

2 **ESHB 2274** - CONF REPT
3 By Conference Committee

4 ADOPTED 3/11/92

5 Strike everything after the enacting clause and insert the
6 following:

7 "NEW SECTION. **Sec. 1.** A new section is added to chapter 49.44 RCW
8 to read as follows:

9 (1) It is unlawful for an employer to refuse to hire or to
10 discharge any individual, or otherwise disadvantage any individual,
11 with respect to compensation, terms, conditions, or privileges of
12 employment because the individual engages in the consumption of lawful
13 products off the premises of the employer during nonworking hours,
14 provided the individual complies with applicable laws or policies
15 regulating that consumption of lawful products on the premises of the
16 employer during working hours.

17 (2) It is not unlawful or an unfair employment practice under this
18 section for an employer to offer, impose, or have in effect a health,
19 disability, or life insurance policy that makes distinctions between
20 employees for the type of coverage or the coverage based upon the
21 employees' consumption of lawful products if:

22 (a) Differential premium rates charged employees reflect a
23 differential cost to the employer; and

24 (b) The employer provides employees with a written statement
25 delineating differential rates used by insurance carriers.

26 (3) It is not unlawful or an unfair employment practice under this
27 section for an employer to refuse to hire, to discharge, or otherwise

1 disadvantage an individual with respect to compensation, terms,
2 conditions, or privileges of employment if that decision is based on:

3 (a) The individual's failure to meet job-related standards set by
4 the employer;

5 (b) An employer's legitimate conflict of interest policy reasonably
6 designed to protect the employer's trade secrets, proprietary
7 information, or other proprietary interests;

8 (c) A bona fide occupational qualification or requirement,
9 including qualifications or requirements implemented by the employer to
10 screen for respiratory diseases in occupations where the individual
11 will be exposed to smoke and noxious fumes; or

12 (d) The employer's drug and alcohol free workplace program,
13 including those adopted in response to federal requirements.

14 (4) The court shall award the prevailing party in an action under
15 this section court costs and reasonable attorneys' fees.

16 (5) The remedy for any individual claiming to be aggrieved by a
17 violation of this section is a civil action for damages for all wages
18 and benefits deprived the individual by reason of the violation.

19 (6) An individual aggrieved by a violation of this section must
20 file the civil action within six months after the alleged unlawful or
21 unfair employment practice or the discovery of that practice.

22 (7) Nothing in this section shall be applied to any matter that is
23 also subject to collective bargaining between the employer and the
24 affected employee."

25 "NEW SECTION. **Sec. 2.** A new section is added to chapter 49.44 RCW
26 to read as follows:

27 Nothing in section 1 of this act precludes a religious or health
28 organization whose tenets prohibit the use of an otherwise lawful
29 product or a company or nonprofit organization whose primary business

1 purpose is the prevention of heart and lung disease, from refusing to
2 employ an individual who uses an otherwise lawful product."

3 "NEW SECTION. Sec. 3. A new section is added to chapter 49.44 RCW
4 to read as follows:

5 Sections 1 and 2 of this act do not apply to businesses with
6 twenty-five employees or less."

7 "NEW SECTION. Sec. 4. If any provision of this act or its
8 application to any person or circumstance is held invalid, the
9 remainder of the act or the application of the provision to other
10 persons or circumstances is not affected."

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14 On page 1, line 1 of the title, after "privacy;" strike the
15 remainder of the title and insert "and adding new sections to chapter
16 49.44 RCW."