

PROPOSED

HOUSE OF REPRESENTATIVES AMENDMENTS TO H.B. 2541

(Reference to printed bill)

1 Strike everything after the enacting clause and insert:

2 "Section 1. Section 23-493, Arizona Revised Statutes, is amended to
3 read:

4 23-493. Definitions

5 In this article, unless the context otherwise requires:

6 1. "Alcohol" means ethanol, isopropanol or methanol.

7 2. "Drugs" means:

8 (a) Any substance considered unlawful under the schedules of the
9 controlled substances section of the comprehensive drug abuse prevention and
10 control act of 1970, AS AMENDED, (P.L. 91-513; 84 Stat. 1247; 21 United
11 States Code section 812) OR PURSUANT TO TITLE 13, CHAPTER 34 or the
12 metabolite of the substance.

13 (b) ANY SUBSTANCE THAT IS NOT LAWFULLY PRESCRIBED TO THE EMPLOYEE AND
14 THAT IS DESIGNED OR INTENDED TO MIMIC OR CREATE THE EFFECT OF ANY DRUG THAT
15 IS MADE UNLAWFUL UNDER THE COMPREHENSIVE DRUG ABUSE PREVENTION AND CONTROL
16 ACT OF 1970, AS AMENDED, (P.L. 91-513; 84 STAT. 1247; 21 UNITED STATES CODE
17 SECTION 812) INCLUDING ANY MATERIAL, COMPOUND, MIXTURE OR PREPARATION THAT
18 CONTAINS ANY QUANTITY OF THE FOLLOWING SUBSTANCES, THEIR SALTS, ISOMERS,
19 WHETHER OPTICAL, POSITIONAL OR GEOMETRIC, HOMOLOGUES AND SALTS OF ISOMERS AND
20 HOMOLOGUES, UNLESS SPECIFICALLY EXCEPTED, WHENEVER THE EXISTENCE OF THESE
21 SALTS, ISOMERS, HOMOGLOGUES AND SALTS OF ISOMERS AND HOMOLOGUES IS POSSIBLE
22 WITHIN THE SPECIFIC CHEMICAL DESIGNATION, INCLUDING THE FOLLOWING SUBSTANCES
23 THAT ARE COMMONLY REFERRED TO AS SYNTHETIC DRUGS:

24 (i) 1-PENTYL-3-(1-NAPHTHOYL)INDOLE (JWH-018).

1 (ii) 1,1-DIMETHYLHEPTYL-11-HYDROXY-DELTA-8-TETRAHYDROCANNABINOL (HU-
2 210); (6A, 10A)-9-(HYDROXYMETHYL)-6,6-DIMETHYL-3-(2-METHYLOCTAN-2-YL)-
3 6A,7,10,10A-TETRAHYDROBENZO[C]CHROMEN-1-01).

4 (iii) 2-[(1R,3S)-3-HYDROXYCYCLOHEXYL]-5-(2-METHYLOCTAN-2-YL)PHENOL,
5 ALSO KNOWN AS CP 47,497 AND ITS C6, C7, C8, AND C9 HOMOLOGUES.

6 (iv) (6AR,10AR)-9-(HYDROXYMETHYL)-6,6-DIMETHYL-1-3-(2-METHYLOCTAN-2-
7 YL)-6A,7,10,10A-TETRAHYDROBENZO [C]CHROMEN-1-0L, ALSO KNOWN AS HU-210.

8 (v) NAPHTHALEN-1-YL-(1-PENTYLINDOL-3-YL)METHANONE, ALSO KNOWN AS 1-
9 PENTYL-3-(1-NAPHTHOYL)INDOLE OR JWH-018.

10 (vi) NAPHTALEN-1-YL-(1-BUTYLINDOL-3-YL)METHANONE, ALSO KNOWN AS 1-
11 BUTYL-3(1-NAPHTHOYL)INDOLE OR JWH-073.

12 (vii) K2 OR SUBSTANCES CONTAINING JWHY-200, CR-47, 497 OR
13 CANNABICYCLOHEXANOL.

14 3. "Employee" means any person in the service of an employer.

15 4. "Employer" means any person, firm, company, corporation, labor
16 organization, employment agency or joint labor-management committee,
17 including any public utility, transit district or special taxing district
18 organized pursuant to title 48, chapter 17 or 22, that has one or more
19 full-time employees employed in the same business, or in or about the same
20 establishment, under any contract of hire, express or implied, oral or
21 written. Employer does not include the United States, this state and its
22 agencies other than the department of public safety, the state department of
23 corrections and the department of juvenile corrections, any political
24 subdivision of this state or any Native American tribe. The department of
25 public safety, the state department of corrections and the department of
26 juvenile corrections are employers for purposes of this paragraph.

27 5. "Good faith" means reasonable reliance on fact, or that which is
28 held out to be factual, without the intent to deceive or be deceived and
29 without reckless or malicious disregard for the truth. A GOOD FAITH BELIEF
30 MAY BE BASED ON ANY OF THE FOLLOWING:

31 (a) OBSERVED CONDUCT, BEHAVIOR OR APPEARANCE.

32 (b) INFORMATION REPORTED BY A PERSON BELIEVED TO BE RELIABLE.

1 (c) WRITTEN, ELECTRONIC OR VERBAL STATEMENTS.

2 (d) LAWFUL VIDEO SURVEILLANCE.

3 (e) RECORDS OF GOVERNMENT AGENCIES, LAW ENFORCEMENT AGENCIES OR
4 COURTS.

5 (f) RESULTS OF A TEST FOR THE USE OF ALCOHOL OR DRUGS.

6 (g) OTHER INFORMATION REASONABLY BELIEVED TO BE RELIABLE OR ACCURATE.

7 6. "IMPAIRMENT" MEANS SYMPTOMS THAT A PROSPECTIVE EMPLOYEE OR EMPLOYEE
8 MAY BE UNDER THE INFLUENCE OF DRUGS OR ALCOHOL THAT MAY DECREASE OR LESSEN
9 THE EMPLOYEE'S PERFORMANCE OF THE DUTIES OR TASKS OF THE EMPLOYEE'S JOB
10 POSITION, INCLUDING SYMPTOMS OF THE EMPLOYEE'S SPEECH, WALKING, STANDING,
11 PHYSICAL DEXTERITY, AGILITY, COORDINATION, ACTIONS, MOVEMENT, Demeanor,
12 APPEARANCE, CLOTHING, ODOR, IRRATIONAL OR UNUSUAL BEHAVIOR, NEGLIGENCE OR
13 CARELESSNESS IN OPERATING EQUIPMENT, MACHINERY OR PRODUCTION OR MANUFACTURING
14 PROCESSES, DISREGARD FOR THE SAFETY OF THE EMPLOYEE OR OTHERS, INVOLVEMENT IN
15 AN ACCIDENT THAT RESULTS IN SERIOUS DAMAGE TO EQUIPMENT, MACHINERY OR
16 PROPERTY, DISRUPTION OF A PRODUCTION OR MANUFACTURING PROCESS, ANY INJURY TO
17 THE EMPLOYEE OR OTHERS OR OTHER SYMPTOMS CAUSING A REASONABLE SUSPICION OF
18 THE USE OF DRUGS OR ALCOHOL.

19 ~~6.~~ 7. "Prospective employee" means any person who has made
20 application to any employer, whether written or oral, to become an employee.

21 8. "SAFETY-SENSITIVE POSITION" MEANS ANY JOB DESIGNATED BY AN EMPLOYER
22 AS A SAFETY-SENSITIVE POSITION OR ANY JOB THAT INCLUDES TASKS OR DUTIES THAT
23 THE EMPLOYER IN GOOD FAITH BELIEVES COULD AFFECT THE SAFETY OR HEALTH OF THE
24 EMPLOYEE PERFORMING THE TASK OR OTHERS, INCLUDING ANY OF THE FOLLOWING:

25 (a) OPERATING A MOTOR VEHICLE, OTHER VEHICLE, EQUIPMENT, MACHINERY OR
26 POWER TOOLS.

27 (b) REPAIRING, MAINTAINING OR MONITORING THE PERFORMANCE OR OPERATION
28 OF ANY EQUIPMENT, MACHINERY OR MANUFACTURING PROCESS, THE MALFUNCTION OR
29 DISRUPTION OF WHICH COULD RESULT IN INJURY OR PROPERTY DAMAGE.

30 (c) PERFORMING DUTIES IN THE RESIDENTIAL OR COMMERCIAL PREMISES OF A
31 CUSTOMER, SUPPLIER OR VENDOR.

32 (d) PREPARING OR HANDLING FOOD OR MEDICINE.

1 (e) WORKING IN ANY OCCUPATION REGULATED PURSUANT TO TITLE 32.

2 ~~7.~~ 9. "Sample" means urine, blood, breath, saliva, hair or other
3 substances from the person being tested.

4 Sec. 2. Section 23-493.06, Arizona Revised Statutes, is amended to
5 read:

6 23-493.06. Employer protection from litigation

7 A. No cause of action is or may be established for any person against
8 an employer who has established a policy and initiated a testing program in
9 accordance with this article for any of the following:

10 1. Actions in good faith based on the results of a positive drug test
11 or alcohol impairment test.

12 2. Failure to test for drugs or alcohol impairment or failure to test
13 for a specific drug or any other controlled substance.

14 3. Failure to test or, if tested, failure to detect any specific drug
15 or other substance, any medical condition or any mental, emotional or
16 psychological disorder or condition.

17 4. Termination or suspension of any substance abuse prevention or
18 testing program or policy.

19 5. ACTIONS BASED ON THE EMPLOYER'S GOOD FAITH BELIEF THAT AN EMPLOYEE
20 USED OR POSSESSED ANY DRUG WHILE ON THE EMPLOYER'S PREMISES OR DURING THE
21 HOURS OF EMPLOYMENT.

22 6. ACTIONS BASED ON THE EMPLOYER'S GOOD FAITH BELIEF THAT AN EMPLOYEE
23 HAD AN IMPAIRMENT WHILE WORKING WHILE ON THE EMPLOYER'S PREMISES OR DURING
24 HOURS OF EMPLOYMENT.

25 7. ACTIONS TO EXCLUDE AN EMPLOYEE FROM PERFORMING A SAFETY-SENSITIVE
26 POSITION, INCLUDING REASSIGNING THE EMPLOYEE TO ANOTHER POSITION OR PLACING
27 AN EMPLOYEE ON PAID OR UNPAID LEAVE, BASED ON THE EMPLOYER'S GOOD FAITH
28 BELIEF THAT THE EMPLOYEE HAD CONSUMED IN THE RECENT PAST OR INTENDED TO
29 CONSUME IN THE NEAR FUTURE ANY DRUG, WHETHER LEGAL, PRESCRIBED BY A PHYSICIAN
30 OR OTHERWISE, IF THE DRUG COULD CAUSE AN IMPAIRMENT OR OTHERWISE DECREASE OR
31 LESSEN THE EMPLOYEE'S JOB PERFORMANCE OR ABILITY TO PERFORM THE EMPLOYEE'S
32 JOB DUTIES. THE BELIEF REGARDING THE EFFECTS OF THE DRUG MAY BE BASED ON

1 INFORMATION INCLUDING RESULTS OF A TEST FOR THE USE OF ALCOHOL OR DRUGS,
2 WARNING LABELS OR OTHER PRINTED MATERIALS THAT ACCOMPANY INSTRUCTIONS FOR USE
3 OF THE DRUG, STATEMENTS BY THE EMPLOYEE, INFORMATION FROM A PHYSICIAN OR
4 PHARMACIST, INFORMATION FROM REPUTABLE REFERENCE SOURCES IN PRINT OR ON THE
5 INTERNET OR OTHER INFORMATION THE EMPLOYER IN GOOD FAITH BELIEVES TO BE
6 RELIABLE.

7 B. THE ACTIONS OF AN EMPLOYER PROTECTED BY THIS SECTION INCLUDE
8 IMPLEMENTING, MONITORING OR MEASURES TO ASSESS, SUPERVISE OR CONTROL THE JOB
9 PERFORMANCE OF THE EMPLOYEE, REASSIGNMENT OF AN EMPLOYEE TO A DIFFERENT
10 POSITION OR JOB DUTIES OR SUSPENSION OR TERMINATION OF EMPLOYMENT.

11 Sec. 3. Title 23, chapter 2, article 14, Arizona Revised Statutes, is
12 amended by adding section 23-493.12, to read:

13 23-493.12. Severability

14 IF A PROVISION OF THIS ARTICLE OR ITS APPLICATION TO ANY PERSON OR
15 CIRCUMSTANCES IS HELD INVALID, THE INVALIDITY DOES NOT AFFECT OTHER
16 PROVISIONS OR APPLICATIONS OF THIS ARTICLE THAT CAN BE GIVEN EFFECT WITHOUT
17 THE INVALID PROVISION OR APPLICATION AND, TO THIS END, THE PROVISIONS OF THIS
18 ARTICLE ARE SEVERABLE.

19 Sec. 4. Subject to the requirements of article IV, part 1, section 1,
20 Constitution of Arizona, section 36-2802, Arizona Revised Statutes, is
21 amended to read:

22 36-2802. Arizona medical marijuana act: limitations

23 This chapter does not authorize any person to engage in, and does not
24 prevent the imposition of any civil, criminal or other ~~penalties~~ PENALTY for
25 engaging in, the following conduct:

26 ~~A.~~ 1. Undertaking any task under the influence of marijuana that
27 would constitute negligence or professional malpractice.

28 ~~B.~~ 2. Possessing or engaging in the medical use of marijuana:

29 ~~1.~~ (a) On a school bus.

30 ~~2.~~ (b) On the grounds of any preschool or primary or secondary
31 school.

32 ~~3.~~ (c) In any correctional facility.

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~~6.~~ 3. Smoking marijuana:

~~1.~~ (a) On any form of public transportation.

~~2.~~ (b) In any public place OR IN A CONDOMINIUM OR PLANNED COMMUNITY
COMMON AREA THAT IS OPEN TO USE BY THE PUBLIC.

~~4.~~ 4. Operating, navigating or being in actual physical control of any motor vehicle, aircraft or motorboat while under the influence of marijuana, except that a registered qualifying patient shall not be considered to be under the influence of marijuana solely because of the presence of metabolites or components of marijuana that appear in insufficient concentration to cause impairment.

~~5.~~ 5. Using marijuana except as authorized under this chapter.

Sec. 5. Requirements for enactment; three-fourths vote

Pursuant to article IV, part 1, section 1, Constitution of Arizona, section 36-2802, Arizona Revised Statutes, as amended by this act, is effective only on the affirmative vote of at least three-fourths of the members of each house of the legislature."

Amend title to conform

KIMBERLY YEE

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