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FIRST REPRINT

A.B. 132

ASSEMBLY BILL NO. 132—ASSEMBLYMEN NEAL,
MCCURDY AND FLORES

FEBRUARY 13, 2019

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions governing employment practices.
(BDR 53-29)

FISCAL NOTE: Effect on Local Government: Increases or Newly
Provides for Term of Imprisonment in County or City
Jail or Detention Facility.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to employment; prohibiting the denial of employment because of the presence of marijuana in a screening test taken by a prospective employee with certain exceptions; authorizing an employee to rebut the results of a screening test under certain circumstances; creating a presumption that the ability of an employee to perform his or her job and that the safety of other employees is not adversely affected if an employee has certain levels of certain prohibited substances in his or her blood; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law establishes various unlawful employment practices. (Chapter 613
2 of NRS)
3 **Section 2** of this bill prohibits, with certain exceptions, an employer from
4 denying employment to a prospective employee because the prospective employee
5 has submitted to a drug screening test and the test indicates the presence of
6 marijuana. **Section 2** further provides, however, that it is not unlawful for an
7 employer to condition the employment of a prospective employee who does not
8 hold a valid registry identification card to engage in the medical use of marijuana
9 on the prospective employee’s abstention from use of marijuana while performing
10 his or her duties of employment. Finally, **section 2** provides that if an employer
11 requires an employee to submit to a screening test within his or her first 30 days of
12 employment, the employer is required to accept as conclusive the results of an



13 additional screening test to which the employee submitted at his or her own
14 expense.

15 Existing law makes it an unlawful employment practice to fail or refuse to hire,
16 discharge or otherwise discriminate against an employee because the employee
17 engages in the lawful use of any product outside the premises of the employer
18 during the employee's nonworking hours, if that use does not adversely affect the
19 employee's ability to perform his or her job or the safety of other employees. (NRS
20 613.333) **Section 3.5** of this bill specifies that this provision of existing law applies
21 to the use of marijuana.

22 Existing law prohibits a person from driving or being in actual physical control
23 of a vehicle on a highway or on premises to which the public has access if the
24 person has an amount of marijuana or marijuana metabolite in his or her blood that
25 is equal to or greater than 2 nanograms per milliliter or 5 nanograms per milliliter,
26 respectively. (NRS 484C.110) **Section 3.5** creates a presumption that the ability of
27 an employee to perform his or her job and that the safety of other employees is not
28 adversely affected if the employee has less than such amounts of marijuana or
29 marijuana metabolite in his or her blood.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** (Deleted by amendment.)

2 **Sec. 2.** Chapter 613 of NRS is hereby amended by adding
3 thereto a new section to read as follows:

4 *Except as otherwise specifically provided by law:*

5 1. *It is unlawful for any employer in this State to fail or*
6 *refuse to hire a prospective employee because the prospective*
7 *employee submitted to a screening test and the results of the*
8 *screening test indicate the presence of marijuana.*

9 2. *The provisions of subsection 1 do not apply if the*
10 *prospective employee is applying for a position:*

11 (a) *As a firefighter, as defined in NRS 450B.071;*

12 (b) *As an emergency medical technician, as defined in*
13 *NRS 450B.065;*

14 (c) *That requires an employee to operate a motor vehicle and*
15 *for which federal or state law requires the employee to submit to*
16 *screening tests; or*

17 (d) *That, in the determination of the employer, could adversely*
18 *affect the safety of others.*

19 3. *It is not unlawful for an employer in this State to require a*
20 *prospective employee who does not hold a valid registry*
21 *identification card to engage in the medical use of marijuana*
22 *pursuant to chapter 453A of NRS to abstain from using marijuana*
23 *while carrying out the duties of his or her employment as a*
24 *condition of employment.*

25 4. *If an employer requires an employee to submit to a*
26 *screening test within the first 30 days of employment, the employee*



1 shall have the right to submit to an additional screening test, at his
2 or her own expense, to rebut the results of the initial screening
3 test. The employer shall accept and give appropriate consideration
4 to the results of such a screening test.

5 5. The provisions of this section do not apply:

6 (a) To the extent that they are inconsistent or otherwise in
7 conflict with the provisions of an employment contract or
8 collective bargaining agreement.

9 (b) To the extent that they are inconsistent or otherwise in
10 conflict with the provisions of federal law.

11 (c) To a position of employment funded by a federal grant.

12 6. As used in this section, "screening test" means a test of a
13 person's blood, urine, hair or saliva to detect the general presence
14 of a controlled substance or any other drug.

15 **Sec. 3.** (Deleted by amendment.)

16 **Sec. 3.5.** NRS 613.333 is hereby amended to read as follows:

17 613.333 1. It is an unlawful employment practice for an
18 employer to:

19 (a) Fail or refuse to hire a prospective employee; or

20 (b) Discharge or otherwise discriminate against any employee
21 concerning the employee's compensation, terms, conditions or
22 privileges of employment,

23 ↪ because the employee engages in the lawful use in this state of
24 any product outside the premises of the employer during the
25 employee's nonworking hours, if that use does not adversely affect
26 the employee's ability to perform his or her job or the safety of other
27 employees.

28 2. *For the purposes of subsection 1:*

29 (a) *It is presumed that the ability of an employee to perform*
30 *his or her job and that the safety of other employees is not*
31 *adversely affected if, during the working hours of the employee,*
32 *the employee has an amount of a prohibited substance in his or*
33 *her blood that is less than the amount set forth in subsection 4 of*
34 *NRS 484C.110.*

35 (b) *The consumption of marijuana, as defined in NRS*
36 *453.096, in a manner that complies with the laws of this State is*
37 *deemed to be the lawful use of a product.*

38 3. An employee who is discharged or otherwise discriminated
39 against in violation of subsection 1 or a prospective employee who
40 is denied employment because of a violation of subsection 1 may
41 bring a civil action against the employer who violates the provisions
42 of subsection 1 and obtain:

43 (a) Any wages and benefits lost as a result of the violation;

44 (b) An order of reinstatement without loss of position, seniority
45 or benefits;



1 (c) An order directing the employer to offer employment to the
2 prospective employee; and

3 (d) Damages equal to the amount of the lost wages and benefits.

4 ~~[3.]~~ 4. The court shall award reasonable costs, including court
5 costs and attorney's fees to the prevailing party in an action brought
6 pursuant to this section.

7 ~~[4.]~~ 5. The remedy provided for in this section is the exclusive
8 remedy for an action brought pursuant to this section.

9 **6. *The provisions of this section do not apply:***

10 **(a) *To the extent that they are inconsistent or otherwise in***
11 ***conflict with the provisions of an employment contract or***
12 ***collective bargaining agreement.***

13 **(b) *To the extent that they are inconsistent or otherwise in***
14 ***conflict with the provisions of federal law.***

15 **(c) *To a position of employment funded by a federal grant.***

16 **Sec. 4.** This act becomes effective on July 1, 2019.

