2007 ASSEMBLY BILL 812

February 15, 2008 – Introduced by Representative NELSON. Referred to Committee on Judiciary and Ethics.

AN ACT to amend 111.31 (1), 111.31 (2), 111.31 (3), 111.321 and 111.322 (intro.); and to create 111.32 (4r), 111.32 (7g) and 111.365 of the statutes; relating to: employment discrimination because of temporary absence from work for not more than 10 hours per year for the purpose of responding to an emergency call as a volunteer fire fighter, emergency medical technician, first responder, or ambulance driver.

Analysis by the Legislative Reference Bureau

Current law prohibits discrimination in employment on the basis of age, race, creed, color, disability, marital status, sex, national origin, ancestry, sexual orientation, arrest record, conviction record, membership in the national guard, state defense force, or military reserves, or use or nonuse of a lawful product off the employer’s premises during nonworking hours. Current law also specifies that employment discrimination because of creed or disability includes refusing to reasonably accommodate the religious observance or practice or disability of an employee or prospective employee unless the employer can demonstrate that the accommodation would pose an undue hardship on the employer’s program, enterprise, or business.

This bill prohibits discrimination in employment based on temporary absence from work for not more than ten hours per year for the purpose of responding to an emergency call as a volunteer fire fighter, emergency medical technician, first
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responder, or ambulance driver, except that the bill permits a political subdivision of this state to discriminate on that basis if the political subdivision operates a full-time, paid fire department or rescue squad. The bill specifies that employment discrimination on that basis includes refusing to reasonably accommodate the temporary absence of an employee or prospective employee from work for not more than ten hours per year for the purpose of responding to an emergency call as a volunteer fire fighter, emergency medical technician, first responder, or ambulance driver unless the employer can demonstrate that the accommodation would pose an undue hardship on the employer’s program, enterprise, or business. Under the bill, an employer may reasonably accommodate a temporary absence from work for not more than ten hours per year for that purpose by temporarily reallocating job duties, adjusting or modifying the employer’s attendance policies, or making other, similar accommodations for the employee or prospective employee. The bill defines “undue hardship” as significant difficulty or expense, with respect to an accommodation for an employee or prospective employee, when considered in light of various factors such as the nature and cost of the accommodation, the overall financial resources of the employer and of the facility involved in providing the accommodation, the number of persons employed by the employer and by the facility, and the type of operation of the employer. The bill also specifies that, if providing the accommodation would result in more than 25 percent of the persons normally on duty in any particular function or operation at the time of the accommodation being temporarily absent from work, it is presumed that the accommodation would pose an unreasonable hardship on the employer’s program, business, or enterprise.

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:

SECTION 1. 111.31 (1) of the statutes, as affected by 2007 Wisconsin Act ....

(Assembly Bill 32), is amended to read:

111.31 (1) The legislature finds that the practice of unfair discrimination in employment against properly qualified individuals by reason of their age, race, creed, color, disability, marital status, sex, national origin, ancestry, sexual orientation, arrest record, conviction record, military status, or use or nonuse of lawful products off the employer’s premises during nonworking hours, or temporary absence from work for not more than 10 hours per year for the purpose of responding
to an emergency call as a volunteer fire fighter, emergency medical technician, first responder, or ambulance driver substantially and adversely affects the general welfare of the state. Employers, labor organizations, employment agencies, and licensing agencies that deny employment opportunities and discriminate in employment against properly qualified individuals solely because of their age, race, creed, color, disability, marital status, sex, national origin, ancestry, sexual orientation, arrest record, conviction record, military status, or use or nonuse of lawful products off the employer’s premises during nonworking hours, or temporary absence from work for not more than 10 hours per year for the purpose of responding to an emergency call as a volunteer fire fighter, emergency medical technician, first responder, or ambulance driver deprive those individuals of the earnings that are necessary to maintain a just and decent standard of living.

Section 2. 111.31 (2) of the statutes, as affected by 2007 Wisconsin Act .... (Assembly Bill 32), is amended to read:

111.31 (2) It is the intent of the legislature to protect by law the rights of all individuals to obtain gainful employment and to enjoy privileges free from employment discrimination because of age, race, creed, color, disability, marital status, sex, national origin, ancestry, sexual orientation, arrest record, conviction record, military status, or use or nonuse of lawful products off the employer’s premises during nonworking hours, or temporary absence from work for not more than 10 hours per year for the purpose of responding to an emergency call as a volunteer fire fighter, emergency medical technician, first responder, or ambulance driver and to encourage the full, nondiscriminatory utilization of the productive resources of the state to the benefit of the state, the family, and all the people of the state. It is the intent of the legislature in promulgating this subchapter to encourage
employers to evaluate an employee or applicant for employment based upon the employee's or applicant's individual qualifications of the employee or applicant rather than upon a particular class to which the individual may belong.

SECTION 3. 111.31 (3) of the statutes, as affected by 2007 Wisconsin Act .... (Assembly Bill 32), is amended to read:

111.31 (3) In the interpretation and application of this subchapter, and otherwise, it is declared to be the public policy of the state to encourage and foster to the fullest extent practicable the employment of all properly qualified individuals regardless of age, race, creed, color, disability, marital status, sex, national origin, ancestry, sexual orientation, arrest record, conviction record, military status, or use or nonuse of lawful products off the employer's premises during nonworking hours, or temporary absence from work for not more than 10 hours per year for the purpose of responding to an emergency call as a volunteer fire fighter, emergency medical technician, first responder, or ambulance driver. Nothing in this subsection requires an affirmative action program to correct an imbalance in the work force. This subchapter shall be liberally construed for the accomplishment of this purpose.

SECTION 4. 111.32 (4r) of the statutes is created to read:

111.32 (4r) “Emergency medical technician” has the meaning given in s. 146.50 (1) (e).

SECTION 5. 111.32 (7g) of the statutes is created to read:

111.32 (7g) “First responder” has the meaning given in s. 146.50 (1) (hm).

SECTION 6. 111.321 of the statutes, as affected by 2007 Wisconsin Act .... (Assembly Bill 32), is amended to read:

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, military status, or use or nonuse of lawful products off the employer’s premises during nonworking hours, or temporary absence from work for not more than 10 hours per year for the purpose of responding to an emergency call as a volunteer fire fighter, emergency medical technician, first responder, or ambulance driver.

**SECTION 7.** 111.322 (intro.) of the statutes is amended to read:

111.322  Discriminatory actions prohibited. (intro.) Subject to ss. 111.33 to 111.36, 111.365, it is an act of employment discrimination to do any of the following:

**SECTION 8.** 111.365 of the statutes is created to read:

111.365 Volunteer fire fighters, emergency medical technicians, first responders or ambulance drivers; exceptions and special cases. (1) (a) In this subsection, “undue hardship” means, with respect to an accommodation required under par. (b), significant difficulty or expense, when considered in light of the following factors:

1. The nature and cost of the accommodation.

2. The overall financial resources of the facility involved in providing the accommodation, the number of persons employed by the facility, the effect of providing the accommodation on the resources and finances of the facility, and any other impact of the accommodation on the operation of the facility.

3. The overall financial resources of the employer, the number of persons employed by the employer, and the number, type, and location of the employer’s facilities.
4. The type of operation of the employer, including the composition, structure, and functions of the employer’s work force, the geographic separateness from the employer of the facility involved in providing the accommodation, and the administrative and financial relationship of that facility to the employer.

(b) Employment discrimination because of temporary absence from work for not more than 10 hours per year for the purpose of responding to an emergency call as a volunteer fire fighter, emergency medical technician, first responder, or ambulance driver includes refusing to reasonably accommodate the temporary absence of an employee or prospective employee from work for not more than 10 hours per year for the purpose of responding to an emergency call as a volunteer fire fighter, emergency medical technician, first responder, or ambulance driver unless the employer can demonstrate that the accommodation would pose an undue hardship on the employer’s program, enterprise, or business. If providing the accommodation would result in more than 25 percent of the persons normally on duty in any particular function or operation at the time of the accommodation being temporarily absent from work, it is presumed that the accommodation would pose an undue hardship on the employer’s program, enterprise, or business. An employer may reasonably accommodate the temporary absence of an employee or prospective employee from work for not more than 10 hours per year for the purpose of responding to an emergency call as a volunteer fire fighter, emergency medical technician, first responder, or ambulance driver by temporarily reallocating job duties, adjusting or modifying the employer’s attendance policies, or making other, similar accommodations for the employee or prospective employee.

(2) Notwithstanding s. 111.322, it is not employment discrimination because of absence from work for not more than 10 hours per year for the purpose of
responding to an emergency call as a volunteer fire fighter, emergency medical
technician, first responder, or ambulance driver for a political subdivision of this
state that operates a full-time, paid fire department or a full-time, paid rescue
squad to refuse to hire or employ an individual, to suspend or terminate the
employment of an individual, or to discriminate against an individual in promotion,
in compensation, or in terms, conditions, or privileges of employment, because of the
individual’s absence from work for not more than 10 hours per year for the purpose
of responding to an emergency call as a volunteer fire fighter, emergency medical
technician, first responder, or ambulance driver.

**SECTION 9. Initial applicability.**

(1) This act first applies to an employee who is affected by a collective
bargaining agreement that contains provisions inconsistent with this act on the day
on which the collective bargaining agreement expires or is extended, modified, or
renewed, whichever occurs first.

(END)