

SENATE BILL 864

K3, P4, J1

9lr0653

By: **Senator Zirkin**

Introduced and read first time: February 4, 2019

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Contracts and Employment – Discrimination Against Medical Cannabis Patients**
3 **and Caregivers – Prohibition**

4 FOR the purpose of prohibiting a party to a contract from rescinding a contract entered into
5 between the party and an individual who is a qualifying patient or caregiver based
6 on the individual's status as a qualifying patient or caregiver; prohibiting an
7 employer from discriminating against a qualifying patient or caregiver in a certain
8 manner based on the individual's status as a qualifying patient or caregiver or, with
9 respect to a qualifying patient, a certain drug test result; authorizing certain
10 individuals to file a complaint with the Commissioner of Labor and Industry;
11 requiring the Commissioner to investigate a certain matter promptly under certain
12 circumstances; requiring the Commissioner to try to resolve a certain matter
13 informally; authorizing the Commissioner to assess certain civil penalties and send
14 a certain order to pay a certain penalty to certain parties under certain
15 circumstances; authorizing an employer to request a certain hearing under certain
16 circumstances; requiring the Commissioner to schedule a certain hearing under
17 certain circumstances; establishing that an order to pay a civil penalty becomes final
18 under certain circumstances; authorizing the Commissioner or a complainant to
19 bring certain court actions under certain circumstances; defining certain terms;
20 providing for the application of certain provisions of this Act; and generally relating
21 to discrimination against qualifying patients and caregivers in contracts and
22 employment.

23 BY repealing and reenacting, without amendments,
24 Article – Health – General
25 Section 13–3301(a), (b), (m), and (n)
26 Annotated Code of Maryland
27 (2015 Replacement Volume and 2018 Supplement)

28 BY adding to
29 Article – Health – General

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 13–3313(c)
2 Annotated Code of Maryland
3 (2015 Replacement Volume and 2018 Supplement)

4 BY adding to
5 Article – Labor and Employment
6 Section 3–716
7 Annotated Code of Maryland
8 (2016 Replacement Volume and 2018 Supplement)

9 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
10 That the Laws of Maryland read as follows:

11 **Article – Health – General**

12 13–3301.

13 (a) In this subtitle the following words have the meanings indicated.

14 (b) “Caregiver” means:

15 (1) A person who has agreed to assist with a qualifying patient’s medical
16 use of cannabis; and

17 (2) For a qualifying patient under the age of 18 years, a parent or legal
18 guardian.

19 (m) “Qualifying patient” means an individual who:

20 (1) Has been provided with a written certification by a certifying provider
21 in accordance with a bona fide provider–patient relationship; and

22 (2) If under the age of 18 years, has a caregiver.

23 (n) “Written certification” means a certification that:

24 (1) Is issued by a certifying provider to a qualifying patient with whom the
25 provider has a bona fide provider–patient relationship; and

26 (2) Includes a written statement certifying that, in the provider’s
27 professional opinion, after having completed an assessment of the patient’s medical history
28 and current medical condition, the patient has a condition:

29 (i) That meets the inclusion criteria and does not meet the exclusion
30 criteria of the certifying provider’s application; and

31 (ii) For which the potential benefits of the medical use of cannabis

1 would likely outweigh the health risks for the patient; and

2 (3) May include a written statement certifying that, in the provider's
3 professional opinion, a 30-day supply of medical cannabis would be inadequate to meet the
4 medical needs of the qualifying patient.

5 13-3313.

6 (C) (1) THIS SUBSECTION DOES NOT APPLY TO:

7 (I) AN EMPLOYER, AS DEFINED UNDER § 3-716 OF THE LABOR
8 AND EMPLOYMENT ARTICLE, WITH RESPECT TO A CONTRACT FOR EMPLOYMENT; OR

9 (II) A PARTY TO A CONTRACT WHOSE COMPLIANCE WITH THIS
10 SECTION WOULD CAUSE THAT PARTY TO LOSE A MONETARY OR
11 LICENSING-RELATED BENEFIT UNDER FEDERAL OR STATE LAW.

12 (2) A PARTY TO A CONTRACT MAY NOT RESCIND A CONTRACT
13 ENTERED INTO BETWEEN THE PARTY AND AN INDIVIDUAL WHO IS A QUALIFYING
14 PATIENT OR CAREGIVER BASED ON THE INDIVIDUAL'S STATUS AS A QUALIFYING
15 PATIENT OR CAREGIVER.

16 Article – Labor and Employment

17 3-716.

18 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
19 INDICATED.

20 (2) "CAREGIVER" MEANS AN INDIVIDUAL WHO:

21 (I) HAS AGREED TO ASSIST WITH A QUALIFYING PATIENT'S
22 MEDICAL USE OF CANNABIS; AND

23 (II) HAS BEEN ISSUED AN IDENTIFICATION CARD BY THE
24 NATALIE M. LAPRADE MEDICAL CANNABIS COMMISSION IN ACCORDANCE WITH §
25 13-3304 OF THE HEALTH – GENERAL ARTICLE.

26 (3) (I) "EMPLOYER" MEANS:

27 1. A PERSON ENGAGED IN A BUSINESS, AN INDUSTRY, A
28 PROFESSION, A TRADE, OR ANY OTHER ENTERPRISE IN THE STATE; OR

29 2. A UNIT OF STATE OR LOCAL GOVERNMENT.

1 (II) "EMPLOYER" INCLUDES AN AGENT, A REPRESENTATIVE,
2 AND A DESIGNEE OF THE EMPLOYER.

3 (4) "QUALIFYING PATIENT" HAS THE MEANING STATED IN § 13-3301
4 OF THE HEALTH - GENERAL ARTICLE.

5 (B) THIS SECTION DOES NOT APPLY TO AN EMPLOYER IF COMPLYING WITH
6 THIS SECTION WOULD CAUSE THE EMPLOYER TO LOSE A MONETARY OR
7 LICENSING-RELATED BENEFIT UNDER FEDERAL OR STATE LAW.

8 (C) AN EMPLOYER MAY NOT DISCRIMINATE AGAINST A QUALIFYING
9 PATIENT OR CAREGIVER IN HIRING, TERMINATION, OR IMPOSITION OF A TERM OR
10 CONDITION OF EMPLOYMENT OR OTHERWISE PENALIZE A QUALIFYING PATIENT OR
11 CAREGIVER BASED ON:

12 (1) THE INDIVIDUAL'S STATUS AS A QUALIFYING PATIENT OR
13 CAREGIVER; OR

14 (2) A REGISTERED QUALIFYING PATIENT'S POSITIVE DRUG TEST FOR
15 CANNABIS COMPONENTS OR METABOLITES UNLESS THE QUALIFYING PATIENT
16 USED, POSSESSED, OR WAS IMPAIRED BY CANNABIS ON THE PREMISES OF THE
17 PLACE OF EMPLOYMENT OR DURING THE HOURS OF EMPLOYMENT.

18 (D) (1) IF AN EMPLOYER VIOLATES SUBSECTION (C) OF THIS SECTION,
19 THE QUALIFYING PATIENT OR CAREGIVER MAY FILE A WRITTEN COMPLAINT WITH
20 THE COMMISSIONER.

21 (2) IF THE COMMISSIONER RECEIVES A WRITTEN COMPLAINT UNDER
22 PARAGRAPH (1) OF THIS SUBSECTION, THE COMMISSIONER SHALL INVESTIGATE
23 THE MATTER PROMPTLY.

24 (3) IF THE COMMISSIONER DETERMINES THAT THE EMPLOYER HAS
25 VIOLATED SUBSECTION (C) OF THIS SECTION, THE COMMISSIONER SHALL TRY TO
26 RESOLVE THE MATTER INFORMALLY.

27 (4) IF THE COMMISSIONER IS UNABLE TO RESOLVE THE MATTER
28 INFORMALLY, THE COMMISSIONER MAY:

29 (I) ASSESS A CIVIL PENALTY OF:

30 1. UP TO \$500 FOR AN INITIAL VIOLATION OF
31 SUBSECTION (C) OF THIS SECTION; OR

1 **2. UP TO \$2,500 FOR A REPEAT VIOLATION OF**
2 **SUBSECTION (C) OF THIS SECTION; AND**

3 **(II) SEND AN ORDER TO PAY THE CIVIL PENALTY TO THE**
4 **COMPLAINANT AND THE EMPLOYER.**

5 **(5) (I) WITHIN 30 DAYS AFTER AN EMPLOYER RECEIVES AN ORDER**
6 **TO PAY A CIVIL PENALTY UNDER PARAGRAPH (4) OF THIS SUBSECTION, THE**
7 **EMPLOYER MAY REQUEST A DE NOVO ADMINISTRATIVE HEARING, SUBJECT TO THE**
8 **REQUIREMENTS OF TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.**

9 **(II) ON RECEIPT OF A REQUEST FOR A HEARING UNDER**
10 **SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE COMMISSIONER SHALL SCHEDULE A**
11 **HEARING.**

12 **(III) IF A HEARING IS NOT REQUESTED UNDER SUBPARAGRAPH**
13 **(I) OF THIS PARAGRAPH, THE ORDER TO PAY A CIVIL PENALTY BECOMES A FINAL**
14 **ORDER OF THE COMMISSIONER.**

15 **(6) IF AN EMPLOYER FAILS TO COMPLY WITH A FINAL ORDER TO PAY**
16 **A CIVIL PENALTY, THE COMMISSIONER OR THE COMPLAINANT MAY BRING AN**
17 **ACTION TO ENFORCE THE ORDER TO PAY A CIVIL PENALTY IN THE CIRCUIT COURT**
18 **IN THE COUNTY WHERE THE EMPLOYER OR THE COMPLAINANT IS LOCATED.**

19 SECTION 2. AND BE IT FURTHER ENACTED, That § 13–3313(c) of the Health –
20 General Article, as enacted by Section 1 of this Act, shall be construed to apply only
21 prospectively and may not be applied or interpreted to have any effect on or application to
22 any contract entered into before the effective date of this Act.

23 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
24 October 1, 2019.