



## 2013 ASSEMBLY BILL 604

January 7, 2014 - Introduced by Representatives SMITH, MILROY, SINICKI, C. TAYLOR, MASON, BERCEAU, HEBL, OHNSTAD, GOYKE, WACHS, WRIGHT, BEWLEY, RINGHAND, HINTZ, ZEPNICK, YOUNG, PASCH, BARCA, JORGENSEN, ZAMARRIPA, VRUWINK, DOYLE, BERNARD SCHABER, GENRICH, SARGENT, BILLINGS and KAHL, cosponsored by Senators LEHMAN and LASSA. Referred to Committee on Labor.

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 on the basis of  
4           military service to pay compensatory and punitive damages.

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### ***Analysis by the Legislative Reference Bureau***

Current law prohibits employment discrimination on the basis of military service, which is defined as service in the U.S. armed forces, the state defense force, the national guard of any state, or any other reserve component of the U.S. armed forces. Also, current law specifies that employment discrimination on the basis of military service includes discriminating against an individual because the individual is or applies to be a member of the U.S. armed forces, the state defense force, the national guard of any state, or any reserve component of the U.S. armed forces or because the individual performs, has performed, applies to perform, or has an obligation to perform military service. Current law provides, however, that it is not employment discrimination on the basis of military service to refuse to hire, employ, or license an individual or to bar or terminate an individual from employment or licensure because the individual has been less than honorably discharged from military service and the circumstances of the discharge substantially relate to the circumstances of the particular job or licensed activity.

Under current law, a person alleging discrimination in employment on the basis of military service may file a complaint with the Department of Workforce Development (DWD) seeking action that will effectuate the purpose of the

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employment discrimination law, including reinstating the complainant, providing back pay, and paying costs and attorney fees. Current law, however, does not authorize DWD to award compensatory or punitive damages to a complainant.

This bill permits DWD or a person who has been discriminated against on the basis of military service to bring an action in circuit court to recover compensatory and punitive damages caused by the act of discrimination, plus reasonable costs and attorney fees incurred in the action, after the completion of all administrative proceedings before DWD and the Labor and Industry Review Commission concerning the violation. Those damages are in addition to any back pay or other amounts awarded in the administrative proceeding. The bill, however, does not permit an action for damages to be brought against any local governmental unit or against any employer employing fewer than 15 individuals.

Under the bill, if the circuit court finds that a defendant has discriminated on the basis of military service, 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.

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

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

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

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1 that the respondent has engaged in discrimination on the basis of military service  
2 as alleged in the complaint, the department shall serve a certified copy of the  
3 examiner's findings on the complainant, together with a notice advising the  
4 complainant that after the completion of all administrative proceedings under this  
5 section he or she may bring an action as provided in s. 111.397 (1) (a) to recover  
6 compensatory and punitive damages as provided in s. 111.397 (2) (a) and advising the  
7 complainant of the time under s. 111.397 (1) (b) within which the action must be  
8 commenced or be barred.

9 **SECTION 2.** 111.39 (5) (d) of the statutes is created to read:

10 111.39 (5) (d) If the commission affirms a finding that the respondent has  
11 engaged in discrimination on the basis of military service as alleged in the complaint,  
12 the commission shall serve a certified copy of the commission's decision on the  
13 complainant, together with a notice advising the complainant that after the  
14 completion of all administrative proceedings under this section he or she may bring  
15 an action as provided in s. 111.397 (1) (a) to recover compensatory and punitive  
16 damages as provided in s. 111.397 (2) (a) and advising the complainant of the time  
17 under s. 111.397 (1) (b) within which the action must be commenced or be barred.

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

19 **111.397 Civil action.** (1) (a) Except as provided in this paragraph, after the  
20 completion of all administrative proceedings under s. 111.39 concerning a violation  
21 of s. 111.321 on the basis of military service, the department or person discriminated  
22 against may bring an action in circuit court against any employer, labor  
23 organization, or employment agency that engaged in that discrimination to recover  
24 compensatory and punitive damages caused by the violation, plus reasonable costs  
25 and attorney fees incurred in the action. Those damages are in addition to any back

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1 pay or other amounts awarded under s. 111.39. The department or person  
2 discriminated against may not bring an action under this paragraph against any  
3 local governmental unit, as defined in s. 19.42 (7u), or against any employer, labor  
4 organization, or employment agency employing fewer than 15 individuals for each  
5 working day in each of 20 or more calendar weeks in the current or preceding year.

6 (b) An action under par. (a) shall be commenced within 60 days after the date  
7 on which a copy of the final decision under s. 111.39 (4) (d) is mailed to the last-known  
8 address of the complainant or, if that decision is reviewed by the commission, within  
9 60 days after the date on which a copy of the final decision under s. 111.39 (5) (d) is  
10 mailed to the last-known address of the complainant, or be barred.

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

15 **(2)** (a) Subject to pars. (b) and (c), in an action under sub. (1) (a), the circuit court  
16 shall order the defendant to pay to the person discriminated against compensatory  
17 damages, and punitive damages under s. 895.043, in an amount that the circuit court  
18 or jury finds appropriate, plus reasonable costs and attorney fees incurred in the  
19 action. Those damages are in addition to any back pay or other amounts awarded  
20 under s. 111.39. The sum of the amount of compensatory damages for future  
21 economic losses and for pain and suffering, emotional distress, mental anguish, loss  
22 of enjoyment of life, and other noneconomic losses and the amount of punitive  
23 damages that a circuit court may order may not exceed the following:

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1           1. In the case of a defendant that employs 100 or fewer employees for each  
2 working day in each of 20 or more calendar weeks in the current or preceding year,  
3 \$50,000.

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

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

10          4. In the case of a defendant that employs more than 500 employees for each  
11 working day in each of 20 or more calendar weeks in the current or preceding year,  
12 \$300,000.

13           (b) If the circuit court orders any payment under par. (a) because of a violation  
14 by an individual employed by an employer, the employer of that individual is liable  
15 for the payment.

16           (c) 1. In this paragraph, "consumer price index" means the average of the  
17 consumer price index for all urban consumers, U.S. city average, as determined by  
18 the bureau of labor statistics of the federal department of labor.

19           2. Except as provided in this subdivision, beginning on July 1, 2015, and on  
20 each July 1 after that, the department shall adjust the amounts specified in par. (a)  
21 1., 2., 3., and 4. by calculating the percentage difference between the consumer price  
22 index for the 12-month period ending on December 31 of the preceding year and the  
23 consumer price index for the 12-month period ending on December 31 of the year  
24 before the preceding year and adjusting those amounts by that percentage  
25 difference. The department shall publish the adjusted amounts calculated under

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1 this subdivision in the Wisconsin Administrative Register, and the adjusted amounts  
2 shall apply to actions commenced under sub. (1) (a) beginning on July 1 of the year  
3 of publication. This subdivision does not apply if the consumer price index for the  
4 12-month period ending on December 31 of the preceding year did not increase over  
5 the consumer price index for the 12-month period ending on December 31 of the year  
6 before the preceding year.

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

8 **814.04 Items of costs.** (intro.) Except as provided in ss. 93.20, 100.195 (5m)  
9 (b), 100.30 (5m), 106.50 (6) (i) and (6m) (a), 111.397 (2) (a), 115.80 (9), 767.553 (4) (d),  
10 769.313, 802.05, 814.245, 895.035 (4), 895.044, 895.443 (3), 895.444 (2), 895.445 (3),  
11 895.446 (3), 895.506, 943.212 (2) (b), 943.245 (2) (d), 943.51 (2) (b), and 995.10 (3),  
12 when allowed costs shall be as follows:

13 **SECTION 5.** 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 (1) (b).

16 **SECTION 6. Initial applicability.**

17 (1) **EMPLOYMENT DISCRIMINATION ON THE BASIS OF MILITARY SERVICE; DAMAGES.** This  
18 act first applies to acts of employment discrimination on the basis of military service  
19 committed on the effective date of this subsection.

20 (END)