

SENATE BILL REPORT

SB 5123

As of January 6, 2023

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

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

Sponsors: Senator Keiser.

Brief History:

Committee Activity: Labor & Commerce: 1/10/23.

Brief Summary of Bill

- Prohibits employers, with some exceptions, from discriminating against a person in hiring if the discrimination is based on the person's use of cannabis outside of work or on certain employer-required drug screening tests.

SENATE COMMITTEE ON LABOR & COMMERCE

Staff: Jarrett Sacks (786-7448)

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

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establishing a drug-free awareness program. Federal law requires certain safety and security sensitive positions be subject to drug and alcohol testing.

Summary of Bill: 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 discriminating in hiring based on scientifically valid drug screening conducted through methods that do not screen for non-psychoactive cannabis metabolites;
- 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; or
- apply to applicants in the building and construction trades, or applicants applying for a position that requires a federal government background investigation or security clearance.

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.

Appropriation: None.

Fiscal Note: Requested on January 5, 2023.

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

Effective Date: The bill takes effect on January 1, 2024.