

2011 DRAFTING REQUEST

Bill

Received: 11/04/2010

Received By: gmalaise

Wanted: As time permits

Companion to LRB:

For: Glenn Grothman (608) 266-7513

By/Representing: Jim Emerson

May Contact:

Drafter: gmalaise

Subject: Discrimination

Addl. Drafters:

Extra Copies:

Submit via email: YES

Requester's email: Sen.Grothman@legis.wisconsin.gov

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Employment discrimination; elimination of compensatory and punitive damages

Instructions:

Repeal 2009 ct 20, which permitted the awarding of compensatory and punitive damages in employment discrimination cases

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	gmalaise 11/04/2010	kfollett 11/10/2010		_____			S&L
/1			rschluet 11/10/2010	_____	sbasford 11/10/2010	lparisi 03/09/2011	

FE Sent For:

↳ At Intro.

<END>

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/?	gmalaise	11/5/10 11/10		_____	_____		

FE Sent For:

<END>



State of Wisconsin
2011 - 2012 LEGISLATURE

In 114



LRB-032277

GMM...:kjf

Gen

- 1 AN ACT ...; relating to: elimination of compensatory and punitive damages for
2 acts of employment discrimination or unfair honesty or genetic testing.

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. In addition, the fair employment law 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. 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 certain limitations, as follows:

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.

This bill eliminates the awarding of compensatory and punitive damages to persons who have been discriminated against in employment or subjected to unfair

honesty or genetic testing. Under the bill, DWD may still award to such a person back pay, costs, and attorney fees.

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:

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

History: 1973 c. 268; 1977 c. 29, 196; 1979 c. 221, 319, 355; 1981 c. 334 ss. 20, 25 (2); Stats. 1981 s. 111.39; 1983 a. 122; 1989 a. 228; 1991 a. 117; 1995 a. 27; 2009 a. 20.

18 **SECTION 2.** 111.39 (5) (d) of the statutes is repealed.

19 **SECTION 3.** 111.397 of the statutes is repealed.

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

2 814.04 Items of costs. (intro.) Except as provided in ss. 93.20, 100.195 (5m)
3 (b), 100.30 (5m), 106.50 (6) (i) and (6m) (a), ~~111.397 (2) (a)~~, 115.80 (9), 281.36 (2) (b)
4 1., 767.553 (4) (d), 769.313, 802.05, 814.245, 895.035 (4), 895.443 (3), 895.444 (2),
5 895.445 (3), 895.446 (3), 895.506, 943.212 (2) (b), 943.245 (2) (d), 943.51 (2) (b), and
6 995.10 (3), when allowed costs shall be as follows:

History: Sup. Ct. Order, 50 Wis. 2d vii (1971); 1971 c. 141; Sup. Ct. Order, 67 Wis. 2d 585, 761, 780 (1975); Stats. 1975 s. 814.04; 1977 c. 209; 1979 c. 110 s. 60 (13); 1979 c. 271, 355; 1981 c. 123, 317; 1985 a. 52, 311; 1987 a. 348; 1991 a. 39, 65, 189, 295; 1993 a. 98, 326, 486, 490, 491; 1995 a. 24, 27, 133, 149, 262, 417; 1997 a. 55, 164, 254; 1999 a. 32, 82, 122, 190; 2001 a. 6, 16; 2003 a. 138; Sup. Ct. Order No. 03-06A, 2005 WI 86, 280 Wis. 2d xiii; 2005 a. 155, 325; 2005 a. 443 s. 265; 2005 a. 458; 2007 a. 96; 2009 a. 20.

7 SECTION 5. 893.995 of the statutes is repealed.

8 SECTION 6. Initial applicability.

9 (1) ELIMINATION OF EMPLOYMENT DISCRIMINATION DAMAGES. This act first applies
10 to an administrative proceeding under section 111.39 of the statutes concerning a
11 violation of section 111.321, 111.37, or 111.372 of the statutes in which a copy of the
12 final decision under section 111.39 (4) (d) or (5) (d) of the statutes is mailed to the
13 last-known address of the complainant on the effective date of this subsection.

14 (END)

D-Note

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0322/1dn

GMM...
kgf

Date

Senator Grothman:

AA 2009 ~~Act 20~~ includes a statute of limitations requiring a civil action for compensatory and punitive damages to be filed within 60 days after the final decision of DWD or LIRC is mailed to the complainant or be barred. Statutes of limitation are substantive, not procedural or remedial, therefore legislation affecting a statute of limitations is presumed to apply prospectively only, not retroactively. As such, when legislation affects a statute of limitations, a cause of action that accrues prior to the effective date of the change is governed by the prior statute and a cause of action that accrues beginning on the effective date is governed by the new legislation. See *Betthausser v. Medical Protective Co.*, 172 Wis. 2d 141 (1992), *State v. Hamilton*, 2002 WI App 89, 253 Wis. 2d 644, and ss. 990.06 and 991.07.

X Under 2009 Act 20, a cause of action for compensatory and punitive damages accrues when the administrative proceeding is completed and, as mentioned above, the statute of limitations begins to run when the final decision is mailed to the complainant. As such, prior law continues to apply to an administrative proceeding that is completed before the effective date of this draft and the draft only applies to an administrative proceeding that is completed beginning of the effective date of the draft.

Accordingly, the draft includes an Initial Applicability provision clarifying that the draft first applies to an administrative proceeding in which the final decision is mailed to the complainant on the effective date of the draft.

If you have any questions about the draft or this drafter's note, please do not hesitate to contact me at the phone number or e-mail address captioned below.

Gordon M. Malaise
Senior Legislative Attorney
Phone: (608) 266-9738
E-mail: gordon.malaise@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0322/1dn
GMM:kjf:rs

November 10, 2010

Senator Grothman:

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Under 2009 Act 20, a cause of action for compensatory and punitive damages accrues when the administrative proceeding is completed and, as mentioned above, the statute of limitations begins to run when the final decision is mailed to the complainant. As such, prior law continues to apply to an administrative proceeding that is completed before the effective date of this draft and the draft only applies to an administrative proceeding that is completed beginning on the effective date of the draft.

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E-mail: gordon.malaise@legis.wisconsin.gov

Parisi, Lori

From: Burri, Lance
Sent: Wednesday, March 09, 2011 12:25 PM
To: LRB.Legal
Subject: Draft Review: LRB 11-0322/1 Topic: Employment discrimination; elimination of compensatory and punitive damages

Please Jacket LRB 11-0322/1 for the SENATE.