

1983 Senate Bill 116

Date of enactment: May 2, 1984  
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1983 Wisconsin Act 391

AN ACT *to repeal* 38.12 (3) (c), 40.23 (1) (f) 3, 111.33 (2) (c) and 119.16 (7); *to amend* 15.31, 21.18 (3), 40.23 (1) (f) 1, 59.07 (77), 111.33 (1) and (2) (b) and (e) and 118.23 (1); and *to create* 111.33 (2) (g) of the statutes, *relating to* expanding the prohibition against discrimination in employment.

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

SECTION 1. 15.31 of the statutes is amended to read:

**15.31 Department of military affairs; creation.** There is created a department of military affairs under the direction and supervision of the adjutant general who shall be appointed by the governor for a 5-year term beginning on November 1, 1981, unless terminated earlier by resignation, disability or for cause. The adjutant general may be reappointed to successive terms ~~and shall cease to hold office on becoming 62 years of age.~~ Appointees shall be officers of the national guard of Wisconsin who have had at least 5 years of federally recognized commissioned service in the active army national guard of Wisconsin or active air national guard of Wisconsin or a combination thereof and have attained at least the rank of lieutenant colonel.

SECTION 2. 21.18 (3) of the statutes is amended to read:

21.18 (3) All staff officers appointed under sub. (1), except the aides-de-camp who shall hold office at the pleasure of the governor and except the adjutant general whose tenure is governed by s. 15.31, shall hold their positions ~~until they have reached the age of 60 years, unless retired prior to that time terminated earlier by reason of~~ resignation, disability or for cause. The terms of the deputy adjutants general for army and air shall be 5 years beginning on the first day of the 7th month of the term of the adjutant general. The deputy adjutants general may be reappointed to successive terms. Vacancies among officers, other than aides-de-camp, shall be filled by appointment from officers of the Wisconsin national guard.

SECTION 3. 38.12 (3) (c) of the statutes is repealed.

SECTION 4. 40.23 (1) (f) 1 of the statutes is amended to read:

40.23 (1) (f) 1. As prohibited by federal law or by s. 111.33.

SECTION 5. 40.23 (1) (f) 3 of the statutes is repealed.

SECTION 6. 59.07 (77) of the statutes is amended to read:

59.07 (77) MILWAUKEE COUNTY; CONTRACTUAL PERSONNEL SERVICES. In counties having a population of 500,000 or more, may enter into a contract for a period not to exceed 2 years for the services of retired county employes ~~who have reached the mandatory retirement age under the retirement system,~~ provided such services shall not replace or duplicate an existing office or position in the classified or unclassified service nor be considered an office or position under s. 63.03.

SECTION 7. 111.33 (1) and (2) (b) and (e) of the statutes are amended to read:

111.33 (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~~ an individual who is age 40 or over.

(2) (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. (e), no~~ 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.

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

SECTION 8. 111.33 (2) (c) of the statutes is repealed.

SECTION 9. 111.33 (2) (g) of the statutes is created to read:

111.33 (2) (g) To exercise an age distinction under ss. 343.12 (2) (a) and (3) and 346.96 (5) (b).

SECTION 10. 118.23 (1) of the statutes is amended to read:

118.23 (1) In this section “teacher” means any person who holds a teacher’s certificate or license and whose legal employment requires such certificate or license, who is employed full time and meets the minimum requirements prescribed by the governing body employing such person and who is employed by a school board, board of trustees or governing body of any school operating under chs. 115 to 121 and lying entirely and exclusively in a county having a population of 500,000 or more. “Teacher” does not include any superintendent or assistant superintendent; any teacher having civil service status under ss. 63.01 to 63.17; any teacher in a public school in a ~~city of the 1st class city~~; or any person who is employed by a school board during time of war as a substitute for a teacher on leave while on full-time duty in the U.S. armed forces or any reserve or auxiliary thereof and who is notified in writing at the time of employment that the position is of a temporary nature. ~~This section does not apply to any teacher after the close of the school year during which the teacher has attained the age of 65 years, nor to any subsequent employment of such teacher.~~

SECTION 11. 119.16 (7) of the statutes is repealed.

SECTION 12. **Nonstatutory provision; statewide concern.** Notwithstanding section 21 of chapter 201, laws of 1937, as created by chapter 405, laws of 1965, and section 15 of chapter 396, laws of 1937, as created by chapter 441, laws of 1947, or any other law, this act for the reasons stated in section 111.31 of the statutes is a matter of statewide concern and is not a matter of local affair or government, whether a retirement system is affected or otherwise.

SECTION 13. **Initial applicability.** (1) In the case of a retirement system or insurance plan in existence on the effective date of this act containing a provision which would violate section 111.33 of the statutes, as affected by this act, the treatment of that section by this act does not apply to that provision until 2 years after the effective date of this act.

(2) In the case of a collective bargaining agreement in effect on the effective date of this act containing a provision which would violate section 111.33 of the statutes, as affected by this act, the treatment of that section by this act does not apply to that provision until the termination of the agreement.

SECTION 14. **Effective date.** This act takes effect on the first day of the 4th month commencing after publication.

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