

STATELINE

THE TOBACCO INSTITUTE
STATE ACTIVITIES DIVISION

SPECIAL
REPORT

December 31, 1990

STATE AND LOCAL

ANTI-DISCRIMINATION AND DISCRIMINATORY EMPLOYMENT PROPOSALS

This Special Report compiles both discriminatory and anti-discriminatory employment legislation and policies that have been considered at the state and local levels. This report updates and replaces the Special Report of June 27, 1990.

During 1990, thirty-seven anti-discrimination bills were considered on the state level, including one state-wide personnel policy and a proposal in the District of Columbia. Locally, three "pro-smoker" ordinances were considered.

As for bills that discriminate against smokers, no new legislation was introduced this year on the state level. On the local level, only five new anti-smoker proposals were considered this year.

Anti-Discrimination Employment Proposals

Since the last update of this report, the New Jersey legislature adopted an anti-discrimination bill. The Governor has until the end of January, 1991 to act on the measure; he has already made known his intention to veto it. In West Virginia, the Division of Personnel issued a new policy that restricts smoking in the workplace, but recognizes the rights of employees to smoke outside the workplace.

And, while considering a broad smoking restriction and sampling limitation ordinance, the District of Columbia considered an amendment to prohibit discrimination based on whether an employee is a smoker or nonsmoker. The amendment was approved in committee but was later removed by the full Council.

State Enactments

To date, anti-discrimination measures have been enacted in eight states:

Colorado
Delaware
Kentucky
Oregon

Rhode Island
South Carolina
Tennessee
Virginia

TIOK 0024846

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During 1990, five states adopted legislation, while another two Governors vetoed legislation. Only one bill, the companion bill to the New Jersey bill still on the Governor's desk, will carry over to 1991.

South Carolina adopted two anti-discrimination bills this year. The first prohibits employers from testing for tobacco use as a job requirement. The second provides that "the use of tobacco products must not be the basis of personnel action, including, but not limited to employment, termination, demotion, or promotion of an employee."

Also down south, **Kentucky** made it unlawful to fail or refuse to hire, or discharge any individual or otherwise discriminate in employment because the individual is a smoker or nonsmoker. In **Tennessee**, the law says no employee shall be discharged or terminated solely for participating or engaging in the use of a non-alcoholic "agricultural product" as long as the employee complies with applicable employer policies regarding use during working hours.

The new **Colorado** law prohibits employers from terminating employment due to a worker engaging in any lawful activity during nonworking hours. The bill would exempt situations where the restriction is a bona fide occupational requirement, would cause a conflict of interest, or is related to employment activities and responsibilities.

And in **Rhode Island**, the new law prohibits discrimination against smokers in hiring and employment practices. Exempt are those employers whose primary purpose is to discourage the use of tobacco products by the general public.

New York's Governor Cuomo vetoed a measure which would make it illegal to discriminate against a person because he or she engages in legal activities during non-working hours. In early June, the **Florida** legislature adopted an employment discrimination bill that would have prohibited basing any personnel action involving firing, promotion, reassignment, compensation or other disciplinary action on an employee's use of tobacco products. Governor Martinez vetoed the bill, however.

Local Look

Locally, the **Kansas City, MO**, City Council enacted legislation to protect employees from discrimination on the basis of employee's engaging in lawful activities outside of employment. However, the ordinance was considered "too broad" by some groups in the community and a referendum petition was initiated. If enough signatures are raised, the issue will force the City Council to repeal the protested sections of the ordinance or place them on the ballot for the voters to decide. This issue will continue to be considered in 1991.

In neighboring **St. Louis, MO**, the City Council continues its consideration of an ordinance to restrict smoking in city buildings. Both anti-discrimination and discriminatory hiring provisions have been discussed as possible amendments. The ordinance was removed from the informal calendar and returned to the Public Health Committee on December 14.

And in **Boston, MA**, an anti-discrimination proposal was discussed in a proposed substitute to a workplace smoking restriction ordinance. The City Council defeated the entire proposal.

Discriminatory Employment Proposals

As mentioned, there have been no state level bills introduced this year pertaining to discriminatory hiring practices. The lone carryover bill, **Kansas H2404**, received no action this year and died upon legislative adjournment.

On the local level, three proposals were adopted; two in the state of Florida, where a 1989 state law prohibits hiring tobacco users as firefighters. In **North Miami**, a regulation was approved a policy rejecting applicants for city jobs if they have used tobacco products in the previous year. In **Kissimmee**, a new policy prohibits the hiring of smokers to the police department. The third policy adopted in **Hampton, VA**, requires all firemen hired after May 1990 not smoke on or off the job.

Proposals pending in **Kent, OH**, that would prohibit the city from hiring police officers and firefighters who smoke; and in **Cheyenne, WY**, where the Fire Department Civil Service Commission has under consideration a proposal to prohibit new firefighters from smoking on or off the job, have not been acted upon since their initial consideration earlier this year.

Historically, local jurisdictions have been extremely active in introducing discriminatory hiring ordinances and policies. In total, 81 proposals have been considered on the local level. Fifty-nine proposals have been adopted, 20 defeated, two have been overturned and two are pending. These policies either require future employees to be nonsmokers or promote preferential hiring of nonsmokers. As for local proposals to prohibit employment discrimination, two have been adopted, one is pending and one has been defeated.

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The remainder of this report lists smoking-related employment policies and proposals by state. The chart indicates whether a policy was approved, defeated or is pending, the year of action where known, and to whom the policy applies.

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ANTI-DISCRIMINATION EMPLOYMENT PROPOSALS

ALABAMA

- 1989 * **DEFEATED** -- Would restrict smoking in workplaces with more than 20 employees and other public places -- Would require nonsmoking areas to be designated -- Would also prohibit "discrimination practiced by government or private employer in employment...based on whether a prospective or current employee is a smoker or nonsmoker"
- 1990 * **DEFEATED** -- Would restrict smoking in workplaces with more than 20 employees and other public places -- Would require restaurants seating 50 or more to provide areas for smokers and nonsmokers -- Would prohibit discrimination in employment practices based on smoking preferences

ARKANSAS

- 1989 **APPROVED** -- Resolution directs House Speaker to appoint citizen committee to study potential public smoking policy concerns in the state, including smoker/nonsmoker discrimination
- 1989 **DEFEATED** -- Would prohibit discrimination based on employee's smoking or nonsmoking preference -- Would provide for legal or equitable relief to employee who is discriminated against

CALIFORNIA

- 1989 **VETOED** -- Would amend state Fair Employment and Housing Act to make it an unlawful practice to discriminate against an employee or applicant "because of the person's assertion of the right to smoke or the right to a smoke-free workplace"

COLORADO

- 1990 **APPROVED** -- Prohibits employers from terminating employment due to worker's engaging in any lawful activity off the premises of the employer during nonworking hours unless restriction is a bona fide occupational requirement, would cause conflict of interest, or is related to employment activities and responsibilities

* Smoking restriction bills which also protect smokers against employment discrimination

TIOK 0024849

DELAWARE

- 1989 * **APPROVED** -- Executive Order requires state government agency heads to restrict smoking -- Prohibits smoking in common-use areas; allows smoking areas to be designated in cafeterias and employee lounges; state government vehicles to be designated smoking or nonsmoking in proportion to employee preference but, if used to transport clients or general public, must be designated nonsmoking -- Also requires phasing-out of sale of tobacco products on state property by 1/1/90 --Prohibits discrimination against state employees or applicants as a result of smoking habits, so long as they comply with smoking restrictions
- 1990 * **DEFEATED** (Carryover from 1989) -- Would restrict smoking in public office buildings owned/leased by state; person in charge would be responsible for designating smoking areas -- Would also prohibit hiring discrimination based on employee's smoking or nonsmoking preference -- Would preempt regulations by all government subdivisions, boards and commissions that are more stringent than state law
- 1990 **DEFEATED** (Carryover from 1989) -- Would prohibit an employer from failing or refusing to hire or to discharge an employee based on an individual's use of tobacco products

DISTRICT OF COLUMBIA

- 1990 **DEFEATED** -- Proposed amendment to smoking restriction and sampling limitation ordinance would have prohibited discrimination based on whether employee is a smoker or nonsmoker

FLORIDA

- 1990 * **VETOED** -- Would increase current smoking restrictions in health care facilities, day care centers and common areas of hotels -- Would require smoking areas to be designated in airports, sporting facilities, lobbies of public buildings and movie theaters -- Would require restaurants to designate 35% of seating as nonsmoking -- Would prohibit basing personnel action involving firing or promotion on use of tobacco products

ILLINOIS

- 1990 **DEFEATED** (Carryover from 1989) -- Would require designation of smoking and nonsmoking areas in workplaces and places designed to accommodate more than 10 members of the public at a time -- Would prohibit discrimination in employment on the grounds that an individual is a smoker -
- Would preempt all local regulation of smoking

KENTUCKY

- 1990 **APPROVED** -- Provides for fair and equal treatment of employees who smoke -- Forbids bias in hiring and promotions -- Prohibits sale of tobacco products to minors under age 16

LOUISIANA

- 1990 **DEFEATED** -- Would prohibit employment discrimination based on whether worker is a smoker or nonsmoker -- Would prohibit off-the-job smoking bans

MARYLAND

1989 **DEFEATED** -- Would make it unlawful employment practice to discriminate against individuals because of smoking/nonsmoking preferences -- Would prohibit requiring an employee to abstain from use of tobacco products outside the course of employment, so long as the employee complies with applicable laws or workplace smoking policy -- Would allow aggrieved employee or applicant to seek injunctive or other relief, including monetary damages.

1990 **DEFEATED** -- Would prohibit discrimination in conditions of employment based on smoking preferences so long as person complies with applicable law or workplace smoking policy during working hours -- Would prohibit requiring employees to abstain from use of tobacco products during nonworking hours

1989 **APPROVED**
* Baltimore City Government
Employees

DEFEATED
--

MASSACHUSETTS

APPROVED
- - -

DEFEATED
1990 Boston -- Workplaces

MISSISSIPPI

1989 **DEFEATED** -- Resolution would urge public agencies of the state to comply with workplace laws and policies and to treat employees fairly and reasonably with respect to physical disabilities or non-work related activities

MISSOURI

1989 **DEFEATED** -- Would prohibit discrimination in employment based on employee smoking preference -- Would prohibit rules requiring employee or applicant to abstain from use of tobacco products outside the course of employment, as long as person complies with laws or workplace smoking policy

1990 **DEFEATED** -- Would amend current law relating to unlawful employment practices to prohibit discrimination based on smoking preferences, or to require that employees abstain from using tobacco products outside the course of employment, so long as employees comply with applicable laws or workplace policy in the course of employment

1990 **PENDING**
* St. Louis -- City employees

DEFEATED
1990 Kansas City -- Workplaces

NEW JERSEY

1990 **TO GOVERNOR** -- S2232 -- Would prohibit employers from discriminating against individuals with respect to conditions of employment because of smoking preferences -- Would prohibit employers from requiring an employee to abstain from tobacco use off-the-job, so long as the employee complies with applicable laws or workplace policies on tobacco use -- A3038 carries over to 1991 legislative session

NEW YORK

1990 **DEFEATED** (Carryover from 1989) -- Would make it an unlawful discriminatory act for an employer to discriminate against an employee because of his "practice of smoking tobacco, during those hours when such individual is not engaged in employment"

1990 **VETOED** -- Would make it illegal to discriminate against a person because he or she engages in legal activities during non-working hours

OKLAHOMA

1990 **DEFEATED** -- Would prohibit discrimination in employment based on whether individual is a smoker or nonsmoker as long as the person complies with applicable laws or any workplace smoking policy

OREGON

1987 **DEFEATED** -- Would prohibit employer testing of employees for tobacco use

1989 **DEFEATED** -- Would prohibit employer testing of employees for tobacco use

1989 **APPROVED** -- Bans the use of genetic screening or brainwave testing as a condition of employment -- Also prohibits employers from requiring employees to refrain from smoking off-the-job except when restriction relates to a bona fide occupation requirement or if prohibited by collective bargaining agreement

PENNSYLVANIA

1990 **DEFEATED** -- Would amend existing anti-discrimination laws to prohibit discrimination with respect to hiring, firing, compensation or other terms of employment because individual uses or does not use tobacco products -- Would prohibit employers from requiring employees to abstain from smoking off-the-job so long as person complies with applicable law or workplace smoking policy

RHODE ISLAND

1990 **APPROVED** -- Prohibits discrimination against smokers in hiring and employment practices

SOUTH CAROLINA

1990 **APPROVED** (Carryover from 1989) -- Requires designation of smoking and nonsmoking areas in government buildings and certain public places -- Prohibits employers from testing for tobacco use as a job requirement -- Preempts local smoking restrictions

1990 **APPROVED** -- Prohibits personnel action including termination, demotion or promotion based on employee's use of tobacco products

TENNESSEE

1990 **APPROVED** -- Prohibits an employee from being fired because of refusal to participate in, or remain silent about illegal activities -- Protects smokers from employment termination for lawful use of a non-alcoholic "agricultural product" as long as employee complies with applicable employer policies regarding use during working hours

	<u>APPROVED</u>	<u>DEFEATED</u>
1989 Knoxville	Overtured off-duty smoking ban of police and firefighters	--

UTAH

1990 **DEFEATED** -- Would replace existing anti-retaliation provision in workplace smoking law with prohibition on discrimination against any employee "for asserting the right to work in a smoke-free environment or to use legal tobacco products outside the course of employment, as long as employee complies with applicable laws or workplace smoking policy" -- Would exempt religious institutions

VERMONT

1990 **DEFEATED** -- Would prohibit discrimination in hiring or employment based on smoking preferences -- Would prohibit requiring employee to abstain from smoking or using tobacco products outside course of employment so long as employee complies with applicable law or workplace smoking policy during course of employment -- Would amend current workplace smoking law to allow smoking areas to be designated where smoking will "not be a physical irritation to any nonsmoking employee," based on majority (instead of two-thirds) vote by employees in workplace

VIRGINIA

1989 **APPROVED** -- Prohibits governments from requiring an applicant or employee "to abstain from smoking or using tobacco products outside the course of his employment." -- Exempts firefighters and police officers

1990 **DEFEATED** -- Would prohibit discrimination in conditions of employment based on smoking preferences -- Would prohibit imposition of ban on smoking during nonworking hours except where restriction relates to a bona fide occupational requirement or where a collective bargaining agreement prohibits off-duty use of tobacco products -- Would provide for aggrieved person to bring action in circuit court seeking compensatory and punitive damages, as well as other injunctive relief

WASHINGTON

- 1987 **DEFEATED** -- Would make it an unfair labor practice to terminate employment for personal habits of employee that bear no reasonable relationship to performance of duties
- 1990 * **DEFEATED** -- (Carryover from 1989) - Would restrict smoking in state office buildings -- Would also provide that smokers not be discriminated against in hiring and prohibits retaliation against any employee exercising rights under this act
- 1990 **DEFEATED** -- As introduced, would make it an unfair employment practice to discriminate against employees on the grounds that they use tobacco products during nonworking hours

WEST VIRGINIA

- 1990 * **APPROVED** -- Personnel policy restricts smoking in state government offices and buildings -- Allows designated smoking areas under certain conditions -- Does not permit agencies to discriminate against smokers who apply for positions and provides that "to prohibit lawful behavior and the use of lawful tobacco products outside the site of the workplace may be a violation of an individual's right to privacy."

WISCONSIN

APPROVED

DEFEATED

- - -

- 1989 Marshfield Rescinded-
Police
Firefighters

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DISCRIMINATORY EMPLOYMENT PROPOSALS

ARIZONA

APPROVED
? Phoenix Firefighters

DEFEATED
- - -

CALIFORNIA

1985 **DEFEATED** - Would allow employers to require tests and examine prospective employees regarding legal activities only if information is reasonable and relevant to employment

APPROVED
1983 San Mateo Firefighters
1984 Manteca Firefighters
Police
1985 Downey Firefighters
1985 Monrovia Firefighters
1985 Orange Police
1986 Brea Firefighters
1986 Kern Co. Firefighters
1986 Laguna Beach Firefighters
Police
1986 S. Pasadena City jobs
preference for
nonsmokers
1987 Montebello Firefighters
1987 Watsonville Firefighters
1988 Ventura Co. Sheriff's
deputies,
sergeants,
and district
attorney

DEFEATED
1985 Eureka Firefighters
1988 Sunnyvale City
government
1988 Contra Costa Firefighters;
County Sheriffs

COLORADO

APPROVED
1986 Bancroft Firefighters
District
1988 Denver Firefighters
1988 Boulder Co. Sheriff's Dept.
1989 Denver Police

DEFEATED
1986 Greeley Firefighters

CONNECTICUT

- 1989 **DEFEATED** - Would authorize local governments to require public safety employees to meet certain minimum physical standards in order to maintain eligibility for special heart and hypertension benefits (standards include nonsmoking)
- 1989 **DEFEATED** - Would authorize local governments to require police officers and firefighters to meet certain minimum physical standards in order to maintain eligibility for special heart and hypertension benefits (standards include nonsmoking)
- 1989 **DEFEATED** - Would require newly-hired police officers and firefighters to be nonsmokers as permanent condition of employment

<u>APPROVED</u>			<u>DEFEATED</u>		
?	Branford	Firefighters	1984	Meriden	Firefighters
?	Glastonbury	Police			
?	Manchester	Police			
?	Middletown	Firefighters			
		Police			
?	New Britain	Police			
?	Vernon	Police			
?	West Haven	Police			
?	Westport	Firefighters			
		Police			

FLORIDA

- 1985 **DEFEATED** - 2 bills - Would presume that death or disability in firefighters due to cancer would have been contracted in line of duty unless evidence showed contrary. Second bill stated law enforcement officers might be ineligible for insurance benefits for heart disease as a work-related disability if shown to have risk factors predisposing individual to heart disease
- 1988 **DEFEATED** - Would require new firefighters to certify under oath that they have not used tobacco products for at least one year prior to employment
- 1989 **APPROVED** - H1456 - Would require firefighters to be nonusers of tobacco products for at least one year prior to application (Companion bill S476 was substituted for H1456)

<u>APPROVED</u>			<u>DEFEATED</u>		
1985	Tallahassee	Police	1983	Tampa	Firefighters
1987	Hialeah	Firefighters	1984	Hialeah	Police
1990	N. Miami	City employees		Gardens	
1990	Kissimmee	Police	1985	Palm Beach Co	Firefighters
			1986	Clearwater	Firefighters

GEORGIA

<u>APPROVED</u>			<u>DEFEATED</u>		
-	-	-	1988	Marietta	Board of Education employees

ILLINOIS

? Skokie **APPROVED**
 Firefighters
 Police

DEFEATED
- - -

IOWA

APPROVED
- - -

DEFEATED
1983 Iowa City Firefighters
 Police
1988 Clinton City
 employees

KANSAS

1989-90 **DEFEATED** – Would amend police and firemen’s retirement system to provide that disability benefits would not be allowed for “any death or disability caused, in whole or in part, by the member’s use of tobacco or tobacco products or alcohol or illegal use of any drug or drugs”

APPROVED
1984 Wichita Firefighters
1986 Lawrence Firefighters
1987 Douglas Co. Employees hired by
 sheriff’s dept. and
 ambulance service

DEFEATED
- - -

MAINE

1985 **DEFEATED** - Would create presumption that firefighters suffering from cancer contracted it in line of duty and are eligible for workers’ compensation unless disease was “occasioned by the willful intention of the employee to injure himself or another”

APPROVED
1983 Rockland Firefighters
1985 Brunswick Firefighters

DEFEATED
- - -

MARYLAND

APPROVED
1988 Montgomery Co Firefighters and
 rescue workers

DEFEATED
- - -

MASSACHUSETTS

- 1986 **DEFEATED** - Would prohibit hiring of smokers as firefighters, police officers or other public safety personnel
1987 **APPROVED** - Requires all public safety personnel hired after 1/1/88 to be nonsmokers

1985 Holden **APPROVED** Police **DEFEATED**
- - -

MINNESOTA

1987 Duluth **APPROVED** Firefighters
1986 Hennepin Co. **DEFEATED** County employees

NORTH DAKOTA

1986 **APPROVED** - Department of Health hiring policy giving preference to nonsmokers for department jobs

APPROVED
- - -
1986 Bismarck **DEFEATED** City hiring preference to nonsmokers

OHIO

1983 Shaker **APPROVED** Firefighters
Heights
1984 Lakewood **APPROVED** Firefighters
Police
1984 Streetsboro **DEFEATED** Police
1986 Bowling Green **DEFEATED** City employees

OKLAHOMA

1984 Oklahoma City **APPROVED** First-year Firefighters
1985 Tulsa **APPROVED** Firefighters
DEFEATED
- - -

OREGON

1983 Salem **APPROVED** Firefighters
1986 Portland **APPROVED** Firefighters
1987 Corvallis **APPROVED** Police
DEFEATED
- - -

PENNSYLVANIA

APPROVED

DEFEATED

1988 Chambersburg Firefighters
Police

RHODE ISLAND

APPROVED

1986 Narragansett Firefighters

DEFEATED

SOUTH DAKOTA

APPROVED

1985 Aberdeen Firefighters

DEFEATED

TENNESSEE

APPROVED

1988 Bartlett City employees
1989 Knoxville Approved, but
later overturned-
Police
Firefighters

DEFEATED

VIRGINIA

APPROVED

1977 Alexandria Police
1980 Alexandria Firefighters
1984 Fairfax Co. Firefighters
Police and Sheriff's
Deputies
1985 Virginia Firefighters
Beach Police
1990 Hampton Firefighters

DEFEATED

1988 Newport News Firefighters
Police

WASHINGTON

APPROVED

1988 Walla Walla Preference to
nonsmokers for
city employment

DEFEATED

WISCONSIN

APPROVED

1985	Janesville	Firefighters
1987	Brookfield	Firefighters
1988	Waukesha	Firefighters
1989	Marshfield	Approved, but later rescinded - Police Firefighters

DEFEATED

1986	Fitchburg	Firefighters Police
1987	Orfordville	Future city employees- excluded board members

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