



Rep. Bob Morgan

Filed: 1/27/2022

10200HB4116ham001

LRB102 19297 SPS 34180 a

1 AMENDMENT TO HOUSE BILL 4116

2 AMENDMENT NO. _____. Amend House Bill 4116 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Right to Privacy in the Workplace Act is
5 amended by changing Section 5 as follows:

6 (820 ILCS 55/5) (from Ch. 48, par. 2855)

7 Sec. 5. Discrimination for use of lawful products
8 prohibited.

9 (a) Except as otherwise specifically provided by law,
10 including Section 10-50 of the Cannabis Regulation and Tax
11 Act, and except as provided in subsections ~~(b) and (c)~~, (d),
12 (e), (f), (g), (h), (i), and (j) of this Section, it shall be
13 unlawful for an employer to refuse to hire or to discharge any
14 individual, or otherwise disadvantage any individual, with
15 respect to compensation, terms, conditions or privileges of
16 employment because the individual uses lawful products away

1 ~~from off the premises of the employer's workplace employer~~
2 during nonworking and non-call hours or because the results of
3 an individual's drug test indicate the presence of
4 tetrahydrocannabinol, unless the employee works in a safety
5 sensitive position, unless the employee demonstrates
6 impairment as defined in this Act, or unless the test results
7 for tetrahydrocannabinol exceeds the limits set forth in
8 Section 11-501.2 of the Illinois Vehicle Code.

9 (a-5) As used in this Section:

10 (1) "Lawful ~~lawful~~ products" means products that are
11 legal under state law.

12 (2) "Workplace" means the employer's premises,
13 including any building, real property, and parking area
14 under the control of the employer or area used by an
15 employee while in the performance of the employee's job
16 duties.

17 (3) "On-call" means ~~For purposes of this Section, an~~
18 ~~employee is deemed on-call~~ when the employee is scheduled
19 with at least 24 hours' notice by his or her employer to be
20 on standby or otherwise responsible for performing tasks
21 related to his or her employment either at the employer's
22 workplace ~~premises~~ or other previously designated location
23 by his or her employer or supervisor to perform a
24 work-related task.

25 (4) "Safety sensitive position" means any position
26 designated in writing by the employer as a safety

1 sensitive position in which the person performing the
2 position, or duties required of the position, while under
3 the influence of tetrahydrocannabinol, may constitute a
4 threat to or endanger the health or safety of the person or
5 others.

6 "Safety sensitive position" includes the following:

7 (1) A position that requires any of the following:

8 (A) carrying a firearm;

9 (B) performing medical procedures,
10 life-threatening procedures, or emergency
11 services; or

12 (C) working with hazardous or flammable
13 materials, controlled substances, or
14 pharmaceuticals.

15 (2) A position in which a lapse of attention could
16 result in injury, illness, death, or damage to
17 property, including, without limitation, a position
18 operating, repairing, maintaining, monitoring, or
19 designing equipment, machinery, critical services and
20 infrastructure, aircraft, motorized watercraft, or
21 motor vehicles as part of the position's job duties.

22 (b) This Section does not apply to any employer that is a
23 non-profit organization that, as one of its primary purposes
24 or objectives, discourages the use of one or more lawful
25 products by the general public. This Section does not apply to
26 the use of those lawful products which impairs an employee's

1 ability to perform the employee's assigned duties.

2 (c) It is not a violation of this Section for an employer
3 to offer, impose or have in effect a health, disability or life
4 insurance policy that makes distinctions between employees for
5 the type of coverage or the price of coverage based upon the
6 employees' use of lawful products provided that:

7 (1) differential premium rates charged employees
8 reflect a differential cost to the employer; and

9 (2) employers provide employees with a statement
10 delineating the differential rates used by insurance
11 carriers.

12 (d) Nothing in this Act prohibits an employer from
13 enforcing a pre-employment drug testing policy, random drug
14 testing policy, or a drug-free workplace policy or from
15 disciplining an employee or withdrawing a job offer to an
16 applicant for violating such policy if the policy is applied
17 to employees working in safety sensitive positions. An
18 employer, however, may not take adverse action against an
19 employee solely because of a positive drug test for
20 tetrahydrocannabinol unless the test result exceeds the limits
21 set forth in Section 11-501.2 of the Illinois Vehicle Code.

22 (e) Nothing in this Act limits an employer's ability to
23 discipline an employee for failing a drug test if failing to do
24 so would put the employer in violation of federal law or cause
25 it to lose a federal contract or funding.

26 (f) Nothing in this Act shall be construed to create a

1 defense for a third party who fails a drug test.

2 (g) An employer may consider an applicant or employee to
3 be impaired when he or she tests positive for
4 tetrahydrocannabinol that exceeds the limits set forth in
5 Section 11-501.2 of the Illinois Vehicle Code or manifests
6 specific, articulable symptoms or behavior while working that
7 decrease or lessen his or her performance of the duties or
8 tasks of the employee's job position, including manifestations
9 of the employee's speech, physical dexterity, agility,
10 coordination, demeanor, irrational or unusual behavior,
11 negligence or carelessness in operating equipment or
12 machinery, disregard for the safety of the employee or others,
13 involvement in an accident that results in serious damage to
14 equipment or property, disruption of a production or
15 manufacturing process, or carelessness that results in any
16 injury to the employee or others. If an employer elects to
17 withdraw a job offer from an applicant or discipline an
18 employee under this subsection, it must afford the applicant
19 or employee a reasonable opportunity to contest the basis of
20 the determination.

21 (h) Nothing in this Act shall be construed to create or
22 imply a cause of action for any person against an employer for:

23 (1) actions based on the employer's good faith belief
24 that an employee used or possessed tetrahydrocannabinol
25 while at the employer's workplace or during the hours of
26 employment;

1 (2) actions based on the employer's good faith belief
2 that an employee was impaired while working, while working
3 at the employer's workplace during the hours of
4 employment;

5 (3) discipline or termination of the employment of an
6 employee or withdrawal of a job offer from an applicant
7 when enforcing a drug policy that complies with this
8 Section; or

9 (4) injury or loss to a third party if the employer
10 neither knew nor had reason to know that the employee was
11 impaired.

12 (i) Nothing in this Act shall be construed to interfere
13 with any federal restrictions on employment, including, but
14 not limited to, the United States Department of Transportation
15 regulation 49 CFR 40.151(e).

16 (Source: P.A. 101-27, eff. 6-25-19.)".