

1989 Assembly Bill 327

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1989 WISCONSIN ACT 47

AN ACT *to repeal* 101.222 (1), 942.04 (title) and (1) (intro.) and 942.04 (6); *to renumber* 942.04 (2); *to renumber and amend* 942.04 (1) (a) to (d), 942.04 (3) and 942.04 (4) and (5); *to amend* 66.432 (2), 101.22 (1m) (as) and 101.22 (4) (a), (c), (d) and (e), (5) and (8) (a); and *to create* 101.22 (1m) (bu) and 101.22 (9) (title) and (a) (intro.) of the statutes, **relating to:** enforcement of the laws prohibiting discrimination in public places of accommodation or amusement.

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

SECTION 1. 66.432 (2) of the statutes is amended to read:

66.432 (2) ANTIDISCRIMINATION HOUSING ORDINANCES. Cities, villages, towns and counties 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 (1) to (8) 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.

SECTION 2. 101.22 (1m) (as) of the statutes is amended to read:

101.22 (1m) (as) “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 (13m), 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 under sub. (2).

SECTION 3. 101.22 (1m) (bu) of the statutes is created to read:

101.22 (1m) (bu) “Sexual orientation” has the meaning given in s. 111.32 (13m).

SECTION 4. 101.22 (4) (a), (c), (d) and (e), (5) and (8) (a) of the statutes are amended to read:

101.22 (4) (a) The department may receive and investigate a complaint charging a violation of this section if the complaint is filed with the department no more than 300 days after the alleged discrimination or act prohibited under sub. (9) occurred. A complaint shall be a written statement of the essential facts constituting the discrimination or act prohibited under sub. (9) charged, and shall be verified.

(c) The department shall employ such examiners as are necessary to hear and decide complaints of discrimination and acts prohibited under sub. (9) and to assist in the effective administration of this section. The examiners may make findings and orders under this section.

(d) If the department finds probable cause to believe that any discrimination or act prohibited under sub. (9) has been or is being committed in violation of this section, it may endeavor to eliminate ~~such~~ the discrimination or other act by conference, conciliation and persuasion. If the department determines that such conference, conciliation and persuasion has not eliminated the alleged discrimination or act prohibited under sub. (9), the department shall issue and serve a written notice of hearing, specifying the nature and acts of discrimination, or

1989 Assembly Bill 327

acts prohibited under sub. (9), which appear to have been committed, and requiring the person named, in this section called the "respondent", to answer the complaint at a hearing before an examiner. The notice shall specify a time of hearing, not less than 10 days after service of the complaint, and a place of hearing within the county in which the act of discrimination violation of this section is alleged to have occurred. The testimony at the hearing shall be recorded by the department. In all hearings before an examiner, except those for determining probable cause, the burden of proof is on the party alleging discrimination or an act prohibited under sub. (9). If, after the hearing, the examiner finds by a fair preponderance of the evidence that the respondent has ~~engaged in discrimination in violation of~~ violated this section, the examiner shall make written findings and order such action by the respondent as will effectuate the purpose of this section. The department shall serve a certified copy of the examiner's findings and order on the respondent and complainant, the order to have the same force as other orders of the department and be enforced as provided in this section except that the enforcement of the order is automatically stayed upon the filing of a petition for review with the commission. If the examiner finds that the respondent has not engaged in discrimination or action prohibited under sub. (9) as alleged in the complaint, the department shall serve a certified copy of the examiner's findings on the complainant and the respondent together with an order dismissing the complaint. If the complaint is dismissed, costs in an amount not to exceed \$100 plus actual disbursements for the attendance of witnesses may be assessed against the department in the discretion of the department.

(e) At any time after a complaint is filed, the department may file a petition in the circuit court for the county in which the act of discrimination or act prohibited under sub. (9) allegedly occurred, or for the county in which a respondent resides or transacts business, seeking appropriate temporary relief against the respondent, pending final determination of proceedings under this section, including an order or decree restraining the respondent from performing an act tending to render ineffectual an order the department may enter with respect to the complaint. The court may grant such temporary relief or restraining order as it deems just and proper.

(5) JUDICIAL REVIEW. Within 30 days after service upon all parties of any order of the commission under this section the respondent or complainant may appeal the order to the circuit court for the county in which the alleged discrimination or act prohibited under sub. (9) took place by the filing of a petition for review. The respondent or complainant shall receive a new trial on all issues relating to any alleged discrimination or act prohibited under sub. (9) and a further right to a trial by jury, if so desired. The department of justice shall represent

the commission. In any such trial the burden shall be to prove discrimination or an act prohibited under sub. (9) by a fair preponderance of the evidence. Costs in an amount not to exceed \$100 plus actual disbursements for the attendance of witnesses may be taxed to the prevailing party on the appeal.

(8) (a) If the department finds probable cause to believe that an act of discrimination has been or is being committed in violation of this section by a person taking an action ~~enumerated~~ prohibited under sub. (2) ~~for which or (9), and~~ the person is licensed or chartered under state law, the department shall notify the licensing or chartering agency of its findings, and shall file a complaint with such agency together with a request that the agency initiate proceedings to suspend or revoke the license or charter of such person or take other less restrictive disciplinary action.

SECTION 5. 101.22 (9) (title) and (a) (intro.) of the statutes are created to read:

101.22 (9) (title) PUBLIC PLACE OF ACCOMMODATION OR AMUSEMENT. (a) (intro.) No person may do any of the following:

SECTION 6. 101.222 (1) of the statutes is repealed.

SECTION 7. 942.04 (title) and (1) (intro.) of the statutes are repealed.

SECTION 8. 942.04 (1) (a) to (d) of the statutes are renumbered 101.22 (9) (a) 1. to 4. and amended to read:

101.22 (9) (a) 1. ~~Denies Deny~~ to another or ~~charges charge~~ 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) handicap~~, sexual orientation as defined in s. 111.32 (13m), national origin or ancestry;

2. ~~Gives Give~~ 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;

3. Directly or indirectly ~~publishes, circulates, displays or mails publish, circulate, display or mail~~ 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 (5) handicap~~, sexual orientation, national origin or ancestry or that the patronage of a person is unwelcome, objectionable or unacceptable for any of those reasons; ~~or~~;

4. ~~Refuses Refuse~~ to furnish or ~~charges charge~~ another a higher rate for any automobile insurance because of race, color, creed, ~~physical condition, developmental disability as defined in s. 51.01 (5) handicap~~, national origin or ancestry.

SECTION 9. 942.04 (2) of the statutes is renumbered 101.22 (1m) (bp).

1989 Assembly Bill 327

– 3 –

SECTION 10. 942.04 (3) of the statutes is renumbered 101.22 (9) (a) 5. and amended to read:

101.22 (9) (a) 5. ~~No person, club or organization may refuse~~ 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).~~

SECTION 11. 942.04 (4) and (5) of the statutes are

renumbered 101.22 (9) (b) and (c) and amended to read:

101.22 (9) (b) Nothing in this ~~section shall prohibit~~ subsection prohibits separate dormitories at higher educational institutions or separate public toilets, showers, saunas and dressing rooms for persons of different sexes.

(c) Nothing in this ~~section shall prohibit~~ subsection prohibits separate treatment of persons based on sex with regard to public toilets, showers, saunas and dressing rooms for persons of different sexes.

SECTION 12. 942.04 (6) of the statutes is repealed.
