

**HB0085**



**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.