

SUBSTITUTE FOR

HOUSE BILL NO. 4532

(As amended May 15, 2008)

A bill to prohibit employers from making employment decisions based upon certain conduct that is unrelated to employment; and to provide remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "employee privacy protection act".

3 Sec. 3. As used in this act:

4 (a) "Employee" means an individual who receives compensation
5 for performing services for an employer under an express or implied
6 contract of hire.

7 (b) "Employer" means an individual or entity that permits [50 or
8 more individuals to work at any time during the calendar year or accepts
9 applications for employment for 50 or more positions during the calendar
10 year, or an agent of that individual or entity.]

10 Sec. 5. (1) Except as provided in this section, an employer

1 shall not fail or refuse to hire or recruit, discharge, or
2 otherwise discriminate against an individual with respect to
3 employment, compensation, or a term, condition, or privilege of
4 employment because the employee engages in, or is regarded as
5 engaging in, a lawful activity that is both off the employer's
6 premises and during nonwork hours.

7 (2) The prohibition in subsection (1) does not apply to any of
8 the following:

9 (a) An activity that directly impairs an established bona fide
10 occupational requirement or an employment activity or
11 responsibility of a particular employee or a particular group of an
12 employer's employees.

13 (b) An activity that creates a substantial conflict of
14 interest with the core mission of the employer or violates a
15 written bona fide conflict of interest policy that has been
16 disseminated to employees.

17 (c) An activity that involves use of property that the
18 employer owns or leases in violation of an established company
19 policy.

20 (d) An activity that is addressed under state or federal law,
21 regulation, or rule regulating the particular type of employment,
22 if the employee's action is not in accord with the law, regulation,
23 or rule.

24 (e) An additional charge or co-pay for health care required
25 because the employee or a dependent of the employee who is covered
26 by the employer's health program smokes.

27 Sec. 7. A person shall not retaliate or discriminate against a

1 person because the person has done or was about to do any of the
2 following:

3 (a) File a complaint under this act.

4 (b) Testify, assist, or participate in an investigation,
5 proceeding, or action concerning a violation of this act.

6 (c) Oppose a violation of this act.

7 Sec. 9. An employer shall not require an applicant or employee
8 to waive any right under this act. An agreement by an applicant or
9 employee to waive any right under this act is invalid and
10 unenforceable.

11 Sec. 11. (1) A person who is injured by a violation of this
12 act may bring a civil suit in a court of competent jurisdiction to
13 obtain injunctive relief and damages.

14 (2) The court shall award costs and reasonable attorney fees
15 to a person who prevails as a plaintiff in a suit authorized under
16 subsection (1).