

HB 2541 (strike everything: medical marijuana; employer monitoring)

The Arizona Medical Marijuana Act was passed by Arizona voters on November 2, 2010. The Greater Phoenix Chamber of Commerce supports legislation that provides guidance for employers who must comply with the Arizona Medical Marijuana Act.

Background: A.R.S. Title 23, Chapter 2, Article 14 outlines regulations for employee drug testing. The article requires employers that utilize drug testing to have a written drug policy that includes a description of testing methods, collection procedures, and the consequences of a refusal to participate in testing. If an employee tests positive, an employer may require drug rehabilitation, employee suspension, employee termination, and/or other adverse employment actions.

The Arizona Medical Marijuana Act prohibits an employer from discriminating against a person in hiring, terminating, or penalizing an employee based on status as a medical marijuana cardholder and/or an employee's positive drug test for marijuana components or metabolites, unless the person used, possessed, or was impaired by marijuana on the business premises or during the hours of employment.

Bill History: Passed House (3/7); Passed Senate Rules (3/29); Waiting for a full Senate recorded vote.

Bill Provisions:

- Allows an employer to take action against an employee based on the good faith belief that an employee had an impairment or used or possessed any drug while on the employer's premises or during the hours of employment.
- Allows an employer to exclude an employee from performing a safety-sensitive position based on the good faith belief that an employee is engaged in the current use of any drug, whether legal, prescribed by a physician or otherwise, if the drug could cause an impairment or decrease the employee's job performance or duties.
 - Stipulates that the allowable action includes reassigning the employee to another position or placing an employee on paid or unpaid leave.
 - Allows the good faith belief to be based on information including results of a test for the use of alcohol or drugs, warning labels or other instructions for the use of the drug, statements by the employee, and information from a physician or pharmacist, from reputable reference sources or other information the employer believes to be reliable.
- Allows an employer to assess, supervise or control the job performance of the employee; reassign an employee to a different position or job duties; or suspend or terminate employment.
- Permits an employer to use the medical marijuana verification system to verify a registry identification card that is provided to the employer by an employee or applicant that has received a conditional offer of employment, subject to the affirmative vote of at least three-fourths of the members of each house of the Legislature (Proposition 105).
- Outlines criteria that can serve as basis of *good faith* and specifies that *good faith* does not include a belief formed with gross negligence.
- Defines *current use of any drug*, *impairment* and *safety-sensitive position*.
- Expands the definition of *employer* to include the state or a political subdivision of the state.