

1999 DRAFTING REQUEST

Bill

Received: 08/24/1999

Received By: malaigm

Wanted: As time permits

Identical to LRB:

For: Carol Kelso (608) 266-0485

By/Representing: Chris

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:

Employment discrimination based on conviction record

Instructions:

Redraft 1997 AB 409

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 08/31/1999	jgeller 09/01/1999		_____			S&L
/1			kfollet 09/01/1999	_____	lrb_docadmin 09/01/1999		S&L
/2	malaigm 09/02/1999	jgeller 09/02/1999	kfollet 09/02/1999	_____	gretskl 09/02/1999	lrb_docadmin 09/07/1999	

FE Sent For:

09-16-99
1/2"

<END>

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/1		<i>1/2 9/2 jg</i>	kfollet 09/01/1999		lrb_docadmin 09/01/1999		
			<i>kjf 9/2</i>	<i>kjf/ch 9/2</i>			

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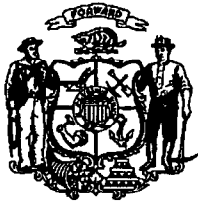
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/?	malaigm	1 8/1 jlg	kjf 9/1	kjf/km 9/1			

FE Sent For:

<END>



Wisconsin State Legislature

FOR IMMEDIATE RELEASE – August 23, 1999

BILL AIMS TO EXEMPT CONVICTIONS FROM LABOR LAW *Lawmakers Say Requirement to Hire Felons Ignores Safety Concerns*

Two state lawmakers want to grant employers an extra safeguard when it comes to hiring and firing decisions. State Reps. Carol Kelso (R-Green Bay) and Scott Walker (R-Wauwatosa) today announced their intention to re-introduce legislation allowing employers to consider conviction records when deciding whether to hire, promote or terminate workers.

State law essentially prohibits employers from considering conviction records unless the offenses in question "substantially relate to the circumstances of a particular job."

Kelso said a case being appealed by Milwaukee Public Schools illustrates the problem with present law. The district filed a petition last week with the Milwaukee County Circuit Court after the state Labor and Industry Review Commission ordered MPS to re-hire a convicted felon as a boiler room attendant.

"The events in Milwaukee this week showed us the absurdity of the current law," Kelso said. "Wisconsin children deserve safe schools, and schools should have the right not to hire criminals who may endanger our children."

The man in the MPS case, previously convicted of burning a child with hot grease, was fired in 1995 for not noting the felony on his original application. When he re-applied for the position and included the conviction on his application, the district refused to hire him based upon the details of the crime. The Commission, however, ruled that the offense did not substantially relate to the circumstances of the job and ordered MPS to re-hire the man – and give him three years of back pay.

Walker echoed school officials' statements in wondering why working with chemicals around children would not meet the state's discrimination standard. But he said the case simply points out a larger problem – the law's failure to recognize past behavior as a legitimate employment concern.

"Employers should not be forced to hire criminals just to meet some politically correct test," Walker said. "Bad behavior should not receive protected status under labor law."

For more information, contact:

Rep. Carol Kelso – 608-266-0485 or Rep. Scott Walker – 608-266-9180/414-771-1938



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-3494/1
GMM.....

DN 06
~~soon~~

TODAY
NOON

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JG

gen

1 AN ACT ...; relating to: ✓ permitting an employer to refuse to employ or to
2 terminate from employment an individual who has been convicted of a felony,
3 misdemeanor or other offense and who has not been pardoned.

Analysis by the Legislative Reference Bureau

Current law, subject to certain exceptions, prohibits discrimination in employment based on conviction record. Current law specifies, however, that it is not employment discrimination because of conviction record to refuse to employ or to terminate from employment any individual who has been convicted of any felony, misdemeanor or other offense, the circumstances of which substantially relate to the circumstances of the particular job. This bill expands that exception to the prohibition against employment discrimination based on conviction record by specifying that it is not employment discrimination because of conviction record to refuse to employ or to terminate from employment any individual who has been convicted of a felony, misdemeanor or other offense and who has not been pardoned, whether or not the circumstances of the felony, misdemeanor or other offense substantially relate to the circumstances of the particular job.

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:

4 SECTION 1. 111.335 (1) (c) ^X of the statutes is amended to read:

1 111.335 (1) (c) Notwithstanding s. 111.322, it is not employment discrimination
2 because of conviction record to refuse to employ or license, or to bar or terminate from
3 employment or licensing, any individual who:

4 1. Has been convicted of any felony, misdemeanor or other offense the
5 circumstances of which substantially relate to the circumstances of the particular job
6 or licensed activity; or

7 2. Is not bondable under a standard fidelity bond or an equivalent bond where
8 such bondability is required by state or federal law, administrative regulation or
9 established business practice of the employer.

History: 1981 c. 334; 1991 a. 216; 1993 a. 98; 1995 a. 448, 461; 1997 a. 112

10 SECTION 2. 111.335 (1) (cg) 3. of the statutes is repealed.

11 SECTION 3. 111.335 (1) (cm) of the statutes is amended to read:

12 111.335 (1) (cm) Notwithstanding s. 111.322, it is not employment
13 discrimination because of conviction record to refuse to employ as an installer of
14 burglar alarms or to terminate from employment a person who has been convicted
15 of a felony, misdemeanor or other offense and who has not been pardoned.

History: 1981 c. 334; 1991 a. 216; 1993 a. 98; 1995 a. 448, 461; 1997 a. 112

16 SECTION 4. 565.02 (1) (b) (intro.) of the statutes is amended to read:

17 565.02 (1) (b) (intro.) Notwithstanding s. ss. 111.321, 111.322 and 111.335, no
18 person may serve as the administrator if he or she has been convicted of, or entered
19 a plea of guilty or no contest to, any of the following:

History: 1987 a. 119, 399; 1989 a. 31; 1991 a. 39, 269, 323; 1993 a. 16; 1995 a. 27; 1997 a. 27

20 SECTION 5. 565.02 (2) (c) (intro.) of the statutes is amended to read:

1 565.02 (2) (c) (intro.) Notwithstanding ~~ss.~~ [✓] ss. 111.321, 111.322 and 111.335, no
2 person may be employed under par. (b) if he or she has been convicted of, or entered
3 a plea of guilty or no contest to, any of the following:

4 History: 1987 a. 119, 399; 1989 a. 31; 1991 a. 39, 269, 323; 1993 a. 16; 1995 a. 27; 1997 a. 27.

(END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3494/1dn

GMM.....:.....

↑
JL

As you will see, the attached draft is not a straight redraft of 1997 AB 409. Rather, the attached draft retains the operative provisions of 1997 AB 409 and deletes certain extraneous amendments of the statutes that, on further review, are not necessary to accomplish your intent of giving employers the right not to employ persons based on conviction record. By redrafting 1997 AB 409 in this manner, this draft is now truer to 1995 AB 911, which is the bill that you originally wanted redrafted for the 1997 session.

Specifically, 1995 AB 911 provided that it is not employment discrimination because of conviction record to refuse to employ or to terminate from employment a person who has been convicted of a felony, misdemeanor or other offense and not pardoned. In drafting 1997 AB 409, however, I discerned that "acts of employment discrimination" under s. 111.322 (1), stats., include not only refusing to hire and terminating from employment, but also discriminating in promotion, compensation or in terms, conditions or privileges of employment. Accordingly, I advised at the time that 1995 AB 911 was logically inconsistent insofar as it exempted hiring and firing from the Fair Employment Law (FEL), but did not exempt from the FEL discrimination in promotion, compensation or in terms, conditions or privileges of employment.

I now rescind that advice for all of the following reasons:

1. It is not logically inconsistent to permit an employer to hire and fire based on conviction record, but to continue to prohibit an employer from discriminating in promotion, compensation or in terms, conditions or privileges of employment based on conviction record. Indeed, it is quite logical to permit an employer, based on conviction record, to make the judgment call that a person is too risky to have around at all, but at the same time to require an employer, once the employer has decided to hire and retain an employe with a conviction record, to treat the employe equally with everyone else.

2. Moreover, the distinction between hiring and firing and discrimination in promotion, compensation or in terms, conditions or privileges of employment is well-established under current law. Specifically, the current exception for when the circumstances of the conviction substantially relates to the particular job, which exception has been in force since 1977, only applies to hiring and firing and not to discrimination in promotion, compensation or in terms, conditions or privileges of employment. Thus, if providing an exception for hiring and firing, but not providing

an exception for discrimination in promotion, compensation or in terms, conditions or privileges of employment were somehow problematical, surely the legislature would have acted by now.

3. The instant cases giving rise to this draft, that is, the case of the Milwaukee Public Schools boiler attendant and the case of Gerald Turner, both involve the issue of hiring and firing and not the issue of discrimination in promotion, compensation or in terms, conditions or privileges of employment. Therefore, an exception that is limited to hiring and firing would solve the instant problems without repealing the state's longstanding public policy of balancing the interest of safety and the interest of rehabilitation of persons with conviction records.

Accordingly, this redraft takes the approach originally taken in 1995 AB 911, which is to provide an exception for the hiring and firing of persons who have been convicted of a felony, misdemeanor or other offense and not pardoned. Other approaches, ranging from the most focused to the most far-reaching, include the following:

1. Limit the exception to schools and other places of employment where children and other vulnerable persons are present. You could further focus the draft by limiting its application to felons who would have unsupervised access to those vulnerable persons.

2. Eliminate conviction record, and perhaps arrest record, as bases of discrimination under the FEL altogether. As such, licensing agencies and labor organizations would also be able to deny licensure or labor organization membership based on conviction record. See, for example, 1995 AB 741. As a practical matter, however, licensing agencies would still probably be constitutionally required to continue to follow current law and deny licensure based on conviction record only if the conviction were substantially related to the particular licensed activity. That is because there is a large body of case law indicating that the criteria used to decide whether a license should be issued must relate specifically to the purpose for which the license is to be held. See, for example, *Schware v. Bd. of Bar Examiners*, 353 U.S. 232; *Dent v. W. Virginia*, 129 U.S. 117; and *Douglas v. Noble*, 261 U.S. 165.

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

Gordon M. Malaise
Senior Legislative Attorney
Phone: (608) 266-9738
E-mail: Gordon.Malaise@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3494/1dn
GMM:jlj:kjf

September 1, 1999

As you will see, the attached draft is not a straight redraft of 1997 AB-409. Rather, the attached draft retains the operative provisions of 1997 AB-409 and deletes certain extraneous amendments of the statutes that, on further review, are not necessary to accomplish your intent of giving employers the right not to employ persons based on conviction record. By redrafting 1997 AB-409 in this manner, this draft is now truer to 1995 AB-911, which is the bill that you originally wanted redrafted for the 1997 session.

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

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Senior Legislative Attorney
Phone: (608) 266-9738
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State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-3494/1

GMM:jlj:kjf

(e)
RMR

~~100~~

Tonight

1999 BILL

Generate

1 AN ACT to repeal 111.335 (1) (cg) 3.; and to amend 111.335 (1) (c), 111.335 (1)
 2 (cm), 565.02 (1) (b) (intro.) and 565.02 (2) (c) (intro.) of the statutes; relating
 3 to: permitting an employer to refuse to employ or to terminate from
 4 employment an individual who has been convicted of a felony, misdemeanor or
 5 other offense and who has not been pardoned.

Analysis by the Legislative Reference Bureau

Current law, subject to certain exceptions, prohibits discrimination in employment based on conviction record. Current law specifies, however, that it is not employment discrimination because of conviction record to refuse to employ or to terminate from employment any individual who has been convicted of any felony, misdemeanor or other offense, the circumstances of which substantially relate to the circumstances of the particular job. This bill expands that exception to the prohibition against employment discrimination based on conviction record by specifying that it is not employment discrimination because of conviction record to refuse to employ or to terminate from employment any individual who has been convicted of a felony, ~~misdemeanor or other offense~~ and who has not been pardoned, whether or not the circumstances of the felony, ~~misdemeanor or other offense~~ substantially relate to the circumstances of the particular job.

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:

1 **SECTION 1.** 111.335 (1) (c) of the statutes is amended to read:

2 111.335 (1) (c) Notwithstanding s. 111.322, it is not employment discrimination
3 because of conviction record to refuse to employ or license, or to bar or terminate from
4 employment or licensing, any individual who:

5 1. Has been convicted of any felony, misdemeanor or other offense the
6 circumstances of which substantially relate to the circumstances of the particular job
7 or licensed activity; or

8 2. Is not bondable under a standard fidelity bond or an equivalent bond where
9 such bondability is required by state or federal law, administrative regulation or
10 established business practice of the employer.

11 **SECTION 2.** 111.335 (1) (cg) 3. of the statutes is repealed.

12 **SECTION 3.** 111.335 (1) (cm) of the statutes is amended to read:

13 111.335 (1) (cm) Notwithstanding s. 111.322, it is not employment
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✓
Insert
2-16 →

17 **SECTION 4.** 565.02 (1) (b) (intro.) of the statutes is amended to read:

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20 a plea of guilty or no contest to, any of the following:

21 **SECTION 5.** 565.02 (2) (c) (intro.) of the statutes is amended to read:

Insert 2-16

(CP)

Created

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✓
(CP)

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- 2. ~~1~~ Has been convicted of any ~~felony~~ misdemeanor or other offense the circumstances of which substantially relate to the circumstances of the particular job ~~or licensed activity~~; or
- 3. ~~2~~ Is not bondable under a standard fidelity bond or an equivalent bond where such bondability is required by state or federal law, administrative regulation or established business practice of the employer.

History: 1981 c. 334; 1991 a. 216; 1993 a. 98; 1995 a. 448, 461; 1997 a. 112.

~~1~~. Has been convicted of any felony, the circumstances of which substantially relate to the circumstances of the particular job, and has been pardoned for that felony;

(end of insert)

**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: 09/02/1999

To: Representative Kelso

Relating to LRB drafting number: LRB-3494

Topic

Employment discrimination based on conviction record

Subject(s)

Discrimination

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

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

10

Barman, Mike

From: Schneider, Christian
Sent: Thursday, September 16, 1999 9:40 AM
To: Barman, Mike
Subject: Fiscal estimate for LRB 3494/2

Mike,

I would like to order a fiscal estimate for LRB 3494/2 (attached). It has not been introduced yet, but we will need a fiscal estimate soon - so I wanted to get the ball rolling ASAP.

Thanks,

Christian M. Schneider
Research Assistant
Office of State Representative Carol Kelso



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