

Legislative Analysis



APPLICANT & EMPLOYEE RIGHTS AND EMPLOYER PROHIBITIONS

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House Bill 4532 (Substitute H-1)
Sponsor: Rep. Lee Gonzales

House Bill 4926 without amendment
Sponsor: Rep. Hoon-Yung Hopgood

House Bill 4887 (Substitute H-1)
Sponsor: Rep. Fred Miller

House Bill 4927 without amendment
Sponsor: Rep. Kathleen Law

Committee: Labor
Complete to 11-7-07

A SUMMARY OF HOUSE BILLS 4532 (H-1), 4887 (H-1), 4926, & 4927 AS REPORTED FROM COMMITTEE

House Bill 4532 (H-1)—to be known as the "Employee Privacy Protection Act"—would prohibit an employer from taking certain adverse actions against an individual who is engaging in—or is regarded as engaging in—a lawful activity both (1) off the employer's premises and (2) during non-work hours.

House Bill 4887 (H-1) would create the Job Applicant Credit Privacy Act. Under the act, an employer could not (1) fail or refuse to hire an individual because of that individual's credit history; or (2) inquire about a job applicant's or potential job applicant's credit history.

House Bill 4926 would create a new act, generally, to prohibit an employer from discriminating against an employee or prospective employee based on body type, degree of physical fitness, or other physical characteristics. The act would be known as the Respect for Physical Differences Act.

House Bill 4927 would create a new act, generally, to prohibit an employer from discriminating against an employee based on a known or believed illness or health condition of a member of the employee's family. The act would be known as the Employee Family Health Privacy Act.

Following is a more detailed description of the bills.

House Bill 4532 (H-1)

House Bill 4532 (H-1)—to be known as the "Employee Privacy Protection Act"—would prohibit an employer from taking certain adverse actions against an individual who is engaging in—or is regarded as engaging in—a lawful activity both (1) off the employer's premises and (2) during non-work hours.

Prohibited acts. Unless an exception applied, an employer could not do any of the following because of an individual's lawful conduct away from work and off the employer's premises:

- Fail or refuse to hire or recruit.
- Discharge.
- Otherwise discriminate with respect to employment, compensation, or a term, condition, or privilege of employment.

Protection includes employees "regarded as" engaging in a non-work activity. The bill would protect both individuals who actually do engage in a lawful off-duty, off-premises activity disfavored by the employer, and those whom an employer perceives—rightly or wrongly—as doing so.

Exceptions. An employer would be allowed to refuse to hire, discharge, or otherwise discriminate against an individual for off-duty, off-premises conduct that would:

- Directly impair an established bona fide occupational requirement or an employment activity or responsibility of a particular employee or group of employees.
- Create a substantial conflict of interest with the core mission of the employer or violate a written conflict of interest policy.
- Violate an established policy as to property owned or leased by the employer.
- Violate a state or federal law, regulation, or rule regulating the particular type of employment.
- Require an additional charge or co-pay for health care because the employee, or a dependent of the employee covered by the employer's health program, smokes.

Rights under act non-waivable. An employer could not require an applicant or employee to waive any rights under this law. Such a waiver agreement would be invalid and unenforceable.

Anti-retaliation provision. The bill would prohibit retaliation or discrimination because a person (1) filed an action; (2) testified, assisted, or participated in an investigation, proceeding, or action concerning a violation of the law; or (3) opposed a violation of the law. The bill would also ban retaliation or discrimination against persons about to do any of these things.

Enforcement. A person injured by a violation of the law could bring a civil suit to obtain injunctive relief and damages, and to recover costs and reasonable attorney fees, if successful.

Definitions. The bill contains the following definitions:

- **"Employee"** would mean "an individual who receives compensation for performing services for an employer under an express or implied contract of hire."

- **"Employer"** would mean "an individual or entity that permits one or more individuals to work, that accepts applications for employment, or that is an agent of an employer."

House Bill 4887 (H-1)

House Bill 4887 (H-1) would create the Job Applicant Credit Privacy Act. Under the act, an employer could not (1) fail or refuse to hire an individual because of that individual's credit history; or (2) inquire about a job applicant's or potential job applicant's credit history.

However, the prohibition would not apply to prevent an inquiry or employment action in cases where a good credit history is an established bona fide occupational requirement of a particular position or job classification. Further, the bill specifies that good credit history would be considered to be a bona fide job qualification for any employee of a state or nationally chartered bank or of a state or federally chartered savings and loan, savings bank, or credit union.

No Waiving or Limiting Protections. The bill would prohibit an employer from requiring an individual to waive or limit any protection granted under the bill as a condition of applying for or receiving an offer for employment. An agreement to waive any right or protection under the new act would be deemed contrary to public policy and void and unenforceable.

Remedies. An individual injured by a violation of the act could bring a civil suit to obtain damages and/or injunctive relief. The court would award costs and reasonable attorney fees to a prevailing plaintiff.

No Retaliation. A person could not retaliate or discriminate against an individual who filed a complaint (or was about to) under the act; testified, assisted, or participated in an investigation, proceeding, or action concerning a violation of the act; or opposed a violation of the act.

House Bill 4926

House Bill 4926 would create a new act, generally, to prohibit an employer from discriminating against an employee or prospective employee based on body type, degree of physical fitness, or other physical characteristics. The act would be known as the Respect for Physical Differences Act.

Employers would be prohibited from failing or refusing to hire or recruit, discharging, or otherwise discriminating with respect to employment, compensation, or a term, condition, or privilege of employment on the basis described above.

The prohibition would not apply when body type, fitness, or a physical characteristic is an established, bona fide occupational requirement or if it impairs an employment

activity or responsibility of an employee or group of employees. The burden of establishing the exception would be on the employer.

The bill also would prohibit retaliation or discrimination against an individual because he or she has, or is about to, file a complaint under the new act; testify, assist, or participate in an investigation, proceeding, or action concerning a violation of the act; or oppose a violation of the act. An employer could not require an applicant for employment or an employee to waive any right under the act. An agreement to waive a right would be invalid and unenforceable.

An individual injured by a violation of the act could bring a civil suit to obtain injunctive relief or damages, or both. The court would award costs and reasonable attorney fees to a prevailing plaintiff.

House Bill 4927

House Bill 4927 would create a new act, generally, to prohibit an employer from discriminating against an employee based on a known or believed illness or health condition of a member of the employee's family. The act would be known as the Employee Family Health Privacy Act.

Employers would be prohibited from (1) failing or refusing to hire or recruit, discharging, or otherwise discriminating with respect to employment, compensation, or a term, condition, or privilege of employment on the basis described above; and (2) inquiring as to the physical condition or health status of an employee's family member.

The prohibition would not apply to: an inquiry to obtain information to verify eligibility for sick leave; an inquiry to obtain information to verify eligibility for family and medical leave; or an inquiry to obtain information necessary to process an employee's health claim.

The bill also would prohibit retaliation or discrimination against an individual because he or she has, or is about to, file a complaint under the new act; testify, assist, or participate in an investigation, proceeding, or action concerning a violation of the act; or oppose a violation of the act. An employer could not require an applicant for employment or an employee to waive any right under the act. An agreement to waive a right would be invalid and unenforceable.

An individual injured by a violation of the act could bring a civil suit to obtain injunctive relief or damages, or both. The court would award costs and reasonable attorney fees to a prevailing plaintiff.

FISCAL IMPACT:

Each of the bills would have an indeterminate fiscal impact on the judiciary; the fiscal impact would depend on how the bill increased civil court caseloads and any related administrative costs.

POSITIONS:

The American Civil Liberties Union supports the four bills. (11-6-07)

IUOE Local 547 supports the four bills. (11-6-07)

The National Organization for Women supports the four bills. (11-6-07)

The Michigan Bankers Association supports House Bill 4887 as amended. (11-6-07)

The National Workrights Institute supports House Bill 4532. (11-6-07)

The Michigan Chamber of Commerce opposes the four bills. (11-6-07)

The Insurance Institute of Michigan opposes House Bill 4887. (11-6-07)

Michigan Seat Company opposes House Bill 4532. (11-6-07)

Meritain Health/Weyco opposes House Bill 4532. (11-6-07)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.