

File No. 210839

Committee Item No. \_\_\_\_\_

Board Item No. 79

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: \_\_\_\_\_

Date: \_\_\_\_\_

Board of Supervisors Meeting

Date: July 27, 2021

#### Cmte Board

- Motion
- Resolution
- Ordinance
- Legislative Digest
- Budget and Legislative Analyst Report
- Youth Commission Report
- Introduction Form
- Department/Agency Cover Letter and/or Report
- MOU
- Grant Information Form
- Grant Budget
- Subcontract Budget
- Contract/Agreement
- Form 126 – Ethics Commission
- Award Letter
- Application
- Public Correspondence

#### OTHER

- Assembly Bill No. 1256 - 2/19/21
- CSAC and LCC Position - 7/20/21
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

Prepared by: Lisa Lew

Date: July 23, 2021

Prepared by: \_\_\_\_\_

Date: \_\_\_\_\_

1 [Supporting California State Assembly Bill No. 1256 (Quirk) - Employment Discrimination:  
2 Cannabis Screening Test]

3 **Resolution supporting California State Assembly Bill No. 1256, authored by Assembly**  
4 **Member Bill Quirk, an anti-cannabis discrimination bill prohibiting employers from**  
5 **discriminating against hiring or terminating a person for testing positive for cannabis**  
6 **metabolites.**

7  
8 WHEREAS, The City of San Francisco legalized the use of cannabis in 1991 with 80%  
9 of residents on favor of Proposition P making it the leader and first U.S city to legalize  
10 marijuana; and

11 WHEREAS, California Proposition 215, passed on November 5, 1996, legalized  
12 medicinal cannabis use in California; however, it did not protect the rights of medicinal  
13 cannabis users in the workplace from employer discrimination; and

14 WHEREAS, In 2008, the California Legislature passed a measure intended to protect  
15 medicinal cannabis users from workplace discrimination, but the measure was vetoed by  
16 Governor Arnold Schwarzenegger; and

17 WHEREAS, In 2016, California Proposition 64, the California Marijuana Legalization  
18 Initiative, for which 57% of Californians voted “yes,” legalized recreational marijuana for  
19 persons over the age of 21; and

20 WHEREAS, Under current California law, employers can still require drug tests for  
21 employees, can turn an individual away based on use of cannabis, and fire or demote for the  
22 use of cannabis; and

23 WHEREAS, Assembly Bill No. 1256 (AB 1256) would prohibit employers from  
24 discriminating against hiring, or terminating, a person who has tested positive for having non-  
25 psychoactive cannabis metabolites in their urine, hair, or bodily fluids; and

1           WHEREAS, AB 1256 also allows employees who have experienced discrimination on  
2 the basis of testing positive for non-psychoactive cannabis metabolites, to institute civil action  
3 for damages and other relief against their employers; and

4           WHEREAS, There are currently twenty states with laws protecting employment rights  
5 for medicinal cannabis uses in addition to several major cities such as: New York City,  
6 Washington D.C, Atlanta, Rochester, and Richmond that protect recreational cannabis  
7 consumers' employment rights; and

8           WHEREAS, The use of drug tests is meant to identify employees who may be impaired  
9 however, the tests conducted for cannabis only show the presence of nonpsychoactive  
10 cannabis metabolites which have no correlation to impairment within the workplace; and

11           WHEREAS, California residents should not be punished for usage of legalized  
12 cannabis; and

13           WHEREAS, Dismissing potential applicants for the use of legalized medications and  
14 legalized recreational substances places an undue burden and barriers on individuals  
15 attempting to seek employment; and

16           WHEREAS, The Covid-19 Pandemic crippled the economy never before seen and  
17 which has caused the exponential increase of food insecurity and housing insecurity due to  
18 job or income loss; and

19           WHEREAS, the most effective way to combat food insecurity, housing insecurity, and  
20 poverty to assist as many people with job opportunities by removing unnecessary barriers to  
21 employment; now, therefore, be it;

22           RESOLVED, The San Francisco Board of Supervisors urges the passage of AB 1256  
23 and supports its enactment into law; and, be it

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1            FURTHER RESOLVED, The San Francisco Board of Supervisors requests the Clerk of  
2 the Board to submit a copy of this Resolution to the local state legislative representatives and  
3 Governor Newsom.

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AMENDED IN ASSEMBLY APRIL 12, 2021

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1256**

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**Introduced by Assembly Member Quirk**

February 19, 2021

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An act to add Section 52.8 to the Civil Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1256, as amended, Quirk. Employment discrimination: cannabis screening test.

Existing law establishes various personal rights and makes unlawful certain employment practices that discriminate on certain protected bases. Existing law makes a person who engages in certain prohibited conduct liable in a cause of action by the aggrieved person, as specified.

This bill would prohibit an employer from discriminating against a person in hiring, termination, or any term or condition of employment because a drug screening test has found the person to have ~~tetrahydrocannabinol in their urine.~~ *nonpsychoactive cannabis metabolites in their urine, hair, or bodily fluids.* The bill would exempt from its provisions an employer that is required to conduct testing for ~~tetrahydrocannabinol~~ *nonpsychoactive cannabis metabolites* by federal law or regulations, or that would lose a monetary or licensing-related benefit for failing to conduct testing for ~~tetrahydrocannabinol.~~ *nonpsychoactive cannabis metabolites.* The bill would also exempt employment in the building and construction trades.

This bill would authorize a person who has suffered discrimination in violation of the bill's provisions to institute and prosecute in their own name and on their own behalf a civil action for specified relief. *The bill would also make related legislative findings and declarations.*

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. *The Legislature find and declares both of the*  
2 *following:*

3     (a) *Tetrahydrocannabinol (THC) is the chemical compound in*  
4 *cannabis that can indicate impairment and cause psychoactive*  
5 *effects. After tetrahydrocannabinol is metabolized, it is stored in*  
6 *the brain and fat cells as a nonpsychoactive cannabis metabolite.*  
7 *These metabolites do not indicate impairment, only that an*  
8 *individual has consumed cannabis in the last few weeks.*

9     (b) *The intent of drug tests is to identify employees who may be*  
10 *impaired. While there is consensus that an employee should not*  
11 *arrive at a worksite high or impaired, when most tests are*  
12 *conducted for cannabis, the results only show the presence of the*  
13 *nonpsychoactive cannabis metabolite and have no correlation to*  
14 *impairment.*

15     SECTION 1.

16     SEC. 2. Section 52.8 is added to the Civil Code, to read:

17     52.8. (a) Except as specified in subdivision (c), an employer  
18 shall not discriminate against a person in hiring, termination, or  
19 any term or condition of employment on account of the fact that  
20 a drug screening test has found that person to have  
21 ~~tetrahydrocannabinol in their urine.~~ *nonpsychoactive cannabis*  
22 *metabolites in their urine, hair, or bodily fluids.*

23     (b) A person who has suffered discrimination in violation of  
24 subdivision (a) may institute and prosecute in their own name and  
25 on their own behalf a civil action for damages, injunctive relief,  
26 reasonable attorney’s fees and costs, any other appropriate equitable  
27 relief to protect the peaceable exercise of the right or rights secured,  
28 and any other relief the court may deem proper.

29     (c) This section does not prohibit an employer from conducting  
30 a screening test for ~~tetrahydrocannabinol~~ *nonpsychoactive cannabis*  
31 *metabolites* if any of the following apply:

32     (1) The employer is required to conduct that test by federal law  
33 or regulations, including Subpart F of Part 655 of Title 49 of the  
34 Code of Federal Regulations and the federal Drug-Free Workplace  
35 Act of 1988.

- 1 (2) The employer would lose a monetary or licensing-related
- 2 benefit for failing to do so.
- 3 (3) The employment is in the building and construction trades.

O

**From:** [Zou, Han \(BOS\)](#)  
**To:** [BOS Legislation, \(BOS\)](#)  
**Cc:** [Haney, Matt \(BOS\)](#); [Barnett, Monica \(BOS\)](#); [RivamonteMesa, Abigail \(BOS\)](#); [Mahogany, Honey \(BOS\)](#)  
**Subject:** Re: Introduction form - resolution supporting AB 1256  
**Date:** Tuesday, July 20, 2021 5:38:42 PM  
**Attachments:** [image001.png](#)  
[20210AB1256\\_98.pdf](#)

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Attached is a copy of the legislation. Confirming neither organizations have taken a position on AB 1256 and it is routine.

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**From:** BOS Legislation, (BOS) <bos.legislation@sfgov.org>  
**Sent:** Tuesday, July 20, 2021 5:32 PM  
**To:** Zou, Han (BOS) <han.zou@sfgov.org>; BOS Legislation, (BOS) <bos.legislation@sfgov.org>  
**Cc:** Haney, Matt (BOS) <matt.haney@sfgov.org>; Barnett, Monica (BOS) <monica.barnett@sfgov.org>; RivamonteMesa, Abigail (BOS) <abigail.rivamontemesa@sfgov.org>; Mahogany, Honey (BOS) <honey.mahogany@sfgov.org>  
**Subject:** RE: Introduction form - resolution supporting AB 1256

Hi Han,

Pursuant to [Board Rule 2.8.2](#), please provide the following to complete this submission:

- a copy of AB 1256
- confirm that organizations such as the [California State Association of Counties](#) and [League of California Cities](#) have *not* taken a position on these bills. If they have, please provide a copy of their statement for completeness of the file.
- since the item is requested to be placed on the For Adoption Without Committee Reference of the agenda, pursuant to Board Rule 2.1.2, please confirm that these matters are routine, not contentious in nature, and of no special interest

Thank you,

**Jocelyn Wong**

San Francisco Board of Supervisors  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102  
T: 415.554.7702 | F: 415.554.5163  
[jocelyn.wong@sfgov.org](mailto:jocelyn.wong@sfgov.org) | [www.sfbos.org](http://www.sfbos.org)

**(VIRTUAL APPOINTMENTS)** To schedule a “virtual” meeting with me (on Microsoft Teams), please ask and I can answer your questions in real time.

*Due to the current COVID-19 health emergency and the Shelter in Place Order, the Office of the Clerk of the Board is working remotely while providing complete access to the legislative process and our services*



Click [here](#) to complete a Board of Supervisors Customer Service Satisfaction form



The [Legislative Research Center](#) provides 24-hour access to Board of Supervisors legislation, and archived matters since August 1998.

**Disclosures:** *Personal information that is provided in communications to the Board of Supervisors is subject to disclosure under the California Public Records Act and the San Francisco Sunshine Ordinance. Personal information provided will not be redacted. Members of the public are not required to provide personal identifying information when they communicate with the Board of Supervisors and its committees. All written or oral communications that members of the public submit to the Clerk's Office regarding pending legislation or hearings will be made available to all members of the public for inspection and copying. The Clerk's Office does not redact any information from these submissions. This means that personal information—including names, phone numbers, addresses and similar information that a member of the public elects to submit to the Board and its committees—may appear on the Board of Supervisors' website or in other public documents that members of the public may inspect or copy.*

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**From:** Zou, Han (BOS) <han.zou@sfgov.org>

**Sent:** Tuesday, July 20, 2021 5:30 PM

**To:** BOS Legislation, (BOS) <bos.legislation@sfgov.org>

**Cc:** Haney, Matt (BOS) <matt.haney@sfgov.org>; Barnett, Monica (BOS) <monica.barnett@sfgov.org>; RivamonteMesa, Abigail (BOS) <abigail.rivamontemesa@sfgov.org>; Mahogany, Honey (BOS) <honey.mahogany@sfgov.org>

**Subject:** Introduction form - resolution supporting AB 1256

Hello,

Attached is the resolution supporting AB 1256 Supervisor Haney will be introducing today and the introduction form. Thank you!

Han

Han Zou

Office of District 6 Supervisor Matt Haney

# Introduction Form

By a Member of the Board of Supervisors or Mayor

Time stamp  
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor  inquiries"
- 5. City Attorney Request.
- 6. Call File No.  from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No.
- 9. Reactivate File No.
- 10. Topic submitted for Mayoral Appearance before the BOS on

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

**Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.**

Sponsor(s):

Haney

Subject:

[Supporting AB-1256 Employment discrimination: cannabis screening test]

The text is listed:

Resolution in Support of Assembly Bill 1256 (AB 1256), Quirk, an anti-cannabis discrimination bill prohibiting employers from discriminating against hiring or terminating as person for testing positive for cannabis metabolites.

Signature of Sponsoring Supervisor:

For Clerk's Use Only