



Testimony

Submitted on behalf of the
Pennsylvania Chamber of Business and Industry

Public Hearing on S.B. 749 – Medical Marijuana and Workplace Safety

Before the:
Pennsylvania Senate Health and Human Services Committee

Presented by:

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September 21, 2021

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Chairwoman Brooks, Chairman Haywood and members of the Senate Health and Human Services Committee, my name is Alex Halper and I am Director of Government Affairs for the Pennsylvania Chamber of Business and Industry. The PA Chamber is the largest, broad-based business advocacy association in Pennsylvania. We represent nearly 10,000 employers of all sizes, from sole proprietors to Fortune 100 companies, crossing all industry sectors throughout the Commonwealth and representing around 50 percent of the private-sector workforce. Thank you for the opportunity to testify today regarding medical marijuana and workplace safety.

The PA Chamber heard from many Pennsylvania employers prior to and during the 2015-16 legislative session as the General Assembly considered medical marijuana legalization. Opinions among employers were mixed: some questioned marijuana's efficacy and potential for abuse and urged opposition; others urged support, noting the potential for medical marijuana to serve as an alternative to opioids and other more addictive and dangerous medications. Ultimately the PA Chamber did not take a position on S.B. 3 overall, given the lack of consensus among our members and the reality that medical professionals and researchers were best positioned to provide input to lawmakers on the potential benefits and risks to patients.

While perspectives varied on the broad question of medical marijuana legalization, there was general consensus among employers on two key principles: workplace safety cannot be compromised; and the law should provide clear guidance to employers for managing medical marijuana use among their workforce.

The PA Chamber noted during consideration of S.B. 3 that employers could potentially face a legal paradox should marijuana become legal for medicinal purposes under Pennsylvania law, while remaining an unlawful under Federal law. This unique dynamic had no precedent and the potential to create confusion for both employers and patients. We discussed these concerns with lawmakers and the final version that became Act 16 of 2016 does include a number of provisions that at least acknowledges these issues.

For example, Section 2103(b)(3) provides that “Nothing in this act shall require an employer to commit any act that would put the employer or any person acting on its behalf in violation of Federal law.” The law further outlines a number of workplace tasks and responsibilities that a medical marijuana patient may be prohibited from undertaking and provides some discretion for employers to prohibit tasks that may be life-threatening or a public safety risk.

At the same time, the law provides strong anti-discrimination protections for patients, stating that “No employer may discharge, threaten, refuse to hire or otherwise discriminate or retaliate against an employee regarding an employee's compensation, terms, conditions, location or privileges solely on the basis of such employee's status as an individual who is certified to use medical marijuana.”

Despite Act 16's recognition of medical marijuana's potential impact on the workforce and workplace safety, it is clear after several years that the current language does not work, has created significant confusion, and an updated approach will help facilitate smoother implementation and long-term administration of the law as medical marijuana use continues to expand.

A key factor in the legal paradox that medical marijuana represents is the fact that employers are unable to utilize current standards that exist for managing legal prescription drug use among employees because those standards emanate from federal law, which still considers marijuana illegal. The Americans with Disabilities Act provides anti-discrimination protections for individuals lawfully using prescription drugs; however, subsequent guidance also allows employers to consider prescription drug use if there is a potential for impairment and the individual is employed in, or applying for, a safety-sensitive position. These complementary aspects of the law help

balance employee rights with the right of employers to maintain a safe work environment.

During consideration of S.B. 3 many advocates expressed agreement with the notion that medical marijuana should be treated similarly to other legal prescription drugs.

Act 16, while affording employees and patients with protections similar to federal law, fails to provide comparable guidance for employers, which has created confusion, has compromised safety; and no doubt has harmed employees as well who may have faced an unjust employment decision because the employer was not appropriately interpreting Act 16.

The PA Chamber supports S.B. 749, which we believe provides a framework that will better promote workplace safety and provide guidance to employers and employees that is more clear, comprehensive and comparable to federal law. Importantly, the bill maintains in its entirety the aforementioned anti-discrimination language found in Section 2103(b)(1). It also codifies a distinction between the general workforce and safety-sensitive positions; and, for the latter, provides employers appropriate discretion to make employment decisions that help ensure a safe work environment.

The bill addresses other questions left unanswered in Act 16 including clarifying the right of employers to conduct lawful drug tests; addressing the standards for

applicability of workers' compensation and unemployment compensation; and ensuring employers' unemployment compensation tax rates will not increase in the event an employee is let go based on the inability of the employer to accommodate the employee's lawful use of medical marijuana and the employee is subsequently awarded UC benefits.

The bill also creates an administrative process for adjudicating disputes by directing the Secretary of Labor and Industry to promulgate rules and providing targeted safe harbor protections for employers.

The PA Chamber has been consistent in its approach to medical marijuana and Act 16: while we do not believe employers are best positioned to opine on the medical efficacy of marijuana, we strongly believe 1) the law should provide clear and thorough guidance to both employers and the patient community for how medical marijuana is expected to be managed in the workplace; and 2) its presence among the workforce cannot compromise workplace safety. S.B. 749 better aligns Act 16 of 2016 with these key principles. We thank the Senate Health and Human Services Committee for holding this hearing and urge the Committee to take up this legislation.

Thank you for the opportunity to testify. I would be happy to answer any questions.