



Rep. William Delgado

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LRB094 16364 WGH 58220 a

1 AMENDMENT TO SENATE BILL 2339

2 AMENDMENT NO. _____. Amend Senate Bill 2339 by replacing
3 lines 11 through 35 on page 4 and lines 1 through 33 on page 5
4 with the following:

5 "(820 ILCS 105/12) (from Ch. 48, par. 1012)

6 Sec. 12. (a) If any employee is paid by his employer less
7 than the wage to which he is entitled under the provisions of
8 this Act, the employee may recover in a civil action the amount
9 of any such underpayments together with costs and such
10 reasonable attorney's fees as may be allowed by the Court, and
11 damages of 2% of the amount of any such underpayments for each
12 month following the date of payment during which such
13 underpayments remain unpaid. Any ~~any~~ agreement between the
14 employee ~~him~~ and the ~~his~~ employer to work for less than such
15 wage is no defense to such action. At the request of the
16 employee or on motion of the Director of Labor, the Department
17 of Labor may make an assignment of such wage claim in trust for
18 the assigning employee and may bring any legal action necessary
19 to collect such claim, and the employer shall be required to
20 pay the costs incurred in collecting such claim. Every such
21 action shall be brought within 3 years from the date of the
22 underpayment. Such employer shall be liable to the Department
23 of Labor for up to 20% of the total employer's underpayment
24 where the employer's conduct is proven by a preponderance of
25 the evidence to be willful, repeated, or with reckless

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

15 If an employee collects damages of 2% of the amount of
16 underpayments as a result of an action brought by the Director
17 of Labor, the employee may not also collect those damages in a
18 private action brought by the employee for the same violation.
19 If an employee collects damages of 2% of the amount of
20 underpayments in a private action brought by the employee, the
21 employee may not also collect those damages as a result of an
22 action brought by the Director of Labor for the same violation.

23 (b) If an employee has not collected damages under
24 subsection (a) for the same violation, the ~~The~~ Director is
25 authorized to supervise the payment of the unpaid minimum wages
26 and the unpaid overtime compensation owing to any employee or
27 employees under Sections 4 and 4a of this Act and may bring any
28 legal action necessary to recover the amount of the unpaid
29 minimum wages and unpaid overtime compensation and an equal
30 additional amount as ~~punitive~~ damages, and the employer shall
31 be required to pay the costs incurred in collecting such claim.
32 Such ~~and the~~ employer shall be additionally liable to the
33 Department of Labor for up to 20% of the total employer's
34 underpayment where the employer's conduct is proven by a

1 preponderance of the evidence to be willful, repeated, or with
2 reckless disregard of this Act or any rule adopted under this
3 Act. ~~be required to pay the costs.~~ The action shall be brought
4 within 5 years from the date of the failure to pay the wages or
5 compensation. Any sums thus recovered by the Director on behalf
6 of an employee pursuant to this subsection shall be paid to the
7 employee or employees affected. Any sums which, more than one
8 year after being thus recovered, the Director is unable to pay
9 to an employee shall be deposited into the General Revenue
10 Fund.

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