

STATELINE

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THE TOBACCO INSTITUTE
STATE ACTIVITIES DIVISION

SPECIAL
REPORT

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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.

The number of bills which prohibit discrimination against employees or applicants because of smoking/nonsmoking preferences continues to grow. So far this year, 18 anti-discrimination bills have been introduced on the state level. Six bills carried over from the 1989 legislative session.

As for bills that discriminate against smokers, no new legislation has been introduced this year. One carryover bill is pending. The only local action this year is a proposal in Kent, OH, that would prohibit the city from hiring police officers and firefighters who smoke.

Anti-Discrimination Employment Proposals

To date, measures to protect smokers from employment discrimination have been adopted in Delaware, Oregon and Virginia. In January 1990, the Illinois Governor signed a bill into law allowing smoking areas be designated in workplaces and places open to the public. The law also prohibits discrimination against anyone who exercises rights under this act. In addition, the Arkansas House passed a resolution in 1989, which calls on the appointment of a citizen committee to investigate public smoking policy concerns, including employment discrimination against smokers.

Of the 18 bills introduced in 1990, 11 are pending and seven have been defeated. Kentucky H628, which provides for fair and equal treatment of employees who smoke and forbids bias in hiring and promotion, has been passed by the House and awaits Senate action. The bill also prohibits the sale of tobacco products to minors under the age of 16.

As introduced, Colorado H1123 would prohibit employers from requiring as a condition of employment that workers refrain from 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.

The bill was then amended by the House to prohibit discrimination only in respect to employment termination, due to a worker engaging in any lawful activity during nonworking hours. The exemptions are similar to the original language. The amended bill has been approved by the House and the Senate Business Affairs Committee. It awaits action on the Senate floor.

Alabama smoking restriction bills have been amended to prohibit discrimination in employment practices based on smoking preference. H327 is awaiting action on the House floor; S432 is on the Senate floor. Also awaiting floor action is New Jersey S2232, prohibiting employment discrimination against those who choose to use tobacco products. Companion bill A3038 is awaiting initial action in the Assembly Labor Committee.

Similar bills are pending in Missouri (2) and Rhode Island (2) which prohibit employment discrimination based on whether a person is a smoker or a nonsmoker. These bills also prohibit rules that require employees to abstain from use of tobacco products during nonworking hours. Both Missouri bills are awaiting floor action in their house of origin and the Rhode Island bills are awaiting first committee consideration.

In Maryland, the House Environmental Matters Committee defeated H1246 that would have prohibited employment discrimination against smokers. Senate companion bill S721 is pending in Judicial Proceedings Committee. A similar measure was defeated by one vote during the 1989 session. And in Tennessee, the House Commerce Committee rejected anti-discrimination bill H1783. Senate companion bill S1962 is still alive but action is unlikely. Bills have also been defeated this year in Oklahoma, Utah, Vermont, Virginia and Washington (2) state.

Of the bills that carried over from 1989, Delaware (3), Illinois and New York, only one bill has been acted upon this year. Delaware S210 has been passed out of the House Labor & Pensions Committee to the House floor. The bill was passed by the Senate on the last day of the 1989 session.

Locally, the first anti-discriminatory ordinance to be adopted was in Baltimore City, MD. 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.

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, would amend the police and firefighter's retirement system, noting that disability benefits would not be allowed for "any death or disability caused, in whole or part, by the member's use of tobacco or tobacco products or alcohol or illegal use of any drug or drugs." No action has been taken on the bill this year.

During recent years, local jurisdictions have been extremely active in introducing discriminatory hiring ordinances and policies. In total, 77 proposals have been considered on the local level. Fifty-four proposals have been adopted, 20 defeated, two have been overturned and one is pending. These policies either require future employees to be nonsmokers or promote preferential hiring of nonsmokers.

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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. Only one discriminatory employment proposal is pending: Kent, OH. No formal action has been taken.

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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 * **PENDING H327 & S432** - As substituted 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 **PENDING H1123** -- As introduced, would prohibit employers from requiring as a condition of employment that workers refrain from engaging in any lawful activity during nonworking hours -- Would exempt situations where 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

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
- 1989 **CARRYOVER TO 1990** - S210 - Would prohibit discrimination against smokers by an employer -- House Labor & Pensions Committee sent measure to House floor 3/14 -- Awaits House floor action

ILLINOIS

- 1989 **ADOPTED** - Would require smoking areas to be designated in workplace and places open to the public -- Would prohibit discrimination against anyone who exercises rights under this act -- Would prohibit localities from regulating smoking -- Exempt from this provision are localities that have passed an ordinance prior to 10/1/89
- 1989 * **CARRYOVER TO 1990** - H378 - 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 -- No action so far this year

KENTUCKY

- 1990 **PENDING H628** -- Would provide for fair and equal treatment of employees who smoke -- Would forbid bias in hiring and promotions --Prohibits sale of tobacco products to minors under age 16

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 **PENDING S721** -- 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
- 1990 **DEFEATED H1246** -- Companion bill to S721 was defeated in House Committee

APPROVED

1989 * **Baltimore City Government Employees**

DEFEATED

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 **PENDING H1044 & S607** -- 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

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

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

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

RHODE ISLAND

- 1990 **PENDING** H8768 & H8622 -- Would prohibit discrimination against smokers in hiring and employment practices

TENNESSEE

- 1990 **DEFEATED** -- Would prohibit discrimination against an individual with respect to conditions of employment because the person is a smoker or nonsmoker -- Would prohibit requiring an employee to abstain from using tobacco off-the-job so long as employee complies with applicable laws and workplace smoking policy
1990 **PENDING** S1962 -- Companion bill to H1783 is still pending though further action unlikely

- | | <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

- 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
- 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

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
- 1989-1990 * **DEFEATED** - S5189 - 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

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

APPROVED

DEFEATED

- | | | | | | |
|---|-------------|--------------|------|---------|--------------|
| ? | 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)

APPROVED

DEFEATED

- | | | | | | |
|------|-------------|--------------|------|---------------|--------------|
| 1985 | Tallahassee | Police | 1983 | Tampa | Firefighters |
| 1987 | Hialeah | Firefighters | 1984 | Hialeah | Police |
| | | | | Gardens | |
| | | | 1985 | Palm Beach Co | Firefighters |
| | | | 1986 | Clearwater | Firefighters |

GEORGIA

APPROVED

DEFEATED

- | | | | |
|-----|------|----------|------------------------------------|
| --- | 1988 | Marietta | Board of
Education
employees |
|-----|------|----------|------------------------------------|

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
- - -
DEFEATED
1986 Bismarck 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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