

AMENDED IN ASSEMBLY APRIL 12, 2021

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

ASSEMBLY BILL

No. 1256

Introduced by Assembly Member Quirk

February 19, 2021

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.

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