



State of Wisconsin
2025 - 2026 LEGISLATURE

LRB-1149/P2
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DOA:.....Humphry, BB0203 - Employment discrimination on the basis of gender expression or gender identity and unfair honesty testing or unfair genetic testing

FOR 2025-2027 BUDGET -- NOT READY FOR INTRODUCTION

AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

EMPLOYMENT

DISCRIMINATION

Employment discrimination based on gender expression and gender identity

Current law prohibits discrimination in employment on the basis of a person's sex or sexual orientation. This bill prohibits employers from discriminating against an employee on the basis of the employee's gender identity or gender expression. Gender expression is defined in the bill as an individual's actual or perceived gender-related appearance, behavior, or expression, regardless of whether these traits are stereotypically associated with the individual's assigned sex at birth. Gender identity is defined in the bill as an individual's internal understanding of the individual's gender, or the individual's perceived gender identity.

Civil actions regarding employment discrimination, unfair honesty, and unfair genetic testing

Under current fair employment law, an individual who alleges that an employer has violated employment discrimination, unfair honesty testing, or unfair genetic testing laws may file a complaint with DWD seeking action that will effectuate the purpose of the fair employment law, including reinstating the individual, providing back pay, and paying costs and attorney fees.

This bill allows DWD or an individual who is alleged or was found to have 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, unfair honesty testing, or unfair genetic testing, in addition to or in lieu of filing an administrative complaint. The action in circuit court must be commenced within 300 days after the alleged discrimination, unfair honesty testing, or unfair genetic testing occurred. The bill does not allow such an action for damages to be brought against a local governmental unit or against an employer that employs fewer than 15 individuals.

Under the bill, if the circuit court finds that a defendant has committed

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employment discrimination, unfair honesty testing, or unfair genetic testing, the circuit court may award back pay and any other relief that could have been awarded in an administrative proceeding. In addition, the circuit court must order the defendant to pay to the individual found to have been discriminated against or found to have received unfair genetic testing or unfair honesty testing compensatory and punitive damages in the amount that the circuit court finds appropriate, except that the total amount of damage awarded for future economic losses and for pain and suffering, emotional distress, mental anguish, loss of enjoyment of life, and other noneconomic losses and punitive damages is subject to the following limitations:

1. If the defendant employs 100 or fewer employees, no more than \$50,000.
2. If the defendant employs more than 100 but fewer than 201 employees, no more than \$100,000.
3. If the defendant employs more than 200 but fewer than 501 employees, no more than \$200,000.
4. If the defendant employs more than 500 employees, no more than \$300,000.

The bill requires DWD to annually revise these amounts on the basis of the change in the consumer price index in the previous year, if any positive change has occurred.

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

SECTION 1. 16.765 (1) of the statutes is amended to read:

16.765 (1) Contracting agencies, the University of Wisconsin Hospitals and Clinics Authority, the Fox River Navigational System Authority, the Wisconsin Aerospace Authority, the Lower Fox River Remediation Authority, the Wisconsin Economic Development Corporation, and the Bradley Center Sports and Entertainment Corporation shall include in all contracts executed by them a provision obligating the contractor not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability, as defined in s. 51.01 (5), sexual

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orientation, as defined in s. 111.32 (13m), gender expression, as defined in s. 111.32 (7j), gender identity, as defined in s. 111.32 (7k), or national origin and, except with respect to sexual orientation, gender expression, and gender identity, obligating the contractor to take affirmative action to ensure equal employment opportunities.

SECTION 2. 16.765 (2) of the statutes is amended to read:

16.765 (2) Contracting agencies, the University of Wisconsin Hospitals and Clinics Authority, the Fox River Navigational System Authority, the Wisconsin Aerospace Authority, the Lower Fox River Remediation Authority, the Wisconsin Economic Development Corporation, and the Bradley Center Sports and Entertainment Corporation shall include the following provision in every contract executed by them: “In connection with the performance of work under this contract, the contractor agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability, as defined in s. 51.01 (5), sexual orientation, gender expression, as defined in s. 111.32 (7j), gender identity, as defined in s. 111.32 (7k), or national origin. This provision shall include, ~~but not be limited to, the following:~~ employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, gender expression, and gender identity, the contractor further agrees to take affirmative action to ensure equal employment opportunities. The contractor agrees to post in conspicuous places, available for

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employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination-~~clause~~” clause.”

SECTION 3. 36.09 (1) (e) of the statutes is amended to read:

36.09 (1) (e) Subject to par. (em), the board shall appoint a president of the system; a chancellor for each institution; a dean for each college campus; the state geologist; the director of the laboratory of hygiene; the director of the psychiatric institute; the state cartographer; and the requisite number of officers, other than the vice presidents, associate vice presidents, and assistant vice presidents of the system; faculty; academic staff; and other employees and fix the salaries, subject to the limitations under par. (j) and s. 230.12 (3) (e), the duties and the term of office for each. The board shall fix the salaries, subject to the limitations under par. (j) and s. 230.12 (3) (e), and the duties for each chancellor, vice president, associate vice president, and assistant vice president of the system. No sectarian or partisan tests or any tests based upon race, religion, national origin, ~~or sex,~~ sexual orientation, as defined in s. 111.32 (13m), gender expression, as defined in s. 111.32 (7j), or gender identity, as defined in s. 111.32 (7k), shall ever be allowed or exercised in the appointment of the employees of the system.

SECTION 4. 47.02 (3m) (f) of the statutes is amended to read:

47.02 (3m) (f) Assure that eligibility for vocational rehabilitation services under this chapter is determined without regard to the sex, race, age, creed, color, ~~or national origin,~~ sexual orientation, as defined in s. 111.32 (13m), gender expression, as defined in s. 111.32 (7j), or gender identity, as defined in s. 111.32 (7k), of the individual applying for services, that no class of individuals is found

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ineligible solely on the basis of type of disability, and that no age limitations for eligibility exist ~~which~~ that, by themselves, would result in ineligibility for vocational rehabilitation services.

SECTION 5. 111.32 (7j) of the statutes is created to read:

111.32 (7j) “Gender expression” means an individual’s actual or perceived gender-related appearance, behavior, or expression, regardless of whether these traits are stereotypically associated with the individual’s assigned sex at birth.

SECTION 6. 111.32 (7k) of the statutes is created to read:

111.32 (7k) “Gender identity” means an individual’s internal understanding of the individual’s gender, or the individual’s perceived gender identity.

SECTION 7. 111.36 (title) of the statutes is amended to read:

111.36 (title) **Sex, sexual orientation, gender expression, gender identity; exceptions and special cases.**

SECTION 8. 111.36 (1) (br) of the statutes is amended to read:

111.36 (1) (br) Engaging in harassment that consists of unwelcome verbal or physical conduct directed at another individual because of that individual’s gender, gender expression, or gender identity, other than the conduct described in par. (b), and that has the purpose or effect of creating an intimidating, hostile, or offensive work environment or has the purpose or effect of substantially interfering with that individual’s work performance. Under this paragraph, substantial interference with an employee’s work performance or creation of an intimidating, hostile, or offensive work environment is established when the conduct is such that a reasonable person under the same circumstances as the employee would consider

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the conduct sufficiently severe or pervasive to interfere substantially with the person's work performance or to create an intimidating, hostile, or offensive work environment.

SECTION 9. 111.36 (1) (c) of the statutes is amended to read:

111.36 (1) (c) Discriminating against any ~~woman~~ individual on the basis of pregnancy, childbirth, ~~maternity~~ parental leave, or related medical conditions by engaging in any of the actions prohibited under s. 111.322, including, but not limited to, actions concerning fringe benefit programs covering illnesses and disability.

SECTION 10. 111.36 (1) (d) 1. of the statutes is amended to read:

111.36 (1) (d) 1. ~~For any employer, labor organization, licensing agency or employment agency or other person to refuse~~ Refusing to hire, employ, admit or license, ~~or to bar or terminate~~ any individual; barring or terminating from employment, membership, or licensure any individual; ~~or to discriminate~~ discriminating against ~~an~~ any individual in promotion, in compensation, or in the terms, conditions, or privileges of employment because of the individual's sexual orientation; ~~or, gender expression, or gender identity.~~

SECTION 11. 111.36 (1) (d) 2. of the statutes is amended to read:

111.36 (1) (d) 2. ~~For any employer, labor organization, licensing agency or employment agency or other person to discharge~~ Discharging or otherwise ~~discriminate~~ discriminating against any person because ~~he or she~~ the person has opposed any discriminatory practices under this paragraph or because ~~he or she~~ the

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person has made a complaint, testified or assisted in any proceeding under this paragraph.

SECTION 12. 111.36 (4) of the statutes is created to read:

111.36 (4) Notwithstanding s. 111.322, it is not employment discrimination for an employer to require an employee to adhere to reasonable workplace appearance, grooming, and dress standards not precluded by other provisions of state or federal law, provided that an employer shall allow an employee to appear or dress consistently with the employee's gender identity or gender expression.

SECTION 13. 111.39 (4) (d) of the statutes is amended to read:

111.39 (4) (d) The department shall serve a certified copy of the findings and order on the respondent, the order to have the same force as other orders of the department and be enforced as provided in s. 103.005. The department shall also serve a certified copy of the findings and order on the complainant, together with a notice advising the complainant about the right to seek, and the time for seeking, review by the commission under sub. (5); about the right to bring, and the time for bringing, an action for judicial review under s. 111.395; and about the right to bring, and the time for bringing, an action under s. 111.397 (1) (a). Any person aggrieved by noncompliance with the order may have the order enforced specifically by suit in equity. If the examiner finds that the respondent has not engaged in discrimination, unfair honesty testing, or unfair genetic testing as alleged in the complaint, the department shall serve a certified copy of the examiner's findings on the complainant, together with an order dismissing the complaint.

SECTION 14. 111.39 (5) (b) of the statutes is amended to read:

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111.39 (5) (b) ~~If no petition is filed~~ the respondent or complainant does not file a petition under par. (a) within 21 days from the date that a copy of the findings and order of the examiner is mailed to the last known address of the respondent served on that party, the findings and order shall be considered final for purposes of enforcement under sub. (4) (d). If a timely petition is filed, the commission, on review, may either affirm, reverse, or modify the findings or order in whole or in part, or set aside the findings and order and remand to the department for further proceedings. Such actions shall be based on a review of the evidence submitted. If the commission is satisfied that a respondent or complainant has been prejudiced because of exceptional delay in the receipt of a copy of any findings and order ~~it,~~ the commission may extend the time another 21 days for filing the petition with the department.

SECTION 15. 111.39 (5) (d) of the statutes is created to read:

111.39 (5) (d) The commission shall serve a certified copy of the commission's decision on the respondent. The commission shall also serve a certified copy of the commission's decision on the complainant, together with a notice advising the complainant about the right to bring, and the time for bringing, an action for judicial review under s. 111.395 and about the right to bring, and the time for bringing, an action under s. 111.397 (1) (a).

SECTION 16. 111.397 of the statutes is created to read:

111.397 Civil action. (1) (a) Except as provided in this paragraph, the department or an individual alleged or found to have been discriminated against or subjected to unfair honesty testing or unfair genetic testing may bring an action in

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circuit court requesting the relief described in sub. (2) (a) against an employer, labor organization, or employment agency that is alleged or found to have engaged in that discrimination, unfair honesty testing, or unfair genetic testing. The department or an individual alleged or found to have been discriminated against or subjected to unfair honesty testing or unfair genetic testing may not bring an action under this paragraph against a local governmental unit, as defined in s. 19.42 (7u), or against an employer, labor organization, or employment agency that employs fewer than 15 individuals for each working day in each of 20 or more calendar weeks in the current or preceding year.

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

(c) An individual alleged or found to have been discriminated against or subjected to unfair honesty testing or unfair genetic testing is not required to file a complaint under s. 111.39 or seek review under s. 111.395 in order for the department or the individual to bring an action under par. (a).

(d) An action under par. (a) shall be commenced within 300 days after the alleged discrimination, unfair honesty testing, or unfair genetic testing occurred.

(2) (a) Subject to pars. (b) and (c), in an action under sub. (1) (a), if the circuit court finds that discrimination, unfair honesty testing, or unfair genetic testing has occurred, or if such a finding has been made by an examiner or the commission and not been further appealed, the circuit court may order any relief that an examiner

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would be empowered to order under s. 111.39 (4) (c) after a hearing on a complaint filed under s. 111.39. In addition, the circuit court shall order the defendant to pay to the individual discriminated against or subjected to unfair honesty testing or unfair genetic testing any other compensatory damages, and punitive damages under s. 895.043 that the circuit court or jury finds appropriate, plus reasonable costs and attorney fees incurred in the action. If any relief was ordered under s. 111.39 or 111.395, the circuit court shall specify whether the relief ordered under this paragraph is in addition to or replaces the relief ordered under s. 111.39 or 111.395. 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:

1. 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.
2. 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.
3. 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.
4. In the case of a defendant that employs more than 500 employees for each

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working day in each of 20 or more calendar weeks in the current or preceding year, \$300,000.

(b) If the circuit court orders a payment under par. (a) because of a violation of s. 111.321, 111.37, or 111.372 by an individual employed by an employer, the employer of that individual is liable for the payment.

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

2. Except as provided in this subdivision, beginning on July 1, 2024, and on each July 1 after that, the department shall adjust the amounts specified in par. (a) 1., 2., 3., and 4. by calculating the percentage difference between the consumer price index for the 12-month period ending on December 31 of the preceding year and the consumer price index for the 12-month period ending on December 31 of the year before the preceding year and adjusting those amounts by that percentage difference. The department shall publish the adjusted amounts calculated under this subdivision in the Wisconsin Administrative Register, and the adjusted amounts shall apply to actions commenced under sub. (1) (a) beginning on July 1 of the year of publication. This subdivision does not apply if the consumer price index for the 12-month period ending on December 31 of the preceding year did not increase over the consumer price index for the 12-month period ending on December 31 of the year before the preceding year.

SECTION 17. 111.81 (12) (b) of the statutes is amended to read:

111.81 (12) (b) Which discriminates with regard to the terms or conditions of

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membership because of race, color, creed, sex, age, sexual orientation, gender expression, as defined in s. 111.32 (7j), gender identity, as defined in s. 111.32 (7k), or national origin.

SECTION 18. 118.20 (1) of the statutes is amended to read:

118.20 (1) No discrimination because of sex, except where sex is a bona fide occupational qualification as defined in s. 111.36 (2), sexual orientation, as defined in s. 111.32 (13m), gender expression, as defined in s. 111.32 (7j), gender identity, as defined in s. 111.32 (7k), race, ~~nationality~~ national origin, or political or religious affiliation may be practiced in the employment of teachers or administrative personnel in public schools or in their assignment or reassignment. No questions of any nature or form relative to sex, except where sex is a bona fide occupational qualification as defined in s. 111.36 (2), sexual orientation, as defined in s. 111.32 (13m), gender expression, as defined in s. 111.32 (7j), gender identity, as defined in s. 111.32 (7k), race, ~~nationality~~ national origin, or political or religious affiliation may be asked applicants for teaching or administrative positions in the public schools either by public school officials or employees or by teachers agencies or placement bureaus.

SECTION 19. 321.37 of the statutes is amended to read:

321.37 No discrimination. No person, otherwise qualified, may be denied membership in the national guard or state defense force because of sex, color, race, creed, ~~or~~ sexual orientation, gender expression, as defined in s. 111.32 (7j), or gender identity, as defined in s. 111.32 (7k), and no member of the national guard or state defense force may be segregated within the national guard or state defense

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force on the basis of sex, color, race, creed, ~~or~~ sexual orientation, gender expression, as defined in s. 111.32 (7j), or gender identity, as defined in s. 111.32 (7k). Nothing in this section prohibits separate facilities for persons of different sexes with regard to dormitory accommodations, toilets, showers, saunas, and dressing rooms, except that no person may be denied equal access to facilities most consistent with the person's gender identity.

SECTION 20. 814.04 (intro.) of the statutes is amended to read:

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

SECTION 21. 893.995 of the statutes is created to read:

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

SECTION 9350. Initial applicability; Workforce Development.

(1) EMPLOYMENT DISCRIMINATION DAMAGES. The treatment of ss. 111.39 (4) (d) and (5) (b) and (d), 111.397, 814.04 (intro.) (by SECTION 20), and 893.995 first applies to acts of employment discrimination, unfair honesty testing, or unfair genetic testing committed on the effective date of this subsection.

(END)