

# HOUSE BILL REPORT

## ESHB 2274

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*As Passed Legislature*

**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;  
Passed Legislature.

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**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 any other way because the employee consumes lawful products away from the workplace during nonworking hours.

**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.

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 employer may discharge, disadvantage, or refuse to hire an individual on the basis of the employee's failure to meet job-related 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.

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; where it relates to a bona fide occupational requirement implemented by the employer to screen for respiratory diseases in occupations where the individual will be exposed to smoke and noxious fumes; and where the decision is based upon the employer's drug and alcohol free workplace program.

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. An individual aggrieved by a violation of this act must file the civil action within six months after the alleged practice or the discovery of that practice.

This act shall not be applied to any matter that is subject to a collective bargaining agreement. The act does not 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.

This law applies only to employers with more than 25 employees.

**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).