



## 104TH GENERAL ASSEMBLY

### State of Illinois

2025 and 2026

SB2729

Introduced 10/28/2025, by Sen. Don Harmon

#### SYNOPSIS AS INTRODUCED:

New Act  
740 ILCS 174/5  
740 ILCS 174/15

Creates the Illinois Bivens Act. Authorizes any resident of the State, other than an officer or employee of a State or local governmental entity in the State, to bring a civil action against any person who, while participating in civil immigration enforcement, knowingly engages in conduct that violates the Illinois Constitution or the United States Constitution. Establishes remedies for violations of the Act. Creates criteria that are to be used in determining the amount of punitive damages that will be awarded under the Act. Amends the Whistleblower Act. Provides that an employer may not take retaliatory action against an employee for disclosing or threatening to disclose in good faith a violation of the Civil Rights Act of 2026. Makes conforming changes to the definition of "retaliatory action". Makes the provisions of the Act severable. Effective immediately.

LRB104 16083 JDS 29370 b

1 AN ACT concerning civil law.

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  
5 Illinois Bivens Act.

6 Section 5. Definitions. As used in this Act:

7 "Crowd control equipment" includes, but is not limited to,  
8 kinetic impact projectiles; compressed air launchers, such as  
9 PLS and FN303; oleoresin capsicum spray, CS gas, CN gas, or  
10 other chemical irritants; 40 millimeter munitions launchers;  
11 less-lethal shotguns; less-lethal specialty impact-chemical  
12 munitions; controlled noise and light distraction devices; and  
13 electronic control weapons.

14 "Facial covering" means any opaque mask, garment, helmet,  
15 headgear, or other item that conceals or obscures the facial  
16 identity of an individual, including, but not limited to, a  
17 balaclava, tactical mask, gaiter mask, ski mask, or any  
18 similar type of facial covering or face-shielding item.  
19 "Facial covering" does not include a medical grade mask  
20 designed to prevent the transmission of diseases; a facial  
21 covering designed to protect against exposure to smoke during  
22 a state of emergency related to wildfires; or protective gear  
23 used by Special Weapons and Tactics (SWAT) team officers

1 necessary to protect their faces from harm while they perform  
2 their SWAT responsibilities.

3 "Prevailing party" includes any party:

4 (1) who obtains some of his or her requested relief  
5 through a judicial judgment in his or her favor;

6 (2) who obtains some of his or her requested relief  
7 through any settlement agreement approved by the court; or

8 (3) whose pursuit of a non-frivolous claim was a  
9 catalyst for a unilateral change in position by the  
10 opposing party relative to the relief sought.

11 Section 10. Deprivation of constitutional rights;  
12 liability. Any resident of this State, other than an officer  
13 or employee of a State or local governmental entity in this  
14 State, may bring a civil action against any person who, while  
15 participating in civil immigration enforcement, knowingly  
16 engages in conduct that violates the Illinois Constitution or  
17 the United States Constitution.

18 Section 15. Remedies.

19 (a) All monetary, injunctive, and declaratory relief  
20 available at common law is available under this Act for a  
21 violation of this Act without regard to whether a plaintiff  
22 may have a claim under any other statute or common law cause of  
23 action. If a plaintiff seeks punitive damages against a  
24 defendant who committed a violation of this Act while acting

1 under color of federal law, Illinois law, or other state law,  
2 the following facts shall be factors in determining the  
3 reprehensibility of the defendant's conduct:

4 (1) whether the defendant wore a facial covering while  
5 committing the violation;

6 (2) whether, at the time of the violation, the  
7 defendant was a law enforcement officer who failed to  
8 identify or disclose that he or she was a law enforcement  
9 officer either verbally or by wearing identifying  
10 insignia, such as a badge, agency logo, or patch, or by  
11 providing his or her name, badge or identification number,  
12 and the employing agency or department;

13 (3) whether, at the time of the violation, the  
14 defendant was a law enforcement officer who was required  
15 by State or federal law or regulation or agency policy to  
16 wear and use an officer-worn body camera during the type  
17 of activity that gave rise to the deprivation of rights  
18 and failed to do so;

19 (4) whether the defendant was operating or using a  
20 motor vehicle without a license plate or with a  
21 non-Illinois license plate;

22 (5) whether the defendant used crowd control equipment  
23 at the time of the violation; or

24 (6) whether the defendant intentionally violated or  
25 failed to comply with any material term or condition of a  
26 court order or consent decree that was issued by a court,

1 that was in effect at the time of the violation of this  
2 Act, that applied to the person acting under color of law,  
3 and that was issued or entered into in part to address or  
4 prevent future violations of this Act relating to the  
5 conduct complained of.

6 (b) Upon motion, a court shall award reasonable attorney's  
7 fees and costs, including expert witness fees and other  
8 litigation expenses, to a plaintiff who is a prevailing party  
9 in any action brought under this Act. In awarding reasonable  
10 attorney's fees, the court shall consider the degree to which  
11 the relief obtained relates to the relief sought.

12 Section 90. The Whistleblower Act is amended by changing  
13 Sections 5 and 15 as follows:

14 (740 ILCS 174/5)

15 Sec. 5. Definitions. As used in this Act:

16 "Adverse employment action" means an action that a  
17 reasonable employee would find materially adverse. An action  
18 is materially adverse when it could dissuade a reasonable  
19 worker from disclosing or threatening to disclose information  
20 protected by Section 15 or from refusing under Section 20.

21 "Employer" means: an individual, sole proprietorship,  
22 partnership, firm, corporation, association, and any other  
23 entity that has one or more employees in this State, including  
24 a political subdivision of the State; a unit of local

1 government; a school district, combination of school  
2 districts, or governing body of a joint agreement of any type  
3 formed by two or more school districts; a community college  
4 district, State college or university, or any State agency  
5 whose major function is providing educational services; any  
6 authority including a department, division, bureau, board,  
7 commission, or other agency of these entities; and any person  
8 acting within the scope of his or her authority, express or  
9 implied, on behalf of those entities in dealing with its  
10 employees.

11 "Employee" means any individual permitted to work by an  
12 employer unless:

13 (1) the individual has been and will continue to be  
14 free from control and direction over the performance of  
15 his or her work, both under his or her contract of service  
16 with his or her employer and in fact;

17 (2) the individual performs work which is either  
18 outside the usual course of business or is performed  
19 outside all of the places of business of the employer  
20 unless the employer is in the business of contracting with  
21 parties for the placement of employees; and

22 (3) the individual is in an independently established  
23 trade, occupation, profession, or business.

24 "Employee" also includes, but is not limited to, a  
25 licensed physician who practices his or her profession, in  
26 whole or in part, at a hospital, nursing home, clinic, or any

1 medical facility that is a health care facility funded, in  
2 whole or in part, by the State.

3 "Public body" means any of the following: the State; any  
4 officer, board, political subdivision, or commission of the  
5 State; any institution supported in whole or in part by public  
6 funds; units of local government; and school districts.

7 "Retaliatory action" means an adverse employment action or  
8 the threat of an adverse employment action by an employer or  
9 his or her agent to penalize or any non-employment action that  
10 would dissuade a reasonable worker from disclosing information  
11 under this Act. "Retaliatory action" includes, but is not  
12 limited to:

13 (1) taking, or threatening to take, any action that  
14 would intentionally interfere with an employee's ability  
15 to obtain future employment or post-termination  
16 retaliation to intentionally interfere with a former  
17 employee's employment;

18 (2) taking, or threatening to take, any action  
19 prohibited by subsection (G) of Section 2-102 of the  
20 Illinois Human Rights Act; or

21 (3) contacting, or threatening to contact, United  
22 States immigration authorities, or otherwise reporting, or  
23 threatening to report, an employee's suspected or actual  
24 citizenship or immigration status or the suspected or  
25 actual citizenship or immigration status of an employee's  
26 family or household member to a federal, State, or local

1 agency.

2 "Retaliatory action" does not include:

3 (1) conduct undertaken at the express and specific  
4 direction or request of the federal government unless it  
5 involves a violation of the Illinois Bivens Act;

6 (2) truthful, performance-related information about an  
7 employee or former employee provided in good faith to a  
8 prospective employer at the request of the prospective  
9 employer; or

10 (3) conduct undertaken if specifically required by  
11 State or federal law. "Employee" also includes, but is not  
12 limited to, a licensed physician who practices his or her  
13 profession, in whole or in part, at a hospital, nursing  
14 home, clinic, or any medical facility that is a health  
15 care facility funded, in whole or in part, by the State.

16 "Supervisor" means any individual who has the authority to  
17 direct and control the work performance of the affected  
18 employee; or any individual who has managerial authority to  
19 take corrective action regarding a violation of the law, rule,  
20 or regulation disclosed by an employee in accordance with  
21 Section 15.

22 (Source: P.A. 103-867, eff. 1-1-25.)

23 (740 ILCS 174/15)

24 Sec. 15. Retaliation for certain disclosures prohibited.

25 (a) An employer may not take retaliatory action against an

1 employee who discloses or threatens to disclose to a public  
2 body conducting an investigation, or in a court, an  
3 administrative hearing, or any other proceeding initiated by a  
4 public body, information related to an activity, policy, or  
5 practice of the employer, where the employee has a good faith  
6 belief that the activity, policy, or practice (i) violates a  
7 State or federal law, rule, or regulation or (ii) poses a  
8 substantial and specific danger to employees, public health,  
9 or safety.

10 (b) An employer may not take retaliatory action against an  
11 employee for disclosing or threatening to disclose information  
12 to a government or law enforcement agency information related  
13 to an activity, policy, or practice of the employer, where the  
14 employee has a good faith belief that the activity, policy, or  
15 practice of the employer (i) violates a State or federal law,  
16 rule, or regulation or (ii) poses a substantial and specific  
17 danger to employees, public health, or safety.

18 (c) An employer may not take retaliatory action against an  
19 employee for disclosing or threatening to disclose to any  
20 supervisor, principal officer, board member, or supervisor in  
21 an organization that has a contractual relationship with the  
22 employer who makes the employer aware of the disclosure,  
23 information related to an activity, policy, or practice of the  
24 employer if the employee has a good faith belief that the  
25 activity, policy, or practice (i) violates a State or federal  
26 law, rule, or regulation or (ii) poses a substantial and

1 specific danger to employees, public health, or safety.

2 (d) An employer may not take retaliatory action against an  
3 employee for disclosing or threatening to disclose in good  
4 faith any violation of Section 10 of the Illinois Bivens Act.

5 (Source: P.A. 103-867, eff. 1-1-25; revised 10-21-24.)

6 Section 97. Severability. The provisions of this Act are  
7 severable under Section 1.31 of the Statute on Statutes.

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