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**2022 SESSION  
POSITION PAPER**

**BILL NO: HB 628**

**COMMITTEE: Economic Matters Committee**

**POSITION: Support with Amendments**

**TITLE:** Employment – Workers’ Compensation and Workplace Discrimination – Use of Medical Cannabis

**BILL ANALYSIS:** House Bill (HB) 628 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.

HB 628 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. Further, HB 628 authorizes the Workers’ Compensation Commission (WCC) to require an employer or its insurer to provide medical cannabis reimbursement to an injured employee receiving workers’ compensation benefits as part of the injured employee’s medical treatment.

**POSITION AND RATIONALE:** The Maryland Medical Cannabis Commission (the Commission) supports HB 628 with the sponsor’s amendments to remove the workers’ compensation provisions from the bill, as well as the Commission’s proposed amendment below.

HB 628 represents an important step in ensuring medical cannabis patients receive equitable treatment and acknowledges the current reality of the more than 148,000 certified patients in Maryland who rely on medical cannabis to treat a variety of chronic and debilitating illnesses and conditions. As medical cannabis programs across the U.S. continue to expand, the need to address employment opportunities and protections for medical cannabis patients has intensified. Despite legal recognition and medical oversight, medical cannabis patients are often subject to discrimination that harms major aspects of their lives such as employment.

***State laws protecting medical cannabis patients are widespread in the United States*** Maryland should join the rapidly growing list of jurisdictions that have addressed employment discrimination of medical cannabis patients. Since 2014, at least 17 states and the District of Columbia have enacted explicit anti-employment discrimination provisions for medical cannabis patients. (AZ, AR, CT, DE, IL, ME, MN, NV, NJ, NM, NY, OK, PA, RI, SD, VA, WV). In addition, a number of cities have enacted employment provisions that protect medical cannabis

patients, including Baltimore, Washington, DC, Atlanta, New York City, Philadelphia, Rochester, NY, Richmond, VA, Isle, MN, and Kansas City, MO. (See *Attachment A – States with Employment Protections for Medical Cannabis Patients* and *Attachment B – Cities with Employment Protections for Medical Cannabis Patients*.)

Health-General Article §13-3313 sets forth general protections for Maryland patients 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. In other jurisdictions, similar language has been interpreted to protect medical cannabis patients from employment discrimination; however, the Commission believes patients and employers would benefit significantly from the General Assembly expressly codifying the employment rights of medical cannabis patients.

***HB 628 balances employee protections with employer need to maintain a safe workplace***

HB 628 takes a commonsense approach to this issue by continuing to allow employers to adopt policies and procedures that prohibit an employee from performing work duties if impaired by cannabis. As a result, the bill establishes the same standards for medical cannabis that apply to all prescription and over-the-counter drugs and allows employers the same authority to develop workplace policies and safeguards. HB 628 would eliminate employment barriers and prohibit discrimination against medical cannabis patients, while recognizing the needs of employers to maintain a safe and productive workplace.

***Proposed Amendment and rationale***

The Commission proposes an amendment to delete the exemption from the bill's anti-discrimination provisions for defense industrial base employers set forth on page 5, lines 1 through 6. HB 628 defines such an employer referencing the U.S. Cybersecurity and Infrastructure Security Agency (CISA) definition which is vague and imprecise. The CISA consists of more than 100,000 entities internationally and domestically. Therefore, this exemption could result in thousands of Marylanders not being protected under this bill.

Further, this exemption for defense industrial base employers applies to those CISA employees for whom testing reveals certain levels of tetrahydrocannabinol (THC). THC levels do not correspond with impairment levels. A person's level of impairment cannot be predicted based on THC levels found in the person's system. A person can test positive for THC weeks after use, and therefore, THC test results are not a meaningful measure of impairment as it relates to workplace safety, absent corroborating observational evidence such as impaired speech or lack of coordination. This exemption could have a chilling effect on a patient's use of medical cannabis or subject the patient to adverse employment consequences without just cause.

HB 628 is an important bill to the health and employment security of medical cannabis patients in Maryland. The bill removes any existing ambiguity for employers concerning their responsibility to medical cannabis patients, and further acknowledges the status of medical cannabis as an important form of medicine. For these reasons, the Commission requests a favorable report with amendments.

For more information, please contact William Tilburg, Executive Director, at (410) 487-8069 or at [william.tilburg@maryland.gov](mailto:william.tilburg@maryland.gov).

**Attachment A – 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> <ul style="list-style-type: none"> <li>a. The person's status as a cardholder.</li> <li>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.</li> </ul> <p><i>See AZ Rev Stat §36-2813</i></p>
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> <ul style="list-style-type: none"> <li>a. The person's status as a cardholder; or</li> <li>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.</li> </ul>
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> <ul style="list-style-type: none"> <li>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.</li> <li>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.</li> </ul>
ME	<p>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</p>

	<p>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.</p>
<p><b>MN</b></p>	<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"> <li>1. The person's status as a patient enrolled in the registry program under sections 152.22 to 152.37; or</li> <li>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.</li> </ol> <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>
<p><b>NV</b></p>	<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"> <li>1. Require any employer to allow the medical use of marijuana in the workplace.</li> <li>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"> <li>(a) Pose a threat of harm or danger to persons or property or impose an undue hardship on the employer; or</li> <li>(b) Prohibit the employee from fulfilling any and all of his or her job responsibilities.</li> </ol> </li> <li>3. Prohibit a law enforcement agency from adopting policies and procedures that preclude an employee from engaging in the medical use of marijuana. NRS 453A.800</li> </ol>
<p><b>NJ</b></p>	<p>It shall be unlawful to take any adverse employment action against an employee who is a registered qualifying patient based solely on the employee's status as a registry identification cardholder. "Adverse employment action" means refusing to hire or employ an individual, barring or discharging an individual from employment, requiring an individual to retire from employment, or discriminating against an individual in compensation or in any terms, conditions, or privileges of employment.</p> <p>If an employer has a drug testing policy and an employee or job applicant tests positive for cannabis, the employer shall offer the employee or job applicant an opportunity to present a legitimate medical explanation for the positive test result and shall provide written notice of the right to explain to the employee or job applicant.</p> <p>As part of an employee's or job applicant's explanation for the positive test result, the employee or job applicant may present an authorization for medical cannabis issued by a health care practitioner, a registry identification card, or both.</p> <p>Nothing in this section shall be deemed to:</p> <ol style="list-style-type: none"> <li>(1) restrict an employer's ability to prohibit, or take adverse employment action for, the possession or use of intoxicating substances during work hours; or</li> <li>(2) require an employer to commit any act that would cause the employer to be in violation of federal law, that would result in a loss of a licensing-related benefit pursuant to federal law, or that would result in the loss of a federal contract or federal funding.</li> </ol> <p>No employer shall be penalized or denied any benefit under State law solely on the basis of employing a person who is a registry identification cardholder.</p>

<p><b>NM</b></p>	<p>Unless a failure to do so would cause the employer to lose a monetary or licensing-related benefit under federal law or federal regulations, it is unlawful to take an adverse employment action against an applicant or an employee based on conduct allowed under the Lynn and Erin Compassionate Use Act. Nothing in this section shall: (1) restrict an employer’s ability to prohibit or take adverse employment action against an employee for use of, or being impaired by, medical cannabis on the premises of the place of employment or during the hours of employment; or (2) apply to an employee whose employer deems that the employee works in a safety-sensitive position.</p>
<p><b>NY</b></p>	<p>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. See Chapter 7-a, Article 3, McKinney’s Consolidated Laws of New York Annotated §42</p>
<p><b>OK</b></p>	<p>Unless otherwise required by federal law or required to obtain federal funding:</p> <ol style="list-style-type: none"> <li>1. No employer may refuse to hire, discipline, discharge or otherwise penalize an applicant or employee solely on the basis of such applicant's or employee's status as a medical marijuana licensee; and</li> <li>2. 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:             <ol style="list-style-type: none"> <li>a. the applicant or employee is not in possession of a valid medical marijuana license,</li> <li>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</li> <li>c. the position is one involving safety-sensitive job duties, as such term is defined in subsection K of this section.</li> </ol> </li> </ol> <p>I. Nothing in this act or Section 420 et seq. of Title 63 of the Oklahoma Statutes shall:</p> <ol style="list-style-type: none"> <li>1. Require an employer to permit or accommodate the use of medical marijuana on the property or premises of any place of employment or during hours of employment;</li> <li>2. Require an employer, a government medical assistance program, private health insurer, worker's compensation carrier or self-insured employer providing worker's compensation benefits to reimburse a person for costs associated with the use of medical marijuana; or</li> <li>3. Prevent an employer from having written policies regarding drug testing and impairment in accordance with the Oklahoma Standards for Workplace Drug and Alcohol.</li> </ol> <p>OK Statutes, Title 63 §427.8H</p>
<p><b>PA</b></p>	<p>Employment.-</p> <ol style="list-style-type: none"> <li>(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.</li> <li>(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.</li> </ol>

	<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.  <i>See 35 P.S. §10231.2103</i></p>
<b>RI</b>	<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> <p>(i) Use or possession of marijuana or being under the influence of marijuana in any workplace;</p> <p>(ii) Undertaking a task under the influence of marijuana when doing so would constitute negligence or professional malpractice or jeopardize workplace safety;</p> <p>(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</p> <p>(iv) Violation of employment conditions pursuant to the terms of a collective bargaining agreement; or</p> <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.  <i>See R.I Gen. Laws §21-28.6-4</i></p>
<b>SD</b>	<p>South Dakota Codified Laws 34-20G-22 et seq.</p> <p>Section 22. That the code be amended by adding a NEW SECTION to read:          Except as provided in this Act, a registered qualifying patient who uses cannabis for a medical purpose shall be afforded all the same rights under state and local law, as the person would be afforded if the person were solely prescribed a pharmaceutical medication, as it pertains to:</p> <p>(1) Any interaction with a person's employer</p> <p>(2) Drug testing by a person's employer; or</p> <p>(3) Drug testing required by any state or local law, agency, or government official.</p> <p>Section 23. That the code be amended by adding a NEW SECTION to read:          The rights provided by sections 19 to 25, inclusive of this Act do not apply to the extent that they conflict with an employer's obligations under federal law or regulation or to the extent that they would disqualify an employer from a monetary or licensing-related benefit under federal law or regulation.</p> <p>Section 24. That the code be amended by adding a NEW SECTION to read:          No employer is required to allow the ingestion of cannabis in any workplace or to allow any employee to work while under the influence of cannabis. A registered qualifying patient may not be considered to be under the influence of cannabis solely because of the presence of metabolites or components of cannabis that appear in insufficient concentration to cause impairment.</p> <p>Section 25. That the code be amended by adding a NEW SECTION to read:          No school, landlord, or employer may be penalized or denied any benefit under state law for enrolling, leasing to or employing a cardholder.</p>

<p><b>VA</b></p>	<p>Approved March 25, 2021 Be it enacted by the General Assembly of Virginia: 1. That the Code of Virginia is amended by adding a section numbered 40.1-27.4 as follows: § 40.1-27.4. Discipline for employee's medicinal use of cannabis oil prohibited.</p> <p>A. As used in this section, "cannabis oil" means the same as that term is defined in § 54.1-3408.3.</p> <p>B. No employer shall discharge, discipline, or discriminate against an employee for such employee's lawful use of cannabis oil pursuant to a valid written certification issued by a practitioner for the treatment or to eliminate the symptoms of the employee's diagnosed condition or disease pursuant to § 54.1-3408.3.</p> <p>C. Notwithstanding the provisions of subsection B, nothing in this section shall:</p> <p>(i) restrict an employer's ability to take any adverse employment action for any work impairment caused by the use of cannabis oil or to prohibit possession during work hours,</p> <p>(ii) require an employer to commit any act that would cause the employer to be in violation of federal law or that would result in the loss of a federal contract or federal funding, or</p> <p>(iii) require any defense industrial base sector employer or prospective employer, as defined by the U.S. Cybersecurity and Infrastructure Security Agency, to hire or retain any applicant or employee who tests positive for tetrahydrocannabinol (THC) in excess of 50 ng/ml for a urine test or 10 pg/mg for a hair test.</p>
<p><b>WV</b></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 cannabis.</p> <p>(2) Nothing in this act shall require an employer to make any accommodation of the use of medical cannabis 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 cannabis in the workplace or for working while under the influence of medical cannabis 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> <p>Prohibitions: The following prohibitions shall apply:</p> <p>(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 three nanograms of active tetrahydrocannabis per milliliter of blood in serum:</p> <p>(A) Chemicals which require a permit issued by the Federal Government or a state government or an agency of the Federal Government or a state government.</p> <p>(B) High-voltage electricity or any other public utility.</p> <p>(C) Vehicle, aircraft, train, boat, or heavy machinery.</p> <p>(2) A patient may not perform any employment duties at heights or in confined spaces, including, but not limited to, mining while under the influence of medical cannabis.</p> <p>(3) A patient may be prohibited by an employer from performing any task which the employer deems life-threatening, to either the employee or any of the employees of the employer, while under the influence of medical cannabis. The prohibition shall not be deemed an adverse employment decision even if the prohibition results in financial harm for the patient.</p> <p>(4) A patient may be prohibited by an employer from performing any duty which could result in a public health or safety risk while under the influence of medical cannabis. The prohibition shall not be deemed an adverse employment decision even if the prohibition results in financial harm for the patient. <i>See West Virginia Code §16A-15-4</i></p>

**Attachment B - Cities with Employment Protections for Medical Cannabis Patients**

<b>City</b>	<b>Provision</b>
<b>Atlanta, GA</b>	Executive Order 2021-08 Mayor Keisha Lance Bottoms issued an executive order suspending the physical exams and drug testing for employees entering “non-safety sensitive positions,
<b>NYC</b>	Law Number: 2019/091 A Local Law to amend the administrative code of the city of New York, in relation to prohibition of drug testing for pre-employment hiring procedures. This bill prohibits New York City employers from requiring a prospective employee to submit to testing for the presence of any tetrahydrocannabinols (THC), the active ingredient in marijuana, in such prospective employee’s system as a condition of employment. Exceptions are provided for safety and security sensitive jobs, and those tied to a federal or state contract or grant.
<b>Philadelphia, PA</b>	Bill No. 200625: Prohibits employers from requiring prospective employees to undergo testing for the presence of marijuana as a condition of employment, under certain terms and conditions. Testing is still allowed when applying for certain safety sensitive positions, such as police officers and/or those who supervise children or medical patients. Additionally, those mandated to be drug tested under federal drug testing guidelines can also be tested. Effective Jan. 1, 2022.
<b>Baltimore, MD</b>	At the request of Mayor Brandon M. Scott, the Board of Estimates (BOE) approved Administrative Manual Policy 205-8, which removes the requirement for a pre-employment drug and alcohol screening for prospective employees in non-safety sensitive positions.
<b>Rochester, NY</b>	The Rochester City Council approved legislation that, effective immediately, removed THC as a chemical tested for during pre-employment drug screenings. The city will continue testing for other drugs, such as heroin, cocaine, and methamphetamines. Potential hires for certain positions where safety is a concern — police officers, for example — will still be tested for THC.
<b>Richmond, VA</b>	Resolution 030- to change the city of Richmond’s Administrative Regulations #4302 to remove marijuana from substance detection test for pre-employment and random screenings.
<b>Isle, MN</b>	Labor shortages prompt Isle City Council to remove employment drug testing. A vote was taken with the motion approved to waive the drug test requirement. April 2021
<b>Kansas City, MO</b>	<u>Ordinance No. 210627</u> , which was approved with an 11 to 1 vote, says, “It shall be unlawful for the City of Kansas City to require a prospective employee to submit to testing for the presence of marijuana in the prospective employee’s system as a condition of employment.”
<b>San Francisco, CA</b>	No employer may demand, require, or request employees to submit to, to take or to undergo any blood, urine, or encephalography test in the body as a condition of continued employment. Nothing herein shall prohibit an employer from requiring a specific employee to submit to blood or urine testing if: <ul style="list-style-type: none"> <li>(a) The employer has reasonable grounds to believe that an employee’s faculties are impaired on the job; and</li> <li>(b) The employee is in a position where such impairment presents a clear and present danger to the physical safety of the employee, another employee or to a member of the public; and</li> </ul>

	<p>(c) The employer provides the employee, at the employer's expense, the opportunity to have the sample tested or evaluated by State licensed independent laboratory/testing facility and provides the employee with a reasonable opportunity to rebut or explain the results.</p> <p>Nothing in this Article shall restrict an employer's ability to prohibit the use of intoxicating substances during work hours or restrict an employer's ability to discipline employees for being under the influence of intoxicating substances during work hours.</p> <p>(Added by Ord. 527-85, App. 12/2/85)</p>
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