



## 100TH GENERAL ASSEMBLY

### State of Illinois

2017 and 2018

HB2364

by Rep. Elizabeth Hernandez

#### SYNOPSIS AS INTRODUCED:

30 ILCS 500/50-14.6 new

30 ILCS 500/50-60

820 ILCS 115/4.5 new

820 ILCS 115/14

from Ch. 48, par. 39m-14

Amends the Illinois Procurement Code. Prohibits any person or business who violates the Illinois Wage Payment and Collection Act, the Minimum Wage Law, the Illinois Worker Adjustment and Retraining Notification Act, the Employee Classification Act, the Fair Labor Standards Act of 1938, or any comparable state statute or regulation of any state which governs the payment of wages to do business with the State or any State agency or enter into a subcontract that is subject to the Code for a period of 5 years. Amends the Illinois Wage Payment and Collection Act. Provides that when an employee who is scheduled to work 3 or more hours reports for duty at the time set by the employer, and that employee is not provided with the expected hours of work, the employee shall be paid for at least 4 hours on such day at no less than the employee's regular rate of compensation. Amends the Illinois Wage Payment and Collection Act. Provides that an employer that is able to pay wages and who refuses to pay is guilty of a Class 4 felony (rather than a misdemeanor). Provides that a subsequent failure to pay within 5 years (rather than 2 years) of a prior conviction is a Class 3 felony (rather than a Class 4 felony).

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CORRECTIONAL  
BUDGET AND  
IMPACT NOTE ACT  
MAY APPLY

FISCAL NOTE ACT  
MAY APPLY

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 Illinois Procurement Code is amended by  
5 changing Section 50-60 and by adding Section 50-14.6 as  
6 follows:

7 (30 ILCS 500/50-14.6 new)

8 Sec. 50-14.6. Wage payment violations.

9 (a) No person or business who has admitted guilt or  
10 liability or has been adjudicated guilty or liable in any  
11 judicial or administrative proceeding of committing a repeated  
12 or willful violation of the Illinois Wage Payment and  
13 Collection Act, the Minimum Wage Law, the Illinois Worker  
14 Adjustment and Retraining Notification Act, the Employee  
15 Classification Act, the Fair Labor Standards Act of 1938, or  
16 any comparable state statute or regulation of any state which  
17 governs the payment of wages shall do business with the State  
18 of Illinois or any State agency or enter into a subcontract  
19 that is subject to this Code for a period of 5 years from the  
20 date of conviction, entry of a plea, administrative finding, or  
21 admission of guilt.

22 (b) Every bid or offer submitted to the State, every  
23 contract executed by the State, every submission to a vendor

1 portal, and every subcontract subject to Section 20-120 of this  
2 Code shall contain a certification by the bidder, offeror,  
3 potential contractor, contractor, or subcontractor,  
4 respectively, that the bidder, offeror, potential contractor,  
5 contractor, or subcontractor is not barred from being awarded a  
6 contract or subcontract under this Section and acknowledges  
7 that the contracting State agency may declare the related  
8 contract void if any of the certifications completed pursuant  
9 to this subsection are false. If the false certification is  
10 made by a subcontractor, then the contractor's submitted bid or  
11 offer and the executed contract may not be declared void,  
12 unless the contractor refuses to terminate the subcontract upon  
13 the State's request after a finding that the subcontract's  
14 certification was false.

15 (30 ILCS 500/50-60)

16 Sec. 50-60. Voidable contracts.

17 (a) If any contract or amendment thereto is entered into or  
18 purchase or expenditure of funds is made at any time in  
19 violation of this Code or any other law, the contract or  
20 amendment thereto may be declared void by the chief procurement  
21 officer or may be ratified and affirmed, provided the chief  
22 procurement officer determines that ratification is in the best  
23 interests of the State. If the contract is ratified and  
24 affirmed, it shall be without prejudice to the State's rights  
25 to any appropriate damages.

1 (b) If, during the term of a contract, the chief  
2 procurement officer determines that the contractor is  
3 delinquent in the payment of debt as set forth in Section 50-11  
4 of this Code, the chief procurement officer may declare the  
5 contract void if it determines that voiding the contract is in  
6 the best interests of the State. The Debt Collection Bureau  
7 shall adopt rules for the implementation of this subsection  
8 (b).

9 (c) If, during the term of a contract, the chief  
10 procurement officer determines that the contractor is in  
11 violation of Section 50-10.5 of this Code, the chief  
12 procurement officer shall declare the contract void.

13 (d) If, during the term of a contract, the contracting  
14 agency learns from an annual certification or otherwise  
15 determines that the contractor no longer qualifies to enter  
16 into State contracts by reason of Section 50-5, 50-10, 50-12,  
17 50-14, ~~or~~ 50-14.5, or 50-14.6 of this Article, the chief  
18 procurement officer may declare the contract void if it  
19 determines that voiding the contract is in the best interests  
20 of the State.

21 (e) If, during the term of a contract, the chief  
22 procurement officer learns from an annual certification or  
23 otherwise determines that a subcontractor subject to Section  
24 20-120 no longer qualifies to enter into State contracts by  
25 reason of Section 50-5, 50-10, 50-10.5, 50-11, 50-12, 50-14, ~~or~~  
26 50-14.5, or 50-14.6 of this Article, the chief procurement

1 officer may declare the related contract void if it determines  
2 that voiding the contract is in the best interests of the  
3 State. However, the related contract shall not be declared void  
4 unless the contractor refuses to terminate the subcontract upon  
5 the State's request after a finding that the subcontractor no  
6 longer qualifies to enter into State contracts by reason of one  
7 of the Sections listed in this subsection.

8 (f) The changes to this Section made by Public Act 96-795  
9 apply to actions taken by the chief procurement officer on or  
10 after July 1, 2010.

11 (g) The changes to this Section made by this amendatory Act  
12 of the 100th General Assembly apply to actions taken by the  
13 chief procurement officer on or after its effective date.

14 (Source: P.A. 96-493, eff. 1-1-10; 96-795, eff. 7-1-10 (see  
15 Section 5 of P.A. 96-793 for the effective date of changes made  
16 by P.A. 96-795); 96-1000, eff. 7-2-10; 97-895, eff. 8-3-12.)

17 Section 10. The Illinois Wage Payment and Collection Act is  
18 amended by changing Section 14 and by adding Section 4.5 as  
19 follows:

20 (820 ILCS 115/4.5 new)

21 Sec. 4.5. Reporting pay. When an employee who is scheduled  
22 to work 3 or more hours reports for duty at the time set by the  
23 employer, and that employee is not provided with the expected  
24 hours of work, the employee shall be paid for at least 4 hours

1 on such day at no less than the employee's regular rate of  
2 compensation.

3 (820 ILCS 115/14) (from Ch. 48, par. 39m-14)

4 Sec. 14. (a) Any employee not timely paid wages, final  
5 compensation, or wage supplements by his or her employer as  
6 required by this Act shall be entitled to recover through a  
7 claim filed with the Department of Labor or in a civil action,  
8 but not both, the amount of any such underpayments and damages  
9 of 2% of the amount of any such underpayments for each month  
10 following the date of payment during which such underpayments  
11 remain unpaid. In a civil action, such employee shall also  
12 recover costs and all reasonable attorney's fees.

13 (a-5) In addition to the remedies provided in subsections  
14 (a), (b), and (c) of this Section, any employer or any agent of  
15 an employer, who, being able to pay wages, final compensation,  
16 or wage supplements and being under a duty to pay, wilfully  
17 refuses to pay as provided in this Act, or falsely denies the  
18 amount or validity thereof or that the same is due, with intent  
19 to secure for himself or other person any underpayment of such  
20 indebtedness or with intent to annoy, harass, oppress, hinder,  
21 delay or defraud the person to whom such indebtedness is due,  
22 upon conviction, is guilty of:

23 (1) for unpaid wages, final compensation or wage  
24 supplements in the amount of \$5,000 or less, a Class 4  
25 felony ~~B misdemeanor~~; or

1           (2) for unpaid wages, final compensation or wage  
2           supplements in the amount of more than \$5,000, a Class 4  
3           felony ~~A misdemeanor~~.

4           Each day during which any violation of this Act continues  
5           shall constitute a separate and distinct offense.

6           Any employer or any agent of an employer who violates this  
7           Section of the Act a subsequent time within 5 ~~2~~ years of a  
8           prior criminal conviction under this Section is guilty, upon  
9           conviction, of a Class 3 ~~4~~ felony.

10          (b) Any employer who has been demanded or ordered by the  
11          Department or ordered by the court to pay wages, final  
12          compensation, or wage supplements due an employee shall be  
13          required to pay a non-waivable administrative fee to the  
14          Department of Labor in the amount of \$250 if the amount ordered  
15          by the Department as wages owed is \$3,000 or less; \$500 if the  
16          amount ordered by the Department as wages owed is more than  
17          \$3,000, but less than \$10,000; and \$1,000 if the amount ordered  
18          by the Department as wages owed is \$10,000 or more. Any  
19          employer who has been so demanded or ordered by the Department  
20          or ordered by a court to pay such wages, final compensation, or  
21          wage supplements and who fails to seek timely review of such a  
22          demand or order as provided for under this Act and who fails to  
23          comply within 15 calendar days after such demand or within 35  
24          days of an administrative or court order is entered shall also  
25          be liable to pay a penalty to the Department of Labor of 20% of  
26          the amount found owing and a penalty to the employee of 1% per

1 calendar day of the amount found owing for each day of delay in  
2 paying such wages to the employee. All moneys recovered as fees  
3 and civil penalties under this Act, except those owing to the  
4 affected employee, shall be deposited into the Wage Theft  
5 Enforcement Fund, a special fund which is hereby created in the  
6 State treasury. Moneys in the Fund may be used only for  
7 enforcement of this Act.

8 (b-5) Penalties and fees under this Section may be assessed  
9 by the Department and recovered in a civil action brought by  
10 the Department in any circuit court or in any administrative  
11 adjudicative proceeding under this Act. In any such civil  
12 action or administrative adjudicative proceeding under this  
13 Act, the Department shall be represented by the Attorney  
14 General.

15 (c) Any employer, or any agent of an employer, who  
16 discharges or in any other manner discriminates against any  
17 employee because that employee has made a complaint to his  
18 employer, to the Director of Labor or his authorized  
19 representative, in a public hearing, or to a community  
20 organization that he or she has not been paid in accordance  
21 with the provisions of this Act, or because that employee has  
22 caused to be instituted any proceeding under or related to this  
23 Act, or because that employee has testified or is about to  
24 testify in an investigation or proceeding under this Act, is  
25 guilty, upon conviction, of a Class C misdemeanor. An employee  
26 who has been unlawfully retaliated against shall be entitled to



1 recover through a claim filed with the Department of Labor or  
2 in a civil action, but not both, all legal and equitable relief  
3 as may be appropriate. In a civil action, such employee shall  
4 also recover costs and all reasonable attorney's fees.

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