



1997 ASSEMBLY BILL 409

June 10, 1997 - Introduced by Representatives KELSO, GROTHMAN, JENSEN, DOBYNS, NASS, OLSEN, SCHAFER, M. LEHMAN, POWERS, LADWIG, LAZICH, WALKER, KAUFERT, SKINDRUD, UNDERHEIM, OWENS and ZUKOWSKI, cosponsored by Senators FITZGERALD, DRZEWIECKI and FARROW. Referred to Committee on Labor and Employment.

1 **AN ACT to repeal** 111.335 (1) (cg) 3. and 111.335 (1) (cm); and **to amend** 62.13
2 (4) (d), 62.50 (5), 63.25 (1) (a), 111.31 (1), 111.31 (2), 111.31 (3), 111.32 (3),
3 111.321, 111.335 (1) (c), 121.555 (2) (c) 5., 565.02 (1) (b) (intro.), 565.02 (2) (c)
4 (intro.) and 565.10 (3) (a) (intro.) of the statutes; **relating to:** discrimination by
5 employers and employment agencies based on conviction record.

Analysis by the Legislative Reference Bureau

Under current law, subject to certain exceptions, an employer, employment agency, licensing agency or labor organization may not discriminate against an individual in employment, licensing or labor organization membership based on conviction record. Currently, it is a discriminatory act to refuse to hire, employ, admit or license any individual, to bar or terminate from employment or labor organization membership any individual or to discriminate against any individual in promotion or compensation or in the terms, conditions or privileges of employment or labor organization membership based on conviction record. It is also a discriminatory act to print or circulate an advertisement, to use an application form or to make inquiries which imply or express any discrimination or intent to discriminate based on conviction record. Current law, however, permits an employer to refuse to employ, or to bar or terminate from employment, an individual who has been convicted of an offense the circumstances of which substantially relate to the circumstances of a particular job or who is not bondable if bondability is required by law or standard business practice of the employer.

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This bill eliminates conviction record as a prohibited basis of employment discrimination for employers and employment agencies. Under the bill, however, licensing agencies and labor organizations remain subject to the law which prohibits discrimination in licensing or labor organization membership based on conviction record.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 62.13 (4) (d) of the statutes is amended to read:

2 62.13 (4) (d) The examination shall be free for all U.S. citizens over 18 and
3 under 55 years of age, with proper limitations as to residence, health, conviction
4 record and, subject to ss. 111.321, 111.322 and 111.335, ~~arrest and conviction~~ record.

5 The examination, including minimum training and experience requirements, shall
6 be job-related in compliance with appropriate validation standards and shall be
7 subject to the approval of the board and may include tests of manual skill and
8 physical strength. All relevant experience, whether paid or unpaid, shall satisfy
9 experience requirements. The board shall control examinations and may designate
10 and change examiners, who may or may not be otherwise in the official service of the
11 city, and whose compensation shall be fixed by the board and paid by the city.
12 Veterans and their spouses shall be given preference points in accordance with s.
13 230.16 (7).

14 **SECTION 2.** 62.50 (5) of the statutes is amended to read:

15 62.50 (5) EXAMINATIONS. The examinations which the rules and regulations
16 provide for shall be public and free to all U.S. citizens with proper limitations as to
17 residence, age, health, conviction record and, subject to ss. 111.321, 111.322 and
18 111.335, ~~arrest and conviction~~ record. The examinations shall be practical in their

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1 character and shall relate to those matters which fairly test the relative capacity of
2 the candidates to discharge the duties of the positions in which they seek
3 employment or to which they seek to be appointed and may include tests of manual
4 skill and physical strength. The board shall control all examinations and may
5 designate suitable persons, either in the official service of the city or not, to conduct
6 such examinations and may change such examiners at any time, as seems best.

7 **SECTION 3.** 63.25 (1) (a) of the statutes is amended to read:

8 63.25 (1) (a) For open, competitive examinations and for other examinations
9 by which to test applicants for office or for employment as to their practical fitness
10 to discharge the duties of the positions which they desire to fill, which examinations
11 shall be public and free to all persons with proper limitations as to residence, age,
12 health, conviction record and, subject to ss. 111.321, 111.322 and 111.335, arrest and
13 ~~conviction~~ record.

14 **SECTION 4.** 111.31 (1) of the statutes is amended to read:

15 111.31 (1) The legislature finds that the practice of unfair discrimination in
16 employment, licensing and labor organization membership against properly
17 qualified individuals by reason of their age, race, creed, color, handicap, marital
18 status, sex, national origin, ancestry, sexual orientation, arrest record, ~~conviction~~
19 ~~record~~, membership in the national guard, state defense force or any other reserve
20 component of the military forces of the United States or this state or use or nonuse
21 of lawful products off the employer's premises during nonworking hours and that the
22 practice of unfair discrimination in licensing and labor organization membership
23 against properly qualified individuals by reason of their conviction record
24 substantially and adversely affects the general welfare of the state. Employers,
25 labor organizations, employment agencies and licensing agencies that deny

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1 employment, licensing and labor organization membership opportunities and
2 discriminate in employment, licensing and labor organization membership against
3 properly qualified individuals solely because of their age, race, creed, color, handicap,
4 marital status, sex, national origin, ancestry, sexual orientation, arrest record,
5 ~~conviction record~~, membership in the national guard, state defense force or any other
6 reserve component of the military forces of the United States or this state or use or
7 nonuse of lawful products off the employer's premises during nonworking hours and
8 licensing agencies and labor organizations that deny licensing and labor
9 organization membership to properly qualified individuals solely because of their
10 conviction record deprive those individuals of the earnings that are necessary to
11 maintain a just and decent standard of living.

12 **SECTION 5.** 111.31 (2) of the statutes is amended to read:

13 111.31 (2) It is the intent of the legislature to protect by law the rights of all
14 individuals to obtain gainful employment, licensing and labor organization
15 membership and to enjoy privileges free from employment discrimination in
16 employment, licensing and labor organization membership because of age, race,
17 creed, color, handicap, marital status, sex, national origin, ancestry, sexual
18 orientation, arrest record, ~~conviction record~~, membership in the national guard,
19 state defense force or any other reserve component of the military forces of the United
20 States or this state or use or nonuse of lawful products off the employer's premises
21 during nonworking hours, to protect by law the rights of all individuals to obtain
22 licensing and labor organization membership and to obtain privileges free from
23 discrimination in licensing and labor organization membership because of conviction
24 record, and to encourage the full, nondiscriminatory utilization of the productive
25 resources of the state to the benefit of the state, the family and all the people of the

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1 state. It is the intent of the legislature in promulgating this subchapter to encourage
2 employers to evaluate an employe or applicant for employment, other than an
3 employe or applicant who has a conviction record, based upon the employe's or
4 applicant's individual qualifications rather than upon a particular class to which the
5 individual may belong.

6 **SECTION 6.** 111.31 (3) of the statutes is amended to read:

7 111.31 (3) In the interpretation and application of this subchapter, and
8 otherwise, it is declared to be the public policy of the state to encourage and foster
9 to the fullest extent practicable the employment, licensing and labor organization
10 membership of all properly qualified individuals regardless of age, race, creed, color,
11 handicap, marital status, sex, national origin, ancestry, sexual orientation, arrest
12 record, ~~conviction record~~, membership in the national guard, state defense force or
13 any other reserve component of the military forces of the United States or this state
14 or use or nonuse of lawful products off the employer's premises during nonworking
15 hours and to encourage and foster to the fullest extent practicable the licensing and
16 labor organization membership of all properly qualified individuals regardless of
17 conviction record. Nothing in this subsection requires an affirmative action program
18 to correct an imbalance in the work force. This subchapter shall be liberally
19 construed for the accomplishment of this purpose.

20 **SECTION 7.** 111.32 (3) of the statutes is amended to read:

21 111.32 (3) "Conviction record" includes, but is not limited to, information
22 indicating that an individual has been convicted of any felony, misdemeanor or other
23 offense, has been adjudicated delinquent, has been less than honorably discharged,
24 or has been placed on probation, fined, imprisoned or paroled pursuant to any law
25 enforcement or military authority, and has not been pardoned.

ASSEMBLY BILL 409**SECTION 8**

1 **SECTION 8.** 111.321 of the statutes is amended to read:

2 **111.321 Prohibited bases of discrimination.** Subject to ss. 111.33 to 111.36,
3 no employer, labor organization, employment agency, licensing agency or other
4 person may engage in any act of employment discrimination as specified in s. 111.322
5 against any individual on the basis of age, race, creed, color, handicap, marital
6 status, sex, national origin, ancestry, arrest record, ~~conviction record~~, membership
7 in the national guard, state defense force or any reserve component of the military
8 forces of the United States or this state or use or nonuse of lawful products off the
9 employer's premises during nonworking hours and no labor organization, licensing
10 agency or other person may engage in any act of employment discrimination as
11 specified in s. 111.322 against any individual on the basis of conviction record.

12 **SECTION 9.** 111.335 (1) (c) of the statutes is amended to read:

13 111.335 (1) (c) Notwithstanding s. 111.322, it is not employment discrimination
14 because of conviction record to refuse to ~~employ or~~ license, or to bar or terminate from
15 ~~employment or~~ licensing, any individual who:

16 1. Has been convicted of any felony, misdemeanor or other offense the
17 circumstances of which substantially relate to the circumstances of the particular job
18 ~~or~~ licensed activity; or

19 2. Is not bondable under a standard fidelity bond or an equivalent bond where
20 such bondability is required by state or federal law, or administrative regulation ~~or~~
21 ~~established business practice of the employer.~~

22 **SECTION 10.** 111.335 (1) (cg) 3. of the statutes is repealed.

23 **SECTION 11.** 111.335 (1) (cm) of the statutes is repealed.

24 **SECTION 12.** 121.555 (2) (c) 5. of the statutes is amended to read:

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1 121.555 (2) (c) 5. ~~Notwithstanding ss. 111.321, 111.322 and 111.335, may~~ May
2 not be a person convicted within a 2-year period of reckless driving under s. 346.62
3 or a local ordinance in conformity with s. 346.62 (2) or a law of a federally recognized
4 American Indian tribe or band in this state in conformity with s. 346.62 (2), operating
5 a motor vehicle while operating privileges are suspended or revoked under s. 343.44
6 (1) or a local ordinance in conformity therewith or a law of a federally recognized
7 American Indian tribe or band in this state in conformity with s. 343.44 (1) with
8 respect to operation of a motor vehicle while operating privileges are suspended or
9 revoked, any of the offenses enumerated under s. 343.31 (1) or (2), or 2 or more
10 offenses under s. 346.63 (7) or a local ordinance in conformity therewith or a law of
11 a federally recognized American Indian tribe or band in this state in conformity with
12 s. 346.63 (7), or a conviction under the law of another jurisdiction, as those terms are
13 defined in s. 340.01 (9r) and (41m), respectively, prohibiting reckless or careless
14 driving, as those or substantially similar terms are used in that jurisdiction's laws,
15 or a conviction, suspension or revocation that would be counted under s. 343.307 (2)
16 (a) to (g), or a person convicted within a 5-year period of violating s. 940.09 (1) or
17 940.25. Upon request of the operator or school, the department shall certify whether
18 the operator meets this requirement.

19 **SECTION 13.** 565.02 (1) (b) (intro.) of the statutes is amended to read:

20 565.02 (1) (b) (intro.) ~~Notwithstanding s. 111.321, no~~ No person may serve as
21 the administrator if he or she has been convicted of, or entered a plea of guilty or no
22 contest to, any of the following:

23 **SECTION 14.** 565.02 (2) (c) (intro.) of the statutes is amended to read:

