

REVENUE: No revenue impact

FISCAL: No fiscal impact

Action:	Do Pass
Vote:	5 - 0 - 0
Yeas:	Deckert, George L., Monnes Anderson, Starr, Metsger
Nays:	0
Exc.:	0
Prepared By:	Janet Adkins, Administrator
Meeting Dates:	2/7, 2/19

WHAT THE MEASURE DOES: Provides that nothing in the Oregon Medical Marijuana Act will preclude an employer from establishing or enforcing a policy to maintain a drug-free workforce. Provides that employers are not required to accommodate the use of medical marijuana, regardless of where it is used. Provides that employers are not required to allow an employee or independent contractor to possess, consume, or be impaired by the use of marijuana during working hours, or to allow any person who is impaired by the use of marijuana to remain in the workplace.

ISSUES DISCUSSED:

- Workplace situations where safety could be compromised
- Impairments related to other medications
- Lack of allowance under federal illegal substances law for medical use of marijuana - classification as a Schedule 1 drug that is illegal and cannot be prescribed
- Methods of determining impairment – difficulty of regular use or use in the field
- Other state medical marijuana laws

EFFECT OF COMMITTEE AMENDMENT: No amendment.

BACKGROUND: Oregon voters approved a medical marijuana initiative in 1998 now known as the Oregon Medical Marijuana Act. Under the program, over 12,000 patients have obtained doctor approval and a card from the state authorizing the use, possession, and growing of marijuana for a qualifying medical condition. The Oregon law specifically provides that employers are not required to make accommodations for the medical use of marijuana in the workplace. However, employer actions to enforce drug free workplace programs through drug testing may be challenged under disability laws that require accommodation of workers with disabilities. Without the ability to enforce workplace drug programs, employers may also expose themselves to liability for accidents or other job safety litigation if an impaired worker drives, operates heavy equipment, works in hazardous situations or with hazardous materials, or works under various other circumstances. Unlike testing for alcohol use, there is not a test or standard that determines whether a person is under the influence of marijuana. A urine test only indicates that an individual has used marijuana and levels can remain in the body up to 30 days.

The principal case interpreting the Oregon's medical marijuana law as it relates to workers is a 2006 Oregon Supreme Court decision, *Washburn v. Columbia Forest Products, Inc.* In that case, an employee was terminated for violating his employer's drug and alcohol policy by testing positive for marijuana. He appealed the termination under disability law because he possessed a medical marijuana card. The Supreme Court did not rule directly on the accommodation requirement, but held that the employee was not a person with a disability because he could use other prescription medicine to control his condition. Although the employer's action was upheld in this case, the question was not resolved. Employers are still open to discrimination challenges for failure to accommodate for medical marijuana use outside of the workplace.

SB 465 provides, in effect, that employers may treat workers who have medical marijuana cards similarly to workers who do not have medical marijuana cards so that if an employee with a medical marijuana card tests positive for marijuana, the employer can apply the same remedial measures that the employer can apply to an employee who does not have a medical marijuana card. The bill does not prevent employers from providing accommodation for workers, but does not require that they do so.

2/22/2007 8:21:00 AM

This summary has not been adopted or officially endorsed by action of the committee.