

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, 30, 60, and 85 as follows:

(820 ILCS 80/5)

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 at least 5 employees ~~fewer than 25 employees~~ in the State during every quarter of the previous calendar year, (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 or Traditional IRA (individual retirement account) under Section 408 or 408A of the Internal Revenue Code.

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

"Payroll deposit retirement savings arrangement" means an arrangement by which a participating employer facilitates payroll deduction contributions from enrollees 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 5 ~~25~~ employees during any quarter of ~~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 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. 101-353, eff. 8-9-19.)

(820 ILCS 80/30)

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

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

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

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

(3) maximizes simplicity, including ease of administration for participating employers and

enrollees;

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

(5) ensures the portability of benefits; and

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

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

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

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

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

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

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

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

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

arrangements.

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

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

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

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

(m) Make provisions for the payment of administrative costs and expenses for the creation, management, and operation of the Program, including the costs associated with subsection (b) of Section 20 of this Act, subsections (e), (f), (h), and (l) of this Section, subsection (b) of Section 45 of this Act, subsection (a) of Section 80 of

this Act, and subsection (n) of Section 85 of this Act. Subject to appropriation, the State may pay administrative costs associated with the creation and management of the Program until sufficient assets are available in the Fund for that purpose. Thereafter, all administrative costs of the Fund, including repayment of any start-up funds provided by the State, shall be paid only out of moneys on deposit therein. However, private funds or federal funding received under subsection (k) of Section 30 of this Act in order to implement the Program until the Fund is self-sustaining shall not be repaid unless those funds were offered contingent upon the promise of such repayment. The Board shall keep total annual expenses as low as possible, but in no event shall they exceed 0.75% of the total trust balance.

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

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

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

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

(p) Facilitate education and outreach to employers and employees.

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

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

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

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

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

The Board may enter into agreements with other governmental entities, including other states or their agencies and instrumentalities, to enable residents of other

states to participate in the Program.

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

(820 ILCS 80/60)

Sec. 60. Program implementation and enrollment. Except as otherwise provided in Section 93 of this Act, the Program shall be implemented, and enrollment of employees shall begin in 2018. The Board shall establish an implementation timeline under which employers shall enroll their employees in the Program. The timeline shall include the date by which an employer must begin enrollment of its employees in the Program and the date by which enrollment must be complete. The Board shall adopt the implementation timeline at a public meeting of the Board and shall publicize the implementation timeline. The Board shall provide advance notice to employers of their enrollment date and the amount of time to complete enrollment. The enrollment deadline for employers with fewer than 25 employees and more than 15 employees shall be no sooner than September 1, 2022. The enrollment deadline for employers with at least 5 employees but not more than 15 employees shall be no sooner than September 1, 2023. ~~Board's implementation timeline shall ensure that all employees are required to be enrolled in the Program by December 31, 2020.~~ The provisions of this Section shall be in force after the Board opens the Program for enrollment.

(a) Each employer shall establish a payroll deposit

retirement savings arrangement to allow each employee to participate in the Program within the timeline set by the Board after the Program opens for enrollment.

(b) Employers shall automatically enroll in the Program each of their employees who has not opted out of participation in the Program using the form described in subsection (c) of Section 55 of this Act and shall provide payroll deduction retirement savings arrangements for such employees and deposit, on behalf of such employees, these funds into the Program. Small employers may, but are not required to, provide payroll deduction retirement savings arrangements for each employee who elects to participate in the Program. ~~Small employers' use of automatic enrollment for employees is subject to final rules from the United States Department of Labor.~~ Utilization of automatic enrollment by small employers may be allowed only if it does not create employer liability under the federal Employee Retirement Income Security Act.

(c) Enrollees shall have the ability to select a contribution level into the Fund. This level may be expressed as a percentage of wages or as a dollar amount up to the deductible amount for the enrollee's taxable year under Section 219(b)(1)(A) of the Internal Revenue Code. Enrollees may change their contribution level at any time, subject to rules promulgated by the Board. If an enrollee fails to select a contribution level using the form described in subsection (c) of Section 55 of this Act, then he or she shall contribute

the default contribution rate of his or her wages to the Program, provided that such contributions shall not cause the enrollee's total contributions to IRAs for the year to exceed the deductible amount for the enrollee's taxable year under Section 219(b) (1) (A) of the Internal Revenue Code.

(d) Enrollees may select an investment option from the permitted investment options listed in Section 45 of this Act. Enrollees may change their investment option at any time, subject to rules promulgated by the Board. In the event that an enrollee fails to select an investment option, that enrollee shall be placed in the investment option selected by the Board as the default under subsection (c) of Section 45 of this Act. If the Board has not selected a default investment option under subsection (c) of Section 45 of this Act, then an enrollee who fails to select an investment option shall be placed in the life-cycle fund investment option.

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

(f) An employee who opts out of the Program who subsequently wants to participate through the participating employer's payroll deposit retirement savings arrangement may only enroll during the participating employer's designated open enrollment period or if permitted by the participating

employer at an earlier time.

(g) Employers shall retain the option at all times to set up any type of employer-sponsored retirement plan, such as a defined benefit plan or a 401(k), Simplified Employee Pension (SEP) plan, or Savings Incentive Match Plan for Employees (SIMPLE) plan, or to offer an automatic enrollment payroll deduction IRA, instead of having a payroll deposit retirement savings arrangement to allow employee participation in the Program.

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

(i) The Board shall establish and maintain an Internet website designed to assist employers in identifying private sector providers of retirement arrangements that can be set up by the employer rather than allowing employee participation in the Program under this Act; however, the Board shall only establish and maintain an Internet website under this subsection if there is sufficient interest in such an Internet website by private sector providers and if the private sector providers furnish the funding necessary to establish and maintain the Internet website. The Board must provide public notice of the availability of and the process for inclusion on the Internet website before it becomes publicly available. This Internet website must be available to the public before the Board opens the Program for enrollment, and the Internet website address must be included on any Internet website

posting or other materials regarding the Program offered to the public by the Board.

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

(820 ILCS 80/85)

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 per for each employee for the first each calendar year the employer is noncompliant 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) \$500 per employee for each subsequent calendar year the employer is noncompliant; noncompliance does not need to be consecutive to qualify for the \$500 penalty 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.

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

(b) After determining that an employer is subject to a 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 or ~~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 120 ~~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 or come into full compliance with the Program as required under Section 60 of this Act.

If, within 120 ~~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 120 ~~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 120 ~~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 or in an electronic format as determined by the Department.

(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) ~~The 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 enrollment 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, if applicable.

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