

State of Wisconsin



1997 Senate Bill 447

Date of enactment: April 15, 1998
Date of publication*: April 29, 1998

1997 WISCONSIN ACT 112

AN ACT *to repeal* 111.335 (1) (d); *to renumber and amend* 47.01 (4) and 104.01 (4); and *to amend* 20.445 (5) (bm), chapter 47 (title), 47.01 (3), 47.01 (5), 47.01 (6), 47.02 (2), 47.02 (3) (a) 1., 47.02 (3) (a) 4., 47.02 (3) (b), 47.02 (3) (c), 47.02 (3) (d), 47.02 (3) (f), 47.02 (3) (h), 47.02 (3) (j), 47.02 (4) (a), 47.02 (4) (c), 47.03 (title), 47.03 (11) (a), 47.035 (title), 102.61 (1), 104.01 (6), 104.07 (2), 106.04 (2r) (a) 3., 106.11 (2) (a) 1. e., 106.11 (2) (a) 3., 106.11 (3) (a), 111.31 (1), 111.31 (2), 111.31 (3), 111.32 (8) (intro.), 111.321, 111.34 (title), 111.34 (1) (intro.), 111.34 (1) (a), 111.34 (1) (b), 111.34 (2) (a), 111.34 (2) (b), 111.34 (2) (c), 230.24 (1m), 230.28 (1) (bm) (intro.), 230.28 (1) (bm) 2. and 560.20 (1) (e) of the statutes; **relating to:** updating obsolete terminology in the fair employment, vocational rehabilitation, worker's compensation, minimum wage and fair housing laws and deleting an obsolete reference in the fair employment law (suggested as remedial legislation by the department of workforce development).

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

LAW REVISION COMMITTEE PREFATORY NOTE: This bill is a remedial legislation proposal, requested by the department of workforce development (DWD) and introduced by the law revision committee under s. 13.83 (1) (c) 4., stats. After careful consideration of the various provisions of the bill, the law revision committee has determined that this bill makes minor substantive changes in the statutes, and that these changes are desirable as a matter of public policy.

SECTION 1. 20.445 (5) (bm) of the statutes is amended to read:

20.445 (5) (bm) *Purchased services for clients.* The amounts in the schedule for the purchase of goods and services authorized under ch. 47 and for vocational rehabilitation and other independent living services to ~~handi-~~e ~~apped~~ persons with disabilities. Notwithstanding ss. 20.001 (3) (a) and 20.002 (1), the department may transfer funds between fiscal years under this paragraph. All

funds appropriated for a particular fiscal year that are transferred to the next fiscal year and are not spent or encumbered by September 30 of that next fiscal year shall lapse to the general fund on the succeeding October 1.

SECTION 2. Chapter 47 (title) of the statutes is amended to read:

CHAPTER 47 **VOCATIONAL REHABILITATION;** **SPECIALIZED PROGRAMS FOR** **HANDICAPPED PERSONS WITH** **DISABILITIES**

SECTION 3. 47.01 (3) of the statutes is amended to read:

47.01 (3) "~~Handicapped person~~" "Person with a disability" means any person who has a physical or mental disability ~~which that~~ constitutes or results in a substantial ~~handicap~~ barrier to employment and who can reasonably be expected to benefit in terms of employability from the provision of vocational rehabilitation services.

* Section 991.11, WISCONSIN STATUTES 1995-96: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

SECTION 4. 47.01 (4) of the statutes is renumbered 47.01 (3g) and amended to read:

47.01 (3g) "~~Severely handicapped person~~" "Person with a severe disability" means any handicapped person with a disability who has a severe disability ~~which that~~ seriously limits one or more functional capacities, including mobility, communication, self-care, self-direction, work tolerance, or work skills, in terms of employability, whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time and who has one or more physical or mental disabilities determined on the basis of an evaluation of rehabilitation potential to cause comparable substantial functional limitation.

SECTION 5. 47.01 (5) of the statutes is amended to read:

47.01 (5) "Visually impaired" means a loss of vision that can reasonably be expected to lead to blindness or a loss of vision that represents a handicap barrier to employment or other major life activities.

SECTION 6. 47.01 (6) of the statutes is amended to read:

47.01 (6) "Vocational rehabilitation" means assisting a handicapped person with a disability to become capable of competing in the labor market, practicing a profession, being self-employed, raising a family and making a home, participating in sheltered employment or other gainful work.

SECTION 7. 47.02 (2) of the statutes is amended to read:

47.02 (2) This section only applies to handicapped and severely handicapped persons with disabilities and persons with severe disabilities except that each person has a right to be evaluated by the department to determine whether the person is a handicapped person with a disability.

SECTION 8. 47.02 (3) (a) 1. of the statutes is amended to read:

47.02 (3) (a) 1. Advise and assist any handicapped person with a disability who applies to the department concerning his or her rehabilitation.

SECTION 9. 47.02 (3) (a) 4. of the statutes is amended to read:

47.02 (3) (a) 4. Register and keep records for each handicapped person with a disability who uses the vocational rehabilitation services provided under this chapter.

SECTION 10. 47.02 (3) (b) of the statutes is amended to read:

47.02 (3) (b) Promote the establishment of local resources for the vocational rehabilitation of handicapped persons with disabilities.

SECTION 11. 47.02 (3) (c) of the statutes is amended to read:

47.02 (3) (c) Provide assessment and evaluation services appropriate to each individual, develop an individualized written rehabilitation program with each handi-

apped person with a disability and develop and supervise services that are part of any handicapped person's the vocational rehabilitation program of any person with a disability.

SECTION 12. 47.02 (3) (d) of the statutes is amended to read:

47.02 (3) (d) Aid handicapped persons with disabilities in securing the services needed to make them more employable, place handicapped persons with disabilities in suitable occupations and provide postemployment services, as defined in the handicapped person's rehabilitation program developed under par. (c) of a person with a disability, necessary to maintain employment.

SECTION 13. 47.02 (3) (f) of the statutes is amended to read:

47.02 (3) (f) Make vocational rehabilitation services under this chapter available in every county to all handicapped persons with disabilities who are present in the state, regardless of residency.

SECTION 14. 47.02 (3) (h) of the statutes is amended to read:

47.02 (3) (h) Provide that severely handicapped persons with severe disabilities will receive priority for services under this chapter.

SECTION 15. 47.02 (3) (j) of the statutes is amended to read:

47.02 (3) (j) Except as provided in par. (o), determine the financial need of handicapped persons with disabilities based upon a uniform fee schedule as provided under s. 46.03 (18) for the provision or purchase of vocational rehabilitation services specified in the person's rehabilitation program developed under par. (c) of the person with a disability.

SECTION 16. 47.02 (4) (a) of the statutes is amended to read:

47.02 (4) (a) From the appropriation under s. 20.445 (5) (bm), provide financial aid to any handicapped person with a disability who is receiving vocational rehabilitation training and who has no other source of aid.

SECTION 17. 47.02 (4) (c) of the statutes is amended to read:

47.02 (4) (c) Provide personal assistance services to any handicapped person with a disability through county departments of human services or social services under s. 46.215, 46.22 or 46.23, aging units as defined in s. 46.82 (1) (a) or other persons.

SECTION 18. 47.03 (title) of the statutes is amended to read:

47.03 (title) Specialized programs for handicapped persons with disabilities.

SECTION 19. 47.03 (11) (a) of the statutes is amended to read:

47.03 (11) (a) The department shall provide services, including vocational training, craft instruction and a supervised business initiatives program for severely handicapped persons with severe disabilities who are eligible

for vocational rehabilitation services. Under this subsection, the department may own, lease, manage, supervise or operate businesses for the benefit of ~~severely handicapped~~ persons with severe disabilities, including home-based employment and craft work, with the ultimate objective of enabling ~~severely handicapped~~ persons with severe disabilities to operate their own businesses. The department shall assist persons with severe disabilities who receive these services in marketing the finished products.

SECTION 20. 47.035 (title) of the statutes is amended to read:

47.035 (title) Fiscal agents for handicapped persons with disabilities.

SECTION 21. 102.61 (1) of the statutes is amended to read:

102.61 (1) Subject to sub. (1m), an employe who is entitled to receive and has received compensation under this chapter, and who is entitled to and is receiving instructions under 29 USC 701 to 797b, as administered by the state in which the employe resides or in which the employe resided at the time of becoming physically ~~handicapped~~ disabled, shall, in addition to other indemnity, be paid the actual and necessary expenses of travel and, if the employe receives instructions elsewhere than at the place of residence, the actual and necessary costs of maintenance, during rehabilitation, subject to the conditions and limitations specified in sub. (1r).

SECTION 22. 104.01 (4) of the statutes is renumbered 104.01 (10) and amended to read:

104.01 (10) ~~“Handicapped” worker means one~~ “Worker with a disability” means a worker whose earning capacity is impaired by age or physical or mental deficiency or injury and who is being served in accordance with the recognized rehabilitation program of a sheltered workshop within the facilities of such agency or in or about the home of the ~~handicapped person~~ worker.

SECTION 23. 104.01 (6) of the statutes is amended to read:

104.01 (6) “Sheltered workshop” means a charitable organization or institution conducted not for profit, but for the purpose of carrying out a recognized program of rehabilitation for ~~handicapped~~ workers with disabilities and of providing ~~such~~ workers with disabilities with remunerative employment or other occupational rehabilitating activity of an educational or therapeutic nature.

SECTION 24. 104.07 (2) of the statutes is amended to read:

104.07 (2) The department shall make rules and grant licenses to sheltered workshops to permit the employment of ~~handicapped~~ workers with disabilities who are unable to earn the living-wage ~~theretofore determined upon permitting such persons to work for at~~ a wage which shall be that is commensurate with his or her their ability and productivity. A license granted to a sheltered work-

shop, under this section, may be issued for the entire workshop or a department ~~thereof~~ of the workshop.

SECTION 25. 106.04 (2r) (a) 3. of the statutes is amended to read:

106.04 (2r) (a) 3. “ANSI A117.1” means the 1986 edition of the American national standards institute’s code for buildings and facilities providing accessibility and usability for ~~physically handicapped~~ people with physical disabilities.

SECTION 26. 106.11 (2) (a) 1. e. of the statutes is amended to read:

106.11 (2) (a) 1. e. In cases permitted by regulations of the U.S. secretary of labor, the individual is an adult ~~handicapped~~ individual with a disability whose own income meets the requirements of subd. 1. a. or b., but who is a member of a family whose income does not meet those requirements.

SECTION 27. 106.11 (2) (a) 3. of the statutes is amended to read:

106.11 (2) (a) 3. ~~“Handicapped individual”~~ “Individual with a disability” means an individual who has a physical or mental disability ~~which that~~ for the individual constitutes or results in a substantial ~~handicap~~ barrier to employment.

SECTION 28. 106.11 (3) (a) of the statutes is amended to read:

106.11 (3) (a) To ensure that the governor’s coordination and special services plan proposed by the governor’s council on workforce excellence and each job training plan proposed by a private industry council pursuant to the federal job training partnership act, 29 USC 1501 to 1792b, coordinate with and consider programs and services provided or proposed by other bodies with a direct interest in employment, training and human resources utilization and respond to concerns of interested citizens, employment and training service providers and members of the business community, the governor’s council on workforce excellence and each private industry council shall make their proposed plans available to the public and after reasonable notice hold at least one public hearing before submittal to the governor under par. (c). The governor’s council on workforce excellence or private industry council shall provide notice of the public hearing and a copy of the proposed plan or a summary of it to the appropriate standing committees under par. (b). The public hearing shall be held sufficiently in advance of the date each council must submit its plan to the governor to permit the council to address concerns raised at its hearing. The public hearing shall be held at a reasonable time in a place accessible to the public, including ~~handicapped~~ persons with disabilities.

SECTION 29. 111.31 (1) of the statutes is amended to read:

111.31 (1) The legislature finds that the practice of unfair discrimination in employment against properly

qualified individuals by reason of their age, race, creed, color, ~~handicap~~ disability, marital status, sex, national origin, ancestry, sexual orientation, arrest record, conviction record, membership in the national guard, state defense force or any other reserve component of the military forces of the United States or this state or use or nonuse of lawful products off the employer's premises during nonworking hours substantially and adversely affects the general welfare of the state. Employers, labor organizations, employment agencies and licensing agencies that deny employment opportunities and discriminate in employment against properly qualified individuals solely because of their age, race, creed, color, ~~handicap~~ disability, marital status, sex, national origin, ancestry, sexual orientation, arrest record, conviction record, membership in the national guard, state defense force or any other reserve component of the military forces of the United States or this state or use or nonuse of lawful products off the employer's premises during nonworking hours deprive those individuals of the earnings that are necessary to maintain a just and decent standard of living.

SECTION 30. 111.31 (2) of the statutes is amended to read:

111.31 (2) It is the intent of the legislature to protect by law the rights of all individuals to obtain gainful employment and to enjoy privileges free from employment discrimination because of age, race, creed, color, ~~handicap~~ disability, marital status, sex, national origin, ancestry, sexual orientation, arrest record, conviction record, membership in the national guard, state defense force or any other reserve component of the military forces of the United States or this state or use or nonuse of lawful products off the employer's premises during nonworking hours, and to encourage the full, nondiscriminatory utilization of the productive resources of the state to the benefit of the state, the family and all the people of the state. It is the intent of the legislature in promulgating this subchapter to encourage employers to evaluate an employe or applicant for employment based upon the employe's or applicant's individual qualifications rather than upon a particular class to which the individual may belong.

SECTION 31. 111.31 (3) of the statutes is amended to read:

111.31 (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 individuals regardless of age, race, creed, color, ~~handicap~~ disability, marital status, sex, national origin, ancestry, sexual orientation, arrest record, conviction record, membership in the national guard, state defense force or any other reserve component of the military forces of the United States or this state or use or nonuse of lawful products off the employer's premises during

nonworking hours. 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 32. 111.32 (8) (intro.) of the statutes is amended to read:

111.32 (8) (intro.) "~~Handicapped individual~~" "Individual with a disability" means an individual who:

SECTION 33. 111.321 of the statutes is amended to read:

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

SECTION 34. 111.335 (1) (d) of the statutes is repealed.

NOTE: This SECTION repeals the definition of "equivalent bond" in the fair employment law. According to DWD, that definition includes a bond issued to an ex-offender under the federal Comprehensive Employment and Training Act, which has been repealed. Therefore, the definition of "equivalent bond" is now obsolete and should also be repealed.

SECTION 35. 111.34 (title) of the statutes is amended to read:

111.34 (title) Handicap Disability; exceptions and special cases.

SECTION 36. 111.34 (1) (intro.) of the statutes is amended to read:

111.34 (1) (intro.) Employment discrimination because of ~~handicap~~ disability includes, but is not limited to:

SECTION 37. 111.34 (1) (a) of the statutes is amended to read:

111.34 (1) (a) Contributing a lesser amount to the fringe benefits, including life or disability insurance coverage, of any employe because of the employe's ~~handicap~~ disability; or

SECTION 38. 111.34 (1) (b) of the statutes is amended to read:

111.34 (1) (b) Refusing to reasonably accommodate an employe's or prospective employe's ~~handicap~~ disability unless the employer can demonstrate that the accommodation would pose a hardship on the employer's program, enterprise or business.

SECTION 39. 111.34 (2) (a) of the statutes is amended to read:

111.34 (2) (a) Notwithstanding s. 111.322, it is not employment discrimination because of ~~handicap~~ disabil-

ity to refuse to hire, employ, admit or license any individual, to bar or terminate from employment, membership or licensure any individual, or to discriminate against any individual in promotion, compensation or in terms, conditions or privileges of employment if the handicap disability is reasonably related to the individual's ability to adequately undertake the job-related responsibilities of that individual's employment, membership or licensure.

SECTION 40. 111.34 (2) (b) of the statutes is amended to read:

111.34 (2) (b) In evaluating whether a ~~handicapped~~ an individual with a disability can adequately undertake the job-related responsibilities of a particular job, membership or licensed activity, the present and future safety of the individual, of the individual's coworkers and, if applicable, of the general public may be considered. However, this evaluation shall be made on an individual case-by-case basis and may not be made by a general rule which prohibits the employment or licensure of ~~handicapped~~ individuals with disabilities in general or a particular class of ~~handicapped~~ individuals with disabilities.

SECTION 41. 111.34 (2) (c) of the statutes is amended to read:

111.34 (2) (c) If the employment, membership or licensure involves a special duty of care for the safety of the general public, including but not limited to employment with a common carrier, this special duty of care may be considered in evaluating whether the employe or applicant can adequately undertake the job-related responsibilities of a particular job, membership or licensed activity. However, this evaluation shall be made on an individual case-by-case basis and may not be made by a general rule which prohibits the employment or licensure of ~~handicapped~~ individuals with disabilities in general or a particular class of ~~handicapped~~ individuals with disabilities.

SECTION 42. 230.24 (1m) of the statutes is amended to read:

230.24 (1m) The policy established by the administrator under sub. (1) that deals with probation shall provide the option of extending the probationary period for ~~handicapped~~ individuals with disabilities, as defined in s. 111.32 (8), who are employes in a manner consistent with s. 230.28 (1) (bm).

SECTION 43. 230.28 (1) (bm) (intro.) of the statutes is amended to read:

230.28 (1) (bm) (intro.) At the request of an appointing authority and an employe, the administrator may authorize, at any time before the completion of the probationary period, an extended probationary period of up to one additional year for a ~~handicapped~~ an individual with a disability, as defined in s. 111.32 (8), who is the employe to allow the employe to do any of the following:

SECTION 44. 230.28 (1) (bm) 2. of the statutes is amended to read:

230.28 (1) (bm) 2. Obtain or adapt to special modifications made to the employe's workplace to accommodate the employe's handicap disability.

SECTION 45. 560.20 (1) (e) of the statutes is amended to read:

560.20 (1) (e) "Person with severe disabilities" means an individual who is eligible for one or more programs or services under ch. 47 because he or she is a ~~severely handicapped~~ person with a severe disability, as defined in s. 47.01 (4) (3g).

NOTE: SECTIONS 1 to 33 and 35 to 45 change references in the fair employment, vocational rehabilitation, worker's compensation, minimum wage for sheltered workshop employes and fair housing statutes from the terms "handicap", "handicapped individual, person or worker" and "handicap to employment" to "disability", "individual, person or worker with a disability" and "barrier to employment". According to DWD, some state statutes and federal statutes use the term "disability" rather than "handicap" because it is more up-to-date and commonly used. Therefore, references to "handicap", "handicapped individual, person or worker" and "handicap to employment" should be updated accordingly.