



State of Wisconsin
2011 - 2012 LEGISLATURE



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SENATE SUBSTITUTE AMENDMENT 1,

TO 2011 SENATE BILL 202

November 2, 2011 – Offered by Senators TAYLOR, HANSEN, MILLER, S. COGGS, C. LARSON, HOLPERIN and CARPENTER.

1 **AN ACT to amend** 111.39 (4) (d), 111.39 (5) (d), 111.397 (1) (a), 111.397 (2) (a)
2 (intro.) and 111.397 (2) (c) of the statutes; **relating to:** elimination of
3 compensatory and punitive damages for acts of unfair honesty or genetic
4 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.
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 substitute amendment eliminates the awarding of compensatory and punitive damages to persons who have been subjected to unfair honesty or genetic testing. Under the bill, DWD may still award to such a person back pay, costs, and attorney fees.

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

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

2 111.39 (5) (d) The commission shall serve a certified copy of its decision on the
3 complainant and respondent. If the commission affirms a finding that the
4 respondent has engaged in discrimination, ~~unfair honesty testing, or unfair genetic~~
5 ~~testing~~ as alleged in the complaint, the commission shall also serve ~~a certified copy~~
6 ~~of the commission's decision on the complainant, together with~~ a notice advising the
7 complainant that after the completion of all administrative proceedings under this
8 section he or she may bring an action as provided in s. 111.397 (1) (a) to recover
9 compensatory and punitive damages as provided in s. 111.397 (2) (a) and advising the
10 complainant of the time under s. 111.397 (1) (b) within which the action must be
11 commenced or be barred.

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

13 111.397 (1) (a) Except as provided in this paragraph, after the completion of all
14 administrative proceedings under s. 111.39 concerning a violation of s. 111.321,
15 ~~111.37, or 111.372,~~ the department or a person discriminated against ~~or subjected to~~
16 ~~unfair honesty testing or unfair genetic testing~~ may bring an action in circuit court
17 against any employer, labor organization, or employment agency that engaged in
18 that discrimination, ~~unfair honesty testing, or unfair genetic testing~~ to recover
19 compensatory and punitive damages caused by the violation, plus reasonable costs
20 and attorney fees incurred in the action. Those damages are in addition to any back
21 pay or other amounts awarded under s. 111.39. The department or a person
22 discriminated against ~~or subjected to unfair honesty testing or unfair genetic testing~~
23 may not bring an action under this paragraph against any local governmental unit,
24 as defined in s. 19.42 (7u), or against any employer, labor organization, or

1 employment agency employing fewer than 15 individuals for each working day in
2 each of 20 or more calendar weeks in the current or preceding year.

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

4 111.397 (2) (a) (intro.) Subject to pars. (c) and (d), in an action under sub. (1)
5 (a), the circuit court shall order the defendant to pay to the person discriminated
6 against ~~or subjected to unfair honesty testing or unfair genetic testing~~ compensatory
7 damages, and punitive damages under s. 895.043, in an amount that the circuit court
8 or jury finds appropriate, plus reasonable costs and attorney fees incurred in the
9 action. Those damages are in addition to any back pay or other amounts awarded
10 under s. 111.39. The sum of the amount of compensatory damages for future
11 economic losses and for pain and suffering, emotional distress, mental anguish, loss
12 of enjoyment of life, and other noneconomic losses and the amount of punitive
13 damages that a circuit court may order may not exceed the following:

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

15 111.397 (2) (c) If the circuit court orders any payment under par. (a) because
16 of a violation of s. 111.321, ~~111.37, or 111.372~~ by an individual employed by an
17 employer, the employer of that individual is liable for the payment.

18 **SECTION 6. Initial applicability.**

19 (1) **ELIMINATION OF DAMAGES FOR UNFAIR HONESTY OR GENETIC TESTING.** This act
20 first applies to an administrative proceeding under section 111.39 of the statutes
21 concerning a violation of section 111.37 or 111.372 of the statutes in which a copy of
22 the final decision under section 111.39 (4) (d) or (5) (d) of the statutes is mailed to the
23 last-known address of the complainant on the effective date of this subsection.

24 (END)