



## 2003 ASSEMBLY BILL 318

May 8, 2003 – Introduced by Representatives SINICKI, PLOUFF, LOEFFELHOLZ, COLON, POCAN, MORRIS, BOYLE, VRUWINK, WASSERMAN, POPE-ROBERTS, MILLER, ZEPNICK, KRUG, YOUNG, BALOW, BERCEAU, BLACK, RICHARDS, HEBL, VAN AKKEREN, STEINBRINK, GRONEMUS, COGGS, J. LEHMAN, SHERMAN, TURNER, SHILLING, PLALE and KREUSER, cosponsored by Senators HANSEN, CARPENTER, SCHULTZ, ROBSON, RISSER, DECKER, MOORE, CHVALA and ERPENBACH. Referred to Committee on Labor.

1     **AN ACT** *to amend* 59.25 (3) (f) 2. and 59.40 (2) (m); and *to create* 20.445 (1) (gr),  
2           111.397 and 893.99 of the statutes; **relating to:** authorizing the circuit court  
3           to order a person who engages in discrimination in employment to pay  
4           compensatory and punitive damages and an assessment, directing the  
5           secretary of workforce development to appoint a committee to study wage  
6           disparities between men and women and between minority group members and  
7           nonminority group members, and making an appropriation.

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### ***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 and providing back pay for not more than two years before the filing of the complaint, costs, and attorney fees. Current law, however, does not authorize DWD to order the

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payment of compensatory or punitive damages or any other assessments 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 an assessment equal to 10% of the amount of compensatory and punitive damages ordered. Assessments collected under the bill must be transmitted to the state treasurer, deposited in the general fund, and credited to an appropriation account of DWD, which must use those assessments 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, 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.

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*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 assessments.* All moneys received  
3 from assessments collected under s. 111.397 (1), for the administration of subch. II  
4 of ch. 111.  
5           **SECTION 2.** 59.25 (3) (f) 2. of the statutes is amended to read:  
6           59.25 (3) (f) 2. For all court imposed fines and forfeitures required by law to be  
7 deposited in the state treasury, the amounts required by s. 757.05 for the penalty

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1 assessment surcharge, the amounts required by s. 165.755 for the crime laboratories  
2 and drug law enforcement assessment, the amounts required by s. 167.31 (5) for the  
3 weapons assessment, the amounts required by s. 973.045 for the crime victim and  
4 witness assistance surcharge, the amounts required by s. 938.34 (8d) for the  
5 delinquency victim and witness assistance surcharge, the amounts required by s.  
6 973.046 for the deoxyribonucleic acid analysis surcharge, the amounts required by  
7 s. 961.41 (5) for the drug abuse program improvement surcharge, the amounts  
8 required by s. 100.261 for the consumer protection assessment, the amounts  
9 authorized by s. 971.37 (1m) (c) 1. or required by s. 973.055 (1) for the domestic abuse  
10 assessment, the amounts required by s. 253.06 (4) (c) for the enforcement assessment  
11 under the supplemental food program for women, infants, and children, the amounts  
12 required by s. 349.04 for the truck driver education assessment, the amounts  
13 required by ss. 346.177, 346.495, and 346.65 (4r) for the railroad crossing  
14 improvement assessment, the amounts required by s. 346.655 (2) (a) and (b) for the  
15 driver improvement surcharge, the amounts required by s. 102.85 (4) for the  
16 uninsured employer assessment, the amounts required by s. 299.93 for the  
17 environmental assessment, the amounts required by s. 29.983 for the wild animal  
18 protection assessment, the amounts required by ss. 29.987 and 169.46 (1) for the  
19 natural resources assessment surcharge, the amounts required by s. 29.985 for the  
20 fishing shelter removal assessment, the amounts required by s. 350.115 for the  
21 snowmobile registration restitution payment, and the amounts required by ss.  
22 29.989 and 169.46 (2) for natural resources restitution payments, and the amounts  
23 required under s. 111.397 (1) for the employment discrimination assessment,  
24 transmit to the state treasurer a statement of all moneys required by law to be paid  
25 on the actions entered during the preceding month on or before the first day of the

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1 next succeeding month, certified by the county treasurer's personal signature affixed  
2 or attached thereto, and at the same time pay to the state treasurer the amount  
3 thereof.

4 **SECTION 3.** 59.40 (2) (m) of the statutes is amended to read:

5 59.40 (2) (m) Pay monthly to the treasurer for the use of the state the state's  
6 percentage of the fees required to be paid on each civil action, criminal action and  
7 special proceeding filed during the preceding month and pay monthly to the  
8 treasurer for the use of the state the percentage of court imposed fines and forfeitures  
9 required by law to be deposited in the state treasury, the amounts required by s.  
10 757.05 for the penalty assessment surcharge, the amounts required by s. 165.755 for  
11 the crime laboratories and drug law enforcement assessment, the amounts required  
12 by s. 167.31 (5) for the weapons assessment, the amounts required by s. 973.045 for  
13 the crime victim and witness assistance surcharge, the amounts required by s.  
14 938.34 (8d) for the delinquency victim and witness assistance surcharge, the  
15 amounts required by s. 973.046 for the deoxyribonucleic acid analysis surcharge, the  
16 amounts required by s. 961.41 (5) for the drug abuse program improvement  
17 surcharge, the amounts required by s. 100.261 for the consumer protection  
18 assessment, the amounts authorized by s. 971.37 (1m) (c) 1. or required by s. 973.055  
19 for the domestic abuse assessment surcharge, the amounts required by s. 253.06 (4)  
20 (c) for the enforcement assessment under the supplemental food program for women,  
21 infants, and children, the amounts required by s. 349.04 for the truck driver  
22 education assessment, the amounts required by ss. 346.177, 346.495, and 346.65 (4r)  
23 for the railroad crossing improvement assessment, the amounts required by s.  
24 346.655 for the driver improvement surcharge, the amounts required by s. 102.85 (4)  
25 for the uninsured employer assessment, the amounts required by s. 299.93 for the

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1 environmental assessment, the amounts required under s. 29.983 for the wild  
2 animal protection assessment, the amounts required under ss. 29.987 (1) (d) and  
3 169.46 (1) (d) for the natural resources assessment surcharge, the amounts required  
4 by s. 29.985 for the fishing shelter removal assessment, the amounts required by s.  
5 350.115 for the snowmobile registration restitution payment, and the amounts  
6 required under ss. 29.989 (1) (d) and 169.46 (2) (d) for the natural resources  
7 restitution payments, and the amounts required under s. 111.397 (1) for the  
8 employment discrimination assessment. The payments shall be made by the 15th  
9 day of the month following receipt thereof.

10 **SECTION 4.** 111.397 of the statutes is created to read:

11 **111.397 Civil action. (1)** A person discriminated against or the department  
12 may bring an action in circuit court against an employer, labor organization,  
13 employment agency, or licensing agency to recover damages caused by a violation of  
14 s. 111.321 after the completion of an administrative proceeding, including judicial  
15 review, concerning that violation. If the circuit court finds that a defendant has  
16 committed a violation of s. 111.321, the circuit court shall order the defendant to pay  
17 to the person discriminated against compensatory and punitive damages in an  
18 amount that the circuit court finds appropriate and to pay to the court an assessment  
19 equal to 10% of the amount of compensatory and punitive damages ordered, except  
20 that if the circuit court orders any payment under this subsection because of a  
21 violation of s. 111.321 by an individual employed by an employer, the employer of that  
22 individual is liable for the payment. The clerk of circuit court shall collect and  
23 transmit the amount of any assessment ordered under this subsection to the county  
24 treasurer under s. 59.40 (2) (m). The county treasurer shall then make payment to  
25 the state treasurer under s. 59.25 (3) (f) 2. All assessments collected under this

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1 subsection shall be deposited in the general fund and credited to the appropriation  
2 account under s. 20.445 (1) (gr).

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

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

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

9 **SECTION 5.** 893.99 of the statutes is created to read:

10 **893.99 Employment discrimination; civil remedies.** Any civil action  
11 arising under s. 111.397 is subject to the limitations of s. 111.397 (2).

12 **SECTION 6. Nonstatutory provisions.**

13 (1) WAGE DISPARITY STUDY.

14 (a) *Definition.* In this subsection, “minority group member” has the meaning  
15 given in section 560.036 (1) (f) of the statutes.

16 (b) *Committee.* By the first day of the 3rd month beginning after the effective  
17 date of this paragraph, the secretary of workforce development shall create and  
18 appoint a committee consisting of the members specified in paragraph (c) to study  
19 the issues specified in paragraph (d) and report its findings, conclusions, and  
20 recommendations as provided in paragraph (e).

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

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

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

6           3. Two members who are representatives of organizations whose objectives  
7 include the elimination of wage disparities between men and women and between  
8 minority group members and nonminority group members and who have  
9 undertaken advocacy, educational, or legislative initiatives in pursuit of that  
10 objective.

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

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

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

20           2. The factors that cause, or that tend to cause, those wage disparities,  
21 including segregation between men and women and between minority group  
22 members and nonminority group members, both within and across occupations; the  
23 payment of lower wages in occupations dominated by women or by minority group  
24 members; disparities between men and women in child-rearing responsibilities; and

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1 disparities in education and training between men and women and between minority  
2 group members and nonminority group members.

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

5 (e) *Recommendations.* The committee shall recommend solutions and policy  
6 alternatives, including proposed legislation, to eliminate and prevent wage  
7 disparities between men and women and between minority group members and  
8 nonminority group members. By the first day of the 15th month beginning after the  
9 effective date of this paragraph, the committee shall report its findings, conclusions,  
10 and recommendations to the secretary of workforce development who shall submit  
11 that report to the appropriate standing committees of the legislature in the manner  
12 provided under section 13.172 (3) of the statutes and to the governor by the first day  
13 of the 16th month beginning after publication.

14 **SECTION 7. Initial applicability.**

15 (1) *Employment discrimination damages.* The treatment of sections 59.25 (3)  
16 (f) 2., 59.40 (2) (m), 111.397, and 893.999 of the statutes first apply to acts of  
17 employment discrimination committed on the effective date of this subsection.

18 (END)