

SENATE BILL NO. 160

INTRODUCED BY RYE, DEVLIN, LYNCH, BRANDEWIE,
ZOOK, DRISCOLL, PAVLOVICH

IN THE SENATE

JANUARY 15, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON LABOR & EMPLOYMENT RELATIONS.
	FIRST READING.
JANUARY 22, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
JANUARY 23, 1993	PRINTING REPORT.
	ON MOTION, TAKEN FROM SECOND READING AND REREFERRED TO COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS.
JANUARY 27, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
JANUARY 28, 1993	PRINTING REPORT.
	SECOND READING, DO PASS AS AMENDED.
JANUARY 29, 1993	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 46; NOES, 1.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

JANUARY 30, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON LABOR & EMPLOYMENT RELATIONS.
	FIRST READING.
MARCH 6, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 9, 1993	SECOND READING, CONCURRED IN.
MARCH 11, 1993	THIRD READING, CONCURRED IN. AYES, 66; NOES, 33.

MARCH 12, 1993

RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

MARCH 16, 1993

RECEIVED FROM HOUSE.

SECOND READING, AMENDMENTS
CONCURRED IN.

MARCH 17, 1993

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 Senate BILL NO. 160
2 INTRODUCED BY Rep. Arthur Lynch
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING
5 DISCRIMINATION AGAINST AN EMPLOYEE FOR USE OF A LAWFUL
6 PRODUCT DURING NONWORKING HOURS; AND PROVIDING FOR CIVIL
7 DAMAGES."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 NEW SECTION. **Section 1.** Discrimination prohibited for
11 use of lawful product during nonworking hours -- exceptions.

12 (1) Except as provided in subsections (2) and (3), an
13 employer may not refuse to employ or license and may not
14 discharge or otherwise discriminate against an individual
15 with respect to compensation, promotion, or the terms,
16 conditions, or privileges of employment because the
17 individual legally uses a lawful product off the employer's
18 premises during nonworking hours.

19 (2) Subsection (1) does not apply to:

20 (a) use of a lawful product that:

21 (i) impairs an individual's ability to perform
22 job-related employment responsibilities or threatens the
23 safety of other employees; or

24 (ii) conflicts with a bona fide occupational
25 qualification that is reasonably related to the individual's

1 employment;

(b) an individual who, on a personal basis, has a professional service contract with an employer and the unique nature of the services provided authorizes the employer, as part of the service contract, to limit the use of certain products; or

7 (c) an employer that is a nonprofit organization that,
8 as one of its primary purposes or objectives, discourages
9 the use of one or more lawful products by the general
10 public.

11 (3) An employer does not violate this section if the
12 employer takes action based on the belief that the
13 employer's actions are permissible under an established
14 substance abuse or alcohol program or policy, professional
15 contract, or collective bargaining agreement.

16 (4) An employer may offer, impose, or have in effect a
17 health, disability, or life insurance policy that makes
18 distinctions between employees for the type or price of
19 coverage based on the employees' recreational activities or
20 use of a product if:

21 (a) differential rates assessed against employees
22 reflect actuarially justified differences in providing
23 employee benefits;

24 (b) the employer provides an employee with written
25 notice delineating the differential rates used by the

1 employer's insurance carriers; and

2 (c) the distinctions in the type or price of coverage
3 is not used to expand, limit, or curtail the rights or
4 liabilities of a party in a civil cause of action.

5 NEW SECTION. **Section 2.** Civil action. An individual
6 who is discharged, discriminated against, or denied
7 employment in violation of [section 1] may file a civil
8 action against an employer within 1 year of the alleged
9 violation and may receive actual damages, court costs, and
10 reasonable attorney fees.

11 NEW SECTION. **Section 3.** Codification instruction.
12 [Sections 1 and 2] are intended to be codified as an
13 integral part of Title 39, chapter 2, part 3, and the
14 provisions of Title 39, chapter 2, part 3, apply to
15 [sections 1 and 2].

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0160 , as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act prohibiting discrimination against an employee for use of a lawful product during working hours; and providing for civil damages.

FISCAL IMPACT:

No known, estimable fiscal impact.

David Lewis 1-20-93
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

David B. Rye 1-20-93
DAVID RYE, PRIMARY SPONSOR DATE

Fiscal Note for SB0160, as introduced.

SB 160

STATE OF MONTANA - FISCAL NOTE

Form BD-15

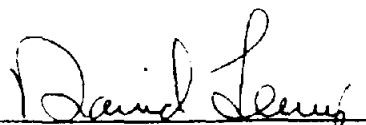
In compliance with a written request, there is hereby submitted a Revised Fiscal Note for SB0160, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act prohibiting discrimination against an employee for use of a lawful product during non-working hours; and providing for civil damages.

FISCAL IMPACT:

No known, estimable fiscal impact.

 1-21-93

DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 1-22-93

DAVID RYE, PRIMARY SPONSOR DATE

Revised Fiscal Note for SB0160, as introduced.

SB 160 Rev.

APPROVED BY COMMITTEE
ON LABOR & EMPLOYMENT
RELATIONS

SENATE BILL NO. 160

INTRODUCED BY RYE, DEVLIN, LYNCH, BRANDEWIE,

ZOOK, DRISCOLL, PAVLOVICH

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING
DISCRIMINATION AGAINST AN EMPLOYEE FOR USE OF A LAWFUL
PRODUCT DURING NONWORKING HOURS; AND PROVIDING FOR CIVIL
DAMAGES."

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employer may not refuse to employ or license and may not
discharge or otherwise discriminate against an individual
with respect to compensation, promotion, or the terms,
conditions, or privileges of employment because the
individual legally uses a lawful product off the employer's
premises during nonworking hours.

(2) Subsection (1) does not apply to:

(a) use of a lawful product that:

(i) impairs AFFECTS IN ANY MANNER an individual's
ability to perform job-related employment responsibilities
or threatens the safety of other employees; or

(ii) conflicts with a bona fide occupational

qualification that is reasonably related to the individual's
employment;

(b) an individual who, on a personal basis, has a
professional service contract with an employer and the
unique nature of the services provided authorizes the
employer, as part of the service contract, to limit the use
of certain products; or

(c) an employer that is a nonprofit organization that,
as one of its primary purposes or objectives, discourages
the use of one or more lawful products by the general
public.

(3) An employer does not violate this section if the
employer takes action based on the belief that the
employer's actions are permissible under an established
substance abuse or alcohol program or policy, professional
contract, or collective bargaining agreement.

(4) An employer may offer, impose, or have in effect a
health, disability, or life insurance policy that makes
distinctions between employees for the type or price of
coverage based on the employees' recreational activities or
use of a product if:

(a) differential rates assessed against employees
reflect actuarially justified differences in providing
employee benefits;

(b) the employer provides an employee with written

1 notice delineating the differential rates used by the
2 employer's insurance carriers; and

3 (c) the distinctions in the type or price of coverage
4 is not used to expand, limit, or curtail the rights or
5 liabilities of a party in a civil cause of action.

6 NEW SECTION. Section 2. Civil action. An individual
7 who is discharged, discriminated against, or denied
8 employment in violation of [section 1] may file a civil
9 action ~~against--an--employer--within--1-year-of-the-alleged~~
10 ~~violation-and-may-receive-actual-damages,-court--costs,-and~~
11 ~~reasonable---attorney--fees~~ FOR REMEDIES AS PROVIDED IN
12 39-2-905.

13 NEW SECTION. Section 3. Codification instruction.
14 [Sections 1 and 2] are intended to be codified as an
15 integral part of Title 39, chapter 2, part 3, and the
16 provisions of Title 39, chapter 2, part 3, apply to
17 [sections 1 and 2].

-End-

RE-REFERRED AND
APPROVED BY COMMITTEE
ON LABOR & EMPLOYMENT
RELATIONS AS AMENDED

SENATE BILL NO. 160

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A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING
DISCRIMINATION AGAINST AN EMPLOYEE FOR USE OF A LAWFUL
PRODUCT DURING NONWORKING HOURS; AMENDING SECTION 39-2-903,
MCA; AND PROVIDING FOR CIVIL DAMAGES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Discrimination prohibited for
use of lawful product during nonworking hours -- exceptions.

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employer may not refuse to employ or license and may not
~~discharge-or-otherwise~~ discriminate against an individual
with respect to compensation, promotion, or the terms,
conditions, or privileges of employment because the
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or

(ii) conflicts with a bona fide occupational
qualification that is reasonably related to the individual's
employment;

(b) an individual who, on a personal basis, has a
professional service contract with an employer and the
unique nature of the services provided authorizes the
employer, as part of the service contract, to limit the use
of certain products; or

(c) an employer that is a nonprofit organization that,
as one of its primary purposes or objectives, discourages
the use of one or more lawful products by the general
public.

(3) An employer does not violate this section if the
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(4) An employer may offer, impose, or have in effect a
health, disability, or life insurance policy that makes
distinctions between employees for the type or price of
coverage based on the employees' recreational-activities-or
use of a product if:

(a) differential rates assessed against employees
reflect actuarially justified differences in providing
employee benefits;

SECOND READING

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SECOND PRINTING

(b) the employer provides an employee with written notice delineating the differential rates used by the employer's insurance carriers; and

(c) the distinctions in the type or price of coverage is not used to expand, limit, or curtail the rights or liabilities of a party in a civil cause of action.

NEW SECTION. Section 2. Civil action -- limitation. An

(1) EXCEPT AS PROVIDED IN SUBSECTION (2), AN individual who is discharged, discriminated against, or denied employment in violation of [section 1] may file a civil action against an employer within one year of the alleged violation--and THE COURT may--receive-actual-damages, court-costs, REQUIRE ANY REASONABLE MEASURE TO CORRECT THE DISCRIMINATORY PRACTICE AND TO RECTIFY THE HARM, PECUNIARY OR OTHERWISE, TO THE PERSON DISCRIMINATED AGAINST and MAY ALLOW reasonable attorney--fees TO THE PREVAILING PARTY FOR REMEDIES AS PROVIDED IN 39-2-905.

(2) PRIOR TO FILING A CIVIL ACTION UNDER SUBSECTION (1), AN EMPLOYEE SHALL, WITHIN 120 DAYS OF THE ALLEGED VIOLATION, INITIATE ANY INTERNAL GRIEVANCE PROCEDURE AVAILABLE. IF A GRIEVANCE PROCEDURE IS NOT EXHAUSTED WITHIN 120 DAYS, THE EMPLOYEE MAY FILE A CIVIL ACTION.

SECTION 3. SECTION 39-2-903, MCA, IS AMENDED TO READ:

"39-2-903. Definitions. In this part, the following definitions apply:

(1) "Constructive discharge" means the voluntary termination of employment by an employee because of a situation created by an act or omission of the employer which an objective, reasonable person would find so intolerable that voluntary termination is the only reasonable alternative. Constructive discharge does not mean voluntary termination because of an employer's refusal to promote the employee or improve wages, responsibilities, or other terms and conditions of employment.

(2) "Discharge" includes a constructive discharge as defined in subsection (1) and any other termination of employment, including resignation, elimination of the job, layoff for lack of work, failure to recall or rehire, and any other cutback in the number of employees for a legitimate business reason.

(3) "Employee" means a person who works for another for hire. The term does not include a person who is an independent contractor.

(4) "Fringe benefits" means the value of any employer-paid vacation leave, sick leave, medical insurance plan, disability insurance plan, life insurance plan, and pension benefit plan in force on the date of the termination.

(5) "Good cause" means reasonable job-related grounds for dismissal based on a failure to satisfactorily perform

1 job duties, disruption of the employer's operation, or other
2 legitimate business reason. The legal use of a lawful
3 product by an individual off the employer's premises during
4 nonworking hours is not a legitimate business reason.

5 (6) "Lost wages" means the gross amount of wages that
6 would have been reported to the internal revenue service as
7 gross income on Form W-2 and includes additional
8 compensation deferred at the option of the employee.

9 (7) "Public policy" means a policy in effect at the
10 time of the discharge concerning the public health, safety,
11 or welfare established by constitutional provision, statute,
12 or administrative rule."

13 NEW SECTION. **Section 4.** Codification instruction.
14 [Sections 1 and 2] are intended to be codified as an
15 integral part of Title 39, chapter 2, part 3, and the
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15 [Sections 1 and 2] are intended to be codified as an
16 integral part of Title 39, chapter 2, part 3, and the
17 provisions of Title 39, chapter 2, part 3, apply to
18 [sections 1 and 2].

-End-

HOUSE STANDING COMMITTEE REPORT

March 5, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Labor report that Senate Bill 160 (third reading copy -- blue) be concurred in as amended.

Signed: 

Tom Nelson, Chair

And, that such amendments read:

Carried by: Rep. Pavlovich

1. Page 1, line 13.

Following: line 12

Insert: "(1) For purposes of this section, "lawful product" means a product that is legally consumed, used, or enjoyed and includes food, beverages, and tobacco.

Following: "subsections"

Strike: "(2) and (3)"

Insert: "(3) and (4)"

Renumber: subsequent subsections

2. Page 1, line 20.

Strike: "(1)"

Insert: "(2)"

3. Page 5, line 5

Following: "reason"

Insert: ", unless the employer acts within the provisions of [section 1(3) or (4)]"

-END-

Committee Vote:
Yes 15, No 1.

HOUSE

SB 160