

Senate Counsel, Research, and Fiscal Analysis

Alexis C. Stangl, Director

Minnesota Senate Building
95 University Ave. W. Suite 3300
St. Paul, MN 55155-1800
(651) 296-4791
www.senate.mn/scrfa

Senate

State of Minnesota

S.F. No. 413 – Minnesota Secure Choice Retirement Program Act (as amended by the author’s DE amendment)

Author: Senator Sandra L. Pappas

Prepared by: Stephanie James, Senate Counsel (651/296-0103)

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Section 1 [Minnesota Secure Choice Retirement Program Citation; §187.01] provides a name for the act.

Section 2 [Definitions; §187.03] defines “board,” “compensation,” “contribution rate,” “covered employee,” “covered employer,” “executive director,” “Internal Revenue Code,” “program,” “retirement savings plan,” “Secure Choice administrative fund,” “Secure Choice trust,” “Roth IRA,” and “Traditional IRA.”

Section 3 [Secure Choice Retirement Program; §187.05]

Subd. 1 [Program established] requires the board of directors of the Minnesota Secure Choice retirement program to operate an employee retirement savings program. The program must begin by October 1, 2024. Under the program, employee payroll deduction contributions are transmitted on an after-tax basis by covered employers to individual retirement accounts established under the program. Requires the board to establish procedures for opening a Roth IRA, a traditional IRA, or both a Roth IRA and a traditional IRA for each covered employee whose covered employer transmits employee payroll deduction contributions under the program. Contributions must be made on an after-tax basis, unless the covered employee elects to contribute on a pre-tax basis.

Subd. 2. [Compliance with Internal Revenue Code] requires the board to establish and administer the Roth IRAs and traditional IRAs opened under the program in compliance with the federal tax code, for the benefit of covered employees.

Subd. 3 [Contributions held in trust] requires covered employers to transmit employee payroll deduction contributions to an account for the employee’s benefit in a trust.

Subd. 4 [Contribution rate] requires the board to establish default, minimum, and maximum employee contribution rates and an escalation schedule that increases each

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employee's contribution rate annually and automatically until the rate reaches the maximum contribution rate, unless the covered employee elects a lower contribution rate or opts out or ceases contributions.

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Subd. 5 [Vesting] specifies that employees are 100 percent vested in their accounts at all times.

Subd. 6. [Withdrawals and distributions] requires the board to establish alternatives that allow employees to withdraw all or a portion of the employee's account while employed or one or more distributions following termination of employment. Distribution alternatives must include lifetime income options.

Subd. 7 [Individuals not employed by a covered employer] requires the board to allow individuals to open and contribute to an account in the program outside of an employment relationship with a covered employer. The individual would be treated like a covered employee for purposes of this act.

Section 4 [Establishment of Secure Choice Trust and Administrative Fund; Employee Accounts; Investments; §187.06]

Subd. 1 [Secure Choice trust established] establishes a Secure Choice trust that is an instrumentality of the state to hold employee payroll deduction contributions and earnings on the contributions. Requires the board to appoint a financial institution to act as a trustee or custodian. Assets of the trust must be managed and administered for the exclusive purposes of providing benefits and defraying reasonable expenses of administering the program.

Subd. 2 [Secure Choice administration fund established] establishes the Secure Choice administrative fund in the state treasury. The administrative fund is separate from the Secure Choice trust. Authorizes the board to assess a fee on each covered employee's account to be applied towards the expense of administering the program. Appropriates money in the administrative fund to the board to pay administrative expenses if fees are not sufficient to cover expenses. Requires the board to determine which expenses to pay from the administrative fund and which to pay from the money in the trust. Authorizes the board to accept gifts, grants, donations, loans, appropriations, or other money for deposit into the administrative fund. Interest or investment earnings attributable to money in the administrative fund must be deposited into the administrative fund.

Subd. 3 [Individual accounts established] requires the trustee or custodian to maintain an account for employee payroll deduction contributions with respect to each covered employee. Interest and earnings are credited, and losses deducted from the accounts.

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Subd. 4 [Investments] requires the board to make available for investment a diversified array of investment funds selected by the State Board of Investment. Members of the Secure Choice board, the State Board of Investment, the executive director of the State Board of Investment, and other fiduciaries are relieved of fiduciary responsibility for investment losses resulting from an employee's investment directions. Authorizes each covered employee to direct the investment of their account in the array of investment funds.

Subd. 5 [Default investment fund] requires the board to designate a default investment fund that is diversified to minimize the risk of large losses and consists of target date funds, a balanced fund, a capital preservation fund, or any combination of those funds. Accounts for which no investment direction has been given by the employee must be invested in the default investment fund. Members of the board, the executive director of the State Board of Investment, and all fiduciaries are relieved of fiduciary duties regarding the default investment fund.

Subd. 6 [Inalienability of accounts] declares that no account under the program is subject to assignment or alienation, or to claims of creditors, except in marital dissolution.

Subd. 7 [Accounts not property of the state or covered employers] specifies that neither the state nor a covered employer has property rights in the assets in the Secure Choice trust. Precludes transferring assets of the trust to the state and comingling of amounts deposited in the trust with state funds. The state has no claim to or against, or interest in, the assets of the trust.

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Section 5 [Responsibilities of Covered Employers; §187.07]

Subd. 1 [Requirement to enroll employees] requires each covered employer to enroll covered employees in the program and to withhold payroll deduction contributions from the employee's paycheck unless the employee elects not to contribute.

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Subd. 2 [Remitting contributions] requires employers to remit contributions timely as required by the board. Requires the board to establish penalties for failing to remit contributions timely.

Subd. 3 [Distribution of information] requires covered employers to provide information prepared by the board to all covered employees regarding the program at least 30 days before the first paycheck from which contributions could be deducted for transmittal to the program if the employee does not elect to opt out.

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Subd. 4 [No fiduciary responsibility] limits an employer's responsibilities to enrolling employees, remitting contributions, and distributing information about the program. Specifies that employers are not fiduciaries under the program or in connection with the trust. Employers are not responsible for administration, investment performance, plan design, or benefits paid to employees.

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Subd. 5 [Employer liability] makes employers not liable to an employee for damages alleged to have resulted from the employee's participation in or failure to participate in the program.

Subd. 6 [Enforcement] authorizes the attorney general to enforce the chapter. The attorney general may impose periodic penalties established by the board against an employer that fails to comply with responsibilities under this section. Proceeds from the penalties, after deducting enforcement expenses, must be deposited in the administrative fund and are appropriated to the program.

Section 6 [Secure Choice Retirement Program Board of Directors; §187.08] establishes a board of directors to make policy for the program.

Subd. 1 [Membership] specifies the membership of the board of directors. The board includes the executive director of the Minnesota State Retirement System or a designee; the executive director of the State Board of Investment or a designee; three members chosen by the Legislative Commission on Pensions and Retirement from specified categories; a human resources or retirement benefits executive from a private company with specified experience, appointed by the governor; and a small business owner or executive appointed by the governor.

Subd. 2 [Appointment] provides for appointment by the governor to be as provided in the open appointments statute.

Subd. 3 [Membership terms] sets a term for board members, other than the executive directors of MSRS and the State Board of Investment, at two years. A term may be renewed but a member cannot serve more than two consecutive terms.

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Subd. 4 [Resignation; removal; vacancies] allows a board member to resign at any time with written notice. Authorizes an appointing authority to remove a member with a majority vote of the board, after notice and a hearing. Authorizes an appointing authority to serve as a voting member of the board if necessary to constitute a quorum, if invited by the chair. The Pensions Commission must fill a vacancy within 90 days.

Subd. 5 [Compensation] allows public members to be compensated and reimbursed for expenses.

Subd. 6 [Chair] requires the board to elect a chair to serve a two-year term. Authorizes the board to elect other officers.

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Subd. 7 [Executive director; staff] requires the board to appoint an executive director and authorizes the board to hire staff as necessary.

Subd. 8 [Duties] specifies the duties of the board, including adopting rules to implement the program.

Subd. 9 [Rules] authorizes the board to adopt rules to implement the chapter.

Subd. 10 [Conflict of interest; economic interest statement] precludes members of the board from participating in deliberations or voting on a matter that will or is likely to result in direct, measurable economic gain to the member or member's family. Members of the board must file an economic interest statement with the Campaign Finance and Public Disclosure Board.

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Section 7 [Fiduciary Duty; Standard of Care; §187.09] establishes that members of the board, the executive director of the program, the executive director and members of the State Board of Investment, and any person who controls the disposition or investment of assets in the trust owes a fiduciary duty to the participants in the program and their beneficiaries. These fiduciaries are required to administer the program solely for the exclusive benefit of employees and their beneficiaries, and for the exclusive purpose of providing benefits and paying reasonable plan expenses. These fiduciaries are subject to the same standard of care as public pension fund fiduciaries. This standard requires them to "act in good faith and to exercise that degree of judgment and care, under the circumstances then prevailing, that persons of prudence, discretion, and intelligence would exercise in the management of their own affairs, not for speculation,

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considering the probable safety of the plan capital as well as the probable investment return to be derived from the assets.” The state indemnifies and holds these fiduciaries harmless for the reasonable costs, expenses, or liability incurred as a result of any actual or threatened litigation or administrative proceeding arising out of the performance of their duties. The fiduciaries do not owe additional duties to covered employees.

Section 8 [No State Liability; §187.10] specifies that the state has no liability for the payment of, the amount of, or losses to any benefit to any participant in the program.

Section 9 [Other State Agencies to Provide Assistance; §187.11] authorizes the board to enter into agreements with state agencies as necessary to provide outreach, technical assistance, or compliance services. An agency that enters an agreement with the board must collaborate and cooperate with the board to provide outreach, technical assistance, or compliance services under the agreement. Requires the commissioner of administration to provide office space in the Capitol complex for the executive director and staff of the board.

Section 10 [Severability] provides that if any provision of the chapter is held unconstitutional and void, the remaining provisions are valid.

Section 11 [Minnesota Secure Choice Retirement Program; Start of Operations]

Subd. 1. [Program start; phasing] provides a deadline for the board of directors of the Minnesota Secure Choice retirement program to start operation of the program. Allows the board to open the program in phases but requires the last phase to open within two years of the first.

Subd. 2 [Board appointments; first meeting] sets a deadline for first appointments to the board and requires the Legislative Commission on Pensions and Retirement to designate a member to convene the first meeting by a specified date. Requires the board to select a chair at its first meeting.

Section 12 [Board Support Until Appointment of Executive Director] requires the executive director of the Legislative Commission on Pensions and Retirement to provide notice to members of the board regarding the first board meeting, to work with the chair on the agenda for the first meeting, and to provide meeting support and to serve as the interim executive director to assist the board until the board appoints an executive director.

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Section 13 [Transfers] transfers money in fiscal years 2024 and 2025 from the general fund to the Secure Choice administrative fund to establish and administer the Secure Choice retirement program. Sets the base for the transfer in fiscal years 2026 and 2027 (amount unspecified) and sets the base at \$0 for 2028 and thereafter.

Section 14 [Effective date] sets the effective date for the section that establishes the program as the day after the board of directors opens the program for enrollment. All other sections are effective the day after enactment.