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09400SB2339sam002

LRB094 16364 WGH 55406 a

1 AMENDMENT TO SENATE BILL 2339

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 2339 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Minimum Wage Law is amended by changing  
5 Sections 3, 7, and 12 as follows:

6 (820 ILCS 105/3) (from Ch. 48, par. 1003)

7 Sec. 3. As used in this Act:

8 (a) "Director" means the Director of the Department of  
9 Labor, and "Department" means the Department of Labor.

10 (b) "Wages" means compensation due to an employee by reason  
11 of his employment, including allowances determined by the  
12 Director in accordance with the provisions of this Act for  
13 gratuities and, when furnished by the employer, for meals and  
14 lodging actually used by the employee.

15 (c) "Employer" includes any individual, partnership,  
16 association, corporation, limited liability company, business  
17 trust, governmental or quasi-governmental body, or any person  
18 or group of persons acting directly or indirectly in the  
19 interest of an employer in relation to an employee, for which  
20 one or more persons are gainfully employed on some day within a  
21 calendar year. An employer is subject to this Act in a calendar  
22 year on and after the first day in such calendar year in which  
23 he employs one or more persons, and for the following calendar  
24 year.

1 (d) "Employee" includes any individual permitted to work by  
2 an employer in an occupation, but does not include any  
3 individual permitted to work:

4 (1) For an employer employing fewer than 4 employees  
5 exclusive of the employer's parent, spouse or child or  
6 other members of his immediate family.

7 (2) As an employee employed in agriculture or  
8 aquaculture (A) if such employee is employed by an employer  
9 who did not, during any calendar quarter during the  
10 preceding calendar year, use more than 500 man-days of  
11 agricultural or aquacultural labor, (B) if such employee is  
12 the parent, spouse or child, or other member of the  
13 employer's immediate family, (C) if such employee (i) is  
14 employed as a hand harvest laborer and is paid on a piece  
15 rate basis in an operation which has been, and is  
16 customarily and generally recognized as having been, paid  
17 on a piece rate basis in the region of employment, (ii)  
18 commutes daily from his permanent residence to the farm on  
19 which he is so employed, and (iii) has been employed in  
20 agriculture less than 13 weeks during the preceding  
21 calendar year, (D) if such employee (other than an employee  
22 described in clause (C) of this subparagraph): (i) is 16  
23 years of age or under and is employed as a hand harvest  
24 laborer, is paid on a piece rate basis in an operation  
25 which has been, and is customarily and generally recognized  
26 as having been, paid on a piece rate basis in the region of  
27 employment, (ii) is employed on the same farm as his parent  
28 or person standing in the place of his parent, and (iii) is  
29 paid at the same piece rate as employees over 16 are paid  
30 on the same farm.

31 (3) In domestic service in or about a private home.

32 (4) As an outside salesman.

33 (5) As a member of a religious corporation or  
34 organization.

1           (6) At an accredited Illinois college or university  
2 employed by the college or university at which he is a  
3 student who is covered under the provisions of the Fair  
4 Labor Standards Act of 1938, as heretofore or hereafter  
5 amended.

6           (7) For a motor carrier and with respect to whom the  
7 U.S. Secretary of Transportation has the power to establish  
8 qualifications and maximum hours of service under the  
9 provisions of Title 49 U.S.C. or the State of Illinois  
10 under Section 18b-105 (Title 92 of the Illinois  
11 Administrative Code, Part 395 - Hours of Service of  
12 Drivers) of the Illinois Vehicle Code.

13           The above exclusions from the term "employee" may be  
14 further defined by regulations of the Director.

15           (e) "Occupation" means an industry, trade, business or  
16 class of work in which employees are gainfully employed.

17           (f) "Gratuities" means voluntary monetary contributions to  
18 an employee from a guest, patron or customer in connection with  
19 services rendered.

20           (g) "Outside salesman" means an employee regularly engaged  
21 in making sales or obtaining orders or contracts for services  
22 where a major portion of such duties are performed away from  
23 his employer's place of business.

24           (Source: P.A. 91-357, eff. 7-29-99.)

25           (820 ILCS 105/7) (from Ch. 48, par. 1007)

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

28           (a) Investigate and gather data regarding the wages, hours  
29 and other conditions and practices of employment in any  
30 industry subject to this Act, and may enter and inspect such  
31 places and such records (and make such transcriptions thereof)  
32 at reasonable times during regular business hours, not  
33 including lunch time at a restaurant, question such employees,

1 and investigate such facts, conditions, practices or matters as  
2 he may deem necessary or appropriate to determine whether any  
3 person has violated any provision of this Act, or which may aid  
4 in the enforcement of this Act.

5 (b) Require from any employer full and correct statements  
6 and reports in writing, including sworn statements, at such  
7 times as the Director may deem necessary, of the wages, hours,  
8 names, addresses, and other information pertaining to his  
9 employees as he may deem necessary for the enforcement of this  
10 Act.

11 (c) Require by subpoena the attendance and testimony of  
12 witnesses and the production of all books, records, and other  
13 evidence relative to a matter under investigation or hearing.  
14 The subpoena shall be signed and issued by the Director or his  
15 or her authorized representative. If a person fails to comply  
16 with any subpoena lawfully issued under this Section or a  
17 witness refuses to produce evidence or testify to any matter  
18 regarding which he or she may be lawfully interrogated, the  
19 court shall, upon application of the Director or his or her  
20 authorized representative, compel obedience by proceedings for  
21 contempt.

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

23 (820 ILCS 105/12) (from Ch. 48, par. 1012)

24 Sec. 12. (a) If any employee is paid by his employer less  
25 than the wage to which he is entitled under the provisions of  
26 this Act, the employee may recover in a civil action the amount  
27 of any such underpayments together with costs and such  
28 reasonable attorney's fees as may be allowed by the Court, and  
29 damages of 2% of the amount of any such underpayments for each  
30 month following the date of payment during which such  
31 underpayments remain unpaid. Any ~~any~~ agreement between the  
32 employee ~~him~~ and the ~~his~~ employer to work for less than such  
33 wage is no defense to such action. At the request of the

1 employee or on motion of the Director of Labor, the Department  
2 of Labor may make an assignment of such wage claim in trust for  
3 the assigning employee and may bring any legal action necessary  
4 to collect such claim, and the employer shall be required to  
5 pay the costs incurred in collecting such claim. Every such  
6 action shall be brought within 3 years from the date of the  
7 underpayment. Such employer shall be liable to the Department  
8 of Labor for 20% of the total employer's underpayment and shall  
9 be additionally liable to the employee for ~~punitive~~ damages in  
10 the amount of 2% of the amount of any such underpayments for  
11 each month following the date of payment during which such  
12 underpayments remain unpaid. These penalties ~~The Director may~~  
13 ~~promulgate rules for the collection of these penalties. The~~  
14 ~~amount of a penalty may be determined, and the penalty may be~~  
15 ~~assessed, through an administrative hearing. The penalty may be~~  
16 recovered in a civil action brought by the Director of Labor in  
17 any circuit court. ~~The penalty shall be imposed in cases in~~  
18 ~~which an employer's conduct is proven by a preponderance of the~~  
19 ~~evidence to be willful.~~ In any such action, the Director of  
20 Labor shall be represented by the Attorney General.

21 (b) The Director is authorized to supervise the payment of  
22 the unpaid minimum wages and the unpaid overtime compensation  
23 owing to any employee or employees under Sections 4 and 4a of  
24 this Act and may bring any legal action necessary to recover  
25 the amount of the unpaid minimum wages and unpaid overtime  
26 compensation and an equal additional amount as ~~punitive~~  
27 damages. Such employer shall also be liable to the Department  
28 of Labor for 20% of the total employer's underpayment, and ~~the~~  
29 ~~employer~~ shall be required to pay the costs of any such legal  
30 action. The action shall be brought within 5 years from the  
31 date of the failure to pay the wages or compensation. Any sums  
32 thus recovered by the Director on behalf of an employee  
33 pursuant to this subsection shall be paid to the employee or  
34 employees affected. Any sums which, more than one year after

1 being thus recovered, the Director is unable to pay to an  
2 employee shall be deposited into the General Revenue Fund.

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

4 Section 10. The Illinois Wage Payment and Collection Act is  
5 amended by changing Sections 2 and 14 as follows:

6 (820 ILCS 115/2) (from Ch. 48, par. 39m-2)

7 Sec. 2. For all employees, other than separated employees,  
8 "wages" shall be defined as any compensation owed an employee  
9 by an employer pursuant to an employment contract or agreement  
10 between the 2 parties, whether the amount is determined on a  
11 time, task, piece, or any other basis of calculation. Payments  
12 to separated employees shall be termed "final compensation" and  
13 shall be defined as wages, salaries, earned commissions, earned  
14 bonuses, and the monetary equivalent of earned vacation and  
15 earned holidays, and any other compensation owed the employee  
16 by the employer pursuant to an employment contract or agreement  
17 between the 2 parties. Where an employer is legally committed  
18 through a collective bargaining agreement or otherwise to make  
19 contributions to an employee benefit, trust or fund on the  
20 basis of a certain amount per hour, day, week or other period  
21 of time, the amount due from the employer to such employee  
22 benefit, trust, or fund shall be defined as "wage supplements",  
23 subject to the wage collection provisions of this Act.

24 As used in this Act, the term "employer" shall include any  
25 individual, partnership, association, corporation, limited  
26 liability company, business trust, employment and labor  
27 placement agencies where wage payments are made directly or  
28 indirectly by the agency or business for work undertaken by  
29 employees under hire to a third party pursuant to a contract  
30 between the business or agency with the third party, or any  
31 person or group of persons acting directly or indirectly in the  
32 interest of an employer in relation to an employee, for which

1 one or more persons is gainfully employed.

2 As used in this Act, the term "employee" shall include any  
3 individual permitted to work by an employer in an occupation,  
4 but shall not include any individual:

5 (1) who has been and will continue to be free from  
6 control and direction over the performance of his work,  
7 both under his contract of service with his employer and in  
8 fact; and

9 (2) who performs work which is either outside the usual  
10 course of business or is performed outside all of the  
11 places of business of the employer unless the employer is  
12 in the business of contracting with third parties for the  
13 placement of employees; and

14 (3) who is in an independently established trade,  
15 occupation, profession or business.

16 (Source: P.A. 89-364, eff. 8-18-95; 89-626, eff. 8-9-96.)

17 (820 ILCS 115/14) (from Ch. 48, par. 39m-14)

18 Sec. 14. (a) Any employer or any agent of an employer, who,  
19 being able to pay wages, final compensation, or wage  
20 supplements and being under a duty to pay, wilfully refuses to  
21 pay as provided in this Act, or falsely denies the amount or  
22 validity thereof or that the same is due, with intent to secure  
23 for himself or other person any underpayment of such  
24 indebtedness or with intent to annoy, harass, oppress, hinder,  
25 delay or defraud the person to whom such indebtedness is due,  
26 upon conviction, is guilty of a Class C misdemeanor. Each day  
27 during which any violation of this Act continues shall  
28 constitute a separate and distinct offense.

29 (b) Any employer who has been demanded ~~ordered~~ by the  
30 Director of Labor or ordered by the court to pay wages due an  
31 employee and who shall fail to do so within 15 days after such  
32 demand or order is entered shall be liable to pay a penalty of  
33 1% per calendar day to the employee for each day of delay in

1 paying such wages to the employee up to an amount equal to  
2 twice the sum of unpaid wages due the employee.

3 (c) Any employer, or any agent of an employer, who  
4 knowingly discharges or in any other manner knowingly  
5 discriminates against any employee because that employee has  
6 made a complaint to his employer, or to the Director of Labor  
7 or his authorized representative, that he or she has not been  
8 paid in accordance with the provisions of this Act, or because  
9 that employee has caused to be instituted any proceeding under  
10 or related to this Act, or because that employee has testified  
11 or is about to testify in an investigation or proceeding under  
12 this Act, is guilty, upon conviction, of a Class C misdemeanor.  
13 (Source: P.A. 83-202.)

14 Section 99. Effective date. This Act takes effect upon  
15 becoming law."