HF 782 (Becker-Finn); SF 413 (Pappas): Minnesota Secure Choice Retirement Program

Delete-everything amendment H782.S413-DE1

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Introduction

Affected Plan: Minnesota Secure Choice Retirement Program

New Law: Minnesota Statutes, Chapter 187

Brief Description: The bill establishes the Minnesota Secure Choice Retirement Program, a state-sponsored program allowing private sector employees to save for retirement.

Background

The bill adds a new chapter to the Minnesota statutes that establishes and governs a new savings program call the Minnesota Secure Choice Retirement Program. The Secure Choice program is intended to benefit employees in the private sector who have no opportunity to save for retirement through an employer-sponsored retirement plan such as a 401(k) plan. Employers that do not sponsor a retirement plan for their employees are required to transmit a percentage of each employee's pay to a state-sponsored individual retirement account (IRA). Employees have the option to change the contribution percentage or opt out of participation altogether. Employees direct the investment of their accounts into a diversified array of investment funds offered through the State Board of Investment (SBI).

There is no cost to employers, except for any incidental costs incurred to modify their payroll systems to deduct contributions on either a pre-tax or after-tax basis and send them to the SBI for deposit into employee accounts.

The program's governing structure consists of a board of directors, an executive director, and staff. Recordkeeping and administration are handled by an outside administrator. Accounts are held in trust by the SBI's corporate trustee.

The board must hold its first meeting by March 1, 2024, and the program is required to be up and running by October 1, 2024. The board may open the program in phases over a two-year period.

Program features:

- Participation in the program is mandatory for employers that do not sponsor their own workforce retirement savings plan, such as a 401(k) plan.

- The board will set the initial contribution rate and an auto-escalation schedule.
- Employees can elect whether their contributions will be pre-tax or after-tax (Roth), can opt out of participation, or change the contribution rate.
- The annual limits on contributions to an account under the program are the federal IRA limits, which are $6,500 for individuals younger than age 50 and $7,500 for individuals age 50 or older. (These amounts are for 2023 and are annually adjusted by the U.S. Treasury Department.)
- Employees direct the investment of their accounts into an array of investment funds offered through the State Board of Investment (similar to employee investment of accounts in the Minnesota Deferred Compensation Plan).
- Upon leaving employment, an employee will be able to leave the employee’s account with the State for distribution at a later date or elect a distribution of in the form of a lump sum or other options to be determined by the board, including lifetime income options.

According to the Georgetown Center for Retirement Initiatives, there are currently 16 retirement savings programs in operation, established by other states for private sector employees. The leaders are Oregon, Illinois, California, and Connecticut, each of which established an auto-IRA account program similar to Secure Choice. Total assets in these four programs exceed $735 million, as of January 2023.

Section- by- Section Summary of the Delete- Everything Amendment

Section 1: Minnesota Secure Choice Retirement Program; Citation

Section 1 states that new Chapter 187 shall be known as the "Minnesota Secure Choice Retirement Program Act."

Section 2: Statement of Purpose

Section 2 is a summary of statistics regarding the inadequacy of retirement savings nationally and statewide and the impact of inadequate savings on the state’s taxpayers.

Section 3: Definitions

This section provides definitions for terms unique to this chapter. Notable definitions include the following:

- "Covered employee" means any employee of a covered employer who is at least 18 years old and satisfies any other criteria established by the board of directors.
- "Covered employer" means any employer, including non-profits, of one or more employees, that has been engaged in business in the State for at least one year, and does not sponsor a retirement plan for employees. Governmental employers are not "covered employers."

Section 4: Secure Choice Retirement Program

Subdivision 1 requires the board of directors to begin operation of the program no later than October 1, 2024, including establishing procedures for opening Roth IRA and traditional IRA accounts for covered employees who do not opt out of the program. The default account is a Roth IRA account, but the employee may elect to make contributions on a pre-tax basis, for deposit in a tradition IRA account. The board may open the program in phases over a two-year period.

Subdivision 2 requires that the IRA accounts comply with federal law governing Roth IRAs (Internal Revenue Code section 408A) and traditional IRAs (Code section 408).

Subdivision 3 requires that contributions be transmitted to an account in the name of the employee making the contribution and that the contributions be held in trust.

Subdivision 4 directs the board to establish the employee contribution rate and an auto-escalation schedule, whereby the contribution rate will automatically increase from year to year until a board-established maximum contribution rate is reached. Employees must be permitted to change the contribution rate or cease contributions altogether.

Subdivision 5 requires that all employees be 100 percent vested in their accounts at all times.

Subdivision 6 requires the board to offer withdrawals while employed, distributions following termination of employment, and distribution alternatives that must include lifetime income options.

Subdivision 7 permits the board to offer participation in the program to individuals who are not employed by a covered employer. This would include sole proprietors and self-employed persons.

Section 5: Secure Choice Trust and Administrative Fund; Employee Accounts; Investments

Subdivision 1 establishes the Secure Choice trust, requires the board to appoint a financial institution to act as trustee, and states that trust assets must be managed for the exclusive purpose of providing benefits and defraying reasonable administrative expenses.

Subdivision 2 establishes the Secure Choice administrative fund in the state treasury to hold appropriations, loans, gifts, and other monies that are to be used to pay administrative expenses of the Secure Choice program, including start-up costs. The appropriation to fund the start-up costs of the program would be deposited in the administrative fund.

Subdivision 3 requires an account to be maintained for each employee, to which will be allocated contributions, earnings and losses.

Subdivision 4 gives employees the authority to direct the investment of their accounts into a diversified array of investment funds selected by the State Board of Investment. Fiduciaries, including the SBI, are relieved of fiduciary duty for investment losses resulting from an employee's investment directions.

Subdivision 5 directs the board to designate a default investment fund in which accounts will be invested if the covered employee gives no investment direction. The default fund must be diversified and consist of target date funds, a balanced fund, a capital preservation fund, or a combination of the foregoing. Fiduciaries, including the SBI, are relieved of fiduciary duty for investment losses due to investment in the default fund.

Subdivision 6 protects accounts from the claims of creditors and prohibits assignment of accounts, except in the case of a division of marital assets due to divorce.

Subdivision 7 states that the assets of the Secure Choice trust may not be commingled with other state funds nor used by the State or any employer for any purpose other than the purposes of the Secure Choice trust.

Section 6: Responsibilities of Covered Employers

Subdivision 1 requires covered employers to enroll their employees in the program. The board is required to establish penalties for covered employers who fail to do so.

Subdivision 2 requires covered employers to transmit contributions on a timely basis. The board is required to establish penalties for covered employers who fail to do so.

Subdivision 3 requires covered employers to provide information prepared by the board to covered employees at least 30 days prior to the first paycheck from which contributions will be deducted.

Subdivisions 4 and 5 state that, but for the responsibilities set forth in subdivisions 1 to 3, covered employers have no obligation or fiduciary duty to covered employees relating to the program and are not liable to covered employees for damages alleged to have resulted from the program.

Subdivision 6 gives the Attorney General the power to enforce the provisions of the act and impose the penalties established by the board. Any penalties collected must be deposited in the administrative fund, after deducting enforcement costs.

Section 7: Secure Choice Retirement Program Board of Directors

Subdivision 1 establishes a seven-member board of directors consisting of the following:

- the executive director of the Minnesota State Retirement System (MSRS) or designee;
- the executive director of the State Board of Investment (SBI) or designee;
- three members appointed by the Legislative Commission on Pensions and Retirement (Commission):
  - an executive with 401(k) recordkeeping experience;
  - an executive with experience with IRAs;
  - an executive with experience in retirement plan investments;
- two members appointed by the Governor:
  - a human resources executive from a private corporation with experience in administering the corporation’s 401(k) plan;
  - a small business owner or executive.

Subdivisions 2, 3, 4, 5, 6, and 7 specify members' terms, removal, and compensation, method for making the Governor's appointments, and provides that the Commission will appoint one of the members as the chair for the first meeting. Appointments to the board by the Commission and the Governor must be made by January 15, 2024. The board must hold its first meeting by March 1, 2024.

Subdivision 8 lists the duties of the board, which include:

- appointing an executive director and determining the director's duties and compensation;
- establishing secure enrollment and contribution transmittal procedures;
- preparing a budget;
- leasing office space and equipment;
- procuring insurance;
- determining contribution rates and an auto-escalation schedule, withdrawal and distribution options, default investment fund, and penalties;
- limiting annual expenses to no more than a reasonable amount relative to fees charged by similar programs in the State or other states, which may be asset-based, fixed fee, or a combination thereof;
- determining eligibility and claims for benefits;
- publishing annual financial and statistical reports and delivering them to specified legislators, directors of the Commission and SBI, and the Legislative Reference Library;
- filing all required reports with the federal government;
- entering into partnerships with other state programs to administer or operate the program;
- retaining service providers and advisors; and
- adopting rules and interpreting the governing documents and statutes.

The board also has the duty to prepare employee information that explains the program, risks and benefits, how to enroll and opt out, and the federal and state income tax consequences of participation in the program. The employee information must include disclaimers, such as that the State does not guarantee investment performance. Finally, the board must conduct outreach that reflects the cultures and languages of the state's diverse population, which may include collaborating with non-profits and other entities.

Subdivision 9 governs conflicts of interest and requires board members to file an economic interest statement.

Section 8: Fiduciary Duty; Standard of Care

This section imposes fiduciary requirements and standards on board members, the executive director, and the executive director and members of the SBI. The section states that these fiduciaries are indemnified and held harmless by the State for costs or liability incurred as a result of litigation or threatened litigation.

Section 9: No State Liability

Section 9 states that the State has no liability to any participant for the payment or amount of any benefit under the program.

Section 10: Other State Agencies to Provide Assistance

Section 10 authorizes the board to enter into agreements with other state agencies to provide outreach, technical assistance, or compliance services and requires other state agencies to provide information and data on employees, employers, and corporations doing business in the state, if requested by the board or the executive director. The commissioner of administration is required to provide an office suite to house the director and staff.

Section 11: Severability

Section 11 states that if any provision is found to be unconstitutional, the remaining provisions are valid.

Section 12: Board Support until Appointment of Executive Director

Section 12 is a session law that requires the executive director of the Commission, with the assistance of the Legislative Coordinating Commission, to provide notice and work with the chair of the board to determine an agenda and provide support for the first meeting. The executive director of the Commission is also required to assist the board until the board appoints the program's executive director.

Section 13: Appropriation

Section 13 appropriates funds in fiscal years 2024 and 2025 for the program.

Section 14: Effective Dates

Sections 1 to 5 and 7 to 12 are effective the day following final enactment.

Section 6, relating to covered employers, is effective the day after the board of directors opens the program for enrollment of covered employees.