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Details:

(FORM UPDATED: 08/11/2010)

**WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS**

2009-10

(session year)

Senate

(Assembly, Senate or Joint)

**Committee on ... Labor, Elections, and Urban
Affairs (SC-LEUA)**

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
(**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**



TO: Members of the Senate Committee on Labor, Elections and Urban Affairs

FROM: John Metcalf, Director, Human Resources Policy

DATE: March 12, 2009

RE: Senate Bill 20 – Cause of Action in Court and Compensatory and Punitive Damages for WFEA Cases

Background

Under the current Wisconsin Fair Employment law (WFEA), 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 reinstate the employee, provide back pay for not more than two years before the filing of the complaint, and pay costs and attorney fees. Current law, however, does not authorize DWD to order the payment of compensatory or punitive damages or any other surcharges or penalties in a case of employment discrimination.

Provisions of SB 20

SB 20 permits DWD or a person who has been discriminated against in promotion, in compensation, or in the terms, conditions, or privileges of employment on the basis of the various WFEA protected classes to bring action in circuit court, after the conclusion of administrative review by DWD, and judicial review of that proceeding, to recover damages caused by the act of discrimination.

Under the bill, if the circuit court finds that a defendant has committed such 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 percent 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 WFEA.

WMC Position


By allowing unlimited compensatory and punitive damages for violations of the WFEA, through a cumbersome administrative and judicial process, this legislation would have a strong negative impact on the Wisconsin business climate. Further, these proposed changes would come at a time when the Wisconsin economy and many businesses face unprecedented economic challenges. Finally, the surcharge feature of this legislation creates an incentive for DWD to take employment discrimination claims to circuit court to fund agency operations.

Conclusion

For these reasons, WMC urges the Committee to vote against this legislation.



Individual Rights & Responsibilities Section

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TESTIMONY OF THE INDIVIDUAL RIGHTS AND RESPONSIBILITIES SECTION OF THE STATE BAR OF WISCONSIN REGARDING SENATE BILL 20

Before the Senate Committee on Labor, Elections, and Urban Affairs

March 12, 2009

Members of the committee:

Thank you for allowing me to speak today. I am here to testify as the current Chair of the Individual Rights and Responsibilities Section Board; the Section is comprised of State Bar of Wisconsin members who have a particular interest in civil and constitutional rights. I am also here to testify on behalf of the individual plaintiffs I have represented in the area of employment discrimination.

I want to particularly thank those of you who have offered this proposed legislation. The goal of the legislation – to provide compensatory and punitive damages for individuals who have been targeted by their employers for illegal discrimination – is a laudable one. Compensatory damages are especially necessary for individuals who have been targeted for harassment on a basis protected under Wisconsin's Fair Employment Act. For example, an individual who is harassed on the basis of his or her sexual orientation by being called a "faggot" or a "dyke" likely feels just as harmed as an African-American person feels who is called the "n" word. However, for gay men or lesbians, there is no way to claim damages for the mental injury or to require an employer to pay for psychiatric or psychological treatment for the harm. Senate Bill 20 is an attempt to remedy this problem. Thank you.

With that said, there are two problems with the bill as it is currently drafted. First, the bill provides for a system of administrative exhaustion that is long and cumbersome. Second, the language of the bill is, in many places, ambiguous. These two factors defeat the purposes the bill is trying to achieve.

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1. Administrative exhaustion – the road is long and hard.

Looking at the first sentence of the proposed s. 111.397(2), it states:

A person discriminated against or the department may bring an action in circuit court against an employer, labor organization, employment agency, or licensing agency to recover damages caused by a violation of s. 111.321 after the completion of an administrative proceeding, including judicial review, concerning that violation.

The current system allows an individual to file his or her complaint with the Equal Rights Division, after which there is an investigation. If the investigator determines that there is probable cause to believe that discrimination occurred, then the matter is referred to an Administrative Law Judge to hear the case on the merits and determine whether, in fact, the employer engaged in illegal discrimination. A hearing is held, a decision is made, and that decision may be appealed to the Labor and Industry Review Commission. After the Commission renders its decision, then the matter may be appealed to a circuit court on a petition for review under Chapter 227, after which it may be further appealed to the Court of Appeals and the Wisconsin Supreme Court.

The way the statute is written, it is only after this entire process is complete that a person discriminated against may take his or her case into court. As a practical matter, by the time the case returns to circuit court, it has been years since the initial employment discrimination. Witnesses have disappeared, damages have mounted, and the case has dragged on without payment to the employee to make him or her whole for the harm endured.

2. Ambiguity – what does that language mean, anyway?

I want to make this point: if the language of the bill remains ambiguous, attorneys will fight for years over what the legislation means, rather than dealing with cases on the merits. Attorney who represent *employees* want to litigate over whether an employer illegally discriminated against those employees, not whether a particular procedure was properly followed. However, delay is an employer's best weapon, and it is frequently used to defeat employment discrimination cases.

Looking at the second sentence of the proposed s. 111.397(1), it states:

If the circuit court finds that a defendant has committed a violation of s. 111.321, the circuit court shall order the defendant to pay to the person

discriminated against compensatory and punitive damages in an amount that the circuit court finds appropriate ...

Does this language mean that the circuit court makes a new determination, *after* the administrative law judge, the Labor and Industry Review Commission, the circuit court *and* the appellate courts, as to whether an employer has engaged in illegal discrimination? In the alternative, does this mean that the circuit court merely rubber-stamps the earlier decisions regarding liability, but makes a new decision as to compensatory and punitive damages? Does this mean that there is a trial to the circuit court on the issues of compensatory and punitive damages alone? Or does this language mean that the case must be re-tried in its entirety? Finally, does this mean that the case can be tried to a jury?

If the language can be argued to have more than one potential meaning, it is ambiguous. It is a waste of judicial resources to have courts determine the meaning of legislation; the government and its citizens are better served if legislative intent is clear in the language of the legislation.

I can tell you that employee advocates want the opportunity to try these cases to a jury. There may be instances, however, where it is in the best interests of our clients to try the cases to an Administrative Law Judge. For example, if the employee claims that he or she has been discriminated against on the basis of his or her criminal record, perhaps such a case would be better brought in an administrative forum rather than in a court in front of a jury which might be unsympathetic to such claims.

I have attached a flow chart which shows what I anticipate would be the best structure for allowing a private cause of action which would allow for compensatory and punitive damages. As you will note, the employee would have two different times when he or she could divert her case into court. In some instances, it may make sense to file in court immediately; in most instances, employees will want the opportunity for completion of the Equal Rights Division's investigation process before filing in court.

3. More ambiguity – when do I file?

The proposed language reads:

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

- (a) Within 60 days after the completion of an administrative proceeding, including judicial review, concerning the violation.
- (b) Within 2 years after the violation occurred, or the department or person discriminated against should have reasonably known that the violation occurred.

I think subsection (a) means after the judicial review *and the period for appeal has run*, but I am not sure. Does it mean 60 days after the opinion on judicial review is filed? What about situations where an appeal to the court of appeals is filed 90 days after the decision at the circuit court? Does that stay the claim for compensatory and punitive damages in circuit court?

As for subsection (b), does this mean that if the case is still pending after two and one-half years, then the only option for filing for judicial review is under subsection (a)?

I can think of no reason that the legislature would want to include ambiguous language in legislation, as it simply clogs the court system with cases which do not go to the merits. It would be nice, perhaps, if a judge could come to the Capitol and just ask "what *did* you mean by this?" The problem is, the judge might get several different ideas; after all, if the judge is unsure, so probably were the drafters. Be direct – say what you mean. We will all be better off.

4. The surcharge -- why us?

Senate Bill 20 contains a provision for a surcharge, which I suppose might encourage defendants to settle cases prior to a final decision by the court. However, we do not understand why our clients, who have already been discriminated against by their employers, should be treated differently by the court system. Granted, the surcharge is to be paid by the employer, but it still seems odd that these cases would be treated differently than other litigation.

5. There are other ways to achieve the same ends.

The IRR Board has not proposed specific language as an alternative to the proposed language but has, instead, suggested that the 1991 Senate Bill 1 be used as a model. The 1991 SB 1 would have created a private cause of action that went beyond the Wisconsin Fair Employment Act. Even if you decide that you simply want to amend the Wisconsin Fair Employment Act, I suggest you look to that bill for language that is simple, straightforward and unambiguous.

Other models for private causes of action under Wisconsin law are contained in Wisconsin's Public Accommodations law, Wisconsin's Open Housing law and Wisconsin's Wage Claim law. They all differ slightly, but they all allow an individual to bring her case to court.

CONCLUSION

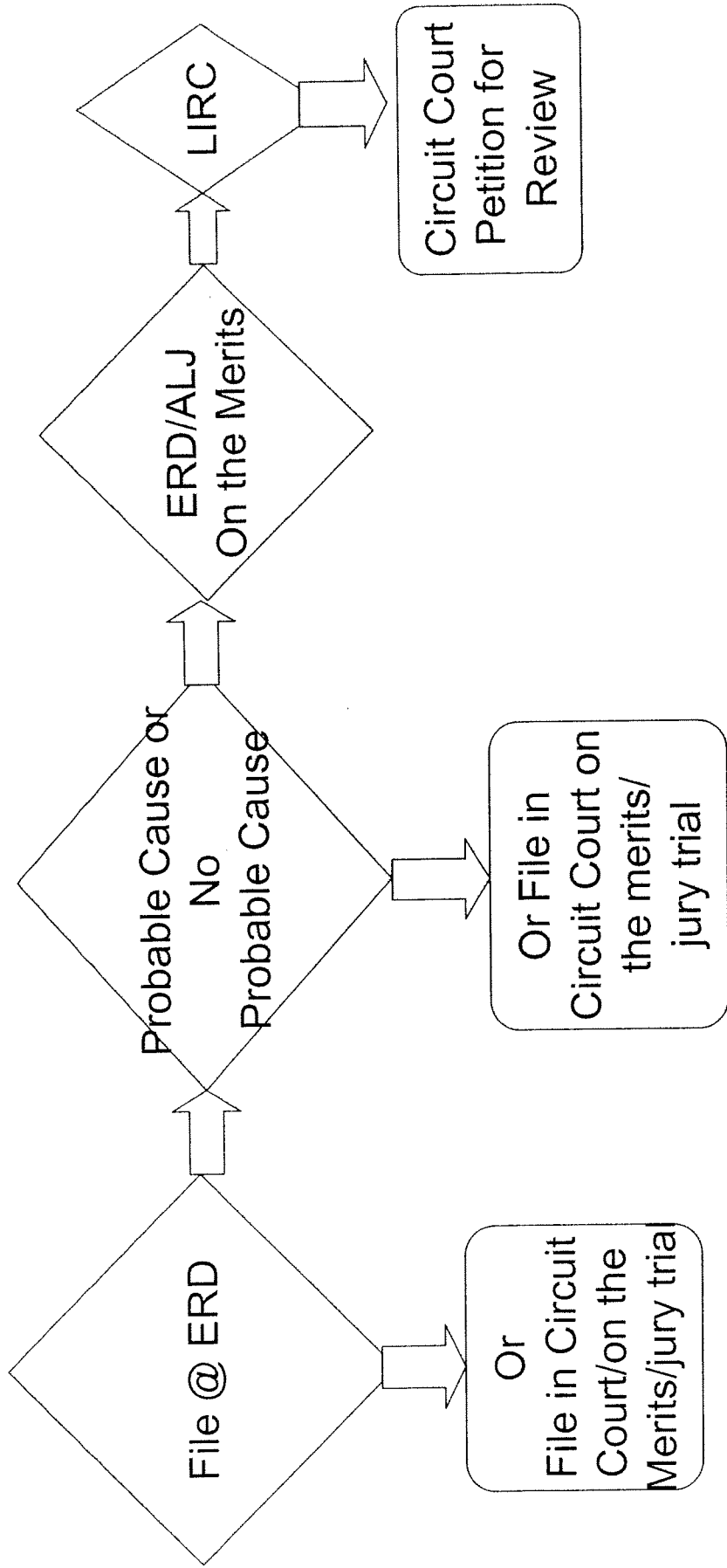
I thank you again for the opportunity to speak today. I would like to underscore the points I made at the outset. The IRR Section Board supports the goals of this legislation, but the

language as it is currently drafted contains an unnecessarily long and arduous administrative exhaustion provision, and the language of the entire bill is ambiguous. The result of the bill as drafted will be to give clients relief that they have not had before, but only after an inordinate investment in time and resources. I urge you to keep in mind the goals of this legislation, but find a different way to craft the language so that the citizens of Wisconsin are better served by your efforts.

The State Bar of Wisconsin establishes and maintains sections for carrying on the work of the association, each within its proper field of study defined in its bylaws. Each section consists of members who voluntarily enroll in the section because of a special interest in the particular field of law to which the section is dedicated. Section positions are taken on behalf of the section only.

The views expressed on this issue have not been approved by the Board of Governors of the State Bar of Wisconsin and are not the views of the State Bar as a whole. These views are those of the Section alone. If you have questions about this memorandum, please contact Adam Korbitz, Government Relations Coordinator, at akorbitz@wisbar.org or (608) 250-6140.

Suggested Private Right of Action





WISCONSIN STATE SENATOR

DAVE HANSEN

SENATOR – 30TH DISTRICT

ASSISTANT MAJORITY LEADER

**Equal Pay Enforcement Act
Senate Bill 20
Committee Testimony
Senate Committee on Committee on Labor, Elections and Urban
Affair
3-12-09**

Thank you Chairman Cogs and members of the committee. I am here today to testify in favor of Senate Bill 20, The Equal Pay Enforcement Act.

Representative Sinicki and I have been working together on this issue for a number of sessions now and during that time little has changed to suggest anything but that it is time to take action to resolve the unfair differences in pay that exist between men and women who are employed performing the same job.

Senate Bill 20 sends an important message about the value that we, as a society, place on the efforts of individual workers. People deserve to be fairly compensated for putting in a hard day's work.

As a husband and father of three grown daughters, I am disappointed that we are here talking about the wage gap that exists between men and women both in our nation and in Wisconsin. I don't understand how, after 45 years of federal law and nearly 60 years in state law, that there is still such a disparity in pay for doing the same work.

I want my daughters and my grandchildren—grandsons and granddaughters alike—to be able to achieve their American Dream equally. And for them to be rewarded on their merits and ability.

We spend our lives as parents telling our children that if they work hard, do well in school and apply themselves that there are no limits to what they can accomplish. It is way past time that we took action to keep that promise.

This legislation is about more than just pay equity. It's about lifting children out of poverty and strengthening families.

It's about improving the quality of life across the board for Wisconsin families from Marinette to Milwaukee and Oshkosh to Onalaska as well as growing our economy and creating jobs from the ground up; If low and middle

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State Capitol

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income workers and their families have more money to spend, the more local goods and services they will purchase and the more jobs will be created.

As a result of the unequal treatment when it comes to compensating men and women in the workplace, Wisconsin families lose more than **\$4,000** per year due to unequal pay.

This is money that will go to working families who will spend it in our economy creating more demand for goods and services that will in turn create more jobs.

But, just as important, like increasing the minimum wage, The Equal Pay Enforcement Act sends an important message about the value that we, as a society, place on the efforts of individual workers. People deserve to be fairly compensated for putting in a hard day's work.


If you work, you and your family should not have to depend on government assistance and the charity of others to put food on your table and a roof over your children's head. It is long past time that we do more than talk about the value of work.

We can do more. Passing this legislation would be a great start. It's not a new idea, and Wisconsin is not alone in trying to solve the problem. Similar legislation has been introduced in 25 other states and at the federal level as well.

For many years Wisconsin was considered a leader on policies that protected and strengthened working families. It is time for us to do the right thing and pass the Equal Pay Enforcement Act. Thank you Mister Chairman and members. I'd be happy to answer any questions.



Individual Rights & Responsibilities Section

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March 17, 2009

TO: Senator Dave Hansen
Representative Christine Sinicki

FROM: Brenda Lewison, Chair
Individual Rights and Responsibilities Section
State Bar of Wisconsin

RE: Suggested alternative language for SB 20/AB 31

Following up on my testimony on Thursday before the Senate Committee, Elections and Urban Affairs, the Individual Rights and Responsibilities Section suggests the following language -- modeled upon that already found in Wisconsin law prohibiting discrimination in public accommodation -- be substituted for that in the bill, and that it be inserted in Subchapter II of Chapter 111 of the Wisconsin Statutes (the Wisconsin Fair Employment Act):

- 1. A person, including the state, alleging a violation of 111.325 may bring a civil action for appropriate injunctive relief, for damages, including compensatory and punitive damages, and, in the case of a prevailing plaintiff, for court costs including but not limited to reasonable expert witness fees and reasonable attorney fees. The civil action may be tried to a jury. The attorney general shall represent the department in an action to which the department is a party.**
- 2. An action commenced under this paragraph may be brought in the circuit court for the county where the alleged violation occurred, or for the county where the person against whom the civil complaint is filed resides or has a principal place of business, and shall be commenced within the time provided by 893.53.**
- 3. The remedies provided for in this paragraph shall include and be in addition to any other remedies contained in this subchapter.**

The language suggested above is very similar to that already found in sec. 106.52(4)(e), the Wisconsin statute that allows for a private right of action for discrimination in public accommodations. The statutory scheme found in 106.52 has worked very well for many years and there is no need to reinvent the wheel when it comes to private actions for violations of the Wisconsin Fair Employment Act. Most importantly, like the public accommodations statute, this language does not require exhaustion of administrative remedies prior to initiating a civil lawsuit. The language is also not ambiguous. This

language will better enable victims of discrimination to obtain the relief in circuit court you want to make possible through SB 20.

In regard to the statute of limitations for initiating a civil action, section 893.53 is the statute of limitations that applies to actions pertaining to injuries to the "character or rights of another." It is the one adopted by the federal courts and the Wisconsin Supreme Court for actions alleging discrimination under federal civil rights statutes, as well, as tortious interference with employment, wage-claim actions, malicious prosecution and abuse of process and attorney malpractice. In this way, the compatibility with all of the federal civil rights claims (like Sec. 1983 and Title II of the ADA) that are governed by this section is preserved.

While the IRR Section of the State Bar does not favor the language in SB 20 and AB 31 requiring losing defendants to pay -- in addition to any damages -- a 10% surcharge to the Department of Workforce Development, we understand the authors of the bill may feel such a provision is necessary. The IRR Section would not oppose the language it is proposing above even if it did include provisions for such a surcharge on losing defendants.

Please do not hesitate to contact me at (414) 273-1040 if you have any questions.

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The views expressed on this issue have not been approved by the Board of Governors of the State Bar of Wisconsin and are not the views of the State Bar as a whole. These views are those of the Section alone. If you have questions about this memorandum, please contact Adam Korbitz, Government Relations Coordinator, at akorbitz@wisbar.org or (608) 250-6140.



Plotkin, Adam

From: Adam Korbitz [akorbitz@wisbar.org]
Sent: Friday, March 20, 2009 12:06 PM
To: Sen.Coggs; Sen.Wirch; Sen.Lehman; Sen.Lasee; Sen.Grothman; Plotkin, Adam
Cc: Rep.Sinicki; Sen.Hansen; George, Mary Beth; Wagnitz, John; Brenda Lewison
Subject: Studies Regarding Discrimination (SB 20) -- Senate Labor Committee
Attachments: Studies Regarding Discrimination (Senate Labor Committee).pdf

Dear Members of the Senate Committee on Labor, Elections and Urban Affairs:

Attached is a memo from Attorney Brenda Lewison, chair of the Individual Rights and Responsibilities Section of the State Bar of Wisconsin, providing some additional information about the studies regarding discrimination she made reference to during her testimony on March 12th in favor of Senate Bill 20.

Thank you,

Adam C. Korbitz
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Individual Rights & Responsibilities Section

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March 20, 2009

TO: Members of the Senate Committee on Labor, Elections and Urban Affairs

FROM: Brenda Lewison, Chair
Individual Rights and Responsibilities Section
State Bar of Wisconsin

RE: Studies Regarding Discrimination (RE: SB 20)

When I spoke to the committee in favor of Senate Bill 20 on Thursday, March 12, 2009, I mentioned that there was a study conducted in Milwaukee which showed that a white man with a criminal conviction record is more likely to get a job than a black man without a criminal conviction record. The study also indicates the increased joblessness among both white and black individuals with criminal conviction records compared to individuals who do not have criminal conviction records.

I promised to provide the Committee with the name of the study. It is: *Marked: Race, Crime, and Finding Work in an Era of Mass Incarceration* by Devah Pager. It published as a book and is out in paperback; it can be found at www.amazon.com for less than \$11.00.

I also promised that I would look for studies that show that the reason women earn less than men is that women are discriminated against. I asked my colleagues for help on this project, and one person cited a 2003 report of the General Accounting Office entitled: "Women's Earnings: Work Patterns Partially Explain Difference Between Men's and Women's Earnings." According to my colleague, at page 19, the report makes the following "Concluding Observation:" "It is difficult to evaluate the remaining difference (beyond the differences in work patterns found) without a full understanding of what contributes to the difference ... An earnings difference may result from workplace discrimination ..." Thus, while there may be some difference in earnings based on self-selection of occupations (women who chose to be teachers rather than rocket scientists, for example), it does not solely explain the differences in pay between men and women.

Another colleague suggested that the Senators examine the testimony provided for the recently passed federal Lilly Ledbetter Fair Pay Act. While I have not had an opportunity to examine the testimony, it would doubtless provide comprehensive information on the differences between men's and women's earnings and why they occur.

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WISCONSIN LEGISLATIVE COUNCIL

*Terry C. Anderson, Director
Laura D. Rose, Deputy Director*

TO: SENATOR DAVE HANSEN
FROM: Jessica L. Karls, Staff Attorney
RE: 2009 Senate Bill 20 and Senate Substitute Amendment 1
DATE: April 9, 2009

This memorandum describes 2009 Senate Bill 20, relating to authorizing the circuit court to order a person who engages in discrimination in employment to pay compensatory and punitive damages and a surcharge and making an appropriation, and Senate Substitute Amendment 1 to the bill. This memorandum also briefly describes provisions in Title VII of the federal Civil Rights Act of 1964, as amended, that are similar to certain provisions in Senate Substitute Amendment 1. Title VII prohibits discrimination based on race, color, religion, sex, and national origin.

CURRENT LAW

Current law provides that a person alleging a violation of the Fair Employment Law may file a complaint with the Department of Workforce Development (DWD). If a hearing examiner finds a violation, the examiner may order such action as will effectuate the purpose of the Fair Employment Law, including reinstatement of the employee and payment of back pay, attorney fees, and costs. However, current law does not allow DWD to order the payment of compensatory or punitive damages or other surcharges.

2009 SENATE BILL 20

Senate Bill 20 provides that a person discriminated against or DWD may bring an action in circuit court against an employer, labor organization, licensing agency, or employment agency to recover damages caused by an act of employment discrimination after the completion of an administrative proceeding, including judicial review, regarding that act. If the circuit court finds that a defendant has committed an act of discrimination, the court must order that the defendant pay to the person discriminated against compensatory and punitive damages in an amount determined by the court. The circuit court must also order that the defendant pay a surcharge to the court equal to 10% of the amount of compensatory and punitive damages ordered. If the circuit court orders payment because of an act of discrimination by an individual employed by an employer, the employer of that individual is liable for the payment.

The clerk of circuit court must collect and transmit the surcharge to the county treasurer. The treasurer must pay the surcharge to the Secretary of the Department of Administration (DOA), who must then deposit the surcharge into the general fund to be credited to a DWD appropriation account.

An action in circuit court must be commenced within 60 days after the completion of an administrative proceeding, including judicial review, regarding the violation or within two years after the violation occurred (or after DWD or the person discriminated against should have reasonably known that the violation occurred), whichever is later.

SENATE SUBSTITUTE AMENDMENT 1

Senate Substitute Amendment 1 provides that if a hearing examiner finds, or the Labor and Industry Review Commission (LIRC) affirms a finding, that the respondent has engaged in discrimination, unfair genetic testing, or unfair honesty testing, DWD or LIRC must serve a certified copy of the examiner's findings or LIRC's decision on the complainant, along with a notice advising the complainant that after the completion of all administrative proceedings the complainant may bring an action in circuit court to recover compensatory and punitive damages and advising the complainant of the time within which the action must be commenced. [Title VII of the Civil Rights Act of 1964, as amended, provides that, in some circumstances, the federal Equal Employment Opportunity Commission or the federal Department of Justice must notify the complainant that he or she may bring a civil action. This is often referred to as a "right to sue" notice. [42 U.S.C. s. 2000e-5 (f).]]

Further, the substitute amendment provides that DWD or a person discriminated against or subjected to unfair genetic testing or unfair honesty testing may bring an action in circuit court against an employer, labor organization, or employment agency to recover compensatory and punitive damages caused by the violation, plus reasonable costs and attorney fees incurred in the action. The damages are in addition to any back pay or other amounts awarded in the administrative proceedings. [Title VII of the Civil Rights Act of 1964, as amended, provides that a complainant may recover compensatory and punitive damages for intentional discrimination. [42 U.S.C. s. 1981a (a) (1).]]

The substitute amendment prohibits such action against the state, a state agency, or a local governmental unit, or against an employer, labor organization, or employment agency employing fewer than 15 individuals for each working day in each of 20 or more calendar weeks in the current or preceding year. [Title VII of the Civil Rights Act of 1964, as amended, does not apply to employers with less than 15 employees or to the United States. [42 U.S.C. s. 2000e (b).]] If the circuit court orders payment because of a violation by an individual employed by an employer, the employer of that individual is liable for the payment.

The substitute amendment provides that the sum of the amount of compensatory damages for future economic losses and for pain and suffering, emotional distress, mental anguish, loss of enjoyment of life, and other noneconomic losses and the amount of punitive damages that a circuit court may order may not exceed the following, as indexed for inflation:

- In the case of a defendant that employs 100 or fewer employees for each working day in each of 20 or more calendar weeks in the current or preceding year, \$50,000.
- In the case of a defendant that employs more than 100 but fewer than 201 employees for each working day in each of 20 or more calendar weeks in the current or preceding year, \$100,000.

- In the case of a defendant that employs more than 200 but fewer than 501 employees for each working day in each of 20 or more calendar weeks in the current or preceding year, \$200,000.
- In the case of a defendant that employs more than 500 employees for each working day in each of 20 or more calendar weeks in the current or preceding year, \$300,000.

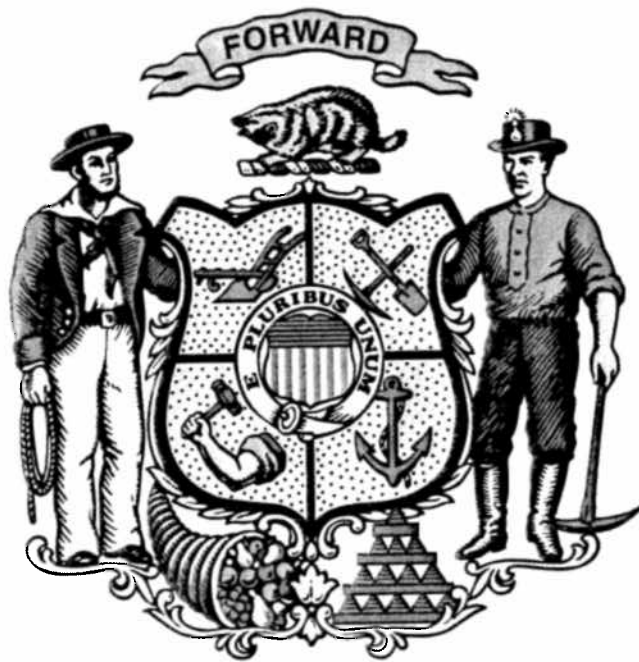
[Title VII of the Civil Rights Act of 1964, as amended, contains the same monetary limits on compensatory and punitive damages. [42 U.S.C. s. 1981a (b) (3).]]

In addition, the substitute amendment provides that the circuit court must order that the defendant pay a fee to the court equal to 10% of the amount of compensatory and punitive damages ordered. The clerk of circuit court must collect and transmit the fee to the county treasurer, who must pay 50% of the fee to the DOA Secretary and retain the other 50% to pay for the cost of operating the county's circuit court. The DOA Secretary must deposit the fee into the general fund to be credited to a DWD appropriation account.

Lastly, under the substitute amendment, an action in circuit court must be commenced within 60 days after the date on which a copy of the final decision of the hearing examiner is mailed to the last-known address of the complainant or, if that decision is reviewed by LIRC, within 60 days after the date on which a copy of LIRC's final decision is mailed to the last-known address of the complainant. If a petition for judicial review of the findings and order of LIRC regarding the same violation is filed, the court must consolidate the proceeding for judicial review and the civil action.

If you have any questions, please feel free to contact me directly at the Legislative Council staff offices.

JK:wu



①

EVA - Public Hrg. - 3/12/09

4820

Hansen & Sinicki

- Hansen written testimony
- Sinicki
 - big biz gets bailout, but not regular WI citizens
 - treat workers equally
- 62
 - bill covers all 5400 areas
 - forward studies?
 - 2008 Census statistics
 - WI is 35th among states w/ equal pay
 - comparable work hours/situations
 - Sinicki will forward study to us
 - jury gives punitive damages? - ok?
 - hope not to have to use the law
 - DVD gets 10% add on? - happen anywhere else
 - not uncommon, speeding tickets
 - talk to businesses?
 - yes, been talking to everyone for 10 years
 - yes, concern was a statute of limitations

John Metcalf

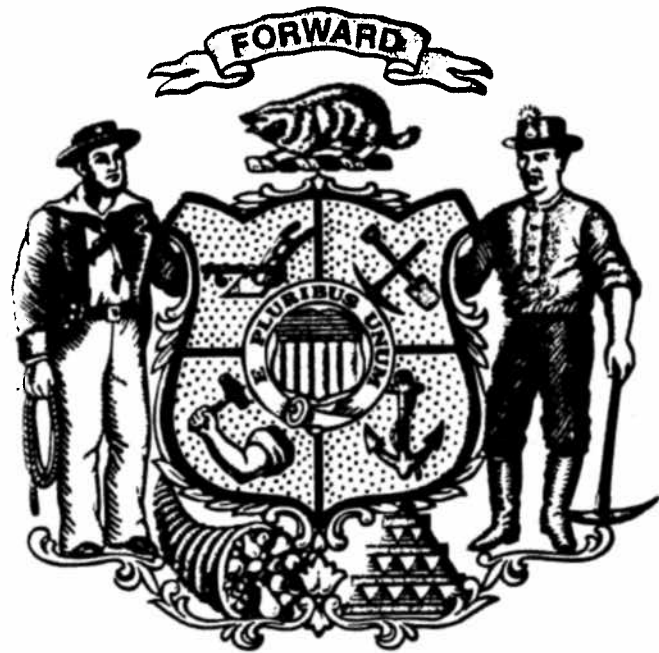
- probable cause finding
- review by LLC, then circuit court then again for damages
- complex system created, currently simple
- will exacerbate current economic problems
- 10% DVD surcharge - bad faith claims in WI 25 years ago

②

- SC - not against fairness, but complicated system
 - yes, process is worse
- redress under Title VII more complicated
 - no, the proposed process is worse & more costly
- caps on damages good?
 - proposed and adopted last time, but if it mirrors fed process, why ~~not~~ need state process
 - there are prob. w/ current system
- Wirch - authors offered chance to work
 - binicki did offer chance to work w/ them
- Lehman - need system for pay equity instead?
 - more a wage & hours issue than discrimination
- what other agency? other system?
 - wage & hour approach - no specifics
- GL - what is standard?
 - penalty for frivolous claims? or finding of no probable cause?
 - probable cause finding done by investigator
 - wants description of current system?
 - one problem is answering challenges of no probable cause findings
 - any consequences currently for frivolous claims
 - not in state, but in feds
 - wants retribution for filing claims that don't have merit
 - hard to know what the practical
- Wirch - not a problem that it's not balanced
 - esp. frustrating for small employers, easier for big employers

(4)

- Bill Smith, NFIB
 - optimism index is at lowest level in 35 years
 - SB20 would contribute to job loss
 - biz. fears becoming defendant
 - takes away from other biz. activities
 - each case takes 4-5 mos. & costs \$10-15k on average
 - 55% have less than 5 employees
 - creates lawsuit incentives
- BZ - small biz. affected, wipe out small biz.
 - costly, but also fear and additional liability costs
- Pete Hanson
 - don't oppose goal, just way to get there
 - encourage justice & equal treatment
 - should keep ~~ALS~~ process in bill
 - SB20 wouldn't put more wages in hands of employees
 - additional burdens on court system
- BZ - law firms have to hire people too
- Witch - stress on victims, didn't ADA cases have claims?
 - do have to protect those who are wronged
 - have respect for current system
- Andrew Cook, WI Civil Justice Council
 - bad - unlimited punitive damages - incentive for DWD
- Paul Kinne, WI Assn. for Justice
 - written testimony
 - judge made limits on punitive damages



LEVA - Exec + PH - 4/14/09

SB 20

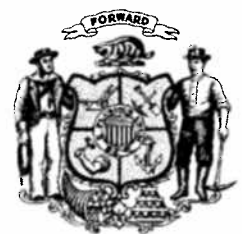
Exec

SB 20

- Russ explains sub based on Karl's memo
- SC points out WI Counties change of support w/ sub
- GG
 - offensive to biz.
 - penalties too high
 - atty fees too high
 - govt shouldn't get exemption (thinks totally off the hook)
 - biz. w/ 16 employees
- Ulrich
 - cost of doing biz.
 - don't control atty fees
- SC
 - don't use China as paragon of virtue
 - 3-2 vote on adoption of amendment
- GG - many claims found to have no probable cause
 - putting full burden on businesses
 - contempt for business
 - haven't seen need for change
 - unfair to biz, will negatively affect employees too
- BW - burden is atty fees
 - employer can be bad actor
 - level playing field for employee
 - need to allow for day in court
- AL - bill could be tolerable at any other time, but economy right now makes it a bad idea
 - one more nail in the coffin for biz
 - hold for a year, don't see need



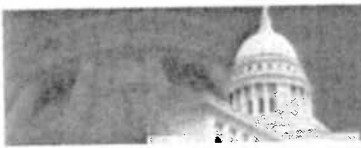
WISCONSIN STATE LEGISLATURE



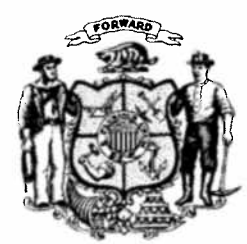
exempt businesses under 250
local government from
punitive

foxpolitics.net

SB 20



WISCONSIN STATE LEGISLATURE



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Government Accountability Board



as of Wednesday, March 11, 2009

2009-2010 legislative session

Legislative bills and resolutions

(search for another legislative bill or resolution at the bottom of this page)

Senate Bill 20

authorizing the circuit court to order a person who engages in discrimination in employment to pay compensatory and punitive damages and a surcharge and making an appropriation. (FE)

TEXT
sponsors
LBR analysis

STATUS
committee actions and
votes
text of amendments

COST & HOURS
of lobbying efforts
directed at this
proposal

Organization		These organizations have reported lobbying on this proposal:	Place pointer on icon to display comments, click icon to display prior comments		
Profile	Interests		Date Notified	Position	Comments
◉	◉	AFT - Wisconsin	2/3/2009	↑	
◉	◉	American Civil Liberties Union of Wisconsin Inc	1/30/2009	?	
◉	◉	Association of Wisconsin Tourism Attractions	3/9/2009	↓	
◉	◉	Fox Cities Chamber of Commerce & Industry	2/17/2009	↓	
◉	◉	Green Bay Area Chamber of Commerce	2/12/2009	↓	
◉	◉	Independent Business Assn of Wisconsin	2/19/2009	↔	
◉	◉	Kimberly-Clark Corporation	2/19/2009	↓	💬
◉	◉	League of Wisconsin Municipalities	2/9/2009	↔	
◉	◉	Metropolitan Builders Association of Greater Milwaukee	3/5/2009	↔	💬
◉	◉	Midwest Equipment Dealers Association Inc	2/17/2009	↓	
◉	◉	Midwest Hardware Association Inc	3/10/2009	↓	
◉	◉	National Association of Theatre Owners of Wisconsin & Upper Michigan	2/5/2009	↓	
◉	◉	National Federation of Independent Business	2/13/2009	?	
◉	◉	Pharmacy Society of Wisconsin	2/27/2009	?	
◉	◉	Schneider National Inc	2/5/2009	↓	
◉	◉	State Bar of Wisconsin	2/27/2009	↔	💬
◉	◉	Wisconsin Association For Justice (formerly Wisconsin Academy of Trial Lawyers)	2/3/2009	↑	
◉	◉	Wisconsin Automobile & Truck Dealers Association Inc	2/20/2009	?	

•	•	Wisconsin Bankers Association	2/18/2009	↔	
•	•	Wisconsin Builders Association	2/16/2009	↔	
•	•	Wisconsin Engine Manufacturer & Distributor Alliance (WEMDA)	2/5/2009	↓	
•	•	Wisconsin Grocers Association, Inc.	2/9/2009	?	
•	•	Wisconsin Hospital Association Inc (WHA)	3/6/2009	?	
•	•	Wisconsin Independent Businesses Inc	2/5/2009	?	
•	•	Wisconsin Insurance Alliance	2/2/2009	↓	
•	•	Wisconsin Manufacturers & Commerce	2/3/2009	↓	
•	•	Wisconsin Motor Carriers Association	2/5/2009	↓	
•	•	Wisconsin Restaurant Association	2/6/2009	↓	
•	•	Wisconsin State AFL-CIO	2/12/2009	↑	

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House

Proposal Type

Proposal Number (enter proposal number)

Legislative Session

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- ▶ Lobbyists

Presented by the Wisconsin
Government Accountability Board



as of Sunday, April 12, 2009

2009-2010 legislative session
Legislative bills and resolutions

(search for another legislative bill or resolution at the bottom of this page)

Senate Bill 20

authorizing the circuit court to order a person who engages in discrimination in employment to pay compensatory and punitive damages and a surcharge and making an appropriation. (FE)

<p>TEXT sponsors LBR analysis</p>	<p>STATUS committee actions and votes text of amendments</p>	<p>COST & HOURS of lobbying efforts directed at this proposal</p>
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●	●	American Civil Liberties Union of Wisconsin Inc	1/30/2009	?	
●	●	American Family Insurance Group	4/6/2009	↓	
●	●	Associated General Contractors of Greater Milwaukee Inc	3/18/2009	↓	
●	●	Association of Wisconsin Tourism Attractions	3/9/2009	↓	
●	●	City of Milwaukee	3/11/2009	↔	
●	●	Civil Trial Counsel of Wisconsin	4/6/2009	↓	
●	●	Fox Cities Chamber of Commerce & Industry	2/17/2009	↓	
●	●	Green Bay Area Chamber of Commerce	2/12/2009	↓	
●	●	Independent Business Assn of Wisconsin	2/19/2009	↔	
●	●	Kimberly-Clark Corporation	2/19/2009	↓	💬
●	●	League of Wisconsin Municipalities	2/9/2009	↔	
●	●	Metropolitan Builders Association of Greater Milwaukee	3/5/2009	↔	💬
●	●	Midwest Equipment Dealers Association Inc	2/17/2009	↓	
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●	●	National Federation of Independent Business	2/13/2009	?	
●	●	Pharmacy Society of Wisconsin	2/27/2009	?	
●	●	Schneider National Inc	2/5/2009	↓	

•	•	State Bar of Wisconsin	2/27/2009	↔	💬
•	•	United Transportation Union	3/11/2009	?	
•	•	Wisconsin Alliance of Cities Inc	3/13/2009	↓	
•	•	Wisconsin Association For Justice (formerly Wisconsin Academy of Trial Lawyers)	2/3/2009	↑	
•	•	Wisconsin Association of School Boards Inc	3/16/2009	↓	
•	•	Wisconsin Automobile & Truck Dealers Association Inc	2/20/2009	?	
•	•	Wisconsin Automotive Aftermarket Association Inc	3/13/2009	↓	
•	•	Wisconsin Automotive Parts Association	3/13/2009	↓	
•	•	Wisconsin Bankers Association	2/18/2009	↔	
•	•	Wisconsin Builders Association	2/16/2009	↔	
•	•	Wisconsin Car Rental Alliance	3/18/2009	↓	
•	•	Wisconsin Cast Metals Association	3/18/2009	↓	
•	•	Wisconsin Engine Manufacturer & Distributor Alliance (WEMDA)	2/5/2009	↓	
•	•	Wisconsin Family Action Inc	3/12/2009	↓	
•	•	Wisconsin Grocers Association, Inc.	2/9/2009	?	
•	•	Wisconsin Hospital Association Inc (WHA)	3/6/2009	?	
•	•	Wisconsin Independent Businesses Inc	2/5/2009	?	
•	•	Wisconsin Insurance Alliance	2/2/2009	↓	
•	•	Wisconsin Manufacturers & Commerce	2/3/2009	↓	
•	•	Wisconsin Motor Carriers Association	2/5/2009	↓	
•	•	Wisconsin Petroleum Marketers & Convenience Store Association	3/16/2009	↓	
•	•	Wisconsin Restaurant Association	2/6/2009	↓	
•	•	Wisconsin State AFL-CIO	2/12/2009	↑	
•	•	Wisconsin Towns Association	3/12/2009	↓	

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House

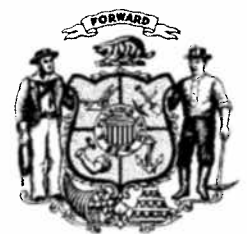
Proposal Type

Proposal Number (enter proposal number)

Legislative Session



WISCONSIN STATE LEGISLATURE



Found in SB 20 folder.

1991 SENATE BILL 1

January 15, 1991 - Introduced by Senators FEINGOLD, BURKE, CZARNEZKI, ULICHNY and CHVALA; cosponsored by Representatives M. COGGS, GRUSZYNSKI, FORTIS, NOTESTEIN, LAUTENSCHLAGER, BOCK, CARPENTER, MOORE, SEERY, ROHAN and YOUNG. Referred to Committee on Judiciary and Consumer Affairs.

1 AN ACT to create 893.875 and 895.68 of the statutes, relating to creating
2 a private cause of action for certain civil rights violations.

Analysis by the Legislative Reference Bureau

This bill creates a private right of action for certain civil rights violations. Under this bill, an aggrieved person may bring an action in circuit court against any other person, including the state, that injures the aggrieved person or causes the aggrieved person to be injured by violating the state laws prohibiting discrimination in employment or violating the civil rights guarantees in the state constitution. An aggrieved person may bring this action in addition to or in lieu of obtaining any other available remedy. The court may award a prevailing plaintiff any appropriate relief, including injunctive relief, compensatory damages, punitive damages and reasonable attorney fees.

For further information see the 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:

3 SECTION 1. 893.875 of the statutes is created to read:
4 893.875 CIVIL RIGHTS ACTION. An action under s. 895.68 shall be
5 brought within 6 years after the injury occurred or be barred.

6 SECTION 2. 895.68 of the statutes is created to read:
7 895.68 CIVIL RIGHTS ACTION. (1) In lieu of or in addition to
8 obtaining any remedy available under any other law or the constitution of
9 this state, an aggrieved person may bring an action in circuit court
10 against any other person, including the state, that injures the aggrieved

or Re
lot to
om t

1 person, or causes the aggrieved person to be injured, by violating article
2 I of the constitution or subch. II of ch. 111.

3 (2) In an action under sub. (1), a court may award a prevailing
4 plaintiff any appropriate equitable remedy or legal remedy or both,
5 including injunctive relief, compensatory damages, punitive damages and
6 reasonable attorney fees.

7 (End)

