



State of Wisconsin
2023 - 2024 LEGISLATURE

LRB-1393/P2
MDE:kms&amn

DOA:.....Kirschbaum, BB0313 - Employment discrimination on the basis of
gender expression or gender identity

FOR 2023-2025 BUDGET -- NOT READY FOR INTRODUCTION

AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

EMPLOYMENT

Employment discrimination based on gender expression and gender identity

Current law prohibits discrimination in employment on the basis of a person's sex or sexual orientation. This bill prohibits employers from discriminating against an employee on the basis of the employee's gender identity or gender expression. Gender expression is defined in the bill as an individual's actual or perceived gender-related appearance, behavior, or expression, regardless of whether these traits are stereotypically associated with the individual's assigned sex at birth. Gender identity is defined in the bill as an individual's internal understanding of the individual's gender, or the individual's perceived gender identity.

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. 16.765 (1) of the statutes is amended to read:

16.765 (1) Contracting agencies, the University of Wisconsin Hospitals and Clinics Authority, the Fox River Navigational System Authority, the Wisconsin Aerospace Authority, the Lower Fox River Remediation Authority, the Wisconsin Economic Development Corporation, and the Bradley Center Sports and Entertainment Corporation shall include in all contracts executed by them a provision obligating the contractor not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability, as defined in s. 51.01 (5), sexual orientation, as defined in s. 111.32 (13m), gender expression, as defined in s. 111.32 (7j), gender identity, as defined in s. 111.32 (7k), or national origin and, except with respect to sexual orientation, gender expression, and gender identity, obligating the contractor to take affirmative action to ensure equal employment opportunities.

SECTION 2. 16.765 (2) of the statutes is amended to read:

16.765 (2) Contracting agencies, the University of Wisconsin Hospitals and Clinics Authority, the Fox River Navigational System Authority, the Wisconsin Aerospace Authority, the Lower Fox River Remediation Authority, the Wisconsin Economic Development Corporation, and the Bradley Center Sports and Entertainment Corporation shall include the following provision in every contract executed by them: “In connection with the performance of work under this contract, the contractor agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability, as defined in s. 51.01 (5), sexual orientation, gender expression, as defined in s. 111.32 (7j), gender identity, as defined in s. 111.32 (7k), or national origin. This provision shall include, ~~but not be limited to, the following:~~ employment, upgrading, demotion, or transfer; recruitment or recruitment

advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, gender expression, and gender identity, the contractor further agrees to take affirmative action to ensure equal employment opportunities. The contractor agrees to post in conspicuous places, available for employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination-~~clause~~” clause.”

SECTION 3. 36.09 (1) (e) of the statutes is amended to read:

36.09 (1) (e) Subject to par. (em), the board shall appoint a president of the system; a chancellor for each institution; a dean for each college campus; the state geologist; the director of the laboratory of hygiene; the director of the psychiatric institute; the state cartographer; and the requisite number of officers, other than the vice presidents, associate vice presidents, and assistant vice presidents of the system; faculty; academic staff; and other employees and fix the salaries, subject to the limitations under par. (j) and s. 230.12 (3) (e), the duties and the term of office for each. The board shall fix the salaries, subject to the limitations under par. (j) and s. 230.12 (3) (e), and the duties for each chancellor, vice president, associate vice president, and assistant vice president of the system. No sectarian or partisan tests or any tests based upon race, religion, national origin, ~~or sex,~~ sexual orientation, as defined in s. 111.32 (13m), gender expression, as defined in s. 111.32 (7j), or gender identity, as defined in s. 111.32 (7k), shall ever be allowed or exercised in the appointment of the employees of the system.

SECTION 4. 47.02 (3m) (f) of the statutes is amended to read:

47.02 (3m) (f) Assure that eligibility for vocational rehabilitation services under this chapter is determined without regard to the sex, race, age, creed, color,

~~or national origin, sexual orientation, as defined in s. 111.32 (13m), gender expression, as defined in s. 111.32 (7j), or gender identity, as defined in s. 111.32 (7k),~~ of the individual applying for services, that no class of individuals is found ineligible solely on the basis of type of disability, and that no age limitations for eligibility exist ~~which that~~, by themselves, would result in ineligibility for vocational rehabilitation services.

SECTION 5. 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 expression, gender identity~~, arrest record, conviction record, military service, status as a holder or nonholder of a license under s. 343.03 (3r), 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 expression, gender identity~~, arrest record, conviction record, military service, status as a holder or nonholder of a license under s. 343.03 (3r), 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.

***NOTE: This treatment, as it relates to status as a holder or nonholder of a license under s. 343.03 (3r), is a reconciliation of this draft and LRB-1790/P2.

SECTION 6. 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 expression, gender identity, arrest record, conviction record, military service, status as a holder or nonholder of a license under s. 343.03 (3r), 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.

***NOTE: This treatment, as it relates to status as a holder or nonholder of a license under s. 343.03 (3r), is a reconciliation of this draft and LRB-1790/P2.

SECTION 7. 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 expression, gender identity, arrest record, conviction record, military service, status as a holder or nonholder of a license under

s. 343.03 (3r), 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.

***NOTE: This treatment, as it relates to status as a holder or nonholder of a license under s. 343.03 (3r), is a reconciliation of this draft and LRB-1790/P2.

SECTION 8. 111.32 (7j) of the statutes is created to read:

111.32 (7j) "Gender expression" means an individual's actual or perceived gender-related appearance, behavior, or expression, regardless of whether these traits are stereotypically associated with the individual's assigned sex at birth.

SECTION 9. 111.32 (7k) of the statutes is created to read:

111.32 (7k) "Gender identity" means an individual's internal understanding of the individual's gender, or the individual's perceived gender identity.

SECTION 10. 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 expression, gender identity, arrest record, conviction record, military service, status as a holder or nonholder of a license under s. 343.03 (3r), 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.

***NOTE: This treatment, as it relates to status as a holder or nonholder of a license under s. 343.03 (3r), is a reconciliation of this draft and LRB-1790/P2.

SECTION 11. 111.36 (title) of the statutes is amended to read:

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

SECTION 12. 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, gender expression, 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 13. 111.36 (1) (c) of the statutes is amended to read:

111.36 (1) (c) Discriminating against any ~~woman~~ individual on the basis of pregnancy, childbirth, ~~maternity~~ parental 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.

SECTION 14. 111.36 (1) (d) 1. of the statutes is amended to read:

111.36 (1) (d) 1. ~~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 any individual; barring or terminating from employment, membership, or licensure any individual; or to discriminate discriminating against an any individual in promotion, in compensation, or in the terms, conditions, or privileges of employment because of the individual's sexual orientation; or, gender expression, or gender identity.~~

SECTION 15. 111.36 (1) (d) 2. of the statutes is amended to read:

111.36 (1) (d) 2. ~~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~~ the person has opposed any discriminatory practices under this paragraph or because ~~he or she~~ the person has made a complaint, testified or assisted in any proceeding under this paragraph.

SECTION 16. 111.36 (4) of the statutes is created to read:

111.36 (4) Notwithstanding s. 111.322, it is not employment discrimination for an employer to require an employee to adhere to reasonable workplace appearance, grooming, and dress standards not precluded by other provisions of state or federal law, provided that an employer shall allow an employee to appear or dress consistently with the employee's gender identity or gender expression.

SECTION 17. 111.81 (12) (b) of the statutes is amended to read:

111.81 (12) (b) Which discriminates with regard to the terms or conditions of membership because of race, color, creed, sex, age, sexual orientation, gender expression, as defined in s. 111.32 (7j), gender identity, as defined in s. 111.32 (7k), or national origin.

SECTION 18. 118.20 (1) of the statutes is amended to read:

118.20 (1) No discrimination because of sex, except where sex is a bona fide occupational qualification as defined in s. 111.36 (2), sexual orientation, as defined in s. 111.32 (13m), gender expression, as defined in s. 111.32 (7j), gender identity, as defined in s. 111.32 (7k), race, nationality national origin, or political or religious affiliation may be practiced in the employment of teachers or administrative personnel in public schools or in their assignment or reassignment. No questions of any nature or form relative to sex, except where sex is a bona fide occupational qualification as defined in s. 111.36 (2), sexual orientation, as defined in s. 111.32 (13m), gender expression, as defined in s. 111.32 (7j), gender identity, as defined in s. 111.32 (7k), race, nationality national origin, or political or religious affiliation may be asked applicants for teaching or administrative positions in the public schools either by public school officials or employees or by teachers agencies or placement bureaus.

SECTION 19. 230.01 (2) (b) of the statutes is amended to read:

230.01 (2) (b) It is the policy of this state to provide for equal employment opportunity by ensuring that all personnel actions including hire, tenure or term, and condition or privilege of employment be based on the ability to perform the duties and responsibilities assigned to the particular position without regard to age, race, creed or religion, color, disability, sex, national origin, ancestry, sexual orientation, gender expression, as defined in s. 111.32 (7j), gender identity, as defined in s. 111.32 (7k), ~~or political affiliation, or status as a holder or nonholder of a license under s. 343.03 (3r).~~

***NOTE: This treatment, as it relates to status as a holder or nonholder of a license under s. 343.03 (3r), is a reconciliation of this draft and LRB-1790/P2.

SECTION 20. 230.18 of the statutes is amended to read:

230.18 Discrimination prohibited. No question in any form of application or in any evaluation used in the hiring process may be so framed as to elicit information concerning the partisan political or religious opinions or affiliations of any applicant nor may any inquiry be made concerning ~~such~~ those opinions or affiliations and all disclosures ~~thereof~~ of those opinions or affiliations shall be discountenanced except that the director may evaluate the competence and impartiality of applicants for positions such as clinical chaplain in a state institutional program. No discriminations may be exercised in the recruitment, application, or hiring process against or in favor of any person because of the person's political or religious opinions or affiliations or because of age, sex, disability, race, color, sexual orientation, gender expression, as defined in s. 111.32 (7j), gender identity, as defined in s. 111.32 (7k), national origin, or ancestry, or status as a holder or nonholder of a license under s. 343.03 (3r) except as otherwise provided.

****NOTE: This treatment, as it relates to status as a holder or nonholder of a license under s. 343.03 (3r), is a reconciliation of this draft and LRB-1790/P2.

SECTION 21. 234.29 of the statutes is amended to read:

234.29 Equality of occupancy and employment. The authority shall require that occupancy of housing projects assisted under this chapter be open to all regardless of sex, race, religion, sexual orientation, status as a holder or nonholder of a license under s. 343.03 (3r), status as a victim of domestic abuse, sexual assault, or stalking, as defined in s. 106.50 (1m) (u), or creed, and that contractors and subcontractors engaged in the construction of economic development or housing projects, shall provide an equal opportunity for employment, without discrimination as to sex, race, religion, sexual orientation, gender expression, as defined in s. 111.32 (7j), gender identity, as defined in s. 111.32 (7k), or creed.

***NOTE: This treatment, as it relates to status as a holder or nonholder of a license under s. 343.03 (3r), is a reconciliation of this draft and LRB-1790/P2.

SECTION 22. 321.37 of the statutes is amended to read:

321.37 No discrimination. No person, otherwise qualified, may be denied membership in the national guard or state defense force because of sex, color, race, creed, or sexual orientation, gender expression, as defined in s. 111.32 (7j), or gender identity, as defined in s. 111.32 (7k), and no member of the national guard or state defense force may be segregated within the national guard or state defense force on the basis of sex, color, race, creed, or sexual orientation, gender expression, as defined in s. 111.32 (7j), or gender identity, as defined in s. 111.32 (7k). Nothing in this section prohibits separate facilities for persons of different sexes with regard to dormitory accommodations, toilets, showers, saunas, and dressing rooms, except that no person may be denied equal access to facilities most consistent with the person's gender identity.

(END)