

State of Wisconsin


LEGISLATIVE REFERENCE BUREAU


RESEARCH APPENDIX - **PLEASE DO NOT REMOVE FROM DRAFTING FILE**


Date Transfer Requested: 12/08/2008 (Per: GMM)



Appendix A

 The 2009 drafting file for LRB-0909/1
has been copied/added to the drafting file for
2009 LRB-1067

 The attached 2009 draft was incorporated into the new 2009 draft listed above. For research purposes, this cover sheet and the attached drafting file were copied, and added, as a appendix, to the new 2009 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

 This cover sheet was added to rear of the original 2009 drafting file. The drafting file was then returned, intact, to its folder and filed.

2009 DRAFTING REQUEST

Bill

Received: **11/21/2008**

Received By: **gmalaise**

Wanted: **As time permits**

Identical to LRB:

For: **Christine Sinicki (608) 266-8588**

By/Representing: **Mary Beth George**

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: **Rep.Sinicki@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Compensatory and punitive damages and surcharge for employment discrimination

Instructions:

Redraft 2007 AB 310, but fold in SA1 and SA2 to SB 165

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 11/21/2008	kfollett 12/04/2008		_____			S&L
/1			phenry 12/05/2008	_____	sbasford 12/05/2008		

FE Sent For:

<END>

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/?	gmalaise	11/15/08 12/04	12/5 ph	12/5 ph/MP			

FE Sent For:

<END>

Malaise, Gordon

From: George, Mary Beth
Sent: Friday, November 21, 2008 2:39 PM
To: Malaise, Gordon
Subject: RE: Pay Equity Bill

Attachments: George, Mary Beth.vcf

Yes, please go ahead and include the Senate amendments.

Thx for asking!

Mary Beth George
Office of State Rep. Christine Sinicki
608-266-8588
marybeth.george@legis.state.wi.us



George, Mary
Beth.vcf (4 KB)

From: Malaise, Gordon
Sent: Thursday, November 20, 2008 5:51 PM
To: George, Mary Beth
Subject: Pay Equity Bill

Mary Beth:

Senator Hansen proposed a couple of amendments to 2007 SB 165 that were adopted by the senate committee unanimously and by the full senate 18-14.

Senate Amendment 1 put caps on the amount of future economic losses, noneconomic losses, and punitive damages that can be awarded. Those amounts depend on the size of the employer and track similar caps under federal law. See SA1 and 42 USC 1981a (b).

Senate Amendment 2 deleted the wage disparity study. See SA2 and the fiscal estimate for SB 165 prepared by DWD.

Do you want to incorporate these amendments into the redraft or go with the original bill?

Gordon

**SENATE AMENDMENT 2,
TO 2007 SENATE BILL 165**

January 24, 2008 – Offered by Senator HANSEN.

1 At the locations indicated, amend the bill as follows:

2 ~~1.~~ Page 1, line 4: delete lines 4 to 6 and substitute "a surcharge and making
3 an".

4 ~~2.~~ Page 4, line 3: delete lines 3 to 25.

5 ~~3.~~ Page 5, line 1: delete lines 1 to 25.

6 ~~4.~~ Page 6, line 1: delete lines 1 and 2.

7 5. Page 6, line 7: delete lines 7 to 9.

8 (END)

Malaise, Gordon

From: George, Mary Beth
Sent: Thursday, December 04, 2008 4:43 PM
To: Malaise, Gordon
Cc: Wagnitz, John
Subject: Re: 07-29981

Attachments: 07-29981.pdf



07-29981.pdf (21
KB)

Hi Gordon,

Contrary to what I said earlier, we've decided the redraft of this should not include the Senate amendment that imposed caps -- so, we're reverting to the original form of the bill on that, but still dropping the DWD study.

And, would you please send an identical draft to John Wagnitz in Sen. Hansen's office for the Senate version?

Thanks!!!

Mary Beth
Rep. Sinicki
6-8588

0909/1
gf

2007 ASSEMBLY BILL 310

May 8, 2007 - Introduced by Representatives SINICKI, SHERIDAN, VAN AKKEREN, POCAN, GRIGSBY, VRUWINK, POPE-ROBERTS, TRAVIS, SHILLING, BERCEAU, BLACK, BOYLE, FIELDS, HINTZ, MASON, TURNER, SHERMAN, BENEDICT, SMITH, RICHARDS, ZEPNICK, GARTHWAITE, YOUNG, A. WILLIAMS, NELSON, STEINBRINK, KREUSER, COLON, HUBLER, PARISI, SEIDEL, JORGENSEN, TOLES, SOLETSKI and SCHNEIDER, cosponsored by Senators HANSEN, ERPENBACH, LEHMAN, TAYLOR, LASSA, BRESKE and MILLER. Referred to Committee on Jobs and The Economy.

Regen

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, directing the secretary of workforce development to appoint a
5 committee to study wage disparities between men and women and between
6 minority group members and nonminority group members, and making an
7 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

- 2 - certain
, subject to limitations specified in the bill,

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 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.

~~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, and 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 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,

3
Subject to sub. (1m), if

1 employment agency, or licensing agency to recover damages caused by a violation of
2 s. 111.321[✓] after the completion of an administrative proceeding, including judicial
3 review, concerning that violation. ^{stet} (1) the circuit court finds that a defendant has
4 committed a violation of s. 111.321[✓], the circuit court shall order the defendant to pay
5 to the person discriminated against compensatory[✓] and punitive damages in an
6 amount that the circuit court finds appropriate and to pay to the court a surcharge
7 equal to 10 percent[✓] of the amount of compensatory and punitive damages ordered,
8 except that if the circuit court orders any payment under this subsection[✓] because of
9 a violation of s. 111.321[✓] by an individual employed by an employer, the employer of
10 that individual is liable for the payment. The clerk of circuit court shall collect and
11 transmit the amount of any surcharge ordered under this subsection[✓] to the county
12 treasurer under s. 59.40 (2) (m). The county treasurer shall then make payment to
13 the secretary of administration under s. 59.25 (3) (f) 2. The secretary of
14 administration shall deposit all moneys received under this subsection[✓] into the
15 general fund to be credited to the appropriation account under s. 20.445 (1) (gr).

Enter
3/15

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

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

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

22 SECTION 3. 814.75 (28)[✓] of the statutes is created to read:

23 814.75 (28) The employment discrimination surcharge under s. 111.397 (1).[✓]

24 SECTION 4. 893.995 of the statutes[✓] is created to read:

1 **893.995 Employment discrimination; civil remedies.** Any civil action
2 arising under s. 111.397 is subject to the limitations of s. 111.397 (2).

3 ~~SECTION 5. Nonstatutory provisions.~~

4 ~~(1) WAGE DISPARITY STUDY.~~

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

7 ~~(b) *Committee.* By the first day of the 3rd month beginning after the effective~~
8 ~~date of this paragraph, the secretary of workforce development shall appoint a~~
9 ~~committee consisting of the members specified in paragraph (c) to study the issues~~
10 ~~specified in paragraph (d) and report its findings, conclusions, and recommendations~~
11 ~~as provided in paragraph (e).~~

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

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

16 ~~2. Two members who are representatives of organized labor, who shall be~~
17 ~~appointed from a list of candidates submitted by a labor organization that is~~
18 ~~chartered by a federation of national or international labor organizations, admits to~~
19 ~~membership local labor organizations, and exists primarily to carry on educational,~~
20 ~~legislative, and coordinating activities.~~

21 ~~3. Two members who are representatives of organizations whose objectives~~
22 ~~include the elimination of wage disparities between men and women and between~~
23 ~~minority group members and nonminority group members and who have~~
24 ~~undertaken advocacy, educational, or legislative initiatives in pursuit of that~~
25 ~~objective.~~

ASSEMBLY BILL 310

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

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

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

10 2. The factors that cause, or that tend to cause, those wage disparities,
11 including segregation between men and women and between minority group
12 members and nonminority group members, both within and across occupations; the
13 payment of lower wages in occupations dominated by women or by minority group
14 members; disparities between men and women in child-rearing responsibilities; and
15 disparities in education and training between men and women and between minority
16 group members and nonminority group members.

17 3. The consequences of those wage disparities on the economy and on individual
18 families.

19 (e) *Recommendations.* The committee shall recommend solutions and policy
20 alternatives, including proposed legislation, to eliminate and prevent wage
21 disparities between men and women and between minority group members and
22 nonminority group members. By the first day of the 15th month beginning after the
23 effective date of this paragraph, the committee shall report its findings, conclusions,
24 and recommendations to the secretary of workforce development who shall submit
25 that report to the appropriate standing committees of the legislature in the manner

ASSEMBLY BILL 310

SECTION 5

1 ~~provided under section 13.172 (3) of the statutes and to the governor by the first day~~
2 ~~of the 16th month beginning after publication.~~

3 **SECTION 6. Initial applicability.**

4 (1) *Employment discrimination damages.* The treatment of sections 111.397,
5 814.75 (28)[✓], and 893.995[✓] of the statutes first applies to acts of employment
6 discrimination committed on the effective date of this subsection.[✓]

7 **SECTION 7. Effective date.** (2009-11)

8 (1) This act takes effect on the day after publication, or on the 2nd day after
9 publication of the 2007-09 biennial budget act, whichever is later.

10

(END)

Insert 3-15

SENATE AMENDMENT 1,
TO 2007 SENATE BILL 165

No

January 15, 2008 - Offered by Senator HANSEN.

1 At the locations indicated, amend the bill as follows:

2 1. Page 3, line 3: delete "If" and substitute "Subject to sub. (1m), if".

3 2. Page 3, line 15: after that line insert:

4 (1m) The sum of the amount of compensatory damages for future economic
5 losses and for pain and suffering, emotional distress, mental anguish, loss of
6 enjoyment of life, and other noneconomic losses and the amount of punitive damages
7 that a circuit court may order a defendant to pay to a person discriminated against
8 may not exceed the following:

9 (a) In the case of a defendant that employs 100 or fewer employees for each
10 working day in each of 20 or more calendar weeks in the current or preceding year,
11 \$50,000.

Insert 3-15
-2

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

4 (c) In the case of a defendant that employs more than 200, but fewer than 501,
5 employees for each working day in each of 20 or more calendar weeks in the current
6 or preceding year, \$200,000.

7 (d) In the case of a defendant that employs more than 500 employees for each
8 working day in each of 20 or more calendar weeks in the current or preceding year,
9 \$300,000.

9

10

(END)

(edit insert)

**2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0909/1ins
GMM.....

(INSERT A)

The bill limits the sum of the amount of compensatory damages for future economic losses and for pain and suffering, emotional distress, mental anguish, loss of enjoyment of life, and other noneconomic losses and the amount of punitive damages that a circuit court may order to not more than the following:

1. \$50,000, if the employer employs 100 or fewer employees.
2. \$100,000, if the employer employs more than 100, but fewer than 201 employees.
3. \$200,000, if the employer employs more than 200, but fewer than 501 employees.
4. \$300,000, if the employer employs more than 500 employees.

(END OF INSERT)

No



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-0909/1
GMM:kjf:ph

2009 BILL

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.

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BILL

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.

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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

BILL

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
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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)