

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 State Prompt Payment Act is amended by
5 adding Sections 3-3.5, 8, 9, 10, and 11 as follows:

6 (30 ILCS 540/3-3.5 new)

7 Sec. 3-3.5. Vendor payment contracts. Any contract
8 executed under the Vendor Payment Program specified in Section
9 900.125 of Title 74 of the Illinois Administrative Code prior
10 to June 30, 2018 shall remain in effect until those contracts
11 have expired. Those parties with existing contracts shall
12 comply with additional reporting requirements established
13 under this amendatory Act of the 100th General Assembly or
14 rules adopted hereunder.

15 (30 ILCS 540/8 new)

16 Sec. 8. Vendor Payment Program.

17 (a) As used in this Section:

18 "Applicant" means any entity seeking to be designated
19 as a qualified purchaser.

20 "Application period" means the time period when the
21 Program is accepting applications as determined by the
22 Department of Central Management Services.

1 "Assigned penalties" means penalties payable by the
2 State in accordance with this Act that are assigned to the
3 qualified purchaser of an assigned receivable.

4 "Assigned receivable" means the base invoice amount of
5 a qualified account receivable and any associated assigned
6 penalties due, currently and in the future, in accordance
7 with this Act.

8 "Assignment agreement" means an agreement executed and
9 delivered by a participating vendor and a qualified
10 purchaser, in which the participating vendor will assign
11 one or more qualified accounts receivable to the qualified
12 purchaser and make certain representations and warranties
13 in respect thereof.

14 "Base invoice amount" means the unpaid principal
15 amount of the invoice associated with an assigned
16 receivable.

17 "Department" means the Department of Central
18 Management Services.

19 "Medical assistance program" means any program which
20 provides medical assistance under Article V of the Illinois
21 Public Aid Code, including Medicaid.

22 "Participating vendor" means a vendor whose
23 application for the sale of a qualified account receivable
24 is accepted for purchase by a qualified purchaser under the
25 Program terms.

26 "Program" means a Vendor Payment Program.

1 "Prompt payment penalties" means penalties payable by
2 the State in accordance with this Act.

3 "Purchase price" means 100% of the base invoice amount
4 associated with an assigned receivable minus: (1) any
5 deductions against the assigned receivable arising from
6 State offsets; and (2) if and to the extent exercised by a
7 qualified purchaser, other deductions for amounts owed by
8 the participating vendor to the qualified purchaser for
9 State offsets applied against other accounts receivable
10 assigned by the participating vendor to the qualified
11 purchaser under the Program.

12 "Qualified account receivable" means an account
13 receivable due and payable by the State that is outstanding
14 for 90 days or more, is eligible to accrue prompt payment
15 penalties under this Act and is verified by the relevant
16 State agency. A qualified account receivable shall not
17 include any account receivable related to medical
18 assistance program (including Medicaid) payments or any
19 other accounts receivable, the transfer or assignment of
20 which is prohibited by, or otherwise prevented by,
21 applicable law.

22 "Qualified purchaser" means any entity that, during
23 any application period, is approved by the Department of
24 Central Management Services to participate in the Program
25 on the basis of certain qualifying criteria as determined
26 by the Department.

1 "State offsets" means any amount deducted from
2 payments made by the State in respect of any qualified
3 account receivable due to the State's exercise of any
4 offset or other contractual rights against a participating
5 vendor. For the purpose of this Section, "State offsets"
6 include statutorily required administrative fees imposed
7 under the State Comptroller Act.

8 "Sub-participant" means any individual or entity that
9 intends to purchase assigned receivables, directly or
10 indirectly, by or through an applicant or qualified
11 purchaser for the purposes of the Program.

12 "Sub-participant certification" means an instrument
13 executed and delivered to the Department of Central
14 Management Services by a sub-participant, in which the
15 sub-participant certifies its agreement, among others, to
16 be bound by the terms and conditions of the Program as a
17 condition to its participation in the Program as a
18 sub-participant.

19 (b) This Section reflects the provisions of Section 900.125
20 of Title 74 of the Illinois Administrative Code prior to
21 January 1, 2018. The requirements of this Section establish the
22 criteria for participation by participating vendors and
23 qualified purchasers in a Vendor Payment Program. Information
24 regarding the Vendor Payment Program may be found at the
25 Internet website for the Department of Central Management
26 Services.

1 (c) The State Comptroller and the Department of Central
2 Management Services are authorized to establish and implement
3 the Program under Section 3-3. This Section applies to all
4 qualified accounts receivable not otherwise excluded from
5 receiving prompt payment interest under Section 900.120 of
6 Title 74 of the Illinois Administrative Code. This Section
7 shall not apply to the purchase of any accounts receivable
8 related to payments made under a medical assistance program,
9 including Medicaid payments, or any other purchase of accounts
10 receivable that is otherwise prohibited by law.

11 (d) Under the Program, qualified purchasers may purchase
12 from participating vendors certain qualified accounts
13 receivable owed by the State to the participating vendors. A
14 participating vendor shall not simultaneously apply to sell the
15 same qualified account receivable to more than one qualified
16 purchaser. In consideration of the payment of the purchase
17 price, a participating vendor shall assign to the qualified
18 purchaser all of its rights to payment of the qualified account
19 receivable, including all current and future prompt payment
20 penalties due to that qualified account receivable in
21 accordance with this Act.

22 (e) A vendor may apply to participate in the Program if:

23 (1) the vendor is owed an account receivable by the
24 State for which prompt payment penalties have commenced
25 accruing;

26 (2) the vendor's account receivable is eligible to

1 accrue prompt payment penalty interest under this Act;

2 (3) the vendor's account receivable is not for payments
3 under a medical assistance program; and

4 (4) the vendor's account receivable is not prohibited
5 by, or otherwise prevented by, applicable law from being
6 transferred or assigned under this Section.

7 (f) The Department shall review and approve or disapprove
8 each applicant seeking a qualified purchaser designation.
9 Factors to be considered by the Department in determining
10 whether an applicant shall be designated as a qualified
11 purchaser include, but are not limited to, the following:

12 (1) the qualified purchaser's agreement to commit a
13 minimum purchase amount as established from time to time by
14 the Department based upon the current needs of the Program
15 and the qualified purchaser's demonstrated ability to fund
16 its commitment;

17 (2) the demonstrated ability of a qualified
18 purchaser's sub-participants to fund their portions of a
19 qualified purchaser's minimum purchase commitment;

20 (3) the ability of a qualified purchaser and its
21 sub-participants to meet standards of responsibility
22 substantially in accordance with the requirements of the
23 Standards of Responsibility found in subsection (b) of
24 Section 1.2046 of Title 44 of the Illinois Administrative
25 Code concerning government contracts, procurement, and
26 property management;

1 (4) the agreement of each qualified purchaser, at its
2 sole cost and expense, to administer and facilitate the
3 operation of the Program with respect to that qualified
4 purchaser, including, without limitation, assisting
5 potential participating vendors with the application and
6 assignment process;

7 (5) the agreement of each qualified purchaser, at its
8 sole cost and expense, to establish a website that is
9 determined by the Department to be sufficient to administer
10 the Program in accordance with the terms and conditions of
11 the Program;

12 (6) the agreement of each qualified purchaser, at its
13 sole cost and expense, to market the Program to potential
14 participating vendors;

15 (7) the agreement of each qualified purchaser, at its
16 sole cost and expense, to educate participating vendors
17 about the benefits and risks associated with participation
18 in the Program;

19 (8) the agreement of each qualified purchaser, at its
20 sole cost and expense, to deposit funds into, release funds
21 from, and otherwise maintain all required accounts in
22 accordance with the terms and conditions of the Program.
23 Subject to the Program terms, all required accounts shall
24 be maintained and controlled by the qualified purchaser at
25 the qualified purchaser's sole cost and at no cost, whether
26 in the form of fees or otherwise, to the participating

1 vendors;

2 (9) the agreement of each qualified purchaser, at its
3 sole cost and expense, to submit a monthly written report,
4 in an acceptable electronic format, to the State
5 Comptroller or its designee and the Department or its
6 designee, within 10 days after the end of each month,
7 which, unless otherwise specified by the Department, at a
8 minimum, shall contain:

9 (A) a listing of each assigned receivable
10 purchased by that qualified purchaser during the
11 month, specifying the base invoice amount and invoice
12 date of that assigned receivable and the name of the
13 participating vendor, State contract number, voucher
14 number, and State agency associated with that assigned
15 receivable;

16 (B) a listing of each assigned receivable with
17 respect to which the qualified purchaser has received
18 payment of the base invoice amount from the State
19 during that month, including the amount of and date on
20 which that payment was made and the name of the
21 participating vendor, State contract number, voucher
22 number, and State agency associated with the assigned
23 receivable, and identifying the relevant application
24 period for each assigned receivable;

25 (C) a listing of any payments of assigned penalties
26 received from the State during the month, including the

1 amount of and date on which the payment was made, the
2 name of the participating vendor, the voucher number
3 for the assigned penalty receivable, and the
4 associated assigned receivable, including the State
5 contract number, voucher number, and State agency
6 associated with the assigned receivable, and
7 identifying the relevant application period for each
8 assigned receivable;

9 (D) the aggregate number and dollar value of
10 assigned receivables purchased by the qualified
11 purchaser from the date on which that qualified
12 purchaser commenced participating in the Program
13 through the last day of the month;

14 (E) the aggregate number and dollar value of
15 assigned receivables purchased by the qualified
16 purchaser for which no payment by the State of the base
17 invoice amount has yet been received, from the date on
18 which the qualified purchaser commenced participating
19 in the Program through the last day of the month;

20 (F) the aggregate number and dollar value of
21 invoices purchased by the qualified purchaser for
22 which no voucher has been submitted; and

23 (G) any other data the State Comptroller and the
24 Department may reasonably request from time to time;

25 (10) the agreement of each qualified purchaser to use
26 its reasonable best efforts, and for any sub-participant to

1 cause a qualified purchaser to use its reasonable best
2 efforts, to diligently pursue receipt of assigned
3 penalties associated with the assigned receivables,
4 including, without limitation, by promptly notifying the
5 relevant State agency that an assigned penalty is due and,
6 if necessary, seeking payment of assigned penalties
7 through the Illinois Court of Claims; and

8 (11) the agreement of each qualified purchaser and any
9 sub-participant to use their reasonable best efforts to
10 implement the Program terms and to perform their
11 obligations under the Program in a timely fashion.

12 (g) Each qualified purchaser's performance and
13 implementation of its obligations under subsection (f) shall be
14 subject to review by the Department and the State Comptroller
15 at any time to confirm that the qualified purchaser is
16 undertaking those obligations in a manner consistent with the
17 terms and conditions of the Program. A qualified purchaser's
18 failure to so perform its obligations including, without
19 limitation, its obligations to diligently pursue receipt of
20 assigned penalties associated with assigned receivables, shall
21 be grounds for the Department and the State Comptroller to
22 terminate the qualified purchaser's participation in the
23 Program under subsection (i). Any such termination shall be
24 without prejudice to any rights a participating vendor may have
25 against that qualified purchaser, in law or in equity,
26 including, without limitation, the right to enforce the terms

1 of the assignment agreement and of the Program against the
2 qualified purchaser.

3 (h) In determining whether any applicant shall be
4 designated as a qualified purchaser, the Department shall have
5 the right to review or approve sub-participants that intend to
6 purchase assigned receivables, directly or indirectly, by or
7 through the applicant. The Department reserves the right to
8 reject or terminate the designation of any applicant as a
9 qualified purchaser or require an applicant to exclude a
10 proposed sub-participant in order to become or remain a
11 qualified purchaser on the basis of a review, whether prior to
12 or after the designation. Each applicant and each qualified
13 purchaser has an affirmative obligation to promptly notify the
14 Department of any change or proposed change in the identity of
15 the sub-participants that it disclosed to the Department no
16 later than 3 business days after that change. Each
17 sub-participant shall be required to execute a sub-participant
18 certification that will be attached to the corresponding
19 qualified purchaser designation. Sub-participants shall meet,
20 at a minimum, the requirements of paragraphs (2), (3), (10),
21 and (11) of subsection (f).

22 (i) The Program, as codified under this Section, shall
23 continue until terminated or suspended as follows:

24 (1) The Program may be terminated or suspended: (A) by
25 the State Comptroller, after consulting with the
26 Department, by giving 10 days prior written notice to the

1 Department and the qualified purchasers in the Program; or
2 (B) by the Department, after consulting with the State
3 Comptroller, by giving 10 days prior written notice to the
4 State Comptroller and the qualified purchasers in the
5 Program.

6 (2) In the event a qualified purchaser or
7 sub-participant breaches or fails to meet any of the terms
8 or conditions of the Program, that qualified purchaser or
9 sub-participant may be terminated from the Program: (A) by
10 the State Comptroller, after consulting with the
11 Department. The termination shall be effective immediately
12 upon the State Comptroller giving written notice to the
13 Department and the qualified purchaser or sub-participant;
14 or (B) by the Department, after consulting with the State
15 Comptroller. The termination shall be effective
16 immediately upon the Department giving written notice to
17 the State Comptroller and the qualified purchaser or
18 sub-participant.

19 (3) A qualified purchaser or sub-participant may
20 terminate its participation in the Program, solely with
21 respect to its own participation in the Program, in the
22 event of any change to this Act from the form that existed
23 on the date that the qualified purchaser or the
24 sub-participant, as applicable, submitted the necessary
25 documentation for admission into the Program if the change
26 materially and adversely affects the qualified purchaser's

1 or the sub-participant's ability to purchase and receive
2 payment on receivables on the terms described in this
3 Section.

4 If the Program, a qualified purchaser, or a sub-participant
5 is terminated or suspended under paragraphs (1) or (2) of this
6 subsection (i), the Program, qualified purchaser, or
7 sub-participant may be reinstated only by written agreement of
8 the State Comptroller and the Department. No termination or
9 suspension under paragraphs (1), (2), or (3) of this subsection
10 (i) shall alter or affect the qualified purchaser's or
11 sub-participant's obligations with respect to assigned
12 receivables purchased by or through the qualified purchaser
13 prior to the termination.

14 (30 ILCS 540/9 new)

15 Sec. 9. Vendor Payment Program financial backer
16 disclosure.

17 (a) Within 60 days after the effective date of this
18 amendatory Act of the 100th General Assembly, at the time of
19 application, and annually on July 1 of each year, each
20 qualified purchaser shall submit to the Department and the
21 State Comptroller the following information about each person,
22 director, owner, officer, association, financial backer,
23 partnership, other entity, corporation, or trust with an
24 indirect or direct financial interest in each qualified
25 purchaser:

- 1 (1) percent ownership;
2 (2) type of ownership;
3 (3) first name, middle name, last name, maiden name (if
4 applicable), including aliases or former names;
5 (4) mailing address;
6 (5) type of business entity, if applicable;
7 (6) dates and jurisdiction of business formation or
8 incorporation, if applicable;
9 (7) names of controlling shareholders, class of stock,
10 percentage ownership;
11 (8) any indirect earnings resulting from the Program;
12 and
13 (9) any earnings associated with the Program to any
14 parties not previously disclosed.

15 (b) Within 60 days after the effective date of this
16 amendatory Act of the 100th General Assembly, at the time of
17 application, and annually on July 1 of each year, each trust
18 associated with the qualified purchaser shall submit to the
19 Department and the State Comptroller the following
20 information:

- 21 (1) names, addresses, dates of birth, and percentages
22 of interest of all beneficiaries;
23 (2) any indirect earnings resulting from the Program;
24 and
25 (3) any earnings associated with the Program to any
26 parties not previously disclosed.

1 (c) Each qualified purchaser must submit a statement to the
2 State Comptroller and the Department of Central Management
3 Services disclosing whether such qualified purchaser or any
4 related person, director, owner, officer, or financial backer
5 has previously or currently retained or contracted with any
6 registered lobbyist, lawyer, accountant, or other consultant
7 to prepare the disclosure required under this Section.

8 (30 ILCS 540/10 new)

9 Sec. 10. Vendor Payment Program audit. The Office of the
10 Auditor General shall perform a performance audit of the
11 Program established under Section 8. The audit shall include,
12 but not be limited to, a review of the administration of the
13 Program and compliance with requirements applicable to
14 participating vendors, qualified purchasers, qualified
15 accounts receivable, and financial backer disclosures. The
16 audit shall cover the Program's operations for fiscal years
17 2019 and 2020. Upon its completion and release, the Auditor
18 General's report shall be posted on the Internet website of the
19 Auditor General.

20 (30 ILCS 540/11 new)

21 Sec. 11. Vendor Payment Program accountability portal. The
22 Department of Central Management Services and the State
23 Comptroller shall publish on their respective Internet
24 websites: (1) the monthly report information submitted under

1 paragraph 9 of subsection (f) of Section 8; and (2) the
2 information required to be submitted under Section 9.

3 Section 99. Effective date. This Act takes effect upon
4 becoming law.