



Sen. Cristina Castro

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1 AMENDMENT TO SENATE BILL 202

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 202 by replacing  
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the Fair  
5 Scheduling Act.

6 Section 5. Purpose and findings. Unfair and unpredictable  
7 scheduling practices cause tens of thousands of Illinois  
8 workers to struggle to meet their responsibilities at home and  
9 on the job, harming their ability to make ends meet and the  
10 overall strength of the Illinois economy. When Illinois workers  
11 do not know when they are scheduled to work, or for how many  
12 hours, it is difficult to manage basic expenses, arrange child  
13 care, continue their education, pursue job training, or get a  
14 second job. This Act is intended to provide Illinois workers  
15 with the predictability and financial stability they need,  
16 create more stable, productive workplaces, and ensure the

1 health and well-being of Illinois workers. Therefore, the  
2 General Assembly finds that it is in the interest of employees,  
3 employers, and the people of Illinois to ensure that Illinois  
4 workers have fair and predictable work schedules, and that this  
5 Act shall be interpreted liberally to aid in this purpose.

6 Section 10. Definitions. As used in this Act:

7 "Department" means the Department of Labor

8 "Domestic violence" means abuse, as defined in Section 103  
9 of the Illinois Domestic Violence Act of 1986.

10 "Employee" means any individual suffered or permitted to  
11 work by an employer. An employee who is paid on a salary basis  
12 and whose rate of pay per week is greater than the 40th  
13 percentile of weekly earnings of full-time non-hourly workers  
14 in the Midwest Census Region, exclusive of board, lodging, or  
15 other facilities, as determined by the U.S. Department of  
16 Labor, but never less than \$50,000 per year, or \$962 per week,  
17 shall not be considered an employee for the purposes of this  
18 Act. An employee shall be considered to be paid on a salary  
19 basis if the employee regularly receives each pay period on a  
20 weekly, or less frequent basis, a predetermined amount  
21 constituting all or part of the employee's compensation that is  
22 not subject to reduction because of variations in the quality  
23 or quantity of the work performed and without regard to the  
24 number of days or hours worked. "Employee" does not include an  
25 employee subject to the hours of service requirements of 49

1 U.S.C. 211 and 49 CFR 228.

2 "Employer" means any individual, natural person,  
3 partnership, corporation, nonprofit corporation, association,  
4 general partnership, limited partnership, limited liability  
5 company, joint venture, business, trust, estate, association,  
6 person, governmental or quasi-governmental body, or any person  
7 or group of persons acting directly or indirectly in the  
8 interest of an employer in relation to an employee (including  
9 through services of a temporary services or staffing agency or  
10 similar entity) for whom one or more individuals are gainfully  
11 employed.

12 "Family or household member" means a spouse, party to a  
13 civil union, parent, child, any other individual related by  
14 blood or current or prior marriage or civil union, other person  
15 who shares a relationship through a child, persons whose close  
16 relationship with the employee is the equivalent of a family  
17 relationship, and persons jointly residing in the same  
18 household.

19 "Sexual violence" means any conduct proscribed by the  
20 Criminal Code of 2012 in Article 11 and in Sections 12-7.3,  
21 12-7.4, and 12-7.5.

22 "Shift" means the consecutive hours an employer schedules  
23 an employee to work or to be available to report to work at the  
24 request or permission of the employer; provided that a break of  
25 one hour or less shall not be considered an interruption of  
26 consecutive hours.

1 "Work schedule" means all of an employee's shifts,  
2 including specific start and end times for each shift during a  
3 calendar week.

4 Section 15. Application to collective bargaining  
5 agreements.

6 (a) Nothing in this Act shall be deemed to affect the  
7 validity of, or change the terms of, a bona fide collective  
8 bargaining agreement in force on the effective date of this  
9 Act. After the effective date of this Act, to the extent  
10 permitted by law, all or any portion of this Act may be waived  
11 in a bona fide collective bargaining agreement; provided, that  
12 the waiver is explicitly set forth in the agreement in  
13 unambiguous terms and that the parties thereto intend to and do  
14 thereby waive all or a specific portion of this Act.

15 (b) Nothing in this Act shall be construed to affect any  
16 policies or practices of an employer that provides greater,  
17 additional, or more generous wages, benefits, or working  
18 conditions to an employee than those required under this Act.

19 Section 20. Compensation for unpredictable schedules.

20 (a) Reporting pay. An employee who by request or permission  
21 of the employer reports to work on any day or whose shift is  
22 canceled or reduced within 72 hours of the scheduled start of  
23 the shift is entitled to no less than one-half times the  
24 employee's regular rate of pay for any scheduled hours the

1 employee does not work, except when greater compensation is  
2 required by local, State, or federal law. Reporting pay is in  
3 addition to any wages earned for work performed by the  
4 employee.

5 (b) Work schedules. An employer shall provide all employees  
6 with a written work schedule no later than 72 hours before the  
7 start of the first shift on the work schedule. The employer  
8 shall post a written work schedule in a conspicuous place at  
9 the workplace that is readily accessible and visible to all  
10 employees at the work location. The employer shall also  
11 transmit electronically the same work schedule in a manner that  
12 ensures that every employee receives the electronic schedule at  
13 the workplace and remotely. The employer shall update the work  
14 schedule and directly notify affected employees after making  
15 changes to the work schedule. An employee who is a victim of  
16 domestic violence or sexual violence or who has a family or  
17 household member who is a victim of domestic violence or sexual  
18 violence may request that his or her schedule not be posted or  
19 transmitted to other employees and that the schedule be  
20 submitted only to her or him in the method of delivery  
21 determined by the employee making the request to ensure his or  
22 her privacy and safety. An oral request shall be sufficient and  
23 implemented immediately. An employer may request a written  
24 statement from the employee that states that she or he is a  
25 victim or has a family or household member who is a victim. The  
26 statement shall satisfy any documentation or evidence needed

1 for the employer to implement the request. The employer may not  
2 require a written statement more than once in a calendar year  
3 from an employee for this purpose. The employee shall have up  
4 to 4 calendar weeks to submit the written statement. In  
5 addition, the Department may by rule establish requirements or  
6 exceptions necessary to ensure the privacy and safety of  
7 employees.

8 (c) Exceptions. The requirements of subsection (a) or (b)  
9 of this Section do not apply under the following circumstances:

10 (1) operations cannot begin or continue when civil  
11 authorities recommend that work not begin or continue or if  
12 there is a credible threat of violence that causes a  
13 reasonable person to fear for the safety of the employer,  
14 employees, or property. Lawful actions by employees, any  
15 union, or any other individuals shall not constitute a  
16 credible threat of violence.

17 (2) operations cannot begin or continue because a  
18 public utility fails to supply electricity, water, or gas  
19 or there is a failure in the public utilities or sewerage  
20 system;

21 (3) operations cannot begin or continue due to acts of  
22 nature including, but not limited to, flood, fire  
23 explosion, earthquake, tidal wave, drought, war, civil  
24 unrest, strikes, or other cause not within the employer's  
25 control; or

26 (4) mutually agreed upon work shift swaps or coverage

1 among employees.

2 (d) Nothing in this Act shall be construed to prohibit an  
3 employer from:

4 (1) adopting policies related to scheduling that are  
5 more beneficial to an employee than those required by this  
6 Act;

7 (2) scheduling an employee for a shift with less than  
8 72 hours' notice, provided the shift is mutually agreed  
9 upon in writing by the employee and employer;

10 (3) granting an employee's request for time off.

11 Section 25. No preemption of higher standards for employees  
12 by units of local government.

13 (a) The purpose of this Act is to ensure minimum labor  
14 standards. Nothing in this Act shall preempt or prevent any  
15 unit of local government, including any home rule unit, from  
16 enacting or implementing laws or policies that provide a higher  
17 standard that benefits employees, such as an increased notice  
18 period or the amount of reporting pay required of employers in  
19 Section 20 or the addition of any other provision that benefits  
20 employees as it relates to scheduling of work hours.

21 (b) This Section is limitation under subsection (i) of  
22 Section 6 of Article VII of the Illinois Constitution on the  
23 concurrent exercise by home rule units of powers and functions  
24 exercised by the State.

1 Section 30. Posting.

2 (a) An employer shall post and keep posted in a conspicuous  
3 place on the premises of the employer where notices to  
4 employees are customarily posted a notice prepared by the  
5 Department summarizing the requirements of this Act and  
6 information pertaining to the filing of a charge. If an  
7 employer's workforce is comprised of a significant portion of  
8 workers who are not literate in English, the employer is  
9 responsible for providing the notice in a language in which the  
10 employees are literate.

11 (b) An employer who willfully violates the posting  
12 requirements of this Section shall be subject to a civil  
13 penalty in an amount not to exceed \$100 for each separate  
14 offense.

15 Section 35. Prohibited acts.

16 (a) It is unlawful and a violation of this Act for any  
17 employer or any other person to discharge, threaten, penalize,  
18 or in any other manner discriminate, retaliate, or take any  
19 adverse action against an employee, including sexual  
20 harassment and discrimination, because the employee or a person  
21 or organization acting on the employee's behalf:

22 (1) exercises rights or attempts to exercise rights  
23 under this Act;

24 (2) opposes practices the employee believes to be in  
25 violation of this Act; or



1 (3) supports the exercise of rights under this Act.

2 (b) Exercising rights, opposing practices, or supporting  
3 the exercise of rights under this Act includes:

4 (1) filing an action or instituting or causing to be  
5 instituted any proceeding under or related to this Act;

6 (2) providing or preparing to provide any information  
7 in connection with any inquiry or proceeding relating to  
8 any right provided under this Act;

9 (3) testifying or preparing to testify in any inquiry  
10 or proceeding relating to any right provided under this Act  
11 in a public hearing or to a community organization; or

12 (4) informing any other person that his or her employer  
13 engages in conduct that the employee reasonably and in good  
14 faith believes violates any provisions of this Act.

15 (c) An agreement by an employee to waive his or her rights  
16 under this Act is void as against public policy. The benefits  
17 provided to employees under this Act may not be diminished by  
18 an employment benefit program or plan entered into or renewed  
19 after the effective date of this Act.

20 (d) It is unlawful for an employer to interfere with,  
21 restrain, or deny the exercise of or the attempt to exercise  
22 any right provided under or in connection with this Act,  
23 including using the taking of paid time off as a negative  
24 factor in an employment action such as hiring, termination,  
25 evaluation, promotion, discipline, or counting the paid time  
26 off under a no-fault attendance policy.

1           (e) It is unlawful for an employer to threaten or in any  
2 other manner discriminate, retaliate, or take any adverse  
3 action against an employee based on his or her actual or  
4 perceived immigration or citizenship status.

5           Section 40. Enforcement.

6           (a) An employee aggrieved by a violation of this Act or any  
7 rule adopted under this Act is entitled to recover any  
8 appropriate damages or other relief set forth in subsection (b)  
9 of this Section in a civil action or through a claim filed with  
10 the Department. Actions may be brought by one or more employees  
11 for and on behalf of themselves and other employees similarly  
12 situated. An action under this Section shall be brought no  
13 later than 3 years after the date of the last event that  
14 constitutes an alleged violation for which the action is  
15 brought.

16           (b) An employee aggrieved by a violation of this Act or any  
17 rule adopted under this Act shall be entitled to recover:

18           (1) all actual and compensatory damages, including the  
19 amount of any wages, compensation, or benefits owed or  
20 other compensation denied or lost to the person by reason  
21 of the violation, with interest at the prevailing rate as  
22 is necessary to remedy violations of this Act, as well as  
23 punitive damages;

24           (2) any equitable relief as may be appropriate; and

25           (3) reasonable attorney's fees, reasonable expert

1 witness fees, and other costs of the action.

2 (c) An employer that the Department or a court finds by the  
3 preponderance of evidence to have knowingly, repeatedly, or  
4 with reckless disregard violated any provision of this Section  
5 or any rule adopted under this Section is subject to civil  
6 money penalty of:

7 (1) \$250 for each separate offense if the other relief  
8 imposed under subsection (b) is \$1,000 or less; or

9 (2) a minimum of \$500 and a maximum \$3,000 for each  
10 separate offense if the damages or other relief imposed  
11 under subsection (b) is more than \$1,000. In determining  
12 the amount of the penalty, the gravity of the violation  
13 shall be considered. Assessed penalties are payable to the  
14 employee and shall include interest at the prevailing rate  
15 necessary to remedy violations of this Section.

16 (d) Claims filed in circuit court shall be filed in the  
17 county where the alleged violation occurred or where any  
18 employee who is a party to this action resides, without regard  
19 to exhaustion of remedies provided in this Act.

20 (e) Claims filed under this Act with the Department shall  
21 be subject to the administrative procedures set forth herein  
22 and by rule for the enforcement of this Act.

23 (f) The Department shall have the power to conduct  
24 investigations in connection with the administration and  
25 enforcement of this Section. The Department may compel, by  
26 subpoena, the attendance and testimony of witnesses and the

1 production of books, payrolls, records, papers, and other  
2 evidence in any investigation and may administer oaths to  
3 witnesses. If, upon investigation, the Department finds cause  
4 to believe that this Section has been violated, the Department  
5 shall notify the parties, in writing, and the matter shall be  
6 referred to an Administrative Law Judge to schedule a formal  
7 hearing in accordance with hearing procedures established by  
8 rule.

9 Any employer who has been ordered to pay wages, benefits,  
10 and other compensation or other relief due under this Act, who  
11 fails to seek timely review of the order as provided under this  
12 Act and who fails to comply within 15 calendar days after such  
13 demand or within 35 days after an administrative or court order  
14 is entered shall also be liable to pay a penalty to the  
15 Department of 20% of the amount found owing. All moneys  
16 recovered as fees and penalties by the Department under this  
17 Section, except those owing to the affected employee, shall be  
18 deposited into the Fair Scheduling Act Enforcement Fund, a  
19 special fund created in the State treasury. Money in the Fund  
20 shall be used by the Department for administration,  
21 investigation, and other expenses incurred in carrying out its  
22 duties under this Act.

23 A final decision of an Administrative Law Judge issued  
24 pursuant to this Section is subject to the provisions of the  
25 Administrative Review Law and shall be enforceable in an action  
26 brought in the name of the people of the State of Illinois by

1 the Attorney General.

2 Section 45. Administration; rules. The Department shall  
3 administer and enforce this Act. The Department shall adopt  
4 rules necessary to administer and enforce this Act in  
5 accordance with the Illinois Administrative Procedure Act.

6 Section 97. Severability. The provisions of this Act are  
7 severable under Section 1.31 of the Statute on Statutes.

8 Section 98. The State Finance Act is amended by adding  
9 Section 5.886 as follows:

10 (30 ILCS 105/5.886 new)

11 Sec. 5.886. The Fair Scheduling Act Enforcement Fund.

12 Section 99. Effective date. This Act takes effect upon  
13 becoming law."