

1981 Assembly Bill 70

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CHAPTER 112 , Laws of 1981

AN ACT to amend 15.04 (1) (g), 16.765 (1) and (2) (a), 21.35, 66.39 (13), 66.395 (2m), 66.40 (2m), 66.405 (2m), 66.43 (2m), 66.431 (3) (e) 2, 66.432 (1) and (2), 66.433 (3) (a) and (c) 1. b and (9), 101.22 (1), (1m) (b), (2m) and (4n), 101.221 (1), 111.31 (1) to (3), 111.32 (5) (a), 111.70 (2), 111.81 (9) (b), 111.85 (1), 227.033 (1), 230.01 (2), 230.18, 234.29 and 942.04 (1) (a) to (c) and (3); and to create 111.32 (4s) and (5) (i) of the statutes, relating to prohibiting discrimination based upon sexual orientation.

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

SECTION 1. 15.04 (1) (g) of the statutes is amended to read:

15.04 (1) (g) *Discrimination review.* In order to determine whether there is any arbitrary discrimination on the basis of race, religion, national origin, sex or marital status or sexual orientation as defined in s. 111.32 (4s), examine and assess the statutes under which the head has powers or regulatory responsibilities, the procedures by which those statutes are administered and the rules promulgated under those statutes. If the department or agency head finds any such discrimination, he or she shall take remedial action,

including making recommendations to the appropriate executive, legislative or administrative authority.

SECTION 2. 16.765 (1) and (2) (a) of the statutes are amended to read:

16.765 (1) Contracting agencies of the state shall include in all contracts executed by them a provision obligating the contractor not to discriminate against any employe or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in s. 51.01 (5), sexual orientation as defined in s. 111.32 (4s) or national origin, and, except with respect to sexual orientation, obligating the contractor to take affirmative action to ensure equal employment opportunities.

(2) (a) In connection with the performance of work under this contract, the contractor agrees not to discriminate against any employe or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in s. 51.01 (5), sexual orientation or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Except with respect to sexual orientation, the contractor further agrees to take affirmative action to ensure equal employment opportunities. The contractor agrees to post in conspicuous places, available for employes and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause.

SECTION 3. 21.35 of the statutes is amended to read:

21.35 Federal laws and regulations; no discrimination. The organization, armament, equipment and discipline of the Wisconsin national guard shall be that prescribed by federal laws or regulations; and the governor may by order perfect such organization, armament, equipment and discipline, at any time, so as to comply with such laws and regulations insofar as they are consistent with the Wisconsin code of military justice. Notwithstanding any rule or regulation prescribed by the federal government or any officer or department thereof, no person, otherwise qualified, ~~shall~~ may be denied membership in the Wisconsin national guard because of sex, color, race ~~or~~, creed or sexual orientation and no member of the Wisconsin national guard ~~shall~~ may be segregated within the Wisconsin national guard on the basis of sex, color, race ~~or~~, creed or sexual orientation. Nothing in this section ~~shall prohibit~~ prohibits separate facilities for persons of different sexes with regard to dormitory accommodations, public toilets, showers, saunas and dressing rooms.

SECTION 4. 66.39 (13) of the statutes is amended to read:

66.39 (13) TENANT SELECTION, DISCRIMINATION. All tenants selected for veterans' housing projects shall be honorably discharged veterans of wars of the United States of America. Selection between veterans shall be made in accordance with rules and regulations promulgated and adopted by the department of veterans affairs which regulation said department is authorized to make and from time to time change as it deems proper. Such rules and regulations, however, shall give veterans of World War II preference over veterans of all other wars. Notwithstanding such rules and regulations or any law to the contrary a veteran shall not be entitled to or be granted any benefits under ss. 66.39 to 66.404 from a housing authority unless such veteran was at the time of induction into military service a resident of the state. Veterans otherwise entitled to any right, benefit, facility or privilege under this section shall not, with reference thereto, be denied them in any manner for any purpose nor be discriminated against because of sex, race, color, creed, sexual orientation or national origin.

SECTION 5. 66.395 (2m) of the statutes is amended to read:

66.395 (2m) DISCRIMINATION. Persons otherwise entitled to any right, benefit, facility or privilege under this section shall not, with reference thereto, be denied them in any manner for any purpose nor be discriminated against because of sex, race, color, creed, sexual orientation or national origin.

SECTION 6. 66.40 (2m) of the statutes is amended to read:

66.40 (2m) DISCRIMINATION. Persons otherwise entitled to any right, benefit, facility or privilege under ss. 66.40 to 66.404 shall not, with reference thereto, be denied them in any manner for any purpose nor be discriminated against because of sex, race, color, creed, sexual orientation or national origin.

SECTION 7. 66.405 (2m) of the statutes is amended to read:

66.405 (2m) DISCRIMINATION. Persons otherwise entitled to any right, benefit, facility or privilege under ss. 66.405 to 66.425 shall not, with reference thereto, be denied them in any manner for any purpose nor be discriminated against because of sex, race, color, creed, sexual orientation or national origin.

SECTION 8. 66.43 (2m) of the statutes is amended to read:

66.43 (2m) DISCRIMINATION. Persons otherwise entitled to any right, benefit, facility or privilege under this section shall not, with reference thereto, be denied them in any manner for any purpose nor be discriminated against because of sex, race, color, creed, sexual orientation or national origin.

SECTION 9. 66.431 (3) (e) 2 of the statutes is amended to read:

66.431 (3) (e) 2. Persons otherwise entitled to any right, benefit, facility or privilege under this section shall not, with reference thereto, be denied such right, benefit, facility or privilege in any manner for any purpose nor be discriminated against because of sex, race, color, creed, sexual orientation or national origin.

SECTION 10. 66.432 (1) and (2) of the statutes are amended to read:

66.432 (1) DECLARATION OF POLICY. The right of all persons to have equal opportunities for housing regardless of their sex, race, color, physical condition, developmental disability as defined in s. 51.01 (5), sexual orientation as defined in s. 111.32 (4s), religion, national origin or ancestry is a matter both of statewide concern under s. 101.22 and also of local interest under this section and s. 66.433. The enactment of s. 101.22 by the legislature shall not preempt the subject matter of equal opportunities in housing from consideration by local governments, and shall not exempt cities, villages, towns and counties from their duty, nor deprive them of their right, to enact ordinances which prohibit discrimination in any type of housing solely on the basis of sex, race, color, physical condition, developmental disability as defined in s. 51.01 (5), sexual orientation, religion, national origin or ancestry.

(2) ANTIDISCRIMINATION HOUSING ORDINANCES. Cities, villages and towns may enact ordinances prohibiting discrimination in the sale or rental of any type of housing within their respective boundaries solely on the basis of sex, race, color, physical condition, developmental disability as defined in s. 51.01 (5), sexual orientation, religion, national origin or ancestry. Such an ordinance may be similar to s. 101.22 or may be more inclusive in its terms or in respect to the different types of housing subject to its provisions, but any such ordinance establishing a forfeiture as a penalty for violation shall not be less than the statutory forfeitures under s. 101.22. Counties may enact such ordinances under ss. 59.07 (11) and 66.433.

SECTION 11. 66.433 (3) (a) and (c) 1. b and (9) of the statutes are amended to read:

66.433 (3) (a) The purpose of the commission is to study, analyze and recommend solutions for the major social, economic and cultural problems which affect people residing or working within the municipality including, without restriction because of enumeration, problems of the family, youth, education, the aging, juvenile delinquency, health and zoning standards, and discrimination in housing, employment and public accommodations and facilities on the basis of sex, class, race, religion, sexual orientation or ethnic or minority status.

(c) 1. b. To ensure to all municipal residents, regardless of sex, race, sexual orientation or color, the rights to possess equal housing accommodations and to enjoy equal employment opportunities.

(9) INTENT. It is the intent of this section to promote fair and friendly relations among all the people in this state, and to that end race, creed, sexual orientation or color ought not to be made tests in the matter of the right of any person to sell, lease, occupy or use real estate or to earn ~~his~~ a livelihood or to enjoy the equal use of public accommodations and facilities.

SECTION 12. 101.22 (1), (1m) (b), (2m) and (4n) of the statutes, are amended to read:

101.22 (1) INTENT. It is the intent of this section to render unlawful discrimination in housing. It is the declared policy of this state that all persons shall have an equal opportunity for housing regardless of sex, race, color, sexual orientation as defined in s. 111.32 (4s), handicap, religion, national origin, sex or marital status of the person maintaining the household, lawful source of income, age or ancestry and it is the duty of the local units of government to assist in the orderly prevention or removal of all discrimination in housing through the powers granted under s. 66.433. The legislature hereby extends the state law governing equal housing opportunities to cover single-family residences which are owner-occupied. The legislature finds that the sale and rental of single-family residences constitute a significant portion of the housing business in this state and should be regulated. This section shall be deemed an exercise of the police powers of the state for the protection of the welfare, health, peace, dignity and human rights of the people of this state.

(1m) (b) "Discriminate" and "discrimination" mean to segregate, separate, exclude or treat any person or class of persons unequally because of sex, race, color, handicap, sexual orientation as defined in s. 111.32 (4s), religion, national origin, sex or marital status of the person maintaining a household, lawful source of income, age or ancestry. It is intended that the factors set forth herein shall be the sole bases for prohibiting discrimination.

(2m) REPRESENTATIONS DESIGNED TO INDUCE PANIC SALES. ~~It is unlawful to~~ No person may induce or attempt to induce any person to sell, rent or lease any dwelling by representations regarding the present or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, national origin, sexual orientation or economic status, or by representations to the effect that such present or prospective entry will or may result in: a) the lowering of real estate values in the area concerned; b) a deterioration in the character of the area concerned; c) an increase in criminal or antisocial behavior in the area concerned; or d) a decline in the quality of the schools or other public facilities serving the area.

(4n) REQUIRING REFERENCES. Nothing in this section ~~shall be deemed to prohibit~~ prohibits an owner, or agent, from requiring that any person who seeks to buy, rent or lease housing supply information concerning family, marital, financial and business status but not concerning race, color, physical condition, developmental disability as defined in s. 51.01 (5), sexual orientation or creed.

SECTION 13. 101.221 (1) of the statutes is amended to read:

101.221 (1) The equal rights council shall disseminate information and attempt by means of discussion as well as other proper means to educate the people of the state to a greater understanding, appreciation and practice of human rights for all people, of whatever race, creed, color, sexual orientation or national origin, to the end that ~~Wisconsin~~ this state will be a better place in which to live.

SECTION 14. 111.31 (1) to (3) of the statutes are amended to read:

111.31 (1) The practice of denying employment and other opportunities to, and discriminating against, properly qualified persons by reason of their age, race, creed, color, handicap, sex, national origin, ancestry, sexual orientation, arrest record or conviction record, is likely to foment domestic strife and unrest, and substantially and adversely affect the general welfare of a state by depriving it of the fullest utilization of its capacities for production. The denial by some employers, licensing agencies and labor unions of employment opportunities to such persons solely because of their age, race, creed, color, handicap, sex, national origin, ancestry, sexual orientation, arrest record or conviction record, and discrimination against them in employment, tends to deprive the victims of the earnings which are necessary to maintain a just and decent standard of living, thereby committing grave injury to them.

(2) It is believed by many students of the problem that protection by law of the rights of all people to obtain gainful employment, and other privileges free from discrimination because of age, race, creed, color, handicap, sex, national origin ~~or~~, ancestry or sexual orientation, would remove certain recognized sources of strife and unrest, and encourage the full utilization of the productive resources of the state to the benefit of the state, the family and to all the people of the state.

(3) In the interpretation and application of this subchapter, and otherwise, it is declared to be the public policy of the state to encourage and foster to the fullest extent practicable the employment of all properly qualified persons regardless of their age, race, creed, color, handicap, sex, national origin ~~or~~, ancestry or sexual orientation. Nothing in this subsection requires an affirmative action program to correct an imbalance in the work force. This subchapter shall be liberally construed for the accomplishment of this purpose.

SECTION 15. 111.32 (4s) of the statutes is created to read:

111.32 (4s) "Sexual orientation" means having a preference for heterosexuality, homosexuality, bisexuality, having a history of such a preference or being identified with such a preference.

SECTION 16. 111.32 (5) (a) of the statutes is amended to read:

111.32 (5) (a) "Discrimination" means discrimination because of age, race, color, handicap, sex, creed, national origin, ancestry, sexual orientation, arrest record or conviction record, by an employer or licensing agency individually or in concert with others, against any employe or any applicant for employment or licensing, in regard to hire, tenure or term, condition or privilege of employment or licensing and by any labor organization against any member or applicant for membership, and also includes discrimination on any of said grounds in the fields of housing, recreation, education, health and social welfare as related to a condition or privilege of employment.

SECTION 17. 111.32 (5) (i) of the statutes is created to read:

111.32 (5) (i) It is discrimination because of sexual orientation:

1. For any employer, labor organization, licensing agency or employment agency or other person to refuse to hire, employ, admit or license, or to bar or terminate from employment, membership or licensure any individual, or to discriminate against an individual in promotion, compensation or in terms, conditions or privileges of employment because of the individual's sexual orientation; or

2. For any employer, labor organization, licensing agency or employment agency or other person to discharge or otherwise discriminate against any person because he or she has opposed any discriminatory practices under this paragraph or because he or she has made a complaint, testified or assisted in any proceeding under this paragraph.

SECTION 18. 111.70 (2) of the statutes is amended to read:

111.70 (2) RIGHTS OF MUNICIPAL EMPLOYEES. Municipal employes shall have the right of self-organization, and the right to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection, and such employes shall have the right to refrain from any and all such activities except that employes may be required to pay dues in the manner provided in a fair-share agreement. Such fair-share agreement shall be subject to the right of the municipal employer or a labor organization to petition the commission to conduct a referendum. Such petition must be supported by proof that at least 30% of the employes in the collective bargaining unit desire that the fair-share agreement be terminated. Upon so finding, the commission shall conduct a referendum. If the continuation of the agreement is not supported by at least the majority of the eligible employes, it shall be deemed terminated. The commission shall declare any fair-share agreement suspended upon such conditions and for such time as the commission decides whenever it finds that the labor organization involved has refused on the basis of race, color, sexual orientation, creed or sex to receive as a member any employe of the municipal employer in the bargaining unit involved, and such agreement shall be made subject to this duty of the commission. Any of the parties to such agreement or any municipal employe covered thereby may come before the commission, as provided in s. 111.07, and ask the performance of this duty.

SECTION 19. 111.81 (9) (b) of the statutes is amended to read:

111.81 (9) (b) Which discriminates with regard to the terms or conditions of membership because of race, color, creed, sex, age, sexual orientation or national origin.

SECTION 20. 111.85 (1) of the statutes is amended to read:

111.85 (1) No fair-share agreement shall become effective unless authorized by referendum. The authorization of such fair-share agreement shall continue thereafter subject to the right of the employer or labor organization concerned to petition the commission to conduct a new referendum on the subject. Such petition must be supported by proof that at least 30% of the employes in the collective bargaining unit desire that the fair-share agreement be discontinued. Upon so finding, the commission shall conduct a new referendum. If the continuance of the agreement is approved by the referendum by at least the number of employes required for its initial authorization, it shall be continued in effect, subject to the right of the employer or labor organization to later initiate a further vote following the above procedure. If the continuation of the agreement is not supported in any referendum, it shall be deemed terminated at the termination of the collective bargaining agreement, or one year from the date of the certification of the result of the referendum, whichever is earlier. The commission shall declare any fair-share agreement suspended upon such conditions and for such time as the commission decides whenever it finds that the labor organization involved has refused on the basis of race, color, sexual orientation or creed to receive as a member any employe in the bargaining unit involved, and such agreement shall be made subject to the findings and orders of the commission. Any of the parties to such agreement or any employe covered thereby, may come before the commission, as provided in s. 111.07, and allege a violation of this provision.

SECTION 21. 227.033 (1) of the statutes is amended to read:

227.033 (1) No rule, either in its terms or in its application, shall may discriminate for or against any person by reason of sex, race, creed, color, sexual orientation, national origin or ancestry. A rule which discriminates for or against any person by reason of physical condition or developmental disability as defined in s. 51.01 (5) shall be permit-

ted only if that rule is strictly necessary to a function of the agency and is supported by data demonstrating that necessity. Every person affected by a rule shall be entitled to the same benefits and subject to the same obligations as any other person under the same or similar circumstances.

SECTION 22. 230.01 (2) of the statutes is amended to read:

230.01 (2) It is the policy of the state and the responsibility of the secretary and the administrator to maintain a system of personnel management which fills positions in the classified service through methods which apply the merit principle, with adequate civil service safeguards. It is the policy of this state to provide for equal employment opportunity by ensuring that all personnel actions including hire, tenure or term, and condition or privilege of employment be based on the ability to perform the duties and responsibilities assigned to the particular position without regard to age, race, creed or religion, color, handicap, sex, national origin, ancestry, sexual orientation or political affiliation. If there are substantial disparities between the proportions of members of racial, ethnic, gender, or handicap groups in a classified civil service classification in an agency and the proportions of such groups in this state, it is the policy of this state to take affirmative action which is not in conflict with other provisions of this subchapter to correct the imbalances and to eliminate the present effects of past discrimination. Gender group does not include any group discriminated against because of sexual orientation. It is the policy of the state to ensure its employees opportunities for satisfying careers and fair treatment based on the value of each employe's services.

SECTION 23. 230.18 of the statutes is amended to read:

230.18 Political or religious affiliations; no discrimination. No question in any form of application or in any examination may be so framed as to elicit information concerning the partisan political or religious opinions or affiliations of any applicant nor may any inquiry be made concerning such opinions or affiliations and all disclosures thereof shall be discountenanced except that the administrator may evaluate the competence and impartiality of applicants for positions such as clinical chaplain in a state institutional program. No discriminations may be exercised in the recruitment, application, examination or hiring process against or in favor of any person because of the person's political or religious opinions or affiliations or because of age, sex, handicap, race, color, sexual orientation, national origin or ancestry except as otherwise provided.

SECTION 24. 234.29 of the statutes is amended to read:

234.29 Equality of occupancy and employment. The authority shall require that occupancy of housing projects assisted under this chapter be open to all regardless of sex, race, religion, sexual orientation or creed, and that contractors and subcontractors engaged in the construction of housing projects, shall provide an equal opportunity for employment, without discrimination as to sex, race, religion, sexual orientation or creed.

SECTION 25. 942.04 (1) (a) to (c) and (3) of the statutes are amended to read:

942.04 (1) (a) Denies to another or charges another a higher price than the regular rate for the full and equal enjoyment of any public place of accommodation or amusement because of sex, race, color, creed, physical condition, developmental disability as defined in s. 51.01 (5), sexual orientation as defined in s. 111.32 (4s), national origin or ancestry;
or

(b) Gives preferential treatment to some classes of persons in providing services or facilities in any public place of accommodation or amusement because of sex, race, color, creed, sexual orientation, national origin or ancestry; or

(c) Directly or indirectly publishes, circulates, displays or mails any written communication which the communicator knows is to the effect that any of the facilities of any public place of accommodation or amusement will be denied to any person by reason of sex, race, color, creed, physical condition, developmental disability as defined in s. 51.01

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(5), sexual orientation, national origin or ancestry or that the patronage of a person is unwelcome, objectionable or unacceptable for any of those reasons; or

(3) No person, club or organization may refuse to rent, charge a higher price than the regular rate or give preferential treatment, because of sex, race, color, creed, sexual orientation, national origin or ancestry, regarding the use of any private facilities commonly rented to the public. Violators of this subsection are subject to the penalties imposed by sub. (1).
