

2001 ASSEMBLY BILL 568

October 15, 2001 – Introduced by Representatives SCHNEIDER, BLACK, HUBLER, BOYLE, BERCEAU, CARPENTER, REYNOLDS, MORRIS-TATUM, PLALE, STEINBRINK, COLON, BOCK, J. LEHMAN, RYBA, GRONEMUS, MEYERHOFER, BALOW, SINICKI, SHERMAN, RICHARDS, KRUG and MUSSER. Referred to Committee on Labor and Workforce Development.

1 **AN ACT to create** 103.165, 106.54 (7) and 230.45 (1) (m) of the statutes; **relating**
2 **to:** displaying the U.S. flag at the workplace.

Analysis by the Legislative Reference Bureau

Current law requires every polling place to display the U.S. flag during all hours that the polls are open and every public and private school to display the U.S. flag in the schoolroom or from a flagstaff on the school ground during the school hours of each school day. Current law also permits the governor to urge the people and organizations to display the U.S. flag on Mother's Day and on Gold Star Mother's Day and requires the adjutant general of the Wisconsin national guard to provide a U.S. flag to the next of kin of each national guard member who dies as a result of active service. In addition, current law, both state and federal, prohibits flag desecration, although the state flag desecration statute was held unconstitutional in *State v. Janssen*, 219 Wis. 2d 362 (1998), and the federal flag desecration statute was held unconstitutional in *U.S. v. Eichman*, 496 U.S. 310 (1990). Moreover, current state law prohibits the improper use of the U.S. flag and current federal law codifies nonbinding rules and customs concerning the display of, and respect for, the U.S. flag by civilians.

This bill requires employers, including the state, to permit their employees to display the U.S. flag, including a copy, picture, or representation of the U. S. flag, at the workplace. The bill, however, does not apply to a religious association if displaying the U.S. flag is in conflict with the religious doctrine of the association.

Under the bill, an employer may not discharge or otherwise discriminate against an employee who displays a U.S. flag at the workplace, files a complaint or

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attempts to enforce the right to display the U.S. flag at the workplace, or testifies or assists in any action or proceeding to enforce the right to display the U.S. flag at the workplace. An employee who is discharged or discriminated against for displaying the U.S. flag at the workplace may file a complaint with the department of workforce development (DWD), and DWD must process the complaint in the same manner as employment discrimination complaints are processed under current law, which processing may include the ordering of back pay and reinstatement.

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.** 103.165 of the statutes is created to read:

2 **103.165 Display of U.S. flag at workplace. (1) DEFINITIONS.** In this section:

3 (a) “Employer” means any person engaging in any activity, enterprise, or
4 business in this state employing at least one individual. “Employer” includes the
5 state and any office, department, independent agency, authority, institution,
6 association, society, or other body in state government created or authorized to be
7 created by the constitution or any law, including the legislature and the courts.

8 (b) “U.S. flag” means anything that is or that purports to be the Stars and
9 Stripes or a copy, picture, or representation of the Stars and Stripes.

10 **(2) DISPLAY OF U.S. FLAG AT WORKPLACE; EMPLOYER MUST PERMIT.** Subject to sub.

11 (3), an employer shall permit an employee to display the U.S. flag at the workplace.

12 **(3) NONAPPLICABILITY.** This section does not apply to a religious association or
13 to an organization or corporation that is primarily owned or controlled by a religious
14 association if displaying the U.S. flag conflicts with the religious doctrine of the
15 religious association.

16 **(4) RETALIATION PROHIBITED.** An employer may not discharge or otherwise
17 discriminate against any person for displaying the U.S. flag at the workplace, filing

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1 a complaint or attempting to enforce the right to display the U.S. flag at the
2 workplace, or testifying or assisting in any action or proceeding to enforce the right
3 to display the U.S. flag at the workplace.

4 **(5) COMPLAINT.** (a) Subject to par. (b), an employee who is discharged or
5 otherwise discriminated against in violation of sub. (4) may file a complaint with the
6 department, and the department shall process the complaint in the same manner
7 that employment discrimination complaints are processed under s. 111.39.

8 (b) Any employee of a state agency, as defined in s. 111.32 (6) (a), who is
9 discharged or otherwise discriminated against in violation of sub. (4) may file a
10 complaint with the personnel commission, and the personnel commission shall
11 process the complaint in the same manner that employment discrimination
12 complaints are processed under s. 111.39.

13 **SECTION 2.** 106.54 (7) of the statutes is created to read:

14 106.54 **(7)** The division shall receive complaints under s. 103.165 (5) (a) and
15 shall process the complaints in the same manner that employment discrimination
16 complaints are processed under s. 111.39.

17 **SECTION 3.** 230.45 (1) (m) of the statutes is created to read:

18 230.45 **(1)** (m) Receive complaints under s. 103.165 (5) (b) and, except as
19 provided in sub. (1m), process the complaints in the same manner that employment
20 discrimination complaints are processed under s. 111.39.

21 **SECTION 4. Initial applicability.**

22 **(1) DISPLAY OF U.S. FLAG AT WORKPLACE.** This act first applies to an employee who
23 is affected by a collective bargaining agreement that contains provisions inconsistent
24 with section 103.165 of the statutes, as created by this act, on the day on which the

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SECTION 4

1 collective bargaining agreement expires, or is extended, modified, or renewed,
2 whichever occurs first.

3 (END)