



Rep. Robert Martwick

Filed: 4/5/2016

09900HB1289ham001

LRB099 05151 JLS 46403 a

1 AMENDMENT TO HOUSE BILL 1289

2 AMENDMENT NO. _____. Amend House Bill 1289 by replacing
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the
5 Independent Contractor Prompt Payment Act.

6 Section 5. Definitions. In this Act:

7 "Department" means the Department of Labor.

8 "Director" means the Director of Labor.

9 "Client" includes a corporation, limited liability
10 company, partnership, association, or non-profit organization
11 contracting with an independent contractor in any occupation,
12 industry, trade, business, or service for compensation equal to
13 or greater than \$600. The term "client" does not include a
14 governmental entity including, but not limited to, any agency,
15 board, department, or commission of the State or any political
16 subdivision thereof and does not include a person. The term

1 "client" does not include the owners of one-family dwellings
2 and 2-family dwellings.

3 "Compensation" means the earnings of an independent
4 contractor. The term "compensation" also includes
5 reimbursement for expenses.

6 "Construction contractor" means any person, sole
7 proprietor, partnership, firm, corporation, limited liability
8 company, association, or other legal entity who by oneself or
9 through others offers to undertake, holds oneself out as being
10 able to undertake, or does undertake a construction project.

11 "Construction project" means the providing of any labor or
12 services, and the use of any materials or equipment in order to
13 alter, build, excavate, add to, subtract from, improve, repair,
14 maintain, renovate, move, wreck, or demolish any bridge,
15 building, highway, road, railroad, land, tunnel, sewer,
16 drainage or other structure, project, development, or
17 improvement, or the doing of any part thereof, including the
18 erection of scaffolding or other structures or works in
19 connection therewith.

20 "Independent contractor" means a sole proprietor who is not
21 an employee and who is hired or retained by a client for an
22 amount equal to or greater than \$600; but does not include a
23 construction contractor.

24 Section 10. Payment of independent contractors. An
25 independent contractor shall be paid the compensation earned in

1 accordance with the agreed work terms. If an independent
2 contractor and client did not agree on a date for payment of
3 compensation earned, the independent contractor shall be paid
4 the compensation earned not later than the last day of the
5 month following the month in which the compensation is earned.
6 The agreed work terms shall be reduced in writing, signed by
7 both the client and the independent contractor, kept on file by
8 the client for a period of not less than 6 years and made
9 available to the Department upon request. The writing shall
10 include a description of how compensation earned and payable
11 shall be calculated. The failure of a client to produce such
12 written work terms, upon request of the Department, shall give
13 rise to a presumption that the terms that the independent
14 contractor has presented are the agreed terms.

15 Section 15. Investigation and adjustment of controversies.

16 (a) The Department shall investigate and attempt to adjust
17 equitably controversies between clients and independent
18 contractors relating to this Act.

19 (b) The Department may take assignments of claims for
20 compensation from independent contractors or third parties in
21 trust for such independent contractors or for the various funds
22 for such independent contractors. Those assignments shall run
23 to the Department. The Department may sue clients on
24 compensation claims assigned to it. The Department may join in
25 a single action any number of compensation claims against the

1 same company.

2 (c) An independent contractor may file with the Department
3 a complaint regarding a violation of this Act for an
4 investigation of such complaint and statement setting the
5 appropriate remedy, if any. Failure of a client to keep
6 adequate records shall not operate as a bar to the filing of a
7 complaint by an independent contractor. In such a case the
8 client in violation has the burden of proving that the
9 complaining independent contractor was paid compensation.

10 (d) On behalf of any independent contractor paid less than
11 the compensation to which he or she is entitled under the
12 agreed work terms under the provisions of this Act, the
13 Department may bring any legal action necessary, including
14 administrative action, to collect such claim and as part of
15 such legal action, in addition to any other remedies and
16 penalties otherwise available under this Act, the Department
17 shall assess against the client an additional amount as
18 liquidated damages, unless the client proves a good faith basis
19 for believing that its underpayment of compensation was in
20 compliance with the law. Liquidated damages shall be calculated
21 by the Department as no more than 100% of the total amount of
22 compensation found to be due. In any action instituted in the
23 courts upon a compensation claim by an independent contractor
24 or the Department in which the independent contractor prevails,
25 the court shall allow such independent contractor all
26 reasonable attorney's fees, prejudgment interest as required

1 under the civil practice law and rules, and, unless the client
2 proves a good faith basis to believe that its underpayment of
3 compensation was in compliance with the law, an additional
4 amount as liquidated damages equal to 100% of the total amount
5 of compensation found to be due. The remedies provided by this
6 article may be enforced simultaneously or consecutively so far
7 as not inconsistent with each other.

8 (e) Notwithstanding any other provision of law, an action
9 to recover upon a liability imposed by this Act must be
10 commenced within 6 years after the completion of the work. An
11 independent contractor has the right to recover full
12 compensation accrued during the 6 years previous to the
13 commencing of the action, whether the action is instituted by
14 the independent contractor or by the Department.

15 (f) An independent contractor who files a complaint
16 regarding a violation of this Act shall be provided with a
17 written description of the anticipated processing of the
18 complaint, including investigation, case conference, potential
19 civil and criminal penalties, and collection procedures.

20 (g) An independent contractor and his or her representative
21 shall be notified in writing of any case conference before it
22 is held and given the opportunity to attend. An independent
23 contractor and his or her representative shall be notified in
24 writing of any award and collection of back compensation and
25 civil penalties, and of any intent to seek criminal penalties.
26 If criminal penalties are sought, the independent contractor

1 and his or her representative shall be notified of the outcome
2 of prosecution.

3 Section 20. Determination of violation; order directing
4 compliance.

5 (a) If the Department determines that a client has violated
6 a provision of this Act, or a rule adopted under this Act, by
7 failing to pay the compensation of its independent contractors,
8 the Department shall issue to the client an order directing
9 compliance, which shall describe particularly the nature of the
10 alleged violation, and order the payment of interest at the
11 rate of interest then in effect as prescribed under the
12 Interest Act from the date of the underpayment to the date of
13 the payment. In addition to directing payment of compensation
14 found to be due, an order issued to a client who previously has
15 been found in violation of this Act or rules or to a client
16 whose violation is willful or egregious shall direct payment to
17 the Department of an additional sum as a civil penalty in an
18 amount equal to double the total amount found to be due.

19 (b) A client who does not pay the compensation of all of
20 its independent contractors in accordance with the provisions
21 of this Act and the officers and agents of any client who
22 knowingly permit the client to violate this Act by failing to
23 pay the compensation of any of its independent contractors in
24 accordance with the provisions this Act shall be guilty of a
25 Class A misdemeanor for the first offense and upon conviction

1 therefor shall be fined not less than \$500 nor more than
2 \$20,000 or imprisoned for not more than one year, and, if any
3 second or subsequent offense occurs within 6 years after the
4 date of conviction for a prior offense, shall be guilty of a
5 Class 4 felony for the second or subsequent offense, and upon
6 conviction therefor, shall be fined not less than \$500 nor more
7 than \$20,000 or imprisoned for not more than one year plus one
8 day or punished by both such fine and imprisonment, for each
9 such offense.

10 Section 25. Representation by the Attorney General.

11 (a) Penalties and fees assessed under this Act may be
12 recovered in a civil action brought by the Department in the
13 circuit court or in an administrative action.

14 (b) The Attorney General shall represent the Department in
15 administrative proceedings and civil actions brought under
16 this Act.

17 Section 30. Rules. The Department is authorized to adopt
18 rules necessary for the administration of this Act.

19 Section 35. Inapplicability. This Act does not apply to:

20 (1) real estate brokers, associate brokers, or
21 salespersons licensed pursuant to the Real Estate License Act
22 of 2000;

23 (2) work performed on one-family dwellings or 2-family

1 dwellings; or

2 (3) construction contractors or construction projects.".