
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1290 Session of
2024

INTRODUCED BY STEFANO, J. WARD, AUMENT, PENNYCUICK, BREWSTER,
YAW AND ARGALL, JULY 17, 2024

REFERRED TO LAW AND JUSTICE, JULY 17, 2024

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; in miscellaneous
15 provisions, further providing for protections for patients
16 and caregivers and providing for enforcement and civil
17 actions; and promulgating 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 The following words and phrases when used in this act shall
25 have the meanings given to them in this section unless the

1 context clearly indicates otherwise:

2 * * *

3 "Essential functions." The fundamental, not marginal, duties
4 of a position.

5 * * *

6 "Impaired." As follows:

7 (1) Symptoms of being under the influence of marijuana
8 that may decrease or lessen an employee's performance of
9 essential duties or tasks that an employer, in good faith,
10 believes will result in carelessness, negligence or disregard
11 for the safety of themselves or others and disrupt business
12 operations.

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

17 * * *

18 "Safety-sensitive position." A position that requires any
19 activity that an employer reasonably believes presents a
20 potential risk of harm to the health or safety of an employee or
21 others, including, but not limited to:

22 (1) Duties performed at heights or in confined spaces,
23 to which the following shall apply:

24 (i) The term "at heights" shall mean an activity
25 undertaken in any place where, if there were no safety
26 precautions in place, a person could fall a certain
27 distance, resulting in personal injury.

28 (ii) The term "confined space" shall mean a space
29 with limited openings for entry or exit that is large
30 enough for entering and working and that is not designed

1 for continuous worker occupancy, including, but not
2 limited to, mines, underground vaults, tanks, storage
3 bins, manholes, pits, silos, underground vaults and
4 pipelines.

5 (2) The operation of any motor vehicle or other vehicle,
6 including, but not limited to, a forklift.

7 (3) Operating, repairing, maintaining or monitoring the
8 performance or operation of any equipment, machinery, power
9 tools, or manufacturing process, the malfunction or
10 disruption of which could result in injury or property
11 damage.

12 (4) The performance of official firefighting or rescue
13 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 chemicals or other potentially
21 volatile, flammable, combustible materials, elements,
22 chemicals or other highly regulated component.

23 (7) Dispensing or handling pharmaceuticals.

24 (8) Carrying a firearm or any device or weapon designed
25 or primarily employed so as to incapacitate an individual
26 while minimizing fatalities, permanent injury or undesired
27 damage to property or the environment.

28 (9) Direct patient, elder or child care.

29 * * *

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

1 (1) A drug test pursuant to which it is determined that:
2 (i) the level of tetrahydrocannabinolic acid in the
3 individual's urine is equal to or greater than 15
4 nanograms per milliliter; or
5 (ii) the individual has provided an adulterated or
6 substituted testing sample.

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

15 Section 2. Sections 510 and 2103(b) of the act are amended
16 to read:

17 Section 510. Prohibitions.

18 The following prohibitions shall apply:

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

23 (i) Chemicals which require a permit issued by the
24 Federal Government or a state government or an agency of
25 the Federal Government or a state government.

26 (ii) High-voltage electricity or any other public
27 utility.

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

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

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

14 Section 2103. Protections for patients and caregivers.

15 * * *

16 (b) Employment.--

17 (1) No employer may discharge, threaten, refuse to hire
18 or otherwise discriminate or retaliate against an employee
19 regarding an employee's compensation, terms, conditions,
20 location or privileges solely on the basis of such employee's
21 status as an individual who is certified to use medical
22 marijuana.

23 (2) Nothing in this act shall require an employer to
24 make any accommodation of the use of medical marijuana on the
25 property or premises of any place of employment. [This act
26 shall in no way limit an employer's ability to discipline an
27 employee for being under the influence of medical marijuana
28 in the workplace or for working while under the influence of
29 medical marijuana when the employee's conduct falls below the
30 standard of care normally accepted for that position.]

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

5 (4) An employer may require employees or job applicants
6 who have received a conditional offer of employment to submit
7 to a drug test, including a test for marijuana, for safety-
8 sensitive positions. An employer may make an adverse
9 employment decision against an employee or job applicant who
10 has provided an adulterated or substituted testing sample or
11 has refused to submit to a lawful drug test required by an
12 employer.

13 (5) An employer or entity that provides employment
14 services or information may indicate that a job position is
15 safety sensitive and the job position's application process
16 or the job may require a drug test.

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

26 (7) An employer may make an adverse employment decision
27 against an employee or job applicant who discloses and
28 produces a valid identification card or who uses medical
29 marijuana if the employee's position, or the position for
30 which the job applicant is applying, is a safety-sensitive

1 position, and the employer shall not be in violation of
2 paragraph (1), provided that the employer has engaged in an
3 interactive process with the employee or applicant to
4 evaluate the individual's ability to perform the essential
5 functions of the position with or without reasonable
6 accommodation.

7 (8) An employer may make an adverse employment decision
8 against an employee if the employee's use of medical
9 marijuana decreases or lessens the employee's job performance
10 or ability to perform the employee's job duties, and the
11 employer shall not be in violation of paragraph (1), provided
12 that the employer has engaged in an interactive process with
13 the employee or applicant to evaluate the individual's
14 ability to perform the essential functions of the position
15 with or without reasonable accommodation.

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

20 (10) Nothing in this section shall be construed to
21 create or permit a cause of action for an employee or job
22 applicant against an employer for:

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

27 (ii) Actions taken pursuant to an employer's lawful
28 workplace drug policy, including, but not limited to,
29 subjecting an employee or job applicant to a lawful drug
30 and alcohol test, lawful and nondiscriminatory random

1 drug test and discipline, termination of employment or
2 withdrawal of a job offer after a failure of a drug test.

3 (iii) Actions based on the employer's good faith
4 belief that an employee used or possessed medical
5 marijuana in the employer's workplace or while performing
6 the employee's job duties or while on call in violation
7 of the employer's lawful employment policies.

8 (iv) Actions based on the employer's good faith
9 belief that an employee was impaired as a result of the
10 use of medical marijuana, under the influence of medical
11 marijuana while at the employer's workplace, under the
12 influence while performing the employee's job duties or
13 under the influence while on call in violation of the
14 employer's lawful workplace drug policy.

15 (11) If an employer makes an adverse employment decision
16 against an employee or job applicant under this act, the
17 employee or job applicant may not challenge the adverse
18 employment decision under any other State or local law.

19 * * *

20 Section 3. The act is amended by adding a section to read:

21 Section 2109.1. Enforcement and civil actions.

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

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

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