

# HOUSE BILL 1378

K3, K4, C1

6lr3067  
CF 6lr1259

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By: **Delegates Frick and Waldstreicher**

Introduced and read first time: February 12, 2016

Assigned to: Economic Matters

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## A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Small Business Retirement Savings Program and Trust**

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

24 BY repealing and reenacting, with amendments,  
25 Article – Corporations and Associations  
26 Section 1–203(b)(3)(ii)  
27 Annotated Code of Maryland  
28 (2014 Replacement Volume and 2015 Supplement)

29 BY adding to

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – Corporations and Associations  
 2 Section 1–203(b)(14)  
 3 Annotated Code of Maryland  
 4 (2014 Replacement Volume and 2015 Supplement)

5 BY adding to  
 6 Article – Labor and Employment  
 7 Section 12–101 through 12–502 to be under the new title “Title 12. Maryland Small  
 8 Business Retirement Savings Program and Trust”  
 9 Annotated Code of Maryland  
 10 (2008 Replacement Volume and 2015 Supplement)

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

13 **Article – Corporations and Associations**

14 1–203.

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

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

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

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

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

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

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

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

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

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

8 (II) THE ENTITY OTHERWISE PROVIDES AN AUTOMATIC  
9 ENROLLMENT PAYROLL DEDUCTION INDIVIDUAL RETIREMENT ACCOUNT OR  
10 INDIVIDUAL RETIREMENT ANNUITY UNDER 26 U.S.C. § 408(A) OR (B) OR AN  
11 EMPLOYER-SPONSORED RETIREMENT PLAN THAT IS IN COMPLIANCE WITH THE  
12 FEDERAL EMPLOYEE RETIREMENT INCOME SECURITY ACT.

13 Article - Labor and Employment

14 TITLE 12. MARYLAND SMALL BUSINESS RETIREMENT SAVINGS PROGRAM AND  
15 TRUST.

16 SUBTITLE 1. DEFINITIONS.

17 12-101.

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

20 (B) "BOARD" MEANS THE MARYLAND SMALL BUSINESS RETIREMENT  
21 SAVINGS BOARD.

22 (C) (1) "ELIGIBLE EMPLOYEE" MEANS A PERSON WHO IS EMPLOYED BY  
23 AN ELIGIBLE EMPLOYER OR WHO IS OTHERWISE ELIGIBLE TO PARTICIPATE IN THE  
24 PROGRAM UNDER THIS TITLE.

25 (2) "ELIGIBLE EMPLOYEE" DOES NOT INCLUDE:

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

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

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

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

11           **(D) (1) “ELIGIBLE EMPLOYER” MEANS A PERSON ENGAGED IN A**  
12 **BUSINESS, AN INDUSTRY, A PROFESSION, A TRADE, OR ANY OTHER ENTERPRISE IN**  
13 **THE STATE, WHETHER FOR PROFIT OR NOT FOR PROFIT, THAT:**

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

17           **(II) PAYS THE ELIGIBLE EMPLOYER’S EMPLOYEES THROUGH A**  
18 **PAYROLL SYSTEM OR SERVICE.**

19           **(2) “ELIGIBLE EMPLOYER” DOES NOT INCLUDE:**

20           **(I) THE FEDERAL GOVERNMENT;**

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

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

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

25           **(V) AN EMPLOYER THAT CURRENTLY OFFERS AN**  
26 **EMPLOYER-SPONSORED RETIREMENT PLAN THAT WAS ESTABLISHED SEPARATELY**  
27 **FROM THE REQUIREMENTS OF THIS TITLE;**

28           **(VI) AN EMPLOYER THAT, AT ANY TIME DURING THE PRECEDING**  
29 **2 CALENDAR YEARS, TERMINATED AN EMPLOYER-SPONSORED RETIREMENT PLAN**  
30 **THAT WAS ESTABLISHED SEPARATELY FROM THE REQUIREMENTS OF THIS TITLE; OR**

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

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

6 (F) "MARYLAND SMALL BUSINESS RETIREMENT SAVINGS PROGRAM"  
7 MEANS A RETIREMENT SAVINGS PROGRAM ESTABLISHED AND OFFERED BY THE  
8 MARYLAND SMALL BUSINESS RETIREMENT SAVINGS BOARD UNDER THIS TITLE.

9 (G) "PARTICIPATING EMPLOYEE" MEANS AN ELIGIBLE EMPLOYEE THAT  
10 ELECTS TO PARTICIPATE IN A PAYROLL DEPOSIT RETIREMENT SAVINGS  
11 ARRANGEMENT UNDER THIS TITLE FOR ELIGIBLE EMPLOYEES.

12 (H) "PARTICIPATING EMPLOYER" MEANS AN ELIGIBLE EMPLOYER THAT  
13 PROVIDES A PAYROLL DEPOSIT RETIREMENT SAVINGS ARRANGEMENT UNDER THIS  
14 TITLE FOR ELIGIBLE EMPLOYEES.

15 (I) "PAYROLL DEPOSIT RETIREMENT SAVINGS ARRANGEMENT" MEANS AN  
16 ARRANGEMENT BY WHICH AN EMPLOYER REMITS PAYROLL DEDUCTION  
17 CONTRIBUTIONS OF PARTICIPATING EMPLOYEES TO A RETIREMENT SAVINGS  
18 PROGRAM.

19 (J) "PROGRAM" MEANS THE MARYLAND SMALL BUSINESS RETIREMENT  
20 SAVINGS PROGRAM ESTABLISHED UNDER THIS TITLE.

21 (K) "TRUST" MEANS THE MARYLAND SMALL BUSINESS RETIREMENT  
22 SAVINGS TRUST ESTABLISHED UNDER THIS TITLE.

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

24 **12-201.**

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

27 (B) THE BOARD CONSISTS OF THE FOLLOWING MEMBERS:

28 (1) THE STATE TREASURER, OR THE STATE TREASURER'S DESIGNEE;

29 (2) THE SECRETARY OF LABOR, LICENSING, AND REGULATION, OR  
30 THE SECRETARY'S DESIGNEE; AND

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

4                   **(I) THREE MEMBERS, APPOINTED BY THE GOVERNOR;**

5                   **(II) THREE MEMBERS, APPOINTED BY THE PRESIDENT OF THE**  
6 **SENATE; AND**

7                   **(III) THREE MEMBERS, APPOINTED BY THE SPEAKER OF THE**  
8 **HOUSE OF DELEGATES.**

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

10                   **(2) THE TERMS OF MEMBERS ARE STAGGERED AS REQUIRED BY THE**  
11 **TERMS PROVIDED FOR MEMBERS OF THE BOARD ON JULY 1, 2016.**

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

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

17           **(D) THE BOARD SHALL ELECT A CHAIR FROM AMONG THE MEMBERS OF THE**  
18 **BOARD.**

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

21 **12-202.**

22           **(A) THE BOARD SHALL MEET AT THE TIMES AND PLACES THAT THE BOARD**  
23 **DETERMINES.**

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

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

1 12-203.

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

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

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

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

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

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

24 12-204.

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

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

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

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

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

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

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

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

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

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

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

29           **(11) SET MINIMUM AND MAXIMUM EMPLOYEE CONTRIBUTION LEVELS**  
30 **IN ACCORDANCE WITH CONTRIBUTION LIMITS SET FOR IRAS BY THE INTERNAL**  
31 **REVENUE CODE;**

32           **(12) ARRANGE FOR COLLECTIVE, COMMON, AND POOLED INVESTMENT**  
33 **OF ASSETS OF THE PROGRAM OR ARRANGEMENTS, INCLUDING INVESTMENTS IN**  
34 **CONJUNCTION WITH OTHER FUNDS WITH WHICH THOSE ASSETS ARE AUTHORIZED**



1 TO BE COLLECTIVELY INVESTED, WITH A VIEW TO SAVING COSTS THROUGH  
2 EFFICIENCIES AND ECONOMIES OF SCALE;

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

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

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

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

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

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

22 12-205.

23 (A) (1) BEFORE OPENING THE PROGRAM FOR ENROLLMENT, THE BOARD  
24 SHALL DESIGN AND DISSEMINATE TO EMPLOYERS AN EMPLOYEE INFORMATION  
25 PACKET.

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

28 (B) THE DISCLOSURE FORM SHALL INCLUDE:

29 (1) THE BENEFITS AND RISKS ASSOCIATED WITH MAKING  
30 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; AND**

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

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

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

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

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

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

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

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

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

26           **(F) (1) THE EMPLOYEE INFORMATION PACKET SHALL BE MADE**  
27 **AVAILABLE TO EMPLOYERS THROUGH THE BOARD AND SUPPLIED TO EMPLOYEES**  
28 **AT THE TIME OF HIRING.**

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

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

8 **12-206.**

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

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

18           **SUBTITLE 3. MARYLAND SMALL BUSINESS RETIREMENT SAVINGS TRUST.**

19 **12-301.**

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

22           **(B) THE MARYLAND SMALL BUSINESS RETIREMENT SAVINGS TRUST**  
23 **SHALL BE ADMINISTERED BY THE BOARD FOR THE PURPOSE OF PROMOTING**  
24 **GREATER RETIREMENT SAVINGS FOR MARYLAND PRIVATE SECTOR EMPLOYEES IN**  
25 **A CONVENIENT, VOLUNTARY, LOW-COST, AND PORTABLE MANNER.**

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

28           **(D) ANY CONTRIBUTIONS PAID BY EMPLOYEES INTO THE TRUST MAY BE**  
29 **USED ONLY TO:**

30                   **(1) PAY BENEFITS TO THE PARTICIPANTS OF THE PROGRAM;**

31                   **(2) PAY THE COST FOR ADMINISTERING THE PROGRAM; AND**

1           **(3) MAKE INVESTMENTS FOR THE BENEFIT OF THE PROGRAM.**

2           **(E) (1) THE BOARD SHALL ESTABLISH DATES WHEN AN EMPLOYER**  
3 **SHALL DEPOSIT EMPLOYEE CONTRIBUTIONS.**

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

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

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

11       **SUBTITLE 4. MARYLAND SMALL BUSINESS RETIREMENT SAVINGS PROGRAM.**

12       **12-401.**

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

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

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

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

24       **12-402.**

25           **(A) AFTER THE BOARD OPENS THE PROGRAM FOR ENROLLMENT, ELIGIBLE**  
26 **EMPLOYERS SHALL ESTABLISH A PAYROLL DEPOSIT RETIREMENT SAVINGS**  
27 **ARRANGEMENT TO ALLOW EMPLOYEE PARTICIPATION IN THE PROGRAM.**

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

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

7           **(3) AN ELIGIBLE EMPLOYEE OF A PARTICIPATING EMPLOYER WHO**  
8 **ELECTS TO OPT OUT OF THE PROGRAM AND WHO SUBSEQUENTLY WANTS TO**  
9 **PARTICIPATE THROUGH THE EMPLOYER'S PAYROLL DEPOSIT RETIREMENT SAVINGS**  
10 **ARRANGEMENT MAY ENROLL IN A MANNER PRESCRIBED BY THE BOARD.**

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

18           **(D) AFTER THE BOARD OPENS THE PROGRAM FOR ENROLLMENT, ANY**  
19 **ELIGIBLE EMPLOYEE OF A NONPARTICIPATING EMPLOYER MAY ELECT TO**  
20 **PARTICIPATE IN THE PROGRAM AT ANY TIME IN A MANNER PRESCRIBED BY THE**  
21 **BOARD.**

22           **(E) A PARTICIPATING EMPLOYEE MAY TERMINATE PARTICIPATION IN THE**  
23 **PROGRAM AT ANY TIME IN A MANNER PRESCRIBED BY THE BOARD AND**  
24 **THEREAFTER BY MAKING A NOTATION ON THE OPT-OUT FORM.**

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

28           **(G) BY REGULATION, THE BOARD MAY ADJUST THE CONTRIBUTION**  
29 **AMOUNT SET IN SUBSECTION (F) OF THIS SECTION.**

30                                   **SUBTITLE 5. LIMITATION OF LIABILITY.**

31 **12-501.**

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

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

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

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

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

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

11 **12-502.**

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

15           **(B) THE DEBTS, CONTRACTS, AND OBLIGATIONS OF THE TRUST AND THE**  
16 **PROGRAM ARE NOT THE DEBTS, CONTRACTS, AND OBLIGATIONS OF THE STATE AND**  
17 **NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE IS**  
18 **PLEGGED DIRECTLY OR INDIRECTLY TO THE PAYMENT OF THE DEBTS, CONTRACTS,**  
19 **AND OBLIGATIONS.**

20           SECTION 2. AND BE IT FURTHER ENACTED, That the terms of the initial  
21 members of the Maryland Small Business Retirement Savings Board established by Section  
22 1 of this Act who are subject to appointment end as follows:

23           (1) three members in 2018;

24           (2) three members in 2019; and

25           (3) three members in 2020.

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

1           SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect July  
2   1, 2016.