AN ACT to renumber and amend 111.36 (1) (d) 1. and 111.36 (1) (d) 2.; to amend 111.31 (1), 111.31 (2), 111.31 (3), 111.321, 111.36 (title), 111.36 (1) (intro.) and 111.36 (1) (br); and to create 111.32 (7j) of the statutes; relating to: prohibiting employment discrimination on the basis of an individual’s gender identity.

Analysis by the Legislative Reference Bureau

Currently, the fair employment law prohibits discrimination in employment and licensing on the basis of age, race, creed, color, disability, marital status, sex, national origin, ancestry, sexual orientation, arrest record, 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. This bill adds gender identity as a prohibited basis for discrimination under the fair employment law.

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 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, gender identity, arrest record, conviction record, military service, use or nonuse of lawful products off the employer’s premises during nonworking hours, or declining to attend a meeting or to participate in any communication about religious matters or political matters, 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, gender identity, arrest record, conviction record, military service, use or nonuse of lawful products off the employer’s premises during nonworking hours, or declining to attend a meeting or to participate in any communication about religious matters or political matters, 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 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, gender identity, arrest record, conviction record, military service, use or nonuse of lawful products off the employer’s premises during nonworking hours, or declining to attend a meeting or to participate in any communication about religious matters or political matters, 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 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 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, gender identity, arrest record, conviction record, military service, use or nonuse of lawful products off the employer’s premises during nonworking hours, or declining to attend a meeting or to participate in any communication about religious matters or political matters. 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 (7j) of the statutes is created to read:

111.32 (7j) “Gender identity” means an individual’s self-identification as male, female, or something else, regardless of the individual’s assigned sex at birth.

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

111.321 Prohibited bases of discrimination. Subject to ss. 111.33 to 111.365, 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, sexual orientation, gender identity, arrest record, conviction record, military service, use or nonuse of lawful products off the employer’s premises during nonworking hours, or declining to attend a meeting or to participate in any communication about religious matters or political matters.

**SECTION 6.** 111.36 (title) of the statutes is amended to read:

111.36 (title) **Sex, sexual orientation, or gender identity; exceptions and special cases.**

**SECTION 7.** 111.36 (1) (intro.) of the statutes is amended to read:

111.36 (1) (intro.) Employment discrimination because of sex, sexual orientation, or gender identity includes, but is not limited to, any of the following actions by any employer, labor organization, employment agency, licensing agency, or other person:

**SECTION 8.** 111.36 (1) (br) of the statutes is amended to read:

111.36 (1) (br) Engaging in harassment that consists of unwelcome verbal or physical conduct directed at another individual because of that individual’s gender or gender identity, other than the conduct described in par. (b), and that has the purpose or effect of creating an intimidating, hostile, or offensive work environment or has the purpose or effect of substantially interfering with that individual’s work performance. Under this paragraph, substantial interference with an employee’s work performance or creation of an intimidating, hostile, or offensive work environment is established when the conduct is such that a reasonable person under the same circumstances as the employee would consider the conduct sufficiently severe or pervasive to interfere substantially with the person’s work performance or to create an intimidating, hostile, or offensive work environment.
SECTION 9. 111.36 (1) (d) 1. of the statutes is renumbered 111.36 (1) (d) and amended to read:

111.36 (1) (d) For any employer, labor organization, licensing agency or employment agency or other person to refuse Refusing to hire, employ, admit, or license, or to bar or terminate an individual; barring or terminating from employment, membership, or licensure any individual; or to discriminate discriminating against an individual in promotion, compensation, or in the terms, conditions, or privileges of employment because of the individual’s sexual orientation; or gender identity.

SECTION 10. 111.36 (1) (d) 2. of the statutes is renumbered 111.36 (1) (e) and amended to read:

111.36 (1) (e) For any employer, labor organization, licensing agency or employment agency or other person to discharge Discharging or otherwise discriminate discriminating against any person because he or she has opposed any discriminatory practices under this paragraph par. (d) or because he or she has made a complaint, testified, or assisted in any proceeding under this paragraph par. (d).

(END)