

SENATE BILL 921

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CF 4r0728

By: **Senators Rosapepe and Madaleno**
Introduced and read first time: January 31, 2014
Assigned to: Budget and Taxation and Finance

A BILL ENTITLED

AN ACT concerning

Maryland Secure Choice Retirement Savings Program and Trust

FOR the purpose of establishing the Maryland Secure Choice Retirement Savings Program for eligible private sector employees; establishing the Maryland Secure Choice Retirement Savings Trust; establishing the Maryland Secure Choice Retirement Savings Board to implement, maintain, and administer the Program and the Trust; providing for the composition, chair, and staffing of the Board; providing for the powers and duties of the Board, including investing certain assets, adopting an investment policy, disseminating information to employers and employees, and submitting an annual audited financial report; authorizing the Board to establish a certain trust fund to accept certain employer contributions; requiring eligible employers to offer the Program and requiring eligible employees to participate in the Program unless written notice to opt out is provided to the employer; providing for the method of payment of certain expenses incurred by the Board as a result of administering the Program; requiring the Board to adopt certain regulations; authorizing the Comptroller to enforce employer compliance with certain Program requirements; imposing certain penalties for noncompliance with certain Program requirements; prohibiting certain employers and the State from incurring certain liabilities regarding the Program and the Trust; requiring certain conditions to be met before any plan, trust, administrative arrangement, or investment offering may be implemented; providing for the expiration of terms of certain initial Board members; defining certain terms; and generally relating to the Maryland Secure Choice Retirement Savings Program and Trust.

BY adding to

Article – Labor and Employment

Section 12–101 through 12–601 to be under the new title “Title 12. Maryland Secure Choice Retirement Savings Program and Trust”

Annotated Code of Maryland

(2008 Replacement Volume and 2013 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

Article – Labor and Employment

**TITLE 12. MARYLAND SECURE CHOICE RETIREMENT SAVINGS PROGRAM
AND TRUST.**

SUBTITLE 1. DEFINITIONS.

12-101.

(A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) “BOARD” MEANS THE MARYLAND SECURE CHOICE RETIREMENT SAVINGS BOARD.

(C) (1) “ELIGIBLE EMPLOYEE” MEANS A PERSON WHO IS EMPLOYED BY AN ELIGIBLE EMPLOYER.

(2) “ELIGIBLE EMPLOYEE” DOES NOT INCLUDE:

(I) AN EMPLOYEE COVERED UNDER THE FEDERAL RAILWAY LABOR ACT (45 U.S.C. SEC. 151) OR AN EMPLOYEE ENGAGED IN INTERSTATE COMMERCE SO AS NOT TO BE SUBJECT TO THE LEGISLATIVE POWERS OF THE STATE, EXCEPT INsofar AS APPLICATION OF THIS TITLE IS AUTHORIZED UNDER THE UNITED STATES CONSTITUTION OR LAWS OF THE UNITED STATES;

(II) AN EMPLOYEE ELIGIBLE TO PARTICIPATE IN A QUALIFYING RETIREMENT PLAN OR ARRANGEMENT DESCRIBED IN 26 U.S.C. § 219(G)(5) OR AN EMPLOYEE WHO WAS ELIGIBLE TO PARTICIPATE BUT THE PLAN OR ARRANGEMENT WAS TERMINATED OR FROZEN AT ANY TIME DURING THE PRECEDING 2 CALENDAR YEARS;

(III) AN EMPLOYEE ELIGIBLE TO PARTICIPATE IN AN AUTOMATIC ENROLLMENT PAYROLL DEDUCTION IRA MAINTAINED OR OFFERED BY THE EMPLOYEE’S EMPLOYER OR AN EMPLOYEE WHO WAS ELIGIBLE TO PARTICIPATE BUT THE EMPLOYER CEASED TO OFFER THE AUTOMATIC ENROLLMENT PAYROLL DEDUCTION AT ANY TIME DURING THE PRECEDING 2 CALENDAR YEARS;

(IV) AN EMPLOYEE COVERED BY A VALID COLLECTIVE BARGAINING AGREEMENT THAT EXPRESSLY PROVIDES FOR A MULTI-EMPLOYER RETIREMENT PLAN DESCRIBED IN 26 U.S.C. § 414(F); OR

(V) AN EMPLOYEE WHO IS UNDER THE AGE OF 18 YEARS BEFORE THE BEGINNING OF THE CALENDAR YEAR.

(D) (1) “ELIGIBLE EMPLOYER” MEANS A PERSON ENGAGED IN A BUSINESS, AN INDUSTRY, A PROFESSION, A TRADE, OR ANY OTHER ENTERPRISE IN THE STATE, WHETHER FOR PROFIT OR NOT FOR PROFIT, THAT HAS FIVE OR MORE ELIGIBLE EMPLOYEES.

(2) “ELIGIBLE EMPLOYER” DOES NOT INCLUDE:

(I) THE FEDERAL GOVERNMENT;

(II) THE STATE AND ANY UNIT OF THE STATE;

(III) A COUNTY AND ANY UNIT OF THE COUNTY;

(IV) A MUNICIPAL CORPORATION AND ANY UNIT OF THE MUNICIPAL CORPORATION;

(V) AN EMPLOYER THAT CURRENTLY OFFERS AN EMPLOYER-SPONSORED RETIREMENT PLAN OR AUTOMATIC ENROLLMENT PAYROLL DEDUCTION IRA THAT WAS ESTABLISHED SEPARATELY FROM THE REQUIREMENTS OF THIS TITLE;

(VI) AN EMPLOYER THAT, AT ANY TIME DURING THE PRECEDING 2 CALENDAR YEARS, TERMINATED AN EMPLOYER-SPONSORED RETIREMENT PLAN OR CEASED TO OFFER AN AUTOMATIC ENROLLMENT PAYROLL DEDUCTION IRA THAT WAS ESTABLISHED SEPARATELY FROM THE REQUIREMENTS OF THIS TITLE; OR

(VII) AN EMPLOYER THAT HAS NOT BEEN IN BUSINESS AT ALL TIMES DURING THE CURRENT CALENDAR YEAR AND THE PRECEDING CALENDAR YEAR.

(E) “IRA” MEANS AN INDIVIDUAL RETIREMENT ACCOUNT OR INDIVIDUAL RETIREMENT ANNUITY UNDER 26 U.S.C. § 408(A) OR (B).

(F) “MARYLAND SECURE CHOICE RETIREMENT SAVINGS PROGRAM” MEANS A RETIREMENT SAVINGS PROGRAM ESTABLISHED BY THE MARYLAND

SECURE CHOICE RETIREMENT SAVINGS BOARD AND OFFERED BY THE MARYLAND SECURE CHOICE RETIREMENT SAVINGS TRUST UNDER THIS TITLE.

(G) “PARTICIPATING EMPLOYER” MEANS AN ELIGIBLE EMPLOYER THAT PROVIDES A PAYROLL DEPOSIT RETIREMENT SAVINGS ARRANGEMENT UNDER THIS TITLE FOR ELIGIBLE EMPLOYEES.

(H) “PAYROLL DEPOSIT RETIREMENT SAVINGS ARRANGEMENT” MEANS AN ARRANGEMENT BY WHICH AN EMPLOYER ALLOWS EMPLOYEES TO REMIT PAYROLL DEDUCTION CONTRIBUTIONS TO A RETIREMENT SAVINGS PROGRAM.

(I) “PROGRAM” MEANS THE MARYLAND SECURE CHOICE RETIREMENT SAVINGS PROGRAM ESTABLISHED UNDER THIS TITLE.

(J) “TRUST” MEANS THE MARYLAND SECURE CHOICE RETIREMENT SAVINGS TRUST ESTABLISHED UNDER THIS TITLE.

SUBTITLE 2. ESTABLISHMENT; POWERS AND DUTIES OF BOARD.

12-201.

(A) THERE IS A MARYLAND SECURE CHOICE RETIREMENT SAVINGS BOARD.

(B) THE BOARD CONSISTS OF THE FOLLOWING MEMBERS:

(1) THE STATE TREASURER, OR THE TREASURER’S DESIGNEE;

(2) THE COMPTROLLER, OR THE COMPTROLLER’S DESIGNEE;

(3) THE SECRETARY OF BUDGET AND MANAGEMENT, OR THE SECRETARY’S DESIGNEE; AND

(4) THE FOLLOWING MEMBERS, APPOINTED BY THE GOVERNOR:

(I) AN INDIVIDUAL WITH RETIREMENT SAVINGS AND INVESTMENT EXPERTISE;

(II) A REPRESENTATIVE OF SMALL BUSINESSES;

(III) A REPRESENTATIVE OF EMPLOYEES;

(IV) A REPRESENTATIVE OF RETIREES; AND

(V) A MEMBER OF THE PUBLIC.

(C) (1) THE TERM OF A MEMBER IS 4 YEARS.

(2) THE TERMS OF MEMBERS ARE STAGGERED AS REQUIRED BY THE TERMS PROVIDED FOR MEMBERS OF THE BOARD ON JULY 1, 2014.

(3) AT THE END OF A TERM, A MEMBER CONTINUES TO SERVE UNTIL A SUCCESSOR IS APPOINTED AND QUALIFIES.

(4) A MEMBER WHO IS APPOINTED AFTER A TERM HAS BEGUN SERVES ONLY FOR THE REST OF THE TERM AND UNTIL A SUCCESSOR IS APPOINTED AND QUALIFIES.

(D) THE STATE TREASURER, OR THE TREASURER'S DESIGNEE, SHALL SERVE AS CHAIR OF THE BOARD.

(E) THE GOVERNOR MAY REMOVE A MEMBER FOR INCOMPETENCE OR MISCONDUCT.

12-202.

(A) THE BOARD SHALL MEET AT THE TIMES AND PLACES THE BOARD DETERMINES.

(B) (1) THE BOARD MAY EMPLOY A STAFF AND MAY HIRE CONSULTANTS, ADMINISTRATORS, AND OTHER PROFESSIONALS AS NECESSARY TO HELP IMPLEMENT, MAINTAIN, AND ADMINISTER THE PROGRAM AND THE TRUST.

(2) ALL EXPENSES, INCLUDING EMPLOYEE COSTS, INCURRED TO IMPLEMENT, MAINTAIN, AND ADMINISTER THE PROGRAM AND THE TRUST SHALL BE PAID FROM MONEY COLLECTED BY OR FOR THE PROGRAM OR THE TRUST.

12-203.

(A) THE BOARD, THE PROGRAM ADMINISTRATOR, AND STAFF SHALL DISCHARGE THE DUTIES WITH RESPECT TO THE TRUST SOLELY IN THE INTEREST OF THE PROGRAM PARTICIPANTS AS FOLLOWS:

(1) FOR THE EXCLUSIVE PURPOSES OF PROVIDING BENEFITS TO PROGRAM PARTICIPANTS AND DEFRAYING REASONABLE EXPENSES OF ADMINISTERING THE PROGRAM; AND

(2) BY INVESTING WITH THE CARE, SKILL, PRUDENCE, AND DILIGENCE UNDER THE CIRCUMSTANCES THEN PREVAILING THAT A PRUDENT PERSON ACTING IN A LIKE CAPACITY AND FAMILIAR WITH THOSE MATTERS WOULD USE IN THE CONDUCT OF AN ENTERPRISE OF A LIKE CHARACTER AND WITH LIKE AIMS.

(B) (1) THE BOARD SHALL ANNUALLY PREPARE AND ADOPT A WRITTEN STATEMENT OF INVESTMENT POLICY THAT INCLUDES A RISK MANAGEMENT AND OVERSIGHT PROGRAM.

(2) THE INVESTMENT POLICY SHALL MITIGATE RISK BY MAINTAINING A BALANCED INVESTMENT PORTFOLIO THAT PROVIDES ASSURANCE THAT NO SINGLE INVESTMENT OR CLASS OF INVESTMENTS WILL HAVE A DISPROPORTIONATE IMPACT ON THE TOTAL PORTFOLIO.

(3) THE RISK MANAGEMENT AND OVERSIGHT PROGRAM SHALL BE DESIGNED TO ENSURE THAT AN EFFECTIVE RISK MANAGEMENT SYSTEM IS IN PLACE TO MONITOR THE RISK LEVELS OF THE PROGRAM INVESTMENT PORTFOLIO AND ENSURE THAT THE RISKS TAKEN ARE PRUDENT AND PROPERLY MANAGED.

12-204.

(A) IN ADDITION TO THE POWERS SET FORTH ELSEWHERE IN THIS TITLE, THE BOARD MAY:

(1) CAUSE THE PROGRAM OR PAYROLL DEPOSIT IRA ARRANGEMENTS ESTABLISHED UNDER THE PROGRAM TO BE DESIGNED, ESTABLISHED, AND OPERATED;

(2) APPOINT A PROGRAM ADMINISTRATOR AND DETERMINE THE DUTIES OF THE PROGRAM ADMINISTRATOR;

(3) EMPLOY STAFF AS NECESSARY AND SET THE COMPENSATION OF THE STAFF;

(4) MAKE PROVISIONS FOR THE PAYMENT OF COSTS OF ADMINISTRATION AND OPERATION OF THE TRUST;

(5) EVALUATE AND ESTABLISH THE PROCESS FOR AN ELIGIBLE EMPLOYEE OF A PARTICIPATING EMPLOYER TO CONTRIBUTE A PORTION OF THE EMPLOYEE'S SALARY OR WAGES TO THE PROGRAM FOR AUTOMATIC DEPOSIT OF THE CONTRIBUTIONS;

(6) EVALUATE AND ESTABLISH THE PROCESS FOR A PARTICIPATING EMPLOYER TO PROVIDE A PAYROLL DEPOSIT RETIREMENT SAVINGS ARRANGEMENT FOR ELIGIBLE EMPLOYEES AND TO FORWARD THE EMPLOYEE CONTRIBUTION AND RELATED INFORMATION TO THE PROGRAM OR ITS AGENTS, WHICH MAY INCLUDE FINANCIAL SERVICES COMPANIES AND THIRD-PARTY ADMINISTRATORS WITH THE CAPABILITY TO RECEIVE AND PROCESS EMPLOYEE INFORMATION AND CONTRIBUTIONS FOR PAYROLL DEPOSIT RETIREMENT SAVINGS ARRANGEMENTS OR OTHER ARRANGEMENTS AUTHORIZED BY THIS TITLE;

(7) DESIGN AND ESTABLISH THE PROCESS FOR THE ENROLLMENT OF PROGRAM PARTICIPANTS;

(8) EVALUATE AND ESTABLISH THE PROCESS FOR A PARTICIPATING EMPLOYER TO USE THE PROGRAM TO REMIT EMPLOYEES' CONTRIBUTIONS TO THEIR INDIVIDUAL RETIREMENT ACCOUNTS ON BEHALF OF THE EMPLOYEES;

(9) PROCURE INSURANCE AGAINST ANY LOSS IN CONNECTION WITH THE PROPERTY, ASSETS, OR ACTIVITIES OF THE TRUST, AND SECURE PRIVATE UNDERWRITING AND REINSURANCE TO MANAGE RISK AND INSURE THE RETIREMENT SAVINGS RATE OF RETURN;

(10) PROCURE INSURANCE INDEMNIFYING EACH MEMBER OF THE BOARD FROM PERSONAL LOSS OR LIABILITY RESULTING FROM A MEMBER'S ACTION OR INACTION AS A MEMBER OF THE BOARD;

(11) SET MINIMUM AND MAXIMUM INVESTMENT LEVELS IN ACCORDANCE WITH CONTRIBUTION LIMITS SET FOR IRAS BY THE INTERNAL REVENUE CODE;

(12) ARRANGE FOR COLLECTIVE, COMMON, AND POOLED INVESTMENT OF ASSETS OF THE PROGRAM OR ARRANGEMENTS, INCLUDING INVESTMENTS IN CONJUNCTION WITH OTHER FUNDS WITH WHICH THOSE ASSETS ARE AUTHORIZED TO BE COLLECTIVELY INVESTED, WITH A VIEW TO SAVING COSTS THROUGH EFFICIENCIES AND ECONOMIES OF SCALE;

(13) DETERMINE THE ALLOCATION OF ADMINISTRATIVE FEES TO EACH INDIVIDUAL RETIREMENT ACCOUNT ON A PRO RATA BASIS, NOT TO EXCEED 1% OF THE TOTAL BALANCE IN THE TRUST;

(14) EXPLORE AND ESTABLISH INVESTMENT OPTIONS THAT OFFER EMPLOYEES RETURNS ON CONTRIBUTIONS AND THE CONVERSION OF INDIVIDUAL RETIREMENT SAVINGS ACCOUNT BALANCES TO SECURE RETIREMENT INCOME WITHOUT INCURRING DEBT OR LIABILITIES TO THE STATE;

(15) IF NECESSARY, DETERMINE THE ELIGIBILITY OF AN EMPLOYER, EMPLOYEE, OR ANY OTHER INDIVIDUAL TO PARTICIPATE IN THE PROGRAM;

(16) EVALUATE AND ESTABLISH THE PROCESS BY WHICH AN INDIVIDUAL OR AN EMPLOYEE OF A NONPARTICIPATING EMPLOYER MAY ENROLL IN AND MAKE CONTRIBUTIONS TO THE PROGRAM; AND

(17) DETERMINE INTEREST RATES TO BE ALLOCATED TO PROGRAM ACCOUNTS.

(B) THE BOARD SHALL ADOPT REGULATIONS NECESSARY TO IMPLEMENT THIS TITLE CONSISTENT WITH THE INTERNAL REVENUE CODE AND REGULATIONS ISSUED IN ACCORDANCE WITH THE INTERNAL REVENUE CODE TO ENSURE THAT THE PROGRAM MEETS ALL CRITERIA FOR FEDERAL TAX DEFERRAL OR TAX-EXEMPT BENEFITS OR BOTH.

12-205.

(A) (1) BEFORE OPENING THE PROGRAM FOR ENROLLMENT, THE BOARD SHALL DESIGN AND DISSEMINATE TO EMPLOYERS THROUGH THE DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT AN EMPLOYEE INFORMATION PACKET.

(2) THE PACKET SHALL INCLUDE BACKGROUND INFORMATION ON THE PROGRAM AND APPROPRIATE DISCLOSURES FOR EMPLOYEES.

(B) THE DISCLOSURE FORM SHALL INCLUDE:

(1) THE BENEFITS AND RISKS ASSOCIATED WITH MAKING CONTRIBUTIONS TO THE PROGRAM;

(2) THE MECHANICS OF HOW TO MAKE CONTRIBUTIONS TO THE PROGRAM;

(3) HOW TO OPT OUT OF THE PROGRAM;

(4) THE PROCESS FOR WITHDRAWAL OF RETIREMENT SAVINGS;
AND

(5) HOW TO OBTAIN ADDITIONAL INFORMATION ON THE PROGRAM.

(C) THE DISCLOSURE FORM SHALL CLEARLY STATE THE FOLLOWING:

(1) EMPLOYEES SEEKING FINANCIAL ADVICE SHOULD CONTACT FINANCIAL ADVISORS BECAUSE EMPLOYERS ARE NOT IN A POSITION TO PROVIDE FINANCIAL ADVICE;

(2) IN ACCORDANCE WITH § 12-501 OF THIS TITLE, EMPLOYERS ARE NOT LIABLE FOR DECISIONS MADE BY EMPLOYEES;

(3) THE PROGRAM IS NOT AN EMPLOYER-SPONSORED RETIREMENT PLAN; AND

(4) IN ACCORDANCE WITH § 12-502 OF THIS TITLE, THE PROGRAM FUND MAY BE PRIVATELY INSURED AND IS NOT GUARANTEED BY THE STATE.

(D) THE DISCLOSURE FORM SHALL INCLUDE A SIGNATURE LINE FOR THE EMPLOYEE TO SIGN AND DATE ACKNOWLEDGING THAT THE EMPLOYEE HAS READ ALL OF THE DISCLOSURES AND UNDERSTANDS THE DISCLOSURES.

(E) (1) THE EMPLOYEE INFORMATION PACKET ALSO SHALL INCLUDE AN OPT-OUT FORM FOR AN ELIGIBLE EMPLOYEE TO NOTE THE EMPLOYEE'S DECISION TO OPT OUT OF PARTICIPATION IN THE PROGRAM.

(2) THE OPT-OUT NOTATION SHALL BE SIMPLE AND CONCISE AND DRAFTED IN A MANNER THAT THE BOARD DEEMS NECESSARY TO APPROPRIATELY EVIDENCE THE EMPLOYEE'S UNDERSTANDING THAT THE EMPLOYEE IS CHOOSING NOT TO AUTOMATICALLY DEDUCT EARNINGS TO SAVE FOR RETIREMENT.

(F) (1) THE EMPLOYEE INFORMATION PACKET SHALL BE MADE AVAILABLE TO EMPLOYERS THROUGH THE DEPARTMENT OF BUSINESS AND

ECONOMIC DEVELOPMENT AND SUPPLIED TO EMPLOYEES AT THE TIME OF HIRING.

(2) ALL NEW EMPLOYEES SHALL REVIEW AND ACKNOWLEDGE HAVING READ THE EMPLOYEE INFORMATION PACKET BY SIGNING THE SIGNATURE LINE ACCOMPANIED BY THE DATE OF THE SIGNATURE.

(G) THE EMPLOYEE INFORMATION PACKET SHALL BE SUPPLIED TO EXISTING EMPLOYEES WHEN THE PROGRAM IS INITIALLY LAUNCHED FOR THAT PARTICIPATING EMPLOYER IN ACCORDANCE WITH § 12-402 OF THIS TITLE, AND EMPLOYEES SHALL REVIEW AND SIGN THE DISCLOSURE FORM AT THAT TIME.

12-206.

(A) ON OR BEFORE AUGUST 1 EACH YEAR, THE BOARD SHALL SUBMIT AN ANNUAL AUDITED FINANCIAL REPORT, PREPARED IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES, ON THE OPERATIONS OF THE TRUST TO THE GOVERNOR AND, SUBJECT TO § 2-1246 OF THE STATE GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY.

(B) THE ANNUAL AUDIT SHALL BE MADE BY AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT AND SHALL INCLUDE DIRECT AND INDIRECT COSTS ATTRIBUTABLE TO THE USE OF OUTSIDE CONSULTANTS, INDEPENDENT CONTRACTORS, AND ANY OTHER PERSONS WHO ARE NOT STATE EMPLOYEES.

12-207.

(A) IN ADDITION TO THE AUTHORITY GRANTED TO THE BOARD UNDER § 12-204 OF THIS SUBTITLE, THE BOARD MAY ESTABLISH A TRUST FUND TO ACCEPT CASH OR CASH EQUIVALENT CONTRIBUTIONS FROM EMPLOYERS FOR THE BENEFIT OF THEIR EMPLOYEES.

(B) A TRUST FUND ESTABLISHED BY THE BOARD UNDER THIS SECTION MUST BE:

(1) ESTABLISHED AS A PROFIT-SHARING DEFINED CONTRIBUTION PLAN WITHIN THE MEANING OF THE INTERNAL REVENUE CODE; AND

(2) QUALIFIED UNDER 26 U.S.C. § 401(A).

(C) (1) THE 401(A) ACCOUNTS, COMPOSED OF EMPLOYER CONTRIBUTIONS PLUS CREDITED EARNINGS, SHALL BE SEGREGATED FROM

THE IRA ACCOUNTS, COMPOSED OF EMPLOYEE CONTRIBUTIONS PLUS CREDITED EARNINGS, WHICH ARE ESTABLISHED BY THE BOARD UNDER THIS TITLE.

(2) TO THE EXTENT AUTHORIZED BY FEDERAL LAW, THE 401(A) ACCOUNTS:

(I) MAY MIRROR THE IRA ACCOUNTS ESTABLISHED BY THE BOARD UNDER THIS TITLE; AND

(II) MAY BE INVESTED BY THE BOARD IN THE SAME MANNER, WITH THE SAME MANAGERS AND ASSET ALLOCATIONS, THAT THE BOARD INVESTS THE ASSETS OF THE IRA ACCOUNTS.

(D) THE BOARD SHALL ACT AS A FIDUCIARY UNDER THE FEDERAL EMPLOYEE RETIREMENT INCOME SECURITY ACT WITH RESPECT TO THE 401(A) ACCOUNTS.

(E) THE 401(A) ACCOUNTS ESTABLISHED UNDER THIS SECTION SHALL PROVIDE FOR IMMEDIATE VESTING RIGHTS.

(F) IF A CONDITION OCCURS THAT AUTHORIZES A DISTRIBUTION OF BENEFITS UNDER THE UNITED STATES CODE, AN EMPLOYEE WHOSE EMPLOYER HAS BEEN CONTRIBUTING TO A 401(A) ACCOUNT ON THE EMPLOYEE'S BEHALF UNDER THIS SECTION, TO THE EXTENT AUTHORIZED BY FEDERAL LAW MAY ELECT TO ROLL OVER THE 401(A) ACCOUNT BALANCE INTO THE EMPLOYEE'S IRA ACCOUNT FOR ANNUITIZATION.

SUBTITLE 3. MARYLAND SECURE CHOICE RETIREMENT SAVINGS TRUST.

12-301.

(A) THERE IS A MARYLAND SECURE CHOICE RETIREMENT SAVINGS TRUST.

(B) THE MARYLAND SECURE CHOICE RETIREMENT SAVINGS TRUST SHALL BE ADMINISTERED BY THE BOARD FOR THE PURPOSE OF PROMOTING GREATER RETIREMENT SAVINGS FOR MARYLAND PRIVATE SECTOR EMPLOYEES IN A CONVENIENT, VOLUNTARY, LOW-COST, AND PORTABLE MANNER.

(C) MONEY IN THE TRUST MAY BE INVESTED OR REINVESTED BY THE TREASURER OR MAY BE INVESTED IN WHOLE OR IN PART UNDER CONTRACT WITH THE BOARD OF TRUSTEES FOR THE STATE RETIREMENT AND PENSION

SYSTEM OR PRIVATE MONEY MANAGERS, OR BOTH, AS DETERMINED BY THE BOARD.

(D) ANY CONTRIBUTIONS PAID BY EMPLOYEES AND EMPLOYERS INTO THE TRUST MAY BE USED ONLY TO:

- (1) PAY BENEFITS TO THE PARTICIPANTS OF THE PROGRAM;
- (2) PAY THE COST FOR ADMINISTERING THE PROGRAM; AND
- (3) MAKE INVESTMENTS FOR THE BENEFIT OF THE PROGRAM.

(E) (1) ANY EMPLOYEE CONTRIBUTIONS DEDUCTED BY A PARTICIPATING EMPLOYER THROUGH PAYROLL DEDUCTION SHALL BE PAID BY THE PARTICIPATING EMPLOYER TO THE TRUST USING THE PROCESS ESTABLISHED BY THE BOARD ON OR BEFORE:

(I) THE LAST DAY OF THE MONTH FOLLOWING THE MONTH IN WHICH THE COMPENSATION OTHERWISE WOULD HAVE BEEN PAYABLE TO THE EMPLOYEE IN CASH; OR

(II) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A LATER DEADLINE ESTABLISHED BY THE BOARD.

(2) THE BOARD MAY NOT ESTABLISH A DEADLINE UNDER PARAGRAPH (1) OF THIS SUBSECTION THAT IS LATER THAN THE DUE DATE FOR:

(I) THE DEPOSIT OF TAX REQUIRED TO BE DEDUCTED AND WITHHELD RELATING TO COLLECTION OF INCOME TAX AT SOURCE ON WAGES; OR

(II) THE DEPOSIT OF TAX REQUIRED TO BE PAID UNDER THE UNEMPLOYMENT INSURANCE SYSTEM FOR THE PAYROLL PERIOD TO WHICH THE PAYMENTS RELATE.

SUBTITLE 4. MARYLAND SECURE CHOICE RETIREMENT SAVINGS PROGRAM.

12-401.

(A) THERE IS A MARYLAND SECURE CHOICE RETIREMENT SAVINGS PROGRAM.

(B) THE MARYLAND SECURE CHOICE RETIREMENT SAVINGS PROGRAM SHALL INCLUDE, AS DETERMINED BY THE BOARD, ONE OR MORE PAYROLL DEPOSIT IRA ARRANGEMENTS.

(C) INTEREST SHALL BE ALLOCATED TO PROGRAM ACCOUNTS AS DETERMINED BY THE BOARD.

(D) AN INDIVIDUAL'S RETIREMENT SAVINGS BENEFIT UNDER THE PROGRAM SHALL BE AN AMOUNT EQUAL TO THE BALANCE IN THE INDIVIDUAL'S PROGRAM ACCOUNT ON THE DATE THE RETIREMENT SAVINGS BENEFIT BECOMES PAYABLE.

12-402.

(A) AFTER THE BOARD OPENS THE PROGRAM FOR ENROLLMENT, ANY EMPLOYER MAY CHOOSE TO HAVE A PAYROLL DEPOSIT RETIREMENT SAVINGS ARRANGEMENT TO ALLOW EMPLOYEE PARTICIPATION IN THE PROGRAM.

(B) BEGINNING 3 MONTHS AFTER THE BOARD OPENS THE PROGRAM FOR ENROLLMENT, ELIGIBLE EMPLOYERS WITH MORE THAN 100 ELIGIBLE EMPLOYEES SHALL HAVE A PAYROLL DEPOSIT RETIREMENT SAVINGS ARRANGEMENT TO ALLOW EMPLOYEE PARTICIPATION IN THE PROGRAM.

(C) BEGINNING 6 MONTHS AFTER THE BOARD OPENS THE PROGRAM FOR ENROLLMENT, ELIGIBLE EMPLOYERS WITH MORE THAN 50 ELIGIBLE EMPLOYEES SHALL HAVE A PAYROLL DEPOSIT RETIREMENT SAVINGS ARRANGEMENT TO ALLOW EMPLOYEE PARTICIPATION IN THE PROGRAM.

(D) BEGINNING 9 MONTHS AFTER THE BOARD OPENS THE PROGRAM FOR ENROLLMENT, ALL OTHER ELIGIBLE EMPLOYERS SHALL HAVE A PAYROLL DEPOSIT RETIREMENT SAVINGS ARRANGEMENT TO ALLOW EMPLOYEE PARTICIPATION IN THE PROGRAM.

(E) (1) EACH ELIGIBLE EMPLOYEE SHALL BE ENROLLED IN THE PROGRAM UNLESS THE EMPLOYEE ELECTS NOT TO PARTICIPATE IN THE PROGRAM.

(2) AN ELIGIBLE EMPLOYEE MAY ELECT TO OPT OUT OF THE PROGRAM BY MAKING THAT ELECTION ON THE OPT-OUT FORM.

(3) FOLLOWING INITIAL IMPLEMENTATION OF THE PROGRAM IN ACCORDANCE WITH THIS SECTION, AT LEAST ONCE EVERY YEAR PARTICIPATING EMPLOYERS SHALL DESIGNATE AN OPEN ENROLLMENT PERIOD DURING WHICH

ELIGIBLE EMPLOYEES THAT PREVIOUSLY OPTED OUT OF THE PROGRAM SHALL BE ENROLLED IN THE PROGRAM UNLESS THE EMPLOYEE AGAIN ELECTS TO OPT OUT AS PROVIDED IN THIS SUBSECTION.

(4) AN EMPLOYEE WHO ELECTS TO OPT OUT OF THE PROGRAM AND WHO SUBSEQUENTLY WANTS TO PARTICIPATE THROUGH THE EMPLOYER'S PAYROLL DEPOSIT RETIREMENT SAVINGS ARRANGEMENT MAY ENROLL ONLY DURING THE EMPLOYER'S DESIGNATED OPEN ENROLLMENT PERIOD OR, IF ALLOWED BY THE EMPLOYER, AT AN EARLIER TIME.

(F) EMPLOYERS SHALL RETAIN THE OPTION AT ALL TIMES TO SET UP ANY TYPE OF EMPLOYER-SPONSORED RETIREMENT PLAN, SUCH AS A DEFINED BENEFIT PLAN OR A 401(K), SIMPLIFIED EMPLOYEE PENSION (SEP) PLAN, OR SAVINGS INCENTIVE MATCH PLAN FOR EMPLOYEES (SIMPLE) PLAN, OR TO OFFER AN AUTOMATIC ENROLLMENT PAYROLL DEDUCTION IRA, INSTEAD OF HAVING A PAYROLL DEPOSIT RETIREMENT SAVINGS ARRANGEMENT TO ALLOW EMPLOYEE PARTICIPATION IN THE PROGRAM.

(G) AN ELIGIBLE EMPLOYEE ALSO MAY TERMINATE PARTICIPATION IN THE PROGRAM AT ANY TIME IN A MANNER PRESCRIBED BY THE BOARD AND THEREAFTER BY MAKING A NOTATION ON THE OPT-OUT FORM.

(H) UNLESS OTHERWISE SPECIFIED BY THE EMPLOYEE, A PARTICIPATING EMPLOYEE SHALL CONTRIBUTE 3% OF THE EMPLOYEE'S ANNUAL SALARY OR WAGES TO THE PROGRAM.

(I) BY REGULATION, THE BOARD MAY ADJUST THE CONTRIBUTION AMOUNT SET IN SUBSECTION (H) OF THIS SECTION TO NO LESS THAN 2% AND NO MORE THAN 4% AND MAY VARY THAT AMOUNT WITHIN THAT 2% TO 4% RANGE FOR PARTICIPATING EMPLOYEES ACCORDING TO THE LENGTH OF TIME THE EMPLOYEE HAS CONTRIBUTED TO THE PROGRAM.

SUBTITLE 5. LIMITATION OF LIABILITY.

12-501.

(A) AN EMPLOYER MAY NOT BE HELD LIABLE FOR:

(1) AN EMPLOYEE'S DECISION TO PARTICIPATE IN OR OPT OUT OF THE PROGRAM;

(2) THE INVESTMENT DECISIONS OF EMPLOYEES WHOSE ASSETS ARE DEPOSITED IN THE PROGRAM;

(3) THE ADMINISTRATION, INVESTMENT, OR INVESTMENT PERFORMANCE OF THE TRUST OR THE PROGRAM; OR

(4) THE PROGRAM DESIGN OR THE BENEFITS PAID TO PROGRAM PARTICIPANTS.

(B) AN EMPLOYER IS NOT A FIDUCIARY, AND MAY NOT BE CONSIDERED TO BE A FIDUCIARY, OF THE TRUST OR THE PROGRAM.

12-502.

(A) THE STATE MAY NOT BE HELD LIABLE FOR THE PAYMENT OF THE RETIREMENT SAVINGS BENEFIT EARNED BY PROGRAM PARTICIPANTS IN ACCORDANCE WITH THIS TITLE.

(B) THE DEBTS, CONTRACTS, AND OBLIGATIONS OF THE TRUST AND THE PROGRAM ARE NOT THE DEBTS, CONTRACTS, AND OBLIGATIONS OF THE STATE AND NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE IS PLEDGED DIRECTLY OR INDIRECTLY TO THE PAYMENT OF THE DEBTS, CONTRACTS, AND OBLIGATIONS.

SUBTITLE 6. PENALTIES.

12-601.

(A) THE COMPTROLLER SHALL ADMINISTER THE ENFORCEMENT OF EMPLOYER COMPLIANCE WITH THIS TITLE.

(B) (1) AFTER DUE PROCESS, EACH ELIGIBLE EMPLOYER THAT, WITHOUT GOOD CAUSE, FAILS TO ALLOW ELIGIBLE EMPLOYEES TO PARTICIPATE IN THE PROGRAM IN ACCORDANCE WITH § 12-402 OF THIS TITLE SHALL PAY \$250 PER ELIGIBLE EMPLOYEE.

(2) PENALTIES COLLECTED IN ACCORDANCE WITH THIS SUBSECTION SHALL BE DEPOSITED IN THE TRUST, LESS THE ENFORCEMENT EXPENSES OF THE OFFICE OF THE COMPTROLLER.

(C) (1) AFTER DUE PROCESS, EACH ELIGIBLE EMPLOYER THAT, WITHOUT GOOD CAUSE, FAILS TO PAY TO THE TRUST WITHIN THE TIME REQUIRED UNDER § 12-301(E) OF THIS TITLE THE EMPLOYEE CONTRIBUTIONS DEDUCTED BY THE EMPLOYER THROUGH PAYROLL DEDUCTION SHALL PAY A

PENALTY EQUAL TO LOST EARNINGS AND INTEREST ON THE CONTRIBUTIONS MADE LATER THAN THE TIME REQUIRED.

(2) THE COMPTROLLER SHALL DETERMINE A METHODOLOGY FOR CALCULATING LOST EARNINGS AND INTEREST UNDER PARAGRAPH (1) OF THIS SUBSECTION.

(3) PENALTIES COLLECTED IN ACCORDANCE WITH THIS SUBSECTION SHALL BE DEPOSITED IN THE TRUST AND CREDITED TO THE IRAS OF THE AFFECTED EMPLOYEES ON A PRO RATA BASIS.

SECTION 2. AND BE IT FURTHER ENACTED, That the terms of the initial members of the Maryland Secure Choice Retirement Savings Board established by Section 1 of this Act who are subject to appointment end as follows:

- (a) one member in 2015;
- (b) one member in 2016;
- (c) one member in 2017; and
- (d) two members in 2018.

SECTION 3. AND BE IT FURTHER ENACTED, That, before any plan, trust, administrative arrangement, or investment offering may be implemented under this Act, the arrangements for individual retirement accounts or individual retirement annuities under 26 U.S.C. § 408(a) or (b) shall qualify for the favorable federal income tax treatment ordinarily accorded to individual retirement accounts or annuities under the Internal Revenue Code, and the Maryland Secure Choice Retirement Savings Program shall be determined not to be an employee benefit plan under the federal Employee Retirement Income Security Act.

SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2014.