

Chapter 323

(Senate Bill 1007)

AN ACT concerning

Maryland Small Business Retirement Savings Program and Trust

FOR the purpose of establishing the Maryland Small Business Retirement Savings Program for ~~eligible~~ private sector employees; establishing the Maryland Small Business Retirement Savings Trust; establishing the Maryland Small Business 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; requiring eligible employers to offer the Program and requiring eligible employees of participating employers to participate in the Program unless written notice to opt out is provided to the employer;~~ authorizing the Board to enter into a certain agreement to borrow certain funds; requiring the Board to take certain actions to ensure that the Program is not preempted by federal law; requiring the Board to establish certain procedures and disclosures; *specifying that the assets in a certain employee's Program account are the property of the employee; prohibiting the State from transferring any assets of the Trust to specified funds of the State, or otherwise encumbering any assets of the Trust;* requiring the Board to design and disseminate certain information to employers and employees; requiring the Board to enter into a certain agreement delegating the administration of the Trust to a third-party administrator; limiting the type of savings arrangements offered by the Board to payroll deposit IRA arrangements; requiring the Board to implement a range of investment options and providers and to select a default investment option; requiring the Board to consider certain information when selecting investment options; authorizing the Board to provide investment options that provide certain income distributions; limiting the ongoing administrative expenses of the Program from exceeding a certain amount; prohibiting the Board from offering investment options that conflict with federal law; prohibiting the Board from offering investment options that could result in certain liabilities; requiring a covered employer to establish a certain payroll deposit retirement savings arrangement, and to automatically enroll covered employees in the Program; prohibiting a covered employer from receiving a certain fee waiver if the covered employer is not in compliance with certain provisions of this Act; establishing that compliance with this Act does not create a certain fiduciary obligation; establishing that a covered employee may opt out of the Program, and re-enroll if the employee has opted out; authorizing certain ~~eligible~~ employees to participate in the Program in a certain manner; requiring the Board to establish a default employee contribution amount; 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; prohibiting certain ~~employers~~ employers, taxpayers, 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; waiving a certain ~~processing~~ fee for the filing of certain documents by certain business entities under certain circumstances; prohibiting the waiver of a certain filing fee under this Act until the Program is open for enrollment; defining certain terms; and generally relating to the Maryland Small Business Retirement Savings Program and Trust.

BY repealing and reenacting, with amendments,
 Article – Corporations and Associations
 Section 1–203(b)(3)(ii)
 Annotated Code of Maryland
 (2014 Replacement Volume and 2015 Supplement)

BY adding to
 Article – Corporations and Associations
 Section 1–203(b)(14)
 Annotated Code of Maryland
 (2014 Replacement Volume and 2015 Supplement)

BY adding to
 Article – Labor and Employment
 Section 12–101 through 12–502 to be under the new title “Title 12. Maryland Small Business Retirement Savings Program and Trust”
 Annotated Code of Maryland
 (2008 Replacement Volume and 2015 Supplement)

Preamble

WHEREAS, It shall be the policy of the State to assist the Maryland workforce in identifying the need to save for retirement, learning about products and services available in the private sector to accumulate retirement savings, promoting the efforts of employers to adopt retirement plans for employees, and assisting employees who do not have access to an employer–offered savings arrangement to initiate individual retirement accounts; and

WHEREAS, It is the intent of the General Assembly that the Maryland Small Business Retirement Savings Board will outsource the administration and management of the funds on behalf of the program participants, and at no point will the funds be managed directly by the Board; and

WHEREAS, Management of the separate accounts shall be performed by private entities selected by the Board that are licensed and in good standing with the State; now, therefore,

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

Article – Corporations and Associations

1–203.

(b) (3) (ii) [For] EXCEPT AS PROVIDED IN PARAGRAPH (14) OF THIS SUBSECTION, FOR each of the following documents which are filed but not recorded, the filing fee is as indicated:

Annual report of a Maryland corporation, except a charitable or benevolent institution, nonstock corporation, savings and loan corporation, credit union, family farm, and banking institution..... \$300

Annual report of a foreign corporation subject to the jurisdiction of this State, except a national banking association, savings and loan association, credit union, nonstock corporation, and charitable and benevolent institution..... \$300

Annual report of a Maryland savings and loan association, banking institution, or credit union or of a foreign savings and loan association, national banking association, or credit union that is subject to the jurisdiction of this State \$300

Annual report of a Maryland limited liability company, limited liability partnership, limited partnership, or of a foreign limited liability company, foreign limited liability partnership, or foreign limited partnership, except a family farm..... \$300

Annual report of a business trust..... \$300

Annual report of a real estate investment trust or foreign statutory trust doing business in this State \$300

Annual report of a family farm..... \$100

(14) THE DEPARTMENT SHALL WAIVE THE ~~NONREFUNDABLE PROCESSING FILING FEE~~ FOR A BUSINESS ENTITY DESCRIBED UNDER PARAGRAPH (3)(II) OF THIS SUBSECTION FOR EACH YEAR THAT THE ENTITY PROVIDES EVIDENCE TO THE DEPARTMENT THAT:

(I) THE ENTITY IS REQUIRED TO COMPLY WITH AND IS IN COMPLIANCE WITH TITLE 12, SUBTITLE 1 TITLE 12 OF THE LABOR AND EMPLOYMENT ARTICLE; OR

(II) THE ENTITY OTHERWISE PROVIDES AN AUTOMATIC ENROLLMENT PAYROLL DEDUCTION INDIVIDUAL RETIREMENT ACCOUNT OR

~~INDIVIDUAL RETIREMENT ANNUITY UNDER 26 U.S.C. § 408(A) OR (B) OR AN EMPLOYER SPONSORED RETIREMENT PLAN EMPLOYER-OFFERED SAVINGS ARRANGEMENT THAT IS IN COMPLIANCE WITH THE FEDERAL EMPLOYEE RETIREMENT INCOME SECURITY ACT FEDERAL LAW.~~

Article – Labor and Employment

TITLE 12. MARYLAND SMALL BUSINESS 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 SMALL BUSINESS RETIREMENT SAVINGS BOARD.

(C) (1) ~~“ELIGIBLE COVERED EMPLOYEE” MEANS A PERSON AN INDIVIDUAL WHO IS EMPLOYED BY AN ELIGIBLE A COVERED EMPLOYER OR WHO IS OTHERWISE ELIGIBLE TO PARTICIPATE IN THE PROGRAM UNDER THIS TITLE.~~

(2) ~~“ELIGIBLE COVERED 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 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

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

(D) (1) “~~ELIGIBLE~~ COVERED 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:

~~(I) EMPLOYS 10 OR MORE ELIGIBLE EMPLOYEES WHO ARE EACH EMPLOYED BY THE ELIGIBLE EMPLOYER FOR 30 OR MORE HOURS PER WEEK; AND~~

~~(II) PAYS THE ~~ELIGIBLE~~ COVERED EMPLOYER’S EMPLOYEES THROUGH A PAYROLL SYSTEM OR SERVICE.~~

(2) “~~ELIGIBLE~~ COVERED EMPLOYER” DOES NOT INCLUDE:

(I) THE FEDERAL GOVERNMENT;

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

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

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

(V) AN EMPLOYER THAT CURRENTLY OFFERS AN ~~EMPLOYER-SPONSORED RETIREMENT PLAN~~ EMPLOYER-OFFERED SAVINGS ARRANGEMENT 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~~ OFFERED AN EMPLOYER-OFFERED SAVINGS ARRANGEMENT 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 AN INDIVIDUAL RETIREMENT ANNUITY UNDER 26 U.S.C. § 408(A) OR (B).

(F) “MARYLAND SMALL BUSINESS RETIREMENT SAVINGS PROGRAM” MEANS A RETIREMENT SAVINGS PROGRAM ESTABLISHED ~~AND OFFERED~~ BY THE MARYLAND SMALL BUSINESS RETIREMENT SAVINGS BOARD UNDER THIS TITLE.

(G) “PARTICIPATING EMPLOYEE” MEANS AN ~~ELIGIBLE~~ EMPLOYEE THAT ~~ELECTS TO PARTICIPATE IN~~ IS PARTICIPATING IN THE PROGRAM THROUGH A PAYROLL DEPOSIT RETIREMENT SAVINGS ARRANGEMENT UNDER THIS TITLE FOR ELIGIBLE EMPLOYEES IN ACCORDANCE WITH REGULATIONS ADOPTED BY THE BOARD.

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

(I) “PAYROLL DEPOSIT RETIREMENT SAVINGS ARRANGEMENT” MEANS AN ARRANGEMENT BY WHICH ~~AN A COVERED~~ EMPLOYER REMITS PAYROLL DEDUCTION CONTRIBUTIONS OF PARTICIPATING EMPLOYEES TO ~~A RETIREMENT SAVINGS PROGRAM~~ THE PROGRAM.

(J) “PROGRAM” MEANS THE MARYLAND SMALL BUSINESS RETIREMENT SAVINGS PROGRAM ESTABLISHED UNDER THIS TITLE.

(K) “TRUST” MEANS THE MARYLAND SMALL BUSINESS RETIREMENT SAVINGS TRUST ESTABLISHED UNDER THIS TITLE.

SUBTITLE 2. ESTABLISHMENT; POWERS AND DUTIES OF BOARD.

12-201.

(A) THERE IS A MARYLAND SMALL BUSINESS RETIREMENT SAVINGS BOARD.

(B) THE BOARD CONSISTS OF THE FOLLOWING MEMBERS:

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

(2) THE SECRETARY OF LABOR, LICENSING, AND REGULATION, OR THE SECRETARY’S DESIGNEE; AND

(3) NINE MEMBERS WITH EXPERTISE IN RETIREMENT PROGRAMS AND BENEFITS, INVESTMENTS, FINANCIAL SYSTEMS AND CONTROLS, OR SMALL BUSINESS, APPOINTED AS FOLLOWS:

- (I) THREE MEMBERS, APPOINTED BY THE GOVERNOR;
- (II) THREE MEMBERS, APPOINTED BY THE PRESIDENT OF THE SENATE; AND
- (III) THREE MEMBERS, APPOINTED BY THE SPEAKER OF THE HOUSE OF DELEGATES.

(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, 2016.

(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 BOARD SHALL ELECT A CHAIR FROM AMONG THE MEMBERS 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 THAT 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.

(3) CONSISTENT WITH ITS FIDUCIARY DUTIES, THE BOARD MAY ENTER INTO AN AGREEMENT TO BORROW FUNDS FROM THE STATE OR ANY OTHER ENTITY TO PROVIDE FUNDING FOR THE OPERATION OF THE PROGRAM UNTIL THE PROGRAM CAN GENERATE SUFFICIENT FUNDING FOR OPERATIONS THROUGH FEES ASSESSED ON PROGRAM ACCOUNTS.

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~~ SELECTING INVESTMENT OPTIONS OR PROGRAMS THAT WILL INVEST 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 CONSIDER INVESTMENT OPTIONS OR PROGRAMS THAT WILL SEEK TO 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 AND DUTIES SET FORTH ELSEWHERE IN THIS TITLE, THE BOARD ~~MAY~~:

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

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

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

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

(5) SHALL 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~~ EMPLOYEE TO CONTRIBUTE AUTOMATICALLY TO THE PROGRAM;

(6) SHALL EVALUATE AND ESTABLISH THE PROCESS FOR A PARTICIPATING EMPLOYER TO PROVIDE A PAYROLL DEPOSIT RETIREMENT SAVINGS ARRANGEMENT FOR ~~ELIGIBLE~~ COVERED 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) SHALL DESIGN AND ESTABLISH THE PROCESS FOR THE ENROLLMENT OF PROGRAM PARTICIPANTS;

(8) SHALL 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~~ A RANGE OF INVESTMENT OPTIONS, INCLUDING A DEFAULT INVESTMENT SELECTION FOR EMPLOYEES' PAYROLL DEPOSIT IRAS;

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

(12) MAY 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) SHALL 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~~ INDIVIDUAL RETIREMENT ACCOUNTS;

(14) SHALL 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,~~ SHALL DETERMINE THE ELIGIBILITY OF AN EMPLOYER, EMPLOYEE, OR ANY OTHER INDIVIDUAL TO PARTICIPATE IN THE PROGRAM; AND

(16) MAY EVALUATE AND ESTABLISH THE PROCESS BY WHICH AN ~~ELIGIBLE~~ 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 AND TAKE ANY OTHER ACTION 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.

(C) THE BOARD SHALL TAKE ANY ACTION NECESSARY TO ENSURE THAT THE PROGRAM IS NOT PREEMPTED BY FEDERAL LAW.

12-205.

(A) THE BOARD SHALL ESTABLISH PROCEDURES AND DISCLOSURES TO PROTECT THE INTERESTS OF PARTICIPANTS AND EMPLOYERS.

(B) (1) BEFORE OPENING THE PROGRAM FOR ENROLLMENT, THE BOARD SHALL DESIGN AND DISSEMINATE TO EMPLOYERS ~~AN EMPLOYEE~~ AND EMPLOYEES INFORMATION ~~PACKET~~ REGARDING THE PROGRAM.

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

~~(B) THE DISCLOSURE FORM SHALL INCLUDE:~~ EMPLOYEES, INCLUDING:

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

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

~~(3)~~ (III) HOW TO OPT OUT OF THE PROGRAM;

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

~~(5)~~ (V) HOW TO OBTAIN ADDITIONAL INFORMATION ON THE PROGRAM; AND

(VI) INFORMATION ABOUT ALTERNATIVE RETIREMENT SAVINGS OPTIONS.

(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~~ EMPLOYER-OFFERED SAVINGS ARRANGEMENT; 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 SHALL ALSO 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 BOARD 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.~~

(D) THE BOARD SHALL ESTABLISH PROCEDURES FOR:

(1) A COVERED EMPLOYEE TO OPT OUT OF PARTICIPATION IN THE PROGRAM;

(2) A PARTICIPATING EMPLOYEE TO OPT OUT OF PARTICIPATION IN THE PROGRAM AFTER THE PARTICIPATING EMPLOYEE HAS COMMENCED PARTICIPATION; AND

(3) AN EMPLOYEE WHO HAS OPTED OUT OF PARTICIPATION TO PARTICIPATE OR RESUME PARTICIPATION IN THE PROGRAM.

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.

SUBTITLE 3. MARYLAND SMALL BUSINESS RETIREMENT SAVINGS TRUST.

12-301.

(A) THERE IS A MARYLAND SMALL BUSINESS RETIREMENT SAVINGS TRUST.

(B) (1) THE MARYLAND SMALL BUSINESS 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.

(2) THE BOARD SHALL ENTER INTO AN AGREEMENT DELEGATING THE ADMINISTRATION OF THE TRUST TO A THIRD-PARTY ADMINISTRATOR.

(C) MONEY IN THE TRUST MAY BE INVESTED OR REINVESTED AS DETERMINED BY THE BOARD.

(D) ANY CONTRIBUTIONS PAID BY EMPLOYEES 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)~~ THE BOARD SHALL ESTABLISH, BY REGULATION, DATES WHEN AN EMPLOYER SHALL DEPOSIT EMPLOYEE CONTRIBUTIONS.

~~(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.~~

(F) THE STATE MAY NOT TRANSFER ANY ASSETS OF THE TRUST TO THE GENERAL FUND OR ANY OTHER FUND OF THE STATE, OR OTHERWISE ENCUMBER ANY ASSETS OF THE TRUST.

SUBTITLE 4. MARYLAND SMALL BUSINESS RETIREMENT SAVINGS PROGRAM.

12-401.

(A) THERE IS A MARYLAND SMALL BUSINESS RETIREMENT SAVINGS PROGRAM.

(B) THE MARYLAND SMALL BUSINESS RETIREMENT SAVINGS PROGRAM SHALL ONLY INCLUDE ONE OR MORE PAYROLL DEPOSIT IRA ARRANGEMENTS AS DETERMINED BY THE BOARD.

(C) THE BOARD SHALL:

(1) IMPLEMENT A RANGE OF INVESTMENT OPTIONS AND PROVIDERS;
AND

(2) SELECT A DEFAULT INVESTMENT OPTION FOR PROGRAM PARTICIPANTS.

(D) WHEN SELECTING INVESTMENT OPTIONS, THE BOARD SHALL CONSIDER METHODS TO MINIMIZE THE RISK OF SIGNIFICANT INVESTMENT LOSSES AT THE TIME OF A PARTICIPATING EMPLOYEE'S RETIREMENT.

(E) THE BOARD MAY PROVIDE AN INVESTMENT OPTION THAT PROVIDES AN ASSURED LIFETIME INCOME.

(F) (1) THE BOARD SHALL CONSIDER INVESTMENT OPTIONS THAT MINIMIZE ADMINISTRATIVE EXPENSES.

(2) ONGOING ANNUAL ADMINISTRATIVE EXPENSES MAY NOT EXCEED 0.5% OF ASSETS UNDER MANAGEMENT IN THE PROGRAM.

(G) THE BOARD MAY NOT OFFER ANY INVESTMENT OPTIONS THAT CONFLICT WITH FEDERAL LAW.

(H) THE BOARD MAY NOT OFFER ANY INVESTMENT OPTIONS THAT COULD RESULT IN LIABILITY TO THE STATE OR ITS TAXPAYERS.

~~(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) (1) AFTER THE BOARD OPENS THE PROGRAM FOR ENROLLMENT, ELIGIBLE COVERED EMPLOYERS SHALL ESTABLISH A PAYROLL DEPOSIT RETIREMENT SAVINGS ARRANGEMENT TO ALLOW EMPLOYEE PARTICIPATION IN THE PROGRAM.

~~(B) (1) AN ELIGIBLE EMPLOYER SHALL ENROLL ALL ELIGIBLE EMPLOYEES IN THE PROGRAM, UNLESS THE EMPLOYEE ELECTS NOT TO PARTICIPATE IN THE PROGRAM.~~

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

~~(3) AN ELIGIBLE EMPLOYEE OF A PARTICIPATING EMPLOYER 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 IN A MANNER PRESCRIBED BY THE BOARD~~

(2) A COVERED EMPLOYER SHALL AUTOMATICALLY ENROLL A COVERED EMPLOYEE IN THE PROGRAM, UNLESS THE EMPLOYEE ELECTS TO OPT OUT IN ACCORDANCE WITH PROCEDURES ESTABLISHED BY THE BOARD.

(B) IF A COVERED EMPLOYER IS NOT IN COMPLIANCE WITH SUBSECTION (A) OF THIS SECTION, THE COVERED EMPLOYER MAY NOT RECEIVE A WAIVER OF THE FILING FEE UNDER § 1-203(B)(14) OF THE CORPORATIONS AND ASSOCIATIONS ARTICLE.

(C) EMPLOYERS SHALL RETAIN THE OPTION AT ALL TIMES TO SET UP ANY TYPE OF ~~EMPLOYER SPONSORED RETIREMENT PLAN~~ EMPLOYER-OFFERED SAVINGS ARRANGEMENT, 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.

(D) COMPLIANCE WITH THIS TITLE AND PARTICIPATION IN THE PROGRAM BY ITSELF DOES NOT CREATE A FIDUCIARY OBLIGATION OF AN EMPLOYER WITH RESPECT TO THE OPERATION OF THE PROGRAM OR FUNDS CONTRIBUTED TO THE PROGRAM.

12-403.

(A) A COVERED EMPLOYEE OF A PARTICIPATING EMPLOYER MAY ELECT TO OPT OUT OF THE PROGRAM.

(B) A COVERED EMPLOYEE OF A PARTICIPATING EMPLOYER WHO ELECTS TO OPT OUT OF THE PROGRAM MAY RE-ENROLL IN THE PROGRAM IN ACCORDANCE WITH PROCEDURES ESTABLISHED BY THE BOARD.

~~(D)~~ (C) AFTER THE BOARD OPENS THE PROGRAM FOR ENROLLMENT, ~~ANY AN ELIGIBLE~~ EMPLOYEE OF A NONPARTICIPATING EMPLOYER MAY ELECT TO PARTICIPATE IN THE PROGRAM ~~AT ANY TIME IN A MANNER PRESCRIBED AS~~ AUTHORIZED BY THE BOARD.

~~(E)~~ (D) A PARTICIPATING EMPLOYEE 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.~~

~~(F)~~ (E) UNLESS OTHERWISE SPECIFIED BY THE EMPLOYEE, A PARTICIPATING EMPLOYEE SHALL CONTRIBUTE ~~3%~~ A FIXED PERCENTAGE OR DOLLAR AMOUNT OF THE EMPLOYEE'S ~~ANNUAL~~ SALARY OR WAGES TO THE PROGRAM.

~~(G)~~ (F) BY REGULATION, THE BOARD SHALL SET AND MAY ADJUST THE DEFAULT CONTRIBUTION AMOUNT SET IN SUBSECTION ~~(F)~~ (E) OF THIS SECTION.

(G) THE ASSETS IN A PARTICIPATING EMPLOYEE'S PROGRAM ACCOUNT ARE THE PROPERTY OF THE PARTICIPATING EMPLOYEE.

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 BOARD, TRUST, OR~~ 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.

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

- (1) three members in 2018;
- (2) three members in 2019; and
- (3) three members in 2020.

SECTION 3. AND BE IT FURTHER ENACTED, That, before any plan, trust, administrative arrangement, or investment offering may be implemented under this Act, the Board shall obtain an opinion from its counsel or from the federal government that the plan, trust, administrative arrangement, investment offerings, and 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 Small Business 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 the filing fee under § 1-203(b)(3)(ii) of the Corporations and Associations Article may not be waived in accordance with this Act until the Maryland Small Business Savings Program is open for enrollment.

~~SECTION 5.~~ SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2016.

Approved by the Governor, May 10, 2016.