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HOUSE COMMITTEE REPORT

(7)

Date Referred: May 8, 1992

FURTHER REFERRALS:

Date of Committee Action: _____

The JUDICIARY Committee considered:

CSSB 340(JUD)

CS FOR SENATE BILL NO. 340 (JUD)

RIGHT TO USE LAWFUL PRODUCTS

"An Act prohibiting employers from discriminating against individuals who use legal products in a legal manner outside of work."

RECOMMENDATIONS:

be replaced with HCS CSSB 340 (JUD) the same title a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact _____

fiscal note(s) _____

zero fiscal note _____

zero fiscal note(s) Admin (x2) - 3/13/92; 4/23/92
Labor 3/13/92

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Mark Hruska</i>		<i>Terry Martin</i>		✓	
		<i>Robin Kay Powell</i>		✓	
		<i>Debra Wiley</i>		✓	

Debra Wiley

CHAIRMAN'S SIGNATURE

7-LS1588S ✓
Cramer
5/10/92

HOUSE CS FOR CS FOR SENATE BILL NO. 340 ()
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS DUNCAN, Eliason, Jones, Uehling, Rodey, Shultz

A BILL

FOR AN ACT ENTITLED

1 "An Act prohibiting employers from discriminating against individuals who use legal
2 products in a legal manner outside of work."

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. AS 23.10 is amended by adding a new section to read:

5 Sec. 23.10.440. NONDISCRIMINATION FOR LAWFUL USE OF PRODUCTS. (a)
6 An employer may not refuse to hire, discharge, or otherwise discriminate against an individual
7 with respect to compensation, privileges, terms, or conditions of employment because the
8 individual uses a lawful product in a lawful manner during nonworking hours and for the
9 individual's personal consumption when not wearing or carrying clothing or other items that
10 identify the individual as an employee of the employer and when in places other than the work
11 site or the premises or vehicles of the employer.

12 (b) It is not unlawful or an unfair employment practice under this section for an employer

13 to

14 (1) discharge an individual or otherwise disadvantage an individual with respect

1 to compensation, terms, conditions, or privileges of employment if that decision is based on the
2 individual's failure to meet job performance standards;

3 (2) offer, impose, or have in effect a health, disability, or life insurance policy that
4 makes distinctions between employees for the type of coverage or the coverage based upon the
5 employees' use of legal products; if differential premium rates apply,

6 (A) the differential premium rates charged employees must reflect a
7 differential cost to the employer; and

8 (B) the employer shall provide employees with a written statement setting
9 out the differential rates used by the insurance carriers.

10 (c) This section does not apply to a religious corporation, association, educational
11 institution, or society with respect to the employment of individuals who perform work connected
12 with the carrying on, by the religious entity, of its activities.

13 (d) In this section,

14 (1) "employee" means a person employed by an employer;

15 (2) "employer" means a person, including the state and political subdivisions of
16 the state, that employs 10 or more persons in the state.

FOR IMMEDIATE RELEASE
March 23, 1992
Contact: Pete Carran

**STATE SENATE APPROVES EMPLOYEE RIGHTS BILL
SPONSORED BY SENATOR JIM DUNCAN**

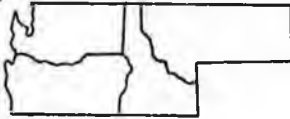
The State Senate today approved legislation sponsored by Senator Jim Duncan of Juneau that strengthens employee rights. Senate Bill 340 forbids Alaskan employers to discriminate based on the use of legal products in a legal manner outside the work place.

"The criteria for hiring, firing, and promotions should be based exclusively on work performance," Senator Duncan said. The use of legal products consumed on their own time in a legal fashion should not be a factor in these decisions. It is a right of privacy issue. Even though our state constitution recognizes privacy as an 'inherent right', I feel it also needs to be spelled out in the appropriate state statute." The bill includes the prohibition in Title 23 of Alaska law that deals with labor and workers' compensation.

Senator Duncan said the legislation is in response to a nationwide trend on the part of some employers to forbid the use of products, such as alcohol and tobacco, outside the work place as a condition of employment. The bill has no effect on employer's ability to establish such policies on the work place during working hours, according to Senator Duncan.

The measure contains language preventing employers from discriminating in this fashion "...with respect to compensation, terms, conditions or privileges of employment."

SB 340 now moves to the State House.



ALASKA
IDAHO
MONTANA
OREGON
WASHINGTON

NORTH PACIFIC UNION CONFERENCE

of Seventh-day Adventists

10225 EAST BURNSIDE
P.O. BOX 18677

PORTLAND, OREGON 97216
(503) 255-7300

RELIGIOUS LIBERTY ASSOCIATION OF THE NORTHWEST

March 27, 1992

SB 340

COMMITTEE ON HEALTH, EDUCATION, AND SOCIAL SERVICES
OF THE ALASKA HOUSE OF REPRESENTATIVES

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- The Hon. Georgianna Lincoln, Co-Chair
- The Hon. Bettye Davis, Vice Chair
- The Hon. Cheri Davis
- The Hon. John C. Gonzales
- The Hon. Mark Hanley
- The Hon. Mary Miller

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OF THE ALASKA HOUSE OF REPRESENTATIVES

- The Hon. David Finkelstein, Chair
- The Hon. Kevin Parnell, Vice Chair
- The Hon. Betty Bruckman
- ✓ The Hon. Dave Donley
- The Hon. Ivan M. Ivan
- The Hon. Robin L. Taylor
- The Hon. James E. Zawacki

COMMITTEE ON THE JUDICIARY
OF THE ALASKA HOUSE OF REPRESENTATIVES

- ✓ The Hon. Dave Donley, Chair
- The Hon. Max F. Gruenberg, Jr., Vice Chair
- The Hon. Johnny Ellis
- The Hon. Kevin Parnell
- The Hon. Mark Hanley
- The Hon. Terry Martin
- The Hon. Mike Miller

Greetings

The Speaker this week assigned CSSB 340 to HESS, L&C, and Judiciary.

CSSB 340 (which passed the Senate Monday, March 23) is the bill by the Hon. Jim Duncan which would prohibit employers from discriminating against individuals who use legal products in a legal manner outside of work.

As I explained to Dale Staley, a member of Senator Duncan's staff, the Religious Liberty Association of the Northwest does not object to the bill's general intent.

However, in its present form the bill poses a significant free-exercise problem to religious organizations.

Representing the Seventh-day Adventist Church, RLANW asks you who will consider this measure in the House to appreciate the fact that we, for obvious reasons, expect our pastors, teachers, and other employees to maintain full-time loyalty to the church's standards regarding the use of tobacco and alcoholic beverages.

CSSB 340 as passed by the Senate would prohibit the church from refusing to hire a person or terminating a worker whose behavior in regard to otherwise lawful products is unacceptable.

Mr. Staley indicated to me he could see the religious liberty issue. I said that I was very sorry we were unable to work with Senator Duncan on the original language. We just did not know about it until one week ago today when I first read the bill here in Portland. To Mr. Staley I added that I hoped Senator Duncan would not object to our offering to the House a friendly amendment which would correct the problem without disturbing the point of his employee privacy act.

When this same issue arose in the Washington State Legislative Assembly a few weeks ago, the question was answered by an amendment providing that the law does not apply to religious or health organizations whose tenets prohibit the use of lawful products. The Washington House amendment also exempts businesses or non-profit organizations whose primary purpose is to prevent heart and lung disease.

Having checked the language of the amendment with Stan Robbins, staff member to the Majority Leader, the Hon. Max F. Gruenberg, Jr., I am pleased to attach it to this letter along with other pertinent documents.

I do request that the committee chairs ask your staff people to help us stay on top of this.

Sincerely



Richard Lee Fenn, President
Religious Liberty Association of the Northwest

xc: The Hon. Jim Duncan, Member of the Senate

SUBSTITUTE SENATE BILL 6266

State of Washington 52nd Legislature 1992 Regular Session

By Senate Committee on Commerce & Labor (originally sponsored by Senators Anderson and McMullen)

Read first time 02/07/92.

This bill came up at the last minute and is currently headed to the floor. I believe our concerns will be cared for, but if you would like to contact a senator you know well, don't hesitate!
Jack B

1 AN ACT Relating to employee privacy; and adding a new section to
2 chapter 49.44 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. Sec. 1. A new section is added to chapter 49.44 RCW
5 to read as follows:

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

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

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

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

10 (3) It is not unlawful or an unfair employment practice under this
11 section for an employer to discharge an individual or otherwise
12 disadvantage an individual with respect to compensation, terms,
13 conditions, or privileges of employment if that decision is based on
14 the individual's failure to meet job performance standards set by the
15 employer.

16 (4) The provisions of subsection (1) of this section shall not be
17 deemed to protect any consumption of lawful products that:

18 (a) Materially threatens an employer's legitimate conflict of
19 interest policy reasonably designed to protect the employer's trade
20 secrets, proprietary information, or other proprietary interests; or

21 (b) Relates to a bona fide occupational requirement and is
22 reasonably and rationally related to the employment activities and
23 responsibilities of a particular employee or a particular group of
24 employees, rather than to all employees of the employer.

25 (5) The court shall award the prevailing party in an action under
26 this section court costs and reasonable attorneys' fees.

27 (6) In addition to other provisions of this title, the remedy for
28 any individual claiming to be aggrieved by a violation of this section
29 is a civil action for damages which includes all wages and benefits
30 deprived the individual by reason of the violation.



**NORTHWEST HEADQUARTERS
OF SEVENTH-DAY ADVENTISTS**

POST OFFICE BOX 16677, 10225 EAST BURNSIDE

• PORTLAND, OREGON 97216

• (503) 255-7300

FEB 18 1992

February 14, 1992

Senator Jeannette Hayner
Senate Majority Leader
311 Legislative Bldg.
Olympia, WA 98501

Dear Jeannette:

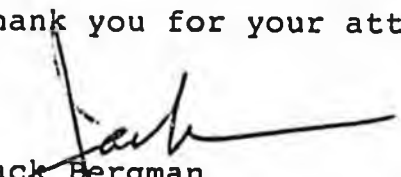
As I explained to you on the phone this morning, my people are concerned about Sub. Senate Bill # 6266 dealing with employee privacy. We have no quarrel with the bill's intent but rather with its lack of recognition that for many religious organizations its restrictions are unacceptable.

Speaking for the Seventh-day Adventist Church in particular, we, for obvious reasons expect that our pastors, teachers, and other employees will conform to the church's standards regarding the use of tobacco and alcoholic beverages--which I presume are the "lawful products" referred to in the bill. Other standards for employment also exist but this particular bill does not appear to speak to them.

Several court cases in recent years have attempted to challenge the right of religious bodies to determine their own standards for employment besides simply competency or job performance, but as far as I am aware none of them were ultimately successful.

We would request that if this bill is to be sent forward that it include a provision exempting religious bodies as far as hiring standards or off-duty actions of employees are concerned.

Thank you for your attention to this matter.


Jack Bergman
Government Relations Representative
for the Seventh-day Adventist Church
for the State of Washington

Home Address and Telephone
148 Highland Park Dr.
College Place, WA 99324
509 522 2053



Washington State Senate

Senator Jeannette Hayner

Senate Majority Leader

Sixteenth District

March 6, 1992

Jack Bergman
Northwest Headquarters of
Seventh-Day Adventists
P.O. Box 16677
Portland, OR 97216

Dear Jack:

Thank you for writing concerning the Seventh-Day Adventists Church's opposition to SSB 6266. It was good to hear from you and I appreciate your letter.

Substitute Senate Bill 6266, and its companion bill Engrossed Substitute House Bill 2274, are measures designed to prohibit employer discrimination for the consumption of lawful products off premises by employees during nonworking hours. Many religious organizations, including the Seventh-Day Adventist Church, were opposed to the measures because there was no clear exemption given to religious groups.

However, an amendment to ESHB 2274 provides that the law is not applicable to religious or health organizations whose tenets prohibit the use of lawful products. The bill also exempts businesses or nonprofit organizations whose primary purpose is to prevent heart and lung disease. It is my understanding that representatives from religious organizations approved the amendment to the bill, and withdrew their opposition.

ESHB 2274 passed the House of Representatives on February 15 and passed the Senate, with my support, on March 6. The bill is awaiting final action by the Governor before being enacted into law.

Thank you for taking an opportunity to contact me. I enjoyed hearing from you.

Sincerely,


JEANNETTE HAYNER
Senate Majority Leader



ALABKA
IDAHQ
MONTANA
OREGON
WABHINGTON

NORTH PACIFIC UNION CONFERENCE

of Seventh-day Adventists

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RELIGIOUS LIBERTY ASSOCIATION OF THE NORTHWEST

March 20, 1992

Suggested additional language for CSSB 340

(d) Nothing in this act precludes a religious or health organization whose tenets prohibit the use of otherwise lawful products or a company or non-profit organization whose primary business purpose is the prevention of heart and lung disease from refusing to employ an individual who uses an otherwise lawful product.

(e) The provisions in (a), (b), (c), and (d) do not apply to businesses of 25 employees or less.

(f) If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not effected.

ALASKA STATE AFL-CIO

2501 Commercial Dr.
Anchorage, Alaska 99501
(907) 258-6284

819 1st Ave.
Fairbanks, Alaska 99701
(907) 456-2030



MANO FREY
Executive President

GARY BROOKS
Secretary / Treasurer

FEBRUARY 11, 1992

TO: MEMBERS OF THE SENATE JUDICIARY COMMITTEE

FROM: PAT SMUTZ, BUSINESS REPRESENTATIVE *Pat*

RE: SENATE BILL 340

The Alaska State AFL-CIO has always supported the right of privacy for individuals. We have always believed that what an individual does on their own time is their own business as long as it doesn't interfere with the rights of others or doesn't present a danger to anyone.

With this in mind the Alaska State AFL-CIO would like to go on record as being in support of Senate Bill 340. Thank you for your consideration.

By Dan Hardie
And-Ride
e Pla

Statement by the AFL-CIO Executive Council

FILE

on

Employee Privacy

February 19, 1991
Bal Harbour, FL

Employers in increasing numbers are seeking to probe--and then to regulate--the most private aspects of their employees' lives away from work. The AFL-CIO opposes these invasions of employee privacy.

Employers continue to interrogate employees about their union sympathies, political beliefs, financial status and other personal matters.

Random drug testing policies applied without any requirement of reasonable suspicion of wrongdoing--which are inconsistent with a basic regard for worker dignity and autonomy--is now endemic in American workplaces.

To shift the blame for rising health care and compensation costs to their employees--and to further their personal agendas--employers are increasingly seeking to regulate workers' off-the-job behavior. These restrictions make use of the employer's economic leverage to prohibit workers from engaging in perfectly lawful activities. Employers go so far as to specify whether employees can smoke at home and what employees can eat or drink at their own dinner tables.

As a matter of course, employers also conduct medical exams and genetic tests to screen out employees thought to be at increased risk of developing a disease in the future. Medical screening reveals the most intimate details of employee health, including those that have no relation to job performance.

Secret employer telephone eavesdropping on employee-customer calls permitted through a little known loophole in the federal wiretap code, is yet another often-used technique that has no place in a free society.

These employer surveillance tactics undermine basic privacy and due process rights. Yet to date, there has been only limited legislative protection for these rights; the polygraph bill and the Americans with Disability Act are the most conspicuous exceptions. The AFL-CIO is committed to enhancing the dignity of working men and women and to preventing intrusions into workers' privacy. We support legislation that would go further than present law to preserve and enhance worker privacy and to outlaw management practices which intrude on these privacy interests.

###



National
Consumers
League
Founded 1899

315 15th Street NW • Suite 928-N • Washington, DC 20005 • (202) 639-8140

Linda F. Golodner, Executive Director

January 15, 1992

Dear Editor:

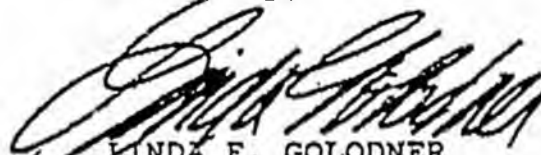
Attached are a news release and report on a special survey commissioned by The National Consumers League on vital issues of workplace privacy in Alaska. The survey is being released in Alaska by the Older Persons Action Group.

The vast majority of those polled in Alaska believe that employers and prospective employers have no business asking applicants and employees about religion, smoking habits, lifestyle, outside hobbies and activities, and other personal, off-the-job factors which have nothing to do with their ability to perform a job. They also believe an employer has no right to force an employee to change diet, stop smoking, or quit a second job. Those polled in Alaska were also opposed to credit checks on job applicants and monitoring of personal telephone calls.

In spite of their opposition to such intrusions on their personal lives, many respondents reported that they or someone they knew had had such an experience.

Because of the importance of this issue and the overwhelming reaction of people in Alaska to the questions we have put to them, we have taken the unusual step of expressing the survey results to you.

Sincerely,



LINDA F. GOLODNER
President

LFG:jb
Attachments

FOR IMMEDIATE RELEASE
January 16, 1992

CONTACT: Linda Golodner
202-639-8140
Vera Gazaway
907-276-1059

WORKPLACE PRIVACY SURVEY

ALASKA FEATURED IN MAJOR PUBLIC OPINION POLL
ON WHAT THE BOSS NEEDS TO KNOW ABOUT EMPLOYEES

WASHINGTON, D.C. ---- People in Alaska value their privacy, on the job and outside the workplace. The vast majority says that the boss has no business asking questions about the private lives, lifestyles, and off-work activities of job applicants and employees. Although most Alaskans believe employers should not ask these questions, many of those polled reported that an employer has done such things either to them or to someone they know.

Alaska was one of four states participating in the survey released today by the National Consumers League and the Older Persons Action Group in Anchorage.

The other states were Arizona, Utah, and Washington.

According to the Penn and Schoen Associates poll for the National Consumers League, Americans clearly believe:

- o Employers have no right to ask intrusive questions during job interviews.
- o It is inappropriate for employers to hire and fire an employee for personal matters unrelated to the job.
- o Employers have no right to try to change personal habits and lifestyles of employees.

Linda F. Golodner, executive director of the National Consumers League, said: "This poll confirms what we have found in many other states - that Americans believe they have a right to privacy on the job and off the job. It also shows that a significant number of employers are not respecting those rights."

In releasing the report, Vera Gazaway, executive director of the Older Persons Action Group, said: "The poll also reveals the vast majority of workers in Alaska are adamantly opposed to attempts by employers to force upon them a company-blessed lifestyle. Those 65 and over who were polled are in agreement with the rest of the state's population. As far as they are concerned, it's none of the boss's business who employees date, how much they eat, whether they smoke, take part in a political demonstration, hold a second job, drive a motorcycle, or have pending workers' compensation claims.

"As far as Alaska senior citizens and the general public are concerned, the ability to perform the job should be the sole criterion for winning and holding a job," she said.

I. NO RIGHT TO ASK

Overwhelmingly, those interviewed in Alaska said a prospective employer has no right to ask the following questions:

- o 88 percent, about an applicant's religion;
- o 87 percent, whether applicant lived with member of opposite sex;
- o 84 percent, if applicant had elderly parents;
- o 82 percent, whether applicant planned to have children;
- o 77 percent, if applicant smoked after work hours;
- o 59 percent, about hobbies and outside activities; and
- o 53 percent, about applicant's marital status.

II. NO JUSTIFICATION FOR HIRING OR FIRING

Those surveyed in Alaska were presented with nine examples of activities that employees may pursue on their own time away from work, their physical condition, and controversial opinions they may hold. Respondents were asked if they thought it was appropriate for the employer to base a decision to hire or fire on these criteria:

- o 98 percent said it was inappropriate for an employer to base hiring or firing on whether an individual dated a person of a different race.
- o 98 percent said whether an individual drives a motorcycle should not be a criterion.
- o 91 percent said participating in political demonstrations should not be a basis for hiring or firing.

- o 91 percent said it was inappropriate for employers to consider whether an employee participates in gambling at a racetrack.
- o 74 percent said holding an unusual second job should not be a consideration for employers.
- o 84 percent said being overweight should not be a consideration in hiring or firing an individual.
- o 95 percent said it was inappropriate to base hiring or firing on an individual's support for abortion.
- o 97 percent said it was inappropriate to base hiring or firing on an individual's opposition to abortion.
- o 94 percent said it was inappropriate to base hiring or firing on whether an individual smoked after work hours.

III. NO RIGHT TO FORCE A CHANGE IN LIFESTYLE

The vast majority of Americans believe that employers have no right to force employees to change their lifestyles.

Here's the level at which survey respondents in Alaska opposed employer rights in the following categories:

- o 77 percent opposed employers monitoring personal telephone conversations.
- o 86 percent opposed a prohibition of employees dating rival firm employees.
- o 81 percent opposed an employer's refusal to hire an overweight person.
- o 78 percent opposed an employer's refusal to hire a smoker.
- o 92 percent opposed an employer's requirement that an employee or job applicant change his or her diet.
- o 85 percent opposed requiring an employee to quit smoking.
- o 68 percent opposed an employer requiring an employee to quit a second job.
- o 67 percent opposed employers performing a credit check on a prospective employee.

IV. PERSONAL EXPERIENCE

The poll also asked Alaskans if they or anyone they knew had ever been asked any of the types of questions they objected to from employers. Sixty percent said they had been asked about their marital status;

- o 45 percent, about outside hobbies and activities;
- o 21 percent, about their religion;
- o 15 percent about whether or not they planned to have children;

- o 15 percent, about whether or not they smoked away from the workplace;
- o 7 percent, whether they had elderly parents; and
- o 6 percent, whether they lived with a non-family member of the opposite sex.

Seventeen percent reported personal experience with monitored personal telephone conversations;

- o 17 percent, credit checks on prospective employees;
- o 15 percent, required to quit a second job;
- o 13 percent, refused to hire an overweight person;
- o 10 percent, refused to hire a smoker;
- o 7 percent, required an employee or applicant to quit smoking;
- o 6 percent, forbid an employee or applicant from dating an employee from a rival firm; and
- o 4 percent, required an employee or applicant to change diet.

Nine percent of those polled indicated they or someone they knew had been denied a job or fired because of a weight problem;

- o 7 percent because of an unusual second job;
- o 7 percent because of participation in a political demonstration;
- o 3 percent for smoking away from the workplace;
- o 4 percent for dating a person of a different race;
- o 2 percent for driving a motorcycle;
- o 2 percent for gambling at a racetrack; and
- o 1 percent for supporting or opposing abortion.

The Penn and Schoen poll, conducted in December 1991 on behalf of the National Consumers League, was based on a random sample of 609 respondents in Alaska. The margin of error in the survey is +/- four percent.

The National Consumers League, founded in 1899, is a private, non-profit consumer advocacy organization concerned with workplace and marketplace issues.



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EXECUTIVE DIRECTOR
C. Ayo Bryan

NBCSL GENERAL ASSEMBLY MEETING DECEMBER 6, 1991 LAS VEGAS, NEVADA

RESOLUTION ON EMPLOYEE PRIVACY

WHEREAS: It has come to the attention of the National Black Caucus of State Legislators that individuals have been fired from their jobs or disadvantaged in other employment and compensation decisions for smoking tobacco products in the privacy of their homes; and

WHEREAS: There is a growing trend in job classification notices published in daily newspapers to stipulate "smokers need not apply" and "nonsmokers only"; and

WHEREAS: Twenty-one state legislatures have enacted legislation protecting employee privacy; and

WHEREAS: The National Black Caucus of State Legislators believes in individual privacy; and

WHEREAS: The National Black Caucus of State Legislators believes that employment decisions should be based solely on an individual's job skills, training and performance

THEREFORE BE IT RESOLVED: The National Black Caucus of State Legislators supports legislation that would make it unlawful for employers to refuse to hire or to discharge any individual, or otherwise disadvantage any individual, with respect to compensation, terms, conditions or privileges of employment because the individual is a smoker or non-smoker; and

The National Black Caucus of State Legislators supports legislation that would make it unlawful for an employer to require as a condition of employment that any employee or applicant for employment abstain from smoking or using tobacco products during nonworking hours, provided the individual complies with applicable laws or policies regulating smoking on the premises of the employer during working hours.

SMOKERS HAVE RIGHTS—JUST ASK THE TOBACCO COMPANIES

Last spring, a Georgia State Senator introduced into committee a "smokers'-rights" bill outlawing discrimination against people who smoke off the job. In the ensuing week, the lieutenant governor's office got a flood of phone calls supporting the law. So many, in fact, that the phone system broke down.

A strong grass-roots response from the good folk of Georgia? Yes, to some extent. But these complaining constituents got a little help from Philip Morris Cos. When Georgia residents called a toll-free hotline, they heard a recorded message lambasting the lieutenant governor—who was against the bill—for interfering with smokers' rights.

PRAIRIE FIRE? The recording then encouraged callers to "stay on the line—we can connect you to his office right now, toll-free." Hence, the flood of calls. A Philip Morris spokesperson says: "We want to make it easier for consumers to voice their concerns."

The Georgia bill was ultimately withdrawn. But 20 other states have passed similar legislation. Antismoking and health groups warn, however, that these laws are not some "prairie wildfire among state legislators," as Walker P. Merryman, vice-president of the Tobacco Institute, describes them. Rather, they represent a campaign by the deep-pocketed tobacco companies

to counter the antismoking movement. Replies Tobacco Institute spokesman Thomas Lauria: "These bills are put through by the ACLU and the AFL-CIO. The tobacco companies simply help smokers'-rights groups that have already formed."

Early this year, a bill that would prohibit companies from refusing to hire smokers or firing people who smoke

law without his signature in July.

The tobacco companies also target big businesses opposed to smokers'-rights bills. Last year, the New York State Legislature passed a broadly worded law that would have prohibited companies from forbidding any legal activity off the job. IBM, Eastman Kodak Co., and other businesses wrote strong letters against the bill, arguing that it would let employees ignore corporate conflict-of-interest policies. Governor Mario M. Cuomo vetoed it.

Now, another version is about to be presented to Cuomo. This time, however, there is no outcry from IBM and Kodak. The reason: Tobacco companies are big buyers of IBM computers and materials for cigarette filters made by Kodak. Rather than risk their accounts, the companies have withdrawn from the debate, say state government officials and sources close to the companies. Neither Kodak nor IBM will comment on their change of heart, saying only they take no position on the bill.

Surveys show that employees are concerned about employers' legislating their lifestyles. Aware of this, says Joseph Marx of the American Cancer Society: "The tobacco companies are trying to elevate smoking to a civil right"—and taking care of business at the same time.

By Wallace Konrad in Atlanta



was introduced in the state legislature of New Jersey. The tobacco industry hired lobbyists to get lawmakers to vote for the bill. Philip Morris also blanketed the state with support-the-bill letters. R. J. Reynolds Tobacco Co. joined in, using videotapes, sample petitions, and slide shows to help smokers start activist groups. Ultimately, the measure passed the legislature, and the governor allowed it to become

**INDIVIDUAL PRIVACY
AND EMPLOYMENT RIGHTS
IN ALASKA**

**A Survey by
Penn + Schoen Associates, Inc.
Conducted for the National Consumers League
January 2, 1992**

INTRODUCTION

Interviews were held in December 1991 with 609 residents of Alaska for the purposes of determining citizens' attitudes toward privacy, their knowledge of employment rights, and the extent to which employers have acted to limit these rights. All respondents were 18 years of age or older. The survey was commissioned by the National Consumers League.

Interviewing was done by telephone from the central telephone facilities of Penn + Schoen Associates at the headquarters in New York City. The margin of error for the entire sample is +/- 4.0%, but is higher for sub-groups.

EXECUTIVE SUMMARY

Summary of Key Finding

Despite the fact that the vast majority of respondents in Alaska believe that employers do not have the right to ask questions about, make job decisions based on, or take actions that infringe upon an individual's right to privacy, up to two out of ten people -- and in some cases more -- report that an employer has done such things to either them or someone they know. This finding supports the notion that while most Alaskans believe in the right of privacy in employment, a significant number of employers are not fully respecting these rights.

Purpose and Format of Study

The purpose of the study is to determine the attitudes and knowledge of the general public concerning individual rights of privacy in employment and measure the extent to which these rights have been limited by employers. Specifically, this survey seeks to assess how the public feels

about certain actions employers might take and questions employers might ask as determinants of prospective or continued employment.

The public was first asked a general question concerning individual privacy in employment. This was followed by three series of questions.

The first set (Section I) were questions prospective employers might ask a job applicant. The second set of questions (Section II) concerned things employees might do and asked whether or not it was appropriate to deny a job to or fire someone for doing these things. The last set of questions (Section III) asked whether or not employers have the right to take certain actions against employees. For each set of questions, people were first asked whether or not employers should have the right to ask these questions or behave in this manner, and secondly, if such a question has ever been asked or such an action has ever been taken against either the respondent personally or someone the respondent knows.

At the end of the questionnaire (Section IV), respondents were asked whether or not businesses in Alaska should be allowed to refuse to hire a person who has a worker compensation claim. In addition, they were asked whether or not they worked outside the home or if they smoked. They were also asked their age, political party affiliation, income, race,

senatorial district, the job title of the head of the household, and whether or not they were registered to vote.

SUMMARY OF FINDINGS

Section I: Questions Posed to Job Applicants

Generally speaking, 69% of Alaskan residents say prospective employers *should not* be allowed to ask questions about the private lives of job applicants. At the same time, two out of three (67%) people report that either they or someone they know has been asked such questions by a potential employer.

As for specific questions, a majority believe employers should not have the right to ask prospective employees about their living arrangements, religion, outside activities, marital status, plans for children, age of parents, or smoking behavior.

Residents of the Northwestern district, Hispanics, and women are all more likely to believe that employers should not have the right to ask these specific questions. On the other hand, people 65 and over,

executives, high-level professionals, former smokers, and men are more likely to think employers should have this right.

Occasional smokers, people aged 25 to 34, those earning between \$20,000 and \$31,000, African-Americans, and Hispanics are more likely to report that either they or someone they know has been asked some of these specific questions.

These findings are reported in detail in Section I, beginning on page nine.

Section II: Employee Behavior Outside of Work

The public was then asked whether or not they thought it is appropriate for employers to deny a job to or fire someone for specific activities. At least 91% say it is inappropriate for employers to deny a job to someone or fire an employee for dating a person of a different race, driving a motorcycle, participating in political demonstrations, gambling at a racetrack, supporting or opposing abortion, or smoking away from the workplace. More than four out of five (84%) think it is not appropriate to deny a job to someone or fire an employee for being overweight, and 74% say it is inappropriate to deny a job or fire someone who holds an unusual second job.

At the same time, almost two out of ten people (19%) report that an employer has denied a job to or fired either them or someone they know for one of these reasons.

High-level professionals and semi/unskilled laborers are more likely to feel it is appropriate for employers to deny someone a job or fire them for some of these behaviors. Executives, high-level professionals, salespeople, former smokers, people aged 35 to 49, Republicans, Hispanics, and African-Americans are all more likely to report that either they or someone they know has been denied a job or fired for exhibiting one of these behaviors.

These findings are explained in detail in Section II, beginning on page seventeen.

Section III: Actions Taken by Employers

People also were asked whether they believe employers have the right to take certain actions concerning an individual's privacy. At least three out of four (77%) say employers do not have the right to monitor personal telephone conversations, forbid an employee from dating someone from a rival firm, refuse to hire someone who is overweight or a smoker, or require an employee to quit smoking or change diets. More than two out of

three people (67%) say employers do not have the right to require an employee to quit a second job or to do a credit check on a prospective employee. People aged 50 to 64 are far more likely than any other subgroup to say that employers *do* have the right to take such actions.

In spite of these opinions, more than one out of three respondents (37%) reports that an employer has taken at least one of these actions against either the respondent or someone the respondent knows. Former smokers, Republicans, residents of the Central district, people aged 50 to 64, high-level professionals, salespeople, and Hispanics are all more likely to report these things occurring.

These findings are explored in detail in Section III, beginning on page twenty-two.

Section IV: Worker Compensation Claim

Nearly three out of four respondents (73%) oppose allowing businesses in Alaska to refuse to hire a person who has a worker compensation claim, while 17% favor allowing them to do so.

This finding is examined in Section IV on page twenty-seven.

Section I: Questions Posed to Job Applicants

"Should prospective employers be allowed to ask questions about the private lives of job applicants?"

	<u>Should (%)</u>	<u>Should not (%)</u>	<u>Don't Know (%)</u>
<u>ALL</u>	23	69	8
<u>AGE</u>			
18-24	22	73	6
25-34	18	73	9
35-49	23	70	7
50-64	28	58	14
65 +	39	55	5
<u>PARTY</u>			
Democrat	15	79	6
Independent	20	72	8
Republican	33	57	10
<u>INCOME</u>			
< \$20,000	19	69	12
\$20-\$30,999	16	79	5
\$31-\$40,999	22	69	9
\$41-\$50,999	25	66	9
\$51,000 +	27	65	8
<u>OCCUPATION</u>			
High-level prof.	31	65	4
Mid-level prof.	18	71	11
Executive	35	61	4
Sales	20	75	5
Other white collar	15	81	4
Skilled labor	22	71	6
Semi/unskilled	14	69	17
Retired	31	62	7
<u>RACE</u>			
White	24	68	8
African-American	33	67	0
Hispanic	11	75	14

Respondents were asked whether prospective employers should be allowed to ask questions about the private lives of job applicants. More than two-thirds (69%) say they should not be allowed to probe the private lives of job applicants, while 23% say they should and 8% are undecided. At the same time, however, two-thirds of the people (67%) report that a potential employer has asked either them or someone they know one or more of these personal questions.

Those age 65 and over (39%), executives (35%), Republicans (33%), blacks (33%), retirees (31%), and high-level professionals (31%) are groups more likely to say employers should be allowed to ask about the private lives of job applicants.

Among those who are most likely to say employers should not be allowed to ask about job applicants' private lives are white collar workers other than professionals or salespeople (81%), Democrats (79%), those in the \$20,000-\$30,999 income bracket (79%), regular smokers (76%), Hispanics (75%), and salespeople (75%).

Those most likely to say that an employer has asked either them or someone they know at least one of these questions include occasional smokers (77%), blacks (74%), Hispanics (74%), those aged 25 to 34 (73%) and those earning between \$20,000 and \$31,000 (73%).

Respondents were read a series of questions prospective employers might ask a job applicant. For each, they were asked whether employers should or should not have the right to ask that question, and whether or not they or someone they know has ever been asked that question.

**SHOULD PROSPECTIVE EMPLOYERS HAVE THE
RIGHT TO ASK JOB APPLICANTS CERTAIN QUESTIONS
ABOUT THEIR PRIVATE LIVES?**

All Respondents

Ranked by "Should Not"

All numbers expressed as percentages

	<u>Should</u>	<u>Should Not</u>	<u>Don't Know</u>
About applicants' religion	12	68	0
Live with member of opposite sex	13	87	0
If applicants have elderly parents	15	84	1
Whether they plan to have children	17	82	1
If they smoke after work hours	21	77	2
About hobbies and activities	38	59	3
About applicants' marital status	46	53	0

"Has a potential employer ever asked you or someone you know...?"

	<u>Yes (%)</u>	<u>No (%)</u>
About your marital status	60	40
About your outside hobbies and activities	45	55
About your religion	21	79
Whether you plan to have children	15	85
If you smoke away from the workplace	15	85
Whether you have elderly parents	7	93
Whether you live with a non-family member of the opposite sex	6	94

NONE OF THESE	33	67

"Asking whether the job applicant lives with a non-family member of the opposite sex."

o Eighty-seven percent (87%) say employers should not have the right to ask this question and 13% say they should. Those over 65 (21%) are more likely to say that employers should have the right to ask this question, while blacks (94%), Hispanics (94%), people from the Northwestern district (94%), and those making between \$20,000 and \$31,000 (94%) are more likely to say that employers should not have the right to ask.

- o Six percent (6%) of respondents report that either they or someone they know has been asked this question. Hispanics (20%) and people in sales (15%) are more likely to say either they or someone they know has been asked this question.

"Asking whether the job applicant has elderly parents."

- o 84% say employers should not be allowed to ask this question; 15% say they should. Those age 65 and over (28%), retirees (26%), and blacks (26%) are more likely than other groups to believe employers have the right to ask this question, while Hispanics (100%) and people from the Northwestern district (93%) more often believe employers do not have the right.

- o Seven percent (7%) say either they or someone they know has been asked this question. Retirees (13%), those over 50 (11%), and salespeople (15%) are more likely to report this occurring.

"Asking the job applicant about their religion."

- o 88% say employers should not be allowed to ask job applicants this question. 12% say they should. Retirees (25%) and those age 65 and over (22%) are more likely to say they have the right to ask. African-Americans (25%) are more likely than whites (11%) to say employers have the right to ask about a job applicant's religion.

- o One out of five respondents (21%) say that either they or someone they know has been asked about their religion by a potential employer. This figure is generally consistent across all sub-groups.

"Asking the job applicant about whether they plan to have children."

- o More than four out of five people (82%) say employers should not be allowed to ask this question, while 17% say they should. Executives (32%), high-level professionals (26%), semi/unskilled workers (25%), and people 18-24 (24%) are more likely than others to think employers have the right to ask whether job applicants plan to have children, while retirees (91%) and those from the Northwestern district (89%) are more likely to feel they do not.

- o Almost one out of six respondents (15%) report that either they or someone they know has been asked whether they plan to have children. Executives (28%) and Hispanics (26%) are more likely to report this occurring.

"Asking the job applicant if they smoke after work hours, at home, or otherwise away from the workplace."

- o 77% say employers should not be allowed to ask job applicants this question, while 21% say they should. Executives (34%), high-level professionals (30%), and former smokers (28%) are more likely to say

employers have the right to ask if a job applicant smokes after work hours, while regular (91%) or occasional (87%) smokers, Hispanics (89%), and residents of the Northwestern district (89%) are more likely to believe that employers do not have this right.

- o Almost one out of six respondents (15%) report that either they or someone they know has been asked if they smoke away from the workplace. Executives (22%), salespeople (22%), those earning between \$20,000 and \$31,000 (21%), and people aged 25-34 (20%) are more likely to say that either they or someone they know has been asked this question.

"Asking the job applicant about their off-the-job hobbies and activities."

- o Almost three out of five (59%) say employers should not be allowed to ask this question; 38% say they should be allowed to ask it. Among the groups most likely to say employers should not be allowed to ask about hobbies and activities outside of the job are retirees (78%), residents of the Northwestern district, those over 65 (71%), mid-level professionals (69%), and Hispanics (66%). Conversely, those most likely to feel employers should be allowed to ask this question include executives (60%), Republicans (49%), high-level professionals (48%), those earning over \$51,000 (46%), and former smokers (45%). Men (44%) are more likely than women (32%) to believe that employers should be able to ask this question.

o Nearly half the respondents (45%) say that either they or someone they know has been asked about their off-the-job hobbies or activities by a potential employer. Executives (60%), high-level professionals (50%), and people aged 25-49 (51%) are most likely to report this occurring.

"Asking the job applicants about their marital status."

o While 53% say employers should not be allowed to ask about a job applicant's marital status, 46% say they should be allowed to ask about it. Residents of the Northwestern district (70%), semi/unskilled workers (65%), salespeople (63%), and other white collar workers (61%) are more likely to feel employers should not be allowed to ask about marital status. Executives (60%), people aged 50 to 64 (58%), and residents of the Southeastern district (55%) are groups which tend to feel employers should be allowed to ask this question. A majority of men (52%) think employers should be able to ask this, but a majority of women (59%) think they should not.

o The majority of people (60%) say that either they or someone they know has been asked their marital status. This figure is generally consistent across all sub-groups.

In summary, only one out of three respondents (33%) said that neither they nor anyone they know has ever been asked any of the

preceding questions by an employer, while two out of three (67%) said the opposite. This occurred despite the fact that the majority of people indicate that employers *should not* have the right to ask such questions.

Section II: Employee Behavior Outside of Work

**WHETHER IT IS APPROPRIATE FOR AN EMPLOYER
TO DENY SOMEONE A JOB OR FIRE AN EMPLOYEE
FOR DOING CERTAIN THINGS**

All Respondents

Ranked by "Not Appropriate"

All numbers expressed as percentages

	<u>Appopr.</u>	<u>Not Appopr.</u>	<u>Don't Know</u>
Dates a person of a different race	1	98	0
Drives a motorcycle	2	98	0
Opposes abortion	2	97	1
Supports abortion	4	95	1
Smokes after work hours	5	94	1
Gambles at a racetrack	7	91	2
Participates in political demonstrations	7	91	3
Is overweight	12	84	4
Holds an unusual second job	16	74	10

"Have you, or has someone you know, ever been denied a job or fired because they ...?"

	<u>Yes (%)</u>	<u>No (%)</u>
Were overweight	9	91
Held an unusual second job	7	93
Participated in political demonstrations	7	93
Dated a person of a different race	4	96
Smoked away from the workplace	3	97
Drove a motorcycle	2	98
Gambled at a racetrack	2	98
Supported abortion	1	99
Opposed abortion	1	99

NONE OF THESE	81	19

Respondents then were read a list of things employees might do. For each, they were asked whether or not they think it is appropriate to deny someone a job or fire a person because they behaved in this way, and whether or not they or someone they know has ever been denied a job or fired because of such behavior.

o Ninety-eight percent (98%) say it is inappropriate to deny a job to or fire someone because they are dating a person of a different race; only 1%

think it is appropriate. Four percent (4%) of people, however, report that either they or someone they know has been denied a job or fired for such a reason.

- o Ninety-eight percent (98%) say it is inappropriate to deny a job to or fire someone who drives a motorcycle; only 2% think it is appropriate. One respondent out of fifty (2%) says that either he or someone he knows has been denied a job or fired because of this behavior.

- o Ninety-one percent (91%) think it is inappropriate to deny a job to or fire someone for participating in political demonstrations, while 7% think it is appropriate. Executives (13%), semi/unskilled workers (13%), retirees (13%), and occasional smokers (13%) are more inclined to feel it is appropriate. One person out of fourteen (7%) reports that either they or someone they know has been denied a job or fired because they participated in a political demonstration. High-level professionals (13%) and people aged 35-49 (11%) are more likely to mention such an occurrence.

- o Ninety-one percent (91%) say it is inappropriate to deny a job to or fire someone for gambling at a racetrack, while 7% say it is appropriate. Two percent (2%) of people say that either they or someone they know has been denied a job or fired because of this practice.

o While 74% say it is inappropriate to deny a job to or fire someone for holding an unusual second job, 16% think it is appropriate. Seven percent (7%) of respondents report that either they or someone they know has been denied a job or fired because they had an unusual second job. Executives (17%) and those earning between \$41,000 and \$51,000 (11%) are more likely to report such an occurrence.

o Eighty-four percent (84%) think it is inappropriate to deny a job to or fire someone who is overweight, while 12% say it is appropriate. Republicans (22%) and high-level professionals (22%) are more likely to believe it is appropriate. One person in eleven (9%) says that either he or she or someone he or she knows has been denied a job or fired because the person was overweight.

o Ninety-five percent (95%) think it is inappropriate to deny a job to or fire someone who supported abortion, while 4% say it is appropriate. Ninety-seven percent (97%) say it is inappropriate to deny a job to or fire someone who opposed abortion. Only 2% say it is appropriate. Only 1% of people say either they or someone they know has been denied a job or fired because of their views on abortion.

o Ninety-four percent (94%) think it is inappropriate to deny a job to or fire someone who smoked after work hours, at home, or otherwise away from the workplace, while 5% say it is appropriate. Former smokers (12%),

high-level professionals (10%), and semi/unskilled workers (10%) more often think it is appropriate. Three percent (3%) of respondents say that either they or someone they know has been denied a job or fired because they smoked away from the workplace.

In summary, almost one-fifth of people (19%) report that either they or someone they know has been denied a job or fired because of the behaviors outlined above. Executives (29%), high-level professionals (23%), salespeople (23%), former smokers (28%), people aged 35 to 49 (23%), Republicans (23%), Hispanics (42%), and African-Americans (24%) are all more likely to report that either they or someone they know has been denied a job or fired for exhibiting one of these behaviors. This occurred despite the fact that the vast majority of people think it is inappropriate to deny someone a job or fire a person because they behaved in any of these ways.

Section III: Actions Taken by Employers

WHETHER EMPLOYERS HAVE THE
RIGHT TO DO CERTAIN THINGS

All Respondents

Ranked by "Don't Have Right" All numbers expressed as percentages

	<u>Have right</u>	<u>Don't Have Right</u>	<u>Don't Know</u>
Require employee to change diet	5	92	3
Forbid dating employee of rival firm	9	86	4
Require employee to quit smoking	12	85	3
Refuse to hire an overweight person	14	81	5
Refuse to hire a smoker	19	78	4
Monitor personal phone calls	20	77	3
Require employee to quit second job	24	68	8
Check credit on prospective employee	29	67	4

"Has an employer ever done any of the following to you
or to someone you know...?"

	<u>Yes (%)</u>	<u>No (%)</u>
Monitor personal telephone conversations	17	83
Do a credit check on a prospective employee	17	83
Require employee or applicant to quit second job	15	85
Refuse to hire an overweight person	13	87
Refuse to hire a smoker	10	90
Require employee or applicant to quit smoking	7	93
Forbid employee or applicant from dating an employee from a rival firm	6	94
Require employee or applicant to change diet	4	96
----- NONE OF THESE	63	37

Respondents were read a list of actions employers might take. For each one, they were asked whether or not employers have the right to take such an action, and whether or not such an action has ever been taken against either the respondent or someone the respondent knows.

o Seventy-seven percent (77%) believe employers do not have the right to monitor personal telephone conversations, but one out of five (20%) say they do have the right. Hispanics (35%), those earning between \$41,000

and \$51,000 (31%). semi/unskilled workers (30%), and people aged 50 to 64 (29%) are more inclined than other groups to feel employers have the right to monitor personal telephone calls. One in six respondents (17%) report that an employer has monitored either their or someone they know's personal telephone conversations. High-level professionals (26%) are the most likely to indicate this.

o Eighty-six percent (86%) say employers do not have the right to forbid an employee or job applicant from dating an employee from a rival firm, and 9% say they do have this right. People aged 50 to 64 (23%) are more likely than other groups to say employers have this right. Six percent (6%) of respondents report that an employer has forbidden either them or someone they know from dating an employee from rival firm.

o Eighty-one percent (81%) say employers do not have the right to refuse to hire an overweight person; 14% say they do have the right. One out of eight respondents (13%) says that an employer has refused to hire either the respondent or someone he or she knows because that person was overweight.

o Seventy-eight percent (78%) think employers do not have the right to refuse to hire a smoker, whereas 19% say they do have the right to refuse to hire a smoker. Among those more inclined to say employers have the right to refuse to hire a smoker are people aged 50 to 64 year (29%),

retirees (27%), and those earning over \$51,000 (27%). Ten percent (10%) of people say that an employer has refused to hire either them or someone they know because the person was a smoker. Former smokers (14%) are the most likely to report this occurring.

o Ninety-two percent (92%) say employers do not have the right to require an employee or job applicant to change his or her diet, while 5% think they do have the right. Four percent (4%) of people say that an employer has required either them or someone they know to change their diet.

o While 85% say employers do not have the right to require an employee or job applicant to quit smoking, 12% think they do have the right. Republicans (19%), 50-64 year olds (19%), high-level professionals, and former smokers (19%) are more likely than other groups to feel employers have the right to require an employee to quit smoking. One out of fourteen respondents (7%) reports that an employer has required either the respondent or someone the respondent knows to quit smoking. Former smokers (12%) are the most likely to report this happening.

o Although 68% think employers do not have the right to require an employee or job applicant to quit a second job almost one out of four Alaskans (24%) say they do have this right. High-level professionals (34%) and people aged 50 to 64 (32%) are most likely to feel employers have this right. Fifteen percent (15%) of people report that an employer has

required either them or someone they know to quit a second job.

Salespeople (27%), executives (24%), high-level professionals (22%), and people 35 to 49 (22%) are more likely to mention this occurring.

o Two out of three respondents (67%) say employers do not have the right to do a credit check on a prospective employee, but 29% say they do have the right. Executives (41%) and people over 50 (41%) are more likely to say employers have the right to do a credit check. One in six respondents (17%) reports that an employer has done a credit check on either the respondent or someone that the respondent knows.

In summary, more than one-third of all respondents (37%) indicate that at least one of the above situations has happened to either them or someone that they know. Former smokers (46%), Republicans (44%), residents of the Central district (43%), people aged 50 to 64 (41%), high-level professionals (41%), salespeople (41%), and Hispanics (63%) are all more likely to report these things occurring. This occurred despite the fact that *at least two-thirds* (67%) of the respondents say that employers do not have the right to take such actions.

Section IV: Worker Compensation Claim

Almost three out of four respondents (73%) oppose allowing businesses in Alaska to refuse to hire a person who has a worker compensation claim, while 17% favor allowing them to do so. Those earning under \$31,000 (86%) and regular smokers (84%) are most opposed to this proposal, while executives (35%) are most in favor.

[Tell us what you think]



Does a company have the right to control your life-style?

BONNIE COOK WAS A hospital attendant in Rhode Island with an excellent job record. When she tried to get a job at a hospital where she had previously worked, however, she found the door closed. Because Cook weighed 315 pounds, her former employers believed that their worker's compensation costs might rise if they rehired her. "If you lose weight, you'll be considered," she was told. After trying and failing to drop below 300 pounds, Cook filed suit, now pending in federal court.

Cook's supporters see her as the target of a dangerous trend—the desire of companies to control employees' behavior both on and off the job, through hiring and employment practices. "This is an example of Big Brother at work," says Steven Brown, the executive director of the Rhode Island American Civil Liberties Union (ACLU), which is handling Cook's suit. "They are essentially telling Bonnie Cook that they can control her life simply because twenty or thirty years from now she might cost the state a little money."

With the aim of lowering skyrocketing

health costs or promoting a "healthier workplace," a number of companies have instituted policies to penalize certain workers. Turner Broadcasting System, for instance, simply won't hire smokers. The Best Lock Corporation in Indianapolis prohibits employees from drinking alcoholic beverages even during their off-hours. At U-Haul International, Inc., workers who smoke or are underweight or overweight pay about \$120 for annual health insurance. Some companies, according to the ACLU, even bar employees from high-risk activities such as riding motorcycles.

Such policies are increasingly under challenge: Twenty states have passed laws limiting the rights of companies to impose life-style requirements on workers. But Fred H. ... president of the Society of Professional Benefit Administrators, maintains that companies' policies are instituted for legitimate reasons. "An employee benefit plan should be viewed as a contract between employer and employee," he says. "If the employee is paying her own medical costs, then she can behave any way she wants. If not, then she is taking something of value, and should be expected to behave respon-

sibly and help minimize costs."

At U-Haul, corporate executives feared they wouldn't be able to provide health care for any employees unless they took action to control health costs. The company's decision to make selected employees pay was a logical extension of standard policy in homeowners or auto insurance, says Public Information Manager Melora Foley. "If you have a smoke detector or fire extinguisher, you get a rebate. In our company, if you don't smoke or you're not overweight or underweight, you don't have to pay."

Opponents of such policies feel they set a dangerous precedent. "The premise of insurance is a pooled risk. Once you start pulling out groups, it undermines the purpose," says Sally E. Smith, executive director, National Association to Advance Fair Acceptance. "If today it's fat people and smokers, who will it be tomorrow?"

Adds John Rosenthal, an ACLU spokesperson: "Almost any personal choice can have health insurance implications. If employers balance their books by invading our lives, virtually every aspect of our personal lives will be subjected to their control."

Tell us what you think.

1. Do employers have the right to make life-style demands (such as forbidding smoking) when workers are on the job?

Yes No I don't know

2. Do employers have the right to make life-style demands of workers during their off-hours?

Yes No I don't know

3. If you answered yes to number two, which demands do you think employers have the right to make?

- Staying within weight guidelines
- No smoking at any time
- No drinking at any time
- No hazardous sports

4. Do employers have the right to use economic incentives to encourage healthy practices, such as charging overweight workers more for health insurance?

Yes No I don't know

5. Which of the following would you be willing to do in order to keep your current job? (Check as many as you want, even if you're not, say, a smoker.)

- Quit smoking
- Lose or gain weight
- Refrain from drinking any alcohol
- Not participate in risky sports
- None of the above

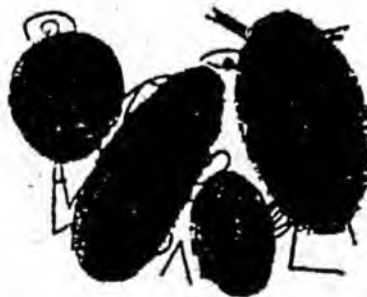
6. If your company wanted you to make one of those changes and you weren't willing, what would you do?

- Quit
- Ignore the ruling and hope I wouldn't get caught
- Lodge a formal protest
- I don't know

Please feel free to comment on any of these questions in the space provided. Make yours self heard. To ensure that your answers reach us in time, please mail them within the next two weeks to: "Tell Us What You Think," Glamour, 350 Madison Ave., New York, NY 10017. OR FAX IT: (212) 880-6922.

[this is what you thought]

OVER 90 PER- cent of the respon- dents to our Novem- ber survey think that company should not be al- lowed to prohibit its employees from engaging in certain types of behavior, such as drinking, smoking and playing risky sports, during their off-hours. Almost half of the respondents said that they would not change their behavior to keep their jobs, and 72 percent feel that employers don't have the right to charge "unhealthy" workers more for health insurance. For more details of the survey, read on.



Do companies have the right to dictate off-hours behavior?

93 percent say no

HAVE THE RIGHT TO MAKE?

30% say staying within weight guidelines

"I've struggled with my weight and know I have more energy when I'm eating properly and exercising regularly. A healthier person makes a better worker."

34% say no drinking at any time

"What people do during off-hours can affect the quality of their work. My co-worker's drinking problem has an impact on everyone in the office."

16% say no smoking at any time

"If you smoke, you're going to get sick. With odds like that, all employers should demand their employees quit."

3% say no hazardous sports

"I don't need my company telling me what's wrong with my personal habits."

"At my former company, the smoking at work policy applied to employees and spouses. Who are they to tell us what we can and can't do in our own home?"

18% say refrain from drinking any alcohol

"I don't drink because of company policy. I haven't felt this good in years!"

15% say quit smoking

"I've been trying to stop smoking for months. If my employer gave me an ultimatum, it would be just the thing I need."

11% say not participate in risky sports

"I don't see why people feel the need to Bungee jump off bridges. Especially if it means higher insurance rates."

10% say lose or gain weight

"If my company wanted me to maintain certain weight for better health, I'd do it. But if it was because of my looks, that would be discrimination."

1. DO EMPLOYERS HAVE THE RIGHT TO MAKE LIFE-STYLE DEMANDS (SUCH AS FORBIDDING SMOKING) WHEN WORKERS ARE ON THE JOB?

85% say yes

"I'm a sales rep for a computer company, and part of what we sell is an image. It's my company's right to make sure I project that image when I go out in the field."

33% say no

"Not allowing smoking in the office is one thing, but there should be designated areas for those of us who still wish to exercise our right to free choice!"

2% say they don't know

2. DO EMPLOYERS HAVE THE RIGHT TO MAKE LIFE-STYLE DEMANDS OF WORKERS DURING THEIR OFF-HOURS?

93% say no

"Unless my life-style negatively affects my ability to perform on the job, it's none of my company's business what I do."

"I work to support my life. I don't live to support work."

4% say yes

"A company has the right to demand legal and noncontroversial behavior from its employees."

3% say they don't know

4. DO EMPLOYERS HAVE THE RIGHT TO USE ECONOMIC INCENTIVES TO ENCOURAGE HEALTHY PRACTICES, SUCH AS CHARGING OVERWEIGHT WORKERS MORE FOR HEALTH INSURANCE?

72% say no

"I suffer from an inactive thyroid gland and can't help that I'm a few pounds overweight. I watch my cholesterol and fat intake. Why should I have to pay extra for health insurance?"

18% say yes

"I'd rather my employer offer incentives to encourage healthy practices than not offer insurance benefits at all."

10% say they don't know

5. WHICH OF THE FOLLOWING WOULD YOU BE WILLING TO DO IN ORDER TO KEEP YOUR CURRENT JOB?

48% say none of

the choices listed below

6. IF YOUR COMPANY WANTED YOU TO MAKE ONE OF THOSE CHANGES AND YOU WEREN'T WILLING, WHAT WOULD YOU DO?

55% say lodge a formal protest

"It's a short hop from 'Don't smoke a home' to 'Who are you sleeping with?' to 'Don't have more than three kids.'"

16% say ignore the ruling and hope they don't get caught

"I'd like to think that I'd protest, but really fear losing my job."

12% say quit

"I'd quit and move to Europe where, as far as I know, they're not as strict on normalizing and controlling."

17% say they don't know

Please turn the page for this month's survey—How much do you want to know about politicians' private lives?

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Nose out

For once, the tobacco lobby is right

American tobacco firms routinely bombard the public with transparently bogus or self-serving rhetoric.

Listening to the industry line, you'd think that there's still some doubt smoking causes cancer, that tobacco firms are disinterested guardians of the First Amendment and that smokers have made rational, fully informed decisions to take up their addictive and life-shortening habit.

But there is one instance where the tobacco industry has a legitimate point. The move by some firms to ban all smoking by all employees — not just at work, but off the job, too — is an illegitimate intrusion on workers' privacy.

Some 6,000 firms refuse to hire smokers, according to The New York Times. A case from Indiana drew national attention earlier this year when a woman was fired because a random drug test showed she'd been smoking cigarettes at home.

Smoking isn't the only unhealthy habit that gets workers in trouble with nosy employers. Best Lock Corporation of Indianapolis bars its workers from drinking alcohol — any time, anywhere. The city of Athens, Ga., even went so far as to reject job applicants with high cholesterol levels.

How do employers rationalize trying to run their workers' private lives? The best answer they can give is that bad habits like smoking or drinking can drive up their health insurance bills.

When that's the case, firms have good reason to charge those workers higher insurance premiums. But they don't have any grounds to tell employees how to live their lives outside of working hours.

In the workplace, only one question should matter: How well do workers do their jobs? As long as what employees do on their own time doesn't affect their job performance, it's none of their employers' business.