
**Labor & Workplace Standards
Committee**

HB 1094

Brief Description: Concerning medical marijuana patients and their employers.

Sponsors: Representatives Sawyer, Kirby, Stonier, Condotta, Appleton, Farrell, Frame, Macri and Kloba.

Brief Summary of Bill

- Prohibits an employer from discriminating against a medical marijuana qualifying patient because of the individuals' status as a qualifying patient or positive marijuana drug test.
- Allows an employer to discriminate if the qualifying patient used, possessed, or was impaired by marijuana on the work site premises or during work hours, or if compliance would cause an employer to lose a federal monetary or licensing-related benefit.

Hearing Date: 1/26/17

Staff: Joan Elgee (786-7106).

Background:

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 the 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.

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.

State law. 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 an authorization from the person's health care professional. The medical marijuana laws specifically allow employers to establish drug-free work policies and do not require employers to accommodate the medical use of marijuana.

Washington Law Against Discrimination.

Under Washington's 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 it would not be a reasonable accommodation of a disability under the WLAD, for an employer to violate federal law, or allow an employee to violate federal law, by employing a person who uses medical marijuana, whether the marijuana was used at work or during off-work hours.

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.

Washington law does not regulate drug testing by private employers.

Summary of Bill:

The provisions in the medical marijuana laws allowing an employer to establish a drug free workplace and stating that employers are not required to accommodate the medical use of marijuana are repealed.

An employer may not refuse to hire a qualifying patient, discharge or bar a qualifying patient from employment, or discriminate against a qualifying patient in compensation or in other terms and conditions of employment because of the qualifying patient's:

- Status as a qualifying patient; or
- Positive drug test for marijuana components or metabolites.

The prohibitions do not apply in any case in which the qualifying patient used, possessed, or was impaired by marijuana on the employment premises or during work hours, or in which compliance would cause an employer to lose a monetary or licensing-related benefit under federal law.

Appropriation: None.

Fiscal Note: Available.

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