

1 AN ACT concerning State government.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Illinois Secure Choice Savings Program Act.

6 Section 5. Definitions. Unless the context requires a
7 different meaning or as expressly provided in this Section, all
8 terms shall have the same meaning as when used in a comparable
9 context in the Internal Revenue Code. As used in this Act:

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

12 "Department" means the Department of Revenue.

13 "Director" means the Director of Revenue.

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

19 "Employer" means a person or entity engaged in a business,
20 industry, profession, trade, or other enterprise in Illinois,
21 whether for profit or not for profit, that (i) has at no time
22 during the previous calendar year employed fewer than 25
23 employees in the State, (ii) has been in business at least 2

1 years, and (iii) has not offered a qualified retirement plan,
2 including, but not limited to, a plan qualified under Section
3 401(a), Section 401(k), Section 403(a), Section 403(b),
4 Section 408(k), Section 408(p), or Section 457(b) of the
5 Internal Revenue Code of 1986 in the preceding 2 years.

6 "Enrollee" means any employee who is enrolled in the
7 Program.

8 "Fund" means the Illinois Secure Choice Savings Program
9 Fund.

10 "Internal Revenue Code" means Internal Revenue Code of
11 1986, or any successor law, in effect for the calendar year.

12 "IRA" means a Roth IRA (individual retirement account)
13 under Section 408A of the Internal Revenue Code.

14 "Participating employer" means an employer or small
15 employer that provides a payroll deposit retirement savings
16 arrangement as provided for by this Act for its employees who
17 are enrollees in the Program.

18 "Payroll deposit retirement savings arrangement" means an
19 arrangement by which a participating employer allows enrollees
20 to remit payroll deduction contributions to the Program.

21 "Program" means the Illinois Secure Choice Savings
22 Program.

23 "Small employer" means a person or entity engaged in a
24 business, industry, profession, trade, or other enterprise in
25 Illinois, whether for profit or not for profit, that (i)
26 employed less than 25 employees at any one time in the State

1 throughout the previous calendar year, or (ii) has been in
2 business less than 2 years, or both items (i) and (ii), but
3 that notifies the Department that it is interested in being a
4 participating employer.

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

9 Section 10. Establishment of Illinois Secure Choice
10 Savings Program. A retirement savings program in the form of an
11 automatic enrollment payroll deduction IRA, known as the
12 Illinois Secure Choice Savings Program, is hereby established
13 and shall be administered by the Board for the purpose of
14 promoting greater retirement savings for private-sector
15 employees in a convenient, low-cost, and portable manner.

16 Section 15. Illinois Secure Choice Savings Program Fund.

17 (a) The Illinois Secure Choice Savings Program Fund is
18 hereby established as a trust outside of the State treasury,
19 with the Board created in Section 20 as its trustee. The Fund
20 shall include the individual retirement accounts of enrollees,
21 which shall be accounted for as individual accounts. Moneys in
22 the Fund shall consist of moneys received from enrollees and
23 participating employers pursuant to automatic payroll
24 deductions and contributions to savings made under this Act.

1 The Fund shall be operated in a manner determined by the Board,
2 provided that the Fund is operated so that the accounts of
3 enrollees established under the Program meet the requirements
4 for IRAs under the Internal Revenue Code.

5 (b) The amounts deposited in the Fund shall not constitute
6 property of the State and the Fund shall not be construed to be
7 a department, institution, or agency of the State. Amounts on
8 deposit in the Fund shall not be commingled with State funds
9 and the State shall have no claim to or against, or interest
10 in, such funds.

11 Section 16. Illinois Secure Choice Administrative Fund.
12 The Illinois Secure Choice Administrative Fund
13 ("Administrative Fund") is created as a nonappropriated
14 separate and apart trust fund in the State Treasury. The Board
15 shall use moneys in the Administrative Fund to pay for
16 administrative expenses it incurs in the performance of its
17 duties under this Act. The Board shall use moneys in the
18 Administrative Fund to cover start-up administrative expenses
19 it incurs in the performance of its duties under this Act. The
20 Administrative Fund may receive any grants or other moneys
21 designated for administrative purposes from the State, or any
22 unit of federal or local government, or any other person, firm,
23 partnership, or corporation. Any interest earnings that are
24 attributable to moneys in the Administrative Fund must be
25 deposited into the Administrative Fund.

1 Section 20. Composition of the Board. There is created the
2 Illinois Secure Choice Savings Board.

3 (a) The Board shall consist of the following 7 members:

4 (1) the State Treasurer, or his or her designee, who
5 shall serve as chair;

6 (2) the State Comptroller, or his or her designee;

7 (3) the Director of the Governor's Office of Management
8 and Budget, or his or her designee;

9 (4) two public representatives with expertise in
10 retirement savings plan administration or investment, or
11 both, appointed by the Governor;

12 (5) a representative of participating employers,
13 appointed by the Governor; and

14 (6) a representative of enrollees, appointed by the
15 Governor.

16 (b) Members of the Board shall serve without compensation
17 but may be reimbursed for necessary travel expenses incurred in
18 connection with their Board duties from funds appropriated for
19 the purpose.

20 (c) The initial appointments for the Governor's appointees
21 shall be as follows: one public representative for 4 years; one
22 public representative for 2 years; the representative of
23 participating employers for 3 years; and the representative of
24 enrollees for 1 year. Thereafter, all of the Governor's
25 appointees shall be for terms of 4 years.

1 (d) A vacancy in the term of an appointed Board member
2 shall be filled for the balance of the unexpired term in the
3 same manner as the original appointment.

4 (e) Each appointment by the Governor shall be subject to
5 approval by the State Treasurer, who, upon approval, shall
6 certify his or her approval to the Secretary of State. Each
7 appointment by the Governor shall also be subject to the advice
8 and consent of the Senate. In case of a vacancy during a recess
9 of the Senate, the Governor shall make a temporary appointment
10 until the next meeting of the Senate, at which time the
11 Governor shall appoint some person to fill the office. If the
12 State Treasurer does not approve or disapprove the appointment
13 by the Governor within 60 session days after receipt thereof,
14 the person shall be deemed to have been approved by the State
15 Treasurer. Any appointment that has not been acted upon by the
16 Senate within 60 session days after the receipt thereof shall
17 be deemed to have received the advice and consent of the
18 Senate.

19 (f) Each Board member, prior to assuming office, shall take
20 an oath that he or she will diligently and honestly administer
21 the affairs of the Board and that he or she will not knowingly
22 violate or willingly permit to be violated any of the
23 provisions of law applicable to the Program. The oath shall be
24 certified by the officer before whom it is taken and
25 immediately filed in the office of the Secretary of State.

1 Section 25. Fiduciary Duty. The Board, the individual
2 members of the Board, the trustee appointed under subsection
3 (b) of Section 30, any other agents appointed or engaged by the
4 Board, and all persons serving as Program staff shall discharge
5 their duties with respect to the Program solely in the interest
6 of the Program's enrollees and beneficiaries as follows:

7 (1) for the exclusive purposes of providing benefits to
8 enrollees and beneficiaries and defraying reasonable
9 expenses of administering the Program;

10 (2) by investing with the care, skill, prudence, and
11 diligence under the prevailing circumstances that a
12 prudent person acting in a like capacity and familiar with
13 those matters would use in the conduct of an enterprise of
14 a like character and with like aims; and

15 (3) by using any contributions paid by employees and
16 employers into the trust exclusively for the purpose of
17 paying benefits to the enrollees of the Program, for the
18 cost of administration of the Program, and for investments
19 made for the benefit of the Program.

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

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

25 (1) accords with best practices for retirement savings

1 vehicles;

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

4 (3) maximizes simplicity, including ease of
5 administration for participating employers and enrollees;

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

8 (5) ensures the portability of benefits; and

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

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

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

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

23 (e) Make and enter into contracts necessary for the
24 administration of the Program and Fund, including, but not
25 limited to, retaining and contracting with investment
26 managers, private financial institutions, other financial and

1 service providers, consultants, actuaries, counsel, auditors,
2 third-party administrators, and other professionals as
3 necessary.

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

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

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

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

1 capability to receive and process employee information and
2 contributions for payroll deposit retirement savings
3 arrangements or similar arrangements.

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

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

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

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

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

1 this Section, subsection (b) of Section 45 of this Act,
2 subsection (a) of Section 80 of this Act, and subsection (n) of
3 Section 85 of this Act. Subject to appropriation, the State may
4 pay administrative costs associated with the creation and
5 management of the Program until sufficient assets are available
6 in the Fund for that purpose. Thereafter, all administrative
7 costs of the Fund, including repayment of any start-up funds
8 provided by the State, shall be paid only out of moneys on
9 deposit therein. However, private funds or federal funding
10 received under subsection (k) of Section 30 of this Act in
11 order to implement the Program until the Fund is
12 self-sustaining shall not be repaid unless those funds were
13 offered contingent upon the promise of such repayment. The
14 Board shall keep annual administrative expenses as low as
15 possible, but in no event shall they exceed 0.75% of the total
16 trust balance.

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

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

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

24 (q) Facilitate compliance by the Program with all
25 applicable requirements for the Program under the Internal
26 Revenue Code, including tax qualification requirements or any

1 other applicable law and accounting requirements.

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

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

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

13 Section 35. Risk Management. The Board shall annually
14 prepare and adopt a written statement of investment policy that
15 includes a risk management and oversight program. This
16 investment policy shall prohibit the Board, Program, and Fund
17 from borrowing for investment purposes. The risk management and
18 oversight program shall be designed to ensure that an effective
19 risk management system is in place to monitor the risk levels
20 of the Program and Fund portfolio, to ensure that the risks
21 taken are prudent and properly managed, to provide an
22 integrated process for overall risk management, and to assess
23 investment returns as well as risk to determine if the risks
24 taken are adequately compensated compared to applicable
25 performance benchmarks and standards. The Board shall consider

1 the statement of investment policy and any changes in the
2 investment policy at a public hearing.

3 Section 40. Investment firms.

4 (a) The Board shall engage, after an open bid process, an
5 investment manager or managers to invest the Fund and any other
6 assets of the Program. Moneys in the Fund may be invested or
7 reinvested by the State Treasurer's Office or may be invested
8 in whole or in part under contract with the State Board of
9 Investment, private investment managers, or both, as selected
10 by the Board. In selecting the investment manager or managers,
11 the Board shall take into consideration and give weight to the
12 investment manager's fees and charges in order to reduce the
13 Program's administrative expenses.

14 (b) The investment manager or managers shall comply with
15 any and all applicable federal and state laws, rules, and
16 regulations, as well as any and all rules, policies, and
17 guidelines promulgated by the Board with respect to the Program
18 and the investment of the Fund, including, but not limited to,
19 the investment policy.

20 (c) The investment manager or managers shall provide such
21 reports as the Board deems necessary for the Board to oversee
22 each investment manager's performance and the performance of
23 the Fund.

24 Section 45. Investment options.

1 (a) The Board shall establish as an investment option a
2 life-cycle fund with a target date based upon the age of the
3 enrollee. This shall be the default investment option for
4 enrollees who fail to elect an investment option unless and
5 until the Board designates by rule a new investment option as
6 the default as described in subsection (c) of this Section.

7 (b) The Board may also establish any or all of the
8 following additional investment options:

9 (1) a conservative principal protection fund;

10 (2) a growth fund;

11 (3) a secure return fund whose primary objective is the
12 preservation of the safety of principal and the provision
13 of a stable and low-risk rate of return; if the Board
14 elects to establish a secure return fund, the Board may
15 procure any insurance, annuity, or other product to insure
16 the value of individuals' accounts and guarantee a rate of
17 return; the cost of such funding mechanism shall be paid
18 out of the Fund; under no circumstances shall the Board,
19 Program, Fund, the State, or any participating employer
20 assume any liability for investment or actuarial risk; the
21 Board shall determine whether to establish such investment
22 options based upon an analysis of their cost, risk profile,
23 benefit level, feasibility, and ease of implementation;

24 (4) an annuity fund.

25 (c) If the Board elects to establish a secure return fund,
26 the Board shall then determine whether such option shall

1 replace the target date or life-cycle fund as the default
2 investment option for enrollees who do not elect an investment
3 option. In making such determination, the Board shall consider
4 the cost, risk profile, benefit level, and ease of enrollment
5 in the secure return fund. The Board may at any time thereafter
6 revisit this question and, based upon an analysis of these
7 criteria, establish either the secure return fund or the
8 life-cycle fund as the default for enrollees who do not elect
9 an investment option.

10 Section 50. Benefits. Interest, investment earnings, and
11 investment losses shall be allocated to individual Program
12 accounts as established by the Board under subsection (d) of
13 Section 30 of this Act. An individual's retirement savings
14 benefit under the Program shall be an amount equal to the
15 balance in the individual's Program account on the date the
16 retirement savings benefit becomes payable. The State shall
17 have no liability for the payment of any benefit to any
18 participant in the Program.

19 Section 55. Employer and employee information packets and
20 disclosure forms.

21 (a) Prior to the opening of the Program for enrollment, the
22 Board shall design and disseminate to all employers an employer
23 information packet and an employee information packet, which
24 shall include background information on the Program,

1 appropriate disclosures for employees, and information
2 regarding the vendor Internet website described in subsection
3 (i) of Section 60 of this Act.

4 (b) The Board shall provide for the contents of both the
5 employee information packet and the employer information
6 packet.

7 (c) The employee information packet shall include a
8 disclosure form. The disclosure form shall explain, but not be
9 limited to, all of the following:

10 (1) the benefits and risks associated with making
11 contributions to the Program;

12 (2) the mechanics of how to make contributions to the
13 Program;

14 (3) how to opt out of the Program;

15 (4) how to participate in the Program with a level of
16 employee contributions other than 3%;

17 (5) the process for withdrawal of retirement savings;

18 (6) how to obtain additional information about the
19 Program;

20 (7) that employees seeking financial advice should
21 contact financial advisors, that participating employers
22 are not in a position to provide financial advice, and that
23 participating employers are not liable for decisions
24 employees make pursuant to this Act;

25 (8) that the Program is not an employer-sponsored
26 retirement plan; and

1 (9) that the Program Fund is not guaranteed by the
2 State.

3 (d) The employee information packet shall also include a
4 form for an employee to note his or her decision to opt out of
5 participation in the Program or elect to participate with a
6 level of employee contributions other than 3%.

7 (e) Participating employers shall supply the employee
8 information packet to employees upon launch of the Program.
9 Participating employers shall supply the employee information
10 packet to new employees at the time of hiring, and new
11 employees may opt out of participation in the Program or elect
12 to participate with a level of employee contributions other
13 than 3% at that time.

14 Section 60. Program implementation and enrollment. Except
15 as otherwise provided in Section 93 of this Act, the Program
16 shall be implemented, and enrollment of employees shall begin,
17 within 24 months after the effective date of this Act. The
18 provisions of this Section shall be in force after the Board
19 opens the Program for enrollment.

20 (a) Each employer shall establish a payroll deposit
21 retirement savings arrangement to allow each employee to
22 participate in the Program at most nine months after the Board
23 opens the Program for enrollment.

24 (b) Employers shall automatically enroll in the Program
25 each of their employees who has not opted out of participation

1 in the Program using the form described in subsection (c) of
2 Section 55 of this Act and shall provide payroll deduction
3 retirement savings arrangements for such employees and
4 deposit, on behalf of such employees, these funds into the
5 Program. Small employers may, but are not required to, provide
6 payroll deduction retirement savings arrangements for each
7 employee who elects to participate in the Program.

8 (c) Enrollees shall have the ability to select a
9 contribution level into the Fund. This level may be expressed
10 as a percentage of wages or as a dollar amount up to the
11 deductible amount for the enrollee's taxable year under Section
12 219(b)(1)(A) of the Internal Revenue Code. Enrollees may change
13 their contribution level at any time, subject to rules
14 promulgated by the Board. If an enrollee fails to select a
15 contribution level using the form described in subsection (c)
16 of Section 55 of this Act, then he or she shall contribute 3%
17 of his or her wages to the Program, provided that such
18 contributions shall not cause the enrollee's total
19 contributions to IRAs for the year to exceed the deductible
20 amount for the enrollee's taxable year under Section
21 219(b)(1)(A) of the Internal Revenue Code.

22 (d) Enrollees may select an investment option from the
23 permitted investment options listed in Section 45 of this Act.
24 Enrollees may change their investment option at any time,
25 subject to rules promulgated by the Board. In the event that an
26 enrollee fails to select an investment option, that enrollee

1 shall be placed in the investment option selected by the Board
2 as the default under subsection (c) of Section 45 of this Act.
3 If the Board has not selected a default investment option under
4 subsection (c) of Section 45 of this Act, then an enrollee who
5 fails to select an investment option shall be placed in the
6 life-cycle fund investment option.

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

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

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

26 (h) An employee may terminate his or her participation in

1 the Program at any time in a manner prescribed by the Board.

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

19 Section 65. Payments. Employee contributions deducted by
20 the participating employer through payroll deduction shall be
21 paid by the participating employer to the Fund using one or
22 more payroll deposit retirement savings arrangements
23 established by the Board under subsection (h) of Section 30 of
24 this Act, either:

25 (1) on or before the last day of the month following

1 the month in which the compensation otherwise would have
2 been payable to the employee in cash; or

3 (2) before such later deadline prescribed by the Board
4 for making such payments, but not later than the due date
5 for the deposit of tax required to be deducted and withheld
6 relating to collection of income tax at source on wages or
7 for the deposit of tax required to be paid under the
8 unemployment insurance system for the payroll period to
9 which such payments relate.

10 Section 70. Duty and liability of the State.

11 (a) The State shall have no duty or liability to any party
12 for the payment of any retirement savings benefits accrued by
13 any individual under the Program. Any financial liability for
14 the payment of retirement savings benefits in excess of funds
15 available under the Program shall be borne solely by the
16 entities with whom the Board contracts to provide insurance to
17 protect the value of the Program.

18 (b) No State board, commission, or agency, or any officer,
19 employee, or member thereof is liable for any loss or
20 deficiency resulting from particular investments selected
21 under this Act, except for any liability that arises out of a
22 breach of fiduciary duty under Section 25 of this Act.

23 Section 75. Duty and liability of participating employers.

24 (a) Participating employers shall not have any liability

1 for an employee's decision to participate in, or opt out of,
2 the Program or for the investment decisions of the Board or of
3 any enrollee.

4 (b) A participating employer shall not be a fiduciary, or
5 considered to be a fiduciary, over the Program. A participating
6 employer shall not bear responsibility for the administration,
7 investment, or investment performance of the Program. A
8 participating employer shall not be liable with regard to
9 investment returns, Program design, and benefits paid to
10 Program participants.

11 Section 80. Audit and reports.

12 (a) The Board shall annually submit:

13 (1) an audited financial report, prepared in
14 accordance with generally accepted accounting principles,
15 on the operations of the Program during each calendar year
16 by July 1 of the following year to the Governor, the
17 Comptroller, the State Treasurer, and the General
18 Assembly; and

19 (2) a report prepared by the Board, which shall
20 include, but is not limited to, a summary of the benefits
21 provided by the Program, including the number of enrollees
22 in the Program, the percentage and amounts of investment
23 options and rates of return, and such other information
24 that is relevant to make a full, fair, and effective
25 disclosure of the operations of the Program and the Fund.

1 The annual audit shall be made by an independent certified
2 public accountant and shall include, but is not limited to,
3 direct and indirect costs attributable to the use of outside
4 consultants, independent contractors, and any other persons
5 who are not State employees for the administration of the
6 Program.

7 (b) In addition to any other statements or reports required
8 by law, the Board shall provide periodic reports at least
9 annually to participating employers, reporting the names of
10 each enrollee employed by the participating employer and the
11 amounts of contributions made by the participating employer on
12 behalf of each employee during the reporting period, as well as
13 to enrollees, reporting contributions and investment income
14 allocated to, withdrawals from, and balances in their Program
15 accounts for the reporting period. Such reports may include any
16 other information regarding the Program as the Board may
17 determine.

18 Section 85. Penalties.

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

23 (1) \$250 for each employee for each calendar year or
24 portion of a calendar year during which the employee
25 neither was enrolled in the Program nor had elected out of

1 participation in the Program; or

2 (2) for each calendar year beginning after the date a
3 penalty has been assessed with respect to an employee, \$500
4 for any portion of that calendar year during which such
5 employee continues to be unenrolled without electing out of
6 participation in the Program.

7 (b) After determining that an employer is subject to
8 penalty under this Section for a calendar year, the Department
9 shall issue a notice of proposed assessment to such employer,
10 stating the number of employees for which the penalty is
11 proposed under item (1) of subsection (a) of this Section and
12 the number of employees for which the penalty is proposed under
13 item (2) of subsection (a) of this Section for such calendar
14 year, and the total amount of penalties proposed.

15 Upon the expiration of 90 days after the date on which a
16 notice of proposed assessment was issued, the penalties
17 specified therein shall be deemed assessed, unless the employer
18 had filed a protest with the Department under subsection (c) of
19 this Section.

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

25 (c) A written protest against the proposed assessment shall
26 be filed with the Department in such form as the Department may

1 by rule prescribe, setting forth the grounds on which such
2 protest is based. If such a protest is filed within 90 days
3 after the date the notice of proposed assessment is issued, the
4 Department shall reconsider the proposed assessment and shall
5 grant the employer a hearing. As soon as practicable after such
6 reconsideration and hearing, the Department shall issue a
7 notice of decision to the employer, setting forth the
8 Department's findings of fact and the basis of decision. The
9 decision of the Department shall become final:

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

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

19 (d) As soon as practicable after the penalties specified in
20 a notice of proposed assessment are deemed assessed, the
21 Department shall give notice to the employer liable for any
22 unpaid portion of such assessment, stating the amount due and
23 demanding payment. If an employer neglects or refuses to pay
24 the entire liability shown on the notice and demand within 10
25 days after the notice and demand is issued, the unpaid amount
26 of the liability shall be a lien in favor of the State of

1 Illinois upon all property and rights to property, whether real
2 or personal, belonging to the employer, and the provisions in
3 the Illinois Income Tax Act regarding liens, levies and
4 collection actions with regard to assessed and unpaid
5 liabilities under that Act, including the periods for taking
6 any action, shall apply.

7 (e) An employer who has overpaid a penalty assessed under
8 this Section may file a claim for refund with the Department. A
9 claim shall be in writing in such form as the Department may by
10 rule prescribe and shall state the specific grounds upon which
11 it is founded. As soon as practicable after a claim for refund
12 is filed, the Department shall examine it and either issue a
13 refund or issue a notice of denial. If such a protest is filed,
14 the Department shall reconsider the denial and grant the
15 employer a hearing. As soon as practicable after such
16 reconsideration and hearing, the Department shall issue a
17 notice of decision to the employer. The notice shall set forth
18 briefly the Department's findings of fact and the basis of
19 decision in each case decided in whole or in part adversely to
20 the employer. A denial of a claim for refund becomes final 90
21 days after the date of issuance of the notice of the denial
22 except for such amounts denied as to which the employer has
23 filed a protest with the Department. If a protest has been
24 timely filed, the decision of the Department shall become
25 final:

26 (1) if no action for review of the decision is

1 commenced under the Administrative Review Law, on the date
2 on which the time for commencement of such review has
3 expired; or

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

9 (f) No notice of proposed assessment may be issued with
10 respect to a calendar year after June 30 of the fourth
11 subsequent calendar year. No claim for refund may be filed more
12 than 1 year after the date of payment of the amount to be
13 refunded.

14 (g) The provisions of the Administrative Review Law and the
15 rules adopted pursuant to it shall apply to and govern all
16 proceedings for the judicial review of final decisions of the
17 Department in response to a protest filed by the employer under
18 subsections (c) and (e) of this Section. Final decisions of the
19 Department shall constitute "administrative decisions" as
20 defined in Section 3-101 of the Code of Civil Procedure.

21 (h) Whenever notice is required by this Section, it may be
22 given or issued by mailing it by first-class mail addressed to
23 the person concerned at his or her last known address.

24 (i) All books and records and other papers and documents
25 relevant to the determination of any penalty due under this
26 Section shall, at all times during business hours of the day,

1 be subject to inspection by the Department or its duly
2 authorized agents and employees.

3 (j) The Department may require employers to report
4 information relevant to their compliance with this Act on
5 returns otherwise due from the employers under Section 704A of
6 the Illinois Income Tax Act and failure to provide the
7 requested information on a return shall cause such return to be
8 treated as unprocessable.

9 (k) For purposes of any provision of State law allowing the
10 Department or any other agency of this State to offset an
11 amount owed to a taxpayer against a tax liability of that
12 taxpayer or allowing the Department to offset an overpayment of
13 tax against any liability owed to the State, a penalty assessed
14 under this Section shall be deemed to be a tax liability of the
15 employer and any refund due to an employer shall be deemed to
16 be an overpayment of tax of the employer.

17 (l) Except as provided in this subsection, all information
18 received by the Department from returns filed by an employer or
19 from any investigation conducted under the provisions of this
20 Act shall be confidential, except for official purposes within
21 the Department or pursuant to official procedures for
22 collection of penalties assessed under this Act. Nothing
23 contained in this subsection shall prevent the Director from
24 publishing or making available to the public reasonable
25 statistics concerning the operation of this Act wherein the
26 contents of returns are grouped into aggregates in such a way

1 that the specific information of any employer shall not be
2 disclosed. Nothing contained in this subsection shall prevent
3 the Director from divulging information to an authorized
4 representative of the employer or to any person pursuant to a
5 request or authorization made by the employer or by an
6 authorized representative of the employer.

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

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

19 (o) This Section shall become operative 9 months after the
20 Board notifies the Director that the Program has been
21 implemented. Upon receipt of such notification from the Board,
22 the Department shall immediately post on its Internet website a
23 notice stating that this Section is operative and the date that
24 it is first operative. This notice shall include a statement
25 that rather than enrolling employees in the Program under this
26 Act, employers may sponsor an alternative arrangement,

1 including, but not limited to, a defined benefit plan, 401(k)
2 plan, a Simplified Employee Pension (SEP) plan, a Savings
3 Incentive Match Plan for Employees (SIMPLE) plan, or an
4 automatic payroll deduction IRA offered through a private
5 provider. The Board shall provide a link to the vendor Internet
6 website described in subsection (i) of Section 60 of this Act.

7 Section 90. Rules. The Board and the Department shall
8 adopt, in accordance with the Illinois Administrative
9 Procedure Act, any rules that may be necessary to implement
10 this Act.

11 Section 93. Delayed implementation. If the Board does not
12 obtain adequate funds to implement the Program within the time
13 frame set forth under Section 60 of this Act, the Board may
14 delay the implementation of the Program.

15 Section 95. Federal considerations. The Board shall
16 request in writing an opinion or ruling from the appropriate
17 entity with jurisdiction over the federal Employee Retirement
18 Income Security Act regarding the applicability of the federal
19 Employee Retirement Income Security Act to the Program. The
20 Board may not implement the Program if the IRA arrangements
21 offered under the Program fail to qualify for the favorable
22 federal income tax treatment ordinarily accorded to IRAs under
23 the Internal Revenue Code or if it is determined that the

1 Program is an employee benefit plan and State or employer
2 liability is established under the federal Employee Retirement
3 Income Security Act.

4 Section 500. The State Finance Act is amended by adding
5 Section 5.855 as follows:

6 (30 ILCS 105/5.855 new)

7 Sec. 5.855. The Illinois Secure Choice Administrative
8 Fund.