



**SENATE SUBSTITUTE AMENDMENT 2,
TO 2009 SENATE BILL 275**

April 21, 2010 - Offered by Senator TAYLOR.

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 and providing a penalty.

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 record, conviction record, military service, or use or nonuse of a lawful product off the employer's premises during nonworking hours. Current law also specifies that employment discrimination because of arrest record includes requesting an individual to supply information regarding any arrest record, except when employment depends on the bondability of the individual, and that employment discrimination because of conviction record does not include refusing to employ an individual who has been convicted of an offense the circumstances of which substantially relate to the circumstances of the particular job or who is not bondable when employment depends on the bondability of the individual.

This substitute amendment prohibits employment discrimination based on credit history. The substitute amendment specifies, however, that it is not employment discrimination because of credit history to refuse to employ, admit, or license, or to bar or terminate from employment, membership, or licensing, any individual based on the circumstances of the individual's credit history if: 1) those

circumstances are substantially related to the circumstances of the particular job; 2) the individual is not bondable when bondability is required by state or federal law, administrative regulation, or established business practice of the employer; 3) the individual is employed, or seeks employment, as an officer or director of a corporation, a member or manager of a limited liability company, or a partner of a partnership or a joint venture; in an executive capacity; or in a capacity in which the individual has the authority to hire or terminate an individual or in which the individual is authorized to have access to confidential personnel records; or 4) the individual is employed, or seeks employment, in a position in which the individual is authorized to have access to any financial account information of a customer or employee of the employer and the circumstances of the individual’s credit history indicate gross negligence or mismanagement of the individual’s personal or professional finances, except that this exception does not apply if the individual is employed, or seeks employment in a position in which the only financial account information of such a customer or employee to which the individual is authorized to have access is the credit or debit card number of the customer or employee.

Under the substitute amendment, “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.

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, or use

1 or nonuse of lawful products off the employer's premises during nonworking hours
2 substantially and adversely affects the general welfare of the state. Employers,
3 labor organizations, employment agencies, and licensing agencies that deny
4 employment opportunities and discriminate in employment against properly
5 qualified individuals solely because of their age, race, creed, color, disability, marital
6 status, sex, national origin, ancestry, sexual orientation, arrest record, conviction
7 record, credit history, military service, or use or nonuse of lawful products off the
8 employer's premises during nonworking hours deprive those individuals of the
9 earnings that are necessary to maintain a just and decent standard of living.

10 **SECTION 2.** 111.31 (2) of the statutes is amended to read:

11 111.31 (2) It is the intent of the legislature to protect by law the rights of all
12 individuals to obtain gainful employment and to enjoy privileges free from
13 employment discrimination because of age, race, creed, color, disability, marital
14 status, sex, national origin, ancestry, sexual orientation, arrest record, conviction
15 record, credit history, military service, or use or nonuse of lawful products off the
16 employer's premises during nonworking hours, and to encourage the full,
17 nondiscriminatory utilization of the productive resources of the state to the benefit
18 of the state, the family, and all the people of the state. It is the intent of the legislature
19 in promulgating this subchapter to encourage employers to evaluate an employee or
20 applicant for employment based upon the ~~employee's or applicant's~~ individual
21 qualifications of the employee or applicant rather than upon a particular class to
22 which the individual may belong.

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

24 111.31 (3) In the interpretation and application of this subchapter, and
25 otherwise, it is declared to be the public policy of the state to encourage and foster

1 to the fullest extent practicable the employment of all properly qualified individuals
2 regardless of age, race, creed, color, disability, marital status, sex, national origin,
3 ancestry, sexual orientation, arrest record, conviction record, credit history, military
4 service, or use or nonuse of lawful products off the employer’s premises during
5 nonworking hours. Nothing in this subsection requires an affirmative action
6 program to correct an imbalance in the work force. This subchapter shall be liberally
7 construed for the accomplishment of this purpose.

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

9 111.32 (3g) “Credit history” means credit account information bearing on an
10 individual’s creditworthiness, credit standing, or credit capacity that is provided in
11 a consumer report, as defined in 15 USC 1681a (d).

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

13 **111.321 Prohibited bases of discrimination.** Subject to ss. 111.33 to 111.36,
14 no employer, labor organization, employment agency, licensing agency, or other
15 person may engage in any act of employment discrimination as specified in s. 111.322
16 against any individual on the basis of age, race, creed, color, disability, marital
17 status, sex, national origin, ancestry, arrest record, conviction record, credit history,
18 military service, or use or nonuse of lawful products off the employer’s premises
19 during nonworking hours.

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

21 **111.333 Credit history; exceptions and special cases.** Notwithstanding
22 s. 111.322, it is not employment discrimination because of credit history to refuse to
23 employ, admit, or license, or to bar or terminate from employment, membership, or
24 licensing, any individual if any of the following applies:

1 (1) The circumstances of the individual's credit history are substantially
2 related to the circumstances of the particular job or licensed activity.

3 (2) The individual is not bondable under a standard fidelity bond or an
4 equivalent bond when that bondability is required by state or federal law,
5 administrative regulation, or established business practice of the employer.

6 (3) The individual is employed, or seeks employment, as an officer or director
7 of a corporation, a member or manager of a limited liability company, or a partner
8 of a partnership or a joint venture; in an executive capacity; or in a capacity in which
9 the individual has the authority to hire, or terminate the employment of, an
10 individual or in which the individual is authorized to have access to confidential
11 personnel records relating to the employees of the employer.

12 (4) Except as provided in this subsection, the individual is employed, or seeks
13 employment, in a position in which the individual is authorized to have access to any
14 financial account information of a customer or employee of the employer, including
15 any financial account number, social security number, personal identification
16 number, access code, security code, password, or any other information that would
17 permit access to any financial account of such a customer or employee, and the
18 circumstances of the individual's credit history indicate gross negligence or
19 mismanagement of the individual's personal or professional finances. This exception
20 does not apply to an individual who is employed, or who seeks employment, in a
21 position in which the only financial account information of a customer or employee
22 of the employer to which the individual is authorized to have access is the credit card
23 number or debit card number of the customer or employee.

24 **SECTION 7. Initial applicability.**

