

1999 DRAFTING REQUEST

Bill

Received: 09/9/98

Received By: malaigm

Wanted: As time permits

Identical to LRB:

For: Shirley Krug (608) 266-5813

By/Representing: Herself

This file may be shown to any legislator: NO

Drafter: malaigm

May Contact:

Alt. Drafters:

Subject: **Discrimination**

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Golf club discrimination

Instructions:

See Attached--redraft 97LRB-4469/1 subject to attached changes

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>
/?	malaigm 12/8/98	ptellez 01/26/99		_____			S&L
/1			hhagen 01/26/99	_____	lrb_docadmin 01/26/99	lrb_docadmin 03/22/99	

FE Sent For:

G 07-06-99

<END>

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1?	malaigm	1/1 rgt 12/15/98	1/26	DF 1/26			
		1 jlg 1/26					

FE Sent For:

<END>



**SHIRLEY
KRUG**
STATE
REPRESENTATIVE

Dear Gordon -

Your boss, Steve, said it's ok. for
me to start sending bill draft
requests in.

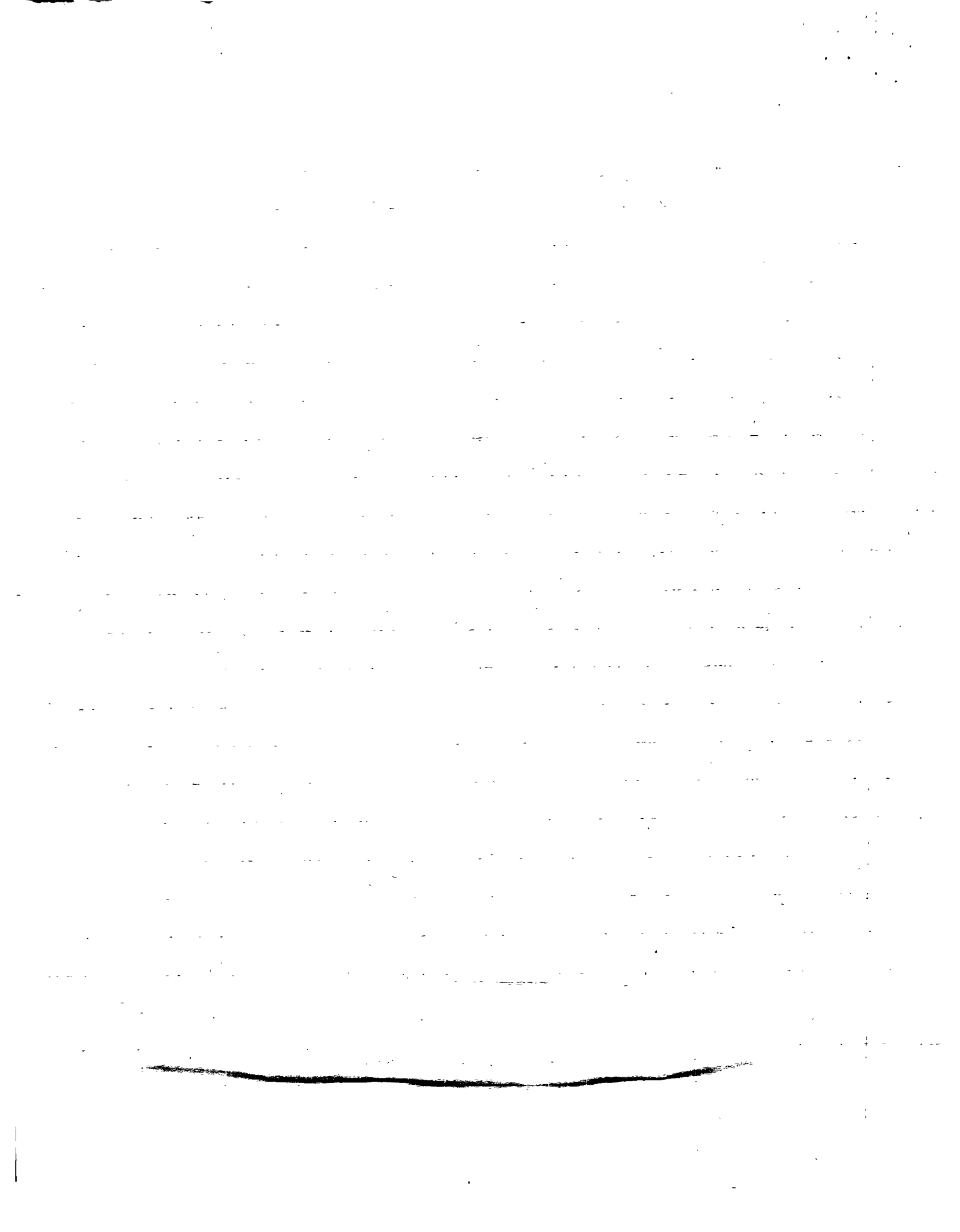
I would like LRB 4469/1 redrafted
for the upcoming session. Before
you get started, please give
me a call re: the hand-
written notes on the draft.

Hope your summer is a good
one.

Regards,

Shirley







State of Wisconsin
1997 - 1998 LEGISLATURE

LRB-4469/1
GMM&PEN:jlgjf

1997 BILL

1 **AN ACT to amend 106.04 (1m) (p) 1.; and to create 106.04 (9) (am), 125.12 (2)**
2 **(ag) 7. and 125.12 (4) (ag) 9. of the statutes; relating to: prohibiting**
3 **discrimination in the use of the facilities or services, or in the exercise of voting**
4 **rights in the governance, of a golf club that is a public place of accommodation**
5 **or amusement and authorizing the suspension or revocation of an alcohol**
6 **beverage license issued to any golf club that impermissibly discriminates in the**
7 **use of its facilities or services or in the exercise of voting rights in its**
8 **governance.**

Analysis by the Legislative Reference Bureau

Under current law, no person may deny to another the full and equal enjoyment of any public place of accommodation or amusement because of sex, race, color, creed, disability, sexual orientation, national origin or ancestry. Under current law, "public place of accommodation or amusement" is interpreted broadly to include, but not be limited to, places of business or recreation, restaurants, taverns, lodging establishments and any place where accommodations, amusement, goods or services are available either free or for a consideration, except that a "public place of accommodation or amusement" does not include a place where a bona fide private, nonprofit organization or institution provides accommodations, amusement, goods

1997 - 1998 Legislature

- 2 -

LRB-4469/1
GMM&PEN:jigjf**BILL**

or services during an event in which the organization or institution provides the accommodations, amusement, goods or services only to its members, to the guests of those members and to the guests of the organization or institution. Under current law, a person who wilfully denies to another the full and equal enjoyment of a public place of accommodation or amusement because of sex, race, color, creed, disability, sexual orientation, national origin or ancestry is subject to a forfeiture and to a civil action for damages, including punitive damages, injunctive relief, court costs and reasonable attorney fees. In addition, if the person is licensed or chartered under state law, for example, if the person holds a liquor license, the person is subject to suspension or revocation of the license or charter.

This bill prohibits discrimination in the use of the facilities or services of a golf club that is a public place of accommodation or amusement (golf club). Specifically, under the bill, no person may deny to another the full and equal enjoyment of the facilities or services of a golf club by doing any of the following:

1. Assigning tee times based on sex, race, color, creed, disability, sexual orientation, marital status, national origin or ancestry.

2. Restricting the use of the facilities or services of the golf club by any adult who is entitled to use those facilities or services under a membership in the golf club that allows the use of those facilities or services by more than one adult so that the use of those facilities or services is not equally available to all adults who are included under that membership.

3. Restricting the exercise of voting rights in the governance of the golf club by any adult who is entitled to use the facilities or services of the golf club under a membership in the golf club that allows the use of those facilities or services by more than one adult so that all adults who are included under that membership do not have an equal voice in the governance of the golf club.

4. Denying availability of any class of membership in the golf club based on sex, race, color, creed, disability, sexual orientation, marital status, national origin or ancestry.

5. Denying equal access to any food or beverage facilities or services of the golf club to any adult member of the golf club in any membership class, subject to the underage drinking law.

The bill, however, permits a golf club to do any of the following:

1. Sponsor or permit events that are limited to members of one sex if the golf club sponsors or permits events that are comparable for each sex.

2. Offer a membership in the golf club that permits the use of the facilities or services of the golf club during times in which that use is restricted to certain classes of memberships if that use during all restricted times is permitted for all adults who are entitled to use the golf club's facilities or services under that membership.

3. Offer, for a reduced rate, an individual membership in the golf club that permits the use of the facilities or services of the golf club only during limited times, if the golf club has on record a written request for such a membership.

The bill allows any resident of a municipality to file a complaint with the municipality alleging that a golf course that is licensed by that municipality to sell alcohol beverages impermissibly discriminates in violation of the bill. The bill also

BILL

authorizes the department of revenue (DOR) to file a complaint with the county circuit court alleging that a golf course that is licensed by a municipality to sell alcohol beverages impermissibly discriminates in violation of the bill. Current law requires the municipality or circuit court, upon receiving a valid complaint alleging any of several specified violations, to conduct a hearing on the complaint and, if the complaint is found to be true or if the licensee fails to appear to contest the complaint, requires the municipality to revoke the violator's alcohol beverage license and requires the circuit court to order the license suspended for not more than 90 days or revoked. The bill authorizes DOR to revoke, suspend or refuse to renew a DOR-issued permit for the sale of alcohol beverages to any golf club that impermissibly discriminates in violation of the bill.

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

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

including private clubs

1 SECTION 1. 106.04 (1m) (p) 1. of the statutes is amended to read:

2 106.04 (1m) (p) 1. "Public place of accommodation or amusement" shall be
3 interpreted broadly to include, but not be limited to, places of business or recreation;
4 lodging establishments; restaurants; taverns; golf clubs; barber or cosmetologist,
5 aesthetician, electrologist or manicuring establishments; nursing homes; clinics;
6 hospitals; cemeteries; and any place where accommodations, amusement, goods or
7 services are available either free or for a consideration, subject to subd. 2.

*AM subd. 2
CR. subd. 3.*

8 SECTION 2. 106.04 (9) (am) of the statutes is created to read:

9 106.04 (9) (am) 1. In addition to the discrimination prohibited under par. (a),
10 no person may deny to another the full and equal enjoyment of the facilities or
11 services of a golf club that is a public place of accommodation or amusement by doing
12 any of the following:

13 a. Assigning tee times based on sex, race, color, creed, disability, sexual
14 orientation, marital status, national origin or ancestry.

addresses designated golfer rule ?

1997 - 1998 Legislature

BILL

LRB-4469/1
GMM&PEN:jlgjf
SECTION 2

Not considered to be equally available
unless on any given weekend equally available
w/in " " "

golf course

Food & Beverage

1 ✓ b. Restricting the use of the facilities or services of the golf club by any adult
2 [who is entitled to use those facilities or services under a membership in the golf club
3 that allows the use of those facilities or services by more than one adult] so that the
4 use of those facilities or services is not equally available to all adults who are included
5 under that membership.

member split 50-50 designated golfer rule
Not for 1/2 season but each day 1 member SAT one sum

6 c. Restricting the exercise of voting rights in the governance of the golf club by
7 any adult [who is entitled to use the facilities or services of the golf club under a
8 membership in the golf club that allows the use of those facilities or services by more
9 than one adult] so that all adults who are included under that membership do not
10 have an equal voice in the governance of the golf club.

11 ✓ d. Denying availability of any class of membership in the golf club based on sex,
12 race, color, creed, disability, sexual orientation, marital status, national origin or
13 ancestry.

14 e. Denying equal access to any food or beverage facilities or services of the golf
15 club to any adult member of the golf club in any membership class at any time,
16 subject to s. 125.07. based on ...?

17 f. Directly or indirectly publishing, circulating, displaying or mailing any
18 written communication that the communicator knows is to the effect that tee times
19 will be assigned in violation of subd. 1. a., that the use of the facilities or services of
20 the golf club will be restricted in violation of subd. 1. b., that the exercise of voting
21 rights in the governance of the golf club will be restricted in violation of subd. 1. c.,
22 that availability of any class of membership will be denied in violation of subd. 1. d.
23 or that equal access to any food or beverage facilities or services of the golf club will
24 be denied in violation of subd. 1. e.

25 2. Nothing in subd. 1. prohibits any of the following:

BILL

1 ✓ a. Sponsoring or permitting events that are limited to members of one sex if the
2 golf club sponsors or permits events that are comparable for each sex.

3 b. Offering a membership in the golf club that permits the ^{a member to} use of the facilities
4 or services of the golf club during times in which that use ^{of those facilities} is restricted to certain
5 classes of memberships if that use during all restricted times is permitted for all
6 adults who are entitled to use those facilities or services under the membership.

7 c. Offering, for a reduced rate, an individual membership in the golf club that
8 permits the ^{member to} use of the facilities or services of the golf club only during limited times
9 if the golf club has on record a written request from the member for such a limited
10 membership.

11 → SECTION 3. 125.12 (2) (ag) 7. of the statutes is created to read:

12 125.12 (2) (ag) 7. The person has violated s. 106.04 (9) (am) 1.

13 SECTION 4. 125.12 (4) (ag) 9. of the statutes is created to read:

14 125.12 (4) (ag) 9. That the licensee has violated s. 106.04 (9) (am) 1.

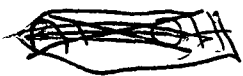
15 SECTION 5. Initial applicability.

16 (1) The treatment of section 106.04 (1m) (p) 1. and (9) (am) of the statutes first
17 applies to a person who is affected by a contract that contains provisions that are
18 inconsistent with section 106.04 (1m) (p) 1. of the statutes, as affected by this act, and
19 section 106.04 (9) (am) of the statutes, as created by this act, on the day after the
20 contract expires or on the day on which the contract is extended, modified or
21 renewed, whichever occurs first.

22 (2) The treatment of section 125.12 (2) (ag) 7. and (4) (ag) 9. of the statutes first
23 applies to actions of a golf club that occur on the effective date of this subsection.

24 (END)

5/5



① Barbara Boyer
Golf by
(414) 271-6560
Michael, Best

designated golfer rule

~~② Brent Coomb~~

1/2 season husband

1/2 " wife

~~68270~~

} no

Should be no designated golfer

split season - no

OK - one Sat / one Sun. - split weekend

exception - designated golfer per family
split weekend morning times

"designated golfer" } (male) CT
"primary member" MN

access to clubhouse

weekend tee times

0082/1

LRB-44032-N

GMM&PEN:jg:lp

pgt
+
jg

DNote

* WED

1997 ASSEMBLY BILL

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AN ACT *to amend* 106.04 (1m) (p) 1.; and *to create* 106.04 (9) (am), 125.12 (2) (ag) 7. and 125.12 (4) (ag) 9. of the statutes; **relating to:** prohibiting discrimination in the use of the facilities or services, ~~or in the exercise of voting rights in the governance,~~ of a golf club ~~that is a public place of accommodation or amusement~~ and authorizing the suspension or revocation of an alcohol beverage license issued to any golf club that impermissibly discriminates in the use of its facilities or services ~~or in the exercise of voting rights in its governance.~~

Regenerate

Analysis by the Legislative Reference Bureau

Under current law, no person may deny to another the full and equal enjoyment of any public place of accommodation or amusement because of sex, race, color, creed, disability, sexual orientation, national origin or ancestry. Under current law, "public place of accommodation or amusement" is interpreted broadly to include, but not be limited to, places of business or recreation, restaurants, taverns, lodging establishments and any place where accommodations, amusement, goods or services are available either free or for a consideration, except that a "public place of accommodation or amusement" does not include a place where a bona fide private, nonprofit organization or institution provides accommodations, amusement, goods

ASSEMBLY BILL

including a private golf club that provides its services only to its members, their guests and the guests of the private golf club

or services during an event in which the organization or institution provides the accommodations, amusement, goods or services only to its members, to the guests of those members and to the guests of the organization or institution. Under current law, a person who wilfully denies to another the full and equal enjoyment of a public place of accommodation or amusement because of sex, race, color, creed, disability, sexual orientation, national origin or ancestry is subject to a forfeiture and to a civil action for damages, including punitive damages, injunctive relief, court costs and reasonable attorney fees. In addition, if the person is licensed or chartered under state law, for example, if the person holds a liquor license, the person is subject to suspension or revocation of the license or charter.

its members, their guests and the guests of the private golf club

This bill prohibits discrimination in the use of the facilities or services of a golf club that is a public place of accommodation or amusement (golf club). Specifically, under the bill, no person may deny to another the full and equal enjoyment of the facilities or services of a golf club by doing any of the following:

1. Assigning tee times based on sex, race, color, creed, disability, sexual orientation, marital status, national origin or ancestry.

2. Restricting the use of the facilities or services of the golf club by any adult who is entitled to use those facilities or services under a membership in the golf club that allows the use of those facilities or services by more than one adult, so that the use of those facilities or services is not equally available at all times to all adults who are included under that membership.

(Family membership)

3. Restricting the exercise of voting rights in the governance of the golf club by any adult who is entitled to use the facilities or services of the golf club under a membership in the golf club that allows the use of those facilities or services by more than one adult so that all adults who are included under that membership do not have an equal voice in the governance of the golf club.

(structure)
(family)

MOVE

4. Denying availability of any class of membership in the golf club based on sex, race, color, creed, disability, sexual orientation, marital status, national origin or ancestry.
5. Denying equal access to any food or beverage facilities or services of the golf club to any adult member of the golf club in any membership class, subject to the underage drinking law.

The bill, however, permits a golf club to do any of the following:

1. Sponsor or permit events that are limited to members of one sex if the golf club sponsors or permits events that are comparable for each sex.

2. Offer a membership in the golf club that permits the use of the facilities or services of the golf club during times in which that use is restricted to certain classes of memberships if that use during all restricted times is permitted for all adults who are entitled to use the golf club's facilities or services under that membership.

(family)

3. Offer, for a reduced rate, an individual membership in the golf club that permits the use of the facilities or services of the golf club only during limited times, if the golf club has on record a written request for such a membership.

The bill allows any resident of a municipality to file a complaint with the municipality alleging that a golf course that is licensed by that municipality to sell alcohol beverages impermissibly discriminates in violation of the bill. The bill also

Insert
A

4.

5.



ASSEMBLY BILL

authorizes the department of revenue (DOR) to file a complaint with the county circuit court alleging that a golf course that is licensed by a municipality to sell alcohol beverages impermissibly discriminates in violation of the bill. Current law requires the municipality or circuit court, upon receiving a valid complaint alleging any of several specified violations, to conduct a hearing on the complaint and, if the complaint is found to be true or if the licensee fails to appear to contest the complaint, requires the municipality to revoke the violator's alcohol beverage license and requires the circuit court to order the license suspended for not more than 90 days or revoked. The bill authorizes DOR to revoke, suspend or refuse to renew a DOR-issued permit for the sale of alcohol beverages to any golf club that impermissibly discriminates in violation of the bill.

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

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

, subject to subd. 2.,

SECTION 1. 106.04 (1m) (p) 1. of the statutes is amended to read:

106.04 (1m) (p) 1. "Public place of accommodation or amusement" shall be interpreted broadly to include, but not be limited to, places of business or recreation; lodging establishments; restaurants; taverns; golf clubs; barber or cosmetologist, aesthetician, electrologist or manicuring establishments; nursing homes; clinics; hospitals; cemeteries; and any place where accommodations, amusement, goods or services are available either free or for a consideration, ~~subject to subd. 2.~~

SECTION 2. 106.04 (9) (am) of the statutes is created to read:

106.04 (9) (am). In addition to the discrimination prohibited under par. (a), no person may deny to another the full and equal enjoyment of the facilities or services of a golf club ~~that is a public place of accommodation or amusement~~ by doing any of the following:

a. Assigning tee times based on sex, race, color, creed, disability, sexual orientation, marital status, national origin or ancestry.

delete extra space
proof w/ stats. lines 1-7
insert 3-7
insert 3-9

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ASSEMBLY BILL

family

1 b. Restricting the use of the facilities or services of the golf club by any adult
2 who is entitled to use those facilities or services under a membership in the golf club
3 ~~that allows the use of those facilities or services by more than one adult~~ so that the
4 use of those facilities or services is not equally available at all times to all adults who
5 are included under that membership.

6 e. Restricting the exercise of voting rights in the governance of the golf club by
7 any adult who is entitled to use the facilities or services of the golf club under a
8 membership in the golf club ~~that allows the use of those facilities or services by more~~
9 ~~than one adult~~ so that all adults who are included under that membership do not
10 have an equal voice in the governance of the golf club.

11 c. Denying availability of any class of membership in the golf club based on sex,
12 race, color, creed, disability, sexual orientation, marital status, national origin or
13 ancestry.

14 d. Denying equal access to any food or beverage facilities or services of the golf
15 club to any adult member of the golf club in any membership class at any time,
16 subject to s. 125.07.

17 f. Directly or indirectly publishing, circulating, displaying or mailing any
18 written communication that the communicator knows is to the effect that tee times
19 will be assigned in violation of subd. a., that the use of the facilities or services of
20 the golf club will be restricted in violation of subd. b., ~~that the exercise of voting~~
21 ~~rights in the governance of the golf club will be restricted in violation of subd. 1. c.~~

22 that availability of any class of membership will be denied in violation of subd. ~~1. d.~~
23 ~~that~~ that equal access to any food or beverage facilities or services of the golf club will
24 be denied in violation of subd. ~~1. e.~~

25 3. Nothing in subd. 1. prohibits any of the following:

2. d. or that the
exercise of voting rights in the governance of the
golf club will be restricted in violation of
subd. 2. e.

more

2. c.

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ASSEMBLY BILL

insert
s-2

1 a. Sponsoring or permitting events that are limited to members of one sex if the
2 golf club sponsors or permits events that are comparable for each sex.

3 (d.) ^{family} Offering a membership in the golf club that permits the use of the facilities
4 or services of the golf club during times in which that use is restricted to certain
5 classes of memberships if that use during all restricted times is permitted for all
6 adults who are entitled to use those facilities or services under the ^{family} membership.

7 (e.) Offering, for a reduced rate, an individual membership in the golf club that
8 permits the use of the facilities or services of the golf club only during limited times
9 if the golf club has on record a written request from the member for such a limited
10 membership.

11 SECTION 3. 125.12 (2) (ag) ¹ of the statutes is created to read:

12 125.12 (2) (ag) ¹. The person has violated s. 106.04 (9) (am) ².

13 SECTION 4. 125.12 (4) (ag) ¹ 9. of the statutes is created to read:

14 125.12 (4) (ag) 9. That the licensee has violated s. 106.04 (9) (am) ².

15 SECTION 5. Initial applicability.

16 (1) The treatment of section 106.04 (1m) (p) ¹ and (9) (am) of the statutes first
17 applies to a person who is affected by a contract that contains provisions that are
18 inconsistent with section 106.04 (1m) (p) ¹ of the statutes, as affected by this act, and
19 section 106.04 (9) (am) of the statutes, as created by this act, on the day ^{on which}
20 contract expires or ~~on the day on which the contract~~ is extended, modified or
21 renewed, whichever occurs first.

22 (2) The treatment of section 125.12 (2) (ag) ¹ and (4) (ag) ¹ 9. of the statutes first
23 applies to actions of a golf club that occur on the effective date of this subsection.

(END)

Drost

Insert 3-7

✓
subject to subd. 3.

Section #. 106.04 (1m) (p) 2. (intro.) of the statutes is amended to read:

106.04 (1m) (p) 2. (intro.) "Public place of accommodation or amusement" does not include a place where a bona fide private, nonprofit organization or institution provides accommodations, amusement, goods or services during an event in which the organization or institution provides the accommodations, amusement, goods or services to the following individuals only:

History: 1971 c. 185 s. 1; 1971 c. 228 s. 42; 1971 c. 230; 1971 c. 307 s. 51; Stats. 1971 s. 101.22; 1975 c. 94, 275, 421, 422; 1977 c. 29; 1977 c. 418 s. 929 (55); 1979 c. 110; 1979 c. 177 s. 85; 1979 c. 188, 221, 355; 1981 c. 112, 180; 1981 c. 391 s. 210; 1983 a. 27, 189; 1985 a. 238, 319; 1987 a. 262; 1989 a. 47 ss. 2 to 5, 8 to 11; 1989 a. 94, 106, 139, 359; 1991 a. 295, 315; 1993 a. 27; 1995 a. 27 s. 3687; Stats. 1995 s. 106.04; 1995 a. 225; 1995 a. 448 ss. 66, 68; 1997 a. 112, 237, 312.

Insert 3-7

SEC #. CR; 106.04 (lm) (p) 3.

106.04 (lm) (p) 3. "Public place of accommodation or

amusement" includes a place where a ~~bona fide~~ private

golf club provides accommodations, amusement, goods or services

during an event in which the private golf club provides the

accommodations, amusement, goods or services to the

individuals specified in subd. 2. a., b. and c. only.

(end of insert)

Insert 3-9

NO #

1. In this [✓] paragraph, "family membership" means a

membership in a golf club that allows more than one adult

to use the facilities or services of the golf club.

#

2. ~~NO #~~

(ed & next)

Insert 5.2

¶ b. Offering a family membership in the golf club that permits only one of the adult members under the family membership to use the facilities or services of the golf club on one day of a weekend if the family membership ~~also~~ permits the ~~the~~ other adult member under the family membership to use the ^{facilities} ~~facilities~~ or services of the golf club on the other day of the weekend.

¶ c. Offering a family membership in the golf club that ^{permits} ~~permits~~ one of the adult members ^{under} ~~the~~ the family membership to have limited or unlimited access to the golfing facilities of the golf club and the other adult member under the family membership to have no access to those facilities if the golf club has on record a written request st from each adult member ^{for} ~~for~~ such a family membership. [end of insert]

✓
Insert (A)

¶ 2. Offer a family membership in the golf club that permits only one of the adult members under the family membership to use the facilities or services of the golf club on one day of a weekend if the family membership permits the other adult member under the family membership ~~to~~ use those facilities or services on the other day of the weekend.

¶ 3. Offer a family membership in the golf club that permits one ^{of} ~~the~~ the adult members under the family membership to have ^{access} to the golfing ~~facilities~~ ^{facilities} of the golf club and the other adult member under the family membership to have ^{no} ~~no~~ access ^{to} ~~to~~ those facilities if the golf club has on record a written request from each adult member for such a family membership.

~~End Insert (A)~~ [End Insert (A)]

I.

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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0082/1dn

GMM. *pgt*...

Jig

Introduction. Based on my research of the constitutionality of applying public accommodations laws to private clubs, there are two points concerning this draft of which you should be aware:

1. Based on a Michigan statute that is remarkably similar to this draft and *Benevolent and Protective Order of Elks v. Reynolds*, 863 F. Supp. 529 (W.D. Mich. 1994), which upheld the constitutionality of that statute, it would appear that the substantive requirements of this draft would pass constitutional muster because the draft merely regulates *the use of the facilities* of a private club, rather than the membership policies of the club itself, and because the draft merely regulates the availability of all classes of membership and the exercise of voting rights for persons *who already are members* of the club, rather than the admission of new members to the club.

2. Based on *Louisiana Debating and Literary Association v. City of New Orleans*, 42 F.3d 1483 (5th Cir. 1994), which struck down New Orleans' public accommodations as applied to certain private clubs on freedom of association grounds, it would appear that the enforcement of this draft might be held unconstitutional as applied to certain private clubs because, to enforce the draft, the department of workforce development (OWD) must necessarily delve into and make public the private, internal workings of those clubs in violation of their constitutional right to freedom of association.

This drafter's note will first explain in general how the constitutional right of freedom of association applies to private clubs and what that application means for a law that regulates private clubs. Next the drafter's note will explain why the substantive requirements of this draft do not impair the associational rights of private clubs. Finally, the drafter's note will explain why the enforcement of this draft might impair the associational rights of a private club and will offer alternative ways to address the freedom of association concerns relating to the enforcement of this draft.

Freedom of association. The Constitution protects against undue intrusion by the government two types of freedom of association. One is freedom of *private association*, that is, the right to enter into and maintain (and, conversely, the right *not* to enter into and maintain) certain private relationships. The most obvious example of an association that enjoys freedom of private association protection is a family because it is small in size, subject to a high degree of selectivity in decisions to begin and maintain the relationship and secluded from others in critical aspects of the relationship.

Freedom of private association, however, is not limited to family relationships; other types of relationships that share those attributes also enjoy freedom of association protection. Therefore, in determining whether an association is sufficiently private to warrant constitutional protection, the courts consider the following factors: 1) the organization's size; 2) its purposes; 3) its selectivity in choosing new members; 4) the congeniality among its members; 5) whether others are excluded from critical aspects of the relationship; and 6) other characteristics that in a particular case may be pertinent. *Roberts v. United States Jaycees*, 104 S. Ct. 3244, 3249-3251 (1984). Thus an organization such as the Jaycees or the Rotary Club that has hundreds of thousands of members, that has as its purpose serviced to the larger community, that is nonselective and nonexclusive in admitting new members and that encourages the participation of nonmembers in its activities, does not enjoy freedom of private association protection. *Roberts* at p. 3251; *Board of Dirs. of Rotary International v. Rotary Club*, 107 S. Ct. 1940, 1946-1947 (1987). On the other hand, an organization such as the Louisiana Debating and Literary Association that has only a few hundred members, that is purely social in purpose, that is selective and exclusive in admitting new members and that prohibits or severely restricts the participation of nonmembers in its activities does enjoy freedom of private association protection. *Louisiana Debating Association* at pp. 1495-1497. Because the draft applies to private clubs that serve only their members and guests, it is likely that the draft will apply to some private clubs that, due to their small size, selectivity, exclusivity and strictly social purpose, are entitled to freedom of private association protection.

The Constitution also protects freedom of *expressive association*, that is, the right to associate for the purpose of engaging in rights protected by the First Amendment such as speech, assembly and religion. *Roberts* at p. 3249. Although golfing is probably not a protected right under the First Amendment, if an organization, for example a fraternal lodge such as the Elks or a religious association such as the Knights of Columbus, not only operates a golf club but also engages in First Amendment activity, such an organization would enjoy freedom of expressive association protection. Because the draft does not exclude from its coverage fraternal or religious organizations that also operate golf facilities, it is likely that the draft will apply to private clubs that are entitled to freedom of expressive association protection.

If a private club is entitled to freedom of association protection, whether based on freedom of private association or freedom of expressive association, that freedom is protected against *unjustified* government interference. That does not mean that the government may never infringe a club's freedom of association, but it does mean that the government may infringe that freedom only if the government demonstrates: 1) that the infringement serves a *compelling state interest*; and 2) that the compelling state interest cannot be achieved through any significantly *less restrictive means*. *Roberts* at p. 3252. Accordingly, because the draft includes within its coverage private clubs that may be entitled to freedom of association protection, the state must demonstrate either that the draft does not infringe the associational freedom of private members or that, if the draft does infringe that freedom, the infringement serves a compelling state interest that cannot be achieved through significantly less restrictive means.

Substantive requirements. The substantive requirements of this draft are remarkably similar to a Michigan statute whose constitutionality was upheld in *Benevolent and Protective Order of Elks v. Reynolds*, 863 F. Supp. 529 (W.D. Mich. 1994). Specifically, in 1992 Michigan amended its public accommodations law to eliminate certain exclusionary practices by private clubs. Michigan did so by amending its definition of "place of public accommodation" to include *the facilities of* certain private clubs (MLCA s. 37.2301 (a)) and by expressly requiring those private clubs to do all of the following:

1. If a private club allows the use of its facilities by one or more adults per membership, make the use of those facilities equally available to all adults who are entitled to use those facilities under the membership.
2. Make all classes of membership available without regard to race, color, gender, religion, marital status or national origin.
3. Offer memberships that permit use during restricted times only if the restricted times apply to all adults using the membership.
4. Allow equal access to its food and beverage facilities for all adults in all membership categories at all times. (MLCA s. 37.2302a).

So, the Michigan statute differs in substance from this draft only insofar as this draft, in addition, requires nondiscrimination in assigning tee times and equal voting rights in the governance of a private golf club.

In the *Elks* case, the Elks challenged the constitutionality of the Michigan law, contending that it violated the right to freedom of association of its members because the law would unjustifiably interfere with the club's membership policies. The Court, however, held that the Michigan law did not interfere with the Elks' membership policies because the law regulates *the use of the facilities* of a private club and not the club itself or its membership policies. In other words, the law does not require a private club to admit women, but if a private club does admit women, the club must allow equal access to its facilities and make all classes of memberships available *to all person who already are members*. *Elks* at p. 533. Similarly, because this draft regulates the facilities of a private club, but does not regulate the club itself or its membership policies, and because this draft regulates access to all classes of memberships and equal voting rights for all persons who already are members of a private club, but does not regulate the admission of new members to the club, it would appear that the Michigan law and the *Elks* case upholding that law would be strong precedent for upholding the constitutionality of the substantive requirements of this draft.

Enforcement. This draft, if enacted, would be enforced as provided in s. 106.04 (10), stats., which among other things permits DWD to hold hearings, subpoena witnesses, take testimony and make investigations; requires a hearing examiner to make written findings; and permits DWD or an aggrieved person to bring a civil action for damages and injunctive relief. Significantly, s. 106.04 (10), stats., does not authorize closed hearings or exempt public accommodations enforcement records from the open records law.

The U. S. Court of Appeals for the ^{Fifth} ~~5th~~ Circuit, in *Louisiana Debating Association*, held that similar enforcement measures in New Orleans' public accommodations law

rendered that law unconstitutional as applied to private clubs that enjoy freedom of association protection because those enforcement measures did not provide adequate safeguards against intrusion into the private affairs of such clubs in that the law did not prevent hearings from being public and did not prevent the city from demanding the membership lists of such clubs. Therefore, the Court held that the city failed to meet its burden of demonstrating that the means chosen to achieve the compelling state interest of eradicating discrimination were the least intrusive on the private association rights of private clubs. Similarly, because s. 106.04 (10), stats., does not permit or require closed hearings, does not exempt any information from the open records law and does not limit the scope of information that DWD may subpoena, it would appear that the lack of safeguards against intrusion into the private affairs of a private club might, under the teaching of *Louisiana Debating Association*, render this draft unconstitutional as applied to private clubs that enjoy freedom of association protection.

Accordingly, it appears that there are three things you can do to address the freedom of association concerns of private clubs:

1. Do not change the draft to accommodate those concerns. A holding of the U.S. Court of Appeals for the ^{Fifth}~~5th~~ Circuit, which covers the ^{Seventh}~~Deep~~ South, is not binding on the U.S. Court of Appeals for the ~~7th~~ Circuit, which covers the ^{STET}~~Upper~~ Midwest. Significantly, the issue of enforcement was not even reached by the U.S. District Court for the Western District of Michigan in the *Elks* case. Moreover, "(i)t is commonly recognized that publicizing efforts to eliminate discrimination with respect to specific instances can be a beneficial tool in deterring its spread or eliminating it." 60 ~~QAC~~ ^{STET} 43, 53 (1971).

2. Balance the desire to protect the privacy of private clubs with the salutary effects of publicizing the misdeeds of malefactors who discriminate by drafting, either on redraft or by amendment, a narrow, carefully tailored provision that addresses the specific privacy concerns of private clubs, but that also allows DWD to collect the information that it needs to enforce the law and allows for appropriate publicity of the guilty. For example, depending on the specific privacy concerns of the private clubs, the draft could prohibit DWD from demanding the names of the members of a private club, could permit or require hearings involving private clubs to be closed or could provide that enforcement records relating to a private club are exempt from the open records law.

3. Provide at the outset for blanket privacy protection for private clubs.

If you have any questions concerning this drafter's note or the draft, please do not hesitate to contact me directly.

Gordon M. Malaise
 Senior Legislative Attorney
 266-9738

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0082/1dn
GMM:pgt&jlg:hmh

Tuesday, January 26, 1999

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Gordon M. Malaise
Senior Legislative Attorney
266-9738

**SUBMITTAL
FORM**

**LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

Date: 1/26/99

To: Representative Krug

Relating to LRB drafting number: LRB-0082

Topic

Golf club discrimination

Subject(s)

Discrimination

1. **JACKET** the draft for introduction _____

SKrug

in the **Senate** ____ or the **Assembly** (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached _____

A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction _____

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Gordon M. Malaise, Senior Legislative Attorney
Telephone: (608) 266-9738

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