

2003 DRAFTING REQUEST

Bill

Received: **01/16/2003**

Received By: **gmalaise**

Wanted: **As time permits**

Identical to LRB:

For: **David Hansen (608) 266-5670**

By/Representing: **Lisa Ellinger**

This file may be shown to any legislator: **NO**

Drafter: **gmalaise**

May Contact:

Addl. Drafters:

Subject: **Discrimination**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Hansen@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Equal pay commission

Instructions:

See Attache--redraft 2001 SB 232.

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 01/16/2003	jdyer 02/20/2003		_____			S&L
/1			rschluet 02/20/2003	_____	sbasford 02/20/2003	sbasford 04/11/2003 sbasford 04/11/2003	

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

FE Sent For:

AA intro.

<END>

2003 DRAFTING REQUEST

Bill

Received: **01/16/2003**

Received By: **gmalaise**

Wanted: **As time permits**

Identical to LRB:

For: **David Hansen (608) 266-5670**

By/Representing: **Lisa Ellinger**

This file may be shown to any legislator: **NO**

Drafter: **gmalaise**

May Contact:

Addl. Drafters:

Subject: **Discrimination**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Hansen@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Equal pay commission

Instructions:

See Attache--redraft 2001 SB 232.

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 01/16/2003	jdyer 02/20/2003		_____			S&L
/1			rschluet 02/20/2003	_____	sbasford 02/20/2003		

FE Sent For:

<END>

2003 DRAFTING REQUEST

Bill

Received: 01/16/2003

Received By: gmalaise

Wanted: As time permits

Identical to LRB:

For: David Hansen (608) 266-5670

By/Representing: Lisa Ellinger

This file may be shown to any legislator: NO

Drafter: gmalaise

May Contact:

Addl. Drafters:

Subject: Discrimination

Extra Copies:

Submit via email: YES

Requester's email: Sen.Hansen@legis.state.wi.us

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Equal pay commission

Instructions:

See Attache--redraft 2001 SB 232.

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

1 2/20 jld

Handwritten signatures and dates: 2-20-3 and CPH

FE Sent For:

<END>

Malaise, Gordon

1546

From: Ellinger, Lisa
Sent: Thursday, January 16, 2003 9:54 AM
To: Malaise, Gordon
Subject: bill drafts

Gordon:

Sen. Hansen would like 2001-02 ~~rule~~ SB232, ~~re-drafted~~ re-drafted for introduction this session.

Thank you.

Lisa Ellinger
Office of State Senator Dave Hansen
State Capitol - Room 319 South
PO Box 7882
Madison WI 53707
608-266-5670
608-267-6791 FAX

-1540/1

NOTE

Thurs
2/27

stays

³
~~2001~~ SENATE BILL 232

LPS - check auto
refs

~~August 16, 2001 - Introduced by Senators HANSEN, BAUMGART, BURKE, CIVALA, DECKER, ERPENBACH, MOORE, RISSER, ROBSON and GEORGE, cosponsored by Representatives SINICKI, BALOW, BERCEAU, BLACK, BOCK, BOYLE, CARPENTER, COGGS, COLON, GRONEMUS, HEBL, KREUSER, LA FAVE, J. LEHMAN, MEYERHOFER, MILLER, PLOUFF, POCAN, RICHARDS, RILEY, RYBA, SHILLING and TURNER. Referred to Committee on Labor and Agriculture.~~

Circuit court

Regenerate

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, ⁱⁿ compensation, or in ^{the} 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

SENATE BILL 232

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:

111,397(1)

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:~~

Insert
A

SENATE BILL 232

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

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

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

SENATE BILL 232

SECTION 3

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

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

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

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

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

~~discriminated against when the violation occurred.~~

SECTION 6. Nonstatutory provisions.

(1) WAGE DISPARITY STUDY.

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

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

✓
 Insert
 3-18

✓ a.r.

SENATE BILL 232

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.

SENATE BILL 232**SECTION 6**

1 2. The factors that cause, or that tend to cause, those wage disparities,
2 including segregation between men and women and between minority group
3 members and nonminority group members, both within and across occupations; the
4 payment of lower wages in occupations dominated by women or by minority group
5 members; disparities between men and women in [✓]child-rearing responsibilities; and
6 disparities in education and training between men and women and between minority
7 group members and nonminority group members.

8 3. The consequences of those wage disparities on the economy and on individual
9 families.

10 (e) *Recommendations.* The committee shall recommend solutions and policy
11 alternatives, including proposed legislation, to eliminate and prevent wage
12 disparities between men and women and between minority group members and
13 nonminority group members. By the first day of the [✓]15th month beginning after the
14 effective date of this paragraph, the committee shall report its findings, conclusions,
15 and recommendations to the secretary of workforce development who shall submit
16 that report to the appropriate standing committees of the legislature in the manner
17 provided under section 13.72 [✓](3) of the statutes and to the governor by the first day
18 of the 16th [✓]month beginning after publication.

SECTION 7. Initial applicability.

20 (1) *Employment discrimination damages.* The ~~renumbering and amendment~~
21 ~~of section 111.39 (4) (c) of the statutes and the creation of section 111.30 (4) (c) 2, 3.,~~
22 ~~and 4 of the statutes~~ first apply to acts of employment discrimination committed on
23 the effective date of this subsection.

(END)

treatment of sections 59.25 (3)(f) 2., [✓]59.40 (2)(m),
111.397 [✓], and 893.999

**2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1540/lins
GMM.....

(INSERT 3-18)

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

59.25 (3) (f) 2. For all court imposed fines and forfeitures required by law to be deposited in the state treasury, the amounts required by s. 757.05 for the penalty assessment surcharge, the amounts required by s. 165.755 for the crime laboratories and drug law enforcement assessment, the amounts required by s. 167.31 (5) for the weapons assessment, the amounts required by s. 973.045 for the crime victim and witness assistance surcharge, the amounts required by s. 938.34 (8d) for the delinquency victim and witness assistance surcharge, the amounts required by s. 973.046 for the deoxyribonucleic acid analysis surcharge, the amounts required by s. 961.41 (5) for the drug abuse program improvement surcharge, the amounts required by s. 100.261 for the consumer protection assessment, the amounts authorized by s. 971.37 (1m) (c) 1. or required by s. 973.055 (1) for the domestic abuse assessment, the amounts required by s. 253.06 (4) (c) for the enforcement assessment under the supplemental food program for women, infants, and children, the amounts required by s. 349.04 for the truck driver education assessment, the amounts required by ss. 346.177, 346.495, ✓ and 346.65 (4r) for the railroad crossing improvement assessment, the amounts required by s. 346.655 (2) (a) and (b) for the driver improvement surcharge, the amounts required by s. 102.85 (4) for the uninsured employer assessment, the amounts required by s. 299.93 for the environmental assessment, the amounts required by s. 29.983 for the wild animal protection assessment, the amounts required by ss. 29.987 and 169.46 (1) for the natural resources assessment surcharge, the amounts required by s. 29.985 for the fishing shelter removal assessment, the amounts required by s. 350.115 for the

↓

MS 3-18
cont

✓
 snowmobile registration restitution payment, and the amounts required by ss. 29.989 and 169.46 (2) for natural resources restitution payments, and the amounts required under s. 111.397 (1) ✓ for the employment discrimination assessment, transmit to the state treasurer a statement of all moneys required by law to be paid on the actions entered during the preceding month on or before the first day of the next succeeding month, certified by the county treasurer's personal signature affixed or attached thereto, and at the same time pay to the state treasurer the amount thereof.

History: 1995 a. 201 ss. 266, 267, 269, 270, 284; 1995 a. 225 ss. 151, 153; 1995 a. 227 s. 202; 1995 a. 269 s. 2; 1995 a. 408 s. 1; 1995 a. 448 s. 60; 1997 a. 27, 35, 135, 211, 237, 248; 1999 a. 9, 32, 74; 1999 a. 150 s. 672; 2001 a. 16; 2001 a. 30 s. 108; 2001 a. 56, 105.

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

59.40 (2) (m) Pay monthly to the treasurer for the use of the state the state's percentage of the fees required to be paid on each civil action, criminal action and special proceeding filed during the preceding month and pay monthly to the treasurer for the use of the state the percentage of court imposed fines and forfeitures required by law to be deposited in the state treasury, the amounts required by s. 757.05 for the penalty assessment surcharge, the amounts required by s. 165.755 for the crime laboratories and drug law enforcement assessment, the amounts required by s. 167.31 (5) for the weapons assessment, the amounts required by s. 973.045 for the crime victim and witness assistance surcharge, the amounts required by s. 938.34 (8d) for the delinquency victim and witness assistance surcharge, the amounts required by s. 973.046 for the deoxyribonucleic acid analysis surcharge, the amounts required by s. 961.41 (5) for the drug abuse program improvement surcharge, the amounts required by s. 100.261 for the consumer protection assessment, the amounts authorized by s. 971.37 (1m) (c) 1. or required by s. 973.055 for the domestic abuse assessment surcharge, the amounts required by s. 253.06 (4)

↓

INSERT

3-18 cent

(c) for the enforcement assessment under the supplemental food program for women, infants, and children, the amounts required by s. 349.04 for the truck driver education assessment, the amounts required by ss. 346.177, 346.495, and 346.65 (4r) for the railroad crossing improvement assessment, the amounts required by s. 346.655 for the driver improvement surcharge, the amounts required by s. 102.85 (4) for the uninsured employer assessment, the amounts required by s. 299.93 for the environmental assessment, the amounts required under s. 29.983 for the wild animal protection assessment, the amounts required under ss. 29.987 (1) (d) and 169.46 (1) (d) for the natural resources assessment surcharge, the amounts required by s. 29.985 for the fishing shelter removal assessment, the amounts required by s. 350.115 for the snowmobile registration restitution payment, and the amounts required under ss. 29.989 (1) (d) and 169.46 (2) (d) for the natural resources restitution payments and the amounts required under s. 111.397 (1) for the employment discrimination assessment. The payments shall be made by the 15th day of the month following receipt thereof.

History: 1995 a. 27 ss. 3290, 3291; 1995 a. 201 ss. 311 to 318, 320 to 322, 325; 1995 a. 224 ss. 11 to 13; 1995 a. 227 s. 203; 1995 a. 279 s. 8; 1995 a. 404 s. 185; 1995 a. 438; 1995 a. 448 s. 61; Sup. Ct. Order No. 96-08, 207 Wis. 2d ¶ (1997); 1997 a. 3, 27; 1997 a. 35 ss. 185, 186; 1997 a. 39, 135, 148, 191, 237, 248, 252; 1999 a. 9, 32; 1999 a. 150 s. 672; 2001 a. 16, 56, 61, 105.

SECTION 3. 111.397 of the statutes is created to read:

111.397 Civil action. (1) A person 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 or the department may bring an action in circuit court against an employer, labor organization, employment agency, or licensing agency to recover damages caused by that discrimination after the completion of an administrative proceeding, including judicial review, concerning that discrimination. If the circuit court finds that a defendant has discriminated against a person in promotion, in compensation, or in the terms, conditions, or



NS 3-18
cont

privileges of employment on the basis of sex, race, color, national origin, or ancestry, the circuit court shall 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 court an assessment equal to 10% of the amount of compensatory and punitive damages ordered, except that if the circuit court orders any payment under this subsection because of an act of discrimination by an individual employed by an employer, the employer of that individual is liable for the payment. The clerk of circuit court shall collect and transmit the amount of any assessment ordered under this subsection to the county treasurer under s. 59.40 (2) (m). The county treasurer shall then make payment to the state treasurer under s. 59.25 (3) (f) 2. All assessments collected under this subsection shall be deposited in the general fund and credited to the appropriation account under s. 20.445 (1) (gr).

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

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

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

SECTION 4. 893.99[✓] of the statutes is created to read:

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

(END OF INSERT)

(INSERT A TO ~~INSERT A~~)



¶ This bill ^{DWD or} permits 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 or DWD 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.

(END OF INSERT)
A ←

√(END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1540/1dn

GMM...f:...

Wlj

Senator Hansen:

This draft makes a procedural change to 2001 SB^o232 to address a concern raised last session relating to the imposition of assessments under the bill. Specifically, under this draft the circuit court, rather than DWD, will order the compensatory and punitive damages and assessments. This change was made to address an argument made last session that it constitutes a conflict of interest to permit DWD both to order the assessments and to keep the moneys assessed. Under this draft, a neutral forum, the circuit court, will order the assessments and transmit the assessments collected to the state treasurer for deposit in^{to} the general fund and crediting to the DWD appropriation.

If you have any questions about the draft, please do not hesitate to contact me directly at the phone number or e-mail address listed below.

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

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

LRB-1540/1dn
GMM:wj:rs

February 20, 2003

Senator Hansen:

This draft makes a procedural change to 2001 SB-232 to address a concern raised last session relating to the imposition of assessments under the bill. Specifically, under this draft the circuit court, rather than DWD, will order the compensatory and punitive damages and assessments. This change was made to address an argument made last session that it constitutes a conflict of interest to permit DWD both to order the assessments and to keep the moneys assessed. Under this draft, a neutral forum, the circuit court, will order the assessments and transmit the assessments collected to the state treasurer for deposit into the general fund and crediting to the DWD appropriation.

If you have any questions about the draft, please do not hesitate to contact me directly at the phone number or e-mail address listed below.

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

Mentkowski, Annie

From: Wagnitz, John
Sent: Thursday, April 10, 2003 4:55 PM
To: LRB.Legal
Subject: Draft review: LRB 03-1540/1 Topic: Equal pay commission

It has been requested by <Wagnitz, John> that the following draft be jacketed for the SENATE:

Draft review: LRB 03-1540/1 Topic: Equal pay commission