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State of Minnesota
HOUSE OF REPRESENTATIVES
NINETIETH SESSION

H. F. No. **2665**

05/15/2017 Authored by Schultz; Murphy, M.; Nelson and Metsa
The bill was read for the first time and referred to the Committee on Commerce and Regulatory Reform

1.1 A bill for an act
1.2 relating to retirement; establishing the Minnesota secure choice retirement program;
1.3 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. **[187.03] DEFINITIONS.**

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

1.12 Subd. 2. **Board.** "Board" means the secure choice retirement program board of directors.

1.13 Subd. 3. **Eligible employee.** "Eligible employee" means an individual employed by an
1.14 eligible employer, with a primary work site in the state, and who, for the immediately
1.15 preceding calendar year, worked 500 or more hours for the eligible employer. Once an
1.16 individual has worked 500 or more hours for the eligible employer in a calendar year, the
1.17 individual continues to be an eligible employee even if the individual works fewer than 500
1.18 hours in the current or any future calendar year. Eligible employee does not include an
1.19 individual who, on December 31 of the preceding calendar year, was less than 18 years of
1.20 age.

1.21 Subd. 4. **Eligible employer.** (a) "Eligible employer" means a person or entity:

2.1 (1) engaged in a business, industry, profession, trade, or other enterprise, whether for
2.2 profit or not for profit;

2.3 (2) with one or more employees in the state; and

2.4 (3) that does not sponsor or contribute to, on behalf of all its employees, a retirement
2.5 savings plan.

2.6 (b) Eligible employer does not include an employer that has not engaged in a business,
2.7 industry, profession, trade, or other enterprise, whether for profit or not for profit at any
2.8 time during the immediately preceding calendar year. Eligible employer does not include
2.9 the state or its subdivisions.

2.10 Subd. 5. **ERISA.** "ERISA" means the Employee Retirement Income Security Act of
2.11 1974, as amended, United States Code, title 29, section 1001, et seq.

2.12 Subd. 6. **Executive director.** "Executive director" means the chief executive and
2.13 administrative head of the program.

2.14 Subd. 7. **Internal Revenue Code.** "Internal Revenue Code" means the Internal Revenue
2.15 Code of 1986, as amended, United States Code, title 26, section 1, et seq.

2.16 Subd. 8. **Participating employee.** "Participating employee" means an eligible employee
2.17 who is contributing to the secure choice retirement program.

2.18 Subd. 9. **Participating employer.** "Participating employer" means an eligible employer
2.19 that participates in a payroll deposit retirement savings arrangement for eligible employees
2.20 as provided for in this chapter.

2.21 Subd. 10. **Payroll deposit retirement savings arrangement.** "Payroll deposit retirement
2.22 savings arrangement" means an arrangement in which an employer makes contributions on
2.23 behalf of participating employees by deducting a specified portion of the employee's pay
2.24 and transmitting the deducted amount to the secure choice retirement program at the same
2.25 time and manner as payroll deductions for federal and state tax withholding.

2.26 Subd. 11. **Program.** "Program" means the secure choice retirement program under this
2.27 chapter.

2.28 Subd. 12. **Retirement savings plan.** "Retirement savings plan" means a plan that permits
2.29 contributions to be set aside for retirement and provides for the deferral of income tax on
2.30 the contributions, unless the employee elects to contribute after-tax amounts. Retirement
2.31 savings plan includes but is not limited to any plan that satisfies the applicable requirements
2.32 of section 401(a) of the Internal Revenue Code, a plan listed in section 219(g)(5) of the

3.1 Internal Revenue Code, a plan within the meaning of section 457(b) of the Internal Revenue
 3.2 Code, a simplified employee pension (SEP) plan, a savings incentive match plan for
 3.3 employees (SIMPLE) plan, an automatic enrollment payroll deduction individual retirement
 3.4 account, and a multiemployer pension plan described in section 414(f) of the Internal
 3.5 Revenue Code.

3.6 Subd. 13. **Secure choice individual retirement account plan or IRAP.** "Secure choice
 3.7 individual retirement account plan" or "IRAP" means the plan established under section
 3.8 187.05.

3.9 Subd. 14. **Secure choice retirement savings trust.** "Secure choice retirement savings
 3.10 trust" means a trust established to hold contributions and investment earnings on funds
 3.11 contributed under the IRAP.

3.12 Sec. 3. **[187.05] SECURE CHOICE INDIVIDUAL RETIREMENT ACCOUNT**
 3.13 **PLAN.**

3.14 Subdivision 1. **IRAP established.** The board must design, establish, and maintain a
 3.15 payroll deduction arrangement whereby employee payroll deduction contributions are
 3.16 transmitted by the employee's eligible employer to an individual retirement account
 3.17 established for the employee. The board must establish procedures for opening an individual
 3.18 retirement account for each employee whose eligible employer transmits employee payroll
 3.19 deduction contributions under the IRAP.

3.20 Subd. 2. **Compliance with Internal Revenue Code.** Each individual retirement account
 3.21 opened under the IRAP must be established and administered in compliance with section
 3.22 408(a) of the Internal Revenue Code for the benefit of the employee for whom the account
 3.23 was opened.

3.24 Subd. 3. **Contributions held in custodial account or trust.** Employee payroll deduction
 3.25 contributions shall be transmitted by the employer to an account established for the benefit
 3.26 of the employee that is a custodial account or, if a trust is established to hold contributions
 3.27 under the IRAP, under the trust in the manner and according to the schedule specified and
 3.28 established by the board.

3.29 Subd. 4. **Contribution rate.** The board shall establish default, minimum, and maximum
 3.30 contribution levels as well as autoescalation requirements whereby employees' contributions
 3.31 automatically escalate from year to year until they reach a maximum contribution rate,
 3.32 subject to the employee's election to change the contribution rate or cease contributions.

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

4.1 Subd. 6. **Distributions.** The board shall establish alternatives for taking a distribution
4.2 of an account following termination of employment, including the option to elect a direct
4.3 rollover within the meaning of section 402(c) of the Internal Revenue Code. Distribution
4.4 alternatives shall include the option to transfer all or any portion of the account toward the
4.5 purchase of an annuity.

4.6 Sec. 4. [187.06] ESTABLISHMENT OF TRUST OR CUSTODIAL ACCOUNTS;
4.7 INVESTMENTS.

4.8 Subdivision 1. **Trust or custodial accounts established.** The board must establish and
4.9 maintain either custodial accounts or a trust for the IRAP to hold and invest contributions
4.10 under the IRAP.

4.11 Subd. 2. **Individual accounts established.** The trustee or custodian, as applicable, must
4.12 maintain accounts for employer and employee contributions for each employee contributing
4.13 under the IRAP. Interest, earnings, and losses shall be allocated to accounts as prescribed
4.14 by the board. An individual's retirement savings benefit under the program shall be an
4.15 amount equal to the balance in the individual's program account on the date the retirement
4.16 savings benefit becomes payable.

4.17 Subd. 3. **Investments.** Each employee or former employee is entitled to direct the
4.18 investment of the contributions credited to the employee's account in the trust or custodial
4.19 account, as applicable. The board shall make available for investment a diversified array
4.20 of investment funds selected by the State Board of Investment under section 356.645 and
4.21 shall otherwise comply with the requirements of section 404(c) of ERISA and related
4.22 regulations. Members of the board, the executive director of the State Board of Investment,
4.23 and all other fiduciaries are relieved of fiduciary responsibility for investment losses resulting
4.24 from the employee's investment directions.

4.25 Subd. 4. **Default investment fund.** The board shall designate a default investment fund
4.26 that satisfies the requirements of section 404(c)(5) of ERISA and related regulations.
4.27 Accounts for which no investment direction has been given by the employee or former
4.28 employee shall be invested in the default investment fund. Members of the board, the
4.29 executive director of the State Board of Investment, and all other fiduciaries are relieved
4.30 of fiduciary duty under section 404 of ERISA and section 356A.06, subdivision 10, with
4.31 regard to investment of assets in the default investment fund.

4.32 Subd. 5. **Inalienability of accounts.** No account under the program is subject to
4.33 assignment or alienation, either voluntarily or involuntarily, or to the claims of creditors.

5.1 Sec. 5. **[187.07] RESPONSIBILITIES OF ELIGIBLE EMPLOYERS.**

5.2 Subdivision 1. **Enrollment in IRAP.** An eligible employer must enroll eligible
5.3 employees, who do not otherwise have the option of enrolling in an employer-sponsored
5.4 retirement savings plan, in the secure choice individual retirement account plan.

5.5 Subd. 2. **Remitting contributions.** A participating employer must timely remit
5.6 contributions, as required by the board. The board may establish penalties for employers
5.7 for failing to timely remit contributions.

5.8 Subd. 3. **Distribution of plan information.** Participating employers shall provide
5.9 information packets regarding the IRAP, prepared by the board, to all eligible employees.
5.10 For employees contributing to the IRAP, the information must be provided to an employee
5.11 no later than 30 days before the date of the first payroll from which employee contributions
5.12 are deducted for transmittal to the IRAP.

5.13 Subd. 4. **No fiduciary responsibility.** Except for the responsibilities described in
5.14 subdivisions 1 to 3, a participating employer has no obligations to employees and is not a
5.15 fiduciary or considered to be a fiduciary regarding the secure choice retirement savings trust
5.16 or the program. Participating employers do not bear responsibility for the administration,
5.17 investment performance, plan design, or benefits paid to plan participants.

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

5.21 Subd. 6. **Enforcement.** The board may enforce the provisions of this chapter. The board
5.22 may impose penalties, not to exceed \$1,000 per month of noncompliance, against any
5.23 eligible employer that fails to comply with this section. Proceeds of such penalties must be
5.24 deposited in a special revenue account and are appropriated to the program.

5.25 Sec. 6. **[187.08] SECURE CHOICE RETIREMENT SAVINGS BOARD OF**
5.26 **DIRECTORS.**

5.27 Subdivision 1. **Membership.** (a) The program is governed by a board of directors
5.28 consisting of the following seven members:

5.29 (1) the executive director of the Minnesota State Retirement System;

5.30 (2) the executive director of the State Board of Investment or the executive director's
5.31 designee;

6.1 (3) an executive or operations manager with at least ten years' experience in Internal
6.2 Revenue Code section 401(k) plan record keeping;

6.3 (4) an executive or operations manager with at least ten years' experience in individual
6.4 retirement accounts;

6.5 (5) an executive or other professional with at least ten years' experience in retirement
6.6 plan investments;

6.7 (6) a human resources or retirement benefits executive from a Fortune 500 corporation,
6.8 with at least ten years' experience in administering the corporation's 401(k) plan; and

6.9 (7) a small business owner or executive.

6.10 (b) The governor must appoint members under paragraph (a), clauses (3) to (7), as
6.11 provided in section 15.0597.

6.12 (c) For the members under paragraph (a), clauses (3) to (5), the Legislative Commission
6.13 on Pensions and Retirement must provide the governor with recommendations for
6.14 appointments.

6.15 Subd. 2. **Terms of initial appointees and deadline for first appointments.** (a) The
6.16 terms of initial appointees are as follows:

6.17 (1) the executive directors of the Minnesota State Retirement System and the State Board
6.18 of Investment shall serve indefinitely;

6.19 (2) the members appointed under subdivision 1, paragraph (a), clauses (3) to (5), shall
6.20 initially serve three, four, and five years, respectively, and four-year terms thereafter; and

6.21 (3) the members appointed under subdivision 1, paragraph (a), clauses (6) and (7), shall
6.22 serve four-year terms.

6.23 (b) The governor must make initial appointments to the board by January 15, 2018.

6.24 Subd. 3. **Removal; vacancies.** Public members may be removed and vacancies filled
6.25 as provided under section 15.0575, subdivisions 4 and 5.

6.26 Subd. 4. **Compensation.** Public members shall be compensated and expenses reimbursed
6.27 as provided under section 15.0575, subdivision 3.

6.28 Subd. 5. **Chair.** The governor must appoint one of the members of the board of directors
6.29 as its chair.

6.30 Subd. 6. **Duties.** In addition to the other duties set forth in this chapter, the board has
6.31 the following duties:

- 7.1 (1) appoint an executive director, determine the duties of the executive director, and set
7.2 the compensation of the executive director;
- 7.3 (2) establish secure processes for enrolling employees in the IRAP and for transmitting
7.4 employee and employer contributions to custodial accounts or accounts within a trust;
- 7.5 (3) prepare a budget and establish procedures for the payment of costs of administering
7.6 and operating the program;
- 7.7 (4) lease or otherwise procure office space and equipment necessary to operate the
7.8 program;
- 7.9 (5) procure insurance in connection with the property of the program and the activities
7.10 of the board, executive director, and other staff;
- 7.11 (6) accept contributions from employees and from participating employers for the benefit
7.12 of their employees in cash or cash equivalents only;
- 7.13 (7) keep annual administrative expenses as low as possible, but in no event may they
7.14 exceed one percent of the total trust balance, and allocate administrative expenses to each
7.15 employee's account on a pro rata basis, or such other basis as the board determines to be
7.16 equitable;
- 7.17 (8) determine the eligibility of an employer, employee, or other individual to participate
7.18 in the program, interpret the program's governing documents and this chapter, and make
7.19 all other decisions necessary to administer the program;
- 7.20 (9) prepare employee information that provides notice to employees regarding the
7.21 following:
- 7.22 (i) the benefits and risks associated with participating in the IRAP, as applicable;
- 7.23 (ii) enrolling in the IRAP;
- 7.24 (iii) how to opt out of the IRAP;
- 7.25 (iv) applying for distribution of retirement benefits;
- 7.26 (v) how to obtain additional information on the IRAP;
- 7.27 (vi) lack of employer liability for decisions employees make; and
- 7.28 (vii) that benefits and investment returns are not guaranteed by the state and the state
7.29 has no liability for investment performance;
- 7.30 (10) publish an annual audited financial report, prepared according to generally accepted
7.31 accounting principles, on the operations of the program, performed by an independent

8.1 certified public accountant, which must include but need not be limited to direct and indirect
 8.2 costs attributable to the use of outside consultants, independent contractors, and other persons
 8.3 who are not state employees. The board must provide the report to the chairs and ranking
 8.4 minority members of the legislative committees with jurisdiction over jobs and economic
 8.5 development and state government finance, the executive director of the State Board of
 8.6 Investment, the chair of the Legislative Commission on Pensions and Retirement, and the
 8.7 Legislative Reference Library;

8.8 (11) publish an annual report regarding plan outcomes, progress toward savings goals
 8.9 established by the board, statistics on eligible employees and participating employers, plan
 8.10 expenses, estimated impact of the program on social safety net programs, and penalties and
 8.11 violations. The board must provide the report to the chairs and ranking minority members
 8.12 of the legislative committees with jurisdiction over jobs and economic development and
 8.13 state government finance, the executive director of the State Board of Investment, the chair
 8.14 of the Legislative Commission on Pensions and Retirement, and the Legislative Reference
 8.15 Library;

8.16 (12) adopt rules to implement the program; and

8.17 (13) properly file any reports required by federal law.

8.18 Subd. 7. **Conflict of interest; economic interest statement.** No member of the board
 8.19 may participate in deliberations or vote on any matter before the board that will or is likely
 8.20 to result in direct, measurable economic gain to the member or the member's employee.
 8.21 Members of the board shall file with the Campaign Finance and Public Disclosure Board
 8.22 an economic interest statement in a manner as prescribed by section 10A.09, subdivisions
 8.23 5 and 6.

8.24 Subd. 8. **Liability; indemnification.** A member of the board is an employee of the state
 8.25 for the purposes of sections 3.732 to 3.7365.

8.26 Subd. 9. **Data practices; open meetings.** The board is subject to chapters 13 and 13D.

8.27 Sec. 7. **[187.09] FIDUCIARY DUTY; STANDARD OF CARE.**

8.28 The members of the board, the State Board of Investment, and the staff of the program
 8.29 are governed by chapter 356A, to the extent any of them exercise fiduciary duty.

8.30 Sec. 8. **[187.10] NO STATE LIABILITY.**

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

9.1 Sec. 9. **EFFECTIVE DATE.**

9.2 Sections 1 to 2 and 4 to 8 are effective the day following final enactment. Section 3 is
9.3 effective the day after the secure choice retirement program board of directors opens the
9.4 secure choice retirement savings program for enrollment or August 1, 2018, whichever is
9.5 earlier.