

By: Bucy

H.B. No. 3149

A BILL TO BE ENTITLED

AN ACT

relating to drug testing and prescription drug policies and certain legal protections for employees and independent contractors of state agencies and political subdivisions and for other persons regarding the medical use of low-THC cannabis and hemp.

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

SECTION 1. Subtitle A, Title 6, Government Code, is amended by adding Chapter 620 to read as follows:

CHAPTER 620. DRUG TESTING AND PRESCRIPTION DRUG POLICIES

Sec. 620.001. DEFINITIONS. In this chapter:

(1) "Drug test" means a technical analysis of an individual's biological specimen to determine the presence or absence of specified drugs or metabolites.

(2) "Hemp" has the meaning assigned by Section 121.001, Agriculture Code.

(3) "Low-THC cannabis" has the meaning assigned by Section 169.001, Occupations Code.

Sec. 620.002. EXCEPTIONS. This chapter does not apply to an employee of a state agency or political subdivision of this state who is required to comply with United States Department of Transportation drug testing regulations in accordance with 49 C.F.R. Part 40.

Sec. 620.003. PROHIBITED DRUG TESTING AND PRESCRIPTION DRUG POLICIES. A state agency or a political subdivision of this state

1 may not:

2 (1) establish a drug testing policy that requires an
3 employee or independent contractor of the agency or political
4 subdivision as a condition of employment or contract to submit to a
5 drug test the intent of which is to screen for the presence of
6 cannabinoids;

7 (2) as a condition of employment or contract with the
8 agency or political subdivision, administer or require the
9 administration of a drug test to the employee or contractor the
10 intent of which is to screen for the presence of cannabinoids;

11 (3) establish for the employee or contractor as a
12 condition of employment or contract a test result that is negative
13 for the presence of cannabinoids; or

14 (4) prohibit an employee or contractor as a condition
15 of employment or contract from:

16 (A) prescribing or obtaining a prescription for
17 low-THC cannabis or using low-THC cannabis in accordance with
18 Chapter 169, Occupations Code; or

19 (B) using a consumable hemp product.

20 Sec. 620.004. MEDICAL PRIVACY. A state agency or a
21 political subdivision of this state may not question an employee
22 about the employee's use of low-THC cannabis or hemp and shall
23 comply with all relevant state and federal privacy laws, including
24 Chapter 181, Health and Safety Code, the Health Insurance
25 Portability and Accountability Act of 1996 (Pub. L. No. 104-191),
26 and regulations adopted under that Act.

27 Sec. 620.005. RELIEF AVAILABLE. (a) A person may assert an

1 actual or threatened violation of Section 620.003 or 620.004 as a
2 claim or defense in a judicial or administrative proceeding and
3 obtain:

- 4 (1) compensatory damages;
- 5 (2) injunctive relief;
- 6 (3) declaratory relief; and
- 7 (4) other appropriate relief, including reasonable
8 attorney's fees.

9 (b) Notwithstanding any other law, a person may commence an
10 action under this section and relief may be granted regardless of
11 whether the person has sought or exhausted available administrative
12 remedies.

13 Sec. 620.006. IMMUNITY WAIVED. A person who alleges a
14 violation of Section 620.003 or 620.004 may sue the state agency or
15 political subdivision for the relief provided under Section
16 620.005. Sovereign or governmental immunity, as applicable, is
17 waived and abolished to the extent of liability for that relief.

18 SECTION 2. Chapter 487, Health and Safety Code, is amended
19 by adding Subchapter A-1 to read as follows:

20 SUBCHAPTER A-1. PROTECTIONS RELATED TO MEDICAL USE OF CANNABIS

21 Sec. 487.021. DEFINITION. In this subchapter, "authorized
22 medical use" means a medical use of a substance that is authorized
23 under:

- 24 (1) this chapter;
- 25 (2) Subchapter G, Chapter 481;
- 26 (3) Chapter 169, Occupations Code; or
- 27 (4) department rule.

1 Sec. 487.022. APPLICABILITY. The protections provided by
2 this subchapter apply to a person who is:

3 (1) a patient for whom authorized medical use is
4 prescribed under Chapter 169, Occupations Code, or the parent or
5 caregiver of the patient;

6 (2) a dispensing organization; or

7 (3) a director, manager, or employee of a dispensing
8 organization who is registered with the department under Section
9 487.053.

10 Sec. 487.023. PROTECTION FROM LEGAL ACTION.

11 Notwithstanding any other law, a person described by Section
12 487.022 is not subject to arrest, prosecution, or penalty in any
13 manner, or denial of any right or privilege, including any
14 administrative or civil penalty or disciplinary action imposed by a
15 court or state licensing board, for conduct involving authorized
16 medical use.

17 Sec. 487.024. PROHIBITED PRESUMPTION OF CHILD ABUSE,
18 NEGLECT, OR ENDANGERMENT. A person described by Section 487.022
19 may not be presumed to have engaged in conduct constituting child
20 abuse, neglect, or endangerment solely because the person engaged
21 in conduct involving authorized medical use.

22 Sec. 487.025. PROHIBITED DENIAL OF PARENTAL RIGHTS. The
23 fact that a person described by Section 487.022 engages in conduct
24 involving authorized medical use does not in itself constitute
25 grounds for denying, limiting, or restricting conservatorship or
26 possession of or access to a child under Title 5, Family Code.

27 Sec. 487.026. PROHIBITED SEIZURE OR FORFEITURE. Property

1 used in the cultivation, research, testing, processing,
2 distribution, transportation, and delivery of low-THC cannabis for
3 authorized medical use is not contraband for purposes of Chapter
4 59, Code of Criminal Procedure, and is not subject to seizure or
5 forfeiture under that chapter or other law solely for the use of the
6 property for the authorized activities.

7 Sec. 487.027. PROHIBITED PROSECUTION FOR PROVISION OF
8 PARAPHERNALIA. A person is not subject to arrest, prosecution, or
9 the imposition of any sentence or penalty for the delivery,
10 possession with intent to deliver, or manufacture of any item that
11 meets the definition of drug paraphernalia, as defined by Section
12 481.002, if that item is delivered, possessed with intent to
13 deliver, or manufactured for the sole purpose of providing that
14 item to:

15 (1) a person for whom authorized medical use is
16 prescribed under Chapter 169, Occupations Code; or

17 (2) a licensed dispensing organization.

18 Sec. 487.028. PROHIBITED DISCIPLINARY ACTION AGAINST
19 STUDENT PATIENTS AND SCHOOL HEALTH CARE PROFESSIONALS. (a)
20 Notwithstanding any other law, a student for whom low-THC cannabis
21 is prescribed under Chapter 169, Occupations Code, may not be
22 subject to suspension, expulsion, placement in a disciplinary
23 alternative education program, or any other form of discipline
24 solely because the student possessed, used, or was prescribed
25 low-THC cannabis.

26 (b) Notwithstanding any other law, a school health care
27 professional assisting a student described by Subsection (a) in the

1 administration of low-THC cannabis may not be subject to any
2 disciplinary action solely because of the assistance.

3 SECTION 3. The changes in law made by this Act apply only to
4 the administration of a drug testing or prescription drug policy or
5 a drug test on or after the effective date of this Act.

6 SECTION 4. This Act takes effect September 1, 2021.