

An Overview: Minnesota Secure Choice Retirement Program

**Presentation to the Secure Choice
Board of Directors
March 25, 2024**

**Presented by
Susan Lenczewski, Executive Director**

Your Role as a Board Member and Fiduciary

- **Under Minn. Stat. sec. 187.09, members of the Board of Directors are fiduciaries and:**
 - Owe a fiduciary duty to employees who participate in the Program
 - Must administer the Program solely for the exclusive benefit of covered employees
 - Are subject to the prudent person standard of care in Section 356A.04, subd. 2 (similar to ERISA)
 - Are indemnified and held harmless by the State

Your Role as a Board Member for a State Agency

- **Keep in mind that meetings are open to the public, so comments and discussion by directors will be observed by the press and the public**
- **During meetings, directors address the Chair and must wait to be called on by the Chair to speak**
- **Only the Chair and Executive Director (ED) can speak for the Board**
 - **If contacted by the press or public, directors must refer the contact to the Chair of the Board and, when an ED is hired, to the ED**
- **Refrain from discussing official Board business off-line with other directors, to avoid the discussion being considered a “meeting”**
- **More guidance will be provided in future meetings regarding MN’s open meetings and data practices requirements**

Minnesota Statistics

- **About 718,000 Minnesota employees in the private sector do not have access to a retirement plan through their employment. MN employees without access breaks down as follows:**
 - 63% of employees at companies with fewer than 10 employees
 - 49% of employees at companies with between 10 and 24 employees
 - 403,000 employees at companies with fewer than 100 employees
 - 315,000 employees at companies with 100 or more employees

(“AARP Fact Sheet: Minnesota”(August 2022))
- **The AARP Fact Sheet cited above and provided separately further breaks down this data among education and earnings levels and by race, ethnicity, and gender.**

The Legislature and Secure Choice

- Women's Economic Security Act of 2014, 2014 Session Laws, Chapter 239, Article 2, Section 10: \$400,000 to study feasibility of a state-sponsored retirement savings plan
- 2015-2017 Feasibility Study by Deloitte, report produced on March 24, 2017 ([Deloitte Report](#))
- Since then, bill introduced four times by Senator Pappas (2017, 2019, 2021, and 2023)

The Legislature and Secure Choice

- Passed in 2023 (see Commission meetings on February 20 and March 27, 2023)
- Two bills amending the Program approved by the Commission at a meeting on March 4, 2024:
 - HF 4248 (Moller); SF 4765 (Pappas): Permitting home and community-based services employees to participate in the Secure Choice program.
 - HF 4270 (Becker-Finn); SF 4319 (Pappas): Modifying requirements applicable to the board of directors; authorizing the appointment of an interim executive director; making technical corrections.

Role of the LCPR Executive Director vis a vis the Board

- 25 years in the private sector as an employee benefits attorney before current position
- Since 2015, as non-partisan employee of the Legislature, support the work of the Commission and provide expertise and bill drafting on pension and retirement topics, including federal law compliance
- Have been advising the legislature on Secure Choice and drafting variations of the bill and amendments since 2015
- For the Secure Choice Board, I serve as:
 - Liaison to the Commission if future changes in the law needed
 - Support to the Secure Choice Board until an Executive Director is hired, as required by the 2023 law

State-Sponsored Retirement Savings Plans

- Since 2012, 48 states and DC have acted to implement a new program, study program options, or consider legislation to establish a program.
- Since 2015, at least one or two states each year have enacted new state-facilitated retirement savings programs.
- During the 2023 legislative sessions, at least 25 states and the District of Columbia introduced legislation to establish new programs, amend existing programs, or form study groups to explore options.
- Three new auto-IRA programs were enacted in 2023: Minnesota, Nevada, and Vermont and one new Multiple Employer Plan (MEP) in Missouri. Vermont changed its existing program from a voluntary MEP to an auto-IRA program.
- As of January 1, 2024, 19 states have enacted new programs for private sector workers, 15 of which are auto-IRA programs.

From the website for the Georgetown Center for Retirement Initiatives (<https://cri.georgetown.edu>)

Program Basics

- Any employer doing business in Minnesota is required to enroll its employees and begin payroll deductions for transmittal to the Program, if the employer (1) does not offer a retirement plan to its employees, and (2) has 5 or more employees.
- Payroll deductions transmitted to the Program are deposited in an IRA in the name of each employee and invested with oversight by the State Board of Investment (Board member Jill Schurtz is the SBI Executive Director and CIO).
- Employees will have the option to change the contribution percentage or opt out of participation altogether.
- Employees will direct the investment of their accounts into a diversified array of investment funds.
- Program must not open earlier than January 1, 2025, and when it does open, it must open in phases over a two-year period.
- The legislature appropriated \$5 million for expenses, salaries, implementation.

Federal Law Considerations

- These programs are structured so ERISA does not apply. ERISA would preempt state fiduciary requirements, require certain disclosure and reporting, and impose an array of eligibility, distribution, and anti-discrimination requirements.
- IRAs generally are exempt from ERISA as long as employers do not endorse or contribute to the program and have no discretion, decision-making, or control over the program.
- Employees can be required by state law to participate and can be allowed to opt out.
- For more information, see [Georgetown Center Primer on Federal Law](#)

Board duties and priorities

- Hire an executive director
- Determine the contribution rate and rate of auto-escalation and whether contributions are allowed pre-tax, after-tax, or both
- Whether to allow individuals to participate
- Whether to partner with another state's program
- Designate a default investment fund or funds for employees that do not self-direct investment
- Determine the administrative fee that will be deducted from accounts

Board duties and priorities

- In addition, many requirements at Minn. Stat. sec. 187.08, subd. 8, including:
 - Hire a recordkeeper and other service providers
 - Prepare information about the Program for dissemination to covered employees
 - Publish an annual report for delivery to the legislature
 - Conduct outreach about the Program to employers and employees

Board duties and priorities—recommend penalties

- **By December 31, 2024, recommend penalties that will be imposed on employers who fail to comply with Program requirements.**
- **The penalties 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.**
- **Deliver the recommendation to the LCPR, which must accept or modify the recommendation and recommend legislation for passage during the 2025 legislative session.**

Contact Us

Any questions or concerns? For now, feel free to contact Commission staff:

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- **For now, Secure Choice Program and Board information will be posted on the LCPR website at www.lcpr.mn.gov**