



## 1997 ASSEMBLY BILL 69

February 10, 1997 - Introduced by Representatives NOTESTEIN, MUSSER, RYBA, CARPENTER, TURNER, R. YOUNG, RILEY, BOYLE, BALDWIN and R. POTTER, cosponsored by Senators PLACHE, CLAUSING and RISSER. Referred to Committee on Labor and Employment.

1     **AN ACT to amend** 111.39 (4) (c) of the statutes; **relating to:** remedies under the  
2             fair employment law for a complainant who quits his or her employment,  
3             membership or licensure voluntarily.

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### *Analysis by the Legislative Reference Bureau*

Under current law, if a hearing examiner of the department of industry, labor and job development (DILJD) finds that an employer, labor organization, employment agency, licensing agency or other person (respondent) has engaged in employment discrimination, unfair honesty testing or unfair genetic testing, the examiner must order such action by the respondent as will effectuate the purposes of the fair employment law, with or without back pay. That action may include back pay for up to 2 years or reinstatement of the complainant. The Wisconsin supreme court, however, held in *Marten Transport, Ltd. v. DILHR*, 176 Wis. 2d 1012 (1993), that if an employe who has been discriminated against resigns his or her employment voluntarily, that voluntary resignation terminates the accrual of back pay and the employer's obligation to reinstate the employe. This bill provides that, if a hearing examiner finds that a respondent has engaged in employment discrimination, unfair honesty testing or unfair genetic testing, the examiner must order such action as will effectuate the purpose of the fair employment law, with back pay, regardless of whether the complainant has quit his or her employment, labor organization membership or licensure voluntarily.

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For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 111.39 (4) (c) of the statutes is amended to read:

2           111.39 (4) (c) If, after hearing, the examiner finds that the respondent has  
3 engaged in discrimination, unfair honesty testing or unfair genetic testing, the  
4 examiner shall make written findings and order such action by the respondent as  
5 will effectuate the purpose of this subchapter, with ~~or without~~ back pay, regardless  
6 of whether the complainant remains an employe, member or licensee of the  
7 respondent, was never employed, admitted or licensed by the respondent, has had  
8 his or her employment, membership or licensure terminated by the respondent or  
9 has quit his or her employment, membership or licensure voluntarily. If the  
10 examiner awards any payment to an employe because of a violation of s. 111.321 by  
11 an individual employed by the employer, under s. 111.32 (6), the employer of that  
12 individual is liable for the payment. If the examiner finds a respondent violated s.  
13 111.322 (2m), the examiner shall award compensation in lieu of reinstatement if  
14 requested by all parties and may award compensation in lieu of reinstatement if  
15 requested by any party. Compensation in lieu of reinstatement for a violation of s.  
16 111.322 (2m) may not be less than 500 times nor more than 1,000 times the hourly  
17 wage of the person discriminated against when the violation occurred. Back pay  
18 liability may not accrue from a date more than 2 years prior to the filing of a  
19 complaint with the department. Interim earnings or amounts earnable with  
20 reasonable diligence by the person discriminated against or subjected to unfair  
21 honesty testing or unfair genetic testing shall operate to reduce back pay otherwise

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1       allowable. Amounts received by the person discriminated against or subject to the  
2       unfair honesty testing or unfair genetic testing as unemployment benefits or welfare  
3       payments shall not reduce the back pay otherwise allowable, but shall be withheld  
4       from the person discriminated against or subject to unfair honesty testing or unfair  
5       genetic testing and immediately paid to the unemployment reserve fund or, in the  
6       case of a welfare payment, to the welfare agency making the payment.

7               **SECTION 2. Initial applicability.**

8               (1) This act first applies to orders under section 111.39 (4) (c) of the statutes,  
9       as affected by this act, entered on the effective date of this subsection.

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**(END)**