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 60 and 85 as follows:

(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. 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 in the manner ~~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. 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 may ~~shall~~ designate an open enrollment period during which employees who previously opted out of the Program may enroll in the Program.

(f) (Blank). ~~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 a qualified retirement plan, including, but not limited to, ~~any type of employer sponsored retirement plan, such as~~ a defined benefit plan or a 401(k), a Simplified Employee Pension (SEP) plan, or a Savings Incentive Match Plan for Employees (SIMPLE) plan, ~~or to offer an automatic enrollment payroll deduction IRA,~~ instead of facilitating their employees' ~~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. 102-179, eff. 1-1-22.)

(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 employee for the first calendar year the employer is noncompliant; 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.

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 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 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 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 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 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 Department shall 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 set up a qualified retirement plan ~~sponsor an alternative arrangement~~, including, but not limited to, a defined benefit plan, 401(k) plan, a Simplified Employee Pension (SEP) plan, or 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. 102-179, eff. 1-1-22.)