

1991 Senate Bill 292

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1991 WISCONSIN ACT 310

AN ACT to amend 111.31 (1) to (3) and 111.321; and to create 111.35 of the statutes, relating to: prohibiting employment discrimination based on the use or nonuse of lawful products outside an employer's premises during nonworking hours.

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

SECTION 1. 111.31 (1) to (3) of the statutes are 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, handicap, marital status, sex, national origin, ancestry, sexual orientation, arrest record, conviction record or membership in the national guard, state defense force or any other reserve component of the military forces of the United States or this state or use or nonuse of lawful products off the employer's premises during nonworking hours substantially and adversely affects the general welfare of the state. Employers, labor organizations, employment agencies and licensing agencies ~~which that~~ deny employment opportunities and discriminate in employment against properly qualified individuals solely because of their age, race, creed, color, handicap, marital status, sex, national origin, ancestry, sexual orientation, arrest record, conviction record or membership in the national guard, state defense force or any other reserve component of the military forces of the United States of this state or use or nonuse of lawful products off the employer's premises during nonworking hours deprive those individuals of the earnings ~~which that~~ are necessary to maintain a just and decent standard of living.

(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 discrimi-

nation because of age, race, creed, color, handicap, marital status, sex, national origin, ancestry, sexual orientation, arrest record, conviction record or membership in the national guard, state defense force or any other reserve component of the military forces of the United States or this state or use or nonuse of lawful products off the employer's premises during nonworking hours, 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 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 individuals regardless of age, race, creed, color, handicap, marital status, sex, national origin, ancestry, sexual orientation, arrest record, conviction record or membership in the national guard, state defense force or any other reserve component of the military forces of the United States or this state or use or nonuse of lawful products off the employer's premises during nonworking hours. 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 2. 111.321 of the statutes is amended 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, conviction record or membership in the national guard, state defense force or any reserve component of the military forces of the United States or this state or use or nonuse of lawful products off the employer's premises during nonworking hours.

SECTION 3. 111.35 of the statutes is created to read:

111.35 Use or nonuse of lawful products; exceptions and special cases. (1) (a) Notwithstanding s. 111.322, it is not employment discrimination because of use of a lawful product off the employer's premises during nonworking hours for a nonprofit corporation that, as one of its primary purposes or objectives, discourages the general public from using a lawful product to refuse to hire or employ an individual, to suspend or terminate the employment of an individual, or to discriminate against an individual in promotion, in compensation or in terms, conditions or privileges of employment, because that individual uses off the employer's premises during nonworking hours a lawful product that the nonprofit corporation discourages the general public from using.

(b) Notwithstanding s. 111.322, it is not employment discrimination because of nonuse of a lawful product off the employer's premises during nonworking hours for a nonprofit corporation that, as one of its primary purposes or objectives, encourages the general public to use a lawful product to refuse to hire or employ an individual, to suspend or terminate the employment of an individual, or to discriminate against an individual in promotion, in compensation or in terms, conditions or privileges of employment, because that individual does not use off the employer's premises during nonworking hours a lawful product that the nonprofit corporation encourages the general public to use.

(2) Notwithstanding s. 111.322, it is not employment discrimination because of use or nonuse of a lawful product off the employer's premises during nonworking hours for an employer, labor organization, employment agency, licensing agency or other person to refuse to hire, employ, admit, or license an individual, to bar, suspend or terminate an individual from employment, membership or licensure, or to discriminate against an individual in promotion, in compensation or in terms, conditions or privileges of employment or labor organization membership if the individual's use or nonuse of a lawful product off the employer's premises during nonworking hours does any of the following:

(a) Impairs the individual's ability to undertake adequately the job-related responsibilities of that individual's employment, membership or licensure.

(b) Creates a conflict of interest, or the appearance of a conflict of interest, with the job-related responsibilities of that individual's employment, membership or licensure.

(c) Conflicts with a bona fide occupational qualification that is reasonably related to the job-related responsibilities of that individual's employment, membership or licensure.

(d) Constitutes a violation of s. 48.983 (2).

(e) Conflicts with any federal or state statute, rule or regulation.

(3) (a) Notwithstanding s. 111.322, it is not employment discrimination because of use of a lawful product off the employer's premises during nonworking hours for an employer, labor organization, employment agency, licensing agency or other person to offer a policy or plan of life, health or disability insurance coverage under which the type of coverage or the price of coverage for an individual who uses a lawful product off the employer's premises during nonworking hours differs from the type of coverage or the price of coverage provided for an individual who does not use that lawful product, if all of the following conditions apply:

1. The difference between the premium rates charged to an individual who uses that lawful product and the premium rates charged to an individual who does not use that lawful product reflects the cost of providing the coverage to the individual who uses that lawful product.

2. The employer, labor organization, employment agency, licensing agency or other person that offers the coverage provides each individual who is charged a different premium rate based on that individual's use of a lawful product off the employer's premises during nonworking hours with a written statement specifying the premium rate differential used by the insurance carrier.

(b) Notwithstanding s. 111.322, it is not employment discrimination because of nonuse of a lawful product off the employer's premises during nonworking hours for an employer, labor organization, employment agency, licensing agency or other person to offer a policy or plan of life, health or disability insurance coverage under which the type of coverage or the price of coverage for an individual who does not use a lawful product off the employer's premises during nonworking hours differs from the type of coverage or the price of coverage provided for an individual who uses that lawful product, if all of the following conditions apply:

1. The difference between the premium rates charged to an individual who does not use that lawful product and the premium rates charged to an individual who uses that lawful product reflects the cost of providing the coverage to the individual who does not use that lawful product.

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2. The employer, labor organization, employment agency, licensing agency or other person that offers the coverage provides each individual who is charged a different premium rate based on that individual's nonuse of a lawful product off the employer's premises during non-working hours with a written statement specifying the premium rate differential used by the insurance carrier.

(4) Notwithstanding s. 111.322, it is not employment discrimination because of use of a lawful product off the employer's premises during nonworking hours to refuse to employ an applicant if the applicant's use of a lawful product consists of smoking tobacco and the employment is as a fire fighter covered under s. 891.45.
