



## 96TH GENERAL ASSEMBLY

### State of Illinois

### 2009 and 2010

### SB3568

Introduced 2/10/2010, by Sen. William Delgado

#### SYNOPSIS AS INTRODUCED:

725 ILCS 5/111-4	from Ch. 38, par. 111-4
820 ILCS 115/11	from Ch. 48, par. 39m-11
820 ILCS 115/13	from Ch. 48, par. 39m-13
820 ILCS 115/14	from Ch. 48, par. 39m-14

Amends the Code of Criminal Procedure of 1963. Provides that 2 or more acts or transactions in violation of certain provisions of the Illinois Wage Payment and Collection Act may be joined in a single count of an indictment, information, or complaint. Amends the Illinois Wage Payment and Collection Act. Subject to appropriation, provides that the Department of Labor shall establish an administrative procedure to adjudicate claims or specific categories of claims. Establishes procedures for an employee who has not been paid the wage the employee is entitled by the Act to recover by filing a claim with the Department or in a civil action, but not both.

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CORRECTIONAL  
BUDGET AND  
IMPACT NOTE ACT  
MAY APPLY

FISCAL NOTE ACT  
MAY APPLY

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Code of Criminal Procedure of 1963 is  
5 amended by changing Section 111-4 as follows:

6 (725 ILCS 5/111-4) (from Ch. 38, par. 111-4)

7 Sec. 111-4. Joinder of offenses and defendants.

8 (a) Two or more offenses may be charged in the same  
9 indictment, information or complaint in a separate count for  
10 each offense if the offenses charged, whether felonies or  
11 misdemeanors or both, are based on the same act or on 2 or more  
12 acts which are part of the same comprehensive transaction.

13 (b) Two or more defendants may be charged in the same  
14 indictment, information or complaint if they are alleged to  
15 have participated in the same act or in the same comprehensive  
16 transaction out of which the offense or offenses arose. Such  
17 defendants may be charged in one or more counts together or  
18 separately and all of the defendants need not be charged in  
19 each count.

20 (c) Two or more acts or transactions in violation of any  
21 provision or provisions of Sections 8A-2, 8A-3, 8A-4, 8A-4A and  
22 8A-5 of the Illinois Public Aid Code, Section 14 of the  
23 Illinois Wage Payment and Collection Act, Sections 16-1, 16-2,

1 16-3, 16-5, 16-7, 16-8, 16-10, 16A-3, 16B-2, 16C-2, 17-1, 17-3,  
2 17-6, 17-7, 17-8, 17-9 or 17-10 of the Criminal Code of 1961  
3 and Section 118 of Division I of the Criminal Jurisprudence  
4 Act, may be charged as a single offense in a single count of  
5 the same indictment, information or complaint, if such acts or  
6 transactions by one or more defendants are in furtherance of a  
7 single intention and design or if the property, labor or  
8 services obtained are of the same person or are of several  
9 persons having a common interest in such property, labor or  
10 services. In such a charge, the period between the dates of the  
11 first and the final such acts or transactions may be alleged as  
12 the date of the offense and, if any such act or transaction by  
13 any defendant was committed in the county where the prosecution  
14 was commenced, such county may be alleged as the county of the  
15 offense.

16 (Source: P.A. 95-384, eff. 1-1-08; 96-354, eff. 8-13-09.)

17 Section 10. The Illinois Wage Payment and Collection Act is  
18 amended by changing Sections 11, 13, and 14 as follows:

19 (820 ILCS 115/11) (from Ch. 48, par. 39m-11)

20 Sec. 11. It shall be the duty of the Department of Labor to  
21 inquire diligently for any violations of this Act, and to  
22 institute the actions for penalties herein provided, and to  
23 enforce generally the provisions of this Act.

24 An employee may file a complaint with the Department

1 alleging violations of the Act by submitting a signed,  
2 completed wage claim application on the form provided by the  
3 Department and by submitting copies of all supporting  
4 documentation. Complaints shall be filed within one year after  
5 the wages, final compensation, or wage supplements were due.

6 Applications shall be reviewed by the Department to  
7 determine whether there is cause for investigation.

8 The Department shall have the following powers:

9 (a) To investigate and attempt equitably to adjust  
10 controversies between employees and employers in respect  
11 of wage claims arising under this Act and to that end the  
12 Department through the Director of Labor or any other  
13 person in the Department of Labor designated by him or her,  
14 shall have the power to administer oaths, subpoena and  
15 examine witnesses, to issue subpoenas duces tecum  
16 requiring the production of such books, papers, records and  
17 documents as may be evidence of any matter under inquiry  
18 and to examine and inspect the same as may relate to the  
19 question in dispute. Service of such subpoenas shall be  
20 made by any sheriff or any person. Any court in this State,  
21 upon the application of the Department may compel  
22 attendance of witnesses, the production of books and  
23 papers, and the giving of testimony before the Department  
24 by attachment for contempt or in any other way as the  
25 production of evidence may be compelled before such court.

26 (b) To take assignments of wage claims in the name of

1 the Director of Labor and his or her successors in office  
2 and prosecute actions for the collection of wages for  
3 persons financially unable to prosecute such claims when in  
4 the judgment of the Department such claims are valid and  
5 enforceable in the courts. No court costs or any fees for  
6 necessary process and proceedings shall be payable in  
7 advance by the Department for prosecuting such actions. In  
8 the event there is a judgment rendered against the  
9 defendant, the court shall assess as part of such judgment  
10 the costs of such proceeding. Upon collection of such  
11 judgments the Department shall pay from the proceeds of  
12 such judgment such costs to such person who is by law  
13 entitled to same. The Department may join in a single  
14 proceeding any number of wage claims against the same  
15 employer but the court shall have discretionary power to  
16 order a severance or separate trial for hearings.

17 (c) To make complaint in any court of competent  
18 jurisdiction of violations of this Act.

19 (d) Subject to appropriations, to establish an  
20 administrative procedure to adjudicate claims or specific  
21 categories of claims, including instances where an  
22 employer fails to timely respond to a notice of claim  
23 issued by the Department, filed with the Department for  
24 \$3,000 or less per individual employee, exclusive of  
25 penalties, costs and fines; and to issue final and binding  
26 administrative decisions subject to the Administrative

1       Review Law. To establish such a procedure, the Director of  
2       Labor or his or her authorized representative may  
3       promulgate rules and regulations. The adoption, amendment  
4       or rescission of rules and regulations for such a procedure  
5       shall be in conformity with the requirements of the  
6       Illinois Administrative Procedure Act.

7       Nothing herein shall be construed to prevent any employee  
8       from making complaint or prosecuting his or her own claim for  
9       wages. Any employee aggrieved by a violation of this Act or any  
10      rule adopted under this Act may file suit in circuit court of  
11      Illinois, in the county where the alleged offense occurred or  
12      where any employee who is party to the action resides, without  
13      regard to exhaustion of any alternative administrative  
14      remedies provided in this Act. Actions may be brought by one or  
15      more employees for and on behalf of themselves and other  
16      employees similarly situated.

17      Nothing herein shall be construed to limit the authority of  
18      the State's attorney of any county to prosecute actions for  
19      violation of this Act or to enforce the provisions thereof  
20      independently and without specific direction of the Department  
21      of Labor.

22      (Source: P.A. 95-209, eff. 8-16-07.)

23           (820 ILCS 115/13) (from Ch. 48, par. 39m-13)

24           Sec. 13. In addition to an individual who is deemed to be  
25      an employer pursuant to Section 2 of this Act, any ~~Any~~ officers

1 of a corporation or agents of an employer who knowingly permit  
2 such employer to violate the provisions of this Act shall be  
3 deemed to be the employers of the employees of the corporation.  
4 (Source: P.A. 78-914.)

5 (820 ILCS 115/14) (from Ch. 48, par. 39m-14)  
6 Sec. 14.

7 (a) Any employee not timely paid wages, final compensation,  
8 or wage supplements by his or her employer as required by this  
9 Act shall be entitled to recover through a claim filed with the  
10 Department of Labor or in a civil action, but not both, the  
11 amount of any such underpayments and damages of 2% of the  
12 amount of any such underpayments for each month following the  
13 date of payment during which such underpayments remain unpaid.  
14 In a civil action, such employee shall also recover costs and  
15 all reasonable attorney's fees.

16 (a-5) Any employer or any agent of an employer, who, being  
17 able to pay wages, final compensation, or wage supplements and  
18 being under a duty to pay, wilfully refuses to pay as provided  
19 in this Act, or falsely denies the amount or validity thereof  
20 or that the same is due, with intent to secure for himself or  
21 other person any underpayment of such indebtedness or with  
22 intent to annoy, harass, oppress, hinder, delay or defraud the  
23 person to whom such indebtedness is due, upon conviction, is  
24 guilty of:

25 (1) for unpaid wages, final compensation or wage

1 supplements in the amount of \$500 or less, a Class A  
2 misdemeanor; or

3 (2) for unpaid wages, final compensation or wage  
4 supplements in the amount of more than \$500, a Class 4  
5 felony ~~a Class C misdemeanor.~~

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

8 (b) Any employer who has been demanded by the Director of  
9 Labor or ordered by the court to pay wages, final compensation,  
10 or wage supplements due an employee shall also be liable to the  
11 Department of Labor for 20% of such unpaid wages and required  
12 to pay a non-waivable administrative fee of \$250 to the  
13 Department of Labor. If an employer fails to pay penalties or  
14 wages that have been so ordered ~~and who shall fail to do so~~  
15 ~~within 15 calendar days after such demand or order is entered,~~  
16 the employer shall also be liable to pay an additional ~~a~~  
17 penalty of 1% per calendar day to the employee for each day of  
18 delay in paying such wages to the employee ~~up to an amount~~  
19 ~~equal to twice the sum of unpaid wages due the employee. Such~~  
20 ~~employer shall also be liable to the Department of Labor for~~  
21 ~~20% of such unpaid wages. All moneys recovered as fees and~~  
22 civil fines under this Act shall be paid into the Wage Theft  
23 Enforcement Fund, a special fund which is hereby created in the  
24 State treasury. Moneys in the Fund may be used only for  
25 enforcement of this Act.

26 (b-5) Penalties, fines and fees under this Section may be



1 recovered in a civil action brought by the Director in any  
2 circuit court or in any administrative adjudicative proceeding  
3 under this Act. In any such ~~this~~ litigation, the Director of  
4 Labor shall be represented by the Attorney General.

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

22 (Source: P.A. 94-1025, eff. 7-14-06; 95-209, eff. 8-16-07.)