



2013 SENATE BILL 398

November 11, 2013 – Introduced by Senators WIRCH, CARPENTER, HARRIS, LEHMAN, MILLER, RISSER and L. TAYLOR, cosponsored by Representatives OHNSTAD, JOHNSON, BARNES, BERCEAU, HEBL, PASCH, POPE, SHANKLAND, C. TAYLOR and YOUNG. Referred to Committee on Workforce Development, Forestry, Mining, and Revenue.

1 **AN ACT to renumber and amend** 103.35, 109.09 (1) and 109.11 (1) (b); **to amend**
2 103.34 (6) (d), 109.03 (5), 109.09 (2) (a), 109.09 (2) (b) 3., 109.09 (2) (c) 2., 109.11
3 (1) (a), 109.11 (1) (c), 109.11 (2) (a), 109.11 (2) (b), 111.322 (2m) (a), 111.322 (2m)
4 (b), 893.44 (1) and 893.44 (2); and **to create** 20.445 (1) (gr), 103.35 (1), 103.35
5 (3), 103.40, 109.01 (3m), 109.11 (4) and 814.75 (28) of the statutes; **relating to:**
6 the provision by employers to employees of written disclosure statements of the
7 terms of employment, the filing and investigation of wage claims, the statute
8 of limitations for filing a wage claim action, the payment of interest, penalties,
9 and surcharges on wage claims, occupational or professional licensing of
10 employers that owe wages under wage claim judgments, and making an
11 appropriation.

Analysis by the Legislative Reference Bureau

CURRENT LAW

Wage claims

Filing and investigation of; statute of limitations. Under current law, an employee who has a claim that his or her employer has not paid the employee any

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wages that are owed to the employee (wage claim) may either: 1) file the wage claim with the Department of Workforce Development (DWD), which may attempt to settle and compromise the wage claim or commence an action in circuit court against the employer on the employee's behalf to collect the wage claim; or 2) commence an action in circuit court on his or her own behalf to collect the wage claim without first filing a wage claim with DWD. An action in circuit court to collect a wage claim must be commenced no later than two years after the wage claim is filed with DWD or, if the wage claim is not first filed with DWD, no later than two years after the cause of action accrues (statute of limitations) and DWD may investigate a wage claim only if it is filed no later than two years after the wages are due.

Increased wages. Under current law, if a wage claim action is commenced in circuit court *before* DWD has completed its attempt to settle and compromise the claim, the circuit court may order the employer to pay, in addition to the amount of wages unpaid, increased wages of not more than 50 percent of the amount of wages unpaid. If a wage claim action is commenced in circuit court *after* DWD has completed its attempt to settle and compromise the claim, the circuit court may order the employer to pay, in addition to the amount of wages unpaid, increased wages of not more than 100 percent of the amount of wages unpaid.

THE BILL***Wage claims***

Filing and investigation of; statute of limitations. This bill permits an employee to file a wage claim with DWD or to commence a wage claim action in circuit court not only in his or her own behalf but also on behalf of other employees similarly situated who consent in writing to being parties to the claim or action. The bill also increases the statute of limitations for a wage claim action to four years after the wage claim is filed with DWD or, if the wage claim is not first filed with DWD, to four years after the cause of action accrues and permits DWD to investigate a wage claim that is filed no later than four years after the wages are due.

Increased wages. The bill also permits a circuit court to order: 1) an employer against which a wage claim action is commenced in circuit court *before* DWD has completed its attempt to settle and compromise the claim to pay, in addition to the amount of wages unpaid, increased wages of not more than 100 percent of the amount of wages unpaid; and 2) an employer against which a wage claim action is commenced in circuit court *after* DWD has completed its attempt to settle and compromise the claim to pay, in addition to the amount of wages unpaid, increased wages of not more than 200 percent of the amount of wages unpaid.

Interest and surcharges. In addition, the bill permits DWD to require, and a circuit court to order, an employer who fails to pay wages that are due and payable to pay interest on the amount of wages due and unpaid at the rate of 2 percent per month for each month that the wages were due and unpaid and to pay to DWD or the circuit court a surcharge of \$500 for a first violation, \$750 for a second violation, and \$1,000 for a third or subsequent violation. Surcharges collected by DWD or a circuit court must be deposited in the general fund, appropriated to DWD, and used for the administration of the wage claim law.

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Costs and attorney fees. Finally, with respect to wage claims, the bill permits a circuit court to require an employer who fails to pay wages that are due and payable to pay reasonable costs and attorney fees.

Disclosure statements

Terms of employment; disclosure required. Moreover, the bill requires an employer to provide an employee with a written statement disclosing the terms of employment (disclosure statement) at the time the employee is hired, on January 1 of each year in which the employee is employed by the employer, and not less than seven days before the effective date of any change in the terms of employment. The disclosure statement must be in English and, if the employee has limited English proficiency, in the employee's native language. The disclosure statement must include: 1) the full name, mailing address, and telephone number of the employer; 2) the remuneration to be paid to the employee, the frequency of payment of that remuneration, and, if that remuneration is paid as an hourly wage, the hourly basic rate of pay to be paid to the employee; 3) the circumstances under which the employee will be paid at a rate that is higher than the hourly basic rate of pay for working in excess of an established number of hours per day, per week, or per month or for working on designated nights, weekends, or holidays; and 4) a description of any other economic benefits that the employer will provide, including health insurance benefits, paid sick leave, vacation pay, holiday pay, pension or other retirement benefits, personal protective equipment that is required for the performance of the employee's work, worker's compensation coverage, or unemployment insurance, whether an employee contribution will be required for those benefits, and, if so, the amount of that employee contribution.

Remedies. An employer that fails to provide a disclosure statement to an employee as required under the bill or that fails to comply with the terms of employment specified in a disclosure statement provided to an employee is liable to the employee for: 1) all actual damages, including any wage claim or wage deficiency, sustained by the employee as a result of the employer's failure to provide that statement or to comply with those terms; 2) liquidated damages of not more than \$50 for each working day that the employer fails to provide that statement or to comply with those terms or, if applicable, the increased wages payable under the bill, whichever is greater; and 3) reasonable costs and attorney fees.

Occupational or professional licensing

Unpaid wage claim judgments. Finally, the bill requires a state office, department, board, examining board, affiliated credentialing board, commission, council, or independent agency in the executive branch, the legislature, or the courts (licensing agency) to require an applicant for issuance or renewal of an occupational or professional certificate, license, permit, or registration (license) to disclose whether there are any wage claim judgments against the applicant that the applicant has not paid. If there are any such judgments, the licensing agency must determine that the applicant is ineligible for issuance or renewal of the license, unless the applicant demonstrates that the applicant has the willingness and ability to pay the judgment.

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

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

1 **SECTION 1.** 20.445 (1) (gr) of the statutes is created to read:

2 20.445 (1) (gr) *Wage claim surcharges.* All moneys received from surcharges
3 collected under s. 109.11 (4), for the administration of ch. 109.

4 **SECTION 2.** 103.34 (6) (d) of the statutes is amended to read:

5 103.34 (6) (d) A traveling sales crew worker who is owed compensation may file
6 a wage claim with the department under s. 109.09 (1) (a) or may bring an action
7 under s. 109.03 (5) without first filing a wage claim with the department.

8 **SECTION 3.** 103.35 of the statutes is renumbered 103.35 (2) and amended to
9 read:

10 103.35 (2) ~~No state office, department, board, examining board, affiliated~~
11 ~~credentialing board, commission, council or independent agency in the executive~~
12 ~~branch, the legislature or the courts may, as a condition for receiving an occupational~~
13 ~~or professional certificate, license, permit or registration, require the submission of~~
14 ~~information by the applicant which is not essential for the determination of licensing~~
15 ~~agency may require an applicant for issuance or renewal of a license to submit any~~
16 ~~information that is not essential for the licensing agency to determine the applicant's~~
17 ~~eligibility for the issuance or renewal of the certificate, license, permit or~~
18 ~~registration. Information which. A licensing agency may request information that~~
19 ~~is not essential for the licensing agency to determine an applicant's eligibility for~~
20 ~~issuance or renewal may be requested of a license, but the licensing agency shall~~

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1 notify the applicant ~~shall be notified~~ in a prominent place on or accompanying the
2 request that she or he is not required to provide such information.

3 **SECTION 4.** 103.35 (1) of the statutes is created to read:

4 103.35 (1) In this section:

5 (a) “License” means an occupational or professional certificate, license, permit,
6 or registration.

7 (b) “Licensing agency” means a state office, department, board, examining
8 board, affiliated credentialing board, commission, council, or independent agency in
9 the executive branch, the legislature, or the courts.

10 **SECTION 5.** 103.35 (3) of the statutes is created to read:

11 103.35 (3) A licensing agency shall require an applicant for issuance or renewal
12 of a license to disclose whether there are any judgments under s. 109.03 (5) or 109.09
13 (1) against the applicant that the applicant has not paid. A licensing agency shall
14 use the circuit court automated information systems established under s. 758.19 (4)
15 to verify the applicant’s disclosure. If there are any judgments under s. 109.03 (5)
16 or 109.09 (1) against the applicant that the applicant has not paid, the licensing
17 agency shall determine that the applicant is ineligible for issuance or renewal of the
18 license, unless the applicant demonstrates that the applicant has the willingness
19 and ability to pay the judgment.

20 **SECTION 6.** 103.40 of the statutes is created to read:

21 **103.40 Terms of employment; disclosure statement.** (1) DISCLOSURE
22 STATEMENT REQUIRED. An employer shall provide an employee with a written
23 statement disclosing the terms of employment at the time the employee is hired, on
24 January 1 of each year in which the employee is employed by the employer, and not
25 less than 7 days before the effective date of any change in the terms of employment.

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1 The written disclosure statement shall be in English and, if the employee has limited
2 English proficiency, in the employee's native language. The written disclosure
3 statement shall include all of the following information:

4 (a) The full name, mailing address, and telephone number of the employer.

5 (b) The remuneration to be paid to the employee, the frequency of payment of
6 that remuneration, and, if that remuneration is paid as an hourly wage, the hourly
7 basic rate of pay to be paid to the employee.

8 (c) The circumstances under which the employee will be paid at a rate that is
9 higher than the hourly basic rate of pay for working in excess of an established
10 number of hours per day, per week, or per month or for working on designated nights,
11 weekends, or holidays.

12 (d) A description of any other economic benefits that the employer will provide,
13 including health insurance benefits, paid sick leave, vacation pay, holiday pay,
14 pension or other retirement benefits, personal protective equipment that is required
15 for the performance of the employee's work, worker's compensation coverage, or
16 unemployment insurance, whether an employee contribution will be required for
17 those benefits, and, if so, the amount of that employee contribution.

18 **(2) WAIVER PROHIBITED.** Any agreement between an employer and an employee
19 purporting to waive or modify the written disclosure statement requirement under
20 sub. (1) or any term of employment specified in such a statement is void.

21 **(3) NONCOMPLIANCE; ENFORCEMENT.** (a) Any employer that fails to provide a
22 written disclosure statement to an employee as required under sub. (1) or that fails
23 to comply with the terms of employment specified in a written disclosure statement
24 provided to an employee under sub. (1) is liable to the employee for all of the
25 following:

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1 1. All actual damages, including any wage claim or wage deficiency, sustained
2 by the employee as a result of the employer’s failure to provide that statement or to
3 comply with those terms.

4 2. Liquidated damages of not more than \$50 for each working day that the
5 employer fails to provide that statement or to comply with those terms or, if
6 applicable, the increased wages payable under s. 109.11 (2) (a) or (b), whichever is
7 greater.

8 3. Reasonable costs and attorney fees, notwithstanding s. 814.04.

9 (b) In addition to the liability specified in par. (a) 1. to 3., the department or the
10 circuit court may order an employer that fails to provide a written disclosure
11 statement to an employee as required under sub. (1) or that fails to comply with the
12 terms of employment specified in a written disclosure statement provided to an
13 employee under sub. (1) to take such action as will effectuate the purpose of this
14 section.

15 (c) An employee who is affected by a violation of par. (a) may file a wage claim
16 with the department under s. 109.09 (1) (a) or may bring an action under s. 109.03
17 (5) without first filing a wage claim with the department under s. 109.09 (1) (a).
18 Section 111.322 applies to any discharge or other discriminatory acts arising in
19 connection with any proceeding under this section.

20 **SECTION 7.** 109.01 (3m) of the statutes is created to read:

21 109.01 (3m) “Wage claim” includes a claim under s. 103.40 (3) (c) that an
22 employer has failed to provide a written disclosure statement to an employee as
23 required under s. 103.40 (1) or has failed to comply with the terms of employment
24 specified in a written disclosure statement provided to an employee under s. 103.40
25 (1).

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1 **SECTION 8.** 109.03 (5) of the statutes is amended to read:

2 109.03 (5) ENFORCEMENT. Except as provided in sub. (1), no employer may by
3 special contract with employees or by any other means secure exemption from this
4 section. Each employee shall have a right of action against any employer for the full
5 amount of the employee's wages due on each regular pay day as provided in this
6 section and for interest on that amount and increased wages as provided in s. 109.11
7 (2), in any court of competent jurisdiction. An employee may bring an action under
8 this subsection on his or her own behalf and on behalf of other employees similarly
9 situated who consent in writing to being parties to the action. Such a consent shall
10 be filed with the court. An employee may bring an action ~~against an employer~~ under
11 this subsection without first filing a wage claim with the department under s. 109.09
12 (1) (a). An employee who brings an action against an employer under this subsection
13 shall have a lien upon all property of the employer, real or personal, located in this
14 state as described in s. 109.09 (2).

15 **SECTION 9.** 109.09 (1) of the statutes is renumbered 109.09 (1) (a) and amended
16 to read:

17 109.09 (1) (a) The department shall investigate and attempt equitably to adjust
18 controversies between employers and employees as to alleged wage claims. An
19 employee may file a wage claim under this paragraph on his or her own behalf and
20 on behalf of other employees similarly situated who consent in writing to being
21 parties to the claim. Such a consent shall be filed with the department. The
22 department may receive and investigate any wage claim ~~which that~~ is filed with the
23 department, or received by the department under s. 109.10 (4), no later than ~~2~~ 4 years
24 after the date the wages are due. ~~The department may, after~~ After receiving a wage
25 claim, the department may investigate any wages due from the employer against

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1 whom the claim is filed to any employee during the period commencing ~~2~~ 4 years
2 before the date the claim is filed.

3 (b) The department shall enforce this chapter and ss. 66.0903, 103.02, 103.40,
4 103.49, 103.82, 104.12, and 229.8275. In pursuance of this duty, the department may
5 sue the employer on behalf of the employee to collect any wage claim or wage
6 deficiency and ss. 109.03 (6) and 109.11 (2) and (3) shall apply to such actions. Except
7 for actions under s. 109.10, the department may refer such an action to the district
8 attorney of the county in which the violation ~~occurs~~ occurred for prosecution and
9 collection and the district attorney shall commence an action in the circuit court
10 having appropriate jurisdiction. Any number of wage claims or wage deficiencies
11 against the same employer may be joined in a single proceeding, but the court may
12 order separate trials or hearings.

13 (c) In actions that are referred to a district attorney under ~~this subsection~~ par.
14 (b), any taxable costs recovered by the district attorney shall be paid into the general
15 fund of the county in which the violation occurs and used by that county to meet its
16 financial responsibility under s. 978.13 (2) (b) for the operation of the office of the
17 district attorney who prosecuted the action.

18 **SECTION 10.** 109.09 (2) (a) of the statutes is amended to read:

19 109.09 (2) (a) The department of workforce development, under its authority
20 under sub. (1) (b) to maintain actions for the benefit of employees, or an employee
21 who brings an action under s. 109.03 (5) shall have a lien upon all property of the
22 employer, real or personal, located in this state for the full amount of any wage claim
23 or wage deficiency.

24 **SECTION 11.** 109.09 (2) (b) 3. of the statutes is amended to read:

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1 109.09 (2) (b) 3. The department of workforce development or employee must
2 file the notice under subd. 1. or 2. within ~~2~~ 4 years after the date on which the wages
3 were due. The notice shall specify the nature of the claim and the amount claimed,
4 describe the property upon which the claim is made and state that the person filing
5 the notice claims a lien on that property.

6 **SECTION 12.** 109.09 (2) (c) 2. of the statutes is amended to read:

7 109.09 (2) (c) 2. Except as provided in this subdivision, a lien under par. (a) does
8 not take precedence over a lien of a commercial lending institution against the
9 employer that originates before the lien under par. (a) takes effect. Subject to subd.
10 3., a lien under par. (a) takes precedence over a lien of a commercial lending
11 institution against the employer that originates before the lien under par. (a) takes
12 effect only as to the first \$3,000 of unpaid wages covered under the lien that are
13 earned by an employee within the 6 months preceding the date on which the
14 employee files the wage claim under sub. (1) (a) or brings the action under s. 109.03
15 (5) or the date on which the department receives the wage claim under s. 109.10 (4)
16 (a), whichever is applicable.

17 **SECTION 13.** 109.11 (1) (a) of the statutes is amended to read:

18 109.11 (1) (a) In adjusting a controversy between an employer and an employee
19 as to an alleged wage claim filed with the department under s. 109.09 (1) (a), the
20 department may compromise and settle that wage claim for such sum as may be
21 agreed upon between the department, the employee, and the employer plus interest
22 on that sum at the rate of 2 percent per month for each month that the wages were
23 due and unpaid and the surcharge specified in sub. (4).

24 **SECTION 14.** 109.11 (1) (b) of the statutes is renumbered 109.11 (1) (b) 1. and
25 amended to read:

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1 109.11 (1) (b) 1. If the department finds that a wage claim is valid, the
2 department may instruct the employer against whom the wage claim is filed to audit
3 his or her payroll records to determine whether the employer may be liable for any
4 other wage claims that are of the same type as the wage claim that prompted the
5 audit instruction. If after the requested completion date of the audit the department
6 receives a wage claim against the employer that is of the same type as the wage claim
7 that prompted the audit instruction and if the department determines that the
8 subsequent wage claim is valid, the department may audit the employer's payroll
9 records to determine whether the employer may be liable for any other wage claims
10 that are of the same type as the wage claim that prompted the audit instruction.

11 2. For any valid wage claim that is filed against an employer after the
12 department has instructed the employer to audit his or her payroll records under ~~this~~
13 ~~paragraph subd. 1.~~ and that is of the same type as the wage claim that prompted the
14 audit instruction and for any valid wage claim that is discovered as a result of the
15 department's audit under ~~this paragraph subd. 1.~~ and that is of the same type as the
16 wage claim that prompted the audit instruction, the department shall require the
17 employer to pay, in addition to the amount of wages due and unpaid, increased wages
18 of not more than 50% of the amount of wages due and unpaid, interest on the amount
19 of wages due and unpaid at the rate of 2 percent per month for each month that the
20 wages were due and unpaid, and the surcharge specified in sub. (4), unless the
21 employer shows the department that payment of the increased wages, interest, or
22 surcharge would cause extreme hardship. The department shall require an
23 employer to make that payment without regard to whether the employer's failure to
24 pay the wages due and unpaid was intentional or unintentional.

25 **SECTION 15.** 109.11 (1) (c) of the statutes is amended to read:

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1 109.11 (1) (c) If an employer does not agree to compromise and settle a wage
2 claim under this subsection, the department may refer the wage claim to a district
3 attorney under s. 109.09 (1) (b) or to the department of justice under s. 109.10 (3) for
4 commencement of an action in circuit court to collect the amount of wages due and
5 unpaid plus interest on that amount at the rate of 2 percent per month for each month
6 that the wages were due and unpaid, increased wages as specified in sub. (2) (b), and
7 the surcharge specified in sub. (4).

8 **SECTION 16.** 109.11 (2) (a) of the statutes is amended to read:

9 109.11 (2) (a) In a wage claim action that is commenced by an employee before
10 the department has completed its investigation under s. 109.09 (1) (a) and its
11 attempts to compromise and settle the wage claim under sub. (1), a circuit court may
12 order the employer to pay to the employee, in addition to the amount of wages due
13 and unpaid and in addition to or in lieu of the criminal penalties specified in sub. (3),
14 increased wages of not more than ~~50%~~ 100 percent of the amount of wages due and
15 unpaid, interest on the amount of wages due and unpaid at the rate of 2 percent per
16 month for each month that the wages were due and unpaid, the surcharge specified
17 in sub. (4), and, notwithstanding s. 814.04, reasonable costs and attorney fees. A
18 circuit court may order an employer to make that payment without regard to
19 whether the employer's failure to pay the wages due and unpaid was intentional or
20 unintentional.

21 **SECTION 17.** 109.11 (2) (b) of the statutes is amended to read:

22 109.11 (2) (b) In a wage claim action that is commenced after the department
23 has completed its investigation under s. 109.09 (1) (a) and its attempts to settle and
24 compromise the wage claim under sub. (1), a circuit court may order the employer
25 to pay to the employee, in addition to the amount of wages due and unpaid to an

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1 employee and in addition to or in lieu of the criminal penalties specified in sub. (3),
2 increased wages of not more than ~~100%~~ 200 percent of the amount of those wages due
3 and unpaid, interest on the amount of wages due and unpaid at the rate of 2 percent
4 per month for each month that the wages were due and unpaid, the surcharge
5 specified in sub. (4), and, notwithstanding s. 814.04, reasonable costs and attorney
6 fees. A circuit court may order an employer to make that payment without regard
7 to whether the employer's failure to pay the wages due and unpaid was intentional
8 or unintentional.

9 **SECTION 18.** 109.11 (4) of the statutes is created to read:

10 109.11 (4) SURCHARGE. In addition to the amounts payable under sub. (1) (a)
11 or (b) or (2) (a) or (b), the department shall require, or a circuit court shall order, an
12 employer who fails to pay wages that are due and payable to an employee to pay to
13 the department or circuit court a surcharge of \$500 for a first violation, \$750 for a
14 2nd violation, and \$1,000 for a 3rd or subsequent violation. If the surcharge is
15 required by the department, the department shall collect the surcharge, deposit the
16 surcharge in the general fund, and credit the surcharge to the appropriation account
17 under s. 20.445 (1) (gr). If the surcharge is ordered by the circuit court, the clerk of
18 circuit court shall collect the surcharge and transmit the surcharge to the county
19 treasurer under s. 59.40 (2) (m), the county treasurer shall pay the surcharge to the
20 secretary of administration under s. 59.25 (3) (f) 2., and the secretary of
21 administration shall deposit the surcharge in the general fund and credit the
22 surcharge to the appropriation account under s. 20.445 (1) (gr).

23 **SECTION 19.** 111.322 (2m) (a) of the statutes is amended to read:

24 111.322 (2m) (a) The individual files a complaint or attempts to enforce any
25 right under s. 103.02, 103.10, 103.13, 103.28, 103.32, 103.34, 103.40, 103.455,

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1 103.50, 104.12, ~~106.04~~, 109.03, 109.07, 109.075, 109.09, or 146.997 or ss. 101.58 to
2 101.599 or 103.64 to 103.82.

3 **SECTION 20.** 111.322 (2m) (b) of the statutes is amended to read:

4 111.322 **(2m)** (b) The individual testifies or assists in any action or proceeding
5 held under or to enforce any right under s. 103.02, 103.10, 103.13, 103.28, 103.32,
6 103.34, 103.40, 103.455, 103.50, 104.12, ~~106.04~~, 109.03, 109.07, 109.075, 109.09, or
7 146.997 or ss. 101.58 to 101.599 or 103.64 to 103.82.

8 **SECTION 21.** 814.75 (28) of the statutes is created to read:

9 814.75 **(28)** The wage claim surcharge under s. 109.11 (4).

10 **SECTION 22.** 893.44 (1) of the statutes is amended to read:

11 893.44 **(1)** Any action to recover unpaid salary, wages or other compensation
12 for personal services, except actions to recover fees for professional services and
13 except as provided in sub. (2), shall be commenced within ~~2~~ 4 years after the cause
14 of action accrues or be barred.

15 **SECTION 23.** 893.44 (2) of the statutes is amended to read:

16 893.44 **(2)** An action to recover wages under s. 109.09 shall be commenced
17 within ~~2~~ 4 years after the claim is filed with the department of workforce
18 development or be barred.

19 **SECTION 24. Initial applicability.**

20 **(1) WAGE CLAIM STATUTE OF LIMITATIONS, INTEREST, AND SURCHARGES.** The
21 treatment of sections 109.09 (1) (with respect to the receipt and investigation of a
22 wage claim) and (2) (b) 3., 109.11 (1) (a), (b), and (c), (2) (a) and (b), and (4), and 893.44
23 (1) and (2) of the statutes first applies to wages earned on the effective date of this
24 subsection.

