



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-5577/1
KRP:emw

2017 SENATE BILL 867

March 7, 2018 - Introduced by Senator ERPENBACH, cosponsored by Representative HESSELBEIN. Referred to Committee on Labor and Regulatory Reform.

1 **AN ACT to renumber and amend** 111.36 (1) (d) 1. and 111.36 (1) (d) 2.; **to amend**
2 111.31 (1), 111.31 (2), 111.31 (3), 111.321, 111.36 (title), 111.36 (1) (intro.) and
3 111.36 (1) (br); and **to create** 111.32 (7j) of the statutes; **relating to:** prohibiting
4 employment discrimination on the basis of an individual's gender identity.

Analysis by the Legislative Reference Bureau

Currently, the fair employment law prohibits discrimination in employment and licensing 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. This bill adds gender identity as a prohibited basis for discrimination under the fair employment law.

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:

5 **SECTION 1.** 111.31 (1) of the statutes is amended to read:

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1 111.31 (1) The legislature finds that the practice of unfair discrimination in
2 employment against properly qualified individuals by reason of their age, race,
3 creed, color, disability, marital status, sex, national origin, ancestry, sexual
4 orientation, gender identity, arrest record, conviction record, military service, use or
5 nonuse of lawful products off the employer's premises during nonworking hours, or
6 declining to attend a meeting or to participate in any communication about religious
7 matters or political matters, substantially and adversely affects the general welfare
8 of the state. Employers, labor organizations, employment agencies, and licensing
9 agencies that deny employment opportunities and discriminate in employment
10 against properly qualified individuals solely because of their age, race, creed, color,
11 disability, marital status, sex, national origin, ancestry, sexual orientation, gender
12 identity, arrest record, conviction record, military service, use or nonuse of lawful
13 products off the employer's premises during nonworking hours, or declining to
14 attend a meeting or to participate in any communication about religious matters or
15 political matters, deprive those individuals of the earnings that are necessary to
16 maintain a just and decent standard of living.

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

18 111.31 (2) It is the intent of the legislature to protect by law the rights of all
19 individuals to obtain gainful employment and to enjoy privileges free from
20 employment discrimination because of age, race, creed, color, disability, marital
21 status, sex, national origin, ancestry, sexual orientation, gender identity, arrest
22 record, conviction record, military service, use or nonuse of lawful products off the
23 employer's premises during nonworking hours, or declining to attend a meeting or
24 to participate in any communication about religious matters or political matters, and
25 to encourage the full, nondiscriminatory utilization of the productive resources of the

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1 state to the benefit of the state, the family, and all the people of the state. It is the
2 intent of the legislature in promulgating this subchapter to encourage employers to
3 evaluate an employee or applicant for employment based upon the individual
4 qualifications of the employee or applicant rather than upon a particular class to
5 which the individual may belong.

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

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

18 **SECTION 4.** 111.32 (7j) of the statutes is created to read:

19 111.32 (7j) "Gender identity" means an individual's self-identification as male,
20 female, or something else, regardless of the individual's assigned sex at birth.

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

22 **111.321 Prohibited bases of discrimination.** Subject to ss. 111.33 to
23 111.365, no employer, labor organization, employment agency, licensing agency, or
24 other person may engage in any act of employment discrimination as specified in s.
25 111.322 against any individual on the basis of age, race, creed, color, disability,

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1 marital status, sex, national origin, ancestry, sexual orientation, gender identity,
2 arrest record, conviction record, military service, use or nonuse of lawful products off
3 the employer's premises during nonworking hours, or declining to attend a meeting
4 or to participate in any communication about religious matters or political matters.

5 **SECTION 6.** 111.36 (title) of the statutes is amended to read:

6 **111.36 (title) Sex, sexual orientation, or gender identity; exceptions**
7 **and special cases.**

8 **SECTION 7.** 111.36 (1) (intro.) of the statutes is amended to read:

9 111.36 (1) (intro.) Employment discrimination because of sex, sexual
10 orientation, or gender identity includes, ~~but is not limited to,~~ any of the following
11 actions by any an employer, labor organization, employment agency, licensing
12 agency, or other person:

13 **SECTION 8.** 111.36 (1) (br) of the statutes is amended to read:

14 111.36 (1) (br) Engaging in harassment that consists of unwelcome verbal or
15 physical conduct directed at another individual because of that individual's gender
16 or gender identity, other than the conduct described in par. (b), and that has the
17 purpose or effect of creating an intimidating, hostile, or offensive work environment
18 or has the purpose or effect of substantially interfering with that individual's work
19 performance. Under this paragraph, substantial interference with an employee's
20 work performance or creation of an intimidating, hostile, or offensive work
21 environment is established when the conduct is such that a reasonable person under
22 the same circumstances as the employee would consider the conduct sufficiently
23 severe or pervasive to interfere substantially with the person's work performance or
24 to create an intimidating, hostile, or offensive work environment.

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1 **SECTION 9.** 111.36 (1) (d) 1. of the statutes is renumbered 111.36 (1) (d) and
2 amended to read:

3 111.36 (1) (d) ~~For any employer, labor organization, licensing agency or~~
4 ~~employment agency or other person to refuse~~ Refusing to hire, employ, admit,
5 license, ~~or to bar or terminate an individual; barring or terminating~~ from
6 employment, membership, or licensure any an individual,~~;~~ or ~~to discriminate~~
7 discriminating against an individual in promotion, compensation, or ~~in the~~ terms,
8 conditions, or privileges of employment because of the individual's sexual
9 orientation; or gender identity.

10 **SECTION 10.** 111.36 (1) (d) 2. of the statutes is renumbered 111.36 (1) (e) and
11 amended to read:

12 111.36 (1) (e) ~~For any employer, labor organization, licensing agency or~~
13 ~~employment agency or other person to discharge~~ Discharging or otherwise
14 discriminate discriminating against any a person because ~~he or she~~ the person has
15 opposed any discriminatory practices under ~~this paragraph~~ par. (d) or because ~~he or~~
16 ~~she~~ the person has made a complaint, testified, or assisted in any proceeding under
17 ~~this paragraph~~ par. (d).

18

(END)