

AN ACT concerning criminal law.

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

Section 2. The State Finance Act is amended by adding Section 5.755 as follows:

(30 ILCS 105/5.755 new)

Sec. 5.755. The Wage Theft Enforcement Fund.

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

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

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

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

(b) Two or more defendants may be charged in the same indictment, information or complaint if they are alleged to have participated in the same act or in the same comprehensive transaction out of which the offense or offenses arose. Such defendants may be charged in one or more counts together or

separately and all of the defendants need not be charged in each count.

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

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

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

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

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

An employee may file a complaint with the Department alleging violations of the Act by submitting a signed, completed wage claim application on the form provided by the Department and by submitting copies of all supporting documentation. Complaints shall be filed within one year after the wages, final compensation, or wage supplements were due.

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

The Department shall have the following powers:

(a) To investigate and attempt equitably to adjust controversies between employees and employers in respect of wage claims arising under this Act and to that end the Department through the Director of Labor or any other person in the Department of Labor designated by him or her, shall have the power to administer oaths, subpoena and examine witnesses, to issue subpoenas duces tecum requiring the production of such books, papers, records and documents as may be evidence of any matter under inquiry and to examine and inspect the same as may relate to the question in dispute. Service of such subpoenas shall be made by any sheriff or any person. Any court in this State,

upon the application of the Department may compel attendance of witnesses, the production of books and papers, and the giving of testimony before the Department by attachment for contempt or in any other way as the production of evidence may be compelled before such court.

(b) To take assignments of wage claims in the name of the Director of Labor and his or her successors in office and prosecute actions for the collection of wages for persons financially unable to prosecute such claims when in the judgment of the Department such claims are valid and enforceable in the courts. No court costs or any fees for necessary process and proceedings shall be payable in advance by the Department for prosecuting such actions. In the event there is a judgment rendered against the defendant, the court shall assess as part of such judgment the costs of such proceeding. Upon collection of such judgments the Department shall pay from the proceeds of such judgment such costs to such person who is by law entitled to same. The Department may join in a single proceeding any number of wage claims against the same employer but the court shall have discretionary power to order a severance or separate trial for hearings.

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

(d) In addition to the aforementioned powers, subject to appropriation, the Department may establish an

administrative procedure to adjudicate claims or specific categories of claims filed with the Department for \$3,000 or less per individual employee, exclusive of penalties, costs and fines, including instances where an employer fails to timely respond to a notice of claim issued by the Department; and to issue final and binding administrative decisions on such claims subject to the Administrative Review Law. To establish such a procedure, the Director of Labor or her or his authorized representative may promulgate rules and regulations. The adoption, amendment or rescission of rules and regulations for such a procedure shall be in conformity with the requirements of the Illinois Administrative Procedure Act.

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

Nothing herein shall be construed to limit the authority of the State's attorney of any county to prosecute actions for violation of this Act or to enforce the provisions thereof

independently and without specific direction of the Department of Labor.

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

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

Sec. 13. In addition to an individual who is deemed to be an employer pursuant to Section 2 of this Act, any ~~Any~~ officers of a corporation or agents of an employer who knowingly permit such employer to violate the provisions of this Act shall be deemed to be the employers of the employees of the corporation.

(Source: P.A. 78-914.)

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

Sec. 14.

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

(a-5) In addition to the remedies provided in subsections (a), (b), and (c) of this Section, any ~~Any~~ employer or any agent of an employer, who, being able to pay wages, final

compensation, or wage supplements and being under a duty to pay, wilfully refuses to pay as provided in this Act, or falsely denies the amount or validity thereof or that the same is due, with intent to secure for himself or other person any underpayment of such indebtedness or with intent to annoy, harass, oppress, hinder, delay or defraud the person to whom such indebtedness is due, upon conviction, is guilty of:

(1) for unpaid wages, final compensation or wage supplements in the amount of \$5,000 or less, a Class B misdemeanor; or

(2) for unpaid wages, final compensation or wage supplements in the amount of more than \$5,000, a Class A misdemeanor ~~a Class C misdemeanor.~~

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

Any employer or any agent of an employer who violates this Section of the Act a subsequent time within 2 years of a prior criminal conviction under this Section is guilty, upon conviction, of a Class 4 felony.

(b) Any employer who has been demanded or ordered by the Department ~~Director of Labor~~ or ordered by the court to pay wages, final compensation, or wage supplements due an employee shall be required to pay a non-waivable administrative fee of \$250 to the Department of Labor. Any employer who has been so demanded or ordered by the Department or ordered by a court to pay such wages, final compensation, or wage supplements and who

fails to seek timely review of such a demand or order as provided for under this Act and who fails to comply within 15 calendar days after such demand or within 35 days of an administrative or court order is entered shall also be liable to pay a penalty to the Department of Labor of 20% of the amount found owing and a penalty to the employee of 1% per calendar day of the amount found owing for each day of delay in paying such wages to the employee. All moneys recovered as fees and civil penalties under this Act, except those owing to the affected employee, shall be deposited into the Wage Theft Enforcement Fund, a special fund which is hereby created in the State treasury. Moneys in the Fund may be used only for enforcement of this Act. ~~and who shall fail to do so within 15 days after such demand or order is entered shall be liable to pay a penalty of 1% per calendar day to the employee for each day of delay in paying such wages to the employee up to an amount equal to twice the sum of unpaid wages due the employee. Such employer shall also be liable to the Department of Labor for 20% of such unpaid wages.~~

(b-5) Penalties and fees under this Section may be assessed by the Department and recovered in a civil action brought by the Department ~~Director~~ in any circuit court or in any administrative adjudicative proceeding under this Act. In any such civil action or administrative adjudicative proceeding under this Act ~~this litigation~~, the Department ~~Director of Labor~~ shall be represented by the Attorney General.

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

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