

2007 SENATE BILL 265

September 13, 2007 – Introduced by JOINT LEGISLATIVE COUNCIL. Referred to Committee on Judiciary and Corrections.

1 **AN ACT** *to amend* 16.765 (1), 16.765 (2), 36.34 (1) (a) (intro.), 39.40 (1) (intro.),
2 39.44 (1) (a) (intro.), 560.036 (1) (e) 1. a., 560.036 (1) (ep) 1. and 560.036 (1) (fm)
3 1.; and *to create* 36.11 (3) (am), 66.0130 and 230.01 (2m) of the statutes;
4 **relating to:** affirmative action practices in state and local government
5 contracting and state and local government hiring, the consideration of race or
6 ethnicity in the University of Wisconsin System, and eligibility requirements
7 for minority teacher loans and minority undergraduate grants awarded by the
8 Higher Educational Aids Board.

Analysis by the Legislative Reference Bureau

This bill is explained in the NOTES provided by the Joint Legislative Council in 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:

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PREFATORY NOTE: This bill was prepared for the joint legislative council's special committee on affirmative action.

Under current law, the minority group members who own, control, and actively manage businesses that are minority businesses, minority financial advisers, or minority investment firms under s. 560.036, stats., must be U.S. citizens or persons lawfully admitted to the United States for permanent residence, as defined under 8 USC 1101 (a) (20).

This bill would require the minority group members who own, control, and actively manage businesses that are minority businesses, minority financial advisers, or minority investment firms under s. 560.036, stats., to be U.S. citizens.

This bill would prohibit the consideration of race or ethnicity, for purposes of determining compliance with affirmative action requirements in s. 16.765, stats., of any person who is not a U.S. citizen.

This bill would specify that the University of Wisconsin (UW) System may not consider the race or ethnicity of an applicant in that applicant's admission to the UW System unless the applicant is a U.S. citizen.

Under current law, the Ben R. Lawton minority undergraduate program provides financial assistance, in the form of grants, to certain minority undergraduate students enrolled in the UW System. The bill requires a student to be a U.S. citizen in order to receive a grant under the Ben R. Lawton minority undergraduate grant program.

Under current law, the Higher Educational Aids Board (HEAB) administers a minority teacher loan program. Under the program, HEAB awards loans to certain minority students who teach or agree to teach in school districts with high minority populations. The loan program also specifies terms for loan forgiveness. Additionally, HEAB operates a minority undergraduate grant program. Under the program, HEAB provides financial assistance, in the form of grants, to certain minority students enrolled in the Wisconsin technical college system and private institutions of higher education.

This bill requires a student be a U.S. citizen in order to receive a minority teacher loan or a minority undergraduate grant from HEAB.

This bill would require contractors, employers, and applicants for employment to be U.S. citizens in order to be eligible for affirmative action programs of a city, village, town, county, or school district unless the citizenship requirement would cause a loss of federal funding to the local governmental unit.

Current law, ch. 230, stats., relating to state civil service, establishes the policy to take affirmative action which is not in conflict with other provisions of the chapter. This bill would prohibit the consideration of race or ethnicity for affirmative action in ch. 230, stats., unless the consideration of race or ethnicity applies to a U.S. citizen.

1 **SECTION 1.** 16.765 (1) of the statutes is amended to read:

2 16.765 (1) Contracting agencies, the University of Wisconsin Hospitals and

3 Clinics Authority, the Fox River Navigational System Authority, the Wisconsin

4 Aerospace Authority, the Health Insurance Risk-Sharing Plan Authority, and the

5 Bradley Center Sports and Entertainment Corporation shall include in all contracts

6 executed by them a provision obligating the contractor not to discriminate against

7 any employee or applicant for employment because of age, race, religion, color,

8 handicap, sex, physical condition, developmental disability as defined in s. 51.01 (5),

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1 sexual orientation as defined in s. 111.32 (13m), or national origin and, except with
2 respect to sexual orientation, obligating the contractor to take affirmative action to
3 ensure equal employment opportunities. A contractor may not take affirmative
4 action by considering the race or the ethnicity of an employee or applicant for
5 employment unless the employee or applicant for employment is a U.S. citizen.

6 **SECTION 2.** 16.765 (2) of the statutes is amended to read:

7 16.765 (2) Contracting agencies, the University of Wisconsin Hospitals and
8 Clinics Authority, the Fox River Navigational System Authority, the Wisconsin
9 Aerospace Authority, the Health Insurance Risk-Sharing Plan Authority, and the
10 Bradley Center Sports and Entertainment Corporation shall include the following
11 provision in every contract executed by them: “In connection with the performance
12 of work under this contract, the contractor agrees not to discriminate against any
13 employee or applicant for employment because of age, race, religion, color, handicap,
14 sex, physical condition, developmental disability as defined in s. 51.01 (5), sexual
15 orientation or national origin. This provision shall include, but not be limited to, the
16 following: employment, upgrading, demotion or transfer; recruitment or recruitment
17 advertising; layoff or termination; rates of pay or other forms of compensation; and
18 selection for training, including apprenticeship. Except with respect to sexual
19 orientation, the contractor further agrees to take affirmative action to ensure equal
20 employment opportunities; the contractor will take affirmative action that considers
21 race or ethnicity only if the employee or applicant for employment is a U.S. citizen.

22 The contractor agrees to post in conspicuous places, available for employees and
23 applicants for employment, notices to be provided by the contracting officer setting
24 forth the provisions of the nondiscrimination clause”.

25 **SECTION 3.** 36.11 (3) (am) of the statutes is created to read:

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1 36.11 (3) (am) The board may not consider the race or ethnicity of an applicant
2 for admission as a factor weighing in favor of admission of the person to the
3 University of Wisconsin System unless the applicant is a U.S. citizen.

4 **SECTION 4.** 36.34 (1) (a) (intro.) of the statutes is amended to read:

5 36.34 (1) (a) (intro.) In this subsection “minority undergraduate” means an
6 undergraduate student who is a U.S. citizen and who:

7 **SECTION 5.** 39.40 (1) (intro.) of the statutes is amended to read:

8 39.40 (1) (intro.) In this section “minority student” means a student who is a
9 U.S. citizen and who is any of the following:

10 **SECTION 6.** 39.44 (1) (a) (intro.) of the statutes is amended to read:

11 39.44 (1) (a) (intro.) In this section “minority undergraduate” means an
12 undergraduate student who is a U.S. citizen and who is any of the following:

13 **SECTION 7.** 66.0130 of the statutes is created to read:

14 66.0130 **Local governmental affirmative action. (1)** In this section, “local
15 governmental unit” means a city, village, town, county, or school district.

16 **(2)** For the purposes of any affirmative action program, a local governmental
17 unit may not consider the race or ethnicity of a contractor, employee, or applicant for
18 employment unless the contractor, employee, or applicant for employment is a U.S.
19 citizen. This subsection does not apply to the extent that its application would cause
20 a local governmental unit to be deemed ineligible for federal funds.

21 **SECTION 8.** 230.01 (2m) of the statutes is created to read:

22 230.01 **(2m)** For purposes of affirmative action under this chapter, the race or
23 ethnicity of an employee or applicant for employment may not be considered unless
24 the employee or applicant for employment is a U.S. citizen.

25 **SECTION 9.** 560.036 (1) (e) 1. a. of the statutes is amended to read:

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1 560.036 (1) (e) 1. a. It is at least 51% owned, controlled and actively managed
2 by a minority group member or members who are U.S. citizens ~~or persons lawfully~~
3 ~~admitted to the United States for permanent residence, as defined under 8 USC 1101~~
4 ~~(a) (20).~~

5 **SECTION 10.** 560.036 (1) (ep) 1. of the statutes is amended to read:

6 560.036 (1) (ep) 1. It is at least 51% owned, controlled and actively managed
7 by a minority group member or members who are U.S. citizens ~~or persons lawfully~~
8 ~~admitted to the United States for permanent residence, as defined under 8 USC 1101~~
9 ~~(a) (20).~~

10 **SECTION 11.** 560.036 (1) (fm) 1. of the statutes is amended to read:

11 560.036 (1) (fm) 1. It is at least 51% owned, controlled and actively managed
12 by a minority group member or members who are U.S. citizens ~~or persons lawfully~~
13 ~~admitted to the United States for permanent residence, as defined under 8 USC 1101~~
14 ~~(a) (20).~~

15 **SECTION 12. Initial applicability.**

16 (1) AFFIRMATIVE ACTION, LOCAL GOVERNMENTS.

17 (a) Except as provided in paragraph (b), the treatment of section 66.0130 of the
18 statutes first applies to a contract that is entered into with a contractor, an applicant
19 for employment who submits an application, or an employee who is not covered by
20 a collective bargaining agreement and who applies to participate in an affirmative
21 action program on the effective date of this paragraph.

22 (b) The treatment of section 66.0130 of the statutes first applies to an employee
23 who is covered by a collective bargaining agreement that contains provisions
24 inconsistent with this act on the day on which the collective bargaining agreement
25 expires or is extended, modified, or renewed, whichever occurs first.

