

## CHAPTER 187

### MINNESOTA SECURE CHOICE RETIREMENT PROGRAM

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#### 187.01 MINNESOTA SECURE CHOICE RETIREMENT PROGRAM; CITATION.

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

**History:** 2023 c 46 s 1

#### 187.03 DEFINITIONS.

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

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

Subd. 3. **Compensation.** "Compensation" means compensation within the meaning of Section 219(f)(1) of the Internal Revenue Code that is received by a covered employee from, or with respect to service performed for, a covered employer.

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

Subd. 5. **Covered employee.** (a) "Covered employee" means a person who is employed by a covered employer and who satisfies any other criteria established by the board.

(b) Covered employee does not include:

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

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

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

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

(5) a person employed on a temporary or seasonal basis for a limited duration, which the employer determines at the time the person is hired will not extend beyond 180 days.

(c) A person described in paragraph (b), clause (5), may elect to have contributions deducted from the person's paycheck for remittance to the program, but only if the employer would otherwise be considered a covered employer.

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

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

(2) that employs five or more covered employees; and

(3) that does not sponsor or contribute to and did not in the immediately preceding 12 months sponsor or contribute to a retirement savings plan for its employees.

(b) Covered employer does not include:

(1) an employer that has not engaged in a business, industry, profession, trade, or other enterprise in Minnesota, whether for profit or not for profit, at any time during the immediately preceding 12 months; and

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

Subd. 6a. **Enrollment window.** "Enrollment window" means the period established by the board, according to a phase-in schedule approved under Laws 2023, chapter 46, section 10, subdivision 1, paragraph (b), that is applicable to each covered employer and during which the covered employer is first required to provide information to covered employees and enroll covered employees who do not elect to opt out of the program.

Subd. 7. **Executive director.** "Executive director" means the chief executive and administrative head of the program or, if an executive director has not been appointed, executive director means the interim executive director, if one has been appointed.

Subd. 7a. **Home and community-based services employee.** "Home and community-based services employee" means an individual who is not an employee of a provider agency and who is selected by and working under the direction of a participant in a covered program to provide to the participant:

(1) consumer-directed community supports services under sections 256B.092 and 256B.49 and chapter 256S or under the alternative care program authorized under section 256B.0913; or

(2) services under the community first services and supports program authorized under section 256B.85 and Minnesota's federally approved waiver programs.

This definition applies only to this chapter and does not create any other legal rights or obligations under state or federal law.

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

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

Subd. 10. **Retirement savings plan.** "Retirement savings plan" means a plan or program offered by an employer that permits contributions to be set aside for retirement on a pretax or after-tax basis and permits all employees of the employer to participate except those employees who have not satisfied participation eligibility requirements that are no more restrictive than the eligibility requirements permitted under section

410(b) of the Internal Revenue Code. Retirement savings plan includes but is not limited to a plan described in section 401(a) of the Internal Revenue Code, an annuity plan or annuity contract described in section 403(a) or 403(b) of the Internal Revenue Code, a plan within the meaning of section 457(b) of the Internal Revenue Code, a simplified employee pension (SEP) plan, a savings incentive match plan for employees (SIMPLE) plan, an automatic enrollment payroll deduction individual retirement account, and a multiemployer pension plan described in section 414(f) of the Internal Revenue Code.

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

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

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

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

**History:** 2023 c 46 s 2; 2024 c 102 art 6 s 1; 2025 c 37 art 9 s 1-4

## **187.05 SECURE CHOICE RETIREMENT PROGRAM.**

Subdivision 1. **Program established.** (a) The board must operate an employee retirement savings program whereby employee payroll deduction contributions are transmitted on an after-tax or pretax basis by covered employers to individual retirement accounts established under the program.

(b) The board must 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.

(c) Contributions must be made on an after-tax (Roth) basis, unless the covered employee elects to contribute on a pretax basis.

Subd. 1a. **Certification by employers that are not covered employers.** (a) Any entity or person may file a certification with the executive director on a form prescribed by the executive director and provide documentation in support of the certification, as requested by the executive director, stating that the entity or person is not a covered employer. The certification must state that the entity or person is not a covered employer for one or more of the following reasons:

(1) the entity or person has not been engaged for at least 12 months in a business, industry, profession, trade, or other enterprise in Minnesota, whether for profit or not for profit;

(2) the entity or person does not employ five or more employees;

(3) the entity or person sponsors or contributes to or, in the immediately preceding 12 months, sponsored or contributed to a retirement savings plan for its employees; or

(4) the entity is a political subdivision of the state or federal government.

(b) Within 30 days of receiving the certification, the executive director must accept the certification or issue a determination that the entity or person is a covered employer and subject to the requirements of section 187.07.

(c) The entity or person may appeal the executive director's determination by filing an appeal with the board of directors no later than 30 days after receipt of the determination.

Subd. 2. **Compliance with Internal Revenue Code.** The board must establish and administer each Roth IRA and traditional IRA opened under the program in compliance with section 408 or 408A of the Internal Revenue Code, as applicable, for the benefit of the covered employee for whom the account was opened.

Subd. 3. **Contributions held in trust.** Each covered employer must transmit employee payroll deduction contributions to an account established for the benefit of the covered employee in a trust established to hold contributions under the program.

Subd. 4. **Contribution rate.** (a) The board may change the required employee contribution rates and the escalation schedule under section 187.07, subdivision 1. The board must provide all covered employers with notice of a change in employee contribution rates or the escalation schedule at least six months in advance of the effective date of the change.

(b) A covered employee must have the right, annually or more frequently as determined by the board, to change the contribution rate, opt out or elect not to contribute, or cease contributions.

Subd. 5. **Vesting.** Covered employees are 100 percent vested in their accounts at all times.

Subd. 6. **Withdrawals and distributions.** The board must establish alternatives permitting covered employees to take a withdrawal of all or a portion of the covered employee's account while employed and one or more distributions following termination of employment. By July 1, 2028, the board must include lifetime income options as distribution alternatives.

Subd. 7. **Individuals not employed by a covered employer.** (a) In addition to home and community-based services employees under paragraph (b), the board may allow individuals not employed by a covered employer to open and contribute to an account in the program, in which case the individual must be considered a covered employee for purposes of sections 187.05 to 187.11.

(b) The board must allow any home and community-based services employee to open and contribute to an account in the program within six months of the opening of the program and must consider a home and community-based services employee a covered employee for purposes of sections 187.05 to 187.11.

Subd. 8. **Employee leasing companies.** (a) For purposes of this chapter, in the case of a taxpaying employer described in section 268.046 that contracts with an employee leasing company, professional employer organization, or other similar entity to obtain workers for the taxpaying employer from the entity for a fee, the workers covered by the contract must be treated as employed by the taxpaying employer and not by the entity, except that if the entity provides the workers with a retirement savings plan, the taxpaying employer is not a covered employer.

(b) A covered employer that is a taxpaying employer described in section 268.046 may contract with an employee leasing company, professional employer organization, or other similar entity to assist the taxpaying employer with the performance of some or all of the taxpaying employer's responsibilities under this chapter.

**History:** 2023 c 46 s 3; 2024 c 102 art 6 s 2; 2025 c 37 art 9 s 5-7

**187.06 ESTABLISHMENT OF SECURE CHOICE TRUST AND ADMINISTRATIVE FUND; EMPLOYEE ACCOUNTS; INVESTMENTS.**

Subdivision 1. **Secure Choice trust established.** The Secure Choice trust is established as an instrumentality of the state to hold employee payroll deduction contributions and earnings on the contributions. The board must appoint a financial institution to act as trustee or custodian. The trustee or custodian must manage and administer trust assets for the exclusive purposes of providing benefits and defraying reasonable expenses of administering the program.

Subd. 2. **Secure Choice administrative fund established; money appropriated.** (a) The Secure Choice administrative fund is established in the state treasury as a fund separate and apart from the Secure Choice trust.

(b) The board of directors may assess administrative fees on each covered employee's account to be applied toward the expenses of administering the program. Money in the administrative fund is appropriated to the board to pay administrative expenses of administering the program if fees from the trust are not sufficient to cover expenses. The board must determine which administrative expenses will be paid using money in the administrative fund and which administrative expenses will be paid using money in the trust in the exercise of its fiduciary duty.

(c) The board may receive and deposit into the administrative fund any gifts, grants, donations, loans, appropriations, or other moneys designated for the administrative fund from the state, any unit of federal or local government, any other entity, or any person.

(d) Any interest or investment earnings that are attributable to money in the administrative fund must be deposited into the administrative fund.

Subd. 3. **Individual accounts established.** The trustee or custodian, as applicable, must maintain an account for employee payroll deduction contributions with respect to each covered employee. Interest and earnings on the amount in the account are credited to the account and losses are deducted.

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

Subd. 5. **Default investment fund.** The board must 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 the foregoing funds. Accounts for which no investment direction has been given by the covered employee must be invested in the default investment fund. Members of the board, the executive director of the State Board of Investment, and all other fiduciaries are relieved of fiduciary duty with regard to investment of assets in the default investment fund.

Subd. 6. **Inalienability of accounts.** No account under the program is subject to assignment or alienation, either voluntarily or involuntarily, or to the claims of creditors, except as provided in section 518.58.

Subd. 7. **Accounts not property of the state or covered employers.** The assets of the Secure Choice trust shall be preserved, invested, and expended solely for the purposes of the trust and no property rights in the trust assets shall exist in favor of the state or any covered employer. The assets of the Secure Choice trust shall not be transferred or used by the state for any purpose other than the purposes of the trust, including

reasonable administrative expenses of the program. Amounts deposited in the trust shall not constitute property of the state and shall not be commingled with state funds, and the state shall have no claim to or against, or interest in, the assets of the Secure Choice trust.

**History:** 2023 c 46 s 4

### 187.07 RESPONSIBILITIES OF COVERED EMPLOYERS.

Subdivision 1. **Requirement to enroll employees.** (a) Each covered employer must enroll its covered employees in the program and withhold payroll deduction contributions from each covered employee's paycheck no later than 30 days after the covered employee's first day of employment, unless the covered employee has elected not to contribute.

(b) Unless the board has approved a different rate or rates under section 187.05, subdivision 4, or a covered employee has elected a different contribution rate or not to contribute, the employee contribution rates and escalation schedule are:

- (1) five percent of pay for the covered employee's first year of participation;
- (2) six percent of pay for the covered employee's second year of participation;
- (3) seven percent of pay for the covered employee's third year of participation; and
- (4) eight percent of pay for the covered employee's fourth year of participation and each year thereafter.

(c) Paragraph (a) does not apply to a covered employer until the covered employer's enrollment window has opened. No later than 30 days after the end of the enrollment window, the covered employer must have enrolled all covered employees, except for any covered employee who has elected not to contribute.

(d) The executive director must communicate annually by email or otherwise in writing to each covered employee:

(1) the annual limit on employee contributions to a traditional IRA and a Roth IRA in effect under section 408 and 408A, respectively, of the Internal Revenue Code; and

(2) notice that it is the responsibility of the covered employee to reduce the covered employee's contribution rate from the rate under paragraph (b) as necessary to stay within the limit under section 408 or section 408A of the Internal Revenue Code that is applicable to the covered employee and the type of IRA to which the contributions are being credited.

Subd. 2. **Remitting contributions.** Notwithstanding section 181.06, a covered employer must remit payroll deduction contributions withheld from the paycheck of each covered employee to the program as soon as practicable after the deduction is taken and no later than 30 days after the date of each paycheck.

Subd. 3. **Distribution of information.** (a) Covered employers must provide information prepared by the board to all covered employees regarding the program. The information must be provided to each covered employee no later than 14 days after the covered employee's first day of employment.

(b) Paragraph (a) does not apply to a covered employer until the covered employer's enrollment window has opened. No later than 14 days before the date of the first paycheck from which employee contributions could be deducted for transmittal to the program, the covered employer must provide the information prepared by the board regarding the program to all covered employees of the covered employer.

Subd. 4. **No fiduciary responsibility.** Except for the responsibilities described in subdivisions 1 to 3, a covered employer has no obligations to covered employees and is not a fiduciary for any purpose under the program or in connection with the Secure Choice trust. Covered employers are not responsible for the administration, investment performance, plan design, or benefits paid to covered employees.

Subd. 5. **Employer liability.** A covered employer is not liable to a covered employee for damages alleged to have resulted from a covered employee's participation in or failure to participate in the program.

Subd. 6. **Enforcement.** (a) As described under section 187.12, the board may impose:

(1) statutory civil penalties against any covered employer that fails to comply with subdivision 1 or 3; and

(2) statutory civil or criminal penalties against any covered employer that fails to comply with subdivision 2.

(b) At the request of the board, the attorney general shall enforce the penalties imposed by the board against a covered employer. Proceeds of such penalties, after deducting enforcement expenses, must be deposited in the Secure Choice administrative fund and are appropriated to the program.

(c) The board must provide written warnings to any covered employer that fails to comply with subdivision 1 or 3 or both subdivisions 1 and 3 for the first two years of noncompliance. If the covered employer has not complied with subdivision 1 or 3 during the two-year period after the date on which the covered employer was first required to comply with subdivision 1 or 3, as applicable, the board must assess penalties.

**History:** 2023 c 46 s 5; 2025 c 37 art 9 s 8-11

**NOTE:** This section, as added by Laws 2023, chapter 46, section 5, is effective the day after the Secure Choice retirement program board of directors opens the Secure Choice retirement savings program for enrollment of covered employees. Laws 2023, chapter 46, section 14.

## **187.08 SECURE CHOICE RETIREMENT PROGRAM BOARD OF DIRECTORS.**

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

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

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

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

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

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

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

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

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

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

Subd. 3. **Membership terms.** (a) Board members serve for two-year terms, except:

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

(2) the initial term of the member who is an executive or other professional with substantial experience in retirement plan investments under subdivision 1, clause (3), item (iii), and the member who is a human resources executive under subdivision 1, clause (4), is three years.

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

Subd. 4. **Resignation; removal; vacancies.** (a) A board member may resign at any time by giving written notice to the board.

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

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

Subd. 5. **Compensation.** Public members are compensated and expenses reimbursed as provided under section 15.0575, subdivision 3.

Subd. 6. **Chair.** The board shall select a chair from among its members. The chair shall serve a two-year term. The board may select other officers as necessary to assist the board in performing the board's duties.

Subd. 7. **Executive director; staff.** (a) The board must appoint an executive director, determine the duties of the executive director, and set the compensation of the executive director. The board may appoint an interim executive director to serve as executive director during any period that the executive director position is vacant.

(b) The executive director may participate in deliberations but must not vote on any matter before the board. The executive director must not participate in deliberations on any matter before the board that results or is likely to result in direct measurable economic gain to the executive director or the executive director's family.

(c) The executive director must file with the Campaign Finance and Public Disclosure Board an economic interest statement in a manner prescribed by section 10A.09, subdivisions 5 and 6.

(d) The board may hire staff as necessary to support the board and the executive director in performing their duties or the board may authorize the executive director to hire staff.

Subd. 8. **Duties.** In addition to the duties set forth elsewhere in this chapter, the board has the following duties:

(1) to establish secure processes for enrolling covered employees in the program and for transmitting employee contributions to accounts in the trust;



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

(3) to lease or otherwise procure equipment necessary to administer the program;

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

(5) to determine the following:

(i) any criteria for a covered employee other than employment with a covered employer under section 187.03, subdivision 5;

(ii) contribution rates and an escalation schedule under section 187.05, subdivision 4;

(iii) withdrawal and distribution options under section 187.05, subdivision 6; and

(iv) the default investment fund under section 187.06, subdivision 5;

(6) to keep annual administrative fees, costs, and expenses as low as possible:

(i) except that any administrative fee assessed against the accounts of covered employees may not exceed a reasonable amount relative to the fees charged by auto-IRA or defined contribution programs of similar size in the state of Minnesota or another state; and

(ii) the fee may be asset-based, flat fee, or a hybrid combination of asset-based and flat fee;

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

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

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

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

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

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

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

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

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

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

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

(9) to publish an annual financial report, prepared according to generally accepted accounting principles, on the operations of the program, which must include but not be limited to costs attributable to the use of outside consultants, independent contractors, and other persons who are not state employees and deliver the report to the chairs and ranking minority members of the legislative committees with jurisdiction over jobs and economic development and state government finance, the executive directors of the State Board of Investment and the Legislative Commission on Pensions and Retirement, and the Legislative Reference Library;

(10) to publish an annual report regarding plan outcomes, progress toward savings goals established by the board, statistics on the number of participants, participating employers, and covered employees who have opted out of participation, plan expenses, estimated impact of the program on social safety net programs, and penalties and violations, and disciplinary actions for enforcement, and deliver the report to the chairs and ranking minority members of the legislative committees with jurisdiction over jobs and economic development and state government finance, the executive directors of the State Board of Investment and the Legislative Commission on Pensions and Retirement, and the Legislative Reference Library;

(11) to file all reports required under the Internal Revenue Code or chapter 290;

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

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

(14) to assess the feasibility of partnering with another state or a governmental subdivision of another state to administer the program through shared administrative resources and, if determined beneficial, enter into contracts, agreements, memoranda of understanding, or other arrangements with any other state or an agency or a subdivision of any other state to administer, operate, or manage any part of the program, which may include combining resources, investments, or administrative functions;

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

(16) to interpret the program's governing documents and this chapter and make all other decisions necessary to administer the program;

(17) to conduct comprehensive employer and worker education and outreach regarding the program that reflect the cultures and languages of the state's diverse workforce population, which may, in the board's discretion, include collaboration with state and local government agencies, community-based and nonprofit organizations, foundations, vendors, and other entities deemed appropriate to develop and secure ongoing resources; and

(18) to prepare notices for delivery to covered employees regarding the escalation schedule and to each covered employee before the covered employee is subject to an automatic contribution increase.

Subd. 9. **Rules.** The board of directors is authorized to adopt rules as necessary to implement this chapter.

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

**History:** 2023 c 46 s 6; 2024 c 102 art 6 s 3-5; 2025 c 37 art 9 s 12,13

### **187.09 FIDUCIARY DUTY; STANDARD OF CARE.**

(a) The 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 the assets of the Secure Choice trust:

- (1) owe a fiduciary duty to the covered employees who participate in the program and their beneficiaries;
- (2) must administer the program solely for the exclusive benefit of such covered employees and their beneficiaries, and for the exclusive purpose of providing benefits and paying reasonable plan expenses;
- (3) are subject to the standard of care established in section 356A.04, subdivision 2; and
- (4) are indemnified and held harmless by the state of Minnesota 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 the person's duties.

(b) Except as otherwise established in this chapter, the fiduciaries under paragraph (a) owe no other duty to covered employees, express or implied, in common law or otherwise.

**History:** 2023 c 46 s 7

### **187.10 NO STATE LIABILITY.**

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

**History:** 2023 c 46 s 8

### **187.11 OTHER STATE AGENCIES TO PROVIDE ASSISTANCE.**

(a) The board may enter into intergovernmental agreements with the commissioner of revenue, the commissioner of labor and industry, the commissioner of employment and economic development, and any other state agency that the board deems necessary or appropriate to provide outreach, technical assistance, or compliance services. An agency that enters into an intergovernmental agreement with the board pursuant to this section must collaborate and cooperate with the board to provide the outreach, technical assistance, or compliance services under any such agreement. The board, executive director, and program staff must maintain the privacy of data obtained under any intergovernmental agreement if required under chapter 13.

(b) For purposes of section 268.19, subdivision 1, paragraph (a), clause (20), "assisting with communication with employers and to verify employer compliance with chapter 187" means providing the

executive director with at least the following information for employers, to the extent available to the commissioner of employment and economic development:

- (1) federal employer identification number;
- (2) business name, address, mailing address, email address, and phone number;
- (3) number of employees; and
- (4) employer industry code.

(c) The commissioner of administration must provide office space in the Capitol complex for the executive director and staff of the program.

**History:** 2023 c 46 s 9; 2025 c 37 art 9 s 14

## **187.12 PENALTIES FOR NONCOMPLIANCE.**

Subdivision 1. **Failure to enroll covered employees or distribute information.** (a) The board may assess penalties against a covered employer that fails to comply with section 187.07, subdivision 1 or 3 or both subdivisions 1 and 3, beginning with the second anniversary of the date on which the covered employer was first required to comply with section 187.07, subdivision 1 or 3, as applicable.

(b) The board may assess the following penalties for a covered employer's failure to comply with section 187.07, subdivision 1 or 3:

- (1) on the second anniversary, a penalty of \$100 per covered employee, not to exceed \$4,000;
- (2) on the third anniversary, a penalty of \$200 per covered employee, not to exceed \$6,000;
- (3) on the fourth anniversary, a penalty of \$300 per covered employee; and
- (4) on each anniversary after the fourth anniversary, a penalty of \$500 per covered employee.

(c) If the covered employer fails to comply with section 187.07, subdivisions 1 and 3, the board must assess two times the penalties in paragraph (b).

(d) The date on which a covered employer is first required to comply with section 187.07, subdivision 1, is the following:

(1) for paragraph (a), on or before the 30th day after the first day of employment of a covered employee hired by the covered employer; and

(2) for paragraph (b), on or before the 30th day after the end of the enrollment window applicable to the covered employer.

(e) The date on which a covered employer is first required to comply with section 187.07, subdivision 3, is the following:

(1) for paragraph (a), for a newly hired covered employee, no later than 14 days after the covered employee's first day of employment; and

(2) for paragraph (b), no later than the 14th day prior to the date of the first paycheck from which employee contributions could be deducted for transmittal to the program.

Subd. 2. **Notice and waiver.** Before assessing a penalty under subdivision 1, the board must provide the covered employer with a written notice informing the covered employer of the amount of the penalty and that the penalty will not be assessed if:

- (1) the covered employer cures the violation no later than 30 days after the date of the notice; or
- (2) the board waives the penalty at the request of the covered employer due to extenuating circumstances.

Subd. 3. **Failure to remit contributions.** (a) If the executive director has reason to believe, based on communication from a covered employee or another source, that a covered employer has failed to comply with section 187.07, subdivision 2, by not remitting payroll deduction contributions withheld from the paycheck of one or more covered employees within 30 days after the deduction is withheld, the executive director must make a written demand to the covered employer requiring the covered employer to immediately remit to the program the withheld contributions plus interest at the annual rate specified in section 356.59, subdivision 2, for the period beginning with the tenth day after the contribution was deducted from the covered employee's paycheck to the date the contribution is remitted to the program.

(b) Any covered employer that willfully and intentionally fails to remit a payroll deduction contribution within ten days after demand from the executive director is guilty of a misdemeanor.

(c) If the executive director issues a written demand to a covered employer under paragraph (a) for a second time, the executive director must assess a penalty of \$250 for each employee contribution withheld but not transmitted to the program.

Subd. 4. **Action; damages.** (a) A covered employee or the attorney general, upon referral from the board, may bring a civil action against a covered employer for a failure to enroll covered employees, distribute information, or remit contributions under section 187.07, subdivisions 1 to 3. A covered employer who is found to have violated section 187.07, subdivisions 1 to 3, is liable to the program for the civil penalties provided for in this section. A covered employer who is found to have violated section 187.07, subdivisions 1 to 3, is liable for compensatory damages and other appropriate relief including but not limited to injunctive relief.

(b) The attorney general, upon referral from the board, may bring a criminal action against a covered employer for the willful and intentional failure to remit contributions under section 187.07, subdivision 2.

(c) An action brought under paragraph (a) or (b) may be filed in the district court of the county in which a violation is alleged to have been committed, where the covered employer resides or has a principal place of business, or any other court of competent jurisdiction.

(d) In an action brought under paragraph (a) or (b), the court must order a covered employer who is found to have committed a violation to pay to the program or covered employee, as appropriate, reasonable costs, disbursements, witness fees, and attorney fees.

**History:** 2025 c 37 art 9 s 15