

**SENATE SUBSTITUTE AMENDMENT 1,
TO 2003 SENATE BILL 130**

May 21, 2003 – Offered by Senator HANSEN.

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 engages in discrimination in employment to pay
4 compensatory and punitive damages and an assessment, directing the
5 secretary of workforce development to appoint a committee to study wage
6 disparities between men and women and between minority group members and
7 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, in 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 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 substitute amendment permits a person who has been discriminated against or DWD to bring an action in circuit court to recover damages caused by the act of discrimination. Under the substitute amendment, if the circuit court finds that a defendant has committed 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 substitute amendment 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 substitute amendment 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 substitute amendment, 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 substitute amendment.

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.

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

1 59.25 (3) (f) 2. For all court imposed fines and forfeitures required by law to be
2 deposited in the state treasury, the amounts required by s. 757.05 for the penalty
3 assessment surcharge, the amounts required by s. 165.755 for the crime laboratories
4 and drug law enforcement assessment, the amounts required by s. 167.31 (5) for the
5 weapons assessment, the amounts required by s. 973.045 for the crime victim and
6 witness assistance surcharge, the amounts required by s. 938.34 (8d) for the
7 delinquency victim and witness assistance surcharge, the amounts required by s.
8 973.046 for the deoxyribonucleic acid analysis surcharge, the amounts required by
9 s. 961.41 (5) for the drug abuse program improvement surcharge, the amounts
10 required by s. 100.261 for the consumer protection assessment, the amounts
11 authorized by s. 971.37 (1m) (c) 1. or required by s. 973.055 (1) for the domestic abuse
12 assessment, the amounts required by s. 253.06 (4) (c) for the enforcement assessment
13 under the supplemental food program for women, infants, and children, the amounts
14 required by s. 349.04 for the truck driver education assessment, the amounts
15 required by ss. 346.177, 346.495, and 346.65 (4r) for the railroad crossing
16 improvement assessment, the amounts required by s. 346.655 (2) (a) and (b) for the
17 driver improvement surcharge, the amounts required by s. 102.85 (4) for the
18 uninsured employer assessment, the amounts required by s. 299.93 for the
19 environmental assessment, the amounts required by s. 29.983 for the wild animal
20 protection assessment, the amounts required by ss. 29.987 and 169.46 (1) for the
21 natural resources assessment surcharge, the amounts required by s. 29.985 for the
22 fishing shelter removal assessment, the amounts required by s. 350.115 for the
23 snowmobile registration restitution payment, and the amounts required by ss.
24 29.989 and 169.46 (2) for natural resources restitution payments, and the amounts
25 required under s. 111.397 (1) for the employment discrimination assessment.

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

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

7 59.40 (2) (m) Pay monthly to the treasurer for the use of the state the state's
8 percentage of the fees required to be paid on each civil action, criminal action and
9 special proceeding filed during the preceding month and pay monthly to the
10 treasurer for the use of the state the percentage of court imposed fines and forfeitures
11 required by law to be deposited in the state treasury, the amounts required by s.
12 757.05 for the penalty assessment surcharge, the amounts required by s. 165.755 for
13 the crime laboratories and drug law enforcement assessment, the amounts required
14 by s. 167.31 (5) for the weapons assessment, the amounts required by s. 973.045 for
15 the crime victim and witness assistance surcharge, the amounts required by s.
16 938.34 (8d) for the delinquency victim and witness assistance surcharge, the
17 amounts required by s. 973.046 for the deoxyribonucleic acid analysis surcharge, the
18 amounts required by s. 961.41 (5) for the drug abuse program improvement
19 surcharge, the amounts required by s. 100.261 for the consumer protection
20 assessment, the amounts authorized by s. 971.37 (1m) (c) 1. or required by s. 973.055
21 for the domestic abuse assessment surcharge, the amounts required by s. 253.06 (4)
22 (c) for the enforcement assessment under the supplemental food program for women,
23 infants, and children, the amounts required by s. 349.04 for the truck driver
24 education assessment, the amounts required by ss. 346.177, 346.495, and 346.65 (4r)
25 for the railroad crossing improvement assessment, the amounts required by s.

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

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

13 **111.397 Civil action. (1)** A person discriminated against or the department
14 may bring an action in circuit court against an employer, labor organization,
15 employment agency, or licensing agency to recover damages caused by a violation of
16 s. 111.321 after the completion of an administrative proceeding, including judicial
17 review, concerning that violation. If the circuit court finds that a defendant has
18 committed a violation of s. 111.321, the circuit court shall order the defendant to pay
19 to the person discriminated against compensatory and punitive damages in an
20 amount that the circuit court finds appropriate and to pay to the court an assessment
21 equal to 10% of the amount of compensatory and punitive damages ordered, except
22 that if the circuit court orders any payment under this subsection because of a
23 violation of s. 111.321 by an individual employed by an employer, the employer of that
24 individual is liable for the payment. The clerk of circuit court shall collect and
25 transmit the amount of any assessment ordered under this subsection to the county

1 treasurer under s. 59.40 (2) (m). The county treasurer shall then make payment to
2 the state treasurer under s. 59.25 (3) (f) 2. All assessments collected under this
3 subsection shall be deposited in the general fund and credited to the appropriation
4 account under s. 20.445 (1) (gr).

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

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

9 (b) Within 2 years after the violation occurred, or the department or person
10 discriminated against should have reasonably known that the violation occurred.

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

12 **893.99 Employment discrimination; civil remedies.** Any civil action
13 arising under s. 111.397 is subject to the limitations of s. 111.397 (2).

14 **SECTION 6. Nonstatutory provisions.**

15 (1) WAGE DISPARITY STUDY.

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

18 (b) *Committee.* By the first day of the 3rd month beginning after the effective
19 date of this paragraph, the secretary of workforce development shall create and
20 appoint a committee consisting of the members specified in paragraph (c) to study
21 the issues specified in paragraph (d) and report its findings, conclusions, and
22 recommendations as provided in paragraph (e).

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

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

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

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

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

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

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

23 2. The factors that cause, or that tend to cause, those wage disparities,
24 including segregation between men and women and between minority group
25 members and nonminority group members, both within and across occupations; the

1 payment of lower wages in occupations dominated by women or by minority group
2 members; disparities between men and women in child-rearing responsibilities; and
3 disparities in education and training between men and women and between minority
4 group members and nonminority group members.

5 3. The consequences of those wage disparities on the economy and on individual
6 families.

7 (e) *Recommendations.* The committee shall recommend solutions and policy
8 alternatives, including proposed legislation, to eliminate and prevent wage
9 disparities between men and women and between minority group members and
10 nonminority group members. By the first day of the 15th month beginning after the
11 effective date of this paragraph, the committee shall report its findings, conclusions,
12 and recommendations to the secretary of workforce development who shall submit
13 that report to the appropriate standing committees of the legislature in the manner
14 provided under section 13.172 (3) of the statutes and to the governor by the first day
15 of the 16th month beginning after publication.

16 **SECTION 7. Initial applicability.**

17 (1) *Employment discrimination damages.* The treatment of sections 59.25 (3)
18 (f) 2., 59.40 (2) (m), 111.397, and 893.999 of the statutes first apply to acts of
19 employment discrimination committed on the effective date of this subsection.

20 (END)