

February 20, 2017

Wilsonville, OR 97070

Dear Chair Prozanski and Members of the Committee:

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Associated General Contractors – Oregon Columbia Chapter represents a broad cross-section of the commercial construction industry, including open shop and union, rural and metro, highway and building contractors.

Construction is a safety-first industry, as illustrated by AGC’s team of safety consultants who work with our members across the state every day to ensure safe jobsites. AGC’s prioritization of safety leads us to oppose Senate Bill 301, which would require employers to accommodate their employees’ usage of legal substances, under Oregon law, in off-duty hours.

AGC’s concerns are as follows:

Federal Preemption: First, SB 301 is preempted by the United States Constitution. The Supremacy clause requires states to follow federal law above state law on a given issue. Congress has spoken on the issue of marijuana use, by making it a federal crime under the Controlled Substances Act.ⁱ

Safety Considerations: Beyond constitutional issues, our fundamental issue with SB 301 is the safety of employees and the general public. Given that marijuana may be present in a drug screening for weeks after usage, it is impossible for employers to determine whether their employees are under the influence of marijuana during their work shift. Being under the influence of marijuana during a work shift creates a host of safety issues, not just for the impaired employee but for those around them, and ultimately the public. In an inherently safety-sensitive industry such as commercial construction, the stakes are even higher than other sectors and literally are a matter of life and death.

Federal Contracting: Some AGC members contract with the federal government to perform work such as federal highway projects. In those instances, notwithstanding state law, contractors must follow the federal Drug-Free Workplace Act. Employers in this situation will have to choose between following federal law and following Oregon law. This is a decision no employer should be saddled with.

Impairment Testing: Current drug testing technology is incapable of allowing employers to discern between an employee who tests positive for marijuana and is currently impaired versus an employee who tests positive as a result of prior marijuana use. As a result, employers do not know from a drug screening whether their employees are currently impaired. That makes it extremely difficult for employers to ensure that they are maintaining a safe workplace.

It is for these reasons that we urge your opposition to SB 301. For additional information, please contact John Rakowitz (503) 317-1781 or Kirsten Adams (503) 990-2262.

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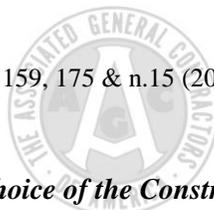
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ⁱ *Emerald Steel Fabricators v. BOLI*, 348 Or. 159, 175 & n.15 (2010)



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