

Amendment No. 616

Assembly Amendment to Assembly Bill No. 132 Proposed by: Assembly Committee on Commerce and Labor Amendment Box: Replaces Amendment No. 499. Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	(BDR 53-29)
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ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.



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 ~~;~~ ~~prohibiting an employer from conditioning employment on a test of the personality traits, behavioral traits or character traits of a prospective employee; providing certain exceptions;~~ 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:

Existing law establishes various unlawful employment practices. (Chapter 613 of NRS)

Section ~~24~~ 1 of this bill prohibits , with certain exceptions, an employer from denying employment to a prospective employee because the prospective employee has submitted to a drug screening test and the test indicates the presence of marijuana. **Section ~~24~~ 1** further provides, however, that it is not unlawful for an employer to condition the employment of a prospective employee who does not hold a valid registry identification card to engage in the medical use of marijuana on the prospective employee's abstention from use of marijuana ~~;~~ while performing his or her duties of employment. Finally, section 1 provides that if an employer requires an employee to submit to a screening test within his or her first 30 days of employment, the employer is required to accept as conclusive the results of an additional screening test to which the employee submitted at his or her own expense.

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

Existing law prohibits a person from driving or being in actual physical control of a vehicle on a highway or on premises to which the public has access if the person has an amount of marijuana or marijuana metabolite in his or her blood that is equal to or greater than 2 nanograms per milliliter or 5 nanograms per milliliter, respectively. (NRS 484C.110) Section 3.5 creates 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 the employee has less than such amounts of marijuana or marijuana metabolite in his or her blood.

~~[Section 3 of this bill prohibits an employer from conditioning the employment of a prospective employee on his or her submission to a character assessment. Section 3 defines "character assessment" to mean any test to evaluate the personality traits, behavioral traits or character traits of a person. Section 3 provides certain exceptions to the preceding prohibition for certain employment involving contact with children, elderly persons or vulnerable persons, employment as a peace officer and employment that affects the public safety.]~~

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

~~Section 1. [Chapter 613 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.] (Deleted by amendment.)~~

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

Except as otherwise specifically provided by law:

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

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

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

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

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

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

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

~~(3.)~~ 4. If an employer requires an employee to submit to a screening test within the first 30 days of employment, the employee shall have the right to submit to an additional screening test, at his or her own expense, to rebut the results of the initial screening test. The employer shall accept and give appropriate consideration to the results of such a screening test.

5. The provisions of this section do not apply:

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

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

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

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

1 **Sec. 3.** ~~1. Except as otherwise provided in this section, it is unlawful for~~
2 ~~any employer in this State to:~~

3 ~~— (a) Directly or indirectly, require, request, suggest or cause any prospective~~
4 ~~employee to take or submit to a character assessment;~~

5 ~~— (b) Use, accept, refer to or inquire concerning the results of a character~~
6 ~~assessment of any prospective employee;~~

7 ~~— (c) Deny employment to or threaten to take such action against any~~
8 ~~prospective employee;~~

9 ~~— (1) Who refuses, declines or fails to take or submit to a character~~
10 ~~assessment; or~~

11 ~~— (2) On the basis of the results of a character assessment;~~

12 ~~2. It is not unlawful for an employer in this State to require an employee to~~
13 ~~take or submit to a character assessment for the purpose of the professional~~
14 ~~development of the employee;~~

15 ~~3. An employer may require a prospective employee to take or submit to a~~
16 ~~character assessment and consider the results of such a character assessment for~~
17 ~~the purpose of evaluating a prospective employee for employment if:~~

18 ~~— (a) The duties of the position for which the prospective employee is being~~
19 ~~evaluated for employment involve regular and substantial contact with children,~~
20 ~~elderly persons or vulnerable persons;~~

21 ~~— (b) The prospective employee is applying for employment as a peace officer,~~
22 ~~as defined in NRS 169.125; or~~

23 ~~— (c) The prospective employee is applying for a position that is designated by~~
24 ~~the Personnel Commission as affecting public safety pursuant to NRS 284.4066.~~

25 ~~4. As used in this section:~~

26 ~~— (a) "Character assessment" means any test to evaluate the personality traits,~~
27 ~~behavioral traits or character traits of a person. The term includes, without~~
28 ~~limitation, the Caliper Profile, the Myers Briggs Type Indicator, the Hogan~~
29 ~~Personality Inventory, the SHL Occupational Personality Questionnaire and~~
30 ~~other similar assessments;~~

31 ~~— (b) "Elderly person" means a person who is 60 years of age or older.~~

32 ~~— (c) "Vulnerable person" means a person 18 years of age or older who:~~

33 ~~— (1) Suffers from a condition of physical or mental incapacitation because~~
34 ~~of a developmental disability, organic brain damage or mental illness; or~~

35 ~~— (2) Has one or more physical or mental limitations that restrict the ability~~
36 ~~of the person to perform the normal activities of daily living.] (Deleted by~~
37 ~~amendment.)~~

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

39 613.333 1. It is an unlawful employment practice for an employer to:

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

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

43 because the employee engages in the lawful use in this state of any product
44 outside the premises of the employer during the employee's nonworking hours, if
45 that use does not adversely affect the employee's ability to perform his or her job or
46 the safety of other employees.

47 2. For the purposes of subsection 1:

48 (a) It is presumed that the ability of an employee to perform his or her job
49 and that the safety of other employees is not adversely affected if, during the
50 working hours of the employee, the employee has an amount of a prohibited
51 substance in his or her blood that is less than the amount set forth in subsection 4
52 of NRS 484C.110.

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

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

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

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

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

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

~~4.3~~ 4. The court shall award reasonable costs, including court costs and attorney's fees to the prevailing party in an action brought pursuant to this section.

~~4.4~~ 5. The remedy provided for in this section is the exclusive remedy for an action brought pursuant to this section.

6. The provisions of this section do not apply:

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

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

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

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