

**SB**

**69**

FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. SB 69

Revision Date: \_\_\_\_\_  
Title: 'An Act prohibiting employers from discriminating against individuals who use legal products in a legal manner outside of work.'  
Sponsor: Senators Taylor, Duncan  
Requestor: Sen. L&C

Department Affected: Administration  
BRU: Personnel/OEEO  
Component: Personnel/OEEO  
COMPONENT SERIAL NO. 56

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING:

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year (FY93) impact: None

ANALYSIS: (Attach a separate page if necessary.)

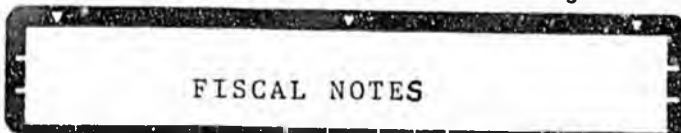
Prepared by: R. H. King, Director  
Division: Personnel/OEEO

Phone: 465-4430  
Date: \_\_\_\_\_

Approved by Commissioner: Nancy Bear Usera  
Agency: Administration

Date: 1/29/93

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# FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO : SB 69

Revision Date: \_\_\_\_\_  
 Title: "An Act prohibiting employers from  
discriminating against individuals ..."  
 Sponsor: Senators Taylor, et.al.  
 Requestor: Senate Labor & Commerce

Department Affected: Labor  
 BRU: Labor Standards & Safety  
 Component: Wage & Hour  
 COMPONENT SERIAL NO. 345

**EXPENDITURES/REVENUES:** (Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL						
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REVENUE FUND SOURCE:						
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**FUNDING:** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipt						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: \$ None

**ANALYSIS:** (Attach a separate page if necessary)

Prepared by: Donald Study, CSP, Director Phone: 465-6003  
 Division: Labor Standards & Safety Date: 2/1/93  
 Approved by Commissioner: Charles W. Matten  
 Agency: Department of Labor Date: 2/1/93

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February 1, 1993

The Honorable Tim Kelly  
Chair, Labor & Commerce Committee  
Alaska State Senate  
State Capitol, Room 101  
Juneau, AK 99801-1182

Dear Senator Kelly:

On behalf of the Alaska Civil Liberties Union (AkCLU), an affiliate of the American Civil Liberties Union (ACLU), I am writing to urge you to support SB 69. This bill is designed to prohibit employers from discriminating against employees based on their use of lawful products during non-working hours and away from the employer's premises. This is a civil liberties and privacy issue of vital concern to the AkCLU and one which the ACLU has strongly supported nationwide.

Employers have the right and the responsibility to be concerned about every employee's job performance, and to take action if that performance is not up to company standards. But an employee's private life is none of his or her employer's business unless it affects their performance.

Unfortunately, many employers today have forgotten this basic rule. These companies refuse to hire people because they smoke or drink at home, because they are overweight, or because they scuba dive or ride motorcycles on their days off. Some of these employers even fire employees who were hired before the policies were adopted.

While a few companies are doing this for paternalistic reasons, most are doing it in an effort to reduce their health care costs. This

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is unquestionably a legitimate corporate goal. But consider the implications of a rule that permits employers to regulate private behavior unrelated to job performance simply because it affects the employee's health. Virtually everything we do affects our health. The list of private choices that may increase health care costs is almost endless: alcohol, tobacco, red meat, fried food, coffee, not getting enough sleep or exercise, even lying on the beach on vacation creates a risk of skin cancer.

The decision with the greatest impact on our employer's health care costs is the decision to have children. If health alone is adequate reason for a company to control private behavior, virtually every aspect of our private lives will be subject to our employer's control.

Even if such interference represented a solution to our nation's health care problems, the civil liberties costs would be too high. But it does not. While the amount of money employers would save by forcing us all to give up our bad habits is unclear, even those who support such corporate programs admit that these habits are not at the core of the problem of increasing health care costs.

We are also concerned about the techniques which employers will be forced to use to enforce such policies. Will all employees be required to submit urine samples for analysis? Will Pinkertons be hired to watch employees while they are away from work? Will employees be encouraged to turn each other in?

As Americans, proud of our heritage of individualism, we cannot accept employers getting into the business of policing private conduct.

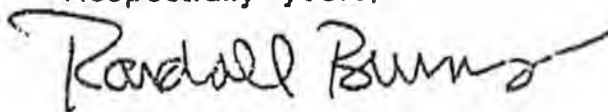
We also appreciate the concerns of the health organizations. The government should not be in the business of encouraging people to hurt themselves. Government has the right, and the obligation, to educate its citizens about the dangers of tobacco and alcohol, and to help those who want to quit. But permitting employers to use the power of the paycheck to coerce those who do not want to quit is wrong.

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Twenty-three states have already acted to protect their citizens' private lives from employer control. The large majority of these statutes are tobacco specific. This limitation is most unfortunate. While off-duty smokers are among the many groups entitled to protection, what is needed are laws that protect everyone's right to conduct their private life free from employer interference. By passing SB 69, Alaska will be setting an example for the rest of the nation.

If you or your staff would like to discuss this issue in more detail, please feel free to contact our office in Anchorage. In addition, the ACLU has a "National Task Force on Civil Liberties in the Workplace," located in New York City. You may contact the task force director, Lewis L. Maltby, at 212-944-9800 (ext. 402).

Respectfully yours,

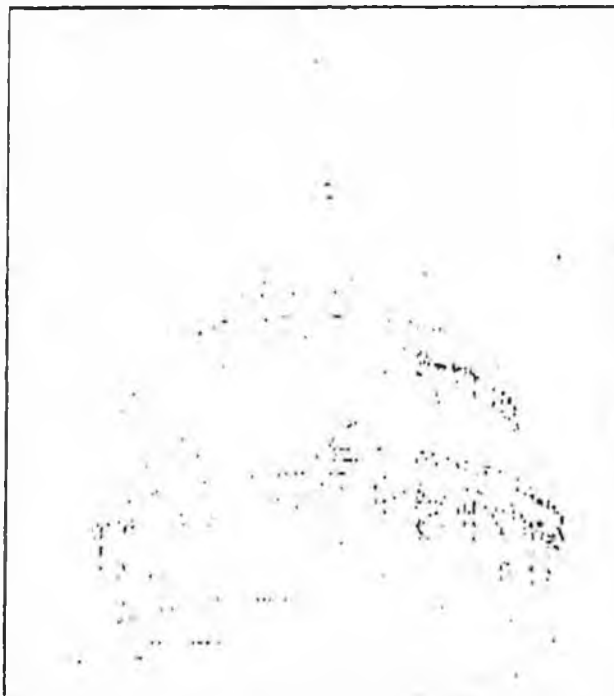


Randall P. Burns  
Executive Director

Attachment

sb69pp-2193

LEGISLATIVE  
BRIEFING  
SERIES



LIFESTYLE DISCRIMINATION

- INTRODUCTION
- QUESTIONS AND ANSWERS
- CURRENT LEGAL STATUS
- MODEL BILL
- LOBBYING STRATEGIES
- SUPPORTING ORGANIZATIONS
- BIBLIOGRAPHY

# INTRODUCTION TO LIFESTYLE DISCRIMINATION IN THE WORKPLACE

*In 1989, Daniel Winn, an employee at the Best Lock Corporation in Indiana, admitted to his superiors that several years earlier he had a few drinks in a bar with friends. Mr. Winn was promptly fired on the basis of Best Lock's policy that its employees cannot drink alcohol under any circumstances.*

*Two officials at the Ford Motor Box Co. in Wabash, Ind. pulled Janice Bone aside and escorted her from the plant. Bone is a smoker, and although she did not smoke on the job, Ford's policy barred her from smoking at all. "I was very shocked. It's devastating when this happens to you", said Bone.<sup>1</sup>*

*In Michigan, Donna O'Leary, a bus driver, was unable during a physical exam to run in place for seven minutes. O'Leary, who weighs over 368 pounds was simply terminated after 26 years employment.<sup>2</sup>*

Americans have long accepted that employers have a certain degree of control over what we do while at the workplace. But increasing numbers of employers are dangerously broadening the sphere of their control to include what employees do in their own homes. Many employers now refuse to hire people whose private lives are deemed "unhealthy". A few even fire current employees who don't change their lifestyle to meet new company demands. The most common victims of this type of discrimination are smokers and fat people.<sup>3</sup> According to a 1988 survey taken by the Administrative Management Society, 6% of all employers (about 6,000 companies) now discriminate against off-duty smokers. The number has almost certainly increased since then. It is more difficult to estimate the number of companies which discriminate against fat people, since this is seldom an official corporate policy. However, anecdotal evidence collected by the National Association for Advancement of Fat Acceptance (NAAFA) suggests that discrimination against fat people is even more common. Other employers refuse to hire people who drink alcohol, have high cholesterol levels, or ride motorcycles.

The driving force behind this trend is economics. Health care costs for employers are increasing by at least 15% per year,<sup>4</sup> almost 3 times as fast as inflation. Although several factors contribute to these rising costs, the only factor employers have control over is their employees. With such an incentive, employers may well try to dominate every

<sup>1</sup> *Private Lives becoming employers' business* Philadelphia Inquirer, March 31, 1991.

<sup>2</sup> Schlarb, John, *Employment Discrimination Based on Employee Lifestyle*, A.C.L.U. Document Book #P13 (1991)

<sup>3</sup> This is the area fat people have chosen to describe themselves.

<sup>4</sup> *Health, A New Look at Workers' Health: Well-Designed Programs Yield Pay from Health Care Cost*, Bus. Ins. February 18, 1991

health-related aspect of their employees' lives, including diet, exercise and sleep habits — and without protective legislation they will succeed.

The early Americans adopted the Bill of Rights to limit the government's involvement in their lives and modern Americans demonstrate the same unwillingness to tolerate intrusion whether by government or by employer. According to a 1990 poll by the National Consumers League,<sup>5</sup> 81% of Americans believe that an employer has no right to refuse to hire an overweight person. 76% believe employers have no right to refuse to hire a smoker. 73% believe employers have no right to require an employee or applicant to change their diet.

Recognizing that refusing to hire people for reasons unrelated to job performance is unfair and often prevents the company from hiring the best qualified person, some employers have adopted a different strategy. Employees who have lifestyles the employer considers unhealthy are required to pay more for their company health insurance. Some employers say they are charging unhealthy employees a premium over their "normal" rate, some say they are giving healthy employees a discount. Either way, one employee is paying more for their health care than another.

This may not be wrong in principle, but such programs should be based on sound actuarial data. The company should be able to demonstrate that the behavior in question increases employer health care costs by a measurable amount. While such relationships may exist, the data currently available does not demonstrate it clearly. For example, the Bureau of National Affairs reports that 95% of companies banning smoking reported no financial savings,<sup>6</sup> and the U.S. Chamber of Commerce has found no connection between smoking and absenteeism.

The methods used to enforce these policies raise independent civil liberties issues. Most employers currently take an employee's word that they are not violating the rules for off-duty behavior. As discrimination grows more common, however, it will become more difficult to simply avoid companies with whose policies one doesn't comply. People will take jobs, not reveal their lifestyle, and hope the employer doesn't find out. When this occurs, employers will have to hire spies to follow people away from work and/or require frequent universal medical testing (such as urinalysis) in order to enforce the policy.

<sup>5</sup> See A.C.L.U. Document Book #74.

<sup>6</sup> Bureau of National Affairs, *What They're Doing: Problems, Policies Concerning Smoking in the Workplace*, 2nd ed. 1987.

# QUESTIONS AND ANSWERS: LIFESTYLE DISCRIMINATION

## WHICH COMPANIES PRACTICE LIFESTYLE DISCRIMINATION?

There is no comprehensive list of companies which practice lifestyle discrimination. A few examples of employers who discriminate include:

- ▶ Cardinal Industries refuses to hire smokers stating it "only hires non-smokers and gives every applicant a urine test and promises to fire those who say they have quit, but don't."
- ▶ U-Haul International charges its smoking employees an extra \$130 per year for health insurance.
- ▶ Pointe Resorts, which operates 3 hotels in Phoenix, pays 40% more of the insurance costs of employees with a normal weight than of those who are overweight.
- ▶ In 1990, the city government of Athens, Georgia initiated a health screening for prospective city workers. Applicants whose cholesterol level was in the worst 25% of national ranges were simply ineligible for any position.

## SHOULDN'T EMPLOYERS BE ABLE TO KEEP THEIR COSTS DOWN BY HIRING EMPLOYEES WHO WON'T GENERATE HIGH MEDICAL BILLS?

It is unfair and dangerous to allow employers to discriminate against certain employees because they believe their private lifestyle choices are unhealthy and lead to higher health insurance costs. To begin with, it is unclear that employers can achieve significant savings through lifestyle discrimination. Also, if it becomes acceptable to deny employment because of potentially higher health care costs, people who are capable of working will be effectively banned from any employment, preventing them from providing for themselves or their dependents. Finally, even if employers could achieve substantial savings, sacrificing the private lives of all working Americans is too high a price to pay.

## WHY SHOULDN'T EMPLOYERS BE ABLE TO RESTRICT THEIR EMPLOYEES' HIGH-RISK BEHAVIOR?

Risks are associated with nearly every personal lifestyle choice we make — from smoking cigarettes, to sitting in the sun, to having children. Where do we draw the line as to what our employer can regulate? The real issue here is the individual right to lead our lives as we choose. It is important that we preserve the distinction between company time and the sanctity of our private lives.

**ISN'T IT WRONG TO ENCOURAGE PEOPLE TO SMOKE WITH PROTECTIVE LEGISLATION?**

The government has the obligation to insure that people understand the health risks of smoking. Government and employers ought to help people who want to quit smoking. Ultimately, however, it is up to the individual to decide if they want to engage in risky behavior such as smoking or riding a motorcycle. What is wrong is using the power of the government or the paycheck to tell other people how to live.

**ISN'T THIS CREATING A RIGHT TO SMOKE?**

No. The A.C.L.U. does not oppose smoking bans in public buildings, in the workplace, or in other locations where non-smokers may be subjected to sidestream smoke. We object only to bans on smoking (or beer or junk food) in a person's own home.

**ISN'T LIFESTYLE DISCRIMINATION LEGISLATION JUST A TOOL OF TOBACCO COMPANIES?**

No. Lifestyle discrimination legislation is supported by a variety of civil rights and labor organizations and by the majority of Americans.

# CURRENT LEGAL STATUS OF LIFESTYLE DISCRIMINATION

## Federal Law

At the federal level, civil rights laws barring discrimination on the basis of race, gender or disability may apply to lifestyle discrimination.

## Race and Gender

There is demographic data showing that blacks and young women smoke in disproportionately large numbers. It is possible that this disproportion is large enough to constitute disparate impact under Title VII of The Civil Rights Act of 1964, which prohibits discrimination in the workplace on the basis of race and gender.

## Disability

The new Americans with Disabilities Act (ADA) prohibits employment discrimination against people with "any physical or mental impairment that substantially limits one or more of an individual's major life activities" and also people who are "regarded as having such an impairment."

While the ADA does not take effect until July of 1992, employees of federal agencies and federal contractors already have this protection under section 504 of the Federal Rehabilitation Act of 1973.

While there is not yet case law on point, it can be argued that certain forms of lifestyle discrimination are illegal under ADA. The critical issue is whether the individual's limitation (real or perceived) is serious enough to qualify as a "disability".

## State Law

Most states have statutes parallel to the Federal Rehabilitation Act of 1973, which cover both public and private sector employees. There have already been state court decisions holding that under these statutes fit people are protected from discrimination. For example, the New York Court of Appeals held that Xerox Corp. violated the New York Human Rights Law by denying Catherine McDermott a job because of her obesity. The Court rejected the company's claim that it had a right to deny employment because of the likely future health costs her condition would create for the company. The Court said that "employment may not be denied because of any actual or perceived undesirable effect the person's employment may have on disability or life insurance programs."<sup>7</sup>

Even the best state disability laws, however, provide no protection for lifestyle choices that are recreational rather than medical.

To correct the shortcomings of current law, twenty-one states have passed lifestyle discrimination statutes. The majority of these protect only smokers, but a few are broader. Colorado and North Dakota ban discrimination based on any form of legal off-duty behavior.

<sup>7</sup> Schlosser, *supra*, note 20

## A complete list of state lifestyle discrimination statutes:

### Enacted Privacy Legislation 1989 - 1991

STATE	LANGUAGE	BILL NUMBER	ENACTED
Virginia	Smokers Only	S607	March 27, 1989
Oregon	Smokers Only	S986	July 28, 1989
Tennessee	Smokers Only	H2516	March 29, 1990
Kantucky	Smokers Only	H628	April 9, 1990
Colorado	Legal Activities	H1123	April 17, 1990
S. Carolina	Smokers Only	S981	June 25, 1990
Rhode Island	Smokers Only	H8768	July 12, 1990
S. Dakota	Smokers Only	SB102	March 1, 1991
New Mexico	Smokers Only	S132	April 4, 1991
North Dakota	Legal Activities	SB2498	April 5, 1991
Mississippi	Smokers Only	SB2172	April 16, 1991
Indiana	Smokers Only	H1439	May 4, 1991
Oklahoma	Smokers Only	HB1590	May 8, 1991
New Hampshire	Smokers Only	S171	June 10, 1991
Nevada	Legal Products	AB667	June 14, 1991
Maine	Smokers Only	LD1696	June 18, 1991
Connecticut	Smokers Only	H7211	June 25, 1991
Arizona	Smokers Only	SB1153	June 25, 1991
New Jersey	Smokers Only	A4699	July 15, 1991
Louisiana	Smokers Only	HB499	July 19, 1991
Illinois	Legal Products	HB1533	January 1, 1992

New York & Michigan have pending legislation.

#### Government Employees

Government employees are protected by equal protection and due process clauses of the federal constitution.

There are comparable clauses in many state constitutions.

These constitutional provisions should protect public employees from discrimination based on non-job related criteria. Perhaps for this reason, lifestyle discrimination by public employers is rare.

The city of North Miami, however, recently adopted an ordinance barring smokers from any municipal employment. The Florida A.C.L.U. has challenged this policy in court,<sup>8</sup> and the result will shed much light upon the extent to which public employees are already protected.

<sup>8</sup> *Kouts v. City of North Miami, Florida Bar No. 4440006 (filed January 1991)*

# MODEL ACT

## 1. Prohibited Practices

1.1 It shall be illegal for an employer to discriminate against any employee or applicant on the basis of that person's conduct during non-working hours away from the employer's premises or on the basis of personal characteristics unless that conduct or characteristic affects the person's ability to properly fulfill the responsibilities of the position in question.

1.2 No employer shall collect information about the off-duty behavior or personal characteristics of employees or applicants which would not be a legitimate basis for personnel decisions under section 1.1.

## 2. Exceptions

2.1 Nothing in sections 1.1 and 1.2 shall be construed to make it illegal for an employer to:

2.2 Maintain a bona fide conflict of interest policy. This section applies only to current employees and does not affect the law of this state regarding restrictive covenants for former employees.

2.3 Refuse to employ a person whose off-duty conduct, while not incompatible with the requirements of the position, is incompatible with the fundamental objectives of the organization.

## 3. Enforcement

3.1 Any person who has been aggrieved by a violation of this act shall have a private right of civil action in any court of competent jurisdiction in this state.

3.2 In any such civil action the plaintiff shall have the burden of proving that he or she was qualified for the position in question. The defendant shall then have the burden of producing a basis for its decision which is consistent with this statute. The plaintiff then has the burden of proving by a preponderance of the evidence that the actual reason for the decision was off-duty behavior or a personal characteristic. The defendant then has the burden of proving that this behavior or characteristic is job related.

## 4. Remedies

4.1 A prevailing plaintiff in a civil action under this act is entitled to:

4.2 Injunctive relief.

4.3 An award of damages equal to the harm caused by the violation (both economic and non-economic) or \$1,000, whichever is greater.

4.4 Full costs of action plus reasonable attorney's fees.

## 5. Waiver

5.1 The rights and procedures provided by this Act may not be waived by contract or otherwise, unless such waiver is part of a written settlement agreed to and signed by the parties to the pending action or complaint under this Act.

# COMMENTS ON DRAFTING A LIFESTYLE DISCRIMINATION STATUTE

*The crucial choice in drafting a statute is deciding how broad the protection should be. There are four basic alternatives:*

## 1. Prohibit Discrimination Based on Off-Duty Smoking

This is the most limited form of protection. While it protects one of the largest groups of victims, it leaves many unprotected. It also lends credence to the charge that the legislation is about smoking rather than autonomy and privacy. Its only real benefit is that its impact is limited and clearly defined. This can reduce, or even eliminate, opposition from organized business.

## 2. Prohibit Discrimination Based on Off-Duty Use of All Legal Substances

This formulation expands the coverage to off-duty drinking and, possibly, people with high cholesterol or other conditions related to diet.

## 3. Prohibit Discrimination Based on Any Legal Off-Duty Behavior

This is the broadest coverage that has yet been obtained. It clearly protects all dietary lifestyle choices and also choices of hobbies (skiing, motorcycles, etc.). It also prohibits discrimination based on sexual orientation in the 25 states that have repealed their sodomy laws.

The pragmatic problem with this approach is that it is so sweeping that its exact impact is hard to determine in advance. This uncertainty increases opposition from organized business. While we have addressed all the legitimate concerns they have raised (see "exceptions"), there is concern that not all the legitimate concerns have yet been identified.

## 4. Prohibit Discrimination Based on Anything Not Related to Job Performance

This is the ideal way to write the statute. It not only prevents discrimination based on off-duty conduct, but prevents discrimination based on personal characteristics unrelated to job performance. All fat people are clearly protected under this approach. So are short people, the physically unattractive, and others who are often discriminated against, but whose condition is not serious enough to be classified as a "disability".

*The second question is the position you want to take on illegal off-duty behavior.*

The ideal position is that the employer's legitimate interest is limited to behavior that is related to job performance, and that even illegal off-duty behavior that does not affect a person's fitness for duty should not be grounds for discrimination.

This position is probably politically untenable at the present time, especially where illegal drugs are involved. We may have to limit our bills to legal off-duty behavior, even in our initial proposal.

Assuming you choose general coverage option 3 or 4 above, there are a series of proposed exceptions from the business community to consider. Each of these purports to

be a situation where a certain form of off-duty behavior is legal, but the employer has a legitimate reason for prohibiting it. These include:

1. **Conflict of Interest:** This is straightforward, and we have included it in the model.
2. **Anti-nepotism Policies:** Having relatives working together can create conflict. Many companies, however, have found ways to manage this without discriminating against relatives of employees. This is a judgment call. Our model does not include this exception.
3. **Conduct Incompatible with Organizational Goals:** The American Lung Association believes it should have the right to refuse to hire smokers. The model incorporates language which would allow this practice. It can be argued that this exception should be limited to high level employees.
4. **Surcharges:** Even when they support legislation banning lifestyle discrimination in hiring, organized business will lobby vigorously for the right to charge "unhealthy" employees more for company health insurance. (See introduction).

There is no compelling civil liberties argument against this in principle. It is not, however, a practice we want to encourage, and is not included in our model.

The best position may be to remain neutral in principle, but insist on two conditions if a surcharge authorization is included in legislation:

1. Any difference in employee contributions must be supported by sound actuarial data on employer costs.
2. No surcharge may have a disparate impact on a group which is protected from job discrimination under federal or state law.

# LOBBYING STRATEGIES

The political landscape is much different for lifestyle discrimination legislation than for other workplace rights bills.

We do not have strong opposition from organized business. The U.S. Chamber of Commerce has taken the position that it is wrong for an employer to refuse to hire (or fire) someone because of off-duty conduct unrelated to job performance. At least one state chamber (New Jersey) has actually supported lifestyle discrimination legislation.

In most states, disagreements over statutory drafting (especially damages) and a general reluctance to support legislation that restricts business led the chamber to remain neutral or offer lukewarm opposition. Seldom, however, have we encountered the strident opposition that has frustrated our efforts on other issues.

The real opposition comes from anti-smoking groups. This includes both national groups like the American Lung Association and local voluntary organizations. Although they are loath to admit it, these people are prohibitionists. They believe that smoking is so harmful that it should not be a matter of personal choice but should be stamped out by any available means. They are not very articulate or candid, but they have a great asset in public antipathy toward smoking, and they know how to play to it.

Critical to this issue, as usual, is organized labor. The AFL-CIO and the Communications Workers of America (CWA) have generally supported lifestyle legislation. We have also had support from police and firefighters unions (those most likely to be victims). Another likely ally is the Carpenters and Joiners union. Their President, Sigurd Lucassen, has been labor's spokesman against outright bans on workplace smoking.

This is a relatively new issue, however, and one cannot assume that all labor leaders are familiar with it or will automatically make it a priority. As with any emerging issue, support for lifestyle discrimination laws must be developed.

Other progressive groups, including religious organizations, should support this legislation, but have generally not yet been asked.

## PRESENTING THE ISSUE

It is always true that the way an issue is framed influences, and often determines, the response. That is especially true here. Opponents will claim that the issue is smoking, even if the bill covers all legal off-duty behavior. The public's tendency to think in the concrete rather than the abstract, the fact that smokers are among the most common victims, and the fact that tobacco companies support the legislation, all work in our opponents' favor. If they succeed in casting the issue this way, we will surely lose.

The real issue here is privacy—the right of all adults to live as they choose in their own homes. The public strongly supports this value. They are not inclined to view the issue this way, and you will have to repeat our position ad nauseum. But experience has shown that with enough repetition, the public will understand the real issue. Once this happens, we will be successful.

### Do's and Don'ts

#### *Labor Law- not Civil Rights*

Some states have attempted to create lifestyle legislation by amending their state civil rights act. This lends credence to the charge that we are trying to turn smoking (or drinking) into a civil right. It also offends some people in the civil rights community.

It is vastly better to place this protection in the state labor law. It is also more correct; the law's purpose is to modify the legal relationship of employers and employees.

### Health Economics

There is in fact a great deal of uncertainty over the health care cost implication of various lifestyle choices. Even where a given behavior clearly causes a measurable increase in health care costs, it is not necessarily true that these costs will be paid by employers.

Health care economics, however, is not the issue. The issue is privacy. Any discussion of economics plays into the hands of those who would mislead the public by mis-stating the issue.

### Spokespeople

Since the issue is not smoking, drinking, or hang gliding, but privacy, the spokespeople for the issue should be those who care about this principle rather than the specific behavior.

# SUPPORTING ORGANIZATIONS

Here are some of the organizations which support lifestyle discrimination legislation. The addresses and phone numbers listed are for national offices, but you can use these contacts to reach the appropriate state and local offices.

AFL-CIO  
815 Sixteenth Street, N.W.  
Washington, D.C. 20006  
(202) 637-5000

Communications Workers of America  
501 3rd Street, N.W.  
Washington, D.C.  
(202) 434-1300

Fraternal Order of Police  
2100 Gardiner Lane  
Louisville, Kentucky 40205  
(502) 451-2700

National Association for Advancement of Fat Acceptance (NAAFA)  
P.O. Box 180620  
Sacramento, California 95818  
(916) 443-0303

Philip Morris U.S.A.  
120 Park Avenue  
New York, N.Y. 10017  
(212) 880-4131

Smokers' Rights Alliance  
20 East Main Street  
Suite 710  
Mesa, Arizona 85201  
(602) 461-8882

United Brotherhood of Carpenters and Joiners of America  
101 Constitution Avenue, NW  
Washington, DC 20001  
(202) 546-6206

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Produced by the ACLU National Task Force on Civil Liberties in the Workplace



The ACLU is a District 65, UAW AFL-CIO Shop

# Alaska State Legislature

Senate Majority Leader  
Chair, Judiciary Committee  
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Regional Affairs

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Committee on Committees  
Western States Legislative Forestry Task Force  
Legislative Council



*Senator Robin L. Taylor*

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## SPONSOR STATEMENT - SB 69

Senate Labor and Commerce Committee  
February 2, 1993

First of all, I would like to thank Senator Kelly and the committee for hearing this legislation in such a timely manner.

SB69 is entitled "an Act prohibiting employers from discriminating against individuals who use legal products in a legal manner outside of work". A more accurate title would call it the workers' right to privacy act.

The right to privacy goes to the very heart of the Constitution of the State of Alaska. SB69 would strengthen that Constitutional guarantee by prohibiting employers from refusing to hire, discharge or otherwise discriminate against an individual because that individual uses a lawful product in a lawful manner during non-working hours.

The results of a survey conducted in December of 1991 show Alaskans have a growing concern about employer intrusion into their private lives. Nationally, the New York Times has reported that 6,000 firms refuse to hire smokers and that in some instances individuals have been fired when random drug testing revealed they had used tobacco at home. Some corporations bar employees from using alcohol off the job.

91% of the people surveyed in Alaska said they thought it is inappropriate for employers to deny a job to someone or fire someone based on conduct away from the workplace. At the same time, nearly 20% of those surveyed in Alaska report that an employer has denied a job or fired either them or someone they know for non-job-related activities.

Quoting an editorial from the Anchorage Daily News "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."

SPONSOR STATEMENT

Sponsor Statement - SB69  
Senate Labor and Commerce Committee  
February 2, 1993

SB69 **does not** impose restrictions on employers from discharging or penalizing an employee for failure to meet job performance standards. It **does not** limit an employers ability to pass on any differential premium rates based on an employees use of legal products and it **does not** apply to the employees of a religious corporation, educational institution, or society who perform work connected with such an entity's activities.

Mr. Chairman, I ask for the support of this committee for Senate Bill 69.

Thank you.

Gerald E. Grilly  
Publisher



Howard Weaver  
Editor

Michael Carey, Editorial Page Editor

Patrick Dougherty, Managing Editor

Katherine Fanning, Editor and Publisher: 1971 to 1983

Lawrence Fanning, Editor and Publisher: 1967 to 1971

Founded in 1946 by Norman C. Brown

## 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.

DAILY NEW'S EDITORIAL



# THE NATIONAL BLACK CAUCUS OF STATE LEGISLATORS

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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.

NATIONAL BLACK CAUCUS OF STATE  
LEGISLATURES:  
RESOLUTION ON EMPLOYEE PRIVACY

## 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 Hilaria 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

# 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 Unifair International, Inc., workers who smoke or are underweight or overweight pay about \$100 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

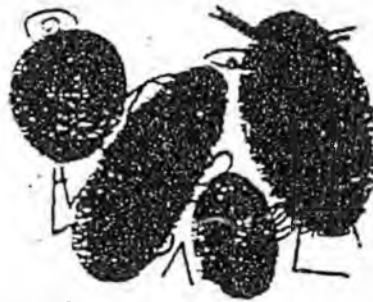
5. Which of the following would you be willing to do in order to keep your current job? (Check as many as you want, even if you're not, say, a smoker.)  
 Quit smoking  
 Lose or gain weight  
 Refrain from drinking any alcohol  
 Not participate in risky sports  
 None of the above

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 yourself 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, 250 Madison Ave., New York, NY 10017. OR FAX IT: (212) 880-6922.

# [this is what you thought]

**OVER 90 PER-** cent of the respondents to our November survey think that company should not be allowed 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

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

65% 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

### 3. IF YOU ANSWERED YES TO NUMBER TWO, WHICH DEMANDS DO YOU THINK EMPLOYERS

#### 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."

18% 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."

5% say 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?

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?

43% say none of

the choices listed below

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

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

10% 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 a certain weight for better health, I'd do it. But if it was because of my looks, that would be discrimination."

### 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 at 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 I 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 stuck on moralizing and controlling."

17% say they don't know

Please turn the page for this month's survey—how much do you want to know?



National  
Consumers  
League  
Founded 1897

115 15th Street NW • Suite 928-N • Washington, DC 20005 • (202) 679-8140

Linda F. Golodner, Executive Director

January 15, 1992

Dear Editor:

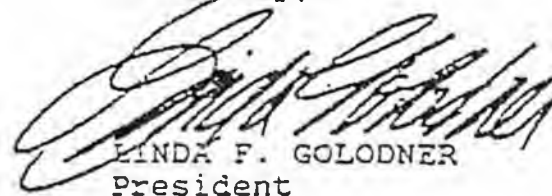
Attached are a news release and report on a special survey commissioned by The National Consumers League on vital issues of workplace privacy in Alaska. The survey is being released in Alaska by the Older Persons Action Group.

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

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NATIONAL CONSUMERS LEAGUE REPORT

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.