PERFORMING FIREFIGHTING DUTIES.

25 (5) THE OPERATION, MAINTENANCE OR OVERSIGHT OF CRITICAL
26 SERVICES AND INFRASTRUCTURE, INCLUDING, BUT NOT LIMITED TO,
27 ELECTRIC, GAS AND WATER UTILITIES, POWER GENERATION OR
28 DISTRIBUTION.

29 (6) THE EXTRACTION, COMPRESSION, PROCESSING,
30 MANUFACTURING, HANDLING, PACKAGING, STORAGE, DISPOSAL,

1 TREATMENT OR TRANSPORT OF POTENTIALLY VOLATILE, FLAMMABLE,
2 COMBUSTIBLE MATERIALS, ELEMENTS, CHEMICALS OR OTHER HIGHLY
3 REGULATED COMPONENT.

4 (7) DISPENSING PHARMACEUTICALS.

5 (8) A POSITION THAT REQUIRES THE EMPLOYEE TO CARRY A
6 FIREARM.

7 (9) DIRECT PATIENT CARE OR DIRECT CHILD CARE.

8 * * *

9 "UNDER THE INFLUENCE." A DRUG TEST PURSUANT TO WHICH IT IS
10 DETERMINED THAT AN EMPLOYEE OR JOB APPLICANT TESTS POSITIVE FOR
11 MARIJUANA AT A LEVEL OF TETRAHYDROCANNABINOLIC ACID IN URINE
12 EQUAL TO OR GREATER THAN 15 NANOGRAMS PER MILLILITER OR FAILS TO
13 SUBMIT TO A MARIJUANA TEST.

14 SECTION 2. SECTION 510 OF THE ACT IS AMENDED TO READ:
15 SECTION 510. PROHIBITIONS.

16 THE FOLLOWING PROHIBITIONS SHALL APPLY:

17 (1) A PATIENT MAY NOT OPERATE OR BE IN PHYSICAL CONTROL
18 OF ANY OF THE FOLLOWING WHILE UNDER THE INFLUENCE OF MEDICAL
19 MARIJUANA WITH A BLOOD CONTENT OF MORE THAN 10 NANOGRAMS OF
20 ACTIVE TETRAHYDROCANNABIS PER MILLILITER OF BLOOD IN SERUM:

21 (I) CHEMICALS WHICH REQUIRE A PERMIT ISSUED BY THE
22 FEDERAL GOVERNMENT OR A STATE GOVERNMENT OR AN AGENCY OF
23 THE FEDERAL GOVERNMENT OR A STATE GOVERNMENT.

24 (II) HIGH-VOLTAGE ELECTRICITY OR ANY OTHER PUBLIC
25 UTILITY.

26 [(2) A PATIENT MAY NOT PERFORM ANY EMPLOYMENT DUTIES AT
27 HEIGHTS OR IN CONFINED SPACES, INCLUDING, BUT NOT LIMITED TO,
28 MINING WHILE UNDER THE INFLUENCE OF MEDICAL MARIJUANA.]

29 (3) A PATIENT MAY BE PROHIBITED BY AN EMPLOYER FROM
30 PERFORMING ANY TASK WHICH THE EMPLOYER DEEMS LIFE-

1 THREATENING, TO EITHER THE EMPLOYEE OR ANY OF THE EMPLOYEES
2 OF THE EMPLOYER, WHILE UNDER THE INFLUENCE OF MEDICAL
3 MARIJUANA. THE PROHIBITION SHALL NOT BE DEEMED AN ADVERSE
4 EMPLOYMENT DECISION EVEN IF THE PROHIBITION RESULTS IN
5 FINANCIAL HARM FOR THE PATIENT.

6 (4) A PATIENT MAY BE PROHIBITED BY AN EMPLOYER FROM
7 PERFORMING ANY DUTY WHICH COULD RESULT IN A PUBLIC HEALTH OR
8 SAFETY RISK WHILE UNDER THE INFLUENCE OF MEDICAL MARIJUANA.
9 THE PROHIBITION SHALL NOT BE DEEMED AN ADVERSE EMPLOYMENT
10 DECISION EVEN IF THE PROHIBITION RESULTS IN FINANCIAL HARM
11 FOR THE PATIENT.]

12 (5) A PATIENT MAY NOT PERFORM ANY EMPLOYMENT DUTIES OF A
13 SAFETY-SENSITIVE POSITION WHILE IMPAIRED.

14 SECTION 3. SECTION 2103(B) (3) OF THE ACT IS AMENDED AND THE
15 SUBSECTION IS AMENDED BY ADDING PARAGRAPHS TO READ:

16 SECTION 2103. PROTECTIONS FOR PATIENTS AND CAREGIVERS.

17 * * *

18 (B) EMPLOYMENT.--

19 * * *

20 (3) NOTHING IN THIS ACT SHALL REQUIRE AN EMPLOYER TO
21 COMMIT ANY ACT THAT WOULD PUT THE EMPLOYER OR ANY PERSON
22 ACTING ON ITS BEHALF IN VIOLATION OF FEDERAL OR STATE LAW.

23 (4) AN EMPLOYER OR ENTITY THAT PROVIDES EMPLOYMENT
24 SERVICES OR INFORMATION MAY INDICATE THAT A JOB POSITION'S
25 APPLICATION PROCESS OR THE JOB REQUIRES A MARIJUANA TEST.

26 (5) AN EMPLOYEE OR JOB APPLICANT THAT TESTS POSITIVE FOR
27 MARIJUANA MAY DISCLOSE AND PRODUCE A VALID IDENTIFICATION
28 CARD AS PROVIDED UNDER THIS ACT TO THE EMPLOYER AS
29 DOCUMENTATION FOR TESTING POSITIVE OR LAWFULLY BEING UNDER
30 THE INFLUENCE OF MEDICAL MARIJUANA.

1 (6) AN EMPLOYER MAY REQUIRE AN EMPLOYEE OR JOB APPLICANT
2 WHO HAS RECEIVED A CONDITIONAL OFFER OF EMPLOYMENT FOR A
3 SAFETY-SENSITIVE POSITION TO SUBMIT TO A TEST FOR MARIJUANA.
4 AN EMPLOYER MAY MAKE AN ADVERSE EMPLOYMENT DECISION AGAINST
5 AN EMPLOYEE OR JOB APPLICANT, AND NOT BE IN VIOLATION OF
6 PARAGRAPH (1), IF AN EMPLOYEE OR JOB APPLICANT:

7 (I) PROVIDED AN ADULTERATED OR SUBSTITUTED TESTING
8 SAMPLE OR HAS REFUSED TO SUBMIT TO A MARIJUANA TEST
9 REQUIRED BY AN EMPLOYER.

10 (II) FAILS TO DISCLOSE AND PRODUCE A VALID
11 IDENTIFICATION CARD AS PROVIDED UNDER THIS ACT.

12 (III) DISCLOSES AND PRODUCES A VALID IDENTIFICATION
13 CARD, AND IS IMPAIRED, IF THE EMPLOYEE'S POSITION IS A
14 SAFETY-SENSITIVE POSITION.

15 (7) NOTHING IN THIS ACT SHALL BE CONSTRUED TO CREATE OR
16 IMPLY A CAUSE OF ACTION FOR AN EMPLOYEE OR JOB APPLICANT FOR
17 A SAFETY-SENSITIVE POSITION BASED ON AN EMPLOYER'S GOOD FAITH
18 BELIEF THAT THE EMPLOYEE OR JOB APPLICANT VIOLATED THE
19 EMPLOYER'S LAWFUL WORKPLACE DRUG POLICY, AS FOLLOWS:

20 (I) ANY CLAIM THAT ARISES FOLLOWING AN EMPLOYEE'S OR
21 JOB APPLICANT'S NONCOMPLIANCE WITH THIS SECTION AND WHICH
22 MAY HAVE BEEN PREVENTED HAD THE EMPLOYEE OR JOB APPLICANT
23 COMPLIED.

24 (II) ACTIONS TAKEN PURSUANT TO AN EMPLOYER'S LAWFUL
25 WORKPLACE DRUG POLICY, INCLUDING SUBJECTING AN EMPLOYEE
26 OR JOB APPLICANT TO A MARIJUANA TEST.

27 (III) ACTIONS BASED ON THE EMPLOYER'S GOOD FAITH
28 BELIEF THAT AN EMPLOYEE USED OR POSSESSED MEDICAL
29 MARIJUANA IN THE EMPLOYER'S WORKPLACE OR WHILE PERFORMING
30 THE EMPLOYEE'S ESSENTIAL FUNCTIONS OF A SAFETY-SENSITIVE

1 POSITION.

2 (IV) ANY CLAIM THAT ARISES AS A RESULT OF AN
3 EMPLOYEE'S IMPAIRMENT WHILE AT THE EMPLOYER'S WORKPLACE.

4 (8) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO
5 INVALIDATE OR VOID ANY RIGHTS, BENEFITS OR PROCEDURES
6 AFFORDED TO AN EMPLOYEE PURSUANT TO AN EXISTING COLLECTIVE
7 BARGAINING AGREEMENT.

8 SECTION 4. THIS ACT SHALL TAKE EFFECT IN 60 DAYS.