

# HOUSE BILL 1251

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CF SB 921

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By: **Delegates Hucker, Barkley, Glenn, Gutierrez, and Holmes**

Introduced and read first time: February 7, 2014

Assigned to: Economic Matters

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## A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Secure Choice Retirement Savings Program and Trust**

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

25 BY adding to

26 Article – Labor and Employment

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

29 Annotated Code of Maryland

30 (2008 Replacement Volume and 2013 Supplement)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3 **Article – Labor and Employment**

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

6 **SUBTITLE 1. DEFINITIONS.**

7 **12-101.**

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

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

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

14 (2) “ELIGIBLE EMPLOYEE” DOES NOT INCLUDE:

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

21 (II) AN EMPLOYEE ELIGIBLE TO PARTICIPATE IN A  
22 QUALIFYING RETIREMENT PLAN OR ARRANGEMENT DESCRIBED IN 26 U.S.C. §  
23 219(G)(5) OR AN EMPLOYEE WHO WAS ELIGIBLE TO PARTICIPATE BUT THE PLAN  
24 OR ARRANGEMENT WAS TERMINATED OR FROZEN AT ANY TIME DURING THE  
25 PRECEDING 2 CALENDAR YEARS;

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

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

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

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

10                   (2) “ELIGIBLE EMPLOYER” DOES NOT INCLUDE:

11                   (I) THE FEDERAL GOVERNMENT;

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

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

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

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

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

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

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

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

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

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

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

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

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

13 **SUBTITLE 2. ESTABLISHMENT; POWERS AND DUTIES OF BOARD.**

14 **12-201.**

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

17 **(B) THE BOARD CONSISTS OF THE FOLLOWING MEMBERS:**

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

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

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

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

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

25 **(II) A REPRESENTATIVE OF SMALL BUSINESSES;**

26 **(III) A REPRESENTATIVE OF EMPLOYEES;**

27 **(IV) A REPRESENTATIVE OF RETIREES; AND**

1                   **(V) A MEMBER OF THE PUBLIC.**

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

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

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

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

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

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

14 **12-202.**

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

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

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

25 **12-203.**

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

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

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

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

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

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

21 **12-204.**

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

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

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

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

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

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

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

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

16           **(8) EVALUATE AND ESTABLISH THE PROCESS FOR A**  
17 **PARTICIPATING EMPLOYER TO USE THE PROGRAM TO REMIT EMPLOYEES’**  
18 **CONTRIBUTIONS TO THEIR INDIVIDUAL RETIREMENT ACCOUNTS ON BEHALF OF**  
19 **THE EMPLOYEES;**

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

24           **(10) PROCURE INSURANCE INDEMNIFYING EACH MEMBER OF THE**  
25 **BOARD FROM PERSONAL LOSS OR LIABILITY RESULTING FROM A MEMBER’S**  
26 **ACTION OR INACTION AS A MEMBER OF THE BOARD;**

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

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

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

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

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

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

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

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

22 **12-205.**

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

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

29           **(B) THE DISCLOSURE FORM SHALL INCLUDE:**

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



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

3           **(3) HOW TO OPT OUT OF THE PROGRAM;**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 **12-206.**

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

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

20 **12-207.**

21 **(A) IN ADDITION TO THE AUTHORITY GRANTED TO THE BOARD UNDER §**  
22 **12-204 OF THIS SUBTITLE, THE BOARD MAY ESTABLISH A TRUST FUND TO**  
23 **ACCEPT CASH OR CASH EQUIVALENT CONTRIBUTIONS FROM EMPLOYERS FOR**  
24 **THE BENEFIT OF THEIR EMPLOYEES.**

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

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

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

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

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

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

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

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

11 (D) THE BOARD SHALL ACT AS A FIDUCIARY UNDER THE FEDERAL  
12 EMPLOYEE RETIREMENT INCOME SECURITY ACT WITH RESPECT TO THE  
13 401(A) ACCOUNTS.

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

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

22 SUBTITLE 3. MARYLAND SECURE CHOICE RETIREMENT SAVINGS TRUST.

23 12-301.

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

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

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

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

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

5 (1) PAY BENEFITS TO THE PARTICIPANTS OF THE PROGRAM;

6 (2) PAY THE COST FOR ADMINISTERING THE PROGRAM; AND

7 (3) MAKE INVESTMENTS FOR THE BENEFIT OF THE PROGRAM.

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

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

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

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

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

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

25 SUBTITLE 4. MARYLAND SECURE CHOICE RETIREMENT SAVINGS PROGRAM.

26 12-401.

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

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

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

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

10 **12-402.**

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

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

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

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

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

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

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

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

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

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

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

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

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

27 SUBTITLE 5. LIMITATION OF LIABILITY.

28 12-501.

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

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

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



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

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

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

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

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

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

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