

2009 ASSEMBLY BILL 31

February 10, 2009 – Introduced by Representatives SINICKI, JORGENSEN, SHERIDAN, POCAN, NELSON, SEIDEL, COLON, PARISI, GRIGSBY, MASON, SHERMAN, SHILLING, VAN AKKEREN, TOLES, BENEDICT, SOLETSKI, MOLEPSKE JR., ROYS, FIELDS, PASCH, A. WILLIAMS, YOUNG, DEXTER, RICHARDS, HILGENBERG, POPE-ROBERTS, BLACK, GARTHWAITE, HIXSON, BERCEAU, HINTZ, SMITH, TURNER, VRUWINK, CULLEN, CLARK, STEINBRINK, SCHNEIDER, HUBLER and ZEPNICK, cosponsored by Senators HANSEN, ROBSON, LASSA, LEHMAN, MILLER, VINEHOUT, TAYLOR and ERPENBACH. Referred to Committee on Labor.

1 **AN ACT to create** 20.445 (1) (gr), 111.397, 814.75 (28) and 893.995 of the statutes;
 2 **relating to:** authorizing the circuit court to order a person who engages in
 3 discrimination in employment to pay compensatory and punitive damages and
 4 a surcharge 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, providing back pay for not more than two years before the filing of the complaint, and paying costs and attorney fees. Current law, however, does not authorize DWD to order the payment of compensatory or punitive damages or any other surcharges or penalties in a case of employment discrimination.

This bill 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 bill, 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

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discriminated against compensatory and punitive damages in an amount that the circuit court finds appropriate and to pay to the circuit court a surcharge equal to 10 percent of the amount of compensatory and punitive damages ordered. Surcharges collected under the bill must be transmitted to the secretary of administration, deposited into the general fund, and credited to an appropriation account of DWD, which must use those surcharges for the administration of the fair employment law.

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 surcharges.* All moneys received
3 from surcharges collected under s. 111.397 (1), for the administration of subch. II of
4 ch. 111.

5 **SECTION 2.** 111.397 of the statutes is created to read:

6 **111.397 Civil action. (1)** A person discriminated against or the department
7 may bring an action in circuit court against an employer, labor organization,
8 employment agency, or licensing agency to recover damages caused by a violation of
9 s. 111.321 after the completion of an administrative proceeding, including judicial
10 review, concerning that violation. If the circuit court finds that a defendant has
11 committed a violation of s. 111.321, the circuit court shall order the defendant to pay
12 to the person discriminated against compensatory and punitive damages in an
13 amount that the circuit court finds appropriate and to pay to the court a surcharge
14 equal to 10 percent of the amount of compensatory and punitive damages ordered,
15 except that if the circuit court orders any payment under this subsection because of
16 a violation of s. 111.321 by an individual employed by an employer, the employer of
17 that individual is liable for the payment. The clerk of circuit court shall collect and
18 transmit the amount of any surcharge ordered under this subsection to the county

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1 treasurer under s. 59.40 (2) (m). The county treasurer shall then make payment to
2 the secretary of administration under s. 59.25 (3) (f) 2. The secretary of
3 administration shall deposit all moneys received under this subsection into the
4 general fund to be credited to the appropriation 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 3.** 814.75 (28) of the statutes is created to read:

12 814.75 **(28)** The employment discrimination surcharge under s. 111.397 (1).

13 **SECTION 4.** 893.995 of the statutes is created to read:

14 **893.995 Employment discrimination; civil remedies.** Any civil action
15 arising under s. 111.397 is subject to the limitations of s. 111.397 (2).

16 **SECTION 5. Initial applicability.**

17 (1) *Employment discrimination damages.* The treatment of sections 111.397,
18 814.75 (28), and 893.995 of the statutes first applies to acts of employment
19 discrimination committed on the effective date of this subsection.

20 **SECTION 6. Effective date.**

21 (1) This act takes effect on the day after publication, or on the 2nd day after
22 publication of the 2009–11 biennial budget act, whichever is later.

23 **(END)**