



2013 ASSEMBLY BILL 269

July 30, 2013 – Introduced by Representatives SINICKI, KAHL, BARCA, BARNES, BERCEAU, BERNARD SCHABER, BEWLEY, BILLINGS, CLARK, DANOU, DOYLE, GENRICH, GOYKE, HEBL, HESSELBEIN, HINTZ, HULSEY, JOHNSON, JORGENSEN, KESSLER, KOLSTE, MASON, MILROY, OHNSTAD, PASCH, POPE, RICHARDS, RIEMER, RINGHAND, SARGENT, SHANKLAND, SMITH, C. TAYLOR, VRUWINK, WACHS, WRIGHT, YOUNG, ZAMARRIPA and ZEPNICK, cosponsored by Senators HANSEN, LEHMAN, HARRIS, VINEHOUT, WIRCH, LASSA, SHILLING, CARPENTER, MILLER, L. TAYLOR, RISSER, C. LARSON, T. CULLEN, ERPENBACH and JAUCH. Referred to Committee on Judiciary.

1 **AN ACT to amend** 111.39 (4) (d) and 814.04 (intro.); and **to create** 111.39 (5) (d),
2 111.397 and 893.995 of the statutes; **relating to:** authorizing the circuit court
3 to order a person who engages in discrimination in employment, unfair honesty
4 testing, or unfair genetic testing to pay compensatory and punitive damages.

Analysis by the Legislative Reference Bureau

Under the current fair employment law, a person alleging discrimination in employment or unfair honesty or genetic testing may file a complaint with the Department of Workforce Development (DWD) seeking action that will effectuate the purpose of the fair employment law, including reinstating the employee, providing back pay, and paying costs and attorney fees. The fair employment law, however, does not authorize DWD to award compensatory or punitive damages to a complainant.

This bill permits DWD or a person who has been discriminated against or subjected to unfair honesty or genetic testing to bring an action in circuit court to recover compensatory and punitive damages caused by the act of discrimination or unfair honesty or genetic testing after the completion of all administrative proceedings before DWD and the Labor and Industry Review Commission concerning the violation. Those damages are in addition to any back pay or other amounts awarded in the administrative proceeding. The bill, however, does not permit an action for damages to be brought against any local governmental unit or against any employer employing fewer than 15 individuals.

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Under the bill, if the circuit court finds that a defendant has committed an act of discrimination or unfair honesty or genetic testing, the circuit court must order the defendant to pay to the person discriminated against compensatory and punitive damages in an amount that the circuit court finds appropriate, subject to the following limitations:

1. If the defendant employs 100 or fewer employees, \$50,000.
2. If the defendant employs more than 100 but fewer than 201 employees, \$100,000.
3. If the defendant employs more than 200 but fewer than 501 employees, \$200,000.
4. If the defendant employs more than 500 employees, \$300,000.

For further information see the *state* 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.** 111.39 (4) (d) of the statutes is amended to read:

2 111.39 (4) (d) The department shall serve a certified copy of the findings and
3 order on the respondent, the order to have the same force as other orders of the
4 department and be enforced as provided in s. 103.005. Any person aggrieved by
5 noncompliance with the order may have the order enforced specifically by suit in
6 equity. If the examiner finds that the respondent has not engaged in discrimination,
7 unfair honesty testing, or unfair genetic testing as alleged in the complaint, the
8 department shall serve a certified copy of the examiner's findings on the
9 complainant, together with an order dismissing the complaint. If the examiner finds
10 that the respondent has engaged in discrimination, unfair honesty testing, or unfair
11 genetic testing as alleged in the complaint, the department shall serve a certified
12 copy of the examiner's findings on the complainant, together with a notice advising
13 the complainant that after the completion of all administrative proceedings under
14 this section he or she may bring an action as provided in s. 111.397 (1) (a) to recover
15 compensatory and punitive damages as provided in s. 111.397 (2) (a) and advising the

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1 complainant of the time under s. 111.397 (1) (b) within which the action must be
2 commenced or be barred.

3 **SECTION 2.** 111.39 (5) (d) of the statutes is created to read:

4 111.39 (5) (d) If the commission affirms a finding that the respondent has
5 engaged in discrimination, unfair honesty testing, or unfair genetic testing as
6 alleged in the complaint, the commission shall serve a certified copy of the
7 commission's decision on the complainant, together with a notice advising the
8 complainant that after the completion of all administrative proceedings under this
9 section he or she may bring an action as provided in s. 111.397 (1) (a) to recover
10 compensatory and punitive damages as provided in s. 111.397 (2) (a) and advising the
11 complainant of the time under s. 111.397 (1) (b) within which the action must be
12 commenced or be barred.

13 **SECTION 3.** 111.397 of the statutes is created to read:

14 **111.397 Civil action.** (1) (a) Except as provided in this paragraph, after the
15 completion of all administrative proceedings under s. 111.39 concerning a violation
16 of s. 111.321, 111.37, or 111.372, the department or a person discriminated against
17 or subjected to unfair honesty testing or unfair genetic testing may bring an action
18 in circuit court against any employer, labor organization, or employment agency that
19 engaged in that discrimination, unfair honesty testing, or unfair genetic testing to
20 recover compensatory and punitive damages caused by the violation, plus
21 reasonable costs and attorney fees incurred in the action. Those damages are in
22 addition to any back pay or other amounts awarded under s. 111.39. The department
23 or a person discriminated against or subjected to unfair honesty testing or unfair
24 genetic testing may not bring an action under this paragraph against any local
25 governmental unit, as defined in s. 19.42 (7u), or against any employer, labor

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1 organization, or employment agency employing fewer than 15 individuals for each
2 working day in each of 20 or more calendar weeks in the current or preceding year.

3 (b) An action under par. (a) shall be commenced within 60 days after the date
4 on which a copy of the final decision under s. 111.39 (4) (d) is mailed to the last-known
5 address of the complainant or, if that decision is reviewed by the commission, within
6 60 days after the date on which a copy of the final decision under s. 111.39 (5) (d) is
7 mailed to the last-known address of the complainant, or be barred.

8 (c) If a petition for judicial review of the findings and order of the commission
9 concerning the same violation as the violation giving rise to the action under par. (a)
10 is filed, the court shall consolidate the proceeding for judicial review and the action
11 under par. (a).

12 **(2)** (a) Subject to pars. (b) and (c), in an action under sub. (1) (a), the circuit court
13 shall order the defendant to pay to the person discriminated against or subjected to
14 unfair honesty testing or unfair genetic testing compensatory damages and punitive
15 damages under s. 895.043, in an amount that the circuit court or jury finds
16 appropriate, plus reasonable costs and attorney fees incurred in the action. Those
17 damages are in addition to any back pay or other amounts awarded under s. 111.39.
18 The sum of the amount of compensatory damages for future economic losses and for
19 pain and suffering, emotional distress, mental anguish, loss of enjoyment of life, and
20 other noneconomic losses and the amount of punitive damages that a circuit court
21 may order may not exceed the following:

22 1. In the case of a defendant that employs 100 or fewer employees for each
23 working day in each of 20 or more calendar weeks in the current or preceding year,
24 \$50,000.

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1 2. In the case of a defendant that employs more than 100 but fewer than 201
2 employees for each working day in each of 20 or more calendar weeks in the current
3 or preceding year, \$100,000.

4 3. In the case of a defendant that employs more than 200 but fewer than 501
5 employees for each working day in each of 20 or more calendar weeks in the current
6 or preceding year, \$200,000.

7 4. In the case of a defendant that employs more than 500 employees for each
8 working day in each of 20 or more calendar weeks in the current or preceding year,
9 \$300,000.

10 (b) If the circuit court orders any payment under par. (a) because of a violation
11 of s. 111.321, 111.37, or 111.372 by an individual employed by an employer, the
12 employer of that individual is liable for the payment.

13 (c) 1. In this paragraph, "consumer price index" means the average of the
14 consumer price index for all urban consumers, U.S. city average, as determined by
15 the bureau of labor statistics of the U.S. department of labor.

16 2. Except as provided in this subdivision, beginning on July 1, 2014, and on
17 each July 1 after that, the department shall adjust the amounts specified in par. (a)
18 1., 2., 3., and 4. by calculating the percentage difference between the consumer price
19 index for the 12-month period ending on December 31 of the preceding year and the
20 consumer price index for the 12-month period ending on December 31 of the year
21 before the preceding year and adjusting those amounts by that percentage
22 difference. The department shall publish the adjusted amounts calculated under
23 this subdivision in the Wisconsin Administrative Register, and the adjusted amounts
24 shall apply to actions commenced under sub. (1) (a) beginning on July 1 of the year
25 of publication. This subdivision does not apply if the consumer price index for the

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1 12-month period ending on December 31 of the preceding year did not increase over
2 the consumer price index for the 12-month period ending on December 31 of the year
3 before the preceding year.

4 **SECTION 4.** 814.04 (intro.) of the statutes is amended to read:

5 **814.04 Items of costs.** (intro.) Except as provided in ss. 93.20, 100.195 (5m)
6 (b), 100.30 (5m), 106.50 (6) (i) and (6m) (a), 111.397 (2) (a), 115.80 (9), 767.553 (4) (d),
7 769.313, 802.05, 814.245, 895.035 (4), 895.044, 895.443 (3), 895.444 (2), 895.445 (3),
8 895.446 (3), 895.506, 943.212 (2) (b), 943.245 (2) (d), 943.51 (2) (b), and 995.10 (3),
9 when allowed costs shall be as follows:

10 **SECTION 5.** 893.995 of the statutes is created to read:

11 **893.995 Employment discrimination; civil remedies.** Any civil action
12 arising under s. 111.397 is subject to the limitations of s. 111.397 (1) (b).

13 **SECTION 6. Initial applicability.**

14 (1) EMPLOYMENT DISCRIMINATION DAMAGES. This act first applies to acts of
15 employment discrimination, unfair honesty testing, or unfair genetic testing
16 committed on the effective date of this subsection.

17 (END)