MAY 6, 1992

Approved

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Sen. Edward F. Reilly, Jr. at 11:00 a.m. on March 25, 1992 in Room 254-E of the Capitol.

All members were present except:

Committee staff present:
Mary Torrence, Office of Revisor of Statutes
Mary Galligan, Legislative Research Department
Jeanne Eudaley, Committee Secretary

Conferees appearing before the committee:
See list attached

Others attending: See attached list

Sen. Reilly called the meeting to order and announced the committee would be hearing testimony on SB 764. The following testified:

Proponents:

Alan Alderson, (Attachment 1 - including amendments);
Tuck Duncan, (Attachment 2);
Neal Whitaker, (Attachment 3);
Carla Dugger, (Attachment 4);

Opponents:

Terry Leatherman, (Attachment 5);
Brian Gilpin, (Attachment 6);
Betty Dicus, (Attachment 7);
Christie Wedeking, (Attachment 8);
Paula Marmet, (Attachment 9).

Discussion involved questions regarding workers who are on call, such as policemen and firemen, how widespread the discrimination is at present, and effects of smoking on breast cancer and children.

The meeting adjourned at 12:00.

GUEST LIST

COMMITTEE: Senate Federal & State Affairs DATE: MARCH 25, 1992

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Jack Alderson	Topeka	KWSU/A
[illegible]	Paola	BLE
Don Lindsey	Osawatomie	UTU
Brian Gilpin	Topeka	Tobacco Free Kansas Coalition
Nicki Rosen	Topeka	IGT
Alan Anderson	Topeka	Tobacco Institute
Carla Dugger	KC	ACLU
Bill Henry	Topeka	Philip Morris USA
Terry Leatherman	Topeka	KCCI
Bill Curtis	Topeka	Ks. Assoc. of School Bds
Paula Marmet	Topeka	KDHE
Betty Duncan	Topeka	American Cancer Soc.
Connie Garrick	Topeka	American Cancer Soc.
[illegible]	Top	[illegible]
[illegible]	Overland Park	Philip Morris
[illegible]	Topeka	K&T
Dick Conth	Topeka	McGill & Associates
Christie Wedeking	Topeka	Ks Respiratory Care Soc.
John G. Bottenberg	Topeka	PM-USA
Ken Bahr	"	Ks Farmers Union
Neal Whitaker	"	KBIA

Attach. 1

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DARIN M. CONKLIN

MEMORANDUM

TO: MEMBERS OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE
FROM: ALAN F. ALDERSON, LEGISLATIVE COUNSEL, THE TOBACCO INSTITUTE
RE: SENATE BILL NO. 764
DATE: MARCH 25, 1992

I am Alan Alderson, Legislative Counsel for the Tobacco Institute, a National Association of Tobacco Product Manufacturers. The Tobacco Institute, on behalf of its member companies, strongly supports Senate Bill 764, and urges you to give your positive support to this measure.

Legislation similar to Senate Bill 764 has been enacted in 22 states, and is currently pending in 16 others. That fact is a dramatic illustration that lawmakers throughout this country are concerned with the elimination of unfair and discriminatory practices in employment policies wherever they exist.

There are numerous reasons why you should see that Senate Bill 764 also becomes the law of the State of Kansas. First, is that employment policies which discriminate against people who use lawful products goes against the spirit of a number of state and federal laws currently in effect. Such policies open the door to measures that may have a chilling effect on other protected employee activities. But even putting legal questions aside, it is illogical to discriminate against workers for any reason not related to job performance.

You only need to call upon your common sense and your senses of fairness and decency to understand the need to protect the individual freedoms addressed in this legislation. A recent editorial in the St. Louis Post-Dispatch about a similar piece of legislation in Illinois spoke to this point by noting that, ". . .Such a law is not only necessary, but right." The writer further observed that employers ". . .should leave people's private lives alone. Unless individual behavior significantly affects other people, a tolerant society must honor private choices."

A poll conducted for the National Consumers League showed that Americans overwhelmingly support privacy legislation. 74% of respondents indicated that an employer had no right to ask job applicants whether or not they smoke on their own time. An overwhelming majority also indicated an employer has no right to ask an employer to quit smoking.

Policies which allow an employer to discharge an individual who smokes during his or her time away from the job also have no bearing on the determination of who is the best individual for a job. Is the secretary who

Att. 1

enjoys smoking in the privacy of her own home more likely to make typographical errors than a non-smoker?

The decision as to whether or not to enjoy tobacco products during one's personal time is a purely private choice -- not an option that employers should be able to dictate or control. Our concern about these policies is not hypothetical -- this discrimination, in fact, exists. For this, and many other reasons, the Tobacco Institute urges you to support the passage of Senate Bill No. 764.

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PROPOSED AMENDMENTS TO S.B. 764

Health Care Cost Distinction

(d) It is not a practice to disadvantage any individual pursuant to this section for an employer to offer, impose or have in effect a health or life insurance policy that makes distinctions between employees for the type of coverage or the cost of coverage based upon the employees use of legal products.

Conflicts of Interest

(e) The provisions of this section shall not be deemed to protect any use of a lawful product by an employee which materially, threatens an employer's legitimate conflict of interest policy reasonably designed to protect the employer's trade secrets, proprietary information or other proprietary interests; or

Specific Job Activity

(f) the provisions of this section shall not be deemed to protect any use of a lawful product which relates to a bona fide occupational requirement and is reasonably and rationally related to the employment activities and responsibilities of a particular employee or a particular group of employees rather than to all employees of the employer.

Att 4. 2

K · A · N · S · A · S
WINE & SPIRITS
WHOLESALERS ASSOCIATION, INC.

March 25, 1992

To: Senate Committee on Federal and State Affairs
From: R.E. "Tuck" Duncan
RE: Senate Bill 764

The bill before the committee preserves privacy rights of an individual in our society. There is an old legal maxim that says: "Public laws favor domestic privacy." This bill achieves that policy. Justice William O. Douglas stated that "The right to be let alone is indeed the beginning of all freedom." Another outstanding Justice, Lewis D. Brandeis summarized the concept of privacy as "The right to be alone-- the most comprehensive of rights, and the right most valued by civilized men." One author has said that "civilization is the progress toward a society of privacy." And so, the question before this committee is whether or not the counsel provided us by these persons should be followed.

Without this enactment there will be discriminatory treatment of employees due to the personal preferences of employers. The effort to eliminate discrimination in the workplace over the last several decades has resulted in many federal and state laws protecting people against employer prejudices due to age, race, color, religion, sex, and national origin. The EEOC has also held that various questions relating to personal matters may be discriminatory and should not be asked in job interviews or on application forms unless it can clearly be shown that the requested information is a bona fide occupational related issue. Prohibited pre-employment subjects may include questions relating to

803 JAYHAWK TOWER • 700 JACKSON • TOPEKA, KANSAS 66603 • (913)233-9370

Att. 2
1

height and weight, citizenship, english language skills, availability for work on religious holidays, marital status, number of children or provisions for child care, economic status or arrest records, without proof of a business necessity.

Can there be, therefore, any reason for an employer to inquire with regard to the lawful activities of a person outside of the workplace or with regard to an employee's use of lawful products outside of the workplace? We would suggest not.

The Ninth Amendment of the United States Constitution provides that "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." We are after all "Endowed by [our] Creator with certain inalienable Rights ..." The Kansas Constitution at Section One of the Bill Of Rights establishes that "All men are possessed of equal and inalienable rights ..." and, as set forth in Section Twenty "This enumeration of rights shall not be construed to impair or deny others retained by the people; and all powers not herein delegated remain with the people."

This state has declared as its public policy the following:

"Economic insecurity due to unemployment is a serious menace to health, morals, and welfare of the people of this state. Involuntary unemployment is therefore a subject of general interest and concern which required appropriate action by the legislature to prevent its spread and lighten its burden which so often falls with curshing force upon the unemployed worker and his family. The achievement of social security requires protection against this greatest hazard of our economic life." [K.S.A. 44-702]

Thus, if we want to preserve the expression of state policy set forth, and the historical traditions of this Nation and State as codified by the pronouncements set forth herein, and protect against injustice when persons are involved in lawful activities or consume lawful products, then the committee will enact this legislation.

Att. 2

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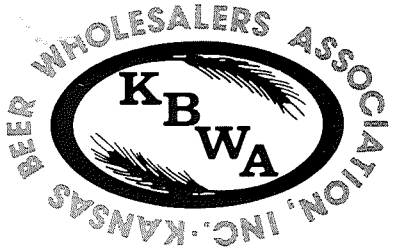
Attach. 3



TESTIMONY
on
HOUSE BILL 2840

Senate Federal and State Affairs Committee

Tuesday, March 24, 1992

by

NEAL WHITAKER
representing
KANSAS BEER WHOLESALERS ASSOCIATION

Mr. Chairman and Members of the Committee:

The Kansas Beer Wholesalers Association appears here today in support of **House Bill 2840** as it passed out of the House Federal and State Affairs Committee. The bill at that time made several minor adjustments to the liquor control act.

First, as the result of an Attorney General's Opinion this past summer items such as baseball schedules, recipe cards and posters that had been available in licensed liquor retailers' establishments were ruled to be a thing of value and, therefore, no longer allowed to be distributed by retailers. Collectively the retailers, spirits wholesalers and ourselves, are asking the legislature to allow consumer advertising specialties such as these to be distributed to the public without charge.

The other item that beer wholesalers are specifically interested in is the matter of residency. K.S.A. 41-311, qualifications for licensure, has been

Att. 3
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1017 Merchants Natl. Bank Bldg. • 800 Jackson • Topeka, Kansas 66612 • (913) 232-1230

Carla Dugger, Associate Director
American Civil Liberties Union
of Kansas and Western Missouri
201 Wyandotte #209
Kansas City, MO 64105
(816) 421-4449

TESTIMONY
SENATE BILL 764
SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS
Wednesday, March 25, 1992

Good morning. Thank you very much for considering this testimony in support of Senate Bill 764, which would add needed protections to Kansas employees. My name is Carla Dugger, and I am the associate director and registered lobbyist for the American Civil Liberties Union of Kansas, a private not-for-profit organization which supports and defends constitutional rights, and works to extend those rights to under-protected groups. We have about 1,200 members in this state, and a quarter of a million members nationwide.

At issue today is one very important group currently without significant constitutional protections -- American employees. When the United States became a nation over 200 years ago, the Founders could not have imagined that, one day, concentrations of corporate power would exist on a scale rivaling, and in some cases exceeding, governmental power. The ability of government to intrude on the personal liberty of individuals was curtailed by the Bill of Rights. Yet because the Constitution does not limit the authority of private employers, they are free to violate the civil liberties of their employees. Nationwide, the ACLU receives more complaints about abuses by employers than about abuses by the government. This trend has led us to the conclusion that this significant problem can only be remedied by extending into the workplace protections guaranteed in the Bill of Rights.

According to an Administrative Management Society survey in 1988, over 6,000 companies in this country were discriminating against both current employees and applicants based on their legal activities during non-working hours. That figure has almost certainly risen over the past few years. Two groups in particular have received the bulk of this type of discrimination, people who are overweight and people who smoke. Some employers, however, have gone even further in their attempts to control the off-duty activities of their personnel. The ACLU nationwide has received complaints about companies which refuse to hire people who have a high serum cholesterol level, who are occasional social drinkers and even people who ride motorcycles or play contact sports.

While public sector workers have some constitutional protection, for example the protection of due process, private sector employees, who make up the majority of our work force, have none. To correct the injustice of such practices, twenty-two states have enacted lifestyle discrimination laws of one type or another.* Most have enacted laws specific to tobacco or, as in the case of SB 764, to "lawful products." Colorado and North Dakota have taken the lead on this issue and have banned discrimination based on any form of legal off-duty

behavior -- legislation similar to a House bill also introduced this session, HB 2984.

The issue of lifestyle discrimination has received widespread popular support. According to a 1990 National Consumers League poll, 81% of Americans believe that an employer has no right to refuse to hire an overweight person. Seventy-six percent think that an employer has no right to refuse to hire a smoker.

It is clear that most Americans believe that what they do in the privacy of their own home is none of their employers' business. If we allow employers to continue to regulate the lives of the American work force during non-working hours, the health care crisis of this country will not have been solved, but the privacy and sanctity of our home life will have been seriously violated.

I would like to note that we believe the terminology used in SB 764, "lawful products," is less comprehensive and therefore less preferred than the term "lawful activities" found in HB 2984. "Lawful activities" would include both products and behavior, and therefore I would urge members of the committee to consider changing the term "products" to "activities." I also would urge the deletion of section (2) (c) of SB 764, which provides exclusions we believe weakens the ability of the bill to extend protections to all Kansas employees.

People terminated from their jobs without just cause turn to ACLU for help, which we cannot give until lawmakers take a stand to offer reasonable, logical, and humane solutions such as SB 764. I urge your support of this bill with the amendments I have suggested.

* A summary of the legislation passed in these states is attached to this testimony.

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Revised 1/13/92

ADOPTED STATE ANTI-DISCRIMINATION LEGISLATION

Anti-Discrimination

1989

Delaware — Executive Order -- Prohibits discrimination against state employees or applicants as a result of smoking habits, so long as they comply with smoking restrictions -- Order also requires smoking restrictions by government agencies -- Phases-out sale of tobacco products on state property

Oregon — Bans the use of genetic screening or brainwave testing as a condition of employment -- Prohibits employers from requiring employees to refrain from smoking off-the-job except when the restriction relates to a bona fide occupational requirement or if off-duty smoking is prohibited by collective bargaining agreement

Virginia — Prohibits governments from requiring an applicant or employee "to abstain from smoking or using tobacco products outside the course of his employment" -- Exempts firefighters and police

1990

Colorado — Prohibits employers from terminating employment due to worker's engaging in any lawful activity off the premises of the employer during nonworking hours unless restriction is a "bona fide occupational requirement," would cause conflict of interest, or is reasonably related to employment

Kentucky — Provides for fair and equal treatment of employees who smoke -- Forbids bias in hiring and promotions -- Prohibits sale of tobacco products to those under age of 16

Rhode Island — Prohibits employers from requiring, as a condition of employment, that and employee refrain from using tobacco products outside the course of employment or otherwise discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment for using tobacco products outside the course of employment -- Exempts employers with primary purpose is to discourage the use of tobacco products by the general public

South Carolina (2 bills)	Provides that personnel actions, including employment termination, demotion or promotion, may not be based on employee's use of tobacco products Requires designation of smoking and nonsmoking areas in government buildings and certain public places -- Prohibits employers from testing for tobacco use as a job requirement -- While not expressly written, also preempts local smoking restrictions
Tennessee	"Whistle-blower" protection bill H2516/S1840, which prohibits an employee from being fired because of refusal to participate in, or remain silent about illegal activities, was amended to protect smokers from employment termination for lawful use of a non-alcoholic "agricultural product" as long as employee complies with applicable employer policies regarding use during working hours

1991

Arizona	Prohibits discrimination by state government employers on the basis of employee's use or nonuse of tobacco products -- Continues to allow Department of Administration and state government agencies to designate smoking areas
Connecticut	Employee drug testing bill was amended to prohibit discrimination based on employee's smoking off-the-job -- Exempts nonprofit organizations or businesses whose primary purpose is to discourage use of tobacco products by the general public -- Also exempts municipal hiring practices or collective bargaining agreements with paid firefighters and police officers
Illinois	Prohibits discrimination based on employee's engaging in lawful activities off employer's premises during nonworking hours (does not apply to non-profit organizations which discourage use of legal products or if activity impairs employee's ability to perform assigned duties) -- Prohibits an employer from inquiring of a prospective employee whether the person has ever filed a claim under workers' compensation -- Allows employers to base insurance premiums and coverage on individual's use of lawful products off-the-job if insurance company charges differential rates

Indiana	Prohibits employers from requiring workers to refrain from using tobacco products outside the course of employment -- Exempts employment by churches, other religious organizations, or by schools or businesses conducted by such organizations
Louisiana	Prohibits discrimination based on employee's smoking or use of tobacco products outside the course of employment
Maine	Prohibits employers from discrimination against employees for off-the-job use of tobacco products
Mississippi	Anti-discrimination language was amended into alcohol and drug testing procedures -- Prohibits discrimination in terms of employment against workers who smoke or use tobacco products outside the course of employment -- Prohibits employers from requiring that employees refrain from smoking or using tobacco off the job -- Exempts non-profit organizations whose primary purpose is to discourage use of tobacco products by general public -- Provides for civil damages and injunctive relief to be awarded by court for violations
Nevada	Prohibits discrimination for off-the-job use of lawful products outside the premises of the employer during his nonworking hours, if that use does not adversely affect his ability to perform his job or the safety of other employees
New Hampshire	Prohibits discrimination in hiring, termination, compensation, terms, conditions or privileges of employment based on whether worker is a smoker or nonsmoker
New Jersey	Prohibits employers from hiring or firing individuals because of smoking/nonsmoking preferences unless the employer has a rational basis for dong so which is reasonably related to the employment, including the responsibilities of the employee or prospective employee
New Mexico	Prohibits discrimination in hiring, discharge or terms of employment based on individual's being a smoker or nonsmoker -- Prohibits employers from requiring that workers abstain from using tobacco products during nonworking hours, so long as the person complies with applicable laws or policies on workplace smoking during working hours -- Provides exceptions for bona fide occupational requirements, or conflict of interest policy

North Dakota	Amends state's discrimination codes to include prohibition on discrimination based on participation in lawful activity off the employer's premises during nonworking hours, unless activity is contrary to a bona fide occupational qualification that reasonably and rationally relates to employment and responsibilities
Oklahoma	Anti-discrimination language was amended into child labor law -- Prohibits employers from refusing to hire, discharge or otherwise discipline an employee for the use of tobacco products outside the course of employment
South Dakota	Prohibits terminating an employee due to the employee's engaging in use of tobacco products off work premises during nonworking hours, unless restriction is a bona fide occupational requirement or necessary to avoid conflict of interest -- Also exempts full-time firefighters -- Provides for aggrieved employee to bring civil suit for damages -- Allows employers to offer health or life insurance policies which make distinctions in coverage or cost based on employee's use of tobacco products

<u>States Where Measures Have Been Vetoed</u>
California
Florida
Missouri
New York (1990, 1991)
New Jersey
Arkansas
Utah

ACLU AMERICAN CIVIL LIBERTIES UNION

BRIEFING PAPER

NUMBER 12

THE RIGHTS OF EMPLOYEES

When the United States became a nation more than 200 years ago, the Founders formulated a Constitution that structured the new society as a majoritarian democracy. They later added a Bill of Rights to protect individuals from the tyranny of the majority. But in the 18th century, when the Constitution and Bill of Rights were ratified, the government was viewed as the only major threat to individual rights. The Founders could not have imagined back then that, one day, concentrations of corporate power would exist on a scale rivaling, and in some cases exceeding, governmental power.

Today, most Americans are more vulnerable to having their rights violated by their employers than the early Americans were to having their rights violated by the government. Yet because the Constitution does not limit their authority, private employers are free to violate the civil liberties of their employees. Nationwide, the American Civil Liberties Union receives more complaints about abuses by employers than about abuses by the government:

- In California, a job applicant was denied a job because he refused to answer questions about his sex life on a "psychological test." At least two million job applicants are required to take such tests every year.
- In Pennsylvania, an employee was fired because he pointed out serious safety defects in his employer's products. At least 200,000 Americans are unjustly fired every year.
- In Indiana, an employee was fired because she smoked cigarettes in her own home. At least 6,000 American companies now attempt to regulate off-duty smoking and other private behavior.

The ACLU believes that such abuses can only be prevented by extending, into the private workplace, the protections guaranteed in the Bill of Rights. Certainly, we recognize that employers have every right to expect workers to do their jobs. But employees are also entitled to the same freedoms on the job that they enjoy off the job.

Here are the ACLU's answers to some questions frequently asked by the public about the rights of American employees.

If the Constitution doesn't apply to the private workplace, what does?

The vast majority of American employees, of whom there are 100 million in all, are governed by a doctrine called "employment at will." This doctrine, a relic of 19th century anti-labor laws, gives employers the unfettered right to fire workers at any time, for any reason, whether grave or frivolous. Indeed, one can be fired for no reason at all. An estimated 200,000 employees, at least, are unjustly fired in the United States each year.

It is the prevalence of the employment-at-will doctrine that empowers employers to impose unwarranted urine tests and intrusive "personality" and "integrity" tests on their employees. The power to fire at will permits employers to suppress their employees' right to free speech.

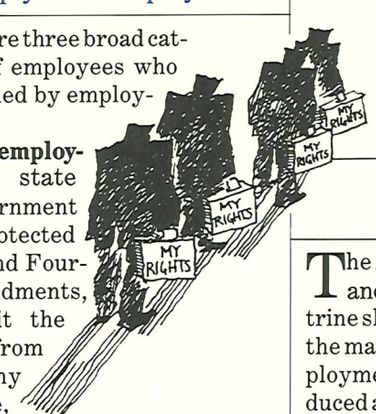
Are there *any* laws that protect employees' rights?

There are federal and state laws that prohibit discrimination against individuals on the bases of race, religion, sex, national origin, age and disability. However, these laws require only that employees be treated equally. Employers are, therefore, free to do whatever they wish to their employees as long as they do so in a non-discriminatory manner.

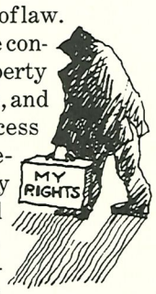
A few other federal and state laws provide some protection against specific abuses, such as urine testing, polygraph testing and retaliation against whistle blowers. But these laws are extremely limited. The fundamental human rights of free expression, privacy and due process are still largely unprotected in the American workplace.

Does the employment-at-will doctrine apply to all employees?

No. There are three broad categories of employees who are not governed by employment-at-will:

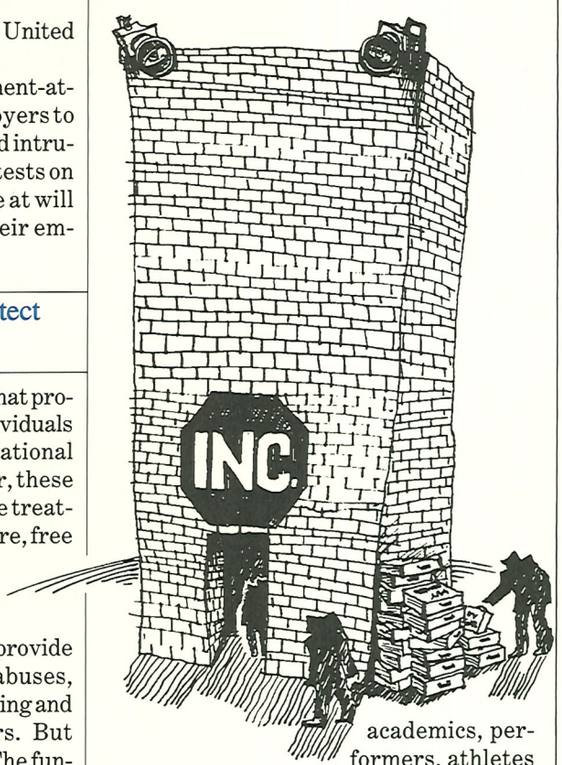


Government employees: Federal, state and local government workers are protected by the Fifth and Fourteenth Amendments, which prohibit the government from depriving any person of "life, liberty or property" without due process of law. These employees are considered to have a property interest in their jobs, and the right to due process places significant restrictions on arbitrary dismissals unrelated to job performance. Some additional protection is provided by federal, state and local civil service laws.



Union members: Virtually all collective bargaining agreements between labor unions and employers stipulate that unionized employees can be fired only for just cause, and only after a hearing before a neutral arbitrator. However, less than 20 percent of American workers belong to unions today, since union membership has been declining for years.

Contract employees: Senior executives, academics, performers, athletes and some other well-situated employees, whose numbers are so small as to be insignificant, work under individual employment contracts that provide protection against unjust dismissal.



What can be done about the problem of unjust dismissals?

The ACLU believes that the outmoded and unfair employment-at-will doctrine should be abolished. Over the years, the many attempts made to challenge employment-at-will in the courts have produced a few narrow exceptions to the rule, but these exceptions have helped very few of the people unjustly fired from their jobs. The ACLU and other organizations advocating employee rights are actively promoting, in state legislatures, model statutes that encompass the following basic principles:

- Employees can be fired only for just cause.
- "Just cause" means that: the employee's offense adversely affected his or her job performance; the rule or standard violated by the employee was known to the employee; and the infraction was serious enough to warrant termination.
- Every employee faced with termination is entitled to a hearing that includes the right to confront witnesses,

Att. 4
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ght to present evidence, the right to have adequate representation (either an attorney or other type of counsel), and the right to an impartial decision maker.

Can employers legally search their employees' lockers, desks and urine looking for contraband?

The Fourth Amendment, which protects the privacy of citizens from "unreasonable searches and seizures," gives some protection to public sector employees against their employers' prying eyes. In general, a government employer cannot search the person or belongings of an employee in the absence of any suspicion that the particular employee has done something illegal. With respect to urine testing for drugs, however, the U.S. Supreme Court has ruled that government employees can be required to take such tests, even if the employer does not suspect drug use, if the person's job is "safety sensitive," or involves carrying a weapon or having access to classified information. (See ACLU Briefing Paper #5, "Drug Testing in the Workplace.")

Private sector employees, on the other hand, have virtually no protection against even the most intrusive practices. In all but a handful of states, an employee can be required to submit to a urine test even where nothing about the employee's job performance or history suggests illegal drug use. If the employee refuses, he or she can be terminated without legal recourse. Employees can be subjected to "sniff" searches by dogs and searches of their lockers, desks, purses, and even their cars if they park in the company parking lot. Both job applicants and employees can be required to answer extremely intrusive questions about their private lives and personal beliefs on "psychological," "personality" and "integrity" tests.

The advent of computer technology has made possible even more sophisticated forms of spying in the workplace. More and more employees are being subjected to electronic surveillance through video display terminals, observation by hidden cameras installed in work areas and locker rooms, and monitored telephone calls. With few exceptions, these increasingly widespread practices are legal.

What can be done to protect the privacy rights of employees?

The ACLU believes that both state and federal legislation should be enacted to extend privacy rights to private sector employees.

In recent years, some positive strides have been made. In 1988, Congress passed the Employee Polygraph Protection Act, which ended decades of "lie detector" abuse in the private workplace. The Act outlaws most random and pre-employment polygraph testing, which in past years had led to an estimated 300,000 workers per year being branded liars. (See ACLU Briefing Paper #4, "Lie Detector Testing.")

Several states — Connecticut, Iowa, Maine, Minnesota, Montana, Rhode Island and Vermont — have enacted legislation that protects employees from indiscriminate urine testing. Two states — Massachusetts and Rhode Island — restrict paper and pencil "honesty" tests. Connecticut is the only state that has a law prohibiting "electronic surveillance, including video surveillance, of any area designed for the health and comfort of employees or for safeguarding of their possessions."

The ACLU has developed model statutes to protect employees from unfair urine testing and electronic surveillance and is actively lobbying for their passage in state legislatures throughout the country. The ACLU is also urging Congress to amend the Employee Polygraph Protection Act to cover so-called paper and pencil "integrity" tests.

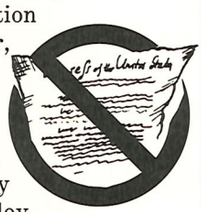
Can employers discriminate on the basis of employees' lifestyles?

One of the emerging issues in the American workplace is the attempt by employers to control certain private habits and proclivities of their employees that have no relationship to job performance. Fat people are victims of lifestyle discrimination, and a growing number of companies are refusing to hire smokers — even those who smoke only in their homes. A few employers exclude people with high cholesterol levels, or high blood pressure, and those who engage in such risky hobbies as scuba diving and hang gliding. Others impose lifestyle restrictions: One Oregon company bars workers who fail to participate in the company's exercise program from attending company picnics; a Pennsylvania company prohibits its managers from riding motorcycles!

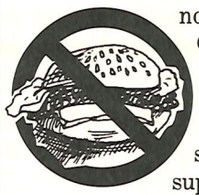
The driving force behind this trend is economics: Employers concerned about the escalating costs of employee health insurance are attempting to cut costs by firing and/or refusing to hire people whose lifestyles appear to place them at risk of illness or injury. But if reducing health care costs is accepted as a legitimate reason for employers to regulate the off-the-job conduct of their employees, then virtually every aspect of our private lives could be subject to employer control. This would be Big Brotherism at its worst.

What can be done to prevent lifestyle discrimination?

The ACLU believes that, just as legislation has been needed to prevent other violations of civil liberties in the workplace, legislation is also necessary to prevent lifestyle discrimination. Just as federal, state and local laws exist to prohibit employment discrimination based on race, gender, ethnicity, religion and, in some places, sexual orientation, new laws are needed to protect against discriminatory practices based on employees' private lifestyle preferences and habits.



At this writing, 15 states have enacted laws that restrain employers from prohibiting legal activities as a condition of employment. For example, Colorado law makes it "a discriminatory or unfair employment practice for an employer to terminate the employment of any employee due to that employee's engaging in any lawful activity off the premises of the employer during nonworking h[illegible]...." Other states are considering bills that prohibit employment discrimination based on off-duty smoking. The ACLU supports these efforts.



Should employers ever have the right to discipline their employees?

Absolutely. Employers have the right to expect an honest day's work for a day's pay. They have the right to expect that their workers will not be drunk, drugged, or too fatigued to perform their jobs. They have the right to set performance standards, and to expect those standards to be met. They also have the right to discipline and dismiss employees for just cause.

Even if all the protective laws described in this briefing paper were passed in every state, employers would still retain the right to discipline and dismiss any employee whose job performance was lacking.

But wouldn't recognition of civil liberties in the workplace damage the American economy?

There is no conflict between free enterprise and civil liberties in the workplace. Free enterprise should not be taken to mean that every corporation is a sovereign republic unto itself, whose only law is the whim of the current CEO. Employers must be free to decide what products to make (or stop making), what factories to operate and where to locate those factories, what prices to charge, and how many workers to hire. But they can make such decisions without trampling on their employees' rights to free speech, privacy and due process.

The fact is that employers in most other Western industrialized nations, as well as in Japan, are required by law to respect the rights of their employees. Nonetheless, those employers' businesses survive and prosper. Moreover, several American employers, including some of the nation's most successful corporations, already guarantee their employees' civil liberties without affecting the bottom line of profits. Those employers believe that respecting employees' rights boosts morale and, thus, raises corporate performance.

It is ironic that the United States, with its long professed respect for individual rights, has not yet extended Bill of Rights protections to the largest remaining group of forgotten citizens — American workers. It is time to right that wrong.

ACLU
AMERICAN CIVIL LIBERTIES UNION
American Civil Liberties Union
132 West 43rd Street
New York, N. Y. 10036

Att. 4
8

Attach 5

LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry

500 Bank IV Tower One Townsite Plaza Topeka, KS 66603-3460 (913) 357-6321

A consolidation of the Kansas State Chamber of Commerce, Associated Industries of Kansas, Kansas Retail Council

SB 764

March 25, 1992

KANSAS CHAMBER OF COMMERCE AND INDUSTRY
Testimony Before the
Senate Committee on Federal and State Affairs
by
Terry Leatherman
Executive Director
Kansas Industrial Council

Mr. Chairman and members of the Committee:

I am Terry Leatherman. I am the Executive Director of the Kansas Industrial Council, a division of the Kansas Chamber of Commerce and Industry. Thank you for the opportunity to appear before the Committee today to express the concerns the Kansas Chamber has towards SB 764.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 55% of KCCI's members having less than 25 employees, and 86% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

The Kansas Chamber has traditionally been a staunch supporter of the employment-at-will doctrine and remains so today. Employment-at-will benefits employers and employees

by bringing flexibility to employment arrangements. However, KCCI concedes that strict application of employment-at-will can conflict with equally important issues of individual privacy. As a result, when issues such as SB 764 are considered, KCCI hinges its position on whether a proposal will disrupt an employer's ability to maintain a business.

The original draft of SB 764 contained four areas which concerned KCCI. It is my understanding the principal proponents of this bill will support amendments which placates two of those KCCI concerns.

1) SB 764 makes it unlawful to "disadvantage an individual" for their use of lawful products away from work. This provision would make employers violators of this act who offer employees health or life insurance policies which discount premiums for individuals who do not smoke or drink alcohol.

An amendment to permit insurance policies offered through the workplace to include distinctions in the cost of coverage would be a step towards rectifying this problem. KCCI suggests the amendment go one step further to allow employers to offer voluntary incentives to employees which promotes healthy lifestyles.

2) SB 764 contains no provision to permit an employer to take action against an employee when their off-duty use of legal products causes problems at work. Two amendments have been drafted to permit employers to take action when it can be demonstrated that off-duty use of legal products causes an employee to be unable to achieve bona fide occupational requirements, or the use of the legal products violates the proprietary interests of an employer.

KCCI urges the Committee to include these amendments in the bill.

While these two areas have been addressed by supporters of SB 764, KCCI has two other suggestions.

1) The phrase "lawful products" should be changed to specify what products the authors of the legislation feel need protection.

SB 764 is a Kansas version of "lifestyle discrimination legislation" which has been introduced in state legislatures across the country. In two of the 21 states which have approved this type of legislation, the protection is extended to "lawful activities."

Att. 5
2

Another two of the 21 states have approved "lawful products" language proposed in SB 764. The remaining 17 states have limited the scope of the legislation to "tobacco products" only.

Narrowing the legislation to "tobacco products" or "alcohol products" makes clear the impact of the legislation. The phrase "lawful products" sends an unclear message to the Kansas business community.

2) SB 764 permits individuals who feel they are victims of this employment practice to sue an employer for back wages and benefits. Considering the avalanche of litigation businesses face today, KCCI urges the Committee to strike this penalty provision and replace it with a minimal civil fine.

Thank you for considering the position of the Kansas Chamber towards SB 764. I would be happy to attempt to answer any questions.

Att. 5
3

Attach. 6

TESTIMONY IN OPPOSITION TO SB 764

Tobacco Free Kansas Coalition
by Brian Gilpin
272-7056

Danger! The language in this bill places smokers in a similar type class as those that society has traditionally determined to be truly discriminated against because of their race, sex, religious creed, ancestry or national origin. Society has rightfully sought to protect these very limited number of groups, whose need for protection can usually be traced to several common factors:

* their status as member of a particular group is permanent and involves no choice or measure of consent on the part of the individual.

* their mistreatment by others is extreme and outrageous, irrational, long standing and the product of hatred, ignorance or chauvinism.

* their continued status as a member of this group has positive social consequences for society and deserves society's protection and promotion.

As you can see, smoking meets none of these criteria. Elevating smokers or any other habit to the status of a protected class trivializes and skews this concept of civil rights.

Some legislation, much like the legislation before you, uses code words like "legal products" which are sufficiently vague enough in order to provide a smokescreen as to the true intention of this bill, but will surely provide for legal problems in areas the bill's sponsors may not have imagined.

Employers have legitimate reasons for having policies for hiring only nonsmokers. Examples include businesses where dangerous or volatile substances are handled like asbestos. Fire and police departments may want to make nonsmoking a condition of employment in order to better insure that their employees are in peak physical condition in order to effectively serve and protect our citizens. Small businesses (many which are struggling to survive in today's economy) may not be able to establish differential insurance plans (smokers vs. nonsmokers), or tolerate increased employee absences.

Employees already have statutory vehicles available to them to redress a wrongful termination or hiring practice by an employer. There is no history or documentation of a problem in this area. Frankly, there are few documented cases of workers being fired from their jobs because they smoke. The attached news clipping from the Washington Post shows that proponents of Maryland legislation (which was defeated) could not identify a single aggrieved party. Further, the bill's sponsor, Senate President Mike Miller, said that he introduced it largely as a favor to a Philip Morris Lobbyist who had been a close personal friend and loyal ally when she was a Senator! (We can be thankful that this sort of thing doesn't happen in our Kansas Legislature.) The question still remains, why this legislation?

Choice magazine, a publication by R.J. Reynolds Tobacco Company talks about the need for legislation exactly like this (what a coincidence). Are they pushing for this legislation because they care so much about our civil rights? NO! The tobacco industry is pushing for these laws across the country so they can begin to build a legislative precedence in order to restrict the establishment of clean indoor air laws in the future and to continue to encourage tobacco use. They are doing this because they're concerned about their domestic cigarette market that is in decline.

Please do not satisfy the tobacco industry, vote no.

(Please refer to the attached exhibits. Similar legislation was vetoed by several governors. Their veto remarks are attached.)

METRO

WILLIAM DONALD SCHAEFER
... wants higher tobacco tax

Smokers' Bill of Rights Brings Out Big Guns

Schaefer Promises to Veto Measure Supported by Md. Senate Leader, Cigarette Industry

By Charles Babington
Washington Post Staff Writer

ANNAPOLIS, Feb. 7—Fresh from legislative victories in 21 states, the cigarette industry is renewing its fight for a smokers' bill of rights in Maryland, the place where its national campaign began three years ago.

The dispute holds promise for a showdown between two of Maryland's top Democrats: Senate President Thomas V. Mike Miller Jr. (D-Prince George's), who is sponsoring the bill, and Gov. William Donald Schaefer, who vowed this week to veto it.

The measure would bar employers from discriminating against people who smoke off the job.

And it would prohibit local governments from enacting tougher smoking restrictions than the state's.

That has infuriated some local officials, who say the tobacco industry is trying to shift its battles away from town and county councils, where it has less clout than in state capitals.

"It's a moral outrage," said Bruce T. Adams (D-At Large), president of the Montgomery County Council.

In 1989, the Maryland General Assembly narrowly defeated a bill to ban discrimination against those who smoke outside the workplace. It was the first such effort by tobacco lobbyists, who soon found greater success elsewhere.

Today, 21 states have enacted such laws, said Jonathan Anderson, of the American Civil Liberties Union's "workplace rights task force."

The ACLU supports such legislation, arguing that employers should not discriminate against people who engage in legal activities, such as smoking, in their own homes.

Even though Miller's bill would not affect local ordinances enacted before this year, thus leaving intact several Montgomery anti-smoking measures, it would bar other jurisdictions from following Montgomery's example, Adams said.

Moreover, Montgomery's ordinance to remove nearly all cigarette vending machines from the county is being challenged in court by lawyer Bruce C. Bereano, a lobbyist for the Tobacco Institute.

If the county's law is overturned, Adams said, Miller's proposal would bar the County Council from revising it to overcome the court's objections.

"Will we not be able to change and modify our own laws?" Adams asked.

"That's crazy."

Bereano defended Miller's bill,

See TOBACCO, B4, Col. 4

SEN. THOMAS V. MIKE MILLER JR.
... seeks smokers' bill of rights

Showdown On Smoking In Maryland

TOBACCO, From B1

saying controls on smoking should be uniform in Maryland.

"This should be done at the state level and not have a disparity of laws at the local level," he said.

Miller's bill, entitled the Tobacco Control Act, has three main parts:

- It would forbid employers or co-workers to "harass or discriminate against any employee" who smokes after work hours.
- It would prohibit new local anti-smoking laws that go beyond state laws.
- And it would make it illegal for minors to possess tobacco products. Violators could be fined $100 for a first offense.

Critics said it is unlikely that police would arrest a teenager over possession of a pack of cigarettes.

But Bereano said the provision is a significant concession by the tobacco industry.

"This notion of throwing a bone to the health advocates is an absolute mischaracterization," he said.

ACLU officials said they know of no cases in which a Maryland employer has discriminated against someone who smoked off the job. Bereano said he has heard of such cases.

Meanwhile, at a news conference this week to renew his call for a 25-cent-a-pack increase in the state's 16-cent cigarette excise tax, Schaefer denounced Miller's bill. "That's just a good way for the tobacco industry to control legislation," the governor said of the provision that would preempt local smoking restrictions.

Miller said in an interview that, although he supports the bill's provisions, he introduced it largely as a favor to Catherine I. Riley, a lobbyist for Philip Morris.

Miller said Riley had been a loyal ally when she was a senator.

"She and I are very close personal friends," Miller said.

Some anti-smoking groups say Miller's backing gives the legislation a real chance of being enacted.

"I am taking this as a major threat," said Robin F. Shaivitz, a lobbyist for the American Cancer Society.

Att. 6
3

STATE OF ARKANSAS
OFFICE OF THE GOVERNOR
State Capitol
Little Rock 72201

Bill Clinton
Governor

March 4, 1991

David P. Cook
American Lung Association of Arkansas
211 Natural Resources Drive
Little Rock, AR 72205-1539

Dear David:

Thank you for expressing your opposition to House Bill 1441, known as the Smokers' Rights Bill.

I have vetoed House Bill 1441 for the following reasons:

The bill prohibits employers from deciding to hire only non-smokers. Some Arkansas companies have chosen to hire only non-smokers to reduce the cost of health care and other benefits, such as term life insurance. This bill would overturn these hiring policies and would prevent other employers from developing similar ones.

The bill has an uncertain reach. While it has been described as a bill which only prevents employers from firing, refusing to hire, or otherwise discriminating against employees because they smoke away from work, it contains language that could give smokers rights in the workplace itself. I believe that is inappropriate. Several Arkansas employers who have established smoke-free work environments asked me to veto the bill for that reason.

This bill is part of a national effort to grant rights to smokers similar to those protected by the First Amendment's guarantee of free speech or those extended to people protected from discrimination on the basis of race, sex, or some other innate condition. While Americans plainly may smoke in many circumstances, smoking is an acquired behavior. Given the overwhelming evidence of the toll it takes every year in disease and death, it should not be accorded legal protection like freedom of speech; nor should smokers be a protected class like those who have been wrongly discriminated against because of race, sex, age, or physical handicaps.

I appreciate your contacting me to let me know how you feel about this issue.

Sincerely,

Bill Clinton

Bill Clinton

BC:sm

Att. 6
4

STATE OF NEW YORK
EXECUTIVE CHAMBER
MARIO M. CUOMO, GOVERNOR

Press Office
518-474-8418
212-587-2126

FOR RELEASE:
IMMEDIATE, TUESDAY
JULY 24, 1990

STATE OF NEW YORK
EXECUTIVE CHAMBER
ALBANY 12224

July 22, 1990

TO THE ASSEMBLY:

I am returning herewith, without my approval, the following bill:

Asembly Bill Number 10727, entitled:

"AN ACT to amend the labor law, in relation to prohibiting employers from discriminating against the engagement in legal activities during non-working hours"

#15

N O T A P P R O V E D

The bill amends the Labor Law to prohibit employment discrimination against employees or applicants for employment because such person has engaged in legal activities during non-working hours.

While the bill's purpose is laudable, it is so broadly drawn that it has certain potential applications which are probably unintended.

For example, the bill prohibits taking any legal activity into account in a hiring decision if the activity took place during non-working hours. If "non-working hours" is interpreted as any time prior to employment by the employer whose action is challenged, such legal activity of the applicant could include sloth or incompetence resulting in the termination of previous employment. If a more limited interpretation of "non-working hours" were adopted, to include only activities outside of duty hours of an employer, one could still not disqualify for the position of motor vehicle operator, or even school bus driver, a person with a history of untreated alcoholism or prescription drug abuse.

The bill could also be interpreted so as to nullify legitimate employer conflict of interest policies. Under the bill, employer conflict of interest policies. Under the bill, employers would not be allowed to prohibit employees from engaging in outside employment that is in conflict with their job responsibilities. Thus, for example, an employer could moonlight with a supplier, customer, or even a competitor, or a company. To go a step further, this bill would allow an employee of a company to endorse a competitor's product and leave the company with no recourse to terminate or otherwise discipline the employee.

Att. 6
5

The examples can go on and on. The point is the bill's sweeping language would invite enormous disruption of both the public and private sector work place.

Disapproval of the bill is recommended by the Department of Labor, the Department of Civil Service, the Office of Employee Relations, the Business Council of New York State, the New York Chamber of Commerce and the American Lung Association.

The bill is disapproved.

(Signed) Mario M. Cuomo

Att. 6
6

To the Members of the California Assembly:

I am returning Assembly Bill No. 2288 without my signature.

This bill would make it an unlawful employment practice to discriminate against an employee or applicant for employment because of the person's assertion of the right to a smoke-free workplace, or because the person smokes during nonworking hours away from the work site.

This bill is unnecessary. There already exist statutes that protect persons who assert their rights to a smoke-free workplace. If they are "smoke sensitive," they are protected under the "physically handicapped" provisions of the Fair Employment and Housing Act. In addition, an appellate court has held that an employee had a cause of action for wrongful discharge against an employer who retaliated against and terminated him for insisting on a smoke-free workplace.

Cordially,

George Deukmejian

George Deukmejian

JIM FLORIO
GOVERNOR

STATE OF NEW JERSEY
OFFICE OF THE GOVERNOR
TRENTON
08625

February 25, 1991

Dear Friend:

As you probably know, I recently vetoed legislation which would have elevated smoking to the status of a civil right. The Senate has since overridden my veto and the Assembly is considering similar action. The reason why I am writing to you now is to reiterate my commitment to opposing this legislation, and to encourage you to get involved in the debate on this important issue.

The civil rights laws of our country have been crafted to protect citizens who, by birth, become members of a class because of certain unalterable personal characteristics such as their skin color, gender or national origin. Smoking does not fit into this category. Unlike the color of one's skin, smoking is an individual choice. It is not an immutable characteristic or a matter of such value and importance so as to warrant the status of being considered a civil right.

There are additional reasons for opposing this legislation. For instance, smoking is one of the leading causes of the rapidly rising cost of health care. It contributes to heart disease, lung cancer, emphysema, and many other tragic illnesses. In fact, it is now estimated that nearly 500,000 smoking-related deaths occur each year in the United States. At a time when health care costs are spiraling and our own health-care system in New Jersey is overwhelmed and underfunded, it would be unconscionable to raise the use of tobacco to a protected civil right when it is responsible for so much harm.

One final reason for opposing the elevation of smoking to the status of a civil right is that such a move would establish a dangerous precedent. If we begin by protecting the rights of smokers, we may soon find ourselves being asked to protect the rights of other individuals who voluntarily participate in activities that are deemed unhealthy by society. Furthermore, by declaring smoking to be a civil right, we would be inviting the tobacco industry to re-enter the debate of whether smoking should be permitted in public places such as schools, restaurants and the workplace.

For all the reasons stated above, I remain committed to opposing the efforts to encourage smoking as a civil right. I thank you for your commitment to this issue. Please do not hesitate to contact me if you wish to share your views with me on this or any other issue.

Very truly yours,

JIM FLORIO
Governor

JJF:jd

Att. 6
8

NORMAN H. BANGERTER
GOVERNOR

STATE OF UTAH

OFFICE OF THE GOVERNOR
SALT LAKE CITY
84114

March 19, 1991

The Honorable Arnold Christensen
President of the Senate
and
The Honorable H. Craig Moody
Speaker of the House
BUILDING MAIL

Dear President Christensen and Speaker Moody:

This is to inform you that on March 19, 1991, I have vetoed SB 122 - ANTIDISCRIMINATION IN EMPLOYEE'S USE OF LAWFUL PRODUCTS and have forwarded this to the Lieutenant Governor for filing.

Both our State and federal government have long recognized that certain members of our society need protection from discrimination in employment based on certain characteristics (such as race or gender) or fundamental rights enjoyed by all citizens (such as the right to vote). Current Utah law, prohibits employment discrimination on the basis of a suspect class or through intrusion on a fundamental right. UTAH CODE ANN. Sec. 34-35-7.1.

SB 122 seeks to add to existing law the "use of a lawful product" either as a new suspect class or a new fundamental right. Under either interpretation, however, the use of a lawful product does not rise to the level of a class or "right" meriting additional government intrusion into an employer's hiring practices.

Invidious discrimination on the basis of a suspect class such as race or gender is prohibited because it has no rational basis and because those characteristics are immutable. Further, our society has recognized that certain rights are so basic that they are of paramount importance over any other rights with which they may conflict. The designation of a right as "fundamental", however has been understandably limited.

In my view, the use of any lawful product, whether it be alcohol, tobacco, prescription medications, food or any other product, does not merit the stringent protections afforded the categories described above. It is not my intent to tell the

Att. 6
9

people of Utah what they may and may not do with lawful products when they are not at their places of employment. At the same time, the State of Utah should not unduly burden the employers of this State by further restricting their right to choose their employees. People in our State have the right to use lawful products in whatever lawful manner they choose; however, that choice does not entitle them to special protection under the law. Adding the changes proposed under SB 122 would create an unwarranted intrusion into the relationship between employers and employees.

It is my goal as Governor to provide protection from discriminatory hiring practices for those who need it due to certain immutable characteristics or the exercise of fundamental rights. It is further my goal to allow the employers of Utah the maximum latitude permissible to enable and encourage them to operate and expand their businesses. The current law appropriately strikes the balance between these two goals.

I believe it necessary to express my displeasure and resentment at the misinformation campaign waged by the tobacco industry to convince Utahns that this bill is somehow necessary to protect their "fundamental right of privacy." There is not a single instance in which current law has been or could be used to interfere with an individual's decision to smoke in their own home.

Sincerely,

Norman H. Bangerter
Governor

NHB/eg/nlc

Att. 6
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Attach. 7

AMERICAN CANCER SOCIETY® KANSAS DIVISION, INC.

THERE'S NOTHING MIGHTIER THAN THE SWORD

STATEMENT IN OPPOSITION TO SB 764
BY THE AMERICAN CANCER SOCIETY,
KANSAS DIVISION, INC.

SENATE FEDERAL AND STATE AFFAIRS COMMITTEE
MARCH 25, 1992

Mr. Chairman and members of the Committee:

My name is Betty Dicus and I appear as a volunteer on behalf of the American Cancer Society, Kansas Division, Inc. We thank you for the opportunity to appear before you in opposition to Senate Bill 764.

Our opposition to the bill is as it relates to health, specifically smoking and tobacco use. This bill is designed to protect and promote the use of tobacco products. In fact, bills of this type are known as "smokers rights" bills.

The American Cancer Society opposes this bill and others like them, because the bill encourages tobacco use by humans. This use is a proven health hazard in our society to both users and nonusers. Tobacco use costs us millions of dollars each year for health care that could be prevented. It destroys and devastates the lives of many people. Its use should be eliminated, not encouraged.

This bill, and similar bills across the county, are part of a broad promotion by the tobacco industry. The purpose is to sell tobacco under the guise of so-called "rights".

1315 SW ARROWHEAD ROAD • TOPEKA, KANSAS 66604-4020
(913) 273-4114 • FAX (913) 273-1503

The tobacco industry has made at least two similar kinds of efforts in recent years to promote tobacco cloaked in "human rights" terms. In each case, the goal is to sell more tobacco, not promote the public good. One example is the tobacco industry's persuasive campaign to tie the use of tobacco products to the emerging rights and opportunities for women in our society and to make the two seem inseparable. Another example is to send a "bill of rights" exhibition around the country as if that too were intertwined with tobacco use.

All of these campaigns by the tobacco industry are an attempt to link basic human rights with tobacco use. We should not be deluded into thinking that the right to smoke in private, or the right of women to the same opportunities as men, or the rights protected by the Bill of Rights mean that the use of tobacco products is anything but a gigantic health hazard.

All of these rights--the right to privacy, the rights of women, the Bill of Rights--are protected in our system of government without these special "smokers rights" bills.

On behalf of the American Cancer Society, I urge this Committee to oppose the passage of Senate Bill 764. Thank you.

Att. 7
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ATTACH 8

Kansas Respiratory Care Society

This testimony is in opposition to SB 764.

My name is Christie Wedeking and I am a certified respiratory therapy technician and am registered with the State Board of Healing Arts as a Respiratory Care Practitioner. I am representing the Kansas Respiratory Care Society (KRCS) which is a member of the Tobacco Free Kansas Coalition. Because of my experience in Pulmonary Rehabilitation and smoking cessation, I see first hand, day in and day out, the ramifications of smoking on individual lives, and have become increasingly aware of the cost of smoking to our society.

I would like to share with you that I object to this legislation based on certain facts:

That tobacco is responsible for the deaths of 1 out of 5 Kansans.

That tobacco is costing our state approximately $65 million per year in disability, lost wages and productivity and health care costs.

That I, my 9 month old daughter, my husband, as well as each and every one of you and your family members and constituents are paying approximately $262 each, every year, to offset the above costs.

Please understand that I am not objecting to smokers. I believe smokers should have the same rights as any individual. I am objecting to smoking! And I object to the way the Tobacco Industry continues to use deceptive tactics such as this legislation to support it's business.

Please understand the Tobacco Industry is not truly for individual rights. If they were, they would take the nicotine out of their products and give people the right to choose whether they want to use tobacco based on choice instead of addiction.

I see, everyday, the people who suffer from tabacco related illnesses. I see their golden years wasted in disability because they cannot breathe well enough to walk across the room, let alone get out and do something productive. I see the smokers who are hospitalized more often than the non-smoker. Its interesting to note that less than 1/3 of our population smokes yet greater than 50% of the patients in the hospital are smokers. I see the use of our health care dollars go disproportionally to pay for the cost of smoking. Never do I see a tobacco industry representive at the patient's bedside to help comfort him, or in the business office helping to pay his bill.

It is because of these concerns that I believe employers should have the right to be selective about hiring the people that best meet the job qualifications and standards, and I urge you to join with me and the KRCS in opposing this legislation.

ATT. 8
1

Christie Wedeking, CRTT

State of Kansas
Joan Finney, *Governor*

Attach 9

Department of Health and Environment
Azzie Young, Ph.D., *Secretary*

Reply to:

Testimony presented to

Senate Federal and State Affairs Committee

by

The Kansas Department of Health and Environment

Senate Bill 764

The Kansas Department of Health and Environment opposes SB 764, which proposes that employers should be prohibited from refusing to hire an individual because he/she uses lawful products off the premises of the an employer during nonworking hours. It would also prohibit employers from requiring as a condition of employment that employee or applicant abstain from use of lawful products off the premises of the employer during nonworking hours. This bill is essentially a nationwide campaign by the tobacco industry to protect their domestic tobacco market.

As the health consequences of involuntary smoking care costs of tobacco use and the direct cost to employers continue to grow, the trend of the 1980's and into the 1990's has seen an increase in the policies regulating smoking at the workplace for the protection of employees' health. Smoking activities by employees has been shown to increase costs to employers by as much as $5,000 per year per smoking employee. That figure represents higher life and health insurance costs, an increased number of disability retirements, greater absenteeism because of health problems, and more lost productivity, in addition to costs related to property damage, cleaning and ventilation.

A 1990 study of randomly selected Kansas households found that about 1/3 of Kansas adults who work outside the home are protected from environmental smoke by total smoking bans in the workplace. Is it appropriate to respond to business and society's growing intolerance of smoking by barring employers from refusing to hire smokers and by clouding the health care issues of smoking with those of civil rights?

Proponents of the bill pretend that smoking is a privacy issue. It should be noted that it is not the users of the product, most of whom wish they could quit, but the makers of cigarettes who endorse this bill, creating the idea of imaginary wrongs that need righting. The real wrong, of course, is that people get addicted to the tobacco and die. Cigarettes are a deadly substance, that when used as intended kill one out of three of its users. If use of cigarettes did in fact affect only the user, it might not be an

Att. 9

Landon State Office Building • 900 SW Jackson • Topeka, Kansas 66612-1290 • (913) 296-1500

issue of public concern. However, smokers aren't engaging in private activity when they light up. Their habit is affecting others, including those who inhale the Environmental Tobacco Smoke and employers who end up bearing the cost of the habit.

Passage of such a measure would only contribute to the escalating health care costs that we in Kansas are trying to contain. It would seriously undermine the efforts of those state legislators trying to reduce health care costs by, in part, slowing the smoking cessation process. It will eliminate current efforts by employers to improve health and safety and to cut health care costs: Some employers give incentives for employees to stay healthy. This law will pre-empt such efforts. With this law, no employer would dare risk discussing such efforts with employees. Some companies have negotiated lower health care and fire insurance rates because of a low prevalence of smokers. These corporate savings will be lost.

The Department of Health and Environment encourages you to kill this bill and join us in our mission to protect the health of Kansans and help in containing unnecessary health care expenditures.

Testimony presented by: Paula Marmet
Director
Office of Chronic Disease and Health Promotion
March 25, 1992

Att. 9
2