



## 102ND GENERAL ASSEMBLY

### State of Illinois

### 2021 and 2022

### HB5088

Introduced 1/27/2022, by Rep. William Davis

#### SYNOPSIS AS INTRODUCED:

New Act

30 ILCS 105/5.970 new

55 ILCS 5/5-12022 new

65 ILCS 5/11-39-5 new

820 ILCS 115/14

from Ch. 48, par. 39m-14

820 ILCS 115/14.6 new

820 ILCS 115/14.7 new

Creates the Wage Theft Act. Provides that any employer and their officers who knowingly withhold wages from an employee in the State and refuses to compensate the employee for the wages they earned shall be deemed guilty of a Class A misdemeanor for the first offense and a Class 4 felony for subsequent offenses and shall be listed on the Department of Labor's website. Amends the Counties Code and the Illinois Municipal Code. Provides that in any county or municipality that requires a building permit, a notice with information on workers' rights under the Wage Theft Act and the Wage Payment and Collection Act shall be included with the building permit applicant to post at the construction site. Amends the Illinois Wage Payment and Collection Act. Provides that there shall be created a Wage Theft Enforcement Fund, subject to appropriation, that will allow any employee that has filed a complaint against an employer, that the Department of Labor determines to be insolvent, to be entitled to receive a full a pay period's worth of wages and interest from the Wage Theft Enforcement Fund. Provides that the Department of Labor shall make available to the public on its website a list of the employers and their officers and agents found guilty of violating the Act and the Wage Theft Act. Amends the State Finance Act to create the Wage Theft Enforcement Fund.

LRB102 24708 SPS 33947 b

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 Theft Act.

6 Section 5. Employee compensation. Any employer and their  
7 officers who knowingly withhold wages from an employee in this  
8 State and refuses to compensate the employee for the wages  
9 they earned shall be deemed guilty of a Class A misdemeanor for  
10 the first offense and a Class 4 felony for subsequent offenses  
11 and shall be listed on the Department of Labor's website. It is  
12 an affirmative defense to prosecution under this Section if  
13 the employer provides financial statements with sworn  
14 affidavits that employees have been compensated.

15 Section 10. The State Finance Act is amended by adding  
16 Section 5.970 as follows:

17 (30 ILCS 105/5.970 new)

18 Sec. 5.970. The Wage Theft Enforcement Fund.

19 Section 15. The Counties Code is amended by adding Section  
20 5-12022 as follows:

1 (55 ILCS 5/5-12022 new)

2 Sec. 5-12022. Notice of wage payment. In any county that  
3 requires a building permit, a notice with information on  
4 workers' rights under the Wage Theft Act and the Wage Payment  
5 and Collection Act shall be included with the building permit  
6 applicant to post at the construction site.

7 Section 20. The Illinois Municipal Code is amended by  
8 adding Section 11-39-5 as follows:

9 (65 ILCS 5/11-39-5 new)

10 Sec. 11-39-5. Notice of wage payment. In any municipality  
11 that requires a building permit, a notice with information on  
12 workers' rights under the Wage Theft Act and the Wage Payment  
13 and Collection Act shall be included with the building permit  
14 applicant to post at the construction site.

15 Section 25. The Illinois Wage Payment and Collection Act  
16 is amended by changing Section 14 and by adding Sections 14.6  
17 and 14.7 as follows:

18 (820 ILCS 115/14) (from Ch. 48, par. 39m-14)

19 Sec. 14. (a) Any employee not timely paid wages, final  
20 compensation, or wage supplements by his or her employer as  
21 required by this Act shall be entitled to recover through a

1 claim filed with the Department of Labor or in a civil action,  
2 but not both, the amount of any such underpayments and damages  
3 of 5% of the amount of any such underpayments for each month  
4 following the date of payment during which such underpayments  
5 remain unpaid. In a civil action, such employee shall also  
6 recover costs and all reasonable attorney's fees.

7 (a-5) In addition to the remedies provided in subsections  
8 (a), (b), and (c) of this Section, any employer or any agent of  
9 an employer and their officers, who, being able to pay wages,  
10 final compensation, or wage supplements and being under a duty  
11 to pay, wilfully refuses to pay as provided in this Act, or  
12 falsely denies the amount or validity thereof or that the same  
13 is due, with intent to secure for himself or other person any  
14 underpayment of such indebtedness or with intent to annoy,  
15 harass, oppress, hinder, delay or defraud the person to whom  
16 such indebtedness is due, upon conviction, is guilty of a  
17 Class A misdemeanor under the Wage Theft Act.+

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

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

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

26 Any employer or any agent of an employer and their

1 officers who violates this Section of the Act a subsequent  
2 time ~~within 2 years of a prior criminal conviction under this~~  
3 ~~Section~~ is guilty, upon conviction, of a Class 4 felony under  
4 the Wage Theft Act.

5 (b) Any employer who has been demanded or ordered by the  
6 Department or ordered by the court to pay wages, final  
7 compensation, or wage supplements due an employee shall be  
8 required to pay a non-waivable administrative fee to the  
9 Department of Labor in the amount of \$250 if the amount ordered  
10 by the Department as wages owed is \$3,000 or less; \$500 if the  
11 amount ordered by the Department as wages owed is more than  
12 \$3,000, but less than \$10,000; and \$1,000 if the amount  
13 ordered by the Department as wages owed is \$10,000 or more. Any  
14 employer who has been so demanded or ordered by the Department  
15 or ordered by a court to pay such wages, final compensation, or  
16 wage supplements and who fails to seek timely review of such a  
17 demand or order as provided for under this Act and who fails to  
18 comply within 15 calendar days after such demand or within 35  
19 days of an administrative or court order is entered shall also  
20 be liable to pay a penalty to the Department of Labor of 20% of  
21 the amount found owing and a penalty to the employee of 1% per  
22 calendar day of the amount found owing for each day of delay in  
23 paying such wages to the employee. All moneys recovered as  
24 fees and civil penalties under this Act, except those owing to  
25 the affected employee, shall be deposited into the Wage Theft  
26 Enforcement Fund, a special fund which is hereby created in

1 the State treasury. Moneys in the Fund may be used only for  
2 enforcement of this Act.

3 (b-5) Penalties and fees under this Section may be  
4 assessed by the Department and recovered in a civil action  
5 brought by the Department in any circuit court or in any  
6 administrative adjudicative proceeding under this Act. In any  
7 such civil action or administrative adjudicative proceeding  
8 under this Act, the Department shall be represented by the  
9 Attorney General.

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

26 (Source: P.A. 102-50, eff. 7-9-21.)

1 (820 ILCS 115/14.6 new)

2 Sec. 14.6. Employer website posting. The Department of  
3 Labor shall make available to the public on its website a list  
4 of the employers and their officers and agents found guilty of  
5 violating subsection (a-5) of Section 14 or the Wage Theft  
6 Act. The Department shall notify employers of this disclosure  
7 requirement and other penalties in this Act and the Wage Theft  
8 Act in its correspondence with the employer after an employee  
9 has filed a complaint.

10 (820 ILCS 115/14.7 new)

11 Sec. 14.7. Wage Theft Enforcement Fund. There shall be  
12 created a Wage Theft Enforcement Fund, subject to  
13 appropriation, that will allow any employee that has filed a  
14 complaint against an employer under Section 14 of this Act,  
15 that the Department of Labor determines to be insolvent, to be  
16 entitled to receive a full pay period's worth of wages and  
17 interest from the Wage Theft Enforcement Fund.