



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-3272/1
MED&MLJ:kjf&wlj

2017 BILL

1 **AN ACT** *to repeal* 452.05 (1) (h) and 452.07 (2); *to renumber* 111.335 (1) (a),
2 111.335 (1) (cg) 1., 111.335 (1) (cg) 2., 111.335 (1) (cg) 3., 111.335 (1) (cs), 111.335
3 (1) (cx) and 111.335 (1) (d) 2.; *to renumber and amend* 111.335 (1) (b), 111.335
4 (1) (c), 111.335 (1) (cm), 111.335 (1) (cv) and 111.335 (1) (d) 1.; *to amend* 440.03
5 (13) (d), 452.139 (3) and 452.25 (2) (a); *to repeal and recreate* 440.03 (13) (bm)
6 and 440.03 (13) (d); and *to create* 111.335 (1m), 111.335 (2) (title), 111.335 (3)
7 (title) and 111.335 (4) of the statutes; **relating to:** discrimination based on
8 arrest or conviction record under the fair employment law.

Analysis by the Legislative Reference Bureau

This bill makes various changes to the fair employment law with respect to the ability of state and local governmental agencies to deny a license to an individual based on the individual's arrest or conviction record.

Under the current fair employment law, it is an unlawful act of employment discrimination for a state or local agency that has the authority to grant or deny licenses to refuse to license an individual on the basis of the individual's arrest or conviction record. (The fair employment law defines "license" as "the whole or any part of any permit, certificate, approval, registration, charter or similar form of permission required by a state or local unit of government for the undertaking,

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practice or continuation of any occupation or profession.”) However, there are a number of exceptions to the fair employment law, including exceptions that allow licensing agencies to 1) deny a license to an individual who is subject to a pending criminal charge if the circumstances of the charge substantially relate to the circumstances of the particular licensed activity; or 2) deny a license to an individual who has been convicted of any felony, misdemeanor, or other offense the circumstances of which substantially relate to the circumstances of the particular licensed activity.

This bill makes a number of modifications to the fair employment law as it relates to discrimination based on arrest or conviction record in licensing, including all of the following:

1. The bill narrows the exception above that allows for denial of a license due to arrest record so that a licensing agency may only deny a license if the pending charge is for a crime against life and bodily security or one of certain crimes against children. The circumstances of the charge would also have to substantially relate to the circumstances of the particular licensed activity, as under current law.

2. The bill qualifies the exception above that allows for denial of a license due to conviction record in the following ways:

a. The bill prohibits a licensing agency from denying a license under the exception because the individual was adjudicated delinquent for an offense under the Juvenile Justice Code, unless the offense for which the individual was adjudicated delinquent was one of certain crimes against life or bodily security or one of certain crimes against children.

b. If a licensing agency denies a license under the exception, the licensing agency must state its reasons for the denial in writing, and must allow the individual to show evidence of rehabilitation and fitness to engage in the licensed activity as provided in the bill. These requirements, however, do not apply if the conviction was for one of certain crimes against life or bodily security or one of certain crimes against children.

3. The bill requires state agencies that may deny licenses due to an individual's conviction record under the exception to promulgate rules to allow an individual, without having to submit a full application for a license, to apply to the agency for a binding determination of whether he or she would be disqualified from obtaining the license based on his or her conviction record. The bill repeals a similar procedure outlined under current law that applies only to the Real Estate Examining Board.

The changes in the bill to the fair employment law apply only to licensing by licensing agencies, and do not otherwise affect the fair employment law as it applies to decisions about whether to employ an individual based on his or her arrest or conviction record.

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:

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1 **SECTION 1.** 111.335 (1) (a) of the statutes is renumbered 111.335 (2) (a).

2 **SECTION 2.** 111.335 (1) (b) of the statutes is renumbered 111.335 (2) (b) and
3 amended to read:

4 111.335 (2) (b) Notwithstanding s. 111.322, it is not employment discrimination
5 because of arrest record to refuse to employ or license, or to suspend from
6 employment or licensing, any individual who is subject to a pending criminal charge
7 if the circumstances of the charge substantially relate to the circumstances of the
8 particular job or licensed activity, except as provided in sub. (4) (a).

9 **SECTION 3.** 111.335 (1) (c) of the statutes is renumbered 111.335 (3) (a) and
10 amended to read:

11 111.335 (3) (a) Notwithstanding s. 111.322, it is not employment discrimination
12 because of conviction record to refuse to employ or license, or to bar or terminate from
13 employment or licensing, any individual who if any of the following applies to the
14 individual:

15 1. Has Subject to sub. (4) (b) to (d), the individual has been convicted of any
16 felony, misdemeanor, or other offense the circumstances of which substantially
17 relate to the circumstances of the particular job or licensed activity; ~~or,~~

18 2. Is The individual is not bondable under a standard fidelity bond or an
19 equivalent bond where such bondability is required by state or federal law,
20 administrative regulation, or established business practice of the employer.

21 **SECTION 4.** 111.335 (1) (cg) 1. of the statutes is renumbered 111.335 (4) (i) 1.

22 **SECTION 5.** 111.335 (1) (cg) 2. of the statutes is renumbered 111.335 (4) (i) 2.

23 **SECTION 6.** 111.335 (1) (cg) 3. of the statutes is renumbered 111.335 (3) (b).

24 **SECTION 7.** 111.335 (1) (cm) of the statutes is renumbered 111.335 (3) (c) and
25 amended to read:

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1 111.335 (3) (c) Notwithstanding s. 111.322, it is not employment discrimination
2 because of conviction record to refuse to employ as an installer of burglar alarms a
3 person who has been convicted of a felony and has not been pardoned for that felony.

4 **SECTION 8.** 111.335 (1) (cs) of the statutes is renumbered 111.335 (4) (h).

5 **SECTION 9.** 111.335 (1) (cv) of the statutes is renumbered 111.335 (3) (d) and
6 amended to read:

7 111.335 (3) (d) Notwithstanding s. 111.322, it is not employment discrimination
8 because of conviction record to refuse to employ in a position in the classified service
9 a person who has been convicted under 50 USC, ~~Appendix, section 462~~ 3811 for
10 refusing to register with the selective service system and who has not been pardoned.

11 **SECTION 10.** 111.335 (1) (cx) of the statutes, as affected by 2017 Wisconsin Act
12 59, is renumbered 111.335 (3) (f).

13 **SECTION 11.** 111.335 (1) (d) 1. of the statutes is renumbered 111.335 (1m) (a) and
14 amended to read:

15 111.335 (1m) (a) ~~In this paragraph, “educational~~ “Educational agency” means
16 a school district, a cooperative educational service agency, a county children with
17 disabilities education board, a state prison under s. 302.01, a juvenile correctional
18 facility, as defined in s. 938.02 (10p), a secured residential care center for children
19 and youth, as defined in s. 938.02 (15g), the Wisconsin Center for the Blind and
20 Visually Impaired, the Wisconsin Educational Services Program for the Deaf and
21 Hard of Hearing, the Mendota Mental Health Institute, the Winnebago Mental
22 Health Institute, a state center for the developmentally disabled, a private school,
23 a charter school, a private, nonprofit, nonsectarian agency under contract with a
24 school board under s. 118.153 (3) (c), or a nonsectarian private school or agency under
25 contract with the board of school directors in a 1st class city under s. 119.235 (1).

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1 **SECTION 12.** 111.335 (1) (d) 2. of the statutes is renumbered 111.335 (3) (e).

2 **SECTION 13.** 111.335 (1m) of the statutes is created to read:

3 111.335 **(1m)** DEFINITIONS. In this section:

4 (b) “Exempt offense” means any of the following:

5 1. A violation specified in ch. 940 or s. 948.02, 948.025, 948.03, 948.05, 948.051,
6 948.055, 948.06, 948.07, 948.075, 948.08, 948.085, or 948.095.

7 2. A violation of the law of another jurisdiction that would be a violation
8 described in subd. 1. if committed in this state.

9 (c) “State licensing agency” means a licensing agency that is an agency, as
10 defined in s. 227.01 (1).

11 (d) “Violent crime against a child” means any of the following:

12 1. A violation of s. 948.02 (1) or (2), 948.025, 948.03 (2) (a) or (c) or (5) (a) 1., 2.,
13 3., or 4., 948.05, 948.051, 948.055, 948.07, 948.08, 948.085, 948.095, or 948.30 (2).

14 2. A felony violation of s. 948.03 (3) or (5) (a) 4.

15 3. A violation of the law of another jurisdiction that would be a violation
16 described in subd. 1. or 2. if committed in this state.

17 **SECTION 14.** 111.335 (2) (title) of the statutes is created to read:

18 111.335 **(2)** (title) DISCRIMINATION BECAUSE OF ARREST RECORD; EXCEPTIONS.

19 **SECTION 15.** 111.335 (3) (title) of the statutes is created to read:

20 111.335 **(3)** (title) DISCRIMINATION BECAUSE OF CONVICTION RECORD; EXCEPTIONS.

21 **SECTION 16.** 111.335 (4) of the statutes is created to read:

22 111.335 **(4)** DISCRIMINATION IN LICENSING. (a) It is employment discrimination
23 because of arrest record for a licensing agency to refuse to license any individual
24 under sub. (2) (b) or to suspend an individual from licensing under sub. (2) (b) solely
25 because the individual is subject to a pending criminal charge, unless the

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1 circumstances of the charge substantially relate to the circumstances of the
2 particular licensed activity and the charge is for any of the following:

3 1. An exempt offense.

4 2. A violent crime against a child.

5 (b) It is employment discrimination because of conviction record for a licensing
6 agency to refuse to license any individual under sub. (3) (a) 1. or to bar or terminate
7 an individual from licensing under sub. (3) (a) 1. because the individual was
8 adjudicated delinquent under ch. 938 for an offense other than an exempt offense.

9 (c) 1. If a licensing agency refuses to license an individual under sub. (3) (a) 1.
10 or bars or terminates an individual from licensing under sub. (3) (a) 1., the licensing
11 agency shall, subject to subd. 2., do all of the following:

12 a. State in writing its reasons for doing so, including a statement of how the
13 circumstances of the offense relate to the particular licensed activity.

14 b. Allow the individual to show evidence of rehabilitation and fitness to engage
15 in the licensed activity under par. (d). If the individual shows competent evidence
16 of sufficient rehabilitation and fitness to perform the licensed activity under par. (d),
17 the licensing agency may not refuse to license the individual or bar or terminate the
18 individual from licensing based on that conviction.

19 2. The requirements under subd. 1. a. and b. do not apply if a conviction is for
20 an exempt offense.

21 (d) 1. Competent evidence of sufficient rehabilitation and fitness to perform the
22 licensed activity under par. (c) 1. b. may be established by the production of any of
23 the following:

24 a. The individual's most recent certified copy of a federal department of defense
25 form DD-214 showing the person's honorable discharge, or separation under

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1 honorable conditions, from the U.S. armed forces for military service rendered
2 following conviction for any offense that would otherwise disqualify the individual
3 from the license sought, except that the discharge form is not competent evidence of
4 sufficient rehabilitation and fitness to perform the licensed activity if the individual
5 was convicted of any misdemeanor or felony subsequent to the date of the honorable
6 discharge or separation from military service.

7 b. A copy of the local, state, or federal release document; and either a copy of
8 the relevant department of corrections document showing completion of probation,
9 extended supervision, or parole; or other evidence that at least one year has elapsed
10 since release from any local, state, or federal correctional institution without
11 subsequent conviction of a crime along with evidence showing compliance with all
12 terms and conditions of probation, extended supervision, or parole.

13 2. In addition to the documentary evidence that may be provided under subd.
14 1. to show sufficient rehabilitation and fitness to perform the licensed activity under
15 par. (c) 1. b., the licensing agency shall consider any of the following evidence
16 presented by the individual:

17 a. Evidence of the nature and seriousness of any offense of which he or she was
18 convicted.

19 b. Evidence of all circumstances relative to the offense, including mitigating
20 circumstances or social conditions surrounding the commission of the offense.

21 c. The age of the individual at the time the offense was committed.

22 d. The length of time that has elapsed since the offense was committed.

23 e. Letters of reference by persons who have been in contact with the individual
24 since the applicant's release from any local, state, or federal correctional institution.

25 f. All other relevant evidence of rehabilitation and present fitness presented.

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1 (e) A state licensing agency that may refuse to license individuals under sub.
2 (3) (a) 1. or that may bar or terminate an individual from licensure under sub. (3) (a)
3 1. shall publish on the agency's Internet site a document indicating the offenses or
4 kinds of offenses that may result in such a refusal, bar, or termination.

5 (f) 1. A state licensing agency that may refuse to license individuals under sub.
6 (3) (a) 1. or that may bar or terminate individuals from licensing under sub. (3) (a)
7 1. shall allow an individual who does not possess a license to, without submitting a
8 full application and without paying the fees applicable to applicants, apply to the
9 agency for a determination of whether the individual would be disqualified from
10 obtaining the license due to his or her conviction record.

11 2. A state licensing agency shall make a determination under subd. 1. in
12 writing and send the determination to the applicant no later than 30 days after
13 receiving the application for a determination.

14 3. A determination made under subd. 1., with respect to convictions reviewed
15 by the state licensing agency as part of the determination, shall be binding upon the
16 agency if the individual subsequently applies for the applicable license, unless there
17 is information relevant to the determination that was not available to the agency at
18 the time of the determination.

19 4. A state licensing agency may require a fee to be paid to the agency for a
20 determination issued under subd. 1. of an amount necessary to cover the cost of
21 making the determination.

22 5. A state licensing agency described in subd. 1. shall create a form on which
23 an individual applying for a determination under subd. 1. may do all of the following:

24 a. State whether he or she has ever been convicted of a crime.

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1 b. Identify the date of conviction for any crime described under subd. 1. a. and
2 describe the nature and circumstances of the crime.

3 c. Sign his or her name to attest to the accuracy and truthfulness of the
4 information under subd. 1. a. and b. and, if applicable, to acknowledge the agency's
5 authority to conduct an investigation on the individual.

6 6. A state licensing agency described in subd. 1. shall promulgate rules to
7 implement this paragraph, except that the department of safety and professional
8 services may promulgate rules defining uniform procedures for making such
9 determinations to be used by the department, the real estate appraisers board, and
10 all examining boards and affiliated credentialing boards attached to the department
11 or an examining board.

12 **SECTION 17.** 440.03 (13) (bm) of the statutes is repealed and recreated to read:

13 440.03 (13) (bm) 1. Upon request by a credentialing board or other board in the
14 department, the department shall conduct an investigation to determine whether an
15 individual seeking a determination by that board under s. 111.335 (4) (f) has an
16 arrest or conviction record. In conducting an investigation under this subdivision,
17 the department may require an individual to provide any information that is
18 necessary for the investigation.

19 2. Upon application seeking a determination by the department under s.
20 111.335 (4) (f), the department shall conduct an investigation to determine whether
21 the individual has an arrest or conviction record. In conducting an investigation
22 under this subdivision, the department may require an individual to provide any
23 information that is necessary for the investigation.

24 **SECTION 18.** 440.03 (13) (d) of the statutes is amended to read:

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1 440.03 (13) (d) The department shall charge an applicant, including an
2 applicant seeking a determination under s. 111.335 (4) (f), any fees, costs, or other
3 expenses incurred in conducting any investigation under this subsection or s. 440.26.
4 The department shall charge an applicant seeking licensure through the interstate
5 medical licensure compact under s. 448.980, directly or indirectly, for any expenses
6 incurred in conducting any investigation under s. 448.980 (5) (b) 3.

7 **SECTION 19.** 440.03 (13) (d) of the statutes, as affected by 2015 Wisconsin Act
8 116 and 2017 Wisconsin Act (this act), is repealed and recreated to read:

9 440.03 (13) (d) The department shall charge an applicant, including an
10 applicant seeking a determination under s. 111.335 (4) (f), any fees, costs, or other
11 expenses incurred in conducting any investigation under this subsection or s. 440.26.

12 **SECTION 20.** 452.05 (1) (h) of the statutes is repealed.

13 **SECTION 21.** 452.07 (2) of the statutes is repealed.

14 **SECTION 22.** 452.139 (3) of the statutes is amended to read:

15 452.139 (3) **LIABILITY FOR NEGLIGENT HIRING.** If a licensee associated with a firm
16 commits a crime under the laws of this state or another wrongful act, the firm may
17 not be held civilly liable for hiring that licensee in a claim brought for negligent
18 hiring if, regardless of whether the firm conducted its own investigation, the firm
19 relied on the investigations conducted by the department under s. 440.03 (13) or on
20 any determination made by the board, including a determination under s. ~~452.07 (2)~~
21 111.335 (4) (f) or 452.25.

22 **SECTION 23.** 452.25 (2) (a) of the statutes is amended to read:

23 452.25 (2) (a) No person may intentionally submit any false information on a
24 form created by the board under s. 111.335 (4) (f) 5. or 452.05 (1) ~~(h)~~ or (i).

