

AMENDED IN ASSEMBLY APRIL 21, 2008

AMENDED IN ASSEMBLY APRIL 14, 2008

AMENDED IN ASSEMBLY APRIL 2, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 2279

**Introduced by Assembly Member Leno
(Coauthors: Assembly Members Berg, Hancock, and Saldana)**

February 21, 2008

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

AB 2279, as amended, 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 primary caregiver, *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, and any other appropriate equitable relief, as specified. The bill would provide that it would not prohibit an employer from terminating the employment of, or taking other corrective action against, a person 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, except as provided in Section 11362.787, or on the
- 7 property or premises of any jail, correctional facility, or other type
- 8 of penal institution in which prisoners reside or persons under
- 9 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 article shall prohibit a jail, correctional
- 17 facility, or other penal institution in which prisoners reside or
- 18 persons under arrest are detained, from permitting a prisoner or a
- 19 person under arrest who has an identification card, to use marijuana
- 20 for medical purposes under circumstances that will not endanger
- 21 the health or safety of other prisoners or the security of the facility.

1 (d) Nothing in this article shall require a governmental, private,
2 or any other health insurance provider or health care service plan
3 to be liable for any claim for reimbursement for the medical use
4 of marijuana.

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

7 11362.787. (a) Notwithstanding subdivision (a) of Section
8 11362.785, and except as provided in subdivision (c), it is unlawful
9 for an employer to discriminate against a person in hiring,
10 termination, or any term or condition of employment or otherwise
11 penalize a person, if the discrimination is based upon either of the
12 following:

13 (1) The person's status as a qualified patient or a designated
14 primary caregiver.

15 (2) The person's positive drug test for marijuana, provided the
16 person is a qualified patient and the medical use of marijuana, as
17 defined in Section 11362.7, does not occur on the property or
18 premises of the place of employment or during the hours of
19 employment, as required by Section 11362.785.

20 (b) A person who has suffered discrimination in violation of
21 subdivision (a) may institute and prosecute in his or her own name
22 and on his or her own behalf a civil action for damages, injunctive
23 relief, and any other appropriate equitable relief to protect the
24 peaceable exercise of the right or rights secured.

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

27 (2) For purposes of this section, a safety-sensitive position
28 ~~means a position in law enforcement, as defined in subdivision (d)~~
29 ~~of Section 13951 of the Government Code, or a position in which~~
30 *means a position in which* medical cannabis-affected performance
31 could clearly endanger the health and safety of others. A
32 safety-sensitive position shall have all of the following general
33 characteristics:

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

36 (B) Errors in judgment, inattentiveness, or diminished
37 coordination, dexterity, or composure while performing its duties
38 could clearly result in mistakes that would endanger the health and
39 safety of others.

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

5 (3) *“Safety-sensitive position” also includes a position that*
6 *involves the performance of a “safety-sensitive function,” as*
7 *described in Section 655.4 of Title 49 of the Code of Federal*
8 *Regulations, and a position in law enforcement, as defined in*
9 *subdivision (d) of Section 13951 of the Government Code.*

10 (d) Nothing in this section shall prohibit an employer from
11 terminating the employment of, or taking other corrective action
12 against, a person who is impaired on the property or premises of
13 the place of employment or during the hours of employment,
14 because of the medical use of marijuana.