



2005 ASSEMBLY BILL 406

May 5, 2005 – Introduced by Representatives SINICKI, YOUNG, VRUWINK, BENEDICT, GRIGSBY, BOYLE, FIELDS, BERCEAU, SHILLING, NELSON, SHERIDAN, MOLEPSKE, RICHARDS, PARISI, POPE-ROBERTS, POCAN, SEIDEL and TURNER, cosponsored by Senators HANSEN, CARPENTER, TAYLOR, MILLER, LASSA, WIRCH, BRESKE and ERPENBACH. Referred to Committee on Labor.

1 **AN ACT to create** 20.445 (1) (gr), 111.397, 814.75 (27) and 893.99 of the statutes;
2 **relating to:** authorizing the circuit court to order a person who engages in
3 discrimination in employment to pay compensatory and punitive damages and
4 a surcharge, directing the secretary of workforce development to appoint a
5 committee to study wage disparities between men and women and between
6 minority group members and nonminority group members, and making an
7 appropriation.

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

ASSEMBLY BILL 406

order the payment of compensatory or punitive damages or any other surcharges 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 a surcharge equal to 10 percent of the amount of compensatory and punitive damages ordered. Surcharges collected under the bill 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 surcharges 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, and 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.

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 (1), for the administration of subch. II of
4 ch. 111.

5 **SECTION 2.** 111.397 of the statutes is created to read:

6 **111.397 Civil action.** (1) A person discriminated against or the department
7 may bring an action in circuit court against an employer, labor organization,

ASSEMBLY BILL 406

1 employment agency, or licensing agency to recover damages caused by a violation of
2 s. 111.321 after the completion of an administrative proceeding, including judicial
3 review, concerning that violation. If the circuit court finds that a defendant has
4 committed a violation of s. 111.321, the circuit court shall order the defendant to pay
5 to the person discriminated against compensatory and punitive damages in an
6 amount that the circuit court finds appropriate and to pay to the court a surcharge
7 equal to 10 percent of the amount of compensatory and punitive damages ordered,
8 except that if the circuit court orders any payment under this subsection because of
9 a violation of s. 111.321 by an individual employed by an employer, the employer of
10 that individual is liable for the payment. The clerk of circuit court shall collect and
11 transmit the amount of any surcharge ordered under this subsection to the county
12 treasurer under s. 59.40 (2) (m). The county treasurer shall then make payment to
13 the secretary of administration under s. 59.25 (3) (f) 2. The secretary of
14 administration shall deposit all moneys received under this subsection into the
15 general fund to be credited to the appropriation account under s. 20.445 (1) (gr).

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

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

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

22 **SECTION 3.** 814.75 (27) of the statutes is created to read:

23 814.75 (27) The employment discrimination surcharge under s. 111.397 (1).

24 **SECTION 4.** 893.99 of the statutes is created to read:

ASSEMBLY BILL 406

1 **893.99 Employment discrimination; civil remedies.** Any civil action
2 arising under s. 111.397 is subject to the limitations of s. 111.397 (2).

3 **SECTION 5. Nonstatutory provisions.**

4 (1) WAGE DISPARITY STUDY.

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

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

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

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

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

21 3. Two members who are representatives of organizations whose objectives
22 include the elimination of wage disparities between men and women and between
23 minority group members and nonminority group members and who have
24 undertaken advocacy, educational, or legislative initiatives in pursuit of that
25 objective.

ASSEMBLY BILL 406

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

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

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

10 2. The factors that cause, or that tend to cause, those wage disparities,
11 including segregation between men and women and between minority group
12 members and nonminority group members, both within and across occupations; the
13 payment of lower wages in occupations dominated by women or by minority group
14 members; disparities between men and women in child-rearing responsibilities; and
15 disparities in education and training between men and women and between minority
16 group members and nonminority group members.

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

19 (e) *Recommendations.* The committee shall recommend solutions and policy
20 alternatives, including proposed legislation, to eliminate and prevent wage
21 disparities between men and women and between minority group members and
22 nonminority group members. By the first day of the 15th month beginning after the
23 effective date of this paragraph, the committee shall report its findings, conclusions,
24 and recommendations to the secretary of workforce development who shall submit
25 that report to the appropriate standing committees of the legislature in the manner

ASSEMBLY BILL 406

1 provided under section 13.172 (3) of the statutes and to the governor by the first day
2 of the 16th month beginning after publication.

3 **SECTION 6. Initial applicability.**

4 (1) *Employment discrimination damages.* The treatment of sections 111.397,
5 814.75 (27), and 893.999 of the statutes first applies to acts of employment
6 discrimination committed on the effective date of this subsection.

7 (END)