



**2021 SESSION
POSITION PAPER**

BILL NO: Senate Bill 504

COMMITTEE: Judicial Proceedings

POSITION: Support

TITLE: Discrimination in Employment – Use of Medical Cannabis – Prohibition

BILL ANALYSIS: Senate Bill (SB) 504 prohibits an employer from discriminating against an individual because of the individual's receipt of a written certification for the use of medical cannabis, or the individual's positive drug test if the individual holds a written certification for the medical use of cannabis, except where failure to do so would violate federal law or regulations, or cause the employer to lose a monetary or licensing-related benefit under federal law or regulation.

SB 504 also establishes that provisions prohibiting employment discrimination do not prohibit an employer from adopting policies and procedures that prohibit an employee from performing the employee's duties while impaired by medical cannabis.

POSITION AND RATIONALE: The Maryland Medical Cannabis Commission (the Commission) supports SB 504.

SB 504 represents an important next step in ensuring medical cannabis patients receive equitable treatment and acknowledges the current reality of the more than 125,000 certified patients who rely on medical cannabis as an important and valued medicine. While individuals who use prescription medications can often seek protection from discrimination under the federal Americans with Disabilities Act (ADA), those same protections do not exist for medical cannabis given its current federal status. In turn, a growing number of states are enacting protections for medical cannabis patients to ensure equal access to employment. Without explicit protections in statute, patients are often forced to seek legal recourse through the court system. For that reason, 12 states and the District of Columbia have enacted explicit anti-employment discrimination provisions for medical cannabis patients. (See *Attachment – States with Employment Protections for Medical Cannabis Patients.*)

Health-General Article §13-3313 sets forth general protections by providing that any individual acting in accordance with the provisions of the subtitle may not be denied any right or privilege for the medical use of cannabis. While this general protection could be extended to apply to prohibit employment discrimination, the Commission believes there is great value to codifying into statute a law that explicitly addresses the employment rights of medical cannabis patients. SB 504 would eliminate employment barriers and prohibit discrimination against medical cannabis

patients, while recognizing the needs of employers to maintain a safe and productive workplace. These protections are made all the more crucial given this unprecedented time of historically high unemployment during the COVID-19 pandemic. SB 504 removes any existing ambiguity for employers concerning their responsibility to medical cannabis patients, and further acknowledges the status of medical cannabis as a legitimate form of medicine.

For these reasons, the Commission requests a favorable report on SB 504.

For more information, please contact Taylor Kasky, Director of Policy and Government Affairs, at (443) 915-5297 or taylors.kasky@maryland.gov.

Attachment – States with Employment Protections for Medical Cannabis Patients

State	Provision
AZ	<p>Unless a failure to do so would cause an employer to lose a monetary or licensing-related benefit under federal law or regulations, an employer may not discriminate against a person in hiring, termination or imposing any term or condition of employment or otherwise penalize a person based upon either:</p> <ol style="list-style-type: none"> a. The person's status as a cardholder. b. A registered qualifying patient's positive drug test for marijuana components or metabolites, unless the patient used, possessed or was impaired by marijuana on the premises of the place of employment or during the hours of employment.
AR	<p>Discrimination. An employer shall not discriminate against an individual in hiring, termination, or any term or condition of employment, or otherwise penalize an individual, based upon the individual's past or present status as a Qualifying Patient or Designated Caregiver.</p>
CT	<p>No employer may refuse to hire a person or may discharge, penalize or threaten an employee solely on the basis of such person's or employee's status as a qualifying patient or primary caregiver... Nothing in this subdivision shall restrict an employer's ability to prohibit the use of intoxicating substances during work hours or restrict an employer's ability to discipline an employee for being under the influence of intoxicating substances during work hours.</p>
DE	<p>Discrimination prohibited. Unless a failure to do so would cause the employer to lose a monetary or licensing-related benefit under federal law or federal regulations, an employer may not discriminate against a person in hiring, termination, or any term or condition of employment, or otherwise penalize a person, if the discrimination is based upon either of the following:</p> <ol style="list-style-type: none"> a. The person's status as a cardholder; or b. A registered qualifying patient's positive drug test for marijuana components or metabolites, unless the patient used, possessed, or was impaired by marijuana on the premises of the place of employment or during the hours of employment.
DC	<p>Patient protections. A public 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.</p>
IL	<p>Discrimination prohibited. No school, employer, or landlord may refuse to enroll or lease to, or otherwise penalize, a person solely for his or her status as a registered qualifying patient or a registered designated caregiver, unless failing to do so would put the school, employer, or landlord in violation of federal law or unless failing to do so would cause it to lose a monetary or licensing-related benefit under federal law or rules. This does not prevent a landlord from prohibiting the smoking of cannabis on the premises.</p> <ol style="list-style-type: none"> a. Nothing in this Act shall prohibit an employer from adopting reasonable regulations concerning the consumption, storage, or timekeeping requirements for qualifying patients related to the use of medical cannabis. b. Nothing in this Act shall prohibit an employer from enforcing a policy concerning drug testing, zero-tolerance, or a drug free workplace provided the policy is applied in a nondiscriminatory manner.

ME	A school, an employer or a landlord may not discriminate. A school, an employer or a landlord may not refuse to enroll or employ or lease to or otherwise penalize a person solely for that person's status as a qualifying patient or a caregiver unless failing to do so would put the school, employer or landlord in violation of federal law or cause it to lose a federal contract or funding. This subsection does not prohibit a restriction on the administration or cultivation of marijuana on premises when that administration or cultivation would be inconsistent with the general use of the premises. A landlord or business owner may prohibit the smoking of marijuana for medical purposes on the premises of the landlord or business if the landlord or business owner prohibits all smoking on the premises and posts notice to that effect on the premises.
MN	<p>Unless a failure to do so would violate federal law or regulations or cause an employer to lose a monetary or licensing-related benefit under federal law or regulations, an employer may not discriminate against a person in hiring, termination, or any term or condition of employment, or otherwise penalize a person, if the discrimination is based upon either of the following:</p> <ol style="list-style-type: none"> 1. The person's status as a patient enrolled in the registry program under sections 152.22 to 152.37; or 2. A patient's positive drug test for cannabis components or metabolites, unless the patient used, possessed, or was impaired by medical cannabis on the premises of the place of employment or during the hours of employment. <p>An employee who is required to undergo employer drug testing pursuant to section 181.953 may present verification of enrollment in the patient registry as part of the employee's explanation under section 181.953, subdivision 6.</p>
NV	<p>Medical needs of an employee who engages in medical use of marijuana is to be accommodated by the employer, other than law enforcement agency, in certain circumstances. Provisions of this chapter do not:</p> <ol style="list-style-type: none"> 1. Require any employer to allow the medical use of marijuana in the workplace. 2. Except as otherwise provided in subsection 4, require an employer to modify the job or working conditions of a person who engages in the medical use of marijuana that are based upon the reasonable business purposes of the employer but the employer must attempt to make reasonable accommodations for the medical needs of an employee who engages in the medical use of marijuana if the employee holds a valid registry identification card, provided that such reasonable accommodation would not: <ol style="list-style-type: none"> (a) Pose a threat of harm or danger to persons or property or impose an undue hardship on the employer; or (b) Prohibit the employee from fulfilling any and all of his or her job responsibilities. 3. Prohibit a law enforcement agency from adopting policies and procedures that preclude an employee from engaging in the medical use of marijuana.
NY	Being a certified patient shall be deemed to be having a "disability" under article fifteen of the executive law (human rights law), section forty-c of the civil rights law, sections 240.00, 485.00, and 485.05 of the penal law, and section 200.50 of the criminal procedure law. This subdivision shall not bar the enforcement of a policy prohibiting an employee from performing his or her employment duties while impaired by a controlled substance. This subdivision shall not require any person or entity to do any act that would put the person or entity in violation of federal law or cause it to lose a federal contract or funding.
OK	<p>No employer may refuse to hire, discipline, discharge or otherwise penalize an applicant or employee solely on the basis of a positive test for marijuana components or metabolites, unless:</p> <ol style="list-style-type: none"> a. The applicant or employee is not in possession of a valid medical marijuana license,

	<ul style="list-style-type: none"> b. The licensee possesses, consumes or is under the influence of medical marijuana or medical marijuana product while at the place of employment or during the fulfillment of employment obligations, or c. The position is one involving safety-sensitive job duties, as such term is defined in subsection K of this section.
PA	<p>Employment. -</p> <p>(1) No employer may discharge, threaten, refuse to hire or otherwise discriminate or retaliate against an employee regarding an employee's compensation, terms, conditions, location or privileges solely on the basis of such employee's status as an individual who is certified to use medical marijuana.</p> <p>(2) Nothing in this Act shall require an employer to make any accommodation of the use of medical marijuana on the property or premises of any place of employment. This act shall in no way limit an employer's ability to discipline an employee for being under the influence of medical marijuana in the workplace or for working while under the influence of medical marijuana when the employee's conduct falls below the standard of care normally accepted for that position.</p> <p>(3) Nothing in this Act shall require an employer to commit any act that would put the employer or any person acting on its behalf in violation of federal law.</p>
RI	<p>No employer may refuse to employ, or otherwise penalize, a person solely for his or her status as a cardholder, except:</p> <p>(1) To the extent employer action is taken with respect to such person's:</p> <ul style="list-style-type: none"> (i) Use or possession of marijuana or being under the influence of marijuana in any workplace; (ii) Undertaking a task under the influence of marijuana when doing so would constitute negligence or professional malpractice or jeopardize workplace safety; (iii) Operation, navigation, or actual physical control of any motor vehicle or other transport vehicle, aircraft, motorboat, machinery or equipment, or firearms while under the influence of marijuana; or (iv) Violation of employment conditions pursuant to the terms of a collective bargaining agreement; or <p>(2) Where the employer is a federal contractor or otherwise subject to federal law such that failure of the employer to take such action against the employee would cause the employer to lose a monetary or licensing related benefit.</p>