

AN ACT concerning finance.

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

Section 5. The State Prompt Payment Act is amended by adding Sections 3-3.5, 8, 9, 10, and 11 as follows:

(30 ILCS 540/3-3.5 new)

Sec. 3-3.5. Vendor payment contracts. Any contract executed under the Vendor Payment Program specified in Section 900.125 of Title 74 of the Illinois Administrative Code prior to June 30, 2018 shall remain in effect until those contracts have expired. Those parties with existing contracts shall comply with additional reporting requirements established under this amendatory Act of the 100th General Assembly or rules adopted hereunder.

(30 ILCS 540/8 new)

Sec. 8. Vendor Payment Program.

(a) As used in this Section:

"Applicant" means any entity seeking to be designated as a qualified purchaser.

"Application period" means the time period when the Program is accepting applications as determined by the Department of Central Management Services.

"Assigned penalties" means penalties payable by the State in accordance with this Act that are assigned to the qualified purchaser of an assigned receivable.

"Assigned receivable" means the base invoice amount of a qualified account receivable and any associated assigned penalties due, currently and in the future, in accordance with this Act.

"Assignment agreement" means an agreement executed and delivered by a participating vendor and a qualified purchaser, in which the participating vendor will assign one or more qualified accounts receivable to the qualified purchaser and make certain representations and warranties in respect thereof.

"Base invoice amount" means the unpaid principal amount of the invoice associated with an assigned receivable.

"Department" means the Department of Central Management Services.

"Medical assistance program" means any program which provides medical assistance under Article V of the Illinois Public Aid Code, including Medicaid.

"Participating vendor" means a vendor whose application for the sale of a qualified account receivable is accepted for purchase by a qualified purchaser under the Program terms.

"Program" means a Vendor Payment Program.

"Prompt payment penalties" means penalties payable by the State in accordance with this Act.

"Purchase price" means 100% of the base invoice amount associated with an assigned receivable minus: (1) any deductions against the assigned receivable arising from State offsets; and (2) if and to the extent exercised by a qualified purchaser, other deductions for amounts owed by the participating vendor to the qualified purchaser for State offsets applied against other accounts receivable assigned by the participating vendor to the qualified purchaser under the Program.

"Qualified account receivable" means an account receivable due and payable by the State that is outstanding for 90 days or more, is eligible to accrue prompt payment penalties under this Act and is verified by the relevant State agency. A qualified account receivable shall not include any account receivable related to medical assistance program (including Medicaid) payments or any other accounts receivable, the transfer or assignment of which is prohibited by, or otherwise prevented by, applicable law.

"Qualified purchaser" means any entity that, during any application period, is approved by the Department of Central Management Services to participate in the Program on the basis of certain qualifying criteria as determined by the Department.

"State offsets" means any amount deducted from payments made by the State in respect of any qualified account receivable due to the State's exercise of any offset or other contractual rights against a participating vendor. For the purpose of this Section, "State offsets" include statutorily required administrative fees imposed under the State Comptroller Act.

"Sub-participant" means any individual or entity that intends to purchase assigned receivables, directly or indirectly, by or through an applicant or qualified purchaser for the purposes of the Program.

"Sub-participant certification" means an instrument executed and delivered to the Department of Central Management Services by a sub-participant, in which the sub-participant certifies its agreement, among others, to be bound by the terms and conditions of the Program as a condition to its participation in the Program as a sub-participant.

(b) This Section reflects the provisions of Section 900.125 of Title 74 of the Illinois Administrative Code prior to January 1, 2018. The requirements of this Section establish the criteria for participation by participating vendors and qualified purchasers in a Vendor Payment Program. Information regarding the Vendor Payment Program may be found at the Internet website for the Department of Central Management Services.

(c) The State Comptroller and the Department of Central Management Services are authorized to establish and implement the Program under Section 3-3. This Section applies to all qualified accounts receivable not otherwise excluded from receiving prompt payment interest under Section 900.120 of Title 74 of the Illinois Administrative Code. This Section shall not apply to the purchase of any accounts receivable related to payments made under a medical assistance program, including Medicaid payments, or any other purchase of accounts receivable that is otherwise prohibited by law.

(d) Under the Program, qualified purchasers may purchase from participating vendors certain qualified accounts receivable owed by the State to the participating vendors. A participating vendor shall not simultaneously apply to sell the same qualified account receivable to more than one qualified purchaser. In consideration of the payment of the purchase price, a participating vendor shall assign to the qualified purchaser all of its rights to payment of the qualified account receivable, including all current and future prompt payment penalties due to that qualified account receivable in accordance with this Act.

(e) A vendor may apply to participate in the Program if:

(1) the vendor is owed an account receivable by the State for which prompt payment penalties have commenced accruing;

(2) the vendor's account receivable is eligible to

accrue prompt payment penalty interest under this Act;

(3) the vendor's account receivable is not for payments under a medical assistance program; and

(4) the vendor's account receivable is not prohibited by, or otherwise prevented by, applicable law from being transferred or assigned under this Section.

(f) The Department shall review and approve or disapprove each applicant seeking a qualified purchaser designation. Factors to be considered by the Department in determining whether an applicant shall be designated as a qualified purchaser include, but are not limited to, the following:

(1) the qualified purchaser's agreement to commit a minimum purchase amount as established from time to time by the Department based upon the current needs of the Program and the qualified purchaser's demonstrated ability to fund its commitment;

(2) the demonstrated ability of a qualified purchaser's sub-participants to fund their portions of a qualified purchaser's minimum purchase commitment;

(3) the ability of a qualified purchaser and its sub-participants to meet standards of responsibility substantially in accordance with the requirements of the Standards of Responsibility found in subsection (b) of Section 1.2046 of Title 44 of the Illinois Administrative Code concerning government contracts, procurement, and property management;

(4) the agreement of each qualified purchaser, at its sole cost and expense, to administer and facilitate the operation of the Program with respect to that qualified purchaser, including, without limitation, assisting potential participating vendors with the application and assignment process;

(5) the agreement of each qualified purchaser, at its sole cost and expense, to establish a website that is determined by the Department to be sufficient to administer the Program in accordance with the terms and conditions of the Program;

(6) the agreement of each qualified purchaser, at its sole cost and expense, to market the Program to potential participating vendors;

(7) the agreement of each qualified purchaser, at its sole cost and expense, to educate participating vendors about the benefits and risks associated with participation in the Program;

(8) the agreement of each qualified purchaser, at its sole cost and expense, to deposit funds into, release funds from, and otherwise maintain all required accounts in accordance with the terms and conditions of the Program. Subject to the Program terms, all required accounts shall be maintained and controlled by the qualified purchaser at the qualified purchaser's sole cost and at no cost, whether in the form of fees or otherwise, to the participating

vendors;

(9) the agreement of each qualified purchaser, at its sole cost and expense, to submit a monthly written report, in an acceptable electronic format, to the State Comptroller or its designee and the Department or its designee, within 10 days after the end of each month, which, unless otherwise specified by the Department, at a minimum, shall contain:

(A) a listing of each assigned receivable purchased by that qualified purchaser during the month, specifying the base invoice amount and invoice date of that assigned receivable and the name of the participating vendor, State contract number, voucher number, and State agency associated with that assigned receivable;

(B) a listing of each assigned receivable with respect to which the qualified purchaser has received payment of the base invoice amount from the State during that month, including the amount of and date on which that payment was made and the name of the participating vendor, State contract number, voucher number, and State agency associated with the assigned receivable, and identifying the relevant application period for each assigned receivable;

(C) a listing of any payments of assigned penalties received from the State during the month, including the

amount of and date on which the payment was made, the name of the participating vendor, the voucher number for the assigned penalty receivable, and the associated assigned receivable, including the State contract number, voucher number, and State agency associated with the assigned receivable, and identifying the relevant application period for each assigned receivable;

(D) the aggregate number and dollar value of assigned receivables purchased by the qualified purchaser from the date on which that qualified purchaser commenced participating in the Program through the last day of the month;

(E) the aggregate number and dollar value of assigned receivables purchased by the qualified purchaser for which no payment by the State of the base invoice amount has yet been received, from the date on which the qualified purchaser commenced participating in the Program through the last day of the month;

(F) the aggregate number and dollar value of invoices purchased by the qualified purchaser for which no voucher has been submitted; and

(G) any other data the State Comptroller and the Department may reasonably request from time to time;

(10) the agreement of each qualified purchaser to use its reasonable best efforts, and for any sub-participant to

cause a qualified purchaser to use its reasonable best efforts, to diligently pursue receipt of assigned penalties associated with the assigned receivables, including, without limitation, by promptly notifying the relevant State agency that an assigned penalty is due and, if necessary, seeking payment of assigned penalties through the Illinois Court of Claims; and

(11) the agreement of each qualified purchaser and any sub-participant to use their reasonable best efforts to implement the Program terms and to perform their obligations under the Program in a timely fashion.

(g) Each qualified purchaser's performance and implementation of its obligations under subsection (f) shall be subject to review by the Department and the State Comptroller at any time to confirm that the qualified purchaser is undertaking those obligations in a manner consistent with the terms and conditions of the Program. A qualified purchaser's failure to so perform its obligations including, without limitation, its obligations to diligently pursue receipt of assigned penalties associated with assigned receivables, shall be grounds for the Department and the State Comptroller to terminate the qualified purchaser's participation in the Program under subsection (i). Any such termination shall be without prejudice to any rights a participating vendor may have against that qualified purchaser, in law or in equity, including, without limitation, the right to enforce the terms

of the assignment agreement and of the Program against the qualified purchaser.

(h) In determining whether any applicant shall be designated as a qualified purchaser, the Department shall have the right to review or approve sub-participants that intend to purchase assigned receivables, directly or indirectly, by or through the applicant. The Department reserves the right to reject or terminate the designation of any applicant as a qualified purchaser or require an applicant to exclude a proposed sub-participant in order to become or remain a qualified purchaser on the basis of a review, whether prior to or after the designation. Each applicant and each qualified purchaser has an affirmative obligation to promptly notify the Department of any change or proposed change in the identity of the sub-participants that it disclosed to the Department no later than 3 business days after that change. Each sub-participant shall be required to execute a sub-participant certification that will be attached to the corresponding qualified purchaser designation. Sub-participants shall meet, at a minimum, the requirements of paragraphs (2), (3), (10), and (11) of subsection (f).

(i) The Program, as codified under this Section, shall continue until terminated or suspended as follows:

(1) The Program may be terminated or suspended: (A) by the State Comptroller, after consulting with the Department, by giving 10 days prior written notice to the

Department and the qualified purchasers in the Program; or (B) by the Department, after consulting with the State Comptroller, by giving 10 days prior written notice to the State Comptroller and the qualified purchasers in the Program.

(2) In the event a qualified purchaser or sub-participant breaches or fails to meet any of the terms or conditions of the Program, that qualified purchaser or sub-participant may be terminated from the Program: (A) by the State Comptroller, after consulting with the Department. The termination shall be effective immediately upon the State Comptroller giving written notice to the Department and the qualified purchaser or sub-participant; or (B) by the Department, after consulting with the State Comptroller. The termination shall be effective immediately upon the Department giving written notice to the State Comptroller and the qualified purchaser or sub-participant.

(3) A qualified purchaser or sub-participant may terminate its participation in the Program, solely with respect to its own participation in the Program, in the event of any change to this Act from the form that existed on the date that the qualified purchaser or the sub-participant, as applicable, submitted the necessary documentation for admission into the Program if the change materially and adversely affects the qualified purchaser's

or the sub-participant's ability to purchase and receive payment on receivables on the terms described in this Section.

If the Program, a qualified purchaser, or a sub-participant is terminated or suspended under paragraphs (1) or (2) of this subsection (i), the Program, qualified purchaser, or sub-participant may be reinstated only by written agreement of the State Comptroller and the Department. No termination or suspension under paragraphs (1), (2), or (3) of this subsection (i) shall alter or affect the qualified purchaser's or sub-participant's obligations with respect to assigned receivables purchased by or through the qualified purchaser prior to the termination.

(30 ILCS 540/9 new)

Sec. 9. Vendor Payment Program financial backer disclosure.

(a) Within 60 days after the effective date of this amendatory Act of the 100th General Assembly, at the time of application, and annually on July 1 of each year, each qualified purchaser shall submit to the Department and the State Comptroller the following information about each person, director, owner, officer, association, financial backer, partnership, other entity, corporation, or trust with an indirect or direct financial interest in each qualified purchaser:

(1) percent ownership;

(2) type of ownership;

(3) first name, middle name, last name, maiden name (if applicable), including aliases or former names;

(4) mailing address;

(5) type of business entity, if applicable;

(6) dates and jurisdiction of business formation or incorporation, if applicable;

(7) names of controlling shareholders, class of stock, percentage ownership;

(8) any indirect earnings resulting from the Program;

and

(9) any earnings associated with the Program to any parties not previously disclosed.

(b) Within 60 days after the effective date of this amendatory Act of the 100th General Assembly, at the time of application, and annually on July 1 of each year, each trust associated with the qualified purchaser shall submit to the Department and the State Comptroller the following information:

(1) names, addresses, dates of birth, and percentages of interest of all beneficiaries;

(2) any indirect earnings resulting from the Program;

and

(3) any earnings associated with the Program to any parties not previously disclosed.

(c) Each qualified purchaser must submit a statement to the State Comptroller and the Department of Central Management Services disclosing whether such qualified purchaser or any related person, director, owner, officer, or financial backer has previously or currently retained or contracted with any registered lobbyist, lawyer, accountant, or other consultant to prepare the disclosure required under this Section.

(30 ILCS 540/10 new)

Sec. 10. Vendor Payment Program audit. The Office of the Auditor General shall perform a performance audit of the Program established under Section 8. The audit shall include, but not be limited to, a review of the administration of the Program and compliance with requirements applicable to participating vendors, qualified purchasers, qualified accounts receivable, and financial backer disclosures. The audit shall cover the Program's operations for fiscal years 2019 and 2020. Upon its completion and release, the Auditor General's report shall be posted on the Internet website of the Auditor General.

(30 ILCS 540/11 new)

Sec. 11. Vendor Payment Program accountability portal. The Department of Central Management Services and the State Comptroller shall publish on their respective Internet websites: (1) the monthly report information submitted under

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paragraph 9 of subsection (f) of Section 8; and (2) the information required to be submitted under Section 9.

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