



Sen. Omar Aquino

Filed: 10/29/2019

10100HB2455sam001

LRB101 08292 TAE 64075 a

1 AMENDMENT TO HOUSE BILL 2455

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 2455 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Secure Choice Savings Program Act  
5 is amended by changing Section 85 as follows:

6 (820 ILCS 80/85)

7 Sec. 85. Penalties.

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

12 (1) \$250 per ~~for each~~ employee for the first ~~each~~  
13 calendar year the employer is noncompliant ~~or portion of a~~  
14 ~~calendar year during which the employee neither was~~  
15 ~~enrolled in the Program nor had elected out of~~  
16 ~~participation in the Program; or~~

1           (2) \$500 per employee for each subsequent calendar year  
2           the employer is noncompliant; noncompliance does not need  
3           to be consecutive to qualify for the \$500 penalty beginning  
4           ~~after the date a penalty has been assessed with respect to~~  
5           ~~an employee, \$500 for any portion of that calendar year~~  
6           ~~during which such employee continues to be unenrolled~~  
7           ~~without electing out of participation in the Program.~~

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

10          (b) After determining that an employer is subject to a  
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 or  
15          ~~and~~ the number of employees for which the penalty is proposed  
16          under item (2) of subsection (a) of this Section for such  
17          calendar 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 or in an  
3 electronic format as determined by the Department.

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

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

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

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

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

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

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

25 (o) ~~By January 1, 2021, This Section shall become operative~~  
26 ~~9 months after the Board notifies the Director that the Program~~

1 ~~has been implemented. Upon receipt of such notification from~~  
2 ~~the Board,~~ the Department shall ~~immediately~~ post on its  
3 Internet website a notice stating that this Section is  
4 operative ~~and the date that it is first operative.~~ This notice  
5 shall include a statement that rather than enrolling employees  
6 in the Program under this Act, employers may sponsor an  
7 alternative arrangement, including, but not limited to, a  
8 defined benefit plan, 401(k) plan, a Simplified Employee  
9 Pension (SEP) plan, a Savings Incentive Match Plan for  
10 Employees (SIMPLE) plan, or an automatic enrollment payroll  
11 deduction IRA offered through a private provider. The Board  
12 shall provide a link to the vendor Internet website described  
13 in subsection (i) of Section 60 of this Act, if applicable.  
14 (Source: P.A. 98-1150, eff. 6-1-15; 99-464, eff. 8-26-15.)".