



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB1653

by Rep. Elizabeth Hernandez

SYNOPSIS AS INTRODUCED:

30 ILCS 500/50-14.6 new
30 ILCS 500/50-60
820 ILCS 115/14

from Ch. 48, par. 39m-14

Amends the Illinois Procurement Code. Prohibits any person or business that 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 Day and Temporary Labor Services 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 an employer that is able to pay wages and who refuses to pay is guilty of a Class 4 felony with respect to amounts of \$5,000 or less (rather than a Class B misdemeanor) and of a Class 3 felony with respect to amounts greater than \$5,000 (rather than a Class 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).

LRB101 07588 RJF 52635 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

FISCAL NOTE ACT
MAY APPLY

1 AN ACT concerning finance.

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 that has admitted guilt or
10 liability or has been adjudicated guilty or liable in a
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 Day and Temporary Labor Services Act,
16 the Fair Labor Standards Act of 1938, any other State law
17 relating to wages and payments of wages, or any comparable
18 statute, law, or regulation of any state which governs wages or
19 the payment of wages shall do business with the State of
20 Illinois or any State agency or enter into a subcontract that
21 is subject to this Code for a period of 5 years from the date of
22 conviction, entry of a plea, administrative finding, or
23 admission of guilt.

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

17 (30 ILCS 500/50-60)

18 Sec. 50-60. Voidable contracts.

19 (a) If any contract or amendment thereto is entered into or
20 purchase or expenditure of funds is made at any time in
21 violation of this Code or any other law, the contract or
22 amendment thereto may be declared void by the chief procurement
23 officer or may be ratified and affirmed, provided the chief
24 procurement officer determines that ratification is in the best
25 interests of the State. If the contract is ratified and

1 affirmed, it shall be without prejudice to the State's rights
2 to any appropriate damages.

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

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

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

23 (e) If, during the term of a contract, the chief
24 procurement officer learns from an annual certification or
25 otherwise determines that a subcontractor subject to Section
26 20-120 no longer qualifies to enter into State contracts by

1 reason of Section 50-5, 50-10, 50-10.5, 50-11, 50-12, 50-14, ~~or~~
2 50-14.5, or 50-14.6 of this Article, the chief procurement
3 officer may declare the related contract void if it determines
4 that voiding the contract is in the best interests of the
5 State. However, the related contract shall not be declared void
6 unless the contractor refuses to terminate the subcontract upon
7 the State's request after a finding that the subcontractor no
8 longer qualifies to enter into State contracts by reason of one
9 of the Sections listed in this subsection.

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

13 (g) The changes to this Section made by this amendatory Act
14 of the 101st General Assembly apply to actions taken by the
15 chief procurement officer on or after its effective date.

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

19 Section 10. The Illinois Wage Payment and Collection Act is
20 amended by changing Section 14 as follows:

21 (820 ILCS 115/14) (from Ch. 48, par. 39m-14)

22 Sec. 14. (a) Any employee not timely paid wages, final
23 compensation, or wage supplements by his or her employer as
24 required by this Act shall be entitled to recover through a

1 claim filed with the Department of Labor or in a civil action,
2 but not both, the amount of any such underpayments and damages
3 of 2% of the amount of any such underpayments for each month
4 following the date of payment during which such underpayments
5 remain unpaid. In a civil action, such employee shall also
6 recover costs and all reasonable attorney's fees.

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

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

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

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

25 Any employer or any agent of an employer who violates this
26 Section of the Act a subsequent time within 5 ~~2~~ years of a

1 prior criminal conviction under this Section is guilty, upon
2 conviction, of a Class 3 4 felony.

3 (b) Any employer who has been demanded or ordered by the
4 Department or ordered by the court to pay wages, final
5 compensation, or wage supplements due an employee shall be
6 required to pay a non-waivable administrative fee to the
7 Department of Labor in the amount of \$250 if the amount ordered
8 by the Department as wages owed is \$3,000 or less; \$500 if the
9 amount ordered by the Department as wages owed is more than
10 \$3,000, but less than \$10,000; and \$1,000 if the amount ordered
11 by the Department as wages owed is \$10,000 or more. Any
12 employer who has been so demanded or ordered by the Department
13 or ordered by a court to pay such wages, final compensation, or
14 wage supplements and who fails to seek timely review of such a
15 demand or order as provided for under this Act and who fails to
16 comply within 15 calendar days after such demand or within 35
17 days of an administrative or court order is entered shall also
18 be liable to pay a penalty to the Department of Labor of 20% of
19 the amount found owing and a penalty to the employee of 1% per
20 calendar day of the amount found owing for each day of delay in
21 paying such wages to the employee. All moneys recovered as fees
22 and civil penalties under this Act, except those owing to the
23 affected employee, shall be deposited into the Wage Theft
24 Enforcement Fund, a special fund which is hereby created in the
25 State treasury. Moneys in the Fund may be used only for
26 enforcement of this Act.

1 (b-5) Penalties and fees under this Section may be assessed
2 by the Department and recovered in a civil action brought by
3 the Department in any circuit court or in any administrative
4 adjudicative proceeding under this Act. In any such civil
5 action or administrative adjudicative proceeding under this
6 Act, the Department shall be represented by the Attorney
7 General.

8 (c) Any employer, or any agent of an employer, who
9 discharges or in any other manner discriminates against any
10 employee because that employee has made a complaint to his
11 employer, to the Director of Labor or his authorized
12 representative, in a public hearing, or to a community
13 organization that he or she has not been paid in accordance
14 with the provisions of this Act, or because that employee has
15 caused to be instituted any proceeding under or related to this
16 Act, or because that employee has testified or is about to
17 testify in an investigation or proceeding under this Act, is
18 guilty, upon conviction, of a Class C misdemeanor. An employee
19 who has been unlawfully retaliated against shall be entitled to
20 recover through a claim filed with the Department of Labor or
21 in a civil action, but not both, all legal and equitable relief
22 as may be appropriate. In a civil action, such employee shall
23 also recover costs and all reasonable attorney's fees.

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