

1999 DRAFTINGREQUEST

**Bill**

Received: **12/02/1999**

Received By: **malaigm**

Wanted: **As time permits**

Identical to LRB:

For: **Joseph Handrick (608) 266-7141**

By/Representing: **Randy**

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:**

Driving school instructor license physical requirements; application of disability discrimination prohibition to

**Instructions:**

Apply disability discrimination prohibition of fair employment law to persons who are denied a driving school instructor license because they have suffered an amputation.

**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>
I?	malaigm 12/02/1999	wjackson 12/03/1999		_____			
/1			mclark 12/03/1999	_____	lrb-docadmin 12/03/1999	lrb-docadmin 12/09/1999	

FE Sent For:

<END>

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1/?	malaigm	1 WLj 12/3	12/3 MRC	MRC/JF 12/13			

FE Sent For:

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State of Wisconsin  
1999 - 2000 LEGISLATURE

LRB-40157?

GMM.../.....

Wlj

DRote

Specifically applies the disability discrimination  
of  
prohibition under the fair employment law  
to the issuance of a

Gen

1 AN ACT ...; relating to: discrimination on the basis of disability in the licensing  
2 of driving school instructors.

**Analysis by the Legislative Reference Bureau**

Under current law, the secretary of transportation may not issue a driving school instructor license, other than a license that is restricted to classroom instruction, to an applicant who ~~does not meet certain vision, hearing and reaction time standards or who~~ has suffered an amputation or loss of the full use of either upper limb or the natural use of the foot normally used to operate the foot brake and foot accelerator.

Under the current fair employment law, however, a licensing agency may not refuse to license an individual on the basis of disability unless the disability is reasonably related to the individual's ability to adequately undertake the job-related responsibilities of that licensure. In evaluating whether an individual with a disability can adequately undertake those job-related responsibilities, the safety of the individual, his <sup>or her</sup> coworkers and the general public and any special duty of care for the general public that the licensure involves may be considered. That evaluation, however, must be made on an individual case-by-case basis and not by a general rule that prohibits the licensure of individuals with disabilities in general or a particular class of individuals with disabilities.

This bill ~~subjects these prohibitions on issuing a~~ driving school instructor license ~~to the fair employment law.~~ Specifically, under the bill, the secretary of transportation may not refuse to issue a driving school instructor license to a person who ~~does not meet the vision, hearing or reaction time standards required for issuance of such a license or who~~ has suffered an amputation or loss of the full use of either upper limb or the natural use of the foot normally used to operate the foot

a person who has suffered an amputation or loss of the full use of either upper limb or the natural use of the <sup>foot</sup> foot normally used to operate the foot brake or foot accelerator

(as follows)

Full

other on upper  
author  
hand upper

natural use of that

brake and foot accelerator unless ~~meeting those standards or~~ having use of those limbs or foot is reasonably related to the individual's ability to adequately undertake the job-related responsibilities, including the safety responsibilities, of a driving school instructor. Under the bill, the secretary of transportation must evaluate whether an individual can adequately undertake those responsibilities on a case-by-case basis and not by a general rule that prohibits the licensing of individuals who ~~do not meet those standards or who do not have~~ use of those limbs or foot.

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

1 ~~SECTION 1. 343.63 (3) (intro.) of the statutes is amended to read:~~

2 343.63 (3) (intro.) ~~Except for an applicant for an instructor's license which is~~  
3 ~~restricted to classroom instruction, the applicant, subject to ss. 111.321, 111.322 and~~  
4 ~~111.34, must pass a psychophysical test with the following grades:~~

5 ~~SECTION 2. 343.63 (5) of the statutes is amended to read:~~

6 343.63 (5) Except for a license which is restricted to classroom instruction, no  
7 license shall be issued to an applicant who, subject to ss. 111.321, 111.322 and 111.34,  
8 has suffered an amputation or loss of the full use of either upper limb or loss of the  
9 natural use of the foot normally employed to operate the foot brake and foot  
10 accelerator.

History: 1977 c. 29 s. 1654 (7) (a); 1987 a. 261.

11

(END)

Date

natural use of ~~that~~ the  
braking and accelerating  
part

DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-4015/1dn

GMM...../i:...

WLJ

and without reference to the  
fair employment law

a

Analogous case law suggests that the fair employment law already applies to decisions by DOT not to issue a driving school instructor license to an individual who has suffered an amputation. Specifically, in *Bothun v. DOT*, 134 Wis. 2d 378, (Ct. App. 1986), the court struck down a DOT rule that prohibited, without exception, the issuance of a school bus operator's license to persons who use hypoglycemic medication to control their diabetes because that rule conflicted with the fair employment law, which requires a case-by-case evaluation of the relationship between a person's disability and the responsibilities of a particular job. The same principle arguably applies ~~not only~~ to DOT's flat prohibition against issuing a driving school instructor license to an individual who has suffered an amputation, ~~but also to DOT's flat prohibition against issuing a driving school instructor to a person who does not meet DOT's vision, hearing and reaction time standards,~~ because such flat prohibitions would similarly conflict with the case-by-case evaluation requirement of the fair employment law. ~~Moreover, to expressly subject the amputee prohibition to the fair employment law and not to similarly subject the vision, hearing and reaction time standards to that law might be taken to mean that the fair employment law does not apply to the vision, hearing and reaction time standards. Accordingly, because it appears that even under current law a court would hold that the fair employment law applies to both the amputee prohibition and the vision, hearing and reaction time standards and because to expressly apply the fair employment law to the amputee prohibition but not to the vision, hearing and reaction time standards might imply that the fair employment law does not apply to those standards, this draft clarifies that the fair employment law applies not only to the amputee prohibition but also to the vision, hearing and reaction time standards as well.~~

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-4015/1dn  
GMM:wlj:mrc

December 3, 1999

Analogous case law suggests that the fair employment law already applies to decisions by DOT not to issue a driving school instructor license to an individual who has suffered an amputation. Specifically, in *Bothun v. DOT*, 134 Wis. 2d 378, (Ct. App. 1986), the court struck down a DOT rule that prohibited, without exception and without reference to the fair employment law, the issuance of a school bus operator's license to persons who use hypoglycemic medication to control their diabetes because that rule conflicted with the fair employment law, which requires a case-by-case evaluation of the relationship between a person's disability and the responsibilities of a particular job. The same principle arguably applies to DOT's flat prohibition against issuing a driving school instructor license to an individual who has suffered an amputation because such a flat prohibition would similarly conflict with the case-by-case evaluation requirement of the fair employment law.

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**SUBMITTAL  
FORM**

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

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

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**Date:** 12/03/1999

**To:** Representative Handrick

**Relating to LRB drafting number:** LRB-4015

**Topic**

Driving school instructor license physical requirements; application of disability discrimination prohibition to

**Subject(s)**

Discrimination

1. **JACKET** the draft for introduction \_\_\_\_\_  
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