
ENGROSSED SUBSTITUTE SENATE BILL 5123

State of Washington

68th Legislature

2023 Regular Session

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

READ FIRST TIME 02/01/23.

1 AN ACT Relating to the employment of individuals who lawfully
2 consume cannabis; adding new sections to chapter 49.44 RCW; and
3 providing an effective date.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 49.44
6 RCW to read as follows:

7 The legislature finds that the legalization of recreational
8 cannabis in Washington state in 2012 created a disconnect between
9 prospective employees' legal activities and employers' hiring
10 practices. Many tests for cannabis show only the presence of
11 nonpsychoactive cannabis metabolites from past cannabis use,
12 including up to 30 days in the past, that have no correlation to an
13 applicant's future job performance. Applicants are much less likely
14 to test positive or be disqualified for the presence of alcohol on a
15 preemployment screening test compared with cannabis, despite both
16 being legally allowed controlled substances. The legislature intends
17 to prevent restricting job opportunities based on an applicant's past
18 use of cannabis.

19 NEW SECTION. **Sec. 2.** A new section is added to chapter 49.44
20 RCW to read as follows:

1 (1) It is unlawful for an employer to discriminate against a
2 person in the initial hiring for employment if the discrimination is
3 based upon:

4 (a) The person's use of cannabis off the job and away from the
5 workplace; or

6 (b) An employer-required drug screening test that has found the
7 person to have nonpsychoactive cannabis metabolites in their hair,
8 blood, urine, or other bodily fluids.

9 (2) Nothing in this section:

10 (a) Prohibits an employer from basing initial hiring decisions on
11 scientifically valid drug screening conducted through methods that do
12 not screen for nonpsychoactive cannabis metabolites;

13 (b) Affects the rights or obligations of an employer to maintain
14 a drug and alcohol free workplace, or any other rights or obligations
15 of an employer required by federal law or regulation; or

16 (c) Applies to testing for controlled substances other than
17 preemployment, such as postaccident testing or testing because of a
18 suspicion of impairment or being under the influence of alcohol,
19 controlled substances, medications, or other substances.

20 (3) This section does not apply to an applicant applying for a
21 position that requires a federal government background investigation
22 or security clearance or in the airline or aerospace industries, or
23 any other safety sensitive position for which impairment while
24 working presents a substantial risk of death. Such safety sensitive
25 positions must be identified by the employer prior to the applicant's
26 application for employment.

27 (4) (a) This section does not preempt state or federal laws
28 requiring an applicant to be tested for controlled substances. This
29 includes state or federal laws requiring applicants to be tested, or
30 the way they are tested, as a condition of employment, receiving
31 federal funding or federal licensing-related benefits, or as required
32 by a federal contract.

33 (b) Employers may require an applicant to be tested for a
34 spectrum of controlled substances, which may include cannabis, as
35 long as the cannabis results are not provided to the employer. Such
36 policies are fully subject to subsection (1) of this section.

37 (5) For the purposes of this section, "cannabis" has the meaning
38 provided in RCW 69.50.101.

1 NEW SECTION. **Sec. 3.** This act takes effect January 1, 2024.

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