A BILL FOR AN ACT

RELATING TO MEDICAL CANNABIS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that several states have given people suffering from illness and disability access to medical cannabis, which can help address pain and generally make them feel better. However, some medical cannabis users risk their jobs if they use it, even if that use is off-site and does not affect the workplace.

The legislature further finds that the conflict between state and federal medical cannabis laws causes confusion for employers, who are unsure whether state medical cannabis laws supersede their power to enforce drug-free workplace policies against employees. Courts consistently rule in favor of employers when medical cannabis users challenge drug-free workplace policies, but they have not foreclosed the possibility that state medical cannabis laws could protect employees. Tools like fit for duty tests are even available for employers to manage workplace risk in potentially dangerous occupations.

Nevertheless, without explicit statutory guidance, the courts
will not recognize these rights. Therefore, Hawaii's medical cannabis laws should clearly address the scope of accommodation that employers must provide to medical cannabis users.

The purpose of this Act is to:

(1) Prohibit an employer from discriminating against a person in hiring, termination, or condition of employment based on the person's status as a medical cannabis cardholder, under certain conditions; and

(2) Specify that an employer may use a fit for duty test for medical cannabis users in potentially dangerous occupations.

SECTION 2. Section 329-125.5, Hawaii Revised Statutes, is amended to read as follows:

"§329-125.5 Medical cannabis patient and caregiver protections. (a) No school shall refuse to enroll or otherwise penalize, and no landlord shall refuse to lease property to or otherwise penalize, a person solely for the person's status as a qualifying patient or primary caregiver in the medical cannabis program under this part, unless failing to do so would cause the school or landlord to lose a monetary or licensing-related benefit under federal law or regulation; provided that the
qualifying patient or primary caregiver strictly complied with
the requirements of this part; provided further that the
qualifying patient or primary caregiver shall present a medical
cannabis registry card or certificate and photo identification,
to ensure that the qualifying patient or primary caregiver is
validly registered with the department of health pursuant to
section 329-123.

(b) For the purposes of medical care, including organ
transplants, a registered qualifying patient's use of cannabis
in compliance with this part shall be considered the equivalent
of the use of any other medication under the direction of a
physician and shall not constitute the use of an illicit
substance or otherwise disqualify a registered qualifying
patient from medical care.

(c) No qualifying patient or primary caregiver under this
part shall be denied custody of, visitation with, or parenting
time with a minor, and there shall be no presumption of neglect
or child endangerment, for conduct allowed under this part;
provided that this subsection shall not apply if the qualifying
patient's or primary caregiver's conduct created a danger to the
safety of the minor, as established by a preponderance of the evidence.

(d) This section shall apply to qualifying patients, primary caregivers, qualifying out-of-state patients, and caregivers of qualifying out-of-state patients who are validly registered with the department of health pursuant to this part and the administrative rules of the department of health.

(e) Unless a failure to do so would cause the employer to lose a monetary or licensing-related benefit under a contract or federal law, an employer shall not discriminate against a person in hiring, termination, or any term or condition of employment, other than contained in a collective bargaining agreement, if the discrimination is based upon either of the following:

(1) The person's status as a cardholder; or

(2) A registered qualifying patient's positive drug test for cannabis components or metabolites, unless the registered qualifying patient was impaired by cannabis during the hours of employment or in a potentially dangerous occupation.

(f) In potentially dangerous occupations, including but not limited to law enforcement officers and correctional
facility employees, an employer may use a fit for duty test as a 
risk-based assessment tool for a registered qualifying patient."

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2020.
Report Title:
Medical Cannabis; Discrimination; Employer; Employee

Description:
Prohibits an employer from discriminating against a person in hiring, termination, or condition of employment based on the person's status as a medical cannabis cardholder, under certain conditions. Specifies that an employer may use a fit for duty test as a tool for medical cannabis users in potentially dangerous occupations. (SD1)

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