

STATELINE

THE TOBACCO INSTITUTE
STATE ACTIVITIES DIVISION

June 27, 1990

**SPECIAL
REPORT**

STATE AND LOCAL

ANTI-DISCRIMINATION AND DISCRIMINATORY EMPLOYMENT PROPOSALS

This Special Report compiles both discriminatory and anti-discriminatory employment policy bills that have been considered at the state and local levels. This report updates and replaces the March 19, 1990 report on employment discrimination.

The number of bills which prohibit discrimination against employees or applicants because of smoking/nonsmoking preferences continues to grow. So far this year, 39 anti-discrimination bills have been considered on the state level. Six bills carried over from the 1989 legislative session. On the local level, St. Louis, MO, is currently considering an ordinance to prohibit employment discrimination against smokers.

As for bills that discriminate against smokers, no new legislation has been introduced this year on the state level. One bill carried over from 1989 and died upon legislative adjournment. Locally, two proposals are pending and one has been approved.

Anti-Discrimination Employment Proposals

Approved Legislation

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

Colorado
Delaware
Florida
Kentucky

Oregon
South Carolina
Tennessee
Virginia

In 1989, an executive order was announced in Delaware, prohibiting discrimination against state employees or applicants as a result of their smoking preferences, so long as they comply with workplace smoking restrictions. Laws were adopted in Oregon and Virginia to prohibit employers from requiring employees to refrain from smoking off-the-job. (The Virginia law applies to government employers only. Efforts were made in 1990 to expand the law to all employers, but were unsuccessful.)

So far in 1990, five states have adopted legislation, six states have legislation pending and nine states have defeated measures. While some of the adopted laws were free-standing bills, many of the laws include additional provisions. For the purposes of this summary, only the anti-discrimination provision of each bill is discussed. A more detailed summary of each bill is available on the attached list outlining all anti-discriminatory and discriminatory policies adopted to date.

TIOR 0015112

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South Carolina adopted two anti-discrimination provisions 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** adopted a law making it unlawful to fail or refuse to hire, or discharge any individual or otherwise discriminate against them 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.

Awaiting action by Governor Martinez is the recently-adopted measure in **Florida**. As passed by the legislature, the law would prohibit basing any personnel action involving firing, promotion, reassignment, compensation or other disciplinary action on an employee's use of tobacco products.

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.

Locally, the first anti-discriminatory ordinance to be adopted was in **Baltimore, MD**, in 1989. Included in the ordinance restricting smoking in city government buildings is a provision to prohibit a supervisor from discriminating against an employee or prospective employee based on smoking or nonsmoking, as long as the employee complies with applicable rules.

Pending Legislation

Anti-discrimination measures are pending in six states, four of which are awaiting action in the legislatures' second-house. In **Delaware**, S210 which would prohibit discrimination based on an employee's use of tobacco products outside the employer's premises, is pending on the House calendar. **Louisiana** S521, prohibiting discrimination in firing and other terms of employment, including off-the-job bans on smoking, is pending on the House floor. **New York** A10727, which would make it illegal to discriminate against a person who engages in legal activities during non-working hours, is on the Senate third reading calendar. The Senate Health, Education & Welfare Committee is expected to hear **Rhode Island's** H8768, which would prohibit discrimination against smokers in hiring and employment practices.

New Jersey's anti-discrimination bill, S2232 passed initial committee referral and is awaiting action on the Senate floor. An anti-discrimination bill was recently introduced in Pennsylvania. H2690 would amend existing anti-discrimination laws to prohibit discrimination in employment because an individual uses or does not use tobacco products. The bill is pending in its first committee referral.

There is also an anti-discrimination ordinance pending on the local level. St. Louis, MO, is currently considering an ordinance that, in addition to designating both smoking and nonsmoking areas in city government buildings, would not allow an employer to deny employment or discharge an employee for engaging in smoking outside the workplace.

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 legislature adjournment.

On the local level, North Miami, FL, approved a policy banning applicants for city jobs if they have used tobacco products in the previous year. Two localities are currently considering discriminatory policies. Kent, OH, is considering a proposal that would prohibit the city from hiring police officers and firefighters who smoke. No formal action has been taken. And in Cheyenne, WY, the Fire Department Civil Service Commission has under consideration a proposal to prohibit new firefighters from smoking on or off the job. The local firefighters union is working to have the proposal rejected.

Historically, local jurisdictions have been extremely active in introducing discriminatory hiring ordinances and policies. In total, 80 proposals have been considered on the local level. Fifty-five 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.

Two discriminatory policies have been overturned. Knoxville, TN, City Council overturned an administrative policy regarding a ban on off-duty smoking by police and firefighters. And in Marshfield, WI, last December, city officials rescinded a policy that banned the hiring of new police officers and firefighters who smoked.

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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.

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** (2 bills) -- 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

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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
- 1989 * **CARRYOVER TO 1990** -- S67 and S95 (Both bills technically carryover to 1990 but in practice, were replaced by S210) 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 -- No action so far this year
- 1990 **PENDING** (Carryover from 1989) -- S210 - Would prohibit an employer from failing or refusing to hire or to discharge an employee based on an individual's use of tobacco products -- Bill is pending on House calendar

FLORIDA

- 1990 * **AWAITING GOVERNOR'S ACTION** -- H1799 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 **PENDING** -- H979/S521 -- Would prohibit employment discrimination based on whether worker is a smoker or nonsmoker -- Would prohibit off-the-job smoking bans -- S521 is pending on House floor -- H979 is pending in House Labor & Industry Relations Committee

MARYLAND

- 1989 **DEFEATED** (2 bills) -- 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** (2 bills) -- 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

APPROVED

DEFEATED

- 1989 * Baltimore City Government
Employees

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** (2 bills) -- 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

PENDING

- 1990 * St. Louis -- City employees

NEW JERSEY

- 1990 **PENDING** -- S2232 & A3038 -- 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 -- S2232 is pending on Senate floor -- A3038 is pending in Assembly Labor Committee

NEW YORK

- 1989 **CARRYOVER TO 1990** -- S6133 -- 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" -- No action so far this year
- 1990 **PENDING** -- A10727/S7771 -- Would make it illegal to discriminate against a person who engages in legal activities during non-working hours -- A10727 went to Senate Rules Committee where S7771 was substituted for A10727 -- A10727 is on Senate third reading calendar

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** -- Would ban 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 **PENDING** -- H2690 -- 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 -- Bill is pending in House Labor Relations Committee

RHODE ISLAND

- 1990 **PENDING** -- H8768 & H8622 -- Would prohibit discrimination against smokers in hiring and employment practices -- H8622 is pending in House Health, Education and Welfare Committee -- H8768 is pending in Senate Health, Education and Welfare Committee

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

APPROVED

DEFEATED

1989 Knoxville **OVERTURNED** 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

WISCONSIN

APPROVED

DEFEATED

- 1989 Marshfield Rescinded-
Police
Firefighters

DISCRIMINATORY EMPLOYMENT PROPOSALS

ARIZONA

? Phoenix APPROVED
 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

APPROVED

- ? Branford Firefighters
? Glastonbury Police
? Manchester Police
? Middletown Firefighters
Police
? New Britain Police
? Vernon Police
? West Haven Police
? Westport Firefighters
Police

DEFEATED

- 1984 Meriden Firefighters

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)

APPROVED

- 1985 Tallahassee Police
1987 Hialeah Firefighters
1990 N. Miami City employees

DEFEATED

- 1983 Tampa Firefighters
1984 Hialeah Police
Gardens
1985 Palm Beach Co Firefighters
1986 Clearwater Firefighters

GEORGIA

APPROVED

- - -

DEFEATED

- 1988 Marietta Board of
Education
employees

ILLINOIS

? Skokie **APPROVED**
 Firefighters
 Police

DEFEATED
- - -

IOWA

APPROVED
- - -

1983 Iowa City **DEFEATED**
 Firefighters
 Police
1988 Clinton **DEFEATED**
 City
 employees

KANSAS

1989 **DEFEATED** -- CARRYOVER TO 1990 - H2404 - 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" -- No action so far this year

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** - Governor's executive order 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 Heights **APPROVED** Firefighters
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

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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