



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB0085

Introduced 1/14/2021, by Rep. Mary E. Flowers

SYNOPSIS AS INTRODUCED:

New Act
5 ILCS 140/7.5
30 ILCS 105/5.935 new

Creates the Wage Insurance Act. Requires the Department of Employment Security to establish a Wage Insurance Program. Provides that an individual is eligible for wage insurance benefits if the individual is a claimant under the Unemployment Insurance Act at the time the individual obtains reemployment and is not employed by the employer from which the individual was last separated. Provides that benefits shall be paid in an amount sufficient to pay the difference between the wage received by the individual at the time of separation and the wages received by the individual from reemployment. Imposes a 0.4% payroll tax on employees beginning January 1, 2022. Provides that claims for wage insurance benefits may be filed beginning June 1, 2022. Contains provisions concerning the recovery of erroneous payments; hearings; civil penalties; unpaid taxes; rules; and other matters. Creates the Wage Insurance Fund as a special fund in the State treasury. Amends the State Finance Act to include the Wage Insurance Fund. Amends the Freedom of Information Act. Exempts from inspection and copying information that is exempt from disclosure under the Wage Insurance Act.

LRB102 03806 KTG 13819 b

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 Wage
5 Insurance Act.

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

7 "Department" means the Department of Employment Security.

8 "Director" means the Director of Employment Security.

9 "Employer" means (1) any person, partnership, corporation,
10 association, or other business entity that employs one or more
11 employees for each working day during each of 20 or more
12 calendar workweeks; and (2) the State of Illinois and any
13 other unit of local government.

14 "Wage insurance benefits" means the benefits payable under
15 this Act.

16 "Tax" means the tax imposed under Section 25 of this Act.

17 Section 10. Wage Insurance Program.

18 (a) The Department shall establish and administer a Wage
19 Insurance Program.

20 (b) The Department shall establish procedures and forms
21 for filing claims for benefits under this Act.

22 (c) Information contained in the files and records

1 pertaining to an employee under this Act is confidential and
2 not open to public inspection, other than to public employees
3 in the performance of their official duties. However, the
4 employee or an authorized representative of an employee may
5 review the records or receive specific information from the
6 records on the presentation of the signed authorization of the
7 employee. An employer or the employer's duly authorized
8 representative may review the records of an employee employed
9 by the employer in connection with a pending claim. At the
10 Department's discretion, other persons may review records when
11 such persons are rendering assistance to the Department at any
12 stage of the proceedings on any matter pertaining to the
13 administration of this Act.

14 An employer must keep at its place of business records of
15 employment from which the information needed by the Department
16 for purposes of this Act may be obtained. The records shall at
17 all times be open to the inspection of the Department pursuant
18 to rules adopted by the Department.

19 (d) The Department shall develop and implement an outreach
20 program to ensure that individuals who may be eligible to
21 receive wage insurance benefits under this Act are made aware
22 of these benefits. Outreach information shall explain, in an
23 easy-to-understand format, eligibility requirements, the
24 claims process, weekly benefit amounts, maximum benefits
25 payable, notice requirements, reinstatement and
26 nondiscrimination rights, confidentiality, and coordination of

1 benefits under this Act and other laws, collective bargaining
2 agreements, and employer policies. Outreach information shall
3 be available in English and in languages other than English
4 that are spoken as a primary language by a significant portion
5 of the State's population, as determined by the Department.

6 Section 15. Eligibility for benefits.

7 (a) Benefits under this Act are payable to an individual
8 who is a claimant under the Unemployment Insurance Act at the
9 time the individual obtains reemployment and who is not
10 employed by the employer from which the individual was last
11 separated.

12 (b) The Department may require that a claim for wage
13 insurance benefits under this Act be supported by a
14 certification of wages issued by the individual's employer.

15 Section 20. Disqualification from benefits.

16 (a) An individual is disqualified from wage insurance
17 benefits under this Act if the individual willfully makes a
18 false statement or misrepresentation regarding a material
19 fact, or willfully fails to disclose a material fact, to
20 obtain benefits.

21 (b) A disqualification for wage insurance benefits is for
22 a period of 2 years, and commences on the first day of the
23 calendar week in which the individual filed a claim for
24 benefits under this Act. An individual who is disqualified for

1 benefits is liable to the Department for a penalty in an amount
2 equal to 15% of the amount of benefits received by the
3 individual.

4 Section 25. Payroll tax.

5 (a) There is imposed a tax upon employees in the amount of
6 0.4% of wages as defined in Section 235 of the Unemployment
7 Insurance Act. The Department shall by rule provide for the
8 collection of this tax.

9 (b) Moneys collected pursuant to subsection (a), and any
10 accrued cash balances, shall be deposited into the Wage
11 Insurance Fund for payment of benefits and the expenditures of
12 the Department in carrying out the functions and duties of the
13 Department under this Act.

14 Section 30. Duration of benefits; amount of benefits.

15 (a) Wage insurance benefits are payable for a maximum of 2
16 years.

17 (b) The first payment of wage insurance benefits shall be
18 made to an employee within 2 weeks after the claim is filed.
19 Subsequent payments shall be made twice a month thereafter.

20 (c) Wage insurance benefits shall be paid in an amount
21 sufficient to pay to the individual the difference between the
22 wage received by the individual at the time of the separation
23 from the employer by which the individual was employed
24 immediately before becoming a claimant under this Act and the

1 wages received by the individual from reemployment.

2 (d) The Department shall provide a tax form to each
3 individual who has received wage insurance benefits for the
4 individual's use in paying federal income tax on the benefits
5 and shall advise an individual filing a new claim for wage
6 insurance benefits, at the time of filing the claim, that:

7 (1) benefits are subject to federal income tax;

8 (2) requirements exist pertaining to estimated tax
9 payments;

10 (3) the individual may elect to have federal income
11 tax deducted and withheld from the individual's payment of
12 benefits at the amount specified in the federal Internal
13 Revenue Code; and

14 (4) the individual is permitted to change a previously
15 elected withholding status.

16 Amounts deducted and withheld from benefits must remain in
17 the Wage Insurance Fund until transferred to the federal
18 taxing authority as a payment of income tax.

19 The Director shall follow all procedures specified by the
20 federal Internal Revenue Service pertaining to the deducting
21 and withholding of income tax.

22 Section 35. Recovery of erroneous payments.

23 (a) If an individual receives any wage insurance benefits
24 under Section 30 to which the employee is not entitled:

25 (1) the individual is liable to the Department for the

1 amount of benefits received; and

2 (2) the amount of benefits received may be deducted by
3 the Department from any future benefits otherwise payable
4 to the individual under Section 30.

5 (b) If the Department decides that an individual has been
6 paid wage insurance benefits to which the individual is not
7 entitled because of an error, and that the individual is not
8 subject to disqualification under Section 20, the amounts
9 received in error may be recovered by the Department only by
10 deductions from benefits otherwise payable to the employee
11 under Section 30 during the 52 weeks following the date on
12 which the order establishing the amount of the erroneous
13 payment becomes final. If amounts determined to be recoverable
14 have not been paid within that time, the liability shall be
15 canceled by the Department and charged against the Wage
16 Insurance Fund.

17 (c) Except as provided in subsection (d), if benefits
18 determined to be recoverable under this Section have not been
19 paid within 3 years after the date that the order of the
20 Department establishing the liability of the individual
21 becomes final, and no payments have been received on the
22 liability for at least 3 months, the liability shall be
23 canceled by the Department and charged against the Wage
24 Insurance Fund.

25 (d) Any amount due under this Section may be collected by
26 the Department in a civil action against the individual

1 brought in the name of the Department.

2 (e) Interest on any benefits recoverable under this
3 Section shall be paid and collected at the same time repayment
4 of benefits is made by the individual. Interest on an amount
5 recoverable under this Section accrues at the rate specified
6 in Section 2-1303 of the Code of Civil Procedure, beginning on
7 the first day of the month following 60 days after entry of the
8 order establishing the amount recoverable.

9 (f) Any amount collected under this Section by the
10 Department shall be paid into the Wage Insurance Fund.

11 Section 40. Hearings. A person aggrieved by a decision of
12 the Department under this Act may request a hearing. The
13 Department shall adopt rules governing hearings and the
14 issuance of final orders under this Act in accordance with the
15 provisions of the Illinois Administrative Procedure Act. All
16 final administrative decisions of the Department under this
17 Act are subject to judicial review under the Administrative
18 Review Law.

19 Section 45. Civil penalty.

20 (a) The Department may assess a civil penalty not to
21 exceed \$5,000 against an employer that:

22 (1) fails to pay when due the taxes imposed under
23 Section 25; or

24 (2) fails to comply with this Act or any rules adopted

1 by the Department relating to reports or other
2 requirements necessary to carry out the purposes of this
3 Act.

4 (b) All civil penalties collected under this Section shall
5 be applied first toward reimbursement of the costs incurred in
6 investigating violations, conducting hearings, and assessing
7 and collecting penalties. All remaining amounts shall be paid
8 into the Wage Insurance Fund.

9 Section 50. Unpaid tax.

10 (a) If an employer defaults with respect to any tax
11 payment required to be made by the employer tax under Section
12 25, a person described in subsection (b) of this Section who,
13 as an officer, member, partner, or employee, is under a duty to
14 perform the actions required by employers under this Act shall
15 be personally liable for amounts due under Section 25. More
16 than one person may be jointly and severally liable under this
17 Section.

18 (b) This Section applies only to a person who is one or
19 more of the following:

20 (1) An officer or employee of a corporation.

21 (2) A member or an employee of a limited liability
22 corporation.

23 (3) A partner in or an employee of a limited liability
24 partnership.

25 (c) If the Director determines that an amount is due under

1 this Section, the Director shall issue a notice of assessment
2 to the person liable under this Section mailed to the person's
3 last-known address of record with the Director.

4 Section 55. Wage Insurance Fund. The Wage Insurance Fund
5 is created as a special fund in the State treasury. All moneys
6 received under this Act shall be deposited into the Fund. This
7 Section constitutes a continuing appropriation from the Fund
8 of all amounts necessary for the purposes authorized by this
9 Act. Any interest earned on moneys in the Wage Insurance Fund
10 shall be deposited into the Fund.

11 Section 60. Rules. The Department may adopt any rules
12 necessary to implement this Act.

13 Section 65. Commencement date.

14 (a) Employers shall first withhold taxes from employees'
15 earnings for quarters worked beginning January 1, 2022.

16 (b) Individuals may first file claims for wage insurance
17 benefits under this Act on or after June 1, 2022.

18 Section 70. Authority to contract. The Department may
19 contract or enter into interagency agreements with other State
20 agencies for the initial administration of the Wage Insurance
21 Program.

1 Section 905. The Freedom of Information Act is amended by
2 changing Section 7.5 as follows:

3 (5 ILCS 140/7.5)

4 Sec. 7.5. Statutory exemptions. To the extent provided for
5 by the statutes referenced below, the following shall be
6 exempt from inspection and copying:

7 (a) All information determined to be confidential
8 under Section 4002 of the Technology Advancement and
9 Development Act.

10 (b) Library circulation and order records identifying
11 library users with specific materials under the Library
12 Records Confidentiality Act.

13 (c) Applications, related documents, and medical
14 records received by the Experimental Organ Transplantation
15 Procedures Board and any and all documents or other
16 records prepared by the Experimental Organ Transplantation
17 Procedures Board or its staff relating to applications it
18 has received.

19 (d) Information and records held by the Department of
20 Public Health and its authorized representatives relating
21 to known or suspected cases of sexually transmissible
22 disease or any information the disclosure of which is
23 restricted under the Illinois Sexually Transmissible
24 Disease Control Act.

25 (e) Information the disclosure of which is exempted

1 under Section 30 of the Radon Industry Licensing Act.

2 (f) Firm performance evaluations under Section 55 of
3 the Architectural, Engineering, and Land Surveying
4 Qualifications Based Selection Act.

5 (g) Information the disclosure of which is restricted
6 and exempted under Section 50 of the Illinois Prepaid
7 Tuition Act.

8 (h) Information the disclosure of which is exempted
9 under the State Officials and Employees Ethics Act, and
10 records of any lawfully created State or local inspector
11 general's office that would be exempt if created or
12 obtained by an Executive Inspector General's office under
13 that Act.

14 (i) Information contained in a local emergency energy
15 plan submitted to a municipality in accordance with a
16 local emergency energy plan ordinance that is adopted
17 under Section 11-21.5-5 of the Illinois Municipal Code.

18 (j) Information and data concerning the distribution
19 of surcharge moneys collected and remitted by carriers
20 under the Emergency Telephone System Act.

21 (k) Law enforcement officer identification information
22 or driver identification information compiled by a law
23 enforcement agency or the Department of Transportation
24 under Section 11-212 of the Illinois Vehicle Code.

25 (l) Records and information provided to a residential
26 health care facility resident sexual assault and death

1 review team or the Executive Council under the Abuse
2 Prevention Review Team Act.

3 (m) Information provided to the predatory lending
4 database created pursuant to Article 3 of the Residential
5 Real Property Disclosure Act, except to the extent
6 authorized under that Article.

7 (n) Defense budgets and petitions for certification of
8 compensation and expenses for court appointed trial
9 counsel as provided under Sections 10 and 15 of the
10 Capital Crimes Litigation Act. This subsection (n) shall
11 apply until the conclusion of the trial of the case, even
12 if the prosecution chooses not to pursue the death penalty
13 prior to trial or sentencing.

14 (o) Information that is prohibited from being
15 disclosed under Section 4 of the Illinois Health and
16 Hazardous Substances Registry Act.

17 (p) Security portions of system safety program plans,
18 investigation reports, surveys, schedules, lists, data, or
19 information compiled, collected, or prepared by or for the
20 Regional Transportation Authority under Section 2.11 of
21 the Regional Transportation Authority Act or the St. Clair
22 County Transit District under the Bi-State Transit Safety
23 Act.

24 (q) Information prohibited from being disclosed by the
25 Personnel Record Review Act.

26 (r) Information prohibited from being disclosed by the

1 Illinois School Student Records Act.

2 (s) Information the disclosure of which is restricted
3 under Section 5-108 of the Public Utilities Act.

4 (t) All identified or deidentified health information
5 in the form of health data or medical records contained
6 in, stored in, submitted to, transferred by, or released
7 from the Illinois Health Information Exchange, and
8 identified or deidentified health information in the form
9 of health data and medical records of the Illinois Health
10 Information Exchange in the possession of the Illinois
11 Health Information Exchange Office due to its
12 administration of the Illinois Health Information
13 Exchange. The terms "identified" and "deidentified" shall
14 be given the same meaning as in the Health Insurance
15 Portability and Accountability Act of 1996, Public Law
16 104-191, or any subsequent amendments thereto, and any
17 regulations promulgated thereunder.

18 (u) Records and information provided to an independent
19 team of experts under the Developmental Disability and
20 Mental Health Safety Act (also known as Brian's Law).

21 (v) Names and information of people who have applied
22 for or received Firearm Owner's Identification Cards under
23 the Firearm Owners Identification Card Act or applied for
24 or received a concealed carry license under the Firearm
25 Concealed Carry Act, unless otherwise authorized by the
26 Firearm Concealed Carry Act; and databases under the

1 Firearm Concealed Carry Act, records of the Concealed
2 Carry Licensing Review Board under the Firearm Concealed
3 Carry Act, and law enforcement agency objections under the
4 Firearm Concealed Carry Act.

5 (w) Personally identifiable information which is
6 exempted from disclosure under subsection (g) of Section
7 19.1 of the Toll Highway Act.

8 (x) Information which is exempted from disclosure
9 under Section 5-1014.3 of the Counties Code or Section
10 8-11-21 of the Illinois Municipal Code.

11 (y) Confidential information under the Adult
12 Protective Services Act and its predecessor enabling
13 statute, the Elder Abuse and Neglect Act, including
14 information about the identity and administrative finding
15 against any caregiver of a verified and substantiated
16 decision of abuse, neglect, or financial exploitation of
17 an eligible adult maintained in the Registry established
18 under Section 7.5 of the Adult Protective Services Act.

19 (z) Records and information provided to a fatality
20 review team or the Illinois Fatality Review Team Advisory
21 Council under Section 15 of the Adult Protective Services
22 Act.

23 (aa) Information which is exempted from disclosure
24 under Section 2.37 of the Wildlife Code.

25 (bb) Information which is or was prohibited from
26 disclosure by the Juvenile Court Act of 1987.

1 (cc) Recordings made under the Law Enforcement
2 Officer-Worn Body Camera Act, except to the extent
3 authorized under that Act.

4 (dd) Information that is prohibited from being
5 disclosed under Section 45 of the Condominium and Common
6 Interest Community Ombudsperson Act.

7 (ee) Information that is exempted from disclosure
8 under Section 30.1 of the Pharmacy Practice Act.

9 (ff) Information that is exempted from disclosure
10 under the Revised Uniform Unclaimed Property Act.

11 (gg) Information that is prohibited from being
12 disclosed under Section 7-603.5 of the Illinois Vehicle
13 Code.

14 (hh) Records that are exempt from disclosure under
15 Section 1A-16.7 of the Election Code.

16 (ii) Information which is exempted from disclosure
17 under Section 2505-800 of the Department of Revenue Law of
18 the Civil Administrative Code of Illinois.

19 (jj) Information and reports that are required to be
20 submitted to the Department of Labor by registering day
21 and temporary labor service agencies but are exempt from
22 disclosure under subsection (a-1) of Section 45 of the Day
23 and Temporary Labor Services Act.

24 (kk) Information prohibited from disclosure under the
25 Seizure and Forfeiture Reporting Act.

26 (ll) Information the disclosure of which is restricted

1 and exempted under Section 5-30.8 of the Illinois Public
2 Aid Code.

3 (mm) Records that are exempt from disclosure under
4 Section 4.2 of the Crime Victims Compensation Act.

5 (nn) Information that is exempt from disclosure under
6 Section 70 of the Higher Education Student Assistance Act.

7 (oo) Communications, notes, records, and reports
8 arising out of a peer support counseling session
9 prohibited from disclosure under the First Responders
10 Suicide Prevention Act.

11 (pp) Names and all identifying information relating to
12 an employee of an emergency services provider or law
13 enforcement agency under the First Responders Suicide
14 Prevention Act.

15 (qq) Information and records held by the Department of
16 Public Health and its authorized representatives collected
17 under the Reproductive Health Act.

18 (rr) Information that is exempt from disclosure under
19 the Cannabis Regulation and Tax Act.

20 (ss) Data reported by an employer to the Department of
21 Human Rights pursuant to Section 2-108 of the Illinois
22 Human Rights Act.

23 (tt) Recordings made under the Children's Advocacy
24 Center Act, except to the extent authorized under that
25 Act.

26 (uu) Information that is exempt from disclosure under

1 Section 50 of the Sexual Assault Evidence Submission Act.

2 (vv) Information that is exempt from disclosure under
3 subsections (f) and (j) of Section 5-36 of the Illinois
4 Public Aid Code.

5 (ww) Information that is exempt from disclosure under
6 Section 16.8 of the State Treasurer Act.

7 (xx) Information that is exempt from disclosure or
8 information that shall not be made public under the
9 Illinois Insurance Code.

10 (yy) Information prohibited from being disclosed under
11 the Illinois Educational Labor Relations Act.

12 (zz) Information prohibited from being disclosed under
13 the Illinois Public Labor Relations Act.

14 (aaa) Information prohibited from being disclosed
15 under Section 1-167 of the Illinois Pension Code.

16 (bbb) Information that is exempt from disclosure under
17 Section 10 of the Wage Insurance Act.

18 (Source: P.A. 100-20, eff. 7-1-17; 100-22, eff. 1-1-18;
19 100-201, eff. 8-18-17; 100-373, eff. 1-1-18; 100-464, eff.
20 8-28-17; 100-465, eff. 8-31-17; 100-512, eff. 7-1-18; 100-517,
21 eff. 6-1-18; 100-646, eff. 7-27-18; 100-690, eff. 1-1-19;
22 100-863, eff. 8-14-18; 100-887, eff. 8-14-18; 101-13, eff.
23 6-12-19; 101-27, eff. 6-25-19; 101-81, eff. 7-12-19; 101-221,
24 eff. 1-1-20; 101-236, eff. 1-1-20; 101-375, eff. 8-16-19;
25 101-377, eff. 8-16-19; 101-452, eff. 1-1-20; 101-466, eff.
26 1-1-20; 101-600, eff. 12-6-19; 101-620, eff. 12-20-19; 101-649,

1 eff. 7-7-20.)

2 Section 910. The State Finance Act is amended by adding
3 Section 5.935 as follows:

4 (30 ILCS 105/5.935 new)

5 Sec. 5.935. The Wage Insurance Fund.