

AN ACT concerning employment.

**Be it enacted by the People of the State of Illinois,  
represented in the General Assembly:**

Section 5. The Illinois Secure Choice Savings Program Act is amended by changing Sections 5, 16, 80, 85, and 90 as follows:

(820 ILCS 80/5)

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

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

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

"Department" means the Department of Revenue.

"Director" means the Director of Revenue.

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

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

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

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

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

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

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

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

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

"Program" means the Illinois Secure Choice Savings Program.

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

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

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

(820 ILCS 80/16)

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

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

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

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

(820 ILCS 80/80)

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

Sec. 80. Audit and reports.

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

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

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

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

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

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

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

(820 ILCS 80/85)

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

Sec. 85. Penalties.

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

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

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

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

year, and the total amount of penalties proposed.

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(820 ILCS 80/90)

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

Public Act 099-0464

HB3220 Enrolled

LRB099 10384 JLS 30611 b

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

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

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