

HOUSE BILL REPORT

HB 1553

As Reported By House Committee On:
Commerce & Labor

Title: An act relating to employee privacy.

Brief Description: Prohibiting employer discrimination for lawful employee conduct off premises during nonworking hours.

Sponsors: Representatives King, Heavey, R. Meyers, Appelwick, Peery, Conway, Leonard, Ogden, R. Fisher, Orr, Scott, Veloria, Brough, Hansen, Wang, Johanson and Quall.

Brief History:

Reported by House Committee on:
Commerce & Labor, February 24, 1993, DPS.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Heavey, Chair; G. Cole, Vice Chair; Conway; King; Springer; and Veloria.

Minority Report: Do not pass. Signed by 3 members: Representatives Lisk, Ranking Minority Member; Chandler, Assistant Ranking Minority Member; and Horn.

Staff: Jim Kelley (786-7166).

Background: No Washington state law prohibits an employer from requiring as a condition of employment or continued employment that an applicant or employee refrain from engaging in any lawful activity 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 engages in any lawful activity away from the workplace during nonworking hours.

Summary of Substitute Bill: It is unlawful for an employer to refuse to hire, discharge, or disadvantage an individual with respect to compensation, terms, conditions, or privileges of employment because the employee engages in any

lawful activity 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' lawful conduct 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 also may offer incentive programs or enter into individual agreements to help employees abstain from smoking or drinking.

An employer may discharge, disadvantage, or refuse to hire an individual if the decision is based on: (1) the employee's failure to meet job performance standards; (2) an employer's legitimate conflict of interest policy reasonably designed to protect the employer's trade secrets or other proprietary interests; or (3) the employer's drug and alcohol free workplace program.

An individual claiming to be aggrieved by a violation of the act may bring a civil action for damages including all wages and benefits of which the individual was deprived because of the violation. The prevailing party is also entitled to court costs and reasonable attorneys' fees. An individual aggrieved by a violation of the act must file the civil action within six months after the alleged practice or the discovery of that practice.

The act does not apply if the language of an applicable collective bargaining agreement specifically addresses employees' lawful conduct off the premises of the employer during nonworking hours, or if a written agreement between an employer and employee in the news media prohibits political activity relating to a subject upon which the employee is reporting. A religious or health organization whose tenets prohibit the otherwise lawful conduct or a company or nonprofit organization whose primary business purpose is the prevention of heart and lung disease may refuse to employ an individual who engages in otherwise lawful conduct.

Substitute Bill Compared to Original Bill: The substitute bill allows employers to offer incentive programs or enter into individual agreements to help employees abstain from smoking or drinking. The substitute bill also allows for agreements between employers and employees in the news media that prohibit political activities relating to stories that are being reported.

The language providing that it is an unfair practice to make an employment decision based on an employee's failure to

meet "job-related standards" is changed to "job performance standards."

Fiscal Note: Not requested.

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

Testimony For: There is an emerging trend for employers to dictate to employees what their off-work behavior should be. Washington is in the minority of states that do not have protection for lawful behavior during nonwork hours. There has not been a rash of lawsuits in the other states with laws similar to this bill. There is protection in the bill against frivolous lawsuits; the employee would have to pay court costs and attorney fees. Many female employees are afraid to let their employer find out that they have had an abortion for fear that they will lose their jobs. This bill comes down to drawing a line regarding where an employer's right to conduct business intrudes on an employee's right to privacy. What should matter in the workplace is what employees do on the job.

Testimony Against: This bill will result in increased litigation. It is in conflict with the state's long held employment at will doctrine. The bill weakens an employer's ability to manage health care costs. Smoking should not be afforded legal protection like race, creed, color, national origin, sex or disability. Agriculture presents certain problems because of the way the farmworker housing is set up. This bill is overkill. Small employers do not think this bill is necessary. The costs created by the bill would impact employers' ability to pay a solid wage. If this bill is not a smokers' rights bill, then it should be amended to take out protection for smokers.

Witnesses: Jerry Sheehan, American Civil Liberties Union (in favor); Lonnie Johns-Brown, National Organization for Women (in favor); Diane McDaniel, Washington State Labor Council (in favor); Joe Daniels, Tobacco Industry Labor Management Committee and International Federation of Professional/Technical Engineers (in favor); Carolyn Logue, National Federation of Independent Business (opposed); Doug Campbell, Ben Bridge Jeweler (opposed); Gary Smith, Independent Business Association (opposed); Rowland Thompson, Allied Daily Newspapers (opposed); Clif Finch, Association of Washington Business (opposed); Dr. Mimi Fields, Washington State Health Officer, Department of Health (opposed); Ken Bertrand, Group Health (opposed); J. Wadsworth, Department of Health (opposed); Carl Nelson, Washington State Medical Association (opposed); and Eldon Ball, F.A.N.S. (opposed).