



February 13, 2019

Dear Chair Barker & Members of the House Business & Labor Committee,

Please accept this testimony from the Oregon Metals Industry Council (OMIC), an industry association of metals manufacturers in Oregon. OMIC opposes House Bill 2655, which contravenes both accepted current state case law and federal and state law.

In 2010, the Oregon Supreme Court ruled in the case of *Emerald Steel Fabricators, Inc., v. Bureau of Labor and Industries*, and found that the use of medical marijuana, though authorized by state law, was an “illegal use of drugs” under federal law, which pre-empts state law in these circumstances.

The Court held that employers can lawfully take adverse employment actions against employees based on their use of federally-illegal drugs. It upheld an employer’s right to implement ‘zero tolerance’ drug-free workplace policies.

Again in 2014, employer rights were reserved by Oregon voters who voted in support of Measure 91, which specifically precluded “amend[ing] or affect[ing] in any way any state or federal law pertaining to employment matters” (Section 4. Article 1).

The use of controlled substances and maintaining safe workplaces is a primary concern of OMIC members. For our members with federal contracts, we are required to maintain drug-free workplaces as a matter of federal law. Employees in the metals industry also operate heavy machinery and follow strict safety guidelines to ensure the safety of themselves and their coworkers. Drug-free workplace policies are integral to this effort.

HB 2655 prohibits the conditioning of employment based on off-duty use of any substance that is lawful to use in Oregon, including marijuana. This cannot co-exist with our members’ rights to maintain ‘zero tolerance’ workplace drug policies which are so critical in maintaining workplace safety.

And in any case, there are still no recognized tests for impairment due to marijuana use that could make HB 2655 in any way feasible.

Creating an unlawful employment action for conditioning employment based on refraining off-duty use of marijuana compromises our workplace safety efforts. Please affirm our ability to maintain safe, drug-free workplaces and do not advance HB 2655.

Sincerely,

J.L. Wilson
OMIC Government Affairs