

State of Maryland Commission on Civil Rights

“Our vision is to have a State that is free from any trace of unlawful discrimination.”



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February 15, 2022

House Bill 628 – Workers’ Compensation and Workplace Discrimination– Medical Cannabis POSITION: Support

Dear Chairperson Wilson, Vice Chairperson Crosby, and Members of the House Economic Matters Committee:

The Maryland Commission on Civil Rights (“MCCR”; “The Commission”) is the State agency responsible for the enforcement of laws prohibiting discrimination in employment, housing, public accommodations, and state contracts based upon race, color, religion, sex, age, national origin, marital status, familial status, sexual orientation, gender identity, genetic information, physical and mental disability, and source of income.

House Bill 628 proposes excluding the use of medical cannabis from the circumstances under which a covered employee or a dependent thereof is not entitled to compensation or benefits under workers’ compensation law. It requires that medical cannabis be added to the list of drugs that an employer or its insurer have to provide to covered employees, under certain circumstances. Discrimination on the basis of possession of a certification for use of medical cannabis or, under certain circumstances, a positive drug test, would be prohibited.

There is ample evidence to show that cannabis has many beneficial effects when used to treat certain diseases and symptoms. It has been used by people for thousands of years and should be accounted for now that it is becoming more widely accepted. There are over 100,000 medical cannabis patients in Maryland. Employees that need medical cannabis to function should not be penalized in the workplace. HB 628 would require that employers treat medical cannabis users fairly on par with allowances made for other employees that take other drugs for medical purposes.

A medical cannabis user can be rejected at any point during the employment process from hiring through the duration of employment if they are subject to random drug screenings. Additionally, employees that suffer a work-related injury are denied assistance that every employee is able to take advantage of through workers’ compensation.

Many states have legalized the use of marijuana for medical purposes and have included anti-discrimination policies in various forms to reduce barriers to employment. For example, fifteen

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states have passed employment protections for medical cannabis users, with Nevada and New Jersey going one step further to include protections for recreational cannabis users. These states include Arizona, Alaska, Connecticut, Delaware, District of Columbia, Illinois, Maine, Minnesota, Nevada, New Jersey, New York, Oklahoma, Pennsylvania, Rhode Island, and West Virginia. The trend is moving towards protecting employees that have been prescribed medical cannabis. These employees should remain eligible for workers' compensation and should not be subject to discrimination in the workplace.

HB 628 would still allow employers to act against employees that are found to be under the influence during working hours. It also includes exemptions for federally related businesses that require special licensure or would lose necessary insurance. Additionally, some states have considered moves to further reduce possible liabilities for employers, like allowing businesses to exclude medical cannabis patients from certain tasks like operating heavy machinery or driving under the influence.

Page 4, lines 32 through 34 of the bill permit an employer to adopt policies and procedures that prohibit an employee from performing the employee's duties while impaired by medical cannabis. However, the bill does not define the term "impaired by medical cannabis", nor does existing statute offer MCCR any guidance. If the Committee entertains any amendments for this legislation, then the Maryland Commission on Civil Rights respectfully recommends considering clarifying language defining "impairment."

For these reasons, the Maryland Commission on Civil Rights urges a favorable vote on HB 628 with our recommendations. Thank you for your time and consideration of the information contained in this letter. The Maryland Commission on Civil Rights looks forward to the continued opportunity to work with you to improve and promote civil rights in Maryland.