

2011 DRAFTING REQUEST

Senate Substitute Amendment (SSA-SB202)

Received: 11/01/2011

Received By: **gmalaise**

Wanted: 11/01/2011

Companion to LRB:

For: **Lena Taylor (608) 266-5810**

By/Representing: **Eric Peterson**

May Contact:

Drafter: **gmalaise**

Subject: **Employ Priv - discrimination**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Taylor@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Elimination of compensatory and punitive damages for unfair honesty or genetic testing

Instructions:

See attached--draft sub that only eliminates damages for unfair honesty or genetic testing, i.e., keep damages for discrimination

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 11/01/2011 | csicilia 11/02/2011 | | _____ | | | |
| /1 | | | jfrantze 11/02/2011 | _____ | mbarman 11/02/2011 | mbarman 11/02/2011 | |

FE Sent For:

<END>

2011 DRAFTING REQUEST

Senate Substitute Amendment (SSA-SB202)

Received: 11/01/2011

Received By: **gmalaise**

Wanted: 11/01/2011

Companion to LRB:

For: **Lena Taylor (608) 266-5810**

By/Representing: **Eric Peterson**

May Contact:

Drafter: **gmalaise**

Subject: **Employ Priv - discrimination**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Taylor@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Elimination of compensatory and punitive damages for unfair honesty or genetic testing

Instructions:

See attached--draft sub that only eliminates damages for unfair honesty or genetic testing, i.e., keep damages for discrimination

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 | 1 gjs | 11/2 11/11/2 | 11/2 gjs | | | |

FE Sent For:

<END>

Malaise, Gordon

From: Peterson, Eric
Sent: Tuesday, November 01, 2011 10:34 PM
To: Malaise, Gordon
Subject: RUSH Drafting for Taylor - SB 202, need for floor Wed AM
Importance: High

Gordon:

I need a substitute amendment to SB 202 for floor Wed AM. The sub should delete ONLY unfair honesty testing and unfair genetic testing from current law.

Thanks
Eric

Eric M. Peterson

Chief of Staff -- Senator Lena C. Taylor
Ranking Member, Joint Committee on Finance
608-266-5810 o, 608-267-2353 f



IN 111 Early AM 11/2 - Floor

State of Wisconsin

2011 - 2012 LEGISLATURE



LRB-0822/1

GMM:kjrs

502507

SENATE SUBSTITUTE AMENDMENT TO

js

2011 SENATE BILL 202

SAV

September 27, 2011 - Introduced by Senators GROTHMAN, GALLOWAY, DARLING, LASEE, KEDZIE, ZIPPERER and MOULTON, cosponsored by Representatives LITJENS, LEMAHIEU, PRIDEMORE, THIESFELDT, HONADEL, BROOKS, KNODL, KLEEFISCH, T. LARSON, KOOPYENGA, RIVARD, KAPENGA, STEINEKE, SEVERSON, PETERSEN, STROEBEL, VOS, KNILANS, CRAIG, A. OTT, KAUFERT, TAUCHEN, BIES, KUGLITSCH, ENDSLEY and STRACHOTA. Referred to Committee on Judiciary, Utilities, Commerce, and Government Operations.

GenCat

Regenerate

1 AN ACT to repeat 111.39 (5) (d), 111.397 and 893.995; and to amend 111.39 (4)
2 (d) and 814.04 (intro.) of the statutes; relating to: elimination of compensatory
3 and punitive damages for acts of employment discrimination or unfair honesty
4 or genetic testing.

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. In addition, the fair employment law 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 after the completion of all administrative proceedings before DWD and the Labor and Industry Review Commission concerning the violation. 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 certain limitations, as follows:

- 1. If the defendant employs 100 or fewer employees, \$50,000.

SENATE BILL 202

substitute amendment

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.

This ~~bill~~ eliminates the awarding of compensatory and punitive damages to persons who have been ~~discriminated against in employment or~~ subjected to unfair honesty or genetic testing. Under the bill, DWD may still award to such a person back pay, costs, and attorney fees.

~~For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.~~

← *kee lin*

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

← *kes*

SECTION 1. 111.39 (4) (d) of the statutes is amended to read:

~~111.39 (4) (d) The department shall serve a certified copy of the findings and order on the respondent, the order to have the same force as other orders of the department and be enforced as provided in s. 103.005. Any person aggrieved by noncompliance with the order may have the order enforced specifically by suit in equity. If the examiner finds that the respondent has not engaged in discrimination, unfair honesty testing, or unfair genetic testing as alleged in the complaint, the department shall serve a certified copy of the examiner's findings on the complainant, together with an order dismissing the complaint. If the examiner finds that the respondent has engaged in discrimination, unfair honesty testing, or unfair genetic testing as alleged in the complaint, the department shall serve a certified copy of the examiner's findings on the complainant, together with a notice advising the complainant that after the completion of all administrative proceedings under this section he or she may bring an action as provided in s. 111.397 (1) (a) to recover compensatory and punitive damages as provided in s. 111.397 (2) (a) and advising the~~

l

SENATE BILL 202

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

3 SECTION 2. 111.39 (5) (d) of the statutes is repealed.

4 SECTION 3. 111.397 of the statutes is repealed.

5 SECTION 4. 814.04 (intro.) of the statutes is amended to read:

6 **814.04 Items of costs.** (intro.) Except as provided in ss. 93.20, 100.195 (5m)
7 (b), 100.30 (5m), 106.50 (6) (i) and (6m) (a), 111.397 (2) (a), 115.80 (9), 281.36 (2) (b)
8 1., 767.553 (4) (d), 769.313, 802.05, 814.245, 895.035 (4), 895.443 (3), 895.444 (2),
9 895.445 (3), 895.446 (3), 895.506, 943.212 (2) (b), 943.245 (2) (d), 943.51 (2) (b), and
10 995.10 (3), when allowed costs shall be as follows:

11 SECTION 5. 893.995 of the statutes is repealed.

12 SECTION 6. Initial applicability.

(S) FOR UNSUBSIDIZED HONESTY OR GENETIC TESTING

13 (1) ELIMINATION OF ~~EMPLOYMENT DISCRIMINATION~~ DAMAGES. This act first applies
14 to an administrative proceeding under section 111.39 of the statutes concerning a
15 violation of section ~~(111.371)~~ 111.37^{ph} or 111.372 of the statutes in which a copy of the
16 final decision under section 111.39 (4) (d) or (5) (d) of the statutes is mailed to the
17 last-known address of the complainant on the effective date of this subsection.

18 (END)

Insert
3-11

↓
Insert

2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0251/lins
GMM.....

complainant and
complainant and

(INSERT 3-11)

1 SECTION 1. 111.39 (4) (d) of the statutes is amended to read:

2 111.39 (4) (d) The department shall serve a certified copy of the findings and
3 order on the respondent, the order to have the same force as other orders of the

4 department and be enforced as provided in s. 103.005. Any person aggrieved by
5 noncompliance with the order may have the order enforced specifically by suit in

6 equity. ~~If the examiner finds that the respondent has not engaged in discrimination,~~

7 ~~unfair honesty testing, or unfair genetic testing as alleged in the complaint, the~~

8 ~~department shall serve a certified copy of the examiner's findings on the~~

9 ~~complainant, together with an order dismissing the complaint.~~ If the examiner finds

10 that the respondent has engaged in discrimination, unfair honesty testing, or unfair

11 genetic testing as alleged in the complaint, the department shall ^{also} serve a certified

12 ~~copy of the examiner's findings~~ on the complainant, ~~together with~~ a notice advising

13 the complainant that after the completion of all administrative proceedings under

14 this section he or she may bring an action as provided in s. 111.397 (1) (a) to recover

15 compensatory and punitive damages as provided in s. 111.397 (2) (a) and advising the

16 complainant of the time under s. 111.397 (1) (b) within which the action must be

17 commenced or be barred. The commission shall serve a certified copy of its

decision on the complainant and respondent.

History: 1973 c. 268; 1977 c. 29, 196; 1979 c. 221, 318, 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; 2009 a.

18 SECTION 2. 111.39 (5) (d) of the statutes is amended to read:

19 111.39 (5) (d) If the commission affirms a finding that the respondent has
20 engaged in discrimination, unfair honesty testing, or unfair genetic testing as

21 alleged in the complaint, the commission shall ^{also} serve a certified copy of the

22 ~~commission's decision~~ on the complainant, ~~together with~~ a notice advising the

23 complainant that after the completion of all administrative proceedings under this

1 section he or she may bring an action as provided in s. 111.397 (1) (a) to recover
2 compensatory and punitive damages as provided in s. 111.397 (2) (a) and advising the
3 complainant of the time under s. 111.397 (1) (b) within which the action must be
4 commenced or be barred.

History: 1973 c. 268; 1977 c. 29, 196; 1979 c. 221, 319, 335; 1981 c. 334 ss. 20, 25 (2); Stats. 1981 s. 111.39; 1983 a. 122; 1989 a. 228; 1991 a. 117; 1995 a. 27; 2009 a.
20.

5 **SECTION 3.** 111.397 (1) (a) of the statutes is amended to read:

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

History: 2009 a. 20.

20 **SECTION 4.** 111.397 (2) (a) (intro.) of the statutes is amended to read:

21 111.397 (2) (a) (intro.) Subject to pars. (c) and (d), in an action under sub. (1)
22 (a), the circuit court shall order the defendant to pay to the person discriminated
23 against ~~or subjected to unfair honesty testing or unfair genetic testing~~ compensatory
24 damages, and punitive damages under s. 895.043, in an amount that the circuit court

x

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

History: 2009 a. 20.

7 **SECTION 5.** 111.397 (2) (c) of the statutes is amended to read:

8 111.397 (2) (c) If the circuit court orders any payment under par. (a) because
9 of a violation of s. 111.321, ~~111.37, or 111.372~~ by an individual employed by an
10 employer, the employer of that individual is liable for the payment.

History: 2009 a. 20.

(END OF INSERT)