

SB3332



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

SB3332

Introduced 2/14/2020, by Sen. Robert F. Martwick

SYNOPSIS AS INTRODUCED:

New Act
30 ILCS 105/5.930 new

Creates the Independent Contractor Payment Protection Act and amends the State Finance Act. Provides that the agreed work terms between an independent contractor and a client shall be: (1) reduced to writing; (2) sufficiently detailed in describing how compensation earned and payable shall be calculated; (3) signed by the independent contractor; (4) signed by the client; (5) kept on file by the client for a period of not less than 6 years. Provides that an independent contractor shall be paid the compensation earned in accordance with the agreed work terms not later than the last day of the month following the month in which the compensation is earned. Provides that an independent contractor may file a complaint with the Department of Labor alleging a violation of the Act. Provides for enforcement of the Act by the Department. Establishes civil and criminal penalties. Creates the Independent Contractor Compensation Theft Enforcement Fund as a special fund in the State treasury and specifies the uses of the Fund.

LRB101 19613 JLS 69093 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

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 1. Short title. This Act may be cited as the
5 Independent Contractor Payment Protection Act.

6 Section 5. Definitions. As used in this Act:

7 "Agreed work terms" or "work terms" means an agreement
8 between an independent contractor and a client describing the
9 work to be done and the compensation to be paid that complies
10 with Section 10.

11 "Client" includes a corporation, limited liability
12 company, partnership, association, non-profit organization, or
13 natural person contracting with an independent contractor in
14 any occupation, industry, trade, business, or service for
15 compensation equal to or greater than \$600. "Client" does not
16 include the federal or State government, any unit of local
17 government or school district, or any agency or instrumentality
18 thereof. "Client" also does not include owners of
19 owner-occupied single-family residences, or owners of
20 owner-occupied multi-family residences of 6 units or less, if
21 the work to be done, as specified in the agreed work terms, is
22 upon such owner-occupied residence or the land adjacent
23 thereto.

1 "Compensation" means the earnings of an independent
2 contractor, including reimbursement for expenses.

3 "Department" means the Department of Labor.

4 "Director" means the Director of Labor.

5 "Independent contractor" means a sole proprietor who is not
6 an employee and who is hired or retained by a client for an
7 amount equal to or greater than \$600.

8 Section 10. Agreed work terms; requirements. The agreed
9 work terms between an independent contractor and a client shall
10 be:

11 (1) reduced to writing;

12 (2) sufficiently detailed in describing how
13 compensation earned and payable shall be calculated;

14 (3) signed by the independent contractor;

15 (4) signed by the client;

16 (5) kept on file by the client for a period of not less
17 than 6 years.

18 Section 15. Payment of independent contractors. An
19 independent contractor shall be paid the compensation earned in
20 accordance with the agreed work terms not later than the last
21 day of the month following the month in which the compensation
22 is earned.

23 Section 20. Department of Labor; duties; powers.

1 (a) It shall be the duty of the Department to inquire
2 diligently for any violations of this Act, to institute the
3 actions for penalties herein provided, and to enforce generally
4 the provisions of this Act.

5 (b) An independent contractor may file a complaint with the
6 Department alleging violations of this Act by submitting a
7 signed, completed independent contractor compensation claim
8 application on the form provided by the Department and by
9 submitting copies of all supporting documentation. The
10 supporting documentation must include the agreed work terms
11 that are alleged to have been violated. Complaints shall be
12 filed within 6 years after the compensation was due.

13 (c) Applications shall be reviewed by the Department to
14 determine whether there is cause for investigation. If the
15 Department finds there is cause for an investigation, it shall
16 have the following powers:

17 (1) To investigate and attempt equitably to adjust
18 controversies between independent contractors and clients
19 in respect of compensation claims arising under this Act,
20 and, to that end, the Department through the Director or
21 any other person in the Department designated by the
22 Director, shall have the power to administer oaths,
23 subpoena and examine witnesses, to issue subpoenas duces
24 tecum requiring the production of such books, papers,
25 records and documents as may be evidence of any matter
26 under inquiry and to examine and inspect the same as may

1 relate to the question in dispute. Upon the request of the
2 Department, through a subpoena duces tecum or otherwise,
3 the client shall produce a copy of the written work terms
4 to the Department within 5 business days of the request.
5 Failure of the client to timely remit the work terms to the
6 Department shall create a presumption that the work terms
7 submitted by the independent contractor are the agreed
8 terms. Service of any such subpoenas shall be made by any
9 sheriff or any person. Any court in this State, upon the
10 application of the Department may compel attendance of
11 witnesses, the production of books and papers, and the
12 giving of testimony before the Department by attachment for
13 contempt or in any other way as the production of evidence
14 may be compelled before such court.

15 (2) To take assignments of compensation claims in the
16 name of the Director and his or her successors in office
17 and prosecute actions for the collection of compensation
18 for independent contractors financially unable to
19 prosecute such claims when in the judgment of the
20 Department such claims are valid and enforceable in the
21 courts. No court costs or any fees for necessary process
22 and proceedings shall be payable in advance by the
23 Department for prosecuting such actions. In the event there
24 is a judgment rendered against the defendant, the court
25 shall assess as part of such judgment the costs of such
26 proceeding. Upon collection of such judgments the

1 Department shall pay from the proceeds of such judgment
2 such costs to such independent contractor who is by law
3 entitled to same. The Department may join in a single
4 proceeding any number of compensation claims against the
5 same client but the court shall have discretionary power to
6 order a severance or separate trial for hearings.

7 (3) To make complaint in any court of competent
8 jurisdiction of violations of this Act.

9 (4) In addition to the aforementioned powers, subject
10 to appropriation, the Department may establish an
11 administrative procedure to adjudicate compensation claims
12 and to issue final and binding administrative decisions on
13 such compensation claims subject to the Administrative
14 Review Law. To establish such a procedure, the Director or
15 her or his authorized representative may adopt rules. The
16 adoption, amendment, or rescission of rules for such a
17 procedure shall be in conformity with the requirements of
18 the Illinois Administrative Procedure Act.

19 (d) If the Department institutes any proceedings that
20 require a hearing in the circuit court or through an
21 administrative procedure, the Department shall notify the
22 independent contractor of the date, time, and location of the
23 hearing.

24 (e) Nothing herein shall be construed to prevent any
25 independent contractor from making complaint or prosecuting
26 his or her own claim for compensation against a client. Any

1 independent contractor aggrieved by a violation of this Act or
2 any rule adopted under this Act may file suit in circuit court
3 of Illinois, in the county where the alleged violation occurred
4 or where any client who is party to the action resides, without
5 regard to exhaustion of any alternative administrative
6 remedies provided in this Act. Actions may be brought by one or
7 more independent contractors for and on behalf of themselves
8 and other independent contractors similarly situated.
9 Complaints filed in accordance with this paragraph shall be
10 filed within 6 years after the compensation was due.

11 (f) Nothing herein shall be construed to limit the
12 authority of the State's attorney of any county to prosecute
13 actions for violation of this Act or to enforce the provisions
14 thereof independently and without specific direction of the
15 Department.

16 (g) The failure of a client to keep adequate records shall
17 not bar an independent contractor or the Director from
18 investigating or filing a complaint. In such a case, the client
19 shall have the burden of proving, by clear and convincing
20 evidence, that the independent contractor was paid all the
21 compensation owed to him or her by the client under the agreed
22 work terms.

23 Section 25. Penalties; recovery.

24 (a) Any independent contractor not timely paid
25 compensation by a client as required by this Act shall be

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

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

1 penalties under this Act, except those owing to the affected
2 independent contractor, shall be deposited into the
3 Independent Contractor Compensation Theft Enforcement Fund, a
4 special fund that is created in the State treasury. Moneys in
5 the Fund may be used only for enforcement of this Act.

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

23 (d) In addition to the remedies provided in subsections
24 (a), (b), and (c) of this Section, any client or any agent of a
25 client, who, being able to pay compensation to an independent
26 contractor and being under a duty to pay, willfully refuses to

1 pay as provided in this Act, or falsely denies the amount or
2 validity thereof or that the same is due, with intent to secure
3 for himself or other person any underpayment of such
4 indebtedness or with intent to annoy, harass, oppress, hinder,
5 delay or defraud the independent contractor to whom such
6 indebtedness is due, upon conviction, is guilty of:

7 (1) for unpaid compensation in the amount of \$5,000 or
8 less, a Class B misdemeanor; or

9 (2) for unpaid compensation in the amount of more than
10 \$5,000, a Class A misdemeanor.

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

13 Any client or any agent of a client who violates this
14 Section of the Act a subsequent time within 2 years of a prior
15 criminal conviction under this Section is guilty, upon
16 conviction, of a Class 4 felony.

17 In addition to an individual who is deemed to be a client
18 pursuant to Section 5 of this Act, any officers of a
19 corporation or agents of a client who knowingly permit such
20 client to violate the provisions of this Act shall be deemed to
21 be the client of the independent contractor.

22 (e) Penalties and fees under this Section may be assessed
23 by the Department and recovered in a civil action brought by
24 the Department in any circuit court or in any administrative
25 adjudicative proceeding under this Act. In any such civil
26 action or administrative adjudicative proceeding under this

1 Act, the Department shall be represented by the Attorney
2 General.

3 Section 30. Departmental compensation recovery; remittance
4 to aggrieved independent contractor.

5 (a) Upon the recovery of unpaid compensation from a client
6 that has violated this Act, the Department shall conduct a good
7 faith search to find the aggrieved independent contractor. If,
8 after conducting a good faith search for the aggrieved
9 independent contractor, the Department is unable to find the
10 aggrieved independent contractor, the Department shall deposit
11 the amount recovered into the Independent Contractor
12 Compensation Theft Enforcement Fund.

13 (b) An aggrieved independent contractor may make a request
14 to the Department in order to recover unpaid compensation that
15 has been deposited into the Independent Contractor
16 Compensation Theft Enforcement Fund. The Department shall not
17 require the independent contractor to present a Social Security
18 number or proof of United States citizenship. For the purpose
19 of paying claims under this Section from the Independent
20 Contractor Compensation Theft Enforcement Fund to aggrieved
21 independent contractors, the Comptroller shall assign a vendor
22 payment number to the Department. When an aggrieved independent
23 contractor makes a valid request for payment to the Department,
24 the Department shall use the vendor payment number to process
25 payment on behalf of the aggrieved independent contractor.

1 Section 35. Rulemaking authority. The Director or his or
2 her authorized representatives shall administer and enforce
3 this Act. In order to accomplish the objectives of this Act and
4 to carry out the duties prescribed by this Act, the Director or
5 his or her authorized representative shall, within one year
6 after the effective date of this Act, adopt rules necessary to
7 administer and enforce the provisions of this Act including the
8 procedures that shall be followed for hearings under Section
9 20. The adoption, amendment, or rescission of rules shall be in
10 conformity with the requirements of the Illinois
11 Administrative Procedure Act.

12 Section 90. The State Finance Act is amended by adding
13 Section 5.930 as follows:

14 (30 ILCS 105/5.930 new)

15 Sec. 5.930. The Independent Contractor Compensation Theft
16 Enforcement Fund.