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**Labor & Workplace Standards  
Committee**

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**HB 2740**

**Brief Description:** Concerning the employment of individuals who lawfully consume marijuana.

**Sponsors:** Representatives Kloba, Macri, Stonier, Appleton, Fitzgibbon, Lekanoff and Tharinger.

**Brief Summary of Bill**

- Prohibits refusal to hire, with some exceptions, due to a positive marijuana test.
- Allows for additional testing to rebut the initial results of an employer-required marijuana test.
- Limits the provision regarding non-accommodation of medical marijuana.

**Hearing Date:** 1/28/20

**Staff:** Lily Smith (786-7175).

**Background:**

General Regulation of Medical Marijuana.

*Federal Law.*

Under federal law, marijuana is classified as a Schedule I substance. The manufacture, possession, or distribution of Schedule I substances is a criminal offense. Some federal contractors and grantees are required to take steps to maintain a drug-free workplace. Contractors that fail to take those steps risk suspension or termination of the contract. Certain safety-sensitive transportation employees, such as some commercial truck drivers, are subject to drug testing, including for marijuana.

*State Law.*

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

Since 1998, Washington law has allowed qualifying patients to use limited amounts of marijuana for medicinal purposes. A qualifying patient is a person who: (1) is a patient of a health care professional, (2) has been diagnosed by that health care professional as having a terminal or debilitating medical condition, (3) is a Washington resident at the time of the diagnosis, (4) has been advised by that health care professional about the risks and benefits of the medical use of marijuana, (5) has been advised by that health care professional that they may benefit from the medical use of marijuana, and (6) has certain authorization.

#### Marijuana and the Workplace.

Employers may establish drug-free workplace policies, and employers with such a policy are not required to accommodate the medical use of marijuana. Regardless of workplace policy, employers are not required to accommodate on-site medical use of marijuana.

#### *Washington Law Against Discrimination.*

Under the Washington Law Against Discrimination (WLAD), it is an unfair practice to discriminate in employment on the basis of the presence of any sensory, mental, or physical disability. An employer must provide reasonable accommodation to a disabled worker unless the employer can show that the accommodation would impose an undue hardship. The Washington State Human Rights Commission (Commission) administers the WLAD.

The Commission has stated that the use of medical marijuana is not a reasonable accommodation of a disability under the WLAD in an employment setting.

#### *Other.*

In *Roe v. TeleTech*, the Washington Supreme Court rejected a wrongful discharge claim and held that an employer may discharge an employee for authorized use of medical marijuana.

The states of Maine and Nevada and the City of New York have recently adopted laws prohibiting, with various exceptions, refusal-to-hire or pre-employment marijuana drug testing.

#### **Summary of Bill:**

Employers are prohibited from refusing to hire an employee due to a positive marijuana test.

Exceptions are provided for:

- the following types of positions:
  - firefighters and emergency medical technicians;
  - those requiring operation of a motor vehicle and subject to federal or state mandated screening tests; and
  - those funded by a federal grant;
- where compliance would cause an employer to lose a monetary or licensing-related benefit under federal law; and
- where the provisions would be inconsistent with:
  - an employment contract or collective bargaining agreement; or
  - federal law.

When testing for marijuana is required within the first 30 days of employment, an employee may submit an additional test to rebut the results of the first. The employer must consider the results of the second test.

The provision that employers with a drug-free policy are not required to accommodate medical marijuana is narrowed to apply only to those employers with an externally required drug-free policy. The provision that employers are not required to accommodate on-site use is not affected.

**Appropriation:** None.

**Fiscal Note:** Requested on January 22, 2020.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.