

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 1032*
Judiciary II Committee Substitute Adopted 6/19/92

Short Title: Discrimination/Nonworking Hours.

(Public)

Sponsors:

Referred to:

May 28, 1992

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT DISCRIMINATION AGAINST ANY EMPLOYEE FOR
ENGAGING IN THE LAWFUL USE OF ANY LAWFUL PRODUCT DURING
NONWORKING HOURS UNRELATED TO EMPLOYMENT.

The General Assembly of North Carolina enacts:

Section 1. Article 3 of Chapter 95 of the General Statutes is amended by
adding a new section to read:

"§ 95-28.2. Prohibit discrimination against employees for lawful product use.

(a) As used in this section, 'employer' means the State and all political subdivisions of the State, public and quasi-public corporations, boards, bureaus, commissions, councils, and private employers with three or more regularly employed employees.

(b) It is an unlawful employment practice for an employer to fail or refuse to hire a prospective employee or discharge or otherwise discriminate against any employee with respect to compensation, terms, conditions, or privileges of employment because the prospective employee or the employee engages in or has engaged in the lawful use of lawful products, if the lawful use occurs off the premises of the employer during nonworking hours and does not adversely affect the employee's job performance or the person's ability to properly fulfill the responsibilities of the position in question or the safety of other employees.

(c) An employee who is discharged or otherwise discriminated against or a prospective employee who is denied employment in violation of subsection (a) of this

1 section may bring a civil action within three years from the date of the alleged violation
2 against the employer and obtain any of the following:

3 (1) Any wages or benefits lost as a result of the violation.

4 (2) An order of reinstatement without loss of position, seniority, or
5 benefits.

6 (3) An order directing the employer to offer employment to the
7 prospective employee.

8 (d) It is not a violation of this section for an employer to do either of the
9 following:

10 (1) Restrict the lawful use of lawful products by employees during
11 nonworking hours if the restriction relates to a bona fide occupational
12 requirement and is reasonably related to the employment activities. If
13 the restriction reasonably relates to only a particular employee or
14 group of employees, then the restriction may only lawfully apply to
15 them.

16 (2) Discharge, discipline, or take any action against an employee because
17 of the employee's failure to comply with the requirements of the
18 employer's substance abuse prevention program or the
19 recommendations of substance abuse prevention counselors employed
20 or retained by the employer.

21 (e) The court may award reasonable costs, including court costs and attorneys'
22 fees, to the prevailing party in an action brought under this section."

23 Sec. 2. This act becomes effective October 1, 1992.