

# AB 2279: MEDICAL CANNABIS EMPLOYMENT NON-DISCRIMINATION AUTHORED BY ASSEMBLYMEMBERS LENO, BERG, HANCOCK & SALDAÑA

## PURPOSE

On January 24, 2008 the California Supreme Court ruled in *Ross v. RagingWire Telecommunications* that an employee using medical marijuana with a doctor's recommendation as permitted by California law may be fired solely because of his/her status as a medical cannabis patient. AB 2279 would make it unlawful to discriminate in employment practices based on an employee's legal use of medical marijuana outside the work place and not during working hours.

## SUMMARY

California law already prohibits the use of medical marijuana by qualified patients on the property or premises of any place of employment or during the hours of employment. AB 2279 clarifies that an employer may not discriminate against an employee in hiring, termination, or any term or condition of employment, if the discrimination is based solely on the employee's status as a qualified medical cannabis patient who uses their doctor recommended medication outside of work and not during working hours in compliance with existing law.

The bill includes an exception for safety sensitive positions in which medical cannabis-affected performance could endanger the health and safety of others. Positions that are independent, complex jobs where an employee is responsible for the safety of others are exempted from the provisions of this bill, to protect employers from liability and to ensure public safety.

## BACKGROUND

### ***Proposition 215 & SB 420***

In 1996, California voters passed Proposition 215, The Compassionate Use Act "to ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes." In 2003, SB 420 (Vasconcellos) was signed into law to address issues that had arisen following the passage of Prop. 215, including the establishment of a qualified patient's right to use medical marijuana outside the workplace.

### ***Ross v. RagingWire Telecommunications***

In September 2001, Gary Ross, a 45 year old disabled Air Force veteran, was fired for failing an employer-mandated drug test despite informing his employer in advance that he was using medical cannabis outside the workplace under his doctor's recommendation. Ross sued and his case was eventually heard before the California Supreme Court.

In 2006, Assemblyman Leno and the other legislative co-authors of SB 420 filed an *amicus curiae* brief with the Court in support of Ross and underscored that the legislature's intent in SB 420 was to permit the use of medical cannabis outside the workplace and that the Fair Employment and Housing Act "generally requires accommodation of medical cannabis use by disabled persons with medical conditions."

In the brief the authors of SB 420 further stated, "We believed that the voters did not intend for the Compassionate Use Act to apply only to unemployed medical cannabis patients, but to all qualified patients, including those who could be productive members of the workforce."



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### **Impact of the Ross Decision**

In its ruling the California Supreme Court ignored the will of the voters and the legislature by invalidating the rights of over 200,000 patients to be free from discrimination in employment. Most concerning was the fact that Gary Ross was not employed in a safety-sensitive position, did not use medical marijuana at the workplace, and was not under the influence of marijuana at work. In essence, the Court said that Ross could be fired simply because of his status as a patient using doctor recommended medication.

In denying Ross certain protections from employment discrimination, the High Court did invite the legislature to clarify its intent with respect to the employment rights of medical cannabis patients.

### **THE SOLUTION**

AB 2279 will provide the clarification requested by the Court and reverse a decision that puts every medical cannabis patient in jeopardy of losing their job without due cause. By amending the Health and Safety Code to prevent discrimination against patients in hiring, termination, or any term of employment, except in the case of safety-sensitive positions, AB 2279 clearly establishes that medical marijuana patients have a right to work. This bill does not require an employer to accommodate marijuana impairment or use in the workplace, and does not require the employer to violate any state or federal laws.

The policy of this state should be to encourage gainful employment for those patients who are able to work. In addition to being an issue of basic

human fairness, medical marijuana patients who lose their jobs could become an additional burden for state general assistance, MediCal, and other social service programs that are already stressed by chronic funding shortages. AB 2279 is a reasonable solution that protects patients, employers, and public safety.

### **WHAT AB 2279 DOES**

- Preserves the rights of employers to take action against employees that come to work impaired or consume medical marijuana at the workplace.
- Prevents an employer from discriminating against a legal medical marijuana patient in hiring, termination, or any term of employment based on his or her status as a patient or based on a positive test for medical marijuana use that occurred during non-working hours outside the workplace.
- Enables a legal patient who is the victim of employment discrimination to file a civil action in state court.
- Preserves the right of employers to take any necessary precautionary measures in the terms of employment for any legally qualified patient working in a safety-sensitive position.

### **WHAT IT DOESN'T DO**

- The bill will not require employers to accommodate smoking marijuana in the workplace or during working hours under any circumstances.
- The bill does not require employers to hire or continue to employ medical marijuana patients that work in safety-sensitive positions.
- The bill does not expose employers to any criminal liability or violate federal drug-free workplace laws.
- The bill does not force an employer to violate any state or federal law.