



Rep. Luis Arroyo

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LRB098 07683 JLS 42471 a

1 AMENDMENT TO HOUSE BILL 2649

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 2649 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Employee Classification Act is amended by  
5 changing Sections 5, 25, 30, and 40 and by adding Section 63 as  
6 follows:

7 (820 ILCS 185/5)

8 Sec. 5. Definitions. As used in this Act:

9 "Construction" means any constructing, altering,  
10 reconstructing, repairing, rehabilitating, refinishing,  
11 refurbishing, remodeling, remediating, renovating, custom  
12 fabricating, maintenance, landscaping, improving, wrecking,  
13 painting, decorating, demolishing, and adding to or  
14 subtracting from any building, structure, highway, roadway,  
15 street, bridge, alley, sewer, ditch, sewage disposal plant,  
16 water works, parking facility, railroad, excavation or other

1 structure, project, development, real property or improvement,  
2 or to do any part thereof, whether or not the performance of  
3 the work herein described involves the addition to, or  
4 fabrication into, any structure, project, development, real  
5 property or improvement herein described of any material or  
6 article of merchandise. Construction shall also include moving  
7 construction related materials on the job site to or from the  
8 job site.

9 "Contractor" means any individual, sole proprietor,  
10 partnership, firm, corporation, limited liability company,  
11 association or other legal entity permitted by law to do  
12 business within the State of Illinois who engages in  
13 construction as defined in this Act.

14 "Contractor" includes a general contractor and a  
15 subcontractor.

16 "Department" means the Department of Labor.

17 "Director" means the Director of the Department of Labor.

18 "Employer" means any contractor that employs individuals  
19 deemed employees under Section 10 of this Act; however,  
20 "employer" does not include (i) the State of Illinois or its  
21 officers, agencies, or political subdivisions or (ii) the  
22 federal government.

23 "Entity" means any contractor for which an individual is  
24 performing services and is not classified as an employee under  
25 Section 10 of this Act; however, "entity" does not include (i)  
26 the State of Illinois or its officers, agencies, or political

1 subdivisions or (ii) the federal government.

2 "Interested party" means a person with an interest in  
3 compliance with this Act.

4 "Performing services" means the performance of any  
5 constructing, altering, reconstructing, repairing,  
6 rehabilitating, refinishing, refurbishing, remodeling,  
7 remediating, renovating, custom fabricating, maintenance,  
8 landscaping, improving, wrecking, painting, decorating,  
9 demolishing, and adding to or subtracting from any building,  
10 structure, highway, roadway, street, bridge, alley, sewer,  
11 ditch, sewage disposal plant, water works, parking facility,  
12 railroad, excavation or other structure, project, development,  
13 real property or improvement, or to do any part thereof,  
14 whether or not the performance of the work herein described  
15 involves the addition to, or fabrication into, any structure,  
16 project, development, real property or improvement herein  
17 described of any material or article of merchandise.  
18 Construction shall also include moving construction related  
19 materials on the job site to or from the job site.

20 (Source: P.A. 95-26, eff. 1-1-08.)

21 (820 ILCS 185/25)

22 Sec. 25. Enforcement.

23 (a) Any interested party may file a complaint with the  
24 Department against an entity or employer covered under this Act  
25 if there is a reasonable belief that the entity or employer is

1 in violation of this Act. It shall be the duty of the  
2 Department to enforce the provisions of this Act. The  
3 Department shall have the power to conduct investigations in  
4 connection with the administration and enforcement of this Act  
5 and any investigator with the Department shall be authorized to  
6 visit and inspect, at all reasonable times, any places covered  
7 by this Act and shall be authorized to inspect, at all  
8 reasonable times, documents related to the determination of  
9 whether an individual is an employee under Section 10 of this  
10 Act. The Director of Labor or his or her representative may  
11 compel, by subpoena, the attendance and testimony of witnesses  
12 and the production of books, payrolls, records, papers, and  
13 other evidence in any investigation and may administer oaths to  
14 witnesses.

15 (b) Whenever the Department believes upon investigation  
16 that there has been a violation of any of the provisions of  
17 this Act or any rules or regulations promulgated under this  
18 Act, the Department may: (i) issue and cause to be served on  
19 any party an order to cease and desist from further violation  
20 of the Act, (ii) take affirmative or other action as deemed  
21 reasonable to eliminate the effect of the violation, (iii)  
22 collect the amount of any wages, salary, employment benefits,  
23 or other compensation denied or lost to the individual, and  
24 (iv) assess any civil penalty allowed by this Act. ~~The civil~~  
25 ~~penalties assessed by the Department as well as any other~~  
26 ~~relief requested by the Department shall be recoverable in an~~

1 ~~action brought in the name of the people of the State of~~  
2 ~~Illinois by the Attorney General.~~

3 (c) If, upon investigation, the Department finds cause to  
4 believe that Section 20 or Section 55 of this Act has been  
5 violated, the Department shall notify the employer, in writing,  
6 of its finding and any proposed relief due and penalties  
7 assessed and that the matter will be referred to an  
8 Administrative Law Judge to schedule a formal hearing in  
9 accordance with the Illinois Administrative Procedure Act.

10 (d) The employer has 14 calendar days from the date of the  
11 Department's finding to answer the allegations contained in the  
12 Department's finding. If an employer fails to answer or fails  
13 to answer all allegations contained in the Department's  
14 finding, any unanswered allegations and findings shall be  
15 deemed to be admitted to be true and shall be so found in the  
16 final decision issued by the Administrative Law Judge.

17 (e) A final decision of an Administrative Law Judge issued  
18 pursuant to this Section is subject to the provisions of the  
19 Administrative Review Law and shall be enforceable in an action  
20 brought in the name of the people of the State of Illinois by  
21 the Attorney General.

22 (f) The Department shall have the authority to adopt  
23 reasonable rules for the hearing process. The General Assembly  
24 finds that the adoption of rules to implement this Section is  
25 deemed an emergency and necessary for the public interest and  
26 welfare.

1 (Source: P.A. 95-26, eff. 1-1-08.)

2 (820 ILCS 185/30)

3 Sec. 30. Attorney General; State's Attorneys. Criminal  
4 violations of this Act shall be prosecuted by the Attorney  
5 General or the appropriate State's Attorney. The Department  
6 shall refer matters to the Attorney General and the appropriate  
7 State's Attorney upon determining that a criminal violation may  
8 have occurred. ~~In all other proceedings the Department shall be~~  
9 ~~represented by the Attorney General's Office.~~

10 (Source: P.A. 95-26, eff. 1-1-08.)

11 (820 ILCS 185/40)

12 Sec. 40. Penalties.

13 (a) An employer or entity that violates any of the  
14 provisions of this Act or any rule adopted under this Act shall  
15 be subject to a civil penalty not to exceed \$1,500 for each  
16 violation found in the first audit by the Department. Following  
17 a first audit, an employer or entity shall be subject to a  
18 civil penalty not to exceed \$2,500 for each repeat violation  
19 found by the Department within a 5 year period. For purposes of  
20 this Section, each violation of this Act for each person and  
21 for each day the violation continues shall constitute a  
22 separate and distinct violation. In determining the amount of a  
23 penalty, the Director shall consider the appropriateness of the  
24 penalty to the employer or entity charged, upon the

1 determination of the gravity of the violations.

2 (b) The amount of the penalty, when finally determined, may  
3 be recovered in any administrative proceeding or a civil action  
4 filed in any circuit court by the Director of Labor, or a  
5 person aggrieved by a violation of this Act or any rule adopted  
6 under this Act.

7 (1) The Department shall distribute to all affected  
8 employees 10% of the civil penalty recovered as a result of  
9 any administrative proceeding or civil action brought by  
10 the Department. The remaining 90% of the amount recovered  
11 shall be submitted to the Director of Labor.

12 (2) In any civil action brought by an interested party  
13 pursuant to this Section, the circuit court shall award the  
14 interested party 10% of the amount recovered. In such case,  
15 the remaining amount recovered shall be submitted to the  
16 Director of Labor.

17 (c) Any uncollected amount shall be subject to the  
18 provisions of the Illinois State Collection Act of 1986.

19 (Source: P.A. 95-26, eff. 1-1-08.)

20 (820 ILCS 185/63 new)

21 Sec. 63. Individual liability. In addition to an individual  
22 who is an employer pursuant to Section 5 of this Act, any  
23 officer of a corporation or agent of an employer who knowingly  
24 permits such employer to violate the provisions of this Act may  
25 be held individually liable for all violations and penalties

1 assessed by the Department.".