



2011 ASSEMBLY BILL 578

February 17, 2012 – Introduced by Representatives WYNN and E. COGGS. Referred to Committee on Labor and Workforce Development.

1 **AN ACT** *to amend* 111.31 (1), 111.31 (2), 111.31 (3) and 111.321; and *to create*
2 111.32 (3g) and 111.333 of the statutes; **relating to:** employment
3 discrimination based on credit history.

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 or conviction record, military service, use or nonuse of a lawful product off the employer's premises during nonworking hours, or declining to attend a meeting or to participate in any communication about religious or political matters. Current law specifies that it is an act of employment discrimination to refuse to hire or employ an individual because of any of those bases.

This bill prohibits employment discrimination based on credit history. The bill specifies, however, that it is not employment discrimination because of credit history for an employer to request or use the credit history of an employee or an applicant for employment if any of the following applies:

1. The employer has offered employment to the applicant and the credit history of the applicant will be used for a purpose other than to refuse to hire the applicant on the basis of credit history.

2. The employer has a bona fide purpose for requesting or using information in the credit history of the employee or applicant that is substantially related to the job-related responsibilities of the position in which the employee is employed or the applicant is seeking employment and the employer discloses that purpose to the

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employee or applicant in writing. The bill specifies that the positions for which an employer has such a bona fide purpose include all of the following: 1) a position that is managerial and that involves setting the direction or control of the business of the employer or of a department, division, unit, or agency of the employer; 2) a position in which the individual holding the position has access to personal information of the employer or of any employee or customer of the employer, other than personal information that is customarily provided in a retail transaction; 3) a position in which the individual holding the position has a fiduciary responsibility to the employer, including the authority to issue payments, collect debts, transfer money, or enter into contracts; 4) a position in which the employer provides the individual holding the position with an expense account, a credit card, or a debit card; or 5) a position in which the individual holding the position has access to a trade secret or any other confidential business information.

The bill also specifies that it is not employment discrimination because of credit history for an employer to refuse to employ an individual or to bar or terminate an individual from employment if the employer is any of the following:

1. Required under any state or federal law to inquire into the credit history of an employee or applicant for the purpose of employment.

2. A bank, savings bank, savings and loan association, or credit union (depository institution) that accepts deposits that are insured by the Federal Deposit Insurance Corporation, the National Credit Union Administration, or any other federal agency or an affiliate or subsidiary of a depository institution that accepts those deposits.

3. The Wisconsin Credit Union Savings Insurance Corporation.

4. An investment adviser that is registered under the federal Investment Advisers Act of 1940 (federal covered investment adviser) or an affiliate of a federal covered investment adviser.

Under the bill, "credit history" means credit account information bearing on an individual's creditworthiness, credit standing, or credit capacity that is provided in a consumer report under the federal Fair Credit Reporting Act (FCRA), which defines "consumer report" as any written, oral, or other communication by a consumer reporting agency bearing on an individual's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, which is used or expected to be used as a factor in establishing the individual's eligibility for credit, insurance, employment, or any other purpose allowed under federal law. The FCRA further defines "consumer reporting agency" as any person who, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on individuals for the purpose of furnishing consumer reports to third parties, and who uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

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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.** 111.31 (1) of the statutes is amended to read:
- 2 111.31 (1) The legislature finds that the practice of unfair discrimination in
3 employment against properly qualified individuals by reason of their age, race,
4 creed, color, disability, marital status, sex, national origin, ancestry, sexual
5 orientation, arrest record, conviction record, credit history, military service, use or
6 nonuse of lawful products off the employer's premises during nonworking hours, or
7 declining to attend a meeting or to participate in any communication about religious
8 matters or political matters, substantially and adversely affects the general welfare
9 of the state. Employers, labor organizations, employment agencies, and licensing
10 agencies that deny employment opportunities and discriminate in employment
11 against properly qualified individuals solely because of their age, race, creed, color,
12 disability, marital status, sex, national origin, ancestry, sexual orientation, arrest
13 record, conviction record, credit history, military service, use or nonuse of lawful
14 products off the employer's premises during nonworking hours, or declining to
15 attend a meeting or to participate in any communication about religious matters or
16 political matters, deprive those individuals of the earnings that are necessary to
17 maintain a just and decent standard of living.
- 18 **SECTION 2.** 111.31 (2) of the statutes is amended to read:
- 19 111.31 (2) It is the intent of the legislature to protect by law the rights of all
20 individuals to obtain gainful employment and to enjoy privileges free from
21 employment discrimination because of age, race, creed, color, disability, marital

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1 status, sex, national origin, ancestry, sexual orientation, arrest record, conviction
2 record, credit history, military service, use or nonuse of lawful products off the
3 employer's premises during nonworking hours, or declining to attend a meeting or
4 to participate in any communication about religious matters or political matters, and
5 to encourage the full, nondiscriminatory utilization of the productive resources of the
6 state to the benefit of the state, the family, and all the people of the state. It is the
7 intent of the legislature in promulgating this subchapter to encourage employers to
8 evaluate an employee or applicant for employment based upon the individual
9 qualifications of the employee or applicant rather than upon a particular class to
10 which the individual may belong.

11 **SECTION 3.** 111.31 (3) of the statutes is amended to read:

12 111.31 (3) In the interpretation and application of this subchapter, and
13 otherwise, it is declared to be the public policy of the state to encourage and foster
14 to the fullest extent practicable the employment of all properly qualified individuals
15 regardless of age, race, creed, color, disability, marital status, sex, national origin,
16 ancestry, sexual orientation, arrest record, conviction record, credit history, military
17 service, use or nonuse of lawful products off the employer's premises during
18 nonworking hours, or declining to attend a meeting or to participate in any
19 communication about religious matters or political matters. Nothing in this
20 subsection requires an affirmative action program to correct an imbalance in the
21 work force. This subchapter shall be liberally construed for the accomplishment of
22 this purpose.

23 **SECTION 4.** 111.32 (3g) of the statutes is created to read:

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1 111.32 (3g) "Credit history" means credit account information bearing on an
2 individual's creditworthiness, credit standing, or credit capacity that is provided in
3 a consumer report, as defined in 15 USC 1681a (d).

4 **SECTION 5.** 111.321 of the statutes is amended to read:

5 **111.321 Prohibited bases of discrimination.** Subject to ss. 111.33 to
6 111.365, no employer, labor organization, employment agency, licensing agency, or
7 other person may engage in any act of employment discrimination as specified in s.
8 111.322 against any individual on the basis of age, race, creed, color, disability,
9 marital status, sex, national origin, ancestry, arrest record, conviction record, credit
10 history, military service, use or nonuse of lawful products off the employer's premises
11 during nonworking hours, or declining to attend a meeting or to participate in any
12 communication about religious matters or political matters.

13 **SECTION 6.** 111.333 of the statutes is created to read:

14 **111.333 Credit history; exceptions and special cases. (1)**

15 Notwithstanding s. 111.322, it is not employment discrimination because of credit
16 history for an employer to request or use the credit history of an employee or an
17 applicant for employment if any of the following applies:

18 (a) The employer has offered employment to the applicant and the credit
19 history of the applicant will be used for a purpose other than a purpose prohibited
20 under s. 111.322.

21 (b) The employer has a bona fide purpose for requesting or using information
22 in the credit history of the employee or applicant that is substantially related to the
23 job-related responsibilities of the position in which the employee is employed or the
24 applicant is seeking employment and the employer discloses that purpose to the

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1 employee or applicant in writing. For purposes of this paragraph, a position for
2 which an employer has such a bona fide purpose includes all of the following:

3 1. A position that is managerial and that involves setting the direction or
4 control of the business of the employer or of a department, division, unit, or agency
5 of the employer.

6 2. A position in which the individual holding the position has access to personal
7 information, as defined in s. 134.98 (1) (b), of the employer or of any employee or
8 customer of the employer, other than personal information that is customarily
9 provided in a retail transaction.

10 3. A position in which the individual holding the position has a fiduciary
11 responsibility to the employer, including the authority to issue payments, collect
12 debts, transfer money, or enter into contracts.

13 4. A position in which the employer provides the individual holding the position
14 with an expense account, a credit card, or a debit card.

15 5. A position in which the individual holding the position has access to a trade
16 secret, as defined in s. 134.90 (1) (c), or any other confidential business information.

17 **(2)** Notwithstanding s. 111.322, it is not employment discrimination because
18 of credit history for an employer to refuse to employ an individual or to bar or
19 terminate an individual from employment if the employer is any of the following:

20 (a) Required under any state or federal law to inquire into the credit history
21 of an employee or applicant for the purpose of employment.

22 (b) A depository institution, as defined in s. 134.74 (1) (c), that accepts deposits
23 that are insured by the Federal Deposit Insurance Corporation, the National Credit
24 Union Administration, or any other federal agency or an affiliate or subsidiary of a
25 depository institution that accepts those deposits.

