

2009 ASSEMBLY BILL 22

February 5, 2009 – Introduced by Representatives SCHNEIDER, GRIGSBY, A. WILLIAMS, KESSLER and VRUWINK. Referred to Committee on Housing.

1 **AN ACT to renumber and amend** 66.0125 (1); **to amend** 66.0125 (3) (a), 66.0125
2 (3) (c) 1. b., 66.0125 (9), 66.1011 (1), 66.1201 (2m), 66.1213 (3), 66.1301 (2m),
3 66.1331 (2m), 66.1333 (3) (e) 2., 106.50 (1), 106.50 (1m) (h), 106.50 (1m) (nm),
4 106.50 (5m) (f) 1., 224.77 (1) (o), 234.29 and 452.14 (3) (n); and **to create** 66.0125
5 (1) (a), 66.0125 (1) (b), 106.50 (1m) (bg), 106.50 (1m) (fg), 106.50 (7) and 111.336
6 of the statutes; **relating to:** prohibiting discrimination in housing because of
7 arrest or conviction record, making it a Class I felony to discriminate in
8 employment or housing because of arrest or conviction record, and providing a
9 penalty.

Analysis by the Legislative Reference Bureau

Introduction

This bill prohibits discrimination in housing because of an arrest or conviction record that is more than three years old and makes such discrimination a Class I felony, which is punishable by a fine not to exceed \$10,000 or imprisonment not to exceed three years and six months, or both. The bill also makes it a Class I felony to discriminate in employment based on arrest or conviction record.

ASSEMBLY BILL 22***Housing discrimination***

Current law prohibits discrimination in housing on the basis of sex, race, color, sexual orientation, disability, religion, national origin, marital status, family status, lawful source of income, age, or ancestry (protected class), but not on the basis of arrest or conviction record. A person who engages in an act of housing discrimination may be required to provide such relief as may be appropriate, including economic and noneconomic damages and injunctive or other equitable relief, and to pay a forfeiture of not more than \$10,000, except that a person who is not a natural person may be required to pay a forfeiture of not more than \$25,000 if the person has committed a previous act of housing discrimination within the preceding five years or a forfeiture of not more than \$50,000 if the person has committed two or more previous acts of housing discrimination within the preceding seven years.

Current law also prohibits a mortgage banker, loan originator, or mortgage broker from treating a person unequally based on the person's membership in a protected class. In addition, current law prohibits a real estate broker, real estate salesperson, or time-share salesperson from treating a person unequally based on the person's sex, race, color, handicap, national origin, ancestry, marital status, or lawful source of income.

This bill prohibits discrimination in housing on the basis of an arrest or conviction record that is more than three years old and prohibits a mortgage banker, loan originator, mortgage broker, real estate broker, real estate salesperson, or time-share salesperson from treating a person unequally based on such an arrest or conviction record. The bill also makes it a Class I felony to commit an act of housing discrimination against an individual on the basis of such an arrest or conviction record. In addition, the bill requires a person who commits an act of housing discrimination against an individual on the basis of an arrest or conviction within the previous three years to inform the individual of the reason for the act, allow the individual to provide information relevant to the arrest or conviction, and, if the individual provides that information, reconsider the act.

Employment discrimination

Current law, subject to certain exceptions, prohibits discrimination in employment, licensing, and labor organization membership based on arrest or conviction record. Current law specifies, however, that it is not employment discrimination because of arrest record to refuse to employ or to license, or to suspend from employment or licensing, an individual who is subject to a pending criminal charge, the circumstances of which substantially relate to the circumstances of the particular job or licensed activity. Also, under current law, it is not employment discrimination because of conviction record to refuse to employ or to license, or to bar or terminate from employment or licensing, an individual who has been convicted of a felony, misdemeanor, or other offense, the circumstances of which substantially relate to the circumstances of the particular job or licensed activity.

Notwithstanding those exemptions, current law prohibits an individual who has been convicted of certain crimes from engaging in certain occupations, including caregiver at certain entities that provide care or treatment services for children or adults, school bus or human services vehicle operator, alternative pupil

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transportation provider, hazardous materials transporter, Division of Gaming in the Department of Administration or Lottery Division in the Department of Revenue employee, lottery ticket retailer, Indian gaming vendor, viatical settlement broker or provider, private detective or investigator, private security person, burglar alarm installer, or alcohol beverage seller (regulated occupations).

This bill makes it a Class I felony to commit an act of employment discrimination against an individual because of arrest or conviction record. The bill, however, does not apply to an act of employment discrimination that is required or permitted with respect to a regulated occupation or to an arrest or conviction, the circumstances of which substantially relate to the circumstances of the particular job or licensed activity.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

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.** 66.0125 (1) of the statutes is renumbered 66.0125 (1) (intro.) and
2 amended to read:

3 66.0125 (1) ~~DEFINITION.~~ DEFINITIONS. (intro.) In this section, “~~local~~;
4 (c) “Local governmental unit” means a city, village, town, school district, or
5 county.

6 **SECTION 2.** 66.0125 (1) (a) of the statutes is created to read:

7 66.0125 (1) (a) “Arrest record,” for purposes of discrimination in housing, has
8 the meaning given in s. 106.50 (1m) (bg) and, for purposes of discrimination in
9 employment, has the meaning given in s. 111.32 (1).

10 **SECTION 3.** 66.0125 (1) (b) of the statutes is created to read:

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1 66.0125 (1) (b) “Conviction record,” for purposes of discrimination in housing,
2 has the meaning given in s. 106.50 (1m) (fg) and, for purposes of discrimination in
3 employment, has the meaning given in s. 111.32 (3).

4 **SECTION 4.** 66.0125 (3) (a) of the statutes is amended to read:

5 66.0125 (3) (a) The purpose of the commission is to study, analyze, and
6 recommend solutions for the major social, economic, and cultural problems which
7 that affect people residing or working within the local governmental unit including,
8 ~~without restriction because of enumeration,~~ problems of the family, youth,
9 education, the aging, juvenile delinquency, health and zoning standards, and
10 discrimination in housing, employment and public accommodations and facilities on
11 the basis of sex, class, race, religion, sexual orientation, or ethnic or minority status,
12 and discrimination in housing and employment on all of those bases plus the basis
13 of arrest or conviction record.

14 **SECTION 5.** 66.0125 (3) (c) 1. b. of the statutes is amended to read:

15 66.0125 (3) (c) 1. b. To ensure to all residents of a local governmental unit,
16 regardless of sex, race, sexual orientation or, color, or arrest or conviction record, the
17 rights to possess equal housing accommodations and to enjoy equal employment
18 opportunities.

19 **SECTION 6.** 66.0125 (9) of the statutes is amended to read:

20 66.0125 (9) INTENT. It is the intent of this section to promote fair and friendly
21 relations among all the people in this state, and to that end race, creed, sexual
22 orientation, or color ought not to be made tests in the matter of the right of any person
23 ~~to sell, lease, occupy or use real estate or to earn a livelihood or to enjoy the equal use~~
24 of public accommodations and facilities and race, creed, sexual orientation, color, or

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1 arrest or conviction record ought not to be made tests in the matter of the right of any
2 person to sell, lease, occupy, or use real estate or to earn a livelihood.

3 **SECTION 7.** 66.1011 (1) of the statutes is amended to read:

4 66.1011 (1) DECLARATION OF POLICY. The right of all persons to have equal
5 opportunities for housing regardless of their sex, race, color, ~~physical condition,~~
6 ~~disability,~~ as defined in s. 106.50 (1m) (g), sexual orientation, as defined in s. 111.32
7 (13m), religion, national origin, marital status, family status, as defined in s. 106.50
8 (1m) (k), lawful source of income, arrest record, as defined in s. 106.50 (1m) (bg),
9 conviction record, as defined in s. 106.50 (1m) (fg), age, or ancestry is a matter both
10 of statewide concern under ss. 101.132 and 106.50 and also of local interest under
11 this section and s. 66.0125. The enactment of ss. 101.132 and 106.50 by the
12 legislature does not preempt the subject matter of equal opportunities in housing
13 from consideration by political subdivisions, and does not exempt political
14 subdivisions from their duty, nor deprive them of their right, to enact ordinances
15 ~~which~~ that prohibit discrimination in any type of housing solely on the basis of an
16 individual being a member of a protected class.

17 **SECTION 8.** 66.1201 (2m) of the statutes is amended to read:

18 66.1201 (2m) DISCRIMINATION. Persons otherwise entitled to any right, benefit,
19 facility, or privilege under ss. 66.1201 to 66.1211 ~~shall~~ may not be denied them the
20 right, benefit, facility, or privilege in any manner for any purpose nor be
21 discriminated against because of sex, race, color, creed, sexual orientation, arrest
22 record, as defined in s. 106.50 (1m) (bg), conviction record, as defined in s. 106.50 (1m)
23 (fg), or national origin.

24 **SECTION 9.** 66.1213 (3) of the statutes is amended to read:

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1 66.1213 **(3)** DISCRIMINATION. Persons otherwise entitled to any right, benefit,
2 facility, or privilege under this section shall may not be denied them the right,
3 benefit, facility, or privilege in any manner for any purpose nor be discriminated
4 against because of sex, race, color, creed, sexual orientation, arrest record, as defined
5 in s. 106.50 (1m) (bg), conviction record, as defined in s. 106.50 (1m) (fg), or national
6 origin.

7 **SECTION 10.** 66.1301 (2m) of the statutes is amended to read:

8 66.1301 **(2m)** DISCRIMINATION. Persons entitled to any right, benefit, facility,
9 or privilege under ss. 66.1301 to 66.1329 shall may not be denied them the right,
10 benefit, facility, or privilege in any manner for any purpose nor be discriminated
11 against because of sex, race, color, creed, sexual orientation, arrest record, as defined
12 in s. 106.50 (1m) (bg), conviction record, as defined in s. 106.50 (1m) (fg), or national
13 origin.

14 **SECTION 11.** 66.1331 (2m) of the statutes is amended to read:

15 66.1331 **(2m)** DISCRIMINATION. Persons otherwise entitled to any right, benefit,
16 facility, or privilege under this section shall may not be denied them the right,
17 benefit, facility, or privilege in any manner for any purpose nor be discriminated
18 against because of sex, race, color, creed, sexual orientation, arrest record, as defined
19 in s. 106.50 (1m) (bg), conviction record, as defined in s. 106.50 (1m) (fg), or national
20 origin.

21 **SECTION 12.** 66.1333 (3) (e) 2. of the statutes is amended to read:

22 66.1333 **(3)** (e) 2. Persons otherwise entitled to any right, benefit, facility, or
23 privilege under this section may not be denied the right, benefit, facility, or privilege
24 in any manner for any purpose nor be discriminated against because of sex, race,

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1 color, creed, sexual orientation, arrest record, as defined in s. 106.50 (1m) (bg),
2 conviction record, as defined in s. 106.50 (1m) (fg), or national origin.

3 **SECTION 13.** 106.50 (1) of the statutes is amended to read:

4 106.50 (1) INTENT. It is the intent of this section to render unlawful
5 discrimination in housing. It is the declared policy of this state that all persons shall
6 have an equal opportunity for housing regardless of sex, race, color, sexual
7 orientation, disability, religion, national origin, marital status, family status, lawful
8 source of income, arrest or conviction record, age, or ancestry and it is the duty of the
9 political subdivisions to assist in the orderly prevention or removal of all
10 discrimination in housing through the powers granted under ss. 66.0125 and
11 66.1011. The legislature hereby extends the state law governing equal housing
12 opportunities to cover single-family residences ~~which~~ that are owner-occupied. The
13 legislature finds that the sale and rental of single-family residences constitute a
14 significant portion of the housing business in this state and should be regulated.
15 This section shall be deemed considered an exercise of the police powers of the state
16 for the protection of the welfare, health, peace, dignity, and human rights of the
17 people of this state.

18 **SECTION 14.** 106.50 (1m) (bg) of the statutes is created to read:

19 106.50 (1m) (bg) “Arrest record” includes information indicating that an
20 individual has been questioned, apprehended, taken into custody or detention, held
21 for investigation, arrested, charged with, indicted, or tried for any felony,
22 misdemeanor, or other offense pursuant to any law enforcement or military
23 authority more than 3 years before a discriminatory act in violation of sub. (2) occurs.

24 **SECTION 15.** 106.50 (1m) (fg) of the statutes is created to read:

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1 106.50 (1m) (fg) “Conviction record” includes information indicating that an
2 individual has been convicted of any felony, misdemeanor, or other offense, has been
3 adjudicated delinquent, has been less than honorably discharged, or has been placed
4 on probation, fined, imprisoned, placed on extended supervision, or paroled
5 pursuant to any law enforcement or military authority more than 3 years before a
6 discriminatory act in violation of sub. (2) occurs.

7 **SECTION 16.** 106.50 (1m) (h) of the statutes is amended to read:

8 106.50 (1m) (h) “Discriminate” means to segregate, separate, exclude, or treat
9 a person or class of persons unequally in a manner described in sub. (2), (2m), or (2r)
10 because of sex, race, color, sexual orientation, disability, religion, national origin,
11 marital status, family status, lawful source of income, arrest or conviction record,
12 age, or ancestry.

13 **SECTION 17.** 106.50 (1m) (nm) of the statutes is amended to read:

14 106.50 (1m) (nm) “Member of a protected class” means a group of natural
15 persons, or a natural person, who may be categorized based on one or more of the
16 following characteristics: because of sex, race, color, disability, sexual orientation as
17 defined in s. 111.32 (13m), religion, national origin, marital status, family status,
18 lawful source of income, arrest or conviction record, age, or ancestry.

19 **SECTION 18.** 106.50 (5m) (f) 1. of the statutes is amended to read:

20 106.50 (5m) (f) 1. Nothing in this section prohibits an owner or agent from
21 requiring that a person who seeks to buy or rent housing supply information
22 concerning arrest or conviction record, family status, and marital, financial, and
23 business status but not concerning race, color, ~~physical condition~~, disability, sexual
24 orientation, ancestry, national origin, religion, creed, or, subject to subd. 2., age.

25 **SECTION 19.** 106.50 (7) of the statutes is created to read:

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1 106.50 (7) DISCRIMINATION BASED ON ARREST OR CONVICTION RECORD. (a) Any
2 person who commits a discriminatory act in violation of sub. (2) because of arrest or
3 conviction record is guilty of a Class I felony.

4 (b) Any person who commits an act described in sub. (2) against an individual
5 because the individual has been the subject of an action described in sub. (1m) (bg)
6 or (fg) within the 3 years preceding that act shall inform the individual of the reason
7 for the act, allow the individual to provide information relevant to the action, and,
8 if the individual provides that information, reconsider the act.

9 **SECTION 20.** 111.336 of the statutes is created to read:

10 **111.336 Arrest or conviction record; criminal penalty. (1)** Except as
11 provided in sub. (2), any person who commits an act of employment discrimination
12 because of arrest or conviction record is guilty of a Class I felony.

13 **(2)** Subsection (1) does not apply to an act of employment discrimination that
14 is permitted or required under s. 48.685 (4m) (a) or (b) or (5m), 50.065 (4m) (a) or (b)
15 or (5m), 85.21 (3m) (b), 111.335, 121.555 (3) (c), 343.12 (2) (dm), (7), or (8) (a) or (b),
16 343.14 (2g) (a), 346.923, 562.045, 565.02 (1) (b) or (2) (c), 565.10 (3) (a), 569.04 (2), or
17 632.68 (3) (a) 4. or (5) (a) 3.

18 **SECTION 21.** 224.77 (1) (o) of the statutes is amended to read:

19 224.77 **(1) (o)** In the course of practice as a mortgage banker, loan originator,
20 or mortgage broker, except in relation to housing designed to meet the needs of
21 elderly individuals, treated a person unequally solely because of sex, race, color,
22 handicap, sexual orientation, as defined in s. 111.32 (13m), religion, national origin,
23 age, or ancestry, the person's lawful source of income, the person's arrest record, as
24 defined in s. 106.50 (1m) (bg), or conviction record, as defined in s. 106.50 (1m) (fg),
25 or the sex or marital status of the person maintaining a household.

