

MINUTES

**MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By Sen. Towe, Chair, on January 21, 1993, at 1:00 P.M.

ROLL CALL

Members Present:

Sen. Tom Towe, Chair (D)
Sen. Bill Wilson, Vice Chair (D)
Sen. Gary Aklestad (R)
Sen. Chet Blaylock (D)
Sen. Jim Burnett (R)
Sen. Tom Keating (R)
Sen. J.D. Lynch (D)

Members Excused: Sen. Chet Blaylock

Members Absent: None

Staff Present: Eddy McClure, Legislative Council
Patricia Brooke, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 160
Executive Action: SB 160

HEARING ON SB 160

Opening Statement by Sponsor:

Senator David Rye, Senate District 47, Billings, spoke from written testimony of the bill he is sponsoring (Exhibit #1).

Proponents' Testimony:

Rep. Jerry Driscoll, House District 92, noted people are tired of employers and government imposing their will on what employees are doing after hours when they are not working. In support of this bill he stated it is nobody's business what employees are doing in the privacy of their own home.

Sen. J.D. Lynch, Senate District 35, stated he is a co-sponsor of this bill because he does not want big government or big business to pick on individual rights. He thinks this bill makes sense because the individual right to privacy is so important. Sen.

Lynch urged the committee to support SB 160.

Jeannine Manuel, homemaker, Fairfield, supports SB 160 because she is worried the right to privacy is being threatened. She strongly believes what one does in the privacy of their home is their business.

Opponents' Testimony:

None

Questions From Committee Members and Responses:

Sen. Aklestad asked if there is a problem in Montana that requires this bill. Sen. Rye answered he is unaware of any problems but feels this bill is important to ward off any problems that could occur.

Sen. Keating asked Sen. Rye if this bill is designed to prohibit employers from discriminating in hiring and firing practices because they use lawful products on their own time. Sen. Rye responded if the use of the product is the sole basis for the discrimination then, yes, this bill is designed to prevent that. Sen. Rye stated he wanted to make clear this bill does not prevent employers from charging higher health insurance rates to smokers they employ.

Sen. Lynch noted the fiscal note is misworded and should state it prohibits discrimination against an employee for use of a lawful product during non-working hours.

Closing by Sponsor:

Sen. Rye said he submitted amendments requested by Burlington Northern(BN). BN had some concern that this bill may affect their ability to drug test their employees or take action if an employee was found inebriated after drinking the night before. He said he wanted to make clear that smoking is not the issue but employee privacy.

EXECUTIVE ACTION ON SB 160

Motion: Sen. Lynch moved to adopt the amendment submitted by Burlington Northern(Exhibit #1, parts 1 and 2).

Discussion: Eddy McClure explained the amendments.

Motion/Vote: The motion to adopt the amendments passed unanimously.

Motion: Sen. Lynch moved SB 160 DO PASS AS AMENDED.

Discussion: Sen. Towe had a question about the wrongful discharge

SENATE LABOR & EMPLOYMENT RELATIONS COMMITTEE

January 21, 1993

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in section 2 of the bill and how it corresponds to the existing wrongful discharge laws. Sen. Towe wondered if the committee was making a different law on the wrongful discharge. Sen. Towe asked Ann MacIntyre of the Human Rights Commission if she believed SB 160 would violate the current wrongful discharge law. Ms. MacIntyre answered she did not know.

Sen. Towe asked Sen. Rye if it was his intent to change the wrongful discharge section of the law. Sen. Rye answered no, that was not his intent.

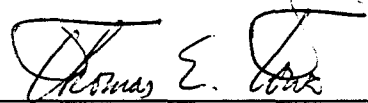
Motion: Sen. Lynch moved to adopt the amendment that Sen. Towe stated(Exhibit #2, part 3).

Vote: The amendment was adopted unanimously by the committee.

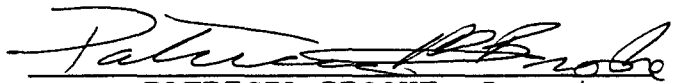
Motion/Vote: Sen. Lynch moved SB 160 DO PASS AS AMENDED. The motion carried unanimously.

ADJOURNMENT

Adjournment: 1:19 P.M.



SEN. TOM TOWE, Chair



PATRICIA BROOKE, Secretary

TET/pmb

ROLL CALL

SENATE COMMITTEE LABOR & EMPLOYMENT REL. DATE 1/20/93

NAME	PRESENT	ABSENT	EXCUSED
SENATOR GARY AKLESTAD	X		
SENATOR TOM KEATING	X		
SENATOR CHET BLAYLOCK			X
SENATOR J.D. LYNCH	X		
SENATOR JIM BURNETT	X		
SENATOR BILL WILSON	X		
SENATOR TOM TOWE	X		

Attach to each day's minutes

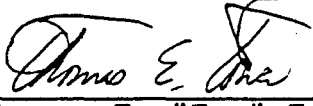
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SENATE STANDING COMMITTEE REPORT

Page 1 of 1
January 22, 1993

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration Senate Bill No. 160 (first reading copy -- white), respectfully report that Senate Bill No. 160 be amended as follows and as so amended do pass.

Signed: 
Senator Thomas E. "Tom" Towe, Chair

That such amendments read:

1. Page 1, line 21.

Following: "(i)"

Strike: "impairs"

Insert: "affects in any manner"

2. Page 1, line 22.

Following: "or"

Strike: "threatens"

3. Page 3, lines 8 through 10.

Following: "action" on line 8

Strike: remainder of line 8 through "fees" on line 10

Insert: "for remedies as provided in 39-2-905"

-END-

STATEMENT OF SENATOR DAVID RYE
OF SENATE DISTRICT 47
IN SUPPORT OF SENATE BILL 160

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. #1

DATE 1/21/93

BILL NO. _____

~~For the record,~~ I am Senator David Rye from Billings, Montana, Senate District 47, chief sponsor of Senate Bill 160.

Senate Bill 160 is entitled "An Act Prohibiting Discrimination Against an Employee for Use of a Lawful Product During Non-Working Hours, and Providing for Civil Damages." My principal reason for sponsoring this bill is my concern regarding an emerging trend in the American work place that directly threatens everyone's right to privacy. Through the media and several news stories, I have learned employers across the country are attempting to extend their control over the lives of their employees to include what their employees do in their own homes and away from work during off-duty hours.

Apparently, the driving force behind this trend is economics, in particular the rising cost of health care provided by employers. Employers' desire to keep health care costs down is understandable in light of our struggling economy, but the destruction of an American's private life is too high a price to pay for small reductions in health care costs. Virtually, every decision a person makes has some impact on that person's health. These decisions run the gamut from having a cup of coffee in the morning to choosing whether or not one should have children. By selectively discriminating against people based upon specific lifestyle choices, employers are acting as societal "health police." If this trend continues, eventually employers will police every aspect of an employee's life that affects his or her health, from an employee's diet to the amount of sleep that employees get at night.

Members of this Committee might think I am overreacting to a problem that may not be of much concern in this State of Montana. However, even as far back as 1988 (according to an Administrative Management Survey), over 6,000 companies were discriminating against both current employees and applicants based on their legal activities during non-working hours. Reports are that this figure has certainly risen over the past few years. Two groups in particular have received the bulk of this type of discrimination, namely people who are overweight and people who smoke. However, many complaints have been filed by people who have a high serum cholesterol level -- people who are occasional social drinkers -- and even people who ride motorcycles or play contact sports.

This bill, in protecting the rights of employees, also will protect the rights of

employers. The employers are protected by Sections 2, 3, and 4 of the Bill.

Under Section 2 in the Bill, if the use of a lawful product during off-duty periods impairs the employee's ability to perform his/her work or endangers the safety of him/herself or others on the job, the employer is justified in taking appropriate action.

Under Section 3 of the Bill, the employer may take action based upon the belief that the employer's actions are permissible under an established substance abuse or alcohol program. Thus, if an employee has an alcohol problem and that employee needs treatment, the employer may require treatment so long as the treatment need is verified.

Under Section 4 of the Bill, if differential rates charged for insurance policies are actuarially justified because of the use of a lawful product by an employee, the employer is justified in making only such insurance policies available to the employee so long as the employee has notice of it.

Twenty-eight (28) state legislatures have passed laws such as Senate Bill 160 to protect employees' privacy. Members of this Committee, I feel this Bill protects Montana citizens and also employers. It protects those people in our society whose actions are based upon common sense and retains for them a feeling of human dignity.

Members of this Committee, please concur with Senate Bill 160.

Thank you very much for your attention.

Amendments to Senate Bill No. 160
First Reading Copy

For the Senate Labor Committee

Prepared by Eddy McClure
January 21, 1993

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 2
DATE 1/21/93
BILL NO. SB 160

1. Page 1, line 21.

Following: "(i)"

Strike: "impairs"

Insert: "affects in any manner"

2. Page 1, line 22.

Following: "or"

Strike: "threatens"

3. Page 3, lines 8 through 10.

Following: "action" on line 8

Strike: remainder of line 8 through "fees" on line 10

Insert: "for remedies as provided in 39-2-905"

DATE January 21 1993

SENATE COMMITTEE ON Labor

BILLS BEING HEARD TODAY: SB 160

Name Representing Bill No. Check One Support Oppose

Name	Representing	Bill No.	Support	Oppose
<i>John Anderson</i>	<i>T. Moore Inst</i>	<i>SB 160</i>		
<i>Lamine Manuel</i>	<i>Self</i>	<i>SB 160</i>	<input checked="" type="checkbox"/>	
<i>Jerry Orinoff</i>	<i>HD 92</i>	<i>SB 160</i>	<input checked="" type="checkbox"/>	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY