

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 1032\*  
Judiciary II Committee Substitute Adopted 6/19/92  
Third Edition Engrossed 6/24/92  
House Committee Substitute Favorable 7/10/92

Short Title: Discrimination/Nonworking Hours.

(Public)

Sponsors:

Referred to:

May 28, 1992

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT DISCRIMINATION AGAINST ANY PERSON 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. Discrimination against persons for lawful use of lawful products during nonworking hours prohibited.**

(a) 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, if that activity does not adversely affect the employee's job performance or the safety of other employees. This section shall not apply to the application of actuarially justified differences in the provisions of employee benefits or in the payment of employee benefit premiums.

(b) It is not a violation of this section:

(1) For an employer to impose a restriction reasonably related to a bona fide occupational requirement.

1           (2) For an employer to discharge, discipline, or take any action against an  
2           employee because of the employee's failure to comply with the  
3           requirements of the employer's substance abuse prevention program or  
4           the recommendations of substance abuse prevention counselors  
5           employed or retained by the employer.

6           (c) An employee who is discharged or otherwise discriminated against, or a  
7           prospective employee who is denied employment in violation of this section, may bring  
8           a civil action against the employer who violates the provisions of subsection (a) and  
9           obtain any of the following:

10           (1) Any wages or benefits lost as a result of the violation;

11           (2) An order of reinstatement without loss of position, seniority, or  
12           benefits; or

13           (3) An order directing the employer to offer employment to the  
14           prospective employee.

15           (d) The court may award reasonable costs, including court costs and attorneys'  
16           fees, to the prevailing party in an action brought pursuant to this section."

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