

FINAL BILL REPORT

ESSB 5123

C 359 L 23
Synopsis as Enacted

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).

Senate Committee on Labor & Commerce
House Committee on Labor & Workplace Standards

Background: Under federal and state law, cannabis 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 cannabis for medicinal purposes. Since 2012, adult-use, recreational cannabis has been legal in Washington.

Under state law, employers may establish drug-free workplace policies. Regardless of workplace policy, employers are not required to accommodate on-site medical use of marijuana. In general, there is no limitation on pre-employment drug screening in state law. Under federal law, some contractors and grantees are required to take steps to maintain a drug-free workplace, such as preparing a drug-free workplace policy and establishing a drug-free awareness program. Federal law requires certain safety and security sensitive positions be subject to drug and alcohol testing.

Summary: Prohibited Practices. Employers are prohibited from discriminating against a person in hiring if the discrimination is based upon:

- the person's use of cannabis off the job and away from the workplace; or
- an employer-required drug screening test that identifies non-psychoactive cannabis metabolites in the person's hair, blood, urine, or other bodily fluids.

The bill does not:

- prohibit an employer from basing initial hiring decisions on scientifically valid drug screening conducted through methods that do not screen for non-psychoactive

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- cannabis metabolites;
- apply to testing for controlled substances other than pre-employment, such as post-accident testing or testing because of suspicion of impairment or being under the influence of alcohol, controlled substances, medications, or other substances; or
- affect the rights or obligation of an employer to maintain a drug and alcohol free workplace, or any other right or obligation of an employer required under federal law or regulation.

Exceptions. The bill does not apply to applicants seeking a position:

- with a general authority Washington law enforcement agency;
- with a fire department, fire protection district, or regional fire protection service authority;
- as a first responder, including a dispatcher position with a public or private 911 emergency communications system or a position responsible for the provision of emergency medical services;
- as a corrections officer with a jail, detention facility, or the Department of Corrections, including any position directly responsible for the custody, safety, and security of persons confined in those facilities; or
- a position in the airline or aerospace industries.

The bill also does not apply to any other safety-sensitive position for which impairment while working presents a substantial risk of death. Safety-sensitive positions must be identified by the employer prior to the applicant's application for employment.

The bill 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. 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.

Votes on Final Passage:

Senate	28	21	
House	57	41	(House amended)
Senate			(Senate refused to concur)
House	56	41	(House receded/amended)
Senate	30	18	(Senate concurred)

Effective: January 1, 2024