

## CHAPTER 354

(Senate Bill 66)

AN ACT concerning

### **Supplemental Retirement Plans and Optional Retirement Program – Employing Institutions – Community Colleges**

FOR the purpose of designating certain community colleges or certain regional community colleges as employing institutions for certain employees participating in supplemental retirement plans and the Optional Retirement Program; requiring certain employing institutions to select one or more designated companies under certain circumstances that may offer supplemental retirement accounts to their employees and to administer the participation of those employees in the supplemental retirement plan under certain circumstances; requiring certain employing institutions to select one or more companies under certain circumstances that may offer supplemental retirement accounts to their employees and to administer the participation of those employees in the supplemental retirement plan under certain circumstances; requiring a certain company to provide indemnification under certain circumstances; declaring the intent of the General Assembly; providing for the application of this Act; and generally relating to employing institutions' supplemental retirement plans and the Optional Retirement Program.

BY repealing and reenacting, without amendments,  
Article – State Personnel and Pensions  
Section 30–101(a) and (c)  
Annotated Code of Maryland  
(2004 Replacement Volume and 2008 Supplement)

BY repealing and reenacting, with amendments,  
Article – State Personnel and Pensions  
Section 30–101(e) and (j), 30–210, and 30–212  
Annotated Code of Maryland  
(2004 Replacement Volume and 2008 Supplement)

BY adding to  
Article – State Personnel and Pensions  
Section 30–401 to be under the new subtitle “Subtitle 4. Supplemental Retirement Plans”  
Annotated Code of Maryland  
(2004 Replacement Volume and 2008 Supplement)

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

**Article – State Personnel and Pensions**

30–101.

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

(c) “Designated company” means an entity that:

(1) on or before March 1, 1993, was designated by the governing board of an employing institution to offer annuity contracts under the program; or

(2) is designated by the Board of Trustees.

(e) “Employing institution” means:

(1) the University System of Maryland;

(2) Morgan State University;

(3) St. Mary’s College; [and]

(4) the Maryland Higher Education Commission with respect to eligible employees of the Commission [or]; **AND**

(5) any community college or regional community college established under Title 16 of the Education Article.

(j) “Supplemental retirement plans” means plans established pursuant to [§ 30–210] § **30–401** of this title.

30–210.

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

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

(i) establish supplemental retirement plans that provide supplemental retirement accounts offered by a designated company in accordance with

§ 401(a), § 403(b), or § 457 of the Internal Revenue Code, or any other provision of federal law that authorizes supplemental retirement accounts; and

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

(2) If an employing institution authorizes its employees or the employees of an institution over which it has administrative authority to participate in a supplemental retirement plan, the employing institution shall designate the companies that may offer supplemental retirement accounts to those employees and shall administer the participation of those employees in the supplemental retirement plan.

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

(4) Assets of the supplemental retirement plans may be deposited and invested in accordance with the investment elections allowed under the supplemental retirement plans notwithstanding any other law limiting the types of investments that may be made with State funds or imposing conditions on the deposit of State funds.

(5) An employee of an employing institution with discretionary authority over the management or administration of any of the supplemental retirement plans or the management or disposition of the assets of any of the supplemental retirement plans is entitled to indemnification and insurance as provided under § 30–210.1 of this subtitle.]

30–212.

A designated company **OR A COMPANY AUTHORIZED TO PROVIDE SUPPLEMENTAL RETIREMENT ACCOUNTS UNDER § 30–401 OF THIS TITLE** shall hold harmless and indemnify the State, the Board of Trustees, employing institutions, and the officers, agents, and employees of the State, the Board of Trustees, and employing institutions from any claims or demands arising from any act or omission on the part of the designated company **OR A COMPANY AUTHORIZED TO PROVIDE SUPPLEMENTAL RETIREMENT ACCOUNTS UNDER § 30–401 OF THIS TITLE** or its officers, agents, or employees, including any claim or demand for payment of benefits or damages arising from the formation, execution, performance, or termination of an annuity contract.

#### **SUBTITLE 4. SUPPLEMENTAL RETIREMENT PLANS.**

**30–401.**

**(A) AN EMPLOYING INSTITUTION MAY:**

**(1) ESTABLISH SUPPLEMENTAL RETIREMENT PLANS THAT PROVIDE SUPPLEMENTAL RETIREMENT ACCOUNTS OFFERED BY A DESIGNATED COMPANY IN ACCORDANCE WITH § 401(A), § 403(B), OR § 457 OF THE INTERNAL REVENUE CODE, OR ANY OTHER PROVISION OF FEDERAL LAW THAT AUTHORIZES SUPPLEMENTAL RETIREMENT ACCOUNTS; AND**

**(2) AUTHORIZE ITS EMPLOYEES OR THE EMPLOYEES OF AN INSTITUTION OVER WHICH IT HAS ADMINISTRATIVE AUTHORITY TO PARTICIPATE IN ONE OR MORE OF THE SUPPLEMENTAL RETIREMENT PLANS.**

**(B) ~~IF (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, IF~~ AN EMPLOYING INSTITUTION AUTHORIZES ITS EMPLOYEES OR THE EMPLOYEES OF AN INSTITUTION OVER WHICH IT HAS ADMINISTRATIVE AUTHORITY TO PARTICIPATE IN A SUPPLEMENTAL RETIREMENT PLAN, THE EMPLOYING INSTITUTION SHALL ~~DESIGNATE THE COMPANIES~~ SELECT ONE OR MORE OF THE DESIGNATED COMPANIES UNDER § 30-202 OF THIS TITLE THAT MAY OFFER SUPPLEMENTAL RETIREMENT ACCOUNTS TO THOSE EMPLOYEES AND SHALL ADMINISTER THE PARTICIPATION OF THOSE EMPLOYEES IN THE SUPPLEMENTAL RETIREMENT PLAN.**

**(2) WITH RESPECT TO A COMMUNITY OR REGIONAL COLLEGE ESTABLISHED UNDER TITLE 16 OF THE EDUCATION ARTICLE, OTHER THAN A COMMUNITY COLLEGE ESTABLISHED UNDER TITLE 16, SUBTITLE 5 OF THE EDUCATION ARTICLE, IF AN EMPLOYING INSTITUTION AUTHORIZES ITS EMPLOYEES OR THE EMPLOYEES OF AN INSTITUTION OVER WHICH IT HAS ADMINISTRATIVE AUTHORITY TO PARTICIPATE IN A SUPPLEMENTAL RETIREMENT PLAN, THE EMPLOYING INSTITUTION SHALL SELECT ONE OR MORE COMPANIES THAT MAY OFFER SUPPLEMENTAL RETIREMENT ACCOUNTS TO THOSE EMPLOYEES AND SHALL ADMINISTER THE PARTICIPATION OF THOSE EMPLOYEES IN THE SUPPLEMENTAL RETIREMENT PLAN.**

**(C) CONTRIBUTIONS AUTHORIZED UNDER THIS ~~SUBSECTION~~ SECTION TO A SUPPLEMENTAL RETIREMENT ACCOUNT ON BEHALF OF AN EMPLOYEE MAY BE MADE BY PAYROLL DEDUCTION, A REDUCTION IN SALARY, OR DEFERRAL IN COMPENSATION IN ACCORDANCE WITH § 403(B), § 457, OR § 414(H) OF THE INTERNAL REVENUE CODE.**

**(D) ASSETS OF THE SUPPLEMENTAL RETIREMENT PLANS MAY BE DEPOSITED AND INVESTED IN ACCORDANCE WITH THE INVESTMENT ELECTIONS ALLOWED UNDER THE SUPPLEMENTAL RETIREMENT PLANS NOTWITHSTANDING**

**ANY OTHER LAW LIMITING THE TYPES OF INVESTMENTS THAT MAY BE MADE WITH STATE FUNDS OR IMPOSING CONDITIONS ON THE DEPOSIT OF STATE FUNDS.**

**(E) AN EMPLOYEE OF AN EMPLOYING INSTITUTION WITH DISCRETIONARY AUTHORITY OVER THE MANAGEMENT OR ADMINISTRATION OF ANY OF THE SUPPLEMENTAL RETIREMENT PLANS OR THE MANAGEMENT OR DISPOSITION OF THE ASSETS OF ANY OF THE SUPPLEMENTAL RETIREMENT PLANS IS ENTITLED TO INDEMNIFICATION AND INSURANCE AS PROVIDED UNDER § 30-210.1 OF THIS TITLE.**

SECTION 2. AND BE IT FURTHER ENACTED, That it is the intent of the General Assembly that this Act may not be construed to limit, expand, or alter the eligibility of employees to participate in the supplemental plans offered by the Board of Trustees of the Maryland Teachers and State Employees Supplemental Retirement Plans established under the State Personnel and Pensions Article.

SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That it is the intent of the General Assembly that this Act may not be construed to diminish in any way the State's contribution to the funding of community college employees' Optional Retirement Program.

SECTION ~~3~~ 4. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply retroactively and shall be applied to and interpreted to affect supplemental retirement accounts authorized and supplemental annuity contributions made after December 31, 2008.

SECTION ~~4~~ 5. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2009.

**Approved by the Governor, May 7, 2009.**