

CHAPTER 334 , Laws of 1981

AN ACT to repeal 111.32 (5) (a) to (c), (e) to (h) and (i) (intro.) and 111.36 (4); to renumber 111.32 (3m), (5) (i) 1 and 2 and (6), 111.326, 111.33, 111.35, 111.351, 111.36 (intro.), (1), (2), (2m), (3), (3m) and (5) and 111.37; to renumber and amend 111.32 (1) to (3); to amend 111.31 (1) to (3) and 111.39 (4) (c), as renumbered; and to create 103.14, 111.31 (5), 111.32 (1), (3), (6) (b), (7), (8) and (10) to (13), 111.321, 111.322, 111.33, 111.335, 111.337, 111.34, 111.345, 111.36 and 111.37 (5) of the statutes, relating to employment discrimination, grooming standards and providing a penalty.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. 103.14 of the statutes is created to read:

**103.14 Grooming requirement; notification.** (1) In this section:

(a) "Employee" has the meaning given in s. 101.01 (2) (d).

(b) "Employer" has the meaning given in s. 101.01 (2) (c).

(2) Each employer shall, at the time of hiring, notify each employe about any hairstyle, facial hair or clothing requirement.

SECTION 1c. 111.31 (1) to (3) of the statutes are amended to read:

111.31 (1) The legislature finds that the practice of denying unfair discrimination in employment and other opportunities to, and discriminating against, properly qualified persons individuals by reason of their age, race, creed, color, handicap, marital status, sex, national origin, ancestry, arrest record or conviction record, is likely to foment domestic strife and unrest, and substantially and adversely affect affects the general welfare of a the state by depriving it of the fullest utilization of its capacities for production. The denial by some employers. Employers, labor organizations, employment agencies and licensing agencies and labor unions of which deny employment opportunities to such persons solely and discriminate in employment against properly qualified individuals solely because of their age, race, creed, color, handicap, marital status, sex, national origin, ancestry, arrest record or conviction record, and discrimination against them in employment, tends to deprive the victim those individuals of the earnings which are necessary to maintain a just and decent standard of living, thereby committing grave injury to them.

(2) It is believed by many students of the problem that protection the intent of the legislature to protect by law of the rights of all people individuals to obtain gainful employment, and other to enjoy privileges free from employment discrimination because of age, race, creed, color, handicap, marital status, sex, national origin or, ancestry, would remove certain recognized sources of strife and unrest arrest record or conviction record, and to encourage the full, nondiscriminatory utilization of the productive resources of the state to the benefit of the state, the family and to all the people of the state. It is the intent of the legislature in promulgating this subchapter to encourage employers to evaluate an employe or applicant for employment based upon the employe's or applicant's individual qualifications rather than upon a particular class to which the individual may belong.

(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 persons individuals regardless of their age, race, creed, color, handicap, marital status, sex, national origin or, ancestry,

arrest record or conviction record. This subchapter shall be liberally construed for the accomplishment of this purpose.

SECTION 1g. 111.31 (5) of the statutes is created to read:

111.31 (5) The legislature finds that the prohibition of discrimination on the basis of creed under s. 111.337 is a matter of statewide concern, requiring uniform enforcement at state, county and municipal levels.

SECTION 2. 111.32 (1) of the statutes is renumbered 111.32 (9) and amended to read:

111.32 (9) ~~The term "labor organization" shall include any collective bargaining unit composed of employes.~~ means:

(a) Any organization, agency or employe representation committee, group, association or plan in which employes participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours or other terms or conditions of employment; or

(b) Any conference, general committee, joint or system board or joint council which is subordinate to a national or international committee, group, association or plan under par. (a).

SECTION 3. 111.32 (1) of the statutes is created to read:

111.32 (1) "Arrest record" includes, but is not limited to, information indicating that an individual has been questioned, apprehended, taken into custody or detention, held for investigation, arrested, charged with, indicted or tried for any felony, misdemeanor or other offense pursuant to any law enforcement or military authority.

SECTION 4. 111.32 (2) and (3) of the statutes are renumbered 111.32 (5) and (6) (a) and amended to read:

111.32 (5) ~~The term "employes" shall~~ "Employee" does not include any individual employed by his or her parents, spouse or child.

(6) (a) ~~The term "employer" shall include~~ "Employer" means the state and each agency of the state and, except as provided in par. (b), any employer as defined in s. 41.02 (4), but shall not include a social club, fraternal or religious association not organized for private profit other person engaging in any activity, enterprise or business employing at least one individual. In this subsection, "agency" means an office, department, independent agency, authority, institution, association, society or other body in state government created or authorized to be created by the constitution or any law, including the legislature and the courts.

SECTION 5. 111.32 (3) of the statutes is created to read:

111.32 (3) "Conviction record" includes, but is not limited to, information indicating that an individual has been convicted of any felony, misdemeanor or other offense, has been adjudicated delinquent, has been less than honorably discharged, or has been placed on probation, fined, imprisoned or paroled pursuant to any law enforcement or military authority.

SECTION 6. 111.32 (3m) of the statutes is renumbered 111.32 (2).

SECTION 7. 111.32 (5) (a) to (c), (e) to (h) and (i) (intro.) of the statutes are repealed.

SECTION 7m. 111.32 (5) (i) 1 and 2 of the statutes are renumbered 111.36 (1) (d) 1 and 2.

SECTION 8. 111.32 (6) of the statutes is renumbered 111.32 (14).

SECTION 8a. 111.32 (6) (b) of the statutes is created to read:

111.32 (6) (b) "Employer" does not include a social club or fraternal society under ch. 188 with respect to a particular job for which the club or society seeks to employ or employs a member, if the particular job is advertised only within the membership.

SECTION 9. 111.32 (7), (8) and (10) to (13) of the statutes are created to read:

111.32 (7) "Employment agency" means any person, including this state, who regularly undertakes to procure employes or opportunities for employment for any other person.

(8) "Handicapped individual" means an individual who:

(a) Has a physical or mental impairment which makes achievement unusually difficult or limits the capacity to work;

(b) Has a record of such an impairment; or

(c) Is perceived as having such an impairment.

(10) "License" means the whole or any part of any permit, certificate, approval, registration, charter or similar form of permission required by a state or local unit of government for the undertaking, practice or continuation of any occupation or profession.

(11) "Licensing agency" means any board, commission, committee, department, examining board or officer, except a judicial officer, in the state or any city, village, town, county or local government authorized to grant, deny, renew, revoke, suspend, annul, withdraw or amend any license.

(12) "Marital status" means the status of being married, single, divorced, separated or widowed.

(13) "Sexual harassment" means unwelcome sexual advances, unwelcome physical contact of a sexual nature or unwelcome verbal or physical conduct of a sexual nature. "Unwelcome verbal or physical conduct of a sexual nature" includes but is not limited to the deliberate, repeated making of unsolicited gestures or comments, or the deliberate, repeated display of offensive sexually graphic materials which is not necessary for business purposes.

SECTION 10. 111.321 of the statutes is created 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, handicap, marital status, sex, national origin, ancestry, arrest record or conviction record.

SECTION 11. 111.322 of the statutes is created to read:

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

(1) To refuse to hire, employ, admit or license any individual, to bar or terminate from employment or labor organization membership any individual, or to discriminate against any individual in promotion, compensation or in terms, conditions or privileges of employment or labor organization membership because of any basis enumerated in s. 111.321.

(2) To print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which implies or expresses any limitation, specification or discrimination with respect to an individual or any intent to make such limitation, specification or discrimination because of any basis enumerated in s. 111.321.

(3) To discharge or otherwise discriminate against any individual because he or she has opposed any discriminatory practice under this subchapter or because he or she has made a complaint, testified or assisted in any proceeding under this subchapter.

SECTION 12. 111.326 of the statutes is renumbered 111.37.

SECTION 13. 111.33 of the statutes is renumbered 111.375.

SECTION 14. 111.33 of the statutes is created to read:

**111.33 Age; exceptions and special cases.** (1) The prohibition against employment discrimination on the basis of age applies only to discrimination against individuals who are between the ages of 40 and 70.

(2) Notwithstanding sub. (1) and s. 111.322, it is not employment discrimination because of age to do any of the following:

(a) To terminate the employment of any employe physically or otherwise unable to perform his or her duties.

(b) To implement the provisions of any retirement plan or system of any employer if the retirement plan or system is not a subterfuge to evade the purposes of this subchapter. Except as provided in par. (c), no plan or system may excuse the failure to hire, or require or permit the involuntary retirement of, any individual under sub. (1) because of that individual's age.

(c) To require retirement of any employe who has attained 65 years of age but not 70 years of age and who for the 2-year period before retirement is employed in a bona fide executive or high policy-making position, if that employe is entitled to an immediate non-forfeitable annual retirement benefit from a pension, profit-sharing, savings or deferred compensation plan offered by the employer, or from any combination of those plans, which benefit equals in the aggregate at least \$27,000. If this retirement benefit is in a form other than a straight life annuity with no ancillary benefits, or if employes contribute to the plan or make roll-over contributions, the benefit shall be adjusted in accordance with rules promulgated by the department, so that the benefit is equivalent to a straight life annuity with no ancillary benefits under a plan to which employes do not contribute and under which no roll-over contributions are made.

(d) To apply varying insurance coverage according to an employe's age.

(e) To exercise an age distinction with respect to the employment of an individual in a capacity in which the knowledge and experience to be gained might reasonably be expected to aid in the development of capabilities required for future advancement to a supervisory, managerial, professional or executive position.

(f) To exercise an age distinction with respect to employment in which the employe is exposed to physical danger or hazard, including, without limitation because of enumeration, certain employment in law enforcement or fire fighting.

SECTION 15. 111.335 of the statutes is created to read:

**111.335 Arrest or conviction record; exceptions and special cases.** (1) (a) Employment discrimination because of arrest record includes, but is not limited to, requesting an applicant, employe, member, licensee or any other individual, on an application form or otherwise, to supply information regarding any arrest record of the individual except a record of a pending charge, except that it is not employment discrimination to request such information when employment depends on the bondability of the individual under a standard fidelity bond or when an equivalent bond is required by state or federal law, administrative regulation or established business practice of the employer and the individual may not be bondable due to an arrest record.

(b) Notwithstanding s. 111.322, it is not employment discrimination because of arrest record to refuse to employ or license, or to suspend from employment or licensing, any individual who is subject to a pending criminal charge if the circumstances of the charge substantially relate to the circumstances of the particular job or licensed activity.

(c) Notwithstanding s. 111.322, it is not employment discrimination because of conviction record to refuse to employ or license, or to bar or terminate from employment or licensing, any individual who:

1. Has been convicted of any felony, misdemeanor or other offense the circumstances of which substantially relate to the circumstances of the particular job or licensed activity; or
2. Is not bondable under a standard fidelity bond or an equivalent bond where such bondability is required by state or federal law, administrative regulation or established business practice of the employer.

(d) In this subsection, "equivalent bond" includes, but is not limited to, a bond issued for an ex-offender under 29 USC 871 (c) in effect on the effective date of this section (1981).

SECTION 16. 111.337 of the statutes is created to read:

**111.337 Creed; exceptions and special cases.** (1) Employment discrimination because of creed includes, but is not limited to, refusing to reasonably accommodate an employee's or prospective employee's religious observance or practice unless the employer can demonstrate that the accommodation would pose an undue hardship on the employer's program, enterprise or business.

(2) Notwithstanding s. 111.322, it is not employment discrimination because of creed:

(a) For a religious association not organized for private profit or an organization or corporation which is primarily owned or controlled by such a religious association to give preference to an applicant or employee who is a member of the same or a similar religious denomination, in hiring or promotion to an instructional or policy-making position, including but not limited to the position of chaplain or counselor.

(b) For a fraternal as defined in s. 614.01 (1) to give preference to an employee or applicant who is a member or is eligible for membership in the fraternal, with respect to hiring or promotion to the position of officer, administrator or salesperson.

(3) No county, city, village or town may adopt any provision concerning employment discrimination because of creed that prohibits activity allowed under this section.

SECTION 17. 111.34 of the statutes is created to read:

**111.34 Handicap; exceptions and special cases.** (1) Employment discrimination because of handicap includes, but is not limited to:

(a) Contributing a lesser amount to the fringe benefits, including life or disability insurance coverage, of any employee because of the employee's handicap; or

(b) Refusing to reasonably accommodate an employee's or prospective employee's handicap unless the employer can demonstrate that the accommodation would pose a hardship on the employer's program, enterprise or business.

(2) (a) Notwithstanding s. 111.322, it is not employment discrimination because of handicap to refuse to hire, employ, admit or license any individual, to bar or terminate from employment, membership or licensure any individual, or to discriminate against any individual in promotion, compensation or in terms, conditions or privileges of employment if the handicap is reasonably related to the individual's ability to adequately undertake the job-related responsibilities of that individual's employment, membership or licensure.

(b) In evaluating whether a handicapped individual can adequately undertake the job-related responsibilities of a particular job, membership or licensed activity, the present and future safety of the individual, of the individual's coworkers and, if applicable, of the general public may be considered. However, this evaluation shall be made on an individual case-by-case basis and may not be made by a general rule which prohibits the employment or licensure of handicapped individuals in general or a particular class of handicapped individuals.

(c) If the employment, membership or licensure involves a special duty of care for the safety of the general public, including but not limited to employment with a common carrier, this special duty of care may be considered in evaluating whether the employe or applicant can adequately undertake the job-related responsibilities of a particular job, membership or licensed activity. However, this evaluation shall be made on an individual case-by-case basis and may not be made by a general rule which prohibits the employment or licensure of handicapped individuals in general or a particular class of handicapped individuals.

SECTION 17m. 111.345 of the statutes is created to read:

**111.345 Marital status; exceptions and special cases.** Notwithstanding s. 111.322, it is not employment discrimination because of marital status to prohibit an individual from directly supervising or being directly supervised by his or her spouse.

SECTION 18. 111.35 of the statutes is renumbered 111.38.

SECTION 19. 111.351 of the statutes is renumbered 111.381.

SECTION 20. 111.36 (intro.), (1), (2), (2m), (3), (3m) and (5) of the statutes are renumbered 111.39 (intro.) and (1) to (6), respectively, and 111.39 (4) (c) of the statutes, as renumbered, is amended to read:

111.39 (4) (c) If, after hearing, the examiner finds that the respondent has engaged in discrimination or unfair honesty testing, the examiner shall make written findings and order such action by the respondent as will effectuate the purpose of this subchapter, with or without back pay. If the examiner awards any payment to an employe because of a violation of s. 111.321 by an individual employed by the employer, under s. 111.32 (6), the employer of that individual is liable for the payment. Back pay liability may not accrue from a date more than 2 years prior to the filing of a complaint with the department. Interim earnings or amounts earnable with reasonable diligence by the person discriminated against or subjected to unfair honesty testing shall operate to reduce back pay otherwise allowable. Amounts received by the person discriminated against or subject to the unfair honesty testing as unemployment benefits or welfare payments shall not reduce the back pay otherwise allowable, but shall be withheld from the person discriminated against or subject to unfair honesty testing and immediately paid to the unemployment reserve fund or, in the case of a welfare payment, to the welfare agency making the payment.

SECTION 21. 111.36 (4) of the statutes is repealed.

SECTION 22. 111.36 of the statutes is created to read:

**111.36 Sex; exceptions and special cases.** (1) Employment discrimination because of sex includes, but is not limited to, any of the following actions by any employer, labor organization, employment agency, licensing agency or other person:

(a) Discriminating against any individual in promotion, compensation paid for equal or substantially similar work, or in terms, conditions or privileges of employment or licensing on the basis of sex where sex is not a bona fide occupational qualification.

(b) Engaging in sexual harassment; or implicitly or explicitly making or permitting acquiescence in or submission to sexual harassment a term or condition of employment or the basis or any part of the basis for any employment decision affecting an employe; or permitting sexual harassment to substantially interfere with an employe's work performance or to create an intimidating, hostile or offensive work environment. Under this paragraph, an employer, labor organization, employment agency or licensing agency is presumed liable for an act of sexual harassment by that employer, labor organization, employment agency or licensing agency or by any of its employes or members, if the act occurs while the complaining employe is at his or her place of employment or is performing duties relating to his or her employment, if the complaining employe informs the employer, labor organization, employment agency or licensing agency of the act, and if

the employer, labor organization, employment agency or licensing agency fails to take appropriate action within a reasonable time.

(c) Discriminating against any woman on the basis of pregnancy, childbirth, maternity leave or related medical conditions by engaging in any of the actions prohibited under s. 111.322, including, but not limited to, actions concerning fringe benefit programs covering illnesses and disability.

(2) For the purposes of this subchapter, sex is a bona fide occupational qualification if all of the members of one sex are physically incapable of performing the essential duties required by a job, or if the essence of the employer's business operation would be undermined if employes were not hired exclusively from one sex.

SECTION 23. 111.37 of the statutes is renumbered 111.395.

SECTION 24. 111.37 (5) of the statutes is created to read:

111.37 (5) Every act by a labor organization, employer, employment agency, licensing agency or other person performed in violation of this section is an act of "unfair honesty testing" and is prohibited.

SECTION 25. **Cross-reference changes.** In the sections of the statutes listed in Column A, the cross-references shown in Column B are changed to the cross-references shown in Column C:

(1) ARREST AND CONVICTION

A	B	C
Statute Sections	Old Cross-References	New Cross-References
66.053 (1)(b)	s. 111.32 (5)(a) and (h)	ss. 111.321, 111.322 and 111.335
139.34 (1)(c)(intro.)	s. 111.32 (5)(a) and (h)	ss. 111.321, 111.322 and 111.335
139.37 (1)(c)(intro.)	s. 111.32 (5)(a) and (h)	ss. 111.321, 111.322 and 111.335
176.05 (9)	s. 111.32 (5)(a) and (h)	ss. 111.321, 111.322 and 111.335
343.12 (2)(d) and (e)	s. 111.32 (5)(a) and (h)	ss. 111.321, 111.322 and 111.335
343.64 (3)	s. 111.32 (5)(a) and (h)	ss. 111.321, 111.322 and 111.335
343.65 (2)	s. 111.32 (5)(a) and (h)	ss. 111.321, 111.322 and 111.335
343.66 (2) and (5)	s. 111.32 (5)(a) and (h)	ss. 111.321, 111.322 and 111.335
343.67 (2)	s. 111.32 (5)(a) and (h)	ss. 111.321, 111.322 and 111.335
440.26 (2)(c), (5) and (6)	s. 111.32 (5)(a) and (h)	ss. 111.321, 111.322 and 111.335
443.11 (1)(f)	s. 111.32 (5)(a) and (h)	ss. 111.321, 111.322 and 111.335
443.13	s. 111.32 (5)(a) and (h)	ss. 111.321, 111.322 and 111.335
446.03 (3)	s. 111.32 (5)(a) and (h)	ss. 111.321, 111.322 and 111.335
449.07 (1)(d)	s. 111.32 (5)(a) and (h)	ss. 111.321, 111.322 and 111.335
450.02 (7)(a)	s. 111.32 (5)(a) and (h)	ss. 111.321, 111.322 and 111.335
455.09 (1)(a)	s. 111.32 (5)(a) and (h)	ss. 111.321, 111.322 and 111.335
457.14 (2)(a)	s. 111.32 (5)(a) and (h)	ss. 111.321, 111.322 and 111.335
458.14 (2)(c)	s. 111.32 (5)(a) and (h)	ss. 111.321, 111.322 and 111.335
551.34 (1)(c)	s. 111.32 (5)(a) and (h)	ss. 111.321, 111.322 and 111.335

(2) OTHER.

A	B	C
Statute Sections	Old Cross-References	New Cross-References
15.221 (intro.)	111.33 to 111.36	111.375 to 111.39
15.221 (2)	111.36 (3m)	111.39 (5)
15.801	111.33 (2)	111.375 (2)
16.765 (10)	ss. 111.31 to 111.37	subch. II of ch. 111
101.04 (1)	111.36	111.39
101.223 (4)(a)	111.36	111.39
111.38 (intro.), as renumbered	111.33 (2)	111.375 (2)

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111.39 (intro.), as renumbered	111.33 (2)	111.375 (2)
111.39 (5)(b), as renumbered	sub. (3)(d)	sub. (4)(d)
111.39 (6), as renumbered	sub. (3)	sub. (4)
118.20 (1)	111.32 (5)(g) 5	111.36 (2)
199.075 (2)(d)	ss. 111.31 to 111.37	subch. II of ch. 111
230.45 (1)(b)	111.33 (2)	111.375 (2)

SECTION 26. **Effective date.** This act takes effect on the 90th day commencing after publication.

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