



## SF xxxx; HF xxxx, Revisor #25-04681: Minnesota Secure Choice Retirement Program; Adding Penalties for Noncompliance

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### Introduction

- Affected Program:** Minnesota Secure Choice Retirement Program (Program)
- Law Added:** The bill adds new section 187.012 to chapter 187, which governs the Program.
- Brief Description:** The bill adds penalties applicable to covered employers for noncompliance with Secure Choice requirements.
- Attachment:** [Amendment 25-04681-1A](#)  
Letters to the Commission, dated [December 19, 2024](#), and [February 4, 2025](#), from the Secure Choice Interim Executive Director Dave Bergstrom, recommending penalties, as required by Laws 2023, Chapter 46, Section 13

### Background

The Minnesota Secure Choice Retirement Program is a state-sponsored retirement program for private sector employees. The Program was established by legislation enacted in 2023 and funded by an appropriation of \$5 million.

The 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 pay deducted from each employee's paycheck to a state-administered individual retirement account (IRA). Employees have the option to change the contribution percentage or opt out of the Program entirely. Employees direct the investment of their accounts into a diversified array of investment funds offered with the oversight of the State Board of Investment (SBI).

The 2023 session law prohibits the Program from beginning operation earlier than January 1, 2025, and once open, the Program must be phased in over a two-year period.

Since passage of the legislation in 2023, the Governor and the Commission have appointed members to the Board of Directors to serve two-year terms along with ex officio members, the executive directors of the Minnesota State Retirement System and the State Board of Investment. The Board has met several times through 2024 and 2025. Actions taken by the Board include:

- the appointment of an interim executive director;
- authorization to begin a search for an executive director;
- approval of a lease for office space, an interagency agreement, and a budget for FY 2025;
- development of a timeline for opening the program;
- publication of an annual report; and
- approval of a compliance (penalties) policy, which was submitted to the Commission.

Section 12 of the 2023 session law that established the Program required the Board to recommend penalties to the Commission:

*No later than December 31, 2024, the board of directors of the Minnesota Secure Choice retirement program must recommend to the Legislative Commission on Pensions and Retirement penalties for failure by covered employers to comply with Minnesota Statutes, section 187.07, subdivisions 1, 2, and 3. The penalties for a failure to comply with Minnesota Statutes, section 187.07, subdivision 2, must be commensurate with penalties for failure to remit state payroll taxes and, for any other compliance failure, commensurate with penalties under similar programs in other states. The Legislative Commission on Pensions and Retirement must accept or modify the recommendation and recommend legislation for passage during the 2025 legislative session.*

Interim executive director Dave Bergstrom, on behalf of the Board, submitted two letters to the Commission recommending a compliance policy, the **first dated December 19, 2024**, and the second, as a follow-up, dated **February 4, 2024**. The first letter recommends a schedule of fees to be assessed against a covered employer who fails to enroll covered employees in the Program and withhold payroll deduction contributions from employee paychecks or who fails to distribute information about the program to covered employees.

The second letter addresses what Mr. Bergstrom described as the serious problem of not remitting withheld contributions as soon as practicable after they have been deducted from an employee's paycheck. The Board recommends treating the failure to remit as wage theft and reporting it to the Attorney General's office. The Board also recommends that the one-year period in current law of issuing written warnings for noncompliance before assessing penalties not apply to the failure to remit employee contributions and that immediate action be taken.

## General Summary

[Revisor #25-04681](#) adds new Section 187.012 to the chapter that governs the Program. The bill puts into law the compliance policy proposed by the Board of Directors. The compliance policy consists of fees to be charged to a covered employer who fails to comply with either of the following requirements:

- to enroll covered employees in the program and withhold payroll deduction contributions from their paychecks, as required by section 187.07, subdivision 1;
- to distribute information about the program to covered employees, as required by section

187.07, subdivision 3; or

The bill treats a failure to timely remit payroll deduction contributions to the Program, as required by section 187.07, subdivision 2, differently. The executive director must immediately make a written demand for payment of the contributions to the Program and charge interest on the withheld contributions beginning with the tenth day after the payment was deducted. Failure to remit the contributions within 10 days after the demand is a misdemeanor. If the executive director issues a second demand, the executive director must assess a penalty of \$250 per employee whose contribution was not transmitted to the program.

The bill also states that a covered employee or the attorney general may bring a civil action against a covered employer for any of the above three violations. The AG may bring a criminal action against a covered employer who fails to remit contributions to the Program after deduction from an employee's paycheck. For either a civil or criminal action, the court is to order a covered employer found liable or guilty to pay the Program or covered employee court costs and attorney fees.

### Section- by- Section Summary

The bill consists of one section that adds new section 187.012 to the chapter that governs the Secure Choice Program. Section 1 of the bill is divided into four subdivisions, as follows:

**New Subdivision 1, "Failure to enroll covered employees or distribute information,"** states that the Board must assess penalties against a covered employer that fails to comply with the requirement to enroll covered employees and transmit payroll deduction contributions (subdivision 1) or fails to distribute required information to covered employees (subdivision 3) or fails to do both. Penalties start on the second anniversary of the date on which the covered employer was first required to comply with these requirements:

- (1) on the second anniversary, \$100 per covered employee, not to exceed \$4,000;
- (2) on the third anniversary, \$200 per covered employee, not to exceed \$6,000;
- (3) on the fourth anniversary, \$300 per covered employees, with no maximum; and
- (4) on each anniversary after the fourth anniversary, \$500 per covered employee, with no maximum.

If the covered employer fails to comply with both requirements, the penalty is doubled.

The date a covered employer is first required to comply is defined in subdivision 1, paragraphs (d) and (e).

**New Subdivision 2, "Notice and waiver,"** states that the Board must provide the covered employer with a written notice that states the amount of the penalty and informs the covered employer that the covered employer has 30 days to cure the violation or may request a waiver of the penalty from the Board for "extenuating circumstances."

**New Subdivision 3, "Failure to remit contributions,"** states that if a covered employer fails to remit payroll deduction contributions withheld from employee paychecks within 30 days after the deduction is withheld, the executive director of the Program must make a written demand to the covered employer requiring the covered employer to immediately remit the withheld contributions to the Program with interest at the annual rate in Section 356.59, subdivision 2, which is currently 7%. Interest starts to accrue on the tenth day after the deduction was withheld.

If the covered employer "willfully and intentionally" fails to remit a payroll deduction contribution within ten days after demand, the covered employer is guilty of a misdemeanor. If the executive director of the Program issues a second written demand, the executive director must assess a penalty of \$250 per employee deduction withheld.

**New Subdivision 4, "Action; damages,"** consists of four paragraphs:

- (a) A covered employee or the Attorney General is authorized to bring a civil action against a covered employer for any of the compliance failures noted in subdivisions 1-3. If the covered employer is found to have committed a violation, the covered employer is liable to the Program for the penalties noted above, plus compensatory damages and other appropriate relief.
- (b) The AG is authorized to bring a criminal action, upon referral from the Board, against a covered employer for the misdemeanor of not remitting withheld payroll deductions.
- (c) An action under this subdivision may be filed in the district court of the county where the violation was committed, where the covered employer has a principal place of business, or any other court of competent jurisdiction.
- (d) In an action under this subdivision, the court must order a covered employer who is found to have committed a violation to pay the Program or covered employee court costs and attorney fees.

**Effective Date.** The bill takes effect upon enactment of the other Secure Choice bill being considered by the Commission, which is Revisor #25-04680.

### **Amendment 25- 04681- 1A**

Amendment 25-04681-1A revises new subdivision 4 in the bill by deleting "misdemeanor of not remitting" in line 3.12 and replacing the phrase with "willful and intentional failure to remit."

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