



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

SB0208

Introduced 2/17/2021, by Sen. Robert F. Martwick

SYNOPSIS AS INTRODUCED:

820 ILCS 80/5
820 ILCS 80/30
820 ILCS 80/60
820 ILCS 80/85

Amends the Illinois Secure Choice Savings Program Act. Removes all references to and the definition of "small employer". Provides that the Act applies to employers with at least one employee (rather than employers with fewer than 25 employees). Requires the Illinois Secure Choice Savings Board to (i) establish annual automatic increases to the contribution rates and (ii) verify employee eligibility for auto-enrollment in accordance with the Internal Revenue Code and applicable federal and State laws. Makes changes regarding penalties for employers who fail, without reasonable cause, to enroll an employee in the Illinois Secure Choice Savings Program (Program). Provides that, for purposes of the penalties, the Department of Revenue shall determine total employee count for employers using the annual average from employer-reported quarterly data. Provides that the Department may provide notice regarding penalties in an electronic format to be determined by the Department. Removes a provision authorizing the Department to implement the penalties 9 months after the Illinois Secure Choice Savings Board notifies the Director of Revenue that the Program has been implemented.

LRB102 04034 KTG 14050 b

FISCAL NOTE ACT
MAY APPLY

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 Illinois Secure Choice Savings Program Act
5 is amended by changing Sections 5, 30, 60, and 85 as follows:

6 (820 ILCS 80/5)

7 Sec. 5. Definitions. Unless the context requires a
8 different meaning or as expressly provided in this Section,
9 all terms shall have the same meaning as when used in a
10 comparable context in the Internal Revenue Code. As used in
11 this Act:

12 "Board" means the Illinois Secure Choice Savings Board
13 established under this Act.

14 "Department" means the Department of Revenue.

15 "Director" means the Director of Revenue.

16 "Employee" means any individual ~~who is 18 years of age or~~
17 ~~older,~~ who is employed by an employer, and who has wages that
18 are allocable to Illinois during a calendar year under the
19 provisions of Section 304(a)(2)(B) of the Illinois Income Tax
20 Act.

21 "Employer" means a person or entity engaged in a business,
22 industry, profession, trade, or other enterprise in Illinois,
23 whether for profit or not for profit, that (i) has ~~at no time~~

1 ~~during the previous calendar year~~ employed at least one
2 employee ~~fewer than 25 employees~~ in the State during every
3 quarter of the previous calendar year, (ii) has been in
4 business at least 2 years, and (iii) has not offered a
5 qualified retirement plan, including, but not limited to, a
6 plan qualified under Section 401(a), Section 401(k), Section
7 403(a), Section 403(b), Section 408(k), Section 408(p), or
8 Section 457(b) of the Internal Revenue Code of 1986 in the
9 preceding 2 years.

10 "Enrollee" means any employee who is enrolled in the
11 Program.

12 "Fund" means the Illinois Secure Choice Savings Program
13 Fund.

14 "Internal Revenue Code" means Internal Revenue Code of
15 1986, or any successor law, in effect for the calendar year.

16 "IRA" means a Roth or Traditional IRA (individual
17 retirement account) under Section 408 or 408A of the Internal
18 Revenue Code.

19 "Participating employer" means an employer ~~or small~~
20 ~~employer~~ that facilitates a payroll deposit retirement savings
21 arrangement as provided for by this Act for its employees.

22 "Payroll deposit retirement savings arrangement" means an
23 arrangement by which a participating employer facilitates
24 payroll deduction contributions from enrollees to the Program.

25 "Program" means the Illinois Secure Choice Savings
26 Program.

1 ~~"Small employer" means a person or entity engaged in a~~
2 ~~business, industry, profession, trade, or other enterprise in~~
3 ~~Illinois, whether for profit or not for profit, that (i)~~
4 ~~employed less than 25 employees at any one time in the State~~
5 ~~throughout the previous calendar year, or (ii) has been in~~
6 ~~business less than 2 years, or both items (i) and (ii), but~~
7 ~~that notifies the Board that it is interested in being a~~
8 ~~participating employer.~~

9 "Wages" means any compensation within the meaning of
10 Section 219(f)(1) of the Internal Revenue Code that is
11 received by an enrollee from a participating employer during
12 the calendar year.

13 (Source: P.A. 101-353, eff. 8-9-19.)

14 (820 ILCS 80/30)

15 Sec. 30. Duties of the Board. In addition to the other
16 duties and responsibilities stated in this Act, the Board
17 shall:

18 (a) Cause the Program to be designed, established and
19 operated in a manner that:

20 (1) accords with best practices for retirement
21 savings vehicles;

22 (2) maximizes participation, savings, and sound
23 investment practices;

24 (3) maximizes simplicity, including ease of
25 administration for participating employers and

1 enrollees;

2 (4) provides an efficient product to enrollees by
3 pooling investment funds;

4 (5) ensures the portability of benefits; and

5 (6) provides for the deaccumulation of enrollee
6 assets in a manner that maximizes financial security
7 in retirement.

8 (b) Appoint a trustee to the IRA Fund in compliance
9 with Section 408 of the Internal Revenue Code.

10 (c) Explore and establish investment options, subject
11 to Section 45 of this Act, that offer employees returns on
12 contributions and the conversion of individual retirement
13 savings account balances to secure retirement income
14 without incurring debt or liabilities to the State.

15 (d) Establish the process by which interest,
16 investment earnings, and investment losses are allocated
17 to individual program accounts on a pro rata basis and are
18 computed at the interest rate on the balance of an
19 individual's account.

20 (e) Make and enter into contracts necessary for the
21 administration of the Program and Fund, including, but not
22 limited to, retaining and contracting with investment
23 managers, private financial institutions, other financial
24 and service providers, consultants, actuaries, counsel,
25 auditors, third-party administrators, and other
26 professionals as necessary.

1 (e-5) Conduct a review of the performance of any
2 investment vendors every 4 years, including, but not
3 limited to, a review of returns, fees, and customer
4 service. A copy of reviews conducted under this subsection
5 (e-5) shall be posted to the Board's Internet website.

6 (f) Determine the number and duties of staff members
7 needed to administer the Program and assemble such a
8 staff, including, as needed, employing staff, appointing a
9 Program administrator, and entering into contracts with
10 the State Treasurer to make employees of the State
11 Treasurer's Office available to administer the Program.

12 (g) Cause moneys in the Fund to be held and invested as
13 pooled investments described in Section 45 of this Act,
14 with a view to achieving cost savings through efficiencies
15 and economies of scale.

16 (h) Evaluate and establish the process by which an
17 enrollee is able to contribute a portion of his or her
18 wages to the Program for automatic deposit of those
19 contributions and the process by which the participating
20 employer provides a payroll deposit retirement savings
21 arrangement to forward those contributions and related
22 information to the Program, including, but not limited to,
23 contracting with financial service companies and
24 third-party administrators with the capability to receive
25 and process employee information and contributions for
26 payroll deposit retirement savings arrangements or similar

1 arrangements.

2 (i) Design and establish the process for enrollment
3 under Section 60 of this Act, including the process by
4 which an employee can opt not to participate in the
5 Program, select a contribution level, select an investment
6 option, and terminate participation in the Program.

7 (j) Evaluate and establish the process by which an
8 individual may voluntarily enroll in and make
9 contributions to the Program.

10 (k) Accept any grants, appropriations, or other moneys
11 from the State, any unit of federal, State, or local
12 government, or any other person, firm, partnership, or
13 corporation solely for deposit into the Fund, whether for
14 investment or administrative purposes.

15 (l) Evaluate the need for, and procure as needed,
16 insurance against any and all loss in connection with the
17 property, assets, or activities of the Program, and
18 indemnify as needed each member of the Board from personal
19 loss or liability resulting from a member's action or
20 inaction as a member of the Board.

21 (m) Make provisions for the payment of administrative
22 costs and expenses for the creation, management, and
23 operation of the Program, including the costs associated
24 with subsection (b) of Section 20 of this Act, subsections
25 (e), (f), (h), and (l) of this Section, subsection (b) of
26 Section 45 of this Act, subsection (a) of Section 80 of

1 this Act, and subsection (n) of Section 85 of this Act.
2 Subject to appropriation, the State may pay administrative
3 costs associated with the creation and management of the
4 Program until sufficient assets are available in the Fund
5 for that purpose. Thereafter, all administrative costs of
6 the Fund, including repayment of any start-up funds
7 provided by the State, shall be paid only out of moneys on
8 deposit therein. However, private funds or federal funding
9 received under subsection (k) of Section 30 of this Act in
10 order to implement the Program until the Fund is
11 self-sustaining shall not be repaid unless those funds
12 were offered contingent upon the promise of such
13 repayment. The Board shall keep total annual expenses as
14 low as possible, but in no event shall they exceed 0.75% of
15 the total trust balance.

16 (n) Allocate administrative fees to individual
17 retirement accounts in the Program on a pro rata basis.

18 (o) Set minimum and maximum contribution levels in
19 accordance with limits established for IRAs by the
20 Internal Revenue Code.

21 (o-5) Select a default contribution rate for Program
22 participants within the range of 3% to 6% of an enrollee's
23 wages.

24 (o-10) Establish annual, automatic increases to the
25 contribution rates based upon a schedule provided for in
26 rules up to a maximum of 10% of an enrollee's wages.

1 (p) Facilitate education and outreach to employers and
2 employees.

3 (q) Facilitate compliance by the Program with all
4 applicable requirements for the Program under the Internal
5 Revenue Code, including tax qualification requirements or
6 any other applicable law and accounting requirements.

7 (q-5) Verify employee eligibility for auto-enrollment
8 in accordance with the Internal Revenue Code and
9 applicable federal and State laws. The verification shall
10 include the rejection of any enrollee under 18 years of
11 age.

12 (r) Carry out the duties and obligations of the
13 Program in an effective, efficient, and low-cost manner.

14 (s) Exercise any and all other powers reasonably
15 necessary for the effectuation of the purposes,
16 objectives, and provisions of this Act pertaining to the
17 Program.

18 (t) Deposit into the Illinois Secure Choice
19 Administrative Fund all grants, gifts, donations, fees,
20 and earnings from investments from the Illinois Secure
21 Choice Savings Program Fund that are used to recover
22 administrative costs. All expenses of the Board shall be
23 paid from the Illinois Secure Choice Administrative Fund.

24 The Board may enter into agreements with other
25 governmental entities, including other states or their
26 agencies and instrumentalities, to enable residents of other

1 states to participate in the Program.

2 (Source: P.A. 100-6, eff. 6-30-17; 101-353, eff. 8-9-19.)

3 (820 ILCS 80/60)

4 Sec. 60. Program implementation and enrollment. Except as
5 otherwise provided in Section 93 of this Act, the Program
6 shall be implemented, and enrollment of employees shall begin
7 in 2018. The Board shall establish an implementation timeline
8 under which employers shall enroll their employees in the
9 Program. The timeline shall include the date by which an
10 employer must begin enrollment of its employees in the Program
11 and the date by which enrollment must be complete. The Board
12 shall adopt the implementation timeline at a public meeting of
13 the Board and shall publicize the implementation timeline. The
14 Board shall provide advance notice to employers of their
15 enrollment date and the amount of time to complete enrollment.
16 The Board's implementation timeline shall ensure that all
17 employees are required to be enrolled in the Program by
18 December 31, 2020. The provisions of this Section shall be in
19 force after the Board opens the Program for enrollment.

20 (a) Each employer shall establish a payroll deposit
21 retirement savings arrangement to allow each employee to
22 participate in the Program within the timeline set by the
23 Board after the Program opens for enrollment.

24 (b) Employers shall automatically enroll in the Program
25 each of their employees who has not opted out of participation

1 in the Program using the form described in subsection (c) of
2 Section 55 of this Act and shall provide payroll deduction
3 retirement savings arrangements for such employees and
4 deposit, on behalf of such employees, these funds into the
5 Program. ~~Small employers may, but are not required to, provide~~
6 ~~payroll deduction retirement savings arrangements for each~~
7 ~~employee who elects to participate in the Program. Small~~
8 ~~employers' use of automatic enrollment for employees is~~
9 ~~subject to final rules from the United States Department of~~
10 ~~Labor. Utilization of automatic enrollment by small employers~~
11 ~~may be allowed only if it does not create employer liability~~
12 ~~under the federal Employee Retirement Income Security Act.~~

13 (c) Enrollees shall have the ability to select a
14 contribution level into the Fund. This level may be expressed
15 as a percentage of wages or as a dollar amount up to the
16 deductible amount for the enrollee's taxable year under
17 Section 219(b)(1)(A) of the Internal Revenue Code. Enrollees
18 may change their contribution level at any time, subject to
19 rules promulgated by the Board. If an enrollee fails to select
20 a contribution level using the form described in subsection
21 (c) of Section 55 of this Act, then he or she shall contribute
22 the default contribution rate of his or her wages to the
23 Program, provided that such contributions shall not cause the
24 enrollee's total contributions to IRAs for the year to exceed
25 the deductible amount for the enrollee's taxable year under
26 Section 219(b)(1)(A) of the Internal Revenue Code.

1 (d) Enrollees may select an investment option from the
2 permitted investment options listed in Section 45 of this Act.
3 Enrollees may change their investment option at any time,
4 subject to rules promulgated by the Board. In the event that an
5 enrollee fails to select an investment option, that enrollee
6 shall be placed in the investment option selected by the Board
7 as the default under subsection (c) of Section 45 of this Act.
8 If the Board has not selected a default investment option
9 under subsection (c) of Section 45 of this Act, then an
10 enrollee who fails to select an investment option shall be
11 placed in the life-cycle fund investment option.

12 (e) Following initial implementation of the Program
13 pursuant to this Section, at least once every year,
14 participating employers shall designate an open enrollment
15 period during which employees who previously opted out of the
16 Program may enroll in the Program.

17 (f) An employee who opts out of the Program who
18 subsequently wants to participate through the participating
19 employer's payroll deposit retirement savings arrangement may
20 only enroll during the participating employer's designated
21 open enrollment period or if permitted by the participating
22 employer at an earlier time.

23 (g) Employers shall retain the option at all times to set
24 up any type of employer-sponsored retirement plan, such as a
25 defined benefit plan or a 401(k), Simplified Employee Pension
26 (SEP) plan, or Savings Incentive Match Plan for Employees

1 (SIMPLE) plan, or to offer an automatic enrollment payroll
2 deduction IRA, instead of having a payroll deposit retirement
3 savings arrangement to allow employee participation in the
4 Program.

5 (h) An employee may terminate his or her participation in
6 the Program at any time in a manner prescribed by the Board.

7 (i) The Board shall establish and maintain an Internet
8 website designed to assist employers in identifying private
9 sector providers of retirement arrangements that can be set up
10 by the employer rather than allowing employee participation in
11 the Program under this Act; however, the Board shall only
12 establish and maintain an Internet website under this
13 subsection if there is sufficient interest in such an Internet
14 website by private sector providers and if the private sector
15 providers furnish the funding necessary to establish and
16 maintain the Internet website. The Board must provide public
17 notice of the availability of and the process for inclusion on
18 the Internet website before it becomes publicly available.
19 This Internet website must be available to the public before
20 the Board opens the Program for enrollment, and the Internet
21 website address must be included on any Internet website
22 posting or other materials regarding the Program offered to
23 the public by the Board.

24 (Source: P.A. 99-571, eff. 7-15-16; 100-6, eff. 6-30-17;
25 100-863, eff. 8-14-18.)

1 (820 ILCS 80/85)

2 Sec. 85. Penalties.

3 (a) An employer who fails without reasonable cause to
4 enroll an employee in the Program within the time prescribed
5 under Section 60 of this Act shall be subject to a penalty
6 equal to:

7 (1) \$250 per ~~for each~~ employee for the first ~~each~~
8 calendar year the employer is noncompliant ~~or portion of a~~
9 ~~calendar year during which the employee neither was~~
10 ~~enrolled in the Program nor had elected out of~~
11 ~~participation in the Program; or~~

12 (2) \$500 per employee for each subsequent calendar
13 year the employer is noncompliant; noncompliance does not
14 need to be consecutive to qualify for the \$500 penalty
15 ~~beginning after the date a penalty has been assessed with~~
16 ~~respect to an employee, \$500 for any portion of that~~
17 ~~calendar year during which such employee continues to be~~
18 ~~unenrolled without electing out of participation in the~~
19 ~~Program.~~

20 The Department shall determine total employee count using
21 the annual average from employer-reported quarterly data.

22 (b) After determining that an employer is subject to a
23 penalty under this Section for a calendar year, the Department
24 shall issue a notice of proposed assessment to such employer,
25 stating the number of employees for which the penalty is
26 proposed under item (1) of subsection (a) of this Section or

1 ~~and~~ the number of employees for which the penalty is proposed
2 under item (2) of subsection (a) of this Section for such
3 calendar year, and the total amount of penalties proposed.

4 Upon the expiration of 90 days after the date on which a
5 notice of proposed assessment was issued, the penalties
6 specified therein shall be deemed assessed, unless the
7 employer had filed a protest with the Department under
8 subsection (c) of this Section.

9 If, within 90 days after the date on which it was issued, a
10 protest of a notice of proposed assessment is filed under
11 subsection (c) of this Section, the penalties specified
12 therein shall be deemed assessed upon the date when the
13 decision of the Department with respect to the protest becomes
14 final.

15 (c) A written protest against the proposed assessment
16 shall be filed with the Department in such form as the
17 Department may by rule prescribe, setting forth the grounds on
18 which such protest is based. If such a protest is filed within
19 90 days after the date the notice of proposed assessment is
20 issued, the Department shall reconsider the proposed
21 assessment and shall grant the employer a hearing. As soon as
22 practicable after such reconsideration and hearing, the
23 Department shall issue a notice of decision to the employer,
24 setting forth the Department's findings of fact and the basis
25 of decision. The decision of the Department shall become
26 final:

1 (1) if no action for review of the decision is
2 commenced under the Administrative Review Law, on the date
3 on which the time for commencement of such review has
4 expired; or

5 (2) if a timely action for review of the decision is
6 commenced under the Administrative Review Law, on the date
7 all proceedings in court for the review of such assessment
8 have terminated or the time for the taking thereof has
9 expired without such proceedings being instituted.

10 (d) As soon as practicable after the penalties specified
11 in a notice of proposed assessment are deemed assessed, the
12 Department shall give notice to the employer liable for any
13 unpaid portion of such assessment, stating the amount due and
14 demanding payment. If an employer neglects or refuses to pay
15 the entire liability shown on the notice and demand within 10
16 days after the notice and demand is issued, the unpaid amount
17 of the liability shall be a lien in favor of the State of
18 Illinois upon all property and rights to property, whether
19 real or personal, belonging to the employer, and the
20 provisions in the Illinois Income Tax Act regarding liens,
21 levies and collection actions with regard to assessed and
22 unpaid liabilities under that Act, including the periods for
23 taking any action, shall apply.

24 (e) An employer who has overpaid a penalty assessed under
25 this Section may file a claim for refund with the Department. A
26 claim shall be in writing in such form as the Department may by

1 rule prescribe and shall state the specific grounds upon which
2 it is founded. As soon as practicable after a claim for refund
3 is filed, the Department shall examine it and either issue a
4 refund or issue a notice of denial. If such a protest is filed,
5 the Department shall reconsider the denial and grant the
6 employer a hearing. As soon as practicable after such
7 reconsideration and hearing, the Department shall issue a
8 notice of decision to the employer. The notice shall set forth
9 briefly the Department's findings of fact and the basis of
10 decision in each case decided in whole or in part adversely to
11 the employer. A denial of a claim for refund becomes final 90
12 days after the date of issuance of the notice of the denial
13 except for such amounts denied as to which the employer has
14 filed a protest with the Department. If a protest has been
15 timely filed, the decision of the Department shall become
16 final:

17 (1) if no action for review of the decision is
18 commenced under the Administrative Review Law, on the date
19 on which the time for commencement of such review has
20 expired; or

21 (2) if a timely action for review of the decision is
22 commenced under the Administrative Review Law, on the date
23 all proceedings in court for the review of such assessment
24 have terminated or the time for the taking thereof has
25 expired without such proceedings being instituted.

26 (f) No notice of proposed assessment may be issued with

1 respect to a calendar year after June 30 of the fourth
2 subsequent calendar year. No claim for refund may be filed
3 more than 1 year after the date of payment of the amount to be
4 refunded.

5 (g) The provisions of the Administrative Review Law and
6 the rules adopted pursuant to it shall apply to and govern all
7 proceedings for the judicial review of final decisions of the
8 Department in response to a protest filed by the employer
9 under subsections (c) and (e) of this Section. Final decisions
10 of the Department shall constitute "administrative decisions"
11 as defined in Section 3-101 of the Code of Civil Procedure. The
12 Department may adopt any rules necessary to carry out its
13 duties pursuant to this Section.

14 (h) Whenever notice is required by this Section, it may be
15 given or issued by mailing it by first-class mail addressed to
16 the person concerned at his or her last known address or in an
17 electronic format as determined by the Department.

18 (i) All books and records and other papers and documents
19 relevant to the determination of any penalty due under this
20 Section shall, at all times during business hours of the day,
21 be subject to inspection by the Department or its duly
22 authorized agents and employees.

23 (j) The Department may require employers to report
24 information relevant to their compliance with this Act on
25 returns otherwise due from the employers under Section 704A of
26 the Illinois Income Tax Act and failure to provide the

1 requested information on a return shall cause such return to
2 be treated as unprocessable.

3 (k) For purposes of any provision of State law allowing
4 the Department or any other agency of this State to offset an
5 amount owed to a taxpayer against a tax liability of that
6 taxpayer or allowing the Department to offset an overpayment
7 of tax against any liability owed to the State, a penalty
8 assessed under this Section shall be deemed to be a tax
9 liability of the employer and any refund due to an employer
10 shall be deemed to be an overpayment of tax of the employer.

11 (l) Except as provided in this subsection, all information
12 received by the Department from returns filed by an employer
13 or from any investigation conducted under the provisions of
14 this Act shall be confidential, except for official purposes
15 within the Department or pursuant to official procedures for
16 collection of penalties assessed under this Act. Nothing
17 contained in this subsection shall prevent the Director from
18 publishing or making available to the public reasonable
19 statistics concerning the operation of this Act wherein the
20 contents of returns are grouped into aggregates in such a way
21 that the specific information of any employer shall not be
22 disclosed. Nothing contained in this subsection shall prevent
23 the Director from divulging information to an authorized
24 representative of the employer or to any person pursuant to a
25 request or authorization made by the employer or by an
26 authorized representative of the employer.

1 (m) Civil penalties collected under this Act and fees
2 collected pursuant to subsection (n) of this Section shall be
3 deposited into the Tax Compliance and Administration Fund. The
4 Department may, subject to appropriation, use moneys in the
5 fund to cover expenses it incurs in the performance of its
6 duties under this Act. Interest attributable to moneys in the
7 Tax Compliance and Administration Fund shall be credited to
8 the Tax Compliance and Administration Fund.

9 (n) The Department may charge the Board a reasonable fee
10 for its costs in performing its duties under this Section to
11 the extent that such costs have not been recovered from
12 penalties imposed under this Section.

13 (o) ~~The This Section shall become operative 9 months after~~
14 ~~the Board notifies the Director that the Program has been~~
15 ~~implemented. Upon receipt of such notification from the Board,~~
16 ~~the~~ Department shall ~~immediately~~ post on its Internet website
17 a notice stating that this Section is operative and the date
18 that it is first operative. This notice shall include a
19 statement that rather than enrolling employees in the Program
20 under this Act, employers may sponsor an alternative
21 arrangement, including, but not limited to, a defined benefit
22 plan, 401(k) plan, a Simplified Employee Pension (SEP) plan, a
23 Savings Incentive Match Plan for Employees (SIMPLE) plan, or
24 an automatic enrollment payroll deduction IRA offered through
25 a private provider. The Board shall provide a link to the
26 vendor Internet website described in subsection (i) of Section

1 60 of this Act, if applicable.

2 (Source: P.A. 98-1150, eff. 6-1-15; 99-464, eff. 8-26-15.)