

HOUSE BILL REPORT

ESHB 2274

As Amended by the Senate

Title: An act relating to employee privacy.

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

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

Brief History:

Reported by House Committee on:
Commerce & Labor, February 4, 1992, DPS;
Passed House, February 15, 1992, 81-11;
Amended by Senate.

**HOUSE COMMITTEE ON
COMMERCE & LABOR**

Majority Report: *The substitute bill be substituted therefor and the substitute bill do pass.* Signed by 10 members: Representatives Heavey, Chair; G. Cole, Vice Chair; Lisk, Assistant Ranking Minority Member; Franklin; Jones; R. King; O'Brien; Prentice; Vance; and Wilson.

Minority Report: *Do not pass.* Signed by 1 member: Representative Fuhrman, Ranking Minority Member.

Staff: Jim Kelley (786-7166).

Background: There is nothing in the law prohibiting an employer from requiring as a condition of employment or continued employment that an applicant or employee refrain from consuming lawful products away from the workplace during nonworking hours.

There also is nothing in the law prohibiting an employer from putting an employee at a disadvantage in other ways because the employee consumes lawful products away from the workplace during nonworking hours.

Under state law, a person may make a claim or counter claim for malicious prosecution on the ground that a legal action

was instituted against him or her, with knowledge that it was false, unfounded, malicious and without probable cause or as part of a conspiracy to misuse the judicial process.

Summary of Bill: It is unlawful for an employer to refuse to hire or to discharge an individual, or otherwise disadvantage an individual, with respect to compensation, terms, conditions, or privileges of employment because the employee consumes lawful products off the premises of the employer during nonworking hours.

The right to consume lawful products away from the workplace during nonworking hours is not protected where it materially threatens an employer's legitimate conflict of interest policy reasonably designed to protect the employer's trade secrets or other proprietary interests. The right is also not protected where it relates to a bona fide occupational requirement that is reasonably related to the employment responsibilities of a particular employee or group of employees, rather than to all employees of the employer.

An employer may discharge, disadvantage, or refuse to hire an individual on the basis of the employee's failure to meet reasonable job performance standards set by the employer. This act does not prevent an employer from discharging or disadvantaging an individual for valid reasons other than consumption of a legal product.

An employer is allowed to offer an insurance policy that distinguishes between employees based upon employees' consumption of lawful products if different premium rates reflect a differential cost to the employer and the employer provides employees with a written statement delineating differential rates used by insurance carriers.

An individual claiming to be aggrieved by a violation of this section may bring a civil action for damages which includes all wages and benefits deprived because of the violation. The prevailing party in an action under this section is also entitled to court costs and reasonable attorneys' fees. A claim or counter claim based on a charge of malicious prosecution is specifically authorized.

Nothing in this section is intended to breach or prevent collective bargaining agreements between employer and employee. Nor is this act intended to preclude a religious or health organization whose tenets prohibit the use of lawful products or a company or nonprofit organization whose primary business purpose is the prevention of heart and lung disease from refusing to employ an individual based on the use of lawful products.

EFFECT OF SENATE AMENDMENT(S): The Senate amendment applies the law only to employers with more than 25 employees. The Senate amendment adds provisions that 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 or on a bona fide occupational requirement including those implemented by the employer to prevent and screen for respiratory disease in firefighters with industrial insurance coverage. A new provision is added requiring that an individual harmed must bring a civil action within six months after the alleged unlawful conduct occurred or after discovery of the practice.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: (Original bill): Many labor organizations favor this bill. Public opinion is also in favor of this bill. Similar legislation has been enacted by twenty-two states. The bill deals with privacy rights, away from the workplace, during nonworking hours.

Testimony Against: (Original bill): This bill is unnecessary and it appears not to deal with the question of impairment causing poor performance at work.

Witnesses: (Original bill): Representative Marlin Appelwick, Prime Sponsor; Joe Daniels, Tobacco Industry Labor Management Committee (in favor); Jerry Sheehan, American Civil Liberties Union (in favor); Mary Clogston, Washington Citizen Action (in favor); and Gary Smith, Independent Business Association (opposed).

VOTE ON FINAL PASSAGE:

Yeas 81; Nays 11; Excused 6

Nays: Representatives Anderson, Betrozoff, Brekke, Franklin, Leonard, Nealey, Rust, Sommers D, Sprenkle, Valle, Winsley

Excused: Representatives Basich, Fuhrman, Meyers R, Moyer, Padden, Wineberry