

1 AMENDMENT TO SENATE BILL 1856

2 AMENDMENT NO. _____. Amend Senate Bill 1856 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Minimum Wage Law is amended by changing
5 Sections 7 and 12 and adding Section 7.1 as follows:

6 (820 ILCS 105/7) (from Ch. 48, par. 1007)

7 Sec. 7. The Director or his authorized representatives
8 have the authority to:

9 (a) Investigate and gather data regarding the wages,
10 hours and other conditions and practices of employment in any
11 industry subject to this Act, and may enter and inspect such
12 places and such records (and make such transcriptions
13 thereof) at reasonable times during regular business hours,
14 not including lunch time at a restaurant, question such
15 employees, and investigate such facts, conditions, practices
16 or matters as he may deem necessary or appropriate to
17 determine whether any person has violated any provision of
18 this Act, or which may aid in the enforcement of this Act.

19 (b) Require from any employer full and correct
20 statements and reports in writing, including sworn
21 statements, at such times as the Director may deem necessary,
22 of the wages, hours, names, addresses, and other information

1 pertaining to his employees as he may deem necessary for the
2 enforcement of this Act.

3 (c) If, as a result of the Director's investigation of an
4 employer's records under subsection (b) it is determined that
5 an employee has been paid less than the wage to which he or
6 she is entitled under the provisions of this Act, the
7 Director may issue an administrative determination setting
8 out the amount of the underpayment together with any penalty
9 or punitive damages authorized under Section 12 of this Act.
10 A notice of this administrative determination shall be sent
11 to the employer. The Department's determination shall be
12 deemed prima facie correct and shall be prima facie evidence
13 of the correctness of the Department's computation of the
14 underpayment, as shown therein. Proof of the determination by
15 the Department may be made at any hearing before the
16 Department or in any legal proceeding by a reproduced copy or
17 computer print-out of the Department's record relating
18 thereto in the name of the Department under the certificate
19 of the Director. If reproduced copies of the Department's
20 records are offered as proof of the determination, the
21 Director must certify that those copies are true and exact
22 copies of records on file with the Department. If computer
23 print-outs of the Department's records are offered as proof
24 of the determination, the Director must certify that those
25 computer print-outs are true and exact representations of
26 records properly entered into standard electronic computing
27 equipment, in the regular course of the Department's
28 business, at or reasonably near the time of the occurrence of
29 the facts recorded, from trustworthy and reliable
30 information. The certified reproduced copy or certified
31 computer print-out shall, without further proof, be admitted
32 into evidence before the Department or in any legal
33 proceeding and shall be prima facie proof of the correctness
34 of the Department's determination, as shown therein.

1 If the employer or the employer's legal representative
2 shall within 60 days after the notice of administrative
3 determination file a protest to the notice of administrative
4 determination and request a hearing, the Department shall
5 give notice to the employer or legal representative of the
6 time and place fixed for the hearing and shall hold a hearing
7 in conformity with the provisions of this Act, and pursuant
8 thereto shall issue to the employer or legal representative a
9 final administrative decision resolving the dispute.

10 If a protest to the notice of administrative
11 determination and a request for a hearing thereon is not
12 filed within 60 days after the notice, the notice of
13 administrative determination shall become a final
14 administrative decision without the necessity of a final
15 administrative decision being issued and shall be deemed to
16 be a final administrative decision.

17 If notice is required by this Act, notice may be given
18 by United States registered or certified mail, addressed to
19 the person concerned at his last known address, and proof of
20 the mailing shall be sufficient for the purposes of this
21 Act. Notice of any hearing provided for by this Act shall be
22 given not less than 7 days prior to the day fixed for the
23 hearing. Following the initial contact of a person
24 represented by an attorney, the Department shall not contact
25 the person concerned but shall only contact the attorney
26 representing the person concerned.

27 Proof of the Department's administrative decision may be
28 made at any hearing before the Department or in any legal
29 proceeding by a reproduced copy of the Department's record
30 relating thereto in the name of the Department under the
31 certificate of the Director. The reproduced copy shall,
32 without further proof, be admitted into evidence before the
33 Department or in any legal proceeding and shall be prima
34 facie proof of the correctness of the decision, as shown

1 therein.

2 (Source: P.A. 77-1451.)

3 (820 ILCS 105/7.1 new)

4 Sec. 7.1. Administrative review. The circuit court of
5 the County where the person aggrieved by the Department's
6 final administrative decision has his or her principal place
7 of business, or of Sangamon County in those cases where the
8 taxpayer does not have his or her principal place of business
9 in this State, shall have power to review all final
10 administrative decisions of the Department in administering
11 the provisions of this Act.

12 The provisions of the Administrative Review Law, and the
13 rules adopted pursuant thereto, shall apply to and govern all
14 proceedings for the judicial review of final administrative
15 decisions of the Department under this Act. The term
16 "administrative decision" is defined as in Section 3-101 of
17 the Code of Civil Procedure.

18 Service upon the Director of summons issued in an action
19 to review a final administrative decision of the Department
20 shall be service upon the Department. The Department shall
21 certify the record of its proceedings if the plaintiff pays
22 to it the sum of 75 cents per page of testimony taken before
23 the Department and 25 cents per page of all other matters
24 contained in such record, except that these charges may be
25 waived if the Department is satisfied that the plaintiff is
26 a poor person who cannot afford to pay such charges. If
27 payment for such record is not made by the plaintiff within
28 30 days after notice from the Department or the Attorney
29 General of the cost thereof, the court in which the
30 proceeding is pending, on motion of the Department, shall
31 dismiss the complaint and shall enter judgment against the
32 plaintiff and in favor of the Department.

1 (820 ILCS 105/12) (from Ch. 48, par. 1012)

2 Sec. 12. (a) If any employee is paid by his employer
3 less than the wage to which he is entitled under the
4 provisions of this Act, the employee may recover in a civil
5 action the amount of any such underpayments together with
6 costs and such reasonable attorney's fees as may be allowed
7 by the Court, and any agreement between him and his employer
8 to work for less than such wage is no defense to such action.

9 (a-5) At the request of the employee or on motion of the
10 Director of Labor, the Department of Labor may make an
11 assignment of such wage claim in trust for the assigning
12 employee and may bring any legal action necessary to collect
13 such claim, and the employer shall be required to pay the
14 costs incurred in collecting such claim. Every such action
15 shall be brought within 3 years from the date of the
16 underpayment. The Department's complaint on behalf of the
17 employee shall be accompanied by a certified copy of the
18 Department's final administrative decision or, if no
19 administrative hearing was sought, a certified copy of the
20 Department's administrative determination. The complaint
21 shall include a recitation of facts sufficient to show that
22 the Department complied with the requirements of the Act in
23 arriving at its administrative determination or final
24 administrative decision, and that the employer had an
25 opportunity for administrative hearing and judicial review,
26 whether or not he or she availed himself or herself of either
27 or both of these opportunities. If the court is satisfied
28 that the Department has complied with the requirements of
29 the Act and that the employer has had the opportunity for
30 administrative hearing and judicial review, whether or not
31 the employer availed himself or herself of either
32 opportunity, judgment shall be entered in favor of the
33 Department and against the employer.

34 Such employer shall be liable to the Department of Labor

1 for 20% of the total employer's underpayment and shall be
2 additionally liable to the employee for punitive damages in
3 the amount of 2% of the amount of any such underpayments for
4 each month following the date of payment during which such
5 underpayments remain unpaid. The Director may promulgate
6 rules for the collection of these penalties. The amount of a
7 penalty may be determined, and the penalty may be assessed,
8 through an administrative hearing. The penalty may be
9 recovered in a civil action brought by the Director of Labor
10 in any circuit court. The penalty shall be imposed in cases
11 in which an employer's conduct is proven by a preponderance
12 of the evidence to be willful. In any such action, the
13 Director of Labor shall be represented by the Attorney
14 General.

15 The penalty payable to the Department shall be deposited
16 into a Special Administrative Account which is hereby
17 created. The amount in this Account in excess of \$100,000 on
18 the close of business of the last business day of each
19 calendar quarter shall immediately be transferred to the
20 General Revenue Fund. The moneys available in the Special
21 Administrative Account shall be expended upon the direction
22 of the Director whenever it appears to the Director that the
23 expenditure is necessary for:

24 (1) The payment of salaries and expenses connected
25 with the conduct of investigations and hearings and the
26 issuance of administrative determinations and final
27 administrative decisions under this Act.

28 (2) The payment of any fees due private collection
29 agencies for collecting amounts due from employers under
30 this Act.

31 This Special Administrative Account shall be considered
32 always appropriated for the purposes of disbursements as
33 provided in this Act and shall be paid out and disbursed
34 only as provided herein and shall not at any time be

1 appropriated or diverted to any other use or purpose.

2 (b) The Director is authorized to supervise the payment
3 of the unpaid minimum wages and the unpaid overtime
4 compensation owing to any employee or employees under
5 Sections 4 and 4a of this Act and may bring any legal action
6 necessary to recover the amount of the unpaid minimum wages
7 and unpaid overtime compensation and an equal additional
8 amount as punitive damages, and the employer shall be
9 required to pay the costs. The action shall be brought within
10 5 years from the date of the failure to pay the wages or
11 compensation. Any sums thus recovered by the Director on
12 behalf of an employee pursuant to this subsection shall be
13 paid to the employee or employees affected. Any sums which,
14 more than one year after being thus recovered, the Director
15 is unable to pay to an employee shall be deposited into the
16 General Revenue Fund.

17 (Source: P.A. 92-392, eff. 1-1-02.)

18 Section 10. The Illinois Wage Payment and Collection Act
19 is amended by changing Sections 11 and 14 and adding Section
20 11.1 as follows:

21 (820 ILCS 115/11) (from Ch. 48, par. 39m-11)

22 Sec. 11. It shall be the duty of the Department of Labor
23 to inquire diligently for any violations of this Act, and to
24 institute the actions for penalties herein provided, and to
25 enforce generally the provisions of this Act.

26 The department shall have the following powers:

27 (a) To investigate and attempt equitably to adjust
28 controversies between employees and employers in respect of
29 wage claims arising under this Act and to that end the
30 department through the Director of Labor or any other person
31 in the Department of Labor designated by him or her, shall
32 have the power to administer oaths, subpoena and examine

1 witnesses, to issue subpoenas duces tecum requiring the
2 production of such books, papers, records and documents as
3 may be evidence of any matter under inquiry and to examine
4 and inspect the same as may relate to the question in
5 dispute. Service of such subpoenas shall be made by any
6 sheriff or any person. Any court in this State, upon the
7 application of the department may compel attendance of
8 witnesses, the production of books and papers, and the giving
9 of testimony before the department by attachment for contempt
10 or in any other way as the production of evidence may be
11 compelled before such court.

12 (a-5) In those cases involving less than \$10,000,
13 exclusive of any penalties or interest, where the Department
14 is unable to equitably adjust a wage claim controversy
15 between employees and employers to the mutual satisfaction of
16 all parties, the Department shall issue an administrative
17 determination adjudicating the wage claim dispute according
18 to its best information and judgment. The Department's
19 determination shall be deemed prima facie correct and shall
20 be prima facie evidence of the correctness of the
21 Department's resolution of the wage claim controversy, as
22 shown therein. Proof of the determination by the Department
23 may be made at any hearing before the Department or in any
24 legal proceeding by a reproduced copy or computer print-out
25 of the Department's record relating thereto in the name of
26 the Department under the certificate of the Director. If
27 reproduced copies of the Department's records are offered as
28 proof of the determination, the Director must certify that
29 those copies are true and exact copies of records on file
30 with the Department. If computer print-outs of the
31 Department's records are offered as proof of the
32 determination, the Director must certify that those computer
33 print-outs are true and exact representations of records
34 properly entered into standard electronic computing

1 equipment, in the regular course of the Department's
2 business, at or reasonably near the time of the occurrence of
3 the facts recorded, from trustworthy and reliable
4 information. The certified reproduced copy or certified
5 computer print-out shall, without further proof, be admitted
6 into evidence before the Department or in any legal
7 proceeding and shall be prima facie proof of the correctness
8 of the Department's determination, as shown therein. The
9 Department shall issue a notice of its administrative
10 determination to all parties to the wage claim controversy.

11 If any party to the dispute that is aggrieved by the
12 Department's administrative determination or that party's
13 legal representative shall within 60 days after issuance of
14 the notice of administrative determination file a protest to
15 the notice of administrative determination and request a
16 hearing thereon, the Department shall give notice to that
17 person or legal representative of the time and place fixed
18 for the hearing and shall hold a hearing in conformity with
19 the provisions of this Act, and pursuant thereto shall issue
20 to that person or legal representative a final
21 administrative decision resolving the dispute.

22 If a protest to the notice of administrative
23 determination and a request for a hearing thereon is not
24 filed within 60 days after issuance of the notice, the notice
25 of administrative determination shall become a final
26 administrative decision without the necessity of a final
27 administrative decision being issued and shall be deemed to
28 be a final administrative decision.

29 Whenever notice is required by this Act, notice may be
30 given by United States registered or certified mail,
31 addressed to the person concerned at his or her last known
32 address, and proof of the mailing shall be sufficient for
33 the purposes of this Act. Notice of any hearing provided for
34 by this Act shall be given not less than 7 days prior to the

1 day fixed for the hearing. Following the initial contact of
2 a person represented by an attorney, the Department shall
3 not contact the person concerned but shall only contact the
4 attorney representing the person concerned.

5 Proof of the Department's final administrative decision
6 may be made at any hearing before the Department or in any
7 legal proceeding by a reproduced copy of the Department's
8 record relating thereto in the name of the Department under
9 the certificate of the Director. The reproduced copy shall,
10 without further proof, be admitted into evidence before the
11 Department or in any legal proceeding and shall be prima
12 facie proof of the correctness of the final administrative
13 decision, as shown therein.

14 (b) To take assignments of wage claims resulting from
15 final administrative decisions in the name of the Director of
16 Labor and his or her successors in office and prosecute
17 actions for the collection of wages based on those final
18 administrative decisions for persons financially unable to
19 prosecute such claims ~~when-in-the-judgment-of-the-department~~
20 ~~such-claims-are-valid-and--enforceable--in--the--courts.~~ The
21 Department's complaint on behalf of such persons shall be
22 accompanied by a certified copy of the Department's final
23 administrative decision or, if no administrative hearing was
24 sought, a certified copy of the Department's administrative
25 determination. The complaint shall include a recitation of
26 facts sufficient to show that the Department complied with
27 the requirements of this Act in arriving at its
28 administrative determination or final administrative
29 decision, and that the person aggrieved by the Department's
30 actions had an opportunity for administrative hearing and
31 judicial review, whether or not he or she availed himself or
32 herself of either or both of these opportunities. If the
33 court is satisfied that the Department has complied with the
34 requirements of this Act and that the person aggrieved by the

1 Department's decision has had the opportunity for
2 administrative hearing and judicial review, whether or not
3 the person availed himself of either opportunity, judgment
4 shall be entered in favor of the Department and against the
5 defendant.

6 No court costs or any fees for necessary process and
7 proceedings shall be payable in advance by the department for
8 prosecuting such actions. In the event there is a judgment
9 rendered against the defendant, the court shall assess as
10 part of such judgment the costs of such proceeding. Upon
11 collection of such judgments in favor of an employee or
12 employees the department shall pay from the proceeds of such
13 judgment such costs to such person who is by law entitled to
14 same. The department may join in a single proceeding any
15 number of wage claims against the same employer but the court
16 shall have discretionary power to order a severance or
17 separate trial for hearings.

18 (c) To make complaint in any court of competent
19 jurisdiction of violations of this Act.

20 Nothing herein shall be construed to prevent any employee
21 from making complaint or prosecuting his or her own claim for
22 wages.

23 Nothing herein shall be construed to limit the authority
24 of the State's attorney of any county to prosecute actions
25 for violation of this Act or to enforce the provisions
26 thereof independently and without specific direction of the
27 Department of Labor.

28 (Source: P.A. 83-1362.)

29 (820 ILCS 115/11.1 new)

30 Sec. 11.1. Administrative review. The circuit court of
31 the County where the person aggrieved by the Department's
32 final administrative decision has his or her principal place
33 of business, or of Sangamon County in those cases where the

1 taxpayer does not have his or her principal place of business
2 in this State, shall have power to review all final
3 administrative decisions of the Department in administering
4 the provisions of this Act.

5 The provisions of the Administrative Review Law, and the
6 rules adopted pursuant thereto, shall apply to and govern all
7 proceedings for the judicial review of final administrative
8 decisions of the Department under this Act. The term
9 "administrative decision" is defined as in Section 3-101 of
10 the Code of Civil Procedure.

11 Service upon the Director of summons issued in an action
12 to review a final administrative decision of the Department
13 shall be service upon the Department. The Department shall
14 certify the record of its proceedings if the plaintiff pays
15 to it the sum of 75 cents per page of testimony taken before
16 the Department and 25 cents per page of all other matters
17 contained in such record, except that these charges may be
18 waived if the Department is satisfied that the plaintiff is
19 a poor person who cannot afford to pay those charges. If
20 payment for the record is not made by the plaintiff within
21 30 days after notice from the Department or the Attorney
22 General of the cost thereof, the court in which the
23 proceeding is pending, on motion of the Department, shall
24 dismiss the complaint and shall enter judgment against the
25 plaintiff and in favor of the Department.

26 (820 ILCS 115/14) (from Ch. 48, par. 39m-14)

27 Sec. 14. (a) Any employer or any agent of an employer,
28 who, being able to pay wages, final compensation, or wage
29 supplements and being under a duty to pay, wilfully refuses
30 to pay as provided in this Act, or falsely denies the amount
31 or validity thereof or that the same is due, with intent to
32 secure for himself or other person any underpayment of such
33 indebtedness or with intent to annoy, harass, oppress,

1 hinder, delay or defraud the person to whom such indebtedness
2 is due, upon conviction, is guilty of a Class C misdemeanor.
3 Each day during which any violation of this Act continues
4 shall constitute a separate and distinct offense.

5 (b) Any employer who has been ordered by the Director of
6 Labor or the court to pay wages due an employee and who shall
7 fail to do so within 15 days after such order is entered
8 shall be liable to pay a penalty of 1% per calendar day to
9 the employee for each day of delay in paying such wages to
10 the employee up to an amount equal to twice the sum of unpaid
11 wages due the employee.

12 In addition, the employer shall pay to the Department of
13 Labor a penalty equal to 20% of the amount due from the
14 employer. This penalty shall be deposited into a Special
15 Administrative Account which is hereby created. The amount
16 in this Account in excess of \$100,000 on the close of
17 business of the last business day of each calendar quarter
18 shall immediately be transferred to the General Revenue Fund.
19 The moneys available in the Special Administrative Account
20 shall be expended upon the direction of the Director if it
21 appears to the Director that such expenditure is necessary
22 for:

23 (1) The payment of salaries and expenses connected
24 with the conduct of investigations and hearings and the
25 issuance of administrative determinations and final
26 administrative decisions under this Act.

27 (2) The payment of any fees due private collection
28 agencies for collecting amounts due from employers under
29 this Act.

30 This Special Administrative Account shall be considered
31 always appropriated for the purposes of disbursements, as
32 provided in this Act, and shall be paid out and disbursed
33 only as provided herein, and shall not, at any time, be
34 appropriated or diverted to any other use or purpose.

1 (c) Any employer, or any agent of an employer, who
2 knowingly discharges or in any other manner knowingly
3 discriminates against any employee because that employee has
4 made a complaint to his employer, or to the Director of Labor
5 or his authorized representative, that he or she has not been
6 paid in accordance with the provisions of this Act, or
7 because that employee has caused to be instituted any
8 proceeding under or related to this Act, or because that
9 employee has testified or is about to testify in an
10 investigation or proceeding under this Act, is guilty, upon
11 conviction, of a Class C misdemeanor.

12 (Source: P.A. 83-202.)".