



February 5, 2016

Hon. Kevin Mullin,
Senate Economic Development, Housing & General Affairs Committee
Vermont State House
115 State Street
Montpelier, VT 05633-5301

Dear Senator Mullin:

I am writing to address some of the concerns that the Vermont League of Cities and Towns has with S.241, a bill that proposes to legalize recreational marijuana in Vermont. As you may already know, we oppose the legalization of marijuana and urge the legislature to not expand beyond Act 76, Vermont's 2013 law that decriminalizes the possession of small quantities of marijuana. VLCT has great concerns with the effects legalization would have on cities, towns, and villages, including the impacts on local school populations, local law enforcement, first responders, municipal governance, and municipal budgets. We also are concerned about the impacts legalization will have on municipalities in their roles as employers, and with the potential legal implications of Vermont's legislature legalizing a drug that is still illegal at the federal level.

Specifically with regard to the issues concerning municipalities as employers, VLCT has great concerns with the impact legalization of a federal Schedule I controlled substance at the state level will have on municipalities. Vermont municipalities have employees of all types who perform jobs that range from office and clerical duties to the operation of large and potentially dangerous machinery, and include employees who are licensed commercial motor vehicle drivers. We are concerned with the impacts legalization may have on workplace safety, productivity, and absenteeism. Moreover, we worry about the potential costs of litigation, health insurance, unemployment insurance, workers' compensation, increased drug-testing, and, more generally, of greater liability exposure for employers. It is imperative that municipalities and employers be able to maintain a drug-free workplace and be given the authority and resources necessary to address the concerns mentioned above.

Currently, a municipal employer cannot subject employees to random drug or alcohol tests pursuant to 21 V.S.A. § 513(b) unless that employee holds a CDL license. Therefore, unless an employee actually operates a commercial vehicle, he or she is not required by federal law (and, thus, Vermont law) to submit to random drug and alcohol testing, regardless of whether or not he or she performs safety-sensitive functions. An employer may only require an individual employee submit to a drug test if *all* of the following conditions are met:

1. The employer has probable cause to believe the employee is using or is under the influence of a drug on the job.
2. The employer has available for the employee tested a bona fide rehabilitation program for alcohol or drug abuse and such program is provided by the employer or is available to the extent provided by a policy of health insurance or under contract by a nonprofit hospital service corporation.
3. The employee may not be terminated if the test result is positive and the employee agrees to participate in the employee assistance program and then successfully completes it. However, the employee may be suspended only for the period of time necessary to complete the program, but not longer than three months. The employee may be terminated if, after completion of an employee assistance program, the employer subsequently administers a drug test in compliance with requirements #1 and #4 that produces a positive result.

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4. The drug test must be administered in accordance with requirements specified in 21 V.S.A. § 414.

Pre-employment drug testing is permissible, but, similar to random drug testing, the law is very specific about its administration. An employer is prohibited from doing any of the following as a condition of employment, promotion, or change of status of employment, or as an expressed or implied condition of a benefit or privilege of employment:

1. Request or require that an employee submit to a drug test.
2. Administer or attempt to administer a drug test to an employee.
3. Request or require that an employee consent, directly or indirectly, to a practice prohibited under 21 V.S.A. §§ 513-520.

It seems prudent that the legislature consider how current employment laws will be utilized if marijuana is legalized, and use potentially increases, specifically with regard to employers' ability to drug-test current and potential employees. The costs, legal practicalities, and administrative concerns regarding drug testing of both non-CDL and CDL employees will certainly be a concern for employers across the state.

In its current state, S.241 lacks the specificity necessary to address the many concerns employers may have with workplace safety, productivity, compliance with state and local laws, and overall costs.

We strongly urge the legislature to make the critical analysis necessary to address the many concerns municipalities have with this pending legislation. The legislature must ensure that all municipalities have the legislative authority, legal certainty, and access to resources that will be necessary to fully comply with and implement legislation legalizing marijuana in Vermont.

Thank you for the opportunity to comment on this pending legislation. We look forward to working with you on this bill.

Sincerely,

Gwynn Zakov, Esq.
Public Policy Advocate