

1       **AN ACT** *to amend* 36.34 (1) (a), 39.40 (1) (intro.), 39.44 (1) (a) and 560.036 (1) (f)  
 2           (intro.); and *to create* 16.765 (3m), 36.11 (3) (am) and 230.01 (2m) of the statutes;  
 3       **relating to:** affirmative action practices in state contracting and state hiring, and the  
 4       consideration of race or ethnicity in the University of Wisconsin System and by the  
 5       higher educational aids board.

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

**JOINT LEGISLATIVE COUNCIL PREFATORY NOTE:** This draft was prepared for the joint legislative council’s special committee on affirmative action.

Current law authorizes numerous instances of affirmative action and other permissible considerations of race or ethnicity. For example, s. 16.75, stats., allows for exceptions to low-bid contract requirements for minority businesses and s. 16.765, stats., directs contracting agencies, and others, to take affirmative action to ensure equal employment opportunities.

According to testimony received by the committee, under certain circumstances the University of Wisconsin considers the race or ethnicity of an applicant as a factor weighing in favor of the admission of the applicant to the University of Wisconsin.

Sections 36.34, 39.40, and 39.44, stats., allow the University of Wisconsin and the higher educational aids board to award grants and loans to minority students in the University of Wisconsin, the Wisconsin Technical College System, and private institutions of higher education located in Wisconsin.

Section 230.01 (2), stats., states that it is the policy of the state to take affirmative action in the context of state civil service.

Chapter 560, stats., contains programs intended to provide assistance to minority business enterprises. The definitions used for these programs are cross-referenced elsewhere in the Wisconsin statutes for use in similar programs.

Generally, under current law, individuals self-report their status as a member of a racial or ethnic group. However, s. Comm 105.04, Wis.

Adm. Code, sets forth a procedure other than self-identification that is used to determine the race or ethnicity of an individual under the department of commerce minority business program. It states:

“The department shall require an individual to provide evidence of ethnic or racial heritage in one or more of the minority groups defined in s. Comm 105.02 (29).

(1) When available, such evidence shall include one or more of the following:

(a) Birth certificates, American Indian tribal registrations, naturalization certificates and permanent residence certificates.

(b) Birth certificate or official record of blood parent or grandparent claimed in substantiation of the minority status of the individual.

(2) When evidence under sub. (1) is not available, the department may accept the following:

(a) Evidence that the individual is commonly recognized as a minority group member. This may include, but is not limited to, a combination of the following: driver’s license, draft registration or other official records which document ethnic or racial heritage; whether the individual’s birth surname is commonly recognized as a minority surname; and notarized third party statements.

(b) An individual who is visibly identifiable as a minority group member may not be required to provide documentation of his or her ethnic or racial heritage but shall be required to submit an unaltered photograph.”.

This draft would limit eligibility for inclusion in affirmative action programs and other programs based on race or ethnicity to persons with at least 25% heritage in a race or ethnicity that is eligible for inclusion in the program.

Under current law, s. 946.32, stats., states that anyone who “under oath or affirmation makes or subscribes a false statement which he or she does not believe is true, when such oath or affirmation is authorized or required by law or is required by any public officer or governmental agency as a prerequisite to such officer or agency taking some official action” is guilty of a class H felony. The penalty for a class H felony is a fine not to exceed \$10,000 or imprisonment not to exceed 6 years, or both.

The draft would require persons who benefit from considerations based on race to affirm, subject to the penalty under s. 946.32, stats., that he or she has at least 25% heritage in a race or ethnicity that is eligible for

beneficial consideration. Thus, under the draft, any person who falsely affirms his or her ethnic or racial heritage for purposes of any of the programs or purposes described above would be subject to a felony conviction and a fine not to exceed \$10,000 or imprisonment not to exceed 6 years, or both. The draft does not specify how a person may substantiate or disprove a claim related to a person's racial or ethnic heritage.

1           **SECTION 1.** 16.765 (3m) of the statutes is created to read:

2           16.765 **(3m)** For purposes of affirmative action under subsections (1) and (2),  
3           contracting agencies, the University of Wisconsin Hospitals and Clinics Authority, the Fox  
4           River Navigational System Authority, the Wisconsin Aerospace Authority, the Health  
5           Insurance Risk-Sharing Plan Authority, and the Bradley Center Sports and Entertainment  
6           Corporation may not consider the race or ethnicity of an employee or applicant for  
7           employment unless the employee or applicant for employment affirms, subject to the penalty  
8           under s. 946.32, that he or she has at least 25% heritage in one or more of the races or ethnicities  
9           eligible for affirmative action.

10           **SECTION 2.** 36.11 (3) (am) of the statutes is created to read:

11           36.11 **(3)** (am) The board may not consider the race or ethnicity of an applicant for  
12           admission as a factor weighing in favor of admission of the person to the University of  
13           Wisconsin system unless the applicant affirms, subject to the penalty under s. 946.32, that he  
14           or she has at least 25% heritage in one or more of the races or ethnicities eligible for beneficial  
15           consideration.

16           **SECTION 3.** 36.34 (1) (a) of the statutes is amended to read:

17           36.34 **(1)** (a) In this subsection "minority undergraduate" means an undergraduate  
18           student who affirms, subject to the penalty under s. 946.32, that he or she is, by at least 25%  
19           heritage, any of the following:

20           1. Is a A Black American.

1           2. ~~Is an~~ An American Indian.

2           3. ~~Is a~~ A Hispanic, as defined in s. 560.036 (1) (d).

3           4. ~~Is a~~ A person who is admitted to the United States after December 31, 1975, and who  
4 either is a former citizen of Laos, Vietnam or Cambodia or whose ancestor was or is a citizen  
5 of Laos, Vietnam or Cambodia.

6           **SECTION 4.** 39.40 (1) (intro.) of the statutes is amended to read:

7           39.40 (1) (intro.) In this section “minority student” means a student who affirms, subject  
8 to the penalty under s. 946.32, that he or she is, by at least 25% heritage, any of the following:

9           **SECTION 5.** 39.44 (1) (a) of the statutes is amended to read:

10          39.44 (1) (a) In this section “minority undergraduate” means an undergraduate student  
11 who affirms, subject to the penalty under s. 946.32, that he or she is, by at least 25% heritage,  
12 any of the following:

13          1. ~~Is a~~ A Black American.

14          2. ~~Is an~~ An American Indian.

15          3. ~~Is a~~ A Hispanic, as defined in s. 560.036 (1) (d).

16          4. ~~Is a~~ A person who is admitted to the United States after December 31, 1975, and who  
17 either is a former citizen of Laos, Vietnam or Cambodia or whose ancestor was or is a citizen  
18 of Laos, Vietnam or Cambodia.

19          **SECTION 6.** 230.01 (2m) of the statutes is created to read:

20          230.01 (2m) For purposes of affirmative action under this chapter, the race or ethnicity  
21 of an employee or applicant for employment may not be considered unless the employee or  
22 applicant for employment affirms, subject to the penalty under s. 946.32, that he or she has  
23 at least 25% heritage in one or more of the races or ethnicities eligible for affirmative action.

24          **SECTION 7.** 560.036 (1) (f) (intro.) of the statutes is amended to read:

