

# Judiciary Committee JOINT FAVORABLE REPORT

**Bill No.:** SB-1089

**Title:** AN ACT CONCERNING CANNABIS AND THE WORKPLACE.

**Vote Date:** 4/8/2019

**Vote Action:** Joint Favorable Substitute

**PH Date:** 3/22/2019

**File No.:** 804

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## **SPONSORS OF BILL:**

Judiciary Committee

## **REASONS FOR BILL:**

With the prospect of cannabis legalization, there is some concern how this may affect an employer's ability to regulate the use of cannabis among its employees while at work. This bill seeks to ensure that no employer is required to make accommodations for or allow employees to use or possess cannabis in the workplace.

## **SUBSTITUTE LANGUAGE:**

See LCO No. 6886. In Line 4, "smoke" was exchanged for the word "use." In Lines 6-14, a new section (subsection (b)) was added to allow an employer to implement a policy prohibiting possession, use or consumption of a cannabis-type substance by an employee. In Lines 15-18, subsection (c) defines "cannabis-type substance," "employer," and "employee."

## **RESPONSE FROM ADMINISTRATION/AGENCY:**

### **Commission on Equity & Opportunity / Connecticut Commission on Women, Children, and Seniors:**

Employers will not be required to make accommodations for or allow employees to use or possess cannabis in the workplace. CEO/CWCS supports this legislation without any changes.

## **PUBLIC OFFICIALS (SUPPORT):**

### **Sen. Martin Looney, President Pro Tempore:**

Thank you for the opportunity to express my support for the following bills: . . . Senate Bill 1089 – AN ACT CONCERNING CANNABIS AND THE WORKPLACE . . . .

## **PUBLIC OFFICIALS (OPPOSITION):**

**None expressed.**

## **RESPONSE FROM PUBLIC (SUPPORT):**

### **National Federation of Independent Business (NFIB):**

NFIB supports the intent behind SB-1089, “An Act Concerning Cannabis in the Workplace,” since this legislation aims to help protect employers should Connecticut further authorize the use of or “legalize” cannabis. However, additional protections are most likely necessary beyond the currently proposed language in SB-1089 to ensure that employers can still enforce their workplace policies and address potential civil and employment liability concerns. While NFIB in Connecticut does not have a position on the underlying policy of cannabis authorization, NFIB will continue to advocate for an employer’s right to maintain a drug-free workplace.

Changes to cannabis related laws at the state level can often raise questions and create a dilemma for many small businesses. “Off duty” use of controlled substances, including cannabis, is a valid concern for employers, as are general health and safety concerns for an employer’s employees, vendors, and customers. For example, according to U.S. DOT, it is “unacceptable for any safety-sensitive employees subject to drug testing under DOT’s regulations to use marijuana.” Additionally, many businesses with federal and/or state contracts must maintain a drug free workplace.

SB-1089, while well-intentioned and generally positive, gives rise to some specific questions and concerns from small business owners. Though silent on the topic, will this bill (and/or other related cannabis legislation) continue to allow for employers to maintain their right to test for cannabis substances, even if they were to become legalized under state law? Additionally, while the bill explicitly states that no employer is required to allow an employee to “possess” (line 5) cannabis-type substance in the workplace, does this include an employee who may have even trace amounts of a cannabis-type substance in his or her body? When and/or how is it determined if an employee is “under the influence” (line 3) of cannabis? These questions must be answered and comprehensive employer protections provided.

### **Motor Transport Association of Connecticut, Inc.:**

MTAC is not necessarily opposed to the legalization of recreational marijuana. However, Commercial Driver’s License holders operating Commercial Motor Vehicles (CMVs) are required by federal regulation to be tested for controlled substances (drugs and alcohol), per 49 CFR Part 382 – CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING. This will still be the case even if Connecticut legalizes recreational marijuana.

Accordingly, employers should not be penalized by the state in any way if they are forced to take action against an employee for simply acting in accordance with federal regulations. Any legislation to legalize recreational marijuana, should at a minimum, refer to federal regulations and provide protection for the employer who complies as required.

### **Health Assistance InterVention Education Network (HAVEN):**

Bill No. 1089 makes clear that an employer is not required to make accommodations for an employee or allow an employee to (1) perform his or her duties while under the influence of a cannabis type substance or (2) possess, smoke or otherwise consume a cannabis-type substance while performing such duties.

The primary component of cannabis, THC, is known to impair motor performance such as reaction time and tracking as well as cognitive function such as attention, decision making, impulse control and memory. Long term use has been associated with cognitive deficits, depression, anxiety, and psychosis. Cannabis use may impact employee attendance and reliability, causing hardship to an employer. This Bill recognizes the dilemmas facing employers.

There is insufficient data or research to demonstrate what it means to be “under the influence” of cannabis or at what point the individual is, in fact, “impaired.” Employers must be able to require a drug free work environment. This Bill needs to make clear that an employer is not required to hire an individual who tests positive for cannabis on a preemployment drug test and should be able to terminate an employee who tests positive for cannabis during the course of employment.

**Connecticut Business & Industry Association (CBIA):**

CBIA supports and appreciates the intent behind SB 1089 that seeks to protect employers and states that “no employer is required to make accommodations for or allow employees to perform his or her duties while under the influence of a cannabis-type substance, or possess, smoke or otherwise consume a cannabis-type substance while in the workplace.”

However, CBIA’s member businesses have raised a few questions and concerns should this legislation move forward, and the use of cannabis be legalized. Some of the questions and concerns include: Will employers be allowed to utilize random substance abuse screening tests for employees whose jobs require the employee to not be under the influence of substances, such as employees in positions that require operation of a vehicle or heavy machinery, employees in inherently dangerous positions such as construction workers, or other employees subject to generally-applicable safety requirements?

Another concern expressed by our members is that under Connecticut law an employee cannot be impaired while at work. Unlike alcohol, there is no easy way for an employer to accurately assess and determine whether an employee is under the effect of cannabis. Should this bill move forward, will a threshold amount of the presence of marijuana be specified?

Should this legislation move forward, CBIA would like to see the addition of language that will protect employers from civil liability if the employer had a good faith belief that an employee was in possession of, or appears impaired from usage of cannabis.

**Home Builders & Remodelers Association of Connecticut, Inc.:**

If enacted, this bill would make clear that no employer is required to make accommodations for or allow employees to use or possess cannabis in the workplace. Worksite safety is of paramount concern to those Connecticut businesses engaged in residential construction. It is important that employers in our industry maintain the ability to drug test prospective and

existing employees engaged in High-Risk and Safety-Sensitive Jobs (such as heavy equipment operators) as delineated by CT DOL.

Any final marijuana legalization legislation should, to the greatest extent possible, include employer protections and should, at minimum, refer to federal regulations in order to protect employers who are in compliance with said regulations.

#### **RESPONSE FROM PUBLIC (OPPOSITION):**

##### **Connecticut Youth Services Association (CYSA):**

On behalf of the Connecticut Youth Services Association (CYSA), we feel that it is imperative that the State of Connecticut carefully consider the serious public health and safety implications for any legislation that would legalize and commercialize the sale of marijuana. Because of these implications for youth and families, CYSA must oppose any such legislative proposals. CYSA is urging the Governor and all Connecticut legislators to carefully consider the available research and to weigh both the financial and human costs associated with legalization. Whatever the intended goal of legalization, it would come at substantial detriment to the safety, health, and welfare of our youth and families.

#### **RESPONSE FROM PUBLIC (NEUTRAL):**

##### **Distilled Spirits Council:**

It has long been the position of proponents [of legalization of recreational marijuana] that the retail sale of marijuana should be made under a similar regulatory and retail scheme as the highly regulated beverage alcohol system, which is very familiar to policy makers. To that end, the Board of Directors of the Distilled Spirits Council has established a series of guiding principles for the consideration in states that are considering the implementation of recreational marijuana

These general principles are: (1) ensure that the same penalties exist for driving under the influence of marijuana and other intoxicants as for driving under the influence of beverage alcohol; (2) ensure that testing and reporting for the presence of drugs, including marijuana as well as beverage alcohol is required for all U.S. highway fatalities; and (3) require that all marijuana products appropriately disclose the THC dose in a manner and under similar conditions of the alcohol by volume declaration required of beverage alcohol products.

##### **General Dynamics Electric Boat, Lockheed Martin Sikorsky, and United Technologies Corporation:**

Collectively, we proudly employ over 38,000 individuals in Connecticut. The health and safety of our employees is as important to our companies as the products we manufacture. We have serious concerns with the bill as drafted.

Legalizing recreational cannabis without comprehensive employer protections would jeopardize our ability to meet our obligations to our employees and customers to ensure a safe workplace. As federal government contractors, we are required to have a workplace that is free of controlled substances under the Drug-Free Workplace Act of 1988; many of our employees are required to have security clearances to do their jobs, and as a result, cannot use or possess cannabis.

We also have concerns that legalized recreational cannabis may impact our ability to meet our workforce development objectives. Any legislation to legalize cannabis – a federally controlled substance – must include language to protect the right of employers to enforce policies restricting the use of cannabis by employees both in and outside of the workplace, as well as to base employment decisions on the pre-employment cannabis use of job candidates not covered by the Palliative Users of Marijuana Act. Employers must be protected from legal liability for following Federal requirements.

<b>Support</b>	<b>Opposed</b>
Tori Giannini (Berlin, CT)	Ken Bastian (Branford, CT)
Ashley Wiltshire (Somewhere, CT)	Aliyah Henry (East Hartford, CT)
	John Doe (Hartford, CT)

**Reported by: Michael Holler**

**Date: April 29, 2019**