

House Votes Protection To Smokers

Md. Bill to Ban Bias Causes Uproar

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ANNAPOLIS, March 27—The Maryland House of Delegates voted today to add another group to the list of those who need special protection from discrimination: smokers.

The House voted 74 to 52—just three votes more than the needed majority—for a bill that would prohibit employers from firing or refusing to hire a person who smokes when not on the job. Supporters said that refusal to hire smokers is the latest form of discrimination, while opponents argued that it was an affront to afford to smokers the same protections granted to women, minorities and others who have endured discrimination for generations.

"It trivializes classes of people that we have given statutory rights to [to] protect themselves against discrimination on the basis" of race, religion and sex, said Del. Gilbert J. Genn (D-Montgomery). "If you vote for this bill, you're going to be giving that right to a smoker, to sue that employer on the basis of discrimination."

House Environmental Matters Committee Chairman John Arnick (D-Baltimore County), whose committee approved the bill, saw it another way. "In this day and age, we're saying that you can be discriminated against [for doing something] in the privacy of your home that is totally legal," he said.

Chances are good that the bill will become law because the Senate last week passed a similar measure on a 35-to-10 vote.

The legislation was written by lobbyist Bruce C. Bereano, who represents The Tobacco Institute, and supporters say the main target is the Montgomery County Department of Fire and Rescue Services, which last year decided to require that newly hired firefighters agree not to smoke on or off the job.

That is a condition that is being added to some job descriptions nationally, especially for firefighters and police. Numerous local jurisdictions have refused to hire smokers for public safety jobs—the Fairfax County Fire Department is one example—and Massachusetts last year became the first state to prohibit new police officers and firefighters from smoking on or off the job.

But there apparently is a backlash in some jurisdictions. Virginia earlier this year passed a bill prohibiting state and local governments from requiring employees—with the exception of firefighters, police officers and emergency services personnel—to be nonsmokers.

Maryland's law would be much broader than that, including private as well as public employers and

making all jobs subject to the law. It would not allow an employer to fire or refuse to hire a person, or to "otherwise discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment" because the person is a smoker.

Some critics cited the far-reaching nature of the proposal as the reason for their opposition to the bill. "If you have two employees and you promote one, and you promote the one that doesn't smoke, there's a good chance you're going to get sued—now that's not right," said Del. Robert Flanagan (R-Howard/Montgomery).

Critics said the bill might even provide greater protection to smokers than minorities and women have because it covers all employers, while the state Human Relations Commission has jurisdiction only

over those with 15 employees or more. Smokers who felt discriminated against would go directly to court with their complaints.

But on the side of the bill were organized labor and the American Civil Liberties Union, among others, who argued that employers had no right to say what an employee could do in their free time. "We're greatly concerned about what [requirement] could come next," said Norman Conway, president of the Montgomery County Career Firefighters Association.

But Leslie D. Adams, head of administrative services for the Montgomery Department of Fire and Rescue Services, said the requirement was part of a plan to upgrade the fitness of firefighters and that studies have shown firefighters who are smokers are less adept at the physical duties required.

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