

HOUSE No. 4699

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, April 19, 2022.

The committee on Labor and Workforce Development to whom was referred the petition (accompanied by bill, House, No. 2056) of Chynah Tyler and others relative to prohibiting employment discrimination based on the legal use of cannabis, reports recommending that the accompanying bill (House, No. 4699) ought to pass.

For the committee,

JOSH S. CUTLER.

HOUSE No. 4699

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Second General Court
(2021-2022)

An Act prohibiting employment discrimination based on the legal use of cannabis.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 151B of the General Laws is hereby amended by inserting after section 4A the
2 following section:-

3 Section 4B. Prohibition of employment discrimination based on the legal use of cannabis

4 1. Definitions

5 For the purposes of this section, the following words and phrases shall have the following
6 meanings:

7 (1) "Marijuana" means all parts of any plant of the genus cannabis, not excepted below
8 and whether growing or not; the seeds thereof; and resin extracted from any part of the plant; and
9 every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or
10 resin including tetrahydrocannabinol as defined in section 1 of chapter 94C.

11 (2) "Qualifying patient" shall have the same meaning as provided in Section (K) of
12 Chapter 369 of the Acts of 2012

(3) "Employer" means any business or employer operating in the Commonwealth and the government of the Commonwealth and municipalities

(4) "Prospective employee" means any individual applying for employment with an employer.

(5) "Safety sensitive position" means a position with regular duties that, if performed while under the influence of drugs or alcohol could cause a significant risk to public health or public safety, or cause serious bodily injury or loss of life.

2. Restriction on pre-employment marijuana testing and employment conditional on marijuana testing.

(a) An employer may only test a prospective employee for marijuana use after a conditional offer of employment has been extended, unless otherwise required by law. Further, no employer or agent of an employer may directly or indirectly solicit or require an employee or prospective employee to submit to testing for the presence of marijuana in his or her system as a condition of employment if that individual is a qualifying patient.

(b) Nothing in this act shall be construed to:

(1) Affect employee compliance with employer workplace drug policies for any substance other than marijuana as defined in Section 1 of this Act;

(2) Require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale, or growing of marijuana in the workplace or at any time during employment; or

(3) Interfere with federal employment contracts.

(c) Subsection (a) of this section shall not apply to safety sensitive positions or if compliance would cause the public employer to commit a violation of a federal law, regulation, contract, or funding agreement.

3. Patient protections.

(a)(1) Notwithstanding any other provision of law, except as provided in subsection (b) of this section, an employer may not refuse to hire, terminate from employment, penalize, fail to promote, or otherwise take adverse employment action against an individual based upon the individual's status as a qualifying patient unless the individual used, possessed, or was impaired by marijuana at the individual's place of employment or during the hours of employment.

(2) A qualifying patient's failure to pass an employer-administered drug test for marijuana components or metabolites may not be used as a basis for employment-related decisions unless reasonable suspicion exists that the qualified patient was impaired by marijuana at the qualifying patient's place of employment or during the hours of employment.

(b) Subsection (a) of this section shall not apply to safety sensitive positions or if compliance would cause the public employer to commit a violation of a federal law, regulation, contract, or funding agreement.