

SENATE BILL REPORT

ESHB 2274

AS REPORTED BY COMMITTEE ON COMMERCE & LABOR, FEBRUARY 25, 1992

Brief Description: Prohibiting employer discrimination for the consumption of lawful products off premises by employees during nonworking hours.

SPONSORS: House Committee on Commerce & Labor (originally sponsored by Representatives Appelwick, Heavey, Prince, Day, Schmidt, Wineberry, R. Meyers, Riley, Winsley and Wilson)

HOUSE COMMITTEE ON COMMERCE & LABOR

SENATE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass as amended.

Signed by Senators Matson, Chairman; McMullen, Moore, Murray, and Skratek.

Minority Report: Do not pass as amended.

Signed by Senators Anderson, Vice Chairman; Bluechel, and McCaslin.

Staff: Catherine Mele (786-7457)

Hearing Dates: February 25, 1992

BACKGROUND:

Concern exists that some employers may treat individuals differently based on an individual's consumption of lawful products, such as tobacco and alcohol, while not at work.

SUMMARY:

An employer is not permitted to refuse to hire, discharge, or disadvantage individuals because they consume lawful products while not at work.

An employer may differentiate between individuals when offering insurance policies that differ in coverage and cost because of an individual's consumption of lawful products. When offering such policies an employer is to provide employees with a written statement showing the different rates charged.

An employer is permitted to discharge an individual if the decision is based on the individual's failure to meet reasonable job performance standards. The law is not applicable when a court finds that a discharge is for valid reasons other than the consumption of lawful products.

There is no protection provided for lawful products consumed on the employer's premises during work hours when consumption conflicts with employment policies or applicable laws. The law is not applicable if it threatens an employer's trade secrets, proprietary interests, or pertains to bona fide occupational requirements.

Prevailing parties are to collect attorney fees and individuals harmed receive back wages and benefits due. If an individual is sued falsely or maliciously under this section, he or she may bring a separate claim for damages.

The law is not applicable to religious or health organizations whose tenets prohibit the use of lawful products, or companies or nonprofit organizations whose primary purpose is to prevent heart and lung disease.

Appropriation: none

Revenue: none

Fiscal Note: requested February 20, 1992

SUMMARY OF PROPOSED SENATE AMENDMENT:

The law is applicable only to employers with more than 25 employees. An employer may refuse to hire, discharge, or disadvantage individuals if that decision is based on an employer's drug or alcohol free workplace program. An individual harmed must bring a civil action within six months after the alleged unlawful conduct occurred or after discovery of the practice.

TESTIMONY FOR:

This is a privacy issue. An employer should not be able to dictate what an individual consumes while not at work. This bill will not lead to increased litigation as 23 states have passed a similar bill, and there have been only two court cases.

TESTIMONY AGAINST:

This bill promotes the use of addictive and unhealthy products. It is not good public policy for Washington to support the use of addictive products, especially when Washington has taken steps to promote healthy lifestyles. This bill will lead to increased litigation whenever an employer hires or discharges an individual that smokes or drinks alcohol.

TESTIFIED: PRO: Joe Daniels, TICMC; Jerry Sheehan, ACLU; CON: Carol Washburn, Department of Health; Carl Nelson, WSMA; K. Collins, AWC