



Sen. Omar Aquino

**Filed: 5/17/2019**

10100HB3405sam001

LRB101 08167 TAE 60562 a

1 AMENDMENT TO HOUSE BILL 3405

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 3405 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Wage Payment and Collection Act is  
5 amended by changing Section 11 and by adding Section 4.1 as  
6 follows:

7 (820 ILCS 115/4.1 new)

8 Sec. 4.1. Gratuities.

9 (a) Gratuities to employees are the property of the  
10 employees, and employers shall not keep gratuities. Failure to  
11 pay gratuities owed to an employee more than 13 days after the  
12 end of the pay period in which such gratuities were earned  
13 constitutes a violation of this Act.

14 (b) This Section does not prohibit an employer from  
15 withholding from gratuities paid by credit card a proportionate  
16 amount of any credit card processing fees that the employer

1 must pay in connection with the transaction, provided that the  
2 amount withheld does not exceed the proportion of the amount of  
3 the tip to the amount of the overall bill, regardless of  
4 whether the overall bill was paid using a credit card. This  
5 Section does not prohibit tip pooling as permitted by law. This  
6 Section does not affect an employer's entitlement to an  
7 allowance for gratuities to the extent permitted under  
8 subsection (c) of Section 4 of the Minimum Wage Law.

9 (820 ILCS 115/11) (from Ch. 48, par. 39m-11)

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

14 An employee may file a complaint with the Department  
15 alleging violations of the Act by submitting a signed,  
16 completed wage claim application on the form provided by the  
17 Department and by submitting copies of all supporting  
18 documentation. Complaints shall be filed within one year after  
19 the wages, final compensation, or wage supplements were due.

20 Applications shall be reviewed by the Department to  
21 determine whether there is cause for investigation.

22 The Department shall have the following powers:

23 (a) To investigate and attempt equitably to adjust  
24 controversies between employees and employers in respect  
25 of wage claims arising under this Act and to that end the

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

15 (b) To take assignments of wage claims in the name of  
16 the Director of Labor and his or her successors in office  
17 and prosecute actions for the collection of wages for  
18 persons financially unable to prosecute such claims when in  
19 the judgment of the Department such claims are valid and  
20 enforceable in the courts. No court costs or any fees for  
21 necessary process and proceedings shall be payable in  
22 advance by the Department for prosecuting such actions. In  
23 the event there is a judgment rendered against the  
24 defendant, the court shall assess as part of such judgment  
25 the costs of such proceeding. Upon collection of such  
26 judgments the Department shall pay from the proceeds of

1 such judgment such costs to such person who is by law  
2 entitled to same. The Department may join in a single  
3 proceeding any number of wage claims against the same  
4 employer but the court shall have discretionary power to  
5 order a severance or separate trial for hearings.

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

8 (d) In addition to the aforementioned powers, subject  
9 to appropriation, the Department may establish an  
10 administrative procedure to adjudicate claims and to issue  
11 final and binding administrative decisions on such claims  
12 subject to the Administrative Review Law. To establish such  
13 a procedure, the Director of Labor or her or his authorized  
14 representative may promulgate rules and regulations. The  
15 adoption, amendment or rescission of rules and regulations  
16 for such a procedure shall be in conformity with the  
17 requirements of the Illinois Administrative Procedure Act.

18 If a final and binding administrative decision issued by  
19 the Department requires an employer or other party to pay  
20 wages, penalties, or other amounts in connection with a  
21 wage claim, and the employer or other party has neither:

22 (i) made the required payment within 35 days of the  
23 issuance of the final and binding administrative decision;  
24 nor (ii) timely filed a complaint seeking review of the  
25 final and binding administrative decision pursuant to the  
26 Administrative Review Law in a court of competent

1       jurisdiction, the Department may file a verified petition  
2       against the employer or other party to enforce the final  
3       administrative decision and to collect any amounts due in  
4       connection therewith in the circuit court of any county  
5       where an official office of the Department is located.

6       Nothing herein shall be construed to prevent any employee  
7       from making complaint or prosecuting his or her own claim for  
8       wages. Any employee aggrieved by a violation of this Act or any  
9       rule adopted under this Act may file suit in circuit court of  
10      Illinois, in the county where the alleged violation occurred or  
11      where any employee who is party to the action resides, without  
12      regard to exhaustion of any alternative administrative  
13      remedies provided in this Act. Actions may be brought by one or  
14      more employees for and on behalf of themselves and other  
15      employees similarly situated.

16      Nothing herein shall be construed to limit the authority of  
17      the State's attorney of any county to prosecute actions for  
18      violation of this Act or to enforce the provisions thereof  
19      independently and without specific direction of the Department  
20      of Labor.

21      (Source: P.A. 98-527, eff. 1-1-14.)"