

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, 16, 80, 85, and 90 as
6 follows:

7 (820 ILCS 80/5)

8 (This Section may contain text from a Public Act with a
9 delayed effective date)

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

14 "Board" means the Illinois Secure Choice Savings Board
15 established under this Act.

16 "Department" means the Department of Revenue.

17 "Director" means the Director of Revenue.

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

23 "Employer" means a person or entity engaged in a business,

1 industry, profession, trade, or other enterprise in Illinois,
2 whether for profit or not for profit, that (i) has at no time
3 during the previous calendar year employed fewer than 25
4 employees in the State, (ii) has been in business at least 2
5 years, and (iii) has not offered a qualified retirement plan,
6 including, but not limited to, a plan qualified under Section
7 401(a), Section 401(k), Section 403(a), Section 403(b),
8 Section 408(k), Section 408(p), or Section 457(b) of the
9 Internal Revenue Code of 1986 in the 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 IRA (individual retirement account)
17 under Section 408A of the Internal Revenue Code.

18 "Participating employer" means an employer or small
19 employer that provides a payroll deposit retirement savings
20 arrangement as provided for by this Act for its employees who
21 are enrollees in the Program.

22 "Payroll deposit retirement savings arrangement" means an
23 arrangement by which a participating employer allows enrollees
24 to remit payroll deduction contributions 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 ~~Department~~ that it is interested in
8 being a participating employer.

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

13 (Source: P.A. 98-1150, eff. 6-1-15.)

14 (820 ILCS 80/16)

15 (This Section may contain text from a Public Act with a
16 delayed effective date)

17 Sec. 16. Illinois Secure Choice Administrative Fund. The
18 Illinois Secure Choice Administrative Fund ("Administrative
19 Fund") is created as a nonappropriated separate and apart trust
20 fund in the State Treasury. The Board shall use moneys in the
21 Administrative Fund to pay for administrative expenses it
22 incurs in the performance of its duties under this Act. The
23 Board shall use moneys in the Administrative Fund to cover
24 start-up administrative expenses it incurs in the performance
25 of its duties under this Act. The Administrative Fund may

1 receive any grants or other moneys designated for
2 administrative purposes from the State, or any unit of federal
3 or local government, or any other person, firm, partnership, or
4 corporation. Any interest earnings that are attributable to
5 moneys in the Administrative Fund must be deposited into the
6 Administrative Fund. The State Treasurer shall be the
7 administering agency for the Administrative Fund on behalf of
8 the Board.

9 (Source: P.A. 98-1150, eff. 6-1-15.)

10 (820 ILCS 80/80)

11 (This Section may contain text from a Public Act with a
12 delayed effective date)

13 Sec. 80. Audit and reports.

14 (a) The Board shall annually submit: ~~(1)~~ an audited
15 financial report, prepared in accordance with generally
16 accepted accounting principles, on the operations of the
17 Program during each calendar year by July 1 of the following
18 year to the Governor, the Comptroller, the State Treasurer, and
19 the General Assembly. ~~and~~

20 ~~(2) a report prepared by the Board, which shall~~
21 ~~include, but is not limited to, a summary of the benefits~~
22 ~~provided by the Program, including the number of enrollees~~
23 ~~in the Program, the percentage and amounts of investment~~
24 ~~options and rates of return, and such other information~~
25 ~~that is relevant to make a full, fair, and effective~~

1 ~~disclosure of the operations of the Program and the Fund.~~

2 The annual audit shall be made by an independent certified
3 public accountant and shall include, but is not limited to,
4 direct and indirect costs attributable to the use of outside
5 consultants, independent contractors, and any other persons
6 who are not State employees for the administration of the
7 Program.

8 (b) In addition to any other statements or reports required
9 by law, the Board shall provide periodic reports at least
10 annually to participating employers, reporting the names of
11 each enrollee employed by the participating employer and the
12 amounts of contributions made by the participating employer on
13 behalf of each employee during the reporting period, as well as
14 to enrollees, reporting contributions and investment income
15 allocated to, withdrawals from, and balances in their Program
16 accounts for the reporting period. Such reports may include any
17 other information regarding the Program as the Board may
18 determine.

19 (c) The State Treasurer shall prepare a report in
20 consultation with the Board that includes a summary of the
21 benefits provided by the Program, including the number of
22 enrollees in the Program, the percentage and amounts of
23 investment options and rates of return, and such other
24 information that is relevant to make a full, fair, and
25 effective disclosure of the operations of the Program and the
26 Fund.

1 (Source: P.A. 98-1150, eff. 6-1-15.)

2 (820 ILCS 80/85)

3 (This Section may contain text from a Public Act with a
4 delayed effective date)

5 Sec. 85. Penalties.

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

10 (1) \$250 for each employee for each calendar year or
11 portion of a calendar year during which the employee
12 neither was enrolled in the Program nor had elected out of
13 participation in the Program; or

14 (2) for each calendar year beginning after the date a
15 penalty has been assessed with respect to an employee, \$500
16 for any portion of that calendar year during which such
17 employee continues to be unenrolled without electing out of
18 participation in the Program.

19 (b) After determining that an employer is subject to
20 penalty under this Section for a calendar year, the Department
21 shall issue a notice of proposed assessment to such employer,
22 stating the number of employees for which the penalty is
23 proposed under item (1) of subsection (a) of this Section and
24 the number of employees for which the penalty is proposed under
25 item (2) of subsection (a) of this Section for such calendar

1 year, and the total amount of penalties proposed.

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

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

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

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

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

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

20 (e) An employer who has overpaid a penalty assessed under
21 this Section may file a claim for refund with the Department. A
22 claim shall be in writing in such form as the Department may by
23 rule prescribe and shall state the specific grounds upon which
24 it is founded. As soon as practicable after a claim for refund
25 is filed, the Department shall examine it and either issue a
26 refund or issue a notice of denial. If such a protest is filed,

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

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

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

22 (f) No notice of proposed assessment may be issued with
23 respect to a calendar year after June 30 of the fourth
24 subsequent calendar year. No claim for refund may be filed more
25 than 1 year after the date of payment of the amount to be
26 refunded.

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

10 (h) Whenever notice is required by this Section, it may be
11 given or issued by mailing it by first-class mail addressed to
12 the person concerned at his or her last known address.

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

18 (j) The Department may require employers to report
19 information relevant to their compliance with this Act on
20 returns otherwise due from the employers under Section 704A of
21 the Illinois Income Tax Act and failure to provide the
22 requested information on a return shall cause such return to be
23 treated as unprocessable.

24 (k) For purposes of any provision of State law allowing the
25 Department or any other agency of this State to offset an
26 amount owed to a taxpayer against a tax liability of that

1 taxpayer or allowing the Department to offset an overpayment of
2 tax against any liability owed to the State, a penalty assessed
3 under this Section shall be deemed to be a tax liability of the
4 employer and any refund due to an employer shall be deemed to
5 be an overpayment of tax of the employer.

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

22 (m) Civil penalties collected under this Act and fees
23 collected pursuant to subsection (n) of this Section shall be
24 deposited into the Tax Compliance and Administration Fund. The
25 Department may, subject to appropriation, use moneys in the
26 fund to cover expenses it incurs in the performance of its

1 duties under this Act. Interest attributable to moneys in the
2 Tax Compliance and Administration Fund shall be credited to the
3 Tax Compliance and Administration Fund.

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

8 (o) This Section shall become operative 9 months after the
9 Board notifies the Director that the Program has been
10 implemented. Upon receipt of such notification from the Board,
11 the Department shall immediately post on its Internet website a
12 notice stating that this Section is operative and the date that
13 it is first operative. This notice shall include a statement
14 that rather than enrolling employees in the Program under this
15 Act, employers may sponsor an alternative arrangement,
16 including, but not limited to, a defined benefit plan, 401(k)
17 plan, a Simplified Employee Pension (SEP) plan, a Savings
18 Incentive Match Plan for Employees (SIMPLE) plan, or an
19 automatic payroll deduction IRA offered through a private
20 provider. The Board shall provide a link to the vendor Internet
21 website described in subsection (i) of Section 60 of this Act.

22 (Source: P.A. 98-1150, eff. 6-1-15.)

23 (820 ILCS 80/90)

24 (This Section may contain text from a Public Act with a
25 delayed effective date)

1 Sec. 90. Rules. The Board and the State Treasurer
2 ~~Department~~ shall adopt, in accordance with the Illinois
3 Administrative Procedure Act, any rules that may be necessary
4 to implement this Act.

5 (Source: P.A. 98-1150, eff. 6-1-15.)

6 Section 99. Effective date. This Act takes effect on June
7 1, 2015.