

SB1812



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

SB1812

Introduced 2/20/2015, by Sen. Iris Y. Martinez

SYNOPSIS AS INTRODUCED:

820 ILCS 305/1

from Ch. 48, par. 138.1

Amends the Workers' Compensation Act. Provides that a borrowing employer that has entered into an agreement with a loaning employer may not avail itself of the exclusive remedy protection under the Act. Provides that any agreement between a loaning employer and a borrowing employer by which the loaning employer is entitled to receive certain reimbursements relating to fees and costs in hearings before the Illinois Workers' Compensation Commission is prohibited, is against public policy, and shall be wholly void.

LRB099 07060 JLS 27144 b

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 Workers' Compensation Act is amended by
5 changing Section 1 as follows:

6 (820 ILCS 305/1) (from Ch. 48, par. 138.1)

7 Sec. 1. This Act may be cited as the Workers' Compensation
8 Act.

9 (a) The term "employer" as used in this Act means:

10 1. The State and each county, city, town, township,
11 incorporated village, school district, body politic, or
12 municipal corporation therein.

13 2. Every person, firm, public or private corporation,
14 including hospitals, public service, eleemosynary, religious
15 or charitable corporations or associations who has any person
16 in service or under any contract for hire, express or implied,
17 oral or written, and who is engaged in any of the enterprises
18 or businesses enumerated in Section 3 of this Act, or who at or
19 prior to the time of the accident to the employee for which
20 compensation under this Act may be claimed, has in the manner
21 provided in this Act elected to become subject to the
22 provisions of this Act, and who has not, prior to such
23 accident, effected a withdrawal of such election in the manner

1 provided in this Act.

2 3. Any one engaging in any business or enterprise referred
3 to in subsections 1 and 2 of Section 3 of this Act who
4 undertakes to do any work enumerated therein, is liable to pay
5 compensation to his own immediate employees in accordance with
6 the provisions of this Act, and in addition thereto if he
7 directly or indirectly engages any contractor whether
8 principal or sub-contractor to do any such work, he is liable
9 to pay compensation to the employees of any such contractor or
10 sub-contractor unless such contractor or sub-contractor has
11 insured, in any company or association authorized under the
12 laws of this State to insure the liability to pay compensation
13 under this Act, or guaranteed his liability to pay such
14 compensation. With respect to any time limitation on the filing
15 of claims provided by this Act, the timely filing of a claim
16 against a contractor or subcontractor, as the case may be,
17 shall be deemed to be a timely filing with respect to all
18 persons upon whom liability is imposed by this paragraph.

19 In the event any such person pays compensation under this
20 subsection he may recover the amount thereof from the
21 contractor or sub-contractor, if any, and in the event the
22 contractor pays compensation under this subsection he may
23 recover the amount thereof from the sub-contractor, if any.

24 This subsection does not apply in any case where the
25 accident occurs elsewhere than on, in or about the immediate
26 premises on which the principal has contracted that the work be

1 done.

2 4. Where an employer operating under and subject to the
3 provisions of this Act loans an employee to another such
4 employer and such loaned employee sustains a compensable
5 accidental injury in the employment of such borrowing employer
6 and where such borrowing employer does not provide or pay the
7 benefits or payments due such injured employee, such loaning
8 employer is liable to provide or pay all benefits or payments
9 due such employee under this Act and as to such employee the
10 liability of such loaning and borrowing employers is joint and
11 several, provided that such loaning employer is in the absence
12 of agreement to the contrary entitled to receive from such
13 borrowing employer full reimbursement for all sums paid or
14 incurred pursuant to this paragraph together with reasonable
15 attorneys' fees and expenses in any hearings before the
16 Illinois Workers' Compensation Commission or in any action to
17 secure such reimbursement. Where any benefit is provided or
18 paid by such loaning employer the employee has the duty of
19 rendering reasonable cooperation in any hearings, trials or
20 proceedings in the case, including such proceedings for
21 reimbursement.

22 Where an employee files an Application for Adjustment of
23 Claim with the Illinois Workers' Compensation Commission
24 alleging that his claim is covered by the provisions of the
25 preceding paragraph, and joining both the alleged loaning and
26 borrowing employers, they and each of them, upon written demand

1 by the employee and within 7 days after receipt of such demand,
2 shall have the duty of filing with the Illinois Workers'
3 Compensation Commission a written admission or denial of the
4 allegation that the claim is covered by the provisions of the
5 preceding paragraph and in default of such filing or if any
6 such denial be ultimately determined not to have been bona fide
7 then the provisions of Paragraph K of Section 19 of this Act
8 shall apply.

9 An employer whose business or enterprise or a substantial
10 part thereof consists of hiring, procuring or furnishing
11 employees to or for other employers operating under and subject
12 to the provisions of this Act for the performance of the work
13 of such other employers and who pays such employees their
14 salary or wages notwithstanding that they are doing the work of
15 such other employers shall be deemed a loaning employer within
16 the meaning and provisions of this Section.

17 Notwithstanding any other provision of this Act to the
18 contrary, any borrowing employer that has entered into an
19 agreement with any loaning employer as defined in this Section
20 in the above paragraph may not and shall not avail itself of
21 the exclusive remedy protection under subsection (a) of Section
22 5 of this Act in any suit for a common law or statutory right to
23 recover damages from any such borrowing employer.

24 Notwithstanding any other provision of this Act to the
25 contrary, any agreement between a loaning employer as defined
26 in this Section in the above paragraph and any borrowing

1 employer by which the loaning employer is entitled to receive
2 from the borrowing employer full reimbursement for all sums
3 paid or incurred pursuant to this paragraph and reasonable
4 attorney's fees and expenses in any hearings before the
5 Illinois Workers' Compensation Commission or in any action to
6 secure such reimbursement is prohibited, is against public
7 policy, and shall be wholly void.

8 (b) The term "employee" as used in this Act means:

9 1. Every person in the service of the State, including
10 members of the General Assembly, members of the Commerce
11 Commission, members of the Illinois Workers' Compensation
12 Commission, and all persons in the service of the University of
13 Illinois, county, including deputy sheriffs and assistant
14 state's attorneys, city, town, township, incorporated village
15 or school district, body politic, or municipal corporation
16 therein, whether by election, under appointment or contract of
17 hire, express or implied, oral or written, including all
18 members of the Illinois National Guard while on active duty in
19 the service of the State, and all probation personnel of the
20 Juvenile Court appointed pursuant to Article VI of the Juvenile
21 Court Act of 1987, and including any official of the State, any
22 county, city, town, township, incorporated village, school
23 district, body politic or municipal corporation therein except
24 any duly appointed member of a police department in any city
25 whose population exceeds 500,000 according to the last Federal
26 or State census, and except any member of a fire insurance

1 patrol maintained by a board of underwriters in this State. A
2 duly appointed member of a fire department in any city, the
3 population of which exceeds 500,000 according to the last
4 federal or State census, is an employee under this Act only
5 with respect to claims brought under paragraph (c) of Section
6 8.

7 One employed by a contractor who has contracted with the
8 State, or a county, city, town, township, incorporated village,
9 school district, body politic or municipal corporation
10 therein, through its representatives, is not considered as an
11 employee of the State, county, city, town, township,
12 incorporated village, school district, body politic or
13 municipal corporation which made the contract.

14 2. Every person in the service of another under any
15 contract of hire, express or implied, oral or written,
16 including persons whose employment is outside of the State of
17 Illinois where the contract of hire is made within the State of
18 Illinois, persons whose employment results in fatal or
19 non-fatal injuries within the State of Illinois where the
20 contract of hire is made outside of the State of Illinois, and
21 persons whose employment is principally localized within the
22 State of Illinois, regardless of the place of the accident or
23 the place where the contract of hire was made, and including
24 aliens, and minors who, for the purpose of this Act are
25 considered the same and have the same power to contract,
26 receive payments and give quittances therefor, as adult

1 employees.

2 3. Every sole proprietor and every partner of a business
3 may elect to be covered by this Act.

4 An employee or his dependents under this Act who shall have
5 a cause of action by reason of any injury, disablement or death
6 arising out of and in the course of his employment may elect to
7 pursue his remedy in the State where injured or disabled, or in
8 the State where the contract of hire is made, or in the State
9 where the employment is principally localized.

10 However, any employer may elect to provide and pay
11 compensation to any employee other than those engaged in the
12 usual course of the trade, business, profession or occupation
13 of the employer by complying with Sections 2 and 4 of this Act.
14 Employees are not included within the provisions of this Act
15 when excluded by the laws of the United States relating to
16 liability of employers to their employees for personal injuries
17 where such laws are held to be exclusive.

18 The term "employee" does not include persons performing
19 services as real estate broker, broker-salesman, or salesman
20 when such persons are paid by commission only.

21 (c) "Commission" means the Industrial Commission created
22 by Section 5 of "The Civil Administrative Code of Illinois",
23 approved March 7, 1917, as amended, or the Illinois Workers'
24 Compensation Commission created by Section 13 of this Act.

25 (d) To obtain compensation under this Act, an employee
26 bears the burden of showing, by a preponderance of the

1 evidence, that he or she has sustained accidental injuries
2 arising out of and in the course of the employment.

3 (Source: P.A. 97-18, eff. 6-28-11; 97-268, eff. 8-8-11; 97-813,
4 eff. 7-13-12.)