

SENATE
STATE OF MINNESOTA
EIGHTY-EIGHTH SESSION

S.F. No. 2078

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DATE	D-PG	OFFICIAL STATUS
02/27/2014	5894	Introduction and first reading Referred to State and Local Government
03/12/2014	6124	Comm report: To pass and re-referred to Commerce
03/26/2014		Comm report: To pass as amended and re-refer to Finance

1.1 A bill for an act
 1.2 relating to retirement; creating the Minnesota secure choice retirement savings
 1.3 plan; requiring a report; establishing a trust account; proposing coding for new
 1.4 law as Minnesota Statutes, chapter 352G.

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

1.6 Section 1. **[352G.01] DEFINITIONS.**

1.7 Subdivision 1. **Applicability.** For purposes of sections 352G.01 to 352G.08, the
 1.8 terms defined in this section shall have the meanings given them.

1.9 Subd. 2. **401(a).** (a) "401(a) account" means an account associated with an
 1.10 individual plan participant within a 401(a) trust.

1.11 (b) "401(a) trust" means a trust fund that is created to receive employer profit-sharing
 1.12 contributions to individual accounts of employees under section 401(a) of the Code.

1.13 Subd. 3. **Board.** "Board" means the Minnesota Secure Choice Retirement Savings
 1.14 Board.

1.15 Subd. 4. **Code.** "Code" means the Internal Revenue Code of 1986, as amended
 1.16 through April 14, 2011.

1.17 Subd. 5. **Eligible employee.** "Eligible employee" means: (1) a person, other than
 1.18 an excluded employee, who is employed by an eligible employer; or (2) a self-employed
 1.19 person.

1.20 Subd. 6. **Eligible employer.** "Eligible employer" means a person or entity with one
 1.21 or more employees in Minnesota, excluding the federal government.

1.22 Subd. 7. **Excluded employee.** (a) "Excluded employee" means:

2.1 (1) any employee who is eligible to participate in either a qualifying retirement plan
2.2 or arrangement described in section 219(g)(5) of the Code, or an automatic enrollment
2.3 payroll deduction IRA maintained or offered by the employee's employer;

2.4 (2) any employee who was eligible at any time during the preceding two calendar
2.5 years to participate in a qualifying retirement plan or arrangement described in section
2.6 219(g)(5) of the Code that was terminated or frozen by the employee's employer;

2.7 (3) any employee who was eligible at any time during the preceding two calendar
2.8 years to participate in an automatic enrollment payroll deduction IRA maintained or
2.9 offered by the employee's employer that the employer ceased to offer;

2.10 (4) any employee covered by a collective bargaining agreement that expressly
2.11 provides for the employer to contribute to a multiemployer retirement plan described in
2.12 section 414(f) of the Code;

2.13 (5) any employee who is an active member of a public employee retirement plan
2.14 listed in section 356.20, subdivision 2; and

2.15 (6) any employee who has not attained the age of 18 before the beginning of the
2.16 calendar year.

2.17 (b) A person who is an excluded employee with respect to employment by one
2.18 employer is excluded only with respect to that employer, and is not an excluded employee
2.19 with respect to another employer, or with respect to self-employment, if paragraph (a)
2.20 does not apply to that employment. A person who becomes an excluded employee is
2.21 excluded only for purposes of future contributions, and this exclusion does not affect the
2.22 person's account with respect to prior contributions.

2.23 Subd. 8. **IRA.** "IRA" means an individual retirement account or individual
2.24 retirement annuity under sections 408(a) or 408(b) of the Code.

2.25 Subd. 9. **Participating employer.** "Participating employer" means an eligible
2.26 employer that provides a payroll deposit retirement savings arrangement under this
2.27 chapter for eligible employees.

2.28 Subd. 10. **Payroll deposit retirement savings arrangement.** "Payroll deposit
2.29 retirement savings arrangement" means an arrangement by which an employer allows
2.30 employees to remit payroll deduction contributions to the plan.

2.31 Subd. 11. **Plan.** "Plan" means the Minnesota secure choice retirement savings plan
2.32 established in section 352G.02.

2.33 Subd. 12. **Plan administrator.** "Plan administrator" means the person selected by
2.34 the board to administer the daily operations of the plan and to provide record keeping
2.35 and other services for the plan.

3.1 Subd. 13. **Trust.** "Trust" means the Minnesota Secure Choice Retirement Savings
3.2 Trust.

3.3 Sec. 2. **[352G.02] MINNESOTA SECURE CHOICE RETIREMENT SAVINGS**
3.4 **PLAN.**

3.5 Subdivision 1. **Plan established.** There is hereby established a retirement savings
3.6 plan known as the Minnesota secure choice retirement savings plan that shall meet all of
3.7 the requirements to qualify for the favorable federal income tax treatment ordinarily
3.8 accorded to IRAs under the Code, and that must not be determined to be an employee
3.9 benefit plan under the federal Employee Retirement Income Security Act.

3.10 Subd. 2. **Purpose.** The plan is established for the purposes of:

3.11 (1) promoting greater retirement income for private employees;

3.12 (2) maximizing participation by private employees who have no access to retirement
3.13 savings through their place of employment by minimizing barriers to participation;

3.14 (3) minimizing fees;

3.15 (4) portability across private employers; and

3.16 (5) providing for stable income through retirement, while incurring no state liability
3.17 for payment of benefits.

3.18 Sec. 3. **[352G.03] MINNESOTA SECURE CHOICE RETIREMENT SAVINGS**
3.19 **TRUST.**

3.20 Subdivision 1. **Trust established.** (a) All assets of the plan, including contributions
3.21 paid by employees and employers and investment earnings, shall be held in trust for the
3.22 exclusive purposes of paying benefits to the participants of the plan, paying for the cost of
3.23 administration of the plan, and making investments for the benefit of the plan participants.

3.24 (b) Assets of the plan shall be held in a separate account in the state treasury known
3.25 as the Minnesota Secure Choice Retirement Savings Trust to be invested by the State
3.26 Board of Investment consistent with applicable rules, or may be invested by third-party
3.27 investment management under contract with the State Board of Investment.

3.28 (c) Plan participants may not direct the investment of contributions to the plan or
3.29 plan earnings.

3.30 (d) Plan assets are not subject to claims by creditors of the state, are not part of the
3.31 general fund, and are not subject to appropriations by the state.

3.32 Subd. 2. **Investment by the State Board of Investment.** (a) The State Board of
3.33 Investment shall establish the plan's investment requirements.

4.1 (b) The State Board of Investment shall invest the money in the trust with care, skill,
4.2 prudence, and diligence under the circumstances then prevailing that a prudent person
4.3 acting in a like capacity and familiar with those matters would use in the conduct of
4.4 an enterprise of a like character and with like aims, subject to the provision of section
4.5 11A.24, except that the accounts may be invested without limit in investment options from
4.6 open-ended investment companies registered under the federal Investment Company Act
4.7 of 1940, United States Code, title 15, sections 80a-1 to 80a-64.

4.8 (c) The State Board of Investment may arrange for collective, common, and pooled
4.9 investment of assets of the retirement savings program or arrangements, including
4.10 investments in conjunction with other funds with which those assets are permitted to be
4.11 collectively invested, with a view to saving costs through efficiencies and economies
4.12 of scale.

4.13 (d) The State Board of Investment may contract with one or more third parties,
4.14 pursuant to subdivision 1, paragraph (b), for investment management or related services
4.15 in connection with investing the money in the trust, subject to the responsibilities in
4.16 subdivision 2, paragraphs (b) and (c). The State Board of Investment and the board may
4.17 jointly contract with third-party providers, if the board and the State Board of Investment
4.18 jointly determine that it is desirable to contract with the same entity or entities for
4.19 administration, record keeping, and investment management services.

4.20 Subd. 3. **Fees.** The board and the State Board of Investment may establish an
4.21 annual fee, equal to a percentage of the average daily net assets of the plan, to be imposed
4.22 on participants to recover the costs of administration, record keeping, and investment
4.23 management. The board and the State Board of Investment must use best efforts to keep
4.24 these fees as low as possible, consistent with efficient administration and high-quality
4.25 investment management, so that the returns on savings invested in the plan will be as
4.26 high as possible.

4.27 Subd. 4. **Risk management.** The State Board of Investment shall adopt a written
4.28 statement of investment policy that includes a risk management and oversight program.
4.29 The investment policy shall mitigate risk by maintaining a diversified investment portfolio.

4.30 Subd. 5. **Benefits.** Interest, earnings, and losses shall be allocated to plan accounts
4.31 as prescribed by the board. An individual's retirement savings benefit under the program
4.32 shall be an amount equal to the balance in the individual's plan account on the date the
4.33 retirement savings benefit becomes payable.

4.34 Subd. 6. **State liability limited.** The state shall have no liability for the payment of
4.35 any benefit to any participant in the program.

5.1 Sec. 4. **[352G.04] OPTIONAL EMPLOYER CONTRIBUTIONS.**

5.2 Subdivision 1. **Employer contributions.** The board shall evaluate, and to the extent
 5.3 allowed under the federal Employee Retirement Income Security Act and the Code, shall
 5.4 establish a separate 401(a) trust fund to accept profit-sharing contributions from employers
 5.5 to individual accounts of their employees, meeting the following conditions:

5.6 (1) employer contributions must be in cash or cash equivalents only; securities must
 5.7 not be accepted as contributions;

5.8 (2) 401(a) accounts must be segregated from the trust;

5.9 (3) the board must act as a fiduciary under the federal Employee Retirement Income
 5.10 Security Act with respect to the 401(a) accounts, and may, to the extent permitted by
 5.11 federal law, direct their investment in the same manner, with the same managers and
 5.12 asset allocations as the assets of the trust;

5.13 (4) employer participation in the 401(a) profit-sharing trust fund is strictly voluntary;

5.14 (5) the investments in the 401(a) accounts, comprised of employer contributions plus
 5.15 credited earnings, may mirror the investments in the individuals' plan accounts, comprised
 5.16 of employee contributions plus credited earnings, to the extent permitted by federal law; and

5.17 (6) 401(a) accounts must provide for immediate vesting.

5.18 Subd. 2. **Rollover.** Upon the occurrence of a condition permitting a distribution
 5.19 of benefits under the Code, the plan participant, or beneficiary, may elect to roll over the
 5.20 account balance in his or her 401(a) account into his or her plan account for the purpose of
 5.21 obtaining secure retirement income or annuitization, to the extent permitted by law.

5.22 Sec. 5. **[352G.05] MINNESOTA SECURE CHOICE RETIREMENT SAVINGS**
 5.23 **BOARD.**

5.24 Subdivision 1. **Minnesota Secure Choice Retirement Savings Board established.**
 5.25 There is established the Minnesota Secure Choice Retirement Savings Board to administer
 5.26 the Minnesota secure choice retirement savings plan.

5.27 Subd. 2. **Membership.** (a) The board shall have nine members, and shall be
 5.28 comprised of the commissioner of management and budget or a designee, who shall serve
 5.29 as both treasurer and chair, and the following members:

5.30 (1) four members appointed by the governor;

5.31 (2) two members appointed by the speaker of the house who are not members of
 5.32 the legislature; and

5.33 (3) two members appointed by the majority leader of the senate who are not
 5.34 members of the legislature.

5.35 (b) Of the four members appointed under paragraph (a), clause (1):

6.1 (1) one must have retirement savings or investment expertise;

6.2 (2) one must represent an eligible employer with between five and 50 eligible
6.3 employees; and

6.4 (3) one must be an eligible employee.

6.5 **Subd. 3. Appointments; membership terms; compensation; removal.** (a)
6.6 Section 15.0597 shall apply to all appointments and filling of vacancies, except for the
6.7 commissioner.

6.8 (b) Membership terms, compensation, and removal of members are as provided
6.9 in section 15.0575.

6.10 (c) Initial appointments to the board must be made by July 1, 2014.

6.11 (d) Initial terms are as follows:

6.12 (1) for members appointed under paragraph (a), clause (1), the governor shall
6.13 designate two to an initial term of two years and two to an initial term of four years;

6.14 (2) for members appointed under paragraph (a), clause (2), the speaker of the house
6.15 shall designate one to an initial term of one year and one to an initial term of three years; and

6.16 (3) for members appointed under paragraph (a), clause (3), the majority leader of
6.17 the senate shall designate one to an initial term of one year, and one to an initial term
6.18 of three years.

6.19 **Subd. 4. Quorum.** A majority of the members appointed and serving shall
6.20 constitute a quorum for the transaction of any business.

6.21 **Subd. 5. Initial meeting.** The commissioner of management and budget must
6.22 convene the initial meeting of the board by August 1, 2014.

6.23 **Subd. 6. Board duties and powers.** The board shall have the power and authority
6.24 to do all of the following:

6.25 (1) appoint a plan administrator, employ staff, determine the duties of the plan
6.26 administrator and other staff as necessary, and set their compensation;

6.27 (2) make provisions for the payment of costs of administration and operation of
6.28 the trust;

6.29 (3) allocate administrative fees to each individual retirement account on a pro rata
6.30 basis;

6.31 (4) design and establish the process for the enrollment of plan participants;

6.32 (5) evaluate and establish the process by which an eligible employer is able to
6.33 forward contributions and related information to the plan or its agents, which may include,
6.34 but is not limited to:

6.35 (i) existing processes and arrangements used for the deposit and administration
6.36 of tax required to be deducted and withheld relating to the collection of income tax at

7.1 source on wages, or for the deposit of tax required to be paid under the unemployment
 7.2 insurance system; or

7.3 (ii) financial services companies and third-party administrators with the capability to
 7.4 receive and process information on plan participants and contributions by payroll deposit
 7.5 retirement savings arrangement or other arrangements authorized by this chapter;

7.6 (6) determine the eligibility of employers, employees, or other individuals to
 7.7 participate in the plan as necessary;

7.8 (7) evaluate and establish the process by which an individual or an employee of a
 7.9 nonparticipating employer may enroll in and make contributions to the plan;

7.10 (8) determine the means and plan conditions by which to maximize eligible
 7.11 employee participation in the plan;

7.12 (9) set minimum and maximum contribution levels in accordance with contribution
 7.13 limits set for IRAs and 401(a) accounts by the Code;

7.14 (10) explore and establish investment policies that offer employees returns on
 7.15 contributions and the conversion of individual plan account balances to secure retirement
 7.16 income or annuitization, without incurring debt or liabilities to the state;

7.17 (11) procure insurance indemnifying each member of the board from personal loss
 7.18 or liability resulting from a member's action or inaction as a member of the board;

7.19 (12) evaluate and recommend appropriate incentives for compliance and penalties
 7.20 for noncompliance with the rules and requirements for participation in the plan;

7.21 (13) promulgate rules to implement this act and to govern the trust, the plan, and
 7.22 participation in the plan; and

7.23 (14) report the following annually beginning December 1, 2015, to the majority
 7.24 leader of the senate, the speaker of the house, and the chairs of the house of representatives
 7.25 and senate committees with primary jurisdiction over retirement systems and associations:

7.26 (i) estimates of the average amount of savings and other financial resources that are
 7.27 recommended for a financially secure retirement in Minnesota;

7.28 (ii) estimates of the relative progress toward achieving the savings recommended for
 7.29 a financially secure retirement by age, gender, race, ethnicity, and plan eligibility;

7.30 (iii) the number of eligible employees, participating employers, and plan participants
 7.31 in Minnesota;

7.32 (iv) the total assets in the trust and average plan account assets by age;

7.33 (v) the annual fee as a percentage of the average daily net assets of the plan; and

7.34 (vi) the estimated impact on publicly funded social safety net programs attributable
 7.35 to insufficient retirement savings.

7.36 Subd. 7. **Expiration.** The board expires January 1, 2020.

8.1 **Sec. 6. [352G.06] INFORMATION, DATA, AND DISCLOSURE.**

8.2 **Subdivision 1. Employee information packet.** Prior to opening the plan for
8.3 enrollment, the board shall design and disseminate an employee information packet to
8.4 all eligible employers. The packet must include background information on the plan and
8.5 appropriate disclosures for employees, as well as a sample enrollment form to be used by
8.6 employees to provide written authorization for payroll deductions for plan contributions.

8.7 **Subd. 2. Disclosure form.** (a) The disclosure form must include, but not be limited
8.8 to, all of the following:

8.9 (1) the benefits and risks associated with making contributions to the plan;

8.10 (2) how to make contributions to the plan;

8.11 (3) how to suspend contributions to the plan;

8.12 (4) the process for withdrawal of retirement savings; and

8.13 (5) how to obtain additional information on the plan.

8.14 **(b)** In addition, the disclosure form must clearly articulate the following:

8.15 (1) employees seeking financial advice must be instructed to contact a financial
8.16 advisor for financial advice, and employees must be advised that employers are not in
8.17 a position to provide financial advice, and that employers are not liable for decisions
8.18 employees make pursuant to this chapter;

8.19 (2) the plan is not an employer-sponsored retirement plan; and

8.20 (3) the trust is not guaranteed by the state.

8.21 **Subd. 3. Data.** Data on plan participants and individuals' plan accounts and 401(a)
8.22 accounts are private data on individuals or nonpublic data as defined in section 13.02.

8.23 **Sec. 7. [352G.08] SEVERABILITY.**

8.24 Should any part of this act be declared invalid or unenforceable, or the enforcement
8.25 or compliance with it is suspended, restrained, or barred, either by the state or by the final
8.26 judgment of a court of competent jurisdiction, the remainder of this act shall remain
8.27 in full force and effect.

8.28 **Sec. 8. REPORT.**

8.29 The board must report the following no later than December 1, 2014, to the majority
8.30 leader of the senate, the speaker of the house, and the chairs of the house of representatives
8.31 and senate committees with primary jurisdiction over retirement systems and associations:

8.32 (1) estimates of the average amount of savings and other financial resources that
8.33 residents of Minnesota have upon retirement;

- 9.1 (2) estimates of the average amount of savings and other financial resources that are
9.2 recommended for a financially secure retirement in Minnesota;
- 9.3 (3) estimates of the relative progress toward achieving the savings recommended for
9.4 a financially secure retirement by age, gender, race, ethnicity, and plan eligibility;
- 9.5 (4) the number of eligible employees in Minnesota;
- 9.6 (5) the estimated impact on publicly funded social safety net programs attributable
9.7 to insufficient retirement savings;
- 9.8 (6) options for structuring contributions to the plan that achieve the purposes in
9.9 Minnesota Statutes, section 352G.02, subdivision 2, including contribution mechanism
9.10 and applicability of the Code, and portability under the Code;
- 9.11 (7) options for ensuring that benefits provide for stable income throughout
9.12 beneficiaries' retirement years, including the use of insurance against loss in connection
9.13 with the property, assets, or activities of the trust, or private underwriting or reinsurance to
9.14 manage risk and ensure a minimum rate of return;
- 9.15 (8) projected fees, pursuant to Minnesota Statutes, section 352G.03, subdivision
9.16 3, relative to asset size and plan structure, with estimates of investment-related fees
9.17 determined in consultation with the State Board of Investment;
- 9.18 (9) the cost to participating employers relative to plan structure;
- 9.19 (10) the aggregate economic effect of plan options within the state; and
- 9.20 (11) any changes to state law required to:
- 9.21 (i) implement the plan;
- 9.22 (ii) open the plan to enrollment;
- 9.23 (iii) achieve the purpose in Minnesota Statutes, section 352G.02; and
- 9.24 (iv) facilitate the responsibilities of the board in Minnesota Statutes, section 352G.05.

9.25 **Sec. 9. EFFECTIVE DATE.**

9.26 Sections 1 to 8 are effective the day following final enactment.