

## 2007 DRAFTING REQUEST

### Bill

Received: 02/23/2007

Received By: **gmalaise**

Wanted: **As time permits**

Identical to LRB:

For: **John Nygren (608) 266-2343**

By/Representing: **Jacque Dicks**

This file may be shown to any legislator: **NO**

Drafter: **gmalaise**

May Contact:

Addl. Drafters:

Subject: **Discrimination**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Nygren@legis.wisconsin.gov**

Carbon copy (CC:) to:

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### Pre Topic:

No specific pre topic given

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### Topic:

Employment discrimination based on use or nonuse of lawful product; exception to permit financial incentives intended to encourage or discourage use of law ful product

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### Instructions:

See attached--draft provision similar to Indiana law that provides exception to prohibition on employment discrimination based on use of tobacco products that permits employer to implement financial incentives to reduce tobacco use

---

### 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>
/?	gmalaise 02/23/2007	jdyer 03/06/2007		_____			
/1			nmatzke 03/06/2007	_____	sbasford 03/06/2007	<del>lrj_d... 03/22/2007</del> mbarman 03/22/2007	

Vers.      Drafted      Reviewed      Typed      Proofed      Submitted      Jacketed      Required

FE Sent For:

*None*

<END>

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/1			nnatzke 03/06/2007	_____	sbasford 03/06/2007		

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/?	gmalaise	1 3/6 jld	nwn 3/6	nwn/rs 3/6			

FE Sent For:

<END>

## Malaise, Gordon

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**From:** Dicks, Jacqu  
**Sent:** Thursday, February 22, 2007 4:24 PM  
**To:** Malaise, Gordon  
**Cc:** Nygren, John  
**Subject:** FW: Drafting Request for Rep. John Nygren

Gordon,

I have forward a drafting request that I previously sent to Pam Kahler, as she informed me this request would fall under your area of legislative drafting issues.

Thank you for your attention to this request. If you have any questions, please feel free to contact us.

Jacqu

### **Jacqu Dicks**

*Legislative Assistant  
Office of Representative John Nygren  
P.O. Box 8953  
Madison, WI 53708-8953  
(608) 266-2343  
(888) 534-0089*

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**From:** Dicks, Jacqu  
**Sent:** Thursday, February 22, 2007 1:12 PM  
**To:** Kahler, Pam  
**Cc:** Nygren, John  
**Subject:** Drafting Request for Rep. John Nygren

Pam,

Below you will find the response from Dick Sweet regarding legislation Representative Nygren would like to introduce. Here is the link containing the law passed in Indiana; House Enrolled Act No. 1420:  
<http://www.in.gov/legislative/bills/2006/HE/HE1420.1.html>

Jacqu

### **Jacqu Dicks**

*Legislative Assistant  
Office of Representative John Nygren  
P.O. Box 8953  
Madison, WI 53708-8953  
(608) 266-2343  
(888) 534-0089*

---

**From:** Sweet, Richard  
**Sent:** Monday, February 12, 2007 1:44 PM  
**To:** Dicks, Jacqu  
**Subject:** RE: Rep. Nygren Legislation Review Request

Jacqu/Mark,

I've pasted below the Wisconsin statute that prohibits employers from discriminating against

employees because of the employees' use of lawful products during nonworking hours. The Indiana law seems limited to tobacco products, while the Wisconsin law covers all lawful products, including tobacco. There are some exceptions in the Wisconsin law, including one that allows employers to charge people who use the lawful products different insurance premiums if certain conditions are met. (I've also pasted that in below.) So there could be different premiums charged for insurance for smokers and nonsmokers if those conditions were met. If you wanted to include an exception like the one in the Indiana law, that would be placed in s. 111.35, Stats., with the other exceptions.

Let me know if you want to discuss this issue further.

*Dick Sweet*

Richard Sweet  
Senior Staff Attorney  
Wisconsin Legislative Council  
(608)266-2982  
[richard.sweet@legis.wisconsin.gov](mailto:richard.sweet@legis.wisconsin.gov)

**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, 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.**

111.35(3)(a) Notwithstanding s. 111.322, it is not employment discrimination because of use of a lawful product off the employer's premises during nonworking hours for an employer, labor organization, employment agency, licensing agency or other person to offer a policy or plan of life, health or disability insurance coverage under which the type of coverage or the price of coverage for an individual who uses a lawful product off the employer's premises during nonworking hours differs from the type of coverage or the price of coverage provided for an individual who does not use that lawful product, if all of the following conditions apply:

1. The difference between the premium rates charged to an individual who uses that lawful product and the premium rates charged to an individual who does not use that lawful product reflects the cost of providing the coverage to the individual who uses that lawful product.
2. The employer, labor organization, employment agency, licensing agency or other person that offers the coverage provides each individual who is charged a different premium rate based on that individual's use of a lawful product off the employer's premises during nonworking

hours with a written statement specifying the premium rate differential used by the insurance carrier.

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**From:** Dicks, Jacque  
**Sent:** Monday, February 12, 2007 10:32 AM  
**To:** Sweet, Richard  
**Subject:** RE: Rep. Nygren Legislation Review Request

Great... thank you!

Jacque

**Jacque Dicks**  
*Legislative Assistant*  
*Office of Representative John Nygren*  
*P.O. Box 8953*  
*Madison, WI 53708-8953*  
*(608) 266-2343*  
*(888) 534-0089*

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**From:** Sweet, Richard  
**Sent:** Monday, February 12, 2007 10:30 AM  
**To:** Dicks, Jacque  
**Subject:** RE: Rep. Nygren Legislation Review Request

Jacque,

I'll take a look at this and give you and/or Mark a call back.

Dick

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**From:** Dicks, Jacque  
**Sent:** Monday, February 12, 2007 10:14 AM  
**To:** Sweet, Richard  
**Subject:** Rep. Nygren Legislation Review Request

Dick,

You spoke with Marc, our intern, a few minutes ago regarding legislation Representative Nygren recently came across that passed in Indiana (see attached PDF file). He is curious to see if such a law would be workable in Wisconsin.

Thank you for your attention to this request.

Jacque

<< File: Legislation.pdf >>

**Jacque Dicks**  
*Legislative Assistant*  
*Office of Representative John Nygren*  
*P.O. Box 8953*  
*Madison, WI 53708-8953*  
*(608) 266-2343*  
*(888) 534-0089*



## Second Regular Session 114th General Assembly (2006)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

**HOUSE ENROLLED ACT No. 1420**

AN ACT to amend the Indiana Code concerning labor and safety.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 22-5-4-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]:

Sec. 1. **(a) Except as provided in subsection (b)**, an employer may not:

(1) require, as a condition of employment, an employee or prospective employee to refrain from using; or

(2) discriminate against an employee with respect to:

(A) the employee's compensation and benefits; or

(B) terms and conditions of employment;

based on the employee's use of;

tobacco products outside the course of the employee's or prospective employee's employment.

**(b) An employer may implement financial incentives:**

**(1) intended to reduce tobacco use; and**

**(2) related to employee health benefits provided by the employer.**

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HEA 1420 \_ Concur

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Figure

Graphic file number 0 named seal1001.pcx with height 58 p and width 72 p Left aligned

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State of Wisconsin  
2007 - 2008 LEGISLATURE

LRB-2069/1

GMM m 1

DN 01E

JLd

CPs -  
Print  
w/line  
numbers  
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Gen

AN ACT ...; relating to: permitting an employer to offer financial incentives to encourage or discourage employee use of a lawful product ~~off the employer's premises during nonworking hours.~~

**Analysis by the Legislative Reference Bureau**

Current law, subject to certain exceptions, prohibits discrimination in employment based on use or nonuse of a lawful product off the employer's premises during nonworking hours. Current law specifies, however, that it is not employment discrimination based on use or nonuse of a lawful product off the employer's premises during nonworking hours for an employer to offer a policy or plan of life, health, or disability insurance coverage under which the type or price of coverage for an individual who uses a lawful product differs from the type or price of coverage provided for an individual who does not use the lawful product.

This bill specifies that it is not employment discrimination based on use or nonuse of a lawful product off the employer's premises during nonworking hours for an employer to offer financial incentives related to employee health care benefits that are intended to encourage or discourage the use of a lawful product.

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

**SECTION 1.** 111.35 (3) (a) (intro.) of the statutes is amended to read:

111.35 (3) (a) (intro.) Notwithstanding s. 111.322, it is not employment discrimination because of use of a lawful product off the employer's premises during

nonworking hours for an employer, labor organization, employment agency, licensing agency, or other person to offer financial incentives related to employee health care benefits that are intended to discourage ~~the~~ use of a lawful product. Those financial incentives may include offering a policy or plan of life, health, or disability insurance coverage under which the type of coverage or the price of coverage for an individual who uses a lawful product off the employer's premises during nonworking hours differs from the type of coverage or the price of coverage provided for an individual who does not use that lawful product, if all of the following conditions apply:

History: 1991 a. 310; 1995 a. 352; 1997 a. 173; 1999 a. 9.

**SECTION 2.** 111.35 (3) (b) (intro.) of the statutes is amended to read:

111.35 (3) (b) (intro.) Notwithstanding s. 111.322, it is not employment discrimination because of nonuse of a lawful product off the employer's premises during nonworking hours for an employer, labor organization, employment agency, licensing agency, or other person to offer financial incentives related to employee health care benefits that are intended to encourage the use of a lawful product. Those financial incentives may include offering a policy or plan of life, health, or disability insurance coverage under which the type of coverage or the price of coverage for an individual who does not use a lawful product off the employer's premises during nonworking hours differs from the type of coverage or the price of coverage provided for an individual who uses that lawful product, if all of the following conditions apply:

History: 1991 a. 310; 1995 a. 352; 1997 a. 173; 1999 a. 9.

(END)

d-note  
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**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-2069/1dn

GMM:an:...

date

Jld

Representative Nygren:

Wisconsin law is broader than Indiana law in that Wisconsin law prohibits employment discrimination based on use or nonuse of any lawful product, not just based on use of tobacco products. Also, Wisconsin already has an exception that permits an employer to offer health care coverage under which the type or price of coverage differs for an individual who uses or does not use a lawful product. ✓

Accordingly, this bill permits an employer to offer financial incentives to discourage use of any lawful product, including tobacco products, as well as to encourage use of a lawful product, for example, an exercise machine. ✓

Gordon M. Malaise

Senior Legislative Attorney

Phone: (608) 266-9738

E-mail: [gordon.malaise@legis.wisconsin.gov](mailto:gordon.malaise@legis.wisconsin.gov)

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-2069/1dn  
GMM:jld:nwn

March 6, 2007

Representative Nygren:

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Gordon M. Malaise  
Senior Legislative Attorney  
Phone: (608) 266-9738  
E-mail: [gordon.malaise@legis.wisconsin.gov](mailto:gordon.malaise@legis.wisconsin.gov)

**Parisi, Lori**

---

**From:** Dicks, Jacqu  
**Sent:** Thursday, March 22, 2007 1:02 PM  
**To:** Parisi, Lori  
**Cc:** Nygren, John  
**Subject:** RE: LRB 07-2084, 07-2069 & 07-2184 attached as requested

Lori,

Thank you for your prompt response to our request.

Can you please send our office the jacket for LRB-2069/1?

Thank you,

Jacque

**Jacque Dicks**

*Legislative Assistant*

*Office of Representative John Nygren*

*P.O. Box 8953*

*Madison, WI 53708-8953*

*(608) 266-2343*

*(888) 534-0089*

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**From:** Parisi, Lori  
**Sent:** Thursday, March 22, 2007 12:51 PM  
**To:** Rep.Nygren  
**Subject:** LRB 07-2084, 07-2069 & 07-2184 attached as requested

<< File: 07-2084/1 >> << File: 07-2069/1 >> << File: 07-2184/1 >>

Lori Parisi

Program Assistant

State of WI Legislative Reference Bureau

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Madison, WI., 53703

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