



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-1142/2
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2015 SENATE BILL 145

May 1, 2015 – Introduced by Senators HANSEN, BEWLEY, CARPENTER, ERPENBACH, HARRIS DODD, C. LARSON, LASSA, MILLER, RINGHAND, RISSER, SHILLING, L. TAYLOR, VINEHOUT and WIRCH, cosponsored by Representatives SINICKI, BARCA, SHANKLAND, ZAMARRIPA, MASON, OHNSTAD, BARNES, BERCEAU, BILLINGS, BOWEN, BROSTOFF, CONSIDINE, DANOU, DOYLE, GENRICH, GOYKE, HEBL, HESSELBEIN, HINTZ, JOHNSON, JORGENSEN, KAHL, KESSLER, KOLSTE, MEYERS, MILROY, POPE, RIEMER, SARGENT, SPREITZER, STUCK, SUBECK, C. TAYLOR, WACHS, YOUNG and ZEPNICK. Referred to Committee on Judiciary and Public Safety.

1 **AN ACT** *to amend* 111.39 (4) (d) and 814.04 (intro.); and *to create* 111.39 (5) (d)
2 and 111.397 of the statutes; **relating to:** authorizing the circuit court to order
3 a person who engages in discrimination in employment, unfair honesty testing,
4 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 is alleged or was found to have 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. Those damages are in addition to any back pay or other amounts awarded in any 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.

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

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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.

The bill requires DWD to annually revise these amounts based upon the change in the consumer price index in the previous year, if any positive change has occurred.

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. The department shall also
5 serve a certified copy of the findings and order on the complainant, together with a
6 notice advising the complainant about the right to seek, and the time for seeking,
7 review by the commission under sub. (5); about the right to bring, and the time for
8 bringing, an action for judicial review under s. 111.395; and about the right to bring,
9 and the time for bringing, an action under s. 111.397 (1) (a). Any person aggrieved
10 by noncompliance with the order may have the order enforced specifically by suit in
11 equity. If the examiner finds that the respondent has not engaged in discrimination,
12 unfair honesty testing, or unfair genetic testing as alleged in the complaint, the
13 department shall serve a certified copy of the examiner's findings served on the
14 complainant, ~~together with~~ shall be accompanied by an order dismissing the
15 complaint.

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

2 111.39 (5) (d) The commission shall serve a certified copy of the commission's
3 decision on the complainant, together with a notice advising the complainant about
4 the right to bring, and the time for bringing, an action for judicial review under s.
5 111.395 and about the right to bring, and the time for bringing, an action under s.
6 111.397 (1) (a).

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

8 **111.397 Civil action.** (1) (a) Except as provided in this paragraph, the
9 department or a person alleged or found to have been discriminated against or
10 subjected to unfair honesty testing or unfair genetic testing may bring an action in
11 circuit court against any employer, labor organization, or employment agency that
12 is alleged or found to have engaged in that discrimination, unfair honesty testing,
13 or unfair genetic testing to recover compensatory and punitive damages caused by
14 the violation, plus reasonable costs and attorney fees incurred in the action. Those
15 damages are in addition to any back pay or other amounts awarded under s. 111.39
16 or 111.395. The department or a person alleged or found to have been discriminated
17 against or subjected to unfair honesty testing or unfair genetic testing may not bring
18 an action under this paragraph against any local governmental unit, as defined in
19 s. 19.42 (7u), or against any employer, labor organization, or employment agency
20 employing fewer than 15 individuals for each working day in each of 20 or more
21 calendar weeks in the current or preceding year.

22 (b) If a petition for judicial review of the findings and order of the commission
23 concerning the same violation as the violation giving rise to the action under par. (a)
24 is filed, the court shall consolidate the proceeding for judicial review and the action
25 under par. (a).

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1 (2) (a) Subject to pars. (b) and (c), in an action under sub. (1) (a), if the circuit
2 court finds that discrimination, unfair honesty testing, or unfair genetic testing has
3 occurred, or if such a finding has been made by an examiner or the commission and
4 not been further appealed, the court shall order the defendant to pay to the person
5 discriminated against or subjected to unfair honesty testing or unfair genetic testing
6 compensatory damages and punitive damages under s. 895.043, in an amount that
7 the circuit court or jury finds appropriate, plus reasonable costs and attorney fees
8 incurred in the action. Those damages are in addition to any back pay or other
9 amounts awarded under s. 111.39 or 111.395. The sum of the amount of
10 compensatory damages for future economic losses and for pain and suffering,
11 emotional distress, mental anguish, loss of enjoyment of life, and other noneconomic
12 losses and the amount of punitive damages that a circuit court may order may not
13 exceed the following:

14 1. In the case of a defendant that employs 100 or fewer employees for each
15 working day in each of 20 or more calendar weeks in the current or preceding year,
16 \$50,000.

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

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

23 4. In the case of a defendant that employs more than 500 employees for each
24 working day in each of 20 or more calendar weeks in the current or preceding year,
25 \$300,000.

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

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

7 2. Except as provided in this subdivision, beginning on July 1, 2016, and on
8 each July 1 after that, the department shall adjust the amounts specified in par. (a)
9 1., 2., 3., and 4. by calculating the percentage difference between the consumer price
10 index for the 12-month period ending on December 31 of the preceding year and the
11 consumer price index for the 12-month period ending on December 31 of the year
12 before the preceding year and adjusting those amounts by that percentage
13 difference. The department shall publish the adjusted amounts calculated under
14 this subdivision in the Wisconsin Administrative Register, and the adjusted amounts
15 shall apply to actions commenced under sub. (1) (a) beginning on July 1 of the year
16 of publication. This subdivision does not apply if the consumer price index for the
17 12-month period ending on December 31 of the preceding year did not increase over
18 the consumer price index for the 12-month period ending on December 31 of the year
19 before the preceding year.

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

21 **814.04 Items of costs.** (intro.) Except as provided in ss. 93.20, 100.195 (5m)
22 (b), 100.30 (5m), 106.50 (6) (i) and (6m) (a), 111.397 (2) (a), 115.80 (9), 767.553 (4) (d),
23 769.313, 802.05, 814.245, 895.035 (4), 895.044, 895.443 (3), 895.444 (2), 895.445 (3),
24 895.446 (3), 895.506, 943.212 (2) (b), 943.245 (2) (d), 943.51 (2) (b), and 995.10 (3),
25 when allowed costs shall be as follows:

