



2011 ASSEMBLY BILL 289

September 29, 2011 - Introduced by Representatives LITJENS, LEMAHIEU, PRIDEMORE, THIESFELDT, HONADEL, BROOKS, KNODL, KLEEFISCH, T. LARSON, KOOYENGA, RIVARD, KAPENGA, STEINEKE, SEVERSON, PETERSEN, STROEBEL, VOS, KNILANS, CRAIG, A. OTT, KAUFERT, TAUCHEN, BIES, KUGLITSCH, ENDSLEY and STRACHOTA, cosponsored by Senators GROTHMAN, GALLOWAY, DARLING, LASEE, KEDZIE, ZIPPERER and MOULTON. Referred to Committee on Judiciary and Ethics.

1 **AN ACT** *to repeal* 111.39 (5) (d), 111.397 and 893.995; and *to amend* 111.39 (4)
2 (d) and 814.04 (intro.) of the statutes; **relating to:** elimination of compensatory
3 and punitive damages for acts of employment discrimination or unfair honesty
4 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.

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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~~

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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 repealed.

4 **SECTION 3.** 111.397 of the statutes is repealed.

5 **SECTION 4.** 814.04 (intro.) of the statutes, as affected by 2011 Wisconsin Act 2,
6 is amended to read:

7 **814.04 Items of costs.** (intro.) Except as provided in ss. 93.20, 100.195 (5m)
8 (b), 100.30 (5m), 106.50 (6) (i) and (6m) (a), ~~111.397 (2) (a)~~, 115.80 (9), 281.36 (2) (b)
9 1., 767.553 (4) (d), 769.313, 802.05, 814.245, 895.035 (4), 895.044, 895.443 (3),
10 895.444 (2), 895.445 (3), 895.446 (3), 895.506, 943.212 (2) (b), 943.245 (2) (d), 943.51
11 (2) (b), and 995.10 (3), when allowed costs shall be as follows:

12 **SECTION 5.** 893.995 of the statutes is repealed.

13 **SECTION 6. Initial applicability.**

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

19 (END)