

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: Secure Choice Savings Program Act
- 2) Code Citation: 86 Ill. Adm. Code 950
- 3) Section Number: 950.200 Proposed Action:
Amendment
- 4) Statutory Authority: Section 85 of the Illinois Secure Choice Savings Program Act [820 ILCS 80/85].
- 5) A Complete Description of the Subjects and Issues Involved: The rulemaking adds a definition of ordinary business care and makes other grammatical changes.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this proposed rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this proposed rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objectives: This rule does not create or enlarge a mandate as described in Section 3(b) of the State Mandates Act.
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to submit comments on this proposed rulemaking may submit them in writing by no later than 45 days after publication of this Notice to:

Brian Fliflet
Illinois Department of Revenue
Legal Services Office
101 West Jefferson
Springfield, Illinois 62794

(217) 782-2844

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- 13) Initial Regulatory Flexibility Analysis:
 - A) Types of small businesses, small municipalities and not for profit corporations affected: Provides income tax credit to qualified volunteer workers at county emergency disaster agencies.
 - B) Reporting, bookkeeping or other procedures required for compliance: Basic accounting and tax preparation.
 - C) Types of professional skills necessary for compliance: None
- 14) Small Business Impact Analysis: No impact on small business
- 15) Regulatory Agenda on which this rulemaking was summarized: July 2024

The full text of the Proposed Amendment begins on the next page:

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TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUE

PART 950
SECURE CHOICE SAVINGS PROGRAM ACT

Section	
950.100	In General
950.150	Definitions
950.200	Penalties
950.250	Assessment
950.300	Collection
950.350	Refunds
950.400	Administrative Review
950.450	Limitations
950.500	Interest

AUTHORITY: Section 85 of the Illinois Secure Choice Savings Program Act [820 ILCS 80/85].

SOURCE: Adopted at 46 Ill. Reg. 14066, effective July 19, 2022; amended at 49 Ill. Reg. _____, effective _____.

Section 950.200 Penalties

- a) *An employer who fails without reasonable cause to enroll an employee in the Program within the time prescribed under Section 60 of the Act shall be subject to a penalty equal to:*
 - 1) \$250 per employee for the initial calendar year during which the employer fails to comply with the requirements of Section 100 of this Part; (Section 85(a)(1) of the Act) or
 - 2) \$500 per employee for each subsequent calendar year during which the employer fails to comply with the requirements of Section 100 of this Part. Years during which the employer is noncompliant need not be consecutive for the \$500 penalty to apply. The \$500 penalty shall apply if the employer previously was assessed a \$250

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penalty and the employer did not come into compliance or has fallen out of compliance. (Section 85(a)(2) of the Act)

- b) The Department shall determine the total number of employees using the annual average from data reported quarterly by the employer pursuant to Article 7 of the Illinois Income Tax Act.
- c) Penalties imposed under the Act are assessed and collected by the Department. (Section 85 of the Act)
- d) Penalties provided under the Act are imposed only if the employer fails to enroll an employee without reasonable cause. (Section 85(a) of the Act) The determination of whether an employer had reasonable cause shall be made on a case by case basis taking into account all pertinent facts and circumstances. The most important factor to be considered in making a determination to abate a penalty will be the extent to which the employer made a good faith effort to comply with the Act.
 - 1) An employer will be considered to have made a good faith effort to comply with the Act if the employer exercised ordinary business care and prudence in so doing~~so~~. “Ordinary care has been defined to be that degree of care which is exercised by ordinarily prudent persons under same or similar circumstances.” Swenson v. City of Rockford, 9 Ill. 2d 122, 127 (1956).
 - 2) An employer's history of compliance is also a factor to be considered in determining whether the employer acted in good faith.
 - 3) If an employee is a nonresident whose base of operation is outside this State, the employer has reasonable cause for not enrolling the employee prior to the 31st working day in which the employee performs services for the employee in this State (within the meaning of IITA Section 304(a)(2)(B)(iii)) during the first calendar year for which the employee meets the requirements for enrollment~~enrolment~~ under the Act.

(Source: Amended at 49 Ill. Reg. _____, effective _____)