

HOUSE BILL REPORT

HB 2274

*As Reported By House Committee on:
Commerce & Labor*

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): 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.

**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.

Summary of Substituted 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 refuse to hire, discharge, or disadvantage an individual on the basis of the employee's failure to meet reasonable job performance standards set by the employer.

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.

Nothing in this section is intended to breach or prevent collective bargaining agreements between employer and employee.

Substituted Bill Compared to Original Bill: The substitute bill includes a provision allowing an employer to terminate or otherwise disadvantage an employee on the basis of the employee's failure to meet reasonable job performance standards.

Fiscal Note: Not requested.

Effective Date of Substituted Bill: 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).