
**Labor & Workplace Standards
Committee**

ESSB 5123

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

Sponsors: Senate Committee on Labor & Commerce (originally sponsored by Senators Keiser, Frame, Hunt, Kuderer, Mullet, Nguyen, Randall, Stanford, Van De Wege and Wellman).

Brief Summary of Engrossed Substitute Bill

- Prohibits employers from discriminating against a person in an initial hiring decision based on the person's use of cannabis outside of work or based on a finding of nonpsychoactive cannabis metabolites in an employer-required drug screening test, subject to certain exceptions and other limitations.

Hearing Date: 3/14/23

Staff: Kelly Leonard (786-7147).

Background:

Cannabis, also referred to as marijuana in some contexts, is a Schedule I hallucinogenic substance under the Washington Uniform Controlled Substances Act and the federal Controlled Substances Act. It is generally unlawful to knowingly possess a controlled substance without a valid prescription. However, state law has established exceptions for medical and recreational use and possession of cannabis. In 1998, the voters approved Initiative Measure No. 692, legalizing possession of cannabis for medical purposes. Then in 2012, the voters approved Initiative Measure No. 502, legalizing possession of small amounts of cannabis for persons age 21 and older without requiring a medical purpose. The state has since adopted a comprehensive regulatory approach on cannabis, with state-licensed producers, processors, and retailers.

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

Cannabis remains illegal under federal law.

State law prohibits consumption of cannabis in view of the general public or in a public place. However, it does not directly address employer policies regarding cannabis, except for limited instances involving commercial driver's licenses. Therefore, while employers must comply with the Fair Chance Act and anti-discrimination laws, they may reject applicants based on prior or current use of cannabis. Employers may adopt and enforce policies on the use of cannabis or the impacts of its use in the workplace. This may include requiring applicants or employees to submit to drug testing. Employers operating with federal funds are required to comply with the Drug-Free Workplace Act.

Summary of Bill:

Restrictions on Hiring Practices.

It is unlawful for an employer to discriminate against a person in the initial hiring for employment based upon:

- the person's use of cannabis off the job and away from the workplace; or
- an employer-required drug screening test that has found the person to have nonpsychoactive cannabis metabolites in their hair, blood, urine, or other bodily fluids.

The restriction does not prohibit an employer from basing initial hiring decisions on scientifically valid drug screening conducted through methods that do not screen for nonpsychoactive cannabis metabolites. Employers may require an applicant to be tested for a spectrum of controlled substances, which may include cannabis, as long as the cannabis results are not provided to the employer.

Exceptions.

The bill does not apply to an applicant applying for a position that requires a federal government background investigation or security clearance, or in the airline or aerospace industries, or any other safety sensitive position for which impairment while working presents a substantial risk of death. Such safety sensitive positions must be identified by the employer prior to the applicant's application for employment.

The bill also does not preempt state or federal law requiring an applicant to be tested for controlled substances as a condition of receiving employment, receiving federal funding or licensing-related benefits, or as required by federal contract. This includes laws requiring applicants to be tested or specifying the way they are tested.

Drug and Alcohol-Free Workplace.

The bill does not affect the rights or obligations of an employer to maintain a drug and alcohol-free workplace, or any other rights or obligations of an employer required by federal law or regulation. An employer may still conduct testing for controlled substances other than preemployment, such as post-accident testing or testing because of a suspicion of impairment or being under the influence of alcohol, controlled substances, medications, or other substances.

Appropriation: None.

Fiscal Note: Requested on March 13, 2023.

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