



## 103RD GENERAL ASSEMBLY

### State of Illinois

2023 and 2024

SB2279

Introduced 2/10/2023, by Sen. Robert F. Martwick

#### SYNOPSIS AS INTRODUCED:

New Act  
30 ILCS 105/5.992 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; and (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.

LRB103 27795 DTM 54173 b

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 the terms of an  
8 agreement between an independent contractor and a client that  
9 describes the work to be done and the compensation to be paid  
10 and that complies 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  
18 instrumentality thereof. "Client" also does not include owners  
19 of owner-occupied single-family residences, or owners of  
20 owner-occupied multi-family residences of 6 units or less, if  
21 the work is to be performed, under the agreed work terms, on  
22 the owner-occupied residence or the land adjacent to the  
23 residence.

1 "Compensation" means the earnings of an independent  
2 contractor under the applicable agreed work terms, including  
3 reimbursement for expenses.

4 "Department" means the Department of Labor.

5 "Director" means the Director of Labor.

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

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

12 (1) reduced to writing;

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

15 (3) signed by the independent contractor;

16 (4) signed by the client; and

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

19 Section 15. Payment of independent contractors. If a  
20 client and independent contractor have agreed to work terms,  
21 the independent contractor shall be paid the compensation  
22 earned in accordance with those terms not later than the last  
23 day of the month following the month in which the compensation  
24 is earned.

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

2 (a) The Department shall inquire diligently regarding any  
3 violations of this Act, institute actions for the penalties  
4 provided in this Act, and enforce the provisions of this Act.

5 (b) An independent contractor may file a complaint with  
6 the 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 date upon which compensation  
13 was due.

14 (c) The Department shall review submitted claim  
15 applications to determine whether there is cause for  
16 investigation. If the Department finds there is cause for an  
17 investigation, the department shall have the following powers:

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

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

17 (2) It shall have the power to take assignments of  
18 compensation claims in the name of the Director and the  
19 Director's successors in office and to prosecute actions  
20 for the collection of compensation for independent  
21 contractors financially unable to prosecute such claims  
22 when in the judgment of the Department such claims are  
23 valid and enforceable in the courts. No court costs or any  
24 fees for necessary process and proceedings shall be  
25 payable in advance by the Department for prosecuting such  
26 actions. If there is a judgment rendered against the

1 defendant, the court shall assess as part of that judgment  
2 the costs of the proceeding. Upon collection of the  
3 judgments, the Department shall pay from the proceeds of  
4 the judgment the costs to the independent contractor who  
5 is by law entitled to the same. The Department may join in  
6 a single proceeding any number of compensation claims  
7 against the same client, but the court shall have  
8 discretionary power to order a severance or separate trial  
9 for hearings.

10 (3) It shall have the power to make complaint in any  
11 court of competent jurisdiction for violations of this  
12 Act.

13 (4) It shall have the power, subject to appropriation,  
14 to establish an administrative procedure to adjudicate  
15 compensation claims and to issue final and binding  
16 administrative decisions on such compensation claims  
17 subject to the terms of the Administrative Review Law,  
18 which are hereby expressly adopted. To establish such a  
19 procedure, the Director or her or his authorized  
20 representative may adopt rules. The adoption, amendment,  
21 or rescission of rules for such a procedure shall be in  
22 conformity with the requirements of the Illinois  
23 Administrative Procedure Act.

24 (d) If the Department institutes any proceedings that  
25 require a hearing in the circuit court or through an  
26 administrative procedure, the Department shall notify the

1 independent contractor of the date, time, and location of the  
2 hearing.

3 (e) Nothing in this Act shall be construed to prevent any  
4 independent contractor from making complaint or prosecuting  
5 the independent contractor's own claim for compensation  
6 against a client. Any independent contractor aggrieved by a  
7 violation of this Act or any rule adopted under this Act may  
8 file suit in circuit court of the county in which the alleged  
9 violation occurred or in which any client who is party to the  
10 action resides, without regard to exhaustion of any  
11 alternative administrative remedies provided in this Act.  
12 Actions may be brought by one or more independent contractors  
13 for and on behalf of themselves and other independent  
14 contractors similarly situated. Complaints filed in accordance  
15 with this subsection shall be filed within 6 years after the  
16 compensation was due.

17 (f) Nothing in this Act shall be construed to limit the  
18 authority of the State's Attorney of any county to prosecute  
19 actions for violation of this Act or to enforce the provisions  
20 of this Act independently and without specific direction of  
21 the Department.

22 (g) The failure of a client to keep adequate records shall  
23 not bar an independent contractor or the Director from  
24 investigating or filing a complaint. In such a case, the  
25 client shall have the burden of proving, by clear and  
26 convincing evidence, that the independent contractor was paid

1 all the compensation owed to the contractor by the client  
2 under the agreed work terms.

3 Section 25. Penalties; recovery.

4 (a) Any independent contractor not timely paid  
5 compensation by a client as required by this Act is entitled to  
6 recover through a claim filed with the Department or in a civil  
7 action, but not both, the amount of any underpayments and  
8 damages of 2% of the amount of any such underpayments for each  
9 month following the date of payment during which the  
10 underpayments remain unpaid. In a civil action, the  
11 independent contractor shall also recover costs and all  
12 reasonable attorney's fees.

13 (b) Any client who has been demanded or ordered by the  
14 Department or ordered by the court to pay compensation due an  
15 independent contractor shall be required to pay a non-waivable  
16 administrative fee to the Department in the amount of \$250 if  
17 the amount ordered by the Department as compensation owed is  
18 \$3,000 or less; \$500 if the amount ordered by the Department as  
19 compensation owed is more than \$3,000, but less than \$10,000;  
20 and \$1,000 if the amount ordered by the Department as  
21 compensation owed is \$10,000 or more. Any client who has been  
22 so demanded or ordered by the Department or ordered by a court  
23 to pay such compensation and who fails to seek timely review of  
24 such a demand or order as provided for under this Act and who  
25 fails to comply within 15 calendar days after such demand or



1 within 35 days of an administrative or court order is entered  
2 shall also be liable to pay a penalty to the Department of 20%  
3 of the amount found owing and a penalty to the independent  
4 contractor of 1% per calendar day of the amount found owing for  
5 each day of delay in paying such compensation to the  
6 independent contractor. All moneys recovered as fees and civil  
7 penalties under this Act, except those owing to the affected  
8 independent contractor, shall be deposited into the  
9 Independent Contractor Compensation Theft Enforcement Fund, a  
10 special fund that is created in the State treasury. Moneys in  
11 the Fund may be used only by the Department for enforcement of  
12 this Act.

13 (c) Any client, or any agent of a client, who in any manner  
14 discriminates against any independent contractor because that  
15 independent contractor has made a complaint to the client, to  
16 the Director or his or her authorized representative in a  
17 public hearing, or to a community organization that the  
18 independent contractor has not been paid in accordance with  
19 the provisions of this Act, or because that independent  
20 contractor has caused to be instituted any proceeding under or  
21 related to this Act, or because that independent contractor  
22 has testified or is about to testify in an investigation or  
23 proceeding under this Act is guilty, upon conviction, of a  
24 Class C misdemeanor. An independent contractor who has been  
25 unlawfully retaliated against shall be entitled to recover  
26 through a claim filed with the Department or in a civil action,

1 but not both, all legal and equitable relief as may be  
2 appropriate. In a civil action, such independent contractor  
3 shall also recover costs and all reasonable attorney's fees.

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

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

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

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

20 Any client or any agent of a client who violates this  
21 Section of the Act a subsequent time within 2 years of a prior  
22 criminal conviction under this Section is guilty, upon  
23 conviction, of a Class 4 felony.

24 In addition to an individual who is deemed to be a client  
25 pursuant to Section 5 of this Act, any officers of a  
26 corporation or agents of a client who knowingly permit such

1 client to violate the provisions of this Act shall be deemed to  
2 be the client of the independent contractor.

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

10 Section 30. Departmental compensation recovery; remittance  
11 to aggrieved independent contractor.

12 (a) Upon the recovery of unpaid compensation from a client  
13 that has violated this Act, the Department shall conduct a  
14 good faith search to find the aggrieved independent  
15 contractor. If, after conducting a good faith search for the  
16 aggrieved independent contractor, the Department is unable to  
17 find the aggrieved independent contractor, the Department  
18 shall deposit the amount recovered into the Independent  
19 Contractor Compensation Theft Enforcement Fund.

20 (b) An aggrieved independent contractor may make a request  
21 to the Department in order to recover unpaid compensation that  
22 has been deposited into the Independent Contractor  
23 Compensation Theft Enforcement Fund. The Department shall not  
24 require the independent contractor to present a Social  
25 Security number or proof of United States citizenship. For the

1 purpose of paying claims under this Section from the  
2 Independent Contractor Compensation Theft Enforcement Fund to  
3 aggrieved independent contractors, the Comptroller shall  
4 assign a vendor payment number to the Department. When an  
5 aggrieved independent contractor makes a valid request for  
6 payment to the Department, the Department shall use the vendor  
7 payment number to process payment on behalf of the aggrieved  
8 independent contractor.

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

20 Section 90. The State Finance Act is amended by adding  
21 Section 5.992 as follows:

22 (30 ILCS 105/5.992 new)

23 Sec. 5.992. The Independent Contractor Compensation Theft

1 Enforcement Fund.