

## 2007 DRAFTING REQUEST

### Bill

Received: 10/16/2007

Received By: rryan

Wanted: As time permits

Identical to LRB:

For: Marlin Schneider (608) 266-0215

By/Representing: Mike

This file may be shown to any legislator: NO

Drafter: rryan

May Contact:

Addl. Drafters: gmalaise

Subject: Criminal Law - miscellaneous  
Discrimination

Extra Copies:

Submit via email: YES

Requester's email: Rep.Schneider@legis.wisconsin.gov

Carbon copy (CC:) to:

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### Pre Topic:

No specific pre topic given

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### Topic:

Using information obtained from a computerized database to discriminate in employment or housing

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### Instructions:

See Attached

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### Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/P1	rryan 11/15/2007	lkunkel 11/26/2007	rschluet 11/26/2007	_____	sbasford 11/26/2007		S&L Crime
	rryan 11/28/2007			_____			
/1	gmalaise 11/29/2007	lkunkel 12/11/2007	nmatzke 12/11/2007	_____	mbarman 12/11/2007	sbasford 12/12/2007	

FE Sent For:

*atkins*  
*3/11*

<END>

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/?							
/P1	rryan 11/15/2007	lkunkel 11/26/2007	rschluet 11/26/2007	_____	sbasford 11/26/2007		

FE Sent For:

/i/mk 12/11

nwn  
12/11

nwn/rs  
12/11

<END>

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**Topic:**

Using information obtained from a computerized database to discriminate in employment or housing

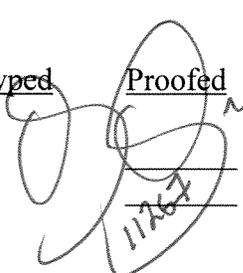
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**Instructions:**

See Attached

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<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rryan	pl/mk 11/23					

FE Sent For:

<END>

**Ryan, Robin**

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**From:** Nelson, Robert P.  
**Sent:** Thursday, October 11, 2007 11:35 AM  
**To:** Ryan, Robin  
**Subject:** Schneider request

I am sending this so I can write down what I think he wants and what may be the problems.

Mike, in Marlin Schneider's office called today. He wants to find a way to stop people from misusing the information on CCAP. I thinking he is talking about the CCAP Internet Web site that is called the Wisconsin Circuit Court Access(WCCA). He wants to stop folks from discriminating in employment and housing based on the information on that site, by making it a felony. We decided on a Class I felony. But, it is complicated because we already have housing (s. 106.50), public accommodations (s. 106.52), and employment (s. 111.322) discrimination statutes. The employment discrimination statute allows discrimination based on arrest or conviction records in certain situations. The other statutes do not mention arrest or conviction records, but have their own exceptions. WCCA does have conviction and charging records, citations records, and civil cases, which I assume include evictions. Thus, the current "arrest or conviction" language in s. 111.322 does not quite fit.

Gordon says he will want to (not really want) be involved in the draft because he may have to change some language in the housing and public accommodations statutes to make them consistent with these new crimes.

The idea Mike has is to make it a Class I felony to refuse to....(here cite s. 111.322 (1), with the 111.335 exceptions) based in information that is (obtained by looking at?) (located in?) WCCA. In the case of housing or public accommodations, he wants the same felony if discriminate based on WCCA information that is greater than 3 years old. If the information in WCCA is less than 3 years old, than can discriminate in housing or public accommodations, but have the landlord or person denying the housing or public accommodations inform the person that they are being denied because of WCCA information and require the landlord or person denying the housing or public accommodations to reconsider their decision based on response made by the person being denied. ???

We also talked about trying to allow discrimination based on the type of WCCA info--child molester, sexual predator--but gave that up for now.

Bob

*wants not just any electronic database,*



State of Wisconsin  
2007 - 2008 LEGISLATURE

PI  
LRB-33142

RLR:.....  
lms

In 11/15/07 other

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

RMR

dn

GenCat

✓

1 AN ACT ...; relating to: using criminal charge or conviction information that is  
2 obtained from a computerized database to discriminate in employment or  
3 housing, and providing a penalty.

*Analysis by the Legislative Reference Bureau*

This is a preliminary draft. An analysis will be provided in a later version. ✓

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

4 SECTION 1. 106.50 (9) of the statutes is created to read:

5 106.50 (9) DISCRIMINATION IN HOUSING BASED ON CRIMINAL RECORD INFORMATION  
6 OBTAINED FROM COMPUTERIZED DATABASE. ✓ A person who obtains information from a  
7 computerized database regarding a criminal charge filed against an individual or a  
8 conviction of the individual that occurred in the previous 3 years and uses that  
9 information as a basis for an act of housing discrimination, as defined in s. 942.10

10 (1) (b), with respect to the individual shall inform the individual of the reason for the

1 action, allow the individual to provide information relevant to the charge or  
2 conviction, and if the individual provides such information, reconsider the act.

3 SECTION 2. 942.10 of the statutes is created to read:

4 **942.10 Use of criminal record information obtained from**  
5 **computerized database. (1) DEFINITIONS. In this section:**

6 (a) "Act of employment discrimination" means a refusal to hire, employ, admit,  
7 or license an individual, a debarment or termination from employment or labor  
8 organization membership of an individual, or discrimination against an individual  
9 in promotion, in compensation, or in the terms, conditions, or privileges of  
10 employment or labor organization membership. ✓

11 (b) "Act of housing discrimination" means segregation, separation, exclusion,  
12 or unequal treatment of an individual by any of the following means:

13 1. Refusing to sell, rent, finance, or contract to construct housing or refusing  
14 to negotiate or discuss the terms thereof. ✓

15 2. Refusing to permit inspection or exacting different or more stringent price,  
16 terms, or conditions for the sale, lease, financing, or rental of housing.

17 3. Refusing to finance or sell an unimproved residential lot or to construct a  
18 home or residence upon such a lot. ✓

19 4. Refusing to enter into, or exacting different terms, conditions, or privileges  
20 with respect to, a contract of insurance against hazards to a dwelling. ✓

21 5. Refusing to renew a lease, causing the eviction of a tenant from rental  
22 housing, or engaging in the harassment of a tenant. ✓

23 6. Discriminating in providing the privileges, services, or facilities that are  
24 available in connection with housing. ✓

1 7. Falsely representing that housing is unavailable for inspection, rental, or  
2 sale. ✓

3 8. Otherwise making unavailable or denying housing. ✓

4 (2) EMPLOYMENT DISCRIMINATION BASED ON CRIMINAL RECORD INFORMATION  
5 OBTAINED FROM COMPUTERIZED DATABASE. (a) Except as provided in par. (b), ✓  
6 obtains information from a computerized database regarding a criminal charge filed  
7 against an individual or a conviction of the individual and uses that information to  
8 engage in an act of employment discrimination against the individual on the basis  
9 of the criminal charge or conviction is guilty of a Class I felony. ✓

10 (b) Paragraph (a) does not apply to an act of employment discrimination that  
11 is permitted or required under s. 48.685 (4m) (a) or (b) or (5m), 50.065 (4m) (a) or (b)  
12 or (5m), 85.21 (3m) (b), 111.335, 121.555 (3) (c), 343.12 (2) (dm), and (7) (a) and (b),  
13 or (8) (a) or (b), 343.12 (2g) (a), 343.14 (2g) (a), 346.923, 562.045, 565.02 (1) (b) or (2)  
14 (c), 565.10 (3) (a), 569.04 (3), 632.68 (3) (a) 4. or (5) (a) 3.

15 (3) DISCRIMINATION IN HOUSING BASED ON CRIMINAL RECORD INFORMATION OBTAINED  
16 FROM COMPUTERIZED DATABASE. Whoever obtains information from a computerized  
17 database regarding a criminal charge filed against an individual or a conviction of  
18 the individual and engages in an act of housing discrimination with respect to the  
19 individual based on the criminal charge or conviction is guilty of a Class I felony if  
20 the criminal charge or conviction occurred 3 or more years before the date of the  
21 refusal.

22 (END)



**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-3314/P1dn

RLR:.....

(date)

Rep. Schneider:

Please review this bill to determine whether it accomplishes your intent. ✓

This bill imposes a criminal penalty on a person who discriminates using information obtained from a computerized database, but does not impose a penalty if the person discriminates using <sup>the</sup> the same information obtained from another source, such as the court, a newspaper, or from another person who may have obtained the information from a computerized database. This disparity might be challenged as a violation of the equal protection clause of U.S. or Wisconsin constitutions. ✓ The court applies heightened scrutiny when reviewing laws that affect fundamental rights, such as due process in criminal proceedings. If the court applies heightened scrutiny, the state would have to show a compelling governmental interest for the disparity in order to uphold the law. ✓

Robin Ryan  
Legislative Attorney  
Phone: (608) 261-6927  
E-mail: robin.ryan@legis.wisconsin.gov

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-3314/P1dn  
RLR:lmk:rs

November 26, 2007

Rep. Schneider:

Please review this bill to determine whether it accomplishes your intent.

This bill imposes a criminal penalty on a person who discriminates using information obtained from a computerized database, but does not impose a penalty if the person discriminates using the same information obtained from another source, such as the court, a newspaper, or from another person who may have obtained the information from a computerized database. This disparity might be challenged as a violation of the equal protection clause of the U.S. or Wisconsin constitution. The court applies heightened scrutiny when reviewing laws that affect fundamental rights, such as due process in criminal proceedings. If the court applies heightened scrutiny, the state would have to show a compelling governmental interest for the disparity in order to uphold the law.

Robin Ryan  
Legislative Attorney  
Phone: (608) 261-6927  
E-mail: [robin.ryan@legis.wisconsin.gov](mailto:robin.ryan@legis.wisconsin.gov)



State of Wisconsin  
2007 - 2008 LEGISLATURE

(add)  
GMM  
LRB-3314/RN  
RLF:lmk:rs  
STAYS  
DNR

DN of I

~~PRELIMINARY DRAFT NOT READY FOR INTRODUCTION~~

Prohibiting discrimination in housing because of arrest or conviction record, making it a class I felony

because of arrest or conviction record

1 AN ACT to create 106.50 (9) and 942.10 of the statutes; relating to: using  
2 ~~criminal charge or conviction information that is obtained from a computerized~~  
3 ~~database to discriminate in employment or housing, and providing a penalty.~~

**Analysis by the Legislative Reference Bureau**

~~This is a preliminary draft. An analysis will be provided in a later version.~~

Insert A

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

SECTION 1. 106.50 (9) of the statutes is created to read:

106.50 (9) DISCRIMINATION IN HOUSING BASED ON CRIMINAL RECORD INFORMATION.

OBTAINED FROM COMPUTERIZED DATABASE. A person who obtains information from a computerized database regarding a criminal charge filed against an individual or a conviction of the individual that occurred in the previous 3 years and uses that information as a basis for an act of housing discrimination, as defined in s. 942.10 (1) (b), with respect to the individual shall inform the individual of the reason for the

INS 1-5

act  
22

act

that

1 action, allow the individual to provide information relevant to the charge or  
2 conviction, and if the individual provides such information, reconsider the act.

3 SECTION 2. 942.10 of the statutes is created to read:

4 **942.10 Use of criminal record information obtained from**  
5 **computerized database. (1) DEFINITIONS. In this section:**

6 (a) "Act of employment discrimination" means a refusal to hire, employ, admit,  
7 or license an individual, a debarment or termination from employment or labor  
8 organization membership of an individual, or discrimination against an individual  
9 in promotion, in compensation, or in the terms, conditions, or privileges of  
10 employment or labor organization membership.

11 (b) "Act of housing discrimination" means segregation, separation, exclusion,  
12 or unequal treatment of an individual by any of the following means:

13 1. Refusing to sell, rent, finance, or contract to construct housing or refusing  
14 to negotiate or discuss the terms thereof.

15 2. Refusing to permit inspection or exacting different or more stringent price,  
16 terms, or conditions for the sale, lease, financing, or rental of housing.

17 3. Refusing to finance or sell an unimproved residential lot or to construct a  
18 home or residence upon such a lot.

19 4. Refusing to enter into, or exacting different terms, conditions, or privileges  
20 with respect to, a contract of insurance against hazards to a dwelling.

21 5. Refusing to renew a lease, causing the eviction of a tenant from rental  
22 housing, or engaging in the harassment of a tenant.

23 6. Discriminating in providing the privileges, services, or facilities that are  
24 available in connection with housing.

1-2-5-17

1 7. Falsely representing that housing is unavailable for inspection, rental, or  
2 sale.

3 8. Otherwise making unavailable or denying housing.

4 (2) EMPLOYMENT DISCRIMINATION BASED ON CRIMINAL RECORD INFORMATION  
5 OBTAINED FROM COMPUTERIZED DATABASE. (a) Except as provided in par. (b), whoever  
6 obtains information from a computerized database regarding a criminal charge filed  
7 against an individual or a conviction of the individual and uses that information to  
8 engage in an act of employment discrimination against the individual on the basis  
9 of the criminal charge or conviction is guilty of a Class I felony. → INS 3-9

10 (b) Paragraph (a) does not apply to an act of employment discrimination that  
11 is permitted or required under s. 48.685 (4m) (a) or (b) or (5m), 50.065 (4m) (a) or (b)  
12 or (5m), 85.21 (3m) (b), ~~111.335~~, 121.555 (3) (c), 343.12 (2) (dm), (7) (a) or (b), or (8)  
13 (a) or (b), 343.14 (2g) (a), 346.923, 562.045, 565.02 (1) (b) or (2) (c), 565.10 (3) (a),  
14 569.04 (2), or 632.68 (3) (a) 4. or (5) (a) 3.

15 (3) DISCRIMINATION IN HOUSING BASED ON CRIMINAL RECORD INFORMATION OBTAINED  
16 FROM COMPUTERIZED DATABASE. Whoever obtains information from a computerized  
17 database regarding a criminal charge filed against an individual or a conviction of  
18 the individual and engages in an act of housing discrimination with respect to the  
19 individual based on the criminal charge or conviction is guilty of a Class I felony if  
20 the criminal charge or conviction occurred 3 or more years before the date of the  
21 refusal. → ~~INS 3-21~~

22  
[Handwritten box containing "3-21"]

(END)

insert 3-21

[Handwritten signature]

2007-2008 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-3314/1insGM  
GMM.....

(INSERT A)

**Introduction**

This bill prohibits discrimination in housing because of an arrest or conviction record that is more than three years old and makes it a Class I ~~Felony~~ <sup>such discrimination</sup>, which is punishable by a fine not to exceed \$10,000 or imprisonment not to exceed three years and six months, or both, ~~to so discriminate~~. The bill also makes it a Class I felony to discriminate in employment based on arrest or conviction record.

**Housing discrimination**

Current law prohibits discrimination in housing on the basis of sex, race, color, sexual orientation, disability, religion, national origin, marital status, family status, lawful source of income, age, or ancestry (protected class), but not on the basis of arrest or conviction record. A person who engages in an act of housing discrimination may be required to provide such relief as may be appropriate, including economic and noneconomic damages and injunctive or other equitable relief, and to pay a forfeiture of not more than \$10,000, except that a person who is not a natural person may be required to pay a forfeiture of not more than \$25,000 if the person has committed a previous act of housing discrimination within the preceding five years or a forfeiture of not more than \$50,000 if the person has committed two or more previous acts of housing discrimination within the preceding seven years. ✓

Current law also prohibits a mortgage banker, loan originator, or mortgage broker from treating a person unequally based on the person's membership in a protected class, ~~and~~ a real estate broker, real estate salesperson, or time-share salesperson from treating a person unequally based on the person's sex, race, color, handicap, national origin, ancestry, marital status, or lawful source of income.

This bill prohibits discrimination in housing on the basis of an arrest or conviction record that is more than three years old and prohibits a mortgage banker, loan originator, mortgage broker, real estate broker, real estate salesperson, or time-share salesperson from treating a person unequally based on such an arrest or conviction record. The bill also makes it a Class I felony to commit an act of housing discrimination against an individual on the basis of such an arrest or conviction record. In addition, the bill requires a person who commits an act of housing discrimination against an individual on the basis of an arrest or conviction within the previous three years to inform the individual of the reason for the act, allow the individual to provide information relevant to the arrest or conviction, and, if the individual provides that information, reconsider the act. ✓

**Employment discrimination**

Current law, subject to certain exceptions, prohibits discrimination in employment, licensing, and labor organization membership based on arrest or conviction record. Current law specifies, however, that it is not employment discrimination because of arrest record to refuse to employ or to license, or to suspend from employment or licensing, an individual who is subject to a pending criminal charge, the circumstances of which substantially relate to the circumstances of the particular job or licensed activity, ~~and that~~ it is not employment discrimination

In addition,  
current law  
prohibits

furthermore

prohibits

Also under current law

because of conviction record to refuse to employ or to license, or to bar or terminate from employment or licensing, an individual who has been convicted of a felony, misdemeanor, or other offense, the circumstances of which substantially relate to the circumstances of the particular job or licensed activity. ✓

Notwithstanding that <sup>case</sup> exemption, current law prohibits an individual who has been convicted of certain crimes from engaging in certain occupations, including caregiver at certain entities that provide care or treatment services for children or adults, school bus or human services vehicle operator, alternative pupil transportation provider, hazardous materials transporter, Division of Gaming in the Department of Administration or Lottery Division in the Department of Revenue employee, lottery ticket retailer, Indian gaming vendor, viatical settlement broker or provider, private detective or investigator, private security person, burglar alarm installer, or alcohol beverage seller (regulated occupations).

This bill makes it a Class I felony to commit an act of employment discrimination against an individual because of arrest or conviction record. The bill, however, does not apply to an act of employment discrimination that is required or permitted with respect to a regulated occupation or to an arrest or conviction, the circumstances of which substantially relate to the circumstances of the particular job or licensed activity.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

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

(END OF INSERT)

(INSERT 3-21)

SECTION 1. 66.0125 (1) of the statutes is renumbered 66.0125 (1) (intro.) and amended to read:

66.0125 (1) ~~DEFINITION.~~ DEFINITIONS. (intro.) In this section, "local:

(c) "Local governmental unit" means a city, village, town, school district, or county. ✓

History: 1975 c. 94; 1975 c. 426 s. 3; 1979 c. 34; 1981 c. 112; 1991 a. 39, 316; 1993 a. 184; 1995 a. 201; 1999 a. 150 s. 449; Stats. 1999 s. 66.0125.

SECTION 2. 66.0125 (1) (a) of the statutes is created to read:

66.0125 (1) (a) "Arrest record," for purposes of discrimination in housing, has the meaning given in s. 106.50 (1m) (bg) and, for purposes of discrimination in employment, has the meaning given in s. 111.32 (1).

**SECTION 3.** 66.0125 (1) (b) of the statutes is created to read:

66.0125 (1) (b) "Conviction record," for purposes of discrimination in housing, has the meaning given in s. 106.50 (1m) (fg) and, for purposes of discrimination in employment, has the meaning given in s. 111.32 (3).

**SECTION 4.** 66.0125 (3) (a) of the statutes is amended to read:

66.0125 (3) (a) The purpose of the commission is to study, analyze, and recommend solutions for the major social, economic, and cultural problems which that affect people residing or working within the local governmental unit 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, and discrimination in housing and employment on all of those bases plus the basis of arrest or conviction record.

**SECTION 5.** 66.0125 (3) (c) 1. b. of the statutes is amended to read:

66.0125 (3) (c) 1. b. To ensure to all residents of a local governmental unit, regardless of sex, race, sexual orientation or, color, or arrest or conviction record the rights to possess equal housing accommodations and to enjoy equal employment opportunities.

**SECTION 6.** 66.0125 (9) of the statutes is amended to read:

66.0125 (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 a livelihood or to enjoy the equal use of public accommodations and facilities and race, creed, sexual orientation, color, or arrest or conviction record 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 a livelihood.

**SECTION 7.** 66.1011 (1) of the statutes is amended to read:

66.1011 (1) DECLARATION OF POLICY. The right of all persons to have equal opportunities for housing regardless of their sex, race, color, physical condition, disability as defined in s. 106.50 (1m) (g), sexual orientation, as defined in s. 111.32 (13m), religion, national origin, marital status, family status, as defined in s. 106.50 (1m) (k), lawful source of income, arrest record, as defined in s. 106.50 (1m) (bg), conviction record, as defined in s. 106.50 (1m) (fg), age, or ancestry is a matter both of statewide concern under ss. 101.132 and 106.50 and also of local interest under this section and s. 66.0125. The enactment of ss. 101.132 and 106.50 by the legislature does not preempt the subject matter of equal opportunities in housing from consideration by political subdivisions, and does not exempt political subdivisions 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 an individual being a member of a protected class.

**SECTION 8.** 66.1201 (2m) of the statutes is amended to read:

66.1201 (2m) DISCRIMINATION. Persons otherwise entitled to any right, benefit, facility, or privilege under ss. 66.1201 to 66.1211 shall may not be denied them the right, benefit, facility, or privilege in any manner for any purpose nor be discriminated against because of sex, race, color, creed, sexual orientation, arrest

record, as defined in s. 106.50 (1m) (bg), conviction record, as defined in s. 106.50 (1m) (fg), or national origin.

**SECTION 9.** 66.1213 (3) of the statutes is amended to read:

66.1213 (3) DISCRIMINATION. Persons otherwise entitled to any right, benefit, facility, or privilege under this section ~~shall~~ may not be denied them the right, benefit, facility, or privilege in any manner for any purpose nor be discriminated against because of sex, race, color, creed, sexual orientation, arrest record, as defined in s. 106.50 (1m) (bg), conviction record, as defined in s. 106.50 (1m) (fg), or national origin.

**SECTION 10.** 66.1301 (2m) of the statutes is amended to read:

66.1301 (2m) DISCRIMINATION. Persons entitled to any right, benefit, facility, or privilege under ss. 66.1301 to 66.1329 ~~shall~~ may not be denied them the right, benefit, facility, or privilege in any manner for any purpose nor be discriminated against because of sex, race, color, creed, sexual orientation, arrest record, as defined in s. 106.50 (1m) (bg), conviction record, as defined in s. 106.50 (1m) (fg), or national origin.

**SECTION 11.** 66.1331 (2m) of the statutes is amended to read:

66.1331 (2m) DISCRIMINATION. Persons otherwise entitled to any right, benefit, facility, or privilege under this section ~~shall~~ may not be denied them the right, benefit, facility, or privilege in any manner for any purpose nor be discriminated against because of sex, race, color, creed, sexual orientation, arrest record, as defined in s. 106.50 (1m) (bg), conviction record, as defined in s. 106.50 (1m) (fg), or national origin.

**SECTION 12.** 66.1333 (3) (e) 2. of the statutes is amended to read:

66.1333 (3) (e) 2. Persons otherwise entitled to any right, benefit, facility, or privilege under this section may not be denied the right, benefit, facility, or privilege in any manner for any purpose nor be discriminated against because of sex, race, color, creed, sexual orientation, arrest record, as defined in s. 106.50 (1m) (bg), conviction record, as defined in s. 106.50 (1m) (fg), or national origin.

**SECTION 13.** 106.50 (1) of the statutes is amended to read:

4) 106.50 (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, disability, religion, national origin, marital status, family status, lawful source of income, arrest or conviction record, age, or ancestry and it is the duty of the political subdivisions to assist in the orderly prevention or removal of all discrimination in housing through the powers granted under ss. 66.0125 and 66.1011. 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.

**SECTION 14.** 106.50 (1m) (bg) of the statutes is created to read:

106.50 (1m) (bg) "Arrest record" includes information indicating that an individual has been questioned, apprehended, taken into custody or detention, held for investigation, arrested, charged with, indicted, or tried for any felony,

misdemeanor, or other offense pursuant to any law enforcement or military authority more than 3 years before a discriminatory act in violation of sub. (2) occurs. ✓

**SECTION 15.** 106.50 (1m) (fg) of the statutes is created to read:

106.50 (1m) (fg) "Conviction record" includes information indicating that an individual has been convicted of any felony, misdemeanor, or other offense, has been adjudicated delinquent, has been less than honorably discharged, or has been placed on probation, fined, imprisoned, placed on extended supervision, or paroled pursuant to any law enforcement or military authority more than 3 years before a discriminatory act in violation of sub. (2) occurs. ✓

**SECTION 16.** 106.50 (1m) (h) of the statutes is amended to read:

106.50 (1m) (h) "Discriminate" means to segregate, separate, exclude, or treat a person or class of persons unequally in a manner described in sub. (2), (2m), or (2r) because of sex, race, color, sexual orientation, disability, religion, national origin, marital status, family status, lawful source of income, arrest or conviction record, age, or ancestry. ✓

**SECTION 17.** 106.50 (1m) (nm) of the statutes is amended to read:

106.50 (1m) (nm) "Member of a protected class" means a group of natural persons, or a natural person, who may be categorized because of ~~based on one or more of the following characteristics:~~ sex, race, color, disability, sexual orientation as defined in s. 111.32 (13m), religion, national origin, marital status, family status, lawful source of income, arrest or conviction record, age, or ancestry. ✓

**SECTION 18.** 106.50 (5m) (f) 1. of the statutes is amended to read:

106.50 (5m) (f) 1. Nothing in this section prohibits an owner or agent from requiring that a person who seeks to buy or rent housing supply information concerning arrest or conviction record, family status, and marital, financial, and

\*

111.336

business status but not concerning race, color, physical condition, disability, sexual orientation, ancestry, national origin, religion, creed, or, subject to subd. 2., age. ✓

**SECTION 19.** 106.50 (7) of the statutes is created to read:

106.50 (7) DISCRIMINATION BASED ON ARREST OR CONVICTION RECORD. (a) Any person who commits a discriminatory act in violation of sub. (2) because of arrest or conviction record is guilty of a Class I felony. ✓

(b) Any person who commits an act described in sub. (2) (a) to (k) against an individual because the individual has been the subject of an action described in sub. (1m) (bg) or (fg) within the 3 years preceding that act shall inform the individual of the reason for the act, allow the individual to provide information relevant to the action, and, if the individual provides that information, reconsider the act. ✓

**SECTION 20.** 111.335 (title) of the statutes is amended to read:

**111.335 (title) Arrest or conviction record; exceptions and special cases; criminal penalty.** ✓

History: 1981 c. 334; 1991 a. 216; 1993 a. 98; 1995 a. 448, 461; 1997 a. 112; 2001 a. 16; 2003 a. 33; 2005 a. 14.

**SECTION 21.** ~~111.335 (2)~~ of the statutes is created to read:

~~111.335 (2)~~ (a) Except as provided in ~~par. (b)~~, <sup>Sub. (2)</sup> any person who commits an act of discrimination because of arrest or conviction record is guilty of a Class I felony. ✓

(b) Paragraph (a) does not apply to an act of employment discrimination that is permitted or required under sub. (1) or s. 48.685 (4m) (a) or (b) or (5m), 50.065 (4m) (a) or (b) or (5m), 85.21 (3m) (b) <sup>111.335</sup> (121.555 (3) (c), 343.12 (2) (dm), (7) (a) or (b), or (8) (a) or (b), 343.14 (2g) (a), 346.923, 562.045, 565.02 (1) (b) or (2) (c), 565.10 (3) (a), 569.04 (2), or 632.68 (3) (a) 4. or (5) (a) 3. ✓

**SECTION 22.** 224.77 (1) (o) of the statutes is amended to read:

**B**  
111.336 Arrest or conviction record; criminal penalty. (1)  
Arrest or conviction record; criminal penalty. (1)

224.77 (1) (o) In the course of practice as a mortgage banker, loan originator, or mortgage broker, except in relation to housing designed to meet the needs of elderly individuals, treated a person unequally solely because of sex, race, color, handicap, sexual orientation, as defined in s. 111.32 (13m), religion, national origin, age, or ancestry, the person's lawful source of income, the person's arrest record, as defined in s. 106.50 (1m) (bg), or conviction record, as defined in s. 106.50 (1m) (fg), or the sex or marital status of the person maintaining a household.

**SECTION 23.** 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, arrest record, as defined in s. 106.50 (1m) (bg), conviction record, as defined in s. 106.50 (1m) (fg), or creed, and that contractors and subcontractors engaged in the construction of economic development or housing projects, shall provide an equal opportunity for employment, without discrimination as to sex, race, religion, sexual orientation, arrest record, as defined in s. 111.32 (1), conviction record, as defined in s. 111.32 (3), or creed.

**SECTION 24.** 452.14 (3) (n) of the statutes is amended to read:

452.14 (3) (n) Treated any person unequally solely because of sex, race, color, handicap, national origin, ancestry, marital status or, lawful source of income, arrest record, as defined in s. 111.32 (1), or conviction record, as defined in s. 111.32 (3).

(END OF INSERT)

2007-2008 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-3314/1ins  
RLR:.....

1 **Ins 1-5:**

2 A person who commits an act of housing discrimination, as defined in s. 942.10  
3 (1) (b), against an individual on the basis that the individual has been charged with  
4 or convicted of a crime within the previous 3 years

5  
6  
7 **Ins 2-4:**

8 **Employment and housing discrimination based on criminal record.**

9  
10  
11 **Ins 3-9:**

12 Except as provided in par. (b), whoever commits an act of employment  
13 discrimination against an individual on the basis that the individual has been  
14 charged with or convicted of a crime is guilty of a Class I felony.

15  
16  
17 **Ins 3-21:**

18 Whoever commits an act of housing discrimination against an individual on the  
19 basis that the individual has been charged with or convicted of a crime, if the charge  
20 or conviction occurred more than 3 years before the act of discrimination, is guilty  
21 of a Class I felony.

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-3314/1dn

GMM...:...

8/1  
mk

(date)

✓  
Representative Schneider:

By removing the condition that the information concerning the criminal charge or conviction be obtained from a computerized database, you are in effect making it a Class I felony to discriminate in employment or housing based on arrest or conviction record, regardless of the source of the information. ✓ Discrimination in employment based on arrest or conviction record already is prohibited. ✓ Discrimination in housing on those bases is not. ✓ Accordingly, this redraft does all of the following:

1. Prohibits discrimination in housing based on an arrest or conviction record that is more than three years old. ✓
2. Makes such discrimination in housing and discrimination in employment based on arrest or conviction record Class I felonies.

As you will see when you review the analysis, current law already provides for a \$10,000 forfeiture for discrimination in housing. ✓ Accordingly, you arguably do not need to make discrimination in housing based on arrest or conviction record a Class I felony in that the monetary penalties are the same. ✓ If you chose to go with the forfeiture, then on redraft we could also provide for a \$10,000 forfeiture, rather than a Class I felony, for discrimination in employment based on arrest or conviction record. ✓

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**Barman, Mike**

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**From:** Schneider, Marlin  
**Sent:** Tuesday, December 11, 2007 4:44 PM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB 07-3314/1 Topic: Using information obtained from a computerized database to discriminate in employment or housing

Please Jacket LRB 07-3314/1 for the ASSEMBLY.

## Barman, Mike

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**From:** Barman, Mike  
**Sent:** Friday, February 15, 2008 9:27 AM  
**To:** Rep.Schneider; Topp, Jessica  
**Subject:** LRB 07-3314/1 & 07-3364/1 (attached - requested by Jessica)

**Attachments:** 07-3314/1; 07-3314/1dn; 07-3464/1



07-33141.pdf (42  
KB)



07-33141dn.pdf  
(10 KB)



07-34641.pdf (13  
KB)

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