



Rep. Bob Morgan

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10200HB4116ham002

LRB102 19297 SPS 36265 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 "(410 ILCS 705/10-50 rep.)

5 Section 5. The Cannabis Regulation and Tax Act is amended
6 by repealing Section 10-50.

7 Section 10. The Right to Privacy in the Workplace Act is
8 amended by changing Section 5 as follows:

9 (820 ILCS 55/5) (from Ch. 48, par. 2855)

10 Sec. 5. Discrimination for use of lawful products
11 prohibited.

12 (a) Except as otherwise specifically provided by law,
13 ~~including Section 10-50 of the Cannabis Regulation and Tax~~
14 ~~Act,~~ and except as provided in subsections (a-5), (b), and
15 (c), (d), (e), (f), (g), (h), and (i) of this Section, it shall

1 be unlawful for an employer to refuse to hire or to discharge
2 any individual, or otherwise disadvantage any individual, with
3 respect to compensation, terms, conditions or privileges of
4 employment because:

5 (1) the individual uses lawful products off the
6 premises of the employer's workplace ~~employer~~ during
7 nonworking hours and hours the individual is not on-call
8 ~~non-call hours; or.~~

9 (2) the results of an individual's drug test indicate
10 the presence of tetrahydrocannabinol, unless:

11 (A) the employee works in a safety sensitive
12 position;

13 (B) the applicant or employee demonstrates
14 impairment as provided in subsection (f); or

15 (C) the test results for tetrahydrocannabinol
16 meets or exceeds the legal limits set forth in Section
17 11-501.2 of the Illinois Vehicle Code.

18 Nothing in this Act prohibits an employer from enforcing a
19 pre-employment drug testing policy, random drug testing
20 policy, or zero-tolerance or drug-free workplace policy or
21 from disciplining an employee or withdrawing a job offer from
22 an applicant for violating such a policy with respect to an
23 employee in a safety sensitive position as defined in
24 subsection (a-5).

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

26 (1) "Lawful ~~lawful~~ products" means products that are

1 legal for the employee to use under state law.

2 (2) "Workplace" means the employer's premises,
3 including any building, real property, and parking area
4 under the control of the employer or area used by an
5 employee while in the performance of the employee's job
6 duties.

7 (3) "On-call" means ~~For purposes of this Section, an~~
8 ~~employee is deemed on call~~ when the employee is scheduled
9 with at least 24 hours' notice by his or her employer to be
10 on standby or otherwise responsible for performing tasks
11 related to his or her employment either at the employer's
12 workplace premises or other previously designated location
13 by his or her employer or supervisor to perform a
14 work-related task.

15 (4) "Safety sensitive position" means a position that
16 meets all of the following requirements:

17 (A) is designated as a safety sensitive position
18 in writing by the employer;

19 (B) requires tasks and duties that could
20 reasonably result in injury, illness, death, or damage
21 to property if the person performing them is under the
22 influence of tetrahydrocannabinol; and

23 (C) requires one or more of the following
24 responsibilities:

25 (i) carrying a firearm;

26 (ii) performing medical procedures or

1 emergency services;

2 (iii) working with hazardous or flammable
3 materials, controlled substances, or
4 pharmaceuticals;

5 (iv) working around heavy machinery in a
6 retail distribution center; or

7 (v) operating, repairing, maintaining,
8 monitoring, or designing one or more of the
9 following: (I) heavy machinery; (II) aircraft;
10 (III) motorized watercrafts; (IV) motor vehicles;
11 or (V) critical services and infrastructure. As
12 used in this subparagraph, "critical services and
13 infrastructure" means physical and cyber systems
14 and assets that are so vital to the State that
15 their incapacity or destruction would have a
16 debilitating impact on physical or economic
17 security, public health, or safety.

18 (5) "Retail distribution center" means a distribution
19 center where products are received and temporarily stored
20 and where orders for products are packaged or repackaged
21 for distribution to resellers, wholesalers, or consumers.
22 "Retail distribution center" does not mean a warehouse
23 used only for purposes of storing products.

24 (b) This Section does not apply to any employer that is a
25 non-profit organization that, as one of its primary purposes
26 or objectives, discourages the use of one or more lawful

1 products by the general public. ~~This Section does not apply to~~
2 ~~the use of those lawful products which impairs an employee's~~
3 ~~ability to perform the employee's assigned duties.~~

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

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

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

14 (d) Nothing in this Act limits an employer's ability to
15 withdraw a job offer from an applicant or discipline an
16 employee for failing a drug test if failing to do so would put
17 the employer in violation of federal or State law or cause it
18 to lose a federal or State contract or funding.

19 (e) Nothing in this Act shall be construed to create a
20 defense for a third party who fails a drug test.

21 (f) An employer may consider an applicant or employee to
22 be impaired when:

23 (1) he or she tests positive for tetrahydrocannabinol
24 at a level that meets or exceeds the legal limits set forth
25 in Section 11-501.2 of the Illinois Vehicle Code; or

26 (2) manifests specific, articulable symptoms or

1 behavior while working that decrease or lessen his or her
2 performance of the duties or tasks of the employee's job
3 position, including manifestations of the employee's
4 speech, physical dexterity, agility, coordination,
5 demeanor, irrational or unusual behavior, negligence or
6 carelessness in operating equipment or machinery,
7 disregard for the safety of the employee or others,
8 involvement in an accident that results in serious damage
9 to equipment or property, disruption of a production or
10 manufacturing process, or carelessness that results in any
11 injury to the employee or others.

12 If an employer elects to withdraw a job offer from an
13 applicant or discipline an employee because the employer
14 considers the applicant or employee to be impaired, it must
15 afford the applicant or employee a reasonable opportunity to
16 contest the basis of the determination.

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

19 (1) actions based on the employer's good faith belief
20 that an employee used or possessed tetrahydrocannabinol
21 while at the employer's workplace or during the hours of
22 employment;

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

1 (3) discipline or termination of the employment of an
2 employee or withdrawal of a job offer from an applicant
3 when enforcing a drug policy that complies with this
4 Section; or

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

8 (h) Nothing in this Act shall be construed to interfere
9 with any federal restrictions on employment, including, but
10 not limited to, the United States Department of Transportation
11 regulation 49 CFR 40.151(e).

12 (i) Nothing in this Act shall be construed to interfere
13 with the application of the Illinois Workers' Compensation
14 Act, specifically, but without limitation, Section 11 of the
15 Workers' Compensation Act, the Workers' Occupational Diseases
16 Act, or the rules of practice before the Illinois Workers'
17 Compensation Commission.

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