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Testifying on SB 16 - An Act Concerning the Adult Use of Cannabis

I am Brian Corvo, Assistant Counsel at CBIA, the Connecticut Business and Industry Association. CBIA is Connecticut’s largest business organization, with thousands of member companies, small and large, representing a diverse range of industries from across the state. Ninety-five percent of our member companies are small businesses, with less than 100 employees.

Thank you for the opportunity to testify on SB 16, An Act Concerning the Adult Use of Cannabis.

The legalization of cannabis for recreational use is a serious matter that will impact every element of our state including businesses. Employers of all sizes across all industries are validly concerned about how the legalization of recreational cannabis will affect the safety of their workplaces, the health of their employees, their exposure to liabilities and their contractual relationships with vendors and customers.

If the legislature chooses to pursue such a far-reaching policy as legalizing recreational cannabis, we ask that you balance it by maintaining the existing reasonable protections employers have to ensure that the effects of cannabis on employees do not compromise workplace safety, negatively affect employees’ health, expose employers to unnecessary liabilities or jeopardize business relationships. SB 16 fails to achieve that important balance.

The use of recreational cannabis is a lifestyle choice. SB 16 erodes the rights of employers that have made the choice to operate a cannabis-free workplace and overreaches by making recreational cannabis use a protected activity.

While CBIA is concerned about the legalization of recreational cannabis and the impact such a policy will have on the ability of employers to find necessary workers, this testimony is limited to the sections of the bill concerning employers’ rights to continue to make and enforce effective hiring and employment policies regarding cannabis use. CBIA also offers to the committee suggested language, drafted with the input of members, that include more comprehensive employer protections. (See Attached).

**SB 16 TAKES AWAY EMPLOYERS’ EXISTING RIGHTS TO OPERATE A CANNABIS-FREE WORKPLACE**

Employers’ rights to make and enforce reasonable and nondiscriminatory policies, which include testing for cannabis, are already well-regulated under Connecticut law. Currently, within the conditions of the law, employers may require prospective employees to submit to a drug screening test as a condition of employment and may require current employees to submit to a drug test if the employer has a reasonable suspicion that the employee is under the influence of drugs or alcohol which adversely affect or could adversely affect the employee’s job performance.
Sections 45, 46, 49 and 50 of the bill take away the current rights employers to develop, implement and enforce effective hiring and employment policies regarding cannabis use outside of the workplace by prospective and current employees. While SB 16 does not require employers to make accommodations for employees to perform their work under the influence of cannabis or to possess or consume cannabis at the workplace and authorizes employers to develop cannabis policies, it takes away employers’ rights with regard to employees’ use of cannabis outside of the workplace. Specifically:

- **SB 16 TAKES AWAY EMPLOYERS’ RIGHTS TO REQUIRE PROSPECTIVE EMPLOYEES AND EMPLOYEES REFRAIN FROM CANNABIS USE OUTSIDE THE COURSE OF EMPLOYMENT.**

- **SB 16 PROHIBITS EMPLOYERS FROM TAKING ACTIONS WITH REGARD TO AN EMPLOYEES’ COMPENSATION, TERMS, CONDITIONS OR PRIVILEGES OF EMPLOYMENT FOR USE OF CANNABIS OUTSIDE THE COURSE OF EMPLOYMENT.**

- **SB 16 PROHIBITS EMPLOYERS FROM REFUSING TO HIRE CANDIDATES WHOSE PRE-EMPLOYMENT SCREENING TESTS INDICATE THE PRESENCE OF THC.**

The bill does provide for some exemptions where employers may continue to require prospective and current employees to refrain from cannabis use outside the workplace and allow drug testing. These exemptions, however, are too narrow and do not consider the valid concerns of the broad range of employers across the diverse spectrum of industries in Connecticut (which largely include small businesses) who have an interest in continuing to operate a safe and secure cannabis-free workplace.

**SB 16 PROTECTS CANNABIS USERS AND PUNISHES EMPLOYERS AND BUSINESSES**

SB-16 expands the rights of cannabis users while it takes away important rights from the majority of Connecticut employers to decide whether cannabis use by employees is compatible with their workplace. The bill not only prohibits employers from continuing to use the hiring and employment policies they have relied on under Connecticut law, but it overreaches by making pre-employment drug screening an unlawful and discriminatory practice and authorizing prospective employees to bring civil actions against employers who so require. Before proceeding with such a bill the committee should consider the following:

- **RECREATIONAL CANNABIS USERS ARE NOT AND SHOULD NOT BE A PROTECTED CLASS.** Recreational cannabis use by a job-seeker or an employee is a personal choice.

- **ALL EMPLOYERS CAN BEST DETERMINE WHETHER CANNABIS USE BY EMPLOYEES IS COMPATIBLE WITH THEIR WORKPLACE SAFETY REQUIREMENTS AND BUSINESS EXPECTATIONS.** As drafted, SB-16 does not protect the rights of the majority of Connecticut businesses with regard to cannabis use by employees.

SB-16, as drafted, misses the mark in the balance between the interests of people who choose to use cannabis for recreational purposes and employers’ valid workplace safety and business liability concerns.

**OTHER STATES WHERE CANNABIS IS LEGAL FOR ADULT USE MAINTAINED EMPLOYERS’ RIGHTS**

Other states where the recreational use of cannabis has been legalized did not take away (and have even protected) employers’ rights to enforce off-site cannabis use policies that include pre-employment and post screening tests.
- **COLORADO**: On February 19, 2020, the House Business Affairs and Labor Committee of Colorado’s general assembly unanimously voted against H.B. 1089 (which would have protected “off-duty” cannabis use) at its first hearing following the testimony of opponents that it could compromise workplace safety.
- **CALIFORNIA**: California allows employers to conduct pre-employment drug testing and, under certain conditions, to current employees. California employers maintain the right to enforce a drug-free workplace policy, including prohibiting cannabis.
- **ILLINOIS**: Illinois lawmakers approved an amendment allowing employers to conduct reasonable drug testing and allowing employers to refuse to hire candidates or to discipline or fire employees who fail.
- **MAINE**: Although recreational use of cannabis is legal, employers can refuse to hire job candidates based on the results of screening tests and may test employees.
- **MASSACHUSETTS**: Currently the law in Massachusetts does not protect job applicants or employees who test positive for cannabis.
- **MICHIGAN**: Michigan legalized recreational cannabis use in 2020 but employers have not been required to change pre-employment drug screening tests.
- **OREGON**: In 2019, HB 2655 and SB 379 failed. These bills would have prohibited employers from using positive drug tests for cannabis as grounds to refuse to hire a job candidate or fire an employee.
- **VERMONT**: Vermont’s employers can drug test employees and, can make job offers contingent on the candidate passing a drug test.
- **WASHINGTON**: Allows employers to conduct pre-employment drug screening for cannabis and reject job applicants who test positive for the drug.

Affording employers reasonable protections to protect their rights to ensure a cannabis-free workplace is not a novel concept. It should be noted that state law in this area is dynamic and some states may have introduced bills to amend some of the laws described above.

**IF CANNABIS IS LEGALIZED IT SHOULD BE BALANCED WITH REASONABLE PROTECTIONS FOR EMPLOYERS**

Connecticut has been experiencing modest economic growth and some improved job creation. For that kind of growth to continue on a positive trajectory, businesses and employers of all sizes and across all industries need to have confidence not only in the state's fiscal and economic climate, but also that they will have control over their own business decisions and how they will navigate a dynamic and changing world.

If Connecticut chooses to legalize the recreational use of cannabis, such a change will certainly impact employers and their businesses. To navigate such a change, employers should be able to decide how they want to address the issues that legal cannabis will bring. Employers can best assess the impact that cannabis use by employees will have on workplace safety or business operations and how to best address that impact. Accordingly, all employers should be able to continue to develop and implement reasonable and nondiscriminatory hiring and employment policies that address cannabis use outside of the workplace including pre-employment screening.
DRAFT Proposed CT LAW:

(a) For purposes of this section:

1. “Cannabis-type substance” means cannabis-type substance, as defined in section 21a-240 of the general statutes,
2. “Employer” means a person or entity engaged in business who has one or more employees, including the state and any political subdivision thereof,
3. “On call” means when the employee is scheduled with at least twenty-four hours’ notice by his or her employer to be on standby or otherwise responsible for performing tasks related to his or her employment either at the employer’s premises or other previously designated location by his or her employer or supervisor to perform a work-related task.

(b) No employer shall be prohibited from adopting a zero tolerance or drug-free workplace policy, drug testing policy or employment policy concerning the smoking, consumption, storage or use of a cannabis-type substance by employees in the workplace, while performing the employee’s job duties or while on call provided such policy is, (1) in writing, and (2) provided to or available to each employee subject to such policy.

(c) No employer shall be required to permit an employee to be under the influence of a cannabis-type substance in the employer’s workplace or while performing the employee’s job duties or while on call.

(d) No employer shall be prohibited from terminating, discharging, disciplining, or imposing adverse personnel action upon an employee for violation of the employer’s zero tolerance or drug-free workplace policy or policy regarding the smoking, consumption storage or use of a cannabis-type substance.

(e) No employer shall be prohibited from conducting drug testing for cannabis-type substances in accordance with sections 31-51t to 31-51aa, inclusive, of the general statutes or any other applicable law and shall not be prohibited from withdrawal of job offers or taking disciplinary action for positive drug test results, including termination of employment.

(f) Nothing in this Act shall be construed to create or imply a cause of action for any person against an employer for:

1. actions taken pursuant to an employer’s reasonable workplace drug policy, including but not limited to subjecting an employee or applicant to drug and alcohol testing in accordance with applicable law, and discipline, termination of employment, or withdrawal of a job offer due to a positive drug test result;
2. actions based on the employer’s good faith belief that an employee used or possessed cannabis in the employer’s workplace or while performing the employee’s job duties or while on call in violation of the employer’s employment policies;
3. actions, including discipline or termination of employment, based on the employer’s good faith belief that an employee was unfit for duty or impaired as a result of the use of cannabis, or under the influence of cannabis, while at the employer’s workplace or while performing the employee’s job duties or while on call in violation of the employer’s workplace drug policy;
4. injury, loss, or liability to a third party if the employer neither knew nor had reason to know that the employee was impaired by a cannabis-type substance; or
5. complying with a federal contract, national security guideline, or other federal law.