



## GOVERNMENT AFFAIRS

# Report

Key  
Legislation

Business  
Regulation

Campaign  
Finance

Civil Law

Economic  
Development

Education

Employment  
Law

Environment  
& Energy

Financial  
Services

Gaming

Health Care

Pensions

January 7, 2021

## Special Legislative Update

Very recently, the Illinois Black Caucus of the General Assembly introduced four bills with intention of passage during this lame duck session starting tomorrow and ending Wednesday. [HB 163](#) deals with policing reforms. [HB 2170](#) focuses on education reform. [HB 5548](#) (House Amendment 1) and [HB 3840](#) (Senate Amendment 1) are identical healthcare and human services reform bills. Expect more from the Chamber about the healthcare bills in the near future.

Today we want to take a deeper dive into the fourth bill, [HB 5871](#) the Economic Equity Act. This bill is a massive governmental intrusion into business and an unnecessary drag on our economy. We will break down just a few of the problematic sections of this bill. This is a massive bill with a lot of

[Procurement](#)

[Taxes](#)

[Workers'  
Compensation](#)

**Quick Links**

[Register Now](#)

[Last Month's Newsletter](#)

[More About Us](#)

[Our Sponsors](#)

information to digest and the following represents our first impressions.

## **Concerns & Recommendations for Employment Law Provisions**

Pages 1-6: Creates the Employee Background Fairness Act. This proposed new Act would impact employer hiring practices and policies regarding the hiring of individuals with criminal backgrounds. It also provides limited legal protections for employers upon hiring of workers with criminal backgrounds.

While we are open to negotiating changes to the proposal, we strongly recommend that the "Job Opportunities for Qualified Applicants Act" (Ban the Box/(820 ILCS 75/1 et al)) is a better place to meet the objectives of the proposed new Act while allowing employers to more easily comply. We are able to provide a counterproposal amending the current law.

### **Our Concerns with HB 5871's "Employee Background Fairness Act":**

1) Section 5: The definition of "direct relationship" is extremely restrictive, so restrictive that an employer has virtually no option but to hire under this type of test. The definition requires the employer to show that the criminal conduct WILL recur in the future...an impossible standard to meet for any employer.

We recommend a "reasonable relationship" definition that focuses on the employer evaluating the conviction and the job with the following factors in mind of the applicant/employee: SAFETY, RELIABILITY and RESPONSIBILITY.

2) Section 5: The definitions of "employee" and "employer" need to align with those provided in the

Wage Payment & Collection Act. This will help by using current law including case law to ascertain who is covered by the law and avoid new litigation over these terms.

3) Section 10, the notice and pre-adverse and final adverse notice is already required under federal law. To avoid confusion and conflict regarding notice, Illinois law should align with the federal law. And, for clarification the 7 days should provide for 7 "calendar" days.

4) Section 10: Under the Illinois Human Rights Act, employers are allowed take action on facts that it knows of surrounding an arrest but not the arrest itself. To avoid conflict with the Illinois Human Rights Act, language must be added allowing employers to consider any fact that it can independently verify that surrounds any arrest or conviction and take adverse action based on those facts.

5) Section 30 regarding civil immunity needs to be strengthened.

6) As recommended above, we believe the objectives of providing greater employment for individuals with criminal backgrounds can be better achieved with amendments to the **"Job Opportunities for Qualified Applicants Act"**. If a new Act is the preferred public policy approach, we recommend repealing the current Act.

**Pages 321-330: Adds to the Equal Pay Act that any business of 100 or more full-time employees must obtain an "equal pay certificate"**. Prohibits the State of Illinois from contracting with any business of 40 or more full-time employees unless such business has an "equal pay certificate" issued by the

Illinois Department of Labor. Exempts certain contractors.

**Our concerns about requiring certification: unnecessary duplication, and regulatory overkill:**

1) All Illinois employers already must comply with the Illinois Human Rights Act and the Illinois Equal Pay Act. Illinois employers with 15 or more employees must already comply with Title VII of the Civil Rights Act. Private employers of 100 or more employees and federal contractors with 50 or more employees must already file with the federal EEOC Standard Form 100 (EEO-1). All Illinois employers must also already comply with the federal Equal Pay Act. Each of these Acts has their own enforcement mechanisms, remedies and penalties.

2) What will be the basis for an employer to be able to certify its average compensation for its female and minority employees is "not consistently below" the average compensation for its male and non-minority employees? This standard is undefined and open to wide interpretation which will lead to significant litigation.

3) Subsection (k) is awkwardly worded and may not provide adequate protection for specific employer data from being accessed.

4) Subsection (m) regarding whistleblower protection uses the term "facility" which is not defined. Employers will be responsible for employee actions other than supervisory employees which is a dramatic expansion of liability.

**Unworkable Environmental Permitting Requirements**

Section 60-5 includes brand new requirements for environmental permitting that are wholly unworkable for chamber members needing air or water permits.

- Apply to new and renewals of CAAPP (major air operating permits) and NPDES (any discharge to waterways) permits in environmental justice communities (which is undefined - but based on IEPA's previous interpretation of the term would capture all urban areas and many small towns);
- Require that the IEPA, in issuing a permit, ensure that:
  - "Possible adverse economic, social, and economic effects" on EJ communities are considered, and
  - That the final decision in issuing the permit is made "in the best overall public interest"
- Requires that a permit applicant:
  - Provide all necessary information to IEPA,
  - Provide public notice to residents of the community,
  - Hold a pre-application community meeting with additional 90 day period for comments, and
  - Enter into a community benefits agreement with the unit of local government with jurisdiction over the location.

Impacts include:

- delay in permitting due to increased process requirements,

- require applicants to continuously get approval from local governments to continue to stay in business,
- hinder IEPA's issuance of permits by requiring it to ensure things it has no experience or expertise in, and
- potentially increase exposure to appeals alleging failure to satisfy ambiguous requirements (i.e. "best overall public interest").

We would like to hear your feedback on this legislation, and will provide you with more updated information as things develop. We are putting together a factsheet for legislators. If you'd like us to add you on as opposition please let us know at [ckaericher@ilchamber.org](mailto:ckaericher@ilchamber.org)



## Connect with the Chamber



LIKE US ON  
FACEBOOK



FOLLOW US  
ON TWITTER



SUBSCRIBE

**ILLINOIS CHAMBER  
OF COMMERCE**

*If you have questions about the Government Affairs Report, contact Clark Kaericher at [ckaericher@ilchamber.org](mailto:ckaericher@ilchamber.org). Do not reply to this email.*

*Illinois Chamber of Commerce*

*2020 Government Affairs Report | Clark Kaericher, Editor*

Illinois Chamber of Commerce, 215 E Adams St, Springfield, IL 62701

Sent by [ckaericher@ilchamber.org](mailto:ckaericher@ilchamber.org)