

**Introduced by Senator Leno**January 27, 2011

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An act to amend Section 11362.785 of, and to add Section 11362.787 to, the Health and Safety Code, relating to medical marijuana.

## LEGISLATIVE COUNSEL'S DIGEST

SB 129, as introduced, Leno. Medical marijuana: qualified patients and primary caregivers: employment discrimination.

Existing law, the Compassionate Use Act of 1996, provides that a patient or a patient's primary caregiver who possesses or cultivates marijuana for personal medical purposes of the patient upon the written or oral recommendation or approval of a physician is not subject to conviction for offenses relating to possession and cultivation of marijuana.

Existing law requires the State Department of Public Health to establish and maintain a voluntary program for the issuance of identification cards to patients qualified to use marijuana for their personal medical purposes, and to their primary caregivers, if any. Existing law states, however, that these provisions do not require any accommodation of any medical use of marijuana on the property or premises of any place of employment or during the hours of employment.

This bill, notwithstanding existing law, would declare it unlawful for an employer to 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 the person's status as a qualified patient or a positive drug test for marijuana, except as specified. The bill would authorize a person who has suffered discrimination in violation of the bill to institute and prosecute a civil action for damages,

injunctive relief, reasonable attorney’s fees and costs, any other appropriate equitable relief, as specified, and any other relief the court may deem proper. The bill would not prohibit an employer from terminating the employment of, or taking other corrective action against, an employee who is impaired on the property or premises of the place of employment, or during the hours of employment, because of the medical use of marijuana.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 11362.785 of the Health and Safety Code  
2 is amended to read:

3 11362.785. (a) Nothing in this article shall require any  
4 accommodation of any medical use of marijuana on the property  
5 or premises of any place of employment or during the hours of  
6 ~~employment~~ *employment, except as provided in Section 11362.787,*  
7 or on the property or premises of any jail, correctional facility, or  
8 other type of penal institution in which prisoners reside or persons  
9 under arrest are detained.

10 (b) Notwithstanding subdivision (a), a person shall not be  
11 prohibited or prevented from obtaining and submitting the written  
12 information and documentation necessary to apply for an  
13 identification card on the basis that the person is incarcerated in a  
14 jail, correctional facility, or other penal institution in which  
15 prisoners reside or persons under arrest are detained.

16 (c) ~~Nothing in this~~ *This* article shall *not* prohibit a jail,  
17 correctional facility, or other penal institution in which prisoners  
18 reside or persons under arrest are detained, from permitting a  
19 prisoner or a person under arrest who has an identification card,  
20 to use marijuana for medical purposes under circumstances that  
21 will not endanger the health or safety of other prisoners or the  
22 security of the facility.

23 (d) ~~Nothing in this~~ *This* article shall *not* require a governmental,  
24 private, or any other health insurance provider or health care service  
25 plan to be liable for any claim for reimbursement for the medical  
26 use of marijuana.

27 SEC. 2. Section 11362.787 is added to the Health and Safety  
28 Code, to read:

1 11362.787. (a) Notwithstanding subdivision (a) of Section  
2 11362.785, and except as provided in subdivision (c), it is unlawful  
3 for an employer to discriminate against a person in hiring,  
4 termination, or any term or condition of employment or otherwise  
5 penalize a person, if the discrimination is based upon either of the  
6 following:

7 (1) The person’s status as a qualified patient.

8 (2) The person’s positive drug test for marijuana, provided the  
9 person is a qualified patient and the medical use of marijuana, as  
10 defined in Section 11362.7, does not occur on the property or  
11 premises of the place of employment or during the hours of  
12 employment, as required by Section 11362.785.

13 (b) A person who has suffered discrimination in violation of  
14 subdivision (a) may institute and prosecute in his or her own name  
15 and on his or her own behalf a civil action for damages, injunctive  
16 relief, reasonable attorney’s fees and costs, any other appropriate  
17 equitable relief to protect the peaceable exercise of the right or  
18 rights secured, and any other relief the court may deem proper.

19 (c) (1) Paragraph (2) of subdivision (a) shall not apply when  
20 an employer employs a person in a safety-sensitive position.

21 (2) For purposes of this section, a safety-sensitive position  
22 means a position in which medical cannabis-affected performance  
23 could clearly endanger the health and safety of others. A  
24 safety-sensitive position shall have all of the following general  
25 characteristics:

26 (A) Its duties involve a greater than normal level of trust,  
27 responsibility for, or impact on the health and safety of others.

28 (B) Errors in judgment, inattentiveness, or diminished  
29 coordination, dexterity, or composure while performing its duties  
30 could clearly result in mistakes that would endanger the health and  
31 safety of others.

32 (C) An employee in a position of this nature works  
33 independently, or performs tasks of a nature that it cannot safely  
34 be assumed that mistakes like those described in subparagraph (B)  
35 could be prevented by a supervisor or another employee.

36 (3) “Safety-sensitive position” also includes a position that  
37 involves the performance of a “safety-sensitive function,” as  
38 described in Section 655.4 of Title 49 of the Code of Federal  
39 Regulations, and a position in law enforcement, as defined in  
40 subdivision (d) of Section 13951 of the Government Code.

1 (d) ~~Nothing in this~~ *This* section shall *not* prohibit an employer  
2 from terminating the employment of, or taking other corrective  
3 action against, an employee who is impaired on the property or  
4 premises of the place of employment or during the hours of  
5 employment, because of the medical use of marijuana.