



2011 SENATE BILL 246

October 19, 2011 – Introduced by Senators TAYLOR and HANSEN, cosponsored by Representatives BERCEAU, GRIGSBY, ZAMARRIPA, PASCH, HEBL, BEWLEY, ROYS, POCAN, TURNER, FIELDS, E. COGGS, POPE-ROBERTS, C. TAYLOR and SINICKI. Referred to Committee on Labor, Public Safety, and Urban Affairs.

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.

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, use or nonuse of a lawful product off the employer's premises during nonworking hours, or declining to attend a meeting or to participate in any communication about religious or political matters. 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 bill prohibits employment discrimination based on credit history. The bill specifies that employment discrimination because of credit history includes an employer, labor organization, employment agency, licensing agency, or other person requesting an applicant, employee, member, licensee, or any other individual, on an application form or otherwise, to authorize that person to procure the individual's

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credit history, except that it is not employment discrimination to request that authorization: 1) if the circumstances of an individual's credit history are substantially related to the circumstances of a particular job or licensed activity; or 2) if employment, membership, or licensing depends on the bondability of the individual and the individual may not be bondable due to his or her credit rating. The bill also specifies 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 if: 1) the circumstances of an individual's credit history are substantially related to the circumstances of the particular job; or 2) if the individual is not bondable when bondability is required by state or federal law, administrative regulation, or established business practice of the employer.

Under the bill, "credit history" means information 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.

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:

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, use or
6 nonuse of lawful products off the employer's premises during nonworking hours, or
7 declining to attend a meeting or to participate in any communication about religious
8 matters or political matters, substantially and adversely affects the general welfare

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1 of the state. Employers, labor organizations, employment agencies, and licensing
2 agencies that deny employment opportunities and discriminate in employment
3 against properly qualified individuals solely because of their age, race, creed, color,
4 disability, marital status, sex, national origin, ancestry, sexual orientation, arrest
5 record, conviction record, credit history, military service, use or nonuse of lawful
6 products off the employer's premises during nonworking hours, or declining to
7 attend a meeting or to participate in any communication about religious matters or
8 political matters, deprive those individuals of the earnings that are necessary to
9 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, use or nonuse of lawful products off the
16 employer's premises during nonworking hours, or declining to attend a meeting or
17 to participate in any communication about religious matters or political matters, and
18 to encourage the full, nondiscriminatory utilization of the productive resources of the
19 state to the benefit of the state, the family, and all the people of the state. It is the
20 intent of the legislature in promulgating this subchapter to encourage employers to
21 evaluate an employee or applicant for employment based upon the individual
22 qualifications of the employee or applicant rather than upon a particular class to
23 which the individual may belong.

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

SENATE BILL 246**SECTION 3**

1 111.31 (3) In the interpretation and application of this subchapter, and
2 otherwise, it is declared to be the public policy of the state to encourage and foster
3 to the fullest extent practicable the employment of all properly qualified individuals
4 regardless of age, race, creed, color, disability, marital status, sex, national origin,
5 ancestry, sexual orientation, arrest record, conviction record, credit history, military
6 service, use or nonuse of lawful products off the employer's premises during
7 nonworking hours, or declining to attend a meeting or to participate in any
8 communication about religious matters or political matters. Nothing in this
9 subsection requires an affirmative action program to correct an imbalance in the
10 work force. This subchapter shall be liberally construed for the accomplishment of
11 this purpose.

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

13 111.32 (3g) "Credit history" means information provided in a consumer report,
14 as defined in 15 USC 1681a (d).

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

16 **111.321 Prohibited bases of discrimination.** Subject to ss. 111.33 to
17 111.365, no employer, labor organization, employment agency, licensing agency, or
18 other person may engage in any act of employment discrimination as specified in s.
19 111.322 against any individual on the basis of age, race, creed, color, disability,
20 marital status, sex, national origin, ancestry, arrest record, conviction record, credit
21 history, military service, use or nonuse of lawful products off the employer's premises
22 during nonworking hours, or declining to attend a meeting or to participate in any
23 communication about religious matters or political matters.

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

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1 **111.333 Credit history; exceptions and special cases.** (1) Employment
2 discrimination because of credit history includes an employer, labor organization,
3 employment agency, licensing agency, or other person requesting an applicant,
4 employee, member, licensee, or any other individual, on an application form or
5 otherwise, to authorize that person to procure the individual's credit history, except
6 that it is not employment discrimination to request that authorization if any of the
7 following applies:

8 (a) The circumstances of an individual's credit history are substantially related
9 to the circumstances of a particular job or licensed activity.

10 (b) Employment, membership, or licensing depends on the bondability of the
11 individual under a standard fidelity bond or when an equivalent bond is required by
12 state or federal law, administrative regulation, or established business practice of
13 the employer and the individual may not be bondable due to his or her credit history.

14 **(2)** Notwithstanding s. 111.322, it is not employment discrimination because
15 of credit history to refuse to employ, admit, or license, or to bar or terminate from
16 employment, membership, or licensing, any individual if any of the following applies:

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

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

22 **SECTION 7. Initial applicability.**

23 (1) This act first applies to an employee who is affected by a collective
24 bargaining agreement that contains provisions inconsistent with this act on the day

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1 on which the collective bargaining agreement expires or is extended, modified, or
2 renewed, whichever occurs first.

3 (END)