



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB5229

by Rep. Will Guzzardi

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. Provides that the Act applies to employers with at least one employee, rather than fewer than 25 employees. Provides for automatic increases in contributions. Makes changes regarding penalties for employers who fail, without reasonable cause, to enroll an employee in the 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. Provides that penalty provisions shall become operative by January 1, 2021, rather than 9 months after the Illinois Secure Choice Savings Board notifies the Director of Revenue that the Program has been implemented.

LRB101 20727 JLS 70402 b

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, all
9 terms shall have the same meaning as when used in a comparable
10 context in the Internal Revenue Code. As used in this Act:

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

13 "Department" means the Department of Revenue.

14 "Director" means the Director of Revenue.

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

20 "Employer" means a person or entity engaged in a business,
21 industry, profession, trade, or other enterprise in Illinois,
22 whether for profit or not for profit, that (i) has ~~at no time~~
23 ~~during the previous calendar year~~ employed, at least one

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

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

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

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

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

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

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

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

26 ~~"Small employer" means a person or entity engaged in a~~

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

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

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

13 (820 ILCS 80/30)

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

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

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

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

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

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

3 (5) ensures the portability of benefits; and

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

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

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

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

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

26 (e-5) Conduct a review of the performance of any

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

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

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

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

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

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

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

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

20 (m) Make provisions for the payment of administrative
21 costs and expenses for the creation, management, and
22 operation of the Program, including the costs associated
23 with subsection (b) of Section 20 of this Act, subsections
24 (e), (f), (h), and (l) of this Section, subsection (b) of
25 Section 45 of this Act, subsection (a) of Section 80 of
26 this Act, and subsection (n) of Section 85 of this Act.

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

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

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

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

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

26 (p) Facilitate education and outreach to employers and

1 employees.

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

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

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

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

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

22 The Board may enter into agreements with other governmental
23 entities, including other states or their agencies and
24 instrumentalities, to enable residents of other states to
25 participate in the Program.

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

1 (820 ILCS 80/60)

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

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

22 (b) Employers shall automatically enroll in the Program
23 each of their employees who has not opted out of participation
24 in the Program using the form described in subsection (c) of
25 Section 55 of this Act and shall provide payroll deduction

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

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

25 (d) Enrollees may select an investment option from the
26 permitted investment options listed in Section 45 of this Act.

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

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

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

21 (g) Employers shall retain the option at all times to set
22 up any type of employer-sponsored retirement plan, such as a
23 defined benefit plan or a 401(k), Simplified Employee Pension
24 (SEP) plan, or Savings Incentive Match Plan for Employees
25 (SIMPLE) plan, or to offer an automatic enrollment payroll
26 deduction IRA, instead of having a payroll deposit retirement

1 savings arrangement to allow employee participation in the
2 Program.

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

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

22 (Source: P.A. 99-571, eff. 7-15-16; 100-6, eff. 6-30-17;
23 100-863, eff. 8-14-18.)

24 (820 ILCS 80/85)

25 Sec. 85. Penalties.

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

5 (1) \$250 per ~~for each~~ employee for the first ~~each~~
6 calendar year the employer is noncompliant ~~or portion of a~~
7 ~~calendar year during which the employee neither was~~
8 ~~enrolled in the Program nor had elected out of~~
9 ~~participation in the Program; or~~

10 (2) \$500 per employee for each subsequent calendar year
11 the employer is noncompliant; noncompliance does not need
12 to be consecutive to qualify for the \$500 penalty ~~beginning~~
13 ~~after the date a penalty has been assessed with respect to~~
14 ~~an employee, \$500 for any portion of that calendar year~~
15 ~~during which such employee continues to be unenrolled~~
16 ~~without electing out of participation in the Program.~~

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

19 (b) After determining that an employer is subject to a
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 or
24 ~~and~~ the number of employees for which the penalty is proposed
25 under item (2) of subsection (a) of this Section for such
26 calendar year, and the total amount of penalties proposed.

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

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

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

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

26 (2) if a timely action for review of the decision is

1 commenced under the Administrative Review Law, on the date
2 all proceedings in court for the review of such assessment
3 have terminated or the time for the taking thereof has
4 expired without such proceedings being instituted.

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

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

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

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

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

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

26 (g) The provisions of the Administrative Review Law and the

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

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

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) ~~By January 1, 2021, This Section shall become operative~~
9 ~~9 months after the Board notifies the Director that the Program~~
10 ~~has been implemented. Upon receipt of such notification from~~
11 ~~the Board,~~ the Department shall immediately post on its
12 Internet website a notice stating that this Section is
13 operative ~~and the date that it is first operative.~~ This notice
14 shall include a statement that rather than enrolling employees
15 in the Program under this Act, employers may sponsor an
16 alternative arrangement, including, but not limited to, a
17 defined benefit plan, 401(k) plan, a Simplified Employee
18 Pension (SEP) plan, a Savings Incentive Match Plan for
19 Employees (SIMPLE) plan, or an automatic enrollment payroll
20 deduction IRA offered through a private provider. The Board
21 shall provide a link to the vendor Internet website described
22 in subsection (i) of Section 60 of this Act, if applicable.

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