

SENATE BILL 331

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2003 Regular Session
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By: **Senator Kasemeyer**

Introduced and read first time: January 31, 2003

Assigned to: Budget and Taxation

Committee Report: Favorable

Senate action: Adopted

Read second time: March 12, 2003

CHAPTER 81

1 AN ACT concerning

2 **Optional Retirement Program - Supplemental Annuities**

3 FOR the purpose of clarifying the authority of certain higher education institutions to
4 invest supplemental retirement plan funds and administer certain
5 supplemental retirement plans under the Internal Revenue Code; providing
6 certain higher education institutions with indemnification by the State; defining
7 certain terms; providing for the application of this Act; and generally relating to
8 the Optional Retirement Program and supplemental retirement plans.

9 BY repealing and reenacting, without amendments,
10 Article - State Personnel and Pensions
11 Section 30-101(a)
12 Annotated Code of Maryland
13 (1997 Replacement Volume and 2002 Supplement)

14 BY adding to
15 Article - State Personnel and Pensions
16 Section 30-101(j) and 30-210.1
17 Annotated Code of Maryland
18 (1997 Replacement Volume and 2002 Supplement)

19 BY repealing and reenacting, with amendments,
20 Article - State Personnel and Pensions
21 Section 30-210
22 Annotated Code of Maryland
23 (1997 Replacement Volume and 2002 Supplement)

1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
2 MARYLAND, That the Laws of Maryland read as follows:

3 **Article - State Personnel and Pensions**

4 30-101.

5 (a) In this title the following words have the meanings indicated.

6 (J) "SUPPLEMENTAL RETIREMENT PLANS" MEAN PLANS ESTABLISHED
7 PURSUANT TO § 30-210 OF THIS TITLE.

8 30-210.

9 (a) With respect to a participating employee who is employed by an employing
10 institution or an institution over which the employing institution has administrative
11 authority, the employing institution shall administer the participating employee's
12 enrollment, termination, or retirement under the program.

13 (b) (1) An employing institution may:

14 (i) establish supplemental retirement plans that provide
15 supplemental retirement accounts offered by a designated company in accordance
16 with § 401(a), § 403(b), or § 457 of the Internal Revenue Code, or any other provision
17 of federal law that authorizes supplemental retirement accounts; and

18 (ii) authorize its employees or the employees of an institution over
19 which it has administrative authority to participate in one or more of the
20 supplemental retirement plans.

21 (2) If an employing institution authorizes its employees or the employees
22 of an institution over which it has administrative authority to participate in a
23 supplemental retirement account, the employing institution shall designate the
24 companies that may offer supplemental retirement accounts to those employees and
25 shall administer the participation of those employees in the supplemental retirement
26 [account] PLAN.

27 (3) Contributions authorized under this subsection to a supplemental
28 retirement account on behalf of an employee may be made by payroll deduction, a
29 reduction in salary, or deferral in compensation in accordance with § 403(b), § 457, or
30 § 414(h) of the Internal Revenue Code.

31 (4) ASSETS OF THE SUPPLEMENTAL RETIREMENT PLANS MAY BE
32 DEPOSITED AND INVESTED IN ACCORDANCE WITH THE INVESTMENT ELECTIONS
33 ALLOWED UNDER THE SUPPLEMENTAL RETIREMENT PLANS NOTWITHSTANDING
34 ANY OTHER LAW LIMITING THE TYPES OF INVESTMENTS THAT MAY BE MADE WITH
35 STATE FUNDS OR IMPOSING CONDITIONS ON THE DEPOSIT OF STATE FUNDS.

36 (5) AN EMPLOYEE OF AN EMPLOYING INSTITUTION WITH
37 DISCRETIONARY AUTHORITY OVER THE MANAGEMENT OR ADMINISTRATION OF ANY

1 OF THE SUPPLEMENTAL RETIREMENT PLANS OR THE MANAGEMENT OR
2 DISPOSITION OF THE ASSETS OF ANY OF THE SUPPLEMENTAL RETIREMENT PLANS IS
3 ENTITLED TO INDEMNIFICATION AND INSURANCE AS PROVIDED UNDER § 30-210.1 OF
4 THIS SUBTITLE.

5 30-210.1.

6 (A) IN THIS SECTION, "COVERED INDIVIDUAL" MEANS AN EMPLOYEE OF AN
7 EMPLOYING INSTITUTION WITH DISCRETIONARY AUTHORITY OVER THE
8 MANAGEMENT OR ADMINISTRATION OF ANY OF THE SUPPLEMENTAL RETIREMENT
9 PLANS OR THE MANAGEMENT OR DISPOSITION OF THE ASSETS OF ANY OF THE
10 SUPPLEMENTAL RETIREMENT PLANS.

11 (B) SUBJECT TO THE PROVISIONS OF THIS SECTION, THE STATE SHALL
12 INDEMNIFY A COVERED INDIVIDUAL WHO IS, OR IS THREATENED TO BE MADE, A
13 PARTY TO AN ACTION OR PROCEEDING, INCLUDING AN ADMINISTRATIVE OR
14 INVESTIGATIVE PROCEEDING, BY REASON OF THE COVERED INDIVIDUAL'S SERVICE
15 AS AN EMPLOYEE OF AN EMPLOYING INSTITUTION WITH DISCRETIONARY
16 AUTHORITY OVER THE MANAGEMENT OR ADMINISTRATION OF ANY OF THE
17 SUPPLEMENTAL RETIREMENT PLANS OR THE MANAGEMENT OR DISPOSITION OF
18 THE ASSETS OF ANY OF THE SUPPLEMENTAL RETIREMENT PLANS.

19 (C) (1) IN THIS SUBSECTION, "EXPENSES" INCLUDE:

20 (I) REASONABLE ATTORNEY'S FEES;

21 (II) JUDGMENTS;

22 (III) FINES; AND

23 (IV) OTHER EXPENSES THAT WERE ACTUALLY AND REASONABLY
24 INCURRED BY THE INDIVIDUAL IN CONNECTION WITH THE ACTION OR PROCEEDING.

25 (2) WITH RESPECT TO A CIVIL, ADMINISTRATIVE, OR INVESTIGATIVE
26 ACTION OR PROCEEDING, THE STATE SHALL INDEMNIFY A COVERED INDIVIDUAL
27 FOR THE EXPENSES OF THE ACTION OR PROCEEDING IF THE COVERED INDIVIDUAL
28 ACTED:

29 (I) IN GOOD FAITH; AND

30 (II) IN A MANNER THE COVERED INDIVIDUAL REASONABLY
31 BELIEVED TO BE IN OR NOT OPPOSED TO THE BEST INTEREST OF THE
32 SUPPLEMENTAL RETIREMENT PLANS.

33 (3) WITH RESPECT TO A CRIMINAL ACTION OR PROCEEDING, THE STATE
34 SHALL INDEMNIFY A COVERED INDIVIDUAL FOR THE EXPENSES OF THE ACTION OR
35 PROCEEDING IF THE COVERED INDIVIDUAL:

36 (I) ACTED IN GOOD FAITH;

1 (II) ACTED IN A MANNER THE COVERED INDIVIDUAL REASONABLY
2 BELIEVED TO BE IN OR NOT OPPOSED TO THE BEST INTEREST OF THE
3 SUPPLEMENTAL RETIREMENT PLANS; AND

4 (III) DID NOT HAVE REASONABLE CAUSE TO BELIEVE THAT THE
5 COVERED INDIVIDUAL'S CONDUCT WAS UNLAWFUL.

6 (C) ANY TERMINATION OF AN ACTION OR PROCEEDING DOES NOT, OF ITSELF,
7 CREATE A PRESUMPTION THAT THE COVERED INDIVIDUAL DID NOT MEET THE
8 STANDARDS FOR INDEMNIFICATION DESCRIBED IN SUBSECTION (B) (2) AND (3) OF
9 THIS SECTION.

10 (D) THE STATE MAY NOT INDEMNIFY:

11 (1) A COVERED INDIVIDUAL WITH RESPECT TO AN ACTION OR
12 PROCEEDING AS TO WHICH THE COVERED INDIVIDUAL WAS HELD LIABLE FOR
13 GROSS NEGLIGENCE OR WILLFUL MISCONDUCT IN THE PERFORMANCE OF THE
14 COVERED INDIVIDUAL'S DUTY TO THE SUPPLEMENTAL RETIREMENT PLANS; OR

15 (2) AN INDEPENDENT CONTRACTOR FURNISHING SERVICES TO THE
16 SUPPLEMENTAL RETIREMENT PLANS.

17 (E) (1) THE STATE SHALL PROVIDE INSURANCE FOR A COVERED
18 INDIVIDUAL ELIGIBLE FOR INDEMNIFICATION UNDER THIS SECTION.

19 (2) FOR THE PURPOSE OF PARAGRAPH (1) OF THIS SUBSECTION, THE
20 STATE MAY PROVIDE SELF-INSURANCE UNDER TERMS AND CONDITIONS
21 SATISFACTORY TO THE STATE TREASURER.

22 (3) A COVERED INDIVIDUAL MAY NOT BE REQUIRED TO PAY AMOUNTS
23 ATTRIBUTABLE TO LIABILITY DESCRIBED IN THIS SECTION BECAUSE THE STATE
24 DOES NOT PROVIDE ADEQUATE INSURANCE COVERAGE OR OTHERWISE FAILS TO
25 INDEMNIFY IN ACCORDANCE WITH THIS SECTION.

26 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
27 construed to apply retroactively and shall be applied to and interpreted to affect
28 supplemental retirement plans and accounts authorized and supplemental annuity
29 contributions made after December 31, 2001.

30 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
31 June 1, 2003.

