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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. 782

01/25/2023 Authored by Becker-Finn, Her, Wolgamott and Nelson, M., The bill was read for the first time and referred to the Committee on State and Local Government Finance and Policy

1.1 A bill for an act
1.2 relating to retirement; establishing the Minnesota Secure Choice retirement
1.3 program; proposing coding for new law as Minnesota Statutes, chapter 187.

1.4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.5 Section 1. [187.01] MINNESOTA SECURE CHOICE RETIREMENT PROGRAM;
1.6 CITATION.

1.7 This chapter shall be known as and may be cited as the "Minnesota Secure Choice
1.8 Retirement Program Act."

1.9 Sec. 2. [187.02] STATEMENT OF PURPOSE.

1.10 The state of Minnesota creates and establishes a public-private partnership model known
1.11 as the "Minnesota Secure Choice retirement program" for privately employed workers to
1.12 save for retirement for the following reasons:

1.13 (1) for millions of Americans, including hundreds of thousands of Minnesotans, a secure
1.14 retirement is not attainable, with the median retirement account balance being \$3,000 for
1.15 all working-age households and \$12,000 for near-retirement-age households;

1.16 (2) Americans who do not have access to a retirement savings plan through their
1.17 workplace are more likely to rely on Social Security as their only source of retirement
1.18 income;

1.19 (3) in Minnesota, the average monthly Social Security benefit is \$1,600, with nearly 14
1.20 percent of seniors relying on Social Security for 90 percent of their income;

2.1 (4) increased retirement savings can save Minnesota taxpayers an estimated \$258,000,000
2.2 over a span of ten years in Medicaid savings alone; and

2.3 (5) research has shown that offering workers a way to save through their job increases
2.4 their ability to save dramatically and promotes individual responsibility and financial
2.5 freedom.

2.6 Sec. 3. [187.03] DEFINITIONS.

2.7 Subdivision 1. **Applicability.** For purposes of this chapter, the terms defined in this
2.8 section have the meanings given them.

2.9 Subd. 2. **Board.** "Board" means the Secure Choice retirement program board of directors.

2.10 Subd. 3. **Compensation.** "Compensation" means compensation within the meaning of
2.11 Section 219(f)(1) of the Internal Revenue Code that is received by a covered employee from
2.12 a covered employer.

2.13 Subd. 4. **Contribution rate.** "Contribution rate" means the percentage of compensation
2.14 withheld from a covered employee's compensation and deposited in an account established
2.15 for the covered employee under the program.

2.16 Subd. 5. **Covered employee.** (a) "Covered employee" means a person who is employed
2.17 by a covered employer and who, for the immediately preceding calendar year, was credited
2.18 with 500 or more hours of service for the covered employer and whose primary work location
2.19 is in Minnesota. Once a person has been credited with 500 or more hours of service in a
2.20 calendar year, the person continues to be a covered employee for as long as the person is
2.21 employed by a covered employer, even if the person is credited with fewer than 500 hours
2.22 of service in the current or subsequent calendar year.

2.23 (b) Covered employee does not include:

2.24 (1) a person who, on December 31 of the preceding calendar year, was younger than 18
2.25 years of age;

2.26 (2) a person covered under the federal Railway Labor Act, as amended, United States
2.27 Code, title 45, sections 151 et seq.;

2.28 (3) a person on whose behalf an employer makes contributions to a Taft-Hartley
2.29 multiemployer pension trust fund; and

2.30 (4) a person employed by the government of the United States, another country, the state
2.31 of Minnesota, another state, or any subdivision thereof.

3.1 Subd. 6. **Covered employer.** (a) "Covered employer" means a person or entity:

3.2 (1) engaged in a business, industry, profession, trade, or other enterprise in Minnesota,
3.3 whether for profit or not for profit;

3.4 (2) that employs one or more covered employees or is a sole proprietor; and

3.5 (3) that does not sponsor or contribute to and did not in the immediately preceding
3.6 calendar year sponsor or contribute to a retirement savings plan for its employees or, in the
3.7 case of a sole proprietorship, for the sole proprietor.

3.8 (b) Covered employer does not include:

3.9 (1) an employer that has not engaged in a business, industry, profession, trade, or other
3.10 enterprise in Minnesota, whether for profit or not for profit, at any time during the
3.11 immediately preceding calendar year; and

3.12 (2) a state or federal government or any political subdivision thereof.

3.13 Subd. 7. **Executive director.** "Executive director" means the chief executive and
3.14 administrative head of the program.

3.15 Subd. 8. **Internal Revenue Code.** "Internal Revenue Code" means the Internal Revenue
3.16 Code of 1986, as amended, United States Code, title 26.

3.17 Subd. 9. **Program.** "Program" means the Minnesota Secure Choice retirement program.

3.18 Subd. 10. **Retirement savings plan.** "Retirement savings plan" means a plan or program
3.19 offered by an employer that permits contributions to be set aside for retirement on a pre-tax
3.20 or after-tax basis and permits all employees of the employer to participate except those
3.21 employees who have not satisfied participation eligibility requirements that are no more
3.22 restrictive than the eligibility requirements permitted under section 410(b) of the Internal
3.23 Revenue Code. Retirement savings plan includes but is not limited to a plan described in
3.24 section 401(a) of the Internal Revenue Code, an annuity plan or annuity contract described
3.25 in section 403(a) or (b) of the Internal Revenue Code, a plan within the meaning of section
3.26 457(b) of the Internal Revenue Code, a simplified employee pension (SEP) plan, a savings
3.27 incentive match plan for employees (SIMPLE) plan, a payroll deduction individual retirement
3.28 account, and a multiemployer pension plan described in section 414(f) of the Internal
3.29 Revenue Code.

3.30 Subd. 11. **Secure Choice administrative fund.** "Secure Choice administrative fund"
3.31 or "administrative fund" means the fund established under section 187.06, subdivision 2.

4.1 Subd. 12. **Secure Choice trust.** "Secure Choice trust" means a trust established under
4.2 section 187.06, subdivision 1, to hold contributions and investment earnings thereon under
4.3 the program.

4.4 Subd. 13. **Roth IRA.** "Roth IRA" means an individual retirement account established
4.5 under section 408A of the Internal Revenue Code to hold and invest after-tax assets.

4.6 Subd. 14. **Traditional IRA.** "Traditional IRA" means an individual retirement account
4.7 established under section 408 of the Internal Revenue Code to hold and invest pre-tax assets.

4.8 **Sec. 4. [187.05] SECURE CHOICE RETIREMENT PROGRAM.**

4.9 Subdivision 1. **Program established.** No later than July 1, 2024, the board must design,
4.10 establish, and maintain a payroll deduction arrangement whereby employee payroll deduction
4.11 contributions are transmitted on a pre-tax or after-tax basis by covered employers to
4.12 individual retirement accounts established under the program. The board must establish
4.13 procedures for opening a traditional IRA, a Roth IRA, or both a traditional IRA and a Roth
4.14 IRA for each employee whose covered employer transmits employee payroll deduction
4.15 contributions under the program. Contributions must be made on a pre-tax basis, unless the
4.16 employee elects to contribute on an after-tax basis.

4.17 Subd. 2. **Compliance with Internal Revenue Code.** Each traditional IRA and Roth
4.18 IRA opened under the program must be established and administered in compliance with
4.19 section 408 or 408A of the Internal Revenue Code, as applicable, for the benefit of the
4.20 employee for whom the account was opened.

4.21 Subd. 3. **Contributions held in trust.** Employee payroll deduction contributions must
4.22 be transmitted by each covered employer to an account established for the benefit of the
4.23 employee in a trust established to hold contributions under the program.

4.24 Subd. 4. **Contribution rate.** The board must establish default, minimum, and maximum
4.25 contribution rates and autoescalation requirements whereby each employee's contribution
4.26 rate automatically increases from year to year until it reaches a maximum contribution rate,
4.27 subject to the employee's election to change the contribution rate or cease contributions.

4.28 Subd. 5. **Vesting.** Employees must at all times be 100 percent vested in their accounts.

4.29 Subd. 6. **Withdrawals and distributions.** The board must establish alternatives
4.30 permitting employees to take a withdrawal of all or a portion of the employee's account
4.31 while employed and one or more distributions following termination of employment,
4.32 including the option to elect a direct rollover within the meaning of section 402(c) of the
4.33 Internal Revenue Code. Distribution alternatives must include lifetime income options.

5.1 Subd. 7. **Individuals not employed by a covered employer.** The board may allow
 5.2 individuals to open and contribute to an account in the program outside of an employment
 5.3 relationship with a covered employer, in which case the individual shall be considered a
 5.4 covered employee.

5.5 Sec. 5. **[187.06] ESTABLISHMENT OF SECURE CHOICE TRUST AND**
 5.6 **ADMINISTRATIVE FUND; EMPLOYEE ACCOUNTS; INVESTMENTS.**

5.7 Subdivision 1. **Secure Choice trust established.** The Secure Choice trust is established
 5.8 as an instrumentality of the state of Minnesota to hold employee payroll deduction
 5.9 contributions and earnings thereon. The board must appoint a financial institution to act as
 5.10 trustee or custodian. Trust assets must be managed and administered for the exclusive
 5.11 purposes of providing benefits to covered employees and defraying reasonable expenses of
 5.12 administering the program and managing investments under the program, including the
 5.13 expenses of the board.

5.14 Subd. 2. **Secure Choice administrative fund established.** The Secure Choice
 5.15 administrative fund is established in the state treasury as a fund separate and apart from the
 5.16 Secure Choice trust. The board must use money in the administrative fund to pay for
 5.17 administrative expenses it incurs in the performance of its duties under this chapter. The
 5.18 administrative fund may receive any gifts, grants, donations, loans, appropriations, or other
 5.19 moneys designated for the administrative fund from the state of Minnesota, any unit of
 5.20 federal or local government, any other entity, or any person. Any interest or investment
 5.21 earnings that are attributable to money in the administrative fund must be deposited into
 5.22 the administrative fund.

5.23 Subd. 3. **Individual accounts established.** The trustee or custodian, as applicable, must
 5.24 maintain an account for employee payroll deduction contributions with respect to each
 5.25 covered employee. Interest, earnings, and losses shall be allocated to accounts as prescribed
 5.26 by the board.

5.27 Subd. 4. **Investments.** Each employee or former employee is entitled to direct the
 5.28 investment of the contributions credited to the employee's account in the trust. The board
 5.29 must make available for investment a diversified array of investment funds selected by the
 5.30 State Board of Investment. Members of the board, the executive director of the State Board
 5.31 of Investment, and all other fiduciaries are relieved of fiduciary responsibility for investment
 5.32 losses resulting from the employee's investment directions.

5.33 Subd. 5. **Default investment fund.** The board must designate a default investment fund
 5.34 that is diversified to minimize the risk of large losses and consists of target date funds, a

6.1 balanced fund, or a capital preservation fund. Accounts for which no investment direction
6.2 has been given by the employee or former employee must be invested in the default
6.3 investment fund. Members of the board, the executive director of the State Board of
6.4 Investment, and all other fiduciaries are relieved of fiduciary duty under section 356A.06,
6.5 subdivision 10, with regard to investment of assets in the default investment fund.

6.6 Subd. 6. **Inalienability of accounts.** No account under the program is subject to
6.7 assignment or alienation, either voluntarily or involuntarily, or to the claims of creditors.

6.8 Subd. 7. **Accounts not property of the state of Minnesota or covered employers.** The
6.9 assets of the Secure Choice trust shall at all times be preserved, invested, and expended
6.10 solely for the purposes of the trust and no property rights therein shall exist in favor of the
6.11 state of Minnesota or any covered employer. The assets of the Secure Choice trust shall not
6.12 be transferred or used by the state of Minnesota for any purpose other than the purposes of
6.13 the trust, including appropriate administrative expenses of the program. Amounts deposited
6.14 in the trust shall not constitute property of the state of Minnesota and shall not be commingled
6.15 with state funds, and the state of Minnesota shall have no claim to or against, or interest in,
6.16 the assets of the Secure Choice trust.

6.17 Sec. 6. **[187.07] RESPONSIBILITIES OF COVERED EMPLOYERS.**

6.18 Subdivision 1. **Requirement to enroll employees.** Each covered employer must enroll
6.19 its covered employees in the program and withhold payroll deduction contributions from
6.20 each covered employee's paycheck, unless the covered employee has elected not to contribute.

6.21 Subd. 2. **Remitting contributions.** A covered employer must timely remit contributions
6.22 as required by the board. The board may establish penalties for employers for failing to
6.23 timely remit contributions.

6.24 Subd. 3. **Distribution of information.** Covered employers must provide information
6.25 packets prepared by the board to all covered employees regarding the program. The
6.26 information must be provided to each employee no later than the date of the first paycheck
6.27 from which employee contributions are deducted for transmittal to the program.

6.28 Subd. 4. **No fiduciary responsibility.** Except for the responsibilities described in
6.29 subdivisions 1 to 3, a covered employer has no obligations to employees and is not a fiduciary
6.30 or considered to be a fiduciary regarding the Secure Choice trust or the program. Covered
6.31 employers do not bear responsibility for the administration, investment performance, plan
6.32 design, or benefits paid to employees or former employees.

7.1 Subd. 5. **Employer liability.** An employer is not liable to an employee or former
7.2 employee for alleged damages resulting from an employee's participation in or failure to
7.3 participate in the program.

7.4 Subd. 6. **Enforcement.** The Minnesota attorney general has the power to enforce the
7.5 provisions of this chapter. The attorney general may impose, after due process, monthly or
7.6 quarterly penalties as established by the board against any covered employer that fails to
7.7 comply with this section. Proceeds of such penalties, after deducting enforcement expenses,
7.8 must be deposited in the Secure Choice administrative fund and are appropriated to the
7.9 program.

7.10 Sec. 7. **[187.08] SECURE CHOICE RETIREMENT PROGRAM BOARD OF**
7.11 **DIRECTORS.**

7.12 Subdivision 1. **Membership.** The policy-making function of the program is vested in a
7.13 board of directors consisting of seven members as follows:

7.14 (1) the executive director of the Minnesota State Retirement System or the executive
7.15 director's designee;

7.16 (2) the executive director of the State Board of Investment or the executive director's
7.17 designee;

7.18 (3) three members chosen by the Legislative Commission on Pensions and Retirement,
7.19 one from each of the following experience categories:

7.20 (i) executive or operations manager with substantial experience in record keeping 401(k)
7.21 plans;

7.22 (ii) executive or operations manager with substantial experience in individual retirement
7.23 accounts; and

7.24 (iii) executive or other professional with substantial experience in retirement plan
7.25 investments;

7.26 (4) a human resources or retirement benefits executive from a Fortune 500 company
7.27 with substantial experience in administering the company's 401(k) plan, appointed by the
7.28 governor; and

7.29 (5) a small business owner or executive appointed by the governor.

7.30 Subd. 2. **Appointment.** Members appointed by the governor must be appointed as
7.31 provided in section 15.0597.

8.1 Subd. 3. **Deadline for first appointments and first board meeting.** (a) The appointing
8.2 authorities must make their first appointments to the board by January 15, 2024.

8.3 (b) The board must hold its first meeting by March 1, 2024.

8.4 Subd. 4. **Membership terms.** (a) Board members serve for two-year terms, except for
8.5 the executive directors of the Minnesota State Retirement System and the State Board of
8.6 Investment, who serve indefinitely.

8.7 (b) Board members' terms may be renewed, but no member may serve more than two
8.8 consecutive terms.

8.9 Subd. 5. **Resignation; removal; vacancies.** (a) A board member may resign at any time
8.10 by giving written notice to the board.

8.11 (b) A board member may be removed by the appointing authority and a majority vote
8.12 of the board following notice and hearing before the board. For purposes of this subdivision,
8.13 the chair may invite the appointing authority or a designee of the appointing authority to
8.14 serve as a voting member of the board if necessary to constitute a quorum.

8.15 (c) If a vacancy occurs, the Legislative Commission on Pensions and Retirement or the
8.16 governor, as applicable, shall appoint a new member within 90 days.

8.17 Subd. 6. **Compensation.** Public members are compensated and expenses reimbursed as
8.18 provided under section 15.0575, subdivision 3.

8.19 Subd. 7. **Chair.** (a) The Legislative Commission on Pensions and Retirement must
8.20 designate one of the members of the board as acting chair for the first meeting.

8.21 (b) The board shall select a chair to replace the acting chair at the first meeting.

8.22 Subd. 8. **Duties.** In addition to the duties set forth in this chapter, the board has the
8.23 following duties, powers, and authority:

8.24 (1) to appoint an executive director, determine the duties of the executive director, and
8.25 set the compensation of the executive director;

8.26 (2) to establish secure processes for enrolling employees in the program and for
8.27 transmitting employee and employer contributions to custodial accounts or accounts within
8.28 a trust;

8.29 (3) to prepare a budget and establish procedures for the payment of costs of administering
8.30 and operating the program;

9.1 (4) to lease or otherwise procure office space and equipment necessary to operate the
9.2 program;

9.3 (5) to procure insurance in connection with the property of the program and the activities
9.4 of the board, executive director, and other staff;

9.5 (6) to accept contributions from employees and from participating employers for the
9.6 benefit of their employees in cash or cash equivalents only;

9.7 (7) to keep annual administrative expenses as low as possible, but in no event may they
9.8 exceed one percent of the total trust balance, and allocate administrative expenses to each
9.9 employee's account on a pro rata basis, or such other basis as the board determines to be
9.10 equitable;

9.11 (8) to determine the eligibility of an employer, employee, or other individual to participate
9.12 in the program and review and decide claims for benefits and make factual determinations;

9.13 (9) to prepare information regarding the program that is clear and concise for
9.14 dissemination to all covered employees and includes the following:

9.15 (i) the benefits and risks associated with participating in the program;

9.16 (ii) procedures for enrolling in the program and opting out of the program, electing a
9.17 different or zero percent employee contribution rate, making investment elections, applying
9.18 for a distribution of employee accounts, and making a claim for benefits;

9.19 (iii) the federal and state income tax consequences of participating in the program, which
9.20 may consist of or include the disclosure statement required to be distributed by retirement
9.21 plan trustees or custodians under the Internal Revenue Code and the Treasury Regulations
9.22 thereunder;

9.23 (iv) how to obtain additional information on the program; and

9.24 (v) disclaimers of covered employer and state responsibility, including the following
9.25 statements:

9.26 (A) covered employees seeking financial, investment, or tax advice should contact their
9.27 own advisors;

9.28 (B) neither covered employers nor the state of Minnesota are liable for decisions covered
9.29 employees make regarding their account in the program;

9.30 (C) neither a covered employer nor the state of Minnesota guarantee the accounts in the
9.31 program or any particular investment rate of return; and

10.1 (D) neither a covered employer nor the state of Minnesota monitors or has an obligation
10.2 to monitor any covered employee's eligibility under the Internal Revenue Code to make
10.3 contributions to an account in the program, or whether the covered employee's contributions
10.4 to an account in the program exceed the maximum permissible contribution under the
10.5 Internal Revenue Code;

10.6 (10) to publish an annual audited financial report, prepared according to generally
10.7 accepted accounting principles, on the operations of the program and audited by an
10.8 independent certified public accountant, which shall include but not be limited to direct and
10.9 indirect costs attributable to the use of outside consultants, independent contractors, and
10.10 other persons who are not state employees. The report shall be provided to the chairs and
10.11 ranking minority members of the legislative committees with jurisdiction over jobs and
10.12 economic development and state government finance, the executive directors of the State
10.13 Board of Investment and the Legislative Commission on Pensions and Retirement, and the
10.14 Legislative Reference Library;

10.15 (11) to publish an annual report regarding plan outcomes, progress toward savings goals
10.16 established by the board, statistics on covered employees and participating employers, plan
10.17 expenses, estimated impact of the program on social safety net programs, and penalties and
10.18 violations. The report shall be provided to the chairs and ranking minority members of the
10.19 legislative committees with jurisdiction over jobs and economic development and state
10.20 government finance, the executive directors of the State Board of Investment and the
10.21 Legislative Commission on Pensions and Retirement, and the Legislative Reference Library;

10.22 (12) to adopt rules to implement the program;

10.23 (13) to properly file all reports required under the Internal Revenue Code for the program;

10.24 (14) to, at the board's discretion, seek and accept gifts, grants, and donations to be used
10.25 for the program, unless such gifts, grants, or donations would result in a conflict of interest
10.26 relating to the solicitation of service provider for program administration, and deposit such
10.27 gifts, grants, or donations in the Secure Choice administrative fund;

10.28 (15) to, at the board's discretion, seek and accept appropriations from the state of
10.29 Minnesota or loans from the state or any agency of the state;

10.30 (16) to assess the feasibility of multi-state or regional agreements to administer the
10.31 program through shared administrative resources and, if determined beneficial, enter into
10.32 contracts, agreements, memoranda of understanding, or other arrangements with any other
10.33 state or an agency or subdivision of any other state to administer, operate, or manage any

11.1 part of the program, which may include combining resources, investments, or administrative
 11.2 functions;

11.3 (17) to hire, retain, and terminate third-party service providers as the board deems
 11.4 necessary or desirable for the program, including but not limited to the trustees, consultants,
 11.5 investment managers or advisors, custodians, insurance companies, recordkeepers,
 11.6 administrators, consultants, actuaries, legal counsel, auditors, and other professionals,
 11.7 provided that each service provider is authorized to do business in the state of Minnesota;
 11.8 and

11.9 (18) to interpret the program's governing documents and this chapter and make all other
 11.10 decisions necessary to administer the program.

11.11 Subd. 9. **Conflict of interest; economic interest statement.** No member of the board
 11.12 may participate in deliberations or vote on any matter before the board that will or is likely
 11.13 to result in direct, measurable economic gain to the member or the member's family. Members
 11.14 of the board shall file with the Campaign Finance and Public Disclosure Board an economic
 11.15 interest statement in a manner as prescribed by section 10A.09, subdivisions 5 and 6.

11.16 **Sec. 8. [187.09] FIDUCIARY DUTY; STANDARD OF CARE.**

11.17 The members of the board, the executive director of the program, the members of the
 11.18 State Board of Investment and its executive director, and any person who controls the
 11.19 disposition or investment of any assets of the Secure Choice trust:

11.20 (1) are fiduciaries subject to chapter 356A and must undertake their activities as
 11.21 fiduciaries consistent with chapter 356A; and

11.22 (2) are indemnified and held harmless by the state of Minnesota for the reasonable costs,
 11.23 expenses, or liability incurred as a result of any actual or threatened litigation or
 11.24 administrative proceeding arising out of the performance of the person's duties.

11.25 **Sec. 9. [187.10] NO STATE LIABILITY.**

11.26 The state of Minnesota has no liability for the payment of, the amount of, or losses to
 11.27 any benefit to any participant in the program.

11.28 **Sec. 10. [187.11] OTHER STATE AGENCIES TO PROVIDE ASSISTANCE.**

11.29 (a) The board may enter into intergovernmental agreements with the commissioner of
 11.30 revenue, the commissioner of labor and industry, and any other state agency that the board
 11.31 deems necessary or appropriate to provide outreach, technical assistance, or compliance

12.1 services. Any agency that enters into an intergovernmental agreement with the board pursuant
12.2 to this section must collaborate and cooperate with the board to provide the outreach,
12.3 technical assistance, or compliance services under any such agreement.

12.4 (b) The commissioner of revenue, the commissioner of labor and industry, and any other
12.5 state agency must provide information and data on employees, employers, and corporations
12.6 doing business in the state of Minnesota, upon the request of the board or executive director.
12.7 The state agency providing the information or data may require that the board or executive
12.8 director comply with confidentiality requirements as a condition to providing such
12.9 information or data.

12.10 Sec. 11. **[187.12] SEVERABILITY.**

12.11 If any provision of this chapter is found to be unconstitutional and void, the remaining
12.12 provisions of this chapter are valid.

12.13 Sec. 12. **EFFECTIVE DATE.**

12.14 Sections 1 to 5 and 7 to 11 are effective the day following final enactment. Section 6 is
12.15 effective the day after the Secure Choice retirement program board of directors opens the
12.16 Secure Choice retirement savings program for enrollment of covered employees.