

2003 SENATE BILL 130

May 1, 2003 – Introduced by Senators HANSEN, ROBSON, CARPENTER, CHVALA, RISSER, DECKER, MOORE, SCHULTZ and ERPENBACH, cosponsored by Representatives SINICKI, PLOUFF, ZEPNICK, POCAN, BLACK, LOEFFELHOLZ, MILLER, SHILLING, VRUWINK, BERCEAU, J. LEHMAN, MORRIS, YOUNG, HEBL, TURNER, BALOW, GRONEMUS, COGGS, KRUG, POPE-ROBERTS, WASSERMAN, PLALE, SHERMAN, STEINBRINK, VAN AKKEREN, COLON, BOYLE, RICHARDS and KREUSER. Referred to Committee on Labor, Small Business Development and Consumer Affairs.

1 **AN ACT** *to amend* 59.25 (3) (f) 2. and 59.40 (2) (m); and *to create* 20.445 (1) (gr),
2 111.397 and 893.99 of the statutes; **relating to:** authorizing the circuit court
3 to order a person who discriminates in promotion, in compensation, or in the
4 terms, conditions, or privileges of employment on the basis of sex, race, color,
5 national origin, or ancestry to pay compensatory and punitive damages and an
6 assessment, directing the secretary of workforce development to appoint a
7 committee to study wage disparities between men and women and between
8 minority group members and nonminority group members, and making an
9 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, in compensation, or in the 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

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hours, DWD 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 permits DWD or a person who has been discriminated against in promotion, in compensation, or in the terms, conditions, or privileges of employment on the basis of sex, race, color, national origin, or ancestry to bring an action in circuit court to recover damages caused by the act of discrimination. Under the bill, if the circuit court finds that a defendant has committed such an act of discrimination, 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 and to pay to the circuit court an assessment equal to 10% of the amount of compensatory and punitive damages ordered. Assessments collected under the bill must be transmitted to the state treasurer, deposited in the general fund, and credited to an appropriation account of DWD, which must use those assessments 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. 111.397 (1), for the administration of subch. II
4 of ch. 111.

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1 **SECTION 2.** 59.25 (3) (f) 2. of the statutes is amended to read:

2 59.25 **(3)** (f) 2. For all court imposed fines and forfeitures required by law to be

3 deposited in the state treasury, the amounts required by s. 757.05 for the penalty

4 assessment surcharge, the amounts required by s. 165.755 for the crime laboratories

5 and drug law enforcement assessment, the amounts required by s. 167.31 (5) for the

6 weapons assessment, the amounts required by s. 973.045 for the crime victim and

7 witness assistance surcharge, the amounts required by s. 938.34 (8d) for the

8 delinquency victim and witness assistance surcharge, the amounts required by s.

9 973.046 for the deoxyribonucleic acid analysis surcharge, the amounts required by

10 s. 961.41 (5) for the drug abuse program improvement surcharge, the amounts

11 required by s. 100.261 for the consumer protection assessment, the amounts

12 authorized by s. 971.37 (1m) (c) 1. or required by s. 973.055 (1) for the domestic abuse

13 assessment, the amounts required by s. 253.06 (4) (c) for the enforcement assessment

14 under the supplemental food program for women, infants, and children, the amounts

15 required by s. 349.04 for the truck driver education assessment, the amounts

16 required by ss. 346.177, 346.495, and 346.65 (4r) for the railroad crossing

17 improvement assessment, the amounts required by s. 346.655 (2) (a) and (b) for the

18 driver improvement surcharge, the amounts required by s. 102.85 (4) for the

19 uninsured employer assessment, the amounts required by s. 299.93 for the

20 environmental assessment, the amounts required by s. 29.983 for the wild animal

21 protection assessment, the amounts required by ss. 29.987 and 169.46 (1) for the

22 natural resources assessment surcharge, the amounts required by s. 29.985 for the

23 fishing shelter removal assessment, the amounts required by s. 350.115 for the

24 snowmobile registration restitution payment, and the amounts required by ss.

25 29.989 and 169.46 (2) for natural resources restitution payments, and the amounts

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1 required under s. 111.397 (1) for the employment discrimination assessment,
2 transmit to the state treasurer a statement of all moneys required by law to be paid
3 on the actions entered during the preceding month on or before the first day of the
4 next succeeding month, certified by the county treasurer's personal signature affixed
5 or attached thereto, and at the same time pay to the state treasurer the amount
6 thereof.

7 **SECTION 3.** 59.40 (2) (m) of the statutes is amended to read:

8 59.40 (2) (m) Pay monthly to the treasurer for the use of the state the state's
9 percentage of the fees required to be paid on each civil action, criminal action and
10 special proceeding filed during the preceding month and pay monthly to the
11 treasurer for the use of the state the percentage of court imposed fines and forfeitures
12 required by law to be deposited in the state treasury, the amounts required by s.
13 757.05 for the penalty assessment surcharge, the amounts required by s. 165.755 for
14 the crime laboratories and drug law enforcement assessment, the amounts required
15 by s. 167.31 (5) for the weapons assessment, the amounts required by s. 973.045 for
16 the crime victim and witness assistance surcharge, the amounts required by s.
17 938.34 (8d) for the delinquency victim and witness assistance surcharge, the
18 amounts required by s. 973.046 for the deoxyribonucleic acid analysis surcharge, the
19 amounts required by s. 961.41 (5) for the drug abuse program improvement
20 surcharge, the amounts required by s. 100.261 for the consumer protection
21 assessment, the amounts authorized by s. 971.37 (1m) (c) 1. or required by s. 973.055
22 for the domestic abuse assessment surcharge, the amounts required by s. 253.06 (4)
23 (c) for the enforcement assessment under the supplemental food program for women,
24 infants, and children, the amounts required by s. 349.04 for the truck driver
25 education assessment, the amounts required by ss. 346.177, 346.495, and 346.65 (4r)

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1 for the railroad crossing improvement assessment, the amounts required by s.
2 346.655 for the driver improvement surcharge, the amounts required by s. 102.85 (4)
3 for the uninsured employer assessment, the amounts required by s. 299.93 for the
4 environmental assessment, the amounts required under s. 29.983 for the wild
5 animal protection assessment, the amounts required under ss. 29.987 (1) (d) and
6 169.46 (1) (d) for the natural resources assessment surcharge, the amounts required
7 by s. 29.985 for the fishing shelter removal assessment, the amounts required by s.
8 350.115 for the snowmobile registration restitution payment, ~~and~~ the amounts
9 required under ss. 29.989 (1) (d) and 169.46 (2) (d) for the natural resources
10 restitution payments and the amounts required under s. 111.397 (1) for the
11 employment discrimination assessment. The payments shall be made by the 15th
12 day of the month following receipt thereof.

13 **SECTION 4.** 111.397 of the statutes is created to read:

14 **111.397 Civil action. (1)** A person discriminated against in promotion, in
15 compensation, or in the terms, conditions, or privileges of employment on the basis
16 of sex, race, color, national origin, or ancestry or the department may bring an action
17 in circuit court against an employer, labor organization, employment agency, or
18 licensing agency to recover damages caused by that discrimination after the
19 completion of an administrative proceeding, including judicial review, concerning
20 that discrimination. If the circuit court finds that a defendant has discriminated
21 against a person in promotion, in compensation, or in the terms, conditions, or
22 privileges of employment on the basis of sex, race, color, national origin, or ancestry,
23 the circuit court shall order the defendant to pay to the person discriminated against
24 compensatory and punitive damages in an amount that the circuit court finds
25 appropriate and to pay to the court an assessment equal to 10% of the amount of

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1 compensatory and punitive damages ordered, except that if the circuit court orders
2 any payment under this subsection because of an act of discrimination by an
3 individual employed by an employer, the employer of that individual is liable for the
4 payment. The clerk of circuit court shall collect and transmit the amount of any
5 assessment ordered under this subsection to the county treasurer under s. 59.40 (2)
6 (m). The county treasurer shall then make payment to the state treasurer under s.
7 59.25 (3) (f) 2. All assessments collected under this subsection shall be deposited in
8 the general fund and credited to the appropriation account under s. 20.445 (1) (gr).

9 (2) An action under sub. (1) shall be commenced within the later of the
10 following periods, or be barred:

11 (a) Within 60 days after the completion of an administrative proceeding,
12 including judicial review, concerning the discrimination.

13 (b) Within 2 years after the discrimination occurred, or the department or
14 person discriminated against should have reasonable known that the discrimination
15 occurred.

16 **SECTION 5.** 893.99 of the statutes is created to read:

17 **893.99 Employment discrimination; civil remedies.** Any civil action
18 arising under s. 111.397 is subject to the limitations of s. 111.397 (2).

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.

