



Sen. Daniel Biss

Filed: 5/19/2015

09900HB3220sam001

LRB099 10384 JLS 35710 a

1 AMENDMENT TO HOUSE BILL 3220

2 AMENDMENT NO. _____. Amend House Bill 3220 on page 1 by
3 replacing line 5 with the following:

4 "is amended by changing Sections 5, 16, 80, 85, and 90 as
5 follows:

6 (820 ILCS 80/5)

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

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

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

15 "Department" means the Department of Revenue.

16 "Director" means the Director of Revenue.

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

6 "Employer" means a person or entity engaged in a business,
7 industry, profession, trade, or other enterprise in Illinois,
8 whether for profit or not for profit, that (i) has at no time
9 during the previous calendar year employed fewer than 25
10 employees in the State, (ii) has been in business at least 2
11 years, and (iii) has not offered a qualified retirement plan,
12 including, but not limited to, a plan qualified under Section
13 401(a), Section 401(k), Section 403(a), Section 403(b),
14 Section 408(k), Section 408(p), or Section 457(b) of the
15 Internal Revenue Code of 1986 in the preceding 2 years.

16 "Enrollee" means any employee who is enrolled in the
17 Program.

18 "Fund" means the Illinois Secure Choice Savings Program
19 Fund.

20 "Internal Revenue Code" means Internal Revenue Code of
21 1986, or any successor law, in effect for the calendar year.

22 "IRA" means a Roth IRA (individual retirement account)
23 under Section 408A of the Internal Revenue Code.

24 "Participating employer" means an employer or small
25 employer that provides a payroll deposit retirement savings
26 arrangement as provided for by this Act for its employees who

1 are enrollees in the Program.

2 "Payroll deposit retirement savings arrangement" means an
3 arrangement by which a participating employer allows enrollees
4 to remit payroll deduction contributions to the Program.

5 "Program" means the Illinois Secure Choice Savings
6 Program.

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

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

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

20 (820 ILCS 80/16)

21 (This Section may contain text from a Public Act with a
22 delayed effective date)

23 Sec. 16. Illinois Secure Choice Administrative Fund. The
24 Illinois Secure Choice Administrative Fund ("Administrative
25 Fund") is created as a nonappropriated separate and apart trust

1 fund in the State Treasury. The Board shall use moneys in the
2 Administrative Fund to pay for administrative expenses it
3 incurs in the performance of its duties under this Act. The
4 Board shall use moneys in the Administrative Fund to cover
5 start-up administrative expenses it incurs in the performance
6 of its duties under this Act. The Administrative Fund may
7 receive any grants or other moneys designated for
8 administrative purposes from the State, or any unit of federal
9 or local government, or any other person, firm, partnership, or
10 corporation. Any interest earnings that are attributable to
11 moneys in the Administrative Fund must be deposited into the
12 Administrative Fund. The State Treasurer shall be the
13 administering agency for the Administrative Fund on behalf of
14 the Board.

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

16 on page 2 by inserting immediately below line 25 the following:

17 "(820 ILCS 80/85)

18 (This Section may contain text from a Public Act with a
19 delayed effective date)

20 Sec. 85. Penalties.

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

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

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

10 (b) After determining that an employer is subject to
11 penalty under this Section for a calendar year, the Department
12 shall issue a notice of proposed assessment to such employer,
13 stating the number of employees for which the penalty is
14 proposed under item (1) of subsection (a) of this Section and
15 the number of employees for which the penalty is proposed under
16 item (2) of subsection (a) of this Section for such calendar
17 year, and the total amount of penalties proposed.

18 Upon the expiration of 90 days after the date on which a
19 notice of proposed assessment was issued, the penalties
20 specified therein shall be deemed assessed, unless the employer
21 had filed a protest with the Department under subsection (c) of
22 this Section.

23 If, within 90 days after the date on which it was issued, a
24 protest of a notice of proposed assessment is filed under
25 subsection (c) of this Section, the penalties specified therein
26 shall be deemed assessed upon the date when the decision of the

1 Department with respect to the protest becomes final.

2 (c) A written protest against the proposed assessment shall
3 be filed with the Department in such form as the Department may
4 by rule prescribe, setting forth the grounds on which such
5 protest is based. If such a protest is filed within 90 days
6 after the date the notice of proposed assessment is issued, the
7 Department shall reconsider the proposed assessment and shall
8 grant the employer a hearing. As soon as practicable after such
9 reconsideration and hearing, the Department shall issue a
10 notice of decision to the employer, setting forth the
11 Department's findings of fact and the basis of decision. The
12 decision of the Department shall become 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 (d) As soon as practicable after the penalties specified in
23 a notice of proposed assessment are deemed assessed, the
24 Department shall give notice to the employer liable for any
25 unpaid portion of such assessment, stating the amount due and
26 demanding payment. If an employer neglects or refuses to pay

1 the entire liability shown on the notice and demand within 10
2 days after the notice and demand is issued, the unpaid amount
3 of the liability shall be a lien in favor of the State of
4 Illinois upon all property and rights to property, whether real
5 or personal, belonging to the employer, and the provisions in
6 the Illinois Income Tax Act regarding liens, levies and
7 collection actions with regard to assessed and unpaid
8 liabilities under that Act, including the periods for taking
9 any action, shall apply.

10 (e) An employer who has overpaid a penalty assessed under
11 this Section may file a claim for refund with the Department. A
12 claim shall be in writing in such form as the Department may by
13 rule prescribe and shall state the specific grounds upon which
14 it is founded. As soon as practicable after a claim for refund
15 is filed, the Department shall examine it and either issue a
16 refund or issue a notice of denial. If such a protest is filed,
17 the Department shall reconsider the denial and grant the
18 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. The notice shall set forth
21 briefly the Department's findings of fact and the basis of
22 decision in each case decided in whole or in part adversely to
23 the employer. A denial of a claim for refund becomes final 90
24 days after the date of issuance of the notice of the denial
25 except for such amounts denied as to which the employer has
26 filed a protest with the Department. If a protest has been

1 timely filed, the decision of the Department shall become
2 final:

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

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

12 (f) No notice of proposed assessment may be issued with
13 respect to a calendar year after June 30 of the fourth
14 subsequent calendar year. No claim for refund may be filed more
15 than 1 year after the date of payment of the amount to be
16 refunded.

17 (g) The provisions of the Administrative Review Law and the
18 rules adopted pursuant to it shall apply to and govern all
19 proceedings for the judicial review of final decisions of the
20 Department in response to a protest filed by the employer under
21 subsections (c) and (e) of this Section. Final decisions of the
22 Department shall constitute "administrative decisions" as
23 defined in Section 3-101 of the Code of Civil Procedure. The
24 Department may adopt any rules necessary to carry out its
25 duties pursuant to this Section.

26 (h) Whenever notice is required by this Section, it may be

1 given or issued by mailing it by first-class mail addressed to
2 the person concerned at his or her last known address.

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

8 (j) The Department may require employers to report
9 information relevant to their compliance with this Act on
10 returns otherwise due from the employers under Section 704A of
11 the Illinois Income Tax Act and failure to provide the
12 requested information on a return shall cause such return to be
13 treated as unprocessable.

14 (k) For purposes of any provision of State law allowing the
15 Department or any other agency of this State to offset an
16 amount owed to a taxpayer against a tax liability of that
17 taxpayer or allowing the Department to offset an overpayment of
18 tax against any liability owed to the State, a penalty assessed
19 under this Section shall be deemed to be a tax liability of the
20 employer and any refund due to an employer shall be deemed to
21 be an overpayment of tax of the employer.

22 (l) Except as provided in this subsection, all information
23 received by the Department from returns filed by an employer or
24 from any investigation conducted under the provisions of this
25 Act shall be confidential, except for official purposes within
26 the Department or pursuant to official procedures for

1 collection of penalties assessed under this Act. Nothing
2 contained in this subsection shall prevent the Director from
3 publishing or making available to the public reasonable
4 statistics concerning the operation of this Act wherein the
5 contents of returns are grouped into aggregates in such a way
6 that the specific information of any employer shall not be
7 disclosed. Nothing contained in this subsection shall prevent
8 the Director from divulging information to an authorized
9 representative of the employer or to any person pursuant to a
10 request or authorization made by the employer or by an
11 authorized representative of the employer.

12 (m) Civil penalties collected under this Act and fees
13 collected pursuant to subsection (n) of this Section shall be
14 deposited into the Tax Compliance and Administration Fund. The
15 Department may, subject to appropriation, use moneys in the
16 fund to cover expenses it incurs in the performance of its
17 duties under this Act. Interest attributable to moneys in the
18 Tax Compliance and Administration Fund shall be credited to the
19 Tax Compliance and Administration Fund.

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

24 (o) This Section shall become operative 9 months after the
25 Board notifies the Director that the Program has been
26 implemented. Upon receipt of such notification from the Board,

1 the Department shall immediately post on its Internet website a
2 notice stating that this Section is operative and the date that
3 it is first operative. This notice shall include a statement
4 that rather than enrolling employees in the Program under this
5 Act, employers may sponsor an alternative arrangement,
6 including, but not limited to, a defined benefit plan, 401(k)
7 plan, a Simplified Employee Pension (SEP) plan, a Savings
8 Incentive Match Plan for Employees (SIMPLE) plan, or an
9 automatic payroll deduction IRA offered through a private
10 provider. The Board shall provide a link to the vendor Internet
11 website described in subsection (i) of Section 60 of this Act.

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

13 (820 ILCS 80/90)

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

16 Sec. 90. Rules. The Board and the State Treasurer
17 ~~Department~~ shall adopt, in accordance with the Illinois
18 Administrative Procedure Act, any rules that may be necessary
19 to implement this Act.

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

21 Section 99. Effective date. This Act takes effect on June
22 1, 2015."