

TRANSCRIPT OF HOUSE HEALTH & LIFE SUBCOMMITTEE - HOUSE BILL 1456

APRIL 24, 1989.

(Note: Tape is unintelligible in many sections due to background noise and distance of speakers from microphone)

Speaker

Representative Ritchie, you are recognized on House Bill 1456.

Rep. Ritchie

Thanks Mr. Fitzgerald and committee members. I'll be brief since we had an opportunity to look at this the other day but a couple of people were absent. But this bill, House Bill 1456, is being supported by the Professional Firefighters, as well as the League of Cities - it would mandate that an individual refrain from the use of tobacco products at least one year prior to being certified as a firefighter, and to continue to refrain from using tobacco products. We talked about the other day the fact that this bill was not setting. . . (unintelligible)

Chairman

Any questions to the sponsor. Representative Harden.

Rep. Harden

Thank you Mr. Chairman. I have a real technical question on the bill, Mr. Ritchie, about the concept that they must continue to be a nonsmoker. It seems to me by my reading of the amendment that, technically it just says you have to be a nonuser just for one year prior to application, but it has no specific wording,

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and you would assume that they would continue not using tobacco. It would seem under the current wording--and I'm asking for your viewpoint on this--that they would have to certify that they are a nonsmoker for one year preceding application and if two years later they wanted to begin smoking again they wouldn't be prohibited by the language that is used in this bill. It says "be a nonuser of tobacco or tobacco products for at least one year immediately preceding application, as evidenced by the sworn affidavit of the applicant." But it has no wording to say that they can't continue to smoke after they've been hired. Has that issue been raised previously?

Rep. Ritchie

We discussed this the other day. . . . Again the reason being that if any incidence of coronary heart disease is presumed to be job related, and consequently we find that --- this goes beyond the scope of employment.

Chairman

Representative Jones.

Rep. Jones

We've covered this the last time when the bill was presented and that was -- should they smoke four or five years after they've been hired, that basically that would be grounds for dismissal. I would assume, the way the bill was written, that would be for a new person that was hired since the enactment of this bill. Would that also be retroactive to someone that already has been a firefighter for ten years?

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Rep. Ritchie

No, Sir. this is only . . . new firefighters.

Chairman

Any further questions?

Representative Laberti.

Rep. Laberti

What was the intent of the firefighters wanting this bill?

Rep. Ritchie

Well, we have some individuals here representing the professional firefighters . . . (unintelligible).

Chairman

We have here testimony.

Rep. Laberti

One more question.

Chairman

Certainly.

Rep. Laberti

Is there a prohibition against alcohol use for that one year?

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Rep. Ritchie

This does not prohibit the use of alcohol, no.

Chairman

Further questions of the sponsor. Alright, thank you Representative Ritchie. We have two cards on this matter. First, Mr. Will May, Florida Fire Chiefs Association, the proponent. Mr. May, welcome sir.

Mr. May

Mr. Chairman, Committee, I wish to speak in favor of this act. The Fire Services of the State of Florida now provide....safety equipment.....they essentially work, except in catastrophic incidences, in a hazard free atmosphere as far as breathing goes, and for a firefighter to go in with expensive equipment and come back outside and light up a cigarette, kind of counteracts....(unintelligible). . . .

Chairman

Any questions, Mr. May? Alright we have another card from Mr. Bob Carver. Mr. Carver is representing the Professional Firefighters. You're welcome. You're recognized.

Mr. Carver

Thank you Mr. Chairman. Professional firefighters in Florida three years ago adopted this position. We did it for two reasons, health and safety. Our own personal health, and the

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Surgeon General said one major modifiable risk factor in coronary heart disease is smoke. The evidence is very strong. We proposed in 1968 the standards that we're now hired by. Three or four physicals determined us to be free of heart disease. I feel very strongly we should come back to this legislature and amend those standards so that we can modify the risks for our own individual health. There are fifteen cities already asked to lead three years ago that have adopted that as a local hiring condition of employment...(unintelligible)...has to be a non-user of tobacco products. The safety aspect of it, as the Chief just mentioned to you.....you have a firefighting team, we have discovered that an individual who smokes has less endurance, and less ability to fight fires, than an individual that does not. It is a team factor, the safety of the individual, and as the laws of this legislature has granted us, it is directly related to heart disease. Last year, over two hundred firefighters in this state had a death or disability attributable to heart disease. We want to save those lives. We want to save those dollars. This was started by one other state that has this position on its constitution. It is constitutional, it is on the law. In the state of Florida if you make it for new hires, that's your constitutional test. You also appropriated 250,000 dollars last year in a health project at the University of Miami that would take those firefighters under a volunteer program that are currently employed.. (unintelligible). It is our goal to have a smoke free fire service. It is health, it is safety. Please pass this legislation.

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Chairman

Questions, Mr. Carver.

I was wondering where you were. Heh heh.

Speaker

Can I ask a question of one of the firefighters?

Representative

Yes.

Chairman

Maybe we ought to, I'm, I have a comment here from staff. I think Mr. Ritchie maybe with your help, Mr. Carver, can at least get the bill I think where you want it to be. And then, we do have a card for Mr. Wilson Wright. You didn't indicate whether you are a proponent or opponent...

Oh, ok.

Also indicate.....

The comment is -- that bill really doesn't address what happens after certifying, if the bill passes, it may have to be amended.

Did you wish to, and was it your intent after certification that some process or something would continue or was this just the first step and see how it goes, or something like that.

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Mr. Carver

It is our understanding that after the certification then the employer, if a complaint is made that one hired since the passing of this legislation..... and it is shown to the state that his certification can be revoked because he would be in violation of the certification which is regulated by the state fire marshall. So the employer and who ever found the violation of it you can certainly ask for other reasons had your certification been revoked. That's the reason for placing the language in the way it was.

Chairman

Ok. So you are satisfied with it, you don't . . . that's final.

Mr. Carver

That's correct. Without certification you cannot fight fires in the state of Florida.

Chairman

Ok. But we left it, the staff had a comment and wanted to raise that to you, so that at least we could make sure that it was exactly what you wanted it to be before the vote.

Are there further questions from Mr. Carver?

Ok. Thanks, Mr. Carver.

Mr. Wright you are recognized, sir.

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Mr. Wright

Wilson Wright on behalf of Reynolds Tobacco Company. Because I addressed this subject the other day I was delighted to come back and give it committee time again, but since there are members here today who were not here then, perhaps it will be worthwhile to restate a couple comments. One of the things we've learned since we were here....the question of equal protection was not addressed, therefore you have firefighters who are already on board who would not be subject to the same standards as those who would come on after . . .(unintelligible) he raised the question which you just discussed, what happens to somebody who is close to retirement twenty years later down the line, and he then decides he wants to take a drag on a cigarette, is he then subject to lose all of his benefits within the system and the answer was, yes. We don't have any objections if the firefighters want, as the gentlemen before me stated, to have a smoke free department. In fact we would think that that, would be one of the things that they might want to raise as part of their collective bargaining agreement. But to write this sort of thing into the state statutes seems to be totally unnecessary, and unwarranted, and we ask you to give another negative roll call for this bill.

Chairman

Ok. Any further questioning, questions - Mr. Wright?

Mr. Ritchie, do you wish to close?

Mr. Harden?

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Rep. Ritchie

I want you to keep in mind the fact that we already have this provision in place in fifteen municipalities around the state, the fact firefighters were very much for this, and the fact that any incidence of coronary heart disease suffered by a fire fighting individual is presumed to be job related. I think those things override the other issues, and while we may not be able to answer all the equal protection clauses today, I think the bill supports . . . or rather warrants our support. We'll let the courts decide that at a later date. Thank you.

Chairman

Thank you.

O.K., Representative Harden on debate. Speak against the bill.

Rep. Harden

Sorry, I did not speak up earlier, Mr. Chairman.

Chairman

We are on debate.

Rep. Harden

If Mr. Ritchie wishes to rebut my comments in a second closing, I will certainly be amenable to that. I guess that I will be the only person to vote against this bill but I feel strongly about the issue, so I want to speak briefly against the bill.

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Briefly, in a nutshell, I just think it is an infringement on the personal rights and freedom of choice of those individuals to smoke or not to smoke. I am not a smoker and I think it is a dirty ridiculous habit, I grew up in a family where my father smoked and it was just a common practice where I had to suffocate at breakfast while he smoked two or three cigarettes reading the paper, and I think it's a dirty habit. But I think it is inappropriate for we as a legislature, to be in the process of regulating something as personal whether someone makes a choice, as poor of a choice as I think it is, and that is to smoke. I don't disagree with any of the statistics that the firefighters, or Representative Ritchie, or anyone else in this room might bring forth on this issue, that smoking is bad for your health, it's a leading cause of coronary heart problems, and it's a leading cause of lung cancer. I agree with those statistics and I don't argue with those statistics. The question, though, really for me is an issue of freedom of choice for that individual. I happen to believe that probably the strongest argument for this is still in light of the unique circumstances of firefighters, is the issue of a team effort to fight a fire, someone has a heart attack or they don't have the endurance of other firefighters who do not smoke. That same argument I think applies to a whole slew of other professions, whether you are an airline pilot, whether you are a fighter pilot, whether you are a navigator, whether you are a policeman, paramedics. There are a whole slew of other occupations that we can conceivably argue, "you aren't as effective on that job because you choose to make that unbelievably poor decision to

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smoke", and I just think it is inappropriate for the legislature to regulate that type of personal behavior, because it's just a step in the wrong direction in mandating only quote unquote good decisions. When we deal with the issue of cost, and that is another argument, that is an argument we use for health laws, which I am opposed to, -- the idea that it is not an individual free choice because all of us indirectly are going to pay higher insurance premiums because those individuals were injured and involved in motorcycle accidents. But there again, if we use that argument, we justify any government intrusion in personal choices. I think that is inappropriate, I think the more proper way to handle it is somehow to come up with some type of supplemental fees for smokers who were involved in health - health insurance policies or smokers who want fire departments . . . Uh, so that they can pay the more true cost of their health care benefits, I think that is a more appropriate way to approach the issue and I oppose the bill.

Chairman

Ok.

Representative Laberti moves that we extend the meeting until completion of the agenda without objection, should that be adopted. Any further debate?

Would debate Secretary call the roll.

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Representative Harden

No

Representative Jones

Yes

Representative Laberti

Yes

Representative Cosgrove

Yes

Representative Deutsch

Yes

Chairman

Ok, so the bill passes.

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