

VETO MESSAGE ON HB 2274-S

April 2, 1992

To the Honorable, the House  
of Representatives of the  
State of Washington

Ladies and Gentlemen:

I am returning herewith, without my approval Engrossed Substitute House Bill No. 2274 entitled:

"AN ACT Relating to employee privacy."

Engrossed Substitute House Bill No. 2274 addresses a problem that does not presently exist in Washington State. The purpose of the bill is to prevent employers from unfairly discriminating against an employee because of the consumption of lawful product outside of the workplace. There is no evidence that employers are abusing their authority under current law.

In contrast, if signed, the bill would draw into question the authority of employers to offer incentives for their employees to end unhealthy forms of behavior, such as the consumption of alcohol or tobacco. For example, this state's Executive Order 88-06, which bans smoking in state buildings and offers assistance to state employees who wish to quit smoking, could be called into question. Given the health hazards associated with tobacco use, the current authority of employers to provide incentives for employees to quit smoking is good public policy. Employers should be encouraged to exercise this authority.

The bill does allow employers to distinguish between employees if their insurance policy carries a differential rate between smokers and nonsmokers. However, it is not clear whether employers who currently lack such policies would be prohibited from obtaining them in the future. To date, the legislature hasn't stepped up to the task of controlling health care costs, and I believe businesses should not be prohibited from exploring options for keeping their employee health insurance plans affordable. In addition, section (1) seems to prohibit employers from discriminating against an individual for smoking on premises during nonworking hours, or for smoking off premises during working hours. This raises troubling issues. For example, it is unclear whether an employer could prohibit a child care employee from smoking around children or whether an employer could prohibit an employee from smoking in a customer's home.

I am concerned that this bill, if it were to become law, would significantly increase employment litigation based on the argument that an employee was dismissed or disadvantaged because of the consumption of a legal product off premises during nonworking hours.

This veto does not affect existing laws that constrain employers from inquiring into their employee's private lives. But because there is no evidence that employers are abusing their current authority, the concerns created by the bill outweigh its possible merits.

For these reasons, I have vetoed House Bill No. 2274 in its entirety.

Respectfully submitted,  
Booth Gardner

Governor