



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB0366

by Rep. Margo McDermed

SYNOPSIS AS INTRODUCED:

820 ILCS 185/40
820 ILCS 185/42
820 ILCS 185/45

Amends the Employee Classification Act. Provides that an employer that violates any provision of the Act or rule adopted under the Act is subject to a civil penalty not to exceed: (i) \$1,500 (rather than \$1,000) for each violation found in the first audit by the Department of Labor and (ii) \$2,500 (rather than \$2,000) for each repeat violation found by the Department within a 5-year period. Provides that a person who willfully violates any provision of the Act or rule adopted under the Act or obstructs the Director of Labor or any other person authorized to inspect places of employment under the Act is liable for penalties up to triple (rather than double) the statutory amount. Provides that an employer that is found to have willfully violated any provision of the Act shall be debarred from being awarded a State contract. Effective immediately.

LRB100 05518 KTG 15530 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 5. The Employee Classification Act is amended by
5 changing Sections 40, 42, and 45 as follows:

6 (820 ILCS 185/40)

7 Sec. 40. Penalties.

8 (a) An employer or entity that violates any of the
9 provisions of this Act or any rule adopted under this Act shall
10 be subject to a civil penalty not to exceed \$1,500 ~~\$1,000~~ for
11 each violation found in the first audit by the Department.
12 Following a first audit, an employer or entity shall be subject
13 to a civil penalty not to exceed \$2,500 ~~\$2,000~~ for each repeat
14 violation found by the Department within a 5 year period. For
15 purposes of this Section, each violation of this Act for each
16 person and for each day the violation continues shall
17 constitute a separate and distinct violation. In determining
18 the amount of a penalty, the Director shall consider the
19 appropriateness of the penalty to the employer or entity
20 charged, upon the determination of the gravity of the
21 violations.

22 (b) The amount of the penalty, when finally determined, may
23 be recovered in any administrative proceeding or a civil action

1 filed in any circuit court by the Director of Labor, or a
2 person aggrieved by a violation of this Act or any rule adopted
3 under this Act.

4 (1) The Department shall distribute to all affected
5 employees 10% of the civil penalty recovered as a result of
6 any administrative proceeding or civil action brought by
7 the Department. The remaining 90% of the amount recovered
8 shall be submitted to the Director of Labor.

9 (2) In any civil action brought by an interested party
10 pursuant to this Section, the circuit court shall award the
11 interested party 10% of the amount recovered. In such case,
12 the remaining amount recovered shall be submitted to the
13 Director of Labor.

14 (c) Any uncollected amount shall be subject to the
15 provisions of the Illinois State Collection Act of 1986.

16 (Source: P.A. 98-106, eff. 1-1-14.)

17 (820 ILCS 185/42)

18 Sec. 42. Debarments. For any second or subsequent violation
19 determined by the Department which is within 5 years of an
20 earlier violation, or a violation in accordance with the
21 provisions of Section 45 of this Act, the Department shall add
22 the employer or entity's name to a list to be posted on the
23 Department's official website. Upon such notice, the
24 Department shall notify the violating employer or entity. No
25 state contract shall be awarded to an employer or entity

1 appearing on the list until 5 4 years have elapsed from the
2 date of the last violation.

3 (Source: P.A. 95-26, eff. 1-1-08.)

4 (820 ILCS 185/45)

5 Sec. 45. Willful violations.

6 (a) Whoever willfully violates any of the provisions of
7 this Act or any rule adopted under this Act or whoever
8 obstructs the Director of Labor, or his or her representatives,
9 or any other person authorized to inspect places of employment
10 under this Act shall be liable for penalties up to triple
11 ~~double~~ the statutory amount.

12 (b) Whoever willfully violates any of the provisions of
13 this Act or any rule adopted under this Act shall be liable to
14 the employee for punitive damages in an amount equal to the
15 penalties assessed in subsection (a) of this Section.

16 (c) The penalty shall be imposed in cases in which an
17 employer or entity's conduct is proven by a preponderance of
18 the evidence to be willful. The penalty may be recovered in a
19 civil action brought by the Director of Labor in any circuit
20 court. In any such action, the Director of Labor shall be
21 represented by the Attorney General. Any uncollected amount
22 shall be subject to the provisions of the Illinois State
23 Collection Act of 1986.

24 (d) An entity or employer that willfully violates any
25 provision of this Act or any rule adopted under this Act

1 commits a Class C misdemeanor. An entity or employer that
2 commits a second or subsequent violation within a 5 year period
3 commits a Class 4 felony.

4 (e) An entity or employer that is found to have willfully
5 violated any provision of this Act shall be debarred from being
6 awarded a State contract as provided under Section 42 of this
7 Act.

8 (Source: P.A. 95-26, eff. 1-1-08.)

9 Section 99. Effective date. This Act takes effect upon
10 becoming law.