



## 94TH GENERAL ASSEMBLY

### State of Illinois

2005 and 2006

SB2339

Introduced 1/12/2006, by Sen. Miguel del Valle

#### SYNOPSIS AS INTRODUCED:

820 ILCS 105/12

from Ch. 48, par. 1012

Amends provisions of the Minimum Wage Law establishing an employer's liability for punitive damages in the case of underpayment of wages by stating that "the employee may recover such punitive damages in any proceeding or action allowed by any provision of this subsection, including, but not limited to, a civil action filed directly by the employee, and, subject to the limitations period set forth herein, the employee's remedy of recovering punitive damages in any proceeding or action allowed by any provision of this subsection shall be available in and applicable to all claims and causes of action under this subsection, whenever arising, including, without limitation, presently existing claims and actions for which a final and no-longer appealable order has not yet been entered". Effective immediately.

LRB094 16364 WGH 51615 b

1 AN ACT concerning employment.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Minimum Wage Law is amended by changing  
5 Section 12 as follows:

6 (820 ILCS 105/12) (from Ch. 48, par. 1012)

7 Sec. 12. (a) If any employee is paid by his employer less  
8 than the wage to which he is entitled under the provisions of  
9 this Act, the employee may recover in a civil action the amount  
10 of any such underpayments together with costs and such  
11 reasonable attorney's fees as may be allowed by the Court, and  
12 any agreement between him and his employer to work for less  
13 than such wage is no defense to such action. At the request of  
14 the employee or on motion of the Director of Labor, the  
15 Department of Labor may make an assignment of such wage claim  
16 in trust for the assigning employee and may bring any legal  
17 action necessary to collect such claim, and the employer shall  
18 be required to pay the costs incurred in collecting such claim.  
19 Every such action shall be brought within 3 years from the date  
20 of the underpayment. Such employer shall be liable to the  
21 Department of Labor for 20% of the total employer's  
22 underpayment and shall be additionally liable to the employee  
23 for punitive damages in the amount of 2% of the amount of any  
24 such underpayments for each month following the date of payment  
25 during which such underpayments remain unpaid, and the employee  
26 may recover such punitive damages in any proceeding or action  
27 allowed by any provision of this subsection, including, but not  
28 limited to, a civil action filed directly by the employee, and,  
29 subject to the limitations period set forth herein, the  
30 employee's remedy of recovering punitive damages in any  
31 proceeding or action allowed by any provision of this  
32 subsection shall be available in and applicable to all claims

1 and causes of action under this subsection, whenever arising,  
2 including, without limitation, presently existing claims and  
3 actions for which a final and no-longer appealable order has  
4 not yet been entered. The Director may promulgate rules for the  
5 collection of these penalties. The amount of a penalty may be  
6 determined, and the penalty may be assessed, through an  
7 administrative hearing. The penalty may be recovered in a civil  
8 action brought by the Director of Labor in any circuit court.  
9 The penalty shall be imposed in cases in which an employer's  
10 conduct is proven by a preponderance of the evidence to be  
11 willful. In any such action, the Director of Labor shall be  
12 represented by the Attorney General.

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

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

28 Section 99. Effective date. This Act takes effect upon  
29 becoming law.