

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 60 and 85 as follows:

6 (820 ILCS 80/60)

7 Sec. 60. Program implementation and enrollment. Except as
8 otherwise provided in Section 93 of this Act, the Program
9 shall be implemented, and enrollment of employees shall begin
10 in 2018. The Board shall establish an implementation timeline
11 under which employers shall enroll their employees in the
12 Program. The timeline shall include the date by which an
13 employer must begin enrollment of its employees in the Program
14 and the date by which enrollment must be complete. The Board
15 shall adopt the implementation timeline at a public meeting of
16 the Board and shall publicize the implementation timeline. The
17 Board shall provide advance notice to employers of their
18 enrollment date and the amount of time to complete enrollment.
19 The enrollment deadline for employers with fewer than 25
20 employees and more than 15 employees shall be no sooner than
21 September 1, 2022. The enrollment deadline for employers with
22 at least 5 employees but not more than 15 employees shall be no
23 sooner than September 1, 2023. The provisions of this Section

1 shall be in force after the Board opens the Program for
2 enrollment.

3 (a) Each employer shall establish a payroll deposit
4 retirement savings arrangement to allow each employee to
5 participate in the Program within the timeline set by the
6 Board after the Program opens for enrollment.

7 (b) Employers shall automatically enroll in the Program
8 each of their employees who has not opted out of participation
9 in the Program in the manner ~~using the form~~ described in
10 subsection (c) of Section 55 of this Act and shall provide
11 payroll deduction retirement savings arrangements for such
12 employees and deposit, on behalf of such employees, these
13 funds into the Program. Small employers may, but are not
14 required to, provide payroll deduction retirement savings
15 arrangements for each employee who elects to participate in
16 the Program. Utilization of automatic enrollment by small
17 employers may be allowed only if it does not create employer
18 liability under the federal Employee Retirement Income
19 Security Act.

20 (c) Enrollees shall have the ability to select a
21 contribution level into the Fund. This level may be expressed
22 as a percentage of wages or as a dollar amount up to the
23 deductible amount for the enrollee's taxable year under
24 Section 219(b)(1)(A) of the Internal Revenue Code. Enrollees
25 may change their contribution level at any time, subject to
26 rules promulgated by the Board. If an enrollee fails to select

1 a contribution level using the form described in subsection
2 (c) of Section 55 of this Act, then he or she shall contribute
3 the default contribution rate of his or her wages to the
4 Program, provided that such contributions shall not cause the
5 enrollee's total contributions to IRAs for the year to exceed
6 the deductible amount for the enrollee's taxable year under
7 Section 219(b) (1) (A) of the Internal Revenue Code.

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

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

24 (f) (Blank). ~~An employee who opts out of the Program who~~
25 ~~subsequently wants to participate through the participating~~
26 ~~employer's payroll deposit retirement savings arrangement may~~

1 ~~only enroll during the participating employer's designated~~
2 ~~open enrollment period or if permitted by the participating~~
3 ~~employer at an earlier time.~~

4 (g) Employers shall retain the option at all times to set
5 up a qualified retirement plan, including, but not limited to,
6 ~~any type of employer sponsored retirement plan, such as a~~
7 defined benefit plan or a 401(k), a Simplified Employee
8 Pension (SEP) plan, or a Savings Incentive Match Plan for
9 Employees (SIMPLE) plan, ~~or to offer an automatic enrollment~~
10 ~~payroll deduction IRA,~~ instead of facilitating their
11 employees' ~~having a payroll deposit retirement savings~~
12 ~~arrangement to allow employee~~ participation in the Program.

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

15 (i) The Board shall establish and maintain an Internet
16 website designed to assist employers in identifying private
17 sector providers of retirement arrangements that can be set up
18 by the employer rather than allowing employee participation in
19 the Program under this Act; however, the Board shall only
20 establish and maintain an Internet website under this
21 subsection if there is sufficient interest in such an Internet
22 website by private sector providers and if the private sector
23 providers furnish the funding necessary to establish and
24 maintain the Internet website. The Board must provide public
25 notice of the availability of and the process for inclusion on
26 the Internet website before it becomes publicly available.

1 This Internet website must be available to the public before
2 the Board opens the Program for enrollment, and the Internet
3 website address must be included on any Internet website
4 posting or other materials regarding the Program offered to
5 the public by the Board.

6 (Source: P.A. 102-179, eff. 1-1-22.)

7 (820 ILCS 80/85)

8 Sec. 85. Penalties.

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

13 (1) \$250 per employee for the first calendar year the
14 employer is noncompliant; or

15 (2) \$500 per employee for each subsequent calendar
16 year the employer is noncompliant; noncompliance does not
17 need to be consecutive to qualify for the \$500 penalty.

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

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

1 under item (2) of subsection (a) of this Section for such
2 calendar year, and the total amount of penalties proposed.

3 Upon the expiration of 120 days after the date on which a
4 notice of proposed assessment was issued, the penalties
5 specified therein shall be deemed assessed, unless the
6 employer had filed a protest with the Department under
7 subsection (c) of this Section or come into full compliance
8 with the Program as required under Section 60 of this Act.

9 If, within 120 days after the date on which it was issued,
10 a protest of a notice of proposed assessment is filed under
11 subsection (c) of this Section, the penalties specified
12 therein shall be deemed assessed upon the date when the
13 decision of the Department with respect to the protest becomes
14 final.

15 (c) A written protest against the proposed assessment
16 shall be filed with the Department in such form as the
17 Department may by rule prescribe, setting forth the grounds on
18 which such protest is based. If such a protest is filed within
19 120 days after the date the notice of proposed assessment is
20 issued, the Department shall reconsider the proposed
21 assessment and shall grant the employer a hearing. As soon as
22 practicable after such reconsideration and hearing, the
23 Department shall issue a notice of decision to the employer,
24 setting forth the Department's findings of fact and the basis
25 of decision. The decision of the Department shall become
26 final:

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

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

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

24 (e) An employer who has overpaid a penalty assessed under
25 this Section may file a claim for refund with the Department. A
26 claim shall be in writing in such form as the Department may by

1 rule prescribe and shall state the specific grounds upon which
2 it is founded. As soon as practicable after a claim for refund
3 is filed, the Department shall examine it and either issue a
4 refund or issue a notice of denial. If such a protest is filed,
5 the Department shall reconsider the denial and grant the
6 employer a hearing. As soon as practicable after such
7 reconsideration and hearing, the Department shall issue a
8 notice of decision to the employer. The notice shall set forth
9 briefly the Department's findings of fact and the basis of
10 decision in each case decided in whole or in part adversely to
11 the employer. A denial of a claim for refund becomes final 120
12 days after the date of issuance of the notice of the denial
13 except for such amounts denied as to which the employer has
14 filed a protest with the Department. If a protest has been
15 timely filed, the decision of the Department shall become
16 final:

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

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

26 (f) No notice of proposed assessment may be issued with

1 respect to a calendar year after June 30 of the fourth
2 subsequent calendar year. No claim for refund may be filed
3 more than 1 year after the date of payment of the amount to be
4 refunded.

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

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

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

23 (j) The Department may require employers to report
24 information relevant to their compliance with this Act on
25 returns otherwise due from the employers under Section 704A of
26 the Illinois Income Tax Act and failure to provide the

1 requested information on a return shall cause such return to
2 be treated as unprocessable.

3 (k) For purposes of any provision of State law allowing
4 the Department or any other agency of this State to offset an
5 amount owed to a taxpayer against a tax liability of that
6 taxpayer or allowing the Department to offset an overpayment
7 of tax against any liability owed to the State, a penalty
8 assessed under this Section shall be deemed to be a tax
9 liability of the employer and any refund due to an employer
10 shall be deemed to be an overpayment of tax of the employer.

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

1 (m) Civil penalties collected under this Act and fees
2 collected pursuant to subsection (n) of this Section shall be
3 deposited into the Tax Compliance and Administration Fund. The
4 Department may, subject to appropriation, use moneys in the
5 fund to cover expenses it incurs in the performance of its
6 duties under this Act. Interest attributable to moneys in the
7 Tax Compliance and Administration Fund shall be credited to
8 the Tax Compliance and Administration Fund.

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

13 (o) The Department shall post on its Internet website a
14 notice stating that this Section is operative and the date
15 that it is first operative. This notice shall include a
16 statement that rather than enrolling employees in the Program
17 under this Act, employers may set up a qualified retirement
18 plan ~~sponsor an alternative arrangement~~, including, but not
19 limited to, a defined benefit plan, 401(k) plan, a Simplified
20 Employee Pension (SEP) plan, or a Savings Incentive Match Plan
21 for Employees (SIMPLE) plan, ~~or an automatic enrollment~~
22 ~~payroll deduction IRA offered through a private provider~~. The
23 Board shall provide a link to the vendor Internet website
24 described in subsection (i) of Section 60 of this Act, if
25 applicable.

26 (Source: P.A. 102-179, eff. 1-1-22.)