

2001 ASSEMBLY BILL 294

April 6, 2001 – Introduced by Representatives SINICKI, BALOW, BERCEAU, BLACK, BOCK, BOYLE, CARPENTER, COGGS, COLON, HEBL, KREUSER, LA FAVE, J. LEHMAN, MEYERHOFER, MILLER, PLOUFF, POCAN, RICHARDS, RILEY, RYBA, SHILLING, GRONEMUS and TURNER, cosponsored by Senators ERPENBACH, BURKE, CHVALA, DECKER, MOORE, RISSER, ROBSON and BAUMGART. Referred to Committee on Labor and Workforce Development.

1 **AN ACT to renumber and amend** 111.39 (4) (c); and **to create** 20.445 (1) (gr),
2 111.39 (4) (c) 2., 111.39 (4) (c) 3. and 111.39 (4) (c) 4. of the statutes; **relating**
3 **to:** authorizing the department of workforce development to order a person who
4 discriminates in promotion, compensation, or in terms, conditions, or privileges
5 of employment on the basis of sex, race, color, national origin, or ancestry to pay
6 compensatory and punitive damages and an assessment, directing the
7 secretary of workforce development to appoint a committee to study wage
8 disparities between men and women and between minority group members and
9 nonminority group members, and making an appropriation.

Analysis by the Legislative Reference Bureau

Under the current fair employment law, if the department of workforce development (DWD) finds that a person has refused to hire an individual, terminated an individual's employment, or discriminated against an individual in promotion, compensation, or in terms, conditions, or privileges of employment on the basis of the individual's age, race, creed, color, disability, marital status, sex, national origin, ancestry, arrest or conviction record, membership in the national guard or military reserves, or use or nonuse of a lawful product during nonwork hours, DWD

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may order the person to take such action as will effectuate the purpose of the fair employment law. That action may include reinstating the employee and providing back pay for not more than two years before the filing of the complaint, costs, and attorney fees. Current law, however, does not authorize DWD to order the payment of compensatory or punitive damages or any other assessments or penalties in a case of employment discrimination.

This bill authorizes DWD to order a person who has discriminated against an individual in promotion, compensation, or in terms, conditions, or privileges of employment on the basis of the individual's sex, race, color, national origin, or ancestry to pay to the individual compensatory and punitive damages in an amount that DWD finds appropriate and to pay to DWD an assessment equal to 10% of the amount of compensatory and punitive damages ordered. DWD must use those assessments collected for the administration of the fair employment law.

The bill also directs the secretary of workforce development (secretary) to appoint a committee to study the issue of wage disparities between men and women and between minority group members and nonminority group members and to recommend solutions and policy alternatives, including proposed legislation, to eliminate and prevent those wage disparities. The committee must consist of representatives of business and industry, organized labor, organizations whose objectives include the elimination of wage disparities, and employees of institutions of higher education or research institutions who have experience and expertise in the collection and analysis of data concerning wage disparities. The committee must report its findings, conclusions, and recommendations to the secretary by the first day of the 15th month beginning after publication of the bill, and the secretary must submit that report to the appropriate standing committees of the legislature and to the governor by the first day of the 16th month beginning after publication of the bill.

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.** 20.445 (1) (gr) of the statutes is created to read:

2 20.445 (1) (gr) *Employment discrimination assessments.* All moneys received
3 from assessments collected under s. 111.39 (4) (c) 2., for the administration of subch.
4 II of ch. 111.

5 **SECTION 2.** 111.39 (4) (c) of the statutes is renumbered 111.39 (4) (c) 1. and
6 amended to read:

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1 111.39 (4) (c) 1. If, after hearing, the examiner finds that the respondent has
2 engaged in discrimination, unfair honesty testing, or unfair genetic testing, the
3 examiner shall make written findings and order such action by the respondent as
4 will effectuate the purpose of this subchapter, with or without back pay. ~~If the~~
5 ~~examiner awards any payment to an employee because of a violation of s. 111.321 by~~
6 ~~an individual employed by the employer, under s. 111.32 (6), the employer of that~~
7 ~~individual is liable for the payment. If the examiner finds a respondent violated s.~~
8 ~~111.322 (2m), the examiner shall award compensation in lieu of reinstatement if~~
9 ~~requested by all parties and may award compensation in lieu of reinstatement if~~
10 ~~requested by any party. Compensation in lieu of reinstatement for a violation of s.~~
11 ~~111.322 (2m) may not be less than 500 times nor more than 1,000 times the hourly~~
12 ~~wage of the person discriminated against when the violation occurred. Back pay~~
13 ~~liability may not accrue from a date more than 2 years prior to the filing of a~~
14 ~~complaint with the department. Interim earnings or amounts earnable with~~
15 ~~reasonable diligence by the person discriminated against or subjected to unfair~~
16 ~~honesty testing or unfair genetic testing shall operate to reduce back pay otherwise~~
17 ~~allowable. Amounts received by the person discriminated against or subject to the~~
18 ~~unfair honesty testing or unfair genetic testing as unemployment benefits or welfare~~
19 ~~payments shall not reduce the back pay otherwise allowable, but shall be withheld~~
20 ~~from the person discriminated against or subject to unfair honesty testing or unfair~~
21 ~~genetic testing and immediately paid to the unemployment reserve fund or, in the~~
22 ~~case of a welfare payment, to the welfare agency making the payment.~~

23 **SECTION 3.** 111.39 (4) (c) 2. of the statutes is created to read:

24 111.39 (4) (c) 2. If the examiner finds that a respondent has discriminated
25 against a person in promotion, compensation, or in terms, conditions, or privileges

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1 of employment on the basis of sex, race, color, national origin, or ancestry, the
2 examiner, in addition to any action ordered under subd. 1., shall order the
3 respondent to pay to the person compensatory and punitive damages in an amount
4 that the examiner finds appropriate and to pay to the department an assessment
5 equal to 10% of the amount of compensatory and punitive damages ordered. All
6 assessments collected under this subdivision shall be deposited in the general fund
7 and credited to the appropriation account under s. 20.445 (1) (gr).

8 **SECTION 4.** 111.39 (4) (c) 3. of the statutes is created to read:

9 111.39 (4) (c) 3. If the examiner orders any payment under subd. 1. or 2. because
10 of a violation of s. 111.321 by an individual employed by an employer, the employer
11 of that individual is liable for the payment.

12 **SECTION 5.** 111.39 (4) (c) 4. of the statutes is created to read:

13 111.39 (4) (c) 4. If the examiner finds a respondent violated s. 111.322 (2m), the
14 examiner shall award compensation in lieu of reinstatement if requested by all
15 parties and may award compensation in lieu of reinstatement if requested by any
16 party. Compensation in lieu of reinstatement for a violation of s. 111.322 (2m) may
17 not be less than 500 times nor more than 1,000 times the hourly wage of the person
18 discriminated against when the violation occurred.

19 **SECTION 6. Nonstatutory provisions.**

20 (1) WAGE DISPARITY STUDY.

21 (a) *Definition.* In this subsection, “minority group member” has the meaning
22 given in section 560.036 (1) (f) of the statutes.

23 (b) *Committee.* By the first day of the 3rd month beginning after the effective
24 date of this paragraph, the secretary of workforce development shall create and
25 appoint a committee consisting of the members specified in paragraph (c) to study

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1 the issues specified in paragraph (d) and report its findings, conclusions, and
2 recommendations as provided in paragraph (e).

3 (c) *Membership.* The committee shall consist of the following members:

4 1. Two members who are representatives of business and industry, who shall
5 be appointed from a list of candidates submitted by an association that represents
6 the interests of businesses and industries in this state.

7 2. Two members who are representatives of organized labor, who shall be
8 appointed from a list of candidates submitted by a labor organization that is
9 chartered by a federation of national or international labor organizations, admits to
10 membership local labor organizations, and exists primarily to carry on educational,
11 legislative, and coordinating activities.

12 3. Two members who are representatives of organizations whose objectives
13 include the elimination of wage disparities between men and women and between
14 minority group members and nonminority group members and who have
15 undertaken advocacy, educational, or legislative initiatives in pursuit of that
16 objective.

17 4. Three members who are employees of an institution of higher education or
18 a research institution and who have experience and expertise in the collection and
19 analysis of data concerning wage disparities between men and women and between
20 minority group members and nonminority group members and whose research has
21 been used in efforts to eliminate those disparities.

22 (d) *Study.* The committee shall study all of the following:

23 1. The extent to which wage disparities exist, in both the public and private
24 sectors, between men and women and between minority group members and
25 nonminority group members.

