



## 2005 SENATE BILL 232

June 7, 2005 – Introduced by Senators HANSEN, COGGS, WIRCH, CARPENTER, RISSER and ERPENBACH, cosponsored by Representatives NELSON, SHERIDAN, SINICKI, LEHMAN, ZEPNICK, BERCEAU, POCAN and BOYLE. Referred to Committee on Labor and Election Process Reform.

1     **AN ACT to amend** 103.005 (12) (a), 103.02, 103.85 (5), 104.04, 105.15, 106.01 (9),  
2           109.11 (1) (a), 109.11 (1) (b), 109.11 (2) (a) and 109.11 (2) (b); and **to create**  
3           103.005 (12) (am) of the statutes; **relating to:** increasing the administrative  
4           and civil penalties that an employer that fails to pay the minimum wage may  
5           be required to pay and providing a penalty.

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### *Analysis by the Legislative Reference Bureau*

Under current law, the Department of Workforce Development (DWD) must investigate and attempt to adjust any claim by an employee that his or her employer has not paid the employee any wages that are owed to the employee (wage claim). Currently, DWD may settle a wage claim for an amount that is agreed upon between DWD, the employer, and the employee. If an employer does not agree to settle a wage claim, DWD may refer the wage claim to the district attorney for commencement of an action in circuit court to collect the wages due. If the circuit court finds that wages are due, the court may order the employer to pay to the employee, in addition to the amount of wages due, increased wages of up to 100 percent of the amount of wages due and to pay a forfeiture of not less than \$25 nor more than \$100 for each offense.

This bill permits DWD to require an employer that pays a wage that is less than the state minimum wage to pay to the employee, in addition to the amount of wages due, increased wages of up to 100 percent of the amount of wages due. The bill also increases the amount of the forfeiture that a circuit court may order the employer to pay from not less than \$10 nor more than \$100 for each offense to not less than \$25 nor more than \$250 for each offense.

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For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 103.005 (12) (a) of the statutes is amended to read:

2           103.005 (12) (a) If any employer, employee, owner, or other person violates ~~chs.~~  
3           ~~103 to 106~~ ch. 103, 105, or 106, or fails or refuses to perform any duty required under  
4           ~~chs. 103 to 106~~ ch. 103, 105, or 106, within the time prescribed by the department,  
5           for which no penalty has been specifically provided, or fails, neglects, or refuses to  
6           obey any lawful order given or made by the department or any judgment or decree  
7           made by any court in connection with ~~chs. 103 to 106~~ ch. 103, 105, or 106, for each  
8           such violation, failure, or refusal, the employer, employee, owner, or other person  
9           shall forfeit not less than \$10 nor more than \$100 for each offense. This paragraph  
10          does not apply to any person who fails to provide any information to the department  
11          to assist the department in determining prevailing wage rates or prevailing hours  
12          of labor under s. 103.49 (3) (a) or (am) or 103.50 (3) or (4).

13          **SECTION 2.** 103.005 (12) (am) of the statutes is created to read:

14          103.005 (12) (am) If any employer, employee, owner, or other person violates  
15          ch. 104, or fails or refuses to perform any duty required under ch. 104, within the time  
16          prescribed by the department, for which no penalty has been specifically provided,  
17          or fails, neglects, or refuses to obey any lawful order given or made by the department  
18          or any judgment or decree made by any court in connection with ch. 104, for each such  
19          violation, failure, or refusal, the employer, employee, owner, or other person shall  
20          forfeit not less than \$25 nor more than \$250 for each offense.

21          **SECTION 3.** 103.02 of the statutes is amended to read:

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1           **103.02 Hours of labor.** No person may be employed or be permitted to work  
2 in any place of employment or at any employment for such period of time during any  
3 day, night, or week, as is dangerous or prejudicial to the person's life, health, safety,  
4 or welfare. The department shall investigate, ascertain, determine, and fix such  
5 reasonable ~~classification~~ classifications, and promulgate rules fixing a period of  
6 time, or hours of beginning and ending work during any day, night, or week, ~~which~~  
7 ~~shall be~~ as may be necessary to protect the life, health, safety, or welfare of any  
8 person, or to carry out the purposes of ss. 103.01 to 103.03. The department shall,  
9 by rule, classify such periods of time into periods to be paid for at regular rates and  
10 periods to be paid for at the rate of at least one and one-half times the regular rates.  
11 Such investigations, classifications, and orders shall be made as provided in s.  
12 103.005 and the penalties under s. 103.005 (12) (a) shall apply to and be imposed for  
13 any violation of ss. 103.01 to 103.03. Such orders shall be subject to review in the  
14 manner provided in ch. 227. Section 111.322 (2m) applies to discharge or other  
15 discriminatory acts arising in connection with any proceeding under this section.

16           **SECTION 4.** 103.85 (5) of the statutes is amended to read:

17           103.85 (5) Every employer who violates this section shall be punished as  
18 provided in s. 103.005 (11) and (12) (a).

19           **SECTION 5.** 104.04 of the statutes is amended to read:

20           **104.04 Classifications; department's authority.** The department shall  
21 investigate, ascertain, determine, and fix such reasonable classifications, and shall  
22 impose general or special orders, determining the living-wage, and shall carry out  
23 the purposes of ss. 104.01 to 104.12. Such investigations, classifications, and orders  
24 shall be made as provided under s. 103.005, and the penalties specified in s. 103.005  
25 (12) (am) shall apply to and be imposed for any violation of ss. 104.01 to 104.12. In

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1 determining the living-wage, the department may consider the effect that an  
2 increase in the living-wage might have on the economy of the state, including the  
3 effect of a living-wage increase on job creation, retention, and expansion, on the  
4 availability of entry-level jobs, and on regional economic conditions within the state.  
5 The department may not establish a different minimum wage for men and women.  
6 Said orders shall be subject to review in the manner provided in ch. 227.

7 **SECTION 6.** 105.15 of the statutes is amended to read:

8 **105.15 General powers of department applicable; penalties.** Such  
9 investigations, classifications, and orders shall be made as provided in s. 103.005 and  
10 the penalties specified in s. 103.005 (12) (a) shall apply to and be imposed for any  
11 violation of ss. 105.01 to 105.11 or 105.13 to 105.15. The department may also order  
12 a person who operates an employment agency in violation of s. 105.05 (1) to make  
13 refunds as provided under s. 105.16 (2). Orders issued under this section are subject  
14 to review in the manner provided in ch. 227.

15 **SECTION 7.** 106.01 (9) of the statutes is amended to read:

16 106.01 (9) The department may investigate, ascertain, determine, and fix such  
17 reasonable classifications, issue rules and general or special orders, and, hold  
18 hearings, make findings, and render orders upon its findings as ~~shall~~ may be  
19 necessary to carry out the intent and purposes of this section. The investigations,  
20 classifications, hearings, findings, and orders shall be made as provided in s.  
21 103.005. Except as provided in sub. (8), the penalties specified in s. 103.005 (12) (a)  
22 apply to violations of this section. Orders issued under this subsection are subject  
23 to review under ch. 227.

24 **SECTION 8.** 109.11 (1) (a) of the statutes is amended to read:

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1           109.11 (1) (a) In adjusting a controversy between an employer and an employee  
2 as to an alleged wage claim filed with the department under s. 109.09 (1), the  
3 department may compromise and settle that wage claim for such sum as may be  
4 agreed upon between the department, the employee, and the employer. If the wage  
5 claim arose out of the employer paying a wage that is less than a living-wage in  
6 violation of ch. 104, the department may require the employer to pay, in addition to  
7 the amount of wages due and unpaid, increased wages in the amount of 100 percent  
8 of the amount of wages due and unpaid.

9           **SECTION 9.** 109.11 (1) (b) of the statutes is amended to read:

10           109.11 (1) (b) If the department finds that a wage claim is valid, the department  
11 may instruct the employer against whom the wage claim is filed to audit his or her  
12 payroll records to determine whether the employer may be liable for any other wage  
13 claims of the same type as the wage claim that prompted the audit instruction. If  
14 after the requested completion date of the audit the department receives a wage  
15 claim against the employer of the same type as the wage claim that prompted the  
16 audit instruction and if the department determines that the subsequent wage claim  
17 is valid, the department may audit the employer's payroll records to determine  
18 whether the employer may be liable for any other wage claims of the same type as  
19 the wage claim that prompted the audit instruction. For any valid wage claim that  
20 is filed against an employer after the department has instructed the employer to  
21 audit his or her payroll records under this paragraph and that is of the same type as  
22 the wage claim that prompted the audit instruction and for any valid wage claim that  
23 is discovered as a result of the department's audit under this paragraph and that is  
24 of the same type as the wage claim that prompted the audit instruction, the  
25 department shall require the employer to pay, in addition to the amount of wages due

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1 and unpaid, increased wages of not more than ~~50%~~ 50 percent of the amount of wages  
2 due and unpaid, unless the employer shows the department that payment of the  
3 increased wages would cause extreme hardship.

4 **SECTION 10.** 109.11 (2) (a) of the statutes is amended to read:

5 109.11 (2) (a) In a wage claim action that is commenced by an employee before  
6 the department has completed its investigation under s. 109.09 (1) and its attempts  
7 to compromise and settle the wage claim under sub. (1), a circuit court may order the  
8 employer to pay to the employee, in addition to the amount of wages due and unpaid  
9 and in addition to or in lieu of the criminal penalties specified in sub. (3), increased  
10 wages of not more than ~~50%~~ 50 percent of the amount of wages due and unpaid.

11 **SECTION 11.** 109.11 (2) (b) of the statutes is amended to read:

12 109.11 (2) (b) In a wage claim action that is commenced after the department  
13 has completed its investigation under s. 109.09 (1) and its attempts to settle and  
14 compromise the wage claim under sub. (1), a circuit court may order the employer  
15 to pay to the employee, in addition to the amount of wages due and unpaid ~~to an~~  
16 ~~employee~~ and in addition to or in lieu of the criminal penalties specified in sub. (3),  
17 increased wages of not more than ~~100%~~ 100 percent of the amount of ~~those~~ wages due  
18 and unpaid.

19 **SECTION 12. Initial applicability.**

20 (1) PENALTIES FOR FAILURE TO PAY THE MINIMUM WAGE. This act first applies to a  
21 wage claim that is received by the department of workforce development on the  
22 effective date of this subsection.

23 (END)