

## 2009 DRAFTING REQUEST

### Senate Substitute Amendment (SSA-SB20)

Received: 03/19/2009

Received By: gmalaise

Wanted: Soon

Identical to LRB:

For: David Hansen (608) 266-5670

By/Representing: Russ Whitesel

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.wisconsin.gov

Carbon copy (CC:) to: russ.whitesel@legis.wisconsin.gov  
jessica.karls@legis.wisconsin.gov

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#### Pre Topic:

No specific pre topic given

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#### Topic:

Employment discrimination; damages and surcharge

---

#### Instructions:

1. Permit civil action to be commenced after completion of administrative proceedings, not including judicial review. 2. Limit damages as under federal law. 3. Exempt government and employeers under 15 employees. 4. Half of surcharge to DWD and half retained by county for court operations.

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#### 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 03/19/2009	wjackson 03/23/2009		_____			
/1			phenry 03/24/2009	_____	mbarman 03/24/2009	mbarman 03/24/2009	
/2	gmalaise	wjackson	phenry	_____	sbasford	sbasford	

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	03/26/2009	04/02/2009	04/03/2009	_____	04/03/2009	04/03/2009	

FE Sent For:

**<END>**

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*fixed*

*Jessica.Karls@legis.wisconsin.gov*

*52v*

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/?	gmalaise 03/19/2009	wjackson 03/23/2009		_____			
/1		<i>1/2 WJ 4/2</i>	phenry 03/24/2009	<i>4/3</i>	mbarman 03/24/2009	mbarman 03/24/2009	

FE Sent For:

*Ph*  
*MO/15*

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/?	gmalaise	1 wlj 3/23	3/24 pb	3/24 pb			

FE Sent For:

<END>

**SENATE AMENDMENT 1,  
TO 2007 SENATE BILL 165**

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.







State of Wisconsin  
2009 - 2010 LEGISLATURE

LRBs0020/10  
GMM.../10  
WLj

In 3/19  
500

SENATE SUBSTITUTE AMENDMENT ,  
TO 2009 SENATE BILL 20

Gen Cat

1 AN ACT ...; relating to: authorizing the circuit court to order a person who  
2 engages in discrimination in employment, unfair honesty testing, or unfair  
3 genetic testing to pay compensatory and punitive damages and a surcharge and  
4 making an appropriation.

**Analysis by the Legislative Reference Bureau**

Under the current fair employment law, a person alleging discrimination in employment or unfair honesty or genetic testing may file a complaint with the Department of Workforce Development (DWD) seeking such action as will effectuate the purpose of the fair employment law, including reinstating the employee, providing back pay, and paying costs and attorney fees. The fair employment law, however, does not authorize DWD to award compensatory or punitive damages to a complainant or to impose any surcharges on the respondent. that

This substitute amendment permits DWD or a person who has been discriminated against or subjected to unfair honesty or genetic testing to bring an action in circuit court to recover compensatory and punitive damages caused by the act of discrimination or unfair honesty or genetic testing, plus reasonable costs and attorney fees, after the completion of all administrative proceedings before DWD and the Labor and Industry Review Commission concerning the violation. The substitute amendment, however, does not permit an action for damages to be brought

against the state, any agency of the state, or any local governmental unit or against any employer employing <sup>fewer</sup> less than 15 individuals.

Under the substitute amendment, if the circuit court finds that a defendant has committed an act of discrimination or unfair honesty or genetic testing, 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, subject to the following limitations: <sup>as follows</sup>

1. ~~\$50,000~~ <sup>\$50,000</sup> if the defendant employs 100 or fewer employees.
2. ~~\$100,000~~ <sup>\$100,000</sup> if the defendant employs more than 100 but fewer than 201 employees.
3. ~~\$200,000~~ <sup>\$200,000</sup> if the defendant employs more than 200 but fewer than 501 employees.
4. ~~\$300,000~~ <sup>\$300,000</sup> if the defendant employs more than 500 employees.

Finally, the substitute amendment requires the circuit court to order the defendant to pay to the circuit court a surcharge equal to 10 percent of the amount of compensatory and punitive damages ordered. Fifty percent of a surcharge collected under the substitute amendment 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 moneys for the administration of the fair employment law. The balance must be retained by the county treasurer and used to pay for the operating costs of the circuit court.

***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 (2) (b), for the administration of subch.  
4 II of ch. 111.

5 SECTION 2. 59.25 (3) (Lm) of the statutes is created to read:

6 59.25 (3) (Lm) Forward 50 percent of the fees received under s. 111.397 (2) (b)  
7 to the secretary of administration for deposit in the general fund and credit to the  
8 appropriation account under s. 20.445 (1) (gr).

9 SECTION 3. 111.39 (4) (d) of the statutes is amended to read:

10 111.39 (4) (d) The department shall serve a certified copy of the findings and  
11 order on the respondent, the order to have the same force as other orders of the

1 department and be enforced as provided in s. 103.005. Any person aggrieved by  
2 noncompliance with the order may have the order enforced specifically by suit in  
3 equity. If the examiner finds that the respondent has not engaged in discrimination,  
4 unfair honesty testing or unfair genetic testing as alleged in the complaint, the  
5 department shall serve a certified copy of the examiner's findings on the complainant  
6 together with an order dismissing the complaint. If the examiner finds that the  
7 respondent has engaged in discrimination, unfair honesty testing, or unfair genetic  
8 testing as alleged in the complaint, the department shall serve a certified copy of the  
9 examiner's findings on the complainant, together with a notice advising the  
10 complainant that after the completion of all administrative proceedings under this  
11 section, he or she may bring an action as provided in s. 111.397 (1) to recover  
12 compensatory and punitive damages as provided in s. 111.397 (2) (a) and advising the  
13 complainant of the time under s. 111.397 (1) (a) or (b) within which the action must  
14 be commenced or be barred.

History: 1973 c. 268; 1977 c. 29, 196; 1979 c. 221, 319, 355; 1981 c. 334 ss. 20, 25 (2); Stats. 1981 s. 111.39; 1983 a. 122; 1989 a. 228; 1991 a. 117; 1995 a. 27.

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

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

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

2           **111.397 Civil action.** (1) Except as provided in this subsection, after the  
3 completion of all administrative proceedings under s. 111.39<sup>✓</sup> concerning a violation  
4 of s. 111.321, 111.37, or 111.372<sup>✓</sup>, the department or a person discriminated against  
5 or subjected to unfair honesty testing or unfair genetic testing may bring an action  
6 in circuit court against any employer, labor organization, or employment agency that  
7 engaged in that discrimination, unfair honesty testing, or unfair genetic testing to  
8 recover compensatory and punitive damages caused by the violation, plus  
9 reasonable costs and attorney fees. The department or a person discriminated  
10 against or subjected to unfair honesty testing or unfair genetic testing may not bring  
11 an action under this subsection against the state, any agency of the state, or any local  
12 governmental unit, as defined in s. 19.42 (7u)<sup>✓</sup>, or against any employer, labor  
13 organization, or employment agency employing ~~less~~<sup>fewer</sup> than 15 individuals for each  
14 working day in each of 20 or more calendar weeks in the current or preceding year.  
15 An action under this subsection shall be commenced within the later of the following  
16 periods, or be barred:

17           (a) Within 60 days after the date on which a copy of the final decision under s.  
18 111.39 (4) (d)<sup>✓</sup> is mailed to the last-known address of the complainant or, if that  
19 decision is reviewed by the commission, within 60 days after the date on which a copy  
20 of the final decision under s. 111.39 (5) (d)<sup>✓</sup> is mailed to the last-known address of the  
21 complainant.

22           (b) Within 2 years after the violation occurred<sup>g</sup>, or the department or person  
23 discriminated against or subjected to unfair honesty testing or unfair genetic testing  
24 should have reasonably known that the violation occurred.

1           (2) (a) Subject to pars. (c) and (d), in an action under sub. (1), the circuit court  
2 shall order the defendant to pay to the person discriminated against or subjected to  
3 unfair honesty testing or unfair genetic testing compensatory and punitive damages  
4 in an amount that the circuit court finds appropriate, plus reasonable costs and  
5 attorney fees, except that the sum of the amount of compensatory damages for future  
6 economic losses and for pain and suffering, emotional distress, mental anguish, loss  
7 of enjoyment of life, and other noneconomic losses and the amount of punitive  
8 damages that a circuit court may order may not exceed the following:

9           1. 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.

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

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

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

21           (b) Subject to par. (c), in an action under sub. (1), the circuit court shall also  
22 order the defendant to pay to the court a surcharge equal to 10 percent of the amount  
23 of compensatory and punitive damages ordered under par. (a). The clerk of circuit  
24 court shall collect and transmit the amount of any surcharge ordered under this  
25 paragraph to the county treasurer, who shall pay 50 percent of the surcharge to the

1 secretary of administration under s. 59.25 (3) (Lm) and retain the balance to pay for  
2 the cost of operating the circuit court of the county. The secretary of administration  
3 shall deposit all moneys received under this paragraph into the general fund to be  
4 credited to the appropriation account under s. 20.445 (1) (gr).

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

8 (d) 1. In this paragraph, "consumer price index" means the average of the  
9 consumer price index for all urban consumers, U.S. city average, as determined by  
10 the bureau of labor statistics of the U.S. department of labor.

11 2. Except as provided in this subdivision, beginning on July 1, 2010, and on  
12 each July 1 after that, the department shall adjust the amounts specified in par. (a)  
13 1., 2., 3., and 4. by calculating the percentage difference between the consumer price  
14 index for the 12-month period ending on December 31 of the preceding year and the  
15 consumer price index for the 12-month period ending on December 31 of the year  
16 before the preceding year and adjusting those amounts by that percentage  
17 difference. The department shall publish the adjusted amounts calculated under  
18 this subdivision in the Wisconsin Administrative Register, and the adjusted amounts  
19 shall apply to actions commenced under sub. (1) beginning on July 1 of the year of  
20 publication. This subdivision does not apply if the consumer price index for the  
21 12-month period ending on December 31 of the preceding year did not increase over  
22 the consumer price index for the 12-month period ending on December 31 of the year  
23 before the preceding year.

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



STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

3/25

Buss Whitesel

① Statute of limitations - 60 days, not 2 years

② If petition for judicial review of LIRC decision is

C. 201, consolidate judicial review & action for damages

③ Damages are in addition to back pay awarded by

DWD & LIRC



## Malaise, Gordon

---

**From:** Wadd, Jay  
**Sent:** Friday, April 03, 2009 9:06 AM  
**To:** George, Mary Beth; Malaise, Gordon  
**Cc:** Wagnitz, John  
**Subject:** RE: S.A. for AB 31 (language changes)

Gordon,

Please incorporate the changes listed below in Mary Beth's email into our sub. We would like both subs to be identical.

Thanks,

Jay

---

**From:** George, Mary Beth  
**Sent:** Thursday, April 02, 2009 9:48 PM  
**To:** Malaise, Gordon  
**Cc:** Wadd, Jay; Wagnitz, John  
**Subject:** RE: S.A. for AB 31 (language changes)

Gordon,

Yep, we developed the sub jointly, with help from Russ Whitesel and Jessical Karls @ Leg Council.

Mary Beth

---

**From:** Malaise, Gordon  
**Sent:** Thursday, April 02, 2009 5:43 PM  
**To:** George, Mary Beth  
**Subject:** RE: S.A. for AB 31

Mary Beth:

If you are aware of Senator Hansen's substitute amendment, then he has waived confidentiality with respect to your office, so I can go ahead and draft a companion sub.

Gordon

---

**From:** George, Mary Beth  
**Sent:** Thursday, April 02, 2009 4:05 PM  
**To:** Malaise, Gordon  
**Cc:** Rep.Sinicki; Karls, Jessica; Whitesel, Russ  
**Subject:** S.A. for AB 31

Hi Gordon,

Please draft the same Substitute Amendment to AB 31 that is being drafted to Senate Bill 20 (Sen. Hansen).

However, in this S.A., please replace current language about the surcharge that goes to DWD with language directing that (language to this effect):

"...an administrative fee equal to 5% of the damages awarded to a claimant under this bill shall be required by the circuit court where a trial for damages takes place, and sent to the State Department of Workforce Development to go towards administrative costs of implementing the Fair Employment Law in its Equal Rights Division.

The circuit court shall also require a court fee equal to 5% of the damages awarded to a claimant under this bill to be kept

for courts administration by the Clerk of Courts in the county where the trial for damages occurs.”

Rep. Sinicki wants to eliminate use of the word “surcharge”.

Thanks, Gordon.

Please let me know if you have any questions about this change.

Mary Beth George  
Office of Rep. Sinicki  
608-266-8588



State of Wisconsin  
2009 - 2010 LEGISLATURE

IN 3/26  
soon

LRBs0020/1  
GMM:wlj:ph  
stays  
DWR

SENATE SUBSTITUTE AMENDMENT,  
TO 2009 SENATE BILL 20

DW-KB

Regen

fee

1 AN ACT *to amend* 111.39 (4) (d) and 814.04 (intro.); and *to create* 20.445 (1) (gr),  
2 59.25 (3) (Lm), 111.39 (5) (d), 111.397, 814.75 (28) and 893.995 of the statutes;  
3 **relating to:** authorizing the circuit court to order a person who engages in  
4 discrimination in employment, unfair honesty testing, or unfair genetic testing  
5 to pay compensatory and punitive damages and a ~~surchage~~ and making an  
6 appropriation.

**Analysis by the Legislative Reference Bureau**

Under the current fair employment law, a person alleging discrimination in employment or unfair honesty or genetic testing may file a complaint with the Department of Workforce Development (DWD) seeking action that will effectuate the purpose of the fair employment law, including reinstating the employee, providing back pay, and paying costs and attorney fees. The fair employment law, however, does not authorize DWD to award compensatory or punitive damages to a complainant or to impose any surcharges on the respondent.

This substitute amendment permits DWD or a person who has been discriminated against or subjected to unfair honesty or genetic testing to bring an action in circuit court to recover compensatory and punitive damages caused by the act of discrimination or unfair honesty or genetic testing, plus reasonable costs and

*Not* = Those damages are in addition to any back pay or other amounts awarded in the administrative proceedings

*incurred in the action*

attorney fees, after the completion of all administrative proceedings before DWD and the Labor and Industry Review Commission concerning the violation. The substitute amendment, however, does not permit an action for damages to be brought against the state, any agency of the state, or any local governmental unit or against any employer employing fewer than 15 individuals.

Under the substitute amendment, if the circuit court finds that a defendant has committed an act of discrimination or unfair honesty or genetic testing, 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, subject to the limitations, as follows:

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

Finally, the substitute amendment requires the circuit court to order the defendant to pay to the circuit court a ~~surcharge~~ *fees* equal to 10 percent of the amount of compensatory and punitive damages ordered. Fifty percent of a ~~surcharge~~ *fees* collected under the substitute amendment 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 moneys for the administration of the fair employment law. The balance must be retained by the county treasurer and used to pay for the operating costs of the circuit court.

***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) *fees* ~~Employment discrimination surcharges~~. All moneys received  
3 from ~~surcharges~~ *fees* collected under s. 111.397 (2) (b), for the administration of subch.  
4 II of ch. 111.

5 SECTION 2. 59.25 (3) (Lm) of the statutes is created to read:

6 59.25 (3) (Lm) Forward 50 percent of the fees received under s. 111.397 (2) (b)  
7 to the secretary of administration for deposit in the general fund and credit to the  
8 appropriation account under s. 20.445 (1) (gr).

9 SECTION 3. 111.39 (4) (d) of the statutes is amended to read:

1           111.39 (4) (d) The department shall serve a certified copy of the findings and  
2 order on the respondent, the order to have the same force as other orders of the  
3 department and be enforced as provided in s. 103.005. Any person aggrieved by  
4 noncompliance with the order may have the order enforced specifically by suit in  
5 equity. If the examiner finds that the respondent has not engaged in discrimination,  
6 unfair honesty testing, or unfair genetic testing as alleged in the complaint, the  
7 department shall serve a certified copy of the examiner's findings on the  
8 complainant, together with an order dismissing the complaint. If the examiner finds  
9 that the respondent has engaged in discrimination, unfair honesty testing, or unfair  
10 genetic testing as alleged in the complaint, the department shall serve a certified  
11 copy of the examiner's findings on the complainant, together with a notice advising  
12 the complainant that after the completion of all administrative proceedings under  
13 this section he or she may bring an action as provided in s. 111.397 (1) <sup>(a) ✓</sup> to recover  
14 compensatory and punitive damages as provided in s. 111.397 (2) (a) and advising the  
15 complainant of the time under s. 111.397 (1) ~~(a) or (b)~~ within which the action must  
16 be commenced or be barred.

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

18           111.39 (5) (d) If the commission affirms a finding that the respondent has  
19 engaged in discrimination, unfair honesty testing, or unfair genetic testing as  
20 alleged in the complaint, the commission shall serve a certified copy of the  
21 commission's decision on the complainant, together with a notice advising the  
22 complainant that after the completion of all administrative proceedings under this  
23 section he or she may bring an action as provided in s. 111.397 (1) <sup>plain → (a)</sup> to recover  
24 compensatory and punitive damages as provided in s. 111.397 (2) (a) and advising the

2009 - 2010 Legislature

- 4 -

*Not* incurred in the action

*These damages are in addition to any back pay or other amounts awarded under s. 111.39*

1 complainant of the time under s. 111.397 (1) ~~(a) (b)~~ (b) within which the action must  
2 be commenced or be barred.

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

*paragraph*

4 **111.397 Civil action.** (1) <sup>(a)</sup> Except as provided in this ~~subsection~~, after the  
5 completion of all administrative proceedings under s. 111.39 concerning a violation  
6 of s. 111.321, 111.37, or 111.372, the department or a person discriminated against  
7 or subjected to unfair honesty testing or unfair genetic testing may bring an action  
8 in circuit court against any employer, labor organization, or employment agency that  
9 engaged in that discrimination, unfair honesty testing, or unfair genetic testing to  
10 recover compensatory and punitive damages caused by the violation, plus  
11 reasonable costs and attorney fees. The department or a person discriminated  
12 against or subjected to unfair honesty testing or unfair genetic testing may not bring  
13 an action under this ~~subsection~~ <sup>paragraph</sup> against the state, any agency of the state, or any local  
14 governmental unit, as defined in s. 19.42 (7u), or against any employer, labor  
15 organization, or employment agency employing fewer than 15 individuals for each  
16 working day in each of 20 or more calendar weeks in the current or preceding year.

17 <sup>(b)</sup> An action under ~~this subsection~~ <sup>paragraph (a)</sup> shall be commenced within ~~the later of the following~~  
18 ~~periods, or be barred:~~

19 ~~(a)~~ <sup>(a)</sup> Within 60 days after the date on which a copy of the final decision under s.  
20 111.39 (4) (d) is mailed to the last-known address of the complainant or, if that  
21 decision is reviewed by the commission, within 60 days after the date on which a copy  
22 of the final decision under s. 111.39 (5) (d) is mailed to the last-known address of the  
23 complainant.

*or be barred*

*incurred in the action. Those damages are in addition to any back pay or other amounts awarded under 40Δ11639. The*

1 (b) Within 2 years after the violation occurred or the department or person  
2 discriminated against or subjected to unfair honesty testing or unfair genetic testing  
3 should have reasonably known that the violation occurred. (a) ↓

4 (2) (a) Subject to pars. (c) and (d), in an action under sub. (1), the circuit court  
5 shall order the defendant to pay to the person discriminated against or subjected to  
6 unfair honesty testing or unfair genetic testing compensatory and punitive damages  
7 in an amount that the circuit court <sup>or jury</sup> finds appropriate, plus reasonable costs and  
8 attorney fees, ~~except that the~~ sum of the amount of compensatory damages for future  
9 economic losses and for pain and suffering, emotional distress, mental anguish, loss  
10 of enjoyment of life, and other noneconomic losses and the amount of punitive  
11 damages that a circuit court may order may not exceed the following:

12 1. In the case of a defendant that employs 100 or fewer employees for each  
13 working day in each of 20 or more calendar weeks in the current or preceding year,  
14 \$50,000.

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

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

21 4. In the case of a defendant that employs more than 500 employees for each  
22 working day in each of 20 or more calendar weeks in the current or preceding year,  
23 \$300,000. (a) ↓

24 (b) Subject to par. (c), in an action under sub. (1), the circuit court shall also  
25 order the defendant to pay to the court a surcharge equal to 10 percent of the amount

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

fee

1 of compensatory and punitive damages ordered under par. (a). The clerk of circuit  
2 court shall collect and transmit the amount of any ~~surcharge~~ ordered under this  
3 paragraph to the county treasurer, who shall pay 50 percent of the ~~surcharge~~ to the  
4 secretary of administration under s. 59.25 (3) (Lm) and retain the balance to pay for  
5 the cost of operating the circuit court of the county. The secretary of administration  
6 shall deposit all moneys received under this paragraph into the general fund to be  
7 credited to the appropriation account under s. 20.445 (1) (gr).

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

11 (d) 1. In this paragraph, "consumer price index" means the average of the  
12 consumer price index for all urban consumers, U.S. city average, as determined by  
13 the bureau of labor statistics of the U.S. department of labor.

14 2. Except as provided in this subdivision, beginning on July 1, 2010, and on  
15 each July 1 after that, the department shall adjust the amounts specified in par. (a)  
16 1., 2., 3., and 4. by calculating the percentage difference between the consumer price  
17 index for the 12-month period ending on December 31 of the preceding year and the  
18 consumer price index for the 12-month period ending on December 31 of the year  
19 before the preceding year and adjusting those amounts by that percentage  
20 difference. The department shall publish the adjusted amounts calculated under  
21 this subdivision in the Wisconsin Administrative Register, and the adjusted amounts  
22 shall apply to actions commenced under sub. (1) <sup>(a)</sup> beginning on July 1 of the year of  
23 publication. This subdivision does not apply if the consumer price index for the  
24 12-month period ending on December 31 of the preceding year did not increase over



1 the consumer price index for the 12-month period ending on December 31 of the year  
2 before the preceding year.

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

4 814.04 Items of costs. (intro.) Except as provided in ss. 93.20, 100.195 (5m)  
5 (b), 100.30 (5m), 106.50 (6) (i) and (6m) (a), 111.397 (2) (a), 115.80 (9), 281.36 (2) (b)  
6 1., 767.553 (4) (d), 769.313, 802.05, 814.245, 895.035 (4), 895.443 (3), 895.444 (2),  
7 895.445 (3), 895.446 (3), 895.506, 943.212 (2) (b), 943.245 (2) (d), 943.51 (2) (b), and  
8 995.10 (3), when allowed costs shall be as follows:

9 SECTION 7. 814.75 (28) of the statutes is created to read:

10 ~~814.75 (28) The employment discrimination surcharge under s. 111.397 (2) (b).~~

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

12 893.995 Employment discrimination; civil remedies. Any civil action  
13 arising under s. 111.397 is subject to the limitations of s. 111.397 (1) <sup>(b)</sup> ✓

14 SECTION 9. Initial applicability.

15 (1) EMPLOYMENT DISCRIMINATION DAMAGES. This act first applies to acts of  
16 employment discrimination, unfair honesty testing, or unfair genetic testing  
17 committed on the effective date of this subsection.

18 SECTION 10. Effective date.

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

21 (END)

*Handwritten notes:*  
# SEC CR; 814.061 (15)  
814.061 (15) (b) (c)  
DAMAGES  
CIVIL ACTION FOR EMPLOYMENT DISCRIMINATION  
On ordering a defendant to pay damages under  
s. 111.397 (2) (a) the fee prescribed in s. 111.397 (2) (b)

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

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Date

GMM: WJ:

NOTE

Russ and Jessica

On further review, we do need to create a statutory right to a trial by jury. There is no constitutional right to a trial by jury in employment discrimination cases because became a cause of action for employment discrimination

did not exist at common law in 1848 when the state constitution was ratified. Village Food Liquor Mart v. <sup>Ampersand</sup> <sub>⊕</sub>

H & S Petroleum <sup>Ampersand</sup> <sub>⊕</sub> 2002 WI 921 254 Wis 22 478

GMM

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

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GMM:wlj:ph

April 3, 2009

Russ and Jessica:

On further review, we do need to create a statutory right to a trial by jury. There is no constitutional right to a trial by jury in employment discrimination cases because a cause of action for employment discrimination did not exist at common law in 1848 when the state constitution was ratified. *Village Food & Liquor Mart v. H&S Petroleum, Inc.*, 2002 WI 92, 254 Wis. 2d 478.

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