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**Commerce & Labor Committee**

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**HB 1154**

**Brief Description:** Regulating employment decisions based on the consumption of lawful tobacco products.

**Sponsors:** Representatives Morrell, Conway, Grant, Sells, Blake, Moeller, Eickmeyer, Appleton, Kenney, Flannigan, Hudgins, Williams, Ormsby and Simpson.

**Brief Summary of Bill**

- Prohibits an employer from refusing to hire, discharging an individual, or otherwise disadvantaging an individual based on the individual's consumption of lawful tobacco products off the premises of the employer during nonworking hours.

**Hearing Date:** 1/26/07

**Staff:** Joan Elgee (786-7106).

**Background:**

Smoking in places of employment is prohibited under Initiative 901, passed in 2005.

Nothing in state law, however, prohibits an employer from requiring as a condition of employment or continued employment that an applicant or employee refrain from consuming lawful tobacco products away from the workplace during nonworking hours. Similarly, nothing in state law prohibits an employer from putting an employee at a disadvantage in other ways because of the employee's use of tobacco away from the workplace during nonworking hours.

At least 15 states have so-called "lawful products" laws that prohibit disadvantaging a person in employment for lawful use of tobacco away from the workplace off work hours. Some other states have laws covering all lawful products. In 1992, the Governor vetoed a bill that prohibited disadvantaging an individual for use of lawful products.

**Summary of Bill:**

Employment Practices

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

An employer is prohibited from refusing to hire, discharging an individual, or otherwise disadvantaging an individual with respect to compensation, terms, conditions, or privileges of employment because the individual engages in the consumption of lawful tobacco products off the premises of the employer during nonworking hours. The individual must comply with applicable laws or policies regulating consumption of lawful tobacco products on the premises of the employer during working hours. An employer may refuse to hire, discharge, or otherwise disadvantage an individual with respect to compensation, terms, conditions, or privileges of employment if the employer's decision is based on:

- the individual's failure to meet job-related standards set by the employer;
- an employer's legitimate conflict of interest policy reasonably designed to protect the employer's trade secrets, proprietary information, or other proprietary interests;
- a bona fide occupational qualification or requirement, including qualifications or requirements implemented by the employer to screen for respiratory diseases in occupations where the individual will be exposed to smoke and noxious fumes; or
- the employer's drug and alcohol free workplace program, including those adopted in response to federal requirements.

### Exemptions

These requirements do not apply to any matter that is also subject to collective bargaining between the employer and the affected employee. A religious or health organization, whose tenets prohibit the use of an otherwise lawful tobacco product or a company or nonprofit organization whose primary business purpose is the prevention of heart and lung disease, may refuse to employ an individual who uses an otherwise lawful tobacco product.

### Remedies

An individual who believes that an employer has violated these requirements may bring a civil action for damages for all wages and benefits deprived the individual by reason of the violation. The civil action must be filed within six months after the alleged unlawful or unfair employment practice or the discovery of that practice. The court may award the prevailing party court costs and reasonable attorneys' fees.

**Rules Authority:** The bill does not address the rule-making powers of an agency.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.