



**SENATE SUBSTITUTE AMENDMENT 1,
TO 2009 SENATE BILL 20**

1 **AN ACT** *to amend* 111.39 (4) (d) and 814.04 (intro.); and *to create* 111.39 (5) (d),
2 111.397 and 893.995 of the statutes; **relating to:** authorizing the circuit court
3 to order a person who engages in discrimination in employment, unfair honesty
4 testing, or unfair genetic testing to pay compensatory and punitive damages.

Analysis by the Legislative Reference Bureau

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

5 **SECTION 3.** 111.39 (4) (d) of the statutes is amended to read:
6 111.39 **(4)** (d) The department shall serve a certified copy of the findings and
7 order on the respondent, the order to have the same force as other orders of the
8 department and be enforced as provided in s. 103.005. Any person aggrieved by
9 noncompliance with the order may have the order enforced specifically by suit in

1 equity. If the examiner finds that the respondent has not engaged in discrimination,
2 unfair honesty testing, or unfair genetic testing as alleged in the complaint, the
3 department shall serve a certified copy of the examiner's findings on the
4 complainant, together with an order dismissing the complaint. If the examiner finds
5 that the respondent has engaged in discrimination, unfair honesty testing, or unfair
6 genetic testing as alleged in the complaint, the department shall serve a certified
7 copy of the examiner's findings on the complainant, together with a notice advising
8 the complainant that after the completion of all administrative proceedings under
9 this section he or she may bring an action as provided in s. 111.397 (1) (a) to recover
10 compensatory and punitive damages as provided in s. 111.397 (2) (a) and advising the
11 complainant of the time under s. 111.397 (1) (b) within which the action must be
12 commenced or be barred.

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

14 111.39 (5) (d) If the commission affirms a finding that the respondent has
15 engaged in discrimination, unfair honesty testing, or unfair genetic testing as
16 alleged in the complaint, the commission shall serve a certified copy of the
17 commission's decision on the complainant, together with a notice advising the
18 complainant that after the completion of all administrative proceedings under this
19 section he or she may bring an action as provided in s. 111.397 (1) (a) to recover
20 compensatory and punitive damages as provided in s. 111.397 (2) (a) and advising the
21 complainant of the time under s. 111.397 (1) (b) within which the action must be
22 commenced or be barred.

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

24 **111.397 Civil action.** (1) (a) Except as provided in this paragraph, after the
25 completion of all administrative proceedings under s. 111.39 concerning a violation

1 of s. 111.321, 111.37, or 111.372, the department or a person discriminated against
2 or subjected to unfair honesty testing or unfair genetic testing may bring an action
3 in circuit court against any employer, labor organization, or employment agency that
4 engaged in that discrimination, unfair honesty testing, or unfair genetic testing to
5 recover compensatory and punitive damages caused by the violation, plus
6 reasonable costs and attorney fees incurred in the action. Those damages are in
7 addition to any back pay or other amounts awarded under s. 111.39. The department
8 or a person discriminated against or subjected to unfair honesty testing or unfair
9 genetic testing may not bring an action under this paragraph against any local
10 governmental unit, as defined in s. 19.42 (7u), or against any employer, labor
11 organization, or employment agency employing fewer than 15 individuals for each
12 working day in each of 20 or more calendar weeks in the current or preceding year.

13 (b) An action under par. (a) shall be commenced within 60 days after the date
14 on which a copy of the final decision under s. 111.39 (4) (d) is mailed to the last-known
15 address of the complainant or, if that decision is reviewed by the commission, within
16 60 days after the date on which a copy of the final decision under s. 111.39 (5) (d) is
17 mailed to the last-known address of the complainant, or be barred.

18 (c) If a petition for judicial review of the findings and order of the commission
19 concerning the same violation as the violation giving rise to the action under par. (a)
20 is filed, the court shall consolidate the proceeding for judicial review and the action
21 under par. (a).

22 **(2)** (a) Subject to pars. (c) and (d), in an action under sub. (1) (a), the circuit court
23 shall order the defendant to pay to the person discriminated against or subjected to
24 unfair honesty testing or unfair genetic testing compensatory damages, and punitive
25 damages under s. 895.043, in an amount that the circuit court or jury finds

1 appropriate, plus reasonable costs and attorney fees incurred in the action. Those
2 damages are in addition to any back pay or other amounts awarded under s. 111.39.
3 The sum of the amount of compensatory damages for future economic losses and for
4 pain and suffering, emotional distress, mental anguish, loss of enjoyment of life, and
5 other noneconomic losses and the amount of punitive damages that a circuit court
6 may order may not exceed the following:

7 1. In the case of a defendant that employs 100 or fewer employees for each
8 working day in each of 20 or more calendar weeks in the current or preceding year,
9 \$50,000.

10 2. In the case of a defendant that employs more than 100 but fewer than 201
11 employees for each working day in each of 20 or more calendar weeks in the current
12 or preceding year, \$100,000.

13 3. In the case of a defendant that employs more than 200 but fewer than 501
14 employees for each working day in each of 20 or more calendar weeks in the current
15 or preceding year, \$200,000.

16 4. In the case of a defendant that employs more than 500 employees for each
17 working day in each of 20 or more calendar weeks in the current or preceding year,
18 \$300,000.

19 (c) If the circuit court orders any payment under par. (a) because of a violation
20 of s. 111.321, 111.37, or 111.372 by an individual employed by an employer, the
21 employer of that individual is liable for the payment.

22 (d) 1. In this paragraph, “consumer price index” means the average of the
23 consumer price index for all urban consumers, U.S. city average, as determined by
24 the bureau of labor statistics of the U.S. department of labor.

1 2. Except as provided in this subdivision, beginning on July 1, 2010, and on
2 each July 1 after that, the department shall adjust the amounts specified in par. (a)
3 1., 2., 3., and 4. by calculating the percentage difference between the consumer price
4 index for the 12-month period ending on December 31 of the preceding year and the
5 consumer price index for the 12-month period ending on December 31 of the year
6 before the preceding year and adjusting those amounts by that percentage
7 difference. The department shall publish the adjusted amounts calculated under
8 this subdivision in the Wisconsin Administrative Register, and the adjusted amounts
9 shall apply to actions commenced under sub. (1) (a) beginning on July 1 of the year
10 of publication. This subdivision does not apply if the consumer price index for the
11 12-month period ending on December 31 of the preceding year did not increase over
12 the consumer price index for the 12-month period ending on December 31 of the year
13 before the preceding year.

14 **SECTION 6.** 814.04 (intro.) of the statutes is amended to read:

15 **814.04 Items of costs.** (intro.) Except as provided in ss. 93.20, 100.195 (5m)
16 (b), 100.30 (5m), 106.50 (6) (i) and (6m) (a), 111.397 (2) (a), 115.80 (9), 281.36 (2) (b)
17 1., 767.553 (4) (d), 769.313, 802.05, 814.245, 895.035 (4), 895.443 (3), 895.444 (2),
18 895.445 (3), 895.446 (3), 895.506, 943.212 (2) (b), 943.245 (2) (d), 943.51 (2) (b), and
19 995.10 (3), when allowed costs shall be as follows:

20 **SECTION 8.** 893.995 of the statutes is created to read:

21 **893.995 Employment discrimination; civil remedies.** Any civil action
22 arising under s. 111.397 is subject to the limitations of s. 111.397 (1) (b).

23 **SECTION 9. Initial applicability.**

