



April 5, 2018

The Honorable Rob Bonta
 California State Assembly
 State Capitol, Room 2148
 Sacramento, CA 95814

**SUBJECT: AB 2069 (BONTA) MEDICINAL CANNABIS: EMPLOYMENT DISCRIMINATION
 AS INTRODUCED FEBRUARY 7, 2018
 OPPOSE-JOB KILLER**

Dear Assembly Member Bonta:

The California Chamber of Commerce and the organizations listed below **OPPOSE AB 2069 (Bonta)** as a **JOB KILLER** because it undermines employer's ability to provide a safe and drug-free workplace by creating a new protected classification of employees who use marijuana for medical purposes, and

exposing employers to costly and unnecessary litigation under the Fair Employment and Housing Act (FEHA) whenever the employer terminates an employee in this new protected class who has created a safety hazard in the workplace.

Similar to Proposition 19, which California voters rejected in November 2010, AB 2069 would prohibit employers from terminating, disciplining or refusing to hire persons who use marijuana and possess a valid state identification card as a medical marijuana patient. While the bill would allow an employer to terminate or take disciplinary action against an employee who is impaired at work, there is currently no objective and legally recognized test an employer can administer, or have administered by a testing company to confirm impairment.

Current law is clear. Under current law established through case law, as well as in AB 266 (Bonta) as part of the medical cannabis regulation legislation in 2015, an employer has the right to maintain a drug-free workplace, within certain parameters. The legislative language in AB 266 was adopted to address significant employer concerns regarding the ability to maintain a drug-free workplace. This assurance also addresses voters apparent concern with Proposition 19. CalChamber did not oppose AB 266, AB 243 or SB 643 in 2015 establishing the regulatory framework for medical marijuana specifically because of the inclusion of legislative language to protect these employer's rights. The legislative language and intent of AB 266 (Bonta) is clear:

This chapter and Article 2 (commencing with Section 11357) and Article 2.5 (commencing with Section 11362.7) of Chapter 6 of Division 10 of the Health and Safety Code shall not interfere with an employer's rights and obligations to maintain a drug and alcohol free workplace or require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale, or growth of cannabis in the workplace or affect the ability of employers to have policies prohibiting the use of cannabis by employees and prospective employees, or prevent employers from complying with state or federal law.

No test for impairment. Although **AB 2069** allows an employer to discipline or terminate an employee that is impaired on the job, this provision is merely window dressing and cannot be implemented. According to the California Highway Patrol, there is no test which can be administered to determine if an individual is impaired and under the influence of marijuana. This creates an obstacle for employers attempting to determine impairment. In contrast, an employer can use a breath test to see whether a worker has been drinking on the job, or a lab test for opioids and other prescription drugs to determine impairment. There is no such test for marijuana.

Therefore, under this bill, an employer would be required to hire known marijuana users without recourse if the employee is impaired on the job because there is no conclusive test for impairment.

Impaired workers undermine workplace safety, quality and productivity. Employers are concerned that medical marijuana users could be impaired workers which puts the safety of the impaired employee, other employees, and members of the public at risk. Employees impaired on the job may not exercise appropriate judgment thereby being at a higher risk of injury to themselves and others. An uptick in on-the-job injuries and vehicle accidents will result in increased worker's compensation and vehicle insurance premiums.

Employers and employees across diverse industries express concerns regarding the ability of coworkers to fulfill their duties if they are impaired. In many instances, employees working alongside impaired employees are concerned for their own safety. Employers that decline to employ applicants that test positive for drugs lower the odds of workers being impaired at work.

Creates new, unprecedented employer liability under Fair Employment and Housing Act (FEHA). Including medical-marijuana users as a protected classification under FEHA will undermine an employer's ability to maintain a safe workplace and expose them to costly litigation. Although AB 2069 indicates an employer may terminate or take corrective action against an employee who is impaired, the lack of any conclusive test to indicate impairment will expose employers to litigation under FEHA. For example, if there were a workplace accident and an employer can require an employee involved in the accident to take a drug test, and if positive, take disciplinary action against that employee. Under that same example with

AB 2069, the employer could be sued for discrimination under FEHA. The employee would allege that the corrective action was based on his or her status as a medical-marijuana user, not the fact that the employee was impaired and created a risk in the workplace. Such a claim would be extremely challenging to defend given that there is no conclusive test for impairment.

FEHA allows an employee to obtain compensatory damages, injunctive relief, declaratory relief, punitive damages, and attorney's fees. A 2015 study by insurance provider Hiscox regarding the cost of employee lawsuits under FEHA estimated that the cost for a small- to mid-size employer to defend and settle a single plaintiff discrimination claim was approximately \$125,000. Limiting an employer's ability to maintain safety in the workplace will expose other employees and members of the public to potential harm.

Illegal under Federal law. The fact that marijuana use is illegal federally creates complexities where it is legal under state law. In late August 2013, the U.S. Department of Justice (DOJ) announced an update to their marijuana enforcement policy, known as the "Cole Memo." The statement reads, in part, that while marijuana remains illegal federally, the DOJ expects states like Colorado and Washington to create "strong, state-based enforcement efforts.... and will defer the right to challenge their legalization laws at this time."

In January of this year, Attorney General Sessions issued a memo rescinding the Cole memo, and ordering federal prosecutors nationwide to ignore previous relaxations of marijuana enforcement, describing the action as a "return to the rule of law." States in which marijuana is legal are now wondering what, if any, enforcement action the federal government might take against states, and marijuana businesses. Furthermore, employers forced to hire known marijuana users could also face the risk of federal enforcement action.

AB 2069 seeks to usurp the voice of the voters as well as the Supreme Court. In November 2010, the voters overwhelmingly rejected Proposition 19, which would have provided marijuana users with similar protections in the workplace. Additionally, in January 2008, the Supreme Court held that the Compassionate Use Act of 1996 which allowed Californians to use marijuana for medical purposes did not create safeguards for such individuals in the workplace. The Supreme Court confirmed that employers are still allowed to manage their own workplaces, including deciding whether to hire medical marijuana users. Employers have a right to choose whether to maintain a drug free workplace, or not. The decisions of the voters and the Supreme Court should be respected.

For these and other reasons, we must **OPPOSE AB 2069 (Bonta) as a JOB KILLER.**

Sincerely,

California Chamber of Commerce
Agricultural Council of California
Associated Builders and Contractors, Inc.
Associated General Contractors
Brea Chamber of Commerce
California Ambulance Association
California Association of Joint Powers
Authorities
California Association of Licensed Security
Agencies, Guards & Associates
California Association of Winegrape Growers
California Attractions and Parks Association
California Beer and Beverage Distributors
California Building Industry Association
California Business Properties Association
California Farm Bureau Federation
California Forestry Association
California Framing Contractors Association
California Grocers Association
California Hotel & Lodging Association

California Independent Petroleum Association
California Landscape Contractors Association
California Lodging Industry Association
California Manufacturers & Technology
Association
California New Car Dealers Association
California Professional Association of Specialty
Contractors
California Special Districts Association
California Restaurant Association
California Retailers Association
California State Association of Counties
California Travel Association
Civil Justice Association of California
Family Business Association
Family Winemakers of California
Garden Grove Chamber of Commerce
Greater Conejo Valley Chamber of Commerce
Greater Riverside Chambers of Commerce

National Association of Mutual Insurance
Companies
National Federation of Independent Business
North Orange County Chamber of Commerce
Oakdale Chamber of Commerce
Official Police Garages of Los Angeles
Personal Insurance Federation of California
Property Casualty Insurers Association of
America
Redondo Beach Chamber of Commerce

San Gabriel Valley Economic Partnership
Santa Maria Valley Chamber of Commerce
South Bay Association of Chambers of
Commerce
Southwest California Legislative Council
Tulare Chamber of Commerce
Walter & Prince LLP
Western Growers Association
Wine Institute

MF:ldl

cc: Graciela Castillo-Krings
District Office, Assembly Member Rob Bonta