

# SENATE BILL REPORT

## SB 5517

---

---

As of January 19, 2022

**Title:** An act relating to the employment of individuals who lawfully consume cannabis.

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

**Sponsors:** Senators Keiser, Saldaña, Hasegawa, Mullet, Nguyen, Nobles, Pedersen, Randall, Stanford, Wilson, C. and Wilson, J..

**Brief History:**

**Committee Activity:** Labor, Commerce & Tribal Affairs: 1/19/22.

**Brief Summary of Bill**

- Prohibits an employer from refusing to hire a prospective employee and discharging a current employee, with certain exceptions, due to a positive cannabis test.

---

### SENATE COMMITTEE ON LABOR, COMMERCE & TRIBAL AFFAIRS

**Staff:** Matt Shepard-Koningsor (786-7627)

**Background:** Marijuana Legality. Under federal and state law, marijuana is classified as a Schedule I substance. The manufacture, possession, or distribution of Schedule I substances is a criminal offense. Since 1998, Washington has allowed qualifying patients to use limited amounts of marijuana for medicinal purposes. Since 2012, adult-use, recreational marijuana has been legal in Washington. While Washington has a legal, adult-use system, marijuana remains a Schedule I substance under state law.

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

---

*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.*

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 employee can show that the reasonable accommodation would impose an undue hardship. The Washington State Human Rights Commission (HRC) administers WLAD. In its 2016 Guide to Disability and Washington State Nondiscrimination Laws, HRC states the use of medical marijuana is not a reasonable accommodation of a disability under 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 Nevada, New York, and Maine, the cities of New York and Philadelphia, and the District of Columbia have adopted laws prohibiting, with various exceptions, refusal-to-hire or pre-employment marijuana drug testing.

**Summary of Bill:** Cannabis has the meaning provided for marijuana under the state Uniform Controlled Substances Act.

Employers are prohibited from refusing to hire a prospective employee and terminating a current employee due to a positive cannabis test. Exceptions are provided for the following:

- where compliance would cause an employer to lose a monetary or licensing-related benefit under federal law;
- where inconsistent or otherwise in conflict with an employment contract, a collective bargaining agreement, or federal law; and
- where a position of employment is funded by a federal grant.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: There is currently not a test to measure impairment based on a substance and the tests out there only measure exposure to such a substance. Until there is a test measuring impairment, this bill would help address discriminatory impacts on individuals who legally use cannabis for medical reasons. Pre-employment testing does not make job sites safer and it is just a tool that can be used to control behavior outside the workplace, which is not policy we should support.

CON: We believe this bill undermines the ability to have a drug-free policy and

environment. The bill does not take away liability if there is an accident. Until a better test is available, we should err on the side of safety, especially in high hazard industries. Safe workplaces are not only required in construction but also restaurants for example.

OTHER: An explicit carve out should be made for law enforcement personnel. The one-size-fits-all policy in the bill means hospitals will lose their ability to craft individual testing policies. The bill should specifically exempt the trucking industry with clearer language. The bill should give employers more discretion to test when an accident occurs.

**Persons Testifying:** PRO: Senator Karen Keiser, Prime Sponsor; Micah Sherman, Washington Sun and Craft Growers Association; CAITLEIN RYAN, THE CANNABIS ALLIANCE.

CON: Tom Kwieciak, Building Industry Association of WA; Jim King, Independent Business Association; Robert Battles, Association of Washington Business (AWB); Mandi Kime, Associated General Contractors of WA.

OTHER: Jeff DeVere, Washington Trucking Association; Taylor Gardner, WASPC; David Streeter, Washington State Hospital Association.

**Persons Signed In To Testify But Not Testifying:** No one.